

CALIFORNIA COASTAL COMMISSION

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original staff report

W24a

MEMORANDUM

Date: May 9, 2016

To: Commissioners and Interested Persons

From: Alison Dettmer, Deputy Director
Bob Merrill, District Manager
Tamara Gedik, Coastal Program Analyst

Subject: Addendum to Commission Meeting for Wednesday, May 11, 2016
North Coast District Item W24a
CDP Appeal A-1-MEN-16-0040 (Mendocino Land Trust)

The purpose of this staff report addendum is to present and respond to a public comment letter received May 6, 2016 on behalf of appellant Diane Rubino from her attorney (Attachment A) in response to the April 22, 2016 staff report, and to transmit additional public comments received since publication of the staff report on April 22, 2016. The other correspondence received includes a letter from the Sierra Club (Attachment B) which supports the Commission staff recommendation that the appeal raises no substantial issue of conformity of the project as approved with the policies of the certified LCP or with the public access policies of the Coastal Act, and a letter from Dr. Jeff Kahler (Attachment C) which supports the appeal by Diane Rubino. This addendum includes: (I) responses to the appellant's comments; (II) revisions to the recommended findings; and (III) the correspondence received as attachments. The addendum does not alter the conclusions of the staff report. Staff continues to recommend that the Commission find that the appeal raises no substantial issue with respect to the grounds on which it was filed.

Staff believes the trail project as proposed and approved by the County does not have a significant impact on the Appellant's privacy given that (a) there is no trail location any further seaward of the Rubino parcel within the previously-dedicated and accepted public access easement; (b) the approved trail project includes the installation of wire fencing and private property signage along the inland side of the public access easement to deter public access users from wandering off the trail and intruding on the privacy of the residents; and (c) trail amenities will be located on Applicant-owned property north of the Appellant's property .

Since the local record evidences that the approved trail will not have a significant adverse impact on the Appellant's privacy and that it is consistent with the access policies of the Coastal Act and the certified LCP, staff believes the Appellant is actually seeking to avoid the effect of the public

access easement previously dedicated for public use. The dedication was made by a prior owner of the land in 1986. The prior owner accepted the benefit of a development permit, without challenging the burden of the public access easement. As the successor in interest, the Appellant stands in the shoes of the prior owner and since any challenge to the public access easement was waived by the prior owner's failure to pursue its judicial remedies, the present landowner is bound by that waiver.

Therefore, staff believes that the appeal presents no “significant questions” regarding conformity of the approved trail with the certified local coastal program or the access policies of the Coastal Act. (Cal. Code of Regs, tit. 14, § 13115.)

I. Response to Appellant’s Comment Letter

In a letter dated May 4, 2016 prepared on behalf of appellant Diane Rubino, attorney Brian Momsen reiterates the four contentions presented in the April 22, 2016 Commission staff report as potentially valid grounds for an appeal, and raises three primary concerns regarding Commission staff’s recommendation that the appeal raises no substantial issue.

1. Comment: The appellant asserts that:

Without getting into the merits of the Staff’s opinion, Ms. Rubino contends it is improper and illegal for this conclusion by Staff to be the grounds to deny her a hearing before the Coastal Commission and find that there is no “substantial issue”. This opinion constitutes the Staff weighing contested evidence and essentially is a “trial by staff...”

The appellant’s attorney additionally states that: “The Rubinos have raised substantial issues on their appeal and therefore request the opportunity to be heard on May 11.”

Response: The staff report published on April 22, 2016 presents the staff recommendation that will be considered by the Commission at its hearing scheduled for May 11, 2016 in Newport Beach. Pages 1 and 6 of the staff report provide hearing procedures information, indicating in part that the appellant, among others, is qualified to testify before the Commission on the substantial issue question.

The procedures further outline the Commission’s decision-making authority. The April 22, 2016 staff report contains the findings supporting staff’s recommendation that the Commission find the appeal raises no substantial issue with respect to the grounds on which it was filed. At the May 11, 2016 public hearing, the Commission may decide at its discretion to either vote that the appeal raises a substantial issue, or no substantial issue with respect to the grounds on which it was filed. Page 6 of the staff report further states: “If the Commission determines that the appeal does raise a substantial issue, the Commission would continue the de novo portion of the appeal hearing to a subsequent meeting.”

Therefore, the procedures contained within the staff report identify the opportunities available to the appellant to participate in the substantial issue hearing on May 11, 2016

in Newport Beach, and to speak on the matter of the subject appeal. Contrary to the appellant's assertions, the Coastal Commission, and not Commission staff, will ultimately determine whether the appeal raises no substantial issue following the close of public testimony.

2. Comment: The appellant's attorney additionally asserts the following:

Secondly, in regard to the Staff Report's conclusion that Ms. Rubino's privacy interests and private property rights have been adequately addressed simply because the local County Code and the Coastal Act permits a trail within 20 feet of a structure, [sic] does not address the fact that no study or consideration of these interests and rights was ever in fact performed. Real property is unique and even if the trail is 100 feet away from my client's home and the Code allows 20 feet, that does not necessarily mean that the Rubino's privacy rights and property interests are not being unduly and unreasonably interfered with. While there were botanical studies and archeological studies and considerations and mitigations for plants and animals, there was no meaningful study or consideration of the Rubinos private property rights and privacy interests whatsoever.

Response:

As described in the April 22, 2016 staff report, the County-approved trail segments located on the two privately-owned properties (including the Rubino parcel) are sited more than 100 feet and as far seaward as feasible from the residences, within the public access easements that are required by the permits granted for development of houses on the two properties in previous decade, and are located within 25 feet of the bluff edge. The County's findings for approval include evidence that the trail is sited far enough away from the Rubino residence that it would not affect the privacy of the property owners. Page 15 of the April 22, 2016 Coastal Commission staff report states in part the following:

As noted in the Mitigated Negative Declaration adopted by the County for the approved project, the distance between the trail and the residence reduce the potential for noise from the trail to be significant or a nuisance. Siting the trail the maximum farthest distance feasible westward of the residence, and placing fencing and signage along the eastern edge of the PAE protects the privacy of private property owners, consistent with public access policies of the Coastal Act and the Mendocino County certified LCP, including but not limited to Coastal Act Section 30214, Mendocino County Land Use Plan Policy 3.6-25, and Coastal Zoning Code Section 20.528.015.

Coastal Act Section 30214(4)(b) states:

It is the intent of the Legislature that the public access policies of this article be carried out in a reasonable manner that considers the equities and that balances the rights of the individual property owner with the public's constitutional right of access pursuant to Section 4 of Article X of the California Constitution. Nothing

in this section or any amendment thereto shall be construed as a limitation on the rights guaranteed to the public under Section 4 of Article X of the California Constitution.

The trail approved by the County is sited in the furthest seaward location feasible that is within the public access easement that was dedicated and recorded by the appellant's predecessor three decades ago, on April 10, 1986 (Mendocino County Official Records Book 1553 Page 155). By: (a) siting the trail in the furthest seaward location more than 100 feet from the Rubino's residence; (b) incorporating fencing and private property signage to deter public access users from wandering outside the easement area; and (c) locating the trail amenities on Applicant-owned property north of the Appellant's property; the County-approved development maximizes the privacy rights of the individual property owners while assuring the public's constitutional rights of access.

3. **Comment:** The appellant's attorney argues that the County-approved development does not include as enforceable conditions of approval the "discretionary components of the Access Management Plan including the very issues that are of the most concern to the Rubinos- use restrictions, aesthetics, security, etc. are left to be implemented at a later date..." The appellant further contends that:

There was no meaningful environmental review and public participation in this process which violates Sundstrom. Moreover, some of the conditions in the Land Trust's proposed Access Management Plan or lack thereof, are contrary to the Rubino's interests, even if they were conditions of approval. For example, the hours of operations for the proposed trail are "dawn to dusk" which on the coast, in the summertime is approximately 5:00 a.m. to 9:00 p.m. This is not reasonable and should be amended to something more realistic and considerate of the Rubino's privacy such as 8:00 a.m. through 6:00 p.m. all year. There are no provisions for garbage receptacles. There are no provisions for security or gating in the Access Management Plan. Other than the eleventh hour proposal at the Board of Supervisors hearing, there has been no consideration or input from the Rubinos and the public into what the contents of this Plan should be.

Response: Coastal Act Section 30210 states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Neither the special conditions of the Commission CDP No. 1-86-22 granted for the house located on the Rubino property nor the recorded offer-to-dedicate public access easement limit the hours of use of the public access trail to less than 24-hour access. Additionally, the County-approved development does not include specified hours of use.

Page 17 of the April 22, 2016 staff report indicates that the applicant did prepare “a draft updated accessway management plan dated February 29, 2016 and presented it to the appellant and the Supervisors at the County appeal hearing on March 1, 2016.

The action by the County Board of Supervisors to uphold the Coastal Permit Administrator action did not include any authorization or findings approving the draft updated accessway management plan that was provided for discussion at the March 1, 2016 appeal hearing. Should the applicant seek to authorize new development or a change to previously approved development such as a proposal to modify the hours of use to those suggested in the February 29, 2016 draft accessway management plan, an amendment to the underlying coastal development permit would be required. As new development or a change to previously approved development such as a permit amendment to change the hours of use would be reviewed by the County Coastal Permit Administrator and/or the Coastal Commission with a full public hearing which the appellants could participate in, the appellant’s contention that a Sundstrom violation occurred raises no substantial issue of conformity of the approved development with the certified LCP or the access policies of the Coastal Act.

CZC Section 20.528.045 “Accessway Management Plan” states in part the following:

No accessway shall be opened for public use until an Accessway Management Plan has been prepared by the managing agency and accepted by the Director. At a minimum, the Plan shall:

...

(D) Set forth provisions for protecting the accessway from vandalism and/or improper use (e.g., guarded gate, security patrol, hours of operation or period/seasons of closure and fees, if any).

Page 17 of the April 22, 2016 Coastal Commission staff report states in part the following:

*Contrary to the appellant’s assertions, none of the components of the **draft** accessway management plan rely on additional future studies or analysis. **Moreover, any proposal to undertake new development or amend previously approved development would require a new permit or a permit amendment.** Therefore, the **draft** accessway management plan does not trigger the need for any additional discretionary analysis beyond that considered as part of the County-approved development.*

Further, the appellant contends in part that by not requiring approval of the accessway management plan by the time of the County’s action on the CDP, the details of how the trail will be designed to avoid privacy concerns will not be developed until too late in the process, after the public hearing process. However, because the accessway management plan serves as a tool demonstrating how management and maintenance of the approved development within the public

access easements will be implemented, it further ensures the privacy of adjacent property owners through features such as dogs-on-leash provisions and protects the aesthetic values of the area by providing for the collection of litter (through, at minimum, monthly visitation by trail maintenance work crews managed by MCMA and MLT).

The appellant argues that neither the approved development nor the draft accessway management plan include provisions for garbage receptacles or security gating. Mendocino County CZC Section 20.528.045 requires that an accessway management plan shall be prepared by the managing agency and accepted by the Director prior to opening the trail for public use, and shall include, “provisions for protecting the accessway from vandalism and/or improper use (e.g., guarded gate, security patrol, hours of operation or period/seasons of closure and fees, if any).” (Emphasis added). As the local record includes evidence that the County-approved development will not result in any significant adverse impacts on the appellant’s privacy, there is no demonstrated need for any of the sample development provisions provided in CZC Section 20.528.045.

II. **Revisions to Recommended Findings**

Finding language has been added to the staff recommendation as follows to address the concerns in the appellant’s comment letter (text to be removed appears in ~~**bold double strikethrough**~~; text to be added appears in **bold double underline**):

A. **Modify Analysis of Appellant’s Contention in Finding F, Contention 1c, beginning before the first full paragraph on page 15 of the staff recommendation as follows:**

...

In his May 4, 2016 comment letter, the appellant’s attorney additionally asserts the following:

Secondly, in regard to the Staff Report’s conclusion that Ms. Rubino’s privacy interests and private property rights have been adequately addressed simply because the local County Code and the Coastal Act permits a trail within 20 feet of a structure, does not address the fact that no study or consideration of these interests and rights was ever in fact performed. Real property is unique and even if the trail is 100 feet away from my client’s home and the Code allows 20 feet, that does not necessarily mean that the Rubino’s privacy rights and property interests are not being unduly and unreasonably interfered with. While there were botanical studies and archeological studies and considerations and mitigations for plants and animals, there was no meaningful study or consideration of the Rubinos private property rights and privacy interests whatsoever.

Studies were undertaken to inform the design and location of public access improvements including but not limited to: a) an initial feasibility study conducted from 2007 through 2010¹, b)

¹ The Feasibility Study Report acknowledges a temporary suspension of activity from December 2008 through August 2009 due to a State budget crisis and freezing of expenditure funding.

botanical studies (reports dated September 15, 2014 and January 5, 2015), c) Point Arena Mountain Beaver surveys conducted in September 2014; and d) archaeological surveys conducted in March and August 2014. The County-approved trail developments will occur on lands that are designated highly scenic, and the trail improvements have been designed in a manner that minimizes alteration of landforms, visual prominence of materials (by utilizing wildlife friendly wire fencing), and reflectivity (by reducing size and quantity of signage, and painting signs to reduce the potential for glare).

The County-approved trail segments located on the privately-owned properties (including the Rubino parcel) are sited more than 100 feet and as far as feasible from the residences, within the public access easement required by the permits granted for development of houses on the two properties in the past, and located within 25 feet of the bluff edge. The County's findings for approval include evidence that the trail is sited far enough away from the residence that it would not affect the privacy of the property owners. Thus, the
County-approved development addresses private property concerns by: a) siting the portion of the trail located on the Rubino parcel in the farthest, westernmost location, over 100 feet from the residence; b) **locating** signage and fencing along the eastern edge of the public access easement to deter the public from straying off the trail onto adjacent privately-owned lands; **and** c) **locating the trail amenities on Applicant-owned property north of the Appellant's property.**

Further, the approved trail is designed to minimize landform alteration to the maximum extent feasible and includes measures to minimize the potential for erosion. Users of the trail will be directed to walkways and trails that avoid sensitive resources. As noted in the Mitigated Negative Declaration adopted by the County for the approved project, the distance between the trail and the residence reduce the potential for noise from the trail to be significant or a nuisance. Siting the trail the maximum farthest distance feasible westward of the residence, and placing fencing and signage along the eastern edge of the PAE protects the privacy of private property owners, consistent with public access policies of the Coastal Act and the Mendocino County certified LCP, including but not limited to Coastal Act Section 30214, Mendocino County Land Use Plan Policy 3.6-25, and Coastal Zoning Code Section 20.528.015.

Coastal Act Section 30214(4)(b) states:

It is the intent of the Legislature that the public access policies of this article be carried out in a reasonable manner that considers the equities and that balances the rights of the individual property owner with the public's constitutional right of access pursuant to Section 4 of Article X of the California Constitution. Nothing in this section or any amendment thereto shall be construed as a limitation on the rights guaranteed to the public under Section 4 of Article X of the California Constitution.

The trail approved by the County is sited in the furthest seaward location feasible that is within the public access easement that was dedicated and recorded by the appellant's predecessor three decades ago, on April 10, 1986 (Mendocino County Official Records Book 1553 Page 155). By siting the trail in the furthest seaward location more than 100 feet from the Rubino's residence, incorporating fencing and private property signage to deter

public access users from wandering outside of the easement area, and locating trail amenities on the Applicant-owned property north of the Appellant's property, the County-approved development maximizes the privacy rights of the individual property owners while assuring the public's constitutional rights of access.

Finally, part of the appellant's privacy concern stated in the appeal is that the trail will lead to an increased likelihood of vandalism at the Rubino residence. The appellant has highlighted in their appeal an incident that occurred at their house at a time they concede is coincident with the departure of the property owner's caretaker. The incident occurred before any trail had been approved by the County and the appellant has not presented any evidence to suggest that use of the trail would increase vandalism.

Therefore, the Commission finds that appeal contentions asserting that the trail design did not balance privacy interests of private property owners with the public's right of access do not raise a substantial issue of conformity of the project as approved with the public access policies of the Coastal Act or the standards of the certified LCP.

B. Modify Analysis of Appellant's Contention in Finding F, Contention 1d beginning on page 17 as follows:

...

Although Special Condition No. 11 of the County-approved development requires an updated management plan prior to issuance of the building permit at a later date, MLT presented a draft updated accessway management plan dated February 29, 2016 and presented it to the appellant and the Supervisors at the County appeal hearing on March 1, 2016. The revised draft public accessway management plan was prepared in consultation with staff from the Coastal Commission, SCC, Mendocino County, and MCMA and more directly addresses trail management, monitoring, maintenance, and liability, and other components that the land trust customarily implements in association with trail management and maintenance.

In his May 4, 2016 comment letter, the appellant further argues that the County-approved development did not include as enforceable conditions of approval the "discretionary components of the Access Management Plan including the very issues that are of the most concern to the Rubinos- use restrictions, aesthetics, security, etc. are left to be implemented at a later date..." The appellant further contends that:

There was no meaningful environmental review and public participation in this process which violates Sundstrom. Moreover, some of the conditions in the Land Trust's proposed Access Management Plan or lack thereof, are contrary to the Rubino's interests, even if they were conditions of approval. For example, the hours of operations for the proposed trail are "dawn to dusk" which on the coast, in the summertime is approximately 5:00 a.m. to 9:00 p.m. This is not reasonable and should be amended to something more realistic and considerate of the Rubino's privacy such as 8:00 a.m. through 6:00 p.m. all year. There are no provisions for garbage receptacles. There are no provisions for security or gating in the Access Management Plan. Other than the eleventh hour proposal at the Board of Supervisors hearing, there has been no consideration or input from the Rubinos and the public into what the contents of this Plan should be.

Coastal Act Section 30210 states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Neither the special conditions of the Commission CDP No. 1-86-22 granted for development of the house located on the Rubino property nor the recorded offer-to-dedicate public access easement limit the hours of use of the public access trail. Additionally, the County-approved development does not include specified hours of use.

The action by the County Board of Supervisors to uphold the Coastal Permit Administrator action did not include any authorization or findings approving the draft updated accessway management plan that was provided for discussion at the March 1, 2016 appeal hearing. Should the applicant seek to authorize new development or change previously approved development such as a request to modify the hours of use to those suggested in the February 29, 2016 draft accessway management plan, an amendment to the underlying coastal development permit would be required. As new development or a change to previously approved development such as a permit amendment to change the hours of use would be reviewed by the County Coastal Permit Administrator and/or the Coastal Commission with a full public hearing which the appellant could participate in, the appellant's contention that a Sundstrom violation occurred raises no substantial issue of conformity of the approved development with the certified LCP or the access policies of the Coastal Act.

As discussed above, the approved trail project as proposed includes trail features that address privacy through: a) siting the portion of the trail located on the Rubino parcel in the farthest, westernmost location, over 100 feet from the residence, b) installing "private property" signage and wildlife-friendly wire fencing along the eastern edge of the public access easement to deter the public from straying off the trail onto adjacent privately owned lands; **and c) locating trail amenities on the Applicant-owned property north of the Appellant's property.** Condition 3 of the County's approval state that "the application, along with supplemental exhibits and related material, shall be considered elements of the permit, and that compliance therewith is mandatory, unless an amendment has been approved by the Planning Commission." Therefore, the siting of the trail in the approved location over 100 feet from the residence, **the siting of the trail amenities on the Applicant-owned property north of the Appellant's property,** and the installation of the wire fencing along the eastern edge of the public access easement as proposed in the application is mandatory. Siting the trail over 100 feet away from the residence, placing fencing and signage along the eastern edge of the public access easement and siting trail amenities on the Applicant-owned property north of the Appellant's property maximizes the protection of privacy of the property owners, consistent with the public access policies of the Coastal Act and the Mendocino county certified LCP, including but not limited to, Coastal Act Section 30214, Mendocino County Land Use Plan Policy 3.6-25, and Coastal Zoning Code Section 20.528.015.

Contrary to the appellant's assertions, none of the components of the draft accessway management plan rely on additional future studies or analysis. **Moreover, any proposal to undertake new development or amend previously approved development would require a permit or permit amendment.** Therefore, the draft accessway management plan does not trigger the need for any additional discretionary analysis beyond that considered as part of the County-approved development.

Further, the appellant contends in part that by not requiring approval of the accessway management plan by the time of the County's action on the CDP, the details of how the trail will be designed to avoid privacy concerns will not be developed until too late in the process, after the public hearing process. However, because the accessway management plan serves as a tool demonstrating how management and maintenance of the approved development within the public access easements will be implemented, it further ensures the privacy of adjacent property owners through features such as dogs-on-leash provisions and protects the aesthetic values of the area by providing for the collection of litter (through, at minimum, monthly visitation by trail maintenance work crews managed by MCMA and MLT).

The appellant argues that neither the approved development nor the draft accessway management plan include provisions for garbage receptacles or security gating. Mendocino County CZC Section 20.528.045 requires that an accessway management plan shall be prepared by the managing agency and accepted by the Director prior to opening the trail for public use, and shall include, "provisions for protecting the accessway from vandalism and/or improper use (e.g., guarded gate, security patrol, hours of operation or period/seasons of closure and fees, if any)." (Emphasis added). As the local record includes evidence that the County-approved development will not result in any significant adverse impacts on the appellant's privacy, there is no demonstrated need for any of the sample development provisions provided in CZC Section 20.528.045.

Therefore, the County's approval requiring as Special Condition No. 11 that the applicant submit a revised access management plan prior to building permit issuance (and thus prior to opening the accessway to public use) is consistent with the public access management policies of the Coastal Act and the certified LCP, including but not limited to Coastal Act Section 30212 and Mendocino County Coastal Zoning Code Section 20.528.045. The degree of factual and legal support for the County's decision is high, given that a) its approval was consistent with the policies of the certified LCP that require an accessway management plan prior to opening a trail to public use; b) ~~MCMA had already prepared an accessway management plan that SCC and the Coastal Commission approved in 2004~~ **any proposal to undertake new development or amend previously approved development would require a permit or permit amendment**; c) the approved trail project is designed to protect the privacy of the private property owners by locating the trail over 100 feet away from the residence, including the installation of fencing and private property signage, **and locating trail amenities on Applicant-owned property north of the Appellant's property**; and d) because the access way management plan serves as a tool further ensuring the privacy protection of adjacent property owners by identifying how management and maintenance of the approved development within the public access way will be implemented.

For all of the above reasons, the Commission finds that the appeal does not raise a substantial issue of conformity of the approved project with the certified LCP and public access policies of the Coastal Act.

C. Corrections to Typographical Errors.

There are several typographical errors in the findings. These errors and any other typographical errors in the report will be corrected in the Adopted Findings prepared after Commission action on the application. The corrections to the typographical errors include the following:

Page 2, Last Sentence of Paragraph Four:

Most of these invalid contentions instead question the validity of the public access easement area executed and recorded as a condition of approval of a prior 1986 permit for the site. These latter contentions are ~~two~~ three decades late.

Page 3, First Full Sentence in Paragraph One:

Third, the approved trail project is sited and designed to protect the property owners' privacy by locating the trail more than 100 feet away from the residence, including the installation of wire fencing and private property signage along the inland side of the public access easement area to deter public access users from ~~wondering~~ wandering off the trail and intruding on the privacy of the residents, and locating trail amenities on the Applicant-owned property north of the Appellant's property.

Page 11, Middle of the Page:

Page 173 of Book 1553 (Mendocino County Official Records, Recorded on April 10, 1986) depicts the 25-foot-wide public access easement (PAE) measured from the top of the bluff edge, with the easterly boundary of the PAE situated ~~approximately 120~~ more than 100 feet from the residence. Although the terms of the OTD state that the access shall in no case be closer than 10 feet from the approved residence, the easement as depicted in the recorded OTD is actually located ~~approximately 120~~ more than 100 feet from the residence. This separation of the County-approved trail from the residence is shown in the aerial site plan on page 2 of 13 of Exhibit No. 4. A closer oblique aerial view of the Rubino parcel from 2013 showing the relative distance of the residence back from the bluff edge is shown on page 4 of 4 of Exhibit No. 2. The County-approved trail was sited within 25 feet from the bluff edge and within the public access easements, consistent with the specifications of the recorded OTDs.

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May 4, 2016

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CALIFORNIA
COASTAL COMMISSION
NORTH COAST DISTRICT

VIA FAX (707) 826-8960 AND U.S. MAIL

California Coastal Commission
c/o Tamara Gedik
1385 8th Street, Suite 130
Arcata, CA 95521

Re: Appeal Number A-1-MEN-16-0040
Item Number W24a
Hearing Date: May 11, 2016
Time: 9:00 a.m.
Place: Newport Beach, City Council Chambers
Applicant: Mendocino Land Trust
Appellant: Diane Rubino

Dear Coastal Commissioners:

This office represents the Appellant, Diane Rubino. Ms. Rubino wishes to respond briefly to the Staff Report on this matter which she just received today as follows:

The Staff Report admits that the appeal states valid legal grounds, particularly that:

- a. The approved trail is not clearly within the boundaries of the recorded and accepted Offer to Dedicate Public Access Easement;
- b. The effect of the trail design on grazing operations was not evaluated;
- c. The property owners' privacy needs were not considered; and
- d. An Access Management Plan has not been prepared.

The report then concludes, however, that no "substantial issue" has been raised by the appeal because "there is a high degree of factual support for the local government's decision to find that the approval conforms with the public access provisions of the Coastal Act and the certified LCP."

Without getting into the merits of the Staff's opinion, Ms. Rubino contends it is improper and illegal for this conclusion by Staff to be the grounds to deny her a hearing before the Coastal Commission and find that there is no "substantial issue". This opinion constitutes the Staff

ATTACHMENT A

(1 of 3)

weighing contested evidence and essentially is a "trial by staff". Such a weighing of evidence is in sharp contrast to California Court of Appeal decisions which upheld the California Coastal Commission finding that no substantial issue existed which are situations where there is a question of law and not weighing of facts. (See Alberstone v. California Coastal Commission (2008) 169 Cal.App.4th 859 – merger of two lots was not a "land division" that was prohibited under a City's local program.)

Secondly, in regard to the Staff Report's conclusion that Ms. Rubino's privacy interests and private property rights have been adequately addressed simply because the local County Code and the Coastal Act permits a trail within 20 feet of a structure, does not address the fact that no *study or consideration* of these interests and rights was ever in fact performed. Real property is unique and even if the trail is 100 feet away from my client's home and the Code allows 20 feet, that does not necessarily mean that the Rubino's privacy rights and property interests are not being unduly and unreasonably interfered with. While there were botanical studies and archeological studies and considerations and mitigations for plants and animals, there was no meaningful study or consideration of the Rubinos private property rights and privacy interests whatsoever.

In regard to the Access Management Plan issue, while the Rubinos appreciate that at the March 1, 2016, hearing before the Mendocino County Board of Supervisors, the Mendocino County Land Trust did submit a meaningful plan, it was still only a good faith gesture and not for example, a condition of approval of the permit which is enforceable. There is nothing prohibiting the Land Trust from changing or discarding this plan at its whim. Therefore, the same circumstances and issues raised in Sundstrom v. County of Mendocino (1988) 202 Cal.App.3d 296, where the Court of Appeal made clear that a County cannot approve a project where complete application involves later development of a discretionary element (there a septic system) still exists here.

The discretionary components of the Access Management Plan including the very issues that are of the most concern to the Rubinos – use restrictions, aesthetics, security, etc. are left to be implemented at a later date – as opposed to being conditions of the use permit. There was no meaningful environmental review and public participation in this process which violates Sundstrom. Moreover, some of the conditions in the Land Trust's proposed Access Management Plan or lack thereof, are contrary to the Rubino's interests, even if they were conditions of approval. For example, the hours of operations for the proposed trail are "dawn to dusk" which on the coast, in the summertime is approximately 5:00 a.m. to 9:00 p.m. This is not reasonable and should be amended to something more realistic and considerate of the Rubino's privacy such as 8:00 a.m. through 6:00 p.m. all year. There are no provisions for garbage receptacles. There are no provisions for security or gating in the Access Management Plan. Other than the eleventh hour proposal at the Board of Supervisors hearing, there has been no consideration or input from the Rubinos and the public into what the contents of this Plan should be.

California Coastal Commission
c/o Tamara Gedik
May 4, 2016
Page 3

Conclusion

The Rubinos have raised substantial issues on their appeal and therefore request the opportunity to be heard on May 11.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Brian S. Momsen", is written over a horizontal line.

CARTER MOMSEN PC

By: Brian S. Momsen, Esq.
Attorneys for Diane Rubino



**SIERRA
CLUB**
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**Sierra Club, Mendocino Group
Coastal Committee
27401 Albion Ridge Rd.
Albion, CA 95410**

May 4, 2016

California Coastal Commission
North Coast District Office
1385 8th St.
Arcata, CA 95521

Re: W24a
A-1-MEN-16-0040

Dear Commissioners,

The Coastal Committee would like to express our support of the CCC staff recommendation of No Significant Issue on the Rubino appeal of the approved CDP for a coastal trail along Pelican Bluffs.

We have followed the process of several years to establish this trail. The Mendocino Land Trust first did a thorough investigation of the legal and practical considerations for establishing the trail, and held several community meetings to get local input. It was determined that this stretch of trail was both practical and beneficial for the community and the larger community of California residents and visitors.

The Sierra Club is proud of the Mendocino Land Trust for showing the tenacity and care to pursue this trail opportunity to its fulfillment. Please consider these efforts and reject the appeal, letting the approval stand.

Thanks for your consideration,

Rixanne Wehren
Chair, Coastal Committee
Sierra Club, Mendocino Group

ATTACHMENT B

VETERINARY MEDICAL ASSOCIATES
J.S. KAHLER, D.V.M.

California Coastal Commission
Northcoast District Office
1385 Eighth St., Suite 120
Arcata CA 95521

May 2, 2016

I am writing this letter in support of an appeal by Diane Rubino, appeal number A-1-MEN-16-0040. Ms Rubino is dealing with a situation that I too have dealt with in the past and likely will do so again in the future.

Ms. Rubino's father was required to grant an easement for a public trail along the bluff at the west edge of his property as a contingency to receiving a coastal development permit to build a house from the California Coastal Commission. He did so, received the permit and subsequently built his house. I do not have the specific date but I believe this occurred in the decade of the eighties. My property which lies within the city limits of Point Arena and too is along the bluff, also carries with it an easement for a public trail extracted from the previous owners of the property, Judy and George Beier(sp?) as a contingency to receiving a CDP from the city of Point Arena.

As I am sure you are well aware, this practice of requiring an easement in return for a CDO was found to be unconstitutional in 1987 by the Supreme Court of the United States in Nollan vs. the California Coastal Commission. It was considered extortion and labeled a "taking" of property without compensation. I realize this decision was rendered after Mr. Rubino had his property taken and I believe that to have been the case with the Beiers as well although that easement may have been extorted after the ruling. This taking is still being done in Point Arena as of 2012 when Tom White was forced by the City to give a trail easement in order to receive a well drilling permit for his property.

While I completely understand the need for public access to various lands throughout the state, I also believe in private property rights and do not believe this taking of property as it has occurred in the cases I have cited should stand. In other words, the extorted easements should be nullified.

Imagine having someone walking along a trail thirty feet from and in plain view of your master bedroom. That would be the case with my property. And as the bluff edge regresses, the trail will continue to move closer and closer! For Ms. Rubino, she too would be subject to people walking just west of her house completely destroying her privacy. This should not be allowed to occur.

Will the public assume the portion of property taxes applied to the area of land consumed by the easements that have been taken from property owners?

Please consider removing the easement for a trail through Ms. Rubino's property as the beginning step toward righting the wrongs that have been done in the taking of property from owners unconstitutionally and transferring it to the public.

Sincerely,


Jeff Kahler, D.V.M.

RECEIVED

MAY 09 2016

CALIFORNIA
COASTAL COMMISSION
NORTH COAST DISTRICT

ATTACHMENT C

MEMBER HOSPITAL - AMERICAN ANIMAL HOSPITAL ASSOCIATION

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE

1385 8TH STREET • SUITE 130

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W24a

Filed:	3/22/16
49 th Day:	Waived
Staff:	T. Gedik-A
Staff Report:	4/22/16
Hearing Date:	5/11/16

STAFF REPORT AND RECOMMENDATION ON APPEAL SUBSTANTIAL ISSUE DETERMINATION

Application No.:	A-1-MEN-16-0040
Applicant:	Mendocino Land Trust
Appellant:	Diane Rubino
Local Government:	County of Mendocino
Local Decision:	Approval with Conditions
Location:	West of Highway One, approximately 600 feet south of its intersection with Curley Lane (CR 504A), located between post miles 14.26 and 13.86 and including two public access easements at 26300 and 26600 South Highway One, in Mendocino County (APNs: 027-151-08 (Mendocino Land Trust), 027-341-07 (LaFranchi), and 027-341-08 (Rubino))
Project Description:	Construct a trail along Pelican Bluffs. Associated development includes a bridge, boardwalks and signage.
Staff Recommendation:	No Substantial Issue

IMPORTANT HEARING PROCEDURE NOTE

This is a substantial issue only hearing. Testimony will be taken only on the question of whether the appeal raises a substantial issue. Generally, and at the discretion of the Chair, testimony is limited to 3 minutes total per side. Please plan your testimony accordingly. Only the applicant, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify. Others may submit comments in writing. If the Commission determines that the appeal does raise a substantial issue, the *de novo* phase of the hearing will occur at a future Commission meeting during which it will take public testimony.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission, after public hearing, determine that NO substantial issue exists with respect to the grounds on which the appeal has been filed.

On November 18, 2015, the County of Mendocino Coastal Permit Administrator conditionally approved Coastal Development Permit (CDP) No. 2014-0042 that authorized Mendocino Land Trust to construct a public access trail along Pelican Bluffs, with associated development consisting of a bridge, boardwalks, and signage construction within an already existing public access easement area. The County-approved development will add an approximately 1.9-mile portion of the California Coastal Trail along three bluff top parcels located approximately two miles south of the recently created Point Arena-Stornetta Unit of the California Coastal National Monument, and two miles north of Schooner Gulch State Beach near Moat Creek.

Of the three parcels, Mendocino Land Trust (MLT) acquired the northern-most, undeveloped 73-acre parcel in 2013 with funding from the State Coastal Conservancy (SCC). Two privately-owned parcels to the south (APNs 027-341-07 (LaFranchi) and 027-341-08 (Ferrara/Rubino)) contain previously dedicated 25-foot-wide lateral public access easements along the bluff top. The bulk of the approved development, including a parking area, wheelchair-accessible loop trail, picnic tables, steps, and interpretive signage will occur on the northernmost parcel owned by Mendocino Land Trust. Development within public access easements on the southerly parcels consists primarily of trail development, private property signage, and wildlife-friendly wire fencing along the eastern border of the public access easements.

The local action is being appealed by a subsequent owner of one of the two privately owned parcels subject to the existing public access easements. After the Appellant appealed the Permit Administrator's decision to the Mendocino County Board of Supervisors, and the Board denied the appeal, the Appellant timely filed an appeal with the Commission's North Coast District Office on March 22, 2016. The appeal raises both valid and invalid contentions. Some of the contentions are invalid because they either question the County's compliance with CEQA or do not relate to the trail that was approved by the County within the existing public access easement area. Most of these invalid contentions instead question the validity of the public access easement area executed and recorded as a condition of approval of a prior 1986 permit for the site. These latter contentions are two decades late.

Other contentions raised in the appeal present potentially valid grounds for appeal in that they allege the approved development's inconsistency with the public access policies of the certified LCP and the Coastal Act, particularly that: (a) the approved trail is not clearly within the boundaries of the recorded and accepted Offer to Dedicate public access easement; (b) the effect of the trail design on grazing operations was not evaluated; (c) the property owners' privacy needs were not considered; and (d) an Accessway Management Plan has not been prepared. However, these valid appeal contentions do not raise a substantial issue of conformity of the project as approved with the policies of the certified LCP or the public access policies of the Coastal Act because there is a high degree of factual support for the local government's decision to find that its approval conforms with the public access provisions of the Coastal Act and the certified LCP. First, the County-approved trail segments located on the privately-owned property are sited more than 100 feet and as far as feasible from the residences, within the public access easement, and within 25 feet of the bluff edge. Second, the appellants have confined cattle use to

the lands eastward of the house while the trail is instead located more than 150 feet away on lands westward of the house and is also separated from the cattle grazing area by existing and approved fencing. Third, the approved trail project is sited and designed to protect the property owners privacy by locating the trail more than 100 feet away from the residence and including the installation of wire fencing and private property signage along the inland side of the public access easement to deter public access users from wondering off the trail and intruding on the privacy of the residents. Fourth, the preparation of an Accessway Management Plan is required prior to issuance of a building permit to further ensure the privacy of adjacent property owners. Therefore, Commission staff recommends that the Commission find that the appeal raises no substantial issue with respect to the grounds on which it was filed.

The motion to adopt the staff recommendation of No Substantial Issue is found on Page 5.

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APPENDICES

[Appendix A](#) – Commission’s Appeal Jurisdiction Over Project

[Appendix B](#) – Substantive File Documents

[Appendix C](#) – Public Access Coastal Act and LCP Policies

EXHIBITS

[Exhibit 1](#) – Regional location map

[Exhibit 2](#) – Vicinity Map/ Aerial Photo

[Exhibit 3](#) – Coastal Records Project Aerial Imagery

[Exhibit 4](#) – Site Plans and Specifications

[Exhibit 5](#) – Notice of Final Local Action and Findings for Approval for CDP 2014-0042

[Exhibit 6](#) – Appeal

[Exhibit 7](#) – Recorded Offer to Dedicate Public Access and 1986 CDP Imposing OTD Requirement.

[Exhibit 8](#) – Coastwalk Acceptance of Offer to Dedicate (OTD) Public Access Easements (PAEs)

[Exhibit 9](#) – Assignment of PAE from American Lands Conservancy (ALC) to Moat Creek Managing Agency (MCMA), Rubino/Capital Auto Center parcel

[Exhibit 10](#) – 2004 Accessway Management Plan

[Exhibit 11](#) – 2016 Draft Amended Accessway Management Plan

I. MOTION AND RESOLUTION

Motion:

I move that the Commission determine and resolve that Appeal No. A-1-MEN-16-0040 does not present a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion by voting “Yes” as is recommended by staff will result in a finding of **No Substantial Issue** and adoption of the following resolution and findings. The local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

Resolution:

The Commission hereby finds that Appeal No. A-1-MEN-16-0040 raises No Substantial Issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency of the approved development with the certified LCP and/or the public access policies of the Coastal Act.

II. FINDINGS AND DECLARATIONS

A. APPEAL JURISDICTION AND PROCEDURES

Pursuant to Coastal Act Section 30603, the County’s approval is appealable to the Commission because (1) the approved development constitutes a major public works project, and because the approved development is located: (2) within a designated “highly scenic area,” which is a type of sensitive coastal resource area; (3) within 100 feet of a wetland or stream; (4) within 300 feet of the top of the seaward face of a coastal bluff; and (5) between the sea and the first public road paralleling the sea. The grounds for an appeal are limited to an allegation that the approved development does not conform to the standards set forth in the certified local coastal program and as the development is located between the first public road and the sea, the public access policies set forth in the Coastal Act.

Coastal Act Section 30625(b) requires the Commission to hear an appeal unless it determines that no substantial issue exists with respect to the grounds on which the appeal has been filed¹. Even when the Commission chooses not to hear an appeal, an appellant nevertheless may obtain judicial review of the local government's coastal permit decision by filing a petition for a writ of

¹ The term “substantial issue” is not defined in the Coastal Act or its implementing regulations. In previous decisions on appeals, the Commission has generally been guided by the following factors in making substantial issue determinations: (a) the degree of factual and legal support for the local government’s decision; (b) the extent and scope of the development as approved or denied by the local government; (c) the significance of the coastal resources affected by the decision; (d) the precedential value of the local government's decision for future interpretations of its LCP; and, (e) whether the appeal raises only local issues, or those of regional or statewide significance.

mandate pursuant to Code of Civil Procedure, Section 1094.5. Commission staff has analyzed the administrative record for the approved project, including the County's Final Local Action Notice for the development (**Exhibit No. 5**), the appellant's claims (**Exhibit No. 6**), and the relevant requirements of the Coastal Act and certified LCP (**Appendix C**) and is recommending that the Commission find that the appeal raises no substantial issue with respect to the grounds on which the appeal has been filed.

In this case, because the staff is recommending that the appeal raises no substantial issue, the Commission will hear arguments and vote on the substantial issue question. Proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. The only persons qualified to testify before the Commission on the substantial issue question are the applicant, the appellant and persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing. It takes a majority of Commissioners present to find that no substantial issue is raised.

If the Commission determines that the appeal does raise a substantial issue, the Commission would continue the *de novo* portion of the appeal hearing to a subsequent meeting.

B. LOCAL GOVERNMENT ACTION AND FILING OF APPEAL

The Mendocino County Coastal Permit Administrator approved the proposed project with modified special conditions at its hearing held on November 18, 2015. On November 24, 2015, Diane Rubino appealed the local decision to the Mendocino County Board of Supervisors. On March 1, 2016 the Board of Supervisors heard public comment on the item and denied the appeal, upholding the approval of the Coastal Permit Administrator and adopting additional findings for approval.

The North Coast District Office received the Notice of Final Local Action on March 18, 2016 (**Exhibit 5**). One appeal was timely filed with the Commission's North Coast District Office on March 22, 2016, within 10 working days of receipt by the Commission of the County's Notice of Final Action. The appeal was filed by Diane Rubino (**Exhibit No. 6**). The local action is being appealed by a subsequent owner of one of the two privately owned parcels subject to the existing public access easement.

C. SITE DESCRIPTION AND BACKGROUND

Site Description

Situated amongst a relatively rugged and remote portion of the southern Mendocino County coast, the County-approved project occurs on three bluff top parcels located approximately one mile south of the City of Point Arena within a designated Highly Scenic Area. Unique geologic conditions and relatively undeveloped surroundings form the backdrop of nearby popular coastal access areas, such as Schooner Gulch State Beach (home to Bowling Ball Beach) located nearly two miles south of the approved project near Moat Creek. Additionally, a Presidential Proclamation dated March 11, 2014 created the Point Arena-Stornetta Unit of the California Coastal National Monument, and its southernmost public access point located approximately one mile north of the County-approved project is anticipated to draw many new visitors to the area.

Of the three parcels, Mendocino Land Trust (MLT) acquired the northern-most, undeveloped 73-acre parcel in 2013 with funding from the State Coastal Conservancy (SCC). Two privately-owned parcels to the south (APNs 027-341-07 (LaFranchi) and 027-341-08 (Ferrara/Rubino))

contain previously dedicated 25-foot-wide lateral public access easements along the bluff top. The bluff-top parcels support a broad range of habitats and vegetation communities, including native and nonnative grassland, shrubland and forested communities. The County staff report describes the presence of several sensitive habitats and species that occur on portions of the MLT parcel, including: Point Arena Mountain Beaver (*Aplodontia rufa nigra*), a federally-listed Endangered species; several rare plant species and communities; and wetland and riparian habitats.

The two privately-owned parcels to the south (APNs 027-341-07 (LaFranchi) and 027-341-08 (Ferrara/Rubino)) that contain the existing public access easements are currently developed with single-family dwelling units, and some agricultural uses occur in the surrounding area. Both southerly parcels contain dedicated 25-foot-wide lateral public access easements along the bluff top, and adopted Land Use Map Nos. 25 and 28 designate existing and proposed public access on all three parcels.

All three parcels are zoned and designated on the land use and zoning classification maps as Remote Residential, 40 acre minimum (RMR 40). As indicated in the County's staff report, the Remote Residential zoning district is intended "to be applied to lands within the Coastal Zone which have constraints for commercial agriculture, timber production or grazing, but which are well-suited for small scale farming, light agriculture and low density residential uses, or where land has already been divided and substantial development has occurred."² According to the County's staff report, lands north and east of the MLT parcel are zoned and designated Rangelands (RL) that were under Williamson Act contracts as of 2014; the adjacent parcel to the south also includes some agricultural use.

Site Background

In 1977, the Commission approved construction of a two-story single family residence on a 43-acre parcel at assessor parcel number (APN) 027-341-08, and required dedication of a lateral access easement as a condition of approval (79-CC-140, Hendricks). Before the permit was issued, construction started on the house. The property changed hands several times before Joseph Rubino (senior) applied for coastal development permit (CDP) No. 1-86-22. On March 14, 1986, the Commission conditionally approved CDP No. 1-86-22 with Special Condition No. 1 requiring that a 25-foot-wide strip of land be dedicated, prior to permit transmittal, as measured inland from the top of the bluff. CDP 1-86-22 was never contested, and the permit was issued on April 10, 1986 following recordation of the offer to dedicate (OTD) a public access easement on April 10, 1986 (Mendocino County Official Records Book 1553 Page 155).

On May 13, 1981, the Commission similarly conditionally-approved CDP 81-CC-307 (Fray) authorizing construction of a single family residence on the adjacent 47-acre parcel to the north at APN 027-341-07, and requiring dedication of a lateral public access easement as a condition of approval. The OTD public access easement was recorded on August 27, 1981 (Mendocino County Official Records Book 1320 Page 232).

On April 6, 2001, Coastwalk, a non-profit public benefit corporation, accepted both OTDs, among others in Mendocino County. A certificate of acceptance was recorded on May 4, 2001 (Instrument 2001-07880, Mendocino County Official Records). Once accepted, the OTDs became public access easements. Coastwalk assigned the Rubino and Fray (parcel now owned

² Mendocino County Coastal Zoning Code Section 20.380.05

by LaFranchi) public access easements (PAEs) to American Land Conservancy in 2004³, who later assigned the PAEs to Moat Creek Managing Agency in 2006⁴.

In 2007, Moat Creek Managing Agency initiated a feasibility study (Appendix [B](#)), with funding assistance from SCC, to investigate the feasibility of extending the California Coastal Trail between existing public access areas at Moat Creek (south of the subject parcels) and Arena Cove, near Point Arena to the north. The Moat Creek Managing Agency (MCMA), a nonprofit located on the Mendocino Coast that also manages the nearby Moat Creek Beach and the Moat to Ross Creek trail, was the grantee for this project. Working in partnership with Coastwalk, Mendocino Land Trust, City of Point Arena, and other trail managers, MCMA conducted outreach to 22 private landowners in the study area, held two community meetings, and completed field research to determine the potential for new sections of coastal trail in this 3.5-mile segment. In December 2013, Mendocino Land Trust acquired the 73-acre “Pelican Bluffs Reserve” parcel located immediately to the north of the Rubino and LaFranchi parcels, facilitating the developing and opening of an approximately 1.9-mile portion of the California Coastal Trail envisioned within this stretch of coastline.

D. PROJECT DESCRIPTION

On November 18, 2015, the Mendocino Coastal Permit Administrator authorized conditional approval of CDP 2014-0042 to construct a public access trail along Pelican Bluffs, with associated development consisting of a bridge, boardwalks, and signage construction. The County staff report (page 33 of **Exhibit 5**) further describes the project components as follows:

Construction of the trail will require the installation of a parking area, foot-bridge, approximately one hundred (100) steps, approximately eighty (80) feet of boardwalk, approximately ten (10) interpretive and management signs, two (2) benches, and two (2) picnic tables. The Pelican Bluffs trail will loop around the property from the trailhead in the northeast corner of the property west towards the bluff, where it will follow the western property boundary before looping back to the trailhead. The trail will also extend south within 25-foot public access easements on private property (APNs: 027-341-07 (LaFranchi) and 027-341-08 (Ferrara)) for a total length of approximately two (2) miles. Public access easements are held by Moat Creek Managing Agency, a partner organization of Mendocino Land Trust.

The bulk of the approved development, including the parking area, picnic tables, steps, and interpretive signage will occur on the northernmost parcel owned by Mendocino Land Trust. The County-approved trail design includes a wheelchair-accessible loop trail as part of the Pelican Bluffs trail. Approved development within the public access easements on the southerly parcels consists primarily of trail development, private property signage, and wildlife-friendly wire fencing along the eastern border of the public access easements.

The approved project would open a public access trail on parcels designated for such a use under the LCP.

³ Instrument 2004-20029, recorded September 2, 2004, Mendocino County Recorder’s Office.

⁴ Instruments 2006-02164 and 2006-02165, recorded February 2, 2006, Mendocino County Recorder’s Office.

E. ANALYSIS OF APPELLANT’S APPEAL CONTENTIONS

The appeal filed by Diane Rubino, successor-in-interest to permittee Joseph Rubino, is attached as **Exhibit 6**. The appeal raises numerous contentions in support of the appeal. The appeal grounds are summarized below.

(1) Inconsistencies of the Approved Development with Public Access Provisions

In correspondence dated November 17, 2015 and February 26, 2016, prepared by the appellant’s attorney and presented as the appeal, the appellant contends that the project as approved is inconsistent with the public access policies of the Coastal Act and the Mendocino County certified LCP, including but not limited to Coastal Act Sections 30210, 30212, and 30214; Mendocino County Land Use Plan (LUP) Policies 3.6-7, 3.6-10, 3.6-13, and 3.6-25; and Mendocino County Coastal Zoning Code (CZC) Chapter 20.528 as detailed below. Attorney Brian Momsen, on behalf of the appellant, contends that: (a) the approved trail is not clearly within the boundaries of the recorded OTD and access easement; (b) the appellant, who owns the Rubino parcel, has had cattle on their property in the past and may wish to graze cattle in the future and no analysis has occurred to evaluate the effect of the trail with grazing operations; (c) the approved trail design is located within a few feet of the owner’s residence, and the property owners’ privacy and aesthetic needs were not evaluated in association with the County-approved trail design, inconsistent with Coastal Act Section 30214 and CZC Section 20.528.015; and (d) an Accessway Management Plan has not been prepared, inconsistent with CZC Section 20.520.045.

(2) Issues Unrelated to the Approved Development or its Consistency with the LCP or the Public Access Policies of the Coastal Act

The appellant also generally questions the local action because: a) the property owner did not receive notice in 2001 that Coastwalk had accepted the offer to dedicate (OTD) the Rubino public access easement; b) the exaction of the OTD by the Coastal Commission in 1986 was, and is, an unconstitutional taking of private property for public use without just compensation; c) it is unclear whether Coastwalk considered the time, place, and manner of the public access easements when it accepted the OTD’s in 2001; d) the appellant questions whether Coastwalk or Mendocino Land Trust have “the necessary resources, experience and expertise to manage and maintain the access;” e) the data used to support the County’s preparation of a Mitigated Negative Declaration (MND) document was inadequate, asserting that “essential conditions for management of the access way, including hours of operation, methods of access and security measures to protect adjacent property” should have been evaluated; and f) an Environmental Impact Report (EIR) instead of a MND should have been prepared to satisfy the requirements of the California Environmental Quality Act (CEQA), because the surrounding environment has changed in the 30 years following the predecessor’s recordation of an offer to dedicate public access.

As set forth in Section 30603 of the Coastal Act, after certification of its local coastal program, an appeal of a local government-issued coastal development permit is limited to allegations made on the grounds that the approved development does not conform to the standards set forth in the certified local coastal program or the public access policies of the Coastal Act. Only the appeal

contentions that allege the approved development's inconsistency with the access policies of the Coastal Act or the certified LCP present potentially valid grounds for appeal.

As discussed below, the Commission finds that the appeal raises no substantial issue of conformity of the approved development with the policies of the certified LCP or the public access policies of the Coastal Act.

F. Appeal Contentions That Are Valid Grounds for Appeal

As indicated above, the appellant raises four appeal contentions that present potentially valid grounds for appeal in that they allege the approved development's inconsistency with the access policies of the Coastal Act or the certified LCP, contending that: (a) the approved trail is not clearly located within the boundaries of the Recorded OTD and Public Access Easement(b) no analysis has occurred to evaluate the effect of the trail design with grazing operations, inconsistent with Coastal Act Section 30212; (c) the property owners' privacy and aesthetic needs were not evaluated in association with the County-approved trail design, inconsistent with Coastal Act Section 30214 and CZC Section 20.528.015; and (d) an Accessway Management Plan has not been prepared, inconsistent with CZC Section 20.520.045.

Contention 1a: Approved Trail is Not Clearly Within the Boundaries of the Recorded OTD and Access Easement

Correspondence dated November 17, 2015 prepared by the appellant's attorney and presented as part of the appeal states in part on Page 3 that:

[I]t is not clear from the proposed project whether the trail meets the requirements of the Irrevocable Offer to Dedicate recorded n [sic] 1986. That offer was for "public access and passive recreational use along the bluff top" with the easement being a 25 ft. wide strip of land as measured inland from the top of the bluff and in no case shall said access be closer than 10 ft. from the approved development." Exhibit C to this easement contemplated the access being approximately 125 ft. from any home or in other words "the proposed development." It is not clear if the bluff has receded in that time or if the proposed access trail is within the easement area designated by Exhibit C to the offer...

Mendocino County LUP Policy 3.6-8 requires in part:

Lateral blufftop accessway easements shall be at least 25 feet in width. However, the passageway within the easement area may be reduced to the minimum necessary to avoid: (1) adverse impacts on habitat values identified in the plan; or (2) encroachment closer than 20 feet from an existing residence; or (3) hazardous topographic conditions. Bluff retreat (erosion) shall be considered and provided for the life of the development when planning lateral accessways.

In a memorandum prepared for the March 1, 2015 County Board of Supervisors hearing on the local appeal of the County-approved project, County staff responded to this contention by referring to the Commission's findings for approval of CDP 1-86-22 (**Exhibit 7**) and the Offer to Dedicate Public Access Easement that the permittee recorded (**Exhibit 7**), stating in part the following:

The Offer to Dedicate (Mendocino County Official Records Book 1553 Page 155, Recorded on April 10, 1986, included as Attachment 2) combined with the information presented within the Staff Report for Coastal Commission Permit No. 1-86-22 give the best sense of the location of this easement.

The Staff Report (Exhibit B of the Offer to Dedicate (Attachment 2)) provides the location of the proposed residence on Page 4 as follows:

The project is proposed to be located 120 feet from the bluffs edge.

The Offer to Dedicate states the location and width of the easement on Page 3 as follows:

NOW THEREFORE, in consideration of the granting of Permit No. 1-86-22 to Grantor by the Commission, the owner(s) hereby offer(s) to dedicate to the People of California an easement in perpetuity for the purposes of public access and passive recreational use along the bluff top. Located on subject property such easement shall be a 25 ft. wide strip of land as measured inland from the top of the bluff and in no case shall said easement be closer than 10 feet from the approved development. The proposed easement is specifically set forth by attached Exhibit C hereby incorporated by reference.

The proposed project design consists of fencing proposed at the eastern boundary of the public access easement (25 feet from the bluff edge). All proposed improvements will be located west of the fencing, demonstrating that the proposed project improvements will be located within the easement area.

Page 173 of Book 1553 (Mendocino County Official Records, Recorded on April 10, 1986) depicts the 25-foot-wide public access easement (PAE) measured from the top of the bluff edge, with the easterly boundary of the PAE situated approximately 120 from the residence. Although the terms of the OTD state that the access shall in no case be closer than 10 feet from the approved residence, the easement as depicted in the recorded OTD is actually located approximately 120 feet from the residence. This separation of the County-approved trail from the residence is shown in the aerial site plan on page 2 of 13 of Exhibit No. 4. A closer oblique aerial view of the Rubino parcel from 2013 showing the relative distance of the residence back from the bluff edge is shown on page 4 of 4 of Exhibit No. 2. The County-approved trail was sited within 25 feet from the bluff edge and within the public access easements, consistent with the specifications of the recorded OTDs.

Therefore, the County-approved trail has been sited consistent with the specifications of the accepted OTD and consistent with the provisions of the Mendocino County certified LCP, including but not limited to LUP Policy 3.6-8.

Therefore, the Commission finds the contention that the County-approved trail was not sited clearly within the boundaries of the recorded OTD and access easement does not raise a substantial issue of conformity of the project as approved with the public access policies of the Coastal Act or the standards of the certified LCP.

Contention 1b: Approved Trail Design Did Not Consider Future Grazing Operations

Correspondence dated November 17, 2015 prepared by the appellant's attorney and presented as part of the appeal states in part on Page 2 that:

...[F]or decades the Rubinos have had cattle on their property even though none are currently present, and they plan once again to have cattle on their property. No analysis or "balancing" has taken place of which the Rubinos are aware of the effect a public hiking trail interfering with their cattle grazing operation, or whether the Land Trust or the State would indemnify the Rubinos for any losses or liability should a member of the public be injured by cattle or otherwise, etc.

The November 17, 2015 letter additionally states on Page 1 that:

From at least the early 1990s, the Rubinos fenced in their entire property, including access to the bluffs along the proposed trail site from the public with four to five strand cattle fencing that is over three feet high.

Coastal Act Section 30212 requires in part the following (emphasis added):

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or, (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

...

(c) Nothing in this division shall restrict public access...

A Final Feasibility Study Report dated February 12, 2010 was prepared for Moat Creek Managing Agency (MCMA) as part of its trail study efforts for continuation of the California Coastal Trail on the subject and surrounding properties between Point Arena and Moat Creek. The feasibility study address trail design adjacent to lands with managed livestock as follows:

As needed, appropriate livestock fences will be maintained in partnership with adjacent landowners, for the management of livestock. Any new or replaced fences will be wildlife friendly where possible (designed to allow for deer passage). On-leash dogs only will be allowed on the trail system. There are livestock hazards to humans (e.g. bulls) that must be addressed by any trail alignment adjacent to grazing cattle. Signs and education, as well as regular trail monitoring, are essential to minimize issues between livestock and hikers.

The appellant's described cattle fencing is visible in imagery available from the California Coastal Records Project,⁵ including but not limited to 2005 and 2013 images numbered 200503951 and 201303668, respectively. As depicted in the aerial imagery, the fencing on the Rubino parcel extends east to west along what appears to be the northern property line, then extends south from the northern property boundary to southern property boundary, following a relatively straight line along the east side of the private residence. During the March 1, 2016 appeal hearing before the Board of Supervisors, both the appellant's brother and the appellant's agent confirmed that the cattle fencing is located eastward of the residence. There is no evidence of a coastal development permit on file for previous fence construction activities on the Rubino parcel. Nonetheless, the location of the existing fencing eastward of the residence would preclude cattle from grazing westward of the Rubino residence, thereby limiting potential interactions between hikers along the dedicated public access easement and grazing cattle.

Additionally, the County-approved trail was sited and designed in a manner that is both consistent with the dedicated public accessway, and that ensures agriculture would not be adversely affected. The County-approved trail segments located on the privately-owned parcels

⁵ California Coastal Records Project imagery is available online at <http://www.californiacoastline.org>

are sited within the public access easement that is located within 25 feet of the bluff edge in the farthest, westernmost location, approximately 150 feet from cattle fencing located east of the residence. Furthermore, as depicted on page 2 of 13 in Exhibit No. 4, the approved project includes the installation of a wire fence along the east side of the public access easements over both the Rubino and La Franchi parcels. This wire fencing is in addition to the Rubinos' own fencing and will further deter public access users from wondering off the trail towards the cattle grazing area.

Therefore, the Commission finds that the contention of the appeal that the approved project is inconsistent with Coastal Act Section 30212 because the approval did not evaluate the effect of the trail design with grazing operations does not raise a substantial issue of conformity of the project as approved with the public access policies of the Coastal Act or the standards of the certified LCP.

Contention 1c: Approved Trail Design Does Not Balance Property Owners' Privacy Needs

The appellant further contends that "the trail at least one location comes within a few feet of the Rubinos' single family residence. There has been no "balancing" of their privacy interest in regard to the effect of a public hiking trail passing directly in front of their home." The appellant additionally asserts the following, on page 3 of the November 17, 2015 letter prepared by the appellant's attorney:

Recently, within the last year, the Rubinos' home was vandalized by a transient who actually broke into the home, lived there for several days and caused over \$70,000 of property damage including firing several shots into the structure with a gun before he was eventually arrested. This occurred when the property was fenced in, however, the caretaker was not present. The existence of a public trail within a few feet of this home will only raise the chances of something similar occurring in the future and violate the Rubinos' right to privacy.

Coastal Act Section 30214 requires in part (Emphasis added):

(a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:

(1) Topographic and geologic site characteristics.

(2) The capacity of the site to sustain use and at what level of intensity.

(3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.

(4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.

(b) It is the intent of the Legislature that the public access policies of this article be carried out in a reasonable manner that considers the equities and that balances the rights of the individual property owner with the public's constitutional right of access pursuant to Section 4 of Article X of the California Constitution. Nothing in this section

or any amendment thereto shall be construed as a limitation on the rights guaranteed to the public under Section 4 of Article X of the California Constitution.

Mendocino County Land Use Plan Policy 3.6-25 similarly requires (emphasis added):

Public access policies shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:

- *topographic and geologic site characteristics;*
- *capacity of the site to sustain use and at what level of intensity;*
- *fragility of natural resource areas and proximity to residential uses;*
- *need to provide for management of the access;*
- *balance between the rights of individual property owners and the public's constitutional rights of access.*

In a memorandum prepared for the March 1, 2015 County Board of Supervisors hearing on the local appeal of the County-approved project, County staff responded to this contention by stating:

The proposed trail is to be developed within the designated area approved under the Offer to Dedicate (Mendocino County Official Records Book 1553 Page 155, Recorded on April 10, 1986, included as Attachment 2). The Offer to Dedicate for the Ferrara/Rubino parcel states:

Such easement shall be a 25-foot wide strip of land as measured inland from the top of the bluff. In no case shall said access be closer than 10 feet from the approved development.

Mendocino County Code also contains requirements for the required distance between residential development and a proposed access trail to minimize this potential conflict between the two uses. Mendocino County Code Section 20.528.015 contains minimum access standards and specifically addresses the required width for the easements, potential restrictions on use of a trail, privacy, posting, safety and accessibility. Included in this section is discussion about trails and proximity to adjacent residential uses. Subsection (B) (3) of this code provides that access trails be limited to pass and repass only where the accessway may encroach closer than twenty (20) feet to an existing residence. Pass and repass is defined as the right to walk and run along the shoreline (MCC Section 20.308.095 (E)). This project is not limited to pass and repass as the existing residence is located over 100 feet from the proposed trail and therefore a passive recreational use is permissible. Subsection (C) also provides that all accessways shall be located and designed to minimize the loss of privacy or other impacts on adjacent residences and residential parcels.

In accordance with the requirements of Mendocino County Code and the recorded Offer to Dedicate, the proposed trail is located within the designated easement area, is limited to public access and passive recreational use, and, as stated in the Appeal, the residence of the Appellant is located ...[over 100 feet]... from the proposed access trail. The proposed access trail has been designed to provide certain features to protect adjacent private properties. These design features consist of the fencing proposed at the boundary

of the public access easement area and additionally the installation of private property signs provide deterrents to the public from encroaching upon the adjacent residences.

Studies were undertaken to inform the design and location of public access improvements including but not limited to: a) an initial feasibility study conducted from 2007 through 2010⁶, b) botanical studies (reports dated September 15, 2014 and January 5, 2015), c) Point Arena Mountain Beaver surveys conducted in September 2014; and d) archaeological surveys conducted in March and August 2014. The County-approved trail developments will occur on lands that are designated highly scenic, and the trail improvements have been designed in a manner that minimizes alteration of landforms, visual prominence of materials (by utilizing wildlife friendly wire fencing), and reflectivity (by reducing size and quantity of signage, and painting signs to reduce the potential for glare).

Thus, the County-approved development addresses private property concerns by: a) siting the portion of the trail located on the Rubino parcel in the farthest, westernmost location, over 100 feet from the residence, and b) signage and fencing along the eastern edge of the public access easement to deter the public from straying off the trail onto adjacent privately-owned lands. The approved trail is designed to minimize landform alteration to the maximum extent feasible and includes measures to minimize the potential for erosion. Users of the trail will be directed to walkways and trails that avoid sensitive resources. As noted in the Mitigated Negative Declaration adopted by the County for the approved project, the distance between the trail and the residence reduce the potential for noise from the trail to be significant or a nuisance. Siting the trail the maximum farthest distance feasible westward of the residence, and placing fencing and signage along the eastern edge of the PAE protects the privacy of private property owners, consistent with public access policies of the Coastal Act and the Mendocino County certified LCP, including but not limited to Coastal Act Section 30214, Mendocino County Land Use Plan Policy 3.6-25, and Coastal Zoning Code Section 20.528.015.

Finally, part of the appellant's privacy concern stated in the appeal is that the trail will lead to an increased likelihood of vandalism at the Rubino residence. The appellant has highlighted in their appeal an incident that occurred at their house at a time they concede is coincident with the departure of the property owner's caretaker. The incident occurred before any trail had been approved by the County and the appellant has not presented any evidence to suggest that use of the trail would increase vandalism.

Therefore, the Commission finds that appeal contentions asserting that the trail design did not balance privacy interests of private property owners with the public's right of access do not raise a substantial issue of conformity of the project as approved with the public access policies of the Coastal Act or the standards of the certified LCP.

Contention 1d: Accessway Management Plan was Not Prepared Prior to CDP Approval

Correspondence dated February 26, 2016 prepared by the appellant's attorney and presented as part of the appeal states in part that: "the Access Management Plan required by section 20.52[8].045 of the Mendocino County Code, has not been prepared and subjected to review required by law." The appellant further asserts that the accessway management plan is a discretionary document that must be subject to public and agency review prior to project approval.

⁶ The Feasibility Study Report acknowledges a temporary suspension of activity from December 2008 through August 2009 due to a State budget crisis and freezing of expenditure funding.

County staff responded to this contention in a memorandum prepared for the March 1, 2015 County Board of Supervisors hearing on the local appeal of the County-approved project, by stating in part that:

In accordance with MCC Section 20.528.045, Condition 11 requires that the applicant submit an Accessway Management Plan prior to issuance of the building permit for the various proposed structures. Mendocino County Code (as shown below) requires that the Accessway Management Plan be prepared prior to opening a trail for public use...

Sec. 20.528.045 - Accessway Management Plan.

No accessway shall be opened for public use until an Accessway Management Plan has been prepared by the managing agency and accepted by the Director. At a minimum, the Plan shall:

- (A) Provide for a design which avoids or mitigates any public safety hazards and any adverse impacts on agricultural operations or identified coastal resources;*
- (B) Set forth the agency(ies) responsible for operating, maintaining and assuming liability for the accessway;*
- (C) Set forth any other known provisions such as facilities to be provided, signing, use restrictions and special design and monitoring requirements; and*
- (D) Set forth provisions for protecting the accessway from vandalism and/or improper use (e.g., guarded gate, security patrol, hours of operation or period/seasons of closure and fees, if any).*

Though not required at this time, Mendocino Land Trust is preparing a draft Accessway Management Plan and intends to have it ready for discussion at the Board of Supervisors hearing.

Coastal Act Section 30212 states in relevant part that “[the] Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.” As part of the assignment of the Rubino PAE to MCMA¹¹, MCMA requested and was granted Commission approval as an acceptable management agency, thereby establishing its acceptance of responsibility for maintenance and liability of the accessway. Both the Coastal Commission and State Coastal Conservancy (SCC) previously approved the January 5, 2004 accessway management plan prepared by MCMA for the two PAEs.

As described above, part of the Coastal Commission’s acknowledgement of the transfer of the two public access easements to MCMA⁷ included certification that:

The responsibilities of Moat Creek Managing Agency to manage the Public Access Easement[s] shall be those set forth in the Management Plan dated January 5, 2004 and maintained in the offices of the Commission and the Conservancy (and as the Management Plan may be amended from time to time with the written concurrence of the Executive Director of the Commission, the Executive Officer of the Conservancy, and Moat Creek Managing Agency)...

⁷ Instruments No. 2006-02164 (Fray) and 2006-02165 (Rubino), Mendocino County Official Records, recorded February 2, 2006

Although Special Condition No. 11 of the County-approved development requires an updated management plan prior to issuance of the building permit at a later date, MLT presented a draft updated accessway management plan dated February 29, 2016 and presented it to the appellant and the Supervisors at the County appeal hearing on March 1, 2016. The revised draft public accessway management plan was prepared in consultation with staff from the Coastal Commission, SCC, Mendocino County, and MCMA and more directly addresses trail management, monitoring, maintenance, and liability, and other components that the land trust customarily implements in association with trail management and maintenance.

As discussed above, the approved trail project as proposed includes trail features that address privacy through: a) siting the portion of the trail located on the Rubino parcel in the farthest, westernmost location, over 100 feet from the residence, and b) installing “private property” signage and wildlife-friendly wire fencing along the eastern edge of the public access easement to deter the public from straying off the trail onto adjacent privately owned lands. Condition 3 of the County’s approval state that “the application, along with supplemental exhibits and related material, shall be considered elements of the permit, and that compliance therewith is mandatory, unless an amendment has been approved by the Planning Commission.” Therefore, the siting of the trail in the approved location over 100 feet from the residence and the installation of the wire fencing along the eastern edge of the public access easement as proposed in the application is mandatory. Siting the trail over 100 feet away from the residence, and placing fencing and signage along the eastern edge of the public access easement maximizes the protection of privacy of the property owners, consistent with the public access policies of the Coastal Act and the Mendocino county certified LCP, including but not limited to, Coastal Act Section 30214, Mendocino County Land Use Plan Policy 3.6-25, and Coastal Zoning Code Section 20.528.015.

Contrary to the appellant’s assertions, none of the components of the accessway management plan rely on additional future studies or analysis. Therefore, the accessway management plan does not trigger the need for any additional discretionary analysis beyond that considered as part of the County-approved development.

Further, the appellant contends in part that by not requiring approval of the accessway management plan by the time of the County’s action on the CDP, the details of how the trail will be designed to avoid privacy concerns will not be developed until too late in the process, after the public hearing process. However, because the accessway management plan serves as a tool demonstrating how management and maintenance of the approved development within the public access easements will be implemented, it further ensures the privacy of adjacent property owners through features such as dogs-on-leash provisions and protects the aesthetic values of the area by providing for the collection of litter (through, at minimum, monthly visitation by trail maintenance work crews managed by MCMA and MLT).

Therefore, the County’s approval requiring as Special Condition No. 11 that the applicant submit a revised access management plan prior to building permit issuance (and thus prior to opening the accessway to public use) is consistent with the public access management policies of the Coastal Act and the certified LCP, including but not limited to Coastal Act Section 30212 and Mendocino County Coastal Zoning Code Section 20.528.045. The degree of factual and legal support for the County’s decision is high, given that a) its approval was consistent with the policies of the certified LCP that require an accessway management plan prior to opening a trail to public use; b) MCMA had already prepared an accessway management plan that SCC and the Coastal Commission approved in 2004; c) the approved trail project is designed to protect the privacy of the private property owners by locating the trail over 100 feet away from the residence

and including the installation of fencing and private property signage; and d) because the access way management plan serves as a tool further ensuring the privacy protection of adjacent property owners by identifying how management and maintenance of the approved development within the public access way will be implemented.

For all of the above reasons, the Commission finds that the appeal does not raise a substantial issue of conformity of the approved project with the certified LCP and public access policies of the Coastal Act.

G. Contentions That Are Not Valid Grounds for Appeal

As described above, the appellant also generally asserts that their appeal raises substantial issues because: a) the property owner did not receive notice in 2001 that Coastwalk had accepted the offer to dedicate (OTD) the Rubino public access easement; b) the exaction of the OTD by the Coastal Commission in 1986 was, and is, an unconstitutional taking of private property for public use without just compensation; c) it is unclear whether Coastwalk considered the time, place, and manner of the public access easements when it accepted the OTD's in 2001; and d) the appellant questions whether Coastwalk or Mendocino Land Trust have "the necessary resources, experience and expertise to manage and maintain the access;" and (e) the Mitigated Negative Declaration that was prepared and adopted with the approval of the project is inadequate and does not comply with CEQA.

These contentions are not valid grounds for appeal because they do not allege an inconsistency of the project as approved with the certified LCP and the public access policies of the Coastal Act. Rather, the appellant's contentions primarily raise concerns about the action taken by the Commission two decades ago. However, the appellant's predecessor did not contest the terms of the underlying CDP 1-86-22 that required, in part, the recordation of an offer-to-dedicate public access. As described above, in 1986, a predecessor owner recorded the OTD and accepted the issued permit without contest. Therefore, the appellant is precluded from now raising a challenge because their predecessor in title elected not to challenge the Commission's 1986 decision to impose a public access condition and any such claims are now barred by the 60-day statute of limitations.

Case law is established on this point. In *Serra Canyon Co., Ltd. V. California Coastal Commission* [(2004) 120 Cal App 4th 663], the Commission granted plaintiff's predecessor a permit on condition he record an irrevocable offer to dedicate property for public recreational use. The predecessor did not challenge the condition but rather executed and recorded the condition. *Serra Canyon* held that by agreeing to the condition the predecessor accepted the benefit of the permit. Further the *Serra Canyon* court made clear that the rule applied even when the aggrieved persons asserted inverse condemnation and were successors in interest to prior owners who accepted the benefits and burdens of the Commission's permit.

Regarding the Appellant's CEQA contention, the contention about the adequacy of the CEQA review does not allege an inconsistency of the project as approved with the certified LCP. Rather, the appellant alleges that the Mitigated Negative Declaration that was prepared and adopted with the approval of the project is inadequate and does not comply with CEQA. These concerns are not valid grounds for appeal, as the concerns do not relate to conformity of the project as approved with the certified LCP and the public access policies of the Coastal Act. The Commission therefore finds that this contention is not a valid ground for appeal pursuant to Section 30603(b)(1) of the Coastal Act.

H. Conclusion

The Commission finds that the County's findings provide a high degree of factual evidence to demonstrate the approved public access trail conforms with the public access policies of the certified LCP and the Coastal Act. Therefore, the Commission finds that the appeal raises no substantial issue of conformity of the approved development with the public access policies and standards of the certified LCP and the Coastal Act.

APPENDIX A

COMMISSION'S APPEAL JURISDICTION OVER THE PROJECT

On November 18, 2016, the County of Mendocino Coastal Permit Administrator approved Coastal Development Permit (CDP) No. 2014-0042 that authorized the construction of a public trail, bridge, boardwalks, and installation of signage along Pelican Bluffs. The project site is located within a designated “highly scenic area” located west of Highway One on a blufftop parcel.

After certification of Local Coastal Programs (LCPs), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits (Coastal Act Section 30603). Section 30603 states that an action taken by a local government on a coastal development permit application may be appealed to the Commission for certain kinds of developments, including developments located within certain geographic appeal areas, such as those located between the sea and the first public road paralleling the sea, or within 300 feet of the inland extent of any beach, or of the mean high tide line of the sea where there is no beach, or within 100 feet of any wetland or stream, or within 300 feet of the top of the seaward face of any coastal bluff, or those located in a sensitive coastal resource area. Furthermore, developments approved by counties may be appealed if they are not designated the “principal permitted use” under the certified LCP. Finally, developments which constitute major public works or major energy facilities may be appealed, whether approved or denied by the city or county. The grounds for an appeal are limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program and, if the development is located between the first public road and the sea, the public access policies set forth in the Coastal Act.

The subject development is appealable to the Commission pursuant to Section 30603 of the Coastal Act because (1) the approved development constitutes a major public works project, and because the approved development is located: (2) within a designated “highly scenic area,” which is a type of sensitive coastal resource area; (3) within 100 feet of a wetland or stream; (4) within 300 feet of the top of the seaward face of a coastal bluff; and (5) between the sea and the first public road paralleling the sea.

1. Major Public Works Project

The project occurs across three parcels along Pelican Bluffs, including a 73-acre parcel owned by Mendocino Land Trust (MLT), and within two 25-foot-wide public access easement areas on the two adjacent private properties to the south. The State Coastal Conservancy previously provided funding towards acquisition of the 73-acre “Pelican bluffs” parcel; and for trail planning efforts for the MLT property and the two adjoining public access easements, thereby establishing the site as a publicly financed recreational facility. Both Mendocino County and the State Coastal Conservancy will be contributing funding to the construction of the approved development.

Section 13012(b) defines “Major Public Works” in part as follows:

Notwithstanding the criteria in (a), "major public works" also means publicly financed recreational facilities that serve, affect, or otherwise impact regional or statewide use of the coast by increasing or decreasing public recreational opportunities or facilities.

The approved development involves the creation of public trails in a manner that will serve the public and affect regional and statewide public recreational opportunities at a publically financed recreational facility, Pelican Bluffs Reserve, as an extension to the California Coastal Trail. Therefore, the subject development is appealable to the Commission pursuant to Section 30603(a)(5) of the Coastal Act.

2. Within a Sensitive Coastal Resource Area

Section 30116 of the Coastal Act defines Sensitive Coastal Resource Areas as follows:

"Sensitive coastal resource areas" means those identifiable and geographically bounded land and water areas within the coastal zone of vital interest and sensitivity. "Sensitive coastal resource areas" include the following:

- (a) Special marine and land habitat areas, wetlands, lagoons, and estuaries as mapped and designated in Part 4 of the coastal plan.*
- (b) Areas possessing significant recreational value.*
- (c) Highly scenic areas. (emphasis added)*
- (d) Archaeological sites referenced in the California Coastline and Recreation Plan or as designated by the State Historic Preservation Officer.*
- (e) Special communities or neighborhoods which are significant visitor destination areas.*
- (f) Areas that provide existing coastal housing or recreational opportunities for low- and moderate-income persons.*
- (g) Areas where divisions of land could substantially impair or restrict coastal access.*

Section 30502 of the Coastal Act indicates that sensitive coastal resource areas are areas within the coastal zone where the protection of coastal resources and public access requires, in addition to the review and approval of zoning ordinances, the review and approval by the Commission of other implementing actions to protect coastal resources. Sensitive coastal resource areas (SCRAs) can be designated either by the Commission pursuant to Section 30502 of the Coastal Act, or by local government by including such a designation in its Local Coastal Program (LCP).

Section 30502 directs the Commission to designate SCRAs not later than September 1, 1977, pursuant to a report which must contain the following information:

- (1) A description of the coastal resources to be protected and the reasons why the area has been designated as a sensitive coastal resource area;*
- (2) A specific determination that the designated area is of regional or statewide significance;*
- (3) A specific list of significant adverse impacts that could result from development where zoning regulations alone may not adequately protect coastal resources or access;*
- (4) A map of the area indicating its size and location.*

The Commission did not ultimately designate SCRAs or make recommendations to the Legislature, as contemplated by Section 30502 and 30502.5. Because it did not designate SCRAs, the Commission does not have the authority to require local governments to adopt such additional implementing actions. Nothing in Sections 30502 or 30502.5, however, overrides other provisions in the Coastal Act that assign primary responsibility to local governments for

determining the contents of LCPs and that authorize local governments to take actions that are more protective of coastal resources than required by the Coastal Act. Such Coastal Act provisions support the position that the Commission does not have the exclusive authority to designate SCRA's. In 1977, the Attorney General's Office advised the Commission that if the Commission decided not to designate SCRA's, local government approvals of development located in SCRA's delineated in LCPs would nonetheless be appealable to the Commission.

The ability of local governments to designate SCRA's in LCPs is further supported by the legislative history of changes to Section 30603. In 1982, after the 1978 deadline for the Commission to designate SCRA's, the Legislature amended the provisions of Section 30603 that relate to appeals of development located in SCRA's. (Cal. Stats. 1982, c. 43, sec. 19 (AB 321 - Hannigan)). The Legislature's 1982 revisions to the SCRA appeal process demonstrate that the Commission's decision not to designate SCRA's did not have the effect of preventing local governments from designating SCRA's through the LCP process. If the Commission's decision not to designate SCRA's rendered the Coastal Act provisions that relate to SCRA's moot, the Legislature's action in 1982 would have been a futile and meaningless exercise. Instead, by deliberately refining the SCRA appeal process, the Legislature confirmed that local governments continue to have the authority to designate SCRA's.

Although a city or county is not required to designate SCRA's in their LCP, at least four local governments have chosen to do so. The Commission has certified LCP's that contain SCRA designations from the City of Grover Beach (1982), San Luis Obispo County (1987), the City of Dana Point (1989) and the segment of Mendocino County's LCP that covers areas outside of the Town of Mendocino (1992).

Designation of SCRA's in this manner is consistent with the reservation of local authority, under Section 30005, to enact certain regulations more protective of coastal resources than what is required by the Act. As noted above, the Coastal Act does not require local governments to designate SCRA's, but local governments are allowed to designate such areas.

The appeal of Mendocino County Coastal Development Permit No. 2014-0042 was accepted by the Commission in part, on the basis that the project site is located in a sensitive coastal resource area designated by Mendocino County and certified by the Commission when the County's LCP was certified in 1992.

The applicable designation of sensitive coastal resource areas was accomplished in the LCP by defining sensitive coastal resource areas within the LCP to include "highly scenic areas," and by mapping specific geographic areas on the certified Land Use Maps as "highly scenic." Chapter 5 of the Mendocino County General Plan Coastal Element (the certified Land Use Plan) and Division II of Title 20, Section 20.308.105(6) of the Mendocino County Coastal Zoning Code (CZC), both define "Sensitive Coastal Resource Areas" to mean "those identifiable and geographically bounded land and water areas within the coastal zone of vital interest and sensitivity." Subparts (c) of these sections include "highly scenic areas." This definition closely parallels the definition of SCRA contained in Section 30116 of the Coastal Act. Mendocino LUP Policy 3.5 defines highly scenic areas to include, in applicable part, "those [areas] identified on the Land Use Maps as they are adopted." Adopted Land Use Map Nos. 25 and 28 designate the area inclusive of the site that is the subject of Mendocino County CDP No. 2014-0042 as highly scenic. Therefore, it is clear that by defining sensitive coastal resource areas to include highly scenic areas, and by then mapping designated highly scenic areas on the adopted Land Use Maps, the County intended that highly scenic areas be considered sensitive coastal resource areas.

Section 30603 of the Coastal Act states that “after certification of its local coastal program, an action taken by a local government on a coastal development permit may be appealed to the Commission...” Included in the list of appealable developments are developments approved within sensitive coastal resource areas. Additionally, Division II of Title 20, Section 20.544.020(B)(6) of the certified Mendocino County Coastal Zoning Code specifically includes developments approved “located in a sensitive coastal resource area” as among the types of developments appealable to the Coastal Commission.

Therefore, for all of the above reasons, the Commission finds that as (1) highly scenic areas are designated and mapped in the certified LCP as a sensitive coastal resource area, and (2) approved development located in a sensitive coastal resource area is specifically included among the types of development appealable to the Commission in the certified LCP, Mendocino County’s approval of local CDP No. 2014-0042 is appealable to the Commission under Section 30603(a)(3) of the Coastal Act and Section 20.544.020(B)(6) of the certified Mendocino County Coastal Zoning Code.

3. Within 100 Feet of a Wetland or Stream

The approved development includes installation of a bridge over a seasonal drainage area. As the approved development is located within 100 feet of wetland and riparian features, the subject development is appealable to the Commission pursuant to Section 30603(a)(2) of the Coastal Act.

4. Between the First Public Road and the Sea

The subject property is located between Highway One and the Pacific Ocean. The Post LCP Certification Permit and Appeal Jurisdiction Map for the area adopted by the Commission in May of 1992, designates Highway One as the first public road paralleling the sea. Therefore, as the approved development is located between the first public road paralleling the sea and the sea, the subject development is appealable to the Commission pursuant to Section 30603(a)(1) of the Coastal Act.

5. Within 300 Feet of the Top of the Seaward Face of a Coastal Bluff

The approved development is located along three bluff-top parcels, and the approved development is located more than 25 feet but less than 300 feet from the bluff edge. Therefore, the subject development is appealable to the Commission pursuant to Section 30603(a)(2) of the Coastal Act.

The decision of the Coastal Permit Administrator was appealed to Mendocino County Board of Supervisors on November 24, 2015. On March 1, 2016, the Board of Supervisors heard public comment on the item, and denied the appeal, upholding the approval of the Coastal Permit Administrator and adopting additional findings for approval.

One appeal was filed with the Commission’s North Coast District Office on March 22, 2016 from Diane Rubino (**Exhibit No. 6**). The appeal was filed in a timely manner, within 10 working days of receipt by the Commission of the County’s Notice of Final Action.

APPENDIX B: SUBSTANTIVE FILE DOCUMENTS

Coastal Commission Coastal Development Permit No. NCR-76-C-335 (McCallum/Cerruti)

Coastal Commission Coastal Development Permit No. 81-CC-307 (Fray)

Coastal Commission Coastal Development Permit No. 1-86-22 (Rubino)

Mendocino County Coastal Development Permit No. CDP 2014-0042

Mendocino County Local Coastal Program

Morris, L. February 12, 2010. "Moat Creek to Arena Cove Trail Feasibility Study, Coastal Conservancy Grant Agreement No. 06-160." Final report prepared for Moat Creek Managing Agency, Point Arena, CA.

Offer to Dedicate Easement, Mendocino County Official Records Book 1320 Page 232, Recorded August 27, 1981, Mendocino County Recorder's Office.

Offer to Dedicate Easement, Mendocino County Official Records Book 1553 Page 155, Recorded April 10, 1986, Mendocino County Recorder's Office.

Appendix C

Coastal Act and Mendocino County LCP Policies Regarding Public Access

Coastal Act Section 30001.5 states in part the following:

The legislature further finds and declares that the basic goals of the state for the coastal zone are to: . . .

(c) Maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resources conservation principles and constitutionally protected rights of private property owners.

Coastal Act Sections 30210, 30211, and 30212 require the provision of maximum public access opportunities, with limited exceptions.

Coastal Act Section 30210 states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Coastal Act Section 30211 states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Coastal Act Section 30212 states in applicable part (emphasis added):

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

(1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,

(2) adequate access exists nearby, or,

(3) agriculture would be adversely affected.

Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

LUP Policy 3.6-13 states the following (emphasis added):

The County may seek agencies to accept accessways as prescribed in this section under "Managing and Maintaining Accessways". Dedicated accessways shall not be required to

be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

CZC Section 20.528.045 “Accessway Management Plan” states the following:

No accessway shall be opened for public use until an Accessway Management Plan has been prepared by the managing agency and accepted by the Director. At a minimum, the Plan shall:

- (A) Provide for a design which avoids or mitigates any public safety hazards and any adverse impacts on agricultural operations or identified coastal resources;*
- (B) Set forth the agency(ies) responsible for operating, maintaining and assuming liability for the accessway;*
- (C) Set forth any other known provisions such as facilities to be provided, signing, use restrictions and special design and monitoring requirements; and*
- (D) Set forth provisions for protecting the accessway from vandalism and/or improper use (e.g., guarded gate, security patrol, hours of operation or period/seasons of closure and fees, if any).*

LUP Policy 3.6-28 states the following:

New development on parcels containing the accessways identified on the land use maps shall include an irrevocable offer to dedicate an easement, as required by other policies in this Chapter, for public use. Such offers shall run for a period of 21 years and shall be to grant and convey to the people of the State of California an easement for access over and across the offeror's property.

Coastal Act Section 30214 states:

(a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:

- (1) Topographic and geologic site characteristics.*
- (2) The capacity of the site to sustain use and at what level of intensity.*
- (3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.*
- (4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.*

(b) It is the intent of the Legislature that the public access policies of this article be carried out in a reasonable manner that considers the equities and that balances the rights of the individual property owner with the public's constitutional right of access pursuant to [Section 4 of Article X of the California Constitution](#). Nothing in this section or any amendment thereto shall be construed as a limitation on the rights guaranteed to the public under [Section 4 of Article X of the California Constitution](#).

(c) In carrying out the public access policies of this article, the commission and any other responsible public agency shall consider and encourage the utilization of innovative access management techniques, including, but not limited to, agreements with private organizations which would minimize management costs and encourage the use of volunteer programs.

(Amended by: Ch. 919, Stats. 1979; Ch. 285, Stats. 1991.)

LUP Policy 3.6-7 states:

All access easements required by this Land Use Plan to be offered for dedication to public use shall be a minimum of 25 feet wide. However, the passageway within the easement area may be reduced to the minimum necessary to avoid: (1) adverse impacts on habitat values identified in the plan; or (2) encroachment closer than 20 feet from an existing residence; or (3) hazardous topographic conditions. The right of public use may be limited to pass and repass only when an accessway is specifically identified in the plan as having habitat values which would be adversely impacted by public use or adverse topographic conditions which would make beach use dangerous, or when the accessway would encroach closer than 20 feet to a residential structure. In specified areas identified in Chapter 4 or on the Land Use Plan maps, offers to dedicate public parking areas may be required as a condition of permit approval.

Such offers shall be obtained in a manner consistent with Policy 3.6-5 and shall contain language consistent with the requirements of Policy 3.6-28. In areas where adequate parking is not available, at the time of development the need for additional parking to serve public access to the coast shall be considered in the permit review process.

LUP Policy 3.6-10 states:

All accessways shall be located and designed to minimize the loss of privacy or other adverse impacts on adjacent residences and other land uses.

LUP Policy 3.6-25 states:

Public access policies shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:

- *topographic and geologic site characteristics;*
- *capacity of the site to sustain use and at what level of intensity;*
- *fragility of natural resource areas and proximity to residential uses;*
- *need to provide for management of the access;*
- *balance between the rights of individual property owners and the public's constitutional rights of access.*

LUP Policy 3.6-8 states:

Easements for lateral shoreline accessways shall extend landward 25 feet from mean high tide or to the toe of the bluff or the first line of terrestrial vegetation if the width of the beach is greater than 25 feet. Lateral blufftop accessway easements shall be at least

25 feet in width. However, the passageway within the easement area may be reduced to the minimum necessary to avoid: (1) adverse impacts on habitat values identified in the plan; or (2) encroachment closer than 20 feet from an existing residence; or (3) hazardous topographic conditions. Bluff retreat (erosion) shall be considered and provided for the life of the development when planning lateral accessways.

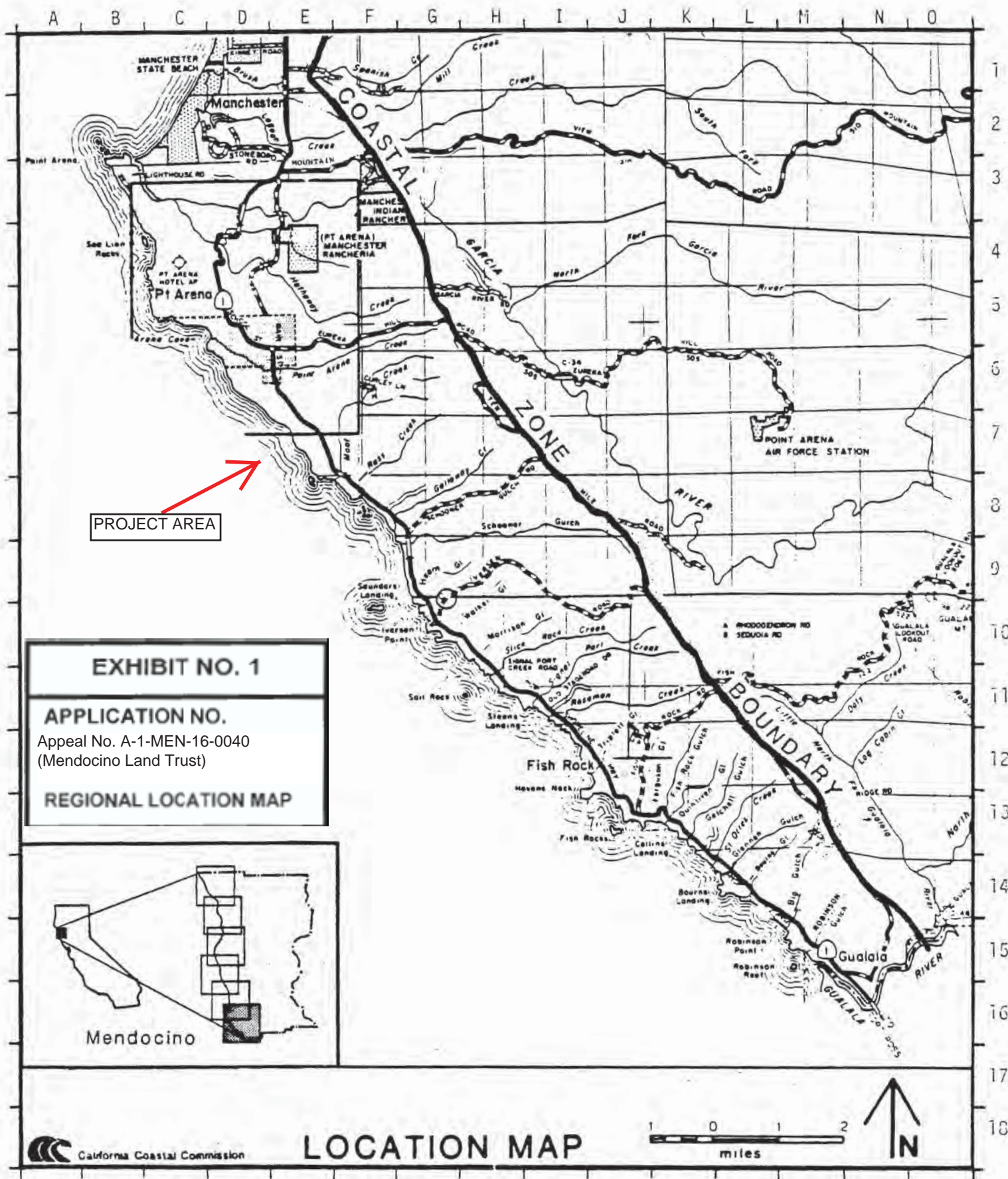
CZC Section 20.528.015 “Minimum Access Standards” states in part the following:

*(A) **Width.** Easements for lateral shoreline accessways shall extend landward twenty-five (25) feet from mean high tide or to the toe of the bluff or the first line of terrestrial vegetation if the width of the beach is greater than twenty-five (25) feet. All access easements required to be offered for public use shall be a minimum of twenty-five (25) feet wide with the following exceptions:*

- (1) Where the passageway would adversely impact identified habitat values;*
- (2) Where it would encroach within twenty (20) feet or less from an existing residence;*
- (3) Where there are identified hazardous topographic conditions; or*
- (4) Along Highway 1 where accessway(s) will be fifteen (15) feet wide pursuant to Section 20.528.010.*

...

*(E) **Safety.** All accessways shall be designed and constructed to safety standards adequate for their intended use. Barriers shall be constructed by the managing agency where necessary. Parking areas to adequately serve public access shall be considered in the permit review process. Bluff retreat/erosion shall be considered and provided for the life of the development when planning lateral accessways.*



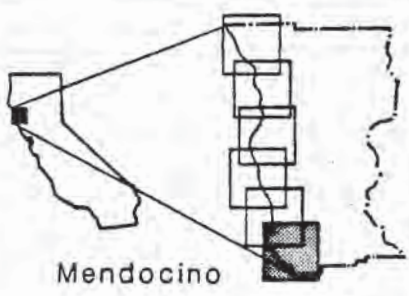
PROJECT AREA

EXHIBIT NO. 1

APPLICATION NO.

Appeal No. A-1-MEN-16-0040
(Mendocino Land Trust)

REGIONAL LOCATION MAP



Mendocino

California Coastal Commission

LOCATION MAP



County of Mendocino

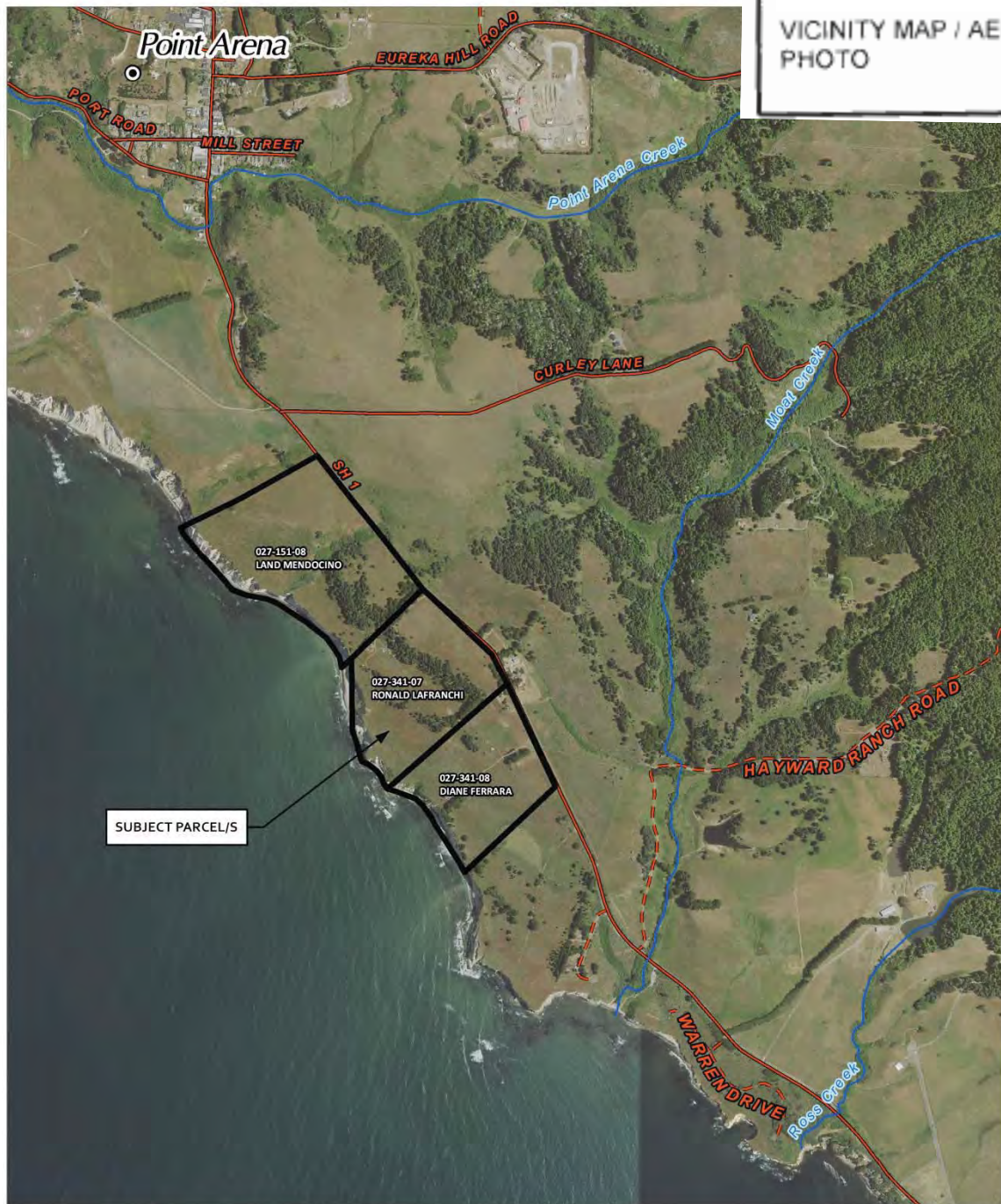
EXHIBIT NO. 2

APPEAL NO.

A-1-MEN-16-0040

(Mendocino Land Trust)

VICINITY MAP / AERIAL
PHOTO



CASE: CDP 2014-0042
OWNER: Various
APN: 027-151-08, 027-341-07, 08
APLCT: Mendocino Land Trust, Inc.
ADDRESS: 26300 S. Hwy. 1, PA

— Named Rivers
— Public Roads
- - Private Roads

0 700 1,400 Feet
0 0.125 0.25 Miles
1:18,000

2014 NAIP AERIAL ORTHOPHOTO

Map produced by the Mendocino County Planning & Building Services, April, 2015
All spatial data is approximate. Map provided without warranty of any kind.



Mendocino Land Trust Parcel, in part
(approximate; APN 027-151-08)

EXHIBIT NO. 3

Appeal No.
A-1-MEN-16-0040
(Mendocino Land Trust)
COASTAL RECORDS
PROJECT AERIAL IMAGE

2013 AERIAL IMAGE SHOWING NORTHERN PORTION OF MLT PARCEL
Image source: California Coastal Records Project, Image 201303650

Copyright (C) 2013 Kenneth & Gabrielle Adelman, California Coastal Records Project, www.Californiacoastline.org



La Franchi Parcel
(APN 027-341-07)

Mendocino Land Trust Parcel, in part
(approximate; APN 027-151-08)

2013 AERIAL IMAGE SHOWING SOUTHERN PORTION OF MLT PARCEL

Image source: California Coastal Records Project, Image 201303656

Copyright (C) 2013 Kenneth & Gabrielle Adelman, California Coastal Records Project, www.Californiacoastline.org



La Franchi Parcel
(approximate; APN 027-341-07)

2013 AERIAL IMAGE SHOWING LA FRANCHI PARCEL

Image source: California Coastal Records Project, Image 201303660

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(4 of 4)

2013 AERIAL IMAGE SHOWING RUBINO PARCEL

Image source: California Coastal Records Project, Image 201303668

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Pelican Bluffs Coastal Trail

Notes for Coastal Development Permit Additions, March 13, 2015

Submitted by Mendocino Land Trust

1. Wildlife friendly fencing, sheep fencing
2. Interpretive Panels:
 - o Bishop Pine Forests
 - o Point Arena Mountain Beaver
 - o Geology
 - o The California Coastal Trail and Partnerships
3. Other signs:
 - o Management Signs (2)- 2' x 3', aluminum painted brown with white letters
 - o Warning Signs (at least 3)- 8" x 12"
 - o Rare Habitat Protection Signs (5)- 8" x 12"
 - o Private Property Signs (at least 7)- 8" x 12"
 - o Trail arrows (5)- 8" x 12"- at intersections
 - o Trail maps (at parking area)
4. Number and Design for Steps- about 100 steps, in two locations (most steps in northern location)
5. Length and Design for Boardwalk- 80 feet of boardwalk, see previously submitted design
6. Bench locations- there will be two benches (locations to be determined)
7. Picnic Table locations- there will be two picnic tables near the coffeeberry "trees" at the northwest portion of the ADA loop trail.

EXHIBIT NO. 4
Appeal No. A-1-MEN-16-0040 (Mendocino Land Trust)
SITE PLANS & SPECIFICATIONS

Pelican Bluffs
027-151-08

Ronald LaFranchi
027-341-07

Eli LaFranchi
027-151-09

The trail area on the LaFranchi and Rubino parcels is fully within the public access easement, which is 25 feet measured from the daily bluff edge.

Rubino
027-341-08

W: Bluff Unstable
SH: Sensitive Habitat
PP: Private Property
M: Management

↑ Trail Arrow

● Gate

● Interpretive panel

== Sheep Fence

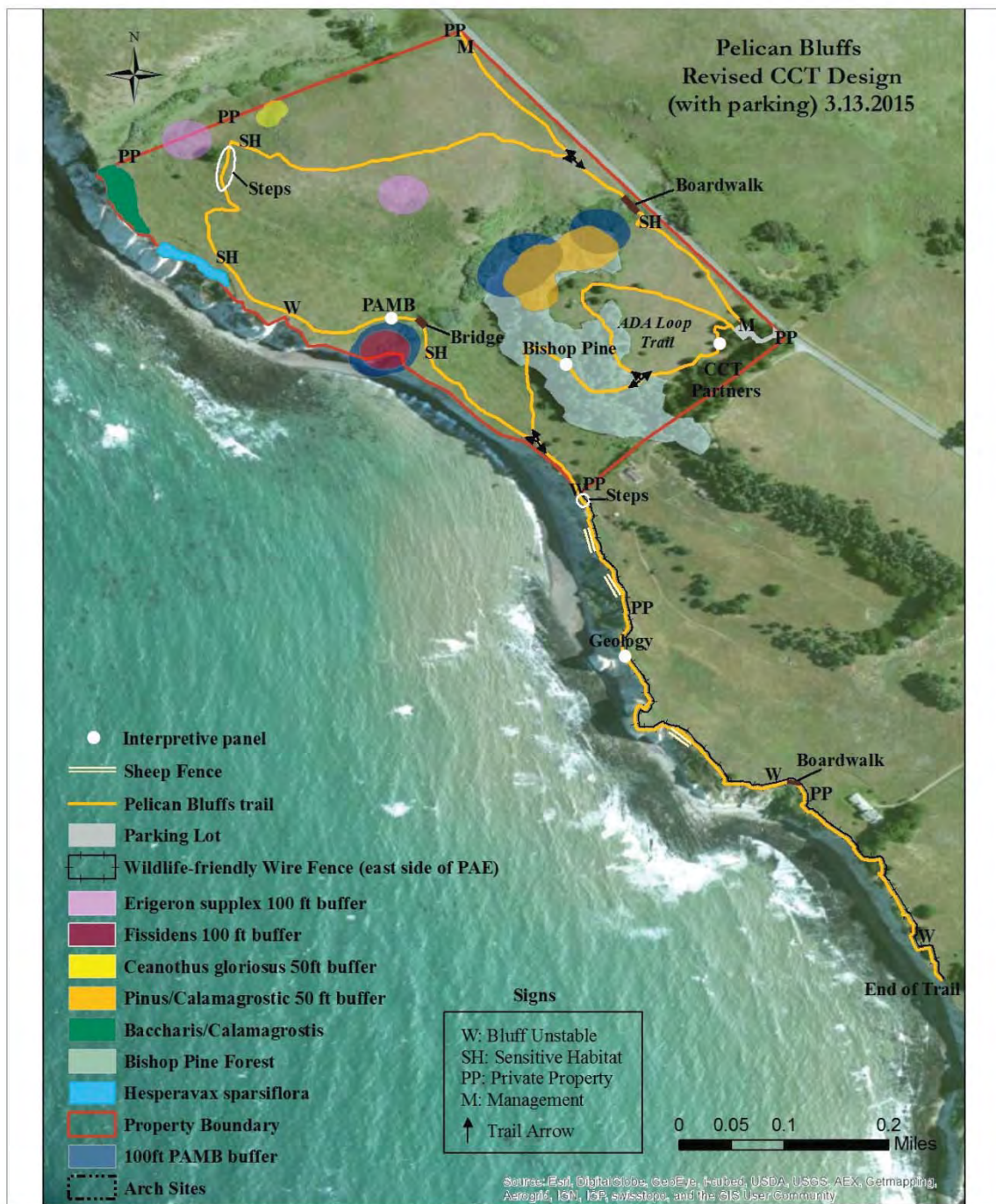
— Public Access Easement (PAE)

— Pelican Bluffs trail

□ Wire Fence (east side of PAE)

0 0.1 0.2
Miles

(2 of 13)

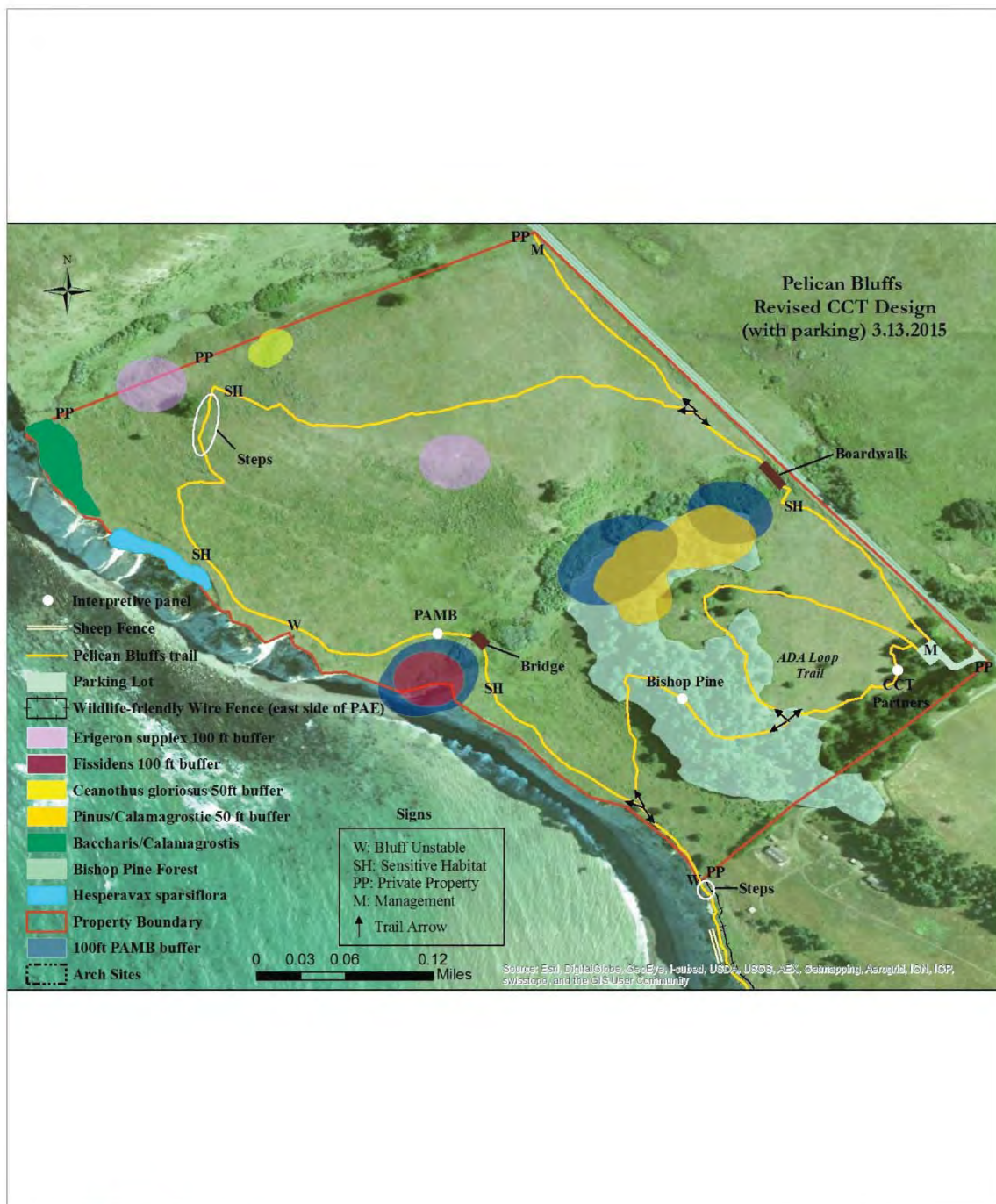


CASE: CDP 2014-0042
 OWNER: Mendocino Land Trust, Inc.
 APN: 027-151-08-01
 APLT: MLT, Inc.
 ADDRESS: None Assigned, PA

NO SCALE

SITE PLAN [03-13-2015]

Map produced by the Mendocino County Planning & Building Services, August, 2015.
 All spatial data is approximate. Map provided without warranty of any kind.

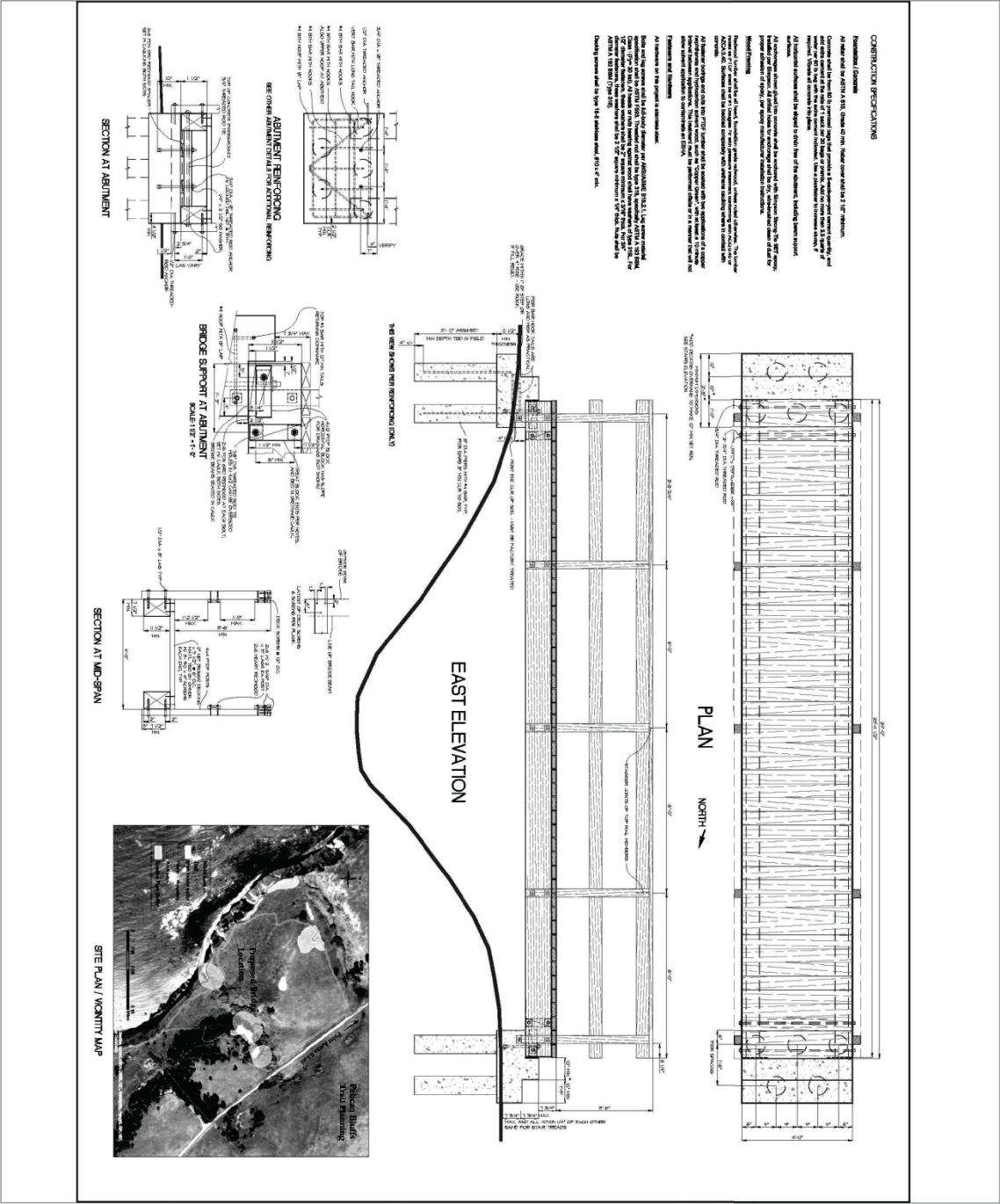


CASE: CDP 2014-0042
 OWNER: Mendocino Land Trust, Inc.
 APN: 027-151-08-01
 APLCT: MLT, Inc.
 ADDRESS: None Assigned, PA

NO SCALE

SITE PLAN DETAIL

Map produced by the Mendocino County Planning & Building Services, August, 2015
 All spatial data is approximate. Map provided without warranty of any kind.

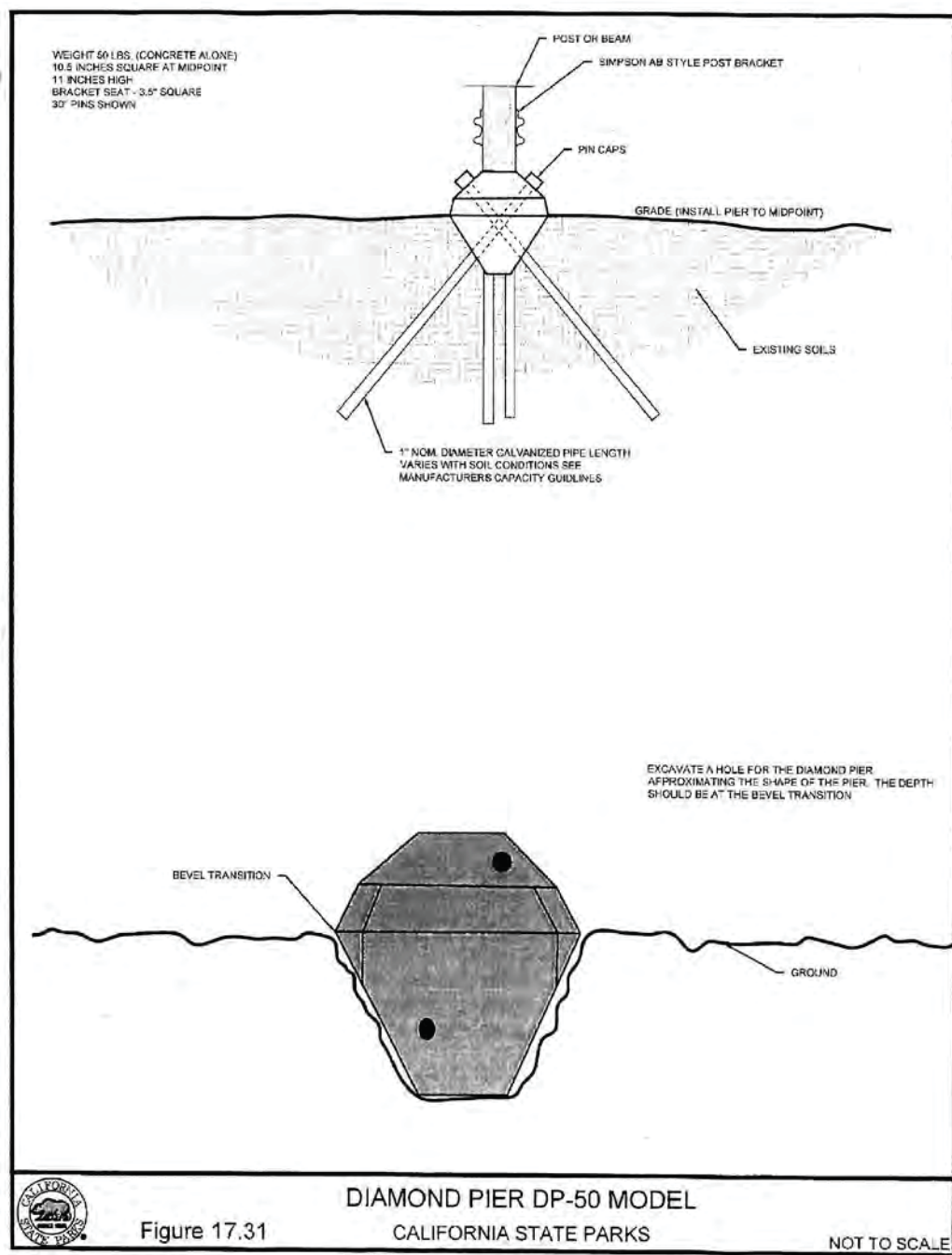


CASE: CDP 2014-00.42
OWNER: Mendocino Land Trust, Inc.
APN: 027-151-08-01
APLCT: MLT, Inc.
ADDRESS: None Assigned, PA

NO SCALE

BRIDGE DESIGN

Map produced by the Mendocino County Planning & Building Services, August, 2015
All spatial data is approximate. Map provided without warranty of any kind.

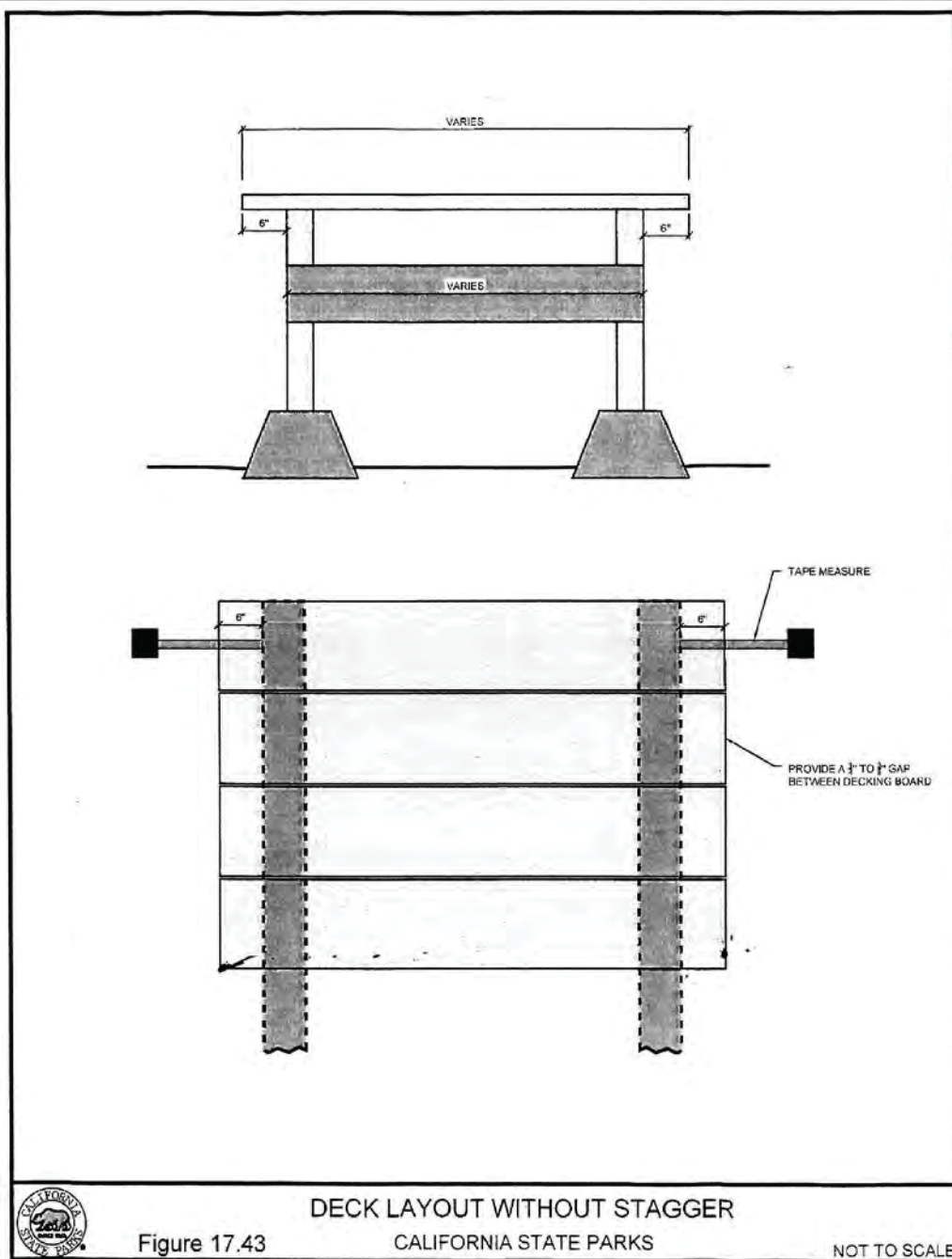


CASE: CDP 2014-0042
OWNER: Mendocino Land Trust, Inc.
APN: 027-151-08-01
APLCT: MLT, Inc.
ADDRESS: None Assigned, PA

NO SCALE

PIER DIAGRAM

Map produced by the Mendocino County Planning & Building Services, August, 2015.
All spatial data is approximate. Map provided without warranty of any kind.

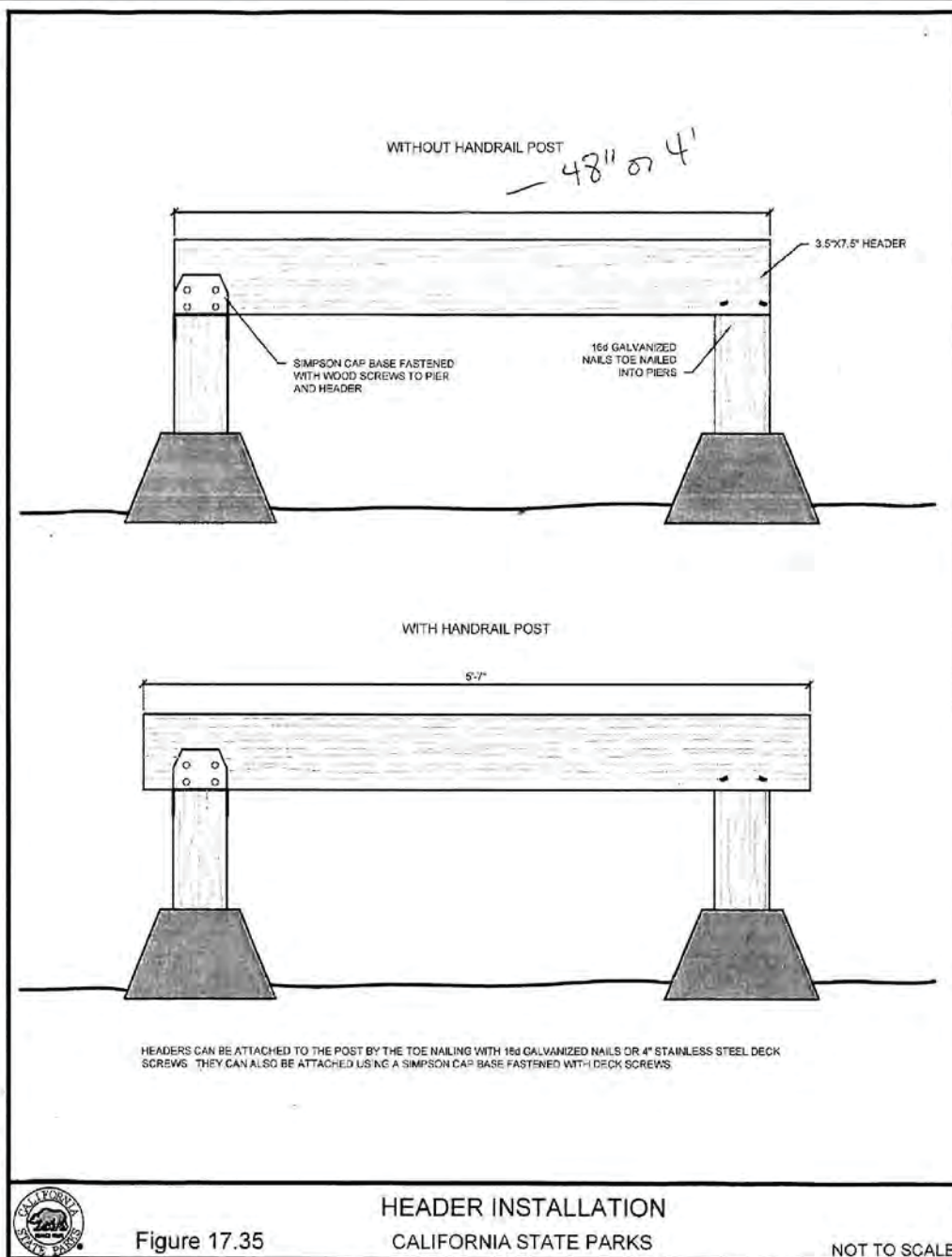


CASE: CDP 2014-0042
 OWNER: Mendocino Land Trust, Inc.
 APN: 027-151-08-01
 APLCT: MLT, Inc.
 ADDRESS: None Assigned, PA

NO SCALE

ELEVATION & DECK PLAN

Map produced by the Mendocino County Planning & Building Services, August, 2015.
 All spatial data is approximate. Map provided without warranty of any kind.

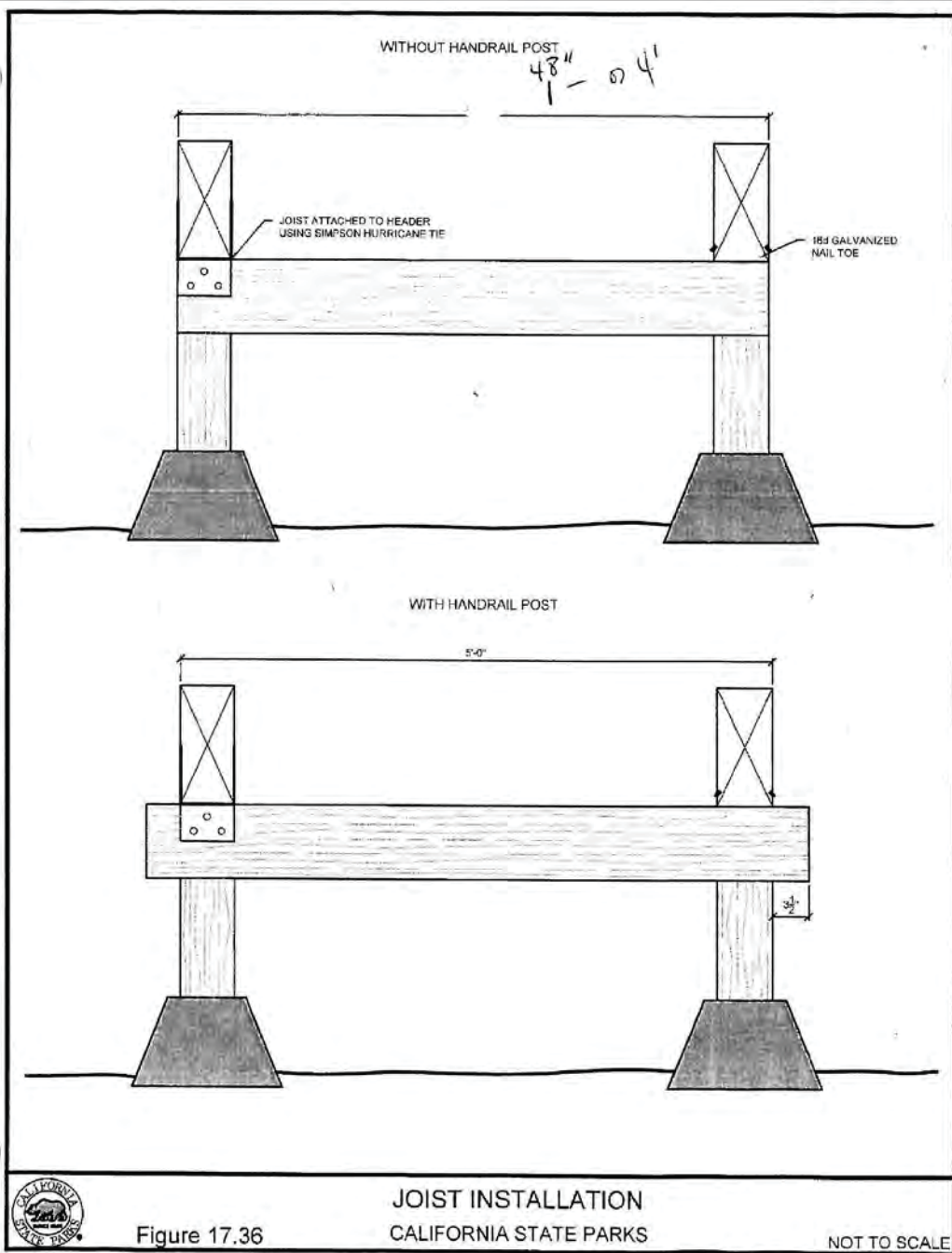


CASE: CDP 2014-0042
 OWNER: Mendocino Land Trust, Inc.
 APN: 027-151-08-01
 APLCT: MLT, Inc.
 ADDRESS: None Assigned, PA

NO SCALE

HEADER INSTALLATION PLAN

Map produced by the Mendocino County Planning & Building Services, August, 2015.
 All spatial data is approximate. Map provided without warranty of any kind.



CASE: CDP 2014-0042
 OWNER: Mendocino Land Trust, Inc.
 APN: 027-151-08-01
 APLCT: MLT, Inc.
 ADDRESS: None Assigned, PA

NO SCALE

JOIST INSTALLATION PLAN

Map produced by the Mendocino County Planning & Building Services, August, 2015.
 All spatial data is approximate. Map provided without warranty of any kind.

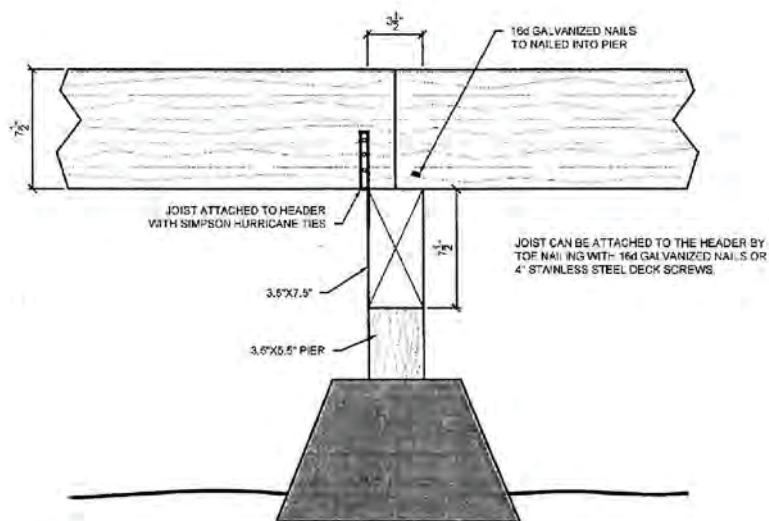


Figure 17.38 JOIST ATTACHMENT ON TOP OF HEADER
CALIFORNIA STATE PARKS

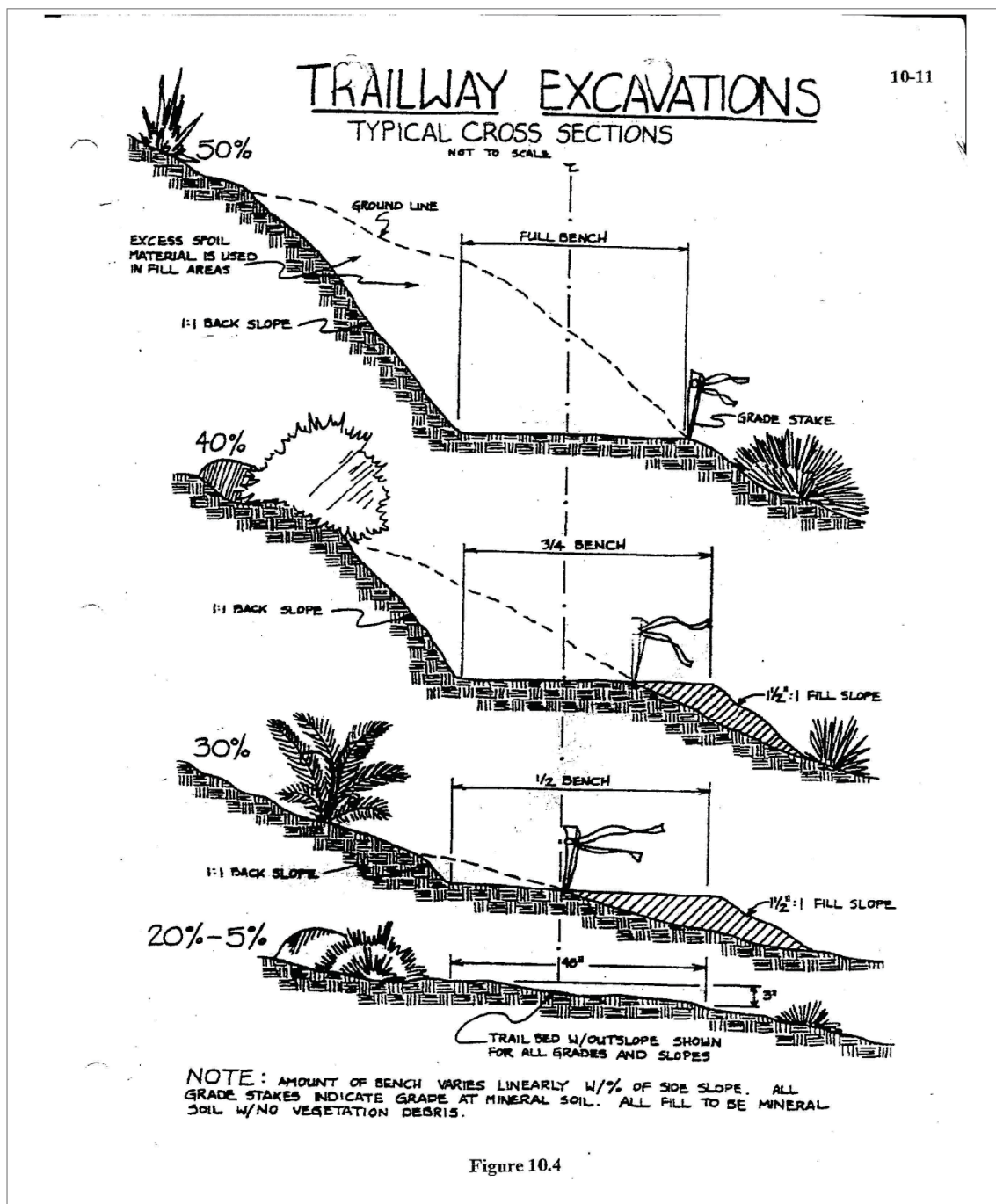
NOT TO SCALE

CASE: CDP 2014-0042
OWNER: Mendocino Land Trust, Inc.
APN: 027-151-08-01
APLCT: MLT, Inc.
ADDRESS: None Assigned, PA

NO SCALE

JOIST-TO-HEADER DESIGN PLAN

Map produced by the Mendocino County Planning & Building Services, August, 2015.
All spatial data is approximate. Map provided without warranty of any kind.

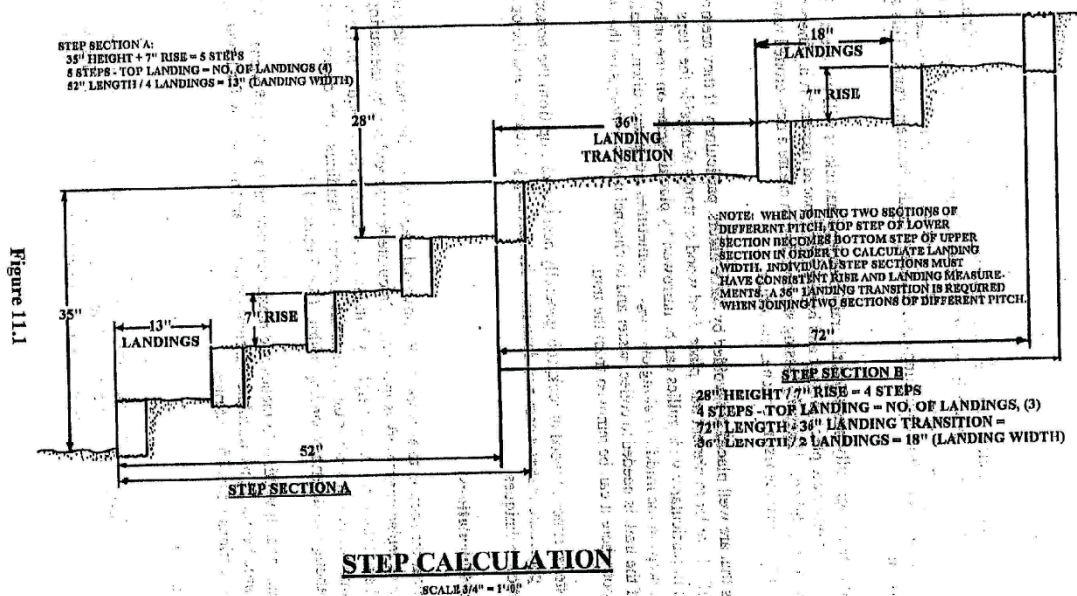


CASE: CDP 2014-0042
OWNER: Mendocino Land Trust, Inc.
APN: 027-151-08-01
APLCT: MLT, Inc.
ADDRESS: None Assigned, PA

NO SCALE

TRAILWAY EXCAVATION PLAN

Map produced by the Mendocino County Planning & Building Services, August, 2015
All spatial data is approximate. Map provided without warranty of any kind.



CASE: CDP 2014-0042
 OWNER: Mendocino Land Trust, Inc.
 APN: 027-151-08-01
 APLCT: MLT, Inc.
 ADDRESS: None Assigned, PA

NO SCALE

STEP CALCULATIONS

Map produced by the Mendocino County Planning & Building Services, August, 2015
 All spatial data is approximate. Map provided without warranty of any kind.



COUNTY OF MENDOCINO
DEPARTMENT OF PLANNING AND BUILDING SERVICES
860 NORTH BUSH STREET • UKIAH • CALIFORNIA • 95482
120 WEST FIR STREET • FORT BRAGG • CALIFORNIA • 95437

STEVE DUNNICLIFF, DIRECTOR
PHONE: 707-234-6650
FAX: 707-463-5709
FB PHONE: 707-964-5379
FB FAX: 707-961-2427
pbs@co.mendocino.ca.us
www.co.mendocino.ca.us/planning

March 7, 2016

EXHIBIT NO. 5

Appeal No.

A-1-MEN-16-0040

(Mendocino Land Trust)

**NOTICE OF FINAL LOCAL
ACTION AND FINDINGS FOR
APPROVAL**

NOTICE OF FINAL ACTION

Action has been completed by the County of Mendocino on the below described project located

DATE FILED: 11/10/2014

OWNER: MENDOCINO LAND TRUST

APPLICANT: MENDOCINO LAND TRUST

PROJECT COORDINATOR: JULIA ACKER

REQUEST: Standard Coastal Development Permit to construct a trail along Pelican Bluffs.

Associated development includes a bridge, boardwalks and signage.

ENVIRONMENTAL DETERMINATION: An Initial Study has been prepared and adoption of a Mitigated Negative Declaration is recommended. Mitigated Negative Declaration

LOCATION: In the Coastal Zone, approximately one mile south of the City of Point Arena, on the west side of Highway 1, approximately 600 feet south of its intersection with Curley Lane (CR 504A), located between post miles 14.26 and 13.86 and including two public access easements at 26300 and 26600 South Highway 1 (APNs: 027-151-08 (Mendocino Land Trust), 027-341-07 (LaFranchi), and 027-341-08 (Ferrara)).

ACTION TAKEN:

The Board of Supervisors, on March 1, 2016, approved the above described project. See attached documents for the findings and conditions in support of this decision.

The above project was appealed at the local level and the Board of Supervisors upheld the Coastal Permit Administrator's decision to approve the project on the date indicated above.

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

Attachments

cc: Coastal Commission
Assessor

RECEIVED

MAR 18 2016

**CALIFORNIA
COASTAL COMMISSION
NORTH COAST DISTRICT**



COUNTY OF MENDOCINO

DEPARTMENT OF PLANNING AND BUILDING SERVICES

860 NORTH BUSH STREET • UKIAH • CALIFORNIA • 95482

120 WEST FIR STREET • FORT BRAGG • CALIFORNIA • 95437

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www.co.mendocino.ca.us/planning

**FINAL FINDINGS AND CONDITIONS OF APPROVAL
CASE# CDP_2014-0042 - MENDOCINO LAND TRUST
MARCH 1, 2016**

The Board of Supervisors uphold the Coastal Permit Administrators approval of Coastal Development Permit # CDP_2014-0042 per the findings and conditions of approval contained below.

conditions of approval or features of the project design so that no significant adverse environmental impacts will result from this project; therefore, a Mitigated Negative Declaration is adopted.

COASTAL DEVELOPMENT PERMIT FINDINGS:

1. The proposed development is in conformity with the certified Local Coastal Program. The proposed project for construction of a public access trail is in conformity with accomplishing the goals and policies of the certified Local Coastal Program. Coastal access is ranked as the highest priority use in the Coastal Zone. The proposed use is consistent with the intent of the Remote Residential (RMR) zoning district and meets the standards for public access. The trail is located within the recorded easement areas and is greater than 100 feet from existing residential units. Previous coastal development permits issued by the California Coastal Commission required the dedication of an access easement area and these dedications were accepted by a managing agency within the specified time-frame (21 years), in accordance with Mendocino County Code requirements for public access; and
2. The proposed development will be provided with adequate utilities, access roads, drainage and other necessary facilities. The proposed project does not propose the use of utilities at this time. Access shall be provided directly off of Highway 1 and will be developed consistent with the Caltrans standards for access. Parking will be provided on-site to ensure that the opening of the public access trail does not become a public nuisance by creating a hazardous situation on Highway 1. The project has been designed to reduce the alteration of natural landforms to the greatest extent practicable and to use permeable surfaces to increase stormwater infiltration. The bridge and parking area have both been designed by a licensed civil engineer. As a condition of approval, an Accessway Management Plan shall be created and approved by the Department of Planning and Building Services.
3. The proposed development is consistent with the purpose and intent of the applicable zoning district, as well as all other provisions of Division II, and preserves the integrity of the zoning district. The proposed passive recreation use of the parcel is a principally permitted use within the zoning district and is consistent with the intent of the RMR district.
4. The proposed development, if constructed in compliance with the conditions of approval, will not have any significant adverse impacts on the environment, within the meaning of the California Environmental Quality Act; an Initial Study has been completed and a Mitigated Negative Declaration is certified.
5. The proposed development will not have any adverse impacts on any known archaeological or paleontological resource. The standard discovery clause is a condition of approval directing the applicant to cease work and contact the Director of Planning and Building Services if archaeological sites or artifacts are discovered during construction and additionally the Mendocino County

Archaeological Commission recommended capping the trail portions over identified archaeological sites to reduce potential impacts.

6. Other public services, including but not limited to, solid waste and public roadway capacity have been considered and are adequate to serve the proposed development. The proposed project does not include any residential development that will require solid waste service; however, the proposed project is to provide a public access trail and it is anticipated that public use of the trail will generate some amount of solid waste. An Accessway Management Plan is required to be completed by the applicant under Condition 11 and shall include information on the maintenance and operation of the site. The increase in traffic volume associated with the development proposed in the application will be negligible. The existing roadways and proposed private access are adequate to serve the

Chapter 3 of the California Coastal Act and the Coastal Element of the General Plan. The subject permit requests construction of a public access trail. The applicant shall provide an Accessway Management Plan, in conformity with the public access section of Mendocino County Code. The proposed project helps accomplish the goals of the Coastal Act and the Mendocino County Local Coastal Program by increasing public access to and along the coastline.

8. The resources identified will not be significantly degraded by the proposed development; there is no feasible less environmentally damaging alternative; and all feasible mitigation measures capable of reducing or eliminating project related impacts have been adopted. The proposed project has the potential to impact biological resources but is considered an allowable use within an ESHA area, as the trail will provide nature study opportunities with interpretive signage. Nature study is an allowable use in wetlands, per MCC Section 20.496.025 (A)(10). The proposed trail project will not significantly degrade the resources on the parcel, rather it will provide the public the opportunity to learn about and observe some of the natural areas of the Mendocino Coast. There is no feasible less environmentally damaging alternative, as relocation to other areas on the parcel would require significantly more vegetation removal, grading, and disruption of natural areas. The selected alignment avoids ESHAs to the greatest extent feasible, while still accomplishing the goal of the project to provide public access along this area of the coast. All feasible mitigation measures are required as conditions of approval to reduce project impacts to a less than significant level.

CONDITIONS OF APPROVAL:

1. This action shall become final on the 11th day following the decision unless an appeal is filed pursuant to Section 20.544.015 of the Mendocino County Code. The permit shall become effective after the ten working day appeal period to the Coastal Commission has expired and no appeal has been filed with the Coastal Commission. The permit shall expire and become null and void at the expiration of two years after the effective date except where construction and use of the property in reliance on such permit has been initiated prior to its expiration.

To remain valid, progress towards completion of the project must be continuous. The applicant has sole responsibility for renewing this application before the expiration date. The County will not provide a notice prior to the expiration date.

2. The use and occupancy of the premises shall be established and maintained in conformance with the provisions of Division II of Title 20 of the Mendocino County Code.
3. The application, along with supplemental exhibits and related material, shall be considered elements of this permit, and that compliance therewith is mandatory, unless an amendment has been approved by the Planning Commission.
4. This permit shall be subject to the securing of all necessary permits for the proposed development from County, State and Federal agencies having jurisdiction.

5. The applicant shall secure all required building permits for the proposed project as required by the Building Inspection Division of the Department of Planning and Building Services.
6. This permit shall be subject to revocation or modification upon a finding of any one or more of the following:
 - a. The permit was obtained or extended by fraud.
 - b. One or more of the conditions upon which the permit was granted have been violated.
 - c. The use for which the permit was granted is conducted so as to be detrimental to the public health, welfare or safety, or to be a nuisance.
 - d. A final judgment of a court of competent jurisdiction has declared one or more conditions to be void or ineffective, or has enjoined or otherwise prohibited the enforcement or operation of one or more such conditions.
7. This permit is issued without a legal determination having been made upon the number, size or shape of parcels encompassed within the permit described boundaries. Should, at any time, a legal determination be made that the number, size or shape of parcels within the permit described boundaries are different than that which is legally required by this permit, this permit shall become null and void.
8. If any archaeological sites or artifacts are discovered during site excavation or construction activities, the applicant shall cease and desist from all further excavation and disturbances within one hundred (100) feet of the discovery, and make notification of the discovery to the Director of the Department of Planning and Building Services. The Director will coordinate further actions for the protection of the archaeological resource(s) in accordance with Section 22.12.090 of the Mendocino County Code.
9. In order to provide for the protection of Natural Resources, the following shall be completed by the applicant:
 - a. The Arroyo (*Salix lasiolepis*) and Sitka (*Salix sitchensis*) willow thicket shall be monitored yearly at the crossing sites to ensure structural integrity is maintained. Hand removal of invasive species shall be completed on a yearly basis before they become established and spread. Herbaceous vegetation that is impacted from the walkway construction shall be replaced at a 1:1 ratio.
 - b. California Department of Fish and Wildlife confirmed that a minimum of a fifty (50) foot buffer shall be maintained between proposed improvements and identified ESHA, except for the resources where the trail must cross within fifty (50) feet. Only those resources specifically outlined in the staff report shall have a buffer of less than fifty (50) feet.
 - c. Restore a wetland area measuring no less than twenty (20) square-feet by removing invasive plants and allowing native plants to colonize the area. The applicant shall adhere to all requirements of the Streambed Alteration Agreement, issued by the California Department of Fish and Wildlife.
10. The proposed trail shall be capped over those portions of trail that traverse the archaeological sites identified in the March 27, 2014 and August 18, 2014 Archaeological Surveys by Thad Van Bueren. Capping shall include at least eight (8) inches thick of material such as clean soil or gravel and shall be at least five (5) feet wide, two and one half (2 ½) feet on either side of trail centerline.
11. Prior to issuance of the building permit, the applicants shall submit an Accessway Management Plan for the trail and associated improvements on the Pelican Bluffs parcel. At a minimum, the Accessway Management Plan shall:
 - a. Provide a design which avoids or mitigates any public safety hazards and any adverse impacts

- on agricultural operations or identified coastal resources;
- b. Set forth the agency(ies) responsible for operating, maintaining and assuming liability for the accessway;
 - c. Set forth any other known provisions such as facilities to be provided, signing, use restrictions and special design and monitoring requirements; and
 - d. Set forth provisions for protecting the accessway from vandalism and/or improper use (e.g. guarded gate, security patrol, hours of operation or period/seasons of closure and fees, if any).
12. All Construction Notes on the Pelican Bluffs Parking Plan, as revised on October 30, 2015, shall be complied with during construction of the parking area. If deviation from the Construction Notes is required, such deviation shall only be permissible if agreed upon by the Department of Planning and Building Services and a licensed civil engineer. Construction Notes are as follows:
- a. No construction shall commence without prior approval of the California Department of Transportation.
 - b. The Contractor shall call Underground Service Alert (USA) at (800)227-2600 at least 48 hours prior to any excavation for markouts of existing underground facilities.
 - c. Any damages to County or other utilities caused by project operations shall be the Contractor's responsibility.
 - d. The Contractor shall be responsible for immediate off-site disposal of all bituminous pavement, concrete, reinforcement, vegetation, and spoils not needed for backfill.
 - e. All workmanship, materials, and construction shall conform to the County of Mendocino Standard Plans, the Construction Specifications for Public Improvements, the Special Provisions for this project, and the State Standard Specifications and Standard Plans.
 - f. All traffic control shall be in accordance with the latest edition off the California Department of Transportation Manual of Traffic for Construction and Maintenance of Work Zones.
 - g. All signs shall be appropriately constructed with reflective material on a backing of metal or fabric (no wood or plastic allowed) and shall be maintained throughout construction to provide proper visibility.
 - h. Site work can only proceed and must be completed during the dry season, April 15 to October 14, unless Wet Season BMPs noted below are followed.
 - i. Before commencing work, the Contractor shall mark off boundary of area of work, and areas outside of project boundaries that cannot be disturbed. Vegetation shall then be cleared over the area to be worked.
 - j. Contractor shall install and maintain erosion control measures shown on the parking plan, prior to grading operations.
 - k. Prior to placement of aggregate base course material at paved areas, compact subsoil to 95 percent of its maximum dry density at optimum water content (-1 percent + 3 percent) in accordance with ASTM D1557 to the depth as indicated on the Drawings, but not less than 36 inches.
 - l. Fill material shall meet Caltrans aggregate subbase (AS) or crushed miscellaneous base (CMB) requirements or a class 3 soil fill meeting the Engineer's requirement.
 - m. Compaction of fill shall meet 95 % of fill material dry density, confirmed per Caltrans test method #231, or the equivalent ASTM Standard Penetration Test procedure.
 - n. Rocked surface and paving base shall meet Caltrans Class 2 Aggregate Requirements. Paving materials and execution shall match Caltrans requirements.

- o. Pavement marking paint material shall meet Caltrans specification PTH-02ALKYD, with reflective spheres meeting Caltrans specification 8010-004.
 - p. Stop bar and marking, and stop sign and installation shall meet 2012 California Manual on Uniform Traffic Control Devices. Include the installation of 2 similar sign posts to be supplied by Mendocino Land Trust.
13. This entitlement does not become effective or operative and no work shall be commenced under this entitlement until the California Department of Fish and Wildlife filing fees required or authorized by Section 711.4 of the Fish and Game Code are submitted to the Mendocino County Department of Planning and Building Services. Said fee of \$2260.25 shall be made payable to the Mendocino County Clerk and submitted to the Department of Planning and Building Services within 5 days of the end of any appeal period. Any waiver of the fee shall be on a form issued by the Department of Fish and Wildlife upon their finding that the project has "no effect" on the environment. If the project is appealed, the payment will be held by the Department of Planning and Building Services until the appeal is decided. Depending on the outcome of the appeal, the payment will either be filed with the County Clerk (if the project is approved) or returned to the payer (if the project is denied). Failure to pay this fee by the specified deadline shall result in the entitlement becoming null and void. **The applicant has the sole responsibility to insure timely compliance with this condition.**
14. The public access trail shall not obstruct any of the existing private access ways on either of the parcels providing the public access easements. Currently those parcels are APN 027-341-07 (LaFranchi) and APN 027-341-08 (Ferrara).



MENDOCINO COUNTY BOARD OF SUPERVISORS
ONLINE AGENDA SUMMARY

BOARD AGENDA # _____

-Arrangements for public hearings and timed presentations must be made with the Clerk of the Board in advance of public/media noticing
 -Agenda Summaries must be submitted no later than noon Monday, 15 days prior to the meeting date (along with electronic submittals)
 -Send 1 complete original single-sided set and 1 photocopy set – Items must be signed-off by appropriate departments and/or Co. Co.
Note: If individual supporting document(s) exceed 25 pages each, or are not easily duplicated, please provide 7 hard-copy sets)
 -Transmittal of electronic Agenda Summaries, records, and supporting documentation must be emailed to: bosagenda@co.mendocino.ca.us
 -Electronic Transmission Checklist: ☐ Agenda Summary ☐ Records ☐ Supp. Doc. ☐ If applicable, list other online information below
 -Executed records will be returned to the department within one week. *Arrangements for expedited processing must be made in advance*

TO: Board of Supervisors **DATE:** February 18, 2016

FROM: Planning and Building Services **MEETING DATE:** March 1, 2016

DEPARTMENT RESOURCE/CONTACT: Julia Acker **PHONE:** 964-5379 **Present** ☒ **On Call** ☐
Steve Dunnicliff **PHONE:** 234-6650 **Present** ☐ **On Call** ☒

Consent Agenda ☐ **Regular Agenda** ☒ **Noticed Public Hearing** ☒ **Time Allocated for Item:** 1 Hr

■ **AGENDA TITLE:** **Noticed Public Hearing - Appeal of the Coastal Permit Administrator's Approval of Coastal Development Permit No. CDP_2014-0042 (Mendocino Land Trust) to Construct a Trail Along Pelican Bluffs; Associated Development Includes a Bridge, Boardwalks and Signage**

■ **PREVIOUS BOARD/BOARD COMMITTEE ACTIONS:** Division II of Title 20 of Mendocino County Code allows for an aggrieved person to request a hearing before the Board of Supervisors for any final decision of the Coastal Permit Administrator by filing a notice thereof in writing with the Clerk of the Board within ten (10) calendar days after such decision, determination or requirement is made (Mendocino County Code Section 20.544.015(A)).

■ **SUMMARY OF REQUEST:** Mendocino Land Trust seeks a Standard Coastal Development Permit to construct a portion of the Coast Trail along Pelican Bluffs. The Pelican Bluffs trail is located approximately one mile south of the City of Point Arena, on the west side of Highway 1, approximately 660 feet south of its intersection with Curley Lane (CR 504A). Construction of the trail requires the installation of a parking area, foot-bridge, approximately one hundred (100) steps, approximately eighty (80) feet of boardwalk, approximately ten (10) interpretive and management signs, two (2) benches, and two (2) picnic tables. The Pelican Bluffs trail would loop around the property from the trailhead in the northeast corner of the property west towards the bluff, where it will follow the western property boundary before looping back to the trailhead. The trail will also extend south within 25-foot public access easements on private property (APNs: 027-341-07 (LaFranchi) and 027-341-08 (Ferrara/Rubino)) for a total length of approximately two (2) miles. Public access easements are held by Moat Creek Managing Agency, a partner organization of Mendocino Land Trust. The Appellant is the owner of APN 027-341-08 (Ferrara/Rubino), which is one of the private properties that granted an offer to dedicate that was accepted to construct this portion of the Coast Trail. The Appellant cites concerns regarding (1) protection of private property due to proximity of the trail to existing single-family dwelling, (2) lack of completion of an Accessway Management Plan in accordance with MCC Section 20.528.045, (3) insufficient CEQA analysis with regards to environmentally sensitive habitat areas, (4) vagueness of the location of the proposed improvements, (5) whether past actions of the Appellant have extinguished the easement, and (6) legality of the original Offer to Dedicate. The CPA's approval of the proposed trail improvements addressed these concerns by (1) confirming the trail is located within the trail easement, (2) confirming PBS will review and approve the Accessway Management Plan before the trails is opened for public use in accordance with the County's public access requirements, (3) certified the CEQA document prepared for the project fully addressed the environmental effects of the project and was properly noticed and circulated for public review, and (4) confirmed the improvements within the

BOARD ACTION (DATE: _____): ☐ Approved ☐ Referred to _____ ☐ Other _____

RECORDS EXECUTED: ☐ Agreement: _____ ☐ Resolution: _____ ☐ Ordinance: _____ ☒ (7) **103**



MENDOCINO COUNTY BOARD OF SUPERVISORS
ONLINE AGENDA SUMMARY

BOARD AGENDA # _____

easement are necessary and customary to provide public access. County Counsel has reviewed the allegations regarding (5) extinguishment of the easement and (6) whether the Offer to Dedicate was legally required, and does not believe these issues affect the CPA's approval.

- SUPPLEMENTAL INFORMATION AVAILABLE ONLINE AT: www.co.mendocino.ca.us/planning
■ ADDITIONAL INFORMATION ON FILE WITH THE CLERK OF THE BOARD (CHECKED BY COB IF APPLICABLE): ☐

FISCAL IMPACT:			
Source of Funding	Current F/Y Cost	Annual Recurring Cost	Budgeted in Current F/Y
N/A	N/A	N/A	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

■ SUPERVISORIAL DISTRICT: 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☒ All ☐ ■ VOTE REQUIREMENT: Majority ☒ 4/5ths ☐

■ **RECOMMENDED ACTION/MOTION:** Adopt the proposed resolution denying the appeal and upholding the Coastal Permit Administrator's action to approve CDP_2014-0042 (Mendocino Land Trust) to construct a trail along Pelican Bluffs and associated development.

■ **ALTERNATIVES:** Approve the appeal and overturn the Coastal Permit Administrator action and either modify or deny the request for construction of the public access trail.

■ **CEO REVIEW (NAME):** Christopher Shaver, Deputy CEO **PHONE:** 463-4441

RECOMMENDATION: Agree ☐ Disagree ☐ No Opinion ☐ Alternate ☐ Staff Report Attached ☐

BOARD ACTION

- ☐ Approved _____
☐ Records Executed _____

Date of Meeting _____

- ☐ Referred to _____
☐ Other _____



COUNTY OF MENDOCINO
DEPARTMENT OF PLANNING AND BUILDING SERVICES
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MEMORANDUM

DATE: MARCH 1, 2016
TO: MENDOCINO COUNTY BOARD OF SUPERVISORS
FROM: JULIA ACKER, PLANNER II
RE: APPEAL OF COASTAL PERMIT ADMINISTRATOR ACTION TO APPROVE COASTAL DEVELOPMENT PERMIT NO. 2014-0042 (MENDOCINO LAND TRUST)

Introduction:

Coastal Development Permit No. 2014-0042 (Mendocino Land Trust) was approved by the Coastal Permit Administrator on November 18, 2015, an appeal was filed on November 24, 2015. The request heard by the Coastal Permit Administrator was for the following:

Standard Coastal Development Permit to construct a trail along Pelican Bluffs. Associated development includes a bridge, boardwalks and signage.

The request is further defined in the report as follows:

The project is for the construction of a public access trail along Pelican Bluffs. Construction of the trail will require the installation of a parking area, foot-bridge, approximately one hundred (100) steps, approximately eighty (80) feet of boardwalk, approximately ten (10) interpretive and management signs, two (2) benches, and two (2) picnic tables. The Pelican Bluffs trail will loop around the property from the trailhead in the northeast corner of the property west towards the bluff, where it will follow the western property boundary before looping back to the trailhead. The trail will also extend south within 25-foot public access easements on private property (APNs: 027-341-07 (LaFranchi) and 027-341-08 (Ferrara)) for a total length of approximately two (2) miles. Public access easements are held by Moat Creek Managing Agency, a partner organization of Mendocino Land Trust.

The Board, in deciding on the appeal, must adopt findings that state their reason for their decision and any conditions imposed. The Board's decision is appealable to the California Coastal Commission within ten (10) business days of the Notice of Final Action.

Background:

The proposed Pelican Bluffs trail is situated approximately one mile south of the City of Point Arena, on the west side of Highway 1, approximately 660 feet south of its intersection with Curley Lane (CR 504A). The proposed trail consists of three parcels, including two 25-foot public access easements on adjacent parcels. The subject parcels are mixed in terms of existing development: vacant (APN 027-151-08) and agricultural and residential (APN 027-341-07 and APN 027-341-08).

All three parcels are adjacent blufftop parcels. The parcel owned by Mendocino Land Trust (APN 027-151-08) contains the bulk of the proposed development, with two dedicated 25-foot access easements on APNs 027-341-07 (LaFranchi) and 027-341-08 (Ferrara/Rubino), which were part of a four (4) lot minor subdivision (#MS 96-76).

The LaFranchi parcel is currently developed with a single-family dwelling (approved by California Coastal Commission Coastal Development Permit No. 81-CC-307), which had, as a condition of approval, the requirement to dedicate a lateral public access easement (Mendocino County Official Records Book 1320 Page 232, Recorded on August 27, 1981).

The Ferrara/Rubino parcel is currently developed with a single-family dwelling (approved by California Coastal Commission Coastal Development Permit No. 1-86-22), which had, as a condition of approval, the requirement to dedicate a lateral public access easement (Mendocino County Official Records Book 1553 Page 155, Recorded on April 10, 1986, included as Attachment 2).

Both the LaFranchi and Ferrara/Rubino parcels were subject to irrevocable offers to dedicate easements for public access, as conditions of approvals sought from the California Coastal Commission in previous decades. Coastwalk, a California nonprofit public benefit corporation, accepted the offers to dedicate in 2001 (Mendocino County Official Records 2001-07880). These easements were transferred to American Land Conservancy (ALC), a national land conservation nonprofit that no longer exists. Before ALC went out of business, they transferred all of their public access easements to other nonprofits. The Fray and Rubino public access easements were transferred to the Moat Creek Managing Agency (MCMA), a small local (Point Arena) nonprofit that manages Moat Creek Beach and the Moat to Ross Creek trail. Mendocino Land Trust partners with other organizations to create and manage California coastal trail. Once accepted, the offers to dedicate became public access easements.

The Appellant is the property owner of the Ferrara/Rubino parcel (APN 027-341-08). The staff report for California Coastal Commission Coastal Development Permit No. 1-86-22 discussed the history of requiring an access easement over this parcel. As noted in the staff report, a lateral access easement was required as a condition of approval by the California Coastal Commission in July 1977 (see below).

In early 1977, the State Coastal Commission on appeal approved the division (McCallum & Cerrat A-237-76) of the Lepori Ranch into four parcels of 71, 47, 43 and 50 acres. The subject parcel is lot three of that division. As condition of approval, the Commission required the recordation of an agricultural open space easement which stated that each parcel could "only be approved with one single family residence and such appurtenant structures and outbuildings as are common and convenient to the conduct of agricultural, horticultural, livestock raising and animal husbandry operations." In addition the easement stated that the resultant properties were not to be further divided. In July 1977, the Commission approved a two-story single-family residence with ancillary structures. As a condition of approval the Commission required the dedication of a lateral Access easement.

Following approval of the above application (79-CC-140, Hendricks) but before issuance of the permit, construction started on the house. Since that time the property has changed hands a number of times.

The California Coastal Commission staff report continues on to say that:

As stated above, the Coastal Act establishes a legislative intent to require public access with new development. In fact, Coastal Act sections 30210 and 30212 expressly require that public access be provided along the shoreline with new development. A single-family residence on property west of the first public road, clearly constitutes new development.

The approved Mendocino LUP requires in policy 4.11-11 an offer to dedicate lateral access for a bluff top trail between the community of Point Arena to the north and Whiskey Shoals to the south. The project site is located within this area and is a key parcel to provide access for a proposed trail which would stretch between the recent State Parks and Recreation acquisition at Schooner Gulch 3.3 miles to the south, north of Point Arena. The Commission finds that to conform to the maximum extent feasible, that access is necessary to be provided along the westerly portion of this property. This as conditioned, the project is consistent with the above referenced Coastal Act policies.

As demonstrated by the excerpts above, there has been a clear history on this parcel of development requiring the dedication of this access easement on two different applications for a single-family dwelling on the same parcel.

Basis of Coastal Permit Administrator Approval of CDP No. 2014-0042:

The following findings were made by Mendocino County Planning Staff in accordance with MCC Section 20.532.095 and Section 20.532.100 (A)(1) and were accepted by the Coastal Permit Administrator to support approval of the project request:

1. The proposed development is in conformity with the certified Local Coastal Program. The proposed project for construction of a public access trail is in conformity with accomplishing the goals and policies of the certified Local Coastal Program. Coastal access is ranked as the highest priority use in the Coastal Zone. The proposed use is consistent with the intent of the RMR zoning district and meets the standards for public access; and
2. The proposed development will be provided with adequate utilities, access roads, drainage and other necessary facilities. The proposed project does not propose the use of utilities at this time. Access shall be provided directly off of Highway 1 and will be developed consistent with the Caltrans standards for access. Parking will be provided on-site to ensure that the opening of the public access trail does not become a public nuisance by creating a hazardous situation on Highway 1. The project has been designed to reduce the alteration of natural landforms to the greatest extent practicable and to use permeable surfaces to increase stormwater infiltration. The bridge and parking area have both been designed by a licensed civil engineer. As a condition of approval, an Accessway Management Plan shall be created and approved by the Department of Planning and Building Services; and
3. The proposed development is consistent with the purpose and intent of the applicable zoning district, as well as all other provisions of Division II, and preserves the integrity of the zoning district. The proposed passive recreation use of the parcel is a principally permitted use within the zoning district and is consistent with the intent of the RMR district; and
4. The proposed development, if constructed in compliance with the conditions of approval, will not have any significant adverse impacts on the environment, within the meaning of the California Environmental Quality Act; an Initial Study has been completed and adoption of a Mitigated Negative Declaration is recommended; and
5. The proposed development will not have any adverse impacts on any known archaeological or paleontological resource. The standard discovery clause is recommended as a condition of approval directing the applicant to cease work and contact the Director of Planning and Building Services if archaeological sites or artifacts are discovered during construction and additionally the Mendocino County Archaeological Commission recommended capping the trail portions over identified archaeological sites to reduce potential impacts; and
6. Other public services, including but not limited to, solid waste and public roadway capacity have been considered and are adequate to serve the proposed development. The proposed project does not include any residential development that will require solid waste service; however, the proposed project is to provide a public access trail and it is anticipated that public use of the trail will generate some amount of solid waste. An Accessway Management Plan is required to be completed by the applicant under Condition 11 and shall include information on the maintenance and operation of the site. The increase in traffic volume associated with the development proposed in the application will be negligible. The existing roadways and proposed private access are adequate to serve the proposed development; and

7. The proposed development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act and the Coastal Element of the General Plan. The subject permit requests construction of a public access trail. The applicant shall provide an Accessway Management Plan, in conformity with the public access section of Mendocino County Code. The proposed project helps accomplish the goals of the Coastal Act and the Mendocino County Local Coastal Program by increasing public access to and along the coastline.
8. The resources identified will not be significantly degraded by the proposed development; there is no feasible less environmentally damaging alternative; and all feasible mitigation measures capable of reducing or eliminating project related impacts have been adopted. The proposed project has the potential to impact biological resources but is considered an allowable use within an ESHA area, as the trail will provide nature study opportunities with interpretive signage. Nature study is an allowable use in wetlands, per MCC Section 20.496.025 (A)(10). The proposed trail project will not significantly degrade the resources on the parcel, rather it will provide the public the opportunity to learn about and observe some of the natural areas of the Mendocino Coast. There is no feasible less environmentally damaging alternative, as relocation to other areas on the parcel would require significantly more vegetation removal, grading, and disruption of natural areas. The selected alignment avoids ESHAs to the greatest extent feasible, while still accomplishing the goal of the project to provide public access along this area of the coast. All feasible mitigation measures are required as conditions of approval to reduce project impacts to a less than significant level.

Basis of Appeal of CDP No. 2014-0042:

CDP No. 2014-0042 was appealed by Diane Rubino (see attached Appeal Form included as Attachment 1). The topics brought forward in the appeal are described below with the staff response below each topic.

The appeal asserts the following:

1. The Applicant has not followed the Coastal Act including Public Resources Code Section 30214 that access be implemented in such a manner so as to protect private property rights, privacy interests of property owners and the aesthetic values of those owners.

Response: The proposed trail is to be developed within the designated area approved under the Offer to Dedicate (Mendocino County Official Records Book 1553 Page 155, Recorded on April 10, 1986, included as Attachment 2). The Offer to Dedicate for the Ferrara/Rubino parcel states:

Such easement shall be a 25-foot wide strip of land as measured inland from the top of the bluff. In no case shall said access be closer than 10 feet from the approved development.

Mendocino County Code also contains requirements for the required distance between residential development and a proposed access trail to minimize this potential conflict between the two uses. Mendocino County Code Section 20.528.015 contains minimum access standards and specifically addresses the required width for the easements, potential restrictions on use of a trail, privacy, posting, safety and accessibility. Included in this section is discussion about trails and proximity to adjacent residential uses. Subsection (B) (3) of this code provides that access trails be limited to pass and repass only where *the accessway may encroach closer than twenty (20) feet to an existing residence*. Pass and repass is defined as *the right to walk and run along the shoreline* (MCC Section 20.308.095 (E)). This project is not limited to pass and repass as the existing residence is located over 100 feet from the proposed trail and therefore a passive recreational use is permissible. Subsection (C) also provides that *all accessways shall be located and designed to minimize the loss of privacy or other impacts on adjacent residences and residential parcels*.

In accordance with the requirements of Mendocino County Code and the recorded Offer to Dedicate, the proposed trail is located within the designated easement area, is limited to public

access and passive recreational use, and, as stated in the Appeal, the residence of the Appellant is located approximately 150 feet from the proposed access trail. The proposed access trail has been designed to provide certain features to protect adjacent private properties. These design features consist of the fencing proposed at the boundary of the public access easement area and additionally the installation of private property signs provide deterrents to the public from encroaching upon the adjacent residences.

2. The Applicant has not prepared an Access Management Plan that meets the requirements of Mendocino County Code Section 20.528.045.

Response: In accordance with MCC Section 20.528.045, Condition 11 requires that the applicant submit an Accessway Management Plan prior to issuance of the building permit for the various proposed structures. Mendocino County Code (as shown below) requires that the Accessway Management Plan be prepared prior to opening a trail for public use. An Accessway Management Plan has not yet been approved for the site. Condition 11 is consistent with the requirements of MCC Section 20.528.045, which requires *no accessway shall be opened for public use unless an Accessway Management Plan has been accepted by the Director.*

Sec. 20.528.045 - Accessway Management Plan.

No accessway shall be opened for public use until an Accessway Management Plan has been prepared by the managing agency and accepted by the Director. At a minimum, the Plan shall:

(A) Provide for a design which avoids or mitigates any public safety hazards and any adverse impacts on agricultural operations or identified coastal resources;

(B) Set forth the agency(ies) responsible for operating, maintaining and assuming liability for the accessway;

(C) Set forth any other known provisions such as facilities to be provided, signing, use restrictions and special design and monitoring requirements; and

(D) Set forth provisions for protecting the accessway from vandalism and/or improper use (e.g., guarded gate, security patrol, hours of operation or period/seasons of closure and fees, if any).

Though not required at this time, Mendocino Land Trust is preparing a draft Accessway Management Plan and intends to have it ready for discussion at the Board of Supervisors hearing.

3. There has been insufficient study pursuant to CEQA as the mitigated negative declaration does not adequately address substantial impacts from decreased buffer zones around environmentally sensitive habitat areas and protected plant species.

Response: Staff notes first that the Appellant did not raise this issue before the Coastal Permit Administrator. However, staff is not able to respond to this question as it is not clearly described by the Appellant how the Mitigated Negative Declaration prepared for the project was insufficient pursuant to CEQA as it relates to reduced buffers to environmentally sensitive habitat areas.

A court will set aside a mitigated negative declaration if there is substantial evidence in the record that the conditions attached to its adoption are insufficient to mitigate project impacts. CEQA requires that the decision as to whether a project may have one or more significant effects shall be based on substantial evidence in the record of the lead agency and that *argument, speculation, unsubstantiated opinion or narrative, or evidence that is clearly inaccurate or erroneous, or evidence that is not credible, shall not constitute substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinions supported by*

facts (Public Resources Code Section 15064(a)(2)(f)). Without substantial evidence in the record showing that significant adverse impacts will remain after mitigation, a court will presume that the conditions adopted by the agency will be effective and ensure that impacts are mitigated to an acceptable level.

The substantial evidence in the record demonstrates that the proposed project will have short term impacts on several of the identified environmentally sensitive habitat areas; however, mitigation measures have been recommended by qualified professionals, agreed upon by the California Department of Fish and Wildlife, and required as conditions of approval to reduce potential project impacts to less than significant levels. A Mitigated Negative Declaration was prepared for the project incorporating the required mitigation levels to reduce project impacts to less than significant levels. Appellant has only provided an allegation that the Mitigated Negative Declaration does not adequately address substantial impacts from decreased buffer zones.

The following is the basis for staff's determination that the mitigation measures recommended by qualified professionals, and required as conditions of approval, reduce potential project impacts to less than significant levels and address Mendocino County Code requirements for granting a reduction in the required buffer distance.

Mendocino County Code requires that all proposed improvements be located a minimum of one-hundred (100) feet from all sensitive habitats, unless a qualified biologist prepares a Reduced Buffer Analysis to reduce the buffer to fifty (50) feet. A Reduced Buffer Zone Analysis was prepared for the project by Geri Hulse-Stephens and Kerry Heise. Table 1, taken from the Reduced Buffer Zone Analysis document, describes the buffer distance to identified sensitive habitats and recommended actions.

Table 1. ESHAs and Recommended Actions

ESHAs	Reduced Buffer	Recommended Action
Pt. Reyes ceanothus (<i>Ceanothus gloriosus</i> var. <i>gloriosus</i>)	50 – 100 ft.	A "Watch List" species (CRPR 4), more information about this plant needs to be obtained. It has no state or federal protection status. Trail proposed within 50 ft, designed to maximize buffer width of the adjacent and rarer supple daisy.
Supple daisy (<i>Erigeron supplex</i>)	> 100 ft.	No compensation necessary
Minute pocket moss (<i>Fissidens pauperculus</i>)	> 100 ft.	No compensation necessary
Short-leaved evax (<i>Hesperievax sparsifolia</i> var. <i>brevifolia</i>)	50 – 100 ft.	No trail will be constructed within 50 feet of the short-leaved evax occurrence.
Bishop pine (<i>Pinus muricata</i>) forest	No buffer	No trees will be removed. Trail will be designed to discourage off trail use to minimize impacts to understory plant
Bishop pine (<i>Pinus muricata</i>)/Pacific reed grass (<i>Calamagrostis sitchensis</i>)	Not less than 50 ft.	Trail will be designed to discourage off trail use. A 50 ft. buffer is adequate to prevent impact to the forest/grassland
Arroyo (<i>Salix lasiolepis</i>) and Sitka (<i>S. sitchensis</i>) willow thicket	No buffer	Construction of elevated pedestrian walkways to avoid impact to understory vegetation. The walkways will utilize natural gaps in willow cover along the seasonal

While a reduced buffer analysis was completed for the proposed project, the proposed trail alignment will still traverse an ESHA. In order to permit development inside a buffer area, the proposed project must comply with MCC Section 20.496.020(A)(4). The proposed project is consistent with the policies related to development within an ESHA buffer for the following reasons:

- While human activity levels will be increased by the acquisition of this site for public use and the construction of trails, these activities will be directed to walkways and trails that avoid all sensitive resources. Prior use of this parcel was a cattle ranch where cattle roamed freely throughout the parcel resulting in considerable ecological damage, displacement of native species, and, establishment of invasive exotics.
- The proposed trail will be compatible with the function and ability of the ESHAs to self-sustain.
- Trail development will be located in a way that will minimize impacts to all ESHAs. Gradual sloping of trails and switchbacks will be employed to minimize erosion. Where switchbacks occur trails will be designed to employ visual obscuration of the lower segment of the trail to discourage "short-cuts" between segments of the trail. Bluff edges will be avoided by locating the trail within 50 to 100 feet of the short-leaved exax that is located on the edge of the bluff. The trail will be near enough to the bluff to satisfy the public attraction to views of the Pacific Ocean without impacting sensitive species and fragile bluff communities.
- Adjacent lands to the north are tilled and farmed and the parcel to the south has a driveway and a residence constructed on the site. The proposed hiking trail is not expected to cause negative impacts to the sensitive resources within the parcel boundaries or outside of it. The hydrology of the site will not be altered by trail construction. Trails will be located in such a way that impact to sensitive resource will be avoided, and the creation of "social trails" minimized.
- The elevated walkway and bridge are necessary improvements facilitating the movement of hikers through the willow thicket and across the drainage with minimal impact.
- The trail will not cause impacts that would degrade adjacent areas; impact will be restricted to the trail footprint. The location of the trail within the coastal prairie/coyote brush scrubland and Bishop pine forest will be designed to minimize erosion and discourage "social trails". Where soil-types are fragile along the shale band within the transition between upper and lower terraces the grade of the trail will be gradual to prevent degradation by foot traffic.
- The elevated walkway and bridge are necessary improvements facilitating the movement of hikers through the willow thicket and across the drainage with minimal impact. Impacts to riparian vegetation will be isolated to areas where pier blocks are placed at 6-foot intervals on each side of the elevated walkway. Bridge footings will consist of five 8-inch diameter posts driven in a minimum of 3-feet deep and covered by a concrete footing 4-foot wide and 2.8-inch long bars at each end of the bridge. Any native plants that will be impacted by construction-related disturbance shall be removed, conserved during construction and replanted in the disturbed areas surrounding the bridge footings. These plants shall be maintained by watering until they are established. No other structures within ESHAs are proposed.
- No trees shall be harvested within the Bishop pine forest. Some limbs may be removed to reduce hazards to hikers and allow hikers to stay on the trail.
- No woody riparian vegetation (willows) will be removed because the crossings will go through natural gaps in the willows. Herbaceous vegetation that will be impacted from walkway construction will be replaced at the recommended 1:1 ratio. Any native plants that will be impacted by construction-related disturbance shall be removed, conserved during construction and replanted in the disturbed areas surrounding the bridge footings.
- No significant obstruction of peak surface water flows from 100-year flood events are expected from construction of the elevated walkway or the bridge.
- The trail and bridge/walkway structures are not expected to have measurable impacts to the hydrologic capacity of the site.

- The trail and bridge/walkway structures are not expected to have measurable impacts to ground water flow within the ESHA buffer zones.
- The proposed ESHA buffers are designed to avoid significant adverse impact to all ESHAs.

The trail has been designed to avoid many of the sensitive habitat areas; however, there are several locations where the trail will traverse through a sensitive habitat area. Mitigation measures such as construction of an elevated pedestrian walkway over these areas and no removal of vegetation as part of the project design result in less than significant impacts to the identified rare plants, animals and habitats. Table 2 lists the project mitigation measures as presented in the Reduced Buffer Analysis submitted for the proposed project.

Table 2: Impact Analysis and Mitigation Measures

Impact to ESHA	Mitigation
1) Pt. Reyes ceanothus (<i>Ceanothus gloriosus</i> var. <i>gloriosus</i>): foot trail potentially within 50 ft. of ESHA edge will avoid impact to Pt. Reyes ceanothus and habitat that supports this ESHA	Since this is a "Watch List" species (CRPR 4), more information about this plant needs to be obtained. Population status should be monitored yearly which could simply involve establishing 1 or 2 permanent photo points.
2) Supple daisy (<i>Erigeron supplex</i>): Sufficient buffers well over 100ft. will help to avoid impact from hikers to the supple daisy. Any off-trail disturbance could potentially degrade supple daisy habitat.	As stated previously, the trail extending through the shale area which supports supple daisy will be constructed in such a way as to avoid using short cuts. Simple photo plots could be employed to monitor this rare species yearly, however, care should be taken not to approach the site from the established trail as this could invite others to explore and potentially impact the ESHA.
3) Minute pocket moss (<i>Fissidens pauperculus</i>): The location of the minute pocket moss is hidden and far enough from proposed crossing structures to be impacted.	No mitigation necessary
4) Short-leaved evax (<i>Hesperivax sparsifolia</i> var. <i>brevifolia</i>): The trail will be constructed sufficiently far from the bluff edge to avoid impact to potential habitat.	No mitigation necessary. Care should be taken if monitoring is conducted as activities near the bluff edge could encourage others to investigate and potentially impact the ESHA habitat.
5) Bishop pine (<i>Pinus muricata</i>) forest: impact is expected to be restricted to the footprint of the trail.	Mitigating any potential human-caused impact to the Bishop pine forest would likely involve trash cleanup, erasing social trails, and where possible, encouraging natural regeneration.
6) Bishop pine (<i>Pinus muricata</i>)/Pacific reed grass (<i>Calamagrostis sitchensis</i>): Same as #5 above	Same as #5 above
7) Arroyo (<i>Salix lasiolepis</i>) and Sitka (<i>S. sitchensis</i>) willow thicket: impact will be restricted to vegetation disturbance at footings and abutments of walkways and bridges at two crossings.	Yearly monitoring should be done at crossing sites to ensure structural integrity is maintained. Any invasive species should be eradicated on a yearly basis before they become established and spread. Herbaceous vegetation that will be impacted from walkway construction will be replaced at the

	recommended 1:1 ratio.
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Part of the proposed project will require the installation of a bridge over a seasonal drainage area. Mendocino Land Trust is in the process of obtaining a Lake and Streambed Alteration Agreement (LSAA) with the California Department of Fish and Wildlife. Mitigation for the loss of the area covered by the footings for the bridge will be required. The objective is to restore a wetland area, equal to the area of impact from the footings for the bridge, by removing invasive plants and allowing native plants to colonize the area. The site to be restored is within the wetland area directly adjacent to the boardwalk. Annual reporting will be provided to California Department of Fish and Wildlife staff. **Condition 9** was adopted at the Coastal Permit Administrator hearing requiring all recommendations from the various biological surveys and resource agencies as conditions of approval.

9. *In order to provide for the protection of Natural Resources, the following shall be completed by the applicant:*

- a. *The Arroyo (*Salix lasiolepis*) and Sitka (*Salix sitchensis*) willow thicket shall be monitored yearly at the crossing sites to ensure structural integrity is maintained. Hand removal of invasive species shall be completed on a yearly basis before they become established and spread. Herbaceous vegetation that is impacted from the walkway construction shall be replaced at a 1:1 ratio.*
- b. *California Department of Fish and Wildlife confirmed that a minimum of a fifty (50) foot buffer shall be maintained between proposed improvements and identified ESHA, except for the resources where the trail must cross within fifty (50) feet. Only those resources specifically outlined in the staff report shall have a buffer of less than fifty (50) feet.*
- c. *Restore a wetland area measuring no less than twenty (20) square-feet by removing invasive plants and allowing native plants to colonize the area. The applicant shall adhere to all requirements of the Streambed Alteration Agreement, issued by the California Department of Fish and Wildlife.*

In summary, the proposed project impacts biological resources but is considered an allowable use within an ESHA area, as the trail will provide nature study opportunities with interpretive signage. MCC Section 20.496.050 (B) provides that *any development within designated resource areas shall be reviewed and established in accord with conditions which could allow some development under mitigating conditions but which assures the continued protection of the resource area.* The proposed trail project will not significantly degrade the resources on the parcel, rather it will provide the public the opportunity to learn about and observe some of the natural areas of the Mendocino Coast. There is no feasible less environmentally damaging alternative, as relocation to other areas on the parcel would require significantly more vegetation removal, grading, and disruption of natural areas. The selected alignment avoids ESHAs to the greatest extent feasible, while still accomplishing the goal of the project to provide public access along this area of the coast. All feasible mitigation measures are required as conditions of approval to reduce project impacts to a less than significant level.

Attached to this memorandum is the Coastal Permit Administrator staff report (Attachment 5) prepared for the project. Attachment B of that staff report is the Initial Study prepared in accordance with CEQA.

Before the Coastal Permit Administrator, the Appellant also made generic claims, without evidence, of the potential for adverse physical impacts on the easement site. These claims were also made without presenting any substantial evidence showing a significant effect on the environment.

4. The proposed project is vague as to whether or not the location of the trail, the construction of the

boardwalk and fencing, etc. fits within the terms and the specific location granted in the recorded Offer of Dedication for this property at issue.

Response: The Offer to Dedicate (Mendocino County Official Records Book 1553 Page 155, Recorded on April 10, 1986, included as Attachment 2) combined with the information presented within the Staff Report for Coastal Commission Permit No. 1-86-22 give the best sense of the location of this easement.

The Staff Report (Exhibit B of the Offer to Dedicate (Attachment 2)) provides the location of the proposed residence on Page 4 as follows:

The project is proposed to be located 120 feet from the bluffs edge.

The Offer to Dedicate states the location and width of the easement on Page 3 as follows:

NOW THEREFORE, in consideration of the granting of Permit No. 1-86-22 to Grantor by the Commission, the owner(s) hereby offer(s) to dedicate to the People of California an easement in perpetuity for the purposes of public access and passive recreational use along the bluff top. Located on subject property such easement shall be a 25 ft. wide strip of land as measured inland from the top of the bluff and in no case shall said easement be closer than 10 feet from the approved development. The proposed easement is specifically set forth by attached Exhibit C hereby incorporated by reference.

The Offer to Dedicate along with the supplemental Exhibits referenced in the above quotations is attached here as Attachment 2. The proposed project design consists of fencing proposed at the eastern boundary of the public access easement (25 feet from the bluff edge). All proposed improvements will be located west of the fencing, demonstrating that the proposed project improvements will be located within the easement area.

Another potential issue posed by the Appellant is the question of whether the boardwalk and fencing is permissible within the dedicated easement. The Offer to Dedicate specifies that the use is limited to passive recreational use. Staff finds that the use fits within the guidelines of the Offer to Dedicate, and that the boardwalk and fencing are considered as accessory uses to the passive recreational use, necessary to allow the public to safely use the proposed trail and prevent the public from traveling off the designated trail area.

Passive recreation is considered an Open Space Use Type (per MCC Chapter 20.340). The General Description of the Open Space Use Types (MCC Section 20.340.005) states:

Open space use types include land to remain in its natural condition or to include the amount of development necessary to support its active or passive recreational uses. The uses also include certain accessory uses as specified in Chapter 20.456 (Accessory Use Regulations).

MCC Section 20.340.015 defines Passive Recreation as:

Leisure activities that do not require permits pursuant to this Division nor constitute "development" as defined in Section 20.308.035(D), and that involve only minor supplementary equipment. Examples include sightseeing, hiking, scuba diving, swimming, sunbathing, jogging, surfing, fishing, bird watching, picnicking, bicycling, horseback riding, boating, photography, nature study and painting.

MCC Section 20.456.010 Accessory Uses Encompassed by Principal Permitted Use in subsection (A) states:

In addition to the principal permitted uses expressly included in the zoning districts such

use types shall be deemed to include such accessory uses which are specifically identified by these Accessory Use Regulations; and such other accessory uses which are necessarily and customarily associated with, and are appropriate, incidental, and subordinate to, such principal permitted uses. When provided by these regulations, it shall be the responsibility of the Director to determine if a proposed accessory use is necessarily and customarily associated with, and is appropriate, incidental and subordinate to the principal permitted use, based on the Directors evaluation of the resemblance of the proposed accessory use to those uses specifically identified as accessory to the principal permitted uses and the relationship between the proposed accessory use and the principal use.

Given the above definitions, the construction of the fencing and the boardwalk are considered accessory to the principal use of passive recreation and are necessary to allow for safe use of the area and deterrent for the public to wander off path and infringe upon the private residence.

5. Any access rights granted to the public have been extinguished by prescription.

Response: Appellant alleges that past actions of the Appellant has served to extinguish by prescription any access rights previously granted to the public. The Appellant may file an action to quiet title on this basis. Current record title shows that the offer to dedicate was recorded and accepted. Allegations of past actions that may or may not satisfy the requirements for the extinguishment of the easement should not be the basis for denying a permit in the face of the current status of record title.

6. The original Offer to Dedicate was an unconstitutional exaction.

Response: Appellant alleges that the original offer to dedicate was an unconstitutional exaction pursuant to the United States Supreme Court case Nollan v. California Coastal Commission (1987) 483 U.S. 825, and that pursuant to the California Supreme Court case of Travis v. County of Santa Cruz (2004) 33 Cal.4th 757, the property owner may challenge a regulatory taking when the property is affected.

Part of Travis discussed the application of Government Code Section 65009, which establishes a short statute of limitations period to actions challenging various planning and zoning decisions. The County argued that the plaintiffs were time-barred from challenging the provisions of the ordinance, which had been adopted 18 years before the plaintiffs had applied for a permit. The court held instead that the plaintiffs could properly challenge the ordinance as applied to their property, for which the plaintiffs had filed within the 90-day statute of limitations period. The Travis court found that the County's construction of Section 65009 would produce an unjust result, as a property owner would be subject to a regulatory taking unless the owner had the foresight to challenge the ordinance when it was enacted.

Travis does not assist the Appellant. The County's approval of a coastal development permit is not the point in time at which their property is affected by the offer to dedicate. The Appellant's property was affected by the Coastal Commission's imposition of the offer to dedicate, which occurred in 1986. It was at that point in time that the property owner should have challenged the offer to dedicate as an unconstitutional taking.

California case law has also not applied Nollan automatically to all similar irrevocable offers to dedicate required by the Coastal Commission from that time period. Serra Canyon Co. v. California Coastal Commission (2004) 120 Cal.App.4th 663, states the following in its opening paragraph of the case, at page 666:

A landowner seeks to avoid the effect of an irrevocable offer to dedicate land for public use. The dedication was made by a prior owner of the land in 1983, in return for a development permit. We conclude that the current landowner's

inverse condemnation claim arrives 20 years too late. All challenges to a condition placed on a development permit had to be asserted at the time the final permit decision was made and the condition was imposed. The challenge in this case was waived by the prior owner's failure to pursue its judicial remedies for an unjust taking of private property. The present landowner is bound by that waiver. We affirm the judgment in favor of the state.

The basic facts of Serra Canyon are similar to those of the Appellant. The court's opinion notes that in the case relied upon by the petitioners, Nollan, the proper administrative procedures were followed: the Nollans protested and promptly filed a petition for writ of mandate seeking to invalidate the condition, which they argued was a violation of the takings clause of the Fifth Amendment. Serra Canyon argued that it was not challenging the original permit decision but only the acceptance of the offer to dedicate by a third party. The court found that the action remained a collateral attack on a decision that had been final for 20 years.

Lastly, the court found that neither Nollan nor other Supreme Court cases cited to by Serra Canyon operate retroactively to revive takings claims that were waived by inaction. The opinion includes citations to both State and Federal case law upholding irrevocable offers to dedicate required by the Coastal Commission.

Staff Recommendation: Staff recommends the following additional findings be adopted by the Board to further clarify:

1. The proposed use is consistent with the intent of the Remote Residential (RMR) zoning district and meets the standards for public access. The trail is located within the recorded easement areas and is greater than 100 feet from existing residential units. Previous coastal development permits issued by the California Coastal Commission required the dedication of an access easement area and these dedications were accepted by a managing agency within the specified time-frame (21 years), in accordance with Mendocino County Code requirements for public access.

Adopt proposed resolution denying the appeal and upholding the Coastal Permit Administrator's action to approve the request.

Attachments:

- (1) Board of Supervisors Appeal Form for Coastal Development Permit No. 2014-0042
- (2) Offer to Dedicate (Mendocino County Official Records Book 1553 Page 155, Recorded on April 10, 1986) with Supplemental Exhibits
- (3) Local Coastal Plan Map Exhibit
- (4) Public Access Easement Map
- (5) CPA Staff Report with Supplemental Attachments and Exhibits
- (6) Momsen Letter dated November 17th, 2015

RESOLUTION NO. 16-

RESOLUTION OF THE MENDOCINO COUNTY BOARD OF SUPERVISORS DENYING APPEAL OF THE COASTAL PERMIT ADMINISTRATOR'S DECISION TO APPROVE CDP 2014-0042 (MENDOCINO LAND TRUST) TO CONSTRUCT A TRAIL ALONG PELICAN BLUFFS

WHEREAS, the applicant, Mendocino Land Trust, filed an application for a Standard Coastal Development Permit (CDP 2014-0042) to construct a trail along Pelican Bluffs. Associated development includes a bridge, boardwalks and signage. Located in the Coastal Zone, approximately one mile south of the City of Point Arena, on the west side of Highway 1, approximately 600 feet south of its intersection with Curley Lane (CR 504A), the trail and associated improvements will be on property owned by the applicant (APN 027-151-08) as well as within public access easements located on adjacent parcels (26300 South Highway 1 (APN 027-341-07, LaFranchi) and 26600 South Highway 1 (APN 027-341-08, Ferrara/Rubino)); and

WHEREAS, an Initial Study was prepared for the CDP 2014-0042 and a Mitigated Negative Declaration was circulated for 30-day public review on October 19, 2015, in accordance with the California Environmental Quality Act (Public Resources Code Section 21000 *et seq.*, "CEQA") and the State and County CEQA Guidelines (14 Cal. Code Regs. 15000 *et seq.*); and

WHEREAS, in accordance with applicable provisions of law, the Coastal Permit Administrator held a public hearing on November 18, 2015, at which time the Coastal Permit Administrator heard and received all relevant testimony and evidence presented orally or in writing regarding the Initial Study and recommended Mitigated Negative Declaration; and

WHEREAS, the Coastal Permit Administrator adopted the recommended findings and conditions of approval in support of approval of CDP 2014-0042 on November 18, 2015; and

WHEREAS, Mendocino County Code Section 20.544.015 allows for an appeal of any final decision of the Coastal Permit Administrator to be heard before the Board of Supervisors provided an appeal is filed within ten (10) days of the Coastal Permit Administrator's action and the appropriate fees are paid; and

WHEREAS, Diane Rubino ("Appellant") filed an appeal on November 24, 2015, and paid the appropriate fees to the Clerk of the Board; and

WHEREAS, the Board of Supervisors, upon receipt of the Appellant's appeal of the Coastal Permit Administrator's decision, did schedule a public hearing to consider the Appellants request for the denial of the Standard Coastal Development Permit; and

WHEREAS, said public hearing was duly held on this 1st day of March, 2016, pursuant to proper notice and all evidence was received and the same fully considered.

NOW, THEREFORE, BE IT RESOLVED that the Mendocino County Board of Supervisors, based on the evidence in the record, upholds the Coastal Permit Administrator's determination to approve CDP 2014-0042, finding:

Coastal Development Permit Findings

1. The proposed development is in conformity with the certified Local Coastal Program. The proposed project for construction of a public access trail is in conformity with accomplishing the goals and policies of the certified Local

Coastal Program. Coastal access is ranked as the highest priority use in the Coastal Zone.

2. The proposed development will be provided with adequate utilities, access roads, drainage and other necessary facilities. The proposed project does not propose the use of utilities at this time. Access shall be provided directly off of Highway 1 and will be developed consistent with the Caltrans standards for access. Parking will be provided on-site to ensure that the opening of the public access trail does not become a public nuisance by creating a hazardous situation on Highway 1. The project has been designed to reduce the alteration of natural landforms to the greatest extent practicable and to use permeable surfaces to increase stormwater infiltration. The bridge and parking area have both been designed by a licensed civil engineer. As a condition of approval, an Accessway Management Plan shall be created and approved by the Department of Planning and Building Services.
3. The proposed development is consistent with the purpose and intent of the applicable zoning district, as well as all other provisions of Division II, and preserves the integrity of the zoning district. The proposed passive recreation use of the parcel is a principally permitted use within the zoning district and is consistent with the intent of the RMR district.
4. The proposed development, if constructed in compliance with the conditions of approval, will not have any significant adverse impacts on the environment, within the meaning of the California Environmental Quality Act; an Initial Study has been completed and a Mitigated Negative Declaration is certified.
5. The proposed development will not have any adverse impacts on any known archaeological or paleontological resource. The standard discovery clause is a condition of approval directing the applicant to cease work and contact the Director of Planning and Building Services if archaeological sites or artifacts are discovered during construction and additionally the Mendocino County Archaeological Commission recommended capping the trail portions over identified archaeological sites to reduce potential impacts.
6. Other public services, including but not limited to, solid waste and public roadway capacity have been considered and are adequate to serve the proposed development. The proposed project does not include any residential development that will require solid waste service; however, the proposed project is to provide a public access trail and it is anticipated that public use of the trail will generate some amount of solid waste. An Accessway Management Plan is required to be completed by the applicant under Condition 11 and shall include information on the maintenance and operation of the site. The increase in traffic volume associated with the development proposed in the application will be negligible. The existing roadways and proposed private access are adequate to serve the proposed development.
7. The proposed development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act and the Coastal Element of the General Plan. The subject permit requests construction of a public access trail. The applicant shall provide an Accessway Management Plan, in conformity with the public access section of Mendocino County Code. The proposed project helps accomplish the goals of the Coastal Act and the

Mendocino County Local Coastal Program by increasing public access to and along the coastline.

8. The resources identified will not be significantly degraded by the proposed development; there is no feasible less environmentally damaging alternative; and all feasible mitigation measures capable of reducing or eliminating project related impacts have been adopted. The proposed project has the potential to impact biological resources but is considered an allowable use within an ESHA area, as the trail will provide nature study opportunities with interpretive signage. Nature study is an allowable use in wetlands, per MCC Section 20.496.025 (A)(10). The proposed trail project will not significantly degrade the resources on the parcel, rather it will provide the public the opportunity to learn about and observe some of the natural areas of the Mendocino Coast. There is no feasible less environmentally damaging alternative, as relocation to other areas on the parcel would require significantly more vegetation removal, grading, and disruption of natural areas. The selected alignment avoids ESHAs to the greatest extent feasible, while still accomplishing the goal of the project to provide public access along this area of the coast. All feasible mitigation measures are required as conditions of approval to reduce project impacts to a less than significant level.

Environmental Findings

1. The environmental impacts identified for the project can be adequately mitigated through the conditions of approval or features of the project design so that no significant adverse environmental impacts will result from this project; therefore, a Mitigated Negative Declaration is adopted.

Additional Findings

1. The proposed use is consistent with the intent of the Remote Residential (RMR) zoning district and meets the standards for public access. The trail is located within the recorded easement areas and is greater than 100 feet from existing residential units. Previous coastal development permits issued by the California Coastal Commission required the dedication of an access easement area and these dedications were accepted by a managing agency within the specified time-frame (21 years), in accordance with Mendocino County Code requirements for public access; and

BE IT FURTHER RESOLVED that the Board hereby uphold the approval of CDP 2014-0042 by the Coastal Permit Administrator and grants the requested Coastal Development Permit, subject to the Conditions of Approval in Exhibit "A", attached hereto.

The foregoing Resolution introduced by Supervisor _____, seconded by Supervisor _____, and carried this _____ day of _____, 2016, by the following vote:

AYES:
NOES:
ABSENT:

WHEREUPON, the Chair declared said Resolution adopted and SO ORDERED.

ATTEST: CARMEL J. ANGELO
Clerk of the Board

DAN GJERDE, Chair
Mendocino County Board of Supervisors

Deputy

APPROVED AS TO FORM:
KATHARINE L. ELLIOTT
Acting County Counsel

I hereby certify that according to the provisions of Government Code Section 25103, delivery of this document has been made.

BY: CARMEL J. ANGELO
Clerk of the Board

Deputy

EXHIBIT A

CONDITIONS OF APPROVAL

CDP_2014-0042

NOVEMBER 18, 2015

Standard Coastal Development Permit to construct a trail along Pelican Bluffs. Associated development includes a bridge, boardwalks and signage.

1. This action shall become final on the 11th day following the decision unless an appeal is filed pursuant to Section 20.544.015 of the Mendocino County Code. The permit shall become effective after the ten working day appeal period to the Coastal Commission has expired and no appeal has been filed with the Coastal Commission. The permit shall expire and become null and void at the expiration of two years after the effective date except where construction and use of the property in reliance on such permit has been initiated prior to its expiration.

To remain valid, progress towards completion of the project must be continuous. The applicant has sole responsibility for renewing this application before the expiration date. The County will not provide a notice prior to the expiration date.

2. The use and occupancy of the premises shall be established and maintained in conformance with the provisions of Division II of Title 20 of the Mendocino County Code.
3. The application, along with supplemental exhibits and related material, shall be considered elements of this permit, and that compliance therewith is mandatory, unless an amendment has been approved by the Planning Commission.
4. This permit shall be subject to the securing of all necessary permits for the proposed development from County, State and Federal agencies having jurisdiction.
5. The applicant shall secure all required building permits for the proposed project as required by the Building Inspection Division of the Department of Planning and Building Services.
6. This permit shall be subject to revocation or modification upon a finding of any one or more of the following:
 - a. The permit was obtained or extended by fraud.
 - b. One or more of the conditions upon which the permit was granted have been violated.
 - c. The use for which the permit was granted is conducted so as to be detrimental to the public health, welfare or safety, or to be a nuisance.
 - d. A final judgment of a court of competent jurisdiction has declared one or more conditions to be void or ineffective, or has enjoined or otherwise prohibited the enforcement or operation of one or more such conditions.
7. This permit is issued without a legal determination having been made upon the number, size or shape of parcels encompassed within the permit described boundaries. Should, at any time, a legal determination be made that the number, size or shape of parcels within the

permit described boundaries are different than that which is legally required by this permit, this permit shall become null and void.

8. If any archaeological sites or artifacts are discovered during site excavation or construction activities, the applicant shall cease and desist from all further excavation and disturbances within one hundred (100) feet of the discovery, and make notification of the discovery to the Director of the Department of Planning and Building Services. The Director will coordinate further actions for the protection of the archaeological resource(s) in accordance with Section 22.12.090 of the Mendocino County Code.
9. In order to provide for the protection of Natural Resources, the following shall be completed by the applicant:
 - a. The Arroyo (*Salix lasiolepis*) and Sitka (*Salix sitchensis*) willow thicket shall be monitored yearly at the crossing sites to ensure structural integrity is maintained. Hand removal of invasive species shall be completed on a yearly basis before they become established and spread. Herbaceous vegetation that is impacted from the walkway construction shall be replaced at a 1:1 ratio.
 - b. California Department of Fish and Wildlife confirmed that a minimum of a fifty (50) foot buffer shall be maintained between proposed improvements and identified ESHA, except for the resources where the trail must cross within fifty (50) feet. Only those resources specifically outlined in the staff report shall have a buffer of less than fifty (50) feet.
 - c. Restore a wetland area measuring no less than twenty (20) square-feet by removing invasive plants and allowing native plants to colonize the area. The applicant shall adhere to all requirements of the Streambed Alteration Agreement, issued by the California Department of Fish and Wildlife.
10. The proposed trail shall be capped over those portions of trail that traverse the archaeological sites identified in the March 27, 2014 and August 18, 2014 Archaeological Surveys by Thad Van Bueren. Capping shall include at least eight (8) inches thick of material such as clean soil or gravel and shall be at least five (5) feet wide, two and one half (2 ½) feet on either side of trail centerline.
11. Prior to issuance of the building permit, the applicants shall submit an Accessway Management Plan for the trail and associated improvements on the Pelican Bluffs parcel. At a minimum, the Accessway Management Plan shall:
 - a. Provide a design which avoids or mitigates any public safety hazards and any adverse impacts on agricultural operations or identified coastal resources;
 - b. Set forth the agency(ies) responsible for operating, maintaining and assuming liability for the accessway;
 - c. Set forth any other known provisions such as facilities to be provided, signing, use restrictions and special design and monitoring requirements; and
 - d. Set forth provisions for protecting the accessway from vandalism and/or improper use (e.g. guarded gate, security patrol, hours of operation or period/seasons of closure and fees, if any).
12. All Construction Notes on the Pelican Bluffs Parking Plan, as revised on October 30, 2015, shall be complied with during construction of the parking area. If deviation from the

Construction Notes is required, such deviation shall only be permissible if agreed upon by the Department of Planning and Building Services and a licensed civil engineer. Construction Notes are as follows:

- a. No construction shall commence without prior approval of the California Department of Transportation.
- b. The Contractor shall call Underground Service Alert (USA) at (800)227-2600 at least 48 hours prior to any excavation for markouts of existing underground facilities.
- c. Any damages to County or other utilities caused by project operations shall be the Contractor's responsibility.
- d. The Contractor shall be responsible for immediate off-site disposal of all bituminous pavement, concrete, reinforcement, vegetation, and spoils not needed for backfill.
- e. All workmanship, materials, and construction shall conform to the County of Mendocino Standard Plans, the Construction Specifications for Public Improvements, the Special Provisions for this project, and the State Standard Specifications and Standard Plans.
- f. All traffic control shall be in accordance with the latest edition off the California Department of Transportation Manual of Traffic for Construction and Maintenance of Work Zones.
- g. All signs shall be appropriately constructed with reflective material on a backing of metal or fabric (no wood or plastic allowed) and shall be maintained throughout construction to provide proper visibility.
- h. Site work can only proceed and must be completed during the dry season, April 15 to October 14, unless Wet Season BMPs noted below are followed.
- i. Before commencing work, the Contractor shall mark off boundary of area of work, and areas outside of project boundaries that cannot be disturbed. Vegetation shall then be cleared over the area to be worked.
- j. Contractor shall install and maintain erosion control measures shown on the parking plan, prior to grading operations.
- k. Prior to placement of aggregate base course material at paved areas, compact subsoil to 95 percent of its maximum dry density at optimum water content (-1 percent + 3 percent) in accordance with ASTM D1557 to the depth as indicated on the Drawings, but not less than 36 inches.
- l. Fill material shall meet Caltrans aggregate subbase (AS) or crushed miscellaneous base (CMB) requirements or a class 3 soil fill meeting the Engineer's requirement.
- m. Compaction of fill shall meet 95 % of fill material dry density, confirmed per Caltrans test method #231, or the equivalent ASTM Standard Penetration Test procedure.
- n. Rocked surface and paving base shall meet Caltrans Class 2 Aggregate Requirements. Paving materials and execution shall match Caltrans requirements.
- o. Pavement marking paint material shall meet Caltrans specification PTH-02ALKYD, with reflective spheres meeting Caltrans specification 8010-004.
- p. Stop bar and marking, and stop sign and installation shall meet 2012 California Manual on Uniform Traffic Control Devices. Include the installation of 2 similar sign posts to be supplied by Mendocino Land Trust.

13. This entitlement does not become effective or operative and no work shall be commenced under this entitlement until the California Department of Fish and Wildlife filing fees required or authorized by Section 711.4 of the Fish and Game Code are submitted to the Mendocino County Department of Planning and Building Services. Said fee of \$2260.00 shall be made payable to the Mendocino County Clerk and submitted to the Department of Planning and Building Services within 5 days of the end of any appeal period. Any waiver of the fee shall be on a form issued by the Department of Fish and Wildlife upon their finding that the project has "no effect" on the environment. If the project is appealed, the payment will be held by the Department of Planning and Building Services until the appeal is decided. Depending on the outcome of the appeal, the payment will either be filed with the County Clerk (if the project is approved) or returned to the payer (if the project is denied). Failure to pay this fee by the specified deadline shall result in the entitlement becoming null and void. **The applicant has the sole responsibility to insure timely compliance with this condition.**

The public access trail shall not obstruct any of the existing private access ways on either of the parcels providing the public access easements. Currently those parcels are APN 027-341-07 (LaFranchi) and APN 027-341-08 (Ferrara).



COUNTY OF MENDOCINO
DEPARTMENT OF PLANNING AND BUILDING SERVICES
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ATTACHMENT 5

PAGE 1

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MEMORANDUM

DATE: November 16, 2015

TO: Coastal Permit Administrator

FROM: Julia Acker, Planner II

RE: CDP 2014-0042 (Mendocino Land Trust) Pelican Bluffs Trail- Condition Revisions and additions

After distribution of the Staff Report for the subject project, County Staff has made aware of changed conditions with regards to several of the Conditions of Approval. This memorandum shall address the recommended changes to the Conditions of Approval and Findings for the project and if adopted by the Coastal Permit Administrator shall be required by the applicant. Language additions are shown as underlined, and deleted language is shown as ~~stricken~~. Text changes are also required due to the change in conditions. The changes in the text will be referenced by document (CPA, A or B) and page number.

Condition 9 shall be modified as described below on CPA-11, A-6 & 7, and B-6.

Condition 12 shall be modified as described below on CPA-12 & 13, A-8 & 9, and B-9 & 10.

The square footage for the wetland restoration shall be revised from sixty (60) square-feet to twenty (20) square-feet on CPA-7, A-6 and B-6.

ENVIRONMENTAL FINDINGS: The Coastal Permit Administrator finds that the environmental impacts identified for the project can be adequately mitigated through the conditions of approval or features of the project design so that no significant adverse environmental impacts will result from this project; therefore, a Mitigated Negative Declaration is adopted.

CONDITIONS OF APPROVAL:

9. In order to provide for the protection of Natural Resources, the following shall be completed by the applicant:

- ~~a. The populations of Pt. Reyes ceanothus (Ceanothus gloriosus var. gloriosus), short-leaved evax (Hesperis matronalis var. brevifolia), and supple daisy (Erigeron supplex) shall be monitored yearly. One or two permanent photo points shall be established with yearly monitoring for five years following project approval. Results of the monitoring shall be submitted to the Department of Planning and Building Services annually. Care shall be taken when performing the yearly monitoring to not approach the sites from the established trail as this could invite others to explore and potentially impact the ESHA.~~
- a. The Arroyo (*Salix lasiolepis*) and Sitka (*Salix sitchensis*) willow thicket shall be monitored yearly at the crossing sites to ensure structural integrity is maintained. Hand removal of invasive species shall be completed on a yearly basis before they become established and spread. Herbaceous vegetation that is impacted from the walkway construction shall be replaced at a 1:1 ratio.
- b. California Department of Fish and Wildlife confirmed that a minimum of a fifty (50) foot buffer shall be maintained between proposed improvements and identified ESHA, except for the

MISC 652

resources where the trail must cross within fifty (50) feet. Only those resources specifically outlined in the staff report shall have a buffer of less than fifty (50) feet.

- c. Restore a wetland area measuring no less than ~~sixty (60)~~ twenty (20) square-feet by removing invasive plants and allowing native plants to colonize the area. The applicant shall adhere to all requirements of the Streambed Alteration Agreement, issued by the California Department of Fish and Wildlife.

- i. ~~The site to be restored shall be within the wetland area directly adjacent to the boardwalk. Mendocino Land Trust shall delineate (flag or stake), photo document and provide a map of the restoration area; compile a plant species list; and estimate cover of native plants and non-native plants within the restoration area.~~

- ii. ~~The mitigation plan shall be in effect for no less than five (5) years. Within the mitigation area, non-native plants shall be removed to encourage the spread and establishment of nearby native plants. After initial removal of non-native plants, follow-up work shall occur on a quarterly basis or as necessary (at the discretion of the California Department of Fish and Wildlife). On at least a quarterly basis, Mendocino Land Trust shall monitor the project site, including photo documentation and an estimate of native and non-native plant cover. On at least an annual basis, this information shall be compiled and reported to the California Department of Fish and Wildlife.~~

- iii. ~~Success Criteria/Performance Standards are at the discretion of the California Department of Fish and Wildlife and the stipulations of the Lake and Streambed Alteration Agreement obtained by Mendocino Land Trust.~~

12. All Construction Notes on the Pelican Bluffs Parking Plan, as revised on October 30, 2015, shall be complied with during construction of the parking area. If deviation from the Construction Notes is required, such deviation shall only be permissible if agreed upon by the Department of Planning and Building Services and a licensed civil engineer. Construction Notes are as follows:

- a. No construction shall commence without prior approval of the ~~County of Mendocino's Supervising Engineer and California Department of Transportation.~~
- b. The Contractor shall call Underground Service Alert (USA) at (800)227-2600 at least 48 hours prior to any excavation for markouts of existing underground facilities.
- c. Any damages to County or other utilities caused by project operations shall be the Contractor's responsibility.
- d. The Contractor shall be responsible for immediate off-site disposal of all bituminous pavement, concrete, reinforcement, vegetation, and spoils not needed for backfill.
- e. All workmanship, materials, and construction shall conform to the County of Mendocino Standard Plans, the Construction Specifications for Public Improvements, the Special Provisions for this project, and the State Standard Specifications and Standard Plans.
- f. All traffic control shall be in accordance with the latest edition off the California Department of Transportation Manual of Traffic for Construction and Maintenance of Work Zones.
- g. All signs shall be appropriately constructed with reflective material on a backing of metal or fabric (no wood or plastic allowed) and shall be maintained throughout construction to provide proper visibility.
- h. Site work can only proceed and must be completed during the dry season, April 15 to October 14, unless Wet Season BMPs noted below are followed.
- i. Before commencing work, the Contractor shall mark off boundary of area of work, and areas outside of ~~Mendocino Land Trust easements~~ project boundaries that cannot be disturbed. Vegetation shall then be cleared over the area to be worked. Existing shrubs of Baccharis shall be recovered with roots intact as possible for replanting by ~~Mendocino Land Trust.~~

- j. Contractor shall install and maintain erosion control measures shown on the parking plan, prior to grading operations.
- k. Prior to placement of aggregate base course material at paved areas, compact subsoil to 95 percent of its maximum dry density at optimum water content (-1 percent + 3 percent) in accordance with ASTM D1557 to the depth as indicated on the Drawings, but not less than 36 inches. ~~At least 24 inches of excavation is required with soil replaced in 12 inch lifts, each compacted.~~
- l. Fill material shall meet Caltrans aggregate subbase (AS) or crushed miscellaneous base (CMB) requirements or a class 3 soil fill meeting the Engineer's requirement, ~~in coordination with the amount of geotextile placed.~~
- m. Compaction of fill shall meet 95 % of fill material dry density, confirmed per Caltrans test method #231, or the equivalent ASTM Standard Penetration Test procedure.
- ~~n. Compaction of fill shall be in 12 inch max lifts, with geotextile reinforcement to be determined. Lifts shall approximate the finished plane, so the upper layers can have full runs of geotextile.~~
- ~~o. Compaction testing shall be undertaken at existing soils before placement of imported fill, and at the completion of fill operations, before placement of rock surface and paving base course.~~
- n. Rocked surface and paving base shall meet Caltrans Class 2 Aggregate Requirements. Paving materials and execution shall match Caltrans requirements.
- o. Pavement marking paint material shall meet Caltrans specification PTH-02ALKYD, with reflective spheres meeting Caltrans specification 8010-004.
- p. Stop bar and marking, and stop sign and installation shall meet 2012 California Manual on Uniform Traffic Control Devices. Include the installation of 2 similar sign posts to be supplied by Mendocino Land Trust.

STAFF REPORT FOR STANDARD COASTAL DEVELOPMENT PERMIT

**CDP_2014-0042
NOVEMBER 18, 2015
CPA - 1**

OWNERS: MENDOCINO LAND TRUST
PO BOX 1094
MENDOCINO, CA 95460

RON LAFRANCHI
580 NORTH CENTRAL
COQUILLE, OR 97423

DIANE FERRARA
PO BOX 18730
SAN JOSE, CA 95158

APPLICANT: MENDOCINO LAND TRUST
PO BOX 1094
MENDOCINO, CA 95460

REQUEST: Standard Coastal Development Permit to construct a trail along Pelican Bluffs. Associated development includes a bridge, boardwalks and signage.

LOCATION: In the Coastal Zone, approximately one mile south of the City of Point Arena, on the west side of Highway 1, approximately 600 feet south of its intersection with Curley Lane (CR 504A), located between post miles 14.26 and 13.86 and including two public access easements at 26300 and 26600 South Highway 1 (APNs: 027-151-08 (Mendocino Land Trust), 027-341-07 (LaFranchi), and 027-341-08 (Ferrara)).

APPEALABLE: Yes (West of First Public Road, Blufftop Parcel)

PERMIT TYPE: Standard Coastal Development Permit

TOTAL ACREAGE: 73.05 Acres, plus 25-foot public access easements on APNs 027-341-07 and -08.

GENERAL PLAN/COASTAL PLAN: Remote Residential (RMR)

ZONING: Remote Residential (RMR), Floodplain combining district (FP), forty (40) acre minimum lot size

EXISTING USES: Vacant (APN 027-151-08), Agricultural (APN 027-341-07), and Residential (APN 027-341-08).

ADJACENT ZONING: North: Rangelands (RL)
East: Rangelands (RL)
South: Remote Residential (RMR)
West: Pacific Ocean

SURROUNDING LAND USES: North: Classified Lands
East: Classified Lands
South: Rangelands

West: Pacific Ocean

SUPERVISORIAL DISTRICT:

5

ENVIRONMENTAL DETERMINATION:

Mitigated Negative Declaration (See Attachment B)

PROJECT DETERMINATION:

Approve with Conditions

PROJECT DESCRIPTION: The project is for the construction of a public access trail along Pelican Bluffs. Construction of the trail will require the installation of a parking area, foot-bridge, approximately one hundred (100) steps, approximately eighty (80) feet of boardwalk, approximately ten (10) interpretive and management signs, two (2) benches, and two (2) picnic tables. The Pelican Bluffs trail will loop around the property from the trailhead in the northeast corner of the property west towards the bluff, where it will follow the western property boundary before looping back to the trailhead. The trail will also extend south within 25-foot public access easements on private property (APNs: 027-341-07 (LaFranchi) and 027-341-08 (Ferrara)) for a total length of approximately two (2) miles. Public access easements are held by Moat Creek Managing Agency, a partner organization of Mendocino Land Trust.

SITE DESCRIPTION AND SETTING: The 73.05 acre subject parcel is situated approximately one mile south of the City of Point Arena, on the west side of Highway 1, approximately 660 feet south of its intersection with Curley Lane (CR 504A). The proposed project includes two 25-foot public access easements on adjacent parcels. The site is surrounded by primarily agricultural uses. The subject parcels are mixed in terms of existing development: vacant (APN 027-151-08), agricultural (APN 027-341-07), and residential (APN 027-341-08).

OTHER RELATED APPLICATIONS: This is a partial list of coastal development permits permitted by Mendocino County for public access trails.

- CDP# 22-96 & CDP# 23-2003 (Redwood Coast Land Conservancy) permitted the first and second phase of the Gualala Bluff Trail. The trail does not provide access to the beach and does not technically allow development on the bluff face. Both phases provide a blufftop-walking trail. Phase two authorized the construction of a bridge across a drainage swale and a set of stairs necessitated by elevation changes required along the blufftop. Project was Categorically Exempt from CEQA under Class 4.
- CDU# 22-2003 (Westport Village Society, Inc.) permitted facilities to provide public access to the coastal bluff and beach. Improvements included approximately 1,500 feet of trails, a footbridge, a viewing platform, a combination stairway and boat chute down the bluff face to the beach, a manual winch, one ADA-compliant parking space, signs, vehicle gates, and log vehicle barriers. An Initial Study was prepared and a Negative Declaration was recommended.
- CDU# 34-2003 (Mendocino Land Trust/ Navarro Point) permitted construction of a driveway entrance and parking area, trails, boardwalk areas over water features, and other facilities needed to provide public access on the site. No access to the beach is provided. Development of a parking lot was considered a conditional use in the RMR zoning district. An Initial Study was prepared and a Negative Declaration was recommended.
- CDP# 11-2004 (Walsh/Mendocino Land Trust) permitted project improvements including brush clearing, directional signage, "bluff unstable" warning signs and a pedestrian gate. No access to the beach was provided. The trail provides access to the Belinda Point blufftop from Ocean Drive, Fort Bragg. Project was Categorically Exempt from CEQA under Class 4.
- CDP# 68-2008 (Van Damme Investments/Mendocino Land Trust) approved construction of a two-foot wide public trail, including fencing and signs. The trail would run from Highway One, along the outside of the cemetery, around a sinkhole, and to within approximately 50 feet from the ocean bluff edge. An Initial Study was prepared and a Negative Declaration was recommended.

- CDU# 12-2009 (Walsh/Mendocino Land Trust) permitted construction of a public access stairway from the bluff top to a rocky cove beach at Belinda Point. The stairway is located within the public access easement for the Belinda Point Trail and consists of a series of gravel steps and a wooden staircase to a concrete footing secured on top of the rock outcropping at the beach. After completing the environmental review checklist staff determines that no significant environmental impacts are anticipated which cannot be adequately mitigated. Based on this review, staff concludes that the project can be found to be categorically exempt from CEQA (Class 3(e) and/or 11 (c)).
- CDP# 18-2014 (Save the Redwoods League/Mendocino Land Trust) permitted construction of the Shady Dell California Coastal Trail (CCT). The project included construction of fifty (50) feet of boardwalk, a thirty (30) foot bridge over Shady Dell Creek, three (3) retaining walls totaling fifty (50) feet in length, two (2) puncheon structures totaling twenty four (24) feet in length, approximately 230 dirt steps, two (2) thirty-six (36) inch by twenty four (24) inch management signs, several eight (8) inch by twelve (12) inch warning signs, and five (5) twenty four (24) by thirty six (36) environmental education/interpretive signs. Approximately 1,000 cubic yards of grading is required to complete the project. Construction of the bridge over Shady Dell Creek requires the use and minor brushing of the M&M Logging Road to bring construction materials to the site. Categorically Exempt from CEQA Class 4 and Class 11.

SUMMARY OF REFERRAL AGENCY COMMENTS:

Planning – Ukiah	No comment
Department of Transportation	No response
Environmental Health – Fort Bragg	Maintain minimum setbacks to septic system on 26600 S Highway 1, Point Arena. Permits indicate the leachfield may be near the proposed trail.
Building Inspection – Fort Bragg	No response
Assessor	No response
Caltrans	No response
Archaeological Commission	Accepted survey. Recommended that the applicant shall cap those portions of trail that traverse identified archaeological sites. Capping shall include at least eight (8) inches thick of material such as clean soil or gravel and shall be at least five (5) feet wide, two and one half (2 ½) feet on either side of trail centerline. Plus the standard discovery clause was recommended.
US Fish and Wildlife Service	No Viola adunca present on site, meaning no Behren's Silverspot Butterfly (BSSB) issues. A 100 foot buffer from Point Arena Mountain Beaver (PAMB) habitat is appropriate. The USFWS thinks that this project can proceed as proposed, and will have no further comments on the project.
Trails Advisory Council	No response
CalFire	No comment.
California Dept of Fish and Wildlife	Recommended preparation of a CEQA document as mitigation is required for the pier installation associated with the bridge and boardwalks. Agreed that a fifty (50) foot buffer from particular sensitive habitats is appropriate, where one hundred (100) feet is appropriate for others. A Lake and Streambed Alteration Agreement is in the process of being obtained with California Department of Fish and Wildlife.
California Coastal Commission	No response
Redwood Coast Fire District	No response
Point Arena City Planning	Recommended approval with the Condition that the trail surface accommodate off-road cyclists to the greatest extent feasible, including access trails from Parking Lot. Recommended incorporating bicycle stairway access, allowing cyclists walking the stairs to roll their bike up or down a surface alongside the

steps. Please see <http://www.millermicro.com/BicycleStairs.html> for an example.

KEY ISSUES: Coastal Development Permit applications are subject to the findings enumerated in Section 20.532.095 and Section 20.532.100 of the Mendocino County Code (MCC). Attachment A of this report individually addresses each of the Required Findings for all Coastal Development Permits and any Supplemental Findings applicable to this project. The issues listed below are drawn from Attachment A and have been determined to be "key issues" because they either require special conditions for the findings to be made, or they address matters of particular concern by referral agencies.

Land Use

The subject parcel is zoned Remote Residential as shown on the Zoning Display Map and similarly classified as Remote Residential, as shown on the General Plan Designation Map. The Remote Residential zoning district is intended "to be applied to lands within the Coastal Zone which have constraints for commercial agriculture, timber production or grazing, but which are well-suited for small scale farming, light agriculture and low density residential uses, or where land has already been divided and substantial development has occurred" (MCC Section 20.380.005). The property is currently vacant with a public access trail proposed. The passive recreational use of the parcel is consistent with the intent of the Remote Residential zoning district and is a principally permitted use within the Remote Residential classification.

Natural Resources

The certified Mendocino County LCP includes sections of both the MCC and the Coastal Element of the General Plan addressing Environmentally Sensitive Habitat Areas (ESHA). The MCC states that development having the potential to impact an ESHA shall be subject to a biological survey, prepared by a qualified biologist, to determine the extent of sensitive resources, to document potential negative impacts, and to recommend appropriate mitigation measures.

Several studies were prepared in association with this project, a Botanical Survey Report, Point Arena Mountain Beaver Survey, and a Reduced Buffer Zone Analysis. The 73.05 acre site contains several areas of sensitive habitats. Identified sensitive habitats on the site are as follows: Point Arena Mountain Beaver (*Aplodontia rufa nigra*), a Federally Listed Endangered Species; Supple daisy (*Erigeron supplex*), a California rare plant; Short-leaved evax (*Hesperis matronalis* var. *brevifolia*), a California rare plant; Point Reyes ceanothus (*Ceanothus gloriosus* var. *gloriosus*), a California rare plant; Minute pocket-moss (*Fissidens pauperculus*), a California rare plant; Arroyo (*Salix lasiolepis*) and Sitka (*S. sitchensis*) willow thicket, a supportive community to wetland species and riparian habitat; Bishop pine forest/Pacific reed grass (*Pinus muricata*/*Calamagrostis nutkaensis*), a rare plant community; and Bishop pine forest (*Pinus muricata*), a rare plant community.

Mendocino County Code requires that all proposed improvements be located a minimum one-hundred (100) feet from all sensitive habitats, unless a qualified biologist prepares a Reduced Buffer Analysis to reduce the buffer to fifty (50) feet. Table 1, taken from the Reduced Buffer Zone Analysis document, describes the buffer distance to identified sensitive habitats and recommended actions. Please note that the Point Arena Mountain Beaver is not included in the table as the analysis was done separately and all proposed improvements will maintain a greater than one-hundred (100) foot buffer to identified Point Arena Mountain Beaver habitat.

Table 1. ESHAs and Recommended Actions

ESHAs	Reduced Buffer	Recommended Action
Pt. Reyes ceanothus (<i>Ceanothus gloriosus</i> var. <i>gloriosus</i>)	50 – 100 ft.	A "Watch List" species (CRPR 4), more information about this plant needs to be obtained. It has no state or federal protection status. Trail proposed within 50 ft, designed to maximize buffer width of the adjacent and more rare supple daisy.
Supple daisy (<i>Erigeron</i> supple)	> 100 ft.	No compensation necessary
Minute pocket moss (<i>Fissidens pauperculus</i>)	> 100 ft.	No compensation necessary
Short-leaved evax (<i>Hesperivax sparsifolia</i>)	50 – 100 ft.	No trail will be constructed within 50 feet of the short-leaved evax occurrence.
Bishop pine (<i>Pinus muricata</i>) forest	No buffer	No trees will be removed. Trail will be designed to discourage off trail use to minimize impacts to understory plant community.
Bishop pine (<i>Pinus muricata</i>)/Pacific reed grass (<i>Calamagrostis sitchensis</i>)	Not less than 50 ft.	Trail will be designed to discourage off trail use. A 50 ft. buffer is adequate to prevent impact to the forest/grassland association.
Arroyo (<i>Salix lasiolepis</i>) and Sitka (<i>S. sitchensis</i>) willow thicket	No buffer	Construction of elevated pedestrian walkways to avoid impact to understory vegetation. The walkways will utilize natural gaps in willow cover along the seasonal drainage.

While a reduced buffer analysis was completed for the proposed project, the proposed trail alignment will still traverse through an ESHA. In order to permit development within a buffer area, the proposed project must comply with MCC Section 20.496.020(A)(4). The proposed project is consistent with the policies related to development within an ESHA buffer for the following reasons:

- While human activity levels will be increased by the acquisition of this site for public use and the construction of trails, these activities will be directed to walkways and trails that avoid all sensitive resources. Prior use of this parcel was a cattle ranch where cattle roamed freely throughout the parcel resulting in considerable ecological damage, displacement of native species, and, establishment of invasive exotics.
- The proposed trail will be compatible with the function and ability of the ESHAs to self-sustain.
- Trail development shall be located in a way that will minimize impacts to all ESHAs. Gradual sloping of trails and switchbacks will be employed to minimize erosion. Where switchbacks occur trails will be designed to employ visual obscuration of the lower segment of the trail to discourage "short-cuts" between segments of the trail. Bluff edges will be avoided by locating the trail within 50 to 100' of the short-leaved evax that is located on the edge of the bluff, yet near enough to the bluff to satisfy the public attraction to view the Pacific Ocean without impacting sensitive species and fragile bluff communities.
- Adjacent lands are tilled and farmed to the north and the parcel to the south has a driveway and a residence constructed on the site. The proposed hiking trail is not expected to cause negative

impacts to sensitive resources within the Reserve or outside of it. The hydrology of the site will not be altered by trail construction. Trails will be located in such a way that impact to sensitive resource will be avoided, and the creation of "social trails" minimized.

- The elevated walkway and bridge are necessary improvements facilitating the movement of hikers through the willow thicket and across the drainage with minimal impact.
- The trail will not cause impacts that would degrade adjacent areas; impact will be restricted to the trail footprint. The location of the trail within the coastal prairie/coyote brush scrubland and Bishop pine forest will be designed to minimize erosion and discourage "social trails". Where soil-types are fragile along the shale band within the transition between upper and lower terraces the grade of the trail will be gradual to prevent degradation by foot traffic.
- The elevated walkway and bridge are necessary improvements facilitating the movement of hikers through the willow thicket and across the drainage with minimal impact. Impacts to riparian vegetation will be isolated to areas where pier blocks are placed at 6-foot intervals on each side of the elevated walkway. Bridge footings will consist of five 8-inch diameter posts driven in a minimum of 3-feet deep and covered by a concrete footing 4-foot wide and 2.8-inch long bars at each end of the bridge. Any native plants that will be impacted by construction-related disturbance shall be removed, conserved during construction and replanted in the disturbed areas surrounding the bridge footings. These plants shall be maintained by watering until they are established. No other structures within ESHAs are proposed.
- No trees shall be harvested within the Bishop pine forest. Some limbs may be removed to reduce hazards to hikers and allow hikers to stay on the trail.
- No woody riparian vegetation (willows) will be removed because the crossings will go through natural gaps in the willow gaps. Herbaceous vegetation that will be impacted from walkway construction will be replaced at the recommended 1:1 ratio. Any native plants that will be impacted by construction-related disturbance shall be removed, conserved during construction and replanted in the disturbed areas surrounding the bridge footings.
- No significant obstruction of peak surface water flows from 100-year flood events are expected from construction of the elevated walkway or the bridge.
- The trail and bridge/walkway structures are not expected to have measurable impacts to the hydrologic capacity of the site.
- The trail and bridge/walkway structures are not expected to have measurable impacts to ground water flow within the ESHA buffer zones.
- The proposed ESHA buffers are designed to avoid significant adverse impact to all ESHAs.

The trail has been designed to avoid many of the sensitive habitat areas; however, there are several locations where the trail will traverse through a sensitive habitat area. Mitigation measures such as construction of an elevated pedestrian walkway over these areas and no removal of vegetation as part of the project design result in less than significant impacts to the identified rare plants, animals and habitats.

Table 2: Impact Analysis and Mitigation Measures

Impact to ESHA	Mitigation
1) Pt. Reyes ceanothus (Ceanothus gloriosus var. gloriosus): foot trail potentially within 50 ft. of ESHA edge will avoid impact to Pt. Reyes ceanothus and habitat that supports this ESHA	Since this is a "Watch List" species (CRPR 4), more information about this plant needs to be obtained. Population status shall be monitored yearly by establishing 1 or 2 permanent photo points.

2) Supple daisy (<i>Erigeron supplex</i>): Sufficient buffers well over 100ft. will help to avoid impact from hikers to the supple daisy. Any off-trail disturbance could potentially degrade supple daisy habitat.	As stated previously, the trail extending through the shale area which supports supple daisy will be constructed to avoid using short cuts. Simple photo plots shall be employed to monitor this rare species yearly.
3) Minute pocket moss (<i>Fissidens pauperculus</i>): The location of the minute pocket moss is hidden and far enough from proposed crossing structures to be impacted.	No mitigation necessary
4) Short-leaved evax (<i>Hesperivax sparsifolia</i> var. <i>brevifolia</i>): The trail will be constructed sufficiently far from the bluff edge to avoid impact to potential habitat.	No mitigation necessary.
5) Bishop pine (<i>Pinus muricata</i>) forest: impact is expected to be restricted to the footprint of the trail.	Mitigating human-caused impacts to the Bishop pine forest shall involve trash cleanup, erasing social trails, and where possible, encouraging natural regeneration.
6) Bishop pine (<i>Pinus muricata</i>)/Pacific reed grass (<i>Calamagrostis sitchensis</i>): Same as #5 above	Same as #5 above
7) Arroyo (<i>Salix lasiolepis</i>) and Sitka (<i>S. sitchensis</i>) willow thicket: impact will be restricted to vegetation disturbance at footings and abutments of walkways and bridges at two crossings.	Yearly monitoring shall be done at crossing sites to ensure structural integrity is maintained. Any invasive species shall be eradicated on a yearly basis before they become established and spread. Herbaceous vegetation that will be impacted from walkway construction will be replaced at the recommended 1:1 ratio.

Part of the proposed project will require the installation of a bridge over a seasonal drainage area. Mendocino Land Trust is in the process of obtaining a Lake and Streambed Alteration Agreement (LSAA) with the California Department of Fish and Wildlife. Mitigation for the loss of the area covered by the footings for the bridge will be required. The objective is to restore a wetland area measuring no less than sixty (60) square-feet by removing invasive plants and allowing native plants to colonize the area. The site to be restored is within the wetland area directly adjacent to the boardwalk. Annual reporting will be provided to California Department of Fish and Wildlife staff. **Condition 9** is recommended requiring all recommendations from the various biological surveys and resource agencies as conditions of approval.

In summary, although the proposed project minimally impacts biological resources, the project is considered an allowable use within an ESHA area, as the trail will provide nature study opportunities with interpretive signage. Nature study is an allowable use in wetlands, per MCC Section 20.496.025 (A)(10); however, development permitted within a ESHA is subject to the supplemental findings related to resource impacts (discussed later in this document). The proposed trail project would not significantly degrade resources on the parcels, rather it would provide the public the opportunity to learn about and observe some of the natural areas of the Mendocino Coast. There is no feasible less environmentally damaging alternative, as relocation to other areas on the parcel would require significantly more vegetation removal, grading, and disruption of natural areas. The selected trail alignment avoids ESHAs to the greatest extent feasible, while still accomplishing the goal of the project to provide public access along this area of the coast. All feasible mitigation measures are required as conditions of approval to reduce project impacts to a less than significant level. The proposed project is therefore consistent with Mendocino County Code regulations for the protection of natural resources.

Drainage/Erosion

The proposed project is designed to minimize to the maximum extent feasible the alteration of natural landforms. Potential to alter the existing drainage pattern is greatest with establishment of the parking area; however, the parking area has been designed by a licensed civil engineer, consists primarily of permeable gravel (with only the handicap space and apron being impermeable surfaces) and includes mitigation measures to reduce the potential for erosion and flood-related concerns. **Condition 12** is

recommended to ensure that the site is developed in accordance with the Parking Plan prepared by the licensed civil engineer.

California Environmental Quality Act (CEQA)

A draft Initial Study and Proposed Mitigated Negative Declaration has been prepared for the project drawing off of supporting materials provided by the applicant and consulting agents. The said materials were used in part to identify potentially significant impacts pursuant to CEQA Guidelines Section 15063. The draft environmental document is attached as **ATTACHMENT B - MITIGATED NEGATIVE DECLARATION**. All application materials are available for review at the Fort Bragg office of the Department of Planning and Building Services.

With the implementation of mitigation measures recommended in the Proposed Mitigated Negative Declaration, the proposed development will not have any significant adverse impacts on the environment within the meaning of CEQA.

Cultural Resources

The applicant submitted two separate Archaeological Survey Reports proposed by Thad Van Bueren with the application. One Survey was completed for APN 027-151-08 (under Mendocino Land Trust ownership) on March 27, 2014 and a secondary Survey was completed for the trail easements on APNs 027-341-07 and 027-341-08 on August 18, 2014. Sites were identified within the project area. The Surveys were reviewed at the June 10, 2015 Mendocino County Archaeological Commission Hearing. Both Surveys were accepted by the Commission; however, additional recommendations were made requiring the applicant to cap the portions of the trail that traverse identified archaeological sites. Capping shall include at least eight (8) inches thick of material such as clean soil or gravel and shall be at least five (5) feet wide, two and one half (2 ½) feet on either side of trail centerline. **Condition 10** is recommended to protect identified sites in perpetuity.

The applicant is also advised of the Mendocino County Archaeological Resources Ordinance, and specifically Section 22.12, commonly referred to as the "Discovery Clause." Recommended **Condition 8** similarly advises the applicant of the Discovery Clause, which prescribes the procedures subsequent to the discovery of any cultural resources during construction of the project.

With the inclusion of the recommended conditions of approval, the project is found consistent with protection of paleontological and archaeological resources.

Coastal Access

Coastal access is regulated under MCC Section 20.528, which provides minimum access standards, methods for securing access and policies related to management of public access trails. The project site is located west of Highway 1, and is designated as a potential public access trail location on the Local Coastal Plan maps (Map #'s 25 and 28). As a condition of permit approval for California Coastal Commission Coastal Development Permits #81-CC-307 and #1-86-22 the landowners of the parcels subject to the Permits were each required to dedicate a twenty-five (25) foot lateral access (Mendocino County Official Records Book 1320 Page 232 and Book 1553 Page 155). The twenty-five (25) foot lateral access is consistent with the minimum access standards contained in MCC Section 20.528.015. In order for the proposed project to be consistent with the requirements in Mendocino County Code, **Condition 11** is recommended requiring the applicant to provide an Accessway Management Plan, prior to the issuance of the building permits on the parcel.

The proposed project would open a public access trail on parcels designated for such a use under the Local Coastal Plan maps and is therefore consistent with the public access goals of Chapter 3 of the California Coastal Act and Mendocino County Coastal Element of the General Plan.

PROJECT DETERMINATION FINDINGS AND CONDITIONS: Pursuant to the provisions of Chapter 20.532 and Chapter 20.536 of the Mendocino County Code, the Coastal Permit Administrator approves the proposed project, based on the following findings and conditions.

REQUIRED FINDINGS FOR THIS COASTAL DEVELOPMENT PERMIT:

1. The proposed development is in conformity with the certified Local Coastal Program. The proposed project for construction of a public access trail is in conformity with accomplishing the goals and policies of the certified Local Coastal Program. Coastal access is ranked as the highest priority use in the Coastal Zone. The proposed use is consistent with the intent of the RMR zoning district and meets the standards for public access; and
2. The proposed development will be provided with adequate utilities, access roads, drainage and other necessary facilities. The proposed project does not proposed the use of utilities at this time. Access shall be provided directly off of Highway 1 and will be developed consistent with the Caltrans standards for access. Parking will be provided on-site to ensure that the opening of the public access trail does not become a public nuisance by creating a hazardous situation on Highway 1. The project has been designed to reduce the alteration of natural landforms to the greatest extent practicable and to use permeable surfaces to increase stormwater infiltration. The bridge and parking area have both been designed by a licensed civil engineer. As a condition of approval, an Accessway Management Plan shall be created and approved by the Department of Planning and Building Services; and
3. The proposed development is consistent with the purpose and intent of the applicable zoning district, as well as all other provisions of Division II, and preserves the integrity of the zoning district. The proposed passive recreation use of the parcel is a principally permitted use within the zoning district and is consistent with the intent of the RMR district; and
4. The proposed development, if constructed in compliance with the conditions of approval, will not have any significant adverse impacts on the environment, within the meaning of the California Environmental Quality Act; an Initial Study has been completed and adoption of a Mitigated Negative Declaration is recommended; and
5. The proposed development will not have any adverse impacts on any known archaeological or paleontological resource. The standard discovery clause is recommended as a condition of approval directing the applicant to cease work and contact the Director of Planning and Building Services if archaeological sites or artifacts are discovered during construction and additionally the Mendocino County Archaeological Commission recommended capping the trail portions over identified archaeological sites to reduce potential impacts; and
6. Other public services, including but not limited to, solid waste and public roadway capacity have been considered and are adequate to serve the proposed development. The proposed project does not include any residential development that will require solid waste service; however, the proposed project is to provide a public access trail and it is anticipated that public use of the trail will generate some amount of solid waste. An Accessway Management Plan is required to be completed by the applicant under Condition 11 and shall include information on the maintenance and operation of the site. The increase in traffic volume associated with the development proposed in the application will be negligible. The existing roadways and proposed private access are adequate to serve the proposed development; and
7. The proposed development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act and the Coastal Element of the General Plan. The subject permit requests construction of a public access trail. The applicant shall provide an Accessway Management Plan, in conformity with the public access section of Mendocino County Code. The proposed project helps accomplish the goals of the Coastal Act and the Mendocino County Local Coastal Program by increasing public access to and along the coastline.
8. The resources identified will not be significantly degraded by the proposed development; there is no feasible less environmentally damaging alternative; and all feasible mitigation measures capable of reducing or eliminating project related impacts have been adopted. The proposed project has the potential to impact biological resources but is considered an allowable use within an ESHA area, as

the trail will provide nature study opportunities with interpretive signage. Nature study is an allowable use in wetlands, per MCC Section 20.496.025 (A)(10). The proposed trail project will not significantly degrade the resources on the parcel, rather it will provide the public the opportunity to learn about and observe some of the natural areas of the Mendocino Coast. There is no feasible less environmentally damaging alternative, as relocation to other areas on the parcel would require significantly more vegetation removal, grading, and disruption of natural areas. The selected alignment avoids ESHAs to the greatest extent feasible, while still accomplishing the goal of the project to provide public access along this area of the coast. All feasible mitigation measures are required as conditions of approval to reduce project impacts to a less than significant levels.

CONDITIONS OF APPROVAL:

1. This action shall become final on the 11th day following the decision unless an appeal is filed pursuant to Section 20.544.015 of the Mendocino County Code. The permit shall become effective after the ten working day appeal period to the Coastal Commission has expired and no appeal has been filed with the Coastal Commission. The permit shall expire and become null and void at the expiration of two years after the effective date except where construction and use of the property in reliance on such permit has been initiated prior to its expiration.

To remain valid, progress towards completion of the project must be continuous. The applicant has sole responsibility for renewing this application before the expiration date. The County will not provide a notice prior to the expiration date.

2. The use and occupancy of the premises shall be established and maintained in conformance with the provisions of Division II of Title 20 of the Mendocino County Code.
3. The application, along with supplemental exhibits and related material, shall be considered elements of this permit, and that compliance therewith is mandatory, unless an amendment has been approved by the Planning Commission.
4. This permit shall be subject to the securing of all necessary permits for the proposed development from County, State and Federal agencies having jurisdiction.
5. The applicant shall secure all required building permits for the proposed project as required by the Building Inspection Division of the Department of Planning and Building Services.
6. This permit shall be subject to revocation or modification upon a finding of any one or more of the following:
 - a. The permit was obtained or extended by fraud.
 - b. One or more of the conditions upon which the permit was granted have been violated.
 - c. The use for which the permit was granted is conducted so as to be detrimental to the public health, welfare or safety, or to be a nuisance.
 - d. A final judgment of a court of competent jurisdiction has declared one or more conditions to be void or ineffective, or has enjoined or otherwise prohibited the enforcement or operation of one or more such conditions.
7. This permit is issued without a legal determination having been made upon the number, size or shape of parcels encompassed within the permit described boundaries. Should, at any time, a legal determination be made that the number, size or shape of parcels within the permit described boundaries are different than that which is legally required by this permit, this permit shall become null and void.
8. If any archaeological sites or artifacts are discovered during site excavation or construction activities, the applicant shall cease and desist from all further excavation and disturbances within one hundred (100) feet of the discovery, and make notification of the discovery to the Director of the Department of

Planning and Building Services. The Director will coordinate further actions for the protection of the archaeological resource(s) in accordance with Section 22.12.090 of the Mendocino County Code.

9. In order to provide for the protection of Natural Resources, the following shall be completed by the applicant:
 - a. The populations of Pt. Reyes ceanothus (*Ceanothus gloriosus* var. *gloriosus*), short-leaved evax (*Hesperis matronalis* var. *brevifolia*), and supple daisy (*Erigeron annuus*) shall be monitored yearly. One or two permanent photo points shall be established with yearly monitoring for five years following project approval. Results of the monitoring shall be submitted to the Department of Planning and Building Services annually. Care shall be taken when performing the yearly monitoring to not approach the sites from the established trail as this could invite others to explore and potentially impact the ESHA.
 - b. The Arroyo (*Salix lasiolepis*) and Sitka (*Salix sitchensis*) willow thicket shall be monitored yearly at the crossing sites to ensure structural integrity is maintained. Hand removal of invasive species shall be completed on a yearly basis before they become established and spread. Herbaceous vegetation that is impacted from the walkway construction shall be replaced at a 1:1 ratio.
 - c. California Department of Fish and Wildlife confirmed that a minimum of a fifty (50) foot buffer shall be maintained between proposed improvements and identified ESHA, except for the resources where the trail must cross within fifty (50) feet. Only those resources specifically outlined in the staff report shall have a buffer of less than fifty (50) feet.
 - d. Restore a wetland area measuring no less than sixty (60) square-feet by removing invasive plants and allowing native plants to colonize the area.
 - i. The site to be restored shall be within the wetland area directly adjacent to the boardwalk. Mendocino Land Trust shall delineate (flag or stake), photo-document and provide a map of the restoration area; compile a plant species list; and estimate cover of native plants and non-native plants within the restoration area.
 - ii. The mitigation plan shall be in effect for no less than five (5) years. Within the mitigation area, non-native plants shall be removed to encourage the spread and establishment of nearby native plants. After initial removal of non-native plants, follow-up work shall occur on a quarterly basis or as necessary (at the discretion of the California Department of Fish and Wildlife). On at least a quarterly basis, Mendocino Land Trust shall monitor the project site, including photo-documentation and an estimate of native and non-native plant cover. On at least an annual basis, this information shall be compiled and reported to the California Department of Fish and Wildlife.
 - iii. Success Criteria/Performance Standards are at the discretion of the California Department of Fish and Wildlife and the stipulations of the Lake and Streambed Alteration Agreement obtained by Mendocino Land Trust.
10. The proposed trail shall be capped over those portions of trail that traverse the archaeological sites identified in the March 27, 2014 and August 18, 2014 Archaeological Surveys by Thad Van Bueren. Capping shall include at least eight (8) inches thick of material such as clean soil or gravel and shall be at least five (5) feet wide, two and one half (2 ½) feet on either side of trail centerline.
11. Prior to issuance of the building permit, the applicants shall submit an Accessway Management Plan for the trail and associated improvements on the Pelican Bluffs parcel. At a minimum, the Accessway Management Plan shall:
 - a. Provide a design which avoids or mitigates any public safety hazards and any adverse impacts on agricultural operations or identified coastal resources;
 - b. Set forth the agency(ies) responsible for operating, maintaining and assuming liability for the accessway;

- c. Set forth any other known provisions such as facilities to be provided, signing, use restrictions and special design and monitoring requirements; and
 - d. Set forth provisions for protecting the accessway from vandalism and/or improper use (e.g. guarded gate, security patrol, hours of operation or period/seasons of closure and fees, if any).
12. All Construction Notes on the Pelican Bluffs Parking Plan shall be complied with during construction of the parking area. If deviation from the Construction Notes is required, such deviation shall only be permissible if agreed upon by the Department of Planning and Building Services and a licensed civil engineer. Construction Notes are as follows:
- a. No construction shall commence without prior approval of the County of Mendocino's Supervising Engineer and California Department of Transportation.
 - b. The Contractor shall call Underground Service Alert (USA) at (800)227-2600 at least 48 hours prior to any excavation for markouts of existing underground facilities.
 - c. Any damages to County or other utilities caused by project operations shall be the Contractor's responsibility.
 - d. The Contractor shall be responsible for immediate off-site disposal of all bituminous pavement, concrete, reinforcement, vegetation, and spoils not needed for backfill.
 - e. All workmanship, materials, and construction shall conform to the County of Mendocino Standard Plans, the Construction Specifications for Public Improvements, the Special Provisions for this project, and the State Standard Specifications and Standard Plans.
 - f. All traffic control shall be in accordance with the latest edition off the California Department of Transportation Manual of Traffic for Construction and Maintenance of Work Zones.
 - g. All signs shall be appropriately constructed with reflective material on a backing of metal or fabric (no wood or plastic allowed) and shall be maintained throughout construction to provide proper visibility.
 - h. Site work can only proceed and must be completed during the dry season, April 15 to October 14.
 - i. Before commencing work, the Contractor shall mark off boundary of area of work, and areas outside of Mendocino Land Trust easements that cannot be disturbed. Vegetation shall then be cleared over the area to be worked. Existing shrubs of *Baccharis* shall be recovered with roots intact as possible for replanting by Mendocino Land Trust.
 - j. Contractor shall install and maintain erosion control measures shown on the parking plan, prior to grading operations.
 - k. Prior to placement of aggregate base course material at paved areas, compact subsoil to 95 percent of its maximum dry density at optimum water content (-1 percent + 3 percent) in accordance with ASTM D1557 to the depth as indicated on the Drawings, but not less than 36 inches. At least 24 inches of excavation is required with soil replaced in 12 inch lifts, each compacted.
 - l. Fill material shall meet Caltrans aggregate subbase (AS) or crushed miscellaneous base (CMB) requirements or a class 3 soil fill meeting the Engineer's requirement, in coordination with the amount of geotextile placed.
 - m. Compaction of fill shall meet 95 % of fill material dry density, confirmed per Caltrans test method #231, or the equivalent ASTM Standard Penetration Test procedure.
 - n. Compaction of fill shall be in 12 inch max lifts, with geotextile reinforcement to be determined. Lifts shall approximate the finished plane, so the upper layers can have full runs of geotextile.
 - o. Compaction testing shall be undertaken at existing soils before placement of imported fill, and at the completion of fill operations, before placement of rock surface and paving base course.

- p. Rocked surface and paving base shall meet Caltrans Class 2 Aggregate Requirements. Paving materials and execution shall match Caltrans requirements.
 - q. Pavement marking paint material shall meet Caltrans specification PTH-02ALKYD, with reflective spheres meeting Caltrans specification 8010-004.
 - r. Stop bar and marking, and stop sign and installation shall meet 2012 California Manual on Uniform Traffic Control Devices. Include the installation of 2 similar sign posts to be supplied by Mendocino Land Trust.
13. This entitlement does not become effective or operative and no work shall be commenced under this entitlement until the California Department of Fish and Wildlife filing fees required or authorized by Section 711.4 of the Fish and Game Code are submitted to the Mendocino County Department of Planning and Building Services. Said fee of \$2260.00 shall be made payable to the Mendocino County Clerk and submitted to the Department of Planning and Building Services within 5 days of the end of any appeal period. Any waiver of the fee shall be on a form issued by the Department of Fish and Wildlife upon their finding that the project has "no effect" on the environment. If the project is appealed, the payment will be held by the Department of Planning and Building Services until the appeal is decided. Depending on the outcome of the appeal, the payment will either be filed with the County Clerk (if the project is approved) or returned to the payer (if the project is denied). Failure to pay this fee by the specified deadline shall result in the entitlement becoming null and void. **The applicant has the sole responsibility to insure timely compliance with this condition.**

Staff Report Prepared By:

DATE

JULIA ACKER
PLANNER I

JA/at
October 9, 2015

Mitigated Negative Declaration

Appeal Period: Ten calendar days for the Mendocino County Board of Supervisors, followed by ten working days for the California Coastal Commission following the Commission's receipt of the Notice of Final Action from the County.

Appeal Fee: \$945 (For an appeal to the Mendocino County Board of Supervisors.)

ATTACHMENTS:

- A- Coastal Permit Approval Checklist
- B- CEQA Initial Study/Mitigated Negative Declaration
- C- Location Map
- D- Topographic Map
- E- 2014 NAIP Aerial Orthophoto (Wide)
- F- 2014 NAIP Aerial Orthophoto
- G- Site Plan [03-13-2015]
- H- Site Plan Detail
- I- Parking Layout
- J- Bridge Design
- K- Pier Diagram
- L- Elevation & Deck Plan

M- Header Installation Plan
N- Joist Installation Plan
O- Joist-to-Header Design Plan
P- Trailway Excavation Plan
Q- Step Calculations
R- Zoning Display Map
S- General Plan Classifications
T- LCP Map 25 & 28
U- Adjacent Parcels
V- Fire Hazard Zones & Responsibility Areas
W- Coastal Ground Water Resources
X- Highly Scenic & Tree Removal Areas
Y- Local Soils
Z- Lands in Williamson Act Contracts
AA- Classified Wetlands
BB- Earthquake Fault Zones

**COASTAL PERMIT APPROVAL CHECKLIST
CDP_2014-0042 (MENDOCINO LAND TRUST)
NOVEMBER 18, 2015**

PROJECT TITLE: CDP_2014-0042 (MENDOCINO LAND TRUST)

PROJECT LOCATION: Located between post miles 14.26 and 13.86 and including two public access easements at 26300 and 26600 South Highway 1 (APNs: 027-151-08 (Mendocino Land Trust), 027-341-07 (LaFranchi), and 027-341-08 (Ferrara)).

LEAD AGENCY NAME, ADDRESS AND CONTACT PERSON: Julia Acker
Mendocino County Planning and Building Services
120 West Fir Street, Fort Bragg, California 95437
707-964-5379

GENERAL PLAN DESIGNATION: Remote Residential (RMR)

ZONING DISTRICT Remote Residential (RMR), Floodplain combining district (FP), forty (40) acre minimum lot size

DESCRIPTION OF PROJECT: The project is for the construction of an approximately two (2) mile public access trail along Pelican Bluffs. Construction of the trail will require the installation of a parking area, foot-bridge, approximately one hundred (100) steps, approximately eighty (80) feet of boardwalk, approximately ten (10) interpretive and management signs, two (2) benches, and two (2) picnic tables. The Pelican Bluffs trail will loop around the property from the trailhead in the northeast corner of the property west towards the bluff, where it will follow the western property boundary before looping back to the trailhead. The trail will also extend south within 25-foot public access easements on private property (APNs: 027-341-07 (LaFranchi) and 027-341-08 (Ferrara)) for a total length of approximately two (2) miles. Public access easements are held by Moat Creek Managing Agency, a partner organization of Mendocino Land Trust.

SITE DESCRIPTION AND SETTING: The 73.05 acre subject parcel is situated approximately one mile south of the City of Point Arena, on the west side of Highway 1, approximately 660 feet south of its intersection with Curley Lane (CR 504A). The proposed project includes two 25-foot public access easements on adjacent parcels. The site is surrounded by primarily agricultural uses. The subject parcels are mixed in terms of existing development: vacant (APN 027-151-08), agricultural (APN 027-341-07), and residential (APN 027-341-08).

DETERMINATION: The proposed project **conditionally satisfies all required findings for approval of a Coastal Development Permit**, pursuant to Section 20.532.095 and 20.532.100 of the Mendocino County Code, as individually enumerated in this Coastal Permit Approval Checklist.

20.532.095 Required Findings for All Coastal Development Permits	Inconsistent	Consistent (With Conditions of Approval)	Consistent (Without Conditions of Approval)	Not Applicable
(A) The granting or modification of any coastal development permit by the approving authority shall be supported by findings which establish the following:				
(1) The proposed development is in conformity with the certified local coastal program.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(2) The proposed development will be provided with adequate utilities, access roads, drainage and other necessary facilities.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(3) The proposed development is consistent with the purpose and intent of the zoning district applicable to the property, as well as the provisions of this Division and preserves the integrity of the zoning district.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

20.532.095 Required Findings for All Coastal Development Permits	Inconsistent	Consistent (With Conditions of Approval)	Consistent (Without Conditions of Approval)	Not Applicable
(4) The proposed development will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
(5) The proposed development will not have any adverse impacts on any known archaeological or paleontological resource.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(6) Other public services, including but not limited to, solid waste and public roadway capacity have been considered and are adequate to serve the proposed development.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(B) If the proposed development is located between the first public road and the sea or the shoreline of any body of water, the following additional finding must be made:				
(1) The proposed development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act and the Coastal Element of the General Plan.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

20.532.095(A)(1) The proposed development is in conformity with the certified local coastal program.

☒ *Consistent (with conditions of approval)*

The Local Coastal Program (LCP) sets goals and policies for managing resource protection and development activity in the Coastal Zone of Mendocino County, an area that extends from the Humboldt County line to the Gualala River. The Local Coastal Program addresses topics such as shoreline access and public trails; development in scenic areas, hazardous areas, and coastal bluffs; environmentally sensitive habitat areas; cultural resources; transportation; public services; and more. The LCP serves as an element of the General Plan and includes Division II of Title 20 of the Mendocino County Code (MCC), and its policies must be consistent with the goals of the California Coastal Act.

Various aspects of the Local Coastal Program are specifically addressed by separate Required and Supplemental Findings for Coastal Development Permits, including utilities, transportation, zoning, CEQA, archaeological resources, public services, coastal access, and resource protection. The following is a discussion of elements of the Local Coastal Program not specifically addressed elsewhere in this checklist.

General Plan Land Use – Remote Residential

The subject parcel is classified as Remote Residential by the Coastal Element of the Mendocino County General Plan, which is intended "to be applied to lands having constraints for commercial agriculture, timber production or grazing, which are well suited for small scale farming and low density agricultural/residential uses" (Chapter 2 of the County of Mendocino Coastal Element). The principally permitted use designated for the Remote Residential land use classification is "one dwelling unit per existing parcel and associated utilities, light agriculture and home occupation" (Chapter 2 of the County of Mendocino Coastal Element).

The parcel is currently vacant. The application proposes a public access trail with associated improvements. Passive recreation is a principally permitted use within the Remote Residential classification and is therefore consistent with the district.

Hazards

Chapter 3.4 of the Mendocino County Coastal Element addresses Hazards Management within the Coastal Zone.

Seismic Activity: The property neither lies within, nor does it adjoin a mapped Alquist-Priolo Earthquake fault zone. The San Andreas fault is located approximately three (3) miles to the northeast of the project site and is the nearest active fault. The site, like the rest of Mendocino County, is subject to strong ground shaking. Figure

3-12 of the Mendocino County General Plan indicates that the subject parcel is not located in a known area of soil liquefaction.

Landslides: The subject property is located west of the highway and slopes gently toward the bluff edge. There are no translational/rotational or debris slides mapped on the subject parcel.

Erosion: The proposed project is designed to minimize to the maximum extent feasible the alteration of natural landforms. Potential to alter the existing drainage pattern is greatest with construction of the parking area; however, the parking area consists primarily of permeable gravel (with only the handicap space and apron being impermeable surfaces) and includes mitigation measures to reduce the potential for erosion and flooding related concerns.

Flooding: The project is not for residential development and further is located outside the mapped 100-year flood hazard area of the parcel, and therefore will not impede or redirect flood flows, and will not expose people or structures to a significant risk involving flooding, including flooding as a result of the failure of a levee or dam.

Fire: The project is located in an area that has a moderate fire hazard severity rating (along bluff edge) and a high fire hazard severity rating elsewhere on the parcel, as shown on the Fire Hazard Zones and Responsibility Areas map. The project application was referred to the Redwood Coast Fire Protection District and California Department of Forestry and Fire Protection (CalFire) for comment. CalFire stated that they had no comments for the proposed project. The Redwood Coast Fire Protection District did not return the referral for this project. Staff believes the proposed project has a minimal potential to expose people and facilities to unnecessary fire hazard.

Visual Resources

Protection of visual resources is a specific mandate of Section 30251 of the Coastal Act, and is subsequently addressed in Chapter 3.5 of General Plan's Coastal Element and implemented by MCC Chapter 20.504.

The project is located in an area that is designated Highly Scenic by the Local Coastal Program and is subject to Local Coastal Program Visual Resource policies relating to Highly Scenic Areas. Pertinent development criteria include protection of public coastal views, siting of structures on the parcel, and location of access roads in areas where they cause minimal visual impact. The proposed project has been designed to be consistent with the criteria for development in a Highly Scenic Area. Public coastal views are protected; the trail location is largely hidden from view, and would be developed to minimize the alteration of natural landforms and to limit the number of structures installed above grade. Additionally, the proposed access road has been located as close as feasible to existing access roads for adjacent properties, limiting the visual impact of the additional access.

No exterior lighting is proposed as part of this application. Signage will be painted to reduce any potential for glare related impacts from the project.

The proposed project is therefore consistent with the criteria for development in a Highly Scenic Area.

Natural Resources

The certified Mendocino County LCP includes sections of both the MCC and the Coastal Element of the General Plan addressing Environmentally Sensitive Habitat Areas (ESHA). The MCC states that development having the potential to impact an ESHA shall be subject to a biological survey, prepared by a qualified biologist, to determine the extent of sensitive resources, to document potential negative impacts, and to recommend appropriate mitigation measures.

Several studies were prepared in association with this project, a Botanical Survey Report, Point Arena Mountain Beaver Survey, and a Reduced Buffer Zone Analysis. The 73.05 acre site contains several areas of sensitive habitats. Identified sensitive habitats on the site are as follows: Point Arena Mountain Beaver (*Aplodontia rufa nigra*), a Federally Listed Endangered Species; Supple daisy (*Erigeron supplex*), a California rare plant; Short-leaved evax (*Hesperis matronalis* var. *brevifolia*), a California rare plant; Point Reyes ceanothus (*Ceanothus gloriosus* var. *gloriosus*), a California rare plant; Minute pocket-moss (*Fissidens pauperculus*), a California rare plant; Arroyo (*Salix lasiolepis*) and Sitka (*S. Sitchensis*) willow thicket, a supportive community to wetland species and riparian habitat; Bishop pine forest/Pacific reed grass (*Pinus muricata*/*Calamagrostis nutkaensis*), a rare plant community; and Bishop pine forest (*Pinus muricata*), a rare plant community.

Mendocino County Code requires that all proposed improvements be located a minimum one-hundred (100) feet from all sensitive habitats, unless a qualified biologist prepares a Reduced Buffer Analysis to reduce the buffer to fifty (50) feet. Table 1, taken from the Reduced Buffer Zone Analysis document, describes the buffer distance to identified sensitive habitats and recommended actions. Please note that the Point Arena Mountain Beaver is not included in the table as the analysis was done separately and all proposed improvements will maintain a greater than one-hundred (100) foot buffer to identified Point Arena Mountain Beaver habitat.

Table 1. ESHAs and Recommended Actions

ESHAs	Reduced Buffer	Recommended Action
Pt. Reyes ceanothus (<i>Ceanothus gloriosus</i> var. <i>gloriosus</i>)	50 – 100 ft.	A "Watch List" species (CRPR 4), more information about this plant needs to be obtained. It has no state or federal protection status. Trail proposed within 50 ft, designed to maximize buffer width of the adjacent and rarer supple daisy.
Supple daisy (<i>Erigeron supplex</i>)	> 100 ft.	No compensation necessary
Minute pocket moss (<i>Fissidens pauperculus</i>)	> 100 ft.	No compensation necessary
Short-leaved evax (<i>Hesperrevax sparsifolia</i> var. <i>brevifolia</i>)	50 – 100 ft.	No trail will be constructed within 50 feet of the short-leaved evax occurrence.
Bishop pine (<i>Pinus muricata</i>) forest	No buffer	No trees will be removed. Trail will be designed to discourage off trail use to minimize impacts to understory plant community.
Bishop pine (<i>Pinus muricata</i>)/Pacific reed grass (<i>Calamagrostis sitchensis</i>)	Not less than 50 ft.	Trail will be designed to discourage off trail use. A 50 ft. buffer is adequate to prevent impact to the forest/grassland association.
Arroyo (<i>Salix lasiolepis</i>) and Sitka (<i>S. sitchensis</i>) willow thicket	No buffer	Construction of elevated pedestrian walkways to avoid impact to understory vegetation. The walkways will utilize natural gaps in willow cover along the seasonal drainage.

While a reduced buffer analysis was completed for the proposed project, the proposed trail alignment will still traverse through an ESHA. In order to permit development within a buffer area, the proposed project must comply with MCC Section 20.496.020(A)(4). The proposed project is consistent with the policies related to development within an ESHA buffer for the following reasons:

- While human activity levels will be increased by the acquisition of this site for public use and the construction of trails, these activities will be directed to walkways and trails that avoid all sensitive resources. Prior use of this parcel was a cattle ranch where cattle roamed freely throughout the parcel resulting in considerable ecological damage, displacement of native species, and, establishment of invasive exotics.
- The proposed trail will be compatible with the function and ability of the ESHAs to self-sustain.
- Trail development shall be located in a way that will minimize impacts to all ESHAs. Gradual sloping of trails and switchbacks will be employed to minimize erosion. Where switchbacks occur trails will be designed to employ visual obscuration of the lower segment of the trail to discourage "short-cuts" between segments of the trail. Bluff edges will be avoided by locating the trail within 50 to 100' of the short-leaved evax that is

located on the edge of the bluff, yet near enough to the bluff to satisfy the public attraction to view the Pacific Ocean without impacting sensitive species and fragile bluff communities.

- Adjacent lands are tilled and farmed to the north and the parcel to the south has a driveway and a residence constructed on the site. The proposed hiking trail is not expected to cause negative impacts to sensitive resources within the Reserve or outside of it. The hydrology of the site will not be altered by trail construction. Trails will be located in such a way that impact to sensitive resource will be avoided, and the creation of "social trails" minimized.
- The elevated walkway and bridge are necessary improvements facilitating the movement of hikers through the willow thicket and across the drainage with minimal impact.
- The trail will not cause impacts that would degrade adjacent areas; impact will be restricted to the trail footprint. The location of the trail within the coastal prairie/coyote brush scrubland and Bishop pine forest will be designed to minimize erosion and discourage "social trails". Where soil-types are fragile along the shale band within the transition between upper and lower terraces the grade of the trail will be gradual to prevent degradation by foot traffic.
- The elevated walkway and bridge are necessary improvements facilitating the movement of hikers through the willow thicket and across the drainage with minimal impact. Impacts to riparian vegetation will be isolated to areas where pier blocks are placed at 6-foot intervals on each side of the elevated walkway. Bridge footings will consist of five 8-inch diameter posts driven in a minimum of 3-feet deep and covered by a concrete footing 4-foot wide and 2.8-inch long bars at each end of the bridge. Any native plants that will be impacted by construction-related disturbance shall be removed, conserved during construction and replanted in the disturbed areas surrounding the bridge footings. These plants shall be maintained by watering until they are established. No other structures within ESHAs are proposed.
- No trees shall be harvested within the Bishop pine forest. Some limbs may be removed to reduce hazards to hikers and allow hikers to stay on the trail.
- No woody riparian vegetation (willows) will be removed because the crossings will go through natural gaps in the willow gaps. Herbaceous vegetation that will be impacted from walkway construction will be replaced at the recommended 1:1 ratio. Any native plants that will be impacted by construction-related disturbance shall be removed, conserved during construction and replanted in the disturbed areas surrounding the bridge footings.
- No significant obstruction of peak surface water flows from 100-year flood events are expected from construction of the elevated walkway or the bridge.
- The trail and bridge/walkway structures are not expected to have measurable impacts to the hydrologic capacity of the site.
- The trail and bridge/walkway structures are not expected to have measurable impacts to ground water flow within the ESHA buffer zones.
- The proposed ESHA buffers are designed to avoid significant adverse impact to all ESHAs.

The trail has been designed to avoid many of the sensitive habitat areas; however, there are several locations where the trail will traverse through a sensitive habitat area. Mitigation measures such as construction of an elevated pedestrian walkway over these areas and no removal of vegetation as part of the project design result in less than significant impacts to the identified rare plants, animals and habitats.

Table 2: Impact Analysis and Mitigation Measures

Impact to ESHA	Mitigation
1) Pt. Reyes ceanothus (<i>Ceanothus gloriosus</i> var. <i>gloriosus</i>): foot trail potentially within 50 ft. of ESHA edge will avoid impact to Pt. Reyes ceanothus and habitat that supports this ESHA	Since this is a "Watch List" species (CRPR 4), more information about this plant needs to be obtained. Population status shall be monitored yearly by establishing 1 or 2 permanent photo points.
2) Supple daisy (<i>Erigeron supplex</i>): Sufficient buffers well over 100ft. will help to avoid impact from hikers to the supple daisy. Any off-trail disturbance could potentially degrade supple daisy habitat.	As stated previously, the trail extending through the shale area which supports supple daisy will be constructed to avoid using short cuts. Simple photo plots shall be employed to monitor this rare species yearly.
3) Minute pocket moss (<i>Fissidens pauperculus</i>): The location of the minute pocket moss is hidden and far enough from proposed crossing structures to be impacted.	No mitigation necessary
4) Short-leaved evax (<i>Hesperervax sparsifolia</i> var. <i>brevifolia</i>): The trail will be constructed sufficiently far from the bluff edge to avoid impact to potential habitat.	No mitigation necessary.
5) Bishop pine (<i>Pinus muricata</i>) forest: impact is expected to be restricted to the footprint of the trail.	Mitigating human-caused impacts to the Bishop pine forest shall involve trash cleanup, erasing social trails, and where possible, encouraging natural regeneration.
6) Bishop pine (<i>Pinus muricata</i>)/Pacific reed grass (<i>Calamagrostis sitchensis</i>): Same as #5 above	Same as #5 above
7) Arroyo (<i>Salix lasiolepis</i>) and Sitka (<i>S. sitchensis</i>) willow thicket: impact will be restricted to vegetation disturbance at footings and abutments of walkways and bridges at two crossings.	Yearly monitoring shall be done at crossing sites to ensure structural integrity is maintained. Any invasive species shall be eradicated on a yearly basis before they become established and spread. Herbaceous vegetation that will be impacted from walkway construction will be replaced at the recommended 1:1 ratio.

Part of the proposed project will require the installation of a bridge over a seasonal drainage area. Mendocino Land Trust is in the process of obtaining a Lake and Streambed Alteration Agreement (LSAA) with the California Department of Fish and Wildlife. Mitigation for the loss of the area covered by the footings for the bridge will be required. The objective is to restore a wetland area measuring no less than sixty (60) square-feet by removing invasive plants and allowing native plants to colonize the area. The site to be restored is within the wetland area directly adjacent to the boardwalk. Annual reporting will be provided to California Department of Fish and Wildlife staff. **Condition 9** is recommended requiring all recommendations from the various biological surveys and resource agencies as conditions of approval.

Condition 9: In order to provide for the protection of Natural Resources, the following shall be completed by the applicant:

- The populations of Pt. Reyes ceanothus (*Ceanothus gloriosus* var. *gloriosus*), short-leaved evax (*Hesperervax sparsifolia* var. *brevifolia*), and supple daisy (*Erigeron supplex*) shall be monitored yearly. One or two permanent photo points shall be established with yearly monitoring for five years following project approval. Results of the monitoring shall be submitted to the Department of Planning and Building Services annually. Care shall be taken when performing the yearly monitoring to not approach the sites from the established trail as this could invite others to explore and potentially impact the ESHA.
- The Arroyo (*Salix lasiolepis*) and Sitka (*Salix sitchensis*) willow thicket shall be monitored yearly at the crossing sites to ensure structural integrity is maintained. Hand removal of invasive species shall be

completed on a yearly basis before they become established and spread. Herbaceous vegetation that is impacted from the walkway construction shall be replaced at a 1:1 ratio.

- c. California Department of Fish and Wildlife confirmed that a minimum of a fifty (50) foot buffer shall be maintained between proposed improvements and identified ESHA, except for the resources where the trail must cross within fifty (50) feet. Only those resources specifically outlined in the staff report shall have a buffer of less than fifty (50) feet.
- d. Restore a wetland area measuring no less than sixty (60) square-feet by removing invasive plants and allowing native plants to colonize the area.
 - i. The site to be restored shall be within the wetland area directly adjacent to the boardwalk. Mendocino Land Trust shall delineate (flag or stake), photo-document and provide a map of the restoration area; compile a plant species list; and estimate cover of native plants and non-native plants within the restoration area.
 - ii. The mitigation plan shall be in effect for no less than five (5) years. Within the mitigation area, non-native plants shall be removed to encourage the spread and establishment of nearby native plants. After initial removal of non-native plants, follow-up work shall occur on a quarterly basis or as necessary (at the discretion of the California Department of Fish and Wildlife). On at least a quarterly basis, Mendocino Land Trust shall monitor the project site, including photo-documentation and an estimate of native and non-native plant cover. On at least an annual basis, this information shall be compiled and reported to the California Department of Fish and Wildlife.
 - iii. Success Criteria/Performance Standards are at the discretion of the California Department of Fish and Wildlife and the stipulations of the Lake and Streambed Alteration Agreement obtained by Mendocino Land Trust.

In summary, although the proposed project minimally impacts biological resources, the project is considered an allowable use within an ESHA area, as the trail will provide nature study opportunities with interpretive signage. Nature study is an allowable use in wetlands, per MCC Section 20.496.025 (A)(10); however, development permitted within a ESHA is subject to the supplemental findings related to resource impacts (discussed later in this document). The proposed trail project would not significantly degrade resources on the parcels, rather it would provide the public the opportunity to learn about and observe some of the natural areas of the Mendocino Coast. There is no feasible less environmentally damaging alternative, as relocation to other areas on the parcel would require significantly more vegetation removal, grading, and disruption of natural areas. The selected trail alignment avoids ESHAs to the greatest extent feasible, while still accomplishing the goal of the project to provide public access along this area of the coast. All feasible mitigation measures are required as conditions of approval to reduce project impacts to a less than significant level. The proposed project is therefore consistent with Mendocino County Code regulations for the protection of natural resources.

20.532.095(A)(2) The proposed development will be provided with adequate utilities, access roads, drainage and other necessary facilities.

☒ *Consistent (with conditions of approval)*

Utilities: No utilities are proposed as part of this project.

Access Roads: The parcel is currently provided access off of Highway 1. The proposed public access trail was referred to the California Department of Transportation (Caltrans) for comment; however, no response was received. Staff notes that the applicant has been in continuous discussion with Caltrans regarding the proposed encroachment from the beginning of the project. Caltrans determined the proposed location to be the best location on the parcel for access. A parking plan has been prepared for the project. Prior to commencement of work, the applicant shall obtain an encroachment permit from Caltrans, as required by **Condition 4**.

Drainage: Drainage is subject to MCC Section 20.492.025, and provides regulations mitigating the impact of stormwater runoff and erosion. The proposed project is designed to minimize to the maximum extent feasible the

alteration of natural landforms. Potential to alter the existing drainage pattern is greatest with establishment of the parking area. The parking area, designed by a licensed civil engineer, consists primarily of permeable gravel (with only the handicap space and apron being impermeable surfaces) and includes mitigation measures to reduce the potential for erosion and flood-related concerns. **Condition 12** is recommended to ensure that the site is developed in accordance with the Parking Plan prepared by the licensed civil engineer.

Condition 12: All Construction Notes on the Pelican Bluffs Parking Plan shall be complied with during construction of the parking area. If deviation from the Construction Notes is required, such deviation shall only be permissible if agreed upon by the Department of Planning and Building Services and a licensed civil engineer. Construction Notes are as follows:

- a. No construction shall commence without prior approval of the County of Mendocino's Supervising Engineer and California Department of Transportation.
- b. The Contractor shall call Underground Service Alert (USA) at (800)227-2600 at least 48 hours prior to any excavation for markouts of existing underground facilities.
- c. Any damages to County or other utilities caused by project operations shall be the Contractor's responsibility.
- d. The Contractor shall be responsible for immediate off-site disposal of all bituminous pavement, concrete, reinforcement, vegetation, and spoils not needed for backfill.
- e. All workmanship, materials, and construction shall conform to the County of Mendocino Standard Plans, the Construction Specifications for Public Improvements, the Special Provisions for this project, and the State Standard Specifications and Standard Plans.
- f. All traffic control shall be in accordance with the latest edition off the California Department of Transportation Manual of Traffic for Construction and Maintenance of Work Zones.
- g. All signs shall be appropriately constructed with reflective material on a backing of metal or fabric (no wood or plastic allowed) and shall be maintained throughout construction to provide proper visibility.
- h. Site work can only proceed and must be completed during the dry season, April 15 to October 14.
- i. Before commencing work, the Contractor shall mark off boundary of area of work, and areas outside of Mendocino Land Trust easements that cannot be disturbed. Vegetation shall then be cleared over the area to be worked. Existing shrubs of Baccharis shall be recovered with roots intact as possible for replanting by Mendocino Land Trust.
- j. Contractor shall install and maintain erosion control measures shown on the parking plan, prior to grading operations.
- k. Prior to placement of aggregate base course material at paved areas, compact subsoil to 95 percent of its maximum dry density at optimum water content (-1 percent + 3 percent) in accordance with ASTM D1557 to the depth as indicated on the Drawings, but not less than 36 inches. At least 24 inches of excavation is required with soil replaced in 12 inch lifts, each compacted.
- l. Fill material shall meet Caltrans aggregate subbase (AS) or crushed miscellaneous base (CMB) requirements or a class 3 soil fill meeting the Engineer's requirement, in coordination with the amount of geotextile placed.
- m. Compaction of fill shall meet 95 % of fill material dry density, confirmed per Caltrans test method #231, or the equivalent ASTM Standard Penetration Test procedure.
- n. Compaction of fill shall be in 12 inch max lifts, with geotextile reinforcement to be determined. Lifts shall approximate the finished plane, so the upper layers can have full runs of geotextile.
- o. Compaction testing shall be undertaken at existing soils before placement of imported fill, and at the completion of fill operations, before placement of rock surface and paving base course.
- p. Rocked surface and paving base shall meet Caltrans Class 2 Aggregate Requirements. Paving materials and execution shall match Caltrans requirements.
- q. Pavement marking paint material shall meet Caltrans specification PTH-02ALKYD, with reflective spheres meeting Caltrans specification 8010-004.

- r. Stop bar and marking, and stop sign and installation shall meet 2012 California Manual on Uniform Traffic Control Devices. Include the installation of 2 similar sign posts to be supplied by Mendocino Land Trust.

20.532.095(A)(3) The proposed development is consistent with the purpose and intent of the zoning district applicable to the property, as well as the provisions of this Division and preserves the integrity of the zoning district.

☒ *Consistent (without conditions of approval)*

Intent: The subject parcel is zoned Remote Residential as shown on the Zoning Display Map. The intent of the Remote Residential zoning district is "to be applied to lands within the Coastal Zone which have constraints for commercial agriculture, timber production or grazing, but which are well-suited for small scale farming, light agriculture and low density residential uses, or where land has already been divided and substantial development has occurred" (MCC Section 20.380.005). The property is currently vacant with a public access trail proposed. The passive recreational use of the parcel is consistent with the intent of the Remote Residential zoning district.

Use: The subject parcel is zoned Remote Residential as shown on the Zoning Display Map. The applicant proposes the construction of a public access trail with associated improvements. The proposed use is classified as passive recreation in Mendocino County Code. Passive recreation is a principally permitted use within the Remote Residential zoning district.

Density: The maximum dwelling density in the Remote Residential zoning district is one single family dwelling per forty (40) acres except as provided pursuant to Section 20.456.015 (Accessory Uses), Section 20.460.035 (Use of a Trailer Coach), and Section 20.460.040 (Family Care Unit) (MCC Section 20.380.025 (A)). The existing and proposed development does not conflict with the dwelling density standards of the Remote Residential zoning district.

Yards: The minimum required front, side, and rear yards in the Remote Residential zoning district for a parcel of this size are fifty (50) feet from all property boundaries (MCC Section 20.380.030 and MCC Section 20.380.035). The proposed public access trail with associated improvements is consistent with the yard setback requirements of the Remote Residential zoning district.

Height: The maximum permitted building height for structures in the Remote Residential zoning district and Highly Scenic Area is eighteen (18) feet (MCC Section 20.380.045). The proposed project consists of a public access trail with associated improvements. The maximum height of proposed improvements is less than ten (10) feet; therefore, the proposed project is consistent with the permitted maximum height in the Remote Residential zoning district.

Lot Coverage: The maximum permitted lot coverage in the Remote Residential zoning district is ten (10) percent for a parcel of this size (MCC Section 20.380.050). The parcel is approximately 3,182,058 square feet, allowing for a maximum permitted lot coverage of approximately 318,205 square feet. The proposed project consists of a public access trail with associated improvements; the trail will be approximately five feet in width and two miles in length. With the inclusion of the parking area in addition to the trail, the lot coverage on the parcel would be less than 60,000 square feet for a lot coverage percentage of approximately two (2) percent. The proposed development is consistent with the lot coverage requirements of the Remote Residential zoning district.

20.532.095(A)(4) The proposed development will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

☒ *Consistent (without conditions of approval)*

A draft Initial Study and Proposed Mitigated Negative Declaration has been prepared for the project drawing off of supporting materials provided by the applicant and consulting agents. The said materials were used in part to identify potentially significant impacts pursuant to CEQA Guidelines Section 15063. The draft environmental document is attached as **ATTACHMENT B - MITIGATED NEGATIVE DECLARATION**. All application materials are available for review at the Fort Bragg office of the Department of Planning and Building Services.

With the implementation of mitigation measures recommended in the Proposed Mitigated Negative Declaration, the proposed development will not have any significant adverse impacts on the environment within the meaning of CEQA.

20.532.095(A)(5) The proposed development will not have any adverse impacts on any known archaeological or paleontological resource.

☒ *Consistent (with conditions of approval)*

The applicant submitted two separate Archaeological Survey Reports prepared by Thad Van Bueren with the application. One Survey was completed for APN 027-151-08 (under Mendocino Land Trust ownership) on March 27, 2014 and a secondary Survey was completed for the trail easements on APNs 027-341-07 and 027-341-08 on August 18, 2014. Sites were identified within the project area. The Surveys were reviewed at the June 10, 2015 Mendocino County Archaeological Commission Hearing. Both Surveys were accepted by the Commission; however, additional recommendations were made requiring the applicant to cap the portions of the trail that traverse identified archaeological sites. Capping shall include at least eight (8) inches thick of material such as clean soil or gravel and shall be at least five (5) feet wide, two and one half (2 ½) feet on either side of trail centerline. **Condition 10** is recommended to protect identified sites in perpetuity.

Condition 10: The proposed trail shall be capped over those portions of trail that traverse the archaeological sites identified in the March 27, 2014 and August 18, 2014 Archaeological Survey's by Thad Van Bueren. Capping shall include at least eight (8) inches thick of material such as clean soil or gravel and shall be at least five (5) feet wide, two and one half (2 ½) feet on either side of trail centerline.

The applicant is also advised of the Mendocino County Archaeological Resources Ordinance, and specifically Section 22.12, commonly referred to as the "Discovery Clause." Recommended **Condition 8** similarly advises the applicant of the Discovery Clause, which prescribes the procedures subsequent to the discovery of any cultural resources during construction of the project, and states:

Condition 8: If any archaeological sites or artifacts are discovered during site excavation or construction activities, the applicant shall cease and desist from all further excavation and disturbances within one hundred (100) feet of the discovery, and make notification of the discovery to the Director of the Department of Planning and Building Services. The Director will coordinate further actions for the protection of the archaeological resource(s) in accordance with Section 22.12.090 of the Mendocino County Code.

With the inclusion of the recommended conditions of approval, the project is found consistent with protection of paleontological and archaeological resources.

20.532.095(A)(6) Other public services, including but not limited to, solid waste and public roadway capacity have been considered and are adequate to serve the proposed development.

☒ *Consistent (with conditions of approval)*

Solid Waste: The proposed project is to provide a public access trail and it is anticipated that public use of the trail will generate some amount of solid waste. An Accessway Management Plan is required to be completed by the applicant under **Condition 11** and shall include information on the maintenance and operation of the site.

Condition 11: Prior to issuance of the building permit, the applicants shall submit an Accessway Management Plan for the trail and associated improvements on the Pelican Bluffs parcel. At a minimum, the Accessway Management Plan shall:

- a. Provide a design which avoids or mitigates any public safety hazards and any adverse impacts on agricultural operations or identified coastal resources;
- b. Set forth the agency(ies) responsible for operating, maintaining and assuming liability for the accessway;

- c. Set forth any other known provisions such as facilities to be provided, signing, use restrictions and special design and monitoring requirements; and
- d. Set forth provisions for protecting the accessway from vandalism and/or improper use (e.g. guarded gate, security patrol, hours of operation or period/seasons of closure and fees, if any).

Roadway Capacity: The increase in traffic volume associated with the development proposed in the application will be negligible. Additionally, Mendocino Department of Transportation and Caltrans reviewed the application and did not state concerns relating to roadway capacity. The existing roadways and proposed private access are adequate to serve the proposed development.

20.532.095(B)(1) The proposed development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act and the Coastal Element of the General Plan.

☒ *Consistent (with conditions of approval)*

Coastal access is regulated under MCC Section 20.528, which provides minimum access standards, methods for securing access and policies related to management of public access trails. The project site is located west of Highway 1, and is designated as a potential public access trail location on the Local Coastal Plan maps (Map #'s 25 and 28). As a condition of permit approval for California Coastal Commission Coastal Development Permits #81-CC-307 and #1-86-22 the landowners of the parcels subject to the Permits were each required to dedicate a twenty-five (25) foot lateral access (Mendocino County Official Records Book 1320 Page 232 and Book 1553 Page 155). The twenty-five (25) foot lateral access is consistent with the minimum access standards contained in MCC Section 20.528.015. In order for the proposed project to be consistent with the requirements in Mendocino County Code, **Condition 11** is recommended requiring the applicant to provide an Accessway Management Plan, prior to the issuance of the building permits on the parcel.

The proposed project would open a public access trail on parcels designated for such a use under the Local Coastal Plan maps and is therefore consistent with the public access goals of Chapter 3 of the California Coastal Act and Mendocino County Coastal Element of the General Plan.

20.532.100 (A) Resource Protection Impact Findings	Inconsistent	Consistent (With Conditions of Approval)	Consistent (Without Conditions of Approval)	Not Applicable
(1) Development in Environmentally Sensitive Habitat Areas. No development shall be allowed in an ESHA unless the following findings are made:				
(a) The resource as identified will not be significantly degraded by the proposed development.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(b) There is no feasible less environmentally damaging alternative.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(c) All feasible mitigation measures capable of reducing or eliminating project related impacts have been adopted.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Discussion of Findings

20.532.100(A)(1), et. seq. No development shall be allowed in an ESHA unless the following findings are made...

☒ *Consistent (with conditions of approval)*

Several studies were prepared in association with this project: a Botanical Survey Report, Point Arena Mountain Beaver Survey, and a Reduced Buffer Zone Analysis. The 73.05 acre site contains several areas of sensitive habitats. Identified sensitive habitats on the site are as follows: Point Arena Mountain Beaver (*Aplodontia rufa nigra*), a Federally Listed Endangered Species; Supple daisy (*Erigeron supplex*), a California rare plant; Short-leaved evax (*Hesperis matronalis* var. *brevifolia*), a California rare plant; Point Reyes ceanothus (*Ceanothus gloriosus* var. *gloriosus*), a California rare plant; Minute pocket-moss (*Fissidens pauperculus*), a California rare

plant; Arroyo (*Salix lasiolepis*) and Sitka (*S. Sitchensis*) willow thicket, a supportive community to wetland species and riparian habitat; Bishop pine forest/Pacific reed grass (*Pinus muricata*/*Calamagrostis nutkaensis*), a rare plant community; and Bishop pine forest (*Pinus muricata*), a rare plant community.

Mendocino County Code requires that all proposed improvements be located a minimum one-hundred (100) feet from all sensitive habitats, unless a qualified biologist prepares a Reduced Buffer Analysis to reduce the buffer to fifty (50) feet. Table 1, taken from the Reduced Buffer Zone Analysis document, describes the buffer distance to identified sensitive habitats and recommended actions. Please note that the Point Arena Mountain Beaver is not included in the table as the analysis was done separately and all proposed improvements will maintain a greater than one-hundred (100) foot buffer to identified habitat.

Table 1. ESHAs and Recommended Actions

ESHAs	Reduced Buffer	Recommended Action
Pt. Reyes ceanothus (<i>Ceanothus gloriosus</i> var. <i>gloriosus</i>)	50 – 100 ft.	A "Watch List" species (CRPR 4), more information about this plant needs to be obtained. It has no state or federal protection status. Trail proposed within 50 ft, designed to maximize buffer width of the adjacent and rarer supple daisy.
Supple daisy (<i>Erigeron supplex</i>)	> 100 ft.	No compensation necessary
Minute pocket moss (<i>Fissidens pauperculus</i>)	> 100 ft.	No compensation necessary
Short-leaved evax (<i>Hesperivax sparsifolia</i> var. <i>brevifolia</i>)	50 – 100 ft.	No trail will be constructed within 50 feet of the short-leaved evax occurrence.
Bishop pine (<i>Pinus muricata</i>) forest	No buffer	No trees will be removed. Trail will be designed to discourage off trail use to minimize impacts to understory plant community.
Bishop pine (<i>Pinus muricata</i>)/Pacific reed grass (<i>Calamagrostis sitchensis</i>)	Not less than 50 ft.	Trail will be designed to discourage off trail use. A 50 ft. buffer is adequate to prevent impact to the forest/grassland association.
Arroyo (<i>Salix lasiolepis</i>) and Sitka (<i>S. sitchensis</i>) willow thicket	No buffer	Construction of elevated pedestrian walkways to avoid impact to understory vegetation. The walkways will utilize natural gaps in willow cover along the seasonal drainage.

While a reduced buffer analysis was completed for the proposed project, the proposed trail alignment will still traverse through an ESHA. In order to permit development within a buffer area, the proposed project must comply with MCC Section 20.496.020(A)(4). The proposed project is consistent with the policies related to development within an ESHA buffer because the proposed public access trail will:

- While human activity levels will be increased by the acquisition of this site for public use and the construction of trails, these activities will be directed to walkways and trails that avoid all sensitive resources. Prior use of this parcel was a cattle ranch where cattle roamed freely throughout the parcel resulting in considerable ecological damage, displacement of native species, and, establishment of invasive exotics.
- The proposed trail will be compatible with the function and ability of the ESHAs to self-sustain.

- Trail development shall be located in a way that will minimize impacts to all ESHAs. Gradual sloping of trails and switchbacks will be employed to minimize erosion. Where switchbacks occur trails will be designed to employ visual obscuration of the lower segment of the trail to discourage "short-cuts" between segments of the trail. Bluff edges will be avoided by locating the trail within 50 to 100' of the short-leaved evax that is located on the edge of the bluff, yet near enough to the bluff to satisfy the public attraction to view the Pacific Ocean without impacting sensitive species and fragile bluff communities.
- Adjacent lands are tilled and farmed to the north and the parcel to the south has a driveway and a residence constructed on the site. The proposed hiking trail is not expected to cause negative impacts to the sensitive resources within the Reserve or outside of it. The hydrology of the site will not be altered by trail construction. Trails will be located in such a way that impact to sensitive resource will be avoided, and the creation of "social trails" minimized.
- The elevated walkway and bridge are necessary improvements facilitating the movement of hikers through the willow thicket and across the drainage with minimal impact.
- The trail will not cause impacts that would degrade adjacent areas; impact will be restricted to the trail footprint. The location of the trail within the coastal prairie/ coyote brush scrubland and Bishop pine forest will be designed to minimize erosion and discourage "social trails". Where soil-types are fragile along the shale band within the transition between upper and lower terraces the grade of the trail will be gradual to prevent degradation by foot traffic.
- The elevated walkway and bridge are necessary improvements facilitating the movement of hikers through the willow thicket and across the drainage with minimal impact. Impacts to riparian vegetation will be isolated to areas where pier blocks are placed at 6-foot intervals on each side of the elevated walkway. Bridge footings will consist of five 8-inch diameter posts driven in a minimum of 3-feet deep and covered by a concrete footing 4-foot wide and 2.8-inch long bars at each end of the bridge. Any native plants that will be impacted by construction-related disturbance shall be removed, conserved during construction and replanted in the disturbed areas surrounding the bridge footings. These plants shall be maintained by watering until they are established. No other structures within ESHAs are proposed.
- No trees shall be harvested within the Bishop pine forest. Some limbs may be removed to reduce hazards to hikers and allow hikers to stay on the trail.
- No woody riparian vegetation (willows) will be removed because the crossings will go through natural gaps in the willow gaps. Herbaceous vegetation that will be impacted from walkway construction will be replaced at the recommended 1:1 ratio. Any native plants that will be impacted by construction-related disturbance shall be removed, conserved during construction and replanted in the disturbed areas surrounding the bridge footings.
- No significant obstruction of peak surface water flows from 100 year flood events are expected from construction of the elevated walkway or the bridge.
- The trail and bridge/walkway structures are not expected to have measurable impacts to the hydrologic capacity of the site.
- The trail and bridge/walkway structures are not expected to have measurable impacts to ground water flow within the ESHA buffer zones.
- The proposed ESHA buffers are designed to avoid significant adverse impact to all ESHAs.

The trail has been designed to avoid many of the sensitive habitat areas; however, there are several locations where the trail will traverse through a sensitive habitat area. Mitigation measures such as construction of an elevated pedestrian walkway over these areas and no removal of vegetation as part of the project design result in less than significant impacts to the identified rare plants, animals and habitats.

Table 2: Impact Analysis and Mitigation Measures

Impact to ESHA	Mitigation
1) Pt. Reyes ceanothus (<i>Ceanothus gloriosus</i> var. <i>gloriosus</i>): foot trail potentially within 50 ft. of ESHA edge will avoid impact to Pt. Reyes ceanothus and habitat that supports this ESHA	Since this is a "Watch List" species (CRPR 4), more information about this plant needs to be obtained. Population status shall be monitored yearly by establishing 1 or 2 permanent photo points.
2) Supple daisy (<i>Erigeron supplex</i>): Sufficient buffers well over 100ft. will help to avoid impact from hikers to the supple daisy. Any off-trail disturbance could potentially degrade supple daisy habitat.	As stated previously, the trail extending through the shale area which supports supple daisy will be constructed to avoid using short cuts. Simple photo plots shall be employed to monitor this rare species yearly.
3) Minute pocket moss (<i>Fissidens pauperculus</i>): The location of the minute pocket moss is hidden and far enough from proposed crossing structures to be impacted.	No mitigation necessary
4) Short-leafed evax (<i>Hesperivax sparsifolia</i> var. <i>brevifolia</i>): The trail will be constructed sufficiently far from the bluff edge to avoid impact to potential habitat.	No mitigation necessary.
5) Bishop pine (<i>Pinus muricata</i>) forest: impact is expected to be restricted to the footprint of the trail.	Mitigating human-caused impacts to the Bishop pine forest shall involve trash cleanup, erasing social trails, and where possible, encouraging natural regeneration.
6) Bishop pine (<i>Pinus muricata</i>)/Pacific reed grass (<i>Calamagrostis sitchensis</i>): Same as #5 above	Same as #5 above
7) Arroyo (<i>Salix lasiolepis</i>) and Sitka (<i>S. sitchensis</i>) willow thicket: impact will be restricted to vegetation disturbance at footings and abutments of walkways and bridges at two crossings.	Yearly monitoring shall be done at crossing sites to ensure structural integrity is maintained. Any invasive species shall be eradicated on a yearly basis before they become established and spread. Herbaceous vegetation that will be impacted from walkway construction will be replaced at the recommended 1:1 ratio.

Part of the proposed project will require the installation of a bridge over a seasonal drainage area. Mendocino Land Trust is in the process of obtaining a Lake and Streambed Alteration Agreement (LSAA) with the California Department of Fish and Wildlife. Mitigation for the loss of the area covered by the footings for the bridge will be required. The objective is to restore a wetland area measuring no less than sixty (60) square-feet by removing invasive plants and allowing native plants to colonize the area. The site to be restored is within the wetland area directly adjacent to the boardwalk. Annual reporting will be provided to California Department of Fish and Wildlife staff. **Condition 9** is recommended requiring all recommendations from the various biological surveys and resource agencies as conditions of approval.

In summary, although the proposed project minimally impacts biological resources but is considered an allowable use within an ESHA area, as the trail will provide nature study opportunities with interpretive signage. Nature study is an allowable use in wetlands, per MCC Section 20.496.025 (A)(10). The proposed trail project would not significantly degrade resources on the parcels, rather it will provide the public the opportunity to learn about and observe some of the natural areas of the Mendocino Coast. There is no feasible less environmentally damaging alternative, as relocation to other areas on the parcel would require significantly more vegetation removal, grading, and disruption of natural areas. The selected alignment avoids ESHAs to the greatest extent feasible, while still accomplishing the goal of the project to provide public access along this area of the coast. All feasible mitigation measures are required as conditions of approval to reduce project impacts to a less than significant level. The proposed project is therefore consistent with Mendocino County Code regulations for the protection of natural resources.

References:

Chapter 2.2. Mendocino County, Planning and Building Services, Planning Division. *The County of Mendocino-General Plan*. 1991. Ukiah, CA.

Chapter 2 Mendocino County, Planning and Building Services, Planning Division. *The County of Mendocino-Coastal Element*. 1985. Ukiah, CA.

Louisa Morris, Mendocino Land Trust/Conservation and Trails Consultant/PAMB Certified Surveyor. *Point Arena Mountain Beaver Survey*. September, 24, 2014.

Kerry Heise and Geri-Hulse Stephens, Botanical Consulting. *Botanical Resources of the Pelican Bluffs Reserve*. September 15, 2014.

Kerry Heise and Geri-Hulse Stephens, Botanical Consulting. *Reduced Buffer Zone Analysis, Pelican Bluffs Reserve, Mendocino County, CA, CDP 42-2014*. January 5, 2015.

State of California Special Studies Zones, Department of Conservation, Division of Mines and Geology.

Thad Van Bueren, Archaeological Reports March 27, 2014 and August 18, 2014

DATE: NOVEMBER 18, 2015

CASE NUMBER: CDP_2014-0042

OWNER: MENDOCINO LAND TRUST, RON LaFRANCHI, DIANE FERRARA

APPLICANT: MENDOCINO LAND TRUST

PROJECT DESCRIPTION: The project is for the construction of a public access trail along Pelican Bluffs. Construction of the trail will require the installation of a parking area, foot-bridge, approximately one hundred (100) steps, approximately eighty (80) feet of boardwalk, approximately ten (10) interpretive and management signs, two (2) benches, and two (2) picnic tables. The Pelican Bluffs trail will loop around the property from the trailhead in the northeast corner of the property west towards the bluff, where it will follow the western property boundary before looping back to the trailhead. The trail will also extend south within 25-foot public access easements on private property (APNs: 027-341-07 (LaFranchi) and 027-341-08 (Ferrara)) for a total length of approximately two (2) miles. Public access easements are held by Moat Creek Managing Agency, a partner organization of Mendocino Land Trust.

LOCATION: In the Coastal Zone, approximately one mile south of the City of Point Arena, on the west side of Highway 1, approximately 600 feet south of its intersection with Curley Lane (CR 504A). Located between post miles 14.26 and 13.86, plus two public access easements at 26300 and 26600 South Highway 1 (APNs: 027-151-08 (Mendocino Land Trust), 027-341-07 (LaFranchi), and 027-341-08 (Ferrara)).

Environmental Checklist.

"Significant effect on the environment" means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project, including land, air, water, minerals, flora, fauna, ambient noise, and aesthetic significance. An economic or social change by itself shall not be considered a significant effect on the environment. A social or economic change related to a physical change, may be considered in determining whether the physical change is significant (CEQA Guidelines, Section 15382).

Accompanying this form is a list of discussion statements for all questions, or categories of questions, on the Environmental Checklist. This includes explanations of "no" responses.

ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:

The environmental factors checked below would be potentially affected by this project, involving at least one impact that is a "Potentially Significant Impact" as indicated by the checklist on the following pages.

<input type="checkbox"/> Aesthetics	<input type="checkbox"/> Agriculture and Forestry Resources	<input type="checkbox"/> Air Quality
<input type="checkbox"/> Biological Resources	<input type="checkbox"/> Cultural Resources	<input type="checkbox"/> Geology /Soils
<input type="checkbox"/> Greenhouse Gas Emissions	<input type="checkbox"/> Hazards & Hazardous Materials	<input type="checkbox"/> Hydrology / Water Quality
<input type="checkbox"/> Land Use / Planning	<input type="checkbox"/> Mineral Resources	<input type="checkbox"/> Noise
<input type="checkbox"/> Population / Housing	<input type="checkbox"/> Public Services	<input type="checkbox"/> Recreation
<input type="checkbox"/> Transportation/Traffic	<input type="checkbox"/> Utilities / Service Systems	<input type="checkbox"/> Mandatory Findings of Significance

I. AESTHETICS. Would the project:	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Have a substantial adverse effect on a scenic vista?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c) Substantially degrade the existing visual character or quality of the site and its surroundings?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

The proposed project consists of opening a public access trail on the above referenced parcels. The trail will provide a positive benefit by making a scenic vista available to the public at large, with appropriate trail design and accessory improvements to minimize potential adverse environmental impacts on the site.

The project is located in an area that is designated Highly Scenic by the Local Coastal Program. The project is therefore subject to Local Coastal Program Visual Resource policies relating to Highly Scenic Areas. Pertinent policies include those related to the protection of coastal views from public areas, minimization of reflective surfaces and minimization of the visual disturbance from the access off Highway 1. The proposed project is for the development of a public access trail on the subject parcel and adjacent public access easements. The trail will be constructed at grade, with minimal development above grade. Additionally, the access to the parcel has been designed to be located as close as feasible to existing access roads and near existing vegetation, minimizing the visual impact. Improvements on the site will be primarily left as natural colors. Each proposed sign will be painted to reduce the reflectivity of the proposed signage.

The proposed project consists of opening a public access trail with associated improvements. The site is currently vacant and so any improvement on the site has the potential to result in a degradation of the visual character or quality of the site. The primary visual impact from the project will be the construction of the parking area for the trail. The parking area will be the most visible of the proposed improvements from Highway 1. Staff does not find that the proposed parking area would be considered a substantial degradation, as it has been designed and sited to minimize the removal of existing vegetation that would act as a screening buffer, and to minimize obtrusion of the parking area into the natural areas of the parcel.

No exterior lighting is proposed with this application. The proposed signage is the only portion of the proposed development with the potential to create a substantial source of glare. The applicant has designed the signage to be painted aluminum and therefore reduces the amount of glare from the project.

No conditions of approval are necessary to ensure project impacts will be held to a less than significant level.

II. AGRICULTURE AND FORESTRY RESOURCES. Would the project:	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code section 12220(g)), timberland (as defined by Public Resources Code section 4526), or timberland zoned Timberland Production (as defined by Government Code section 51104(g))?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Result in the loss of forest land or conversion of forest land to non-forest use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use or conversion of forest land to non-forest use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Adjacent lands are tilled and farmed to the north and the parcel to the south has a driveway and a residence constructed on the site. The lands to the north and east of the subject parcel are under Williamson Act Contract (in 2014). The proposed hiking trail is not expected to cause negative impacts to the sensitive resources within the parcel boundaries or outside of it. The project would not convert any land designated "Prime Farmland," "Unique Farmland," or "Farmland of Statewide Importance" to non-agricultural uses.

III. AIR QUALITY. Where available, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make the following determinations. Would the project:	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Conflict with or obstruct implementation of any applicable air quality plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d) Expose sensitive receptors to substantial pollutant concentrations?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Create objectionable odors affecting a substantial number of people?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

The project is located within the jurisdiction of the Mendocino County Air Quality Management District (AQMD). Any new emission point source is subject to an air quality permit, consistent with the district's air quality plan, prior to project construction.

The project will not include a new point source, and would contribute minimally to emissions, as the site proposes minimal earth movement, and no residential development. The generation of dust during grading activities, a type of area-source emission, will be limited by the County's standard grading and erosion control requirements (MCC Sections 20.492.010; -020). These policies limit ground disturbance and require immediate revegetation after the disturbance. Consequently, existing County requirements will help to ensure PM10 generated by the project will not be significant and that the project will not conflict with nor obstruct attainment of the air quality plan PM10 reduction goals.

The project will establish a public access trail with associated improvements on a currently vacant parcel, surrounded primarily by residential and agricultural uses. Approval of this project will not permit large-scale development that may result in a cumulatively considerable net increase in air pollution, including PM10.

Additionally, there are no short-term or long-term activities or processes associated with the establishment of the public access trail that will create objectionable odors. Nor are there any uses in the surrounding area that are commonly associated with a substantial number of people (i.e., churches, schools, etc.) that could be affected by any odor generated by the project.

No conditions are necessary to reduce potential project impacts to a less than significant level.

IV. BIOLOGICAL RESOURCES: Would the project:	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

California Department of Fish and Game or US Fish and Wildlife Service?				
c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

The certified Mendocino County LCP includes sections of both the MCC and the Coastal Element of the General Plan addressing Environmentally Sensitive Habitat Areas (ESHA). The MCC states that development having the potential to impact an ESHA shall be subject to a biological survey, prepared by a qualified biologist, to determine the extent of sensitive resources, to document potential negative impacts, and to recommend appropriate mitigation measures.

Several studies were prepared in association with this project, a Botanical Survey Report, Point Arena Mountain Beaver Survey, and a Reduced Buffer Zone Analysis. The 73.05 acre site contains several areas of sensitive habitats. Identified sensitive habitats on the site are as follows: Point Arena Mountain Beaver (*Aplodontia rufa nigra*), a Federally Listed Endangered Species; Supple daisy (*Erigeron supplex*), a California rare plant; Short-leaved evax (*Hesperis matronalis* var. *brevifolia*), a California rare plant; Point Reyes ceanothus (*Ceanothus gloriosus* var. *gloriosus*), a California rare plant; Minute pocket-moss (*Fissidens pauperculus*), a California rare plant; Arroyo (*Salix lasiolepis*) and Sitka (*S. Sitchensis*) willow thicket, a supportive community to wetland species and riparian habitat; Bishop pine forest/Pacific reed grass (*Pinus muricata*/*Calamagrostis nutkaensis*), a rare plant community; and Bishop pine forest (*Pinus muricata*), a rare plant community.

Mendocino County Code requires that all proposed improvements be located a minimum of one-hundred (100) feet from all sensitive habitats, unless a qualified biologist prepares a Reduced Buffer Analysis to reduce the buffer to fifty (50) feet. Table 1, taken from the Reduced Buffer Zone Analysis document, describes the buffer distance to identified sensitive habitats and recommended actions. Please note that the Point Arena Mountain Beaver is not included in the table as the analysis was done separately and all proposed improvements will maintain a greater than one-hundred (100) foot buffer to identified Point Arena Mountain Beaver habitat.

Table 1. ESHAs and Recommended Actions

ESHAs	Reduced Buffer	Recommended Action
Pt. Reyes ceanothus (<i>Ceanothus gloriosus</i> var. <i>gloriosus</i>)	50 – 100 ft.	A "Watch List" species (CRPR 4), more information about this plant needs to be obtained. It has no state or federal protection status. Trail proposed within 50 ft, designed to maximize buffer width of the adjacent and rarer supple daisy.
Supple daisy (<i>Erigeron supplex</i>)	> 100 ft.	No compensation necessary
Minute pocket moss (<i>Fissidens pauperculus</i>)	> 100 ft.	No compensation necessary

Short-leaved evax (<i>Hesperervax sparsifolia</i> var. <i>brevifolia</i>)	50 – 100 ft.	No trail will be constructed within 50 feet of the short-leaved evax occurrence.
Bishop pine (<i>Pinus muricata</i>) forest	No buffer	No trees will be removed. Trail will be designed to discourage off trail use to minimize impacts to understory plant community.
Bishop pine (<i>Pinus muricata</i>)/Pacific reed grass (<i>Calamagrostis sitchensis</i>)	Not less than 50 ft.	Trail will be designed to discourage off trail use. A 50 ft. buffer is adequate to prevent impact to the forest/grassland association.
Arroyo (<i>Salix lasiolepis</i>) and Sitka (<i>S. sitchensis</i>) willow thicket	No buffer	Construction of elevated pedestrian walkways to avoid impact to understory vegetation. The walkways will utilize natural gaps in willow cover along the seasonal drainage.

While a reduced buffer analysis was completed for the proposed project, the proposed trail alignment will still traverse an ESHA. In order to permit development inside a buffer area, the proposed project must comply with MCC Section 20.496.020(A)(4). The proposed project is consistent with the policies related to development within an ESHA buffer for the following reasons:

- While human activity levels will be increased by the acquisition of this site for public use and the construction of trails, these activities will be directed to walkways and trails that avoid all sensitive resources. Prior use of this parcel was a cattle ranch where cattle roamed freely throughout the parcel resulting in considerable ecological damage, displacement of native species, and, establishment of invasive exotics.
- The proposed trail will be compatible with the function and ability of the ESHAs to self-sustain.
- Trail development will be located in a way that will minimize impacts to all ESHAs. Gradual sloping of trails and switchbacks will be employed to minimize erosion. Where switchbacks occur trails will be designed to employ visual obscuration of the lower segment of the trail to discourage "short-cuts" between segments of the trail. Bluff edges will be avoided by locating the trail within 50 to 100 feet of the short-leaved evax that is located on the edge of the bluff. The trail will be near enough to the bluff to satisfy the public attraction to views of the Pacific Ocean without impacting sensitive species and fragile bluff communities.
- Adjacent lands to the north are tilled and farmed and the parcel to the south has a driveway and a residence constructed on the site. The proposed hiking trail is not expected to cause negative impacts to the sensitive resources within the parcel boundaries or outside of it. The hydrology of the site will not be altered by trail construction. Trails will be located in such a way that impact to sensitive resource will be avoided, and the creation of "social trails" minimized.
- The elevated walkway and bridge are necessary improvements facilitating the movement of hikers through the willow thicket and across the drainage with minimal impact.
- The trail will not cause impacts that would degrade adjacent areas; impact will be restricted to the trail footprint. The location of the trail within the coastal prairie/coyote brush scrubland and Bishop pine forest will be designed to minimize erosion and discourage "social trails". Where soil-types are fragile along the shale band within the transition between upper and lower terraces the grade of the trail will be gradual to prevent degradation by foot traffic.
- The elevated walkway and bridge are necessary improvements facilitating the movement of hikers through the willow thicket and across the drainage with minimal impact. Impacts to riparian vegetation will be isolated to areas where pier blocks are placed at 6-foot intervals on each side of the elevated walkway. Bridge footings will consist of five 8-inch diameter posts driven in a minimum of 3-feet deep and covered by a concrete footing 4-foot wide and 2.8-inch long bars at each end of the bridge. Any native plants that will be impacted by construction-related disturbance shall be removed, conserved during construction and replanted in the disturbed areas surrounding the bridge footings. These plants shall be maintained by watering until they are established. No other structures within ESHAs are proposed.
- No trees shall be harvested within the Bishop pine forest. Some limbs may be removed to reduce hazards to hikers and allow hikers to stay on the trail.

- No woody riparian vegetation (willows) will be removed because the crossings will go through natural gaps in the willows. Herbaceous vegetation that will be impacted from walkway construction will be replaced at the recommended 1:1 ratio. Any native plants that will be impacted by construction-related disturbance shall be removed, conserved during construction and replanted in the disturbed areas surrounding the bridge footings.
- No significant obstruction of peak surface water flows from 100-year flood events are expected from construction of the elevated walkway or the bridge.
- The trail and bridge/walkway structures are not expected to have measurable impacts to the hydrologic capacity of the site.
- The trail and bridge/walkway structures are not expected to have measurable impacts to ground water flow within the ESHA buffer zones.
- The proposed ESHA buffers are designed to avoid significant adverse impact to all ESHAs.

The trail has been designed to avoid many of the sensitive habitat areas; however, there are several locations where the trail will traverse through a sensitive habitat area. Mitigation measures such as construction of an elevated pedestrian walkway over these areas and no removal of vegetation as part of the project design result in less than significant impacts to the identified rare plants, animals and habitats.

Table 2: Impact Analysis and Mitigation Measures

Impact to ESHA	Mitigation
1) Pt. Reyes ceanothus (<i>Ceanothus gloriosus</i> var. <i>gloriosus</i>): foot trail potentially within 50 ft. of ESHA edge will avoid impact to Pt. Reyes ceanothus and habitat that supports this ESHA	Since this is a "Watch List" species (CRPR 4), more information about this plant needs to be obtained. Population status should be monitored yearly which could simply involve establishing 1 or 2 permanent photo points.
2) Supple daisy (<i>Erigeron supplex</i>): Sufficient buffers well over 100ft. will help to avoid impact from hikers to the supple daisy. Any off-trail disturbance could potentially degrade supple daisy habitat.	As stated previously, the trail extending through the shale area which supports supple daisy will be constructed in such a way as to avoid using short cuts. Simple photo plots could be employed to monitor this rare species yearly, however, care should be taken not to approach the site from the established trail as this could invite others to explore and potentially impact the ESHA.
3) Minute pocket moss (<i>Fissidens pauperculus</i>): The location of the minute pocket moss is hidden and far enough from proposed crossing structures to be impacted.	No mitigation necessary
4) Short-leaved evax (<i>Hesperevax sparsifolia</i> var. <i>brevifolia</i>): The trail will be constructed sufficiently far from the bluff edge to avoid impact to potential habitat.	No mitigation necessary. Care should be taken if monitoring is conducted as activities near the bluff edge could encourage others to investigate and potentially impact the ESHA habitat.
5) Bishop pine (<i>Pinus muricata</i>) forest: impact is expected to be restricted to the footprint of the trail.	Mitigating any potential human-caused impact to the Bishop pine forest would likely involve trash cleanup, erasing social trails, and where possible, encouraging natural regeneration.
6) Bishop pine (<i>Pinus muricata</i>)/Pacific reed grass (<i>Calamagrostis sitchensis</i>): Same as #5 above	Same as #5 above
7) Arroyo (<i>Salix lasiolepis</i>) and Sitka (<i>S. sitchensis</i>) willow thicket: impact will be restricted to vegetation disturbance at footings and abutments of walkways and bridges at two crossings.	Yearly monitoring should be done at crossing sites to ensure structural integrity is maintained. Any invasive species should be eradicated on a yearly basis before they become established and spread. Herbaceous vegetation that will be impacted from walkway construction will be replaced at the recommended 1:1 ratio.

Part of the proposed project will require the installation of a bridge over a seasonal drainage area. Mendocino Land Trust is in the process of obtaining a Lake and Streambed Alteration Agreement (LSAA) with the California Department of Fish and Wildlife. Mitigation for the loss of the area covered by the footings for the bridge will be required. The objective is to restore a wetland area measuring no less than sixty (60) square-feet by removing invasive plants and allowing native plants to colonize the area. The site to be restored is within the wetland area directly adjacent to the boardwalk. Annual reporting will be provided to California Department of Fish and Wildlife staff. **Condition 9** is recommended requiring all recommendations from the various biological surveys and resource agencies as conditions of approval.

Condition 9: In order to provide for the protection of Natural Resources, the following shall be completed by the applicant:

- a. The populations of Pt. Reyes ceanothus (*Ceanothus gloriosus* var. *gloriosus*), short-leaved evax (*Hesperis matronalis* var. *brevifolia*), and supple daisy (*Erigeron supplex*) shall be monitored yearly. One or two permanent photo points shall be established with yearly monitoring for five years following project approval. Results of the monitoring shall be submitted to the Department of Planning and Building Services. Care shall be taken when performing the yearly monitoring to not approach the sites from the established trail as this could invite others to explore and potentially impact the ESHA.
- b. The Arroyo (*Salix lasiolepis*) and Sitka (*Salix sitchensis*) willow thicket shall be monitored yearly at the crossing sites to ensure structural integrity is maintained. Hand removal of invasive species shall be completed on a yearly basis before they become established and spread. Herbaceous vegetation that is impacted from the walkway construction shall be replaced at a 1:1 ratio.
- c. California Department of Fish and Wildlife confirmed that a minimum of a fifty (50) foot buffer shall be maintained between proposed improvements and identified ESHA, except for the resources where the trail must cross within fifty (50) feet. Only those resources specifically outlined in the staff report shall have a buffer of less than fifty (50) feet.
- d. Restore a wetland area measuring no less than sixty (60) square-feet by removing invasive plants and allowing native plants to colonize the area.
 - i. The site to be restored shall be within the wetland area directly adjacent to the boardwalk. Mendocino Land Trust shall delineate (flag or stake), photo-document and provide a map of the restoration area; compile a plant species list; and estimate cover of native plants and non-native plants within the restoration area.
 - ii. The mitigation plan shall be in effect for no less than five (5) years. Within the mitigation area, non-native plants shall be removed to encourage the spread and establishment of nearby native plants. After initial removal of non-native plants, follow-up work shall occur on a quarterly basis or as necessary (at the discretion of the California Department of Fish and Wildlife). On at least a quarterly basis, Mendocino Land Trust shall monitor the project site, including photo-documentation and an estimate of native and non-native plant cover. On at least an annual basis, this information shall be compiled and reported to the California Department of Fish and Wildlife.
 - iii. Success Criteria/Performance Standards are at the discretion of the California Department of Fish and Wildlife and the stipulations of the Lake and Streambed Alteration Agreement obtained by Mendocino Land Trust.

In summary, the proposed project impacts biological resources but is considered an allowable use within an ESHA area, as the trail will provide nature study opportunities with interpretive signage. The proposed trail project will not significantly degrade the resources on the parcel, rather it will provide the public the opportunity to learn about and observe some of the natural areas of the Mendocino Coast. There is no feasible less environmentally damaging alternative, as relocation to other areas on the parcel would require significantly more vegetation removal, grading, and disruption of natural areas. The selected alignment avoids ESHAs to the greatest extent feasible, while still accomplishing the goal of the project to provide public access along this area of the coast. All feasible mitigation measures are required as conditions of approval to reduce project impacts to a less than significant level.

<u>V. CULTURAL RESOURCES.</u> Would the project:	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Cause a substantial adverse change in the significance of a historical resource as defined in § 15064.5?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to § 15064.5?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Disturb any human remains, including those interred outside of formal cemeteries?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

The applicant submitted two separate Archaeological Survey Reports prepared by Thad Van Bueren with the application. One Survey was completed for APN 027-151-08 (under Mendocino Land Trust ownership) on March 27, 2014 and a secondary Survey was completed for the trail easements on APNs 027-341-07 and 027-341-08 on August 18, 2014. Sites were identified within the project area. The Surveys were reviewed at the June 10, 2015 Mendocino County Archaeological Commission Hearing. Both Surveys were accepted by the Commission; however, additional recommendations were made requiring the applicant to cap the portions of the trail that traverse identified archaeological sites. Capping will include at least eight (8) inches thick of material such as clean soil or gravel and shall be at least five (5) feet wide, two and one half (2 ½) feet on either side of trail centerline. **Condition 10** is recommended to protect identified sites in perpetuity.

Condition 10: The proposed trail shall be capped over those portions of trail that traverse the archaeological sites identified in the March 27, 2014 and August 18, 2014 Archaeological Survey's by Thad Van Bueren, on-file with the Department of Planning and Building Services. Capping shall include at least eight (8) inches thick of material such as clean soil or gravel and shall be at least five (5) feet wide, two and one half (2 ½) feet on either side of trail centerline.

The applicant is also advised of the Mendocino County Archaeological Resources Ordinance, and specifically Section 22.12, commonly referred to as the "Discovery Clause." Recommended **Condition 8** similarly advises the applicant of the Discovery Clause, which prescribes the procedures subsequent to the discovery of any cultural resources during construction of the project, and states:

Condition 8: If any archaeological sites or artifacts are discovered during site excavation or construction activities, the applicant shall cease and desist from all further excavation and disturbances within one hundred (100) feet of the discovery, and make notification of the discovery to the Director of the Department of Planning and Building Services. The Director will coordinate further actions for the protection of the archaeological resource(s) in accordance with Section 22.12.090 of the Mendocino County Code.

With the inclusion of the recommended conditions of approval, the project is found consistent with protection of paleontological and archaeological resources.

<u>VI. GEOLOGY AND SOILS.</u> Would the project:	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

ii) Strong seismic ground shaking?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
iii) Seismic-related ground failure, including liquefaction?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
iv) Landslides?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Result in substantial soil erosion or the loss of topsoil?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e) Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

The property neither lies within, nor does it adjoin a mapped Alquist-Priolo Earthquake fault zone. The San Andreas fault is located approximately three (3) miles to the northeast of the project site and is the nearest active fault. The site, like the rest of Mendocino County, is subject to strong ground shaking. Figure 3-12 of the Mendocino County General Plan indicates that the subject parcel is not located in a known area of soil liquefaction.

The subject property is located west of the highway and slopes gently toward the bluff edge. There are no translational/rotational or debris slides mapped on the subject parcel.

The main structures being constructed under this project are the bridge and parking area. Both have been designed by a licensed civil engineer and have been designed to be stable structures and reduce erosion, resulting in less than significant impacts.

The proposed project is located in a relatively flat coastal terrace area. The proposed structures may be located on expansive soil, thereby creating risks to life or property. Both structures have been engineered by a licensed civil engineer, and will be further reviewed for expansive soils at the building permit phase, which may require site-specific soil reports to identify and mitigate potential hazards, thereby reducing risks to a less than significant level.

The proposed project consists of a public access trail, and does not include the installation of septic facilities on the site. If septic facilities are proposed, soil work will be completed to determine if the site is suitable for development of a septic system.

VII. GREENHOUSE GAS EMISSIONS. Would the project:	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Assembly Bill 32 (AB32), the California Global Warming Solutions Act, 2006 recognized that California is a source of substantial amounts of greenhouse gas (GHG) emission which poses a serious threat to the economic well-being, public health, natural resources, and the environment of California. AB32 established a state goal of reducing GHG emission to 1990 levels by the year 2020 with further reductions to follow. In order to address global climate change associated with air quality impacts, CEQA statutes were amended to require evaluation of GHG emission which includes criteria air pollutants (regional) and toxic air contaminants (local). As a result, Mendocino County Air Quality Management District (AQMD) adopted CEQA thresholds of significance for criteria air pollutants and GHGs, and issued updated CEQA guidelines to assist lead agencies in evaluating air quality

impacts to determine if a project's individual emissions would be cumulatively considerable. According to the AQMD, these CEQA thresholds of significance are the same as those which have been adopted by the Bay Area Air Quality Management District (BAAQMD). Pursuant to the BAAQMD CEQA Guidelines, the threshold for project significance of GHG emissions is 1,100 metric tons CO₂e (CO₂ equivalent) of operation emission on an annual basis. This project as proposed, creating a public access trail, will have no impact and be below the threshold for project significance of 1,100 metric tons CO₂e.

Given the limited scale of development on the parcel, the GHG generated by the project will not have a significant impact on the environment.

VIII. HAZARDS AND HAZARDOUS MATERIALS. Would the project:	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

The project will establish a public access trail involving the routine transport, use and disposal of hazardous materials never or in small quantities. These materials include power tools and asphalt. Storage of these materials in the open may result in contaminated stormwater runoff being discharged into nearby water bodies, including the Pacific Ocean.

This potential hazard is not significant if these materials are properly stored on the project site and then disposed at an approved collection facility. Potential impacts involving the transport, use or disposal of hazardous materials are less than significant. **Condition 12** is recommended to require all specifications stated in the parking plan as conditions of approval.

Condition 12: All Construction Notes on the Pelican Bluffs Parking Plan shall be complied with during construction of the parking area. If deviation from the Construction Notes is required, such deviation shall only

be permissible if agreed upon by the Department of Planning and Building Services and a licensed civil engineer. Construction Notes are as follows:

- a. No construction shall commence without prior approval of the County of Mendocino's Supervising Engineer and California Department of Transportation.
- b. The Contractor shall call Underground Service Alert (USA) at (800)227-2600 at least 48 hours prior to any excavation for markouts of existing underground facilities.
- c. Any damages to County or other utilities caused by project operations shall be the Contractor's responsibility.
- d. The Contractor shall be responsible for immediate off-site disposal of all bituminous pavement, concrete, reinforcement, vegetation, and spoils not needed for backfill.
- e. All workmanship, materials, and construction shall conform to the County of Mendocino Standard Plans, the Construction Specifications for Public Improvements, the Special Provisions for this project, and the State Standard Specifications and Standard Plans.
- f. All traffic control shall be in accordance with the latest edition off the California Department of Transportation Manual of Traffic for Construction and Maintenance of Work Zones.
- g. All signs shall be appropriately constructed with reflective material on a backing of metal or fabric (no wood or plastic allowed) and shall be maintained throughout construction to provide proper visibility.
- h. Site work can only proceed and must be completed during the dry season, April 15 to October 14.
- i. Before commencing work, the Contractor shall mark off boundary of area of work, and areas outside of Mendocino Land Trust easements that cannot be disturbed. Vegetation shall then be cleared over the area to be worked. Existing shrubs of Baccharis shall be recovered with roots intact as possible for replanting by Mendocino Land Trust.
- j. Contractor shall install and maintain erosion control measures shown on the parking plan, prior to grading operations.
- k. Prior to placement of aggregate base course material at paved areas, compact subsoil to 95 percent of its maximum dry density at optimum water content (-1 percent + 3 percent) in accordance with ASTM D1557 to the depth as indicated on the Drawings, but not less than 36 inches. At least 24 inches of excavation is required with soil replaced in 12 inch lifts, each compacted.
- l. Fill material shall meet Caltrans aggregate subbase (AS) or crushed miscellaneous base (CMB) requirements or a class 3 soil fill meeting the Engineer's requirement, in coordination with the amount of geotextile placed.
- m. Compaction of fill shall meet 95 % of fill material dry density, confirmed per Caltrans test method #231, or the equivalent ASTM Standard Penetration Test procedure.
- n. Compaction of fill shall be in 12 inch max lifts, with geotextile reinforcement to be determined. Lifts shall approximate the finished plane, so the upper layers can have full runs of geotextile.
- o. Compaction testing shall be undertaken at existing soils before placement of imported fill, and at the completion of fill operations, before placement of rock surface and paving base course.
- p. Rocked surface and paving base shall meet Caltrans Class 2 Aggregate Requirements. Paving materials and execution shall match Caltrans requirements.
- q. Pavement marking paint material shall meet Caltrans specification PTH-02ALKYD, with reflective spheres meeting Caltrans specification 8010-004.
- r. Stop bar and marking, and stop sign and installation shall meet 2012 California Manual on Uniform Traffic Control Devices. Include the installation of 2 similar sign posts to be supplied by Mendocino Land Trust.

The recommended condition will reduce impacts of hazards and hazardous materials to a less than significant level.

IX. HYDROLOGY AND WATER QUALITY. Would the project:	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Violate any water quality standards or waste discharge requirements?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Otherwise substantially degrade water quality?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
h) Place within a 100-year flood hazard area structures which would impede or redirect flood flows?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
j) Inundation by seiche, tsunami, or mudflow?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

The proposed public access trail is located on a parcel that contains a seasonal drainage feature. A bridge is proposed to be constructed over the seasonal drainage feature. In conformance with Fish and Game Code Section 1600, the applicant is in the process of obtaining a Lake and Streambed Alteration Agreement (LSAA). With mitigation and standard best management practices, the proposed project is not anticipated to violate any water quality standard or waste discharge standard.

No impacts to groundwater supplies are anticipated, as the proposed project does not include the development of a well or other development that may impact groundwater resources.

The proposed project is designed to minimize to the maximum extent feasible the alteration of natural landforms. Potential to alter the existing drainage pattern is greatest with the establishment of the parking area; however, the parking area has been designed by a licensed civil engineer, consists primarily of permeable gravel (with only the handicap space and apron being impermeable surfaces) and includes mitigation measures to reduce the potential for erosion and flooding related concerns.

The project is not for residential development and further is located outside the mapped 100-year flood hazard area of the parcel, and therefore will not impede or redirect flood flows, and will not expose people or structures to a significant risk involving flooding, including flooding as a result of the failure of a levee or dam.

Hydrology and water quality impacts are not anticipated; no mitigation is required.

<u>X. LAND USE AND PLANNING.</u> Would the project:	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Physically divide an established community?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c) Conflict with any applicable habitat conservation plan or natural community conservation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

The project site is located on a blufftop parcel, just south of the City of Point Arena, adjacent to existing residential development and agricultural operations. The proposed project will not result in the division of an established community.

The proposed project is consistent with all policies of the Local Coastal Program of the General Plan and the MCC, except Section 20.496.020(A)(1) relating to buffer widths from Environmentally Sensitive Habitat Areas, due to the location of the trail within a sensitive habitat.

Currently, the U.S. Fish and Wildlife Service have a *Recovery Plan for the Point Arena Mountain Beaver-Aplodontia rufa nigra (Rafinesque)* published in 1998. The proposed project, which will establish a public access trail on the subject parcel, will avoid all occurrences of the Point Arena Mountain Beaver by providing a greater than one hundred (100) foot buffer to identified habitat areas.

<u>XI. MINERAL RESOURCES.</u> Would the project:	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

The project is not located in an area of known mineral resources. No impact is expected and no mitigation is required.

<u>XII. NOISE.</u> Would the project result in:	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?				
f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

With the exception of short-term construction related noise, the proposed development will not create a new source of noise that will impact the community. As a requirement for establishment of a public access trail, all trails must be located a minimum of twenty (20) feet from existing residences, to reduce conflicts between the two uses. This distance also reduces the potential for noise from the trail to become a nuisance. Noise created by the public access trail is not anticipated to be significant, and no mitigation is required.

<u>XIII. POPULATION AND HOUSING.</u> Would the project:	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

The project would permit a public access trail in a zoning district and General Plan land use designation intended for residential development and on a parcel where residential development exists on the adjacent parcels. The project would not trigger the need for new public roads or other infrastructure that may indirectly trigger population growth. Consequently, the project would not generate unanticipated population growth in the local area. No impacts are expected, and no mitigation is required.

<u>XIV. PUBLIC SERVICES.</u>	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Fire protection?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Police protection?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Schools?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Parks?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Other public facilities?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

The project site is served by CalFire and the Redwood Coast Fire Protection District. The establishment of the public access trail in an existing community would not create additional significant service demands or result in adverse physical impacts associated with delivery of fire, police, parks or other public services.

<u>XV. RECREATION.</u>	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

The project site is located west of Highway 1, and is designated as a potential public access trail location on the Local Coastal Plan maps. As a condition of permit approval for California Coastal Commission Coastal Development Permits #81-CC-307 and #1-86-22 the landowners of the parcels subject to the Permits were required to dedicate a twenty-five (25) foot lateral access (Mendocino County Official Records Book 1320 Page 232 and Book 1553 Page 155). The proposed project would open a public access trail on parcels designated for such a use under the Local Coastal Plan maps. Deterioration of public facilities is not anticipated as the project proposes a parking area and would ultimately have a positive impact on public access and recreation. Possible environmental impacts are addressed under the Biological Resources section of this document, including mitigation for the small wetlands impact as a result of the bridge installation.

<u>XVI. TRANSPORTATION/TRAFFIC.</u> Would the project:	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the circulation system, taking into account all modes of transportation including mass transit and non-motorized travel and relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Conflict with an applicable congestion management program, including, but not limited to level of service standards and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Result in inadequate emergency access?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

The parcel is currently provided access off of Highway 1. The proposed public access trail was referred to the California Department of Transportation (Caltrans) for comment; however, no response was received. Staff notes that the applicant has been in continuous discussion with Caltrans regarding the proposed encroachment from the beginning of the project. Caltrans determined the proposed location to be the best location on the parcel for access. A parking plan has been prepared for the project. Prior to commencement of work, the applicant shall obtain an encroachment permit from Caltrans, as required by **Condition 4**.

The proposed use is consistent with Mendocino County's Local Coastal Program for the area and will not degrade the performance of the existing roadway. The project is not located within an area subject to a congestion management program.

Impacts to transportation and circulation are less than significant, with no mitigation required.

<u>XVII. UTILITIES AND SERVICE SYSTEMS.</u> Would the project:	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Comply with federal, state, and local statutes and regulations related to solid waste?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

The proposed project does not include any residential development that will require wastewater treatment or utility systems. The site proposes the establishment of a public access trail on the parcel.

There are no impacts related to utilities and service systems.

<u>XVIII. MANDATORY FINDINGS OF SIGNIFICANCE.</u>	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

c) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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The project's potential to degrade the quality of the environment, as described in the first Mandatory Finding of Significance, will be less than significant provided it incorporates the mitigation measures recommended in this Initial Study.

None of the of the project mitigated impacts are cumulatively considerable because the project's potential impacts are limited to the project site, and the approval and establishment of the project will not alter the existing setting nor amend an existing regulation that would create a circumstance where the incremental effect of a probable future project will generate a potentially significant environmental impact.

The project will not generate any potential direct or indirect environmental effect that will have a substantial adverse impact on human beings including, but not limited to, exposure to geologic hazards, air quality, water quality, traffic hazards, noise and fire hazards.

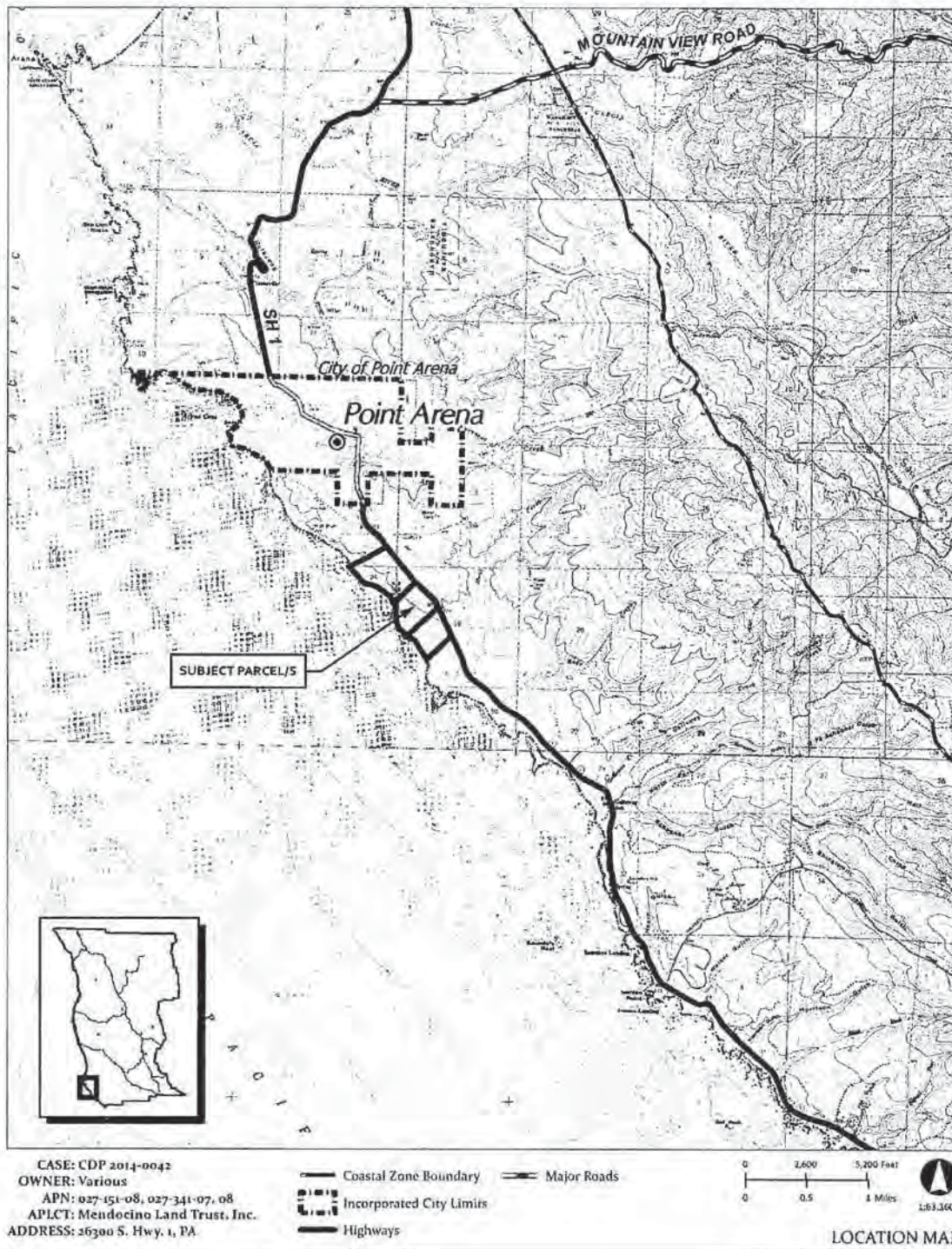
DETERMINATION:

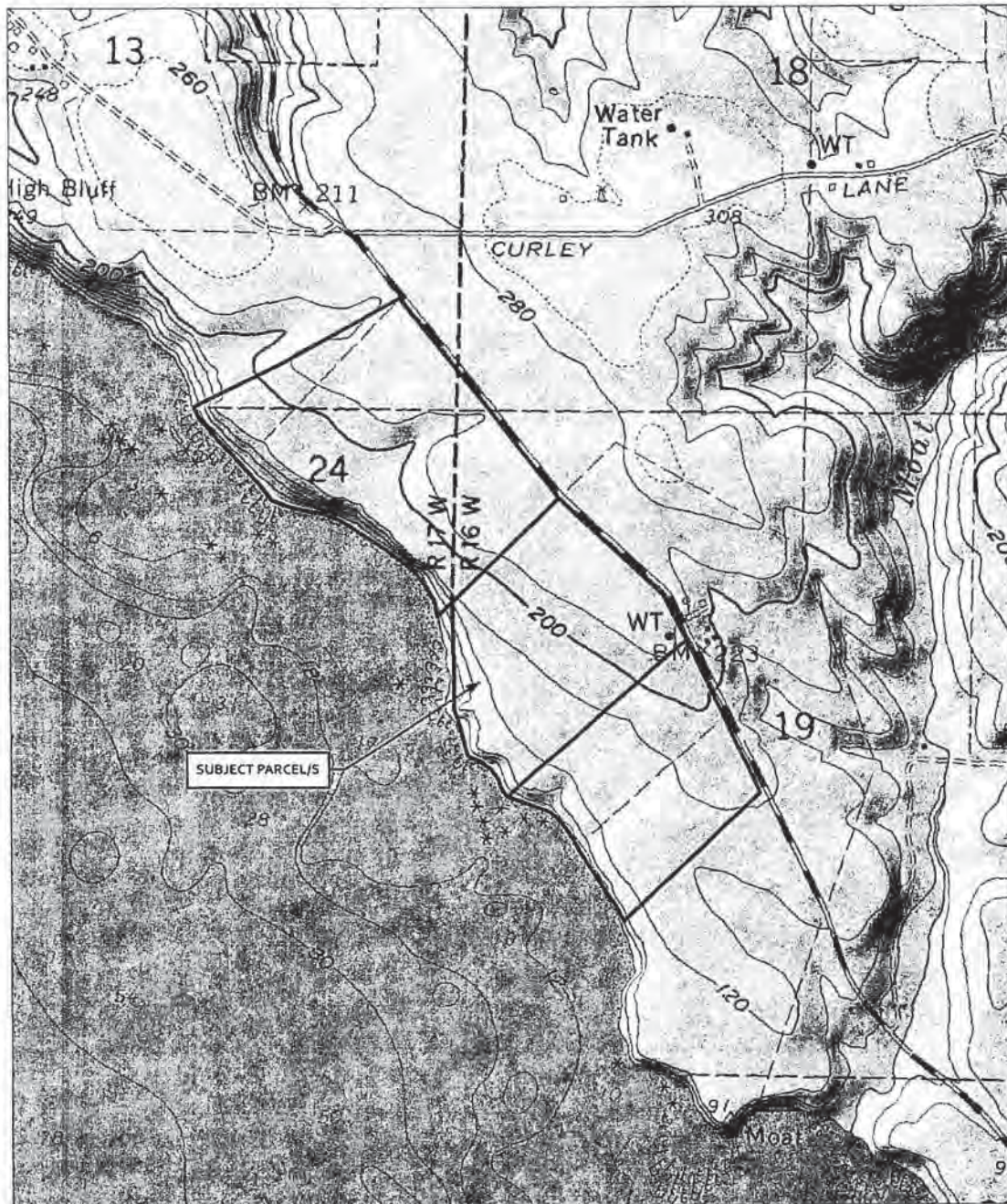
On the basis of this initial evaluation:

- ☐ I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.
- ☒ I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.
- ☐ I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.
- ☐ I find that the proposed project MAY have a "potentially significant impact" or "potentially significant unless mitigated" impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.
- ☐ I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.

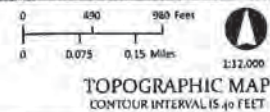
DATE

JULIA ACKER
PLANNER I

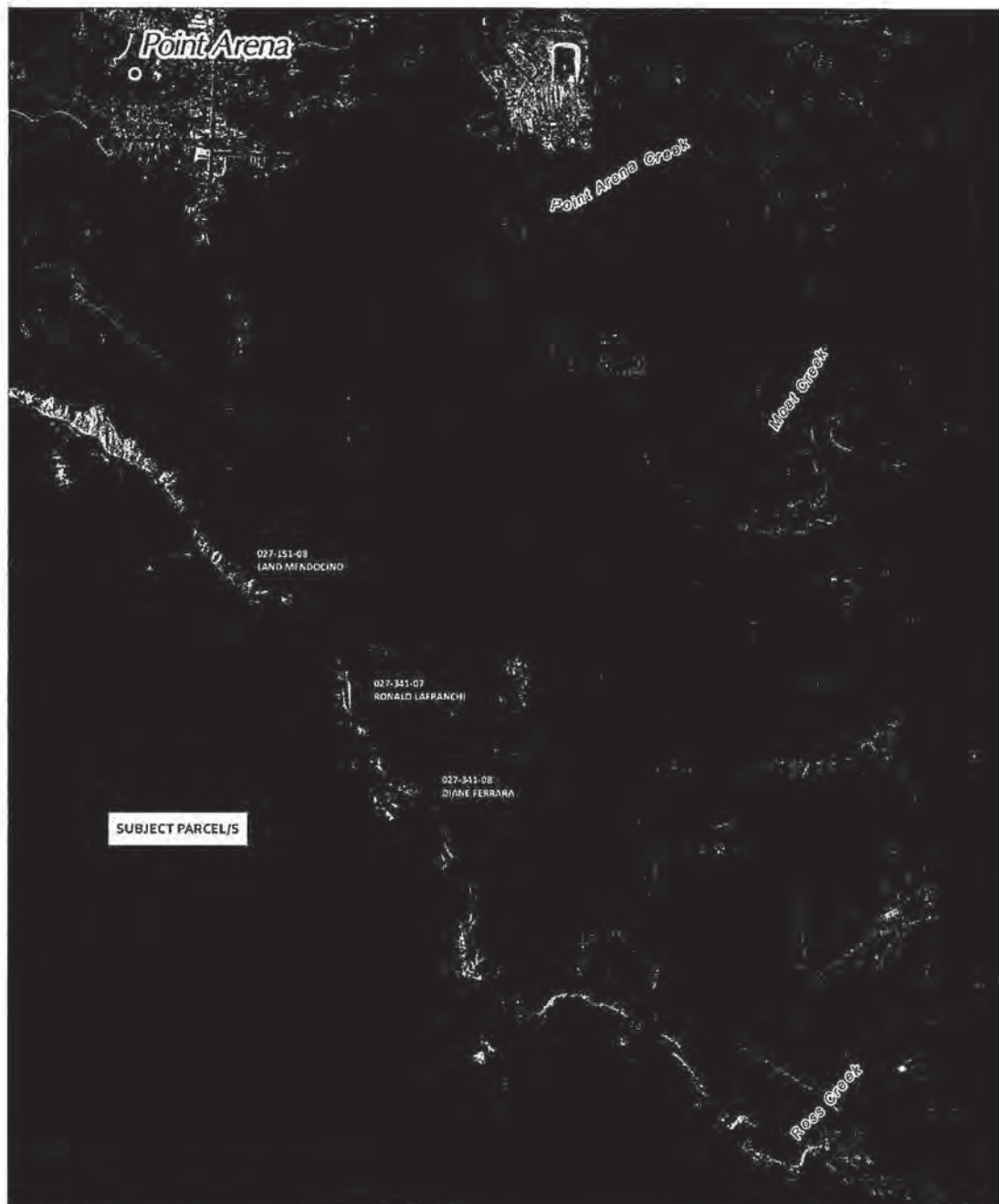




CASE: CDP 2014-0042
OWNER: Various
APN: 027-151-08, 027-341-07, 08
APLCT: Mendocino Land Trust, Inc.
ADDRESS: 26300 S. Hwy. 1, PA

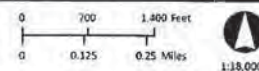


Map produced by the Mendocino County Planning & Zoning Services, April, 2015.
All spatial data is approximate. Map provided without warranty of any kind.



CASE: CDP 2014-0042
OWNER: Various
APN: 027-151-08, 027-341-07, 08
APLCT: Mendocino Land Trust, Inc.
ADDRESS: 26300 S. Hwy. 1, PA

— Named Rivers
— Public Roads
— Private Roads



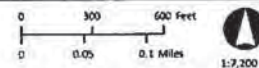
2014 NAIP AERIAL ORTHOPHOTO

Map produced by the Mendocino County Planning & Building Services, April 2015
All spatial data is approximate. Map provided without warranty of any kind.



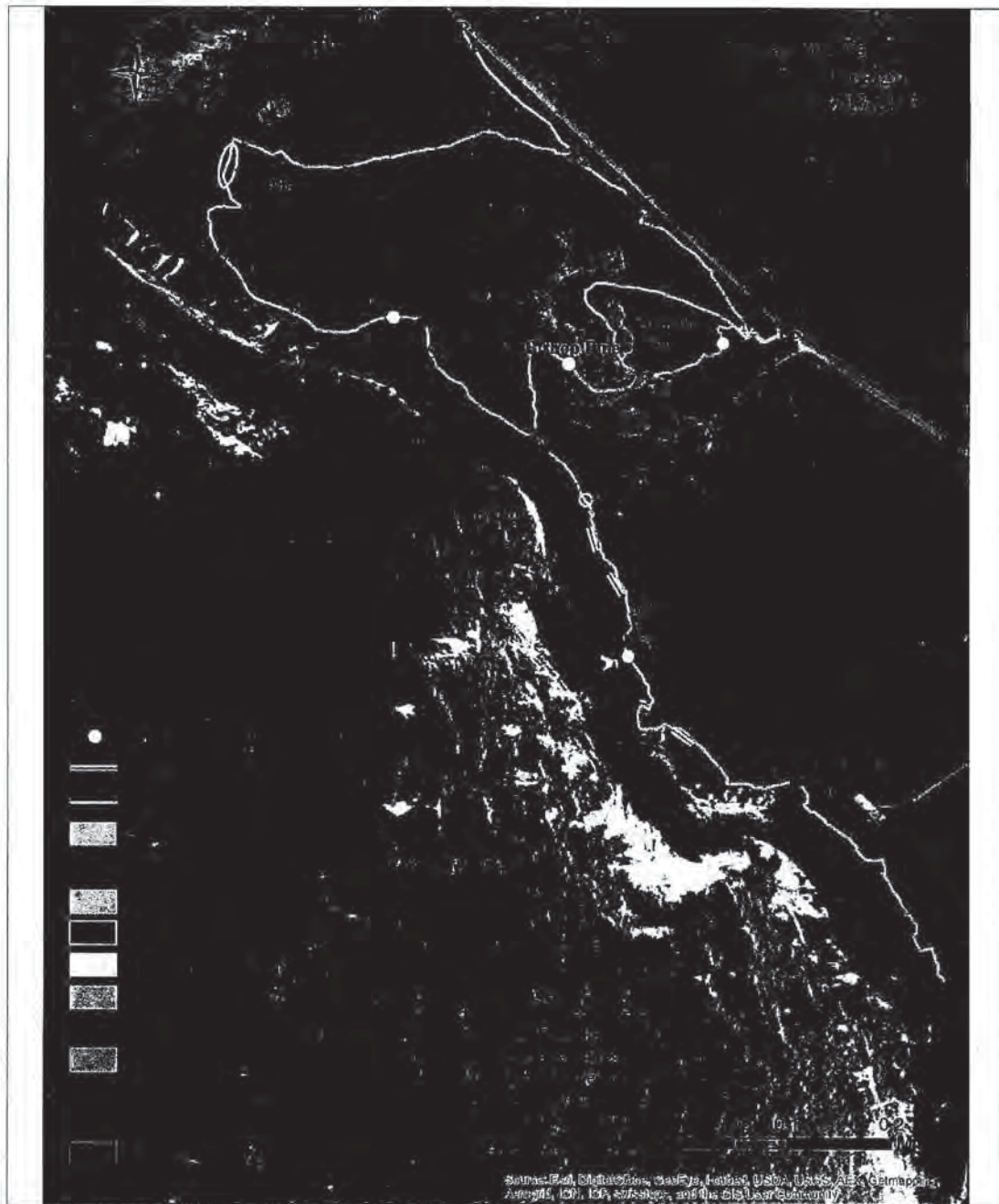
CASE: CDP 2014-0042
OWNER: Various
APN: 027-151-08, 027-341-07, 08
APLCT: Mendocino Land Trust, Inc.
ADDRESS: 36300 S. Hwy. 1, PA

— Public Roads



2014 NAIP AERIAL ORTHOPHOTO

Map produced by the Mendocino County Planning & Building Services, April, 2015.
All spatial data is approximate. Map provided without warranty of any kind.

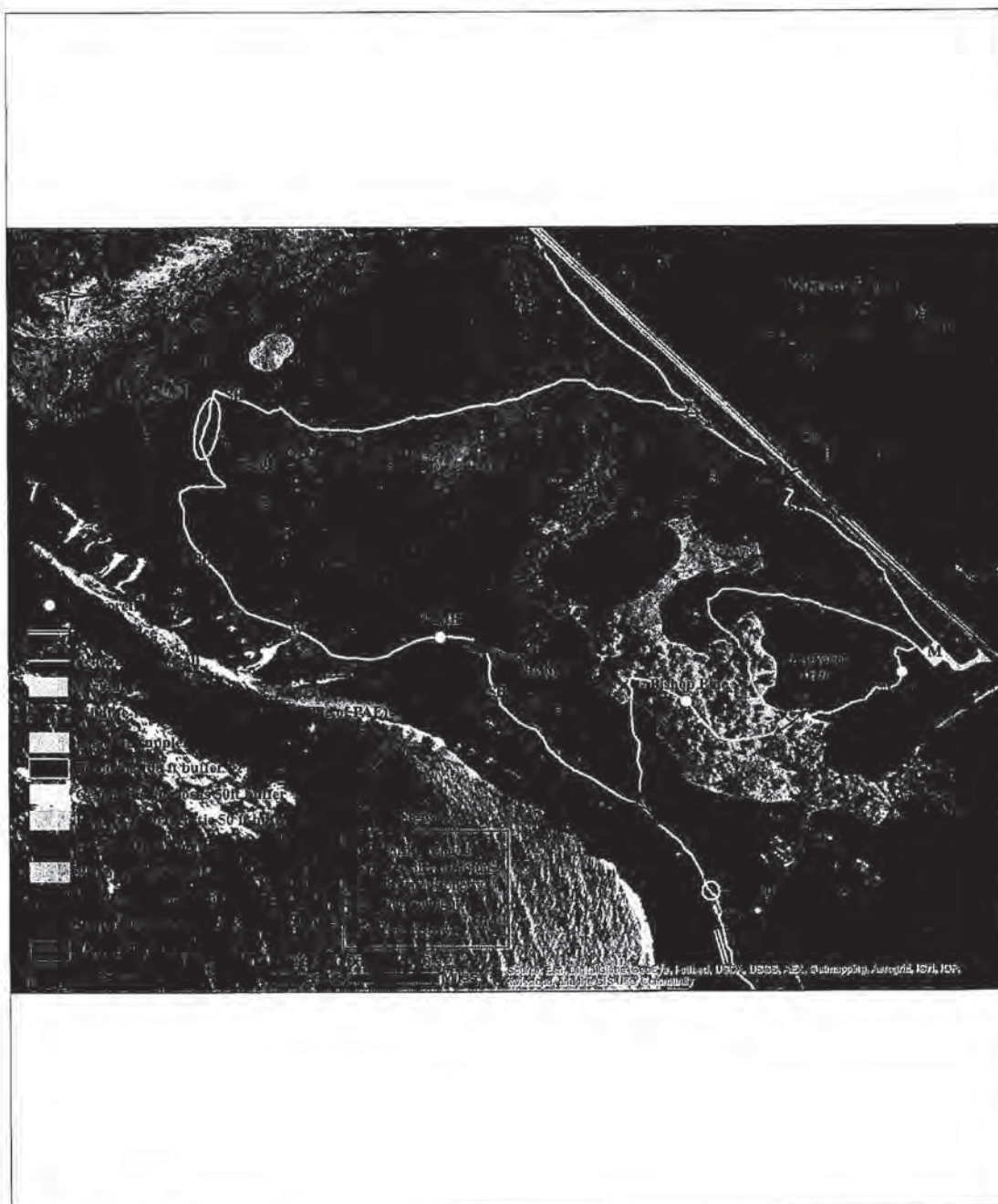


CASE: CDP 2014-0042
OWNER: Mendocino Land Trust, Inc.
APN: 027-151-08-01
APLCT: MLT, Inc.
ADDRESS: None Assigned, PA

NO SCALE

SITE PLAN [03-13-2015]

Map produced by the Mendocino County Planning & Building Services, August, 2015
All spatial data is approximate. Map provided without warranty of any kind

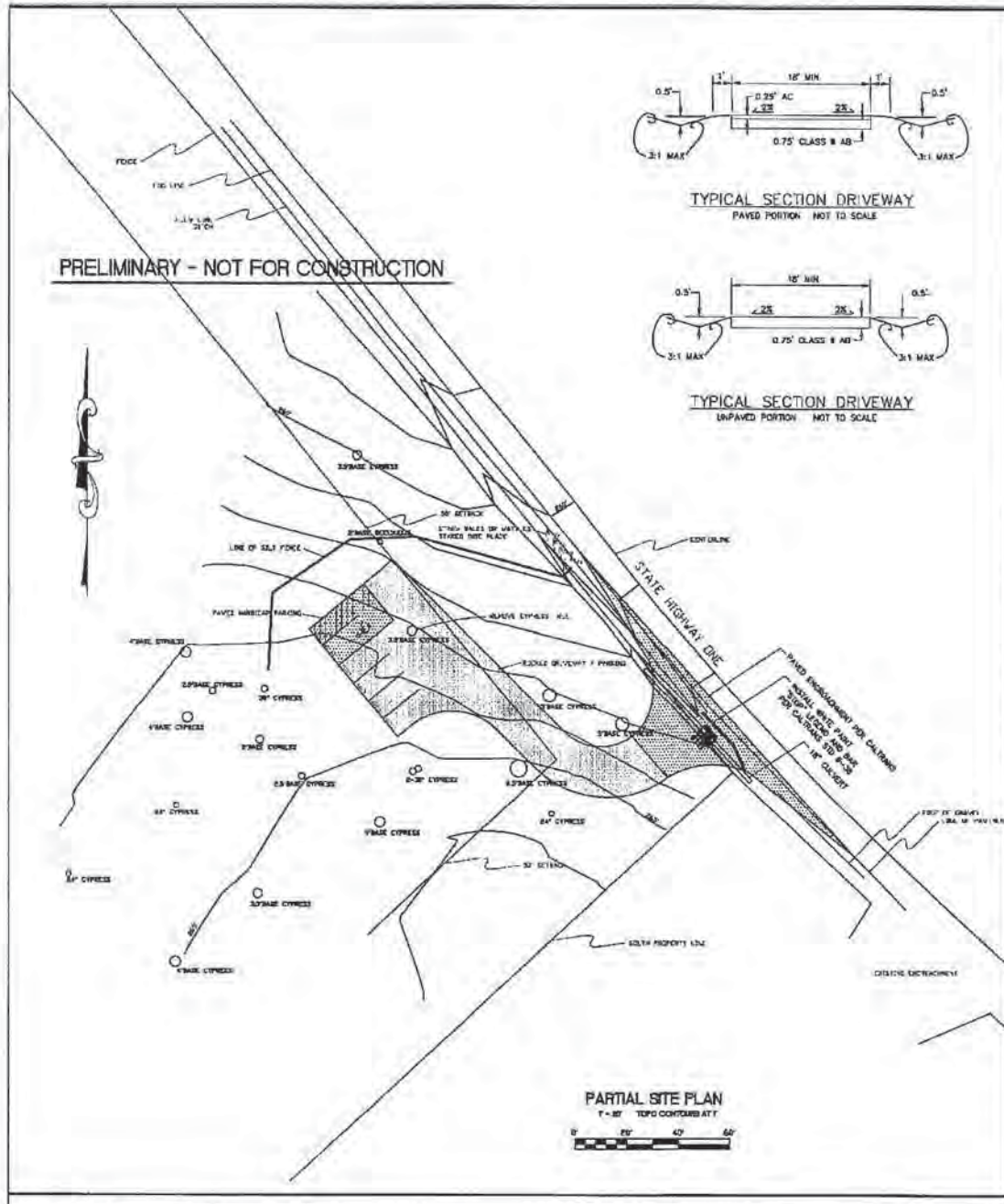


CASE: CDP 2014-0042
OWNER: Mendocino Land Trust, Inc.
APN: 027-151-08-01
APLCT: MLT, Inc.
ADDRESS: None Assigned, PA

NO SCALE

SITE PLAN DETAIL

Map produced by the Merced County Planning & Building Services, August, 2013
All spatial data is approximate. Map provided without warranty of any kind.

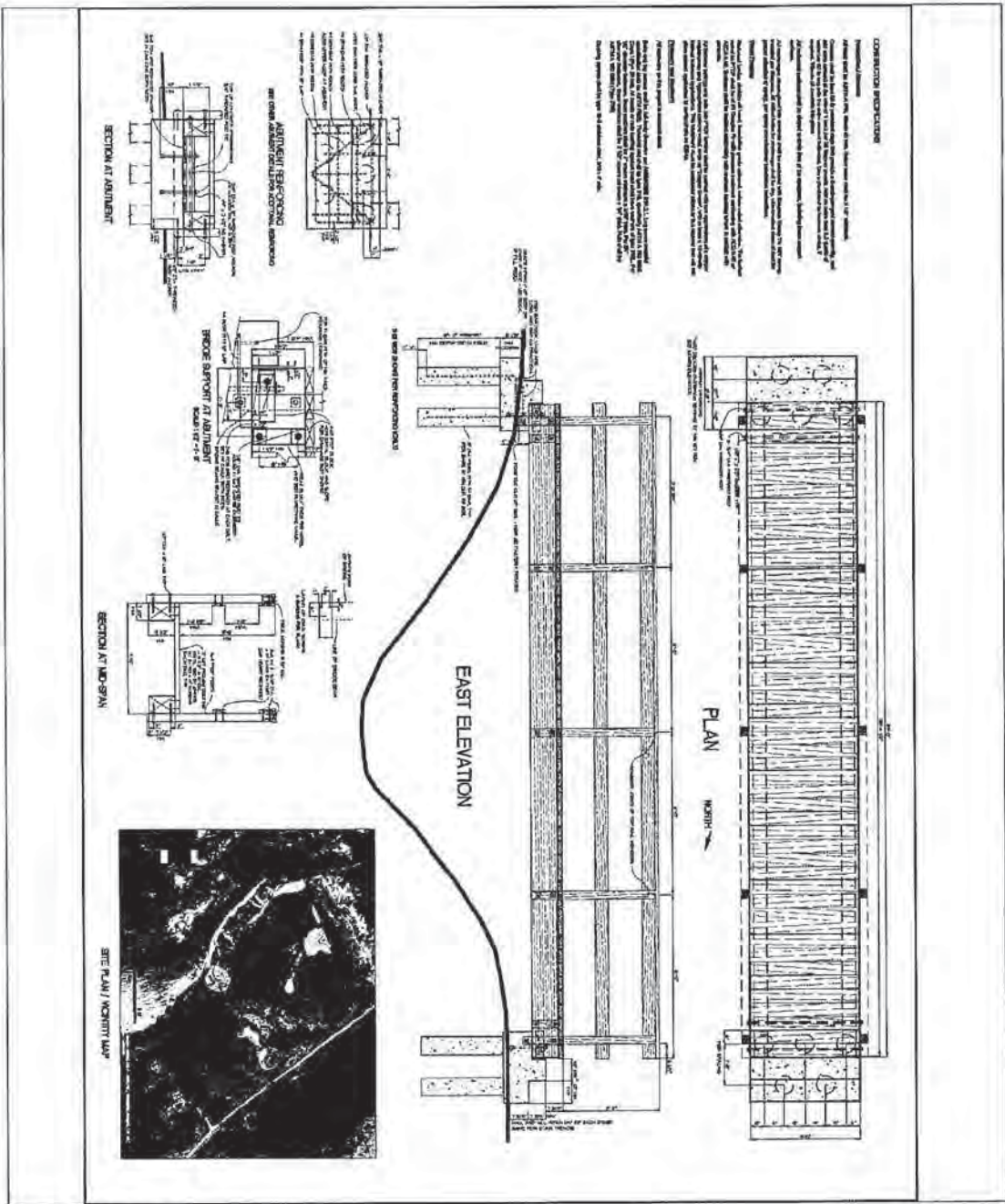


CASE: CDP 2014-0042
OWNER: Mendocino Land Trust, Inc.
APN: 027-151-08-01
APLCT: MLT, Inc.
ADDRESS: None Assigned, PA

NO SCALE

PARKING LAYOUT

Map produced by the Mendocino County Planning & Building Services, August, 2015
All spatial data is approximate. Map provided without warranty of any kind.

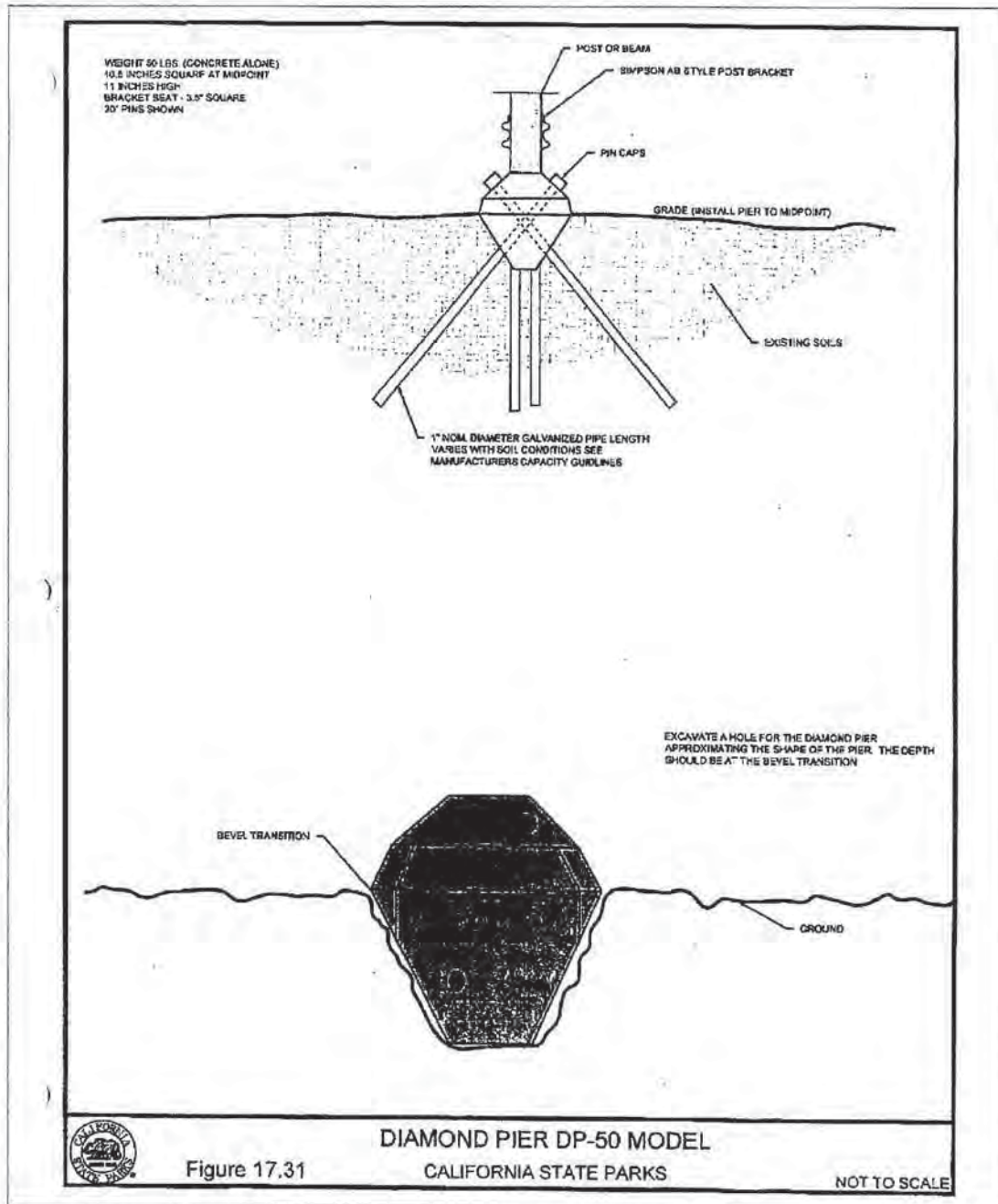


CASE: CDP 2013-0042
OWNER: Mendocino Land Trust, Inc.
APN: 027-151-08-01
APLCT: MLT, Inc.
ADDRESS: None Assigned, PA

NO SCALE

BRIDGE DESIGN

Map produced by the Mendocino County Planning & Building Services, August, 2015
All spatial data is approximate. Map provided without warranty of any kind.

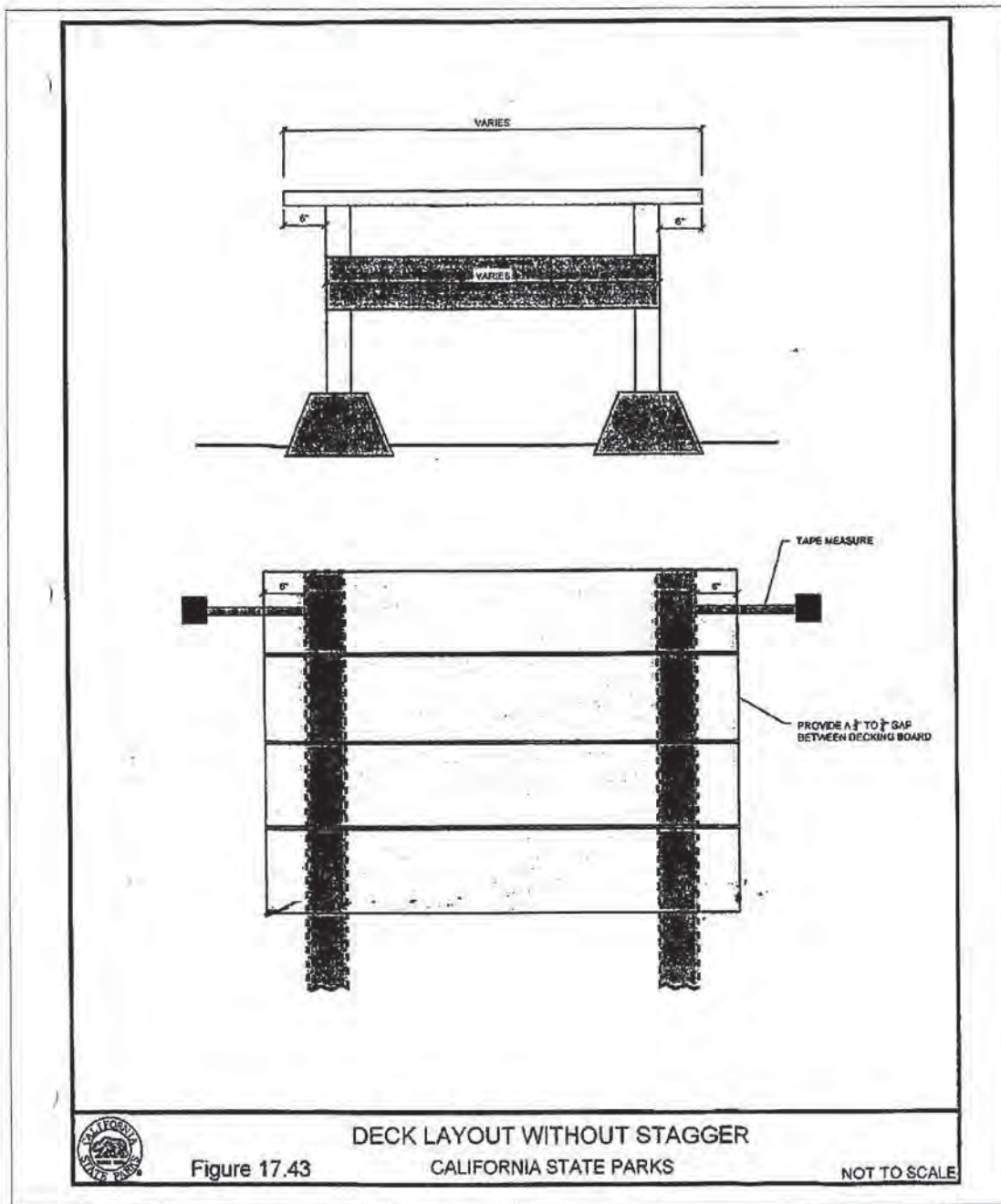


CASE: CDP 2014-0042
OWNER: Mendocino Land Trust, Inc.
APN: 027-151-08-01
APLCT: MLT, Inc.
ADDRESS: None Assigned, PA

NO SCALE

PIER DIAGRAM

Map prepared by the Mendocino County Planning & Building Services, August, 2015
All spatial data is approximate. Map provided without warranty of any kind.

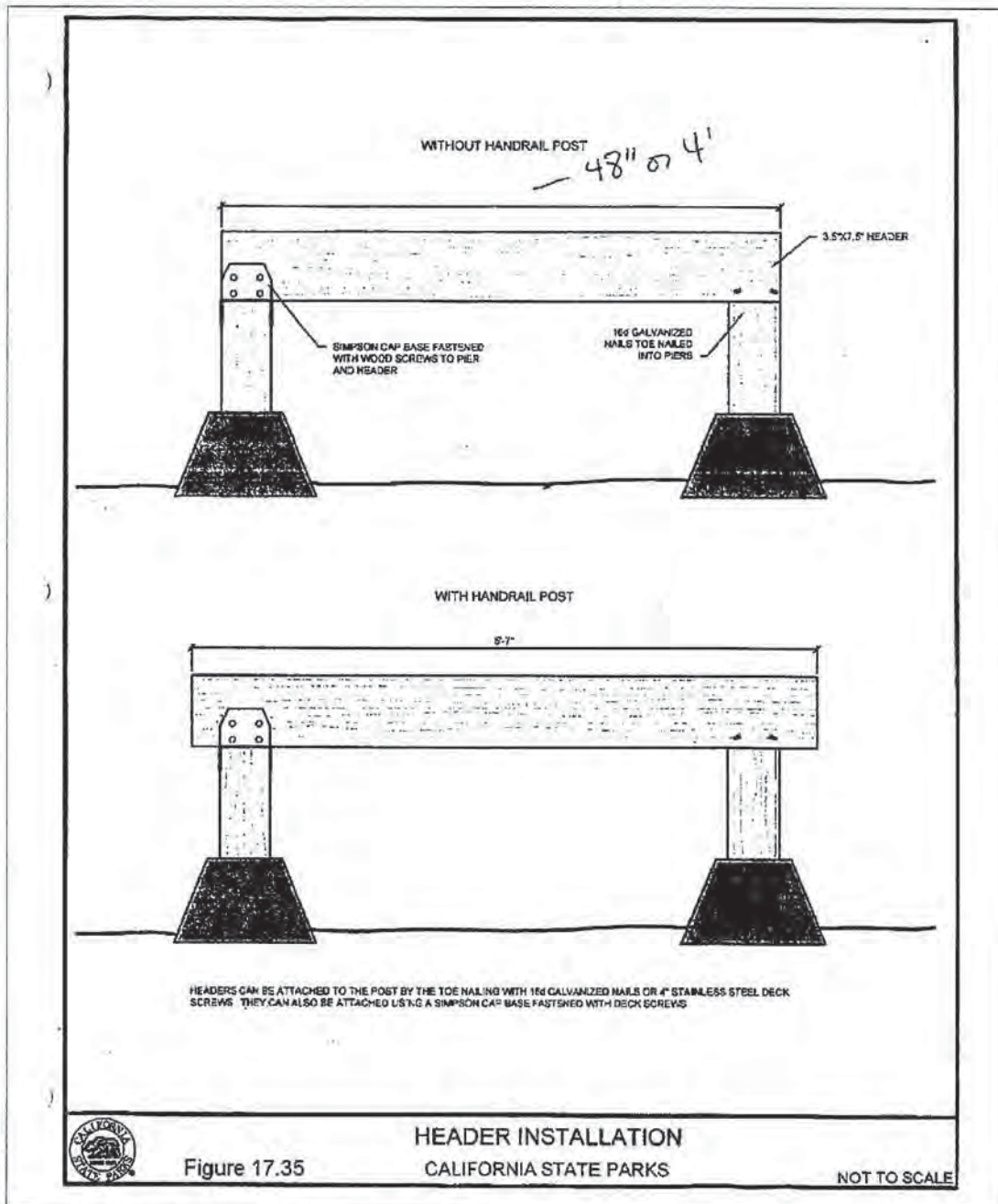


CASE: CDP 2014-0042
OWNER: Mendocino Land Trust, Inc.
APN: 027-151-08-01
APLCT: MLT, Inc.
ADDRESS: None Assigned, PA

NO SCALE

ELEVATION & DECK PLAN

Map produced by the Mendocino County Planning & Building Services, August, 2015
All spatial data is approximate. Map provided without warranty of any kind.

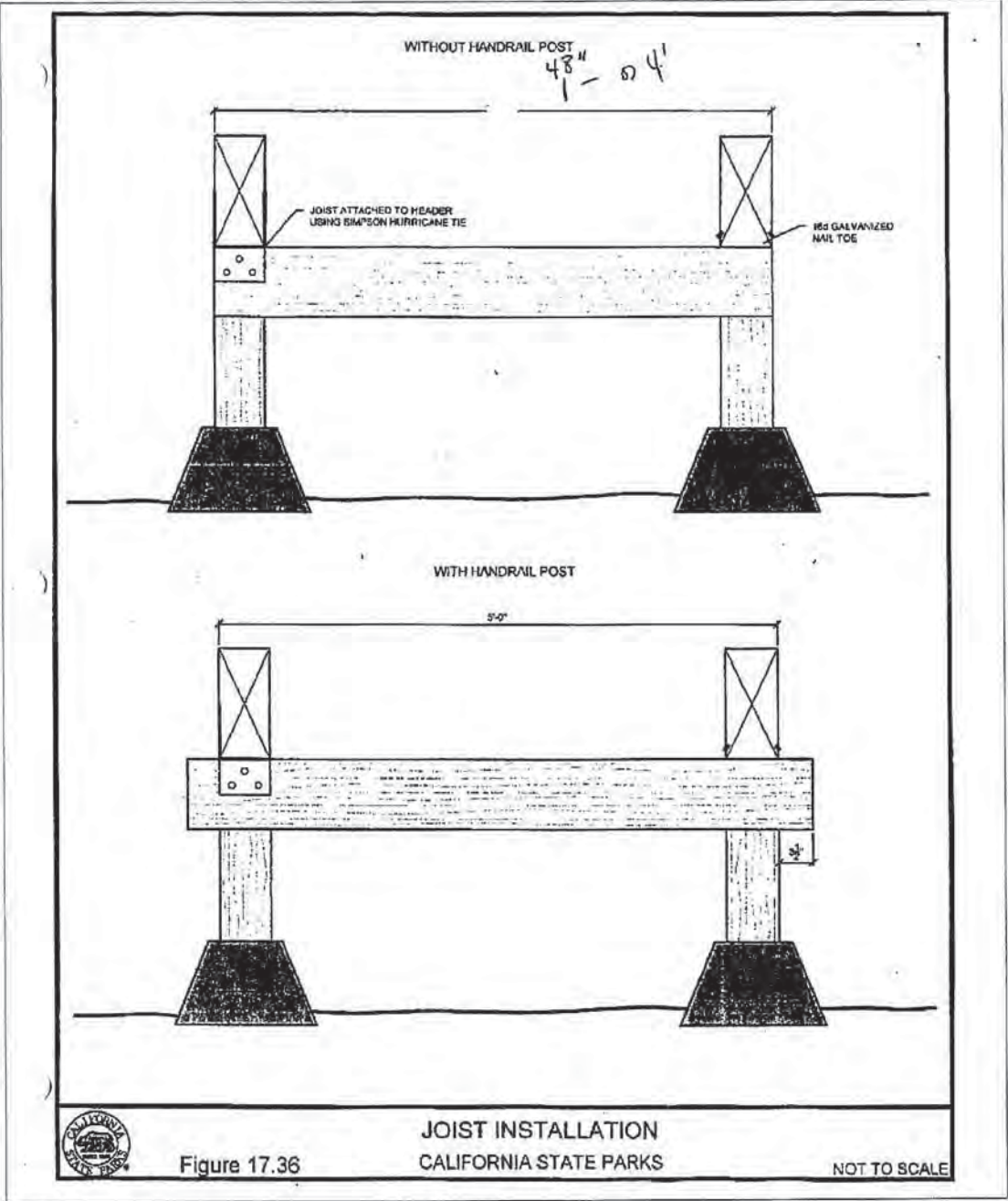


CASE: CDP 2014-0042
OWNER: Mendocino Land Trust, Inc.
APN: 027-151-08-01
APLCT: MLT, Inc.
ADDRESS: None Assigned, PA

NO SCALE

HEADER INSTALLATION PLAN

Map produced by the Mendocino County Planning & Building Services, August, 2015
All spatial data is approximate. Map provided without warranty of any kind.

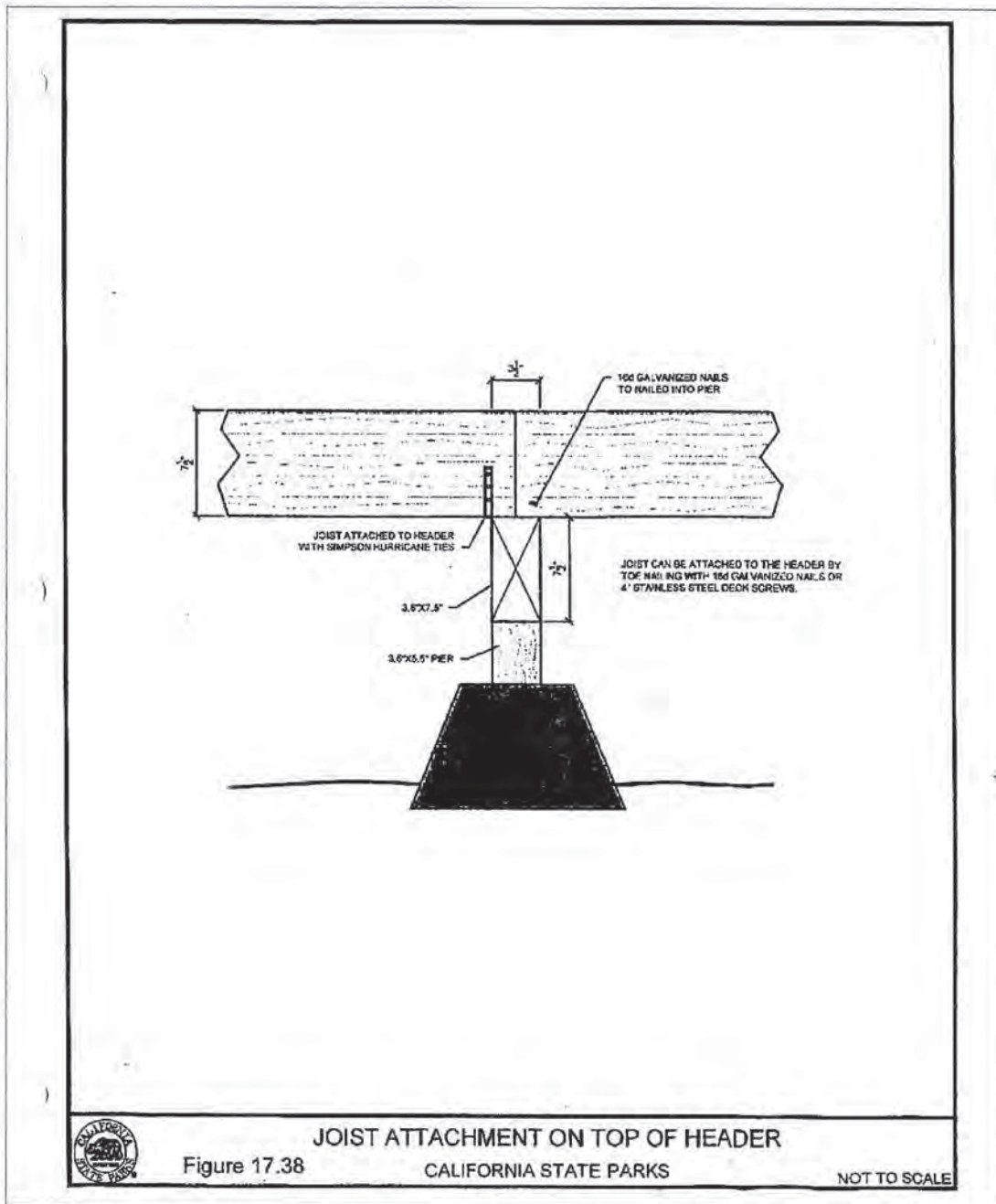


CASE: CDP 2014-0042
OWNER: Mendocino Land Trust, Inc.
APN: 027-151-08-01
APLCT: MLT, Inc.
ADDRESS: None Assigned, PA

NO SCALE

JOIST INSTALLATION PLAN

Map produced by the Mendocino County Planning & Building Services, August, 2015
All spatial data is approximate. Map provided without warranty of any kind.

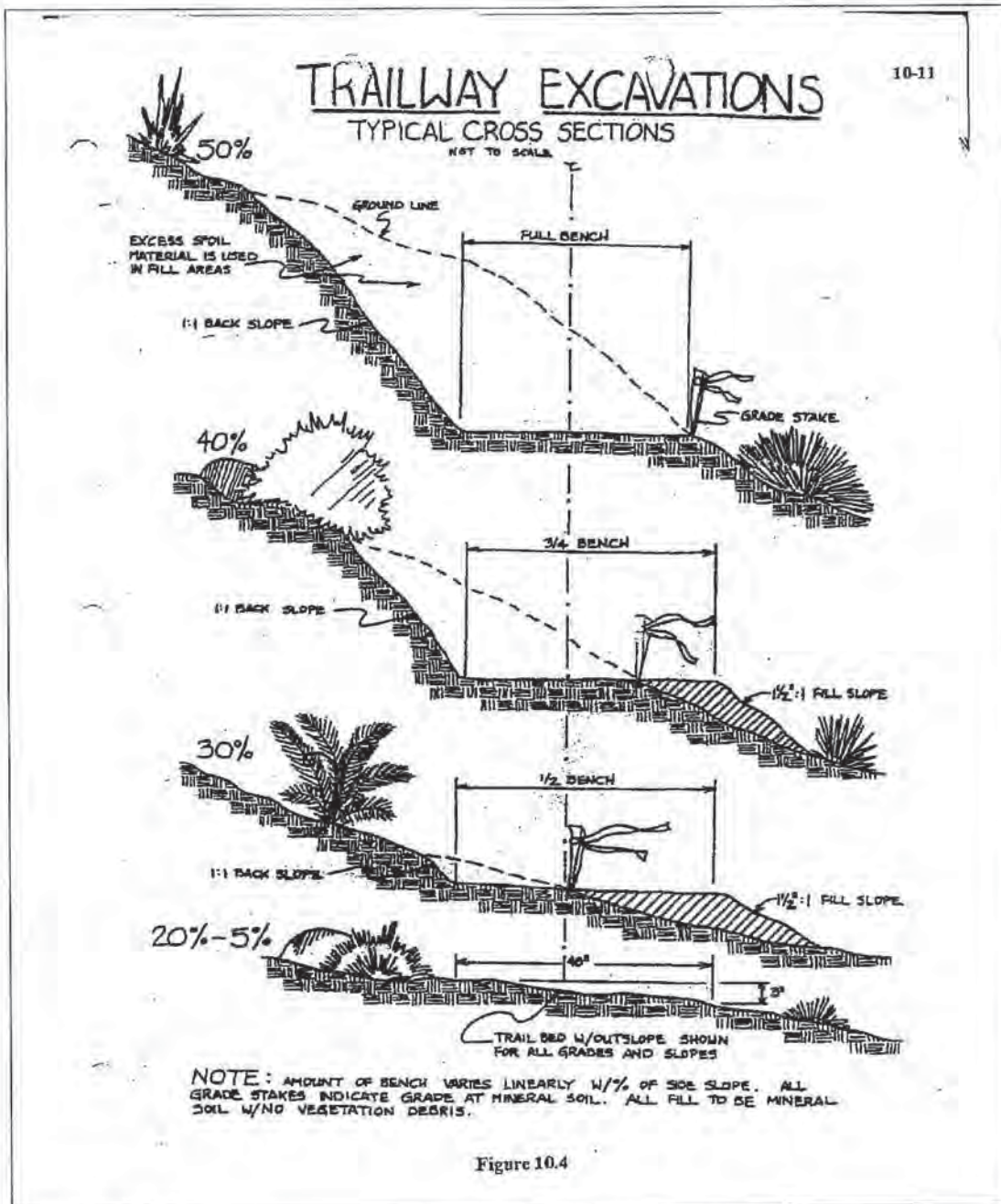


CASE: CDP 2014-0042
OWNER: Mendocino Land Trust, Inc.
APN: 027-151-08-01
APLCT: MLT, Inc.
ADDRESS: None Assigned, PA

NO SCALE

JOIST-TO-HEADER DESIGN PLAN

Map prepared by the Mendocino County Planning & Building Services, August, 2015
All spatial data is approximate. Map provided without warranty of any kind.

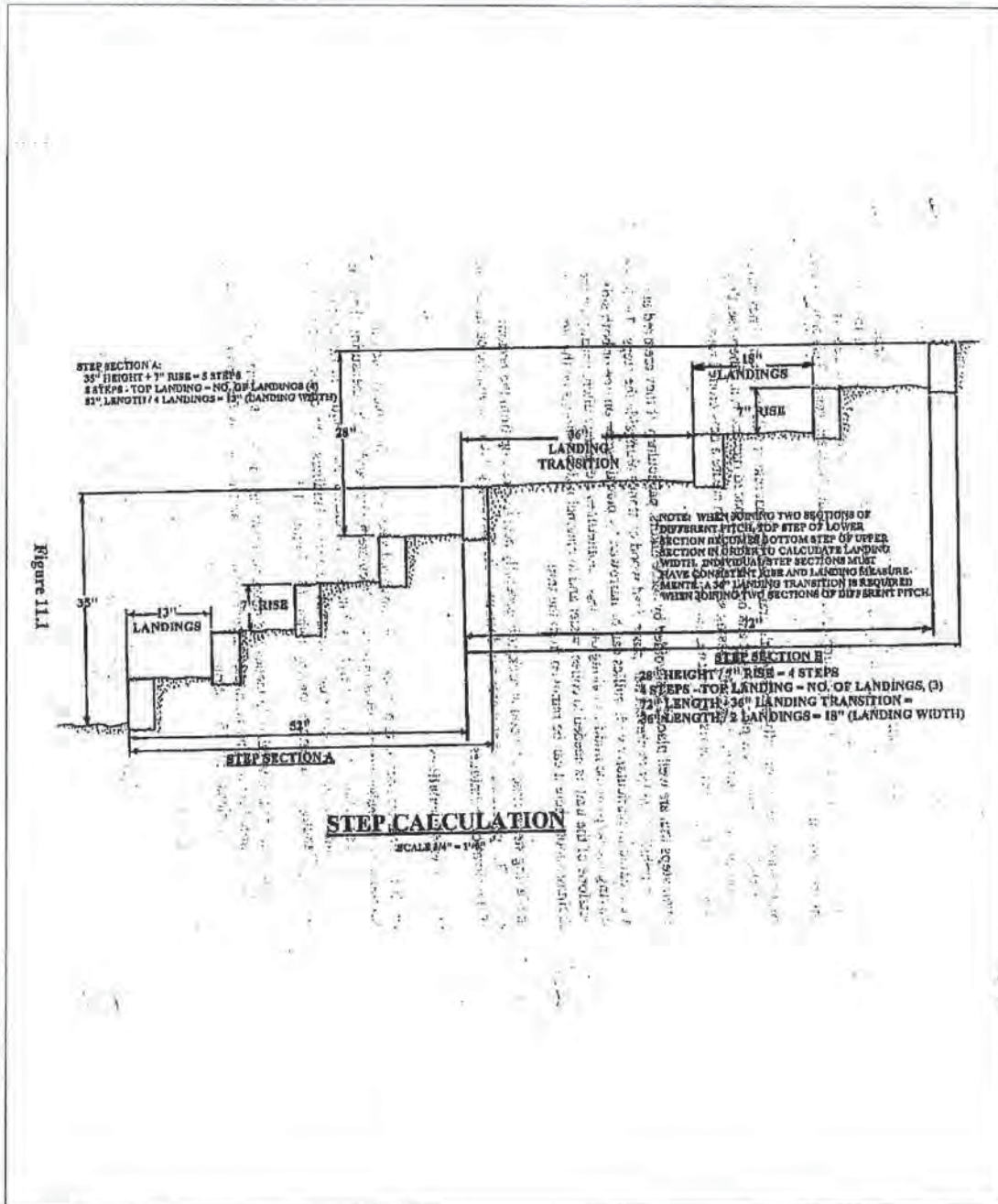


CASE: CDP 2014-0042
OWNER: Mendocino Land Trust, Inc.
APN: 027-151-08-01
APLCT: MLT, Inc.
ADDRESS: None Assigned, PA

NO SCALE

TRAILWAY EXCAVATION PLAN

Map produced by the Mendocino County Planning & Building Services, August, 2015
All spatial data is approximate. Map provided without warranty of any kind.

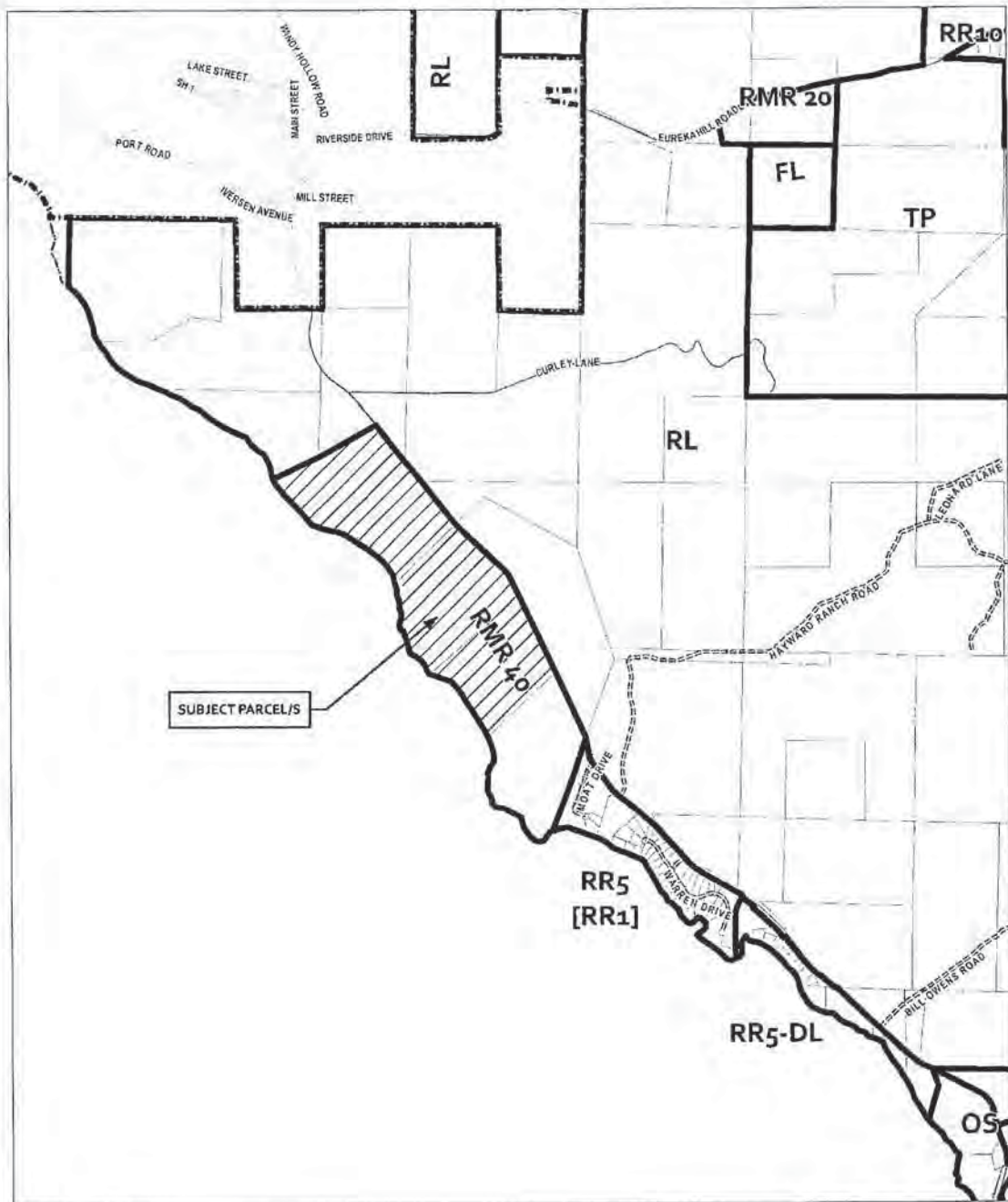


CASE: CDP 2014-0042
OWNER: Mendocino Land Trust, Inc.
APN: 027-151-08-01
APLCT: MLT, Inc.
ADDRESS: None Assigned, PA



NO SCALE

STEP CALCULATIONS

Map produced by the Mendocino County Planning & Building Services, August, 2015
All spatial data is approximate. Map provided without warranty of any kind.



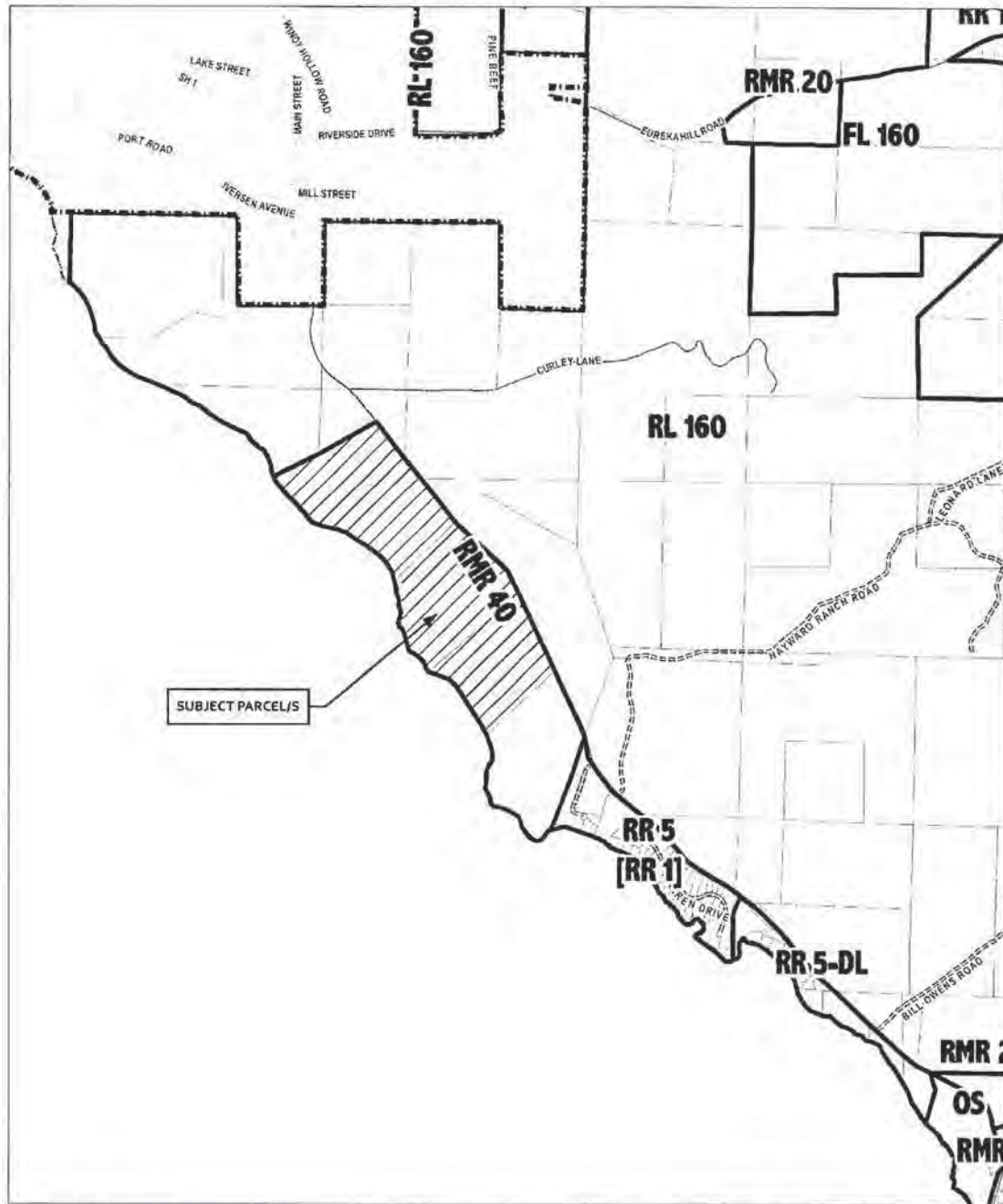
CASE: CDP 2014-0042
OWNER: Various
APN: 027-151-08, 027-341-07, 08
APLCT: Mendocino Land Trust, Inc.
ADDRESS: 26300 S. Hwy. 1, PA

 Incorporated City Limits
 Zoning Master



0 950 1,900 Feet
0 0.175 0.35 Miles
1:24,000

ZONING DISPLAY MAP

Map produced by the Mendocino County Planning & Building Services, April, 2015.
All spatial data is approximate. Map provided without warranty of any kind.



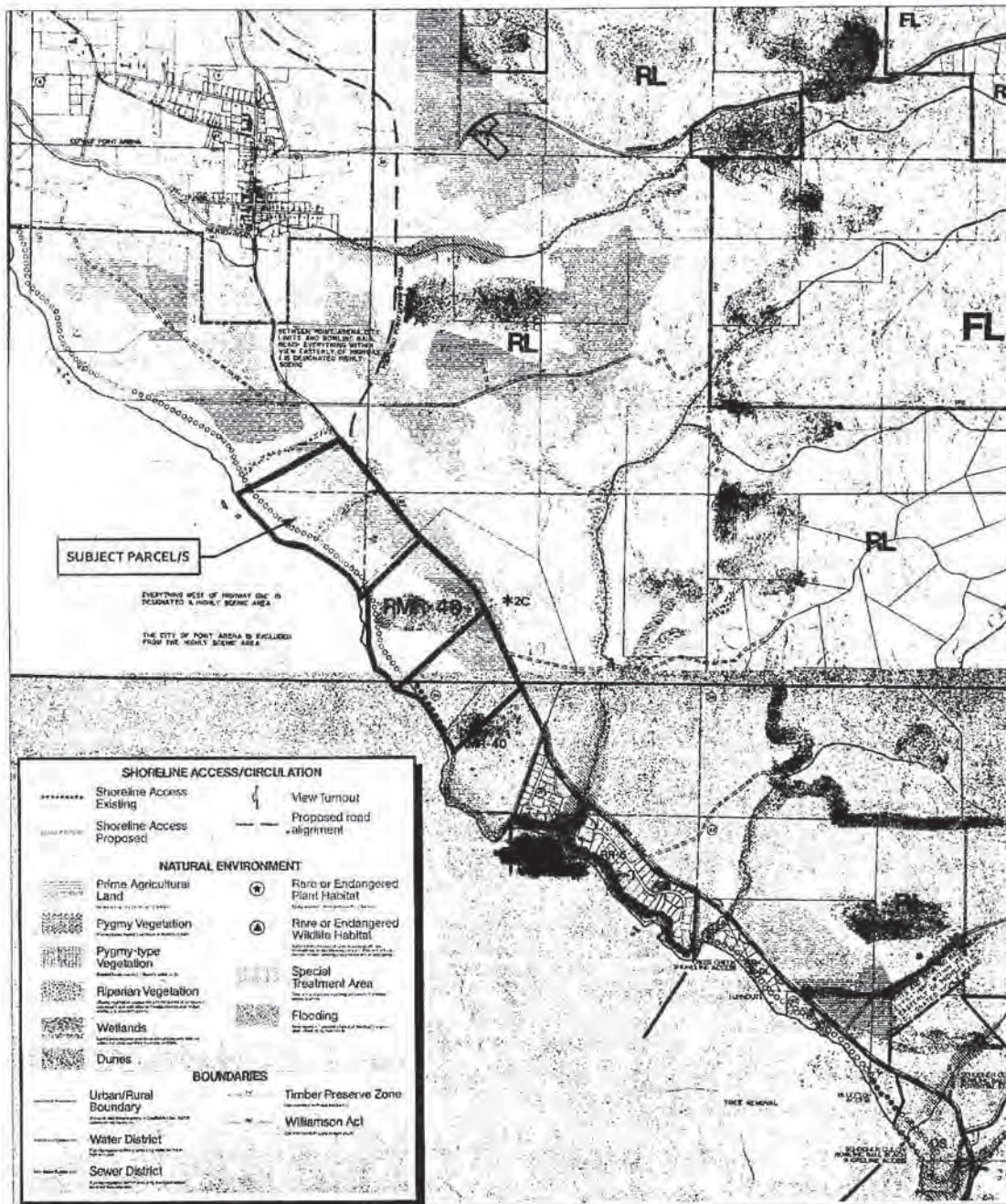
CASE: CDP 2014-0042
OWNER: Various
APN: 027-151-08, 027-341-07, 08
APLCT: Mendocino Land Trust, Inc.
ADDRESS: 26300 S. Hwy. 1, PA

 Incorporated City Limits
 General Plan Master

0 950 1,900 Feet
0 0.125 0.35 Miles
1:24,000

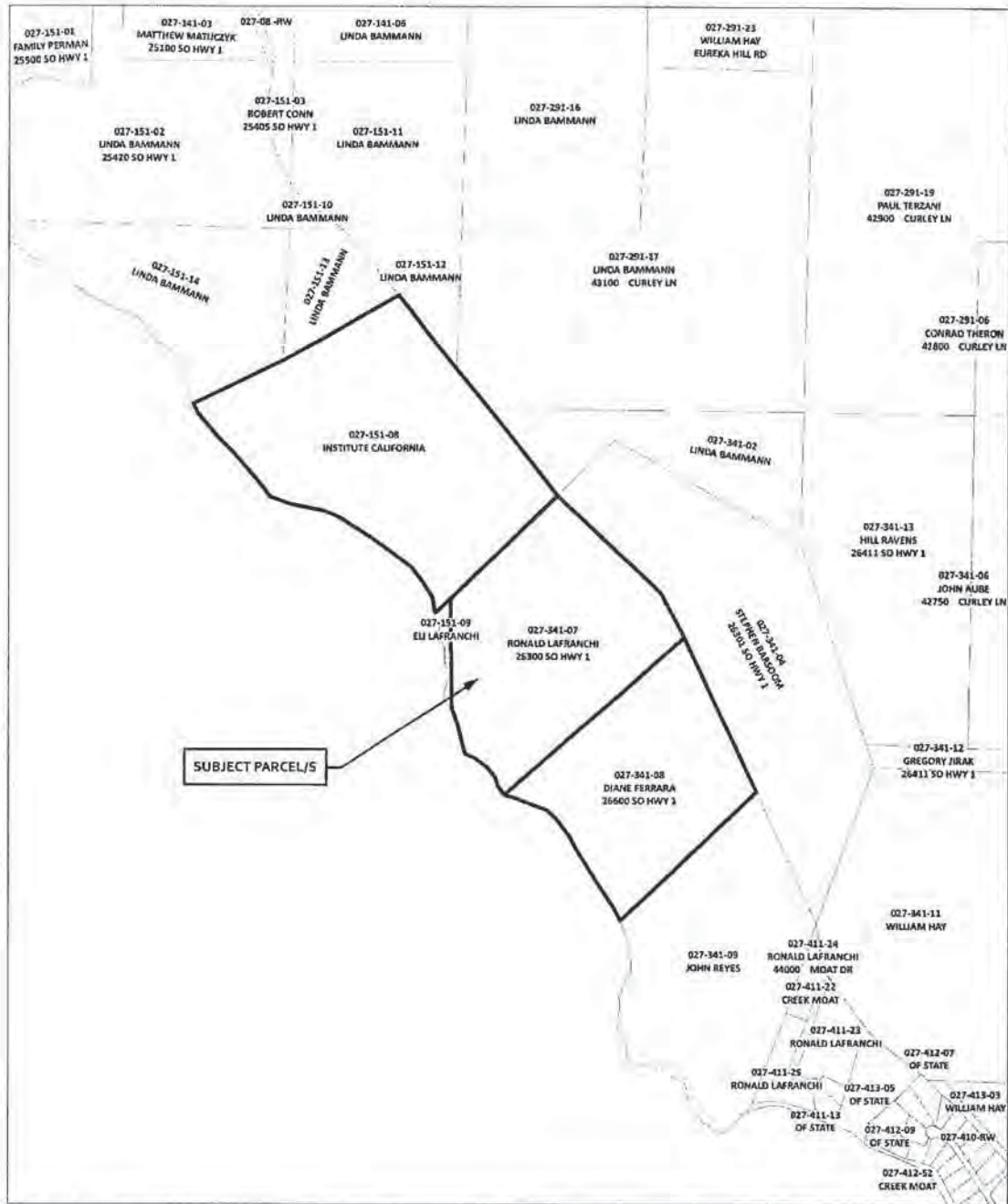
GENERAL PLAN CLASSIFICATIONS

Map produced by the Mendocino County Planning & Building Services, April, 2015
All spatial data is approximate. Map provided without warranty of any kind.

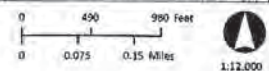


CASE: CDP 2014-0042
OWNER: Various
APN: 027-151-08, 027-341-07, 08
APLCT: Mendocino Land Trust, Inc.
ADDRESS: 26300 S. Hwy. 1, PA

Map produced by the Mendocino County Planning & Building Services, April, 2015
All spatial data is approximate. Map provided without warranty of any kind.



CASE: CDP 2014-0042
OWNER: Various
APN: 027-151-08, 027-341-07, 08
APLT: Mendocino Land Trust, Inc.
ADDRESS: 26300 S. Hwy. 1, PA






ADJACENT PARCELS

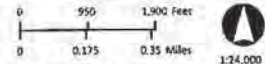
Map produced by the Mendocino County Planning & Building Services, April, 2015
All spatial data is approximate. Map provided without warranty of any kind.



CASE: CDP 2014-0042
OWNER: Various
APN: 027-151-08, 027-341-07, 08
APLCT: Mendocino Land Trust, Inc.
ADDRESS: 26300 S. Hwy. 1, PA

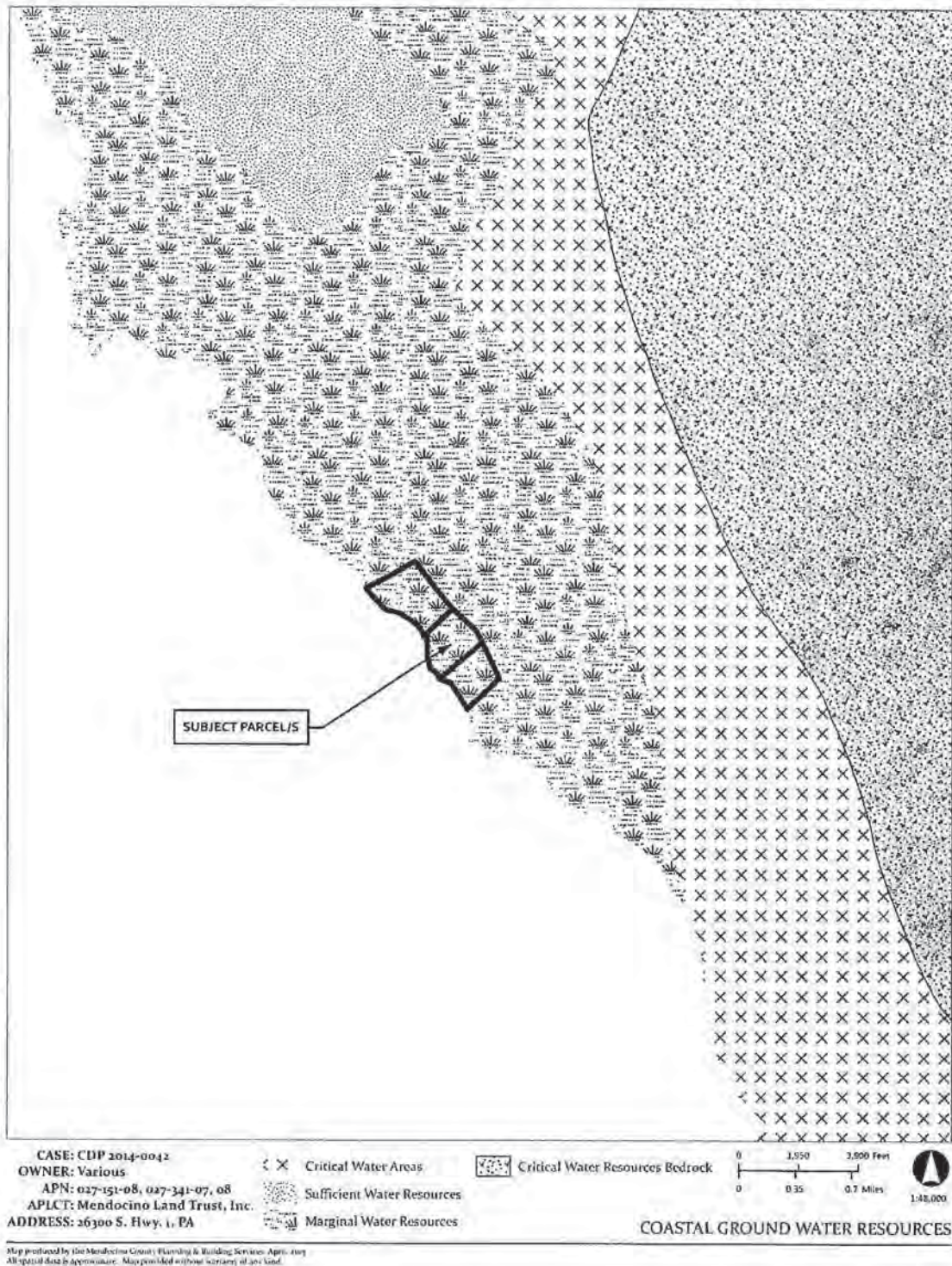
 Incorporated City Limits
 County Fire Districts
 High Fire Hazard

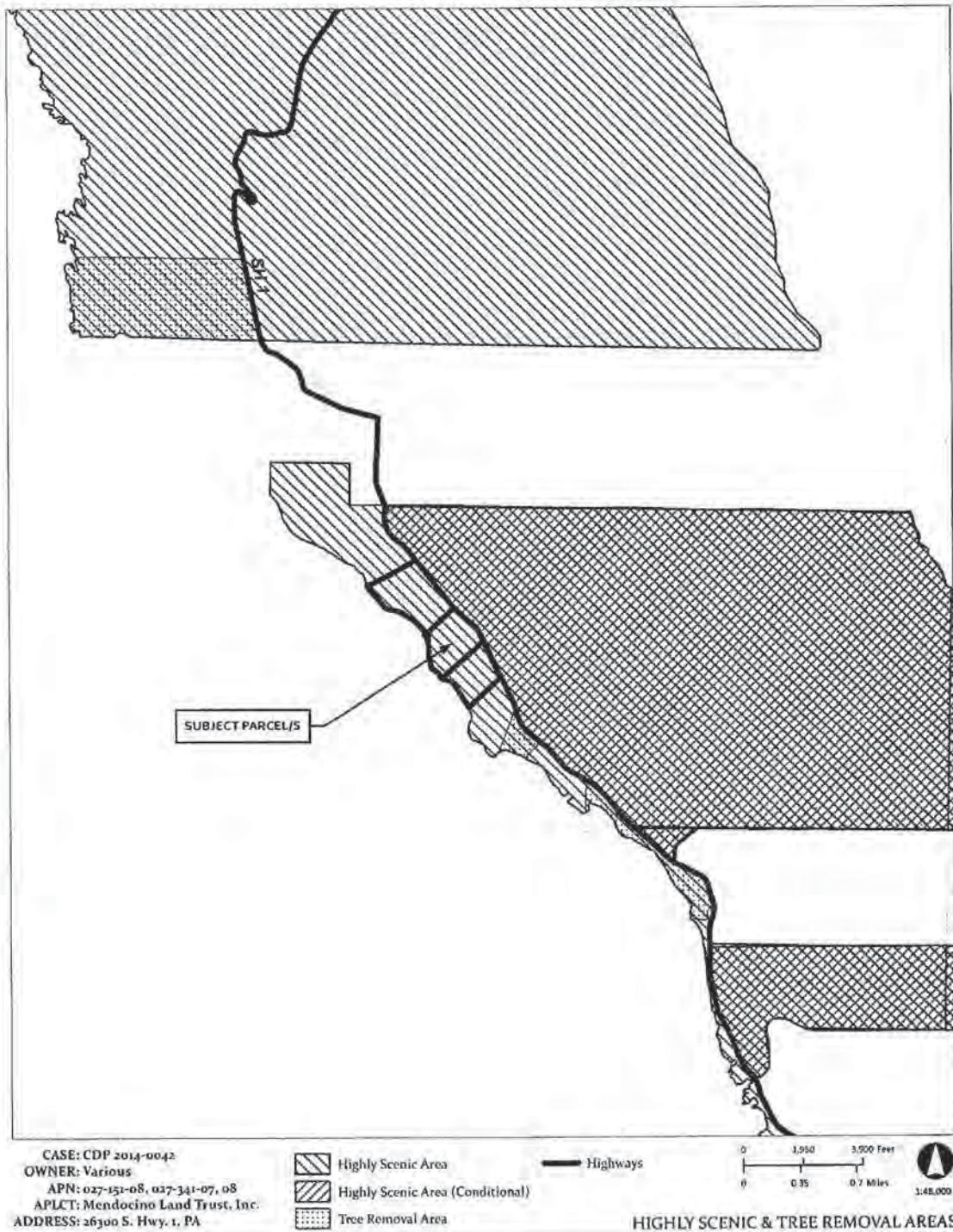
Moderate Fire Hazard



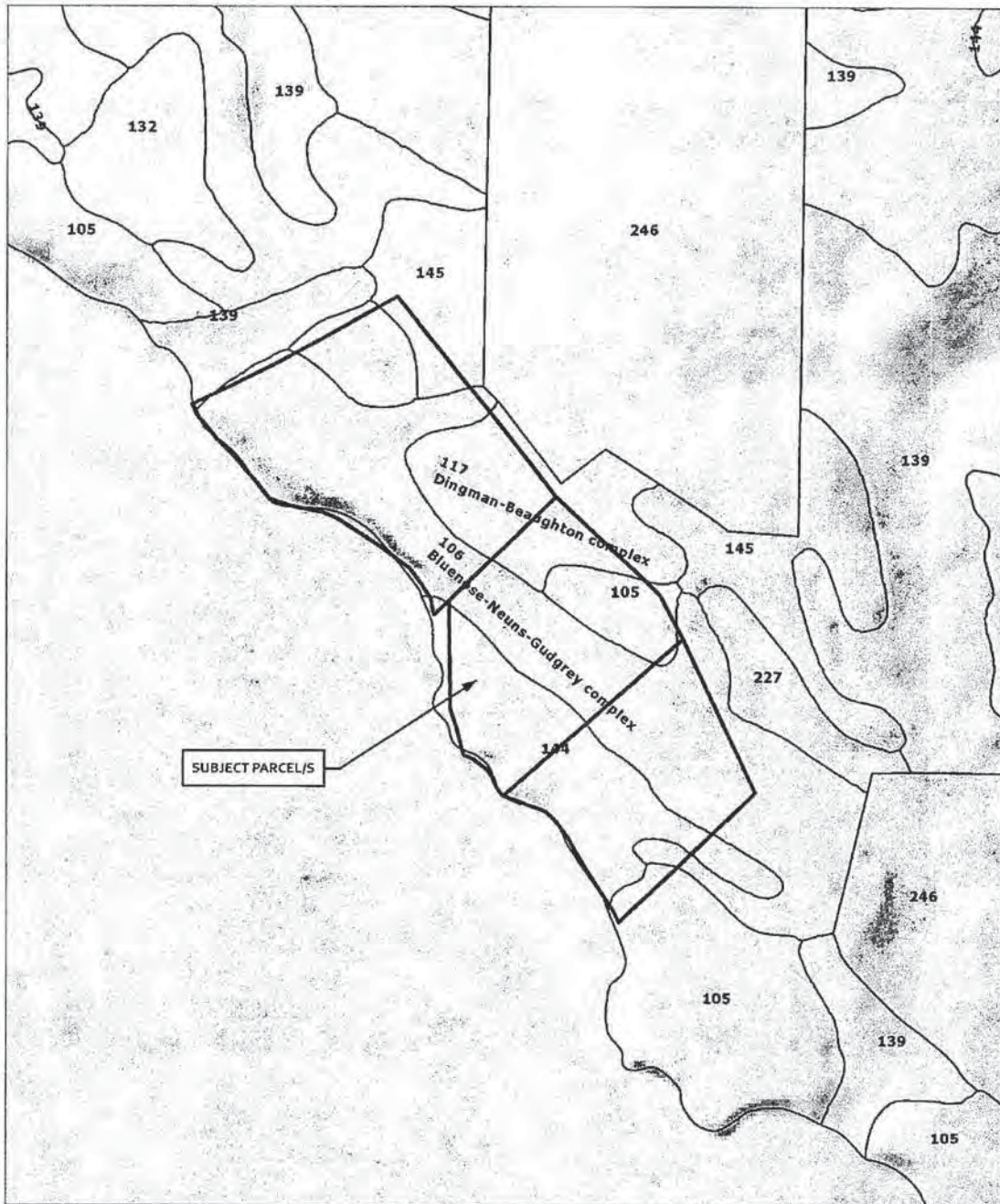
FIRE HAZARD ZONES & RESPONSIBILITY AREAS
STATE RESPONSIBILITY AREA

Map prepared by the Mendocino County Planning & Building Services, April, 2015
All special data is approximate. Map provided without warranty of any kind.

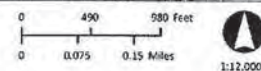




Map produced by the Mendocino County Planning & Building Services, April, 2015.
 All spatial data is approximate. Map provided without warranty of any kind.

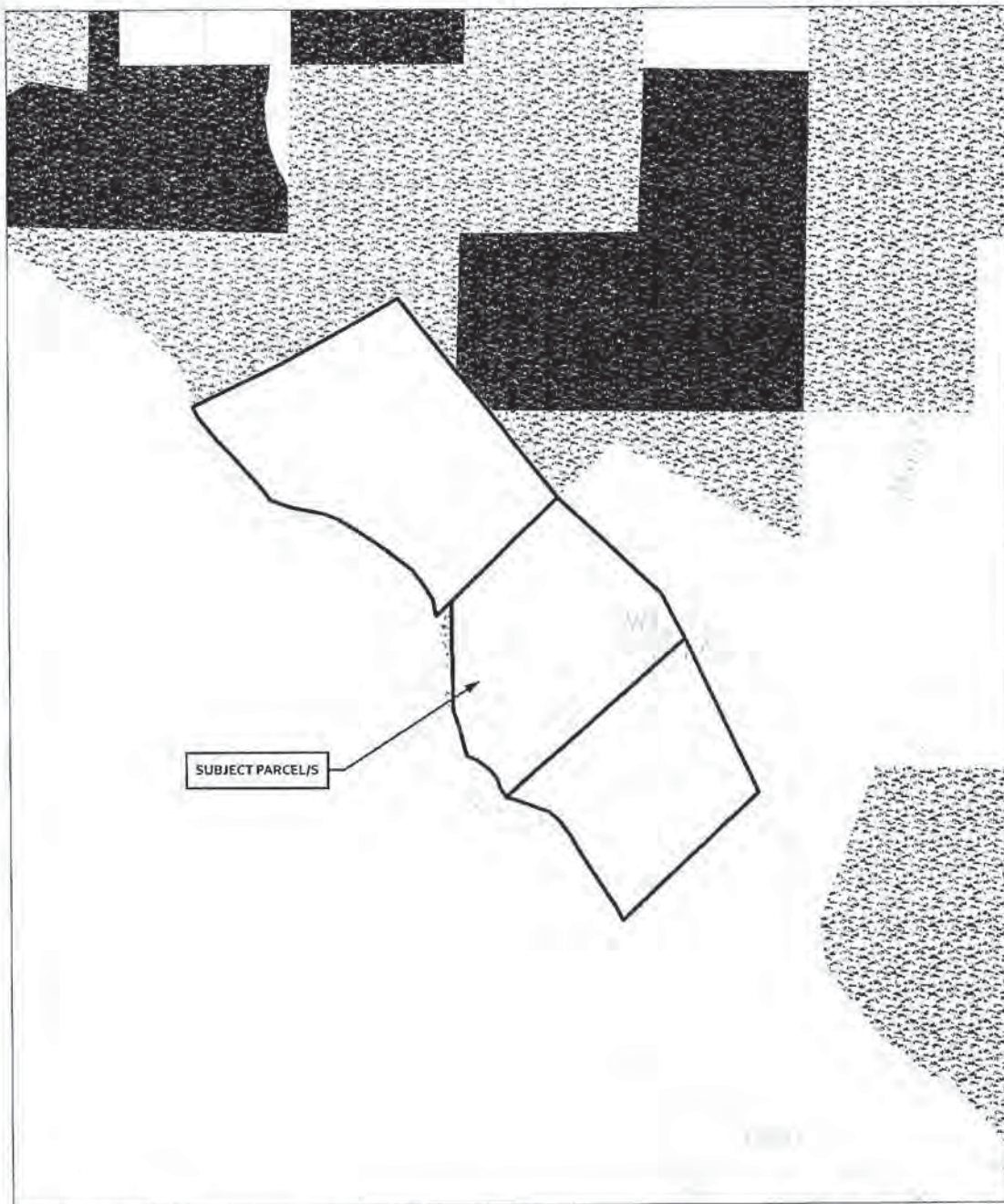


CASE: CDP 2014-0042
OWNER: Various
APN: 027-151-08, 027-341-07, 08
APLCT: Mendocino Land Trust, Inc.
ADDRESS: 26300 S. Hwy. 1, PA



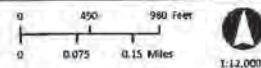
LOCAL SOILS

Map produced by the Mendocino County Planning & Building Services, April, 2015
All spatial data is approximate. Map provided without warranty of any kind.



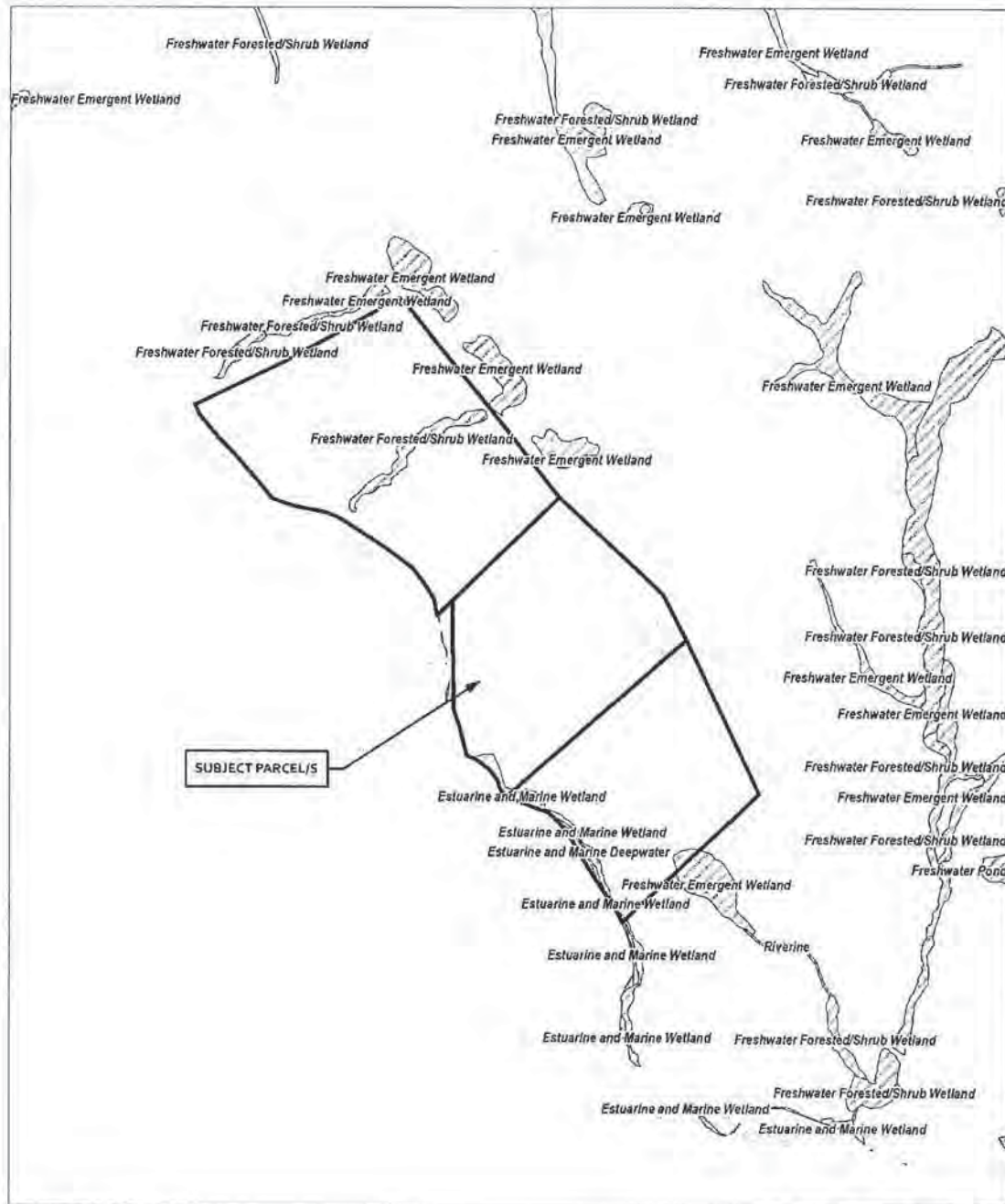
CASE: CDP 2014-0042
OWNER: Various
APN: 027-151-08, 027-341-07, 08
APLCT: Mendocino Land Trust, Inc.
ADDRESS: 26300 S. Hwy. 1, PA

Williamson Act 2014
Prime Ag 2014
Non-Prime Ag 2014



LANDS IN WILLIAMSON ACT CONTRACTS

Map provided by the Mendocino County Planning & Building Services, April, 2015.
All spatial data is approximate. Map provided without warranty of any kind.

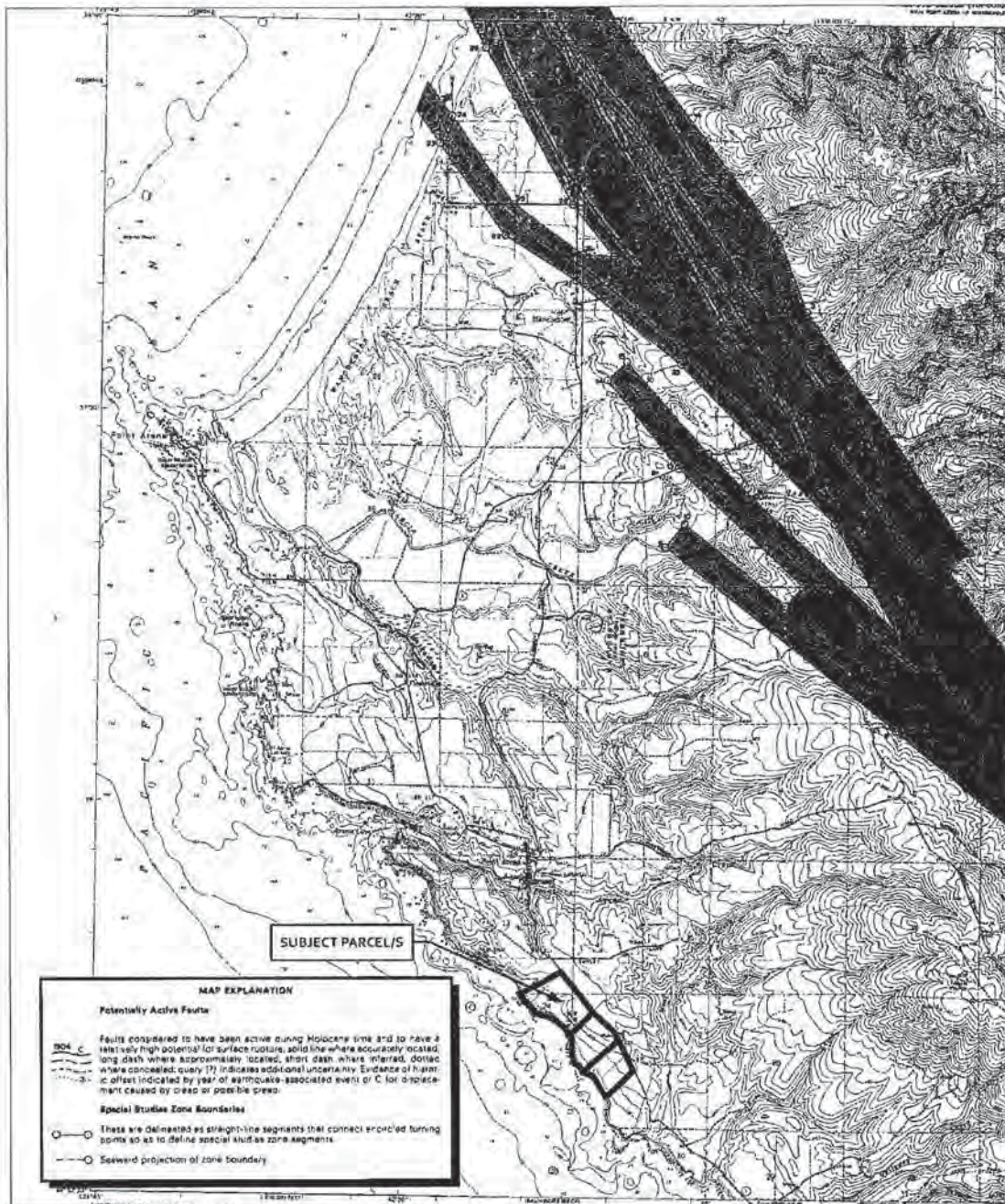


CASE: CDP 2014-0042
OWNER: Various
APN: 027-151-08, 027-341-07, 08
APLT: Mendocino Land Trust, Inc.
ADDRESS: 26300 S. Hwy. 1, PA

Wetlands

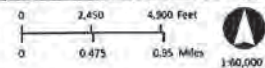
CLASSIFIED WETLANDS

Map produced by the Mendocino County Planning & Building Services, April, 2015
All spatial data is approximate. Map provided without warranty of any kind.



CASE: CDP 2014-0042
OWNER: Various
APN: 027-151-08, 027-341-07, 08
APLCT: Mendocino Land Trust, Inc.
ADDRESS: 16300 S. Hwy. 1, PA

San Andreas Fault Zone



EARTHQUAKE FAULT ZONES

Map produced by the Mendocino County Planning & Building Services, April, 2015.
All spatial data is approximate. Map provided without warranty of any kind.

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE

1385 EIGHTH STREET, SUITE 130

ARCATA, CA 95521

VOICE (707) 826-8950 FAX (707) 826-8960

RECEIVED

MAR 22 2016

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT
CALIFORNIA COASTAL COMMISSION
NORTH COAST DISTRICT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name: DIANE RUBINO

Mailing Address: 305 N. MAIN ST

City: UKIAH, CA

Zip Code: 95482

Phone: 707-462-6694

SECTION II. Decision Being Appealed

1. Name of local/port government:

Mendocino County

2. Brief description of development being appealed:

Public Coastal Trail

3. Development's location (street address, assessor's parcel no., cross street, etc.):

Mendocino County APN 027-34-08

4. Description of decision being appealed (check one.):



Approval; no special conditions



Approval with special conditions:



Denial

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO:

A-1-MEN-16-0040

DATE FILED:

3/22/16

DISTRICT:

1

EXHIBIT NO. 6

Appeal No.

A-1-MEN-16-0040
(Mendocino Land Trust)APPEAL
(1 of 13)

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

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

- ☐ Planning Director/Zoning Administrator
☒ City Council/Board of Supervisors
☐ Planning Commission
☐ Other

6. Date of local government's decision: 3/1/16

7. Local government's file number (if any): _____

SECTION III. Identification of Other Interested Persons

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

a. Name and mailing address of permit applicant:

MENDOCINO LAND TRUST
330 N FRANKLIN ST.
FORT BRAGG, CA 95437

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

- (1) LOUISA MORRIS
MENDOCINO LAND TRUST
330 N. FRANKLIN ST.
FORT BRAGG, CA 95437
- (2)

(3)

(4)

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

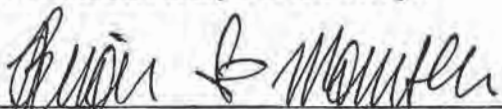
- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly **your reasons for this appeal**. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

See letters of 11/17/15 and
2/26/16 attached hereto.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)

SECTION V. Certification

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



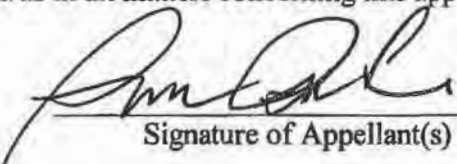
Signature of Appellant(s) or Authorized Agent
Attorney for Appellant
Date: 3/22/16

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

Section VI. Agent Authorization

I/We hereby
authorize

Diane Rubino
to act as my/our representative and to bind me/us in all matters concerning this appeal.



Signature of Appellant(s)
Date: 3-22-16

LAW OFFICES OF

CARTER, MOMSEN & KNIGHT, PC

305 N. MAIN STREET
POST OFFICE BOX 1709
UKIAH, CALIFORNIA 95482

JARED G. CARTER
BRIAN C. CARTER
BRIAN S. MOMSEN
MATISSE M. KNIGHT
ALEXANDER C. RICH

PHONE: (707) 462-6694
FAX: (707) 462-7839
E-MAIL: bmomsen@pacific.net
WEBSITE: www.cartermomsen.com

November 17, 2015

VIA FAX 961-2427 AND EMAIL ackerj@co.mendocino.ca.us

Ms. Julia Acker
County of Mendocino Department of
Planning & Building Services

Re: CDP 2014-0042
Applicant: Mendocino Land Trust
Our Client: Diane Rubino

Dear Ms. Acker:

I am writing on behalf of a neighboring land owner, Diane Rubino, to oppose the above-referenced Coast Development Permit Application and ask that this letter be made a part of the public record regarding the hearing on this application.

In 1986, my client's predecessor in interest, Capital Auto Center, as a condition of receiving a Coastal Development Permit, executed and recorded an Irrevocable Offer to Dedicate a public access easement over the subject property. That offer was not accepted until 2001, when a non-profit organization, Coastwalk, recorded a Certificate of Acceptance in the Mendocino County records. It is not clear that my client ever received anything but constructive notice of this acceptance through the recording of the Notice since there is no proof of service on the document and the listed property owners only refer to Capital Auto Center, which had not owned the property since 1986.

From at least the early 1990s, the Rubinos fenced in their entire property, including access to the bluffs along the proposed trail site from the public with four to five strand cattle fencing that is over three feet high. While an occasional abalone diver may have slipped through this fencing once in awhile, in general, their property was not used by the public and they employed a caretaker up until a year ago and for the previous 25 years, to evict any trespassers on their property. At no time since Coastwalk accepted the offer to dedicate in 2001, did Coastwalk or anyone else ever complain or demand that the fencing or the policing of the property by the caretaker cease.

Since 1987, just a year after the offer to dedicate in this case, the United States Supreme Court has held that exactions of property rights from permit applicants such as Rubino's predecessors, are illegal and unconstitutional without the commission paying just compensation unless the imposition of the access easement was sufficiently related to the burdens created by the proposed project. (See Nollan v. California Coastal Commission (1987) 483 US 825) In this case, just like in Nollan the imposition of lateral coastal access for a public trail is in no way related to the permit application which was for the construction of a single family residence. The residence itself did not impede access in any way or affect an already existing condition related to public access. Consequently, the exaction of the offer to dedicate by the Coastal Commission in 1986, in this case, was, and is, an unconstitutional taking of private property for public use without just compensation. It was not until the instant permit application, after many years of dormancy, that the Mendocino County Land Trust has attempted to enforce this unconstitutional action through opening up the Rubino property for public use. Pursuant to Travis v. the County of Santa Cruz (2004) 33 Cal.4th 757, a property owner subjected to a regulatory taking may challenge the act when his or her property is affected and does not have to have "the foresight to challenge the ordinance when it was enacted, possibly years or even decades before it was used against the property" (*Id.* at 770). The rationale for this decision was the Government should not be able to put an "expiration date on the Takings Clause" and that "future generations too have a right to challenge unreasonable limitations on the use and value of land." (*Id.* citing Palazzolo v. Rhode Island (2001) 533 US 606, 626-627)

In addition to the unconstitutional exaction, the acceptance by Coastwalk did not comply with State law. Public Resources Code §30214 "Implementation of Public Access Policies; Legislative Intent" states in relevant part that "access must be implemented in such a manner so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter." (See subsection (a)(4)) This regulation also states that implementation of public access must take into account the need to regulate the time, place and manner as well as the level of intensity of use and that the rights of individual property owners must be balanced with the public's constitutional right of access.¹

It is unclear that Coastwalk has performed any such analysis, has agreed to take on any such responsibilities, or even if it has agreed, that Coastwalk or the Mendocino Land Trust has the necessary resources, experience and expertise to manage and maintain the access way once it has been opened to public use. Furthermore, for decades the Rubinos have had cattle on their property even though none are currently present, and they plan once again to have cattle on their

1

In this case there is no public "constitutional right of access" so under this formula the rights of the individual property owner are predominant.

property. No analysis or "balancing" has taken place of which the Rubinos are aware of the effect a public hiking trail interfering with their cattle grazing operation, or whether the Land Trust or the State would indemnify the Rubinos for any losses or liability should a member of the public be injured by cattle or otherwise, etc. Similarly, the trail at at least one location comes within a few feet of the Rubinos' single family residence. There has been no "balancing" of their privacy interest in regard to the effect of a public hiking trail passing directly in front of their home.

Recently, within the last year, the Rubinos' home was vandalized by a transient who actually broke into the home, lived there for several days and caused over \$70,000 of property damage including firing several shots into the structure with a gun before he was eventually arrested. This occurred when the property was fenced in, however, the caretaker was not present. The existence of a public trail within a few feet of this home will only raise the chances of something similar occurring in the future and violate the Rubinos' right to privacy.

In addition to the 2001 acceptance being inadequate, there has been insufficient study of the environmental effects of this project under the California Environmental Quality Act ("CEQA"). The level of environmental review has only been a mitigated negative declaration. The Coastal Commission has sufficient discretion to modify the terms under which a permit for an entity such as the Land Trust will be approved for acceptance of an offer to dedicate; and the accepting entity has similar discretion to determine essential conditions for management of the access way, including hours of operation, methods of access and security measures to protect adjacent property. Public use of the access will generate traffic, litter, land deformation, and other adverse physical impacts on the easement site. Opening this trail to the public may also cause adverse aesthetic impacts. CEQA also requires that a subsequent or supplemental EIR be prepared if "circumstances under which the project is being undertaken" have changed to an extent that would require "major revisions" to the previous environmental review. (Public Resources Code §21167) In this case, the permit application by my client's predecessor where there was purportedly some environmental review in regard to the exaction of the public access easement occurred almost 30 years ago, and obviously the surrounding environment has changed in that time such that further study is required.

Finally, it is not clear from the proposed project whether the trail meets the requirements of the Irrevocable Offer to Dedicate recorded in 1986. That offer was for "public access and passive recreational use along the bluff top" with the easement being a 25 ft. wide strip of land as measured inland from the top of the bluff and in no case shall said access be closer than 10 ft. from the approved development." Exhibit C to this easement contemplated the access being approximately 125 ft. from any home or in other words "the proposed development." It is not clear if the bluff has receded in that time or if the proposed access trail is within the easement area designated by Exhibit C to the Offer. Also, the Offer only grants access and the proposed

Ms. Julia Acker
County of Mendocino Department of
Planning & Building Services
November 17, 2015
Page 4

project contemplates a boardwalk on the Rubinos' property. It is unclear from the proposed plan what exactly this boardwalk entails? Is it part of an access trail or some sort of view or overlook? Is the boardwalk within the easement area as defined in Exhibit C?

CONCLUSION

For the foregoing reasons, this permit application should either be promptly denied or in the alternative, further environmental review should be required pursuant to the Public Resources Code sections cited above and CEQA.

Respectfully submitted,


CARTER, MOMSEN & KNIGHT, PC
By: Brian S. Momsen, Esq.

Attorneys for Diane Rubino

CARTER, MOMSEN & KNIGHT, PC

305 N. MAIN STREET
POST OFFICE BOX 1709
UKIAH, CALIFORNIA 95482

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BRIAN S. MOMSEN
MATISSE M. KNIGHT
ALEXANDER C. RICH

PHONE: (707) 462-8894
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E-MAIL: bmomsen@pacific.net
WEBSITE: www.cartermomsen.com

February 26, 2016

VIA HAND DELIVERY

Mendocino County Board of Supervisors
501 Low Gap Road
Ukiah, CA 95482

Re: Board of Supervisor's Planning Appeal Hearing - March 1, 2016
Case Number CDP 2014-0042

Dear Planning Commissioners:

This office represents the Appellant, Diane Rubino, regarding the above-referenced matter.

This letter is submitted in addition to my letter of November 17, 2015 to Julia Acker which already included as attachment 6 to the Staff Report on this appeal. Rather than reiterate the points made in that letter, I will focus on the issues raised in the appeal that concern my client's privacy and aesthetic interests, as well as issues created by the fact that the Access Management Plan required by section 20.520.045 of the Mendocino County Code, has not been prepared and subjected to review required by law.

The Staff's position in its report on this appeal is essentially that so long as the proposed public access trail is more than 20 ft. away from the existing residence and so long as the Access Management Plan which is supposed to propose conditions regarding public safety hazards, adverse impact on agricultural conditions, liability insurance, signage, protecting against vandalism and improper use, etc., is completed prior to the trail being opened to the public, as opposed to the coastal permit being approved, no further consideration of these issues is necessary now. This is a false premise.

The narrow language contained in the County Code regarding "20 ft." and the section cited in the Staff Report that an Action Management Plan only need be submitted prior to the trail opening to the public, is not the only governing law on point. In the same County Code section as the 20 ft. language, section 2.528.015, section (C) "Privacy" states that all access ways shall be located and designed to minimize the loss of privacy *or other impacts* on adjacent residences and residential parcels. (Emphasis added) Public Resources Code §30214 states that public access easements shall be implemented in such a manner so as to protect private property rights, privacy interests of property owners and the aesthetic values of those owners. While there are thirteen separate conditions of approval for this CDP involving archeological artifacts, plant life, wetlands, fish, etc., which provide some level of detail, there are no present conditions that address my client's privacy and aesthetic concerns.

Moreover, in a similar circumstance Sundstrom v. County of Mendocino (1988) 202 Cal.App.3d 296, the Court of Appeal made it clear that the Board of Supervisors cannot approve a project where complete application involved later development of a discretionary element (there a septic system permit), not yet in existence and subject to legally required public and agency review, meeting CEQA requirements. Adoption of a negative declaration without subjecting this septic plan to review violated CEQA.

One condition of approval in this case requires an Access Management Plan for the trail and associated improvements to be submitted "prior to the issuance of a building permit." The Plan and its approval are discretionary – i.e., no specific legal specifications controlling content. Approval of a building permit is often ministerial. It is only at this stage, the use permit stage, where adequate review of my client's privacy, safety and aesthetic concerns under CEQA can be adequately and legally performed per Sundstrom. As stated in my previous letter, and as shown on the aerial photograph (Attachment 4 to the Staff Report), the Coastal Bluff Trail passes within 150 ft. of the Rubino's home which has previously been vandalized by trespassers who caused over \$70,000 in damage. In addition, my clients plan on running cattle on their property which is a permitted use. None of the mitigation measures or conditions of approval address these concerns and no privacy or aesthetic issues have even been studied.

The timing required for the Access Management Plan called for in the County Code notwithstanding, it makes no sense, and CEQA as interpreted in Sundstrom prevents, that the Coastal Development Permit which can contain conditions of approval after public hearing and input from neighbors, etc., not address some of these same issues which, in fact, the entity issuing the permit is required to do so by law. The only draft Access Management Plan I have seen from the Land Trust, is attached hereto along with an e-mail from Louisa Morris. This document is a hollow shell. The Staff Report mentions that there may be an up-dated plan, but I have not seen this to date.

Ms. Rubino requests that this Access Management Plan addressing her privacy and agricultural interests as well as the other required elements under the County Code be submitted prior to a ruling on this appeal and subjected to CEQA review with ample time for her to comment on the proposals and suggest additional proposals if necessary.

Sincerely,


CARTER, MOMSEN & KNIGHT, PC
By: Brian S. Momsen, Esq.

Attorneys for Diane Rubino

Enclosures

Brian Momsen

From: Louisa Morris <lmorris@mendocinolandtrust.org>
Sent: Wednesday, November 18, 2015 12:40 PM
To: bmomsen@pacific.net; ackerj@co.mendocino.ca.us
Subject: Fray/Rubino Accessway Management Plan
Attachments: Fray-Rubino MP.pdf; PB trail planning 3.13.15.jpg

Hi Brian and Julia,

Here is the current accessway management plan for the Fray and Rubino Public Access Easements. These are the two easements on the two properties south of Pelican Bluffs.

We will update this management plan as a condition of our coastal development permit.

Thank you, and please let me know if you have any questions.

Brian, I've also attached a color project map for you/your client.

All the best,

Louisa

Louisa Morris
Associate Director
Mendocino Land Trust
PO Box 1094
Mendocino, CA 95460
707-962-0470
lmorris@mendocinolandtrust.org
www.mendocinolandtrust.org

Management Plan for the Rubino/Capital Auto Center and Fray Public Access Easements

January 5, 2004

This Management Plan provides for the Moat Creek Managing Agency (MCMA), a nonprofit public benefit corporation, to hold title to two California Coastal Commission required public access easements that will be transferred to MCMA by Coastwalk, a nonprofit public benefit corporation. The purpose of this Management Plan is to manage these public access easements. The public access easements were granted in Mendocino County by:

- Capital Auto Center, easement located at 26600 Highway 1, Point Arena area. CDP 1-86-22.
- H. Joseph Fray, easement located at 26300 Highway 1, Point Arena area. CDP 81-CC-307.

Background

These public access easements were required by the California Coastal Commission to mitigate the impacts from private development upon public access, pursuant to two coastal development permits. The Capital Auto Center and Fray public access easements are 25-foot easements measured inland from the top of the bluff. In no case shall said access be closer than 10 feet from the approved Capital Auto Center development. By their signatures to this Management Plan, the Executive Director of the Coastal Commission and the Executive Officer of the Coastal Conservancy hereby approve MCMA's management plan for these public access easements.

Acceptance/ Opening/ Maintenance/Liability

MCMA has accepted the transfer of these public access easements for the purpose of general public recreational use. **However, MCMA does not intend to officially open to public use or improve any of the easement areas at this time.**

Annual Report

By July 1 of each year, MCMA shall submit an annual report to the Commission and Conservancy, describing the status of the easements and any opportunities for opening the easements for public use.

Amendment

This plan may be amended, if needed, with concurrence of all three signatories.

Agreement

Should the Moat Creek Managing Agency cease to exist or fail to carry out its responsibilities pursuant to the approved management plan, then all right, title and interest in the easements shall be vested in the State of California, acting by and through the State Coastal Conservancy or its successor in interest, or in

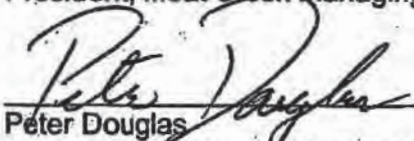
another public agency or nonprofit organization designated by the State Coastal Conservancy and approved by the Executive Director of the California Coastal Commission. This right of entry is set forth in the Acknowledgement By California Coastal Commission Of Transfer Of Public Access Easement by which the Moat Creek Managing Agency has agreed to accept the transfer of the public access easements. The foregoing is agreed to by and between Moat Creek Managing Agency, the Executive Director of the California Coastal Commission, and the Executive Officer of the State Coastal Conservancy.



Tomas Neth
President, Moat Creek Managing Agency

4-22-04

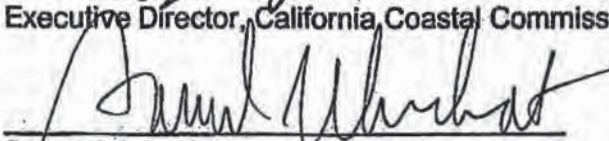
date



Peter Douglas
Executive Director, California Coastal Commission

5/13/04

date



Samuel Schuchat
Executive Officer, State Coastal Conservancy

5/19/04

date

Recording Requester and
When Recorded, Mail to:
California Coastal Commission
631 Howard Street, 4th Floor
San Francisco, California 94105
Attention: Legal Department

EXHIBIT NO. 7

Appeal No.
A-1-MEN-16-0040
(Mendocino Land Trust)

Offer to Dedicate
Public Access Easement,
APN 027-341-08 (Rubino)

Richard Perkins
BOOK 1553 PAGE 155
APR 10 8 02 AM '86

OFFICIAL RECORDS
MENDOCINO COUNTY CALIF
MARSHA A. YOUNG
RECORDER

IRREVOCABLE OFFER TO DEDICATE PUBLIC ACCESS EASEMENT

AND

DECLARATION OF RESTRICTIONS

THIS IRREVOCABLE OFFER TO DEDICATE PUBLIC ACCESS EASEMENT AND
DECLARATION OF RESTRICTIONS (hereinafter "offer") is made this 1st day
of April, 19 86, by Capitol Auto Center, a partnership,
(hereinafter referred to as "Grantor").

I. WHEREAS, Grantor is the legal owner of a fee interest of certain real
property located in the County of Mendocino, State of
California, and described in the attached Exhibit A (hereinafter referred to as
the "Property"); and

II. WHEREAS, all of the Property is located within the coastal zone as
defined in Section 30103 of the California Public Resources Code (which code is
hereinafter referred to as the "Public Resources Code"); and

III. WHEREAS, the California Coastal Act of 1976, (hereinafter referred to
as the "Act") creates the California Coastal Commission, (hereinafter referred
to as the "Commission") and requires that any coastal development permit
approved by the Commission must be consistent with the policies of the Act set
forth in Chapter 3 of Division 20 of the Public Resources Code; and

IV. WHEREAS, pursuant to the Act, Grantor applied to the California Coastal
Commission for a permit to undertake development as defined in the Act within
the Coastal zone of Mendocino County (hereinafter the
"Permit"); and

V. WHEREAS, a coastal development permit (Permit No. 1-86-22 Rubino)

1 was granted on March 14, 1986, by the Commission in
2 accordance with the provision of the Staff Recommendation and Findings,
3 attached hereto as Exhibit B and hereby incorporated by reference, subject to
4 the following condition:

5 **1. Lateral Access**

6 Prior to the transmittal of the permit, the Executive Director shall
7 certify in writing that the following condition has been satisfied. The
8 application shall execute and record a document, in a form and content
9 approved in writing by the Executive Director of the Commission irrevocably
10 offering to dedicate to a public agency or a private association approved by
11 the Executive Director an easement for public access and passive recreational
12 use along the bluff top. The document shall also restrict the applicant from
13 interfering with present use by the public of the areas subject to the
14 easement prior to acceptance of the offer.

15 Such easement shall be a 25-foot wide strip of land as measured inland from
16 the top of the bluff. In no case shall said access be closer than 10 feet
17 from the approved development.

18 Such easement shall be recorded free of prior liens except for tax liens and
19 free of prior encumbrances which the Executive Director determines may affect
20 the interest being conveyed.

21 The offer shall run with the land in favor of the People of the State of
22 California, binding successors and assigns of the applicant or landowner. The
23 officer of dedication shall be irrevocable for a period of 21 years, such
24 period running from the date of recording.

25 VI. WHEREAS, the subject property is a parcel located between the first
26 public road and the shoreline; and

27 VII. WHEREAS, under the policies of Sections 30210 through 30212 of the
California Coastal Act of 1976, public access to the shoreline and along
the coast is to be maximized, and in all new development projects located
between the first public road and the shoreline shall be provided; and

VIII. WHEREAS, the Commission found that but for the imposition of the above
condition, the proposed development could not be found consistent with the
public access policies of Section 30210 through 30212 of the California Coastal
Act of 1976 and the Local Coastal Program as defined in Public Resources Code
Section 30108.6 and that therefore in the absence of such a condition, a permit
could not have been granted;

IX. WHEREAS, it is intended that this Offer is irrevocable and shall constitute enforceable restrictions within the meaning of Article XIII, Section 8 of the California Constitution and that said Offer, when accepted, shall thereby qualify as an enforceable restriction under the provision of the California Revenue and Taxation Code, Section 402.1;

NOW THEREFORE, in consideration of the granting of Permit No. 1-86-22 to Grantor by the Commission, the owner(s) hereby offer(s) to dedicate to the People of California an easement in perpetuity for the purposes of public access and passive recreational use along the bluff top.

located on the subject property Such easement shall be a 25 ft. wide strip of land as measured inland from the top of the bluff and in no case shall said access be closer than 10 ft from the approved development. The proposed easement is
~~and is~~ specifically set forth by attached Exhibit C hereby incorporated by reference.

1. BENEFIT AND BURDEN. This Offer shall run with and burden the Property and all obligations, terms, conditions, and restrictions hereby imposed shall be deemed to be covenants and restrictions running with the land and shall be effective limitations on the use of the Property from the date of recordation of this document and shall bind the Grantor and all successors and assigns. This Offer shall benefit the State of California.

2. DECLARATION OF RESTRICTIONS. This offer of dedication shall not be used or construed to allow anyone, prior to acceptance of the offer, to interfere with any rights of public access acquired through use which may exist on the Property.

//

//

1 3. ADDITIONAL TERMS, CONDITIONS, AND LIMITATIONS. Prior to the
2 opening of the accessway, the Grantee, in consultation with the Grantor, may
3 record additional reasonable terms, conditions, and limitations on the use of
4 the subject property in order to assure that this Offer for public access is
5 effectuated.

6 4. CONSTRUCTION OF VALIDITY. If any provision of these restrictions
7 is held to be invalid or for any reason becomes unenforceable, no other
8 provision shall be thereby affected or impaired.

9 5. SUCCESSORS AND ASSIGNS. The terms, covenants, conditions,
10 exceptions, obligations, and reservations contained in this Offer shall be
11 binding upon and inure to the benefit of the successors and assigns of both the
12 Grantor and the Grantee, whether voluntary or involuntary.

13 6. TERM. This irrevocable offer of dedication shall be binding for a
14 period of 21 years starting from the date of recordation. Upon recordation of
15 an acceptance of this Offer by the Grantee, this Offer and terms, conditions,
16 and restrictions shall have the effect of a grant of access easement in gross
17 and perpetuity that shall run with the land and be binding on the parties,
18 heirs, assigns, and successors. The People of the State of California shall
19 accept this offer through the local government in whose jurisdiction the
20 subject property lies, or through a public agency or a private association
21 acceptable to the Executive Director of the Commission or its successor in
22 interest.

23 //

24 //

25 //

26 //

27 //

1 Acceptance of the Offer is subject to a covenant which runs with the
2 land, providing that any offeree to accept the easement may not abandon it but
3 must instead offer the easement to other public agencies or private
4 associations acceptable to the Executive Director of the Commission for the
5 duration of the term of the original Offer to Dedicate.

6 Executed on this 1 day of April 1986, at Los Gatos
7 _____, California.

8 Signed _____

9 Jack H. Hilleary
10 Capitol Auto Center by

11 Type or Print

12 Signed Stephen R. Cerrito

13 Jack H. Hilleary

14 Type or Print

15 NOTE TO NOTARY PUBLIC: If you are notarizing the signatures of persons signing
16 on behalf of a corporation, partnership, trust, etc., please use the correct
17 notary acknowledgment form as explained in your Notary Public Law Book.

18 State of California.)

19 County of Santa Clara)

STATE OF California
COUNTY OF Santa Clara } ss.



ON April 1, 19 86,
before me, the undersigned, a Notary Public in and for said State, personally appeared
Stephen R. Cerrito, Jack H. Hilleary, known to me,
to be one of the partners of the partnership that executed the within Instrument, and acknowl-
edged to me that such partnership executed the same.

WITNESS my hand and official seal.

Doreen Simpson

DOREEN SIMPSON

NAME (TYPED OR PRINTED) (5 of 25)
Notary Public in and for said State

1 This is to certify that the Offer to Dedicate set forth above is
2 hereby acknowledged by the undersigned officer on behalf of the California
3 Coastal Commission pursuant to the action of the Commission when it granted
4 Coastal Development Permit No. 1-86-22 on March 14, 1986,
5 and the California Coastal Commission consents to recordation thereof by its
6 duly authorized officer.

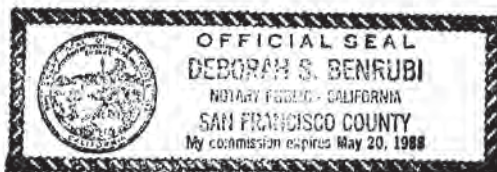
7 Dated: April 7, 1986

8 Judith W. Allen
9 Judith W. Allen, Staff Counsel
10 California Coastal Commission

11 STATE OF California

12 COUNTY OF San Francisco

13 On April 7, 1986, before me the undersigned,
14 a Notary Public, personally appeared Judith W. Allen, personally known to
15 me to be (or proved to me on the basis of satisfactory evidence)
16 to be the person who executed this instrument as the Staff Counsel
17 and authorized representative of the California Coastal Commission and
18 acknowledged to me that the California Coastal Commission executed it.



23
24
25
26
27

Deborah S. Benrubi
NOTARY PUBLIC IN AND FOR
SAID STATE AND COUNTY

RECORDING REQUESTED
COMMONWEALTH LAND TITLE #330831JDC

Exhibit A

AND WHEN RECORDED MAIL TO:

Name
Street
Address
City &
State
Capitol Auto Center
c/o Valley View Packing Co.
P.O. Box 5699
San Jose, CA 95150

MAIL TAX STATEMENTS TO:

Name
Street
Address
City &
State
SAME AS ABOVE

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Grant Deed

A.P.N. _____

THIS FORM FURNISHED BY COMMONWEALTH LAND TITLE INSURANCE COMPANY

The undersigned grantor(s) declare(s):
Documentary transfer tax is \$ 286.00

- (☒) computed on full value of property conveyed, or
(☐) computed on full value less value of liens and encumbrances remaining at time of sale.
(☐) Unincorporated area: (☐) City of _____, and

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,
ROBERT R. SHIPMAN, an unmarried man

hereby GRANT(S) to
CAPITOL AUTO CENTER, a partnership

the following described real property in the unincorporated area of the
County of Mendocino, State of California:

TRACT ONE:

Parcel 3 as numbered and designated upon that certain Parcel Map MS 96-76,
which Map was filed March 2, 1977 in Map Case 2, Drawer 29, Page 82,
Mendocino County Records, and additional real property as set forth on
Exhibit "A" attached hereto & made a part hereof.
27-341-08

Dated: 12-19-85

Robert R. Shipman
Robert R. Shipman

Georgia
STATE OF ~~CALIFORNIA~~

COUNTY OF Fulton

On 12-19-85

} SS.

before me,

Dorothy Archer

a Notary Public in and for said State, personally appeared

Robert R. Shipman

"TRACT TWO: An non-exclusive easement for water pipeline placement and maintenance, together with ingress and egress over said pipeline for the purposes stated hereinabove, being 10 feet in width, the North and East lines of which are described as follows: Beginning at the water source located on Parcel 1 of Parcel Map filed in Map Case 2, Drawer 29, Page 82, Mendocino County Records, the water source consisting of a ditch approximately 106 feet long and approximately 10 feet deep, lying 30 feet Northerly of the most Northerly row of Cypress trees; thence West to the West line of Parcel 1 of the herein referred to Parcel Map; thence continuing West across State Highway 1 to the East line of Parcel 2 of the herein referred to Parcel Map; thence South along the East line of Parcel 2 to the North line of Parcel 3 of the herein referred to Parcel Map and the termination of this easement.

TRACT THREE: An undivided 1/2 interest in an to the existing undeveloped water source located on Parcel 1, as numbered and designated on the Parcel Map filed in Map Case 2, Drawer 29, Page 82, Mendocino County Records, the water source consisting of a ditch approximately 106 feet long and approximately 10 feet deep, lying 30 feet Northerly of the most Northerly row of Cypress trees.

CALIFORNIA COASTAL COMMISSION

NORTH COAST AREA

631 HOWARD STREET, 4TH FLOOR
SAN FRANCISCO, CA 94105
(415) 543-8355



FILED February 20, 1986
49th DAY: April 3, 1986
180th DAY: August 20, 1986
Staff: Linda Locklin
Staff Report: February 24, 1986
Hearing Date: March 14, 1986

STAFF REPORT: CONSENT CALENDAR

PROJECT DESCRIPTIONAPPLICANT: Joseph RubinoPERMIT NO. 1-86-22PROJECT LOCATION: 26600 South Highway One, South of Point Arena, Mendocino County. APN 027-341-08PROJECT DESCRIPTION: Construct a single family dwelling, well, septic tank, gravel access road.LOT AREA 43 acres ZONING NABLDG. COVERAGE 3338 sq.ft. (LCP) PLAN DESIGNATION RMR40-Res 40 ac.PAVEMENT COVERAGE none PROJECT DENSITY 1 unit/40 acresLANDSCAPE COVERAGE none HEIGHT ABV. FIN. GRADE 30 ft.LOCAL APPROVALS RECEIVED: LCP Consistency ReviewSUBSTANTIVE FILE DOCUMENTS: Mendocino Land Use Plan, Permit #79-CC-140STAFF RECOMMENDATION

The Staff recommends that the Commission adopt the following Resolution:

Approval

The Commission hereby grants a permit for the proposed development subject to the conditions below on the grounds that the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a local coastal program conforming to the provisions of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

PTT: 1
Document No.: 0865P

STANDARD CONDITIONS: see attached

SPECIAL CONDITIONS:

1. Lateral Access

Prior to the transmittal of the permit, the Executive Director shall certify in writing that the following condition has been satisfied. The application shall execute and record a document, in a form and content approved in writing by the Executive Director of the Commission irrevocably offering to dedicate to a public agency or a private association approved by the Executive Director an easement for public access and passive recreational use along the bluff top. The document shall also restrict the applicant from interfering with present use by the public of the areas subject to the easement prior to acceptance of the offer.

Such easement shall be a 25-foot wide strip of land as measured inland from the top of the bluff. In no case shall said access be closer than 10 feet from the approved development.

Such easement shall be recorded free of prior liens except for tax liens and free of prior encumbrances which the Executive Director determines may affect the interest being conveyed.

The offer shall run with the land in favor of the People of the State of California, binding successors and assigns of the applicant or landowner. The officer of dedication shall be irrevocable for a period of 21 years, such period running from the date of recording.

2. Underground Utilities

All Electric, Telephone, and any other facilities using wires or lines shall be undergrounded.

A. Project Description and History

The proposed development is for the construction of a two story 3338 square foot single family residence, and attached garage, well, septic system and gravel access road. The project is located on a 43 acre parcel located west of State Route One, approximately one mile south of the City of Point Arena. This grassy, parcel is located within a highly scenic area as designated by the approved Mendocino County Land Use Plan. It is made up of a series of three well defined coastal terraces, the first at 110 feet, the second at 210 feet and the third at 200 feet. Shorth but steep escarpments separate the terraces.

In early 1977, the State Coastal Commission on appeal approved the division (McCallum & Cerrat A-237-76) of the Lepori Ranch into four parcels of 71, 47, 43, and 50 acres. The subject parcel is lot three of that division. As condition of approval, the Commission required the recordation of an agricultural open space easement which stated that each parcel could "only be approved with one single family residence and such appurtenant structures and outbuildings as are common and convenient to the conduct of agricultural, horticultural, livestock raising and animal husbandry operations." In

addition the easement stated that the resultant properties were not to be further divided. In July 1977, the Commission approved a two-story single-family residence with ancillary structures. As condition of approval the Commission required the dedication of a lateral Access easement.

Following approval of the above application (79-CC-140, Hendricks) but before issuance of the permit, construction started on the house. Since that time the property has changed hands a number of times.

B. Access

Coastal Act Section 30220 states that:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners and natural resource areas from overuse.

Additionally, Section 30212 of the Coastal Act requires in part that:

Access shall be provided from the nearest public roadway to the shoreline and along the coast except where:

As stated above, the Coastal Act establishes a legislative intent to require public access with new development. In fact, Coastal Act sections 30210 and 30212 expressly require that public access be provided along the shoreline with new development. A single-family residence on property west of the first public road, clearly constitutes new development.

The approved Mendocino LUP requires in policy 4.11-11 an offer to dedicate lateral access for a bluff top trail between the community of Point Arena to the north and Whiskey Shoals to the south. The project site is located within this area and is a key parcel to provide access for a proposed trail which would stretch between the recent State Parks and Recreation acquisition at Schooner Gulch 3.3 miles to the south, north to Point Arena. The Commission finds that to conform to the maximum extent feasible, that access is necessary to be provided along the westerly portion of this property. This as conditioned, the project is consistent with the above referenced Coastal Act policies.

C. Development

Section 30250(a) of the Coastal Act states that:

"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" (emphasis added).

Also Section 30253 of the Coastal Act states that:

"New development shall:

(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs." (emphasis added)

The project is proposed to be located 120 feet from the bluffs edge. The Commission finds that this set back is sufficient to protect the development from bluff erosion during the anticipated life of this development as the project is located outside of the area of demonstration as suggested by the Commission guidelines. In addition the project is located within a few miles of the San Andreas Fault and (based upon the terrace formation upon which it is to be located) is subject to intermediate shaking. The necessary structural design for this structure provided by the uniform building code (to withstand wind stress) is anticipated to be sufficient to prevent loss of property as the Commission has found in previous permits. For these reasons the Commission finds that the project conforms to the above referenced Sections of the Coastal Act.

D. Scenic Qualities

Section 30251 requires the protection of the scenic and visual qualities of the coast and further requires that new development be subordinate to the character of the coast. The approved Land Use Plan for the County of Mendocino requires that in such decorated highly scenic areas such as this, that new development can be carefully sited and subordinated to the maximum extent feasible. This property is part of the open beach grassland that stretches between the town of Point Arena and Iversen Point, 7 1/2 miles to the south. Currently there are few buildings along this stretch of highway except for a scattering of ranch homes. The area has traditionally been pasture land for dairy and beef operations. In approving the Land division from which the subject property was created the Coastal Commission found that:

"...residential development could probably be accommodated with minimal view disruption from Highway 1 if home sites on the lower terrace backing up against the escarpment are selected. However, any development on the entire coastal terrace would be visible from Saunders Point, a vista point three miles to the south and construction of individual houses would thus detract from the scenic value of the land."

The Commission then found that because of the requirement for an openspace easement that the visual resources could be protected. The project site selected by the applicant conforms to the findings above, in that it is located on the lowest terrace and is backed up to the escarpments. The use of natural siding materials as proposed by the applicant will in time, further assist in blocking and subordination the structure into its surroundings. The requirement as condition of approval for undergrounding utilities, will

further aid in minimizing visual intrusion on portions of the property closer to public view access.

E. Agricultural Productivity

Section 30242 of the Coastal Act seeks to protect and prevent conversion of Agricultural lands. The approved land use classification for this site in the Mendocino LUP is Remote Residential 40 acre minimum, in which agriculture is an encouraged use.

The Commission in approving the land division form which this parcel is produced around the traditional grazing activities of this area were declining and:

"...that the division of this parcel into parcels of between 40 and 75 acres, as conditioned, will allow and encourage purchase of the land by persons not dependent on the land for their income. This in turn will tend to encourage the continuance of agriculture as a means to supplement income, and in the long run will tend to maintain agriculture and the rural character of the property."

With the recordation of an easement limiting the properties density and intensity of development as well as the applicant's stated desire to use the remainder of the property for pea production, the Commission finds that the agricultural values of this property are protected and maintained as required by the above quoted section.

F. Commission Reservation of Rights with Regards to Possible Violation:

As noted in the section entitled "Project History and Description", work was commenced by a previous owner, on a now defunct permit approval, but prior to issuance of that permit and the recordation of an access offer. Although development has taken place prior to submission of this permit application (construction started), consideration of the application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Approval or denial of this permit does not constitute a waiver of any legal action with regards to any violation of the Coastal Act that may have occurred; nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal development permit.

G. California Environmental Quality Act

The Coastal Commission's permit process has been designated the functional equivalent of C.E.Q.A.; thus, in reviewing permit applications, the Commission must consider the provisions of C.E.Q.A. One of the Central C.E.Q.A. provisions is the consideration of less environmentally damaging alternatives and the consideration of proper mitigation measures to lessen significant environmental impacts. Thus, the project as conditioned can be found consistent with the provisions of C.E.Q.A. since any significant environmental impacts are adequately mitigated.

H. Local Coastal Program

Section 30604(a) of the Coastal states in part that:

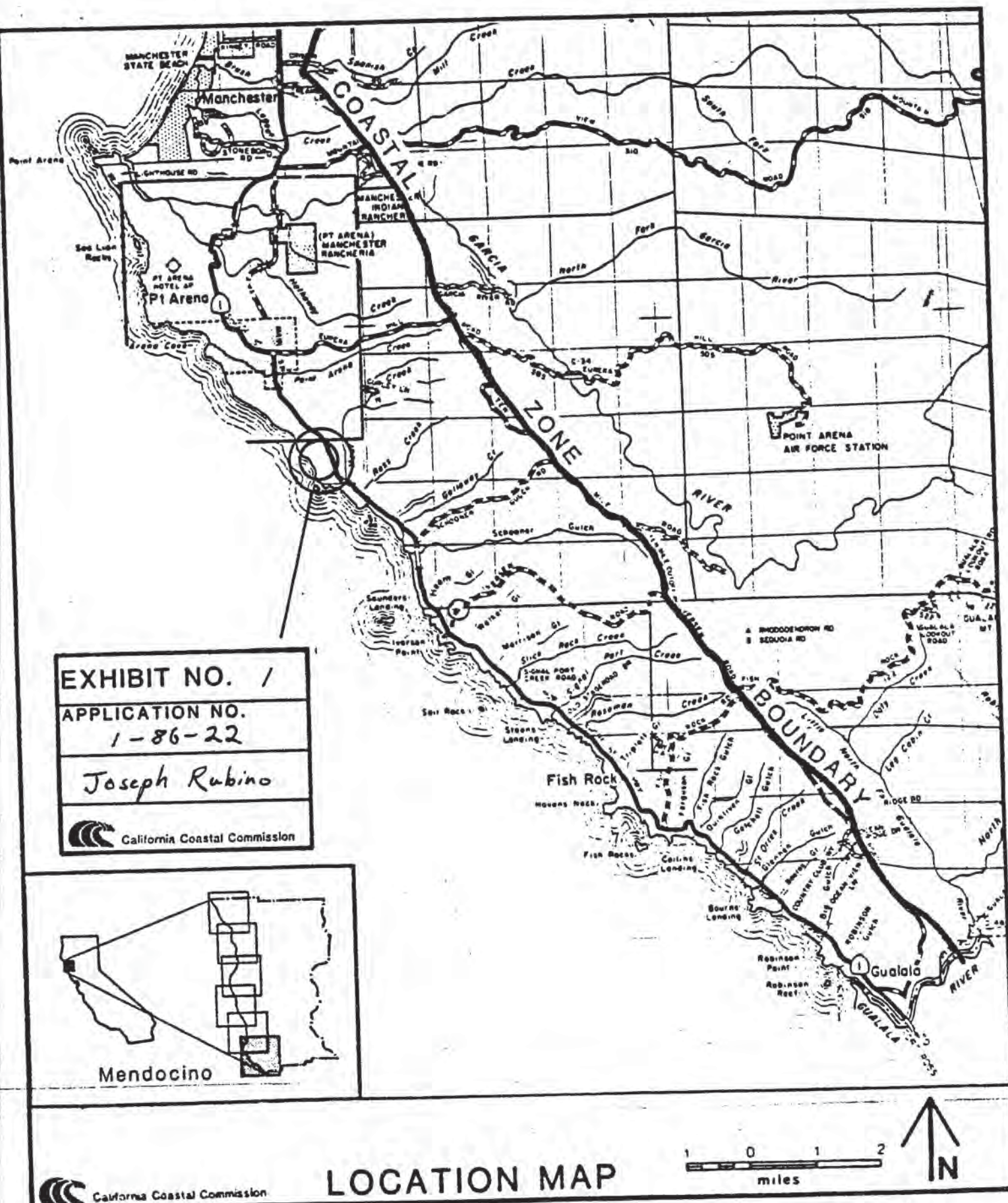
(a) Prior to certification of the local coastal program, a coastal development permit shall be issued if the issuing agency, or the commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a local coastal program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200).

The Commission finds, based upon the findings above that the proposed project conforms to the approved Mendocino Land Use Plan. As approved and conditioned the project will not prejudice the ability of the local government to complete their LCP development.

BNT/btr
0865P

Standard Conditions

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



PACIFIC OCEAN

Edge of bluff

160' ±

House

Area for
Septic
System.

Cypress Row

Gravel Road

1369'

1400'

Proposed
Well

1350'

COAST HIGHWAY ONE



SITE PLAN

Scale: 1" = 100' ±

EXHIBIT NO. 2

APPLICATION NO.
1-86-22

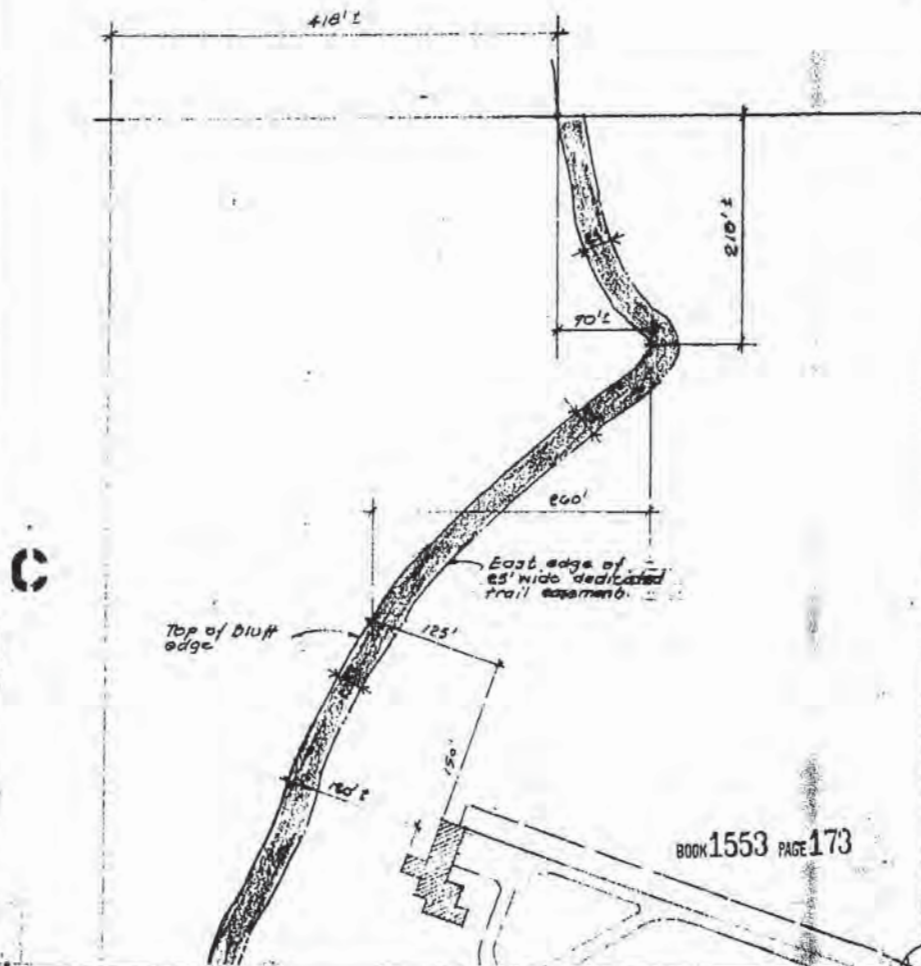
Joseph Rubino



SITE PLAN for JOSEPH RUBINO
26600 S. COAST HIGHWAY #1
POINT ARENA, CA.

PACIFIC
OCEAN

BOOK 1553 PAGE 172



12/17/2004 11:15 FAX 707 462 2689

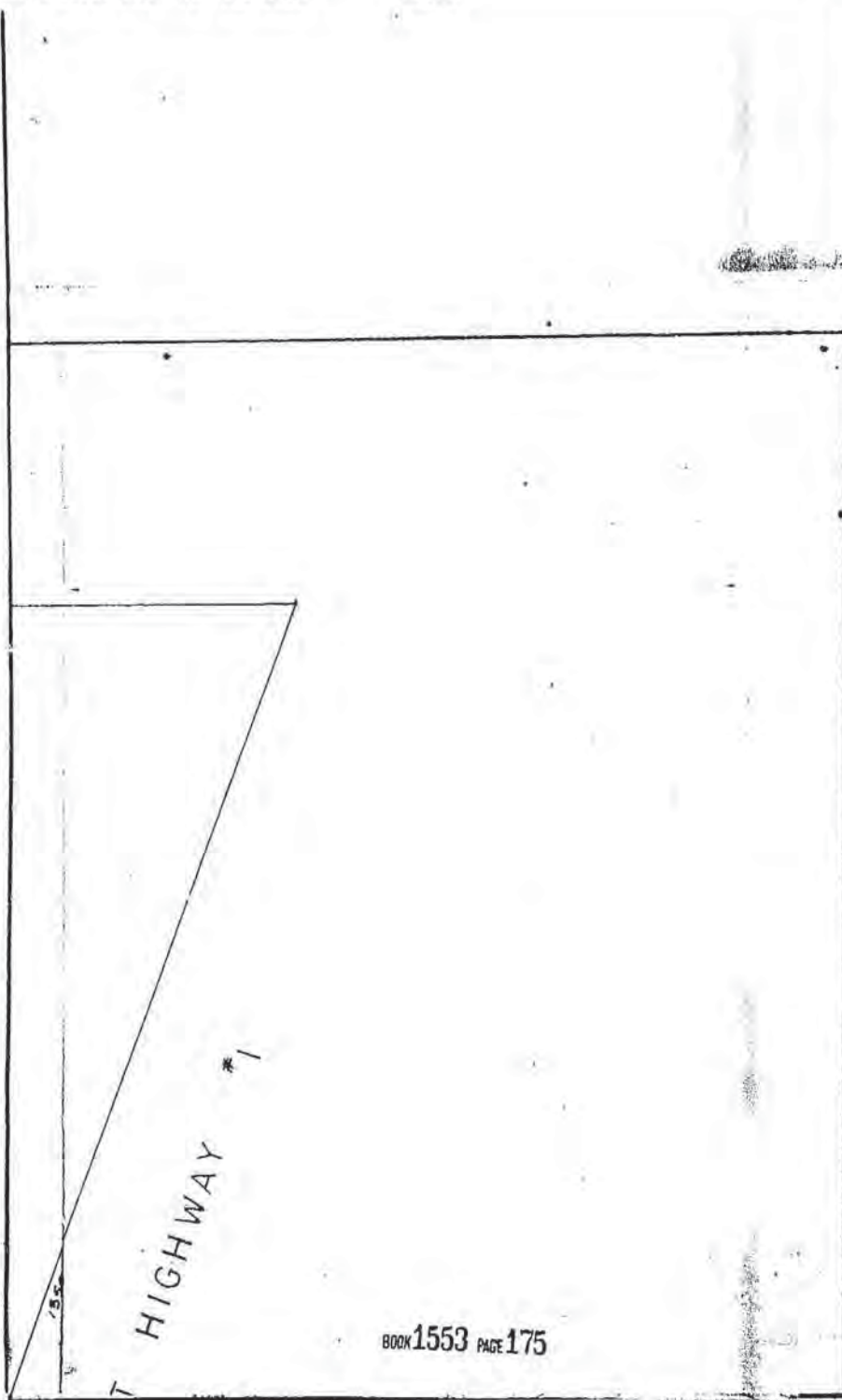
RETCO

022/027

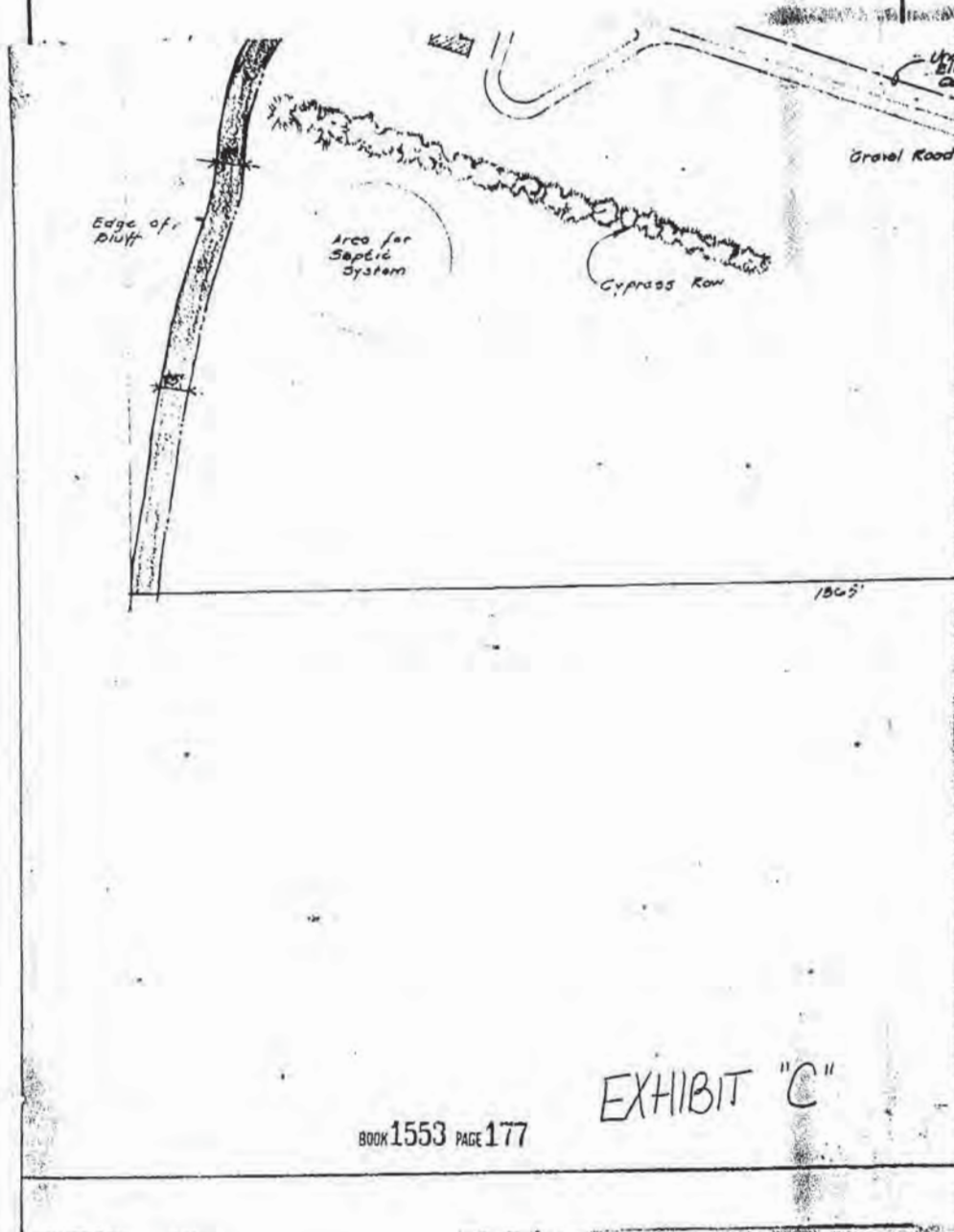
- 1400

BOOK 1553 PAGE 174

1350



BOOK 1553 PAGE 176



Underground
Electric & Telephone
Cables

el Road

SITE PLAN

Scale: 1" = 100'-0"



BOOK 1553 PAGE 178

S COAST

Residence for
MR. JOSEPH RUBINO
COAST HIGHWAY SOUTH
POINT ARENA, CA.

RICHARD H. PERKINS
ARCHITECT

GUALALA, CA. 707-554-5404

A
I

BOOK 1553 PAGE 179

5469

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

2001-07880
Recorded at the request of
CAL ST
05/04/2001 10:11A
Fee: 0.00 No of Pages: 4

STATE OF CALIFORNIA
OFFICIAL BUSINESS: Document
Entitled to free recordation pursuant
To Government Code section 6103

OFFICIAL RECORDS
Mendocino County, CA
Marsha A Wharff, Clerk-Recorder



2001-07880
Page: 1 of 4

CERTIFICATE OF ACCEPTANCE

This is to certify that Coastwalk, a duly organized and existing California nonprofit public benefit corporation, hereby accepts any and all right, title and interest in the real property conveyed in the Offers to Dedicate shown on Exhibit A, attached hereto and incorporated herein by reference, recorded in the Official Records of the County of Mendocino.

The interest in the property being conveyed by the offers is accepted in trust for the people of the State of California. Acceptance is made of that interest which can be legally conveyed and is not intended to define boundaries or accept interests or rights in lands which are already the property of the State or people of California.

This Acceptance and consent to recording of the Acceptance is executed by and on behalf of Coastwalk as approved and authorized by its Resolution No. 2001-01 of its governing board at its meeting on February 3, 2001, by its duly authorized officer.

Dated: 4-6-01

COASTWALK

By: Richard Nichols
Richard Nichols

Its: Executive Director

STATE OF CALIFORNIA
COUNTY OF San Francisco

On 4/6/01, before me, Deborah L. Bove, a Notary Public, personally appeared Richard Nichols, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to within the instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Deborah L. Bove



EXHIBIT NO. 8

Appeal No.
A-1-MEN-16-0040
(Mendocino Land Trust)
Coastwalk Acceptance of
OTDs for PAEs, Including
Fray (La Franchi) & Rubino

ACKNOWLEDGMENT BY CALIFORNIA COASTAL COMMISSION

This is to certify that Coastwalk is a nonprofit public corporation acceptable to the Executive Director of the California Coastal Commission to be Grantee under the Offers to Dedicate referenced in Exhibit A attached hereto and incorporated herein by reference and recorded in the Official Records of the County of Mendocino.

Dated: April 30, 2001

CALIFORNIA COASTAL COMMISSION

John Bowers
John Bowers, Staff Counsel

STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

On 4/30/01, before me, Deborah L. Bove, a Notary Public, personally appeared John Bowers, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to within the instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Deborah L. Bove



2001-07880
Page: 2 of 4

Page 2 of 2

EXHIBIT A

OFFERS TO DEDICATE AS RECORDED IN OFFICIAL RECORDS OF MENDOCINO COUNTY, CALIFORNIA

GRANTOR	DATE RECORDED	INSTRUMENT NO. BOOK / PAGE	ASSESSOR PARCEL NO.	PERMIT NO.
Jack T. Bishoff and Chatter Bishoff	12/20/77	60984 / 1124 / 6	118-23-03	A-177-77
Gary W. Baumgartner and Patricia K. Baumgartner	07/31/81	11801 / 1316 / 402	8-421-001	80-P-019
Eric Beihl and Martha Beihl	12/24/81	19712 / 1335 / 191	142-031-10	1-81-035
Donald K. Blumenthal and Mary I. Blumenthal	11/16/81	17539 / 1330 / 458	142-021-03	1-81-046
Benny L. Booth	07/16/80	10451 / 1266 / 164	17-360-19	NCR-79-CC-304
Allen S. Booth and Sandra C. Booth	09/24/80	14797 / 1275 / 374	118-230-50	NCR-80-CC-134
Larry Bowen and Virginia L. Bowen	09/23/77	54870 / 1110 / 392	118-200-18	A-179-77
James W. Chambers & Kay G. Chambers	03/26/82	3990 / 1345 / 667	144-290-04	80-CC-267
Mildred C. Day	11/06/78	23781 / 1179 / 80	17-360-22	NCR-77-CC-016
Mildred C. Day	06/16/87	10451 / 1629 / 465	17-360-021	1-85-033
Eddon Duran and Trudy L. Duran	03/23/81	4131 / 1297 / 632	118-230-52	80-CC-161
Donald J. Emerson and Dorothy J. Emerson	09/21/77	54727 / 1110 / 178	17-280-50	NCR-77-CC-221
John M. Frankel and Margaret S. Frankel	09/12/80	14046 / 1273 / 602	127-040-01	A-79-073
" Re-recorded	11/06/80	17345 / 1281 / 303	127-040-01	A-79-073
Joseph Fray	08/27/81	13363 / 1320 / 232	27-341-07	81-CC-307
Richard M. Fugill and Loys M. Fugill	10/03/80	15413 / 1276 / 636	118-360-10	80-CC-162
Peter G. Garcia	12/01/77	59729 / 1121 / 59	15-330-24	NCR-77-CC-347
William A. Gardner and Nancy Gardner	05/16/80	7334 / 1259 / 151	13-280-34	A-64-079
J. V. Garote	10/06/77	55792 / 1112 / 387	121-050-23	NCR-77-CC-158
Elmer F. Glasser and Mary Louise Glasser	04/07/81	4980 / 1299 / 616	144-290-09	80-CC-259



2001-07888
Page: 3 of 4

**OFFERS TO DEDICATE AS
RECORDED IN OFFICIAL RECORDS
OF MENDOCINO COUNTY, CALIFORNIA**

GRANTOR	DATE RECORDED	INSTRUMENT NO. BOOK / PAGE	ASSESSOR PARCEL NO.	PERMIT NO.
Ben Glassman and Carmen Glassman	09/21/77	54726 / 1110 / 173	121-050-03	NCR-77-CC-116
Peter Hack	11/18/80	17966 / 1282 / 694	15-340-05	77-CC-328
Patricia J. Hicks	07/05/79	11959 / 1215 / 193	13-280-32	NCR-79-CC-1031
Bruce B. Kesner and Marjorie A. Kesner	01/08/81	246 / 1288 / 677	142-031-08	80-CC-138
Michael J. Lieben and Rima F. Lieben	12/02/80	18642 / 1284 / 373	123-340-09	NCR-80-CC-143
Dorothy J. Linton	10/08/81	15533 / 1325 / 373	142-033-11	1-81-053
Robert E. Patterson and Eveleth C. Patterson	05/22/78	10000 / 1148 / 584	17-280-52	NCR-77-CC-393
Frank C. Petersen and Rita Petersen	9/21/82	12796 / 1367 / 214	15-350-28	1-81-119
Esther B. Newberry and Charlene A. Petersen				
Lloyd B. Plath and Frances M. Plath	08/15/80	12264 / 1270 / 13	142-151-21	79-CC-294
Larry Robinson and Marsha Robinson	05/12/78	9348 / 1147 / 269	15-340-04	NCR-77-CC-394
Capitol Auto Center, a partnership	04/10/86	5469 / 1553 / 155	027-341-08	1-86-022
David Sabsay and Helen G. Sabsay	11/07/80	17440 / 1281 / 467	15-340-07	NCR-78-CC-297
Dayna A. Shaffron	07/06/79	12111 / 1215 / 445	123-340-10	NCR-79-CC-022
Harry L. Tennant and Margaret F. Tennant	01/20/81	904 / 1290 / 234	118-360-7	80-CC-218
Katharine W. Tremaine	10/03/77	55552 / 1112 / 28	121-28-09	NCR-75-CC-479
Fred Tremblay and Anna Belle Tremblay	03/31/81	4627 / 1299 / 23	144-290-11	78-CC-838
Robert Trombetta and Marjorie J. Trombetta	12/06/78	25758 / 1183 / 475	17-280-51	NCR-78-CC-932
John Tweedie and Janet Tweedie	11/16/77	58777 / 1119 / 42	142-031-14	NCR-77-CC-354
Steven C Young and Laurel A. Young	07/06/84	10028 / 1465 / 118	144-290-10	1-84-077



2001-07850
Page: 4 of 4

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:
CALIFORNIA COASTAL COMMISSION
725 Front Street # 300
Santa Cruz, California 95060
Attn: Legal Division

2006-02165
Recorded at the request of
CALIFORNIA COASTAL COMMISSION
02/02/2006 02:36P
Fee: 0.00 No of Pages: 6

OFFICIAL RECORDS
Marsha A Wharff, Clerk-Recorder
Mendocino County, CA

STATE OF CALIFORNIA OFFICIAL BUSINESS
Document entitled to free recordation
Pursuant to Government Code § 27383

CDP 1-86-22
Rubino/Capital Auto Center

EXHIBIT NO. 9

Appeal No.
A-1-MEN-16-0040
(Mendocino Land Trust)

ASSIGNMENT OF PAE
FROM ALC TO MCMA
(Page 1 of 6)

ASSIGNMENT OF PUBLIC ACCESS EASEMENT

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,
American Land Conservancy, a private nonprofit corporation (hereinafter the "Assignor"), hereby
assigns to Moat Creek Managing Agency, all of its right, title, and interest in the perpetual easement in
gross, for public access, created by the recordation by Coastwalk, a private nonprofit corporation, on
May 4, 2001 as Instrument No. 2001-07880, of a Certificate of Acceptance, which easement
Coastwalk subsequently assigned to American Land Conservancy by the recordation of Assignment of
Public Access Easement recorded on September 2, 2004 as Instrument No. 2004-20029.

Dated: 12/22/05

AMERICAN LAND CONSERVANCY

By: Mark Bergstrom

Mark Bergstrom
President

STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

On 22 December 2005, before me, Andrew F. Albright, a Notary Public,
personally appeared Mark Bergstrom, personally known to me (or proved to me on
the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within
instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon
behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

NOTARY PUBLIC



2006-02165
Pg: 1/6

**ACKNOWLEDGMENT BY
CALIFORNIA COASTAL COMMISSION
OF TRANSFER OF PUBLIC ACCESS EASEMENT**

THIS ACKNOWLEDGMENT acknowledges and certifies the transfer from American Land Conservancy, a private nonprofit corporation, to Moat Creek Managing Agency, a private nonprofit corporation, of a Public Access Easement created by the recordation by Coastwalk, a private nonprofit corporation, of a Certificate of Acceptance on May 4, 2001, as Instrument Number 2001-07880 in the Official Records of Mendocino County (hereinafter the "Public Access Easement"), which Public Access Easement Coastwalk subsequently assigned to American Land Conservancy by the recordation of Assignment of Public Access Easement recorded on September 2, 2004 as Instrument No. 2004-20029, and sets forth conditions of that transfer of ownership of the Public Access Easement with respect to the management and future disposition of said Public Access Easement. It is the intention of the California Coastal Commission (hereinafter the "Commission") and Moat Creek Managing Agency to ensure that the purposes, terms and conditions of the Public Access Easement be carried out within a framework established by and among the Commission, Moat Creek Managing Agency and the State Coastal Conservancy (hereinafter the "Conservancy") in order to implement the Commission's Coastal Access Program pursuant to the California Coastal Act of 1976, Public Resources Code § 30000 *et seq.* (hereinafter the "Coastal Act").

I. WHEREAS, the Commission is an agency of the State of California established pursuant to Public Resources Code § 30300 and is charged with primary responsibility for implementing and enforcing the Coastal Act; and



II. WHEREAS, the Conservancy is an agency of the State of California existing under Division 21 of the California Public Resources Code, which serves as a repository for interests in land whose reservation is required to meet the policies and objectives of the Coastal Act or a certified local coastal plan or program; and

III. WHEREAS, Moat Creek Managing Agency is a private nonprofit corporation existing under § 501(c)(3) of the United States Internal Revenue Code and having among its principal charitable purposes the preservation of land for public access, recreation, scenic and open space purposes; and

IV. WHEREAS, as a condition to its approval of a Coastal Development Permit, 1-86-22, imposed pursuant to Sections 30210-30212 of the Coastal Act, the Commission required the permittee to grant the Public Access Easement; and

V. WHEREAS, terms and conditions of the Public Access Easement provide, among other things, that (A) the Public Access Easement shall run with the land and be binding on the parties, heirs, assigns, and successors; and (B) the Public Access Easement holder may not abandon it but must instead offer the Public Access Easement to other public agencies or private associations acceptable to the Executive Director of the Commission; and

VI. WHEREAS, Moat Creek Managing Agency desires to become the holder of the Public Access Easement and accordingly has requested that the Executive Director of the Commission approve it as an acceptable management agency; and

VII. WHEREAS, Moat Creek Managing Agency is acceptable to the Executive Director of the Commission to be the holder of the Public Access Easement provided that the Public Access Easement will be transferred to another qualified entity or to the Conservancy in the event that Moat



Creek Managing Agency ceases to exist or is otherwise unable to carry out its responsibilities as Grantee, as set forth in a management plan approved by the Executive Director of the Commission.

NOW, THEREFORE, this is to certify that Moat Creek Managing Agency is a private nonprofit corporation acceptable to the Executive Director of the Commission to be holder of the Public Access Easement, on the condition that should Moat Creek Managing Agency cease to exist or fail to carry out its responsibilities as holder of the Public Access Easement to manage the Public Access Easement for the purpose of public access and passive recreational use along the bluff top, then all of Moat Creek Managing Agency's right, title and interest in the Public Access Easement shall vest in the State of California, acting by and through the Conservancy or its successor, upon acceptance thereof; provided, however, that the State, acting through the Executive Officer of the Conservancy or its successor agency, may designate another public agency or private association acceptable to the Executive Director of the Commission, in which case vesting shall be in that agency or organization rather than the State. The responsibilities of Moat Creek Managing Agency to manage the Public Access Easement shall be those set forth in the Management Plan dated January 5, 2004 and maintained in the offices of the Commission and the Conservancy (and as the Management Plan may be amended from time to time with the written concurrence of the Executive Director of the Commission, the Executive Officer of the Conservancy, and Moat Creek Managing Agency). Notwithstanding the foregoing, the right, title and interest of Moat Creek Managing Agency in the Public Access Easement may not vest in the Conservancy or another entity except upon (1) a finding by the Conservancy, made at a noticed public hearing, that Moat Creek Managing Agency has ceased to exist or failed to carry out its responsibilities as set forth in the Management Plan; and (2) recordation by the State or another designated agency or entity of a Certificate of Acceptance, substantially in the form set forth in California Government Code § 27281. Nothing herein shall



prevent Moat Creek Managing Agency from transferring the Public Access Easement to a qualified entity pursuant to the Public Access Easement, thereby relieving itself of the obligation to manage the Public Access Easement in accordance with the Management Plan.

IN WITNESS WHEREOF, the Commission and Moat Creek Managing Agency have executed this ACKNOWLEDGMENT OF TRANSFER OF PUBLIC ACCESS EASEMENT as of the dates set forth below.

Dated: Dec. 21, 2005

Dated: 1-27-06

CALIFORNIA COASTAL COMMISSION

MOAT CREEK MANAGING AGENCY

By: John Bowers
John Bowers, Staff Counsel

By: Thomas M. Neth
Thomas M. Neth, President
Thomas M. Neth

STATE OF CALIFORNIA

COUNTY OF MENDOCINO

On January 27, 2006, before me, David S. Goretsky, a Notary Public, personally appeared Thomas M. Neth, ~~personally known to me~~ (or proved to me on the basis of satisfactory evidence) ~~to be~~ the person(s) whose name(s) ~~is/are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature



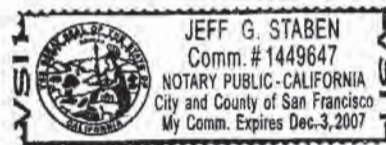
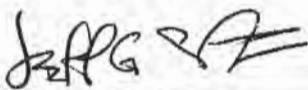
STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

On 12.21.05, before me, Jeff G. Staben, a Notary Public, personally appeared John Bowers, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature



Management Plan for the Rubino/Capital Auto Center and Fray Public Access Easements

January 5, 2004

This Management Plan provides for the Moat Creek Managing Agency (MCMA), a nonprofit public benefit corporation, to hold title to two California Coastal Commission required public access easements that will be transferred to MCMA by Coastwalk, a nonprofit public benefit corporation. The purpose of this Management Plan is to manage these public access easements. The public access easements were granted in Mendocino County by:

- Capital Auto Center, easement located at 26600 Highway 1, Point Arena area. CDP 1-86-22.
- H. Joseph Fray, easement located at 26300 Highway 1, Point Arena area. CDP 81-CC-307.

Background

These public access easements were required by the California Coastal Commission to mitigate the impacts from private development upon public access, pursuant to two coastal development permits. The Capital Auto Center and Fray public access easements are 25-foot easements measured inland from the top of the bluff. In no case shall said access be closer than 10 feet from the approved Capital Auto Center development. By their signatures to this Management Plan, the Executive Director of the Coastal Commission and the Executive Officer of the Coastal Conservancy hereby approve MCMA's management plan for these public access easements.

Acceptance/ Opening/ Maintenance/Liability

MCMA has accepted the transfer of these public access easements for the purpose of general public recreational use. **However, MCMA does not intend to officially open to public use or improve any of the easement areas at this time.**

Annual Report

By July 1 of each year, MCMA shall submit an annual report to the Commission and Conservancy, describing the status of the easements and any opportunities for opening the easements for public use.

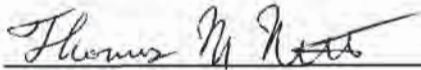
Amendment

This plan may be amended, if needed, with concurrence of all three signatories.

Agreement

Should the Moat Creek Managing Agency cease to exist or fail to carry out its responsibilities pursuant to the approved management plan, then all right, title and interest in the easements shall be vested in the State of California, acting by and through the State Coastal Conservancy or its successor in interest, or in

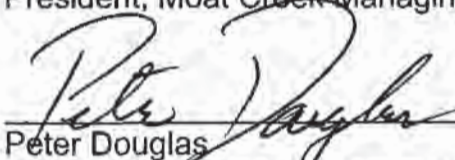
another public agency or nonprofit organization designated by the State Coastal Conservancy and approved by the Executive Director of the California Coastal Commission. This right of entry is set forth in the Acknowledgement By California Coastal Commission Of Transfer Of Public Access Easement by which the Moat Creek Managing Agency has agreed to accept the transfer of the public access easements. The foregoing is agreed to by and between Moat Creek Managing Agency, the Executive Director of the California Coastal Commission, and the Executive Officer of the State Coastal Conservancy.



Tomas Neth
President, Moat Creek Managing Agency

4-22-04

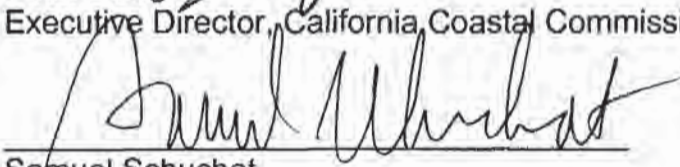
date



Peter Douglas
Executive Director, California Coastal Commission

5/13/04

date



Samuel Schuchat
Executive Officer, State Coastal Conservancy

5/19/04

date

**AMENDMENT TO
ACCESSWAY MANAGEMENT PLAN
PUBLIC ACCESS TRAIL ON PELICAN BLUFFS, RUBINO/CAPITOL AUTO CENTER
AND FRAY PROPERTIES**

By this agreement, Mendocino Land Trust (MLT), a nonprofit corporation, will construct, open and manage a coastal trail on their Pelican Bluffs property, and the Moat Creek Managing Agency (MCMA), a non-profit corporation, in partnership with MLT, will construct, open and manage a coastal access trail within two public access easements, offered for dedication in 1986 (Rubino/Capitol Auto Center) and 1981 (Fray). The trail will be located at Pelican Bluffs (no street address), 26300 Highway One, and 26600 Highway One, approximately one mile south of the City of Point Arena, in coastal Mendocino County, California.

MLT acquired the Pelican Bluffs property to preserve open space, wildlife habitat, and to provide for public access and recreation. The current property owners for the three properties underlying the coastal trail are MLT (Pelican Bluffs), Diane and Joe Rubino (Rubino/Capitol Auto Center), and Ron LaFranchi (Fray). The CEQA determination for construction of this trail on these three properties was completed by Mendocino County Planning and Building Services in CDP 2014-0042, and this amended Management Plan is being prepared pursuant to CDP 2014-0042.

Coastal Commission permit requirements

These two public access easements were required by the California Coastal Commission to mitigate impacts from private development on public access, pursuant to coastal development permits CDP 1-86-22 (Rubino/Capitol Auto Center) and CDP 81-CC-307 (Fray). Both permits required dedication of lateral blufftop easements measuring 25 feet inland from the top of the daily bluff edge. The Rubino public access easement included a requirement that in no case shall the public access be closer than 10 feet to the approved Rubino/Capitol Auto Center development.

OTD acceptance/Public Access Easement Transfers/Previous Management Plans

Coastwalk (CW), a non-profit organization, accepted the Rubino and Fray offers-to-dedicate for public access in 2001 and prepared a Management Plan dated 4/3/2001. On 4/28/2002, the Management Plan was amended to ensure that should CW fail to perform or cease to exist, the Easements would be transferred to the State Coastal Conservancy (SCC).

In 2005, CW transferred the Public Access Easements to American Land Conservancy (ALC) and the Management Plan was amended to reflect the change in easement ownership on 12/15/2004. In 2006, ALC transferred the Easements to MCMA and the Management Plan (amendment # 4) reflected the change in easement ownership and was dated 1/5/2004. On 1/29/2008 the Management Plan was amended (# 5) to remove the requirement for annual monitoring reports.

EXHIBIT NO. 11

**Appeal No.
A-1-MEN-16-0040**
(Mendocino Land Trust)

**2016 DRAFT AMENDED
ACCESSWAY
MANAGEMENT PLAN**

This current Amendment (#6) to the Accessway Management Plan is required as a condition of CDP 2014-0042, prior to opening the Pelican Bluffs Trail and the trail within the two public access easements.

California Coastal Trail

The Pelican Bluffs property was identified as a crucial link in the California Coastal Trail (CCT) by a CCT Feasibility Study completed by MCMA in 2010. This study was funded by the State Coastal Conservancy, who also funded MLT's purchase of the 73-acre Pelican Bluffs property in 2013, as well as MLT's coastal trail planning efforts for the property and two public access easements.

When completed, this trail (on MLT's Pelican Bluffs property and within the 25-foot Rubino and Fray public access easements) will be a 2.2-mile long segment of the CCT. The trail begins at a 5-car parking area on MLT's 73-acre Pelican Bluffs property, which is north of the two public access easements. Its total length is 2.2 miles, and there will be a footbridge, about 100 dirt steps, 80 feet of boardwalk, 4 interpretive signs, 2 management signs with trail guidelines, 20 smaller signs (private property, warning signs, sensitive habitat, pack it in/pack it out), 2 benches, and 2 picnic tables.

Existing Site Conditions

The site is located between Highway One and the Pacific Ocean, west of mile marker 13.86 on Highway One, between the town of Point Arena and Moat Creek Beach, which is managed by MCMA. Pelican Bluffs connects to the Fray (LaFranchi) public access easement on its southwest boundary, and the Fray (LaFranchi) public access easement connects to the Rubino public access easement on its southwest boundary.

This part of the Mendocino Coast offers spectacular views of the Pacific Ocean from 100-foot white sandstone cliffs. The endangered Point Arena Mountain Beaver lives here, as do interesting coastal plants and complex ecological communities. Many birds of prey roost and hunt in this area. Cattle were removed from the Pelican Bluffs property in 2013, and the riparian areas are now recovering from decades of over-grazing.

Botanical and Point Arena Mountain Beaver surveys and archeological studies of Pelican Bluffs and the two easement areas were completed in 2014-15. There are several types of environmentally sensitive habitat areas (ESHA) on the Pelican Bluffs property, including several rare plants, plant communities, and sensitive archaeological resources. The Pelican Bluffs trail has been designed to avoid impacts to sensitive resources. Impacts to ESHA have been addressed and mitigated to less than significant in CDP 2014-0042. The surveys found no sensitive botanical or cultural resources within the two 25-foot wide public access easement areas.

There are houses and other structures on the two private properties (Fray/LaFranchi and Rubino). Both houses are located more than 100 feet from the proposed trail. Currently, a caretaker lives in the home on the LaFranchi property, while the house on the Rubino property is vacant. There are presently no cattle or other livestock on either property. Remnant wire fencing exists

approximately 25 feet from the bluff edge on the LaFranchi property, which also has a wooden gate across a private, steep trail with steps leading to the beach. There is wooden fencing west of Highway One on all three properties, and Pelican Bluffs' northern and southern property boundaries are fenced.

Improvements

Trail improvements include parking, the trail, signage, steps, boardwalk, a footbridge, benches, picnic tables, and fencing.

Signage for this site is designed to accomplish four objectives: (1) direct hikers to the trail, (2) encourage visitors to stay on the trail and respect private property, as well as all trail regulations, (3) warn users of trail hazards, and (4) instruct visitors to stop at the end of the maintained trail.

In the engineer-designed parking area and northeastern trailhead at the beginning of the Pelican Bluffs trail, two 2' x 3' management signs will indicate the trailhead and post the guidelines for trail use. These signs will include the State Coastal Conservancy, California Coastal Commission, MCMA, and MLT logos. The signs will identify MLT and MCMA as the managing entities, state guidelines for use (**dawn to dusk only, pack out all trash, dogs on leash only, no fires, no firearms, no motorized vehicles, no bicycles, no horses, and other use guidelines**), and include contact information for both non-profit organizations. An additional smaller sign will state "Pack It In, Pack It Out" and "No Beach Access."

20 smaller 12" x 8" signs (private property, warning signs, sensitive habitat, pack it in/pack it out) will be appropriately located to facilitate safe public use of the Pelican Bluffs trail. Specifically, on the trail along the bluff edge and within the public access easements on private property, there will be at least 3 signs (8" x 12") indicating private property boundaries. At least 3 "Unstable Bluff" warning signs (8" x 12") will be placed near the bluff edge within the public access easement areas. At the southern terminus of the developed trail within the easement on the Rubino/Capitol Auto Center property, there will be an 8" x 12" "End of Trail" sign. At the request of the California Coastal Commission or State Coastal Conservancy, MLT and/or MCMA may post emblems designating the trail as part of the California Coastal Trail.

There will be four interpretive panels on the Pelican Bluffs trail, whose goal will be to facilitate nature study and educate trail users about the unique features and history of Pelican Bluffs and the surrounding landscape. Topics will include the California Coastal Trail, Point Arena Mountain Beaver, Geology, and the Bishop Pine forest. These interpretive panels will provide information about the unique ecology of this part of the Mendocino Coast.

The trail surface will consist of dirt and/or mowed grass. On Pelican Bluffs, most of the 2-foot wide trail will be constructed using hand tools by the California Conservation Corps and volunteer trail crews. In two areas on the Pelican Bluffs property (a wheelchair-accessible loop and archaeologically sensitive area), the trail will have a gravel surface and be 4-5 feet in width. The foot trail within the two public access easement areas will be established by clearing brush and minimal excavation of a 2-foot dirt path.

There will also be two sets of approximately 100 total steps, 10 of these steps within the Fray public access easement, connecting to the main trail on the Pelican Bluffs property, and approximately 90 additional steps on the Pelican Bluffs property. In addition, there will be a short section of boardwalk (approximately 12 feet long) across a small ditch located within the Rubino public access easement. A second 80-foot boardwalk will be located near Highway One on the Pelican Bluffs property. Boardwalk will be constructed of 8" x 12" pressure treated Douglas fir "stringers" with 2"x 6"x 4' plastic lumber decking and stainless steel hardware fasteners.

An approximately 25-foot long engineered footbridge will cross the drainage on Pelican Bluffs, in an area that cattle used in the past, where there is a gap in the willow thicket with a remnant cattle trail. There will be also two benches and two picnic tables, both on the Pelican Bluffs property.

A fence will be installed along the eastern boundary of the 25-foot lateral blufftop easements. This fence will consist of 4-6 foot wire mesh fencing attached to peeler core posts, braces, and galvanized t-stakes. There will be a gate where noted in the CDP 2014-0042 for private landowner access across the public trail area. This fence will be wildlife-friendly, unless the landowner wants livestock fencing, which they will need to request prior to trail construction.

There will also be redwood fencing ("sheep fencing") west of some of the trail in the easement areas, in places where the bluff is particularly steep. Most of these sections of sheep fencing are on the Fray (LaFranchi) property.

Maintenance and Liability

Maintenance of the trail will be carried out by MCMA and MLT staff and volunteers. At least once a month, MCMA and ML T work parties will monitor the trail, remove litter, and care for restoration and mitigation projects. Both MCMA and MLT will maintain liability insurance.

Monitoring Reports

MCMA and MLT shall maintain a log of all complaints that arise in connection with ownership of Pelican Bluffs and the public access easements, including date, complainant identification, nature of the complaint, form of the complaint and MCMA and MLT's response, resolution, or attempted resolution. MCMA and MLT shall provide a copy of the complaint log to the CCC and the SCC within 5 business days upon request.

If any material complaint is submitted to MCMA and MLT which cannot be resolved within 30 days by discussion and agreement between the complainant and MCMA and MLT, MCMA and MLT shall promptly provide to CCC and SCC a copy of the complaint (or a summary of the complaint if not in writing) and of MCMA and MLT's response to address, resolve, or respond to the complaint.

If any complaint is submitted to the CCC or SCC regarding MCMA and MLT's operation of the trail, upon request by the CCC or SCC, MCMA and MLT shall submit a written report within 30

days, detailing its response to the issues identified in the complaint and any changes needed to address the issues.

For any reason, the CCC or SCC can require the submittal of a Monitoring Report. Upon written notification of the need for such a report, MCMA and MLT shall submit the written report within 30 days.

For all the public access easements held and operated by MCMA and MLT, the CCC requires MCMA and MLT to prepare and retain documentation of its activities related to maintenance, monitoring and management.

Written Approval of Conservancy and Commission

MCMA and MLT shall obtain the advance written approval of the SCC, through its Executive Officer, and the CCC, through its Executive Director, before MCMA and MLT undertakes, authorizes or permits any action or enters into any agreement or participates in any litigation that may materially affect, alter, impair or delay the future use of Pelican Bluffs and/or these easements for public access or the use of these easements by the public or that may be inconsistent with the material terms of this amended Management Plan. The Conservancy and the Commission shall not unreasonably delay or withhold approval.

Amendment

This Plan may be amended as needed, with the concurrence of all five signatories.

Agreement

Should the Moat Creek Managing Agency or Mendocino Land Trust cease to exist or fail to carry out its responsibilities pursuant to the approved management plan, then all right, title, and interest in the Pelican Bluffs property and public access easements shall be vested in the State of California, acting by and through the State Coastal Conservancy or its successor in interest, or in another public agency or nonprofit organization designated by the State Coastal Conservancy and approved by the Executive Director of the California Coastal Commission. This right of entry is set forth in the Acknowledgement by California Coastal Commission of Transfer of Public Access Easements, by which the Moat Creek Managing Agency agreed to accept the transfer of the public access easements from American Land Conservancy.. The foregoing is agreed to by and between the Board President of the Moat Creek Managing Agency, the Executive Director of the Mendocino Land Trust, the Director of Mendocino County Planning and Building Services, the Executive Director of the California Coastal Commission, and the Executive Officer of the State Coastal Conservancy.

(Name)
President, Moat Creek Managing Agency

Date

Ann Cole
Executive Director, Mendocino Land Trust

Date

Steve Dunncliff
Director, Mendocino County Planning and Building Services

Date

(name)
Executive Director, California Coastal Commission

Date

Samuel Schuchat
Executive Officer, State Coastal Conservancy

Date