CALIFORNIA COASTAL COMMISSION

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August 19, 2002

December 28, 2002

Robert S. Merrill

May 27, 2004

June 9, 2004

STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.:

1-01-010

APPLICANTS:

Paul & Kristen Decker, and

Eric & Marla Jochim

PROJECT LOCATION:

3058, 3058A, and 3058B Patrick's Point Drive, approximately four miles north of Trinidad, Humboldt County (APNs 517-271-09 & 517-271-

(80

PROJECT DESCRIPTION:

(1) Adjust the boundary line between a 1.28-acre parcel and a 9.83-acre parcel resulting in two adjusted parcels of 3.80 acres and 7.60 acres, (2) demolish and remove a garage, and (3) replace an on-site sewage system serving an existing singlefamily home with an intermittent sand filter system with a pressure distributed in-ground leachfield.

PLAN DESIGNATION:

Not certified (Area of deferred certification.)

LOCAL ZONING DESIGNATION:

Rural Residential Agricultural and Commercial

Recreation.

LOCAL APPROVALS RECEIVED:

Humboldt County Conditional Certificate of

Compliance Approval;

Humboldt County Lot Line Adjustment;

OTHER APPROVALS REQUIRED:

None

SUBSTANTIVE FILE DOCUMENTS:

(1) Humboldt County Local Coastal Program;

(2) CDP File No. 1-92-150

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends <u>approval</u> with conditions of the coastal development permit application for the proposed project on the basis that, as conditioned by the Commission, the project is consistent with the Coastal Act.

The application seeks authorization for three development activities, including (a) after the fact authorization for a lot line adjustment that was recorded in 1993, (b) after the fact authorization for the previous removal of an old garage structure, and (c) the proposed installation of a new septic system to replace the current system that serves the existing seven-room single-family residence on the subject property built in the 1930s or 40s. The proposed boundary line adjustment and garage removal were approved by the Commission under a previous Coastal Development Permit approved in 1993, but the permit expired before the prior to issuance condition had been fully met, causing the boundary line adjustment and garage removal to remain unauthorized. The project site is a bluff top parcel located along Patrick's Point Drive, approximately four miles north of Trinidad, and one mile south of Patrick's Point State Park in northern Humboldt County.

As adjusted, both parcels involved in the boundary line adjustment would be considered to be developed. Proposed Parcel A would contain five visitor-serving cottages, two house trailers, and related outbuildings. Proposed Parcel B, as adjusted, would contain the existing single-family residence. By configuring the previously vacant Parcel B so that it encompasses the area containing the existing single family residence, the boundary line adjustment would reduce the overall density of development that otherwise could have occurred on the overall subject property, reducing potential impacts to coastal resources. In addition, with construction of the proposed septic system, both parcels would have adequate water supply and septic services to accommodate the existing development on the property.

Elements of the proposed septic system are proposed to be located as close as 55 feet to the edge of the approximately 150-200-foot-high bluff. The applicants commissioned a geotechnical evaluation of the site that concluded that the proposed sewage disposal system would be adequately set back from the bluff to ensure a low potential for future damage. The report recommends, however, that surface flows and gutter run-off from the subject property be re-routed away from the leachfield area to help offset the impacts associated with the additional water discharged from the leachfield.

Coastal Commission staff geologist Dr. Mark Johnsson has reviewed the SHN report, conducted a site visit to the property, and conferred with the applicants' geologist. Dr. Johnsson has indicated that the conclusions of the report are reasonable. To ensure that the geologist's recommendations for re-routing drainage away from the leachfield area are followed, staff is recommending that the Commission attach Special Condition No. 1, which would require the applicants to submit an erosion and runoff control plant that would provide that site runoff from other development on the site and other areas of the site be redirected so as not to flow through the leachfield site. This special condition would also require the use of certain best management practices to minimize erosion and sedimentation impacts from the proposed construction of the septic system.

Staff further recommends that the Commission attach several other special conditions, including conditions to 1) prohibit the future installation of bluff or shoreline protective devices to protect the septic system; 2) require the applicants to assume the risk of geologic hazard and waive liability for the Commission, and 3) require that all terms and conditions of the permit are recorded as deed restrictions. These conditions will ensure that no seawall will be constructed in the future to protect the proposed septic system contrary to the requirements of Section 30253 of the Coastal Act which requires that new development not in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

Staff recommends that the Commission find the project, as conditioned, is consistent with the Chapter 3 policies of the Coastal Act.

The Motion to adopt the Staff Recommendation of Approval with Conditions is found on page 4.

STAFF NOTES:

1. Standard of Review

The proposed project is located on the west side of Patrick's Point Drive, north of the City of Trinidad, in Humboldt County. Humboldt County has a certified LCP. However, the project is located in an area of deferred certification (ADC). Therefore, the standard

of review that the Commission must apply to the project is the Chapter 3 policies of the Coastal Act.

2. Commission Action Necessary

The Commission must act on the application at the June 9, 2004 meeting to meet the requirements of the Permit Streamlining Act.

I. MOTION, STAFF RECOMMENDATION AND RESOLUTION:

The staff recommends that the Commission adopt the following resolution:

Motion:

I move that the Commission approve Coastal Development Permit No. 1-01-010 pursuant to the staff recommendation.

Staff Recommendation of Approval:

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

Resolution to Approve the Permit:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS: See Attachment A.

III. SPECIAL CONDITIONS:

1. Erosion and Runoff Control Plan

- A. PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. 1-03-028, the applicant shall submit an Erosion and Runoff Control Plan for review and approval of the Executive Director. The Erosion and Runoff Control Plan shall incorporate design elements and/or Best Management Practices (BMPs) which will serve to minimize the volume and velocity of storm water runoff leaving the developed site and capture sediment and other pollutants contained in storm water runoff from the construction site. The final drainage and runoff control plans shall at a minimum include the following provisions:
 - 1. A physical barrier consisting of bales of straw placed end to end shall be installed between any construction and bluff edges that are down slope of the construction. The bales shall be composed of weed-free rice straw, and shall be maintained in place throughout the construction period.
 - 2. Vegetation at the site shall be maintained to the maximum extent possible and any disturbed areas shall be replanted or seeded with native vegetation immediately following project completion. No exotic invasive species shall be used.
 - 3. All on-site debris stockpiles shall be covered and contained at all times.
 - 4. Provide that site drainage and runoff from the roof, driveway and other impervious surfaces from the subject property be redirected away from the proposed septic system leachfield to pervious areas on the site (landscaped areas) for infiltration to the maximum extent practicable in a non-erosive manner, prior to being conveyed off-site.
- B. The permittee shall undertake development in accordance with the approved Erosion and Runoff Control plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the approved plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

2. **Deed Restriction**

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive

Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

3. No Future Bluff or Shoreline Protective Device

- A. By acceptance of this permit, the applicants agree, on behalf of themselves and all successors and assigns, that no bluff or shoreline protective device(s) shall ever be constructed to protect the septic system approved pursuant to Coastal Development Permit No. 1-01-010 in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, bluff retreat, landslides, ground subsidence or other natural hazards in the future. By acceptance of this permit, the applicants hereby waive, on behalf of themselves and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.
- B. By acceptance of this Permit, the applicants further agree, on behalf of themselves and all successors and assigns, that the landowner(s) shall remove the septic system authorized by this permit in the event that the development is threatened with damage or destruction from any of the hazards identified above. In the event that portions of the development fall to the beach before they are removed, the landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.
- C. In the event the edge of the bluff recedes to within 10 feet of the septic system, a geotechnical investigation shall be prepared by a licensed geologist or civil engineer with coastal experience retained by the applicant, that addresses whether any portions of the septic system are threatened by wave, erosion, storm conditions, or other natural hazards. The report shall identify all those immediate or potential future measures that could stabilize the septic system without shore or bluff protection, including but not limited to removal or relocation of portions of the septic system. The report shall be submitted to the Executive Director and the appropriate local government official. If the geotechnical report concludes that the septic system or any portion of the septic system is unsafe for occupancy, the

permittee shall, within 90 days of submitting the report, apply for a coastal development permit amendment to remedy the hazard which shall include removal of the threatened portion of the septic system.

4. Assumption of Risk, Waiver of Liability and Indemnity

By acceptance of this permit, the applicants acknowledge and agree: (i) that the site may be subject to hazards from landslide, bluff retreat, erosion, subsidence, and earth movement; (ii) to assume the risks to the applicants and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

5. Future Development Restriction

This permit is only for the development described in coastal development permit No. 1-01-010. Pursuant to Title 14 California Code of Regulations section 13250(b)(6), the exemptions otherwise provided in Public Resources Code section 30610(a) shall not apply to the development governed by Coastal Development Permit No. 1-01-010. Accordingly, any future improvements to this structure authorized by this permit shall require an amendment to Permit No. 1-01-010 from the Commission or shall require an additional coastal permit from the Commission or from the applicable certified local government. In additional coastal permit from the Commission or from the applicable certified local government shall be required for any repair or maintenance identified as requiring a permit in Public Resources Code Section 30610(d) and Title 14, California Code of Regulations Sections 13252(a)-(b).

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

1. Project Background

The project description for Coastal Development Permit Application No. 1-01-010 as originally submitted was limited to installing a replacement septic system to serve an

existing single-family residence. Since submittal of the application, the applicants have amended the application to seek after-the-fact approval of a boundary line adjustment and removal of a former garage on the property.

The subject property had previously been the subject of three separate coastal development permits, including a permit granted by the Commission in 1993 (Coastal Development Permit No. 1-92-150) for a lot line adjustment between the two parcels on the subject property (see Exhibit 7). The lot line adjustment approved reconfiguration of the boundary between the two parcels to establish a 4.25-acre parcel and a 6.86-acre parcel. The permit also approved the demolition of a garage. The garage needed to be removed to ensure conformance with the setback requirements of the County zoning ordinance and enable the lot line adjustment to be granted the necessary Subdivision Map Act authorization by the County.

The Commission granted Coastal Development Permit No. 1-92-150 with a condition requiring the applicants, prior to issuance of the permit, to record a contingent easement to ensure the continued provision of water supply service from the parcel involved in the lot line adjustment that contains a water source to the other parcel involved in the lot line adjustment which does not contain a water source. The standard conditions of the permit indicated that the permit would expire within two years of Commission approval if development had not commenced. An easement to ensure the continued provision of water supply service to the affected parcel was eventually recorded, but not within two years of approval of the permit by the Commission. As (1) the special condition requiring the recordation of the contingent easement was not satisfied within two years of approval of the permit by the Commission, and (2) the applicant did not seek or obtain a time extension for the coastal development permit, the permit approval expired before the prior to issuance condition was met. Consequently, the coastal development permit authorization granted for the lot line adjustment never became effective and the reconfigured parcels that would have resulted from the lot line adjustment parcels are not legally recognized under the Coastal Act. However, Humboldt County granted Subdivision Map Act authorization to recognize the parcels in the adjusted configuration just prior to the Commission's action on Coastal Development Permit No. 1-92-150. The parcels have been treated as separate parcels by the property owners and the Humboldt County Assessor's Office ever since, and the ownership interests in the subject parcels have subsequently transferred on several occasions since the County approval of the lot line adjustment. In addition, the garage that was required to be removed by the County as a condition of approval of Subdivision Map Act authorization of the boundary line adjustment and authorized for removal under CDP 1-92-151 was removed.

To bring the adjusted parcels and the previous removal of the garage into compliance with coastal development permit requirements, the applicants amended the project description of the current application to include requests for after-the-fact authorization of (a) the lot line adjustment to reconfigure the subject property into a 3.80-acre parcel and a 7.60-acre parcel, and (b) the removal of the previously existing garage. Therefore,

the current application involves requests for authorization of both the proposed installation of the replacement septic system, as well as development that has already occurred, including the removal of the old garage and the lot line adjustment.

2. <u>Site Description</u>

The subject property is located at 3058, 3058A, and 3058B Patrick's Point Drive, approximately four miles north of Trinidad, and one mile south of Patrick's Point State Park in northern Humboldt County (see Exhibits 1 and 2). Patrick's Point Drive is a two-lane road that used to be U.S. Highway 101 until the current freeway was built in the 1960's about one-quarter mile inland. The property is situated along a forested section of coastline with steep high bluffs. The surrounding neighborhood includes relatively large residential parcels and timberlands.

The property is a generally westward-sloping coastal bluff. The bluff top is the remnant of a marine terrace top property, and slopes gently (10% to 20%) toward the bluff crest with slopes gradually increasing toward the crest. The bluff top is vegetated with various grasses and shrubs and numerous large spruces, redwood, and other trees. The bluff face is very steep (80% slope) and rises approximately 150-200 feet above the ocean. Several approximately 30 to 40-year-old tall spruce trees grow along the bluff face and several large rock outcrops are present on the bluff face. At the base of the bluff is a narrow beach strip.

Prior to initiating the 1992 lot line adjustment, the 11.11-acre subject property consisted of a 1.28-acre parcel in the northwest portion of the property and a 9.83-acre parcel. As noted above, Coastal Development Permit Approval No. 1-92-150 granted in September of 1993 to adjust these parcels expired before the special conditions that were required to be met prior to issuance of the permit were fully satisfied. Therefore the proposed boundary line has not been authorized under the Coastal Act, and the property now before the Commission still consists of the 1.28-acre parcel and 9.83-acre parcel that existed prior to the Commission's action on CDP 1-92-150.

The 1.28-acre parcel contains a small accessory structure but is otherwise undeveloped. The subject property is locally zoned as Rural Residential Agricultural (see Exhibit 4). This parcel does not contain any environmentally sensitive habitat area (ESHA) except the rocky intertidal area along shoreline of the parcel at the base of the steep bluffs.

The 9.83-acre parcel is developed with an older single-family residence built in the 1930s or 1940s, two house trailers, five cottages, a water intake, treatment, and storage facility along a creek that provides water service to both parcels, and a septic system that was approved by Coastal Development Permit No. NCR-77-CC-462 in December of 1977. This parcel also used to include the former garage, for which the applicants are now seeking after-the-fact authorization for its removal. The cottages and house trailers were

previously rented out for visitor accommodations that have been vacant for at least the last 10 years. The parcel is locally zoned as Commercial Recreation. Environmentally Sensitive Habitat Areas on the parcel include the afore-mentioned creek, which generally runs east west through the southern portion of the property and the rocky intertidal area along shoreline of the parcel at the base of the steep bluffs.

The beach area at the base of the steep bluffs is subject to an offer to dedicate a 25-foot-wide lateral public access easement. This offer to dedicate an easement was required by a special condition of Coastal Development Permit No. NCR-77-CC-462. There is no evidence of public use of the bluff top portions of the property for public access.

Although Humboldt County has a certified local coastal program, the project site is located within an area of deferred certification (ADC). The ADC includes all of the lands between Patricks Point State Park and Trinidad State Beach west of Scenic Drive, Stagecoach Road, and Patrick's Point Drive (see Exhibit 3). In denying certification for this area in 1982 when the rest of the Trinidad Area Land Use Plan portion of the Humboldt County LCP was certified, the Commission suggested that the plan's policies regarding the protection of potential prescriptive rights of public access be modified to conform to the natural resource, hazards and public access policies of the Coastal Act. The County did not accept the suggested modification and the area became an area of deferred certification. As a result, the authority for granting coastal development permits within the ADC is still retained by the Commission.

3. Project Description

The application seeks authorization for three development activities. First, the applicants' are seeking after the fact authorization for a lot line adjustment that was recorded in 1993. Second, the applicants' are seeking after the fact authorization for the previous removal of an old garage structure. Finally, the applicants' are seeking authorization for the proposed installation of a new septic system to replace the current system that serves the existing single-family residence on the subject property built in the 1930s or 40s. Each of these elements of the project are described in more detail below:

A. Lot Line Adjustment

The proposed boundary line adjustment would adjust the boundary between the existing 1.28-acre parcel and 9.83-acre parcel in a manner that would result in two adjusted parcels of 3.8 acres (Parcel B, APN 517-271-09) and 7.6 acres (Parcel A, APN 517-271-08) respectively (see Exhibits 4 and 5). Through the adjustment, the smaller parcel, proposed Parcel B, generally expands southward into area formerly part of Parcel A to encompass the single-family residence and the site of the former garage. An easement recorded in 2003 provides access to proposed Parcel B from Patrick's Point Drive across the northern tip of proposed Parcel A. A 20-foot-wide water line easement extends from

the water service facility along the creek on proposed Parcel A westward and northward to Parcel B (see Exhibit 5, 2 of 2). This easement ensures water service to proposed Parcel B. A 10-foot-wide drainage easement for the benefit of proposed Parcel A extends along the eastern end of proposed Parcel B. As adjusted, Parcel A retains the five cottages, two house trailers, and the water service facility.

B. Removal of Garage

Adjusting the boundary of the two parcels triggered the need for removal of a former garage to comply with the side yard setback requirements of the County's zoning ordinance (see Exhibit 4). The County required removal of the garage as a condition of approval of the Lot Line Adjustment in 1993 (Humboldt County LLA 10-92). The old 24-foot-long by 18-foot-wide garage was removed approximately 10 years ago. The grassy vegetation of the site now extends over the site of the former garage.

C. Proposed Septic System

The proposed new septic system would replace the antiquated and sub-standard sewage system serving the existing single-family home that would exist on Parcel B if adjusted. The proposed system would utilize an unconventional intermittent sand filter system. The components of the system include a septic tank, two intermittent sand filters, a pressure distributed in-ground leachfield, and pipes connecting these various elements (see Exhibit 6).

The sand filter system is proposed for this site because of the relatively high groundwater table and the relatively high permeability of the soil. An intermittent sand filter is a wastewater treatment unit that improves the quality of the treated wastewater beyond that normally obtained in a conventional septic tank and leachfield system. As discussed in the narrative that was prepared by the designer of the septic system and included as part of the application, a conventional system generally consists of a septic tank and leach field system. Wastewater treatment begins in the septic system with final treatment and disposal occurring in the leachfield. With the majority of the wastewater treatment and disposal taking place together in the soil, there is potential for disposal to occur before treatment is complete, particularly in very permeable soils or in locations where there is a high ground water table, such as at the project site. The addition of a sand filter in the system provides for greater treatment to occur before discharge to the soil to better protect the ground water and public health. Sand filter technology is currently widely used and accepted in Oregon, Washington, and in such areas of California as Stinson Beach, the town of Paradise, and Sonoma County. Humboldt County has begun accepting intermittent sand filter designs for existing parcels and repairs on difficult sites. The Humboldt County Division of Environmental Health has reviewed and has preliminarily approved the proposed design of the septic system (see Exhibit 9).

As proposed, the new septic system would be installed adjacent to the west of the existing single-family residence, between the house and the bluff edge. The septic tank and intermittent sand filters would occupy an approximately 2,000-square-foot area adjacent to the house. The proposed 2,550-square-foot reserve leachfield area would be located west of the intermittent sand filters. The similarly sized primary leachfield area is planned adjacent to the west of the reserve leachfield area. At its closest point, the primary leachfield area would come to within 55 feet of the bluff edge. At its closest point, the reserve leachfield area would come to within approximately 80 feet of the bluff edge (see Exhibit 6).

4. New Development

Section 30250(a) of the Coastal Act states that new development shall be located within or near existing developed areas able to accommodate it or in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. The intent of this policy is to channel development toward more urbanized areas where services are provided and potential impacts to resources are minimized.

The proposed development is located in a rural area. Proposed Parcel B is locally zoned as Rural Residential Agriculture, which allows a single-family home as a principally permitted use. Proposed Parcel A is locally zoned Commercial Recreation, which allows visitor-serving cottages such as those that exist on the parcel.

With approval of the proposed boundary line adjustment, both parcels will be considered to be developed. Parcel B, as adjusted, will contain the existing single-family residence. Proposed Parcel A will contain the visitor-serving cottages and related outbuildings. By reconfiguring the previously vacant Parcel B so that it encompasses the area containing the existing single family residence, the boundary line adjustment will reduce the overall density of future development that otherwise could have occurred on Parcel B and overall on the entire subject property, reducing potential impacts to coastal resources.

With approval of the coastal development permit application, wastewater treatment and water supply services are available for both of the parcels as adjusted. With regard to wastewater treatment services, proposed Parcel A includes a septic system to serve the existing cottages and house trailers on the site that was approved pursuant to Coastal Development Permit No. NCR-77-CC-462 in December of 1977. As described above, the current application includes a request for authorization of a new septic system to serve the house on proposed Parcel B. The Humboldt County Department of Health, Division of Environmental Health has preliminarily approved the proposed intermittent sand filter septic system as meeting its standards (see Exhibit 9). The Commission notes that the narrative of the septic system design that was submitted with the application includes certain site drainage recommendations to ensure that surface flows and building gutter run off not interfere with the leachfield area. The document recommends that (1)

all gutters be routed to tight-line drains to the south, (2) all driveways and access be sloped and directed to the uphill side and that the run-off be routed to tight-line drains to the south, (3) the existing culvert from Patrick's Point Drive be permanently routed away from the area to the west of the house, and (4) any other wet-weather surface flows be noted and disposed of before they affect the leachfield area to the west of the house. Therefore, the Commission attaches Special Condition No. 1 which requires that the applicants submit, for the review and approval of the Executive Director, an erosion and runoff control plan to re-route site run-off away from the approved leachfield area as recommended by the narrative of the septic system design. The special condition will ensure that the leachfield area is protected from concentrated runoff that might compromise its effectiveness in treating wastewater of the single-family residence on the site.

With regard to water supply, both parcels are currently served by a water intake, treatment, and storage facility along the creek that flows through the southern portion of Parcel A. At the time the Commission granted since-expired Coastal Development Permit No. 1-92-150 for the boundary line adjustment in 1993, the water service to the existing single-family residence on Parcel B was not guaranteed by easement. Thus, the Commission imposed a special condition in CDP No. 1-92-150 requiring the applicants, prior to issuance of the permit, to record a contingent easement to ensure the continued provision of water supply service from proposed Parcel A which contains the water source, to proposed Parcel B, which does not contain a water source. Although the necessary contingent easement was not fully recorded prior to expiration of the permit, the easement was recorded in 2003. Therefore, an easement is in place to ensure that proposed Parcel B will continue to have a water source.

As discussed in the findings below, the proposed project has been conditioned to ensure the protection of water quality and to ensure that the development does not contribute to geologic instability or create significant geologic hazards

Therefore, the Commission finds that the proposed development is consistent with Coastal Act Section 30250(a) in that it is located in an area with adequate water and septic services to accommodate it, and the development will not cause significant adverse effects, either individually or cumulatively, to coastal resources.

5. Geologic Hazards

Section 30253 states in applicable part:

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...

The subject property is located on a bluff top situated approximately 150-200 feet above the ocean. The proposed septic system would be installed between the existing house on proposed Parcel B and the bluff edge. At its closest point, the primary leachfield area would come to within 55 feet of the bluff edge. At its closest point, the reserve leachfield area would come to within approximately 80 feet of the bluff edge (see Exhibit 6).

Section 30253 of the Coastal Act requires that coastal development be sited a sufficient distance landward of coastal bluffs so that it will neither be endangered by erosion nor lead to the construction of protective coastal armoring during the assumed economic life of the development.

SHN Consulting Engineers and Geologists performed a geotechnical investigation of the site documented in a report dated February 12, 2004 (see Exhibit 8). The purpose of the report was to evaluate the suitability of the proposed location for the new septic system in terms of avoiding bluff retreat related hazards. The report indicates that the bluff top at the site is a remnant of a marine terrace, and that the marine terrace is a late Pleistocene age feature eroded into the regional bedrock during a previous high sea level stand. The terrace has been uplifted by regional tectonics. The bedrock at the site is the Cretaceous to Jurassic age Central belt of the Franciscan Complex. The Central belt of the Franciscan complex consists of a tectonic mélange composed of rock blocks within a penetratively sheared, metamorphosed argillite matrix.

The geotechnical investigation noted that the coastal bluff at the site is occupied by several 30 to 40 year old straight-standing spruce trees and contains several large rock outcrops. These features suggest that the bluff face is a relatively resistant rocky slope. The report notes that slope failures are present both north and south of the subject parcel where the septic system will be installed. A slide to the north appears to be associated with the drainage point for a small creek. The slide to the south appears to have been associated with drained road runoff from Patrick's Point Drive which exacerbated masswasting. Runoff has since been re-routed and the movement of the slide area has reportedly slowed. The geologist concludes that the subject site represents a relatively stable "promontory," a rock-controlled slope bordered by areas of low strength mélange matrix where the slides have occurred. The geotechnical investigation included a review of historical bluff retreat information, which suggested that there has been no discernable bluff retreat since before at least 1942.

The geotechnical report concludes that the proposed sewage disposal system is acceptably located from a geologic standpoint and that the proposed sewage disposal system is adequately set back from the bluff to ensure a low potential for future damage. The report recommends, however, that surface flows and gutter run-off from the subject property be re-routed away from the leachfield area to help offset the impacts associated with the additional water discharged from the leachfield.

Coastal Commission staff geologist Dr. Mark Johnsson reviewed the SHN report, conducted a site visit to the property, and conferred with the applicants' geologist. Dr. Johnsson has indicated that the conclusions of the report are reasonable. Commission staff has also examined alternative locations for the septic system that would be farther back from the bluff edge. However, no feasible location for the septic system is available. The septic system cannot be located in the northern portion of the property due to the presence of a spring. The standards of the Humboldt County Division of Environmental Health require that septic systems be located at least 100 feet away from springs and other potential water supply sources. The only other alternative locations on the parcel are either in the area of the existing driveway immediately north of the house or behind the house itself. Leachfields cannot be located underneath a driveway because the leachfield system needs to be located near the surface of the ground to be above the water table and facilitate aerobic bacterial treatment of the leachate, and the compacted roadbed of a driveway would interfere with the functioning of the leachfield. Locating leachfields behind the house would not be feasible because the area contains previously disturbed ground with old fill material that would not meet soil standards for leachfields.

During his review, Dr. Johnsson noted that the proposed reserve leachfield area, where a future leachfield would be installed once the primary leachfield has reached the end of its useful life (approximately 20-30 years) was originally proposed to be installed seaward of the primary leachfield. This installation would occur after 20 or 30 years of additional bluff retreat. Dr. Johnsson noted that switching the locations of the primary and reserve leachfields, in other words installing the primary leachfield now in the more seaward location and reserving the more landward location for the reserve leachfield, would provide greater assurance that in 20-30 years when the reserve leachfield needs to be installed that the reserve leachfield would not be located in an area compromised by bluff retreat.

After staff communicated these concerns to the applicants, the applicants submitted a redesigned plan for the leachfield that switches the location of the primary and reserve leachfields such that the primary leachfield will be in the more seaward location and the reserve leachfield will be in the more landward location. As discussed above, switching the locations of the proposed primary and reserve leachfields would provide greater assurance that after the reserve leachfield needs to be installed, it will not be compromised by bluff retreat.

As conditioned, the development would install a septic system with portions of the development as close as approximately 55 feet to a bluff that is gradually eroding. Thus, the proposed development would be located in an area of high geologic hazard. The proposed development can only be found consistent with the above-referenced LCP provisions if the risks to life and property from the geologic hazards are minimized and if a protective device will not be needed in the future. The applicant has submitted information from a registered engineering geologist which states that the new development will be safe from erosion and will not require any devices to protect the proposed development during its useful economic life.

Although a comprehensive geotechnical evaluation is a necessary and useful tool that the Commission relies on to determine if proposed development is permissible at all on any given bluff top site, the Commission finds that a geotechnical evaluation alone is not a guarantee that a development will be safe from bluff retreat. It has been the experience of the Commission that in some instances, even when a thorough professional geotechnical analysis of a site has concluded that a proposed development will be safe from bluff retreat hazards, unexpected bluff retreat episodes that threaten development during the life of the structure sometimes still do occur. Examples of this situation include:

- The Kavich Home at 176 Roundhouse Creek Road in the Big Lagoon Area north of Trinidad (Humboldt County). In 1989, the Commission approved the construction of a new house on a vacant bluff top parcel (Permit 1-87-230). Based on the geotechnical report prepared for the project it was estimated that bluff retreat would jeopardize the approved structure in about 40 to 50 years. In 1999 the owners applied for a coastal development permit to move the approved house from the bluff top parcel to a landward parcel because the house was threatened by 40 to 60 feet of unexpected bluff retreat that occurred during a 1998 El Nino storm event. The Executive Director issued a waiver of coastal development permit (1-99-066-W) to authorize moving the house in September of 1999.
- The Denver/Canter home at 164/172 Neptune Avenue in Encinitas (San Diego County). In 1984, the Commission approved construction of a new house on a vacant bluff top lot (Permit 6-84-461) based on a positive geotechnical report. In 1993, the owners applied for a seawall to protect the home (Permit Application 6-93-135). The Commission denied the request. In 1996 (Permit Application 6-96-138), and again in 1997 (Permit Application 6-97-90) the owners again applied for a seawall to protect the home. The Commission denied the requests. In 1998, the owners again requested a seawall (Permit Application 6-98-39) and submitted a geotechnical report that documented the extent of the threat to the home. The Commission approved the request on November 5, 1998.
- The Arnold project at 3820 Vista Blanca in San Clemente (Orange County). Coastal development permit (Permit # 5-88-177) for a bluff top project required protection

from bluff top erosion, despite geotechnical information submitted with the permit application that suggested no such protection would be required if the project conformed to 25-foot bluff top setback. An emergency coastal development permit (Permit #5-93-254-G) was later issued to authorize bluff top protective works.

The Commission notes that the examples above are not intended to be absolute indicators of bluff erosion on the subject parcel, as coastal geology can vary significantly from location to location. However, these examples do illustrate that site-specific geotechnical evaluations cannot always accurately account for the spatial and temporal variability associated with coastal processes and therefore cannot always absolutely predict bluff erosion rates. Collectively, these examples have helped the Commission form it's opinion on the vagaries of geotechnical evaluations with regard to predicting bluff erosion rates.

The SHN geotechnical investigation report states the following:

Despite the historic stability of the bluff at the site, we acknowledge that coastal bluffs are inherently dynamic geomorphic features that may experience mass wasting due to a combination of wave undercutting, seismic triggering, and/or excess saturation. As such, developments (including sewage disposal systems) should be adequately setback from coastal bluffs to account for uncertainty regarding future bluff retreat potential. It is our opinion that the proposed sewage disposal system is adequately set back from the bluff to ensure a Low potential for future damage.

This language in the report itself is indicative of the underlying uncertainties of this and any geotechnical evaluation and supports the notion that no guarantees can be made regarding the safety of the proposed development with respect to bluff retreat. Despite the historic stability of the bluff in this location, the report acknowledges there still is a potential for damage to the septic system from bluff retreat, albeit a low potential, from the effects of wave undercutting, seismic triggering, and saturation of the ground.

Geologic hazards are episodic, and bluffs that may seem stable now may not be so in the future. Therefore, the Commission finds that the subject lot is an inherently hazardous piece of property, that the bluffs are clearly eroding, and that the proposed new development will be subject to geologic hazard and could potentially someday require a bluff or shoreline protective device, inconsistent with Section 30253 of the Coastal Act. The Commission finds that the proposed development could not be approved as being consistent with Section 30253 of the Coastal Act if projected bluff retreat would affect the proposed development and necessitate construction of a seawall to protect it.

Based upon the geologic report prepared by the applicants geologist and the evaluation of the project by the Commission's staff geologist, the Commission finds that the risks of geologic hazard are minimized if the septic system is set back from the bluff edge as proposed with the locations of the primary leachfield and the reserve leachfield switched. However, given that the risk cannot be eliminated and the geologic report cannot assure that shoreline protection will never be needed to protect the septic system, the Commission finds that the proposed development is consistent with the Coastal Act only if it is conditioned to provide that shoreline protection will not be constructed. Thus, the Commission further finds that due to the inherently hazardous nature of this lot, the fact that no geology report can conclude with any degree of certainty that a geologic hazard does not exist, the fact that the approved development and its maintenance may cause future problems that were not anticipated, and because new development shall not engender the need for shoreline protective devices, it is necessary to attach Special Condition No. 3 prohibiting the construction of seawalls and Special Condition No. 4 requiring a waiver of liability.

Special Condition No. 3 prohibits the construction of shoreline protective devices on the parcel, requires that the landowner provide a geotechnical investigation and remove the septic system if bluff retreat reaches the point where the septic system is threatened, and requires that the landowners accept sole responsibility for the removal of any structural debris resulting from landslides, slope failures, or erosion of the site. These requirements are necessary for compliance with Section 30253 of the Coastal Act, which states that new development shall minimize risk to life and property in areas of high geologic, flood, and fire hazard, assure structural integrity and stability, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding areas, nor in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. The Commission finds that the proposed development could not be approved as being consistent with Section 30253 of the Coastal Act if projected bluff retreat would affect the proposed development and necessitate construction of a seawall to protect it.

Special Condition No. 4 requires the landowner to assume the risks of extraordinary erosion and geologic hazards of the property and waive any claim of liability on the part of the Commission. Given that the applicants have chosen to implement the project despite these risks, the applicants must assume the risks. In this way, the applicants are notified that the Commission is not liable for damage as a result of approving the permit for development. The condition also requires the applicants to indemnify the Commission in the event that third parties bring an action against the Commission as a result of the failure of the development to withstand hazards. In addition, as discussed below, the requirement of Special Condition No. 2 that a deed restriction be recorded will ensure that future owners of the property will be informed of the risks, the Commission's immunity from liability, and the indemnity afforded the Commission.

In addition, as noted above, some risks of an unforeseen natural disaster, such as an unexpected landslide, massive slope failure, erosion, etc. could result in destruction or partial destruction of the septic system approved by the Commission. In addition, the development itself and its maintenance may cause future problems that were not

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anticipated. When such an event takes place, public funds are often sought for the clean up of structural debris that winds up on the beach or on an adjacent property. As a precaution, in case such an unexpected event occurs on the subject property, Special Condition No. 3 requires the landowner to accept sole responsibility for the removal of any structural debris resulting from landslides, slope failures, or erosion on the site, and agree to remove the septic system should the bluff retreat reach the point where a government agency has ordered that the structure not be occupied.

The Commission finds that Special Condition No. 2 is also required to ensure that the proposed development is consistent with the Coastal Act. Special Condition No. 2 is required to provide notice of potential hazards of the property and help eliminate false expectations on the part of potential buyers of the property, lending institutions, and insurance agencies that the property is safe for an indefinite period of time and for further development indefinitely into the future, or that a protective device could be constructed to protect the approved development. The condition requires that the applicant record and execute a deed restriction approved by the Executive Director against the property that imposes the special conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the property.

As recommended by the applicants' geologist, the Commission also attaches Special Condition No. 1. This special condition requires that the applicants submit for the review and approval of the Executive Director an Erosion and Runoff Control Plan that provides that site runoff from other development on the site and other areas of the site be redirected so as not to flow through the leachfield site. As noted by the geologist, rerouting this run-off will help offset any impacts on bluff stability associated with the additional water discharged from the leachfield.

As conditioned, the Commission finds that the proposed septic system will be set back a sufficient distance from the bluff edge to protect the proposed septic system over the life of the development and eliminate the need for shoreline protection devices to protect the development consistent with Section 30253 of the Coastal Act.

The Commission notes that Section 30610(a) of the Coastal Act exempts certain additions to existing single-family residential structures from coastal development permit requirements. Pursuant to this exemption, once a house has been constructed, certain additions and accessory buildings that the applicant might propose in the future are normally exempt from the need for a permit or permit amendment. Under Section 30610(a), once the septic system has been constructed, certain modifications to the septic system including installation of the reserve leachfield could be considered to be exempt from the need for a permit or permit amendment. Depending on its nature, extent, and location, such a modification or new development could contribute to geologic hazards at the site. For example, building a reserve leachfield in a different location closer to the bluff than that currently planned for the reserve leachfield could put the leachfield at greater risk. In addition, modifying the system to expand the capacity of the leachfield to

handle additional sewage flows could lead to greater discharges of leachate that could saturate the bluff. Saturation of the bluff could increase the potential for landslides or catastrophic bluff failure.

To avoid such impacts to coastal resources from the development of otherwise exempt additions to existing homes, Section 30610(a) requires the Commission to specify by regulation those classes of development which involve a risk of adverse environmental effects and require that a permit be obtained for such improvements. Pursuant to Section 30610(a) of the Coastal Act, the Commission adopted Section 13250 of Title 14 of the California Code of regulations. Section 13250(b)(6) specifically authorizes the Commission to require a permit for additions to existing single-family residences that could involve a risk of adverse environmental effect by indicating in the development permit issued for the original structure that any future improvements would require a development permit. As noted above, certain additions or improvements to the approved development could involve a risk of creating geologic hazards at the site. Therefore, in accordance with provisions of Section 13250 (b)(6) of Title 14 of the California Code of Regulations, the Commission attaches Special Condition No. 5 which requires that all future development on the subject parcel that might otherwise be exempt from coastal permit requirements requires an amendment or coastal development permit. This condition will allow the future installation of the reserve leachfield or other modifications to the septic system to be reviewed by the Commission to ensure that future improvements will not be sited or designed in a manner that would result in a geologic hazard. Special Condition No. 1 also requires recordation of a deed restriction to ensure that all future owners of the property are aware of the requirement to obtain a permit for development that would otherwise be exempt. This will reduce the potential for future landowners to make improvements to the residence without first obtaining a permit as required by this condition.

The Commission thus finds that the proposed development, as conditioned, is consistent with Section 30253 of the Coastal Act, since the development as conditioned will not contribute significantly to the creation of any geologic hazards, will not have adverse impacts on the stability of the coastal bluff or on erosion, will not require the construction of shoreline protective works, and the Commission will be able to review any future additions to ensure that development will not be located or designed in a manner that might result in the creation of a geologic hazard. Only as conditioned is the proposed development consistent with Section 30253 of the Coastal Act.

6. Water Quality

Coastal Act Section 30230 states as follows:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special

biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Coastal Act Section 30231 states as follows:

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

Storm water runoff from new residential development can adversely affect the biological productivity of coastal waters by degrading water quality. Section 30230 and 30231 of the Coastal Act require the protection of the biological productivity and quality of coastal waters.

As discussed above, the subject parcel is located on a coastal terrace atop a steep coastal bluff. Excavation of the site to install the new septic system to serve the existing single-family house on Parcel B would expose loosened soil to storm water runoff. Runoff originating from the development site that is allowed to drain over the bluff edge would contain entrained sediment and other pollutants in the runoff that would contribute to degradation of the quality of marine waters. In addition, to protect the proposed leachfield to ensure that it will function properly, the narrative of the septic system design and Special Condition No.1 require that site runoff from other development on the site and other areas of the site be redirected so as not to flow through the leachfield site. If the redirected runoff is not directed to vegetated areas that could biolifiltrate pollutants contained in the runoff, the proposed project could increase impacts on water quality.

Therefore, consistent with Coastal Act Sections 30230 and 30231, the Commission attaches Special Condition No. 1 to minimize erosion and sedimentation impacts from the proposed construction of the residence. Special Condition No. 1 requires that the applicants submit for the review and approval of the Executive Director an Erosion and Runoff Control Plan that would provide that (1) straw bales be installed to contain runoff from construction areas, (2) on-site vegetation be maintained to the maximum extent possible during construction, (3) any disturbed areas be replanted or seeded with native vegetation following project completion, (4) all on-site stockpiles of construction debris be covered and contained to prevent polluted water runoff, and (5) runoff from existing

development and the subject property that is to be redirected away from the proposed leachfield be directed into vegetated areas on the site for biofiltration of pollutants.

The Commission finds that as conditioned, erosion and sedimentation will be controlled and minimized by (1) maintaining on-site vegetation to the maximum extent possible; (2) replanting or seeding any disturbed areas with native vegetation following project completion; (3) covering and containing stockpiles at all times; (4) using straw bales to control runoff during installation of the new septic system; and (5) redirecting runoff away from the leachfield of the new septic system in a manner that would provide for infiltration into the ground. Furthermore, the Commission finds that the proposed development as conditioned is consistent with the provisions of Coastal Act Sections 30230 and 30231 requiring that the biological productivity of coastal waters be sustained because storm water runoff from the proposed development would be directed away from the coastal bluff and would be controlled on site by infiltration into vegetated areas.

7. Public Access

Coastal Act Sections 30210, 30211, and 30212 require the provision of maximum public access opportunities, with limited exceptions. Section 30210 states that maximum access and recreational opportunities shall be provided consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse. Section 30211 states that development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation. Section 30212 states that public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, adequate access exists nearby, or agriculture would be adversely affected.

In its application of these policies, the Commission is limited by the need to show that any denial of a permit application based on these sections, or any decision to grant a permit subject to special conditions requiring public access, is necessary to offset a project's adverse impact on existing or potential public access.

The beach area at the base of the steep bluffs of the subject property is subject to an offer to dedicate a 25-foot-wide lateral public access easement. This offer to dedicate an easement was required by a special condition of Coastal Development Permit No. NCR-77-CC-462, granted for installation of a septic system and other development on the property. The required access did not include any public access on the bluff top of the parcel.

There is no evidence of public use of the bluff top portions of the property for public access. There is no evidence of trails on the site and no indication from the public that the site has been used for public access purposes in the past. The Trinidad Area Land Use Plan identifies a number of trails over privately held lands in the surrounding area which the public has used historically to gain access to the sea for beachcombing, sport fishing, and other recreational activities, but none of these identified trails are located on the subject property. Furthermore, the proposed development will not increase the demand for public access to the shoreline as it does not increase the number of parcels or increase the number of buildings at the site. Therefore, the Commission finds that the proposed project, which does not include provision of public access, is consistent with the public access policies of the Coastal Act.

8. California Environmental Quality Act.

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

The Commission incorporates its findings on conformity with the Chapter 3 policies of the Coastal Act at this point as if set forth in full. These findings address and respond to all public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the staff report. As discussed herein, in the findings addressing the consistency of the proposed project with the Chapter 3 policies of the Coastal Act, the proposed project has been conditioned to be found consistent with the Coastal Act. Mitigation measures, which will minimize all adverse environmental impacts have been required. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact that the activity may have on the environment. Therefore, the Commission finds that the proposed project can be found to be consistent with the requirements of the Coastal Act to conform to CEQA.

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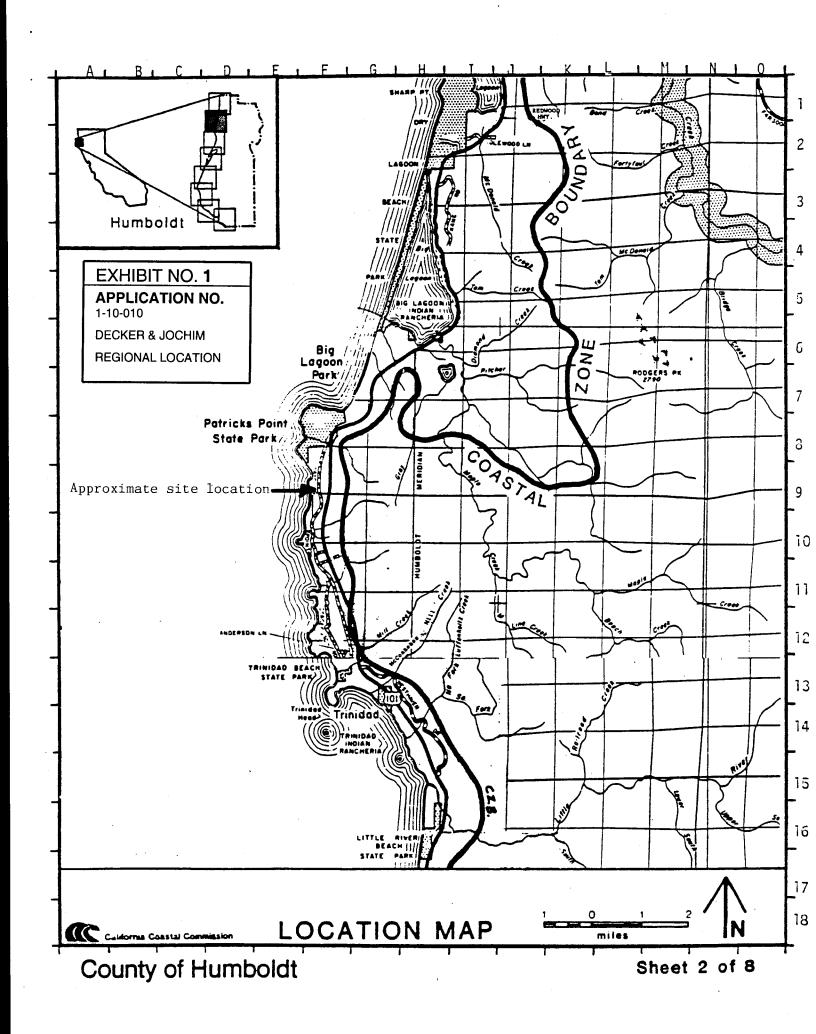
Exhibits

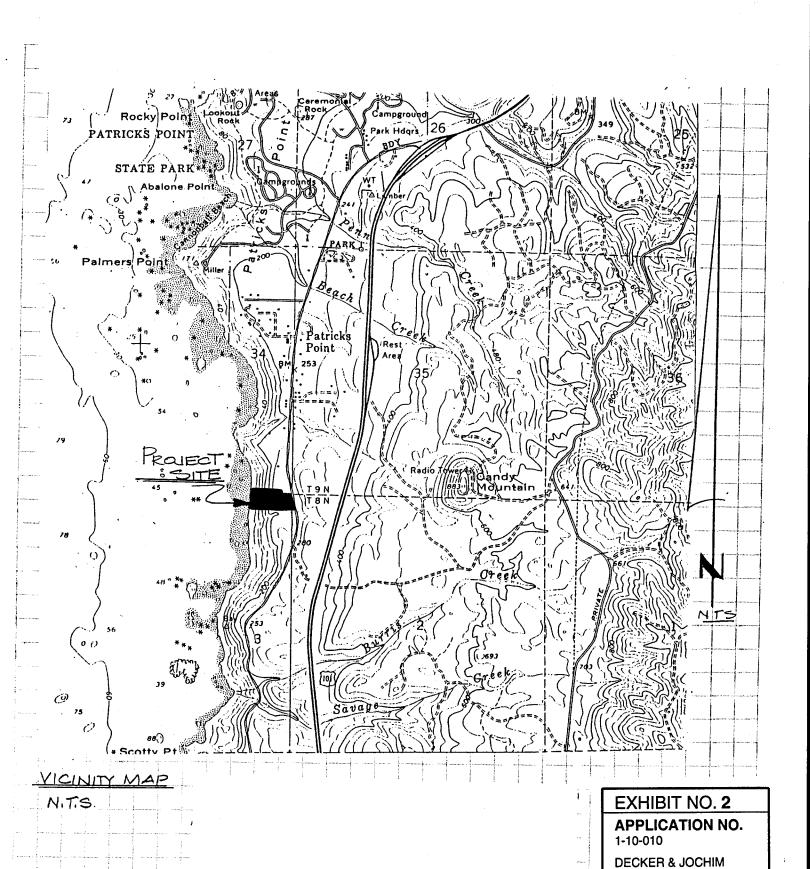
- 1. Regional Location
- 2. Area Location
- 3. Non-Certified Area
- 4. Site Map
- 5. Proposed Boundary Line Adjustment
- 6. Proposed Septic System
- 7. CDP 1-92-150 Staff Report
- 8. Geologic Evaluation
- 9. Health Department Approval

<u>ATTACHMENT</u>

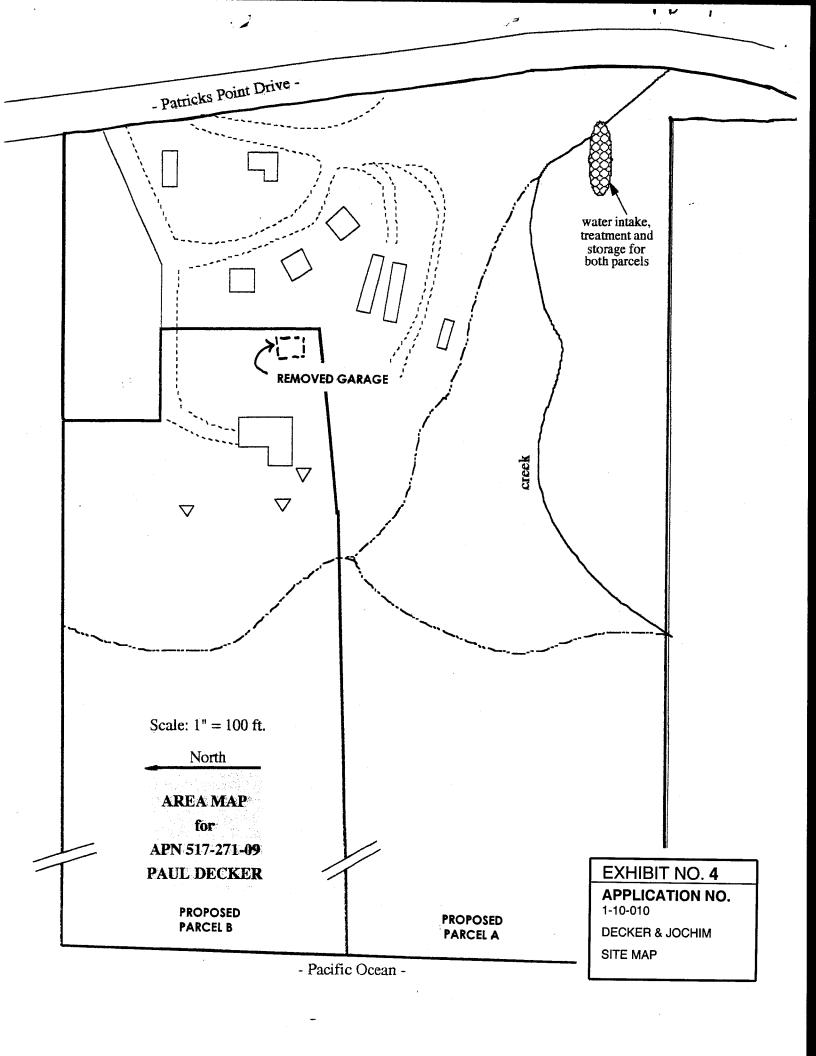
Standard Conditions:

- 1. <u>Notice of Receipt and Acknowledgment</u>. 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. <u>Expiration</u>. 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. <u>Interpretation.</u> Any questions of intent or interpretation of any condition will be resolved by the Executive Director of the Commission.
- 4. <u>Assignment.</u> The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
- 5. <u>Terms and Conditions Run with the Land.</u> 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.

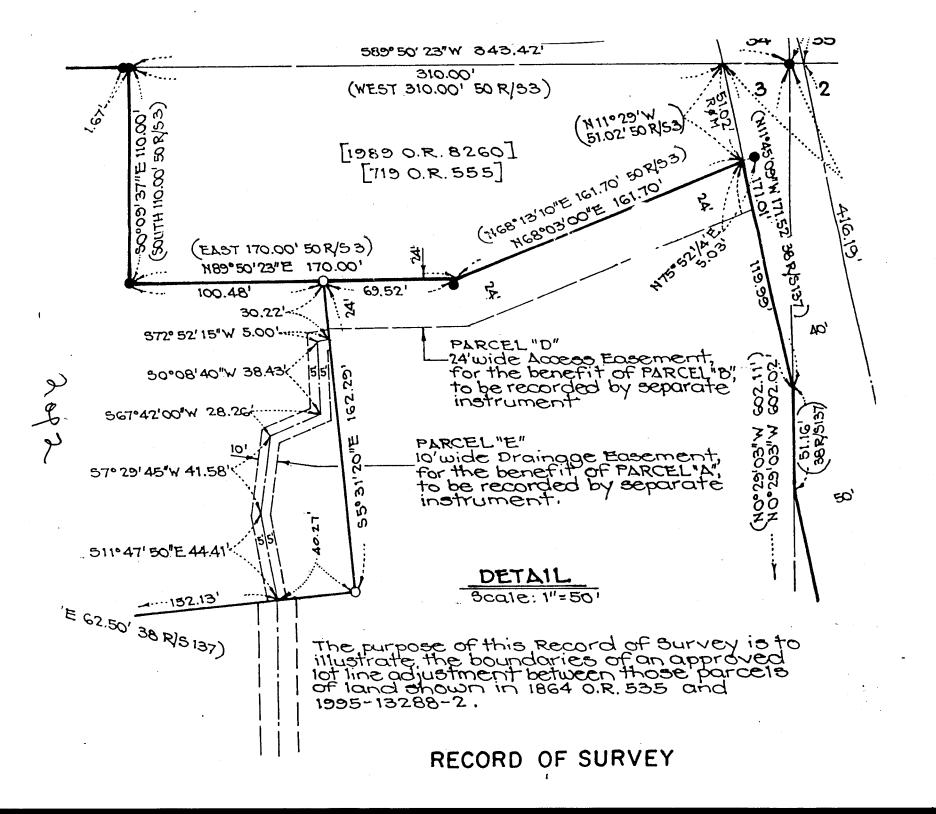


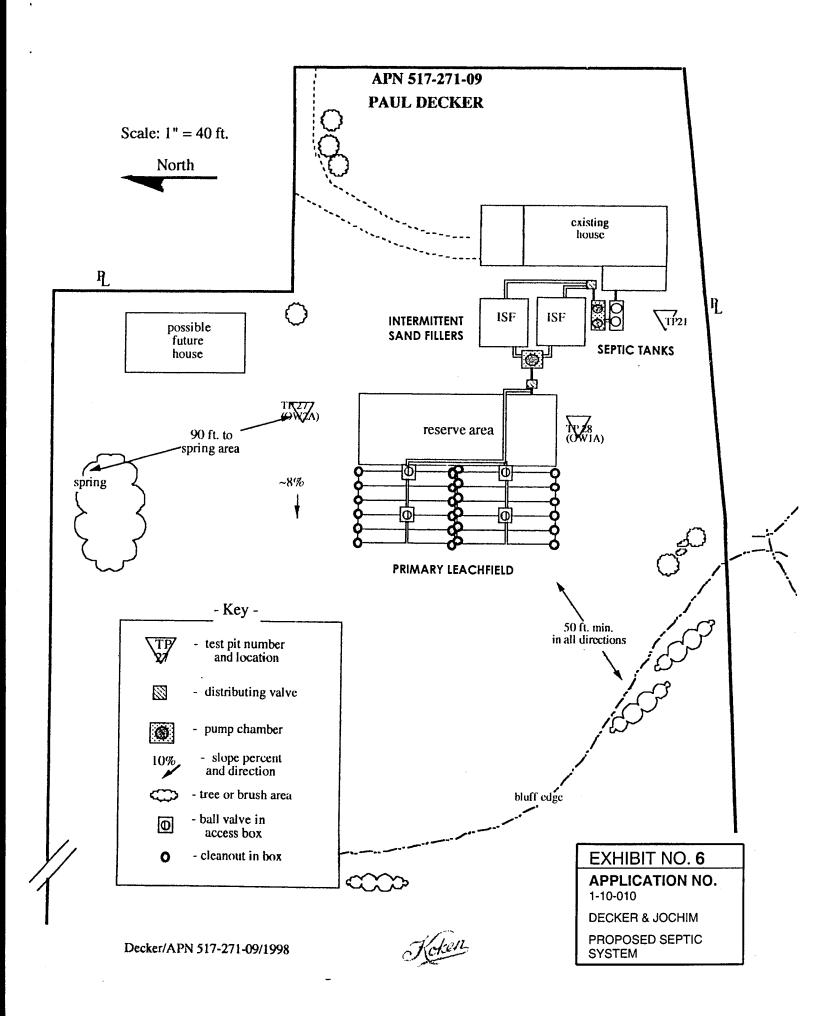


AREA LOCATION



* Basis of Bearings is No°29'03"W between Monuments (A) & (B) per Book 25 of Farce1 Maps, Page 10G, H.C.R.. which was based on 38 R/5 137, H.C.R..





CALIFORNIA COASTAL COMMISSION

NORTH COAST AREA 45 FREMONT, SUITE 2000 SAN FRANCISCO, CA 94105-2219 (415) 904-5260

EXHIBIT NO. 7

APPLICATION NO.

1-10-010

DECKER & JOCHIM

CDP 1-92-150 STAFF REPORT (1 of 7)





Filed: 49th Day: 180th Day: Staff:

Staff Report: Hearing Date:

Hearing Date: Commission Action: August 23, 1993 October 11, 1993 February 19, 1994

James Muth

September 3, 1993 September 15, 1993

STAFF REPORT: CONSENT CALENDAR

APPLICATION NO.:

1-92-150

APPLICANT:

DECKER REVOCABLE FAMILY TRUST

AGENT:

Laurie A. Graben, Omsberg & Company

PROJECT LOCATION:

3058 Patricks Point Drive, Trinidad area of Humboldt

County. APN's 517-271-02 and 03.

PROJECT DESCRIPTION:

(1) Adjust the boundary line between a 1.28-acre parcel and a 9.83-acre parcel resulting in two adjusted parcels of 4.25 acres and 6.86 acres, and (2) demolish and

remove a garage.

Lot area:

1.28 acres and 9.83 acres (before the adjustment) 4.25 acres and 6.86 acres (after the adjustment)

Zoning:

Rural Residential Agricultural, 2 acre minimum

parcel size, and Commercial Recreation.

Plan designation:

Not certified (Area of deferred certification).

LOCAL APPROVALS RECEIVED:

Humboldt County: Planning Department boundary line adjustment and conditional certificate of

compliance approval.

SUBSTANTIVE FILE DOCUMENTS:

Humboldt County's Trinidad Area Land Use Plan.
Permits No. NCR-77-A-110 (Decker) & NCR-77-CC-462

(Decker).

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby <u>grants</u> a permit, subject to the conditions below, for the proposed development on the grounds that the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of

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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, is located between the sea and the first public road nearest the shoreline and is in conformance with the public access and public recreation policies 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.

- II. Standard Conditions. See attached.
- III. Special Conditions.
- 1. Contingent Easement.

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for the review and approval of the Executive Director and subsequently record a contingent easement that will ensure the continued provision of water supply service from APN 517-271-03 to APN 517-271-02 upon the sale or transfer of APN 517-271-03 to another party.

The contingent easement shall be recorded free of prior liens and encumbrances except tax liens, shall be irrevocable, running from the date of recordation and shall run with the land binding the landowners, and their heirs, assigns, and successors in interest to the subject property. Upon demonstration to the satisfaction of the Executive Director that an approved water supply service alternative is available, the easement may be partially or wholly extinguished.

IV. Findings and Declarations.

The Commission hereby finds and declares as follows:

Project and Site Description.

The applicant proposes to: (1) adjust the boundary line between a 1.28-acre parcel and a 9.83-acre parcel resulting in two adjusted parcels of 4.25 acres and 6.86 acres, and (2) demolish and remove a garage, disposing of the unsalvagable debris in a local landfill.

The purpose of the boundary line adjustment is to separate those portions of the property which are for sale from those which are not. With rearrangement of the property lines, the garage must be removed to comply with the County's side yard setback requirements.

The bluff top property is located about one mile south of Patricks Point State Park on the west side of Patricks Point Drive, the first public road nearest the sea. See locational Exhibits No. 1, 2, and 3. The ll.ll-acre property consists of an 1.28-acre parcel and an adjacent 9.83-acre parcel.

The 1.28-acre parcel was previously identified as APN 517-041-11 and is now identified as APN 517-271-03. Except for a minor accessory structure, this parcel is undeveloped and does not front on Patricks Point Drive. This parcel is zoned as Rural Residential Agricultural, 2-acre minimum parcel size, and has an overlay combining zone that: allows the provision of manufactured housing; requires that new development be subject to a design review permit; and requires that off-shore rocks and riparian resources be protected. This parcel has no streams, riparian vegetation, or other environmentally sensitive habitat areas, except for an evironmentally sensitive, rocky intertidal area along the parcel's shoreline.

According to the County, the 1.28-acre parcel was not legally created in 1969. However, the County now legally recognizes the parcel under a conditional certificate of compliance which requires, among other things, that the applicant record a survey map of the property and provide a 20-foot-wide, minimum access road from Patricks Point Drive to the subject property.

The adjacent 9.83-acre parcel is developed with a single-family residence, a garage, two house trailers, six cottages, and a shed. Water supply service to this parcel is provided from a creek to the south of the property. The single-family residence has its own septic tank and leach field area. A separate septic tank and leach field area serve the two house trailers and the six cottages. See Exhibit No. 6, a detail of the site plan. This parcel is zoned as Commercial Recreation and has an overlay combining zone that requires new development be subject to a design review permit and that off-shore rocks and riparian resources be protected. This parcel has no streams, riparian vegetation, or other environmentally sensitive habitat areas, except for an evironmentally sensitive, rocky intertidal area along the parcel's shoreline.

As adjusted, the 1.28-acre parcel will be expanded in size to 4.25 acres and will include the existing single-family residence and garage. As adjusted, the adjacent 9.83-acre parcel will be reduced in size to 6.68 acres and will contain the visitor-serving cottages, house trailers, and accessory buildings. See Exhibits No. 5 and 6.

Previous Permits on the Property.

In July of 1977, the Commission approved Permit No. NCR-77-A-110 (Decker) which allowed the applicant to replace an existing visitor-serving sign with a more modern sign.

In December of 1977, the Commission approved Permit No. NCR-77-CC-462 (Decker) which allowed the applicant to install a 5,000 gallon septic tank and a new leach field and to add a 360-square-foot addition to an existing building which was then used as an antique shop. As a special condition of permit approval, the Commission required that the applicant record an offer to dedicate a 25-foot-wide, lateral public access easement along the beach. This condition was met.

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Local Coastal Program Background.

In October of 1982, the Commission adopted a resolution certifying in part the Trinidad Area Land Use Plan of Humboldt County's Local Coastal Program. However, the resolution denied certification of the plan for privately owned lands, other than lands owned by the Humboldt Northcoast Land Trust, located west of Scenic Drive, Stagecoach Road, and Patricks Point Drive (where they are the first public roads paralleling the sea), and along the route of the 6th Avenue Trail in the Westhaven area. In denying certification for this area, the Commission suggested that the plan's policies regarding the portection of the public's right of access where acquired through use (i.e. potential prescriptive rights) be modified to conform to the natural resource, hazard, and public access policies of the Coastal Act. The County did not accept the suggested modification and the geographic area became an "area of deferred certification" or ADC. Consequently, the authority for granting coastal development permits within the ADC is still retained by the Commission.

4. Public Access.

Section 30210 of the Coastal Act requires in applicable part that maximum public access and recreational opportunities be provided when consistent with public safety, private property rights, and natural resource protection. Section 30211 requires in applicable part that development not interfere with the public's right of access to the sea where acquired through use. Section 30212 requires in applicable part that public access from the nearest public roadway to the shoreline and along the coast be provided in new development projects, except in certain instances as when adequate access exists nearby or when the provision of public access would be inconsistent with public safety.

In applying Sections 30210, 30211, and 30212, the Commission is limited by the need to show that any denial of a permit application based on those sections, or any decision to grant a permit subject to special conditions requiring public access, is necessary to avoid or offset a development's adverse impact on existing or potential public access.

The Trinidad Area LUP identifies a number of trails over privately held lands in the surrounding area which the public has used historically to gain access to the sea for beachcombing, sportfishing, and other recreational opportunities. None of these identified trails are located on the subject property. In addition, no one has come forward to claim that they have used the subject property for either bluff top viewing or to gain access to the sea. Moreover, the proposed project does not increase the demand for public access to and along the coast as it does not increase the number of parcels or increase the number of buildings. Therefore, the Commission finds that the project is consistent with Sections 30210, 30211, and 30212 as the project creates no additional demand for public access and does not interfere with the public's right of access where acquired through use in the surrounding area.

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New Development.

Section 30250(a) of the Coastal Act requires in applicable part that:

(a) New residential, commercial, or industrial development...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.

Although the subject property is located outside of an existing developed area, both parcels will be considered to be developed once the boundary line adjustment is approved. The 4.25 acre parcel will contain the existing single-family residence and the garage. The 6.86 acre parcel will contain the visitor-serving cottages and related outbuildings.

In the event that either property is sold to another party, the existing development on each parcel will continue to have the ability to dispose of waste water as each parcel has its own septic tank and leach field area. However, to ensure that the parcel at the end of the water supply service line (APN 517-271-02) will continue to have water supply service, the Commission attaches Special Condition No. 1 which requires the applicant to submit for the review and approval of the Executive Director and subsequently record a contingent easement to ensure the continued provision of water supply service from APN 517-271-03 to APN 517-271-02 in the event either parcel is sold or transfered to another party. The condition provides that in the future, an applicant can request that the easement be partially or wholly extinguished if he or she can demonstrate to the satisfaction of the Executive Director that an approved water supply service alternative is available, such as a new well on APN 517-271-02 with an adequate supply of water.

The Commission finds that the project, as conditioned, is consistent with Section 30250(a) as adequate services will remain available to accommodate the existing development and as there will be no adverse impacts on coastal resources because there is no net change to the development potential or density of either parcel and because the unsalvagable debris from the garage will be properly disposed of in a local landfill.

Humboldt County LUP/Prejudice to LCP.

Section 30604 of the Coastal Act allows permit issuance of a project if it is consistent with Chapter 3 of the Coastal Act. Approval of the project, as conditioned, is consistent with Sections 30201, 30211, 30211, and 30250(a) of the Coastal Act and thus will not prejudice local government's ability to implement a certifiable LCP for this uncertified area.

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7. California Environmental Quality Act.

The project does not have a significant adverse effect on the environment, within the meaning of CEQA. As discussed above, the project has been conditioned to ensure consistency with the Coastal Act. The Humboldt County Planning Department acted as lead agency for this project under CEQA and found that: (a) the conditional certificate of compliance which legally recognized the creation of two separate parcels was subject to a negative declaration; and (b) the boundary line adjustment was categorically exempt under a class 5, Section 15305(a) exemption of CEQA.

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ATTACHMENT A

Standard Conditions

- 1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
- 2. <u>Expiration</u>. 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. <u>Compliance</u>. 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. <u>Interpretation</u>. Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
- 5. <u>Inspections</u>. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
- 6. <u>Assignment</u>. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
- 7. <u>Terms and Conditions Run with the Land</u>. 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.

SHN EUREKA

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CONSULTING ENGINEERS & GEOLOGISTS, INC.

812 W. Wabash • Eureka, CA 95501-2138 • 707-441-8855 • Fax 707-441-8877 • info@shn-eureka.com

Reference: 004039

February 12, 2004

Paul and Kristen Decker 5086 Lakeville Hwy Petaluma, CA 94954 **EXHIBIT NO. 8**

APPLICATION NO.

1-10-010

DECKER & JOCHIM

GEOLOGIC EVALUATION

(1 of 6

Subject: Geologic Evaluation of APN 517-271-09 Focusing on Bluff Stability

Mr. and Ms. Decker:

This letter report presents the results of our focused geologic evaluation of your property (APN 517-271-09) north of Trinidad, California (location shown on Figure 1). It is our understanding that the property is pending Coastal Commission approval of a proposed lot line adjustment and installation of an improved on-site sewage disposal system. The site is located on a coastal bluff and the sewage disposal system is proposed to be constructed on the seaward side of the existing residence at the site; therefore the Coastal Commission has requested a geologic evaluation of bluff stability. This report documents the findings and conclusions of that geologic evaluation. Our evaluation is focused solely on the suitability of the placement of the sewage disposal system, and does not include an assessment of other geologic aspects of the proposed project. Our work scope for this evaluation included site reconnaissance, interpretation of aerial photography, and review of pertinent literature and maps. We visited the site with your agent, Mr. Mickey Fleschner, of Trinidad Realty on February 3, 2004.

We reviewed a report detailing the proposed Sewage Disposal System, which was prepared by Ms. Angela Koken in 1998. The proposed disposal system is designed to accommodate up to 7 bedrooms in the residence, accounting for up to 900 gallons per day of discharge. The proposed system includes a septic tank, sand filters, and a leachfield consisting of four groups of six 20-foot laterals. We have conducted our evaluation assuming that the location of the leachfield and other system components will be constructed as shown in the Sewage Disposal System design report (shown on the accompanying site map, Figure 2).

Topographic and Geologic Setting

The project site occupies a generally westward-sloping coastal bluff top. The bluff top at the site is a remnant of a marine terrace. The site is bordered on the western side by the Pacific Ocean and an associated narrow beach strip and coastal bluff. Slopes at the site are gentle on the bluff top (<10% to 20%) to steep (up to about 80%) on the bluff face. An existing residence is present at the site, an older structure built in the 1930's or 1940's. Some minor grading is apparent at the site; the house rests on an apparently graded bench, and there is some geomorphic evidence of minor grading on the bluff top seaward of the house.

The marine terrace at the site is a late Pleistocene age feature eroded into the regional bedrock during a previous high sea level stand. Marine terraces are preserved along the coast of California as erosional remnants of raised shore platforms and associated cover sediments. Sea level has fluctuated throughout the late Pleistocene in response to the advance and retreat of large

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Paul and Kristen Decker Geologic Evaluation of APN 517-271-09 Focusing on Bluff Stability February 12, 2004 Page 2

continental ice sheets. Marine terraces preserved along the coast represent surfaces eroded during the highest levels of these sea level fluctuations, superimposed on a coastline being uplifted by regional tectonics.

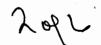
Bedrock at the site is the Cretaceous to Jurassic age Central belt of the Franciscan Complex. The Franciscan Complex is a regional bedrock unit that is composed of three broad belts: the Eastern, Central, and Coastal belts. These belts represent "terranes", discrete fault bounded masses of highly deformed oceanic crust that have been welded to the western margin of the North American plate over the past 140 million years. The belts become progressively older, more deformed, and metamorphosed to the east. The Central belt of the Franciscan Complex consists of a tectonic mélange composed of rock blocks within a penetratively sheared, metamorphosed argillite matrix. Individual rock blocks can range in size from very small gravel-size fragments to very large mountain-scale blocks (i.e., Trinidad Head). The Central belt is commonly described as a mélange due to its block-in-matrix textural character, its assemblage of disassociated rock types, and its pervasively sheared character.

Slope failures in mélange terrain include earthflows that deform the low strength mélange matrix. and rotational slides and block falls that occur in rockier settings. Earthflow movement is complex and commonly involves relatively slow, plastic deformation or flow of cohesive (i.e., clay-rich) materials. The displaced mass in an earthflow is typically strongly internally deformed, particularly along the flow margins. In material with a block-in-matrix texture such as the Franciscan mélange, earthflows tend to occur within the sheared, clay-rich matrix. The matrix flows downslope around the large, relatively stable rock blocks. The blocks may remain on the hillside in relatively stable positions depending on their depth of penetration relative to the depth of sliding. Deep-scated rotational slumps are less common, but may also be present locally within the Franciscan mélange where slope mechanics are more influenced by the presence of large rock masses. Slumps are most common along coastal bluffs where wave action can remove toe support in rocky slopes and gravitational forces can overcome the resisting forces of the materials within the bluff face. One such slump occurred on the adjacent parcel to the north of the subject lot.

Results of Investigation

To evaluate the suitability of the area west of the existing residence for a sewage disposal system, we conducted field reconnaissance of the lot and adjacent bluff, interpreted aerial photography of the site and vicinity, and reviewed a historical account of coastal bluff retreat. The house is located 200 feet from the bluff crest, and was constructed on a graded building pad. Beyond the graded pad that the existing house rests upon, the bluff top at the site rolls gently toward the bluff crest, with slope gradients increasing gradually toward the crest. The area seaward of the house is a grass-covered field with a few large spruce trees. We note that the subject parcel is visible in an online aerial photograph at www.californiacoastline.org; refer to frame 7573 (look to left side of image, 3 white structures are visible to north, house is brown building in shade, next to a small bright white shed).

The coastal bluff at the site is a steep, relatively planar slope, which is occupied by several 30 to 40 year old, straight-standing spruce trees. Several large rock outcrops are present on the bluff face. The geomorphic expression of the bluff face suggests it is a relatively resistant rocky slope. As



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Paul and Kristen Decker Geologic Evaluation of APN 517-271-09 Focusing on Bluff Stability February 12, 2004 Page 3

discussed above, slope processes in block-in-matrix earth materials such as Franciscan mélange are controlled by the presence or absence of rock blocks. Where rock blocks are present, the area stands out in relative resistance; where highly sheared, low strength matrix is present, low gradient, earthflow-prone slopes form. The available geomorphic information at this site suggests the bluff face below the proposed leachfield area is a rock-controlled slope.

Slope failures are present both north and south of the subject parcel. To the north, a significant rotational slump is present in the upper half of the bluff face. This slide appears to be about 75 feet wide, and is associated with a 6 to 8 foot high arcuate head scarp. The failure has been fenced off, and the residence at that site has reportedly been moved. The slide appears to be at the drainage point for a small creek, which the resident appears to have impounded into a small landscaped pond. Springs were noted on the slopes adjacent to the watercourse, one of which occurs along the common property line with the subject parcel (see site map; Figure 2). The area around this failure appears very wet (abundant hydrophilic vegetation is present), and we infer that this failure is a result of run-off and stream related saturation. Review of the on-line aerial photograph described above suggests that this failure does not penetrate to the base of the bluff, but rather is confined to the upper one-half of the bluff face (above bedrock exposed on the beach). The proposed leachfield on the subject parcel is approximately 120 feet from the nearest spring along the northern property line, and at least 150 feet from the slide.

To the south of the subject parcel, apparent earthflow deformation is occurring in a broad, bowl-shaped amphitheater. Scarps at the head of this failure expose gray sheared argillite (i.e., mélange matrix). It is our understanding that the County previously drained road runoff from Patrick's Point Drive onto this slope, which reportedly significantly exacerbated mass wasting. Run-off has since been re-routed, and movement in this area has reportedly slowed. There is however, evidence of recent movement in the form of fresh scarps and warped, leaning conifer saplings. The reserve area of the proposed leachfield on the subject property is about 55 feet from the bluff crest above this unstable area; the closest approach of the slide area is about 80 feet away. The primary field is over 100 feet from this unstable area.

Based on the presence of mass wasting features on either side of the subject parcel, we conclude that the subject site represents a relatively stable "promontory", a rock-controlled slope bordered by areas of low-strength mélange matrix. The owner's agent whom we visited the site with indicates no knowledge of mass wasting or bluff retreat at this site since the 1970's, the extent of his experience with the property. The proposed reserve area of the leachfield, the most seaward element of the proposed sewage disposal system, is between 70 and 80 feet from the bluff directly west of the site; the primary leachfield is 105 to 115 feet from the bluff.

We reviewed a historical account of coastal bluff retreat in northern Humboldt County, prepared in 1981 by Don Tuttle (former Humboldt County Deputy Public Works Director), which was based on review of aerial photographs dating back to 1942. The nearest coastline transects evaluated in that report are near Scotty's Point, about 4,000 to 4,500 feet to the south. These transects are interpreted to be relevant to the subject site based on similarities in geology and geomorphic expression of the bluffs. The coastal transects at White Rock do not indicate any bluff retreat between 1942 and 1974.

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Paul and Kristen Decker Geologic Evaluation of APN 517-271-09 Focusing on Bluff Stability February 12, 2004 Page 4

Conclusions and Recommendations

- It is our opinion that the proposed Sewage Disposal System is acceptably located from a
 geologic standpoint. The bluff below the site appears to have been historically stable, and
 appears to be a resistant rock-dominated slope. As discussed above, relative stability in blockin-matrix bedrock such as that at the site is controlled by the presence or absence of rock blocks.
 Slope failures on adjacent parcels appear to be localized features related to the absence of rocky
 materials (i.e., they are underlain by weak, sheared mélange matrix), and/or saturation due to
 natural or man-made run-off.
- 2. Despite the historic stability of the bluff at the site, we acknowledge that coastal bluffs are inherently dynamic geomorphic features that may experience mass wasting due to a combination of wave undercutting, seismic triggering, and/or excess saturation. As such, developments (including sewage disposal systems) should be adequately setback from coastal bluffs to account for uncertainty regarding future bluff retreat potential. It is our opinion that the proposed sewage disposal system is adequately set back from the bluff to ensure a Low potential for future damage. The reserve area of the leachfield, the most westward element of the system, is between 70 and 80 feet from the bluff directly west of the site; the primary leachfield is 105 to 115 feet from the bluff. The reserve area is 55 feet from the bluff crest above the unstable area to the southwest; the closest approach of the slide area is about 80 feet away. The primary field is over 100 feet from this unstable area.
- 3. Bluff retreat hazards diminish with distance from the bluff edge. The reserve leachfield area is the element of the proposed sewage disposal system that is closest to the coastal bluff. However, it may be several years before that area is utilized, if at all. As such, we recommend that should the primary field become unusable, and the reserve area is developed, that the site be re-assessed to ensure that conditions at the site have not changed significantly (i.e., that no significant bluff retreat has occurred).
- 4. We concur with the sewage disposal system designer, Ms. Koken, that surface flows and gutter run-off be routed away from the leachfield area. From a geologic standpoint, re-routing of this run-off will help offset the impacts associated with the additional water discharged from the leachfield.

I hope that this report provides you with the information that you need at this time. If you should have any questions, or require clarification of our findings presented herein, please call our office. We appreciate the opportunity to assist you on this project.

Respectfully,

SHN Consulting Engineers to Geologists, Inc.

Gary D. Simpson, C.E.G.

Senior Geologist

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GARY D.

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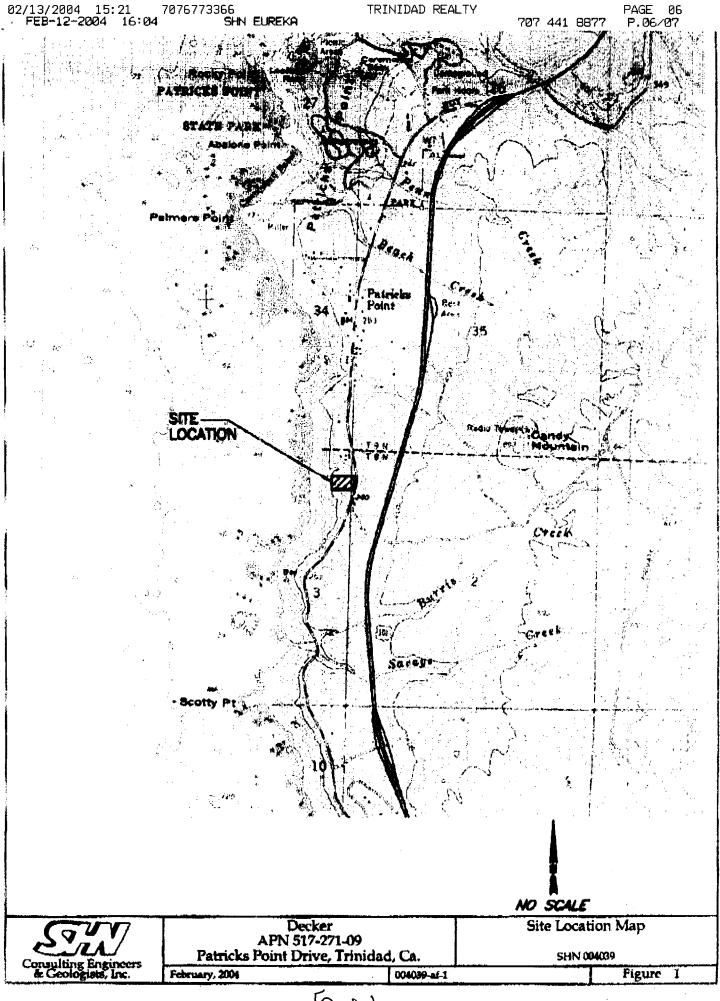
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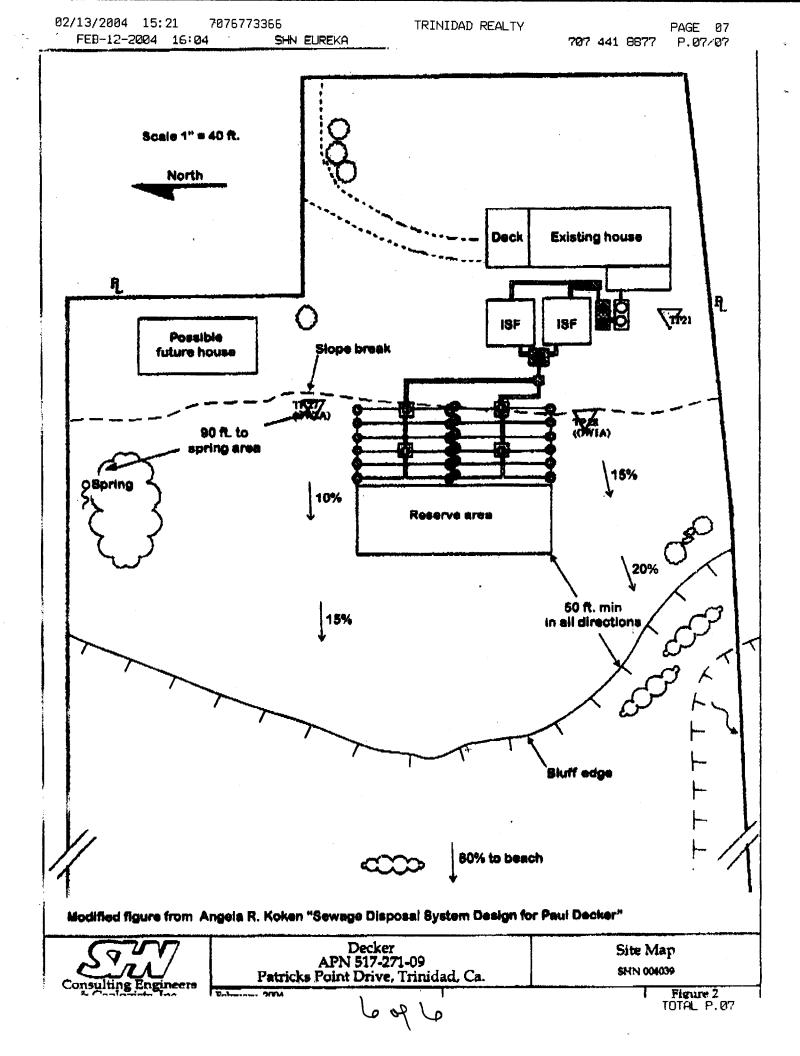
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Humboldt County Department of Health and Human Services DIVISION OF ENVIRONMENTAL HEALTH

100 H Street, Suite 100, Eureka, CA 95501

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Toll Free 1-800-963-9241 envhealth@co.humboldt.ca.us

June 27, 2002

RECEIVED

JUL 0 1 2002

Tiffany Tauber CALIFORNIA
California Coastal Commission COASTAL COMMISSION
Northern California District Office
P. O. Box 4908
Eureka, CA 95502-4908

RE:

Onsite Sewage Disposal System at 3058 Patrick's Point Drive, Trinidad

AP #517-271-09

Dear Ms. Tauber:

The Humboldt County Division of Environmental Health (DEH) has completed a review of the sewage disposal system design (prepared by Angela Koken) for the main residence on the aforementioned parcel. DEH has no objection to the installation of the system as proposed. The site conditions and system design were found to be in conformance with applicable county sewage disposal requirements.

Please notify this office once Coastal Commission requirements for the installation of the sewage disposal system have been completed so DEH can issue the permit to install the system. If you have any questions regarding this matter please contact me at (707) 268-2209.

Sincerely,

David Spinosa, R.E.H.S.

Senior Environmental Health Specialist

DS/se

c:

Mickey Fleschner

EXHIBIT NO. 9

APPLICATION NO.

1-10-010

DECKER & JOCHIM

HEALTH DEPARTMENT APPROVAL

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