

**CALIFORNIA COASTAL COMMISSION**

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**Staff:**  
**Staff Report:**  
**Hearing Date:**

**SMR-SF**  
**May 21, 2004**  
**June 9, 2004**

**FINDINGS FOR  
CEASE AND DESIST AND RESTORATION ORDERS**

**CEASE AND DESIST AND  
RESTORATION ORDERS:**

CCC-04-CD-05 and CCC-04-RO-01

**RELATED VIOLATION FILES:**

V-1-03-014

**PROPERTY LOCATION:**

3870 Cannibal Road,  
Loleta, Humboldt County  
**APNs 310-083-03, 310-083-04 and 310-083-06 (Exhibit 1)**

**DESCRIPTION OF PROPERTY:**

Three parcels of dune-edged pasture land adjacent  
to and just north of the mouth of the Eel River in  
Humboldt County.

**PROPERTY OWNER:**

Robert Niles

**VIOLATION DESCRIPTION:**

Unpermitted grading, solid waste disposal and  
removal of major vegetation.

**SUBSTANTIVE FILE DOCUMENTS:**

Cease and Desist and Restoration Order file Nos.  
CCC-04-CD-05 and CCC-04-RO-01  
Background Exhibits 1 through 14

**CEQA STATUS:**

Exempt (CEQA Guidelines (CG) §§ 15060 (c)(2) and (3),  
and Categorically Exempt (CG §§ 15061(b)(2), 15037,  
15038 and 15321)

## I. SUMMARY

Staff recommends that the Commission approve Cease and Desist and Restoration Orders (as described below) directing Robert Niles ("Niles") to remove unpermitted development at 3870 Cannibal Road ("subject property") and to restore the impacted area. The unpermitted development consists of unpermitted grading, solid waste disposal and removal of major vegetation. Solid waste disposed of and discovered on the subject property includes (but is not limited to) household waste, dead cows, metal debris, car bodies, a travel trailer, a television set, a vehicle engine block, carpeting, plastic buckets, car batteries, and a fluid-filled, leaking tank. Mr. Robert Niles is the owner of the subject property.

The subject property consists of three parcels of land near the mouth of Eel River in Humboldt County, all located in the Coastal Zone and subject to Commission jurisdiction. The southern and western edges of the subject property border on the Eel River and consist of dune habitat, while the remainder of the subject property is farmed for dairy pasture. The unpermitted disposal (which is included as "development" under the Coastal Act as discussed below) is located along the western dune edge of the subject property in a series of pits where solid waste has been buried. The Humboldt County Environmental Health Division first received and investigated reports about the unpermitted activity in the summer of 2003, and organized a multi-agency task force addressing the matter. Commission staff has participated in the task force efforts and is coordinating with County and other agency staff to resolve the violations on the subject property.

The unpermitted development activity that has occurred on the subject property meets the definition of "development" set forth in Section 30106 of the Coastal Act. The development was undertaken without a coastal development permit, in violation of Public Resources Code 30600. Therefore, the Commission may issue a Cease and Desist Order under Section 30810 of the Coastal Act.

The unpermitted development is also inconsistent with the California Coastal Act, including Sections 30231 (Biological productivity; water quality) 30240 (Environmentally Sensitive Habitat Areas) and 30251 (Scenic Resources and Alteration of Landforms) of the Public Resources Code. The unpermitted development has impacted the habitat values of the subject property, which includes environmentally sensitive dune habitat and is located adjacent to environmentally sensitive estuary habitat at the mouth of the Eel River. This estuary habitat is specifically designated Environmentally Sensitive Habitat Area (ESHA) in the certified Eel River Area Land Use Plan. The impacts from the unpermitted development remain at the subject property. Thus, the unpermitted development on the subject property is causing continuing resource damage, as defined in Section 13190 of the Commission's regulations. Therefore, the Commission may issue a Restoration Order under Section 30811 of the Coastal Act.

## **II. HEARING PROCEDURES**

The procedures for a hearing on a proposed Cease and Desist Order and Restoration Order are set forth in Section 13185 and 13195 of the California Code of Regulations (CCR), Title 14, Division 5.5, Chapter 5, Subchapter 8.

For a Cease and Desist and Restoration Order hearing, the Chair shall announce the matter and request that all alleged violators or their representatives present at the hearing identify themselves for the record, indicate what matters are already part of the record, and announce the rules of the proceeding including time limits for presentations. The Chair shall also announce the right of any speaker to propose to the Commission, before the close of the hearing, any question(s) for any Commissioner, in his or her discretion, to ask of any person, other than the violator or its representative. The Commission staff shall then present the report and recommendation to the Commission, after which the alleged violator or his representative may present their position(s) with particular attention to those areas where an actual controversy exists. The Chair may then recognize other interested persons after which staff typically responds to the testimony and to any new evidence introduced.

The Commission will receive, consider, and evaluate evidence in accordance with the same standards it uses in its other quasi-judicial proceedings, as specified in CCR Section 13185, 13186, and 13195, incorporating by reference Sections 13185, 13186 and 13065. The Chair will close the public hearing after the presentations are completed. The Commissioners may ask questions to any speaker at any time during the hearing or deliberations, including, if any Commissioner chooses, any questions proposed by any speaker in the manner noted above. Finally, the Commission shall determine, by a majority vote of those present and voting, whether to issue the Cease and Desist and Restoration Orders, either in the form recommended by the Executive Director, or as amended by the Commission. Passage of a motion, per staff recommendation or as amended by the Commission, will result in issuance of the order.

## **III. MOTIONS**

Staff recommends that the Commission adopt the following two motions:

### **1.A. Motion**

*I move that the Commission issue Cease and Desist Order No.  
CCC-04-CD-05 pursuant to the staff recommendation.*

### **1.B. Staff Recommendation of Approval**

Staff recommends a YES vote. Passage of this motion will result in issuance of the Cease and Desist Order. The motion passes only by an affirmative vote of a majority of Commissioners present.

### **1.C. Resolution to Issue Cease and Desist Order**

The Commission hereby issues Cease and Desist Order number CCC-04-CD-05, as set forth below, and adopts the findings set forth below on grounds that development has occurred without a coastal development permit.

### **2.A. Motion**

*I move that the Commission issue Restoration Order No. CCC-04-RO-01 pursuant to the staff recommendation.*

### **2.B. Staff Recommendation of Approval**

Staff recommends a YES vote. Passage of this motion will result in issuance of the Restoration Order. The motion passes only by an affirmative vote of a majority of Commissioners present.

### **2.C. Resolution to Issue Restoration Order**

The Commission hereby issues Restoration Order number CCC-04-RO-01, as set forth below, and adopts the findings set forth below on grounds that development has occurred without a coastal development permit, the development is inconsistent with the Coastal Act, and the development is causing continuing resource damage.

## **IV. PROPOSED FINDINGS**

### **A. History of Violation**

Commission staff first learned of the alleged violation on the subject property on July 29, 2003. North Coast District Commission enforcement staff attended a multi-agency task force meeting on July 30, 2003. The Humboldt County Environmental Health Division had received reports about unpermitted solid waste disposal in an illegal landfill at the subject property ("Site B" in County documents attached as Exhibit 3) and other Code violations at another nearby property that Mr. Niles also owns ("Site A" in County documents attached as Exhibit 3). The Humboldt County Environmental Health Division led the task force meeting, and presented information about the alleged violations at the subject property. County staff visited the subject property in July 2003 and observed an open pit (approximately four feet deep) filled with household waste including milk cartons, paper, plastic, and clothing. County staff also observed several sandy mounds in the immediate area, some of which had sharp pieces of metal sticking out of them and evidently indicating the location of recently buried waste. The County determined that further investigation was necessary and organized a multi-agency task force to address the various health and environmental concerns regarding the violations on the subject property.

The task force executed a criminal search warrant at the subject property on September 15, 2003. The purpose of the search warrant was to locate, map and photograph disposal areas, describe their contents, and segregate and contain any hazardous and medical wastes. The search warrant was not designed for comprehensive abatement and clean-up action. The County excavated ten

pits on the subject property. Solid waste discovered on the subject property during the County investigation includes (but is not limited to) abandoned household waste, dead cows, metal debris, car bodies, a travel trailer, a television set, a vehicle engine block, carpeting, plastic buckets, car batteries, and a fluid-filled, leaking tank (**Exhibit 2**). Some of the solid waste discovered in this initial investigation, including two car batteries, was deemed hazardous and was removed by Humboldt County Environmental Health Division staff and disposed of off-site. The leaking tank was wrapped in plastic and removed to a concrete pad near the barn on the property for Mr. Niles to dispose of. County staff collected a soil sample from the ground near the leaking tank. The soil was tested for Total Petroleum Hydrocarbons (TPH) and was non-detectable for TPH. After the search warrant was executed, the temporary pits were then backfilled and the solid waste left in place. The development activities associated with the execution of the search warrant were performed pursuant to the emergency permit waiver provisions of Section 30611 of the Coastal Act and Section 13144 of the Commission's regulations. The proposed Commission enforcement actions for the subject property ordering removal of the solid waste from the illegal landfill are for the "Site B" location noted in County documents.

On October 15, 2003, Commission staff received an October 14, 2003 memo and attachments from the Humboldt County Division of Environmental Health (**Exhibit 3**). The complete County file regarding this matter, entitled "Cannibal Island Illegal Disposal Site" is available for review at the Humboldt County Division of Environmental Health, 100 H Street, Suite 100, in Eureka. The memo and its attachments cited County and State Code violations on the subject property ("Site B" location in County documents) and included pit excavation logs and maps and photographs of the site. On December 2, 2003, the Humboldt County Code Enforcement Unit mailed a Notice of Nuisance and Notice to Recover Costs to Mr. Niles (**Exhibit 4**). This notice described the location and nature of the code violations (the "nuisance") on the subject property, and ordered Mr. Niles to abate the nuisance. As of this date, the buried waste remains on the subject property.

On November 14, 2003, the Commission sent a Notice of Intent (NOI) to Commence Cease and Desist Order and Restoration Order Proceedings to Robert Niles (**Exhibit 5**). The NOI stated the basis for issuance of the proposed Cease and Desist and Restoration orders, stated that the matter was tentatively being placed on the Commission's January 2004 hearing agenda, and provided the opportunity to respond to allegations in the NOI with a Statement of Defense form.

Mr. Niles did not return the Statement of Defense by the December 5, 2003 deadline set in the NOI. In a letter dated December 8, 2003, Commission staff memorialized a December 5, 2003 telephone conversation with Mr. Niles, in which Mr. Niles indicated that he had not received the NOI until December 1, 2003. In a letter dated December 8, 2003, staff extended the deadline for the submittal of a Statement of Defense to December 19, 2003 (**Exhibit 6**). On December 19, 2003, staff received a request from Mr. Niles' attorney for an extension of the deadline for submittal of a Statement of Defense (**Exhibit 7**). In a letter dated December 23, 2003, staff granted another extension for the deadline to submit a Statement of Defense until January 6, 2004 (**Exhibit 8**). On January 5, 2004, staff received a Statement of Defense dated December 31, 2003, from Mr. Niles' attorney (**Exhibit 9**).

On March 30, 2004, the Commission sent a Notice of Intent (NOI) to Record a Notice of Violation of the Coastal Act to Mr. Niles (**Exhibit 10**). Section 30812 of the Coastal Act provides that if the Commission determines, based on substantial evidence, that a violation has occurred on the subject property, a Notice of Violation can be recorded against the subject property to provide notice to any potential purchasers regarding the presence of the violation. If the property owner objects to the recordation of such a Notice and wishes to present evidence regarding the matter, he must respond to the NOI in writing within 20 days of the postmarked mailing of the NOI. As of April 19, 2004, the Commission had not received a written objection to the recordation of the Notice of Violation. Humboldt County recorded the Notice of Violation on April 26, 2004 as provided for under Section 30812 of the Coastal Act (**Exhibit 11**). On April 28, 2004, staff received a letter from Mr. Niles' attorney stating an objection to the recordation of the Notice of Violation (**Exhibit 12**). Staff spoke with Mr. Niles' attorney on April 28, 2004, and explained that the Notice of Violation had already been recorded pursuant to Section 30812, but that it will be extinguished after the violation on the subject property is resolved. Staff memorialized this conversation in a letter dated April 30, 2004 (**Exhibit 13**).

Since the commencement of formal enforcement proceedings in this matter, Commission staff has discussed the Coastal Act violations on the subject property with Mr. Niles and explained that as the legal property owner, Mr. Niles is responsible for removing the unpermitted development on his property, even if Mr. Niles himself did not deposit the waste on his property. Mr. Niles asserts that others have dumped waste illegally on his property and on adjacent County property. Illegal dumping is an unfortunate problem that is common in many parts of the state, and the County and other agencies are certainly aware of the problem in this specific location. Mr. Niles' apparent response in this case, however (essentially his establishment of an unlicensed landfill)<sup>1</sup>, is not the solution to this problem, and may likely have contributed to continued illegal dumping by others in the area, as abandoned vehicles and other waste simply disappeared from the area when the materials were periodically buried by Niles on the subject property.

When first investigating reports of the illegal waste disposal activities on the subject property, Humboldt County staff received reports that a truck and trailer transported waste from Mr. Niles' nearby residential property at 1111 Cannibal Road to disposal pits on the subject properties at 3870 Cannibal Road, where the waste was then buried in the pits. This indicates that Mr. Niles and/or his employees are aware of and directly responsible for the unpermitted disposal of solid waste on the subject property.

Commission staff has encouraged Mr. Niles to report further incidents of illegal activities by others that occur on his property to local and state officials, and has explained that in instances where individual parties can be identified, the Commission can and will hold individuals responsible for any violations of the Coastal Act that they perform on the subject property. Accordingly, Mr. Niles has reported several incidents to Commission staff since March 2004,

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<sup>1</sup> The Commission notes that there are a number of local, State and federal laws concerning the appropriate disposal of solid and other wastes designed to ensure environmental protection when wastes are disposed of, including requirements for site location and lining of landfills, groundwater monitoring, etc. (see, for example, Resource Conservation and Recovery Act (RCRA), 42 USC 6901, et seq.)

including the abandonment and burning of a stolen truck near an old barn on Mr. Niles' property, and excavation of sand south of the area the County investigated in September 2003. The Commission has opened new files investigating these reports. In addition, County staff recently visited the area to investigate, and confirmed that an area south of the buried waste pits had been recently excavated (**Exhibit 14 map and photos**). It is currently unknown if sand excavation was the only activity here, or if solid waste was also buried in this location. The Commission is therefore including further investigation and possible remediation of this area in the proposed Cease and Desist and Restoration Orders. The Orders would require test pits to be dug in this area, and if any solid waste is discovered it must be removed and the site restored according to the terms of the Orders.

**B. Description of Unpermitted Development**

The unpermitted development, which is the subject matter of this Cease and Desist and Restoration Order, consists of unpermitted grading, solid waste disposal and removal of major vegetation. Solid waste discovered on the subject property during the County investigation includes (but is not limited to) household waste, dead cows, metal debris, car bodies, a travel trailer, a television set, a vehicle engine block, carpeting, plastic buckets, car batteries, and a fluid-filled, leaking tank. The grading of pits for waste disposal resulted in the removal of dune vegetation.

**C. Basis for Issuance of Cease and Desist Order**

The statutory authority for issuance of this Cease and Desist Order is provided in §30810 of the Coastal Act, which states, in relevant part:

*If the Commission, after public hearing, determines that any person...has undertaken, or is threatening to undertake, any activity that 1) requires a permit from the commission without first securing the permit or 2) is inconsistent with any permit previously issued by the Commission, the Commission may issue an order directing that person...to cease and desist.*

The development activity that has occurred on the subject property meets the definition of "development" set forth in Section 30106 of the Coastal Act. The development was undertaken without a coastal development permit, in violation of Public Resources Code 30600. Therefore, the Commission may issue a Cease and Desist Order under Section 30810 of the Coastal Act.

**D. Basis for Issuance of Restoration Order**

The statutory authority for issuance of this Restoration Order is provided in §30811 of the Coastal Act, which states, in relevant part:

*In addition to any other authority to order restoration, the commission... may, after a public hearing, order restoration of a site if it finds that 1) the development has occurred without a coastal development permit from the commission, 2) the development is inconsistent with this division, and 3) the development is causing continuing resource damage.*

## **1. Development Has Occurred Without a Coastal Development Permit**

The unpermitted development activity that is the subject of this Restoration Order is included within the definition of "development" contained in Section 30106 of the Coastal Act. This definition includes but is not limited to: the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials or change in the density or intensity of the use land. In this case, unpermitted grading, solid waste disposal and removal of major vegetation are "development" as defined by Section 30106.

Pursuant to Section 30600(a) of the Coastal Act, "development" requires a coastal development permit. In this case, no coastal development permit has been applied for or issued for the subject unpermitted development.

## **2. Unpermitted Development is Inconsistent with the Coastal Act**

The unpermitted development meets the definition of "development" which requires a Coastal Development Permit (CDP). A CDP may be approved only when development is consistent with the resource protection policies contained in Chapter 3 of the Coastal Act. The unpermitted development is not consistent with Sections 30107.5, 30231, 30240, 30251 and 30253 of the Coastal Act.

### **Environmentally Sensitive Habitat Area**

Section 30107.5 of the Coastal Act states:

*"Environmentally sensitive area" means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.*

Section 30240 of the Coastal Act states:

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

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

The subject property is adjacent to the Eel River. The water column and river bottom substrate within the year-round low-flow channel of rivers provide habitat for a wide variety of resident



and migratory fish and wildlife species at all trophic levels, ranging from aquatic macro-invertebrates to mammals. These perennially inundated areas within the river meet the first criterion of the definition of environmentally sensitive area because the inundated areas of the reach may contain rare or endangered species, namely federal- and state-listed salmonids using this reach as a transit corridor between areas of holding habitat prior to the onset of upstream migration. The perennially inundated areas within the river clearly meet the second criterion of the definition of environmentally sensitive area because diking, dewatering, fill, and dredging activities can quickly disturb and degrade the habitat areas. The Commission has previously determined in numerous permit actions that such riverine perennial channels are environmentally sensitive areas. The Commission has consistently conditioned permits for development in and near such channels and along riparian woodlands within streams and rivers to avoid disturbances of aquatic resources.

A portion of the subject property is located within a sand dune area. In many recent decisions, the Commission has considered entire dune areas to be ESHA. Dune systems are a relatively rare feature along the California coastline. In addition, dunes often support rare or threatened plant species and other plant species that are considered to have special value because of their role in supporting the dune system. Because dune systems are dynamic and the extent and location of plant coverage can vary from year to year within the dune system, the Commission has considered entire dune areas to be ESHA, even those portions of the dunes that are not vegetated at any particular time. Because dunes migrate mainly as a result of changes in wind conditions, dunes are not particularly stable and can easily be disturbed by excavation and filling activities. Excavation in a dune can change wind patterns in a manner that can cause increased wind erosion of the remaining portions of the dunes. Placement of fill can act to anchor dunes in a way that interferes with the natural dynamic systems and cause changes in the extent and coverage of the dune area. Therefore, dunes such as those located on the subject property are environmentally sensitive habitat pursuant to Section 30107.5 of the Coastal Act as they are rare and of special value because of their unique nature or role in the ecosystem, and can be easily disturbed or degraded by human activities and developments.

The unpermitted development disrupts the habitat value because dune vegetation was removed to excavate the pits where solid waste was deposited. In addition, the solid waste has been buried in unlined sand pits, and toxic chemicals or compounds capable of degradation in the waste materials in the pits are subject to leaching because of generally high rainfall and high groundwater in the area, and because of potential floods. The subject property is directly adjacent to the mouth of the Eel River, an area that is subject to periodic flooding.

High levels of groundwater, high rainfall and flooding of the river on the subject property may all contribute to the leaching of toxic chemicals or compounds capable of degradation from the solid waste into the environment. The solid waste that is buried on the subject property includes car bodies, engine blocks, and tires, which all contain toxic chemicals that could leach into the surrounding environment, contaminating groundwater and the adjacent river and, in turn, potentially affecting fish, animals and water quality in the area. The solid waste may also become re-exposed at the surface during flood events and may be completely uncovered and washed away as loose debris during larger flood events that periodically occur on the Eel River.

In addition to Sections 30107.5 and 30240 of the Coastal Act, the unpermitted development is also inconsistent with resource protection policies in the Eel River Area Land Use Plan (LUP), which is part of the certified Humboldt County Local Coastal Program.

Section 3.41A of the Eel River Area LUP identifies environmentally sensitive habitats:

*Environmentally sensitive habitats within the Eel River Planning Area include: a) Rivers, creeks, and associated riparian habitats; b) Estuaries, sloughs, and wetlands; c) Rookeries for herons and egrets; d) harbor seal pupping areas; and e) critical habitats for rare or endangered species listed on State or Federal lists.*

The subject property is directly adjacent to the Eel River, forming part of the river's northern boundary at the mouth of the river. Although most of the subject property is farmed for dairy pasture, the dune habitat along the western and southern edges of the property, where the solid waste is buried, is considered ESHA and has been impacted through the unpermitted burial of solid waste. The waste is buried in a series of unlined sand pits adjacent to the Eel River, and may be leaching toxic chemicals or compounds capable of degradation into the groundwater and into the river. This may adversely affect animals in the area, including Chinook, Coho, and Steelhead, federally threatened salmonids that spawn in the Eel River.

Therefore, the unpermitted development is inconsistent with Sections 30107.5 and 30240 of the Coastal Act, and with the Eel River Land Use Plan.

**Biological productivity; water quality**

Section 30231 of the Coastal Act states:

*The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain 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.*

As discussed above, the solid waste that is buried on the subject property includes car bodies, engine blocks, and tires, which all contain toxic chemicals or compounds capable of degradation that could be leaching into the surrounding environment, contaminating groundwater and the adjacent river and, in turn, potentially affecting fish, animals and water quality in the area. Therefore, the Commission finds that the unpermitted development does not maintain the biological productivity and quality of the Eel River Estuary and is not consistent with Section 30231 of the Coastal Act.

### **Scenic Resources and Minimization of Adverse Impacts**

Section 30251 of the Coastal Act states:

*The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of the surrounding areas, and, where feasible, to restore and enhance the visual quality in visually degraded areas.*

Section 30253 of the Coastal Act states:

*New development shall minimize risks to life and property in areas of high geologic, flood, and fire hazard.*

Initial reports regarding the Coastal Act violations on the subject property described pieces of metal sticking out of waste pits, indicating either incomplete burial of some of the waste or exposure of waste after shifting of dune sands. The waste pits are in effect an unpermitted landfill in coastal dunes, which does not minimize alteration of the natural landform and is not in keeping with the protection of scenic and visual qualities of the surrounding area, which is adjacent to a County Park.

The waste pits on the subject property are located in an area that is subject to periodic flooding of the Eel River, and over time these floods may uncover and expose waste near the surface of the disposal pits. The waste could become loose hazardous debris in the environment, and does not minimize risk to life or property.

Therefore, the Commission finds that the unpermitted development is not consistent with Sections 30251 and 30253 of the Coastal Act.

### **3. Unpermitted Development is Causing Continuing Resource Damage**

The unpermitted development is causing continuing resource damage, as defined by Section 13190(c) of the Commission's regulations:

*'Continuing', when used to describe 'resource damage', means such damage, which continues to occur as of the date of issuance of the Restoration Order.*

The unpermitted development remains on the subject. As described below, the unpermitted development is causing impacts to resources protected by the Coastal Act that continue to occur as of the date of this proceeding and damage to resources is "continuing" for purposes of Section 30811 of the Coastal Act.

Section 13190(a) of the Commission's regulations defines the term "resource" as it is used in Section 30811 of the Coastal Act as follows:

*'Resource' means any resource that is afforded protection under the policies of Chapter 3 of the Coastal Act, including but not limited to public access, marine and other aquatic resources, environmentally sensitive wildlife habitat, and the visual quality of coastal areas.*

The term "damage" in the context of Restoration Order proceedings is provided in Section 13190(b) as follows:

*'Damage' means any degradation or other reduction in quality, abundance, or other quantitative or qualitative characteristic of the resource as compared to the condition the resource was in before it was disturbed by unpermitted development."*

In this case, the resource damage is the continuing degradation of environmentally sensitive habitat caused by the presence of the unpermitted solid waste, as well as potential chemical and physical degradation and movement through the environment of these materials. The unpermitted development is causing the ongoing adverse impacts to coastal resources that are described in subsection 2 above. As long as the unpermitted development remains on the subject property, these impacts will continue to occur.

**E. California Environmental Quality Act (CEQA)**

The Commission finds that issuance of a Cease and Desist Order and Restoration order to compel the removal of the unpermitted development and restoration of the property is exempt from any applicable requirements of the California Environmental Quality Act (CEQA) of 1970 and will not have significant adverse effects on the environment, within the meaning of CEQA. The Cease and Desist Order and Restoration Orders are exempt from the requirement for the preparation of an Environmental Impact Report, based on Sections 15060(c)(2) and (3), 15061(b)(2), 15307, 15308 and 15321 of CEQA Guidelines.

**F. Allegations**

1. Robert Niles owns the property at 3870 Cannibal Road (APNs 310-083-03, 310-083-04 and 310-083-06). The violations on the subject property are located in designated ESHA in the Eel River Planning Area of Humboldt County.
2. Unpermitted grading, solid waste disposal and removal of major vegetation have occurred on the subject property.
3. No coastal development permit has been applied for nor obtained for the unpermitted development.
4. No exemption from the permit requirements of the Coastal Act applies to the unpermitted development on the subject property.

5. The unpermitted development is inconsistent with Chapter 3 policies of the Coastal Act, including Sections 30107.5, 30231, 30240, 30251 and 30253.
6. The unpermitted development is causing continuing resource damage.

**G. Violators' Defenses and Commission's Response**

Mr. Niles' attorney submitted a Statement of Defense (SOD) with attached letter dated December 31, 2003 on behalf of Mr. Niles, which was received by the Commission staff on January 5, 2004, and is included as **Exhibit 9**. The following paragraphs summarize the defenses contained in the Statement of Defense and set forth the Commission's response to each defense.

**Mr. Niles' Defense:**

1. **"Car bodies, trash, and misc. garbage items have been buried on subject property over the last 50 years. All car bodies, garbage, trash and misc. junk was on the subject property, and was deposited there by members of the public who have access to that area. The area involved is open to the public. Mr. Niles has attempted to fence off the problem area, and has constructed many fences to surround the area. The fences are always torn down by drug uses [sic] and others who frequent that area for "parties". Trespasses onto Niles property continue to take place to this date and will probably continue to take place in the future. The persons who trespass onto the Niles property leave garbage, old cars, and old appliances on the Niles' property and in the County Park area as well."**

**Commission's Response:**

Mr. Niles asserts that trespassers deposited the solid waste on the subject property. Staff acknowledges that illegal dumping of waste occurs and has occurred on the subject property. Since notifying Mr. Niles of the Commission's proposal to issue Cease and Desist and Restoration Orders in this matter, Mr. Niles has reported several incidents of illegal activities on the subject property to County and Commission staff, including the abandonment and burning of a truck trailer and a large quantity of household garbage near the County Park, the abandonment and burning of a stolen truck near an old barn on Mr. Niles' property, and the excavation of sand south of the area the County investigated in September 2003. The solid waste that is the subject of the proposed enforcement Orders, however, was not left scattered on the land surface throughout the subject property wherever it was originally deposited. The waste has been systematically buried in a series of pits in a specific location on Mr. Niles' property (**Exhibit 3**).

When first investigating reports of the illegal waste disposal activities on the subject property, Humboldt County staff received reports that a truck and trailer transported waste from Mr. Niles' nearby residential property at 1111 Cannibal Road to disposal pits on the subject properties at 3870 Cannibal Road, where the waste was then buried in the pits. This indicates that Mr. Niles and/or his employees are aware of and responsible for the unpermitted disposal of solid waste on the subject property.

Even if some of the buried waste on the subject property was deposited there by a previous owner, Mr. Niles is liable for actions of previous owners who may have created the public nuisances on the subject property based on Civil Code 3483, which states:

*Every successive owner of property who neglects to abate a continuing nuisance upon, or in the use of, such property, created by a former owner, is liable therefor in the same manner as the one who first created it.*

In addition, in *(Leslie Salt Co. v. San Francisco Bay Conservation etc. Com. (1984) 153 Cal. App.3d 605, 618)*, the court held that:

*"whether the context be civil or criminal, liability and the duty to take affirmative action [to correct a condition of noncompliance with applicable legal requirements] flow not from the landowner's active responsibility for [that] condition of his land...or his knowledge of or intent to cause such [a condition] but rather, and quite simply, from his very possession and control of the land in question."*

**Mr. Niles' Defense:**

2. **"Garbage left by others on subject property was buried by Robert Niles' employees at the request of Calif. Dept. of Fish and Game employees in an effort to clean-up the County Park known as Crab Park, which is open to the public."**

**Commission's Response:**

Mr. Niles asserts that California Department of Fish and Game staff requested that his employees move garbage from Crab Park and bury it on the subject properties that Mr. Niles owns, which are adjacent to and just south of Humboldt County Crab Park (see **Exhibit 1, page 2**). Mr. Niles has provided no additional information, such as names of staff, to verify this assertion.

The California Department of Fish and Game does not own Crab Park or maintain the property. Moreover, the Department has no authority to direct private citizens to dispose of waste in the manner described by Mr. Niles. The mission of the California Department of Fish and Game is to manage California's diverse fish, wildlife, and plant resources, and the habitats upon which they depend, for their ecological values and for their use and enjoyment by the public. The Department of Fish and Game maintains native fish, wildlife, plant species and natural communities for their intrinsic and ecological value and their benefits to people. This includes habitat protection and maintenance in a sufficient amount and quality to ensure the survival of all species and natural communities. The department is also responsible for the diversified use of fish and wildlife including recreational, commercial, scientific and educational uses. They are not charged with solid waste management or regulation of solid waste disposal.

In addition, staff in the Eureka office of the State Department of Fish and Game are active participants in the multi-agency task force organized by Humboldt County to investigate and resolve the multiple environmental and health code violations on the subject property. They have

indicated that Department of Fish and Game employees did not direct Mr. Niles to bury solid waste in pits on the subject property.

**Mr. Niles' Defense:**

3. **"Mr. Niles denies that any car bodies, garbage, old appliances, and other items of garbage left on Niles property were placed and/or buried on said property by Robert Niles or any of his employees. Robert Niles or any of his employees have never buried any of their own garbage and/or abandoned vehicles on the Niles' property or on the Humboldt County property known as "Crab Park". Robert Niles does admit to burying 5 or 6 dead cows on his own land in the last few years since the local tallow company has closed down. The Humboldt County Dept. of Agriculture was contacted and proper instructions were received and followed as to how to bury the dead cows."**

**Commission's Response:**

Mr. Niles denies that he or any of his employees placed or buried solid waste on the subject property, but in his statement quoted in Defense No. 2 above, Mr. Niles states that his employees buried garbage on the subject property. As previously discussed, Humboldt County staff received reports that a truck and trailer transported waste from Mr. Niles' nearby residential property at 1111 Cannibal Road to disposal pits on the subject property at 3870 Cannibal Road, where waste was then buried.

The County's investigation of the subject property in September 2003 revealed a variety of solid waste, including household waste, metal debris, car bodies, a travel trailer, a television set, a vehicle engine block, carpeting, plastic buckets, car batteries, and a fluid-filled, leaking tank, as well as a number of cow bodies. Mr. Niles admits he buried several dead cows on the subject property. All of the waste is buried in the same general location on the subject property, spread over an area of approximately 300 square feet (**Exhibit 3**); in Pit N10, cow bodies are interspersed with other solid waste. Staff does not believe that Mr. Niles could be unaware of the solid waste in the area, given its close proximity to and in some cases burial in the same pits as the cows that he has admitted burying on the subject property.

The Commission staff has not asserted here that Mr. Niles or his employees buried anything on the Humboldt County property known as "Crab Park." Any such disposal, if any, is not the subject of the proposed Orders, which address specifically materials placed on property owned by Mr. Niles. Regardless of who placed the solid waste on the subject property, the persistence of the unpermitted development remains a continuing violation of the Coastal Act and a continuing public nuisance that the owner of the property is liable for correcting.

Staff recommends that the Commission issue the following Cease and Desist and Restoration Orders:

## **CEASE AND DESIST ORDER CCC-04-CD-05**

Pursuant to its authority under Public Resource Code §30810, the California Coastal Commission hereby orders and authorizes Robert Niles, his agents, contractors and employees, and any person acting in concert with any of the foregoing (hereinafter referred to as "Respondents") to cease and desist from engaging in any further development on the subject property, including but not limited to disposal of solid waste in pits, unless authorized pursuant to the Coastal Act, and to remove the unpermitted material as set forth below.

## **RESTORATION ORDER CCC-04-RO-01**

Pursuant to its authority under Public Resource Code §30811, the California Coastal Commission hereby orders and authorizes the Respondents to restore the subject property as described below. Accordingly, the Coastal Commission hereby authorizes and orders the following:

- A. Within 60 days of issuance of this Restoration Order, Respondents shall submit for the review and approval of the Executive Director of the Commission a Removal and Restoration Plan ("Plan"). The Plan shall be prepared by a certified engineering geologist, civil engineer, or other similar professional licensed in the State of California. Respondents shall at the same time submit a second copy of this Plan to the attention of the Humboldt County Environmental Health Division. In preparing the Plan, Respondents shall refer to County files regarding this matter to obtain maps and descriptions of the location of the buried waste on the subject property. Respondents shall contact the Humboldt County Division of Environmental Health Local Enforcement Agency (LEA) Program Manager, 100 H Street, Suite 100 in Eureka, and schedule times for removal of the buried waste during normal business hours on weekdays (9 a.m. to 5 p.m., Monday through Friday) so that County staff can observe the removal process. The Plan shall outline the excavation and removal of all waste in areas where previous inspections and investigations disclosed that waste was present on the subject property. The Plan shall include excavation of three new test pits at the site on the subject property where sand extraction was reported in April 2004 to determine whether any solid waste was buried in this location. The Plan shall include and discuss the following elements:
  1. A description of the equipment that will be used for excavation and removal of the waste.
  2. A description of the licensed facility outside Coastal Zone (appropriate for the type of waste being disposed of) where the waste will be transported for disposal.
  3. A proposed series of dates and times for performing the removal work. Respondents will finalize a work schedule after contacting County staff as described above, to determine dates when County staff can be present at the subject property to observe the removal work, and provide notice of the schedule to the Coastal Commission.



4. A monitoring element to check regrowth of dune vegetation in excavated/impacted areas in Summer 2005 (after one rainy season). Respondents shall submit Summer 2005 photographs of site to Commission staff **no later than September 30, 2005** to document regrowth of any impacted dune vegetation.
  5. A provision that all work to be performed under this Order shall be done in compliance with all applicable laws.
- B. Within 30 days of the approval by the Executive Director of the documents submitted under paragraph A, or within such additional time as the Executive Director may grant for good cause, Respondents shall complete the following actions, in compliance with the plans approved under paragraph A:
1. Excavate and remove the waste from the pits where Humboldt County has confirmed the presence of buried solid waste on the subject property (**Exhibit 3, page 4**). Respondents shall carefully remove and reserve dune vegetation where excavation is required and shall reserve upper layers of clean sand from excavated pits. Any soil within the pits that appears to be contaminated from car bodies or other solid waste shall be completely excavated, contained and treated as hazardous waste for disposal. If any unidentified and potentially hazardous waste is discovered during removal that is of a type other than the kinds of solid waste previously found by the County during the search warrant (for example, an unlabeled fluid-filled barrel that may contain unknown hazardous chemicals), work shall be halted until a certified Hazardous Materials (HazMat) specialist can be consulted and brought to the site to direct proper removal and disposal procedures.
  2. Excavate three test pits at the site on the subject property where sand extraction was reported in April 2004 (**Exhibit 14, page 1, area labeled "Excavation"**) to determine whether any solid waste was buried in this location. Remove any solid waste that is found at this site according to the terms of this Order. If additional evidence of buried waste in other locations on the subject property is discovered during the excavation and removal work carried out under these Orders, excavate and remove such waste according to the terms of the Orders.
  3. Backfill all excavated pits after the removal of all solid waste with clean soil and clean sand and restore the natural contours of the site. Replant any vegetation that was removed during excavation in the top layer of backfilled sand.
  4. Remove all excavated waste to an appropriate, licensed disposal site located outside of the Coastal Zone. Should the disposal site be located in the Coastal Zone, a coastal development permit shall be required. Obtain receipts verifying the waste disposal and include this information in the report discussed below.
  5. Submit to the Executive Director of the Commission and Humboldt County Environmental Health Division a report documenting the restoration of the subject

property. This report shall include a summary of dates when work was performed and photographs that show the excavation and removal of the solid waste on the subject property, as well as photographs of any replanted dune vegetation at individual excavation sites. The report shall include copies of receipts verifying disposal of the solid waste at the licensed disposal site. Respondents shall submit this report to the Commission and Humboldt County **no later than October 29, 2004.**

6. Submit to the Executive Director a report with photographs taken in Summer 2005 documenting regrowth of the dune vegetation in impacted/excavated areas after one rainy season. Respondents shall submit this report to the Commission **no later than September 30, 2005.**
7. Addresses for report submittals:

California Coastal Commission, Attn: Sheila Ryan  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105

Humboldt County Division of Environmental Health, Attn: LEA Program Manager  
100 H Street, Suite 100  
Eureka CA 95501

#### **I. Persons Subject to the Orders**

Robert Niles, and his agents, contractors and employees, and any persons acting in concert with any of the foregoing.

#### **II. Identification of the Property**

The property that is subject to the orders is described as follows:

Three lots at 3870 Cannibal Road, Loleta, Humboldt County, Assessor's Parcel Numbers 310-083-03, 310-083-04 and 310-083-06.

#### **III. Description of Unpermitted Development**

The development that is the subject of the Cease and Desist and Restoration Orders consists of unpermitted grading, solid waste disposal and removal of major vegetation. Solid waste discovered on the subject property during Humboldt County's September 2003 site investigation includes (but is not limited to) household waste, dead cows, metal debris, car bodies, a travel trailer, a television set, a vehicle engine block, carpeting, plastic buckets, car batteries, and a fluid-filled, leaking tank.

#### **IV. Effective Date and Terms of the Orders**

The effective date of the Orders is the date of their approval by the Commission. The Orders shall remain in effect permanently unless and until modified or rescinded by the Commission.

#### **V. Findings**

The Orders are issued on the basis of the findings adopted by the Commission at the June 2004 hearing, as set forth in the attached document entitled "Findings for Cease and Desist Order CCC-04-CD-05 and Restoration Order CCC-04-RO-01".

#### **VI. Compliance Obligation**

Strict compliance with the orders by all parties subject thereto is required. Failure to comply strictly with any term or condition of the orders including any deadline contained in the orders will constitute a violation of this order and may result in the imposition of civil penalties of up to SIX THOUSAND DOLLARS (\$6,000) per day for each day in which such compliance failure persists, in addition to any other penalties authorized under Section 30820.

#### **VII. Deadlines**

Deadlines may be extended by the Executive Director for good cause. Any extension request must be made in writing to the Executive Director and received by Commission staff at least 10 days prior to expiration of the subject deadline.

#### **VIII. Appeal**

Pursuant to Public Resources Code Section 30803(b), any person or entity against whom the orders are issued may file a petition with the Superior Court for a stay of this order.

Executed in \_\_\_\_\_ on \_\_\_\_\_, on behalf of the California Coastal Commission.

By: \_\_\_\_\_ Peter Douglas, Executive Director

## Exhibits

1. Site Map and Location.
2. Site photographs.
3. October 14, 2003 memo and attachments from the Humboldt County Division of Environmental Health.
4. Notice of Nuisance and Notice to Recover Costs dated December 2, 2003, from the Humboldt County Code Enforcement Unit to Mr. Niles.
5. Notice of Intent (NOI) to Commence Cease and Desist Order and Restoration Order Proceedings dated November 14, 2003.
6. Letter dated December 19, 2003 from Commission staff to Mr. Niles.
7. Letter dated December 19, 2003, from Mr. Niles' attorney to Commission staff, requesting an extension of the deadline for submittal of a Statement of Defense.
8. Letter dated December 23, 2003, from Commission staff to Mr. Niles.
9. Statement of Defense dated December 31, 2003, from Mr. Niles' attorney, received by Commission staff on January 5, 2004.
10. Notice of Intent (NOI) to record a violation of the Coastal Act dated March 30, 2004.
11. Notice of Violation recorded on April 26, 2004.
12. Letter dated April 28, 2004 from Mr. Niles' attorney to Commission staff, stating an objection to the recordation of the Notice of Violation.
13. Letter dated letter dated April 30, 2004 from Commission staff to Mr. Niles' attorney.
14. Map and photos of April 2, 2004 County site visit regarding reports of sand extraction on the subject property.

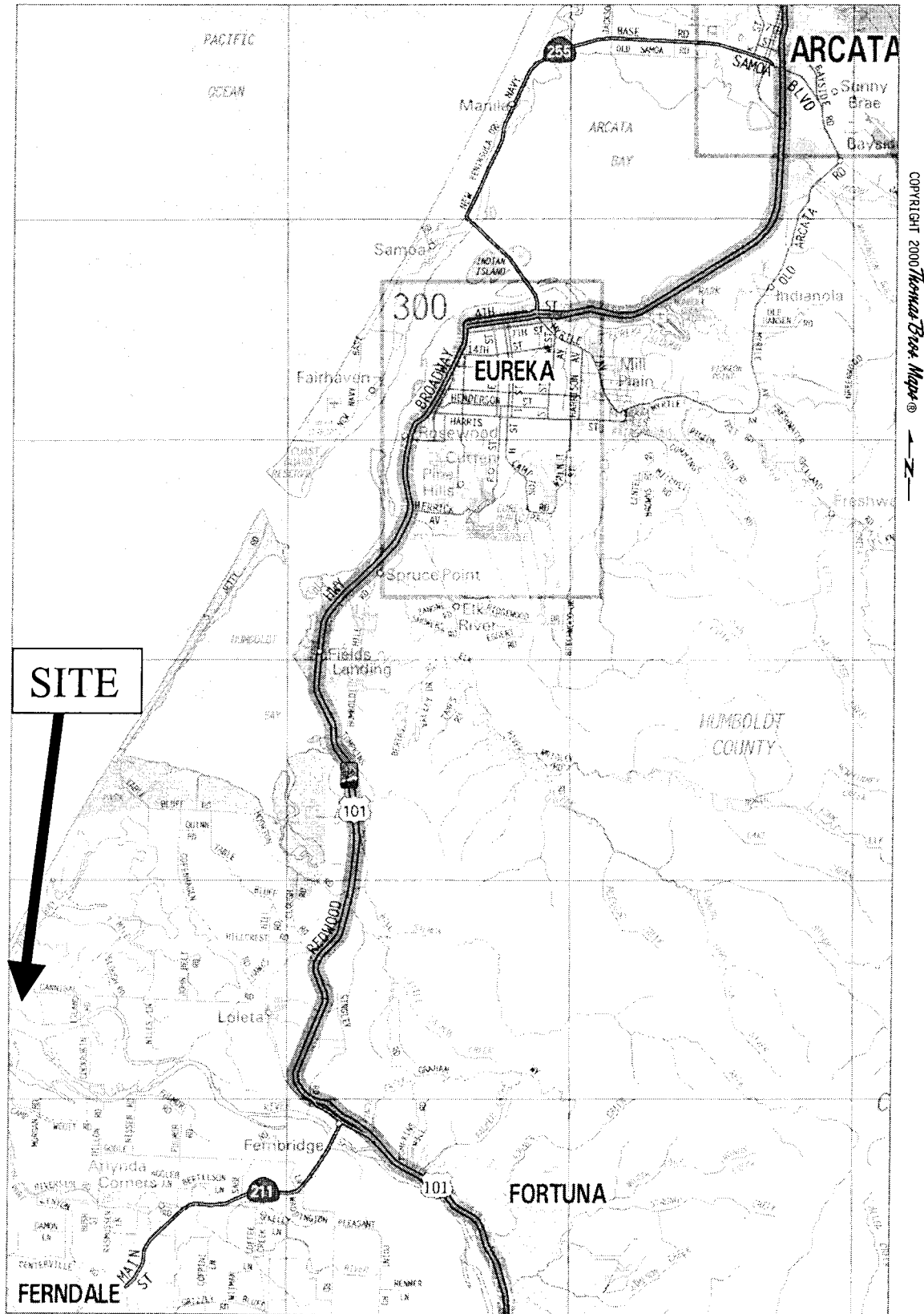
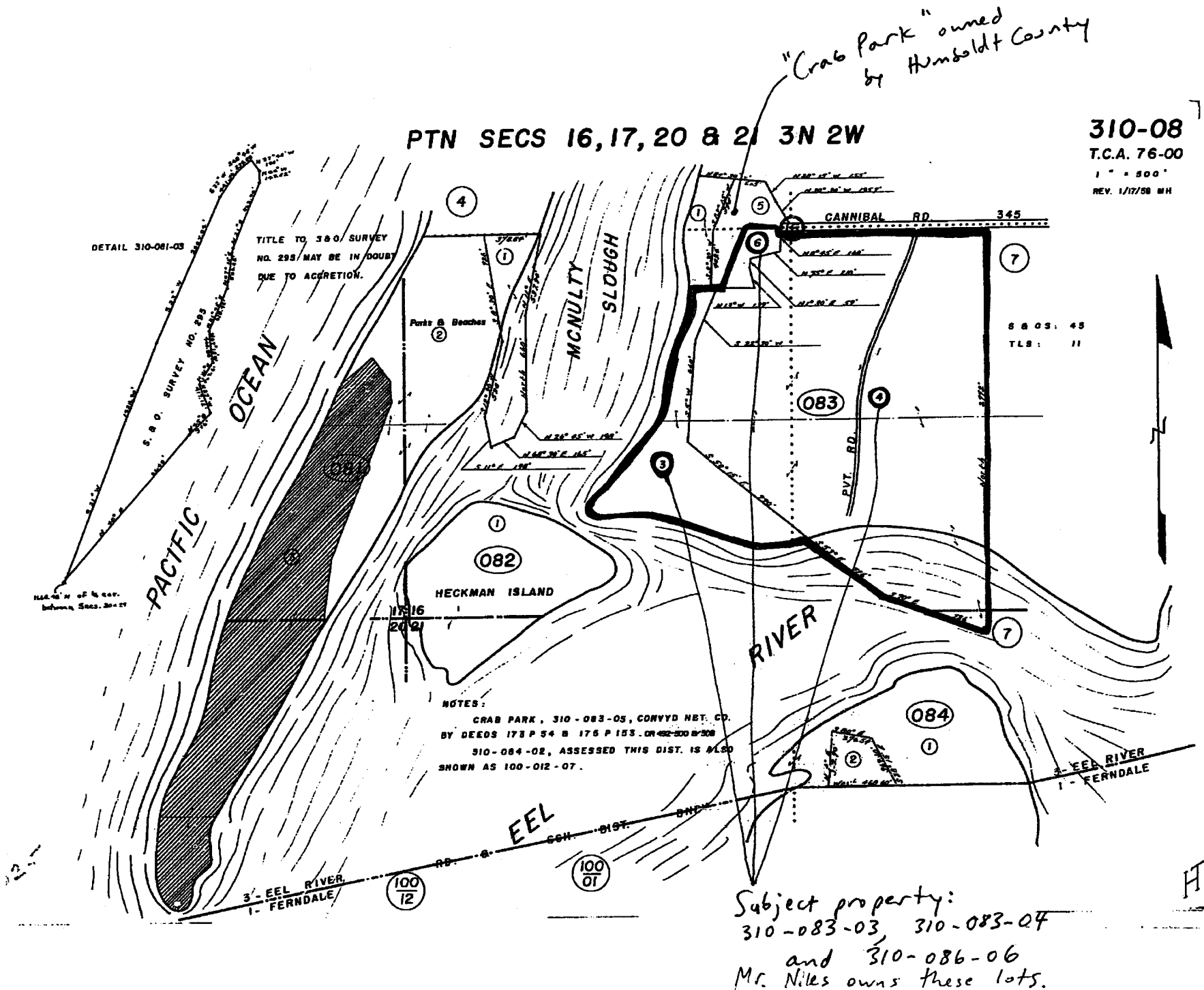


Exhibit 1. Area location map.





**Exhibit 2a.** Photograph of household waste in burial pit on subject property.



**Exhibit 2b.** Two batteries (battery on left was leaking) discovered during County search warrant at subject property on September 15, 2003.



**Exhibit 2c.** Photograph of car body on subject property.



**Exhibit 2d.** Photograph of truck trailer on subject property.





**Exhibit 2e.** Photograph of engine block and tires on subject property.




**Exhibit 2f.** Photograph of cracked empty plastic buckets labeled "Transmission Oil".



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

100 H Street - Suite 100 - Eureka, CA 95501  
Voice: 707-445-6215 - Fax: 707-441-5699 - Toll Free: 800-963-9241  
envhealth@co.humboldt.ca.us

## Memorandum

To: Richard Hendry, Code Enforcement Unit, Humboldt County Counsel  
CC: Brain Cox, Kevin Metcalfe, Melissa Martel - HCDEH  
From:  Carolyn G. Hawkins, Senior Solid Waste LEA Program  
Date: 10/14/2003  
Subject: Cannibal Road Illegal Disposal Site / Niles Robert L., owner

---

**Violations with respect to Public Health and the environment that were witnessed by  
HCDEH staff on September 15, 2003 at Site A:**

HCC 521-1: Failure to meet minimum standards for storage, removal and disposal of solid waste  
HCC 521-4(b)(1) Inadequate storage  
HCC 521-4(c)(1) Inadequate removal frequency  
HCC 611-3 Lack of approved sewage disposal system for five travel trailers and one mobile  
home  
CCR 66265.31 Failed to Prevent HW release  
CCR 66262.34(a)(1)(d) Failure to clearly mark accumulation date  
CCR 66262.34(f)(3) HW containers lack labels  
CCR 66265.171 Containers not in good condition/leaking  
CCR 66265.173(a) Failure to close containers  
HSC 25250.5 Improper disposal of used oil  
CCR 66266.130 Mismanagement of used oil filters  
CCR 66265.16(a) and (c) Failure to complete required training

**Violations with respect to Public Health and the environment that were witnessed by  
HCDEH staff on September 15, 2003 at Site B:**

HCC 521-10 Disposal of solid waste at other than authorized disposal facility  
PRC (Public Resources Code) 44002(a)(1) Operating a solid waste facility without a permit  
California Penal Code 374.3(a) Dumping on private property (see also (d) public health and  
safety hazard and (e) tires)  
California Penal Code 374.7(a) Dumping on beach within 150 feet of high water mark.  
CCR 66266.80 and .81 Management of Lead-Acid Batteries

Richard Hendry, CEU  
Cannibal Road IDS/Niles  
Page 2

**Please see the enclosed supporting materials:**

**Envelope #1**

- HCDEH Solid Waste Program Site B pit logs and corresponding photos. The photos are labeled and are in the order of the pit logs, where you will find them noted.
- 1 hand-generated and 1 GIS generated map of Site B
- labeled photos of Pit#4 showing dated material and names on household waste. This evidence remains at HCDEH office and I will supply it to you if requested.
- HCDEH Land Use Program summary and photos

**Envelope #2**

- HCDEH CUPA Program field notes, summary, inspection report, photos, laboratory analysis Sites A & B. Please note that Jeff Birdsall gave the property owner a list of corrective actions and a compliance date of October 15, 2003. I will request that the CUPA program notify you of progress or any contact they have with Mr. Niles regarding compliance.

At the October 3, 2003 meeting, I gave Jack Bernstein of your office the original 8mm videotape that was recorded at Site B on 9/15/03. Planning Division Claude Young provided his report to Jack at that time. Neither CA DFG nor NCUAQMD was present at that meeting. Jack has contacted the representatives of those agencies regarding the violations they noted and their follow-up plans.

If you have any solid waste or general operational questions, please call me at 268-2224. Hazardous waste questions can be addressed to Melissa Martel at 268-2220. Thank you for your support on this case.

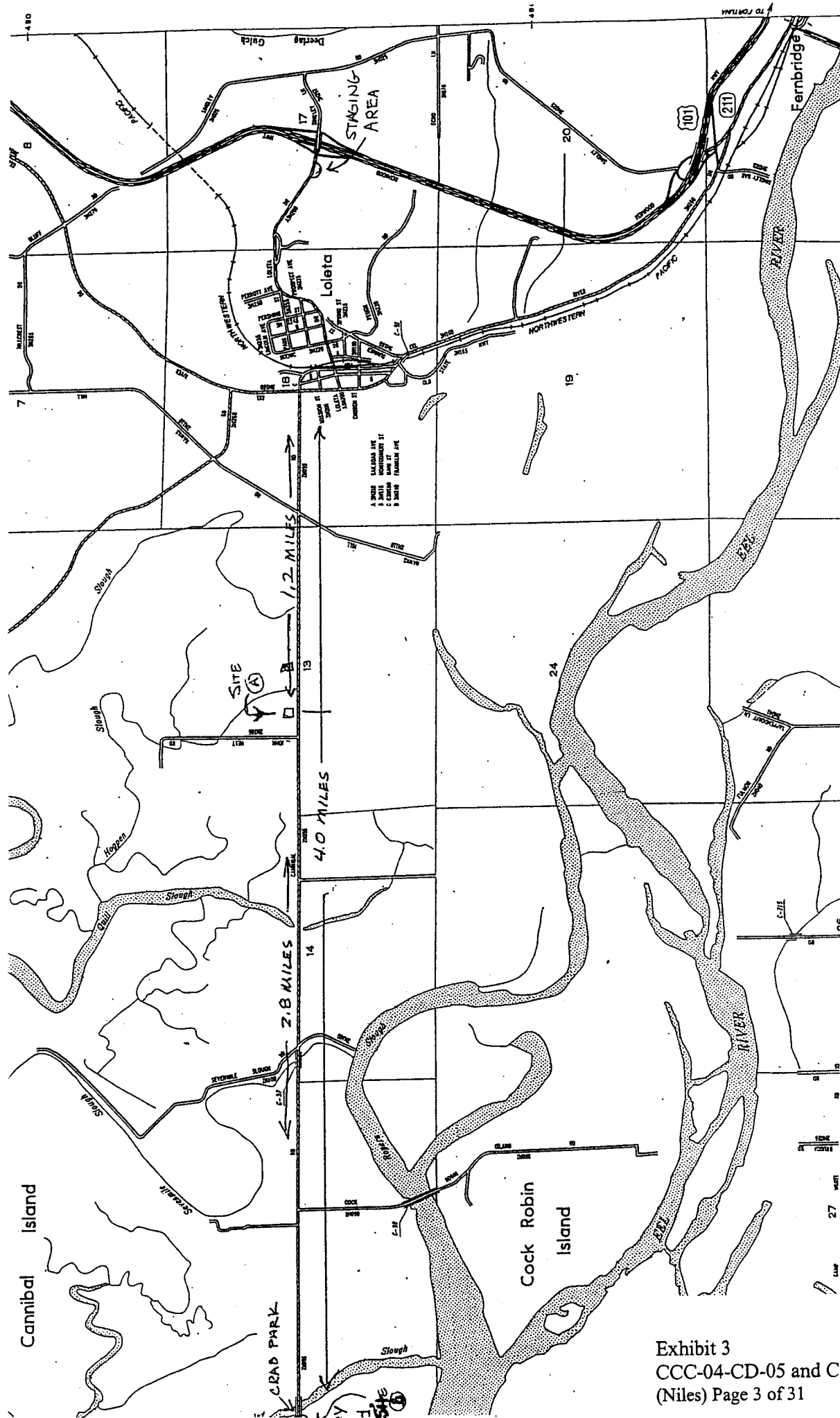
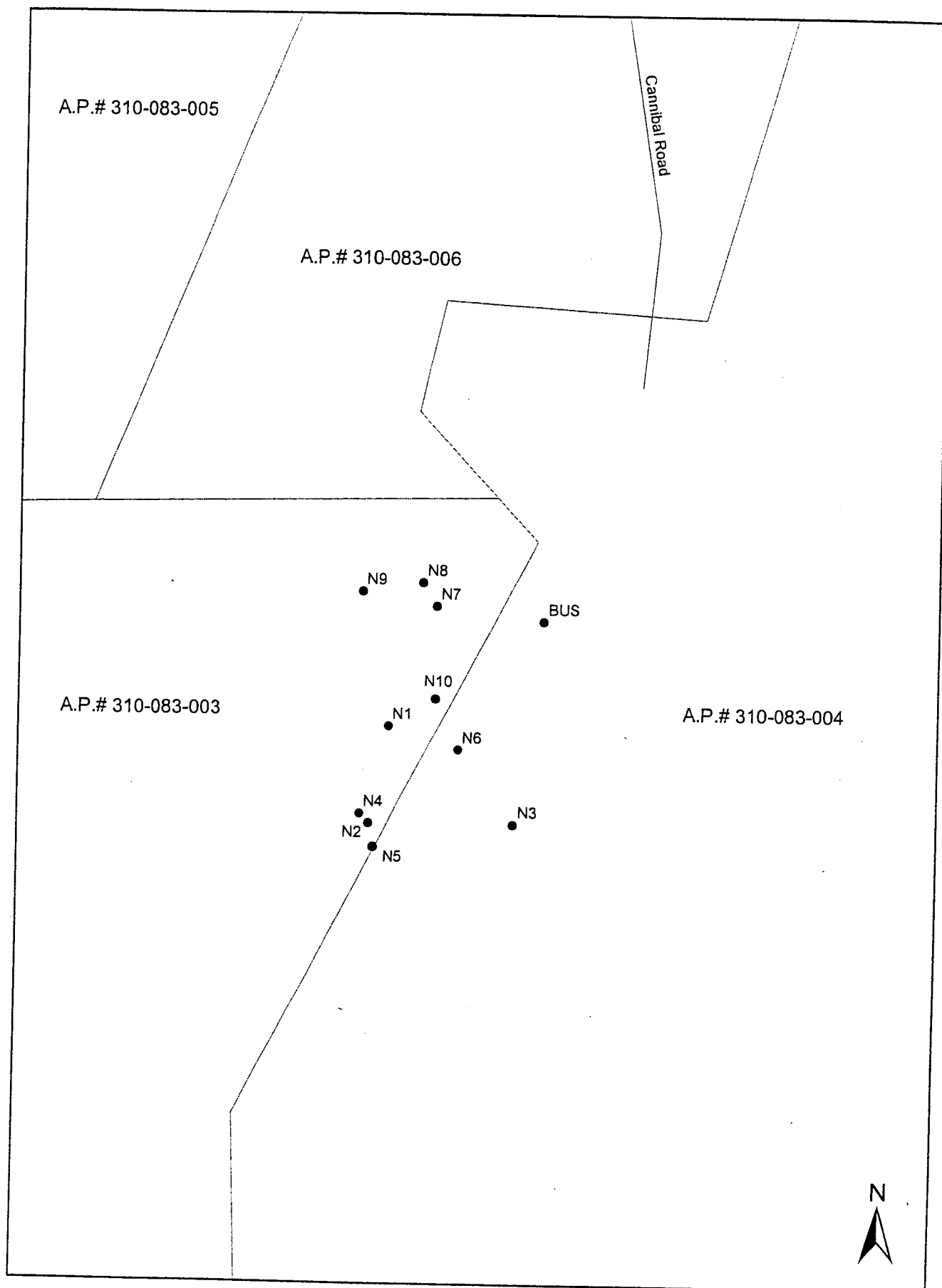


Exhibit 3  
 CCC-04-CD-05 and CCC-04-RO-01  
 (Niles) Page 3 of 31

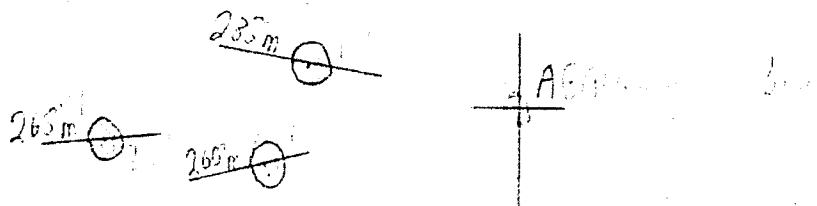
# Cannibal Road IDS



3 SEPTEMBER 2002

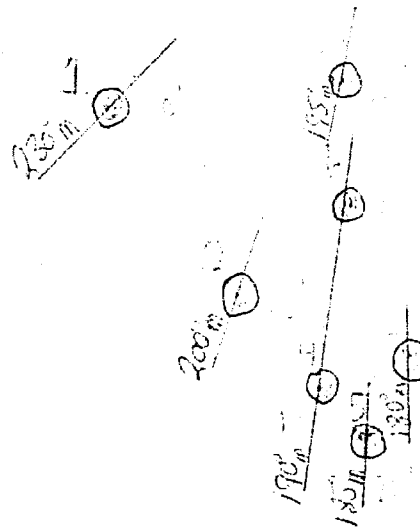
# NYLED SITE CHARACTERIZATION AP 310-083-003/004

THE APPROXIMATE MAGNETIC BEARING AND DISTANCE IN FEET TO THE TEN EXCAVATION PITS THAT WILL EVALUATED. REFERENCE POINT IS THE ABANDONED GUN THAT WAS PREVIOUSLY MARKED BY GIS.



SCALE: 1" = 50 FEET

PIT #	BEARING	DISTANCE
1	230° m	110'
2	200° m	130'
3	180° m	135'
4	190° m	140'
5	185° m	165'
6	170° m	100'
7	260° m	65'
8	280° m	60'
9	265° m	110'
10	195° m	70'



HIGH TIDE  
DATUM OF  
EEL RIVER

## 313-7 RESOURCE USE REGULATIONS

<b>313-7.1 AE: Agriculture Exclusive</b>	
<b>Use Type</b>	<b>Principal Permitted Use</b>
Residential Use Types	Single Family Residential. On lots sixty (60) acres or larger in size, two single detached dwellings are permitted.
Civic Use Types	Minor Utilities
Agricultural Use Types	General Agriculture
Commercial Timber Use Type	Timber Production
<b>Use Type</b>	<b>Conditionally Permitted Use</b>
Residential Use Types	Guest House Farm Employee Housing Labor Camp Second Agriculture or Commercial Timber Production Residence (on a lot less than sixty (60) acres in size) Single Family Residential (a Use Permit is required on a lot less than sixty (60) acres in size for a second single detached dwelling)
Civic Use Types	Essential Services Solid Waste Disposal; subject to the Solid Waste Disposal Regulations Oil and Gas Pipelines; subject to the Oil and Gas Pipelines Regulations Major Electrical Distribution Lines; subject to the Electrical Distribution Lines Regulations Minor Generation and Distribution Facilities
Industrial Use Types	Aquaculture, allowed within non-prime agricultural lands only Cottage Industry; subject to the Cottage Industry Regulations
Agricultural Use Types	Hog Farming Feed Lots/Slaughter House Kennels Agriculture-Related Recreation Intensive Agriculture
Extractive Use Types	Oil and Gas Drilling and Processing; subject to the Oil and Gas Drilling and Processing Regulations Surface Mining - 2; subject to the Surface Mining Regulations Surface Mining - 3; subject to the Surface Mining Regulations Metallic Mineral Extraction; subject to the Surface Mining Regulations
Natural Resource Use Types	Fish and Wildlife Management Watershed Management Wetland Restoration Resource-Related Recreation Coastal Access Facilities
Use Types Not Listed in This Table**	Any use not specifically enumerated in this Division, if it is similar to and compatible with the uses permitted in the AE zone.

\*See, Industrial Performance Standards, Section 313-103.1.

\*\*See, "Classifying Uses Not Specifically Mentioned in Use Type Descriptions," Section 313-165.

(Former Section CZ#A313-29(A-C); Amended by Ag Zone ordinance amendments approved by the Humboldt County Board of Supervisors 2/9/99)

313-7.1 AE: AGRICULTURE EXCLUSIVE		
Development Standards		
Minimum Lot Size and Minimum Lot Width		
Zone Designation	Minimum Lot Size	Minimum Lot Width
AE-20	20 acres	(As determined during subdivision review and approval.)
AE-40	40 acres	
AE-60	60 acres	
AE-160	160 acres	
AE-600	600 acres	
Maximum Lot Depth	(None specified.)	
Maximum Density	(None specified.)	
Minimum Yard Setbacks***		
Front	Twenty (20) feet; Thirty (30) feet for flag lots.	
Rear	Thirty (30) feet.	
Interior Side	Thirty (30) feet.	
Exterior Side	Twenty (20) feet.	
Flag Lots	For Flag Lots, the Director, in consultation with the Public Works Department, shall establish the minimum yard that is required for a vehicular turn around on the lot.	
Double Frontage Lots	Front and rear yards shall be twenty (20) feet, except that the rear yard setback may be reduced to ten (10) feet where such yard abuts an alley.	
Maximum Ground Coverage	(None specified.)	
Maximum Structure Height	(None specified.)	
Permitted Main Building Types	Residential Single Detached; Ancillary Residential, Manufactured Home; Unlimited Mixed Residential - Nonresidential Detached Nonresidential	

\*\*\*Note: Setbacks may be modified by other provisions of this Code or State law. For example, see Section 313-30: "Alquist-Priolo Fault Hazard" and the "Fire Safe Regulations" at Title III, Division 11.  
(Former Section CZ#A313-29(A-C); Amended by Ag Zone ordinance amendments approved by the Humboldt County Board of Supervisors 2/9/99)



<b>313-5.4 NR: Natural Resources</b>	
<b>Use Type</b>	<b>Principal Permitted Use</b>
Natural Resource Use Types	Fish and Wildlife Habitat Management
<b>Use Type</b>	<b>Conditionally Permitted Use</b>
Residential Use Types	Caretaker's Residence (allowed only within Humboldt Bay Coastal sand dune areas only)
Civic Use Types	Minor Utilities Oil and Gas Pipelines; subject to the Oil and Gas Pipelines Regulations Major Electrical Distribution Lines; subject to the Electrical Distribution Lines Regulations Minor Generation and Distribution Facilities
Industrial Use Types*	Aquaculture; subject to the Coastal Dependent Industrial Regulations
Extractive Use Types	Surface Mining - 3; subject to the Surface Mining Regulations
Natural Resource Use Types	Watershed Management Wetland Management Boating Facilities Improvements Resource-Related Recreation Coastal Access Facilities
Use Types Not Listed in This Table**	Any use not specifically enumerated in this Division, if it is similar to and compatible with the uses permitted in the NR zone.
<b>Development Standards</b>	
Minimum Lot Size	Determined during subdivision approval process and in conformance with this zone and the General Plan.
Minimum Lot Width	Determined during subdivision approval process and in conformance with this zone and the General Plan.
Maximum Lot Depth	(None specified.)
Maximum Density	(None specified.)
Minimum Yard Setbacks***	
Front	Twenty (20) feet.
Rear	Ten (10) feet.
Side	Five (5) feet.
Flag Lots	For Flag Lots, the Director, in consultation with the Public Works Department, shall establish the minimum yard that is required for a vehicular turn around on the lot.
Maximum Ground Coverage	(None specified.)
Maximum Structure Height	Thirty-five (35) feet.
Permitted Main Building Types	Ancillary Residential or Manufactured Home (only one unit per lot). Nonresidential Detached, Multiple/Group.

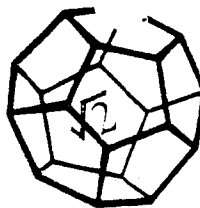
\*See, Industrial Performance Standards, Section 313-103.1.

\*\*See, "Classifying Uses Not Specifically Mentioned in Use Type Descriptions," Section 313-165.

\*\*\*Note: Setbacks may be modified by other provisions of this Code or State law. For example, see Section 313-30: "Alquist-Priolo Fault Hazard" and the "Fire Safe Regulations" at Title III, Division 11.  
(Former Section CZ#A313-32(A-C))

RECEIVED

SEP 26 2003



NORTH COAST  
LABORATORIES LTD.

September 25, 2003

HUMBOLDT CO. DIVISION  
OF ENVIRONMENTAL HEALTH

Humboldt Co Div of Env Health  
100 H Street, Suite 100  
Eureka, CA 95501-0480

Order No.: 0309441

Invoice No.: 36907

PO No.:

ELAP No. 1247-Expires July 2004

Attn: Jeff Birdsall

RE:

**SAMPLE IDENTIFICATION**

Fraction Client Sample Description

01A	1A
02A	2A
03A	3A
04A	1B

ND = Not Detected at the Reporting Limit

Limit = Reporting Limit

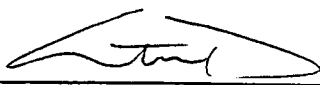
All solid results are expressed on a wet-weight basis unless otherwise noted.

RECEIVED

OCT 10 2003

CALIFORNIA  
COASTAL COMMISSION

**REPORT CERTIFIED BY**

  
Laboratory Supervisor(s)

  
QA Unit

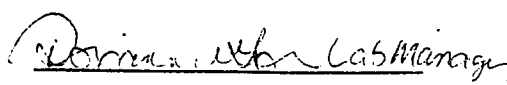
  
Jesse G. Chaney, Jr.  
Laboratory Director

Exhibit 3

CCC-04-CD-05 and CCC-04-RO-01  
(Niles) Page 9 of 31

Date: 25-Sep-03

WorkOrder: 0309441

## ANALYTICAL REPORT

Client Sample ID: 1A

Received: 9/16/03

Collected: 9/15/03 11:00

Lab ID: 0309441-01A

Test Name: TPH as Diesel

Reference: EPA 3550/GCFID(LUFT)/EPA 8015B

<u>Parameter</u>	<u>Result</u>	<u>Limit</u>	<u>Units</u>	<u>DF</u>	<u>Extracted</u>	<u>Analyzed</u>
TPHC Diesel	250,000	10,000	µg/g	10,000	9/17/03	9/19/03
Surrogate: N-Tricosane	NQ	45.3-122	% Rec	10,000	9/17/03	9/19/03

Client Sample ID: 2A

Received: 9/16/03

Collected: 9/15/03 11:18

Lab ID: 0309441-02A

Test Name: TPH as Diesel/Motor Oil

Reference: EPA 3550/GCFID(LUFT)/EPA 8015B

<u>Parameter</u>	<u>Result</u>	<u>Limit</u>	<u>Units</u>	<u>DF</u>	<u>Extracted</u>	<u>Analyzed</u>
TPHC Motor Oil	360,000	100,000	µg/g	10,000	9/23/03	9/25/03

Client Sample ID: 3A

Received: 9/16/03

Collected: 9/15/03 11:30

Lab ID: 0309441-03A

Test Name: TPH as Diesel/Motor Oil

Reference: EPA 3550/GCFID(LUFT)/EPA 8015B

<u>Parameter</u>	<u>Result</u>	<u>Limit</u>	<u>Units</u>	<u>DF</u>	<u>Extracted</u>	<u>Analyzed</u>
TPHC Motor Oil	150,000	100,000	µg/g	10,000	9/23/03	9/24/03

Client Sample ID: 1B

Received: 9/16/03

Collected: 9/15/03 13:35

Lab ID: 0309441-04A

Test Name: TPH as Diesel/Motor Oil

Reference: EPA 3550/GCFID(LUFT)/EPA 8015B

<u>Parameter</u>	<u>Result</u>	<u>Limit</u>	<u>Units</u>	<u>DF</u>	<u>Extracted</u>	<u>Analyzed</u>
TPHC Motor Oil	ND	10	µg/g	1.0	9/23/03	9/23/03

CLIENT: Humboldt Co Div of Env Health

Work Order: 0309441

Project:

## QC SUMMARY REPORT

Method Blank

Sample ID: MB-9904	Batch ID: 9904	Test Code: TPHDIS	Units: µg/g	Analysis Date: 9/19/03 11:40:46 AM	Prep Date: 9/17/03							
Client ID:		Run ID: ORGC7_030918A		SeqNo: 369398								
Analyte	Result	Limit	SPK value	SPK Ref Val	% Rec	LowLimit	HighLimit	RPD Ref Val	%RPD	RPDLimit	Qual	
TPHC Diesel	0.4728	1.0									J	
N-Tricosane	0.749	0.10	1.00	0	74.9%	45	122	0				
Sample ID: MB-9935	Batch ID: 9935	Test Code: TPHDMS	Units: µg/g	Analysis Date: 9/23/03 8:34:55 PM	Prep Date: 9/23/03							
Client ID:		Run ID: ORGC7_030923A		SeqNo: 370364								
Analyte	Result	Limit	SPK value	SPK Ref Val	% Rec	LowLimit	HighLimit	RPD Ref Val	%RPD	RPDLimit	Qual	
TPHC Motor Oil	ND	10										

ND - Not Detected at the Reporting Limit

J - Analyte detected below quantitation limits

S - Spike Recovery outside accepted recovery limits

R - RPD outside accepted recovery limits

B - Analyte detected in the associated Method Blank

CLIENT: Humboldt Co Div of Env Health

Work Order: 0309441

Project:

## QC SUMMARY REPORT

Laboratory Control Spike

Sample ID: LCS-9904	Batch ID: 9904	Test Code: TPHDIS	Units: µg/g	Analysis Date: 9/18/03 5:03:36 AM				Prep Date: 9/17/03			
Client ID:		Run ID: ORGC7_030918A				SeqNo: 369395					
Analyte	Result	Limit	SPK value	SPK Ref Val	% Rec	LowLimit	HighLimit	RPD Ref Val	%RPD	RPDLimit	Qual
TPHC Diesel	9.322	1.0	10.0	0	93.2%	78	133	0			
N-Tricosane	0.887	0.10	1.00	0	88.7%	45	122	0			

Sample ID: LCSD-9904	Batch ID: 9904	Test Code: TPHDIS	Units: µg/g	Analysis Date: 9/18/03 5:28:44 AM				Prep Date: 9/17/03			
Client ID:		Run ID: ORGC7_030918A			SeqNo: 369396						
Analyte	Result	Limit	SPK value	SPK Ref Val	% Rec	LowLimit	HighLimit	RPD Ref Val	%RPD	RPDLimit	Qual
TPHC Diesel	9.463	1.0	10.0	0	94.6%	78	133	9.32	1.50%	15	
N-Tricosane	0.883	0.10	1.00	0	88.3%	45	122	0.887	0.500%	15	

Sample ID: LCS-9935	Batch ID: 9935	Test Code: TPHDMS	Units: µg/g	Analysis Date: 9/23/03 5:00:53 PM				Prep Date: 9/23/03			
Client ID:		Run ID: ORGC7_030923A		SeqNo: 370360							
Analyte	Result	Limit	SPK value	SPK Ref Val	% Rec	LowLimit	HighLimit	RPD Ref Val	%RPD	RPDLimit	Qual
TPHC Motor Oil	19.95	10	20.0	0	99.8%	59	134	0			

Sample ID: LCSD-9935	Batch ID: 9935	Test Code: TPHDMS	Units: µg/g	Analysis Date: 9/23/03 5:26:41 PM				Prep Date: 9/23/03			
Client ID:	Run ID: ORGC7_030923A			SeqNo: 370362							
Analyte	Result	Limit	SPK value	SPK Ref Val	% Rec	LowLimit	HighLimit	RPD Ref Val	%RPD	RPDLimit	Qual
TPHC Motor Oil	20.35	10	20.0	0	102%	59	134	20.0	1.96%	15	

ND - Not Detected at the Reporting Limit

J - Analyte detected below quantitation limits

S - Spike Recovery outside accepted recovery limits

R - RPD outside accepted recovery limits

B - Analyte detected in the associated Method Blank



## Chain of Custody

**PRIOR AUTHORIZATION IS REQUIRED FOR RUSHES**

Final Report: FAX ☐ Verbal ☐ By: \_\_\_/\_\_\_/\_\_\_

**PRESERVATIVE CODES:** a—HNO<sub>3</sub>; b—HCl; c—H<sub>2</sub>SO<sub>4</sub>; d—Na<sub>2</sub>S<sub>2</sub>O<sub>3</sub>; e—NaOH; f—C<sub>2</sub>H<sub>5</sub>O<sub>2</sub>Cl; g—other

ID samples by #

CHAIN OF CUSTODY SEALS Y/N/NA ☐  
 SHIPPED VIA: UPS Air-Ex Fed-Ex Bds Hand

## PROJECT INFORMATION

Purchase Order Number: \_\_\_\_\_

[illegible]

v=Drinking Water; Eff=Effluent; Inf=Influent; SW=Surface Water; GW=Ground Water; S=Soil; O=Other.

## CONTAMINATED NON-AQUEOUS SAMPLES WILL BE RETURNED TO CLIENT

Exhibit 3  
CCC-04-CD-05 and CCC-04-RO-01  
(Niles) Page 13 of 31

Site B Arrived 12:30 p.m.

- Sample #1 B - Niles B, sand, taken 1:35 p.m. from the upper west edge of Pit #7 where a unknown type of tank had been prior to removal by the backhoe operator. New latex gloves were used.
- Photo #18 - Sample #1 B area/sample 1:40 p.m.
- Photo #19 - Sample #1 B 1:40 p.m.
- Photo #20 - Buried vehicle frame partially exposed with the differential containing oil 2:31 p.m., Pit #1 (Vehicle frame partially exposed)
- Photo #21 - Buried vehicle frame (partially exposed with the differential containing oil 2:32 p.m., Pit #1)
- 2:34 p.m. → Photo #22 - Differential containing oil on frame Pit #7
- Hazardous materials unit staff were not able to sample the oil in the differential because the tears/gashes in the differential were not large enough to allow the sampling equipment to obtain a sample

J. Birdsell

\* Pit #1 = Pit N1 , Pit #7 = Pit N7

J. Birdsell

Robert Niles Properties  
September 15, 2003

Site A: 1111 Cannibal Island Road, Loleta, CA

Arrival time: 9:15 am

Melissa Martel and I did an initial walkthrough and observed the storage of hazardous materials and hazardous waste. Ms. Martel drew a site map of the areas we observed that contained hazardous materials and hazardous waste. We divided the sites into two areas, the "calf barn" and the "milk barn".

Calf Barn

- Burn Pile with the charred remains of a used oil filter.
- An estimated 15 gallon open container in poor condition approximately ¼ full of used oil with used oil deposited to the ground. The soil was sampled.
- An estimated 5 gallon open container approximately 1/3 full of used oil.
- A wooden shed containing three aboveground fuel tanks. Staining in the soil that appeared to originate from the tank closest to the entrance was observed. The soil was sampled. Staining was also observed on the tank, fill hose and the smaller rectangular tank behind it. Mr. Niles indicated that the tank closest to the entrance contained diesel fuel. He said that the rectangular tank behind it was formerly used on trucks, but that there was difficulty securing the tank in the truck. The third tank in the rear of the shed was empty according to Mr. Niles. Mr. Niles did not know the capacity of the tanks.

Mr. Niles was offered duplicate samples prior to any sampling activity. I explained to Mr. Niles the purpose of duplicate samples and he declined. I also asked Mr. Niles about employee training concerning safe handling, storage, spill and emergency procedures with hazardous materials and hazardous waste. Mr. Niles stated that a training program does not exist. I left Mr. Niles with a copy of my inspection report and explained to him the corrective actions required.

Milk Barn

- An oil compressor room was observed in the milk barn. Staining from used oil on the wall outside behind the milk barn and in the soil was observed. The soil was sampled.

Site B: AP#310-083-006

Arrival Time: 12:30 pm

- An aluminum cylindrical tank with rounded ends was observed in Pit N7. The tank contained an unknown oil/water liquid. The capacity of the tank was



estimated to be approximately 50 gallons. There was staining below the area of the tank when it was removed from the pit. I sampled the area where the staining was observed. The tank was wrapped in plastic and moved to a concrete area next to the barn.

- A partially buried vehicle was observed in Pit N1 with a damaged differential containing an estimated 1-quart of oil. I attempted to obtain a sample of the oil from the differential, but the opening in the differential from former damage was too small to allow access to sample. The differential was wrapped with plastic and secured with duct tape.

  
sign

9-24-03  
date

Robert Niles Properties  
September 15, 2003

Site A

@ 1111 Cannibal island Road 0915

Spoke to Mr. Niles:

"No maintenance done to vehicles on-site, except topping-off." "Takes vehicles to Suprlube on Harris in Eureka."

After waste oil was found:

He claimed that waste oil is taken to Eel River Disposal (he couldn't remember the name of it, but remembered the name "Harry"). Last time he took it was about three months ago. About three gallons in five gallon buckets. Before that was when "it was raining. Maybe January, February or March" (again about 3 gallons).

See Inspection Report signed by Robert Niles and Inspector Jeff Birdsall

Three hazardous waste samples taken by Jeff Birdsall (results due from laboratory by Oct. 7)

Site B (AP #310-083-006)

On-site @ 1100

Two pits have already been uncovered: freshly buried dead cow (Pit N3) and household refuse (Pit N4). No haz waste observed.

Pit N2 @ about 4' (1120):

Two car bodies, one possibly a Ford (blue) with engine block w/ oil (unknown quantity).

Pit N1 (1150)

Two vehicles, one trailer. A differential with differential oil (approx. 1 quart). DEH attempted to take a sample from the differential, but we could not access the oil with our sample equipment. The differential was wrapped with plastic and duct taped.

Fuel tank with mostly water.

Pit N5 (1200)

Checked both south and north ends of the artificially mounded sand and found nothing buried.

Un-numbered pit – nothing found

Pit N7 @ 5' (1250)

Part of a drum (confirmed burn barrel)

Fuel tank

Wheel with tire

Rims

2 lead acid vehicle batteries, one leaking liquid – immediately placed on plastic tarps

Aluminum tank (approx. 50 g capacity) leaking watery oily appearing substance.

This oily substance was sampled in the sand and tank was righted so that no leaking continued. Tank was wrapped in plastic and moved to concrete next to the barn for RP's proper disposal.

At least 7 empty five-gallon buckets ("Transmission Oil")

Pit N8 (1320)

Nothing observed

Pit N9 (1324)

Car bodies

Pit N-10 (1350)

Dead cow bodies

Part of a drum

Sleeping cot

Misc. metal

  
signed

9/22/23  
date

HUMBOLDT COUNTY DEPARTMENT OF HEALTH AND HUMAN SERVICES  
DIVISION OF ENVIRONMENTAL HEALTH  
INSPECTION REPORT

Date 9/15/03

Facility Name: Robert Niles Property  
Facility Address: 1111 Cannibal Island Rd., Eureka

File # N/A  
Page 2 of 3

Corrective Actions:

104.1 Excavate all petroleum contaminated soil in the fuel tanks shed and properly store and manage it as hazardous waste or have it characterized by laboratory analysis for proper disposal. Properly dispose of the contaminated soil by the corrections due date and provide copies of receipts to DEH.

106/106.1 All containers of hazardous waste must be properly labeled and include an accumulation start date (used oil).

108. Store all hazardous waste in structurally sound containers (used oil).

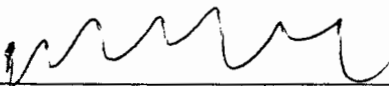
110. All containers of hazardous waste must be kept closed unless adding or removing waste (used oil).

116.5 Excavate all soil contaminated with used oil and properly store and manage it as hazardous waste. Properly dispose of the used oil currently on site by a licensed hazardous waste hauler or at a licensed hazardous waste facility and obtain a receipt showing proper disposal. Provide a

Chemical Inventory Amendments: copy of the receipt showing proper disposal to DEH by the corrections due date.

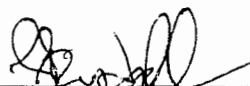
118. Used oil filters must be properly stored and managed as hazardous waste. (Filter observed in a burn pile)

Received By:



Facility Representative

Inspected By:



Hazardous Materials Specialist

Exhibit 3

CCC-04-CD-05 and CCC-04-RO-0

(Niles) Page 18 of 21

HUMBOLDT COUNTY DEPARTMENT OF HEALTH AND HUMAN SERVICES  
DIVISION OF ENVIRONMENTAL HEALTH  
INSPECTION REPORT

Date 9/15/03

Facility Name: H. Niles Property  
Facility Address: 1111 Cannibal Island Rd., Loleta

File # N/A  
Page 3 of 3

Corrective Actions:

136137. Employees must be trained in safe handling, storage, spill and emergency procedures with hazardous materials and hazardous waste. Annual reviews of the training are required. The training must be documented. Conduct the training (or have it conducted) and submit a copy of the documentation to DEH by the corrections due date. (Applicable employees must sign that they received the training).

- Maintain a written log of disposal of used oil taken to a licensed facility listing the date and amount disposed of.

- Small business hazardous waste facility appointment number (866) 724-2272 (Ask for Tara Burke or Mark Winkler)

- List of HW haulers left with Mr. Niles

Chemical Inventory Amendments:

Received By:

Facility Representative

Inspected By:

Hazardous Materials Specialist

Exhibit 3

CCC-04-CD-05 and CCC-04-RO-01

(Niles) Page 10 of 31



# HUMBOLDT COUNTY DEPARTMENT OF HEALTH AND HUMAN SERVICES

DIVISION OF ENVIRONMENTAL HEALTH  
100 H STREET, SUITE 100, EUREKA, CA 95501

(707) 445-6215  
FAX (707) 445-5699

## INSPECTION REPORT: Common CUPA Violations

Page 1 of 3

INSPECTION TYPE: ☐ New ☐ Routine ☐ Follow-up ☒ Complaint ☐ Exemption Verification ☐ Closure Verification  
File # N/A EPA ID # \_\_\_\_\_ Inspection Date 9-15-03 Time In 9:15 Time Out 12:20  
Facility Name Robert Niles Property Phone 733-5378  
Facility Address 1111 Carnival Island Rd., Leta  
Consent Given By Criminal Search Warrant Title Owner

**AUTHORITY:** This inspection is conducted under authority of Chapter 6.95, §25508, Chapter 6.5, §25185(a) and §25185.5 of the California Health & Safety Code. Under §25188 of the Health & Safety Code any person subject to a compliance schedule who does not comply to that schedule is subject to civil penalties. Under §25189(a) of the Health & Safety Code, any person who intentionally or negligently makes any false statement or representation in any report, record, or other document, filed, maintained, or used for purposes of compliance with Chapter 6.5 of the California Health & Safety Code, shall be liable for civil penalties which are not to exceed \$25,000 per violation per day that violation(s) continue.

See back for code citations

- |   |   |
|---|---|
| <input type="checkbox"/> 101. Hazardous Waste Determination Not Made.   | <input type="checkbox"/> 123. Failed to keep shipping papers/receipts for milkrun for 3 years.  |
| <input type="checkbox"/> 102. No EPA ID Number.   | <input type="checkbox"/> 124. Failed to keep manifests/bills of lading for spent acid batteries for 3 years.  |
| <input type="checkbox"/> 103. Unauthorized waste storage.   | <input type="checkbox"/> 125. Failed to retain copies of used oil receipts for 3 years.   |
| <input checked="" type="checkbox"/> 104.1 Failed to prevent HW release.<br>Location: <u>Fuel tank shed</u>  | <input type="checkbox"/> 126. Failed to retain bills of lading for used oil filters for 3 years.  |
| <input type="checkbox"/> 104.2 Disposal or induced disposal of hazardous waste at unauthorized point.   | <input type="checkbox"/> 127. Failed to determine if waste is restricted from land disposal.  |
| <input checked="" type="checkbox"/> 106. Mislabelled/no labels on HW containers.  | <input type="checkbox"/> 134. No contingency plan.  |
| <input checked="" type="checkbox"/> 106.1 Failed to clearly mark each HW container with the accumulation start date.  | <input checked="" type="checkbox"/> 136. Personnel failed to complete training course.  |
| <input type="checkbox"/> 107. HW accumulation storage time limit exceeded.  | <input checked="" type="checkbox"/> 137. Personnel failed to receive annual training review.  |
| <input checked="" type="checkbox"/> 108. Containers not in good condition/leaking.  | <input type="checkbox"/> 141. Unauthorized treatment of hazardous waste.  |
| <input checked="" type="checkbox"/> 110. Failed to close HW containers.   | <input type="checkbox"/> 201. Aboveground storage tank in operation with no SPCC plan.  |
| <input type="checkbox"/> 111. Failed to conduct weekly inspection of HW storage area.   | <input type="checkbox"/> 401. Failed to establish/implement a business plan.  |
| <input type="checkbox"/> 112. Failed to locate ignitable/reactive waste 15 meters from property line.   | <input type="checkbox"/> 401.1 Failed to update business plan data with administering agency within 30 days of change.  |
| <input type="checkbox"/> 113. Failed to determine leaking or unfit tank.  | <input type="checkbox"/> 402. Hazardous materials inventory is missing or does not meet the information requirements of HSC §25509.   |
| <input type="checkbox"/> 114. Failed to provide secondary containment.  | <input type="checkbox"/> 402.7 The name and phone number of the business representative able to assist emergency personnel in the event of an emergency involving the business during nonbusiness hours is missing/deficient. |
| <input type="checkbox"/> 115. Failed to conduct daily tank inspections.   | <input type="checkbox"/> 403. Emergency Response Plan does not contain the required elements.   |
| <input checked="" type="checkbox"/> 116.5 Disposal of used oil by discharge to sewer, drainage systems, surface or ground- waters; by incineration or burning as a fuel or by deposit on land. Unauthorized use of waste oil as dust suppressant. | <input type="checkbox"/> 404. Personnel training program does not meet the requirements of HSC §25504(c).   |
| <input type="checkbox"/> 116.7 Contaminated used oil with other HW.   | <input type="checkbox"/> 405. Failed to report a release/threatened release.  |
| <input type="checkbox"/> 117. Mismanagement of lead acid batteries including labeling of damaged batteries.   | <input type="checkbox"/> 406. Site map is not attached or is insufficient.  |
| <input checked="" type="checkbox"/> 118. Mismanagement of used oil filters.   | <input type="checkbox"/> 407. Failed to submit a completed inventory form on an annual basis.   |
| <input type="checkbox"/> 119. Transported HW without or with incomplete manifest.   |   |
| <input type="checkbox"/> 121. Failed to retain manifests for 3 years.   |   |

☐ NO VIOLATIONS OBSERVED

the undersigned facility representative, certify that I have disclosed the location of all hazardous materials or hazardous waste located on the facility identified above and I have made all storage locations available for inspection by the undersigned inspector.

Corrections must be submitted by: 10-15-03

Facility Rep. / Title

Date

Inspector

Exhibit 3

CCC-04-CD-05 and CCC-04-RO-01  
(Niles) Page 20 of 31

<u>Item #</u>	<u>Violation Code</u>	<u>Description</u>	<u>Item #</u>	<u>Violation Code</u>	<u>Description</u>
101.	CCR 66262.11	Hazardous Waste Determination Not Made.	123.	CCR 66263.42(e)	Failed to keep shipping papers/receipts for milkrun for 3 years.
102.	CCR 66262.12(a)	No EPA ID Number.	124.	CCR 66266.81(a)(4)(B)	Failed to keep manifests/bills of lading for spent acid batteries for 3 years.
103.	HSC 25201 (a)	Unauthorized waste storage.	125.	HSC 25250.8(b)(3)	Failed to retain copies of used oil receipts for 3 years.
104.1	CCR 66265.31	Failed to prevent HW release. Location:	126.	CCR 66266.130(c)(5)	Failed to retain bills of lading for used oil filters for 3 years.
104.2	HSC 25189.5	Disposal or induced disposal of hazardous waste at unauthorized point.	127.	CCR 66268.7(a)	Failed to determine if waste is restricted from land disposal.
106.	CCR 66262.34(f)(3)	Mislabeled/no labels on HW containers.	134.	CCR 66265.51(a)	No contingency plan.
106.1	CCR 66262.34(a)(1)(D)	Failed to clearly mark each HW container with the accumulation start date.	136.	CCR 66265.16(a)	Personnel failed to complete training course.
107.	CCR 66262.34	HW accumulation storage time limit exceeded.	137.	CCR 66265.16(c)	Personnel failed to receive annual training review.
108.	CCR 66265.171	Containers not in good condition/leaking.	141.	HSC 25201(a)	Unauthorized treatment of hazardous waste.
110.	CCR 66265.173(a)	Failed to close HW containers.	201.	HSC 25270.5 (c)	Aboveground storage tank in operation with no SPCC plan.
111.	CCR 66265.174	Failed to conduct weekly inspection of HW storage area.	401.	HSC 25503.5	Failed to establish/implement a business plan.
112.	CCR 66265.176	Failed to locate ignitable/reactive waste 15 meters from property line.	401.1	HSC 25510	Failed to update business plan data with administering agency within 30 days of change.
113.	CCR 66265.191(a)	Failed to determine leaking or unfit tank.	402.	HSC 25504(a)	Hazardous materials inventory is missing or does not meet the information requirements of HSC §25509.
114.	CCR 66265.193	Failed to provide secondary containment.	402.7	HSC 25504(a)	The name and phone number of the business representative able to assist emergency personnel in the event of an emergency involving the business during nonbusiness hours is missing/deficient.
115.	CCR 66265.195(a)	Failed to conduct daily tank inspections.	403.	HSC 25504(b)	Emergency Response Plan does not contain the required elements.
116.5	HSC 25250.5	Disposal of used oil by discharge to sewer, drainage systems, surface or ground- waters; by incineration or burning as a fuel or by deposit on land. Unauthorized use of waste oil as dust suppressant.	404.	HSC 25504(c) CCR 66264.16	Personnel training program does not meet the requirements of HSC §25504(c).
116.7	HSC 25250.7	Contaminated used oil with other HW.	405.	HSC 25507(a)	Failed to report a release/threatened release.
117.	CCR 66266.81	Mismanagement of lead acid batteries including labeling of damaged batteries.	406.	CCR 2729(a)(4)	Site map is not attached or is insufficient.
118.	CCR 66266.130	Mismanagement of used oil filters.	407.	HSC 25505(d)	Failed to submit a completed inventory form on an annual basis.
119.	CCR 66262.20(a)	Transported HW without or with incomplete manifest.			
121.	CCR 66262.40(a)	Failed to retain manifests for 3 years.			

Exhibit 3

CCC-04-CD-05 and CCC-04-RO-01

agram

Fit ID N-1  
Logged by Ship  
Date 9-15-03  
Time 11:30  
GPS 40.6454  
124.30435

SOLID

1# 1 frame 13

th: 3 foot mound.

2 ties, 1 piece of pipe

HAZ

depth:

11# 2 frame 1 sofa & ties

pth: 4 pipe, metal debris

depth:

12-2 truck frame  
(1 vehicle in pit)  
(travel trailer)

# 2 frame # 3 1 vehicle  
1 travel trailer.

tes:

agram

Pit ID N-2

Logged by Hipp

Date 9-15-03

Time 40.64/33

GPS 124.30439

11:02 AM

SOLID

# 1 frame 9  $\frac{1}{3}$  foot high.

pth: mound with some Metal  
clut on it

Vehicle Body, Tire.

HAZ

depth:

# 1 frame 10

pth: 3' car body - cheng Lu?

possibly 2 Vehicles.

depth:

1-12 engine block. depth 3'

# 1 frame 11 depth 3'

otes:



Diagram

ID N 3  
Logged by Bob Hipp  
Date 9-15-03  
Time 10:33  
GPS 40.64133  
124.30408

SOLID

# 1 frame 5

depth: 2' sand & wood

HAZ

depth:

# 2 frame 6

depth: 2' 1 Cow

depth:

#     frame     #

notes:

agram

Pit ID N-4

Logged by HIPP

Date 9-15-03

Time 10:45

GPS 40.64135

124.30941

SOLID

# 1 frame 1

th: 4' Household garbage  
w/ open pit - pet carrier  
Plastics, food containers.  
Bath room sink.

HAZ

depth:

# 1 frame 8

th: 6' ~~7~~ sand -

depth:

#      frame     

tes:

gram

Pit ID N-5  
Logged by Hipp  
Date 9-15-03  
Time \_\_\_\_\_  
GPS 40.64128  
124.30438

SOLID

HAZ

# 2 frame 6

th: 4' H. 10" x 15"  
mound of sand

depth:

1\* frame \_\_\_\_\_

th:

depth:

\_\_\_\_\_ frame # \_\_\_\_\_

tes:

agram

Pit ID N-6  
Logged by Wipb  
Date 9-15-03  
Time 12:00  
GPS 40.6449  
124.30420

SOLID

# 1 frame 4

th: 4' high X 10' w X 20' L  
mounded sand.

HAZ

depth:

# 2 frame 5

th: 4' sand & wood.

depth:

#     frame #    

otes:

2gram

40.64136  
124.30447

Pit ID N-7  
Logged by Hipp  
Date 9-15-03  
Time 12:45  
GPS 40.64180  
124.30425

SOLID

1 # 2 frame 7

At: 3' Metal debris  
Tie, Plastic bucket

2 - 8 - 5 gal buckets (4)

Ties, Metal debris

2 - L-A-Batteries depth 4'

1 - Broken T.V.

11 # 2 frame 9 oily H<sub>2</sub>O leaking

At: 4' out of tank. (sampled)  
By J. Bidsell

Possible disassemble R.V.

2 - 10 tie in pit.

#    frame #   

Notes:

HAZ

depth:

depth:

agram

Pit ID N-8

Logged by                     

Date                     

Time 1:20

GPS 40.64185

124.30428

SOLID

HAZ

1# Z frame 11

pth: level sandy area .

depth:

5 feet - nothing  
sand & wood.

11# — frame —

pth:

depth:

# — frame #

otes:

agram

Pit ID N-9  
Logged by HIPP  
Date 9-15  
Time 1:30  
GPS 40.6483  
124.30441

2-11

SOLID

# 2 frame 12

th: car, carpeting  
3'

2-13

2-14 - white sealant.  
4' down.

1\* - frame -

th:

-

- frame #

tes:

HAZ

depth:

depth:

agram

70' for brent.

NOTHING FIVE

Pit ID N-10  
Logged by Hipp  
Date 9-15-03  
Time 1:45  
GPS 40.64160  
124.30425

SOLID

# 2 frame 15 start.

th: 5' dead animal  
no glass  
CRT Parts T.V.  
Tire's  
Metal debris.  
Car seat.  
old lumber.  
-16

# 2 frame 17-18 End of the  
digging  
th: 5'

#    frame #   

tes: N-5 - 2-28

HAZ

depth:

depth:





Recording Requested By & For Benefit Of:  
**COUNTY OF HUMBOLDT**  
When Recorded, Mail To:  
**CODE ENFORCEMENT UNIT**  
Courthouse Bldg., 825 Fifth Street  
Eureka, California 95501  
707.445.7518

Exempt From Fees Per Gov't C. § 27383

**2003-48392-11**

Recorded — Official Records  
**Humboldt County, California**  
Carolyn Crnich, Recorder  
Recorded by HUMBOLDT CNTY  
Exempt from payment of fees  
Clerk: LH Total: 0.00  
Dec 10, 2003 at 11:09

# NOTICE OF NUISANCE

To: **ROBERT L. NILES**  
Location of Subject Premises: Cannibal Island Road, Loleta, California ~ A.P. N's: 309.181.003 and 310.083.003

**NOTICE IS HEREBY GIVEN** that conditions described on "Attachment A" exist on premises situate in the County of Humboldt, State of California, as described on Attachments "B.1 and B.2", which are in violation of state law and the Humboldt County Code. These conditions exist to an extent that endanger the life, limb, health, property, safety or welfare of the public and, as such, constitute a "nuisance". Therefore,

**YOU ARE HEREBY ORDERED** to **immediately abate** said nuisance. Failure to immediately abate said nuisance may result in:

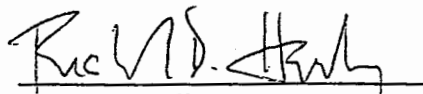
- **Imposition of an administrative penalty.** The Code Enforcement Unit may impose an administrative penalty upon you, in which event you may be liable for a monetary penalty of between \$100 to \$10,000 per violation, for each and every day the violation exists. In that case, the penalty shall be made a special assessment against the premises, shall become a lien upon the property and may be collected at the same time and in the same manner as is provided for the collection of ordinary county taxes and, further, shall be subject to the same interest and the same procedure of foreclosure and sale in the case of delinquency as is provided for in ordinary county taxes, and/or it may be collected as a personal obligation against you; and/or

- **Commencement of an abatement proceeding before the County Board of Supervisors.** If corrective action is not undertaken and diligently pursued to abate the nuisance within thirty (30) days from service on you of this Notice of Nuisance, then the Code Enforcement Unit may apply to the Board of Supervisors of Humboldt County for an order to abate the nuisance. In the event the Code Enforcement Unit applies to the Board of Supervisors for an order to abate the nuisance, the cost of such abatement may become a charge against the premises and in that event may be made a special assessment against the premises which may be collected at the same time and in the same manner as is provided for the collection of ordinary county taxes and may be subject to the same penalties and interest, under the same procedure of foreclosure and sale, in the case of delinquency, as is provided for in ordinary county taxes; and/or

- **Commencement of a civil action.** In the event the Code Enforcement Unit commences a civil action for injunctive relief and to abate the nuisance, you may be liable for monetary damages including the costs of abatement, civil fines and penalties, as well as for court costs and attorney's fees.

**Please be advised** ~ Violation of Humboldt County Code is a misdemeanor, punishable by imprisonment in the County Jail for a term not exceeding six (6) months, or a fine up to \$500, or both such fine and imprisonment, for each day of a violation.

Dated: December 2, 2003.

  
RICHARD D. HENDRY  
Deputy County Counsel  
Deputy District Attorney

## "ATTACHMENT A"

1. did unlawfully use land, buildings or structures in a manner inconsistent with zoning requirements, in violation of Section 311-10 of the Humboldt County Code [A.P. N°. 309.181.003]; and
2. did willfully and unlawfully use a trailer or motorhome as a residence without permit, in violation of Section 314-81.1 of the Humboldt County Code [A.P. N°. 309.181.003]; and
3. did unlawfully grade and place landfill without permits, in violation of Section 331-11 of the Humboldt County Code [A.P. N°. 309.181.003]; and
4. did unlawfully maintain or use trailer which is not provided with a water supply system approved by the Health Officer, in violation of Section 331-11.5 of the Humboldt County Code [A.P. N°. 309.181.003]; and
5. did fail to meet minimum standards for storage, removal and disposal of solid waste, in violation of Section 521-1 of the Humboldt County Code [A.P. N°. 309.181.003]; and
6. did inadequately store solid waste, in violation of Section 521-4(b)(1) of the Humboldt County Code [A.P. N°. 309.181.003]; and
7. did fail to adequately remove solid waste, in violation of Section 521-4(c)(1) of the Humboldt County Code [A.P. N°. 309.181.003]; and
8. did unlawfully deposit, bury, burn or otherwise dispose of solid waste at a place other than a solid waste facility, in violation of Section 521-10 of the Humboldt County Code [A.P. N°. 309.181.003]; and
9. did lack of approved sewage disposal system for trailers and motorhomes used as residence, in violation of Section 611-3 of the Humboldt County Code [A.P. N°. 309.181.003]; and
10. did unlawfully deposit, bury, burn or otherwise dispose of solid waste at a place other than a solid waste facility, in violation of Section 521-10 of the Humboldt County Code [A.P. N°. 310.083.003]; and
11. did unlawfully abandon, park, store or leave, or permit the abandonment, parking, storing or leaving of a junk vehicle upon private property for a period in excess of 5 days, in violation of Section 352-26 of the Humboldt County Code [A.P. N°. 310.083.003]; and

12. did unlawfully store and fail to remove solid waste, in violation of Section 521-4(c) of the Humboldt County Code [A.P. N°. 310.081.003]; and
13. did unlawfully deposit, bury, burn or otherwise dispose of solid waste at a place other than a solid waste facility, in violation of Section 521-10 of the Humboldt County Code [A.P. N°. 310.081.003]; and
14. did unlawfully abandon, park, store or leave, or permit the abandonment, parking, storing or leaving of a junk vehicle upon private property for a period in excess of 5 days, in violation of Section 352-26 of the Humboldt County Code, a misdemeanor [A.P. N°. 310.081.003]; and
15. did unlawfully grade and place landfill without permits, in violation of Section 331-11 of the Humboldt County Code [A.P. N°. 310.081.003]; and
16. did unlawfully use land, buildings or structures in a manner inconsistent with zoning requirements, in violation of Section 311-10 of the Humboldt County Code [A.P. N°. 310.081.003]; and
17. did unlawfully engage in development without a coastal development permit, in violation of Section 312-3.1.4 of the Humboldt County Code [A.P. N°. 310.081.003].

Attachment B.1

PARCEL ONE

The south half of the northwest quarter of Section 13, Township 3 North, Range 2 West, Humboldt Meridian.

PARCEL TWO

BEGINNING at the quarter section corner on the east line of Section 14, Township 3 North, Range 2 West, Humboldt Meridian;  
and running thence north 26 chains to the center of a small slough;  
thence north 82 degrees west 5.50 chains;  
thence south 48 degrees west  $4\frac{1}{2}$  chains;  
thence south  $29\frac{1}{2}$  degrees east 2.45 chains;  
thence south 20.86 chains;  
and thence east 7.59 chains to the place of beginning.

A.P. N°. 309.181.003

Attachment B.2

That real property situate in the County of Humboldt, State of California, described as follows:

PARCEL ONE

BEGINNING at a point 1320 feet West of the Quarter Section post on the line between Sections 15 and 16, Township 3 North, Range 2 West, Humboldt Base and Meridian;

thence West, 1642.74 feet to the margin of a navigable slough;

thence following the meanders of said slough left bank downstream, South 22½ degrees West, 858 feet to its junction with the Eel River;

thence following the meanders of Eel River right bank upstream, South 05 degrees West, 660 feet;

thence South 50½ degrees East, 990 feet;

thence South 53 degrees East, 726 feet;

thence South 70 degrees East, 726 feet;

thence leaving meanders of the Eel River and running North, 2772 feet the point of beginning.

BEING the land embraced in Swamp and Overflowed Land Survey N°. 45, above description being according to the Survey of same as made by the County Surveyor of Humboldt County in the year 1858.

EXCEPTING FROM PARCEL ONE the fishery right which was reserved by Ezekiel M. Heckman and wife in their Deed to Sarah Annie Heckman Hansen dated February 11, 1903, and recorded in Book 119 of Deeds, Page 351, Humboldt County Records, said reservation being in the following language: *"Reserving unto the parties of the first part the exclusive right of fishery on the water front of said parcel of land, with the exclusive right and privilege of casting, hauling and landing seines and nets on said water front."*

EXCEPTING FROM PARCEL ONE a piece of land situated on the waterfront of said parcel, as reserved by the Grantors in last mentioned Deed, and to be subsequently located by them.

ALSO EXCEPTING FROM PARCEL ONE that portion thereof granted to the County of Humboldt, a political subdivision of the State of California, by Deed recorded July 7, 1959, in Book 543, Page 308, as Recorder's Serial N°. 11295, Humboldt County Official Records.

[continued next page]

ALSO EXCEPTING FROM PARCEL ONE the tract bounded as follows:  
BEGINNING at a point on the East and West subdivision line through said Section 16 distant 1387 feet West of the Northeast corner of the Northwest Quarter of the Southeast Quarter of said Section 16;  
thence continuing along said line North 89 degrees 15 minutes West, 452 feet to the high tide line;  
thence South 03 degrees 30 minutes West 409.5 feet;  
thence South 89 degrees 15 minutes East 302 feet;  
thence North 13 degrees West 139 feet;  
thence North 01 degrees 30 minutes East, 59 feet;  
thence North 75 degrees East, 210 feet;  
thence North 45 minutes East, 160 feet to the point of beginning.

ALSO EXCEPTING THEREFROM an undivided one-half interest in all oil, gas, hydrocarbons and minerals in and under the above described land, as granted to Christina Belli by Fred Fearrien and wife, by Deed recorded January 17, 1978, in Book 1464, Page 432, Humboldt County Official Records.

#### PARCEL TWO

BEGINNING at a point on the East and West Subdivisional line through Section 16, Township 3 North, Range 2 West, Humboldt Base and Meridian, distant thereon 1387 feet West of the Northeast corner of the Northwest Quarter of the Southeast Quarter of said Section 16;  
thence continue along said line North 89 degrees 15 minutes West, 452 feet to the high tide line;  
thence South 03 degrees 30 minutes West, 409.5 feet;  
thence South 89 degrees 15 minutes East, 302 feet;  
thence North 13 degrees West, 139 feet;  
thence North 01 degrees 30 minutes East, 59 feet;  
thence North 75 degrees East, 210 feet;  
thence North 45 minutes East, 160 feet to the point of beginning.

EXCEPTING THEREFROM that portion thereof granted to the County of Humboldt, a political subdivision of the State of California, by Deed recorded July 7, 1959, in Book 543, Page 308, as Recorder's Serial N°. 11295, Humboldt County Official Records.

[continued next page]

ALSO EXCEPTING THEREFROM an undivided one-half interest in all oil, gas, hydrocarbons and minerals in and under the above described land, as granted to Christina Belli by Fred Fearrien and wife, by Deed recorded January 17, 1978, in Book 1464, Page 432, Humboldt County Official Records.

PARCEL THREE

BEGINNING on the West line of Swamp and Overflowed Land Survey No. 36 at a point 363.0 feet Southerly from its most Northwesterly point, as surveyed by J. S. Murray, County Surveyor in the year 1858;

thence North 04 degrees East, 372.90 feet;

thence South 80 degrees East, 276.54 feet;

thence South 28¼ degrees East, 369.60 feet;

thence West, 468.60 feet west to the point of beginning.

BEING located in Section 21, Township 3 North, Range 2 West, Humboldt Base and Meridian; and

BEING at the time of said Survey the most Northerly extremity of Keefer's point; and

BEING the same parcel of land conveyed by William Ellery to E. M. Heckman by Deed dated April 2, 1894, and recorded in Book 50 of Deeds, Faze 379, Humboldt County Records.

EXCEPTING FROM PARCEL ONE the fishery right which was reserved by Ezekiel M. Heckman and wife in their Deed to Sarah Annie Heckman Hansen dated February 11, 1903, and recorded in Book 119 of Deeds, Page 351, Humboldt County Records, said reservation being in the following language: *"Reserving unto the parties of the first part the exclusive right of fishery on the water front of said parcel of land, with the exclusive right and privilege of casting, hauling and landing seines and nets on said water front."*

ALSO EXCEPTING THEREFROM an undivided one-half interest in all oil, gas, hydrocarbons and minerals in and under the above described land, as granted to Christina Belli by Fred Fearrien and wife, by Deed recorded January 17, 1978, in Book 1464, Page 432, Humboldt County Official Records.

[continued next page]

#### PARCEL FOUR

A strip of land described as follows:

BEGINNING at a point 1320 feet West of the Quarter Section post on the East line of Section 16, Township 3 North, Range 2 West, Humboldt Base and Meridian;

thence West, 408 feet;

thence North, 12 feet;

thence East, 408 feet;

thence South, 12 feet to the point of beginning;

BEING the South Half of a portion of a private road, and  
BEING the same strip deeded by Perenin to Hansen by Deed dated October 7, 1919, and recorded in Book 145 of Deeds, Page 499, Humboldt County Records.

#### PARCEL FIVE

That tract of land now commonly referred to as Hackman Island, (but not necessarily being the original Hackman Island) and being the accreted lands to Swamp and Overflowed Lane Survey N°. 45.

A.P. N°. 310.083.003





# COUNTY OF HUMBOLDT

## CODE ENFORCEMENT UNIT

825 Fifth Street, Eureka, California 95501

Telephone 707.445.7518

### NOTICE OF INTENT TO RECOVER COSTS

[Humboldt County Code § 2121-4(b)]

To: Robert L. Niles

Address of Premises: APN 309-181-003 & 310-083-003, 1111 Cannibal Island Road, Loleta

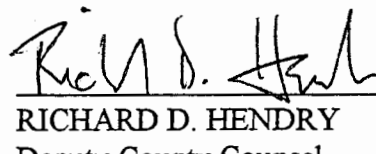
The Code Enforcement Unit has determined that conditions exist at the above-described property which violate sections of the Humboldt County Code, as described on the attached Notice of Nuisance.

**NOTICE IS HEREBY GIVEN** pursuant to Humboldt County Code section 2121-1, that it is the intention of the County of Humboldt to collect all costs incurred by the County in gaining abatement of the conditions and compliance with Humboldt County Code. Costs include but are not limited to staff time, site inspections, summaries, reports, telephone contacts, correspondence, and time spent in administrative or judicial proceedings, which costs are expended and reasonably related to enforcement.

In this regard, you will receive at the conclusion of this case a statement of costs associated with the processing of this violation, at an hourly rate as established and adjusted from time to time by the County Board of Supervisors. The hourly rate which is presently in effect is between \$29.00 to \$150.00 per hour, depending on the personnel involved. At the end of this case you will have the right to object to any charges by filing a written request for hearing with the Code Enforcement Unit within ten (10) days of service on you of any summary of costs, pursuant to section 2121-4(e) of the Humboldt County Code.

**NOTICE IS HEREBY FURTHER GIVEN** that if corrective action is undertaken and completed within thirty (30) days from service on you of this notice, then the undersigned may waive all costs associated with the processing of this violation.

Dated: December 3, 2003

  
RICHARD D. HENDRY  
Deputy County Counsel  
Deputy District Attorney

A.P. No: 309-181-003 & 310-083-003

File No: 03CEU013

PROOF OF SERVICE

STATE OF CALIFORNIA    )  
                                  ) ss.  
COUNTY OF HUMBOLDT    )

I, the undersigned, say:

I am a citizen of the United States, over 18 years of age, a resident of the County of Humboldt, State of California, and not a party to the within action; that my business address is Humboldt County Courthouse, Eureka, California; that on December 4, 2003, I placed a true copy of the

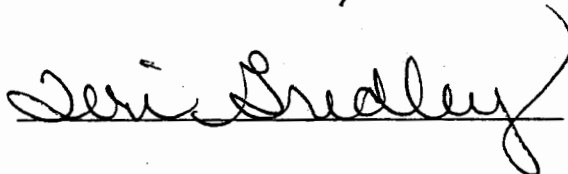
**NOTICE OF NUISANCE AND  
NOTICE OF INTENT TO RECOVER COSTS**

- ☒ by placing a true copy thereof enclosed in a sealed envelope marked certified, return receipt requested, with postage thereon fully prepaid, in the United States mail at Eureka, California, addressed as set forth below.
- ☐ by personally delivering a true copy thereof to the person and at the address set forth below.
- ☐ by placing a true copy thereof in the designated place in the County Clerk's office to the judge/attorney named below.
- ☐ by FAX to the name and telephone number noted below.

Robert L. Niles  
1111 Cannibal Island Road  
Loleta, CA 95551

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 4, 2003, Eureka, California.



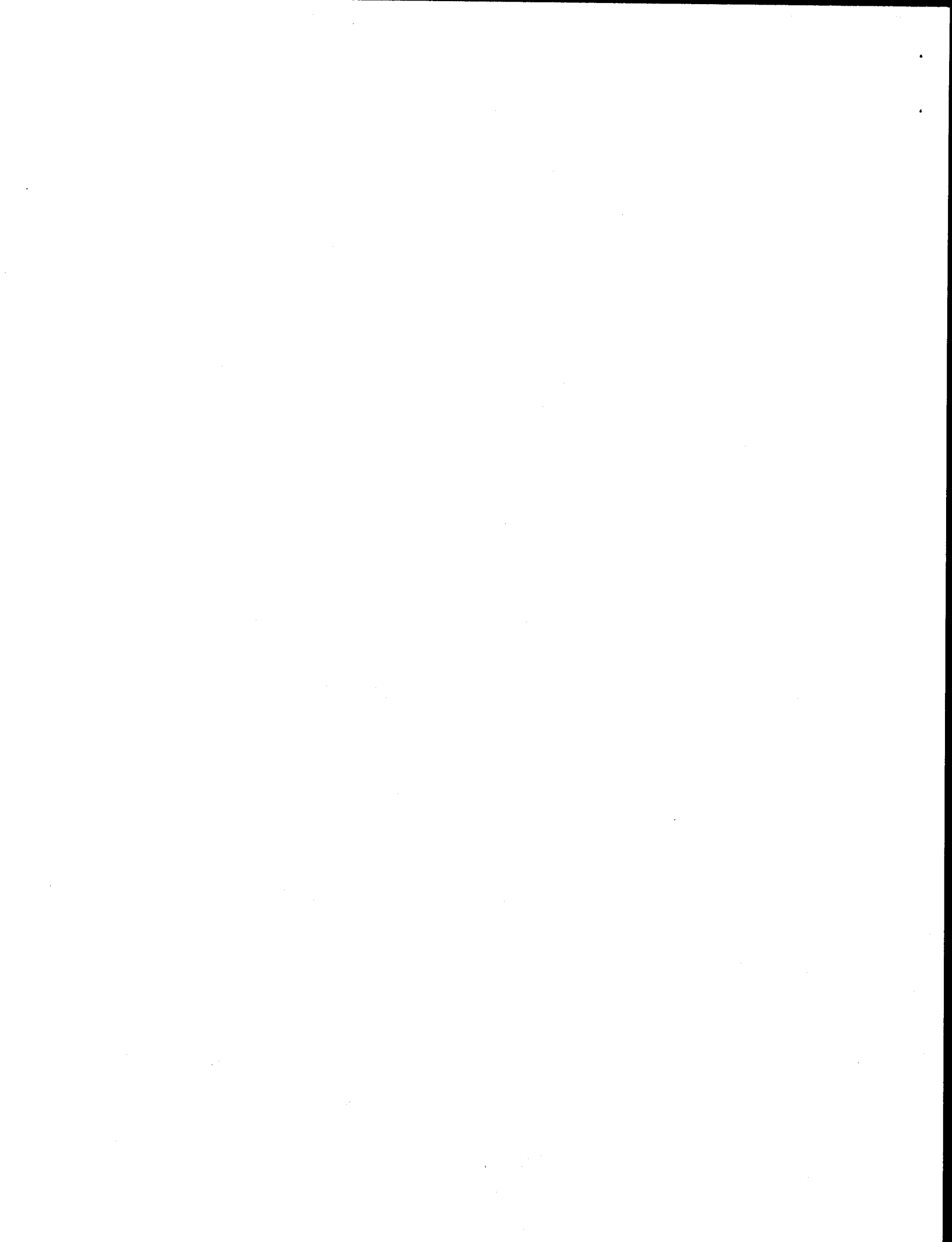
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ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): COUNTY OF HUMBOLDT CODE ENFORCEMENT UNIT 825 Fifth Street Eureka, CA 95501		TELEPHONE NO.: (707) 445-7518		FOR COURT USE ONLY	
ATTORNEY FOR (Name):		Ref. No. or File No.			
Insert name of court and name of judicial district and branch court, if any:					
SHORT TITLE OF CASE: CEU vs. Robert L. Niles					
PROOF OF SERVICE		DATE: December 5, 2003	TIME: 1045	DEPT./DIV.: CEU	CASE NUMBER: 03CEU009

1. At the time of service I was at least 18 years of age and not a party to this action, and served copies of the (specify documents):  
Notice of Nuisance / Notice of Intent to Recover Costs.
2. a. Party served (specify name of party as shown on the documents served)
- b. Person served: ☐ party in item 2a ☒ other (specify name and title or relationship to the party named in item 2a)  
1111 Cannibal Island Road
- c. Address: Loleta, CA 95551
3. I served the party named in item 2
- a. ☐ by personally delivering the copies (1) on (date): (2) at (time):
- b. ☐ by leaving the copies with or in the presence of (name and title or relationship to person indicated in item 2b)
- (1) ☐ (business) a person at least 18 years of age apparently in charge at the office or usual place of business of the person served. I informed him or her of the general nature of the papers.
- (2) ☐ (home) a competent member of the household (at least 18 years of age) at the dwelling house or usual place of abode of the person served. I informed him or her of the general nature of the papers.
- (3) on (date): (4) at (time):
- (5) ☐ A declaration of diligence is attached. (Substituted service on natural person, minor, conservatee, or candidate.)
- c. ☐ by mailing the copies to the person served, addressed as shown in item 2c, by first-class mail, postage prepaid,
- (1) on (date): (2) from (city):
- (3) ☐ with two copies of the Notice and Acknowledgment of Receipt and a postage-paid return envelope addressed to me.
- (4) ☐ to an address outside California with return receipt requested. ↘ (Attach completed form.) ↗
- d. ☐ by causing copies to be mailed. A declaration of mailing is attached.
- e. ☒ other (specify other manner of service and authorizing code section) POSTED PROPERTY WITH NON/NOT.
4. The "Notice to the Person Served" (on the summons) was completed as follows:
- a. ☐ as an individual defendant.
- b. ☐ as the person sued under the fictitious name of (specify):
- c. ☐ on behalf of (specify):
- under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor) ☐ other:
- ☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
- ☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (individual)
5. Person serving (name, address, and telephone No.):
- Jack R. Bernstein  
 Investigator  
 County of Humboldt  
 825 Fifth Street, 4th Floor  
 Eureka, CA 95501  
 (707) 445-7518
- a. Fee for service: \$
- b. ☐ Not a registered California process server.
- c. ☐ Exempt from registration under B&P § 22350(b).
- d. ☐ Registered California process server.
- (1) ☐ Employee or independent contractor.
- (2) Registration No.:
- (3) County:
6. ☐ I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
7. ☐ I am a California sheriff, marshal, or constable and I certify that the foregoing is true and correct.

Date:

Jack R. Bernstein  
 (SIGNATURE)



**CALIFORNIA COASTAL COMMISSION**

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

**VIA CERTIFIED and REGULAR MAIL**

November 14, 2003

Robert Niles  
P.O. Box 148  
Loleta, CA 95551-0148

**Subject: Notice of Intent to Commence Cease and Desist Order and Restoration Order Proceedings**

**Violation No.: V-1-03-014**

**Location: 3870 Cannibal Road, Loleta, Humboldt County  
(APNs 310-083-03, 310-083-04 and 310-083-06)**

**Violation Description: Unpermitted grading and solid waste disposal**

Dear Mr. Niles:

The purpose of this letter is to notify you of my intent, as the Executive Director of the California Coastal Commission ("Commission"), to commence proceedings for issuance of a Cease and Desist Order and Restoration Order for unpermitted development. The unpermitted development consists of grading and disposal of solid waste. This unpermitted development is located on property you own at 3870 Cannibal Road, Loleta, Humboldt County, APN 310-083-04 and APNs 310-083-03 and 310-083-06 ("subject property"). The subject property contains environmentally sensitive dune and estuary habitat near the mouth of the Eel River.

"Development" is defined in section 30106 of the Coastal Act as follows:

"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreation use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvest of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations... (emphasis added)

The grading of pits, clearing of dune vegetation and the placement and burial of solid waste constitute development under the Coastal Act, and as such are subject to Coastal Act permit requirements.

The purpose of these enforcement proceedings is to resolve outstanding issues associated with the unpermitted development activities that have occurred at the subject property. Collectively, the Cease and Desist Order and Restoration Order will direct you to cease and desist from performing any unpermitted development and will compel the removal of unpermitted development and restoration of the areas impacted by the unpermitted development. The Cease and Desist Order and Restoration Order are discussed in more detail in the following sections of this letter.

#### **History of the Violation Investigation**

On July 29, 2003, the Coastal Commission received a report regarding unpermitted grading and disposal of solid waste on the subject property. On July 31, 2003, Commission staff confirmed the presence of one open pit containing household garbage and several sandy mounds. Two of the mounds had pieces of metal sticking out of them and all of the mounds appeared to indicate the location of recently buried pits.

A multi-agency task force headed by the Humboldt County Environmental Health Division executed a criminal search warrant at the subject property on September 15, 2003. The purpose of the search warrant was to locate, map and photograph disposal areas, describe their contents, and segregate and contain any hazardous or medical wastes. The search warrant was not designed for comprehensive abatement and clean-up action. The County excavated ten pits on the subject property. Solid waste discovered on the subject property during the County investigation includes (but is not limited to) household garbage, metal debris, tires, five vehicles, a travel trailer, a television set, a vehicle engine block, carpeting, plastic buckets, car batteries, and a fluid-filled, leaking metal tank. Some of the solid waste, including two car batteries and the leaking metal tank, was deemed hazardous and was removed by Humboldt County

Environmental Health Division staff and disposed of off-site. The temporary pits were then backfilled.

The unpermitted development on the subject property, which is located in the coastal zone, was performed without a coastal development permit and is a violation of the Coastal Act. Section 30600(a) of the Coastal Act requires that, in addition to obtaining any other permit required by law, any person wishing to perform or undertake any development in the coastal zone must obtain a coastal development permit. A coastal development permit was neither applied for nor obtained before the unpermitted development was performed on the subject property. According to County and Commission records, no coastal development permit applications were filed for any of the above-described development on the subject property.

### **Cease and Desist Order**

The Commission's authority to issue Cease and Desist Orders is set forth in Section 30810(a) of the Coastal Act, which states the following:

*If the commission, after public hearing, determines that any person or governmental agency has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the commission without securing the permit or (2) is inconsistent with any permit previously issued by the commission, the commission may issue an order directing that person or governmental agency to cease and desist.*

The Executive Director of the Commission is issuing this notice of intent to commence Cease and Desist Order proceedings because unpermitted development has occurred at the subject property. This unpermitted development consists of grading of pits in estuarine sand dune areas and subsequent burial of solid waste in the pits on the subject property. The Cease and Desist Order would order you to desist from any further unpermitted grading and waste disposal activities or other unpermitted development on your property.

Based on Section 30810(b) of the Coastal Act, the Cease and Desist Order may also be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with the Coastal Act, including immediate removal of any development or material. Staff will recommend that the Cease and Desist Order include terms requiring additional site investigations to ensure complete removal of all unpermitted development on the subject property, with a schedule for removing the unpermitted development.

### **Restoration Order**

Section 30811 of the Coastal Act authorizes the Commission to order restoration of a site in the following terms:

*In addition to any other authority to order restoration, the commission...may, after a public hearing, order restoration of a site if it finds that the development has occurred without a coastal development permit from the commission... the development is inconsistent with this division, and the development is causing continuing resource damage.*

Commission staff has determined that the specified activity meets the criteria of Section 30811 of the Coastal Act, based on the following:

- 1) Unpermitted development consisting of grading of pits in estuarine sand dune areas and subsequent placement and burial of solid waste has occurred on the subject property.
- 2) This development is inconsistent with the resource protection policies of the Coastal Act, including Section 30231 (biological productivity and water quality), Section 30232 (oil and hazardous substance spills), Section 30240 (environmentally sensitive habitat areas), Section 30251 (scenic and visual qualities) and Section 30253 (minimization of adverse impacts).

The solid waste on the subject property, which is located at the mouth of the Eel River, may have leaked hazardous chemicals from the unlined sand pits into the surrounding estuarine environment, thereby adversely affecting biological productivity and water quality (Sections 30231 and 30232). The excavation of pits and burial of solid waste and major removal of dune vegetation on the subject property constitutes a disturbance and negative impact to the quality of the environmentally sensitive dune habitat (Section 30240). The pits were covered with sand, forming rough mounds, with portions of the solid waste protruding from the sand. The unpermitted development has not minimized the alteration of natural landforms and has degraded the scenic and visual qualities of this coastal area (Section 30251). The subject property is located at the mouth of the Eel River, and is subject to seasonal flooding. The partially buried solid waste, which includes large metal debris, poses an adverse risk to life and property if it were to drift from the disposal area during a flood (Section 30253).

- 3) The unpermitted development is causing continuing resource damage, as defined by Section 13190 of the Commission's regulations. The unpermitted development has impacted environmentally sensitive estuarine and dune habitat areas. Such impacts meet the definition of damage provided in Section 13190(b): "any degradation or other reduction in quality, abundance, or other quantitative or qualitative characteristic of the resource as compared to the condition the resource was in before it was disturbed by unpermitted development." The unpermitted development consists of grading of pits in estuarine sand dune areas and subsequent burial of solid waste in the pits on the subject property.

Solid waste discovered on the subject property during the County investigation includes (but is not limited to) household garbage, metal debris, tires, five vehicles, a travel trailer, a television set, a vehicle engine block, carpeting, plastic buckets, car batteries, and a fluid-filled, leaking metal tank. Some of the solid waste, including two car batteries and the leaking metal tank, was removed by Humboldt County Environmental Health Division staff and disposed of off-site. The remaining waste was left where it was found and the temporary pits were backfilled. The remaining waste and additional waste still present may be leaking into the surrounding environment. Unpermitted development continues to exist at the subject property; therefore, the damage to resources protected by the Coastal Act is continuing.



For the reasons stated above, I have decided to commence a Cease and Desist and Restoration Order proceeding before the Commission in order to restore the subject property to the condition it was in before the unpermitted development occurred. Restoration will require complete removal of all unpermitted development on the subject property and restorative grading and revegetation of the impacted dune areas.

The procedures for the issuance of Cease and Desist and Restoration Orders are described in Sections 13190 through 13197 of the Commission's regulations. Section 13196(e) of the Commission's regulations states the following:

*Any term or condition that the commission may impose which requires removal of any development or material shall be for the purpose of restoring the property affected by the violation to the condition it was in before the violation occurred.*

Accordingly, any Cease and Desist and Restoration Order that the Commission may issue will have as its purpose the restoration of the subject property to the conditions that existed prior to the occurrence of the unpermitted development described above.

#### **Additional Procedures**

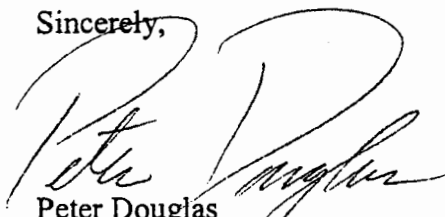
In addition to the procedures for proposing and issuing enforcement orders that are discussed in this letter, Section 30812 of the Coastal Act allows the Executive Director, after providing notice and opportunity for a hearing, to record a Notice of Violation of the Coastal Act against your property. The Commission staff will send you a subsequent notice if it intends to proceed with recordation of a Notice of Violation in this matter.

Please be advised that Coastal Act Sections 30803 and 30805 authorize the Coastal Commission to initiate litigation to seek injunctive relief and an award of civil penalties in response to any violation of the Coastal Act. Coastal Act Section 30820(a) provides that any person who violates any provision of the Coastal Act may be subject to a penalty not to exceed \$30,000. Further, Section 30820(b) states that, in addition to any other penalties, any person who "knowingly and intentionally" performs any development in violation of the Coastal Act can be subject to a civil penalty of up to \$15,000 for each day in which the violation persists. Additional penalties of up to \$6,000 per day can be imposed if a cease and desist or restoration order is violated. Section 30822 further provides that exemplary damages may also be imposed for knowing and intentional violations of the Coastal Act or of any orders issued pursuant to the Coastal Act.

In accordance with Sections 13181(a) and 13191(a) of the Commission's regulations, you have the opportunity to respond to the Commission staff's allegations as set forth in this Notice of Intent to commence Cease and Desist Order and Restoration Order proceedings by completing the enclosed Statement of Defense form. **The Statement of Defense form must be returned to the Commission's San Francisco office, directed to the attention of Sheila Ryan, no later than December 5, 2003.**

The Commission staff is tentatively scheduling the hearing for the Cease and Desist Order and Restoration Order during the Commission meeting that is scheduled for January 14-16, 2004 in Los Angeles. If you have any questions regarding this letter or the enforcement case, please call Sheila Ryan at (415) 597-5894 or send correspondence to her attention at the address listed on the letterhead.

Sincerely,

  
Peter Douglas  
Executive Director

cc: Sheila Ryan, Headquarters Enforcement Officer  
Lisa Haage, Chief of Enforcement  
Sandy Goldberg, Staff Counsel  
Nancy Cave, Northern California Enforcement Supervisor  
Bob Merrill, Central Coast District Deputy Director  
Richard Hendry, Deputy County Counsel and Deputy District Attorney, Humboldt  
County Code Enforcement Unit  
Carolyn Hawkins, Senior Environmental Health Specialist, Humboldt County Division of  
Environmental Health  
Jon Wilcox, California Department of Fish and Game

Encl.: Statement of Defense Form for Cease and Desist Order and Restoration Order

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Street, Apt. No., or PO Box No.	Exhibit 5
City, State, ZIP+	CCC-04-CD-05 and CCC-04-RO-01
PS Form 3800, J	(Niles) Page 6 of 6

NOV 14 2003  
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## CALIFORNIA COASTAL COMMISSION

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



## VIA REGULAR MAIL

December 8, 2003

Robert Niles  
P.O. Box 148  
Loleta, CA 95551

Subject: Notice of Intent letter dated November 14, 2003 and extension of  
deadline for Statement of Defense

Violation No.: V-1-03-014

Location: 3870 Cannibal Road, Loleta, Humboldt County  
(APNs 310-083-03, 310-083-04 and 310-083-06)

Violation Description: Unpermitted grading and solid waste disposal

Dear Mr. Niles:

I received a voicemail message from you on December 2, 2003, in which you confirmed that you received the Notice of Intent (NOI) letter from the Commission on December 1, 2003. I am writing to memorialize the telephone conversation we had last Friday, December 5, 2003.

As we discussed last week, you said that you had read through the Notice of Intent letter but that you didn't fully understand the letter. I asked you to be specific about what you did not understand, so that I could explain the NOI and the Commission process to you, and you stated that you weren't sure of the location of the solid waste discussed in the NOI. The general location is south and west of the barn on your properties at the western end of Cannibal Road. After the Humboldt County Environmental Health Division executed the search warrant on your

property on September 15, 2003, the pits that had been excavated to locate the solid waste were backfilled. The County action was not an abatement, or clean-up, of your property, but was intended to determine the location of the unpermitted materials.

You stated that you have no problem dealing with the Commission and that you are willing to remove the unpermitted development on your properties. You stated a concern about the time of year that the work would take place. I responded that the terms of any enforcement order issued by the Commission would take into account the seasonal nature of the possibility of flooding along the Eel River, and that removal work would be scheduled for an appropriate time of year.

The NOI letter includes a Statement of Defense form, in which you can respond to the information and allegations contained in the NOI. The original deadline for you to submit this form was last Friday, but I am extending this deadline. You must submit the Statement of Defense form to my attention in the Commission's San Francisco office no later than **December 19, 2003**.

If you have any questions about the Statement of Defense form or any additional questions about the Commission enforcement process, please do not hesitate to call me at 415-597-5894.

Sincerely,

Sheila Ryan  
Headquarters Enforcement Officer

cc: Lisa Haage, Chief of Enforcement  
Nancy Cave, Northern California Enforcement Supervisor  
Bob Merrill, North Coast District Manager  
Richard Hendry, Deputy County Counsel and Deputy District Attorney,  
Humboldt County Code Enforcement Unit

**KENNETH M. BAREILLES**

ATTORNEY AT LAW  
533 E. STREET  
EUREKA, CA 95501  
(707) 443-9338  
FAX (707) 444-9742

FAX TO.....CALIFORNIA COASTAL COMM.  
FROM.....KEN BAREILLES  
DATE.....DEC. 19, 2003

RE: NOTICE OF INTENT .....DATED NOV. 14, 2003  
VIOLATION NUMBER V-1-03-014  
ROBERT NILES PROPERTY, 3870 CANNIBAL ROAD, LOLETA, CA.  
AP NO'S 310-083-03, 310-083-04, AND 310-083-06

DEAR COASTAL COMM. PERSON:

THIS OFFICE HAS BEEN CONTACTED BY ROBERT NILES OF P.O. BOX  
148, LOLETA, CA. 95551.

HE HAS BEEN TRYING TO CONTACT ME FOR THE LAST THREE DAYS AND  
I HAVE BEEN HOME SICK WITH THE FLU AND UNABLE TO CONTACT HIM UNTIL  
THIS DATE.

THIS FAX IS TO PRESERVE ANY RIGHTS TO A DEFENSE MR. NILES  
MIGHT HAVE IN THE ABOVE MATTER.

I WILL CONTACT THE PROPER PERSON FROM YOUR OFFICE EARLY NEXT  
WEEK TO COMPLETE ANY ADDITIONAL STEPS NEEDED TO PROVIDE THE DEFENSE  
FOR MR. NILES.

THANK YOU

  
KENNETH M. BAREILLES

CALIFORNIA COASTAL COMMISSION

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



VIA TELECOPY AND REGULAR MAIL

December 23, 2003

Mr. Kenneth M. Bareilles, Attorney at Law  
533 E. Street  
Eureka, CA 95501

Subject: Extension of deadline for Statement of Defense  
Violation No.: V-1-03-014  
Location: 3870 Cannibal Road, Loleta, Humboldt County  
(APNs 310-083-03, 310-083-04 and 310-083-06)  
Violation Description: Unpermitted grading and solid waste disposal

Dear Mr. Bareilles:

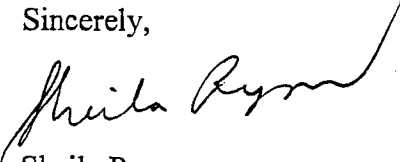
I am in receipt of your letter dated December 19, 2003, requesting an extension for Mr. Niles to submit a Statement of Defense Form in response to the Commission's Notice of Intent (NOI) letter regarding the above referenced matter. The Statement of Defense form was due to me on December 19, 2003, which was already an extension of the original deadline of December 5, 2003 that was set in the November 14, 2003 NOI.

As we discussed today on the telephone, staff will grant another short extension in this matter, but please note that any further extensions cannot be granted without additional written requests

and written demonstration of good cause (see California Code of Regulations Title 14, Division 5.5, Section 13181 (b)). Mr. Niles should submit the Statement of Defense form to my attention in the Commission's San Francisco office no later than **January 6, 2004**.

If you have any questions about the Statement of Defense form or any additional questions about the Commission enforcement process, please do not hesitate to call me at 415-597-5894.

Sincerely,



Sheila Ryan  
Headquarters Enforcement Officer

cc: Lisa Haage, Chief of Enforcement  
Nancy Cave, Northern California Enforcement Supervisor  
Bob Merrill, North Coast District Manager  
Robert Niles, property owner

**KENNETH M. BAREILLES**

ATTORNEY AT LAW

533 E. STREET  
EUREKA, CA 95501  
(707) 443-9338  
FAX (707) 444-9742

December 31, 2003

California Coastal Commission  
45 Fremont, Suite 2000  
San Francisco, CA. 94105-2219

Attn: Ms. Sheila Ryan

Re: Statement of Defense for Robert Niles  
Violation No.: V-1-03-014  
3870 Cannibal Road, Loleta, CA., Humboldt County

Dear Ms. Ryan:

Pursuant to our telephone conversation of December 30, 2003,  
I am enclosing the Statement of Defense on behalf of Mr. Robert  
Niles.

Please accept this Statement of Defense on behalf of Mr. Niles  
and contact my office regarding the next step for Mr. Niles to per-  
form to conclude this matter.

I have contacted the office of Richard Hendry, of the Humboldt  
County Counsel's office and advised Mr. Hendry's office that I am  
representing Mr. Niles in this matter.

I will keep your office advised as to the outcome of our dis-  
cussions with Mr. Hendry's office.

Naturally, we would like to conclude both of these matters  
as soon as possible with both the Coastal Commission and the Hum-  
boldt County Code Enforcement Unit.

Thank you for your cooperation in this matter.

Very truly,



KENNETH BAREILLES

KMB/nb  
Encl:



## CALIFORNIA COASTAL COMMISSION

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

**STATEMENT OF DEFENSE FORM**

DEPENDING ON THE OUTCOME OF FURTHER DISCUSSIONS THAT OCCUR WITH THE COMMISSION ENFORCEMENT STAFF AFTER YOU HAVE COMPLETED AND RETURNED THIS FORM, (FURTHER) ADMINISTRATIVE OR LEGAL ENFORCEMENT PROCEEDINGS MAY NEVERTHELESS BE INITIATED AGAINST YOU. IF THAT OCCURS, ANY STATEMENTS THAT YOU MAKE ON THIS FORM WILL BECOME PART OF THE ENFORCEMENT RECORD AND MAY BE USED AGAINST YOU.

YOU MAY WISH TO CONSULT WITH OR RETAIN AN ATTORNEY BEFORE COMPLETING THIS FORM OR OTHERWISE CONTACT THE COMMISSION ENFORCEMENT STAFF.

This form is accompanied by either a cease and desist order and restoration order issued by the Executive Director or a notice of intent to initiate cease and desist order and restoration order proceedings before the Coastal Commission. This document indicates that you are or may be responsible for, or in some way involved in, either a violation of the Coastal Act or a permit issued by the Commission. This form asks you to provide details about the (possible) violation, the responsible parties, the time and place the violation (may have) occurred, and other pertinent information about the (possible) violation.

This form also provides you the opportunity to respond to the (alleged) facts contained in the document, to raise any affirmative defenses that you believe apply, and to inform the staff of all facts that you believe may exonerate you of any legal responsibility for the (possible) violation or may mitigate your responsibility. You must also enclose with the completed statement of defense form copies of all written documents, such as letters, photographs, maps, drawings, etc. and written declarations under penalty of perjury that you want the commission to consider as part of this enforcement hearing.

You must complete the form (please use additional pages if necessary) and return it no later than **December 5, 2003** to the Commission's enforcement staff at the following address:

Sheila Ryan  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105

If you have any questions, please contact Sheila Ryan at 415-597-5894.

1. **Facts or allegations contained in the notice of intent that you admit (with specific reference to the paragraph number in the notice of intent):**

Admit that car bodies, trash, and misc. garbage items have been  
buried on subject property over the last 50 years.

Admit that garbage left by others on subject property was buried  
by Robert Niles' employees at the request of Calif. Dept. of Fish  
and Game employees in an effort to clean-up the County Park known  
as Crab Park, which is open to the public.

Admit that all car bodies, garbage, trash and misc. junk was on the subject property, and was deposited there by members of the public who have access to that area.

2. **Facts or allegations contained in the notice of intent that you deny (with specific reference to paragraph number in the notice of intent):**

Deny that any car bodies, garbage, old appliances, and other items of garbage left on Niles property were placed on said property by Robert Niles or any of his employees.

Deny that any buried car bodies were placed on Niles property and/or buried on Niles property by Robert Niles or any of his employees.

3. **Facts or allegations contained in the notice of intent of which you have no personal knowledge (with specific reference to paragraph number in the notice of intent):**

Robert Niles has no knowledge regarding who deposited the car bodies on Niles' property, and also has no knowledge regarding who deposited the trash, garbage, and misc. items of junk on Niles' property. The area involved in this case is open to the public and cars are often abandoned on that location, and garbage is often deposited on the subject property by members of the public who have access to that area.

4. Other facts which may exonerate or mitigate your possible responsibility or otherwise explain your relationship to the possible violation (be as specific as you can; if you have or know of any document(s), photograph(s), map(s), letter(s), or other evidence that you believe is/are relevant, please identify it/them by name, date, type, and any other identifying information and provide the original(s) or (a) copy(ies) if you can:

The area involved is open to the public. Mr. Niles has attempted to fence off the problem area, and has constructed many fences to surround the area. The fences are always torn down by drug uses and others who frequent that area for "parties"

Trespasses onto Niles property continue to take place to this date and will probably continue to take place in the future. The persons who trespass onto the Niles property leave garbage, old cars, and old appliances on Niles' property and in the County Park area as well.

5. Any other information, statement, etc. that you want to offer or make:

Robert Niles or any of his employees have never buried any of their own garbage and/or abandoned vehicles on the Niles' property or on the Humboldt County property known as "Crab Park".

Robert Niles does admit to burying 5 or 6 dead cows on his own land in the last few years since the local tallow company has closed down.

The Humboldt County Dept. of Agriculture was contacted and proper instructions were received and followed as to how to bury the dead cows.

6. Documents, exhibits, declarations under penalty of perjury or other materials that you have attached to this form to support your answers or that you want to be made part of the administrative record for this enforcement proceeding (Please list in chronological order by date, author, and title, and enclose a copy with this completed form):

Maps, and photos will be submitted to show the proximity of Mr. Niles property and the property known as Crab Park. The maps and photos will show that access to the property by the public is available and will continue to be available in the future.

**CALIFORNIA COASTAL COMMISSION**

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

**VIA CERTIFIED and REGULAR MAIL**

March 30, 2004

Robert Niles  
P.O. Box 148  
Loleta, CA 95551-0148

**Subject:** Notification of Intent to Record a Notice of Violation of the Coastal Act

**Violation No.:** V-1-03-014

**Location:** 3870 Cannibal Road, Loleta, Humboldt County  
(APNs 310-083-03, 310-083-04 and 310-083-06)

**Violation Description:** Unpermitted grading, solid waste disposal and removal of major vegetation

Dear Mr. Niles:

The purpose of this letter is to notify you of my intent, as the Executive Director of the California Coastal Commission ("Commission"), to record a Notice of Violation for unpermitted development. The unpermitted development consists of grading, disposal of solid waste and removal of major vegetation. This unpermitted development is located on property you own at 3870 Cannibal Road, Loleta, Humboldt County, APN 310-083-04 and APNs 310-083-03 and 310-083-06 ("subject property"). The subject property contains environmentally sensitive dune and estuary habitat near the mouth of the Eel River.

"Development" is defined in section 30106 of the Coastal Act as follows:

"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreation use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvest of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations... (emphasis added)

The grading of pits, clearing of dune vegetation and the placement and burial of solid waste constitute development under the Coastal Act, and as such are subject to Coastal Act permit requirements. We have reviewed our records and determined that a Coastal Development Permit was not applied for nor obtained for the cited development.

#### **Notice of Violation**

The Commission's authority to record a Notice of Violation is set forth in Section 30812 of the Coastal Act, which states the following:

*(a) Whenever the executive director of the commission has determined, based on substantial evidence, that real property has been developed in violation of this division, the executive director may cause a notification of intention to record a notice of violation to be mailed by regular and certified mail to the owner of the real property at issue, describing the real property, identifying the nature of the violation, naming the owners thereof, and stating that if the owner objects to the filing of a notice of violation, an opportunity will be given to the owner to present evidence on the issue of whether a violation has occurred.*

I am issuing this notice of intent to record a Notice of Violation because unpermitted development has occurred at the subject property. This determination is based on observations of the site by Commission staff on September 15, 2003, on photographs of the site taken by Humboldt County staff on September 15, 2003, and on documents from Humboldt County planning, environmental health, and code enforcement staff regarding the unpermitted development. If you object to the recordation of a Notice of Violation in this matter and wish to present evidence on the issue of whether a violation has occurred, you must respond in writing, within 20 days of the postmarked mailing of the notification. If, within 20 days of mailing of the notification, you fail to inform the Commission of an objection to recording a Notice of Violation, I shall record the Notice of Violation in the Humboldt County recorder's office as provided for under Section 30812 of the Coastal Act.

I previously notified you of the Coastal Act violations on the subject property in a Notice of Intent (NOI) letter dated November 14, 2003. The NOI informed you of my intention to initiate Cease and Desist and Restoration Order proceedings for the unpermitted development on the subject property, and informed you that staff would send you a second notice if it intended to proceed with the recordation of a Notice of Violation in this matter. Staff received a Statement of Defense from you regarding the unpermitted development on January 5, 2004. The Commission staff is scheduling the hearing for the proposed Cease and Desist Order and Restoration Order during the Commission meeting that is scheduled for May 12-14, 2004 in San Rafael. **If you object to the recordation of a Notice of Violation in this matter and wish to present evidence on the issue of whether a violation has occurred, this would also be heard at the May hearing and you must respond in writing, to the attention of Sheila Ryan, no later than April 19, 2004.**

If you have any questions regarding this letter or the enforcement case, please call Sheila Ryan at (415) 597-5894 or send correspondence to her attention at the address listed on the letterhead.

Sincerely,



Peter Douglas  
Executive Director

cc: Sheila Ryan, Headquarters Enforcement Officer  
Lisa Haage, Chief of Enforcement  
Sandy Goldberg, Staff Counsel  
Nancy Cave, Northern California Enforcement Supervisor  
Bob Merrill, Central Coast District Deputy Director  
Ken Bareilles, attorney for Mr. Niles

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Return Receipt Fee (Endorsement Required)	1.75
Restricted Delivery Fee (Endorsement Required)	0
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S. Ryan	
Sent To Robert Niles	
Street, Apt. No., or PO Box No. PO Box 148	
City, State, ZIP+4 Lolita, CA 95501-0148	
PS Form 3800, June 2002	

Exhibit 10  
CCC-04-CD-05 and CCC-04-RO-01  
(Niles) Page 3 of 3

RECORD COPY

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

CALIFORNIA COASTAL COMMISSION  
Attention: Sheila Ryan  
45 FREMONT STREET, SUITE 2000  
SAN FRANCISCO, CA 94105

**2004-13749-3**  
Recorded — Official Records  
**Humboldt County, California**  
Carolyn Crnich, Recorder  
Recorded by CA ST COASTAL COMMISSION  
Exempt from payment of fees  
Clerk: MM Total: 0.00  
Apr 26, 2004 at 10:36  
**CONFORMED COPY**

STATE OF CALIFORNIA OFFICIAL BUSINESS  
Document entitled to free recordation  
Pursuant to Government Code §27383

NOTICE OF VIOLATION OF THE COASTAL ACT  
(Public Resources Code Section 30812)

I, Peter Douglas, declare:

1. I am the Executive Director of the California Coastal Commission.
2. A violation of the California Coastal Act of 1976 (Public Resources Code Section 30000, et seq.) has occurred on those certain parcels of real property situated in the County of Humboldt, State of California, more particularly described as follows:

**3870 Cannibal Road**  
**Loleta, Humboldt County, California, and identified as**  
**Assessor's Parcel Numbers 310-083-03, 310-083-04 and 310-083-06**

3. This property is located within the Coastal Zone as that term is defined in Section 30103 of the Coastal Act.
4. The record owner of said real property is: Mr. Robert Niles.

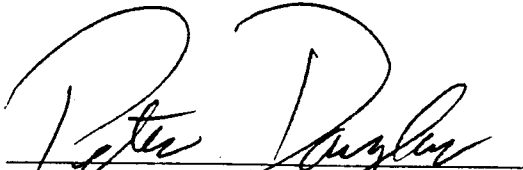
5. The violation of the Coastal Act (Violation File No. V-1-03-014) consists of: unpermitted grading, solid waste disposal and removal of major vegetation in environmentally sensitive estuarine and dune habitat at the mouth of the Eel River.
6. The requirements set forth in Section 30812 for notice and recordation of this Notice of Violation have been complied with. Recording this notice is authorized under Section 30812 of the California Public Resources Code.
7. The California Coastal Commission notified the record owner, Mr. Robert Niles, of its intent to record a Notice of Violation in this matter in a letter dated March 30, 2004.
8. As of this date, the Commission has not received a written objection to the recordation of the Notice of Violation. Therefore the Commission is recording the Notice of Violation as provided for under Section 30812 of the California Coastal Act.



*San Francisco PD*


Executed at 4/22/04, California, on 4/22/04

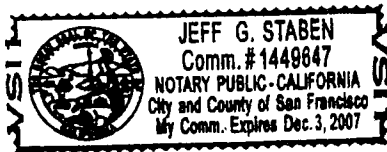
I declare under penalty of perjury that the foregoing is true and correct.

  
PETER DOUGLAS, Executive Director

STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO

On this 22 day of APRIL, in the year 2004, before me the undersigned Notary Public, personally appeared Peter Douglas, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument as Executive Director of the California Coastal Commission and acknowledged to me that the California Coastal Commission executed it.

  
Notary Public in and for Said State and County



**KENNETH M. BAREILLES**

ATTORNEY AT LAW  
533 E. STREET  
EUREKA, CA 95501  
(707) 443-9338  
FAX (707) 444-9742

April 28, 2004

California Coastal Commission  
45 Fremont, Suite 2000  
San Francisco, CA. 94105-2219

Attn: Ms. Sheila Ryan

Re: Intent to Object to Recordation of Notice of Violation

Dear Ms. Ryan:

This letter is to formally object to the recordation of the notice of violation against Mr. Niles.

We previously sent your office a detailed statement of defense in December of 2003.

I do not know what information is needed in addition to the above information contained in the above referred statement of defense.

I apologize for the lateness of this letter. It was supposed to be in your office no later than April 19, 2004.

We would like to get on the May calendar for the Eureka hearing if possible.

If not possible to get on the May calendar, then we would ask to be placed on the agenda for the June 2004 calendar for the Eureka meeting.

I will FAX a copy of this letter to your office at this time and mail the original to your office today as well.

Thank you.

Very truly:

  
KENNETH BAREILLES

KMB/ct

## CALIFORNIA COASTAL COMMISSION

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



## VIA TELECOPY AND REGULAR MAIL

April 30, 2004

Mr. Kenneth M. Bareilles, Attorney at Law  
533 E. Street  
Eureka, CA 95501

Subject: Recordation of Notice of Violation

Violation No.: V-1-03-014

Location: 3870 Cannibal Road, Loleta, Humboldt County  
(APNs 310-083-03, 310-083-04 and 310-083-06)

Violation Description: Unpermitted grading and solid waste disposal and removal of  
major vegetation

Dear Mr. Bareilles:

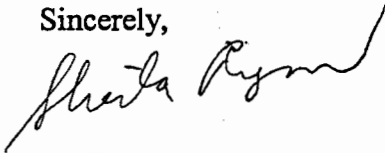
I am in receipt of your letter dated April 28, 2004, stating an objection to the recordation of a Notice of Violation in the above-referenced matter. Your letter included a copy of your December 31, 2003 letter and Statement of Defense regarding this matter that Commission staff originally received on January 5, 2004. The deadline for filing a written objection to the recordation of this Notice was April 19, 2004, and staff has already proceeded to record the Notice. Staff received a conformed copy of the Notice of Violation, which was recorded on April 26, 2004, from the Humboldt County Recorder's Office on April 28, 2004.

As we discussed last Thursday on the telephone, the Notice of Violation would be extinguished as soon as the Commission confirms that the violation on the subject property has been resolved. The proposed Cease and Desist and Restoration Orders, which will likely be heard at the Commission's June hearing, sets a schedule for removal of the solid waste on the property. When I explained that the Commission hearings are held in different locations each month and that the June hearing would be held in Los Angeles, you indicated that you would likely not attend the hearing. I indicated that the Commission would not be willing to delay a hearing in this matter until September, which is when the Commission meets each year in Eureka, because the best time for removal work will be in late summer before the rainy season begins.

Commission staff is encouraged by conversations we have had with Mr. Niles, in which he has indicated that he will resolve the violation and remove the waste that is buried on his property. We appreciate that Mr. Niles has reported recent incidents of illegal activities on and near his property, and the enforcement unit has opened new case files investigating these reports.

If you have any questions about this matter or the Commission's enforcement process, please do not hesitate to call me at 415-597-5894.

Sincerely,

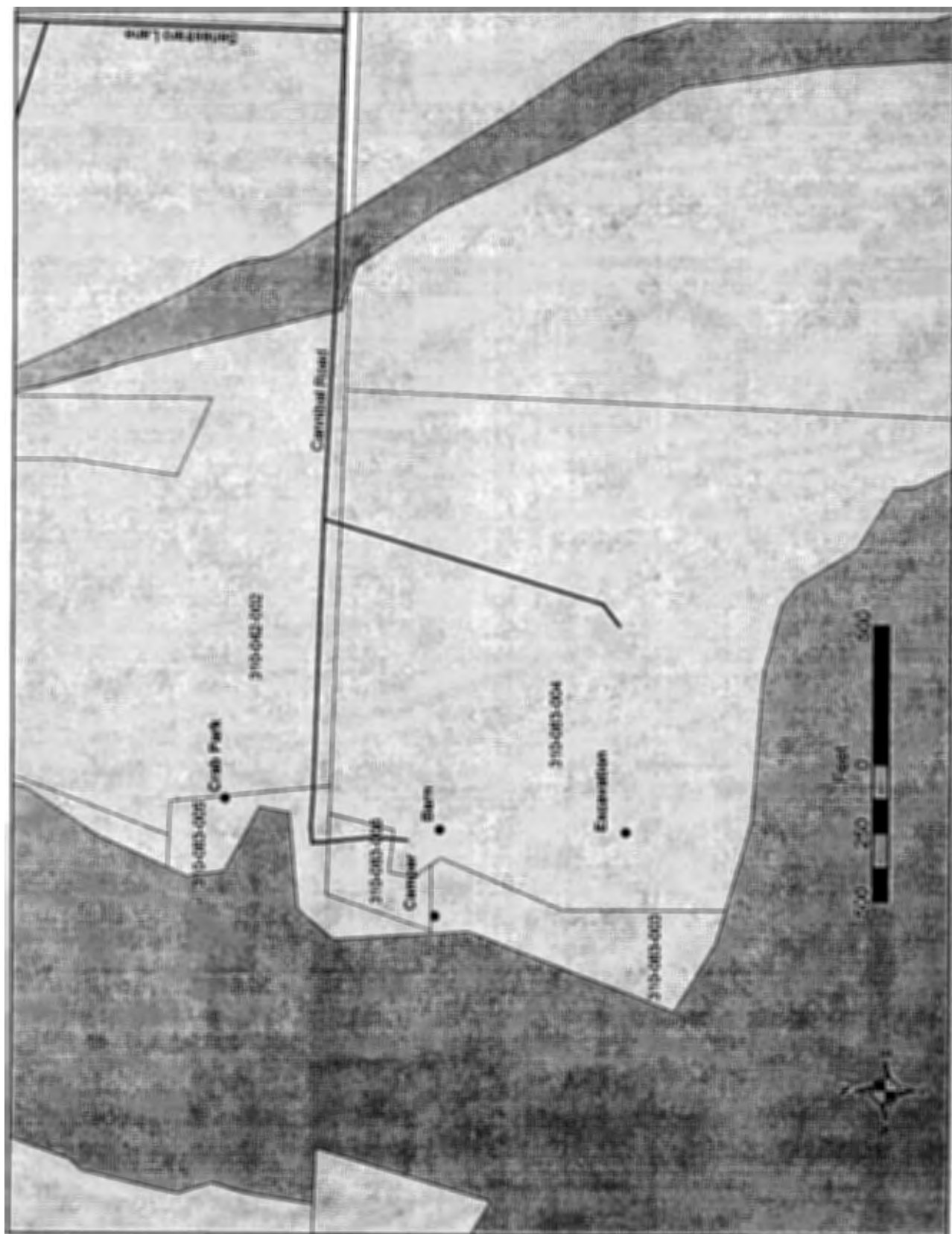


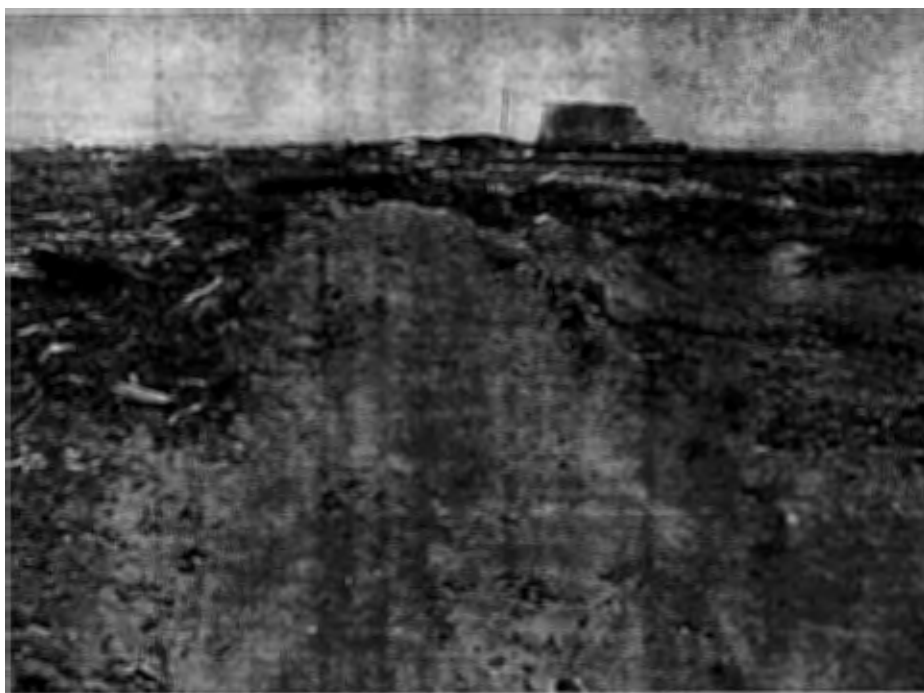
Sheila Ryan  
Headquarters Enforcement Officer

cc: Lisa Haage, Chief of Enforcement  
Nancy Cave, Northern California Enforcement Supervisor  
Bob Merrill, North Coast District Manager  
Robert Niles, property owner

# Solid Waste Illegal Disposal Site

Complaint # 03/04-594





**Exhibit 14a.** Photograph of sand excavation area on subject property.



**Exhibit 14b.** Photograph of sand excavation area on subject property.