

CALIFORNIA COASTAL COMMISSION

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Commission Action:	

REVISED STAFF REPORT:
PERMIT AMENDMENT

APPLICATION NO.: 1-01-052-A2

APPLICANT: AVATARIC RUCHIRASALA OF ADIDAM

AGENTS: Jack Lewis
Julia Knox, Esq.
Michael J. Wood, Esq.

PROJECT LOCATION: 1512 and 1570 Stagecoach Road, north of Trinidad,
Humboldt County, (APNs 517-011-05 & -04).

**DESCRIPTION OF PROJECT
PREVIOUSLY APPROVED
AND SUBSEQUENTLY
AMENDED:**

After-the-fact authorization of a six-foot-high, wooden perimeter fence, gate, and landscaping, with special conditions that the fencing along the parcel's roadside frontage be reduced from six-feet to four-feet in height and screened subject to a revised landscaping plan. Project subsequently amended to: (1) replace the existing fence and extend it around the perimeter of the adjoining parcel with a landscaped six-foot-high wire field fence; (2) construct an approximately 250-square-foot solarium addition to the existing residence's attached garage; (3) modify and

enlarge the current driveway and parking area; (4) install a new landscaped path from parking area to patio and from parking area to house; (5) construct a slate patio and other landscaping yard improvements; (6) develop walking paths on the vacant adjoining parcel; and (7) relocate the existing pump house, water tank, generator, gas tank, and install four 5,000-gallon water storage tanks.

DESCRIPTION OF SECOND

AMENDMENT REQUEST: Modify previously-granted permit as amended to convert the water supply from a well water source to a surface water diversion based system drafting from adjoining McNeil Creek.

**SUBSTANTIVE FILE
DOCUMENTS:**

- 1) CDP File No. 1-83-096 (Knight & Preston);
- 2) CDP File No. 1-01-052 (Eleutherian Pan-Communion of Adidam);
- 3) CDP Reconsideration File No. 1-01-052-R (Eleutherian Pan-Communion of Adidam);
- 4) CDP Extension File No. 1-01-052-E1 (Avataric Ruchirasala of Adidam);
- 5) CDP Amendment File No. 1-01-052-A1 (Avataric Ruchirasala of Adidam);
- 6) County of Humboldt Special Permit No. SP-03-25; and
- 7) County of Humboldt Local Coastal Program.

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission approve with conditions, the requested permit amendment. The amendment is the second amendment to the after-the-fact coastal development permit originally granted for the construction of rural residential perimeter fencing on a parcel in the Stagecoach Road Area-of-Deferred-Certification approximately two miles north of the City of Trinidad. The original 2001 permit (CDP No. 1-01-052, Eleutherian Pan-Communion of Adidam, Applicant) authorized the after-the-fact construction of a wooden perimeter fence, gate, and landscaping. The permit was conditioned to require the applicant to reduce the height of the fencing along the parcel's Stagecoach Road frontage from six to four feet, and to submit a revised landscaping plan for the review and approval of the Executive Director. A subsequent amendment to this permit granted in 2004 (CDP No. 1-01-052-A1, Avataric Ruchirasala of Adidam, Applicant) authorized several additional improvements and changes to the fencing, off-street parking and utilities storage areas on the parcel and the applicant's adjoining parcel, and granted permission to the applicant to develop several trails on the

property involving the removal and clearing of minor forest understory vegetation and downed woody debris.

Staff believes this further amended project with the attachment of certain special conditions would be consistent with the policies of Chapter 3 of the Coastal Act. The revised project as conditioned would comprise an allowable use under Section 30236 for development that entails the substantial alteration of a coastal stream for which adequate protections and the best feasible mitigation measures have been included to protect coastal resources from significant adverse environmental impacts.

Four of the special conditions of the permit as previously amended by the Commission are reimposed to assure that the amended development remains consistent with the policies of the Coastal Act. In addition, staff is also recommending that two new special conditions be attached to the permit as amended to: (1) reiterate the restrictions placed by the State Water Resources Control Board and the California Department of Fish and Game upon the maximum quantity of the water to be appropriated and the manner in which the diversion would be undertaken so as to prevent over-drafting of the creek; and (2) require an erosion and runoff control plan to prevent sedimentation impacts to McNeil Creek from occurring from the trenching for installation of the water delivery piping and the pump's electrical power line.

As conditioned, staff has determined that the development with the proposed amendment would be consistent with the policies of the Coastal Act.

STAFF NOTES:

1. Procedural Note.

Section 13166 of the California Code of Regulations states that the Executive Director shall reject an amendment request if: (a) it lessens or avoids the intent of the approved permit; unless (b) the applicant presents newly discovered material information, which he or she could not, with reasonable diligence, have discovered and produced before the permit was granted.

The Executive Director has determined that the proposed amendment would not lessen or avoid the intent of the conditionally approved permit and subsequent permit amendment. On December 14, 2001, Coastal Permit No. 1-01-052 (Eleutherian Pan-Communion of Adidam) was approved by the Commission with two special conditions intended to assure consistency with the provisions of the Coastal Act for protecting visual resources, namely ensuring that new development is visually compatible with the character of surrounding areas. As the now proposed water system improvements would be constructed in subsurface or at-grade locations that would be fully invisible from view

from public vantage points, the development as amended would conform to the policies and standards of the Coastal Act with respect to visual resource protection.

Therefore, for the reasons discussed above, the Executive Director has determined that the proposed amendment would not lessen or avoid the intent of the conditionally approved permit and has accepted the amendment request for processing.

2. Commission Jurisdiction and Standard of Review.

The project subject to this coastal development permit amendment is located within an Area-of-Deferred-Certification along the west side of Stagecoach Road and Partick's Point Drive within the Trinidad Planning Area of the County of Humboldt's Local Coastal Program. The project site is located between the first public road and the sea. Pursuant to Section 30604(a) of the Coastal Act, prior to certification of a certified LCP for this geographic segment, the standard of review that the Commission must apply to the project is the Chapter 3 policies of the Coastal Act.

3. Scope.

This staff report addresses only the coastal resource issues affected by the proposed permit amendment, provides recommended special conditions to reduce and mitigate significant impacts to coastal resources and achieve consistency with the certified LCP and the public access and recreation policies of the Coastal Act, and provides findings for conditional approval of the amended project. All other analysis, findings, and conditions related to the originally permitted project and the subsequent permit amendment, except as specifically affected by this proposed permit amendment and addressed herein, remain as stated within the revised findings for the original development adopted in by the Commission on March 6, 2002 and the staff report for the first permit amendment adopted on November 19, 2004.

4. Continuance from June Agenda.

The applicant postponed the public hearing on this permit amendment application from the Commission meeting of June 8, 2005. The hearing was postponed at the behest of the applicant so that staff and the applicant's representative could further discuss concerns raised over the perceived effects that recordation of the permit special conditions as a deed restriction might have over the title of the subject property.

Since the June hearing, the applicant's legal representative has submitted correspondence suggesting specific changes to the wording of Special Condition No. 9, the deed restriction special condition (see Exhibit No. 9). In addition, the letter contains several comments from the applicant's legal counsel: (1) stating her understanding as to the basis for the Commission staff recommending Special Condition No. 7 (with which Commission staff concur); (2) correcting an error within the project description summary

for the preceding Permit Amendment 1-01-052-A1 regarding the location of the starting point of the authorized perimeter fencing; and (3) providing further information as to the location of the source of the spring diversion-based water supply system currently in use at the project site.

With respect to the changes to Special Condition No. 9 proposed by the applicant's representative, staff does not agree that the suggested modifications would be appropriate for the following reasons: (1) the document *is* a deed restriction rather than solely a "recorded document" as portrayed in the applicant's representative's amended condition language; (2) the intent of the special condition *is* to restrict the "use and enjoyment of the property" through the imposition of covenants, conditions, and restrictions to be recorded in the property's title rather than a mere recitation of the terms of the permit as suggested; (3) the scope of restriction's being applied *is not* limited to Special Condition Nos. 7 and 8, but to all special conditions applied to the original permit and subsequent permit amendments; (4) the extinguishment clause of the special condition regards the deed restriction *not* the conditions of the permit; and, moreover, (5) the subject deed restriction condition has been applied to the coastal development permits and permit amendment of hundreds of other coastal developments throughout the state *without* any resulting obfuscation to the scope and/or intent of the permit conditions or causing future clouding of real property title or rights of use.

As a result of the foregoing reasoning, staff has not modified the wording of Special Condition No. 9 as applicant's representative has requested. However, staff has amended the language of Special Condition No. 7, regarding the enumerated permissible uses of water appropriated from McNeil Creek, to add clarity to the condition. Specifically, phrasing has been added to the terms of the special condition to state that future development on vacant parcel APN 517-011-04 would require a further permit amendment and declaring that at the time of the Commission's action on the subject permit amendment, the applicant's permitted water storage capacity is not sufficient to allow the diverted water to serve both the currently permitted uses (the single-family dwelling on APN 517-11-05) as well as those associated with a future residence on APN 517-011-04. Staff believe these changes would adequately address the concerns raised by the applicant's representative without unnecessarily altering the standard language of an established permit special condition.

As regards the other additional information provided by the applicant's representative concerning the correct locations of the perimeter fencing and the source of the current water system, these suggested revisions have been incorporated within the findings for the permit for the amended development at Findings Sections IV.A.3 and IV.B.2 (pp. 11 and 14), below.

The Commission will open the public hearing for the amended development and may vote on the matter at its July 13-15, 2005 meeting.

I. MOTION, STAFF RECOMMENDATION, AND RESOLUTION:

The staff recommends that the Commission adopt the following resolution:

Motion:

I move that the Commission approve the proposed amendment to Coastal Development Permit No. 1-052-A2 pursuant to the staff recommendation.

Staff Recommendation of Approval:

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

Resolution to Approve with Conditions:

The Commission hereby approves the proposed permit amendment and adopts the findings set forth below, subject to the conditions below, on the grounds that the development with the proposed amendment, as conditioned, will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because all feasible mitigation measures and alternatives have been incorporated to substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS: See attached.

III. SPECIAL CONDITIONS:

Note: Special Condition No. 1 of the original permit was modified and was reimposed as a condition of Permit Amendment No. 1-01-052-A1. Special Condition Nos. 2 and 3 of the original permit were previously deleted by Coastal Development Permit Amendment No. 1-01-052-A1. Special Condition Nos. 1, 4, 5, and 6 of the first amended permit are reimposed as conditions of the current permit amendment without any changes and remain in full force and effect. Special Condition Nos. 7 and 8 below, are additional new conditions attached to this permit amendment.

For comparison, the text of the original permit and the first permit amendment conditions are included in Exhibit No. 7 and 8, respectively.

7. Water Supply System Standards and Limitations

A. The water supply system authorized by this permit amendment shall be subject to the following performance standards and limitations on use:

1. The water appropriated shall be limited to the quantity that can be beneficially used and shall not exceed 1,950 gallons per day by direct diversion from October 1 of each year to August 1 of the succeeding year;
2. The water appropriation authorized by this permit is limited to the use of water by the existing single-family residence on APN 517-011-05, the irrigation of lawn area not in excess of one-half ($\frac{1}{2}$) acre), ornamental shrubbery or gardens at any single establishment, and for human consumption, cooking and sanitary needs associated with the single-family use of APN 517-011-05 as authorized by Coastal Development Permit Nos. 1-83-096 and 1-01-052, and Coastal Development Permit Amendment No. 1-01-052-A1. Use of water drawn from McNeil Creek by the surface water diversion authorized by Permit Amendment No. 1-01-052-A2 to serve a single-family residence on APN 517-011-04 is not authorized by this permit and would require a further amendment. At the time of approval of Permit Amendment No. 1-01-052-A2, the applicant's permitted water storage capacity is not sufficient to allow the diverted water to serve the permitted uses and a future single-family residence on APN 517-011-04; and
3. For the protection of riparian habitat and aquatic species, in and below the point of authorized water appropriation diversion, the permittee shall bypass at least fifty percent (50%) of the surface flow of McNeil Creek at any time diversion for domestic use is occurring.

B. The permittee shall undertake the development in accordance with these standards and limitations. Any proposed changes to the approved water supply system or to the uses enumerated in Section A.2 shall be reported to the Executive Director. No changes to the approved water system or the development of new uses that the water system would serve shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

8. Erosion and Runoff Control Plan

A. **PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT AMENDMENT NO. 1-01-052-A2**, the applicant shall submit, for review and approval of the Executive Director, a plan for erosion and run-off control.

- 1) The run-off, spill prevention and response plan shall demonstrate that:

- (a) Run-off from the project site shall not increase sedimentation in coastal waters;
 - (b) Run-off from the project site shall not result in pollutants entering coastal waters; and
 - (c) Use of relevant best management practices (BMPs) as detailed in the "California Storm Water Best Management (Construction and Industrial/Commercial) Handbooks, developed by Camp, Dresser & McKee, *et al.* for the Storm Water Quality Task Force (i.e., BMP Nos. EC1-Scheduling, EC2-Preservation of Existing Vegetation, SE1-Silt Fence and/or SE9-Straw Bale Barrier; see <http://www.cabmphandbooks.com>).
- 2) The plan shall include, at a minimum, the following components:
 - (a) A schedule for installation and maintenance of appropriate construction source control best management practices (BMPs) to prevent entry of stormwater run-off into the construction site and the entrainment of excavated materials into run-off leaving the construction site.
- B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

9. Deed Restriction Recordation of Permit Special Conditions

PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT AMENDMENT NO. 1-01-052-A2, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares as follows:

A. Project and Site Description.

1. Project Setting and Background

The project site is comprised of two blufftop lots located on the west side of Stagecoach Road approximately ¼ mile south of the northern intersection with Patrick's Point Drive and approximately 2.2 miles north of Trinidad (Exhibit Nos. 1 & 2). The site is located in an area of low-density, rural residential development along a densely vegetated, narrow road corridor. These blufftop lots lie at an elevation of approximately 200 feet above sea level. The southerly lot, Assessor's Parcel No. (APN) 517-011-05, is approximately .98-acre in size and is developed with a single-family residence built pursuant to a coastal development permit approved by the Commission in 1983 (CDP No. 1-83-096, Knight). The northerly parcel, APN 517-011-04, encompasses approximately five acres and, with the exception of those portions of the off-street parking and utilities storage facilities authorized under a preceding permit amendment (CDP Amendment No. 1-01-052-A1, Avataric Ruchirasala of Adidam, Applicant), is currently vacant and unimproved. The site and surrounding area is vegetated with a North Coast Coniferous Forest consisting primarily of a Sitka spruce (Picea sitchensis) / western hemlock (Tsuga heterophylla) complex, with an attending understory of red alder (Alnus rubra), California wax myrtle (Myrica californica), swordfern (Polystichum munitum), western bracken fern (Pteridium aquilinum), evergreen huckleberry (Vaccinium ovatum), salal (Gaultheria shaloni), and related undergrowth species.

Water service for the existing residence is provided by a water line originating on APN 517-011-06, the property across Stagecoach Road from the project parcels. The property is developed with a single-family residence and related rural residential accessory uses. Water for these uses as well as the project site is provided by a stream diversion pumping system drafting from McNeil Creek. During the late summer and early autumn months before the onset of the rainy season, when the flows within McNeil creek are low, the existing service does not have the capacity to provide water to all of the connections, leading to less than adequate quantities being provided to the applicant's property.

2. Description of Originally Approved Project

The original permit application was approved by the Commission on December 14, 2001. The permit application requested an after-the-fact authorization for a six-foot-high, solid wood perimeter fence, gate, and landscaping. The fence is constructed of 1" x 6" vertical redwood slats, 2" x 8" horizontal redwood slats across the top, on 6" x 6" vertical posts

and 2" x 4" stringers spaced every ten feet, with a similarly designed gate across the driveway (Exhibit No. 5). The fence extends along the north, east, and south property boundaries of APN 517-011-05 for approximately 124, 186, and 127 linear feet respectively (Exhibit No. 3). The applicant indicated in the original permit application that the purpose of the fence is to provide security and privacy, as the residence is used from time to time as a retreat for the applicant's spiritual leader.

To screen the view of the fence from Stagecoach Road, the applicant also proposed to landscape along the eastern fence line paralleling the road. The applicant proposed to plant two types of vegetation native to the area including 32 silk tassel (*Garrya elliptica*) bushes, four to five feet apart, and 22 Clematis (*Clematis* sp.) vines. The applicant also proposed to install landscaping irrigation to help establish the vegetation.

The three special conditions attached to the original permit (see Exhibit No. 7) included requirements to assure visual compatibility with the character of the surrounding area. The conditions required that the run of the fence along the property's eastern side be reduced in height from six to four feet to reduce the apparent mass of the fence. In addition, the screening plants were to be installed consistent with a revised landscaping plan wherein specific standards as to their spacing, irrigation, maintenance, and upkeep were to be detailed.

3. Description of Previously-Issued Permit Amendment

On November 19, 2004, the Commission approved an amendment to the original after-the fact permit. The amended project included several changes and additions to the fencing and landscaping required under the original permit. In addition, permission for a variety of other site improvements to the property's residence, its off-street parking and utility storage areas, and grounds was also granted. The amended project elements are described as follows:

- Replace the existing fencing along the eastern side of APN 517-011-05 with a different type of fencing to be located approximately five feet westerly from the existing fence. The new fence extends to six feet in height and is constructed of 4" x 4" galvanized wire mesh field fencing materials strung on 4" x 4" wooded posts set in concrete footings to an 18-inch-depth and spaced six to eight feet apart with 2" x 4" wooden top and bottom stringer rails. Plant the front of the replacement fence with "privacy landscaping."
- Retain the existing wooden fence run along Stagecoach Road in place for a period of one to two years to allow the landscaping in front of the new fence to mature to a point where privacy screening has been established. Retain the existing wooden fence segment along the southerly property line in an unchanged condition and remove the fence segment along the boundary between the northerly adjoining parcel.

- Install landscaped wire mesh field fencing along the eastern and northern perimeter of adjoining co-owned Assessor's Parcel No. 517-011-04, commencing at a point approximately 40 feet south-southwesterly from the northeastern corner of APN 517-011-05 and run approximately 20 feet westerly, 115 feet northerly, 36 feet easterly, and 65 feet southerly to enclose an approximately 3,200-square-foot utility and guest parking area for four vehicles to be created across the common property line of the two parcels. The new fencing would continue running northerly from the utility/guest parking area along the eastern side of currently vacant APN 517-011-04, setback a minimum distance of 25 feet from the centerline of Stagecoach Road until coming within 100 feet of the McNeil Creek riparian corridor. At this point the new fence would turn and run westerly parallel to the creek drainage for a distance of approximately 650 feet to the parcel's blufftop edge.
- Modify the existing driveway and off-street parking facilities by constructing a new 10-foot-wide gravel driveway whose alignment would run southwesterly from the current entry point onto APN 517-011-05 approximately 75 feet to the existing concrete slab on the southern center of the parcel. Expand the slab to create a 32' x 32' paved parking and turn-around area for three vehicles. Screen the parking area screened with additional "appropriate plants." Construct and back-fill a 30-inch-high stone wall between the new parking area to and across the existing driveway to create a terraced landscaped area at the edge of the stone patio. Remove the remaining portions of the gravel surface of the existing driveway between the stone wall and its street entrance and replace them with "appropriate landscaping."
- Remodel the existing attached two-car garage into a art studio / general utility space. Attach a pre-fabricated approximately 215-square-foot, 15-foot-high solarium onto the landward former entrance to the garage. Install a 23-foot-diameter stone patio along the southeastern side of the garage and clear a footpath between the patio and the new parking area.
- Relocate the existing pump house, water tank, generator, and liquefied petroleum gas tank into the newly created utility / guest parking area. Extend new water, gas and electrical power lines to the relocated utilities from their former sites. Install four 5,000-gallon water storage tanks in tandem within the utility area. Construct a new 10' x 12', seven- to eight-foot-high pump house and water treatment structure. Clear a walking pathway between the utility /guest parking area to the main residence.
- Construct a series of three-foot-wide, unimproved surface walking paths across APN 517-011-04, remove downed trees and limbs, and groom the site of debris as

necessary for safety and wildfire management purposes. No major vegetation is to be removed.

The revised findings staff report for the prior permit amendment is attached as Exhibit No. 8 and is hereby incorporated by reference. The three new special conditions attached to the permit amendment included requirements to: (1) vest the permit amendment upon issuance; (2) Secure the developed parcel's rights to use of the utilities storage and off-street parking facilities located on the adjacent vacant parcel through recordation of an easement establishing such rights; and (3) remove the existing fence within one year of the Commission's action on the subject permit amendment.

4. Description of Current Permit Amendment

The applicant now proposes to modify the method by which the parcel receives its water supply. The current water supply entails a service line from a well water system situated on an adjoining property located across Stagecoach Road from the subject property developed with a single-family dwelling. Due to interruptions in service associated with the existing water supply system, the applicant began looking for alternative sources of water. Exploratory bores dug on the property in 2003 (CDP No. 1-02-142, Eleutherian Pan-Communion of Adidam, Applicant) were unsuccessful in finding a groundwater source from which a well-based system might have been developed. The applicant subsequently applied for a water allocation from the State Water Resources Control Board – Division of Water Rights (SWRCB-DWR) to develop a separate water system drafting from McNeil Creek along the northern side of the five-acre vacant parcel abutting the creek at a location approximately 150 west from the parcel's frontage with Stagecoach Road (see Exhibit No. 4).

The proposed stream diversion water system would entail the installation of a ½ horsepower, 220-volt, three-inch-diameter submersible pump encased in a four-foot length of six-inch-diameter well casing into a naturally formed hole within the streambed of McNeil Creek. The casing and the pump would be secured in the creek by piling rocks obtained from within the creek bed around the pump casing. In addition wire rope cabling would be attached to the water line above the casing and tied to nearby trees. The pump's electrical power wiring harness would be run through flexible conduit hosing along the ground surface beside the water line to a point approximately 15 feet from the pump where it would be connected into a junction box. From the junction box, the encased power cable and water line would continue up to the top of the slope above the creek where it would be placed in a roughly one-foot-wide, one-foot-deep shallow trench running the remaining 500 feet to the water filtration and storage tank facilities developed pursuant to the prior-issued permit amendment along the southern side of the vacant parcel. The water piping and electric line would be tied into the facilities at the utilities and water treatment and storage area.

On September 6, 2004, the SWRCB-DWR issued Small Domestic Use Registration Certificate No. R652 to the applicant, authorizing the appropriation of up to 1,950 gallons per day by direct diversion and 0.06 acre-feet (19,554 gallons) per annum storage during the period of October 1 to August 1 of each year, with the total amount of withdrawal not to annually exceed 1.86 acre-feet, or 606,174 gallons (see Exhibit No. 5). To protect riparian and aquatic resources. SWRCB-DWR placed further restrictions on the diversion as recommended by the California Department of Fish and Game, namely a requirement that fifty percent of the streamflow at any given time be allowed to bypass the intake pump (see Exhibit No. 6). Together with the 20,000-gallon capacity of the storage tanks installed at the project site, the authorized water allotment would provide a adequate year-round supply to meet both the domestic potable water needs of both the applicant's existing residence and the adjoining vacant five-acre parcel to the north. Once the system has been constructed, the existing connection to the system originating on the neighboring property to the east would be disconnected and abandoned-in-place (capped, but not excavated and removed).

The amended development does not involve a change from the current residential use, as the property and existing residence is not currently used or proposed for church assembly.

B. Planning and Locating New Development.

1. Summary of Applicable Coastal Act Provisions.

Section 30250 of the Coastal Act states, in applicable part:

New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources...

2. Analysis

The project site consists of two rural residential parcels, one of which (APN 517-011-05) is currently developed with a single-family residence. This property is served by easement-conveyed stream diversion-based system originating from a parcel to the east and upstream of the project site. Wastewater from the dwelling is accommodated by an on-site sewage disposal system approved by the County of Humboldt Public Health Department's Division of Environmental Health as part of the original permitting for the residence (see CDP No. 1-82-096, James Knight and Kathlene Preston, Applicants). The subject parcels abut and have direct access off of Stagecoach Road, a County-maintained public street. The parcels lie within the emergency services jurisdictional boundaries of

the Humboldt County Sheriff's Office and the California Department of Forestry and Fire Protection. Electrical and telephone service is provided to the site by the Pacific Gas and Electric Company and SBC Communications, Inc., respectively. Gas fuel service is available onsite at APN 517-011-05 from an existing liquefied petroleum gas (LPG) tank.

As described in the Description of Current Permit Amendment Findings Section IV.A.4 above, the applicant is proposing to amend the permit originally granted for development at the site to replace the existing offsite-source water supply system with a stream diversion system to be developed in McNeil Creek on the northern periphery of the applicant's property. The impetus for this change is the seasonal unreliability of the existing water supply system to provide service to all the connections it serves, leading to less than adequate delivery flows to the project site during the drier late summer-early autumn months. The proposed replacement water supply facilities would not cause a change in the demand for water supply from that which currently exists at the two legal parcels planned and zoned for low-density single-family residential development that comprise the project site.

The new water system would provide a more reliable source of water for the existing development on the southerly developed parcel APN 517-011-05. However, the Commission notes that even with this increased service reliability, the new water system will not necessarily provide enough additional water to adequately serve future development on the currently vacant northern parcel APN 517-011-04. Based on the 400-gallons-per-day-per-dwelling average domestic water consumption standard used by Humboldt County in assessing the adequacy of water supplies for new residential development, the proposed new water diversion with use of the 20,000-gallon storage tank facilities developed at the site with further water conservation measures in place (e.g., flow restrictors, low volume appliances and conveniences, irrigation with recycled graywater), should be adequate as a reserve source of water to serve the existing house on APN 517-011-05, including during the two-month period of August through September when no stream diversion is allowed. However, the source would not be adequate to also serve a future residence on the vacant parcel. At a minimum, similar sized storage capacity would need to be developed for the vacant parcel as well as an amendment granted to the 0.06 acre-feet /19,554 gallons annual storage cap of Small Domestic Use Registration Certificate R652 if both parcels were to share the current water appropriation allotment. Prior to the approval of any such future development on the northern vacant parcel, the applicant would be required to demonstrate to the Commission, or its successor agency, that water supplies were adequate to serve the proposed future development.

Regardless of the subject property's location at the furthest downstream point in the McNeil Creek watershed, as discussed further in the Development in Coastal Rivers and Streams Findings Section IV.C below, the unrestricted diversion of water from the creek could have significant adverse effects, either individually or cumulatively, on the coastal resources within the McNeil Creek streambed and riparian corridor. To prevent these

impacts, the State Water Resources Control Board – Division of Water Rights (SWRCB-DWR) placed restrictions on the authorized water appropriation, limiting the diversion to no more than 1,950 gallons per day by direct diversion and 0.06 acre-feet per annum storage during the period of October 1 to August 1 of each year, with the total amount of withdrawal not to annually exceed 1.86 acre-feet, or 606,174 gallons. The appropriated water was further restricted to uses associated with the property's single-family rural residential setting, namely domestic potable water consumption for drinking, washing, irrigation of landscaping, and other similar applications. In addition, to further prevent impacts to aquatic and riparian resources from over-drafting, the California Department of Fish and Game require that 50% of the streamflow within McNeil Creek be allowed to bypass the diversion point. These conditions have been incorporated in Special Condition No. 7.

Therefore, the Commission concludes that the amended development as conditioned is consistent with the new development policies of the Coastal Act because the amended development would not have significant adverse effects, either individually or cumulatively, on coastal resources with regard to water supply facilities or other public services and utilities.

C. Development within Coastal Rivers and Streams and Coastal Water Quality.

Section 30236 of the Coastal Act provides that:

Channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (1) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat. [Emphasis added.]

Section 30231 provides, in part:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored...

Section 30236 sets forth a number of different limitations on what projects may be allowed that cause substantial alteration of rivers and streams. For analysis purposes, a particular development proposal must be shown to be: (1) for a necessary water supply project; (2) for certain specified flood control projects; or (3) primarily for fish and wildlife habitat improvement. In addition, the development must incorporate the best

mitigation measures feasible. Section 30231 requires that the biological productivity and quality of coastal waters, including streams, be maintained and, when feasible, restored.

As described in further detail in the Project Description Findings Section IV.A.4 above, the proposed development is being pursued as a water supply project. The applicant has indicated that the present water system is unreliable for providing the existing residence with a year-round domestic water supply, especially during the drier late-summer/early-autumn months. Thus, the limitations of the current system necessitate an improvement to the system to resolve the existing service unreliability at the existing residence. Therefore, the Commission further finds that the primary purpose of the development is a necessary water supply project.

In addition to the allowable use provisions of Section 30236, development proposals approved pursuant to this policy must also be shown to have incorporated the best mitigation measures feasible to reduce potentially significant adverse impacts on coastal resources to less than significant levels. In addition, Section 30231 requires that the biological productivity and quality of coastal streams be maintained and, where feasible, restored.

The roughly 700-foot-long northern boundary of the project site is co-terminus with the centerline of McNeil Creek, a first-order perennial coastal stream that drains a small, approximately 400-acre watershed. The creek and its adjoining riparian corridor occupy the bottom and sides of a relatively steep-sided gulch whose vegetation changes abruptly at the top of the slopes into the adjacent North Coast Coniferous Forest series, clearly demarcating the boundaries of the creek's riparian vegetation. Due to the steep, near-vertical topographic breaks along the uplifted marine terrace edge where the stream cascades down to the beach below, McNeil Creek does not support anadromous fish runs.

The proposed water supply intake would be developed in riverine and riparian wetlands could have potentially significant adverse effects on a number of sensitive plant and animal species and/or their habitat that depend on the environment of lower McNeil Creek. If over-drafting were to occur, the surface and subsurface flows within the creek could be diminished to a point where habitat impacts could result (e.g., unavailability of water to aquatic organisms, desiccation of hydrophytic vegetation in and along the riparian corridor).

To prevent potential impacts to riparian habitat and aquatic species the State Water Resources Control Board's Division of Water Rights set specific limits on the types of uses the water appropriation could serve and the quantity of stream water to be diverted. These limits incorporate the recommendations of the Department of Fish and Game that the applicant allow a minimum of fifty percent (50%) of the surface flow within McNeill to bypass the diversion pump. To ensure that these water use limitations necessary to protect the downstream habitat of McNeil Creek are followed, the Commission attaches Special Condition No. 7. Special Condition No. 7 reiterates the fifty percent bypass

requirement established by the CDFG to prevent impacts to aquatic resources from potential over-drafting.

As detailed further in the Description of Current Permit Amendment Findings Section IV.A.4, above, the applicant proposes to install a submersible pump that would draft water from within McNeil Creek that runs along the northern side of the currently vacant lot APN 517-011-04. The pump would be placed into a depression within the creek bed and secured in place with native rock materials, and wire rope cabling connected to nearby trees. The pump's electrical wiring would be contained in flexible conduit and along with the water transmission PVC piping routed along the ground surface from the pump for a distance of approximately 15 feet to a electrical power junction box. The power and water lines would then run along the ground approximately 100 feet up to the top of the bank of McNeil Creek and out of the riparian corridor.

Upon exiting the riparian corridor and entering the coastal forest along the terrace top, the wiring and water pipe would be buried in an approximately one-foot-wide, one-foot-deep trench running the approximately 500-foot distance to the filtration and storage tank facilities located across the parcel line common to APNs 517-011-04 and -05. The trench would be back-filled with the soil materials excavated to create the trench, with the loose soils tamped firm back in place. Similar to what has been undertaken with establishing the water storage tank connections to the existing house on APN 517-011-05, the applicant is proposing to excavate the water and power line trench using hand tools. By taking care to minimize the amount of ground disturbance, and to avoid or dig around any major tree roots or other subsurface obstacles they may encounter, the introduction of a sediment source that could become entrained in stormwater runoff or damage the vegetation on the terrace top would be minimized.

To ensure that the habitat provided within the McNeil Creek is not impacted by the introduction of stormwater-laden sediment the Commission attaches Special Condition No. 8. Special Condition No. 8 requires that the applicant submit for the review and approval of the Executive Director an erosion and stormwater runoff control plan for utilizing established water quality best management practices during the construction of the trenching for the water and power lines. These measures are to include dry season scheduling for the excavation, performing the trench excavation, line placement and re-covering work in phases, preserving existing vegetation, and using runoff interceptor barriers, such as hay bales or debris fencing to prevent unseasonable precipitation from entering the excavation or allowing unfiltered runoff from leaving the trench and to enter the coastal waters of McNeil Creek.

Therefore, as the proposed development is for an enumerated allowable use and as the project would incorporate or has been conditioned to include the best mitigation measures feasible, the Commission finds the proposed streambed development is consistent with Section 30236 of the Coastal Act. The Commission further finds that the amended development, as conditioned to protect the stream from sedimentation impacts from the

proposed development, is consistent with the requirement of Coastal Act Sections 30231 that the biological productivity and the quality of coastal streams appropriate to maintain optimum populations of marine organisms and for the protection of human health be maintained and, where feasible, restored.

D. Coastal Access.

1. Summary of Applicable Coastal Act Provisions

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

2. Analysis

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

Although the project site is located between the first public road (Stagecoach Road) and the sea, the development will not adversely affect public access. There are no trails that provide shoreline access through the subject property and therefore, the proposed site improvements would not result in a barrier to public coastal access. Furthermore, the proposed water system improvements would not change the nature or intensity of use of the site and thus, would not create any new demand for public access or otherwise create any additional burdens on public access.

Therefore, the Commission finds that the amended development is consistent with the public access policies of the Coastal Act.

E. Religious Land Use And Institutionalized Persons Act of 2000.

The Commission notes that its action on the proposed development is not based upon any animus toward the religious affiliation of the applicant. The Commission has reviewed

the provisions of the Religious Land Use and Institutionalized Persons Act (RLUIPA), which prohibit certain actions even if *not* based upon animus, to ensure that its actions are not in violation of federal law in any other way. Section 2 of the RLUIPA, titled “Protection of Land Use as Religious Exercise” (42 USC §2000cc), contains four separate prohibitions on government action.¹

Pursuant to that section, the Commission may not “implement a land use regulation...”

- “In a manner that imposes a substantial burden on the religious exercise of a[n] . . . institution, unless the imposition of the burden... (A) [furthers]... a compelling governmental interest; and (B) is the least restrictive means of furthering that compelling governmental interest” (RLUIPA Section 2(a));
- “In a manner that treats a religious assembly or institution on less than equal terms with a non-religious assembly or institution” (RLUIPA Section 2(b)(1));
- “That discriminates against any assembly or institution on the basis of religion or religious denomination” (RLUIPA Section 2(b)(2)); or
- “That (A) totally excludes religious assemblies from a jurisdiction; or (B) unreasonably limit religious assemblies, institutions, or structures within a jurisdiction.” [RLUIPA Section 2(b)(3)]

These sections are inapplicable, initially, because the Commission’s action does not involve the implementation of a “land use regulation” as RLUIPA defines that phrase. RLUIPA specifically defines “land use regulation” to mean “a zoning or landmarking law ... that limits or restricts a claimant’s use or development of land... if the claimant has an ownership, leasehold, easement, servitude, or other property interest...or a contract or option to acquire such an interest.” RLUIPA Section 8(5); 42 USC § 2000cc-5(5). The Coastal Act provisions implemented by the Commission’s decision are neither zoning nor landmarking laws that limit or restrict the applicant’s use or development of the subject property.

Furthermore, even if the Commission’s action were to constitute implementation of a “land use regulation” for purposes of RLUIPA, it meets none of the four criteria listed above. Regarding the first prohibition, in RLUIPA Section 2(a), the Commission notes that the subject site is not used for church assembly and therefore, the Commission’s action imposes no substantial burden on the applicant’s religious exercise. The proposed amended development is not designed to facilitate the exercise of religion (much less is it central to such exercise). Thus, the imposition of conditions on the project by the Commission with the proposed revisions would not burden the applicant’s exercise of religion, much less pose a substantially burden to such activity.

Secondly, with respect to RLUIPA Section 2(b)(1), the Commission’s action treats the applicant on terms that are identical to those it would apply to any non-religious entity

¹ These prohibitions apply to all state agencies, including the Commission. 42 USC §2000cc-5(4).

applying for the same development. It is the nature of the proposed amended development, and the fact that it involves coastal resource impacts, rather than the nature of the applicant, that is critical to the Commission's decision.

Finally, the Commission's action does not discriminate against the applicant on the basis of religion or religious denomination, and it does not exclude or unreasonably limit religious assemblies or institutions from any jurisdiction. Consequently, the Commission concludes that its action on the amended development is not in violation of the Religious Land Use and Institutionalized persons Act of 2000.

G. California Environmental Quality Act (CEQA).

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

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

V. EXHIBITS:

1. Regional Location Map
2. Vicinity Map
3. Planning Area Boundary Map, Trinidad Area Plan – County of Humboldt LCP
4. Proposed Amended Project Description, Site Plans, and Water System Schematic
5. State Water Resources Control Board – Division of Water Rights *Small Domestic Use Registration Certificate No. R652*
6. Department of Fish and Game Water Appropriation Consultation Letter

1-01-052-A2

AVATARIC RUCHIRASALA OF ADIDAM

Page 21

7. Revised Findings Staff Report, Coastal Development Permit No. 1-01-052
8. Staff Report Coastal Development Permit Amendment No. 1-01-052-A1
9. Applicant Correspondence

ATTACHMENT A:

STANDARD CONDITIONS

1. Notice of Receipt and Acknowledgement. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable amount of time. Application for extension of the permit must be made prior to the expiration date.
3. Interpretation. Any questions of intent of interpretation of any condition will be resolved by the Executive Director of the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

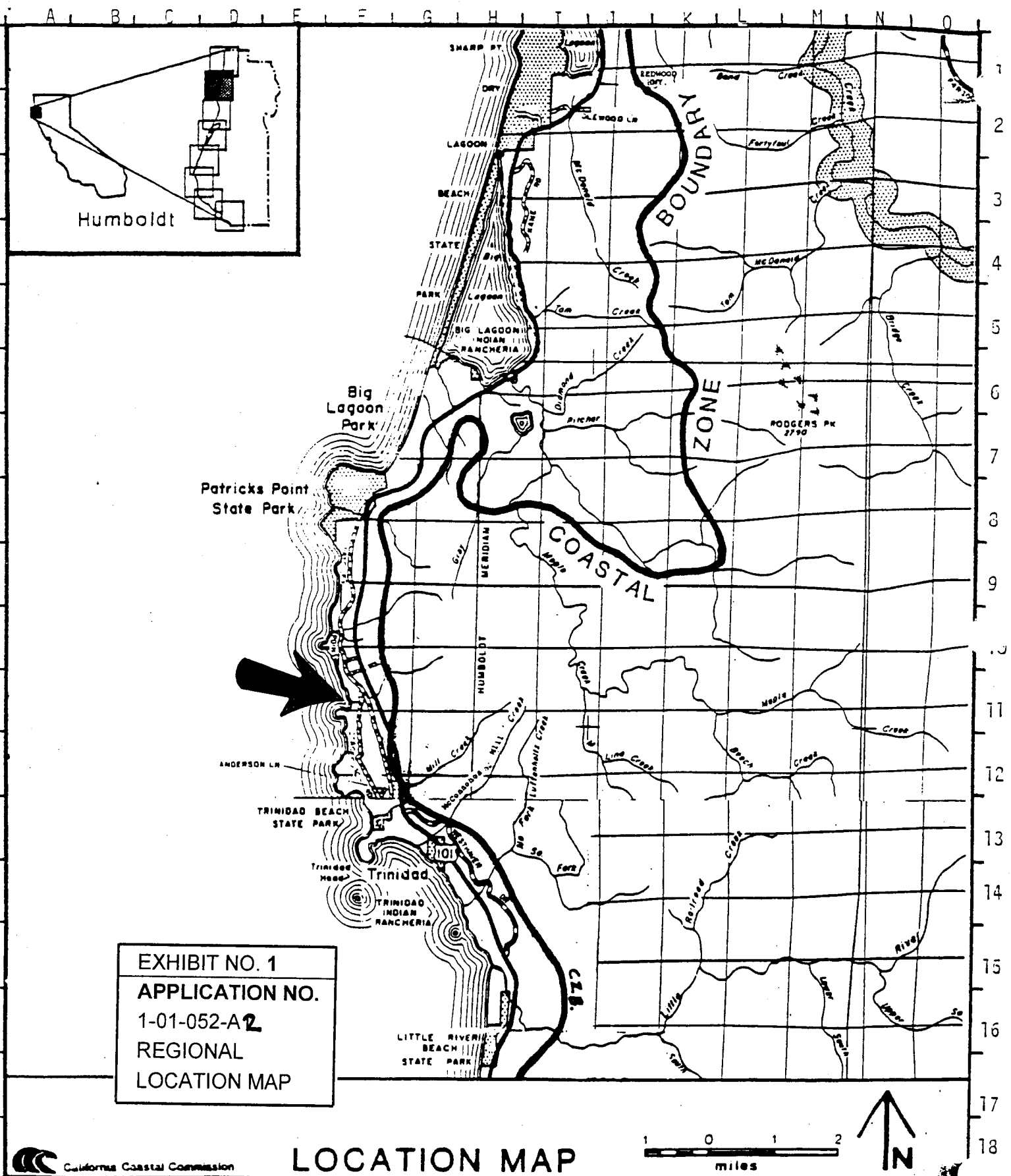


EXHIBIT NO. 1
APPLICATION NO.
1-01-052-A2
REGIONAL
LOCATION MAP

topozone

Copyright 1999-2003 Maps & la carte, Inc.

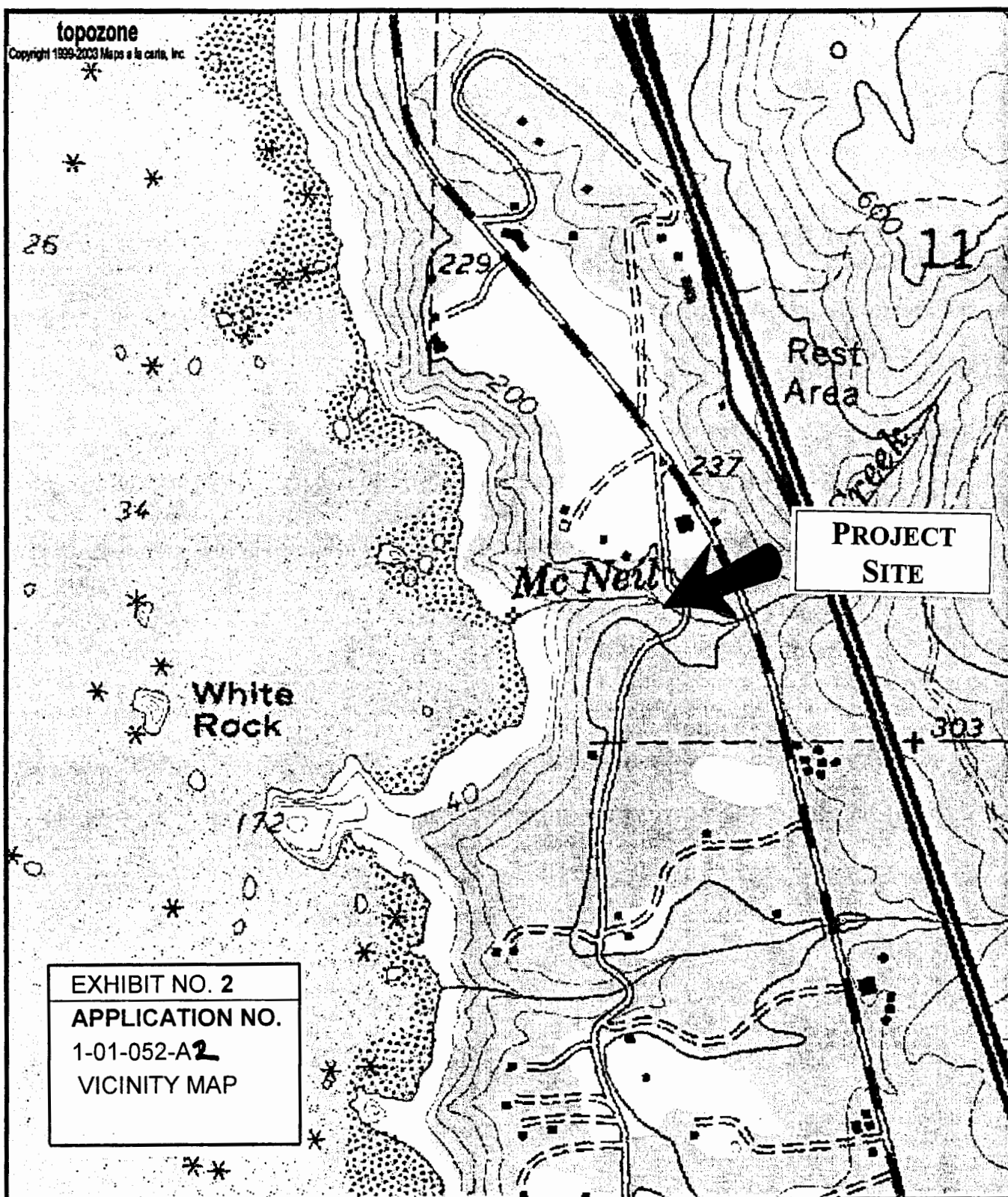


EXHIBIT NO. 2

APPLICATION NO.

1-01-052-A2

VICINITY MAP

Map center is UTM 10 403009E 4549219N (WGS84/NAD83)

TRINIDAD quadrangle

Projection is UTM Zone 10 NAD83 Datum

M=16.325

G=-0.759

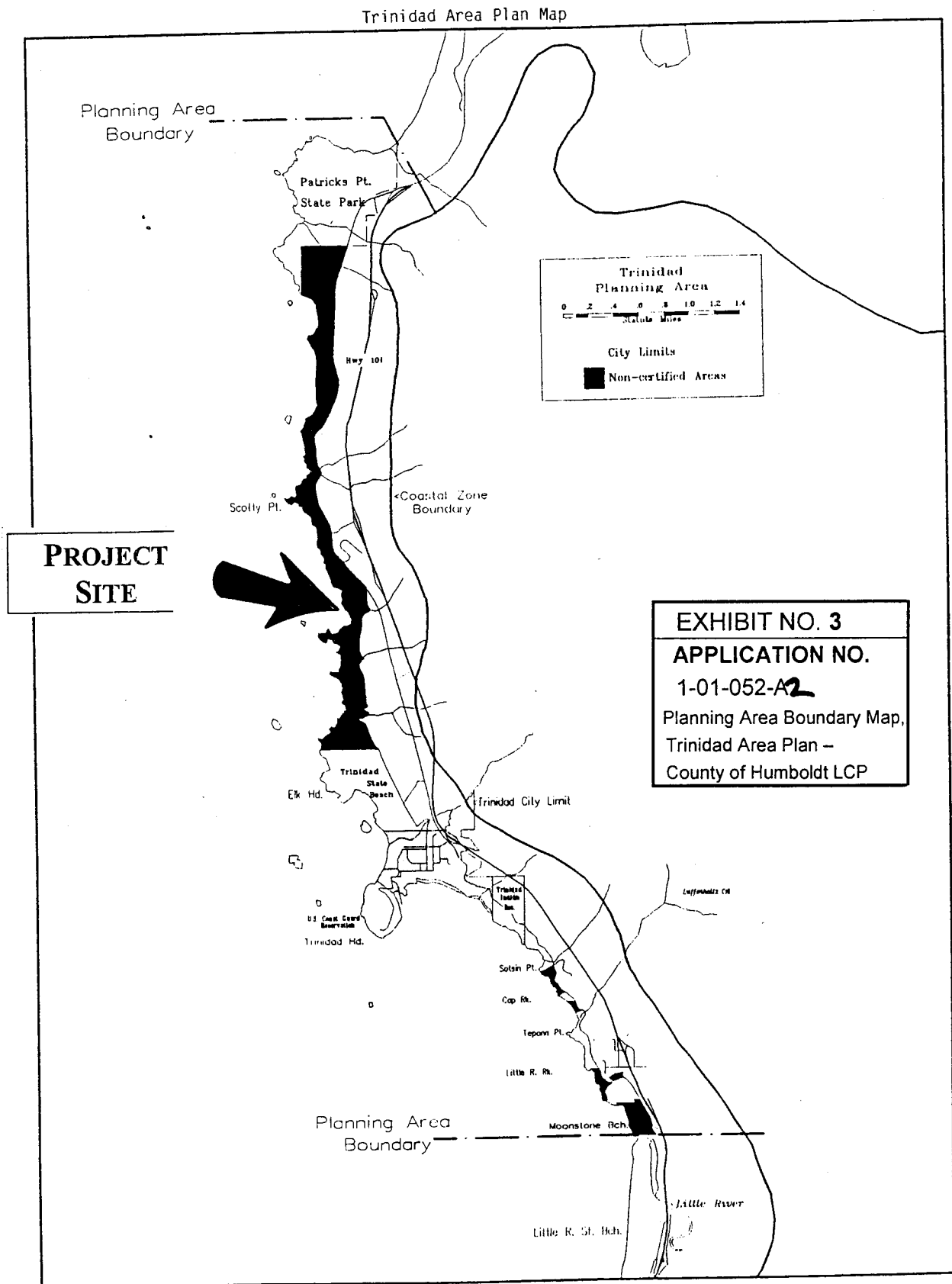


EXHIBIT "A"

Description of Proposed Amendment (page 2 of application)

1512 Stage Coach Road

Water System- narrative

1. Water will be extracted from a natural rock water hole in McNeil Creek. A ½ horse power 220 volt submersible pump will be placed in the water hole inside a 4' length of 6" well casing. The casing and pump will be secured in the water hole by rocks and by cabling the galvanized water line to nearby trees.
2. The pump wiring harness will be run in flexible conduit to a junction box located 15' from the water hole.
3. From the junction box near the water hole connection will be made to 10-3 wire which will be run in buried conduit 500 feet to subpanel in pump house.
4. Subpanel in pump house will be supplied by #8 wire from main panel at house.
5. Initial water pipe from the water hole will be galvanized for the first fifteen feet and will then connect with buried PVC pipe which will run to pump house.
6. Pump house will contain water filtration and purification equipment, pressure tanks, pressure pump, outlets, low level alarms, and lighting.
7. Water tank will be plumbed to the pump house and will have water level controls.

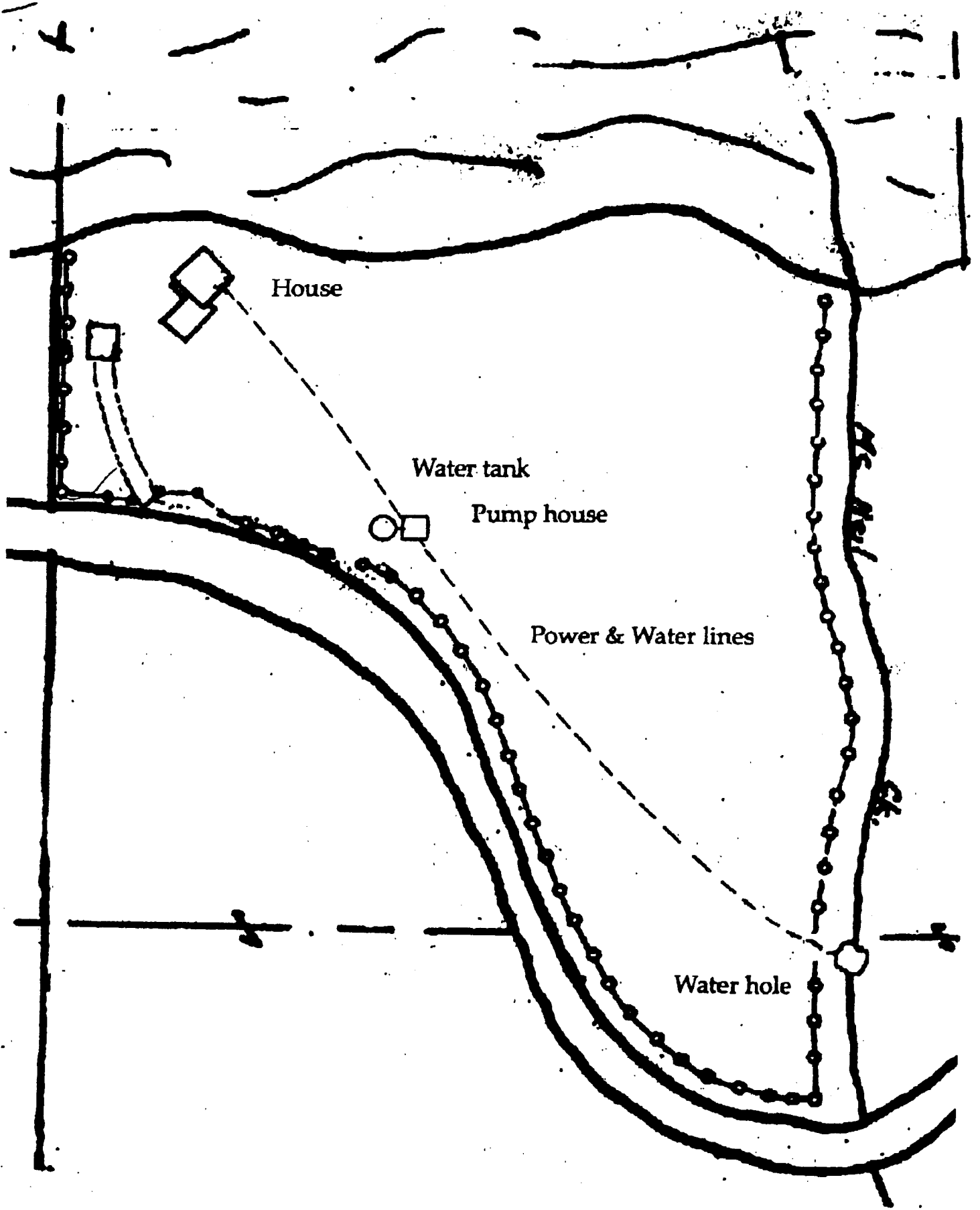
Exhibit "A" to Application for Amendment to Coastal
Development Permit No. 1-01-052-A1 (page 2)
Applicant: The Avataric Ruchirasala of Adidam

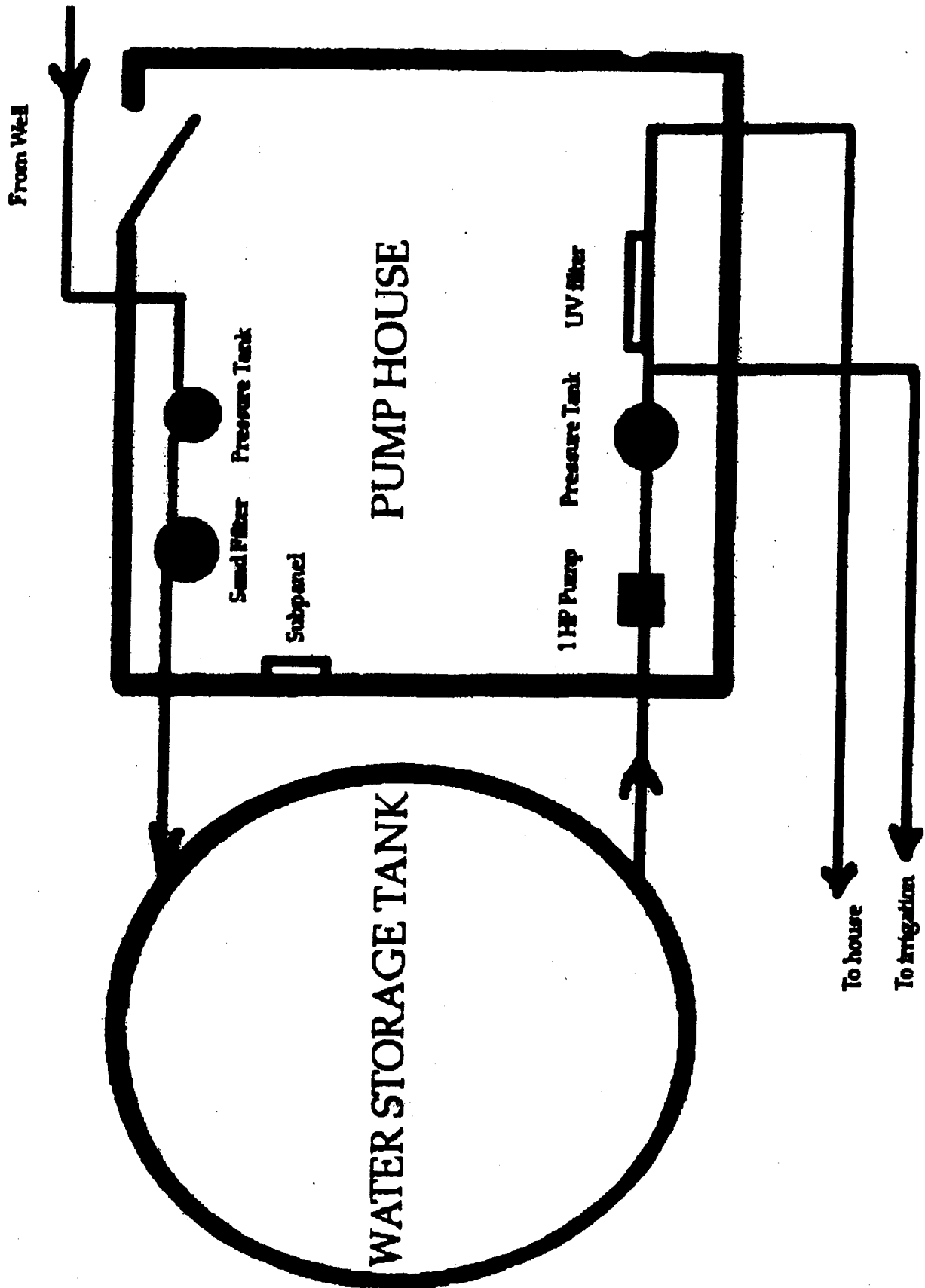
EXHIBIT NO. 4

APPLICATION NO.

1-01-052-A~~1~~2

Proposed Amended Project
Description, Site Plans, & Water
System Schematic (Page 1 of 3)







State Water Resources Control Board



Terry Tamminen
Secretary for
Environmental
Protection

Division of Water Rights
1001 I Street, 14th Floor • Sacramento, California 95814 • 916.341.5300
Mailing Address: P.O. Box 2000 • Sacramento, California 95812-2000
FAX: 916.341.5400 • www.waterrights.ca.gov

Arnold Schwarzenegger
Governor

SEP 6 2004

In Reply Refer
to:331:WT:D031498R

Adidam Avataric Pam Commune
c/o Jack Lewis
P.O. Box 544
Trinidad, CA 95570

APPLICATION D031498R

CERTIFICATE NO. R 652

Your small domestic use registration certificate is enclosed. Before diverting water under this registration, please read the limitations on diversion of water, which are specified in the certificate and in the attached clearance from the California Department of Fish and Game. You must comply with all conditions.

Condition 11 of the certificate reflects the statutory provision that all appropriations are subject to prior rights. This means that, with respect to other water rights from this source, the priority of your right commences with the date of filing your registration. In times of water shortage, therefore, those with rights senior to yours are entitled to take their full amount of water first.

The Water Code requires that your small domestic use registration be renewed every five years. You also must pay the then-current renewal fee (now \$100). At the same time, you must submit a report of monthly water use for the previous five years on forms to be furnished by the State Water Resources Control Board.

Please inform us of any change in address or ownership. If you have any questions, please telephone Whalen Toy at (916) 341-5408.

STEVEN HERRERA, Chief
Water Rights Permitting Section

Enclosure

cc: (w/Copy of Certificate)
California Department of Fish and Game
REGION I
Northern California/North Coast Region
601 Locust Street
Redding, CA 96001

EXHIBIT NO. 5
APPLICATION NO.
1-01-052-A2
State Water Resources Control Board - Division of Water Rights Small Domestic Use Registration Cert. No. R652 (Page 1 of 5)

California Environmental Protection Agency



STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

SMALL DOMESTIC USE REGISTRATION

CERTIFICATE NO. R 652

Application D031498R of **Adidam Avataric Pam Commune**
c/o Jack Lewis
P.O. Box 544
Trinidad, CA 95570

filed with the State Water Resources Control Board (SWRCB) on **April 2, 2004** meets the requirements for registration of small domestic use specified in Article 2.7 (commencing with section 1228) of Chapter 1 of Part 2 of Division 2 of the Water Code. The appropriation is subject to the following conditions.

1. Source:

Tributary to:

McNeill Creek

Pacific Ocean

within the County of **Humboldt**.

2. Location of Point of Diversion: By California Coordinate System of 1927, Zone 1	Point is within (40-acre subdivision)	Section	Township	Range	Base and Meridian
North 646,695 feet & East 1,407,216 feet	SW¼ of SW¼	11	8N	1W	H

3. Purpose of Use:	4. Place of Use:	Section	Township	Range	Base and Meridian	Acres
DOMESTIC	SW¼ of SW¼	11	8N	1W	H	0.11

The place of use is shown on a map on file with the SWRCB.

5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 1,950 gallons per day by direct diversion and .06 acre-feet per annum by storage from October 1 of each year to August 1 of the succeeding year.

The total amount of water to be taken from the source shall not exceed 1.86 acre-feet per year.

6. Appropriation of water pursuant to this registration shall be made in accordance with the information set forth in the completed registration form as to source, location of point of diversion, purpose of use, place of use, and quantity and season of diversion. This information is reproduced as conditions 1 through 5 of this certificate.
7. The appropriation registered herein shall be limited to the use of water in houses, resorts, motels, organization camps, campgrounds, and other similar facilities, including the incidental watering of domestic stock for family sustenance or enjoyment, the irrigation of not to exceed one-half acre of lawn, ornamental shrubbery, or gardens at any single establishment, and the human consumption, cooking, and sanitary needs at campgrounds or resorts. Also, any storage of water registered herein may include impoundment for incidental aesthetic, recreational, or fish and wildlife purposes.
8. This appropriation is limited to the season of diversion specified in condition 5 herein. If such specified season is less than the actual season of need, an alternative supply of water, or other valid right, shall be utilized for all uses outside of the season registered herein.
9. Pursuant to California Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this registration, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the SWRCB in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.
10. Registrant shall allow representatives of the SWRCB, and other parties as may be authorized from time to time by the SWRCB, reasonable access to project works to determine compliance with the terms and conditions of this registration.
11. This appropriation is subject to prior rights. Registrant may be required to curtail diversion or release water stored during the most recent collection season should diversion under this registration result in injury to holders of legal downstream senior rights. If a reservoir is involved, registrant may be required to bypass or release water through, over, or around the dam. If release of stored water would not effectively satisfy downstream prior storage rights, registrant may be required to otherwise compensate the holders of such rights for injury caused.

12. If the registrant does not own the point of diversion, this registration shall not be construed as conferring upon the registrant right of access to the point of diversion.
13. To the extent that water available for use under this registration is return flow, imported water, or wastewater, this registration shall not be construed, as giving any assurance that such supply will continue.
14. Diversion works shall be constructed and water applied to beneficial use with due diligence.
15. No work shall commence and no water shall be diverted, stored or used under this certificate until registrant has received a stream or lake alteration permit from the California Department of Fish and Game. Compliance with the terms and conditions of the permit is the responsibility of the registrant. If a permit is not necessary for this project, the registrant should retain a written waiver from the California Department of Fish and Game.
16. In compliance with section 5937 of the Fish and Game Code, if storage or diversion of water under this registration is by means of a dam, registrant shall allow sufficient water at all times to pass through a fishway or, in the absence of a fishway, allow sufficient water to pass over, around, or through the dam to keep in good condition any fish that may be planted or exist below the dam; provided that, during a period of low flow in the stream, upon approval of the California Department of Fish and Game, this requirement will be satisfied if sufficient water is passed through a culvert, waste gate, or over or around the dam to keep in good condition any fish that may be planted or exist below the dam if it is impracticable or detrimental to pass the water through a fishway. In the case of a reservoir, this provision shall not require the passage or release of water at a greater rate than the unimpaired natural inflow into the reservoir.
17. The facilities for diversion under this registration shall include satisfactory means of measuring and bypassing sufficient water to satisfy downstream prior rights and any requirements of the California Department of Fish and Game.
18. No construction shall be commenced and no water shall be diverted under this registration until all necessary federal, state, and local approvals have been obtained, including obtaining and complying with any waste discharge requirements from the appropriate California Regional Water Quality Control Board.
19. This registration does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this water right, the

registrant shall obtain authorization for an incidental take prior to construction or operation of the project. Registrant shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this registration.

20. This registration is subject to the submittal of a report of water use and satisfactory renewal of the registration, on forms to be furnished by the SWRCB, including payment of the then-current renewal fees prior to the expiration of each five-year period following the date of first filing the completed registration.
21. The point or points of diversion and the place of use registered herein may be changed by filing a completed amended registration form with the SWRCB, including payment of the then-current registration fee. Such change shall not operate to the injury of any legal user of the water involved.
22. The appropriation registered herein shall be totally or partially forfeited for nonuse if the diversion is abandoned or if all or any part of the diversion is not beneficially used for a continuous period of five years.
23. The appropriation registered herein is subject to enforcement, including but not limited to revocation, by the SWRCB if 1) the SWRCB finds that the registrant knowingly made any false statement, or knowingly concealed any material fact, in the registration; 2) the registration is not renewed as required by the conditions of this certificate; or 3) the SWRCB finds that the registrant is in violation of the conditions of this registration.

Dated: September 6, 2004

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY
STEVEN HERRERA
FOR

*Victoria A. Whitney, Chief
Division of Water Rights*



State of California - The
Resources Agency
DEPARTMENT OF FISH AND GAME
<http://www.dfg.ca.gov>
801 Locust Street
Redding, CA 96001
(530) 225-2363

ARNOLD

HWARZENEGGER, Governor



March 24, 2004

Mr. Jack Lewis
Box 544
Trinidad, California 95570-0544

Dear Mr. Lewis:

The California Department of Fish and Game has evaluated your "Small Domestic Use Registration" on McNeill Creek, tributary to the Pacific Ocean in Humboldt County. You enclosed check #1025 for \$250.00, payable to the Division of Water Rights. Per your request, we will forward the water right application and the check to the State Water Resources Control Board along with a copy of this letter.

Registration of water use, pursuant to the Water Code (§1228.3), requires consultation with the Department and compliance with all lawful conditions required by the Department. The Department reviews the appropriation of water to ensure fish and wildlife resources are protected. The Department recommends the following conditions for your project to avoid significant adverse environmental impacts.

1. Prior to any construction work within or adjacent to the stream, notify the Department pursuant to Section 1603 of the Fish and Game Code and obtain a Lake or Streambed Alteration Agreement (LSAA) from the Department. Visit the Department's Web Site at <http://www.dfg.ca.gov/1600> or call (530) 225-2367 to obtain the notification forms for LSAA. Provide the Department a copy of your Small Domestic Use Registration Certificate and a copy of this letter when submitting your notification to the Department. Please note that the Department's decision to execute an LSAA pursuant to Fish and Game Code Section 1600 is subject to the California Environmental Quality Act (CEQA) (Public Resources Code Sections 21000 et seq.) and may require environmental review.
2. For the protection of riparian habitat and aquatic species in and below the unnamed stream, the permittee shall bypass at least 50 percent of the surface flow of the unnamed stream at any time diversion for domestic use is occurring. The dam must be operated in such a manner to allow sufficient water to pass downstream to keep fish and other aquatic life in good condition (Fish and Game Code Section 5937).

Conserving California's Wildlife Since 1870

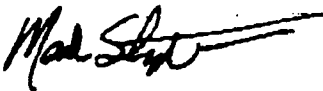
EXHIBIT NO. 6
APPLICATION NO.
1-01-052-A2
Department of Fish and Game
Water Appropriation Consultation
Letter (Page 1 of 2)

Mr. Jack Lewis
March 24, 2004
Page Two

3. Permittee hereby grants Department of Fish and Game permission to enter his land for the purposes of monitoring compliance with the certificate conditions.

If you have any questions regarding this matter, please contact Environmental Scientist Jane Vorpapel at (530) 225-2124.

Sincerely,


DONALD B. KOCH
Regional Manager

cc: **With enclosures of registration application and check**
Division of Water Rights
State Water Resources Control Board
Post Office Box 2000
Sacramento, California 95812-2000

Ms. Jane Vorpapel
Department of Fish and Game
601 Locust Street
Redding, California 96001

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE

MAILING ADDRESS:

710 E STREET • SUITE 200

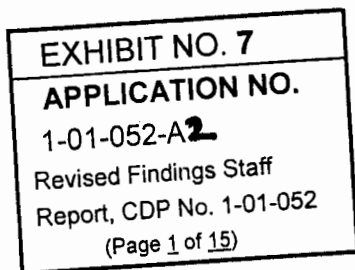
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**W 24b**

Staff: Tiffany S. Tauber
Staff Report: February 15, 2002
Hearing Date: March 6, 2002
Commission Action:

STAFF REPORT: REVISED FINDINGS

APPLICATION NO.: **1-01-052**

APPLICANT: **THE ELEUTHERIAN
PAN-COMMUNION OF ADIDAM**

PROJECT LOCATION: **1512 Stagecoach Road, north of Trinidad,
Humboldt County, (APN 517-011-05)**

PROJECT DESCRIPTION: **After-the-fact authorization of a six-foot-high,
wooden perimeter fence, gate, and landscaping.**

GENERAL PLAN DESIGNATION: **Rural Residential, 5-acre minimum**

ZONING DESIGNATION: **Rural Residential, Non-Certified Area**

LOCAL APPROVALS REQUIRED: **None Required**

OTHER APPROVALS REQUIRED: **None**

COMMISSIONERS ON THE
PREVAILING SIDE: **Commissioners Desser, Dettloff, Hart, Susskind,
Ruddock, Nava, Potter, Reilly, Woolley, and Wan**

SUBSTANTIVE FILE DOCUMENTS: **CDP File No. 1-83-96 (Knight)**

STAFF NOTES:

1. Procedure

On December 14, 2001, the Commission approved the permit with conditions to mitigate impacts related to visual resources different from the conditions originally recommended by staff. The original staff recommendation dated November 21, 2001 recommended three special conditions. Special Condition No. 2 of the staff report would have required the applicant to submit revised fence plans that would provide for a more open-style gate across the driveway. At the hearing, staff deleted Special Condition No. 2 requiring an open-style gate from the staff recommendation. In addition, at the hearing, the Commission added a special condition (a new Special Condition No. 2) requiring the applicant to submit revised plans that would provide for lowering the portion of the fence extending along the eastern property boundary (along Stagecoach Road) and the driveway gate from approximately six-feet-high to a maximum of four-feet-high. No changes were made to recommended Special Conditions No. 1 and 3. Special Condition No. 1 requires the applicant to submit a landscaping plan that would provide for extensive native landscaping to screen the fence. Special Condition No. 3 requires the applicant to satisfy all prior to issuance conditions within 60 days of Commission action on the coastal development permit. As the Commission's actions on the project differed from the written staff recommendation dated November 21, 2001, staff has prepared the following set of revised findings for the Commission's consideration as the needed findings to support its action on the permit.

The changes from the original staff report dated November 21, 2001 include the new Special Condition No. 2 found on page 5 and the associated findings under Finding No. 3, "Visual Resources," beginning on page 7.

The Commission will hold a public hearing and vote on the revised findings at its March 6, 2002 meeting. The purpose of the hearing is to consider whether the revised findings accurately reflect the Commission's previous action rather than to reconsider whether the appeal raises a substantial issue or to reconsider the merits of the project or the appropriateness of the adopted conditions. Public testimony will be limited accordingly.

2. Concurrent Review of Reconsideration Request

After the Commission's action on the permit application at the December meeting, the applicant submitted a Reconsideration Request. The Commission will consider the Reconsideration Request on CDP 1-01-052 at the same March, 2002 meeting and may decide to have a joint hearing on both the Revised Findings and the Reconsideration Request, with two separate votes.

3. Standard of Review

The proposed project is located on the west side of Stagecoach Road north of the City of Trinidad in Humboldt County. Humboldt County has a certified LCP. However, the project is located in an area of deferred certification (ADC). Therefore, the standard of review that the Commission must apply to the project is the Chapter 3 policies of the Coastal Act.

I. MOTION, STAFF RECOMMENDATION AND RESOLUTION:

Staff Recommendation:

The staff recommends that the Commission adopt the revised findings in Section IV below in support of the Commission's action on December 14, 2001 approving the project with conditions. The proper motion is:

Motion:

I move that the Commission adopt the revised findings, in support of the Commission's action on December 14, 2001, approving Coastal Development Permit No. 1-01-052, with conditions.

Staff Recommendation of Approval

Staff recommends a **YES** vote on the motion. Passage of this motion will result in the adoption of revised findings as set forth in this staff report. The motion requires a majority vote of the members from the prevailing side present at the December 14, 2001 hearing, with at least three of the prevailing members voting. Only those Commissioners on the prevailing side of the Commission's action are eligible to vote on the revised findings. See the listing of eligible Commissioners on Page 1.

Resolution to Adopt Revised Findings:

The Commission hereby adopts the findings set forth below for the approval with conditions of Coastal Development Permit No. 1-01-052 on the ground that the findings support the Commission's decision made on December 14, 2001 and accurately reflect the reasons for it.

ACTION ON COASTAL DEVELOPMENT PERMIT ON DECEMBER 14, 2001

Adopted Resolution to Approve Permit:

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

II. Standard Conditions: See Attachment A.

III. Special Conditions:

1. Revised Landscaping Plan

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit a revised landscaping plan prepared by a qualified professional with expertise in the fields of landscaping or botany, such as a landscape architect or botanist, for the review and approval of the Executive Director. The landscaping plan shall substantially conform with the plan received by the Commission on November 6, 2001 from James Calledine except that the plan shall also provide for the following:

- (a) Landscaping shall be planted along all three lengths of the fence to minimize the visual impacts to Stagecoach Road and shall include the planting of plants or shrubs on at least three-foot centers along the entire span of each of the three lengths of fence;
- (b) The landscaping shall include only native species or non-invasive, non-native species commonly found along Stagecoach Road and shall include a planting plan detailing the specific locations where individual plants and shrubs would be planted;
- (c) Specifications shall be included to indicate species, size at planting, height at maturity, and establishment techniques (e.g., irrigation, fertilization, etc.);
- (d) A site map showing the type, size, and location of all plant materials that will be planted at site, the irrigation system, and all other landscape features;

- (e) A schedule for installation of the plants;
 - (f) All planting shall be completed within 60 days of receipt of the coastal development permit. The applicant shall notify the Executive Director in writing when the vegetation has been planted, and Commission staff shall verify the planting via a site visit or by examining photographs submitted by the applicant.
 - (g) All required plantings shall be maintained in good growing condition throughout the life of the project, and wherever necessary, shall be replaced with new plant materials to ensure continued compliance with the approved landscaping plan.
 - (h) The installed landscaping shall achieve 80% coverage of the fence within three years of planting. Monitoring to determine if the success standard has been achieved shall be conducted in the fall after the summer dry season. Monitoring shall continue each year for three years or until the success standard has been achieved. Monitoring reports shall be submitted to the Executive Director by October 1 of each year and shall contain accurate counts of the numbers of plants that survived or died, a plan showing the location of plants that did not survive, a narrative assessment of the general condition of the vegetation along the fence, an analysis of reasons for any failure of the planting, photographs of the landscaping, and an evaluation of whether the 80% coverage standard will be or has been achieved within three years of planting. If a report indicates that the plants will not be or have not been successful in part, or in whole, the applicant shall submit for the review and approval of the Executive Director a revised landscaping program containing recommendations for any additional planting and other corrective measures needed to achieve the 80% coverage performance standard. The revised landscaping program shall require an amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.
- B. The permittee shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.
2. Revised Fence Plans
- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit a revised plan for the design of the fence to the Executive Director for review and approval. The revised plan shall provide for lowering the portion of the fence extending along the eastern property boundary (along

Stagecoach Road) and the driveway gate from approximately six-feet-high to a maximum of four-feet-high.

- B. The permittee shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

3. Condition Compliance

- A. **WITHIN 60 DAYS OF COMMISSION ACTION ON THIS COASTAL DEVELOPMENT PERMIT APPLICATION**, or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to issuance of this permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

1. Site Description & Project Description

The project site is a blufftop lot located on the west side of Stagecoach Road approximately ¼ mile south of the northern intersection with Patricks Point Drive and approximately 2.2 miles north of Trinidad (Exhibit Nos. 1 & 2). The site is located in an area of low-density, rural residential development along a densely vegetated, narrow road corridor. The blufftop lot is at an elevation of approximately 200 feet above sea level and is developed with a single-family residence built pursuant to a coastal development permit approved by the Commission in 1983 (CDP No. 1-83-96, Knight). The site and surrounding area is vegetated with a spruce forest community containing spruce, alder, wax myrtle, ferns, huckleberry, salal, and related undergrowth species.

The applicant seeks after-the-fact authorization of a six-foot-high, solid wood perimeter fence, gate, and landscaping. The fence is constructed of 1' x 6' vertical redwood slats, 2' x 8' horizontal redwood slats across the top, 6" x 6" vertical posts spaced every ten feet, and a similarly designed gate across the driveway (Exhibit No. 5). The fence extends along the north, east, and south property boundaries for approximately 124, 186, and 127 linear feet respectively (Exhibit No. 3). The applicants indicate that the purpose of the fence is to provide security and privacy, as the residence is used from time to time as a retreat for the applicants' spiritual leader. The project does not involve a change of use, as the property and existing residence is not used for church assembly.

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The applicants are proposing landscaping along the eastern fence line paralleling the road to screen the view of the fence from Stagecoach Road. The applicants propose to plant two types of vegetation native to the area including 32 Garrya bushes (silk tassel) and 22 Clematis vines (Exhibit No. 4). The applicants also propose to install landscaping irrigation to help establish the vegetation.

2. Need for a Permit

Section 30601(a) of the Coastal Act exempts certain improvements to existing single-family residences from coastal development permit requirements. Section 30610 states in applicable part that:

Notwithstanding any other provision of this division, no coastal development permit shall be required pursuant to this chapter for the following types of development and in the following areas:

(a) Improvements to existing single-family residences; provided, however, that the commission shall specify, by regulation, those classes of development which involve a risk of adverse environmental effect and shall require that a coastal development permit be obtained pursuant to this chapter.

The proposed development is the kind of improvement to an existing single-family residence that the Commission, pursuant to Section 13250 of its administrative regulations, has determined involves a risk of adverse environmental effect and shall require a permit. Section 13250 of the Commission's administrative regulations states in applicable part:

(b) Pursuant to Public Resources Code Section 30610(a), the following classes of development require a coastal development permit because they involve a risk of adverse environmental effect:

*(4) On property...that is located between the sea and the first public road paralleling the sea...**any significant non-attached structure such as garages, fences, shoreline protective works, or docks**.... (emphasis added)*

The project site is located between the sea and the first road paralleling the sea and the proposed development, a fence, is specifically listed as a significant non-attached structure requiring a permit. Therefore, the improvement to an existing single-family residence is not exempt from permit requirements under Coastal Act Section 30610 (a).

3. Visual Resources

Section 30251 of the Coastal Act states that the scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance, and requires in applicable part that permitted development be sited and designed to protect views to and along the ocean and

scenic coastal areas, to minimize the alteration of natural land forms, and to be visually compatible with the character of surrounding areas.

The applicant seeks after-the-fact authorization for a six-foot-high, solid wood fence along the north, east, and south property boundaries of the subject parcel with a gate and landscaping. The installation of the fence does not involve any grading and thus, the alteration of natural land forms is minimized as required by Section 30251. Therefore, the proposed project raises two issues with regard to consistency with the visual resource protection standards of Section 30251 including whether the fence (1) is visually compatible with the character of the surrounding area and (2) protects views to and along the ocean and coastal scenic areas.

Visual Compatibility with the Character of the Surrounding Area

The site is located on the west side of Stagecoach Road in an area of low-density, rural residential development on heavily forested lots. Stagecoach Road is a narrow, public road within a densely vegetated travel corridor that provides public access to several coastal recreation areas including Trinidad State Beach to the south and Patricks Point State Park to the north. The proposed project does not involve the removal of any trees or major vegetation and would not be visible from any park or public recreation area, only from the public road.

The character of the area is largely defined by the dense, native spruce forest and coastal scrub vegetation along the east and west sides of the road corridor. As a result of the densely vegetated character of the area, very little development is actually visible from Stagecoach Road with the exception of occasional rooftops and scattered property fences. While there are some other fences along the road that are of a solid design and similar height as the proposed fence, they are scattered along the length of the road and are not present on most properties. The dense vegetation is the dominant characteristic of the area; fences themselves do not define the character of the area.

The vegetation planted and proposed along the fence will help to partially screen the fence from view and, in part, increase the compatibility of the fence with the densely vegetated character of the surrounding area. However, the Commission finds that planting vegetation alone is not sufficient to find consistency with the character compatibility requirement of Section 30251, as the mass of the fence itself is out of character with the surrounding area. There are no other significantly visible fences along the street frontage of the properties on either side of the subject property, which results in the proposed fence being even more visually prominent among the adjacent dense vegetation. Fences elsewhere along the road are at a lower, three to four foot height and of an open-style design, such as wooden posts and wire, that provides greater compatibility with the character of the area in that they are less visually prominent. Many of these open-style fences are also covered with vegetation common to the area that furthers their compatibility with the character of the area. Although a few solid tall fences exist along the west side of Stagecoach Road, none of these are in the immediate vicinity of the subject property, and such fences are not typical of fences found in the area. Therefore, these tall, solid fences are not an element of the character of the particular setting in which the applicant's fence is located.

Thus, as the proposed fence is both tall and solid in its design, and creates a structural mass at the front of the subject property that is not present along the street frontage of adjacent properties and is not typical of the properties along Stagecoach Road, the Commission finds it necessary to require the height of the fence to be lowered in addition to planting vegetative screening to find consistency with the character compatibility requirement of Section 30251. Thus, the Commission attaches Special Condition No. 2 which requires the applicant to submit a revised plan for the design of the fence to the Executive Director for review and approval prior to issuance of the coastal development permit. The revised plan is required to provide for lowering the portion of the fence extending along the eastern property boundary (along Stagecoach Road) and the driveway gate from approximately six-feet-high to a maximum of four-feet-high.

Even after the portion of the fence along the street frontage is lowered, as required by Special Condition No. 2, the solid nature of the fence would still create more visual impact than the more open style fences, or those that are overgrown with vegetation. When the fence was originally constructed, the applicants planted vegetation along the eastern fenceline which has been only partially successful in screening the fence, as some of the plantings did not survive due to what the applicants attribute to lack of light and irrigation. The applicants are proposing to provide additional native landscaping along the eastern fence line facing Stagecoach Road including Garrya shrubs (silk tassel) and Clematis vines.

To ensure that the fence is adequately screened in a manner consistent with the character of the area, the Commission attaches Special Condition No. 1 which requires the applicant to submit a revised landscaping plan for review and approval of the Executive Director. In addition to the length of fence on the eastern property boundary that parallels the road, the lengths of fence that are perpendicular to the road along the north and south property boundaries are also visible when traveling northbound and southbound along Stagecoach Road. As the applicants are proposing only to provide landscaping along the eastern fence line, Special Condition No. 1 requires that the revised landscaping plan provide for native landscaping along all three lengths of the fence to screen the fence from view in all directions along the public road. Furthermore, due to the limited success of previous landscaping attempts, the Commission finds that it is also necessary to require a mechanism to monitor and maintain the health of the vegetation to ensure its successful establishment. The landscaping plan requires specifications including species, size at planting, height at maturity, and establishment techniques including irrigation and fertilization. Special Condition No. 1 also requires that the installed landscaping achieve 80% coverage of the fence within three years of planting to ensure that it achieves consistency with the character of the area as discussed above. Monitoring reports are required to be submitted to the Executive Director by October 1 of each year and a narrative assessment of the general condition of the vegetation along the fence, an analysis of reasons for any failure of the planting, photographs of the landscaping and an evaluation of whether the 80% coverage standard will be or has been achieved within three years of planting. If a report indicates that the plants will not be or have not been successful in part, or in whole, the applicant is required to submit for the review and approval of the Executive Director a revised landscaping program containing recommendations for any additional planting and other corrective measures needed to achieve the 80% coverage

performance standard and obtain a permit amendment unless the Executive Director determines that no amendment is legally required.

Protection of Views To and Along the Ocean and Coastal Scenic Areas

As noted above, views of the ocean from Stagecoach Road are limited by the intervening dense spruce forest vegetation and the distance from the road to the ocean (approximately 125 feet at the subject property). As seen from Stagecoach Road, the subject property affords only a minimal blue water view corridor across the property down the area of the driveway entrance. The majority of the former ocean view across the property was obstructed with the construction of the single-family residence approved under CDP No. 1-83-96. The Commission notes that CDP No. 1-83-96 did not require the establishment of a view corridor across the site, or otherwise require the view to be maintained. The permit did include a condition that limited additional tree removal beyond the project proposal and required the maintenance of native vegetation on the site to maintain compatibility with the densely vegetated character of the area. However, maintenance of the densely forested site also minimizes any ocean view across the property. Thus, the Commission finds that the proposed fence would not result in a significant adverse impact on views to or along the coast.

Conclusion

The fence for which the applicant is seeking after-the-fact authorization is not visible from any public beach or public park lands and does not involve grading or any other form of natural landform alteration. However, the fence has been constructed along a public roadway that provides access to coastal recreation areas and visitor serving facilities and the fence is not compatible with the character of the area as tall solid fences along the street frontage are not typical for the area. As conditioned, the height of the fence would be lowered from six-feet-high to a maximum of four-feet-high to minimize the overall mass of the fence to ensure its compatibility with the character of the area. Furthermore, as conditioned, additional landscaping would be planted and maintained along the fence to ensure that the fence would be screened from view with vegetation in a manner that is visually compatible with the character of the surrounding area, namely the densely vegetated road corridor and similarly vegetated property fences. Therefore, the Commission finds that the proposed development as conditioned is consistent with Section 30251.

4. Public Access

Section 30210 of the Coastal Act requires that maximum public access shall be provided consistent with public safety needs and the need to protect natural resource areas from overuse. Section 30212 of the Coastal Act requires that access from the nearest public roadway to the shoreline be provided in new development projects except where it is inconsistent with public safety, military security, or protection of fragile coastal resources, or adequate access exists nearby. Section 30211 requires that development not interfere with the public's right to access gained by use or legislative authorization. Section 30214 of the Coastal Act provides that the

public access policies of the Coastal Act shall be implemented in a manner that takes into account the capacity of the site and the fragility of natural resources in the area. In applying Sections 30210, 30211, 30212, and 30214, the Commission is also limited by the need to show that any denial of a permit application based on these sections, or any decision to grant a permit subject to special conditions requiring public access, is necessary to avoid or offset a project's adverse impact on existing or potential access.

Although the project site is located between the first public road (Stagecoach Road) and the sea, it will not otherwise adversely affect public access. There are no trails that provide shoreline access through the subject property and therefore, the fence would not result in a barrier to public coastal access. Furthermore, the proposed fence would not change the nature or intensity of use of the site and thus, would not create any new demand for public access or otherwise create any additional burdens on public access.

Therefore, the Commission finds that the proposed project does not have any significant adverse effect on public access, and that the project as proposed without new public access is consistent with the requirements of Coastal Act Sections 30210, 30211, 30212, and 30214.

5. Religious Land Use And Institutionalized Persons Act of 2000

The Commission notes that its action on the proposed development is not based upon any animus toward the religious affiliation of the applicant. The Commission has reviewed the provisions of the Religious Land Use and Institutionalized Personnas Act (RLUIPA), which prohibit certain actions even if *not* based upon animus, to ensure that its actions are not in violation of federal law in any other way. Section 2 of RLUIPA ("Protection of Land Use as Religious Exercise"), 42 U.S.C. § 2000cc, contains four separate prohibitions on government action.¹

Pursuant to that section, the Commission may not "implement a land use regulation . . ."

- "in a manner that imposes a substantial burden on the religious exercise of a[n] . . . institution, unless the imposition of the burden . . . (A) [further] . . . a compelling governmental interest; and (B) is the least restrictive means of furthering that compelling governmental interest" (RLUIPA Section 2(a));
- "in a manner that treats a religious assembly or institution on less than equal terms with a non-religious assembly or institution" (RLUIPA Section 2(b)(1));
- "that discriminates against any assembly or institution on the basis of religion or religious denomination" (RLUIPA Section 2(b)(2)); or
- "that (A) totally excludes religious assemblies from a jurisdiction; or (B) unreasonably limit religious assemblies, institutions, or structures within a jurisdiction" (RLUIPA Section 2(b)(3)).

¹ These prohibitions apply to all state agencies, including the Commission. 42 U.S.C. § 2000cc-5(4).

These sections are inapplicable, initially, because the Commission's action does not involve the implementation of a "land use regulation" as RLUIPA defines that phrase. RLUIPA specifically defines "land use regulation" to mean "a zoning or landmarking law . . . that limits or restricts a claimant's use or development of land . . . if the claimant has an ownership, leasehold, easement, servitude, or other property interest . . . or a contract or option to acquire such an interest." RLUIPA Section 8(5); 42 U.S.C. § 2000cc-5(5). The Coastal Act provisions implemented by the Commission's decision are neither zoning nor landmarking laws that limit or restrict the applicant's use or development of the subject property.

Furthermore, even if the Commission's action were to constitute implementation of a "land use regulation" for purposes of RLUIPA, it meets none of the four criteria listed above. Regarding the first prohibition, in RLUIPA Section 2(a), the Commission notes that the subject site is not used for church assembly and therefore, the Commission's action imposes no substantial burden on the applicant's religious exercise. The proposed development is not designed to facilitate the exercise of religion (much less is it central to such exercise). Thus, the imposition of conditions on the project does not burden the applicant's exercise of religion, much less substantially burden it.

Secondly, with respect to RLUIPA Section 2(b)(1), the Commission's action treats the applicant on terms that are identical to those it would apply to any non-religious entity applying for the same development. It is the nature of the proposed development, and the fact that it involves coastal resource impacts, rather than the nature of the applicant, that is critical to the Commission's decision.

Finally, the Commission's action does not discriminate against the applicant on the basis of religion or religious denomination, and it does not exclude or unreasonably limit religious assemblies or institutions from any jurisdiction. Consequently, the Commission concludes that its action is not in violation of the Religious Land Use and Institutionalized persons Act of 2000.

6. Alleged Violation

As noted above, the fence was constructed at the site in an area within the Commission's jurisdiction without the benefit of a coastal development permit. Consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Review of this permit does not constitute a waiver of any legal action with regard to the cited alleged violation nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit.

7. California Environmental Quality Act (CEQA)

Section 13096 of the Commission's administrative regulations requires Commission approval of a coastal development permit application to be supported by findings showing that the application, as modified by any conditions of approval, is consistent with any applicable requirement of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of

CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available, which would substantially lessen any significant adverse effect the proposed development may have on the environment.

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

EXHIBITS:

1. Regional Location
2. Vicinity Map
3. Site Plan
4. Landscaping Plan
5. Fence Typical

ATTACHMENT A

Standard Conditions:

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Interpretation. Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

CALIFORNIA COASTAL COMMISSION

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EXHIBIT NO. 8

APPLICATION NO.

1-01-052-A²

Staff Report, CDP

Amendment No. 1-01-052-A1

(Page 1 of 23)

F6.5a

Date Filed:	November 17, 2003
49 th Day:	January 5, 2004
180 th Day:	May 16, 2004
Staff:	Jim Baskin
Staff Report:	October 29, 2004
Hearing Date:	November 19, 2004
Commission Action:	

STAFF REPORT:
PERMIT AMENDMENT

APPLICATION NO.: 1-01-052-A1

APPLICANTS: AVATARIC RUCHIRASALA OF ADIDAM

AGENTS: Jack Lewis
Julia Knox, Esq.
Michael J. Wood, Esq.

PROJECT LOCATION: 1512 and 1570 Stagecoach Road, north of Trinidad,
Humboldt County, (APNs 517-011-05 & -04).

DESCRIPTION OF PROJECT

PREVIOUSLY APPROVED: After-the-fact authorization of a six-foot-high, wooden perimeter fence, gate, and landscaping, with special conditions that the fencing along the parcel's roadside frontage be reduced from six-feet to four-feet in height and screened subject to a revised landscaping plan.

DESCRIPTION OF

AMENDMENT REQUEST: Modify after-the-fact permit granted for the construction of a residential fence, gate, and related landscaping to: (1) replace the existing fence and extend it around the perimeter of the adjoining parcel with a landscaped six-foot-high wire field fence; (2) construct an approximately

250-square-foot solarium addition to the existing residence's attached garage; (3) modify and enlarge the current driveway and parking area; (4) install a new landscaped path from parking area to patio and from parking area to house; (5) construct a slate patio and other landscaping yard improvements; (6) develop walking paths on the vacant adjoining parcel; and (7) relocate the existing pump house, water tank, generator, gas tank, and install four 5,000-gallon water storage tanks.

SUBSTANTIVE FILE:
DOCUMENTS

- 1) CDP File No. 1-83-096 (Knight & Preston);
- 2) CDP File No. 1-01-052 (Eleutherian Pan-Communion of Adidam);
- 3) CDP Reconsideration File No. 1-01-052-R (Eleutherian Pan-Communion of Adidam);
- 4) CDP Extension File No. 1-01-052-E1 (Avataric Ruchirasala of Adidam);
- 5) County of Humboldt Special Permit No. SP-03-25; and
- 4) County of Humboldt Local Coastal Program

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission approve with conditions, the requested amendment to the after-the-fact coastal development permit originally granted for the construction of rural residential perimeter fencing on a parcel in the Stagecoach Road Area-of-Deferred-Certification approximately two miles north of the City of Trinidad. The original 2001 permit (CDP No. 1-01-052, Eleutherian Pan-Communion of Adidam, Applicants) authorized after-the-fact the construction of a wooden perimeter fence, gate, and landscaping, requiring the applicants to reduce the height of the fencing along the parcel's Stagecoach Road frontage from six to four feet, submit a revised landscaping plan for the review and approval of the Executive Director, and satisfy all of the permit's special conditions within sixty days of the Commission's action on the permit.

Staff believes the amended project with the attachment of certain special conditions would be consistent with the policies of Chapter 3 of the Coastal Act. The revised project would conform to the Chapter 3 requirements that permitted new development: (1) be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, and to be visually compatible with the character of surrounding areas; and (2) be located in an area with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources, including the environmentally sensitive riparian habitat along McNeil Creek.

One of the three special conditions of the original permit approved by the Commission is reimposed with revisions to assure that the amended development remains consistent with the policies of the Coastal Act. In addition staff is also recommending that three new special conditions be attached to the permit as amended including a condition that would require the original solid wooden fence to be removed within one year of the Commission's action on the permit, a condition that would deem the permit issued to ensure the original construction of the solid wooden fence without a permit is brought into compliance, and a condition requiring that an easement be established conveying rights to the developed parcel for use of water supply facilities to be built partially on the currently vacant northerly parcel to prevent the potential future loss of the domestic water pumping, treatment, storage, and transmission facilities intended to support the residence on the southerly parcel that might occur if the adjoining, currently vacant parcel is later sold, leased, transferred, offered for financing, or put to alternative uses apart from the remainder of the project property.

As conditioned, staff has determined that the development with the proposed amendment would be consistent with the policies of the Coastal Act.

STAFF NOTES:

1. Procedural Note.

Section 13166 of the California Code of Regulations states that the Executive Director shall reject an amendment request if: (a) it lessens or avoids the intent of the approved permit; unless (b) the applicant presents newly discovered material information, which he or she could not, with reasonable diligence, have discovered and produced before the permit was granted.

On December 14, 2001, Coastal Permit No. 1-01-052 (Eleutherian Pan-Communion of Adidam) was approved by the Commission with three special conditions intended to address visual resource protection, and assure that the unpermitted development violation aspect of the project be promptly corrected.

The Executive Director has determined that the proposed amendment would not lessen or avoid the intent of the approved or conditionally approved permit and subsequent permit amendments. The original permit issued by the Commission authorized site development that specifically conditioned to assure consistency with the provisions of the Coastal Act for protecting visual resources, namely ensuring that new development is visually compatible with the character of surrounding areas. A principal requirement of the conditions of the original permit is to lower the height of the fence so as to reduce the sense of mass presented by the wooden board fence. The area primarily contains open wire fence designs that are mostly transparent. Although the amendment proposes an

increase in fencing height, the project as amended would still be consistent with the Coastal Act's visual resource policies as the proposed project changes would also entail replacing the existing solid board-on-board wooden fence with open wire and post fencing that would be compatible with the design of other fences in the area. The development as amended would conform to the policies and standards of the Coastal Act with respect to visual resource protection.

Therefore, for the reasons discussed above, the Executive Director has determined that the proposed amendment would not lessen or avoid the intent of the approved permit and has accepted the amendment request for processing.

2. Commission Jurisdiction and Standard of Review.

The project subject to this coastal development permit amendment is located within an Area-of-Deferred-Certification along the west side of Stagecoach Road and Partick's Point Drive within the Trinidad Planning Area of the County of Humboldt's Local Coastal Program. The project site is located between the first through public road and the sea. Pursuant to Section 30604(a) of the Coastal Act, prior to certification of a certified LCP for this geographic segment, the standard of review that the Commission must apply to the project is the Chapter 3 policies of the Coastal Act.

3. Scope.

This staff report addresses only the coastal resource issues affected by the proposed permit amendment, provides recommended special conditions to reduce and mitigate significant impacts to coastal resources and achieve consistency with the certified LCP and the public access and recreation policies of the Coastal Act, and provides findings for conditional approval of the amended project. All other analysis, findings, and conditions related to the originally permitted project, except as specifically affected by the proposed permit amendment and addressed herein, remain as stated within the revised findings for the original development adopted in by the Commission on March 6, 2002.

4. Commission Action Necessary.

The Commission must act on the application at the November 19, 2004 meeting to meet the requirements of the Permit Streamlining Act.

I. MOTION, STAFF RECOMMENDATION, AND RESOLUTION:

The staff recommends that the Commission adopt the following resolution:

Motion:

I move that the Commission approve the proposed amendment to Coastal Development Permit No. 1-052-A1 pursuant to the staff recommendation.

Staff Recommendation of Approval:

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

Resolution to Approve with Conditions:

The Commission hereby approves the proposed permit amendment and adopts the findings set forth below, subject to the conditions below, on the grounds that the development with the proposed amendment, as conditioned, will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because all feasible mitigation measures and alternatives have been incorporated to substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS: See attached.

III. SPECIAL CONDITIONS:

Note: Special Condition No. 1 of the original permit is modified and imposed as a condition of this permit amendment. Special Condition Nos. 2 and 3 of the original permit are not imposed as conditions of the permit amendment and are shown below in deleted wording format for reference. Special Condition Nos. 4, 5, and 6 are additional new conditions attached to the permit amendment.

Deleted wording within the modified special conditions is shown in ~~striketrough~~ text, new condition language appears as **bold double-underlined** text. For comparison, the text of the original permit conditions are included in Exhibit No. 6.

1. Revised Landscaping Plan

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- A. ~~PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, WITHIN 60 DAYS OF COMMISSION APPROVAL OF COASTAL DEVELOPMENT PERMIT AMENDMENT APPLICATION NO. 1-01-052-A1~~, the applicant shall submit a revised landscaping plan prepared by a qualified professional with expertise in the fields of landscaping or botany, such as a landscape architect or botanist, for the review and approval of the Executive Director. The landscaping plan shall ~~substantially conform with the plan received by the Commission on November 6, 2001 from James Calledine except that the plan shall also provide for the following:~~
- (a) Landscaping shall be planted along ~~all three the southern and eastern~~ lengths of the fence on Assessor's Parcel No. (APN) 517-011-05 and around the utility / guest parking area on APN 517-011-05 and -04 to minimize the visual impacts to Stagecoach Road and shall include the planting of plants or shrubs on at least three-foot centers along the entire span of each of the three these replacement and new lengths of fence;
 - (b) The landscaping shall include only native species or non-invasive, non-native species commonly found along Stagecoach Road and shall include a planting plan detailing the specific locations where individual plants and shrubs would be planted. No exotic invasive plants shall be planted anywhere at the project site;
 - (c) Specifications shall be included to indicate species, size at planting, height at maturity, and establishment techniques (e.g., irrigation, fertilization, etc.);
 - (d) A site map showing the type, size, and location of all plant materials that will be planted at site, the irrigation system, and all other landscape features;
 - (e) A schedule for installation of the plants;
 - (f) All planting shall be completed within 60 days of ~~receipt of the coastal development permit~~ the Executive Director's approval of the revised landscaping plan. The applicant shall notify the Executive Director in writing when the vegetation has been planted, and Commission staff shall verify the planting via a site visit or by examining photographs submitted by the applicant.
 - (g) All required plantings shall be maintained in good growing condition throughout the life of the project, and wherever necessary, shall be replaced with new plant materials to ensure continued compliance with the approved landscaping plan.

- (h) The installed landscaping shall achieve 80% coverage of the portions of the fence located on APN 517-011-05 and the portions of the fence that will be constructed on APNs 517-011-05 and -04 around the new utility / guest parking area within three years of planting. Monitoring to determine if the success standard has been achieved shall be conducted in the fall after the summer dry season. Monitoring shall continue each year for three years or until the success standard has been achieved. Monitoring reports shall be submitted to the Executive Director by October 1 of each year and shall contain accurate counts of the numbers of plants that survived or died, a plan showing the location of plants that did not survive, a narrative assessment of the general condition of the vegetation along the fence, an analysis of reasons for any failure of the planting, photographs of the landscaping, and an evaluation of whether the 80% coverage standard will be or has been achieved within three years of planting. If a report indicates that the plants will not be or have not been successful in part, or in whole, the applicant shall submit for the review and approval of the Executive Director a revised landscaping program containing recommendations for any additional planting and other corrective measures needed to achieve the 80% coverage performance standard. The revised landscaping program shall require an amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.
- B. The permittee shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

2. Revised Fence Plans

- ~~A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit a revised plan for the design of the fence to the Executive Director for review and approval. The revised plan shall provide for lowering the portion of the fence extending along the eastern property boundary (along Stagecoach Road) and the driveway gate from approximately six feet high to a maximum of four feet high.~~
- ~~B. The permittee shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.~~

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3. Condition Compliance

- A. WITHIN 60 DAYS OF COMMISSION ACTION ON THIS COASTAL DEVELOPMENT PERMIT APPLICATION, or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to issuance of this permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

4. Permit Expiration and Condition Compliance

Because some of the proposed development has already commenced, this coastal development permit shall be deemed issued upon the Commission's approval and will not expire. Failure to comply with the special conditions of this permit may result in the institution of an action to enforce those conditions under the provisions of Chapter 9 of the Coastal Act.

5. Well Water Pumping, Treatment, and Storage, and Guest Parking Easement.

- A. APN 517-011-04 shall provide, in perpetuity, rights for access, maintenance, and use of that portion of APN 517-011-04 depicted as "utility / guest parking area," as shown on pages 4 and 5 of Exhibit No. 4 attached to this staff report for domestic water supply pumping, treatment, storage, and transmission facilities, and for supplemental off-street parking for guests of the residence on APN 517-011-05

- B. WITHIN 60 DAYS OF COMMISSION APPROVAL OF COASTAL DEVELOPMENT PERMIT AMENDMENT APPLICATION NO. 1-01-052-A1 or within such additional time as the Executive Director may grant for good cause, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against that real property known as 1570 Stagecoach Road, Trinidad, California (APN 517-011-04) an easement in favor of that real property known as 1512 Stagecoach Road, Trinidad, California (APN 517-011-05), in a form and content acceptable to the Executive Director conveying rights in perpetuity for access, maintenance, and use of that portion of APN 517-011-04 depicted as "utility / guest parking area," as shown on pages 4 and 5 of Exhibit No. 4 attached to this staff report for domestic water supply pumping, treatment, storage, and transmission facilities, and for supplemental off-street parking for guests of the residence on APN 517-011-05. The easement shall include a legal description of the

entire parcel or parcels governed by this permit. The easement shall be irrevocable, running from the date of recordation and shall run with the land binding all landowners, and their heirs, assigns, and successors in interest to the subject property. The easement shall also indicate that, in the event of an extinguishment or termination of the easement for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

6. Removal of Wooden Fence.

The existing wooden fence along the Stagecoach Road frontage side of APN 517-011-05 shall be removed by November 15, 2005. The demolition materials from removal of the fence shall be disposed of at a solid waste or recycling facility appropriately licensed to receive such materials.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares as follows:

A. Project and Site Description.

1. Project Setting and Background

The project site is comprised of two blufftop lots located on the west side of Stagecoach Road approximately ¼ mile south of the northern intersection with Patrick's Point Drive and approximately 2.2 miles north of Trinidad (Exhibit Nos. 1 & 2). The site is located in an area of low-density, rural residential development along a densely vegetated, narrow road corridor. These blufftop lots lie at an elevation of approximately 200 feet above sea level. The southerly lot, Assessor's Parcel No. (APN) 517-011-05, is approximately .98-acre in size and is developed with a single-family residence built pursuant to a coastal development permit approved by the Commission in 1983 (CDP No. 1-83-096, Knight). The northerly parcel, APN 517-011-04 encompasses approximately three acres and is currently vacant and unimproved. The site and surrounding area is vegetated with a North Coast Coniferous Forest consisting primarily of a Sitka spruce (*Picea sitchensis*) / western hemlock (*Tsuga heterophylla*) complex, with an attending understory of red alder (*Alnus rubra*), California wax myrtle (*Myrica californica*), swordfern (*Polystichum munitum*), western bracken fern (*Pteridium aquilinum*), evergreen huckleberry (*Vaccinium ovatum*), salal (*Gaultheria shaloni*), and related undergrowth species.

2. Description of Originally Approved Project

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The original permit application came before the Commission on December 14, 2001 in response to an investigation by the Enforcement Unit wherein it was confirmed that a fence had been constructed on the southerly parcel, in an area within the Commission's jurisdiction, without the benefit of a coastal development permit contrary to the requirements of Section 30600(a) of the Coastal Act. To resolve the violation, the applicants submitted a coastal development permit application seeking an after-the-fact authorization for a six-foot-high, solid wood perimeter fence, gate, and landscaping. The fence is constructed of 1" x 6" vertical redwood slats, 2" x 8" horizontal redwood slats across the top, on 6" x 6" vertical posts and 2" x 4" stringers spaced every ten feet, with a similarly designed gate across the driveway (Exhibit No. 5). The fence extends along the north, east, and south property boundaries of APN 517-011-05 for approximately 124, 186, and 127 linear feet respectively (Exhibit No. 3). The applicants indicated in the original permit application that the purpose of the fence is to provide security and privacy, as the residence is used from time to time as a retreat for the applicants' spiritual leader.

To screen the view of the fence from Stagecoach Road, the applicants also proposed to landscape along the eastern fence line paralleling the road. The applicants proposed to plant two types of vegetation native to the area including 32 silk tassel (*Garrya elliptica*) bushes, four to five feet apart, and 22 Clematis (*Clematis* sp.) vines. The applicants also proposed to install landscaping irrigation to help establish the vegetation.

The revised findings staff report for the original development, attached as Exhibit No. 7 and hereby incorporated by reference, state that the original conditionally-approved project entailed the after-the-fact authorization of a six-foot-high, solid wood perimeter fence, gate, and landscaping contingent upon certain modifications. The three special conditions attached to the original permit included requirements to assure visual compatibility with the character of the surrounding area. The conditions required that the run of the fence along the property's eastern side be reduced in height from six to four feet to reduce the apparent mass of the fence. In addition, the screening plants were to be installed consistent with a revised landscaping plan wherein specific standards as to their spacing, irrigation, maintenance, and upkeep were to be detailed. All requirements of the original permit special conditions (i.e., submittal of the revised landscaping plan, reducing the height of the eastern fence from six to four feet) were to be satisfied within sixty days of the Commission's action on the original permit, unless extended for good cause by the Executive Director.

3. Development of Alternate Fence Design and Submittal of Permit Amendment

The applicants objected to the requirements to lower the fence and submitted a request for reconsideration of the Commission's decision on the original permit. The reconsideration request hearing was scheduled for a hearing at the Commission's March 6, 2002 meeting, but was continued at the request of the applicants so that they could

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develop an alternative fence design and apply for a permit amendment that would satisfy the Commission's concern about visual compatibility with the surrounding area and yet meet the applicant's concerns about privacy. The applicant subsequently developed the current design of the fence in consultation with their neighbors and on March 15, 2002 obtained a special permit for design review from the County of Humboldt for the fence and the other new development proposed in the amendment. The applicants have indicated that they intend to withdraw the reconsideration request upon favorable action on the permit amendment by the Commission. On December 5, 2003, the applicants also applied for a permit extension prior to the original permit's March 5, 2004 expiration date. This extension request will also be presented to the Commission for its consideration at the November 19, 2004 meeting.

4. Description of Permit Amendment

Replacement Fencing: The applicants now propose to amend the project to replace the existing fencing along the eastern side of APN 517-011-05 with a different type of fencing to be located approximately five feet westerly from the existing fence. The new fence would extend to six feet in height and be constructed of 4" x 4" galvanized wire mesh field fencing materials strung on 4" x 4" wooded posts set in concrete footings to an 18-inch-depth and spaced six to eight feet apart with 2" x 4" wooden top and bottom stringer rails. The front of the replacement fence would be planted with "privacy landscaping." The existing wooden fence run along Stagecoach Road would be retained in place for a period of one to two years to existing to allow the landscaping in front of the new fence run to mature to a point where privacy screening has been established. No further details were provided with the permit amendment application as to the specific landscaping plants to be utilized for the replacement fence, or precisely at what point the new landscaping would be deemed to have been adequately established to prompt the removal of the existing easterly fence run. The existing wooden fence segment along the southerly property line will remain unchanged and the fence segment along the boundary between the two parcels would be removed.

New Fencing: In addition to replacing the existing fence run along the eastern side of the property, the applicants propose to install similarly landscaped wire mesh field fencing along the eastern and northern perimeter of adjoining Assessor's Parcel No. 517-011-04. The applicants have indicated that they have recently acquired this property and wish to include most of its grounds within the curtilage of the residence on Assessor's Parcel No. 517-011-05. The proposed new fencing would commence at a point approximately 40 feet south-southwesterly from the southeastern corner of APN 517-011-05 and run approximately 20 feet westerly, 115 feet northerly, 36 feet easterly, and 65 feet southerly to enclose an approximately 3,200-square-foot utility and guest parking area for four vehicles to be created across the common property line of the two parcels. The new fencing would continue running northerly from the utility/guest parking area along the eastern side of currently vacant APN 517-011-04, setback a minimum distance of 25 feet from the centerline of Stagecoach Road until coming within 100 feet of the McNeil Creek

riparian corridor. At this point the new fence would turn and run westerly parallel to the creek drainage for a distance of approximately 650 feet to the parcel's blufftop edge.

Relocated and New Site Improvements: The applicants are also proposing to perform a variety of new improvements to the property, as follows:

- Modify the existing driveway and off-street parking facilities by constructing a new 10-foot-wide gravel driveway whose alignment would run southwesterly from the current entry point onto APN 517-011-05 approximately 75 feet to the existing concrete slab on the southern center of the parcel. The slab would be expanded to create a 32' x 32' paved parking and turn-around area for three vehicles. The parking area would be screened with additional "appropriate plants." A 30-inch-high stone wall would be constructed and backfilled between the new parking area to and across the existing driveway to create a terraced landscaped area at the edge of the stone patio. The remaining portions of the gravel surface of the existing driveway between the stone wall and its street entrance would be removed and replaced with "appropriate landscaping."
- Remodel the existing attached two-car garage into a art studio / general utility space. Attach a pre-fabricated approximately 215-square-foot, 15-foot-high solarium onto the landward former entrance to the garage. Install a 23-foot-diameter stone patio along the southeastern side of the garage and clear a footpath between the patio and the new parking area.
- Relocate the existing pump house, water tank, generator, and liquefied petroleum gas tank into the newly created utility / guest parking area. Extend new water, gas and electrical power lines to the relocated utilities from their former sites. Install four 5,000-gallon water storage tanks in tandem within the utility area. Construct a new 10' x 12', seven- to eight-foot-high pump house and water treatment structure. Clear a walking pathway between the utility /guest parking area to the main residence.
- Construct a series of three-foot-wide, unimproved surface walking paths across APN 517-011-04, remove downed trees and limbs, and groom the site of debris as necessary for safety and wildfire management purposes. No major vegetation is proposed for removal.

The amended development does not involve a change of use, as the property and existing residence is not currently used or proposed for church assembly.

B. Planning and Locating New Development.

1. Summary of Applicable Coastal Act Provisions.

Section 30250 of the Coastal Act states, in applicable part:

New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources...

2. Analysis

The project site consists of two rural residential parcels, one of which (APN 517-011-05) is currently developed with a single-family residence. This property is served by easement-conveyed well water originating from a parcel on the other side of Stagecoach Road. Wastewater from the dwelling is accommodated by an on-site sewage disposal system approved by the County of Humboldt Public Health Department's Division of Environmental Health as part of the original permitting for the residence (see CDP No. 1-82-096, James Knight and Kathlene Preston, Applicants). The subject parcels abut and have direct access off of Stagecoach Road, a County-maintained public street. The parcels lie within the emergency services jurisdictional boundaries of the Humboldt County Sheriff's Office and the California Department of Forestry and Fire Protection. Electrical and telephone service is provided to the site by the Pacific Gas and Electric Company and SBC Communications, Inc., respectively. Gas fuel service is available onsite at APN 517-011-05 from an existing liquefied petroleum gas (LPG) tank.

As described in Findings Section IV.A.3 above, the applicants are proposing to amend the permit originally granted to replace the section of the existing solid wooded fence along the property's eastern road frontage whose height had been required to be lowered from six feet to four feet with a landscaped, six-foot-high, open wire mesh field fence to be located five feet further in from the existing fence. The amended project description also proposes a variety of new development, including: (1) installing new field fencing to enclose a utility / guest parking area and around the adjacent, currently vacant lot (APN 517-011-04); (2) revising driveway and off-street parking areas; (3) remodeling the existing attached garage into an art studio and general utility area, and constructing a solarium addition; (4) relocating and augmenting the existing water pump house and storage, generator and LPG fuel tank facilities into the utility area; and (5) establishing a patio area, walkways, paths, and landscaping at various locations on the property.

With respect to impacts on road circulation, wastewater disposal capabilities, utilities, or other public services, the proposed amended development would not have significant adverse effects, either individually or cumulatively, on coastal resources. The proposed

improvements to the driveway and off-street parking facilities would not result in a change in road capacity, create new vehicular entry points onto the adjoining public road, or reduce the amount of off-street parking amenities provided at the project site.

A major new aspect of the amended development is the proposed relocation of the fuel domestic water supply pumping, treatment, and storage infrastructure into a fenced-off approximately 3,200-square-foot "utility area" to be situated at a location straddling the property line of the two lots. The Commission notes that as a separate and discrete parcel of real property, APN 517-011-04 is available for lease, sale, transfer to other parties, or as lien collateral for purposes of financing. If a successor upon receivership should then opt to discontinue allowing the owners of APN 517-011-05 to use the portion of the utility and guest parking area on APN 517-011-04, the adjoining residential uses could lose a crucial supporting element. Such elimination of water supply facilities could have significant implications to the residents of APN 517-011-05 that could adversely affect their health, safety, and comfort. A lack of water would also affect sewage disposal practices, resulting in impacts to water quality and coastal resources, inconsistent with the intent of Sections 30250 that development be located in areas with adequate services where it will not have significant adverse effects of coastal resources.

Thus, to prevent the potential loss of the water supply facilities provided on the adjoining parcel, the Commission attaches new Special Condition No. 5. Special Condition No. 5 states that the applicants must submit within 60 days of the Commission's approval of the subject coastal development permit a copy of a recorded easement, in a form acceptable to the Executive Director, establishing rights in perpetuity for the owners of APN 517-011-05 for access, maintenance, and use of the utility / parking area on APN 517-011-04 for domestic water supply pumping, treatment, storage and transmission facilities, and supplemental off-street guest parking for the existing residential use on APN 517-011-05. Recordation of the easement will also provide constructive notice that the conveyed rights of use of the utility area are fully disclosed to all potential future purchasers of either property.

Therefore, the Commission concludes that the amended development as conditioned is consistent with the new development policies of the Coastal Act because the amended development would not have significant adverse effects, either individually or cumulatively, on coastal resources with regard to circulation, water and wastewater facilities, or other public services.

C. Visual Resource Protection and Compatibility with Surrounding Character.

1. Summary of Applicable Coastal Act Provisions

Section 30251 of the Coastal Act states, in applicable part, that:

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

2. Analysis

The site is located on the west side of Stagecoach Road in an area of low-density, rural residential development on heavily forested lots. Stagecoach Road is a narrow, public road within a densely vegetated travel corridor that provides public access to several coastal recreation areas including various units of Trinidad State Beach to the south from the City of Trinidad and serves as an alternate parallel route to Patrick's Point Drive for southbound traffic coming from the north. The proposed amended project does not involve the removal of any trees or major vegetation and would not be visible from any park or public recreation area, only from the public road.

The character of the area is largely defined by the dense, native spruce/hemlock forest and coastal scrub vegetation along the east and west sides of the road corridor. As a result of the densely vegetated character of the area, very little development is actually visible from Stagecoach Road with the exception of occasional rooftops and some property line fencing. This dense vegetation is the dominant characteristic of the area; the few fences that do exist and that are visible from the roadway do not by themselves define the character of the area.

Protection of Views To and Along the Ocean and Coastal Scenic Areas

As noted above, views of the ocean from Stagecoach Road are limited by the intervening dense spruce forest vegetation and the distance from the road to the ocean (approximately 125 feet at the subject property). As seen from Stagecoach Road, the subject property affords only a minimal blue water view corridor across the property down the area of the driveway entrance. The majority of the former ocean view across the property was obstructed with the construction of the single-family residence approved under CDP No. 1-83-096. The Commission notes that CDP No. 1-83-096 did not require the establishment of a view corridor across the site, or otherwise require the view to be maintained. The permit did include a condition that limited additional tree removal beyond the project proposal and required the maintenance of native vegetation on the site to maintain compatibility with the densely vegetated character of the area. However, maintenance of the densely forested site also minimizes any ocean view across the property. Thus, the Commission finds that the proposed replacement fence and new fencing as well as the other relocated and new site improvements, including the new 15-foot-high, 215-square-foot solarium, which will be located on the landward side of the existing house, would not result in a significant adverse impact on views to or along the coast.

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Minimization of Natural Landform Alteration

As described further in Project Setting and Site Description Findings Section IV.A.1, the subject site consists of flat uplifted marine terrace comprising two blufftop lots. The parcels are covered with dense coastal conifer forest and understory vegetation. The installation of the revised and new fencing, changes to the driveway and off-street parking areas, relocation of the water, fuel, and generator facilities, and the landscaping work would entail some minor grading and excavation, primarily for the placement of fence posts, gravel and pavement surfaces, and for the foundations for the proposed structural additions. However, no additional trees or other areas of major vegetation (i.e., large contiguous patches of brush) would be removed. A 30-inch-high stone wall would be constructed and backfilled to the edge of the proposed stone patio. Given the relatively minor scope of the proposed changes to the site terrain, the Commission finds that the proposed amended development would not result in substantial alteration of natural landforms.

Visually Compatibility with the Character of Surrounding Areas

As discussed in the revised findings for the original permit, the Commission found that planting vegetation to screen the existing six-foot wooden fence alone would not be sufficient to find consistency with the character compatibility requirement of Section 30251, as the mass of the solid wooden fence itself is out of character with the surrounding area. There are no other significantly visible fences along the street frontage of the properties on either side of the subject property, which results in the originally proposed solid wooden fence being even more visually prominent among the adjacent dense vegetation. Fences elsewhere along the road are either of a lower, three to four foot height and/or are of an open-style design, such as wooden posts and wire, that provides greater compatibility with the character of the area in that they are less visually prominent. Many of these open-style fences are also covered with vegetation common to the area that furthers their compatibility with the character of the area.

Thus, even though the replacement fence proposed under the current amendment request would be the same height as the existing fence and would include screening landscaping, this barrier would not create a solid edifice, as does the existing fence that visually projects a structural mass at the front of the subject property, atypical of other properties along Stagecoach Road. Similarly, the new wire fence around the northerly parcel as proposed to vary in setback from the road consistent with topographic features and to be located so as to utilize existing vegetation for screening would be compatible with the character of the surrounding area. Therefore, the Commission finds that all of the proposed fencing would be compatible with the character of the surrounding area, as required by Section 30251, provided the existing fence is promptly removed once the screening to be planted around the replacement fence as screening has been established. Thus, the Commission imposes revised Special Condition No. 6 which requires the applicant to demolish the existing fence within one year (November 15, 2005) of the

Commission's action on the permit and to require that the demolition materials are disposed of at a solid waste or recycling facility appropriately licensed to receive such materials.

The solarium, utility areas, driveway, and other new development components of the amended development must also be compatible with the character of the surrounding area. Several of these elements, such as the pathways, trails, driveways, patio, and landscaping stonewall will either not extend noticeably above the ground or, as screened by the proposed replacement fence, would not be visible from public vantage points along Stagecoach Road. Although the solarium addition would extend to a height of 15 feet, the structure would be no taller than the existing 28-foot-high house. The Commission does note that while the existing house may form a backdrop to the solarium, the glass panels of this structure as well as the industrial appearance of the water storage tanks and the other water supply facilities would not necessarily be compatible with the character of the area. Accordingly, additional mitigative actions would need to be taken to ensure that the replacement fence on the southerly parcel and around the utility area adequately screen these structures to ensure the appearance of the amended development is compatible with the character of the surrounding area

When the original fence was constructed, the applicants planted vegetation along the eastern fenceline that has been only partially successful in screening the fence, as some of the plantings did not survive due to what the applicants attribute to lack of light and irrigation. As part of the amended development, the applicants are proposing to provide additional native landscaping along the replacement fence line segment facing Stagecoach Road, consisting of "appropriate plants."

To ensure that the replacement fencing and the development behind it is adequately screened in a manner consistent with the character of the area, the Commission reimposes revised Special Condition No. 1. Special Condition No. 1 requires the applicant to submit a revised landscaping plan for review and approval of the Executive Director. Special Condition No. 1 also requires that the revised landscaping plan provide for native landscaping along all lengths of the replacement fencing to screen the fence from view in all directions along the public road. Furthermore, due to the limited success of previous landscaping attempts, the Commission finds that it is again necessary to require a mechanism to monitor and maintain the health of the vegetation to ensure its successful establishment. The landscaping plan requires specifications including species, sizes at planting, heights at maturity, and establishment techniques including irrigation and fertilization. Special Condition No. 1 also requires that the installed landscaping achieve 80% coverage of the fence within three years of planting to ensure that it achieves consistency with the character of the area as discussed above. Monitoring reports are required to be submitted to the Executive Director by October 1 of each year and a narrative assessment of the general condition of the vegetation along the fence, an analysis of reasons for any failure of the planting, photographs of the landscaping and an evaluation of whether the 80% coverage standard will be or has been achieved within

three years of planting. If a report indicates that the plants will not be or have not been successful in part, or in whole, the applicant is required to submit for the review and approval of the Executive Director a revised landscaping program containing recommendations for any additional planting and other corrective measures needed to achieve the 80% coverage performance standard and obtain a permit amendment unless the Executive Director determines that no amendment is legally required.

Conclusion

The Commission concludes that the amended development as conditioned has been sited and designed to protect views to and along the coast. Furthermore, the Commission concludes that, as conditioned by reimposed revised Special Conditions No. 1 and new Special Condition No. 6 to: (a) ensure that landscaping is successfully planted and maintained along the replacement fence to ensure that the development behind the fence would be screened from view and that only non-invasive native vegetation appropriate to the surrounding area is utilized; and (b) require the existing fence run along the eastern property line be promptly removed one year after issuance of the permit, the amended development will not have significant adverse effects on visual resources.

The Commission therefore finds that as: (1) views to and along the ocean would not significantly be adversely effected by the project modifications; (2) natural landform alteration would be minimized; and (3) the amended project has been conditioned to ensure that it would be visually compatible with the character of surrounding areas, the amended development as conditioned is consistent with Coastal Act Section 30251.

D. Environmentally Sensitive Habitat Areas.

1. Summary of Applicable Coastal Act Provisions

Section 30240(b) of the Coastal Act states:

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

2. Analysis

The roughly 700-foot-long northern boundary of the project site is co-terminus with the centerline of McNeil Creek, a first-order perennial coastal stream that drains a small an approximate 400-acre watershed. The creek and its adjoining riparian corridor occupy the bottom and sides of a relatively steep-sided gulch whose vegetation changes abruptly at the top of the slopes into the adjacent North Coast Coniferous Forest series, clearly demarcating the boundaries of the creek's environmentally sensitive habitat areas.

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As detailed further in the Description of Permit Amendment Findings Section IV.A.3, above, the applicants propose to install new fencing northward along the eastern side of the currently vacant lot APN 517-011-04 to a point 100 feet from the top of the slope down into McNeil Creek. The fence would then turn to the west and run parallel to the top of the bank terminating at the parcel's blufftop edge. Rudimentary walking trails would also be developed throughout APN 517-011-04 in the area to the south of the proposed northerly fenceline.

The applicants are proposing to provide a minimum 100-foot-wide buffer between the riparian corridor ESHA and the proposed fencing and pathways uses. As the amended development would comprise a relatively small project on existing parcels zoned for low-density single family residential uses, and as the Commission has often found 100-foot-wide buffers to be adequate to protect ESHA from the impacts of adjacent development, the Commission finds the proposed 100-foot-wide buffer to be adequate.

To ensure that the habitat provided within the McNeil Creek is not impacted by the introduction of invasive landscaping plants, Special Condition No. 1 requires that only native or non-invasive, non-native plant species common to the Stagecoach Road rural residential area be used in the fence's landscaped screening. No exotic invasive plants are allowed to be planted anywhere at the project site. Introduced invasive exotic plant species could physically spread into the ESHA and displace native riparian and wetland vegetation thereby disrupting the values and functions of the ESHAs. The seeds of exotic invasive plants could also be spread to other nearby ESHA by wind dispersal or by birds and other wildlife. Special Condition No. 1 will ensure that the ESHA near the site is not significantly degraded by any future landscaping that would contain invasive exotic species. Therefore, the Commission finds amended development as conditioned is consistent with the requirement of Coastal Act Section 30240(b) that development adjacent to ESHA be shall be sited and designed to prevent impacts which would significantly degrade such areas, and be compatible with the continuance of those habitat areas.

E. Coastal Access.

1. Summary of Applicable Coastal Act Provisions

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

development projects except where it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, adequate access exists nearby, or agriculture would be adversely affected.

2. Analysis

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

Although the project site is located between the first public road (Stagecoach Road) and the sea, it will not otherwise adversely affect public access. There are no trails that provide shoreline access through the subject property and therefore, the revised fence or other site improvements would not result in a barrier to public coastal access. Furthermore, the proposed revised fence and site improvements would not change the nature or intensity of use of the site and thus, would not create any new demand for public access or otherwise create any additional burdens on public access.

Therefore, the Commission finds that the amended development is consistent with the public access policies of the Coastal Act.

F. Religious Land Use And Institutionalized Persons Act of 2000.

The Commission notes that its action on the proposed development is not based upon any animus toward the religious affiliation of the applicant. The Commission has reviewed the provisions of the Religious Land Use and Institutionalized Persons Act (RLUIPA), which prohibit certain actions even if *not* based upon animus, to ensure that its actions are not in violation of federal law in any other way. Section 2 of the RLUIPA, titled "Protection of Land Use as Religious Exercise" (42 USC §2000cc), contains four separate prohibitions on government action.¹

Pursuant to that section, the Commission may not "implement a land use regulation..."

- "In a manner that imposes a substantial burden on the religious exercise of a[n] . . . institution, unless the imposition of the burden... (A) [further]... a compelling governmental interest; and (B) is the least restrictive means of furthering that compelling governmental interest" (RLUIPA Section 2(a));
- "In a manner that treats a religious assembly or institution on less than equal terms with a non-religious assembly or institution" (RLUIPA Section 2(b)(1));
- "That discriminates against any assembly or institution on the basis of religion or religious denomination" (RLUIPA Section 2(b)(2)); or

¹ These prohibitions apply to all state agencies, including the Commission. 42 USC §2000cc-5(4).

- “That (A) totally excludes religious assemblies from a jurisdiction; or (B) unreasonably limit religious assemblies, institutions, or structures within a jurisdiction.” [RLUIPA Section 2(b)(3))

These sections are inapplicable, initially, because the Commission’s action does not involve the implementation of a “land use regulation” as RLUIPA defines that phrase. RLUIPA specifically defines “land use regulation” to mean “a zoning or landmarking law ... that limits or restricts a claimant’s use or development of land... if the claimant has an ownership, leasehold, easement, servitude, or other property interest...or a contract or option to acquire such an interest.” RLUIPA Section 8(5); 42 U.S.C. § 2000cc-5(5). The Coastal Act provisions implemented by the Commission’s decision are neither zoning nor landmarking laws that limit or restrict the applicant’s use or development of the subject property.

Furthermore, even if the Commission’s action were to constitute implementation of a “land use regulation” for purposes of RLUIPA, it meets none of the four criteria listed above. Regarding the first prohibition, in RLUIPA Section 2(a), the Commission notes that the subject site is not used for church assembly and therefore, the Commission’s action imposes no substantial burden on the applicant’s religious exercise. The proposed amended development is not designed to facilitate the exercise of religion (much less is it central to such exercise). Thus, the imposition of conditions on the project by the Commission with the proposed revisions would not burden the applicant’s exercise of religion, much less pose a substantially burden to such activity.

Secondly, with respect to RLUIPA Section 2(b)(1), the Commission’s action treats the applicant on terms that are identical to those it would apply to any non-religious entity applying for the same development. It is the nature of the proposed amended development, and the fact that it involves coastal resource impacts, rather than the nature of the applicant, that is critical to the Commission’s decision.

Finally, the Commission’s action does not discriminate against the applicant on the basis of religion or religious denomination, and it does not exclude or unreasonably limit religious assemblies or institutions from any jurisdiction. Consequently, the Commission concludes that its action on the amended development is not in violation of the Religious Land Use and Institutionalized persons Act of 2000.

G. Alleged Violation.

As noted above, the original fence was constructed at the site in an area within the Commission’s jurisdiction without the benefit of a coastal development permit. Consideration of this permit amendment application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Review of this permit does not constitute a waiver of any legal action with regard to the cited alleged violation nor does

it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit.

H. California Environmental Quality Act (CEQA).

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

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

V. EXHIBITS:

1. Regional Location Map
2. Vicinity Map
3. Planning Area Boundary Map, Trinidad Area Plan – County of Humboldt LCP
4. Proposed Amended Project Narrative Description, Site Plans, and Elevation Views
5. Excerpts, Original Coastal Development Permit Revised Findings Staff Report
6. Original Project Site Map, Landscaping Plan, and Fencing Typical

ATTACHMENT A:

STANDARD CONDITIONS

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director of the Commission.
3. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
4. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

JULIA H. KNOX

Attorney at Law

June 1, 2005

Bob Merrill, Executive Director
Jim Baskin, Coastal Planner Analyst
California Coastal Commission, North Coast District Office
710 E Street, Suite 200 / P.O. Box 4908
Eureka, CA 95502-4908

EXHIBIT NO. 9**APPLICATION NO.**

1-01-052-A2

APPLICANT**CORRESPONDENCE**

(Page 1 of 2)

By Facsimile to: (707) 445-7877

Re: The Avataric Ruchirasala of Adidam (the "Church")
CDP No. 1-01-052-A1

Dear Bob and Jim:

I am writing pursuant to our conversations at the end of last week in reference to the Church's application for amendment to the above referenced coastal development permit, and the "Staff Report: Permit Amendment" dated May 20, 2005.

In our conversations we discussed amending the Staff Report in order to clarify the intent of the Applicant (The Avataric Ruchirasala of Adidam) and the Coastal Commission as regards the scope of the provisions of the Permit Amendment specifically in reference to Section III SPECIAL CONDITIONS, paragraph 9 entitled "Deed Restriction Recordation of Permit Special Conditions". In accordance with my discussion with you Bob, I have endeavored to amend the language of paragraph 9 in accordance with my understanding of the intent of the parties and the scope of the Permit Amendment as follows:

9. **Deed Restriction Recordation of Permit Special Conditions**

PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT AMENDMENT NO. 1-01-052-A2, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit a document in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that pertain to the appropriation, storage and use of water from McNeil Creek; and (2) reflects the terms of Special Conditions # 7 and #8 of this permit. The recorded document shall include a legal description of the entire parcel or parcels governed by this permit. The recorded document shall also indicate that, in the event of an extinguishment or termination of the conditions set forth in the recorded document for any reason, the present terms and conditions of this permit amendment, and any future terms and conditions which may result from California Coastal Commission approval of future permit amendment application(s), shall continue to apply to the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

Bob Merrill and Jim Baskin
June 1, 2005
page two

There are also a few other points in the Staff Report: Permit Amendment which I would like to bring to your attention:

1. Under Section III SPECIAL CONDITIONS: (page 5)

a. III 7(A)(2): (page five)

I would like to clarify the Applicant's understanding of why the Commission is imposing the limitations on Applicant's use of the water from McNeil Creek enumerated in this provision which are:

(1) because of the fact that Applicant is allowed, under the existing terms of the permit, to draw water from McNeil Creek for 10 months only every year; and

(2) Applicant's permitted water tank storage capacity (20,000 gallon capacity) is only large enough to allow Applicant the uses enumerated in this paragraph for the two months Applicant is not drawing water from McNeil Creek, and Applicant will require greater storage capacity prior to expanding its use of the water Applicant draws from McNeil Creek.

2. Under Section IV FINDINGS AND DECLARATIONS: (page 7)

a. IV(A)(3) (page 9)

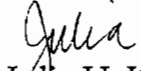
I would like to clarify that in the paragraph referenced by the third bullet point on this page the first sentence refers to the geographic reference "at a point approximately 40 feet south-southwesterly from the southeastern corner of APN 517-011-05 and run approximately 20 feet westerly...". I am not clear as to this reference as it seems to me that "40 feet south-southwesterly from the southeastern corner of APN 517-011-05" would be on the Greene's property??

b. IV(B)(2) (page 12)

The second sentence of this paragraph reads: "This property is served by easement-conveyed stream diversion-based system originating from a parcel on the other side of Stagecoach Road (APN 517-011-06)." Please note that Applicant's existing water system rights originate at a point farther away from Applicant's property than "a parcel on the other side of Stagecoach Road...". Applicant's existing water system originates to the east of Stagecoach Road, but not directly across Stagecoach Rd. from APN 517-011-05.

Thank you very much Jim and Bob for your assistance with this permit amendment application. I will follow this fax up with a telephone call to you. I can be reached directly at my desk at (707)928-5775.

Sincerely,


Julia H. Knox

JHK:hps

cc: Jack Lewis, Michael Wood, Esquire

EXHIBIT NO. 9

APPLICATION NO.

1-01-052-A2

APPLICANT

CORRESPONDENCE

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