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Filed:	July 7, 2008
49th Day:	Waived
Staff:	Tiffany S. Tauber
Staff Report:	August 22, 2008
Hearing Date:	September 12, 2008

STAFF REPORT: APPEAL

SUBSTANTIAL ISSUE

APPEAL NO.:	A-1-MEN-08-030
APPLICANT:	Mendocino Land Trust
LOCAL GOVERNMENT:	County of Mendocino
DECISION:	Approval with Conditions
PROJECT LOCATION:	On a bluff top parcel located approximately one mile south of Albion, on the west side of Highway One, approximately 500 feet north of the its intersection with Navarro Ridge Road at 2300 North Highway One, Mendocino County (APN 123-290-03).
PROJECT DESCRIPTION:	Open and develop a public access trail from State Highway One to the ocean bluff within a lateral and vertical public access easement on private property, including installation of signage, fencing, and a segment of raised boardwalk.
APPELLANTS:	John & Dee Patrick

SUMMARY OF STAFF RECOMMENDATION:

The subject site is a 12.5-acre blufftop parcel located approximately one mile south of Albion on the west side of Highway One, approximately 500 feet north of its intersection with Navarro Ridge Road. The parcel is situated on a west-sloping marine terrace bound to the east by Highway One and to the west by an approximately 130-foot-high, near vertical coastal bluff. The portion of the parcel that is the subject of the coastal development permit under appeal contains an existing public access easement area, that consists of a 10-foot-wide vertical easement from Highway One extending along the southeast property line to the bluff edge, and a 25-foot-wide lateral blufftop easement as measured from the bluff edge.

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The appellant, the current owners of the property, contends that providing public access at the subject site would create adverse public safety, environmental, and liability impacts due to its proximity to the coastal bluff, Highway One, and adjacent private property. The appellant alleges that public access at the subject location would (1) expose the public to safety hazards associated with the bluff edge and fast moving highway traffic, (2) cause adverse impacts to the environment from the direct killing of plants and animals by trail users, garbage left at the site, the introduction of non-native plants, and animals not on a leash, and (3) result in trespassing on private property, blocking a private driveway, and increased liability for the private property owners. The appellant does not cite a specific LCP policy that they feel the County's action did not conform with in regard to this contention.

The appellant does specifically cite Coastal Act Section 30212 and asserts that Section 30212 allows OTD's to be terminated if adequate access exists nearby. The appellant contends that since the time the subject OTD was required by the Commission in the 1980's, the 55-acre Navarro Headlands public access area has been established less than half a mile from the subject site. The appellant asserts that adequate access now exists nearby and therefore, the subject OTD should be terminated, and time and effort should be directed toward maintaining those trails that are open and do not pose as much perceived risk to the public.

Staff recommends that the Commission find that the contentions raised by the appellant do not raise a substantial issue of conformity of the approved development with either the certified LCP or the public access policies of the Coastal Act.

The issues raised by the appellant pertain to the alleged inappropriateness of the subject location as a site for providing public access. However, the *location* of the public access easement area was not a matter before the County as part of its action to approve CDP No. 40-2006. Rather, CDP No. 40-2006 authorizes the physical development of a trail (i.e., signs, fencing, boardwalk structure, earthen path) in the already established public access easement. The public access improvements approved by the County are located entirely within the vertical and lateral easement areas required by CDP No. 1-81-085 approved by the Coastal Commission in 1981 for the development of a single-family residence on the subject property. In reviewing CDP No. 1-81-085, the Commission determined that the provision of public access at the site was necessary and appropriate to mitigate for potential adverse impacts to public access from residential development at the site consistent with the requirements of the Coastal Act. The Commission's action to approve CDP No. 1-81-085 with conditions requiring the public access easement was not challenged at the time, and the 60-day statute of limitations for filing suit against the Commission's action lapsed more than 26 years ago. As the easement has been previously established and accepted, the easement location cannot be moved or eliminated as suggested by the appellant. The appellant does not raise any contentions regarding the physical development of the public access trail that is the subject of CDP No. 40-2006 as approved by the County.

The project as approved by the County is consistent with the applicable provisions governing opening, regulating, and managing the accessway provided by Coastal Act Section 30212, LUP

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Policies 3.6-13, 3.6-14, 3.6-26, and CZC Sections 20.528.045 and 20.528.015 in that (1) MLT agrees to accept responsibility for maintenance and liability of the accessway, (2) a management plan has been prepared and is required to be signed by reviewing authorities prior to the construction and use of the accessway, and (3) the project includes signage and fencing to designate accessway regulations, safety hazards, and private property boundaries.

Moreover, there is a high degree of factual and legal support for the local government's approval.

For all of the above reasons, staff recommends that the Commission find that the appeal raises no substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency of the approved project with the certified LCP and the public access policies of the Coastal Act.

The motion to adopt the staff recommendation of approval with conditions is found on page 6.

STAFF NOTES:

1. Appeal Process

After certification of Local Coastal Programs (LCPs), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits (Coastal Act Section 30603).

Section 30603 states that an action taken by a local government on a coastal development permit application may be appealed to the Commission for certain kinds of developments, including developments located within certain geographic appeal areas, such as those located between the sea and the first public road paralleling the sea, or within three hundred feet of the inland extent of any beach, or of the mean high tide line of the sea where there is no beach, or within one hundred feet of any wetland or stream, or within three hundred feet of the top of the seaward face of any coastal bluff, or those located in a sensitive coastal resource area.

Furthermore, developments approved by counties may be appealed if they are not designated the "principal permitted use" under the certified LCP. Finally, developments which constitute major public works or major energy facilities may be appealed, whether approved or denied by the city or county. The grounds for an appeal are limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program and, if the development is located between the first public road and the sea, the public access policies set forth in the Coastal Act.

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The subject development is appealable to the Commission because (a) the proposed development is situated on a bluff top parcel, between the sea and the first public road paralleling the sea (Highway One), and (b) the development is located within three hundred feet of the top of the seaward face of a coastal bluff.

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue is raised by the appeal. In this case, because the staff is recommending no substantial issue, the Commission will hear arguments and vote on the substantial issue question. Proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. The only persons qualified to testify before the Commission on the substantial issue question are the applicant, the appellant and persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing. It takes a majority of Commissioners present to find that no substantial issue is raised.

Unless it is determined that there is no substantial issue, the Commission would continue with a full public hearing on the merits of the project, which may occur at a subsequent meeting. If the Commission were to conduct a *de novo* hearing on the appeal, because the proposed development is between the first road and the sea, the applicable test for the Commission to consider would be whether the development is in conformity with the certified Local Coastal Program and with the public access and public recreation policies of the Coastal Act.

2. Filing of Appeal

One appeal was filed by John & Dee Patrick (Exhibit No. #). The appeal was filed with the Commission in a timely manner on July 7, 2008 within 10 working days of receipt by the Commission of the County's Notice of Final Action (Exhibit No.) on July 3, 2008.

3. 49-Day Waiver

Pursuant to Section 30621 of the Coastal Act, an appeal hearing must be set within 49 days from the date an appeal of a locally issued coastal development permit is filed. On July 22, 2008, prior to the 49th day after the filing of the appeal, the applicant submitted a signed 49-Day Waiver waiving the applicant's right to have a hearing set within 49 days from the date the appeal had been filed.

I. MOTION, STAFF RECOMMENDATION AND RESOLUTION:

Pursuant to Section 30603(b) of the Coastal Act and as discussed below, the staff recommends that the Commission determine that no substantial issue exists with respect to the grounds on which the appeal has been filed. The proper motion is:

Motion:

I move that the Commission determine that Appeal No. A-1-MEN-08-030 raises NO SUBSTANTIAL ISSUE with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.

STAFF RECOMMENDATION:

Staff recommends a **YES** vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application *de novo* and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

RESOLUTION TO FIND NO SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. A-1-MEN-08-030 does not present a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency of the approved project with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

II. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. APPELLANT'S CONTENTION

The Commission received one appeal of the County of Mendocino's decision to approve the development from John and Dee Patrick, owners of the subject property. The project as approved by the County involves developing and opening a public access trail, including the installation of signage, fencing, and a segment of raised boardwalk. The project is located on a blufftop parcel approximately one mile south of Albion on the west side of Highway One, approximately 500 feet north of its intersection with Navarro Ridge Road, at 2300 North Highway One, Mendocino County.

The appeal raises one main contention alleging inconsistency of the approved project with the public access and recreation policies of the Coastal Act. The appellant's contention is summarized below, and the full text of the contention is included as Exhibit No. 7.

1. Adverse Impacts Associated with Public Access at the Subject Site

The appellant contends that providing public access at the subject site would have adverse public safety, environmental, and liability issues due to its proximity to the coastal bluff, Highway One, and private property. Additionally, the appellant specifically cites Coastal Act Section 30212 and asserts that Section 30212 allows OTD's to be terminated if adequate access exists nearby. The appellant contends that since the time the subject OTD was required by the Commission in the 1980's, the 55-acre Navarro Headlands public access area has been established less than half a mile from the subject site. The appellant asserts that because adequate access now exists nearby, the existing public access easement should be terminated, and time and effort should be directed toward maintaining those trails that are open and do not pose as much perceived risk to the public. The appellant's specific allegations are outlined below:

- a. **Public Safety.** The public access development is located adjacent to a steep coastal bluff to the west and Highway One to the east. The location of the trail exposes the public to safety hazards associated with the bluff edge and fast moving highway traffic. The public should be properly informed regarding cliffs, poison oak, and other trail hazards.
- b. **Environmental Impacts.** The public access development would result in adverse impacts to the environment from the direct killing of plants and animals by trail users, garbage left at the site, the introduction of non-native plants, and animals not on a leash. The public access trail would also result in trespassing on adjacent private property and blocking a private driveway.
- c. **Liability.** The public access development raises questions as to who would be responsible for policing the trail, controlling use of the trail, and protecting the public's safety, and whether the Mendocino Land Trust is capable of adequately managing the trail.

B. LOCAL GOVERNMENT ACTION

On March 27, 2008, the Mendocino Coastal Permit Administrator conditionally approved Coastal Development Permit No. 40-2006 to open and develop a public accessway within an existing vertical and lateral access easement held by the Mendocino Land Trust. The permit was approved with six special conditions requiring (1) submittal of an Accessway Management Plan signed by Mendocino County, Coastal Commission, and Coastal Conservancy prior to trail construction; (2) that minimal maintenance of the trail occur with additional maintenance outlined in the management plan; (3) compliance with all mitigation measures set forth in the biological report prepared by Matt Richmond dated June 2007; (4) installation of signs stating "No Beach Access" at the trailhead; (5) an encroachment permit for any work within the road

right-of-way; and (6) installation of a split-rail fence at the edge of the highway right-of-way to the terminus of the access trail.

The project was appealed at the local level by the same current appellant (Patrick). The Mendocino County Board of Supervisors heard the appeal on June 24, 2008. The Board of Supervisors denied the appeal and upheld the action of the Coastal Permit Administrator approving CDP #40-2006 with one additional special condition intended to address the appellant's concerns regarding liability issues. The Board of Supervisors added Special Condition No. 7 requiring that the land owner be listed as an insured party on the liability insurance policy held by the Mendocino Land Trust.

Commission staff received the Notice of Final Action of the Mendocino Board of Supervisor's approval of the project on July 3, 2008 (Exhibit No. 6). The County's approval of the project was appealed to the Coastal Commission in a timely manner on July 7, 2008, within ten working days after receipt by the Commission of the Notice of Final Local Action.

C. PROJECT AND SITE DESCRIPTION

The subject site is a 12.5-acre blufftop parcel located approximately one mile south of Albion on the west side of Highway One, approximately 500 feet north of its intersection with Navarro Ridge Road (see Exhibit Nos. 1 & 2). The parcel is situated on a west-sloping marine terrace bound to the east by Highway One and to the west by an approximately 130-foot-high, near vertical coastal bluff.

The portion of the parcel that is the subject of the coastal development permit under appeal contains an existing public access easement, known as the "Campbell public access easement," that consists of a 10-foot-wide vertical easement from Highway One extending along the southeast property line to the bluff edge, and a 25-foot-wide lateral blufftop easement as measured from the bluff edge. (See Exhibit No. 3.) A large wetland complex characterized by a series of swales occupies the middle of the parcel and extends onto the lateral easement. The majority of the lateral easement supports upland habitat dominated by introduced perennial grassland vegetation. Coastal scrub habitat occurs along the edge of the bluff and is patchy across the steep vertical face. Monterey Pine forest extends from the highway to near the bluff top to the west along the vertical easement.

The Campbell public access easement was required by the Coastal Commission in 1981 and was recorded by the previous landowner (CDP No. 1-81-85, Campbell) in August 1983 for the purpose of "public pedestrian access to the shoreline." The offer to dedicate the easement was originally accepted by the Coastal Land Trust. The Mendocino Land Trust (MLT) accepted the transfer of the easement in December 2005 from the Coastal Land Trust pursuant to the terms of the certificate of acceptance established by the Coastal Commission and State Coastal Conservancy. An interim Management Plan dated October 25, 2005 was signed by MLT, Coastal Conservancy, and the Coastal Commission for the Campbell easement. The State Coastal Conservancy granted MLT funding in November 2005 to complete the necessary

technical studies and permitting to open the Campbell OTD to the public for passive recreation use.

The project approved by the County involves opening and developing a public accessway within the existing Campbell public access easement area and includes the installation of signage, fencing, and a segment of raised boardwalk. The accessway would provide a pedestrian trail from Highway One to the blufftop with the trailhead located at the southeast corner of the Patrick property at State Highway One. A two-foot-wide footpath within the Caltrans Highway One right-of-way would extend south from an existing pullout where vehicles may park at milepost 42.5 approximately 120 feet to the southeast corner of the Patrick property to connect the parking area to the trailhead. No access down the bluff to the beach is encouraged or proposed to be developed as part of the approved project.

Signage to be installed includes: (1) a 2' x 3' management sign identifying MLT as the managing entity, (2) five 8" x 12" private property signs placed at various junctions along the length of the trail to keep users on the trail and off of the adjacent private property, (3) three 8" x 12" bluff warning signs stating "Bluff Unstable, Danger," and (4) an 8" x 12" "End of Trail" sign placed at the end of the trail. Additional posted restrictions would prohibit camping, fires, firearms, and motorized vehicles on the easement, as well as requiring that dogs be leashed, all trash be packed out, and the plant and animal habitat be left undisturbed.

The approved project also includes installation of (1) double rail fencing along the vertical easement from approximately five feet north of the trailhead at Highway One to near the bluff edge, (2) single rail fencing along the lateral easement setback 25 feet from the bluff edge, and (3) a segment of 4-foot-wide raised Trex boardwalk along the trail alignment. The approved project also authorizes MLT to trim tree limbs to make the trail passable and mow the trailhead.

The objective of the project is to improve public pedestrian access to the blufftop, with provisions for public safety and protection of sensitive resources. The accessway is intended to facilitate passive recreational activities such as hiking, sightseeing, bird watching, whale watching, picnicking, and photography. The subject site is planned and zoned Rural Residential. Passive recreation is listed in the County's LCP among the principal permitted uses in a Rural Residential zone.

D. SUBSTANTIAL ISSUE ANALYSIS

Section 30603(b)(1) of the Coastal Act states:

The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division.

As noted above, the grounds for an appeal are limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program and, if the

development is located between the first public road and the sea, as in this case, the public access policies set forth in the Coastal Act. Therefore, the contention raised in this appeal presents potentially valid grounds for appeal in that it alleges that the approval of the project by the County raises significant issues regarding consistency with the public access policies of the Coastal Act.

Coastal Act Section 30625(b) states that the Commission shall hear an appeal unless it determines:

With respect to appeals to the commission after certification of a local coastal program, that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603.

The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. The Commission's regulations indicate simply that the Commission will hear an appeal unless it "finds that the appeal raises no significant question." (California Code of Regulations, Title 14, Section 13115(b).) In previous decisions on appeals, the Commission has been guided by the following factors:

- The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP and with the public access policies of the Coastal Act;
- The extent and scope of the development as approved or denied by the local government;
- The significance of the coastal resources affected by the decision;
- The precedential value of the local government's decision for future interpretations of its LCP; and
- Whether the appeal raises only local issues, or those of regional or statewide significance.

Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing a petition for a writ of mandate pursuant to Code of Civil Procedure, Section 1094.5.

In this case, for the reasons discussed further below, the Commission exercises its discretion and determines that with respect to the allegations below, the appeal raises **no substantial issue** with regard to the approved project's conformance with either the certified Mendocino County LCP or the public access and recreation policies of the Coastal Act.

1. Allegation Raising No Substantial Issue:

A. Public Access

The appellant contends that providing public access at the subject site would have adverse public safety, environmental, and liability issues due to its proximity to the coastal bluff, Highway One, and private property. Additionally, the appellant specifically cites Coastal Act Section 30212 and asserts that Section 30212 allows OTD's to be terminated if adequate access exists nearby. The appellant contends that since the time the subject OTD was required by the Commission in the 1980's, the 55-acre Navarro Headlands public access area has been established less than half a mile from the subject site. The appellant asserts that because adequate access now exists nearby, the existing public access easement should be terminated, and time and effort should be directed toward maintaining those trails that are open and do not pose as much risk to the public. The specific allegations are outlined below:

1. **Public Safety.** The public access development is located adjacent to a steep coastal bluff to the west and Highway One to the east. The location of the trail exposes the public to safety hazards associated with the bluff edge and fast moving highway traffic. The public should be properly informed regarding cliffs, poison oak, and other trail hazards.
2. **Environmental Impacts.** The public access development would result in adverse impacts to the environment from the direct killing of plants and animals by trail users, garbage left at the site, the introduction of non-native plants, and animals not on a leash. The public access trail would also result in trespassing on private property and blocking a private driveway.
3. **Liability.** The public access development raises questions as to who would be responsible for policing the trail, controlling use of the trail, and protecting the public's safety, and whether the Mendocino Land Trust is capable of adequately managing the trail.

Coastal Act and LCP Policies and Standards

Coastal Act Section 30212 states:

New development projects

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

(b) For purposes of this section, "new development" does not include:

(1) Replacement of any structure pursuant to the provisions of subdivision (g) of Section 30610.

(2) The demolition and reconstruction of a single-family residence; provided, that the reconstructed residence shall not exceed either the floor area, height or bulk of the former structure by more than 10 percent, and that the reconstructed residence shall be sited in the same location on the affected property as the former structure.

(3) Improvements to any structure which do not change the intensity of its use, which do not increase either the floor area, height, or bulk of the structure by more than 10 percent, which do not block or impede public access, and which do not result in a seaward encroachment by the structure.

(4) The reconstruction or repair of any seawall; provided, however, that the reconstructed or repaired seawall is not a seaward of the location of the former structure.

(5) Any repair or maintenance activity for which the commission has determined, pursuant to Section 30610, that a coastal development permit will be required unless the commission determines that the activity will have an adverse impact on lateral public access along the beach.

As used in this subdivision "bulk" means total interior cubic volume as measured from the exterior surface of the structure.

(c) Nothing in this division shall restrict public access nor shall it excuse the performance of duties and responsibilities of public agencies which are required by Sections 66478.1 to 66478.14, inclusive, of the Government Code and by Section 4 of Article X of the California Constitution. (Amended by: Ch. 1075, Stats. 1978; Ch. 919, Stats. 1979; Ch. 744, Stats. 1983.)

LUP Policy 3.6-13 states:

The County may seek agencies to accept accessways as prescribed in this section under "Managing and Maintaining Accessways". Dedicated accessways shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

LUP Policy 3.6-14 states:

New and existing public accessways shall be conspicuously posted by the appropriate agency and shall have advance highway signs except those for which specific management provisions have been made and specified in Chapter 4. Additional signs shall designate parking areas and regulations for their use, and shall include regulations for protection of marine life and warning of hazards, including high tides that extend to the bluffs. Access shall not be signed until the responsibility for maintenance and liability is accepted and management established.

All accessways shall be designed and constructed to safety standards adequate for their intended use. Hazardous bluffs shall be marked or, if lateral access use is intended, shall have a cable or other clear barrier marking the trail or limit of safe approach to the bluff edge. The County of Mendocino shall seek to implement this policy where appropriate by requesting CalTrans, or other responsible agencies to maintain and sign such accessways.

LUP Policy 3.6-26 states:

Prior to the opening, advertising or use of any accessway, the responsible individuals or agency shall prepare a management plan for that accessway, which is acceptable to the County of Mendocino, sufficient to protect the natural resources and maintain the property.

Coastal Zoning Code Section 20.528.015 states in applicable part:

Minimum Access Standards.

...

(D) Posting. *Once the responsibility for maintenance and liability is accepted and management established, designated accessways may be posted by the managing agency. Additional signs shall designate parking areas and restrictions for their use, list off-road vehicle restrictions, as well as regulations for protection of marine life and designation of hazard areas. Handicapped access shall be posted. All signs shall conform to the regulations and standards of [Chapter 20.476](#) of this Division.*

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

...

Coastal Zoning Code Section 20.528.045 states:

Accessway Management Plan.

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

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

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

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

(D) Set forth provisions for protecting the accessway from vandalism and/or improper use (e.g., guarded gate, security patrol, hours of operation or period/seasons of closure and fees, if any). (Ord. No. 3785 (part), adopted 1991)

Discussion

As discussed above, an offer-to-dedicate an easement at the subject site was required by the Coastal Commission in 1981 and was recorded by a former landowner in August 1983 for the purpose of providing “public pedestrian access to the shoreline” (CDP No. 1-81-85, Campbell). The offer to dedicate the easement was originally accepted by the Coastal Land Trust. The Mendocino Land Trust (MLT) accepted the transfer of the easement in December 2005 from the Coastal Land Trust pursuant to the terms of the certificate of acceptance established by the Coastal Commission and State Coastal Conservancy. The project as approved by the County under CDP #40-2006 involves opening and developing a public accessway within the existing “Campbell public access easement area” and includes the installation of signage, fencing, and a segment of raised boardwalk. The accessway would thus provide a pedestrian trail from Highway One to and along the blufftop within the vertical and lateral easements previously established pursuant to CDP No. 1-81-85. (See Exhibit No. 3.)

The appellant alleges that the approved public access development would have adverse public safety, environmental, and liability issues due to its proximity to the coastal bluff, Highway One, and adjacent private property. The appellant asserts that providing public access at the subject location poses risks from the steep coastal bluff, highway traffic, and other trail hazards and the appellant questions the liability of private property owners for accidents related to such risks. The appellant also asserts that public access at the subject location would result in increased garbage at the site and disruption to native plants and animals from trail users and unleashed animals. The appellant does not cite a specific LCP policy that they feel the County’s action did not conform with in regard to this contention. The appellant does specifically cite Coastal Act Section 30212 but erroneously asserts that Section 30212 provides for OTD’s to be terminated if adequate access exists nearby. The appellant suggests that the existing public access easement should be terminated because adequate access – the recently opened 55-acre Navarro Headlands public access area - exists less than half a mile from the subject site.

The issues raised by the appellant pertain to the alleged inappropriateness of the subject location as a site for providing public access. However, the *location* of the public access easement area was not a matter before the County as part of its action to approve CDP No. 40-2006. Rather, CDP No. 40-2006 authorizes the physical development of a trail (i.e., signs, fencing, boardwalk

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structure, earthen path) within the already established public access easement. The public access improvements approved by the County are located entirely within the vertical and lateral easement areas required by CDP No. 1-81-085 approved by the Coastal Commission in 1981. In reviewing CDP No. 1-81-085, the Commission determined that the provision of public access at the site was necessary and appropriate to mitigate for potential adverse impacts to public access from residential development at the site consistent with the requirements of the Coastal Act. The Commission's action to approve CDP No. 1-81-085 with conditions requiring that an offer to dedicate the public access easement for the specific location required was not challenged at the time, and the 60-day statute of limitations for filing suit against the Commission's action lapsed more than 26 years ago. In cases where parties have filed suit against the Commission and/or public access management agencies seeking to block the opening of public access easements years after the easements were established through permit conditions for development, the courts have affirmed that such challenges are too late. One such example is the decision of the Court of Appeal of California, Second Appellate District, Division Two, filed on June 15, 2004 in the case of Serra Canyon Company, Ltd. v. California Coastal Commission, et al. In that case, a landowner sought to avoid the effect of an irrevocable offer to dedicate land for public use. The dedication was made by a prior owner of the land in 1983, in return for a development permit. The Court concluded that the current landowner's inverse condemnation claim arrived 20 years too late, and that all challenges to a condition placed on a development permit had to be asserted at the time the final permit decision was made and the condition was imposed. The Court determined that the challenge in that case was waived by the prior owner's failure to pursue its judicial remedies, and the present landowner was bound by that waiver.

As the subject easement has been previously established and accepted, the easement location cannot be moved or eliminated as suggested by the appellant. Coastal Act Section 30212 applies to "new development" as defined by the Coastal Act and requires that public access from the nearest public roadway to the shoreline and along the coast be provided in new development projects except where: (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or, (3) agriculture would be adversely affected. In this case, the Commission found in reviewing CDP No. 1-81-085 in 1981 that the new residential development proposed under CDP No. 1-81-085 was subject to, in part, the requirements of Coastal Act Section 30212 and thus, the "Campbell OTD" was required as a condition of permit approval. Regardless of the adequacy of public access that exists near the subject site at present, such as the Navarro Headlands public access area, Coastal Act Section 30212 does not, as suggested by the appellant, provide circumstances under which already dedicated access easements may be terminated.

The appellant does not raise any contentions regarding the physical development of the public access trail that is the subject of CDP No. 40-2006 as approved by the County. Even if the appellant had raised contentions regarding the conformance of the project as approved with the Coastal Act and LCP provisions regarding the development, opening, and management of public accessways, there is a high degree of factual and legal support for the local government's approval. The Mendocino County LCP and the Coastal Act set forth various provisions for developing, opening, and managing public accessways. The County's LCP sets forth specific

MENDOCINO LAND TRUST

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standards for posting, signing, and managing public accessways. As discussed below, the County's approval of CDP #40-2006 is consistent with these public access policies of the Coastal Act and the Mendocino County LCP.

Coastal Act Section 30212 does require, in applicable part, that dedicated accessways shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway. This requirement is also reflected in LUP Policy 3.6-13 and Coastal Zoning Code Section 20.528.045. LUP Policy 3.6-14 and CZC Section 20.528.015 also set forth specific access standards to regulate use of the accessway and to ensure public safety. Furthermore, LUP Policy 3.6-26 and CZC Section 20.528.045 require that prior to the opening or use of any accessway, the responsible individuals or agency shall prepare a management plan for that accessway, which is acceptable to the County of Mendocino, sufficient to protect the natural resources and maintain the property

An interim Management Plan for the Campbell trail prepared by MLT dated October 25, 2005 was signed by the Executive Director of the Coastal Commission and the Coastal Conservancy at the time of acceptance of the OTD. An updated Accessway Management Plan has been prepared by MLT wherein MLT agrees to accept responsibility for maintenance and liability of the accessway as required by Coastal Act Section 30212, LUP Policy 3.6-13, and CZC Section 20.528.045. The plan outlines the proposed improvements, maintenance, and monitoring provisions for the subject accessway, referred to in the plan as the Navarro Headlands Public Access Trail (see Exhibit No. 5). The management plan addresses the concerns raised by the appellant regarding the public's safety and use of the trail. Specifically, the management plan stipulates that the MLT will monitor the site and gather and remove litter monthly, care for native plantings, and that MLT will maintain liability insurance. Furthermore, the monitoring provisions included in the management plan require an annual evaluation report be prepared to assess the number of users, the physical condition of the trail, any particular maintenance issues, safety problems, complaints and responses, and any other additional information relevant to the ongoing maintenance and improvement of the public access area.

The management plan also details the signage to be installed at the accessway consistent with the standards and requirements set forth in LUP Policy 3.6-14 and CZC Section 20.528.015. According to the plan, the signage is designed to accomplish three objectives: (1) direct visitors to the new trail, (2) encourage visitors to stay on the trail and respect private property, and (3) instruct visitors to stop at the end of the maintained trail. The signs that are part of the project as approved by the County include a management identification sign, numerous private property signs, and bluff hazard warning signs. Additional posted restrictions would prohibit camping, fires, firearms, and motorized vehicles on the easement, as well as requiring that dogs be leashed, all trash be packed out, and the plant and animal habitat be left undisturbed. (See Exhibit No. 4).

In its approval of the project, the County imposed a special condition requiring that the Accessway Management Plan described above be signed by Mendocino County, Coastal Commission, and Coastal Conservancy prior to trail construction to ensure that the MLT implements and carries out the accessway management provisions as proposed. Additionally,

MENDOCINO LAND TRUST

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following the appellant's appeal of the approved development to the Mendocino County Board of Supervisors, the County added an additional special condition in response to the appellant's liability concerns that requires the MLT to list the landowner (Patrick) as an insured party on its liability insurance policy. The Commission notes that such insurance supplements the statutory protection and immunity from liability already afforded landowners with recreational easements located on their property.

Therefore, the project as approved by the County addresses issues of opening, regulating, and managing the accessway in a manner consistent with Coastal Act Section 30212, LUP Policies 3.6-13, 3.6-14, 3.6-26, and CZC Sections 20.528.045 and 20.528.015 in that (1) MLT agrees to accept responsibility for maintenance and liability of the accessway, (2) a management plan has been prepared and is required to be signed by reviewing authorities prior to the construction and use of the accessway, and (3) the project includes signage and fencing to designate accessway regulations, safety hazards, and private property boundaries.

Thus, the Commission finds that the County has a high degree of factual and legal support for its decision, and that the contention raised by the appellant does not raise a substantial issue of conformance of the approved project with the public access provisions of the Certified Local Coastal Program and the public access policies of the Coastal Act.

Conclusion

The Commission finds that for the reasons stated above the appeal raises no substantial issue with respect to conformance of the approved project with the certified LCP and the public access policies of the Coastal Act.

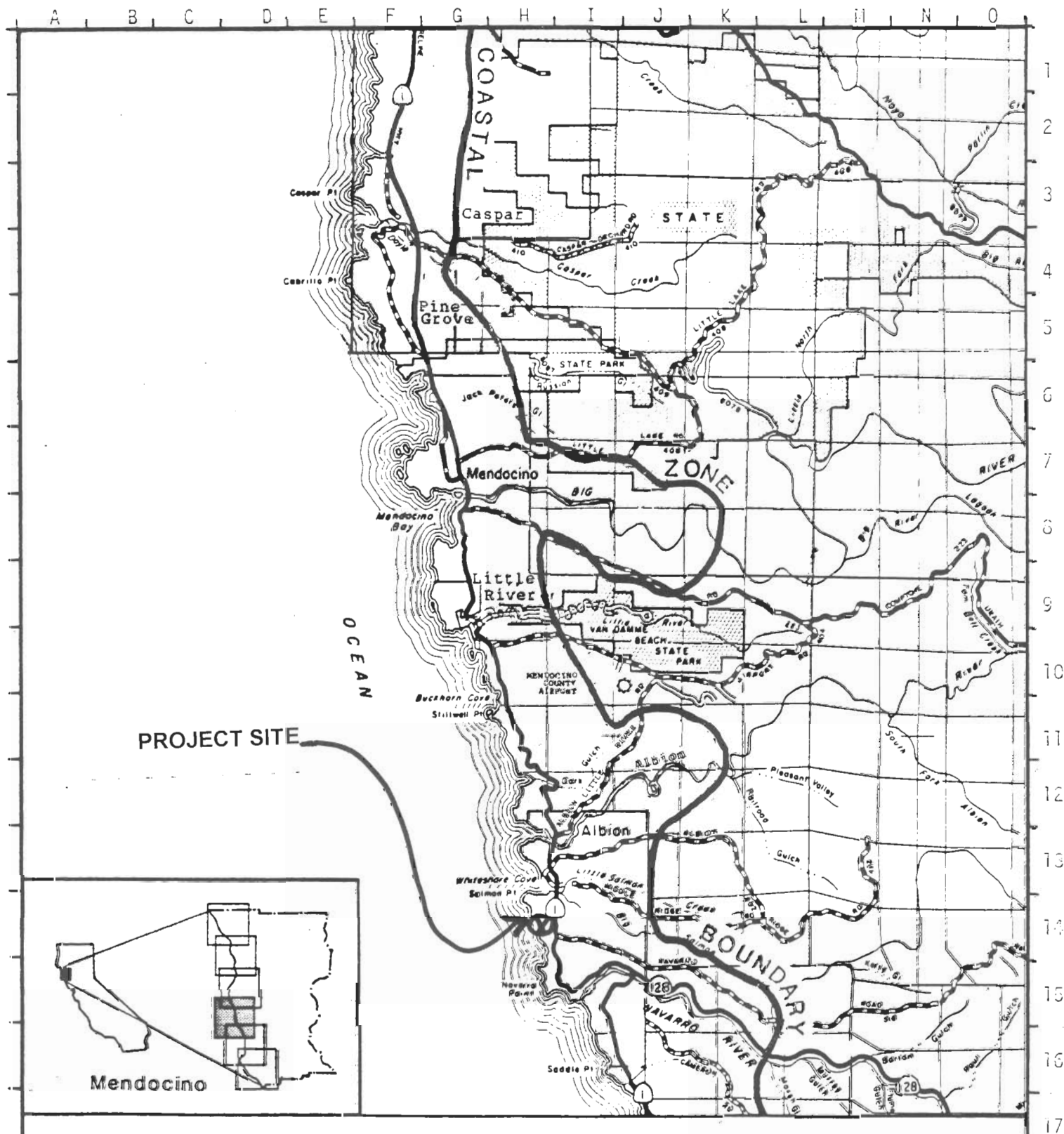
MENDOCINO LAND TRUST

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EXHIBITS:

1. Regional Location Map
2. Vicinity Map
3. Site Plan
4. Signage Details
5. Accessway Management Plan
6. Notice of Final Local Action
7. Appeal
8. Correspondence



STAFF REPORT FOR COASTAL DEVELOPMENT
STANDARD PERMIT

CDP # 40-2006 (MLT)
March 27, 2008

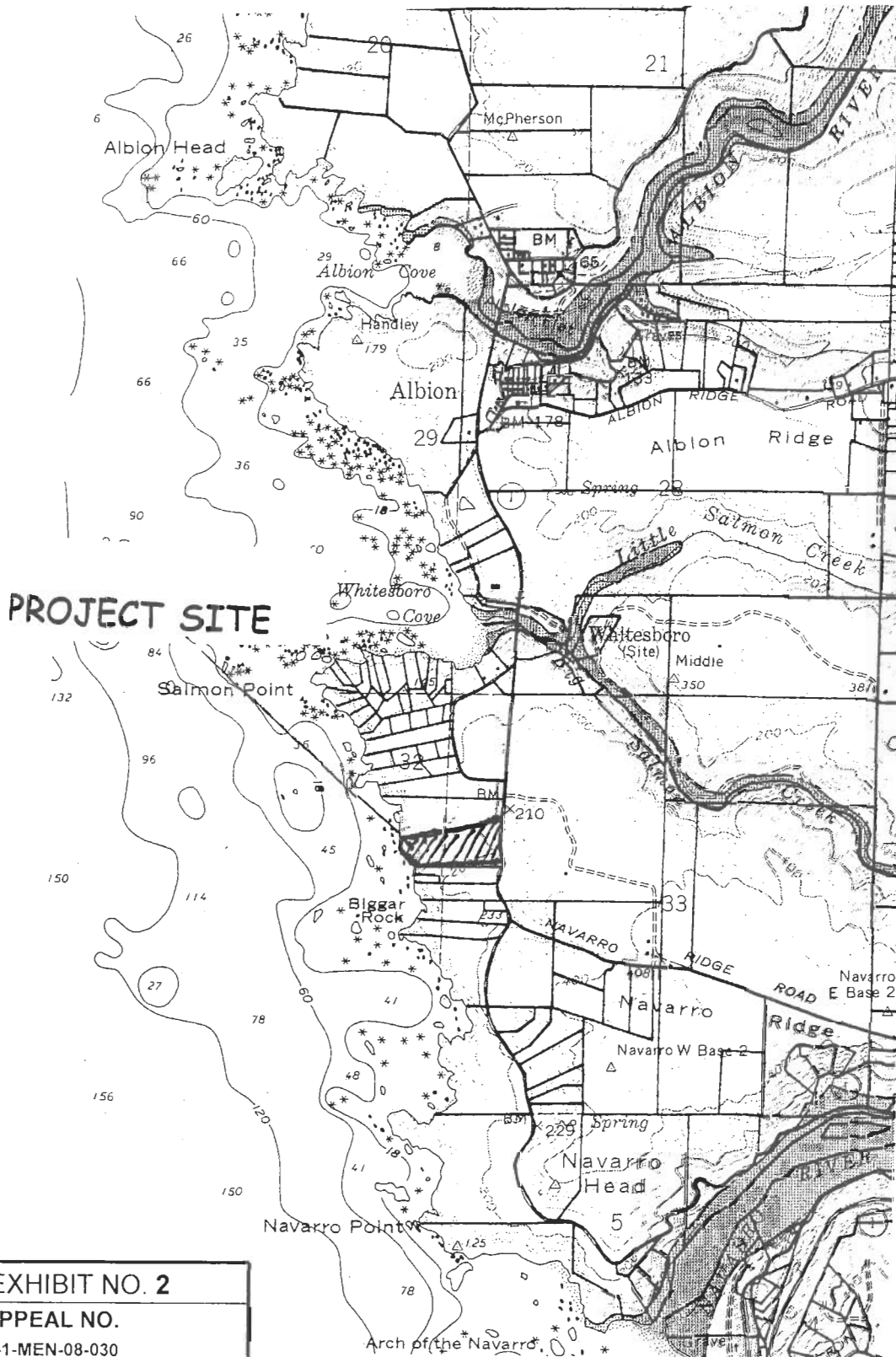


EXHIBIT NO. 2

APPEAL NO.

A-1-MEN-08-030

MENDOCINO LAND TRUST

VICINITY MAP

LOCATION MAP

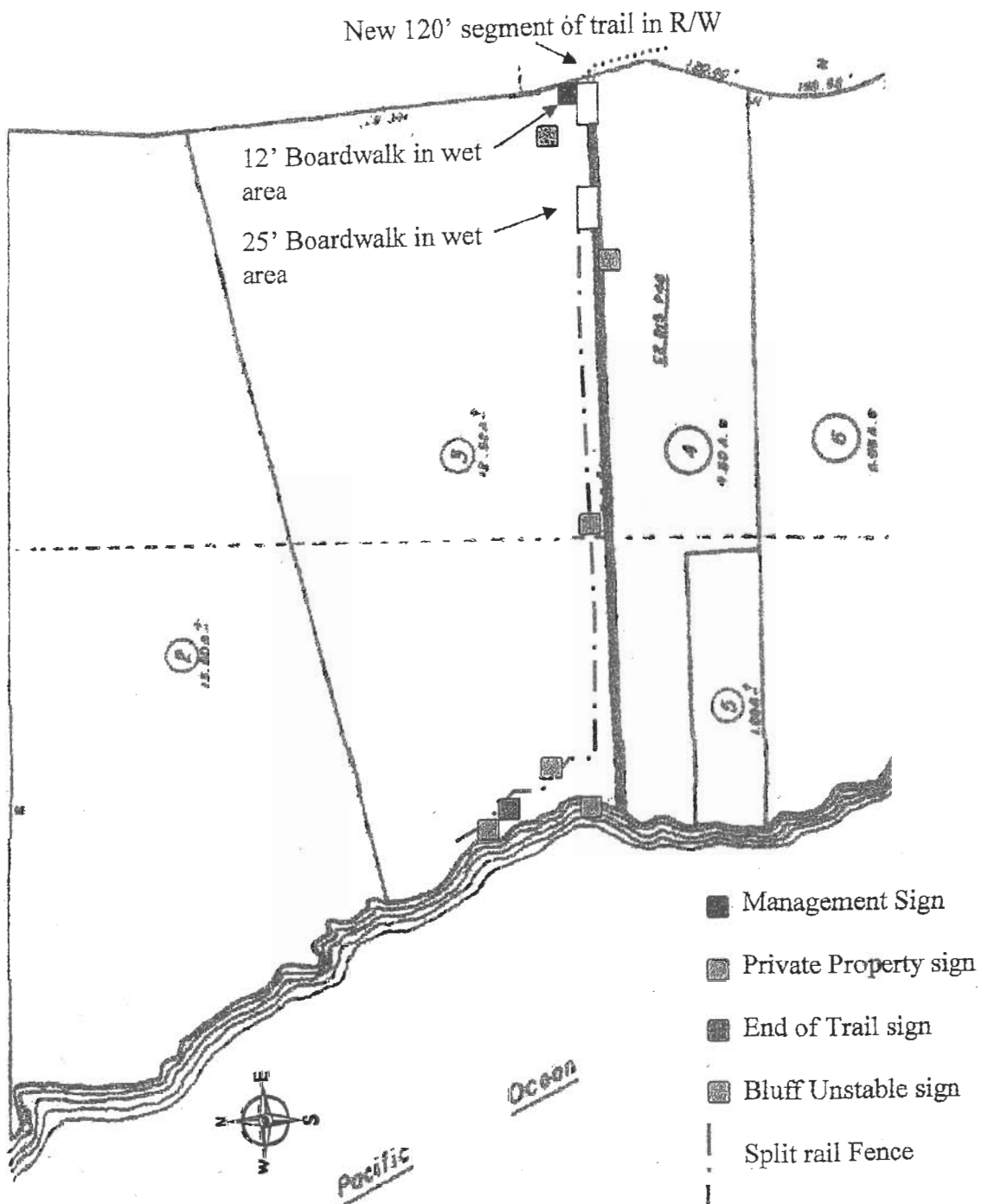


EXHIBIT NO. 3

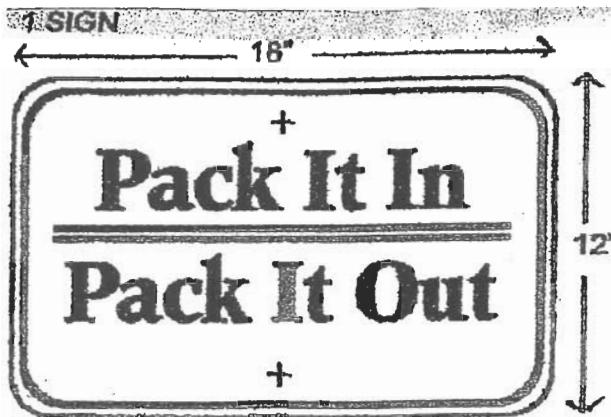
APPEAL NO.

A-1-MEN-08-030

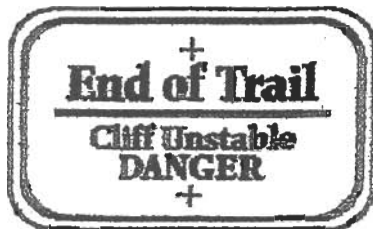
MENDOCINO LAND TRUST

SITE PLAN

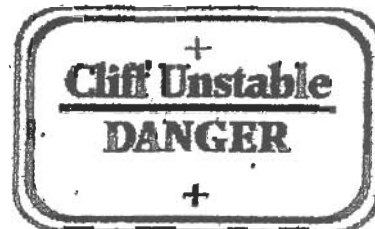
SITE PLAN



1 SIGN



3 SIGNS



NAVARRO BLUFFLANDS PUBLIC SCENIC TRAIL

Conserved and
Managed by



Please help us conserve the unique habitats and beauty of this area and respect the landowner's privacy by staying on designated trails. For your safety, please stay away from the dangerous cliffs at the bluff edge.

We ask that you respect this special place by honoring these requests:

- * Leash your dog
- * Carry out your trash
- * Pedestrian use only
- * No motorized vehicles
- * No bicycles on trail
- * Day use only
- * No fires
- * No firearms
- * Leave the plant and animal life undisturbed

If you would like more information, please contact the Mendocino Land Trust at (707) 962-0470.

EXHIBIT NO. 4

APPEAL NO.

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MENDOCINO LAND TRUST

SIGNAGE DETAILS

SIGNAGE DETAILS

**ACCESSWAY MANAGEMENT PLAN
NAVARRO HEADLANDS PUBLIC ACCESS TRAIL**

EXHIBIT NO. 5

APPEAL NO.

A-1-MEN-08-030

MENDOCINO LAND TRUST

ACCESSWAY MANAGEMENT
PLAN (1 of 4)

By this agreement, the Mendocino Land Trust (MLT), a non-profit corporation, undertakes to manage a public access trail on an easement offered for dedication in 1985 for that purpose north of the town of Albion, Mendocino County, California. The Land Trust will also manage a section of trail within the Caltrans highway right-of-way west of Highway One which will connect the public access trail to a Caltrans maintenance pullout.

FEB 13 2008

Background

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This public access easement was required by the California Coastal Commission to mitigate the impacts from private development upon public access, pursuant to coastal development permit CDP 1-81-85, located at 2300 Highway One, south of Albion, in the County of Mendocino, California. The Campbell permit specifically conditioned the approval of the permit for the dedication of a 10 feet wide vertical easement from the southeast property line to the bluff edge and a lateral blufftop easement 25 feet in width, measured from the daily bluff edge.

The Land Trust accepted the Campbell Offer-To-Dedicate (OTD) public access easement in 2005 with the intent to develop it for recreational use. The Land Trust signed an interim management plan along with the State Coastal Conservancy and the California Coastal Commission at the time of acceptance of the OTD.

The Land Trust will enter into a Memorandum of Understanding with Mendocino County for the maintenance of the 120-foot long, 5-foot wide trail within the Caltrans right-of-way. The County in turn will enter into a Delegated Maintenance Agreement with Caltrans District 1. All permitting, construction and legal defense expenses related to the trail will be the responsibility of the Land Trust as described in the MOU.

It is understood that the Land Trust will pursue, where feasible, connecting this public access easement to future trail segments in the vicinity. All activities that have historically occurred will continue, including, but not limited to, walking, bird watching, whale watching, photography, nature study, and the general enjoyment of the scenic beauty.

Existing Site Conditions

The site is on a gently sloping blufftop lying between Highway One and the Pacific Ocean, lying westerly of mile marker 42.53 on Highway One, between the Navarro River and the town of Albion. A botanical and archeological studies and a wetlands delineation within the easement were completed in 2007. There are no sensitive cultural resources known on site. There are three wetlands or ESHAs within the easement which will be either avoided completely or mitigated for.

Improvements

The vertical and lateral trail will be earth and mowed grass. Two sections of raised boardwalk will be constructed where the trail crosses wet areas. Planting native vegetation will be mitigation for the boardwalk posts within the wet areas. Native plant survival will be monitored at 1, 3, and 5 years after planting. Maintenance of at least 75% survival rate will be accomplished through replanting and replacement of dead plants.

The connector trail from the trailhead on the Campbell easement will be a two-foot wide pedestrian foot trail running laterally approximately 120 feet to accommodate access to the trail from the roadway. This foot trail will be established with minimal brush clearing until regular use maintains the trail path.

Signage for this site is designed to accomplish three objectives: 1) direct visitors to the new trail, 2) encourage visitors to stay on the trail and respect private property, and 3) instruct visitors to stop at the end of the maintained trail. At the trailhead on the Campbell easement, a 2 x 3 foot sign will indicate the trailhead. It will include the State Coastal Conservancy, California Coastal Commission, and Land Trust logos and identify MLT as the managing entity, state guidelines for users, and include contact information. An additional smaller sign will state, "pack it in, pack it out". Along the vertical trail, there will be at least three small signs (8 x 12") indicating private property boundaries and at least one private property sign on the blufftop trail on the east side of the trail easement. Two unstable bluff warning signs (also 8 x 12") will be placed along the bluff edge. At the terminus of the developed trail, there will be an 8 x 12" "End of trail" sign.

A fence shall be constructed along the southern boundary of the 10-foot wide vertical and the eastern boundary of the 25-foot lateral easements. The fence shall be double split rail along the vertical and single split rail along the lateral easements.

Maintenance

The maintenance of the trail will be carried out by staff and volunteers of the Mendocino Land Trust. The MLT work parties will monitor the site, gather and remove litter monthly, care for plant restoration projects, maintain boardwalks and mow the grass as needed. MLT will maintain liability insurance.

Monitoring

An evaluation report will be prepared annually by September 1 by MLT and submitted to the Coastal Commission and the State Coastal Conservancy for review to ensure conformance with the approved Management Plan. The evaluation will include estimates of user numbers, physical condition of the pathway, any particular maintenance issues, safety problems, complaints and responses, and whatever additional information is relevant to the ongoing maintenance and improvement of the public access areas.

Amendment

This Plan may be amended as needed, with the concurrence of all four signatories.

Agreement

Should the Mendocino Land Trust cease to exist or fail to carry out its responsibilities pursuant to the approved management plan then all right, title, and interest in the easements shall be vested in the State of California, acting by and through the State Coastal Conservancy or its successor in interest, or in another public agency or nonprofit organization designated by the State Coastal Conservancy and approved by the Executive Director of the California Coastal Commission. This right of entry shall be set forth in the Acknowledgement by California Coastal Commission of Transfer of Public Access Easement by which the Mendocino Land Trust has agreed to accept the transfer of the public access easement. The foregoing is agreed to by and between the Executive Director of the Mendocino Land Trust, the Executive Director of the California Coastal Commission, and the Executive Officer of the State Coastal Conservancy.

The forgoing is agreed to by and between the Mendocino Land Trust, the California Coastal Commission, the State Coastal Conservancy, and Mendocino County Planning Department.

James Bernard, Executive Director
Mendocino Land Trust

Date

Peter Douglas, Executive Director
California Coastal Commission

Date

Samuel Schuchat, Executive Officer
California State Coastal Conservancy

Date

Ray Hall, Director
Mendocino County Planning and Building Department

Date

R. 17 W, M.D.B.

T. 16 N,

SECTION 32

SECTION 33

Proposed
Navarro Blufflands Trail

Trail segment in the State
right-of-way

Caltrans Pullout

Mile post 42.5

Encroachment Permit Application
Public Access Trail Connector in Caltrans ROW
Milepost 42.5, Highway One, Mendocino County
Mendocino Land Trust

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COUNTY OF MENDOCINO

DEPARTMENT OF PLANNING AND BUILDING SERVICES

790 SOUTH FRANKLIN STREET · FORT BRAGG · CALIFORNIA · 95437

RAYMOND HALL, DIRECTOR

Telephone 707-964-5379

FAX 707-961-2427

www.co.mendocino.ca.us/planning

June 30, 2008

NOTICE OF FINAL ACTION

Action has been completed by the County of Mendocino on the below described project located within the Coastal Zone.

CASE#: CDP #40-2006

OWNER: John & Delilah Patrick

APPLICANT: Mendocino Land Trust

REQUEST: Open public access trail along State Highway One to the ocean bluff within an easement on private property in Albion. Project includes signage, fencing and boardwalk areas installed to define public trail.

LOCATION: In the Coastal Zone, approximately one mile south of Albion, on the west side of Highway One, approximately 500 feet north of its intersection with Navarro Ridge Road (CR #518) on a blufftop parcel at 2300 North Highway One (APN 123-290-03).

PROJECT COORDINATOR: Paula Deeter

HEARING DATE: 3/27/2008

APPROVING AUTHORITY: Coastal Permit Administrator

ACTION: Approved with Conditions.

See staff report for the findings and conditions in support of this decision.

The project was appealed at the local level. The Mendocino County Board of Supervisors heard the appeal June 24, 2008. The Board of Supervisors denied the appeal and upheld the action of the coastal permit administrator approving CDP #40-2006, adding an additional Special Condition. (Copy enclosed)

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

EXHIBIT NO. 6

APPEAL NO.

A-1-MEN-08-030

MENDOCINO LAND TRUST

NOTICE OF FINAL LOCAL
ACTION (1 of 20)

**STAFF REPORT FOR
STANDARD COASTAL DEVELOPMENT PERMIT**

**CDP# 40-2006
March 27, 2008
CPA-1**

OWNER: John & Delilah Patrick
300 Northstar Lane
Cloverdale, CA 95425

APPLICANT: Mendocino Land Trust
PO Box 1094
Mendocino, CA 95460

REQUEST: Open public access trail along State Highway One to the ocean bluff within an easement on private property in Albion. Project includes signage, fencing and boardwalk areas installed to define the public trail.

LOCATION: In the Coastal Zone, approximately one mile south of Albion, on the west side of Highway One, approximately 500 feet north of its intersection with Navarro Ridge Road (CR# 518) on a blufftop parcel at 2300 North Highway One (APN 123-290-03).

APPEALABLE AREA: Yes, blufftop parcel; highly scenic area; ESHAs

PERMIT TYPE: Standard

TOTAL ACREAGE: 12.5 ± acres

ZONING: RR: L-5 (PD); DL / RR: L-5 (PD)

GENERAL PLAN: RR-5 PD

CA COASTAL RECORDS PROJECT: Image 200503608

EXISTING USES: Pursuant to CDP 93-2002 there is a well, a storage building and solar panel on the eastern portion of the property. Also, a vested coastal development permit authorized by the California Coastal Commission (CCC 1-81-85) for an SFR, well, septic and driveway encroachment for the western portion of the subject parcel. Coastal Development Minor Subdivision (CDMS 12-2005) was approved to divide the 12.5± acre parcel into two parcels of 6± acres each; a Coastal Development Use Permit (CDU 14-2005) was issued to implement the Planned Development (PD) Combining District designation; and a Coastal Development Permit (CDP 67-2006) was approved to construct a single family residence on the eastern 6± acres parcel created by approved CDMS 12-2005.

SUPERVISORIAL DISTRICT: 5

ENVIRONMENTAL DETERMINATION: Categorically Exempt, Class 4

OTHER RELATED APPLICATIONS: Minor subdivision MS 51-1987 was submitted and processes to create two parcels of 7 and 5 acres. However, on February 29, 1998 prior to scheduling the application for a Planning Commission agenda the property owner withdrew the application. Coastal Development Permit 1-81-85 was approved by the California Coastal Commission on November 3, 1981, for the construction of a single family residence and installation of a well, septic system and driveway. The

2 of 20

**STAFF REPORT FOR
STANDARD COASTAL DEVELOPMENT PERMIT**

**CDP# 40-2006
March 27, 2008
CPA-2**

Coastal Commission has determined that CDP 1-81-85 is a vested, valid approval due to the installation of a water well in reliance on that permit but no other aspect of that authorization has been constructed to date.

CDP 1-81-85 exacted an Offer-To-Dedicate (OTD) for public access. This CDP is for the development associated with the opening of the OTD for use by the public and its ongoing maintenance.

Pre- Application Conference 1-2000 was conducted in April of 2000. This conference was conducted around the time the Patrick's purchased the subject parcel. The topics discussed included the status of CDP 1-81-85, the possibility of a minor subdivision and the ability to relocate the recorded OTD.

CDP 83-2002 was approved on June 26, 2003. The permit authorized a gate and fence adjacent to the highway, the conversion of a test well into production well, install a solar powered pump, a water storage holding tank and a 8' x 20' storage container within a group of trees in the northeast corner of the parcel.

Coastal Development Minor Subdivision (CDMS 12-2005) was approved to divide a 12.5± acre parcel into two parcels of 6± acres each; a Coastal Development Use Permit (CDU 14-2005) was issued to implement the Planned Development (PD) Combining District designation; and a Coastal Development Permit (CDP 67-2006) was approved to construct a single family residence on one of the proposed 6± acres parcels.

PROJECT DESCRIPTION: The Mendocino Land Trust (MLT) has proposed the development and opening of a public coastal access trail south of Albion and west of State Highway One (near the base of Navarro Ridge Road). Signage will be installed: a 2' x 3' management sign, private property signs (8" x 12") bluff warning signs, and an 8" x 12" end of trail sign. MLT will also trim tree limbs to make the trail passable, mow the trail tread, install split rail fencing (where there is no boardwalk, double rail fence from approximately 5 feet north of the trail from Highway One to as close to the bluff edge as is permitted (along the vertical trail easement) and then single rail along the eastern edge of the bluff edge (lateral) easement (set back 25 feet from the bluff edge), and construct a raised boardwalk (4 feet wide) through the muddy portion of the trail.

BACKGROUND: This public access easement was required by the California Coastal Commission to mitigate the impacts from private development upon public access, pursuant to Coastal Development Permit CDP 1-81-85, located at 2300 Highway One, south of Albion, in the County of Mendocino, California. The Campbell permit specifically conditioned approval of the permit for the dedication of a ten-foot wide vertical easement from the southeast property line to the bluff edge and a lateral blufftop easement twenty five feet in width, measured from the daily bluff edge.

The Land Trust accepted the Campbell (OTD) public access easement in 2005 with the intent to develop it for recreational use. The Land Trust signed an interim management plan along with the State Coastal Conservancy and the California Coastal Commission at the time of the acceptance of the OTD.

The Land Trust may enter into a Memorandum of Understanding with Mendocino County for the maintenance of the 120-foot long, 5-foot wide trail within the Caltrans right-of-way. The County in turn may enter into a Delegated Maintenance Agreement with Caltrans District One.

It is understood that the Land Trust will pursue, where feasible, connecting this public access easement to future trail segments in the vicinity. The proposed segment provides hope that a continuous California Coastal trail may one day be realized.

LOCAL COASTAL PROGRAM CONSISTENCY RECOMMENDATION: The proposed project is consistent with the applicable goals and policies of the Local Coastal Program as described below.

3420

Land Use

The primary objective of the project is to improve public pedestrian access to the bluff top, with provisions for public safety and protection of sensitive resources. Activities such as hiking, sight seeing, bird watching, whale watching, picnicking, and photography are the kinds of uses anticipated on the site, and are encompassed within the Passive Recreation use type defined in the Coastal Zoning Code (Section 20.340.015). Passive Recreation is listed among the Principal Permitted Uses allowed in a Remote Residential zone (Section 20.380.010(C)). Maximum public access to the coast is one of the goals stated in the Coastal Act. Numerous policies in Chapter 3.6 of the County's Coastal Plan and the provisions of Chapter 20.528 of the Coastal Zoning Code also promote development of public access to the shoreline. The project as proposed by the Mendocino Land Trust is consistent with public access policies of the certified LCP.

Public Access

The project site is located west of Highway 1 and is a blufftop site that is not designated as a public access trail location on the LUP maps. However, this is an area that the public has historically used. To permanently protect these historic rights, the California Coastal Commission required that a public access easement be recorded in connection with coastal development projects and/or permits.

Sec. 20.528.010 of the Mendocino County Coastal Zoning Code states:

Minimum Access Locations.

- (A) *In specified areas identified in Chapter 4 of the Coastal Element or as indicated on land use maps, prior to the issuance of a coastal development permit, an offer to dedicate an easement for public access shall be recorded unless required public access has otherwise been secured as provided herein.*

Sec. 20.528.035 of the MCCZC further notes:

Methods for Securing Access.

Where acquisition of access delineated in the land use plan has not occurred through preferred methods such as bequests, gifts or purchase, recordation of an offer to dedicate an easement for public access purposes shall be required as a condition of any coastal development permit. Such offer shall be acceptable to the California Coastal Commission in form and content. Visitor accommodations and services on parcels adjoining the shoreline as identified on the public access maps shall provide public access to the blufftop and/or the shoreline. The access, to be required as a condition of permit approval or other methods as described in this Chapter, shall be available to the public at large as well as to guests. In the event that the use is changed to a use other than visitor accommodations or services, an irrevocable offer to dedicate an easement for public access shall be made available to a public entity for acceptance and management. If the accessway is reopened, it shall remain available to the public free of entrance charge. (Ord. No. 3785 (part), adopted 1991)

Sec. 20.528.040 of the MCCZC details the procedure for an OTD:

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Procedures for Conveyance of Title.

(A) Prior to issuance of the coastal development permit, the landowner shall record in the official records of the County Recorder of Mendocino County an offer to dedicate an easement as a condition of project approval as follows:

- (1) The offer shall be free of prior liens except for tax liens and free of prior encumbrances which may affect the interest being conveyed.*
- (2) The offer shall run with the land binding successors and assigns of the landowner and shall be irrevocable for a period of twenty-one (21) years beginning from the date of recording.*
- (3) The offer shall convey to the people of the State of California an easement for access over and across the offerers' property.*
- (4) Each offer of dedication will provide that the title for each easement shall be automatically conveyed upon acceptance by a qualified agency as named by the Director after a management plan has been accepted.*

The active management of this easement will be transferred to the Mendocino Land Trust upon completion and signing of their Accessway Management Plan, approval of this Coastal Development Permit, and any other requirements. Special Condition #1 is recommended to ensure that all of these requirements are met prior to the issuance of the Coastal Development Permit.

The trailhead will be located at the southeast corner of the Patrick property at State Highway One. A footpath will travel south from an existing Caltrans pullout at MP 42.5 approximately 120' to the southeast corner of the Patrick property. The accessway would provide a pedestrian trail from the State Highway to the ocean bluff top. No access down the bluff to the beach will be encouraged or developed without first obtaining a Coastal Development Use Permit from the County Planning Division.

A management sign (approximately 24" high x 36" long, and approximately 6' in height) will be placed adjacent to State Highway One. The sign shall identify the location as "Navarro Blufflands Public Scenic Trail", naming MLT as the responsible organization and providing MLT's local telephone number. Posted restrictions shall prohibit camping, fires, firearms, and motorized vehicles on the easement, as well as requiring that dogs be leashed, all trash be packed out, and the plant and animal habitat shall be undisturbed. Five "Private Property" signs (approximately 8" x 12") will be placed at various junctions along the length of the trail to keep users on trail and off of the adjacent private property. Three "Bluff Unstable, Danger" signs (approximately 8" x 12") will be placed at necessary locations along the bluff, and one "End of Trail" sign will be placed at the end of the trail.

According to State and Federal Accessibility requirements, paths of travel are not required to be made accessible when the enforcing agency determines that compliance with these regulations would create an unusual hardship. The Mendocino County Planning Division believes that compliance with these regulations for the construction of this new trail would create an unusual hardship and is unrealistic given the terrain to be traversed.

Hazards

5420

The applicant proposes to construct a trail providing access to the bluff top. Trails, signs and informal parking would be created to support the proposed public access project. This would be the extent of the development to the site.

Policy 3.4-1 of the Coastal Element of the General Plan states:

The County shall review all applications for Coastal Development permits to determine threats from and impacts on geologic hazards arising from seismic events, tsunami runup, landslides, beach erosion, expansive soils and subsidence and shall require appropriate mitigation measures to minimize such threats. In areas of known or potential geologic hazards, such as shoreline and bluff top lots and areas delineated on the hazards maps the County shall require a geologic investigation and report, prior to development, to be prepared by a licensed engineering geologist or registered civil engineer with expertise in soils analysis to determine if mitigation measures could stabilize the site. Where mitigation measures are determined to be necessary, by the geologist, or registered civil engineer the County shall require that the foundation construction and earthwork be supervised and certified by a licensed engineering geologist, or a registered civil engineer with soil analysis expertise to ensure that the mitigation measures are properly incorporated into the development.

Policy 3.4-7 of the Coastal Element of the General Plan states:

The County shall require that new structures be set back a sufficient distance from the edges of bluffs to ensure their safety from bluff erosion and cliff retreat during their economic life spans (75 years). Setbacks shall be of sufficient distance to eliminate the need for shoreline protective works. Adequate setback distances will be determined from information derived from the required geologic investigation and from the following setback formula:

$$\text{Setback (meters)} = \text{Structure life (years)} \times \text{Retreat rate (meters/year)}$$

The retreat rate shall be determined from historical observation (e.g., aerial photographs) and/or from a complete geotechnical investigation.

All grading specifications and techniques will follow the recommendations cited in the Uniform Building Code or the engineering geologists report

Policy 3.4-10 of the Coastal Element of the General Plan states:

No development shall be permitted on the bluff face because of the fragility of this environment and the potential for resultant increase in bluff and beach erosion due to poorly-sited development. However, where they would substantially further the public welfare, developments such as staircase accessways to beaches or pipelines to serve coastal-dependent industry may be allowed as conditional uses, following a full environmental, geologic and engineering review and upon the determinations that no feasible less environmentally damaging alternative is available and that feasible mitigation measures have been provided to minimize all adverse environmental effects.

Coastal Plan Policy 3.4-1 and Coastal Zoning Code Section 20.500.015 require a geologic investigation and report prior to approval of development of structures on bluff top lots. A geotechnical study was performed in conjunction with the permit obtained from the Coastal Commission for construction of the yet to be constructed residence, and it was determined that the residence would be in compliance with geotechnical requirements. The proposed development would be located within 125 feet of the bluff edge; however, this consists of fencing and signage (hand dug post holes), therefore no additional geotechnical information was

required to be submitted. The boardwalk "structure" is located well over 500 feet to the east of the bluff edge.

The trail would be maintained and monitored by staff and volunteers of the Mendocino Land Trust. The MLT work parties will monitor the site, gather and remove litter monthly, care for plant restoration projects, maintain boardwalks and mow the grass as needed. MLT will maintain liability insurance. Any safety issues or erosion problems shall be addressed immediately and reported to Mendocino County Planning Division and the State Coastal Conservancy. Special Condition #2 is recommended to ensure compliance.

The easement area slopes gently from east to west, beginning at State Highway One and ending approximately one-half mile west. As noted above, no access from the bluff to the beach will be developed without first obtaining a Coastal Development Use Permit from the Mendocino County Planning Division.

The bluff area will be posted with warning signs. Three signs will warn the public "Bluff Unstable" at necessary locations along the trail, and one sign will warn the public "End of Trail".

Section 20.528.015 of the Coastal Zoning Code states in part:

All accessways shall be designed and constructed to safety standards adequate for their intended use. Barriers shall be constructed by the managing agency where necessary. ...

The preliminary drawings prepared for the project indicate that public safety has been taken into account in the design of the project. A portion of the end of the trail is to be blocked to reduce exposure of the public to safety hazards. Paths along the bluff edge are to be set back a safe distance. A number of signs are proposed to warn visitors of hazardous conditions. In staff's opinion, a reasonable balance between public access to the coast and public safety will be incorporated in the design and operation of the project.

It is the policy of the Coastal Commission and the County to require recordation of a deed restriction as a condition of development on blufftop parcels, prohibiting the construction of seawalls and requiring that permitted improvements be removed from the property if threatened by bluff retreat. The restriction also requires that the landowner be responsible for any clean up associated with portions of the development which might fall onto a beach. However, as no buildings are proposed with this project, staff has determined that this is unnecessary and onerous.

The property is in an area with a moderate fire hazard severity rating as determined by the California Department of Forestry and Fire Prevention. The site is located in a State Responsibility Area and potential hazards associated with fire protection on the subject property are addressed by CDF (CalFire). CalFire has been consulted and has responded with CDF file #269-06, which does not place restrictions on this project due to the nature of the development.

Visual Resources

The project site is located within a designated "highly scenic area." The trailhead would be partially visible to passing traffic; however, it is minimally visible amongst the number of existing trees and vegetation on the site.

Policy 3.5-1 of the County of Mendocino Coastal Element applies to all development within the Coastal Zone. It states:

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

Policy 3.5-3 of the Coastal Element states:

Any development permitted in [highly scenic] areas shall provide for the protection of ocean and coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes.

The proposed materials for the development on the site include "Trex" decking material for the boardwalk (gray, with pressure treated fir underlayment and stainless steel screws); brown wooden split rail fencing; and the signage to be aluminum painted brown with white lettering on wooden posts.

The trail would have minimal impact on the visual resources of this area. Aspects of the trail that would minimize visual impact include mowing the easement to define the minimum impact trail, placing signage only in areas deemed necessary for safety purposes and limiting trail construction to the minimum amount needed.

Natural Resources

Avoidance of impacts to environmentally sensitive habitat areas (ESHAs) is frequently a design consideration for development projects on blufftop parcels. In the Coastal Zoning Code an ESHA is defined to include streams, riparian areas, wetlands, and habitats of rare or endangered plants and animals, all of which commonly occur along the shoreline. As part of the process of designing this public access project, a previous botanical survey and wetland delineation, conducted by KPFF in 2005 revealed the presence of *Viola Adunca* (a special plant due to its host status for the Behren's Silverspot Butterfly) and Point Reyes Checkerbloom, a California Native Plant Society, category 1B.2. A greater than 100-foot buffer would be observed between any proposed development and the site of these plants, as the location of the flora is in the approximate middle of the parcel.

The report additionally noted that the trail site contains two small, isolated marginal quality wetlands which MLT proposes to place raised boardwalks over, in order to protect the wetland and improve access.

An updated wetland delineation and biological survey were prepared and submitted by Matt Richmond for Redwood Coast Associates, dated June 2007.

A wetland of roughly 2 acres occurs diagonally across the parcel; however, a 50-foot buffer from the trail would be met with the exception of two small wetlands that will be crossed by boardwalks constructed of "Trex", a plastic and recycled material that will resemble lumber.

Boardwalk placement would occur in a wetland habitat area. A reduced buffer analysis (attached as Appendix A) has been performed and addresses development within the buffer area to the wetland. Section 20.496.025 of the Mendocino County Coastal Zoning Code (MCCZC) discusses development activities allowed within a wetland:

Sec. 20.496.025 Wetlands and Estuaries.

(A) Development or activities within wetland and estuary areas shall be limited to the following:

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(7) Incidental public service purposes which temporarily impact the resource including but not limited to burying cables and pipes, or inspection of piers, and maintenance of existing intake and outfall lines.

(8) Restoration projects which are allowable pursuant to Section 30233(a)(7) of the Coastal Act are publicly or privately financed projects in which restoration is the sole purpose of the project. Restoration projects may include some fill for non-permitted uses if the wetlands are small, extremely isolated, and incapable of being restored. Small, extremely isolated parcels that are incapable of being restored to biologically productive systems may be filled and developed for uses not ordinarily allowed only if such actions establish stable and logical boundaries between urban and wetland areas and if the applicant provides funds sufficient to accomplish an approved restoration program in the same general region pursuant to Chapter 20.532. All the following criteria must be satisfied before this exception is granted:

(a) The wetland to be filled is so small (e.g., less than one (1) acre) and so isolated (i.e., not contiguous or adjacent to a larger wetland) that it is not capable of recovering and maintaining a high level of biological productivity without major restoration activities.

(b) The wetland must not provide significant habitat value to wetland fish and wildlife species, and must not be used by any species that are rare or endangered.

(c) Restoration of another wetland to mitigate for fill can most feasibly be achieved in conjunction with filling a small wetland. The mitigation measure shall be carried out in a manner that would result in no net loss of either wetland acreage or habitat value.

(d) Restoration of a parcel to mitigate for the fill must occur at a site that is next to a larger, contiguous wetland area providing significant habitat value to fish and wildlife that would benefit from the addition of more area. In addition, such restoration must occur in the same general region (e.g., within the general area surrounding the same stream, lake, or estuary where the fill occurred).

(e) The Department of Fish and Game and the U.S. Fish and Wildlife Service believe the proposed restoration project can be successfully carried out.

The reduced buffer analysis explains that location of the boardwalk is in the only feasible location, as the access easement is in a fixed and dedicated area, and cannot be moved without acquiring a new OTD. Therefore, since a less damaging alternative is not available, this development is allowed within the riparian area. Supplemental findings are included, on page CPA-13 of this staff report, pursuant to Section 20.532.100 of the MCCZC, which explains that the approving authority may approve or conditionally approve development in an Environmentally Sensitive Habitat Area only if such findings are made. Restoration activities have been included in the project as discussed in greater detail below.

Approximately 52 square feet of shade will be created in the SE wetland by the placement of the boardwalk; the installation of two concrete piers and 8 support tubes will be placed within the wetland boundaries. The installation of 2 concrete piers and 8 support tubes would be placed within 5 feet of the edge of the wetland area, displacing an upland surface area of 4 square feet within the buffer. The installation of 2 signs ("MLT Management" and "Private Property") would impact a total of 2 square feet in the upland buffer.

In the second wetland area to be crossed by boardwalk placement (referred to as the SC wetland), the raised boardwalk will create approximately 100 square feet of shade cover over this wetland. The installation of 2 concrete piers and 8 support tubes will be placed within the wetland boundaries. The installation of 4

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concrete piers and 16 support tubes would be placed within 5 feet of the edge of the wetland area, displacing an upland surface area of 4 square feet within the buffer.

The installation of the split rail fence and additional signage would impact 11 square feet of upland surface, primarily resulting from digging holes with a post-hole digger and the pouring of concrete. The trail terminates 50 feet from the edge of the riparian/wetland vegetation.

Alternatives were explored, including the placement of a steel-mesh boardwalk to reduce shading and to use a less impactful pier system; however this is not cost effective. The trail has been recorded on the title report for the property, and as such, the option of relocating the trail is not feasible. The "no-project" alternative does not meet the project goals and denies coastal access as is required in the Coastal Act.

To offset potential adverse impacts to the 152 square feet of shading over the low quality wetland areas (SE and SC), the applicant proposes to enhance the remaining 278 square feet of partially degraded wetlands comprising the SE and SC wetland areas. The end result would be potential loss of 152 square feet of moderately low quality wetland habitat and the creation of 278 square feet of high quality wetland/coastal prairie habitat. To compensate for the 6 square feet of structural fill associated with the piers, the applicant proposes to create 6 square feet of additional wetland in the buffer area adjacent to the SE wetland. The applicant further proposes to enhance an additional 94 square feet of the buffer area adjacent to the SE and SC wetlands to offset potential impacts to the buffer areas.

Wetland/buffer enhancement/creation activities would involve the eradication of non-native species and replanting with native wetland species typically associated with Coastal Terrace Prairie habitat. The shaded portion of the wetland/buffer will be planted with shade tolerant wetland natives. After the completion of the wetland/buffer enhancement/creation activities, monitoring shall be conducted at intervals of 1, 3, and 5 years. If, during the monitoring, survivorship success rates have dropped below the recommended 70% level, the applicant shall replant until the 70% goal has been achieved.

In addition to the proposed wetland/buffer enhancement/creation activities, the applicant proposes to eradicate *invasive* species from the entire public access easement area on a bi-annual basis for as long as they actively manage the easement. Also, as recommended in the biological report, the following mitigation measures are recommended:

- All work involved associated with the trail and infrastructure, including soil movement and/or digging, shall occur during the dry season.
- Plants used for wetland enhancement shall be of stock from within the immediate locale and should be planted at the most appropriate time to achieve the highest survival rate as possible.
- All construction activities should occur offsite and be transported to the site only for assembly and installation.
- All soil should remain on site.
- Enhance and create the designated wetland and buffer areas according to specific guideline, as outlined in the biological report.

Rick Macedo, biologist for the Department of Fish and Game, noted during a site visit that the proposed project and recommended mitigation is acceptable to DFG. John Hunter, from the USFWS, concurred with the MLT proposal and the mitigation.

As the trail has been historically used for years in the same location, the County does not anticipate any new adverse effects to the wetland in the general vicinity due to the trail's opening. With the proposed mitigation planting, the project complies with LCP natural resources policy.

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The project as proposed and conditioned would not significantly degrade any of the ESHA's identified above. Because of the restricted width of the easement (25'), opportunities to avoid identified ESHA's are limited. In all cases, the least environmentally damaging alternative has been selected and appropriate mitigation measures adopted to reduce or eliminate impacts of the trail project.

Special Condition #3, which requires that all mitigation measures be followed, is recommended to ensure compliance with the LCP.

Archaeological/Cultural Resources

The project was reviewed by the Northwest Information Center at Sonoma State University, which noted that the project area has the possibility of containing unrecorded archaeological sites, and recommended that the site be surveyed by an archaeologist. The project was reviewed by the Mendocino County Archaeological Commission, which required a survey. An archaeological survey was conducted and a report was prepared by Thad M. Van Buren, M.A., Registered Professional Archaeologist. There are no sensitive cultural resources known on site. The report was approved by the Mendocino County Archaeological Commission at their February 10, 2005 meeting. No archaeological impacts are anticipated with the development of the access trail. Regardless, Standard Condition #8 is included as a routine safety measure.

Groundwater Resources

The proposed facility will neither consume water nor generate sewage. No restrooms are proposed.

Environmental Health noted:

DEH can give clearance to this CDP. ST24373 [septic permit] is located 350± feet away from proposed trail.

Transportation/Circulation

The project includes an informal parking area within a CalTrans right of way, which is presently developed to the extent of gravel and soil storage, for the purpose of road improvements.

The management signage will be placed adjacent to the State right of way. The exact location has not been mapped; therefore, should the signage be placed within the State ROW, the following requirement is noted from CalTrans:

Any work within the State right of way, including sign placement, will require an encroachment permit. We recommend that the applicant contact Jim Shupe of Caltrans District 1 Permits office to ensure the adequacy of the project's proposed sign placement and road approach prior to submittal of an Encroachment Permit application.

Special Condition #4 is recommended to ensure compliance with Caltrans' requirements.

The project would not affect traffic on local and regional roadways. The cumulative effects of traffic due to development on this site were considered when the Coastal Element land use designations were assigned. No adverse impacts would occur.

110920

Zoning Requirements

The project, as conditioned, complies with all of the zoning requirements of Division II of Title 20 of the Mendocino County Code.

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

FINDINGS:

1. The proposed development is in conformity with the certified Local Coastal Program; and
2. The proposed development will be provided with adequate utilities, access roads, drainage and other necessary facilities; and
3. The proposed development is consistent with the purpose and intent of the applicable zoning district, as well as all other provisions of Division II, and preserves the integrity of the zoning district; and
4. The proposed development, if constructed in compliance with the conditions of approval, will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act; and
5. The proposed development will not have any adverse impacts on any known archaeological or paleontological resource; and
6. Other public services, including but not limited to, solid waste and public roadway capacity have been considered and are adequate to serve the proposed development; and
7. The proposed development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act and Coastal Element of the General Plan.

SUPPLEMENTAL FINDINGS:

8. The resource as identified will not be significantly degraded by the proposed development.
9. There is no feasible less environmentally damaging alternative.
10. All feasible mitigation measures capable of reducing or eliminating project-related impacts have been adopted.

STANDARD CONDITIONS:

1. This action shall become final on the 11th day following the decision unless an appeal is filed pursuant to Section 20.544.015 of the Mendocino County Code. The permit shall become effective after the ten working day appeal period to the Coastal Commission has expired and no appeal has been filed with the Coastal Commission. The permit shall expire and become

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STAFF REPORT FOR
STANDARD COASTAL DEVELOPMENT PERMIT

CDP# 40-2006
March 27, 2008
CPA-12

null and void at the expiration of two years after the effective date except where construction and use of the property in reliance on such permit has been initiated prior to its expiration.

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

2. The use and occupancy of the premises shall be established and maintained in conformance with the provisions of Division II of Title 20 of the Mendocino County Code.
3. The application, along with supplemental exhibits and related material, shall be considered elements of this permit, and that compliance is mandatory, unless an amendment has been approved by the Coastal Permit Administrator.
4. The permit is subject to the securing of all necessary permits for the proposed development from County, State and Federal agencies having jurisdiction.
5. The applicant shall secure all required building permits for the proposed project as required by the Building Inspection Division of the Department of Planning and Building Services.
6. This permit shall be subject to revocation or modification upon a finding of any one or more of the following:
 - a. The permit was obtained or extended by fraud.
 - b. One or more of the conditions upon which such permit was granted have been violated.
 - c. The use for which the permit was granted is so conducted as to be detrimental to the public health, welfare or safety or is a nuisance.
 - d. A final judgment of a court of competent jurisdiction has declared one or more conditions to be void or ineffective, or has enjoined or otherwise prohibited the enforcement or operation of one or more such conditions.
7. This permit is issued without a legal determination having been made upon the number, size or shape of parcels encompassed within the permit described boundaries. Should, at any time, a legal determination be made that the number, size or shape of parcels within the permit described boundaries are different than that which is legally required by this permit, this permit shall become null and void.
8. If any archaeological sites or artifacts are discovered during site excavation or construction activities, the applicant shall cease and desist from all further excavation and disturbances within one hundred feet of the discovery, and make notification of the discovery to the Director of the Department of Planning and Building Services. The Director will coordinate further actions for the protection of the archaeological resources in accordance with Section 22.12.090 of the Mendocino County Code.

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STAFF REPORT FOR
STANDARD COASTAL DEVELOPMENT PERMIT

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CPA-13

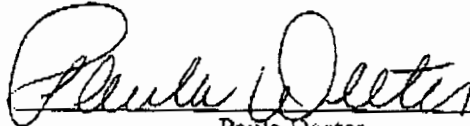
SPECIAL CONDITIONS:

1. Accessway Management Plan. The Accessway Management Plan shall be finalized and signed by Mendocino County, California Coastal Commission, and the State Coastal Conservancy prior to trail construction. A copy of the signed plan shall be submitted to the Planning Division prior to construction.
2. Maintenance. There shall be minimal maintenance (mowing, and only where necessary) of the trail. Volunteer work parties organized by MLT will carry out the construction and maintenance of the trail. Additional maintenance of the trail is to be outlined in the management plan. Mendocino Land Trust shall construct the trail within the easement, as described by a detailed and current field survey.
3. All mitigation measures set forth in the report from Matt Richmond (Redwood Coast Associates), dated June 2007, shall be considered a mandatory requirement of the project. Any proposed changes to this plan shall be submitted to the CPA for review and approval.

Staff Report Prepared By:

3-14-08

Date



Paula Deeter
Planner I

Attachments: Exhibit A: Location Map
Exhibit B: Site Plan
Exhibit B.1: ESHA Map
Exhibit C: Boardwalk Plan
Exhibit C.1: Replanting Details
Exhibit D: Signage Details

Appendix A: Reduced Buffer Analysis

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

Appeal Fee: \$825 (For an appeal to the Mendocino County Board of Supervisors.)

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STAFF REPORT FOR COASTAL DEVELOPMENT
STANDARD PERMIT

CDP # 40-2006 (MLT)
March 27, 2008

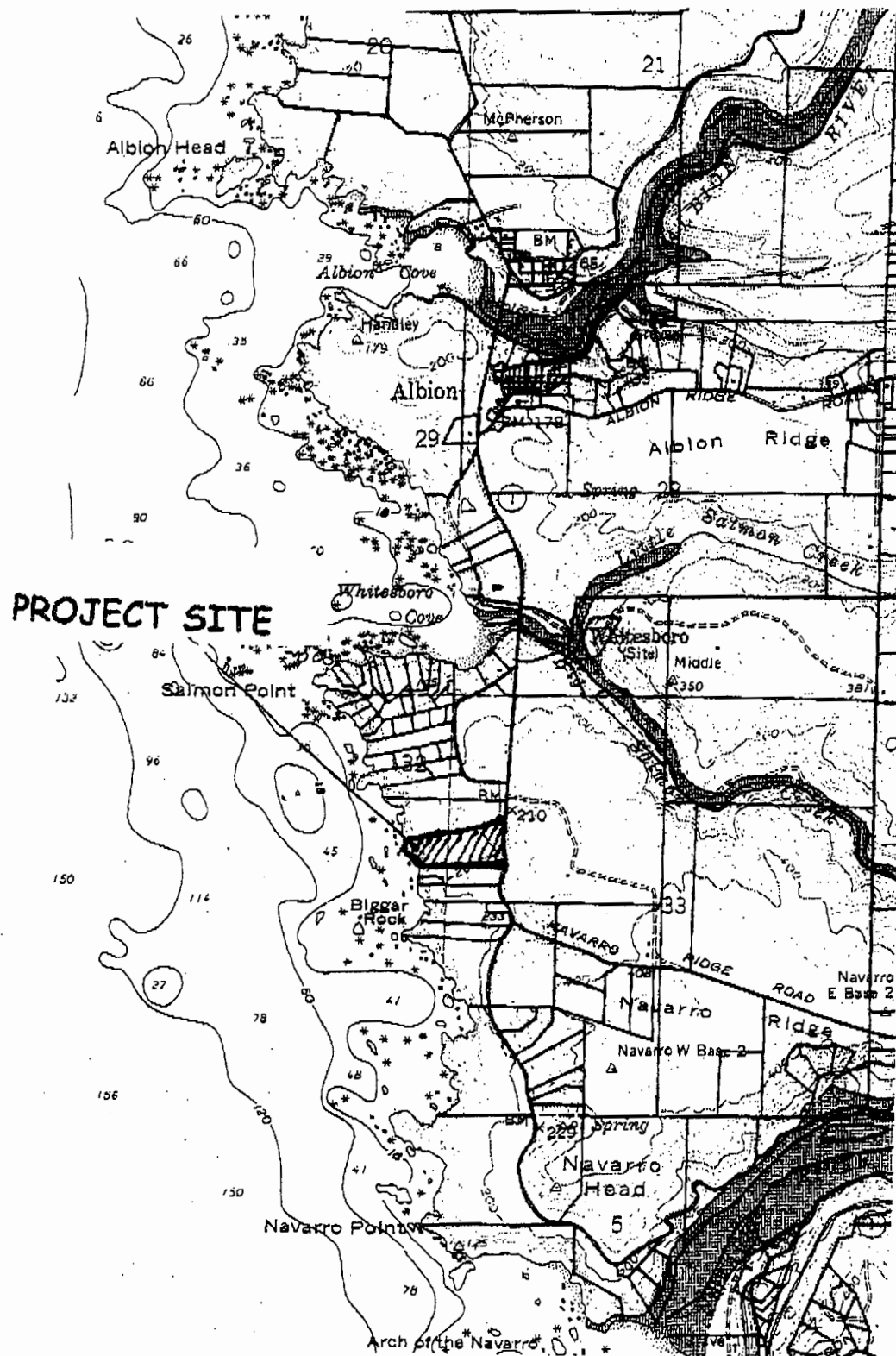
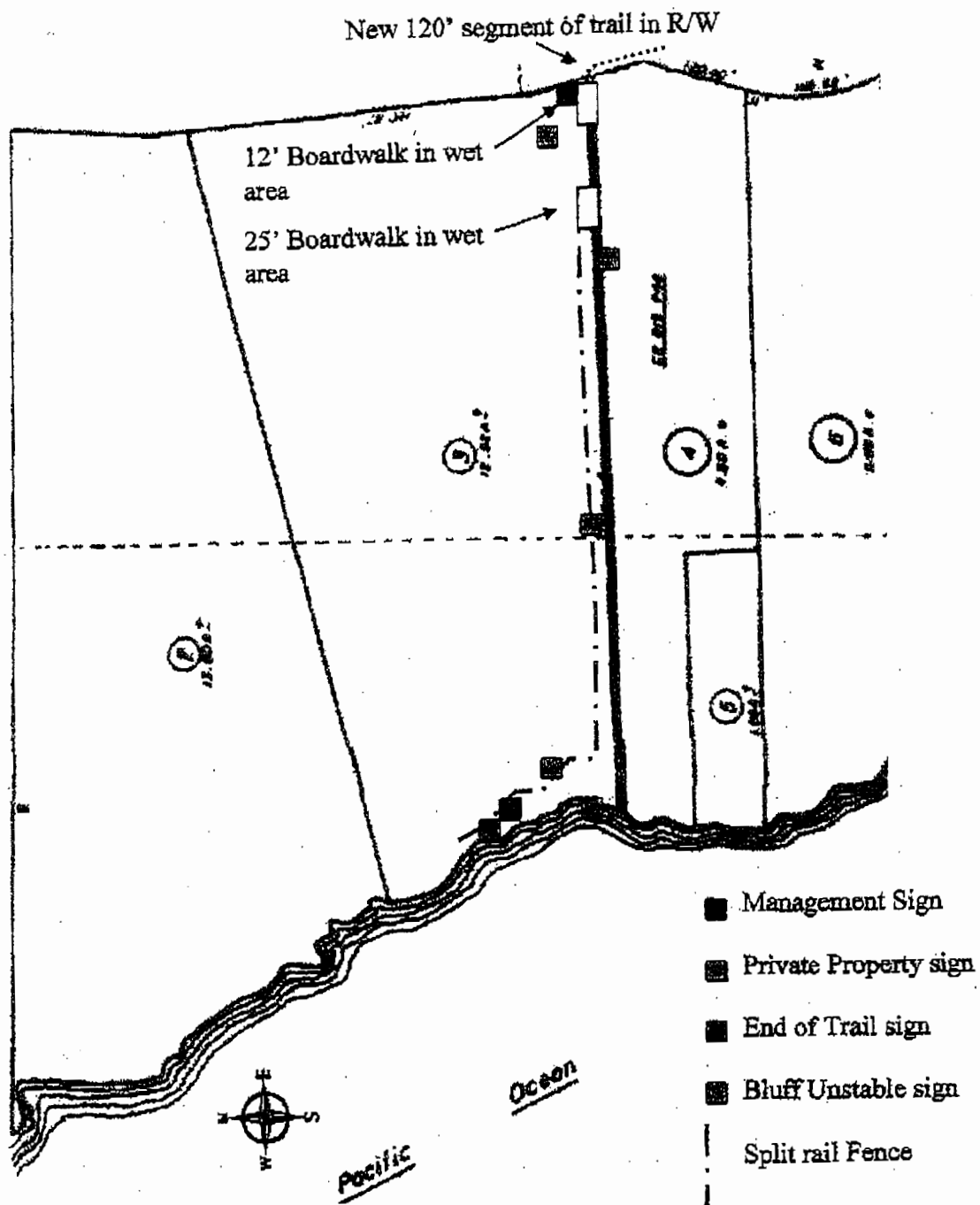


EXHIBIT A

LOCATION MAP

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STAFF REPORT FOR COASTAL DEVELOPMENT
STANDARD PERMIT

CDP # 40-2006 (MLT)
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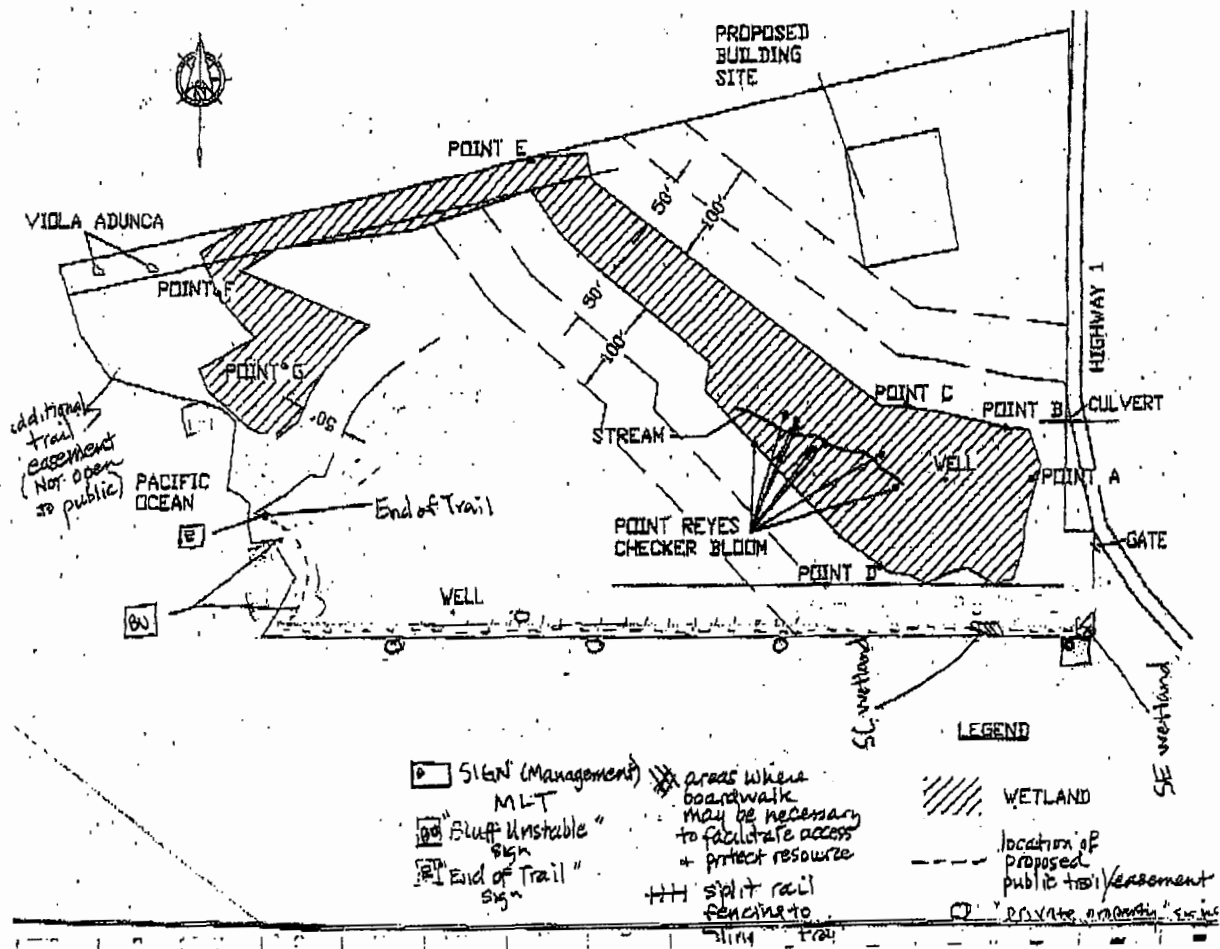
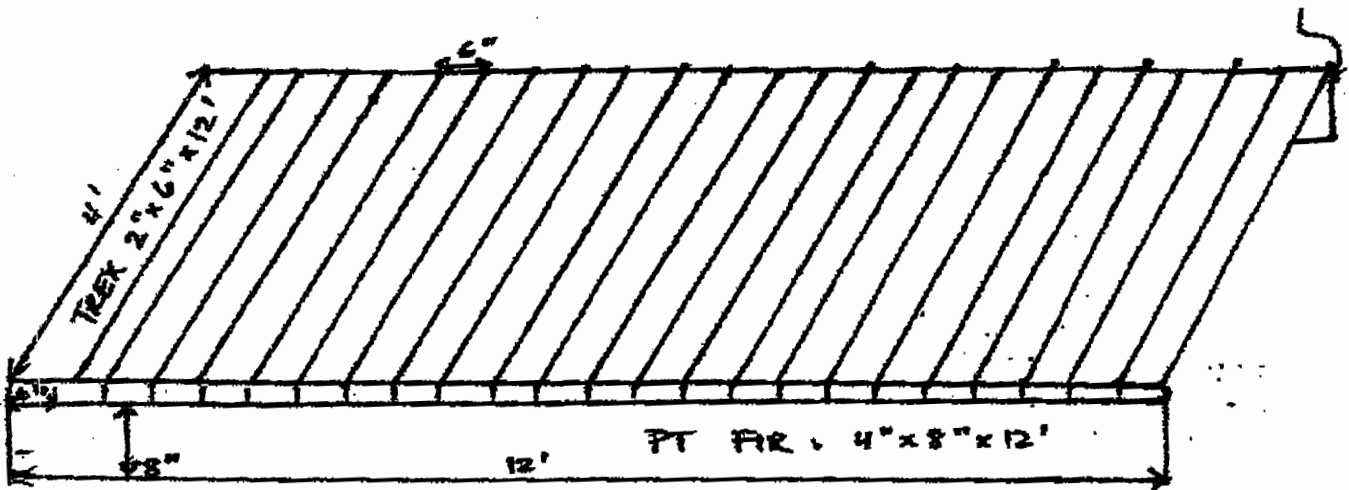


EXHIBIT B.1

ESHA MAP

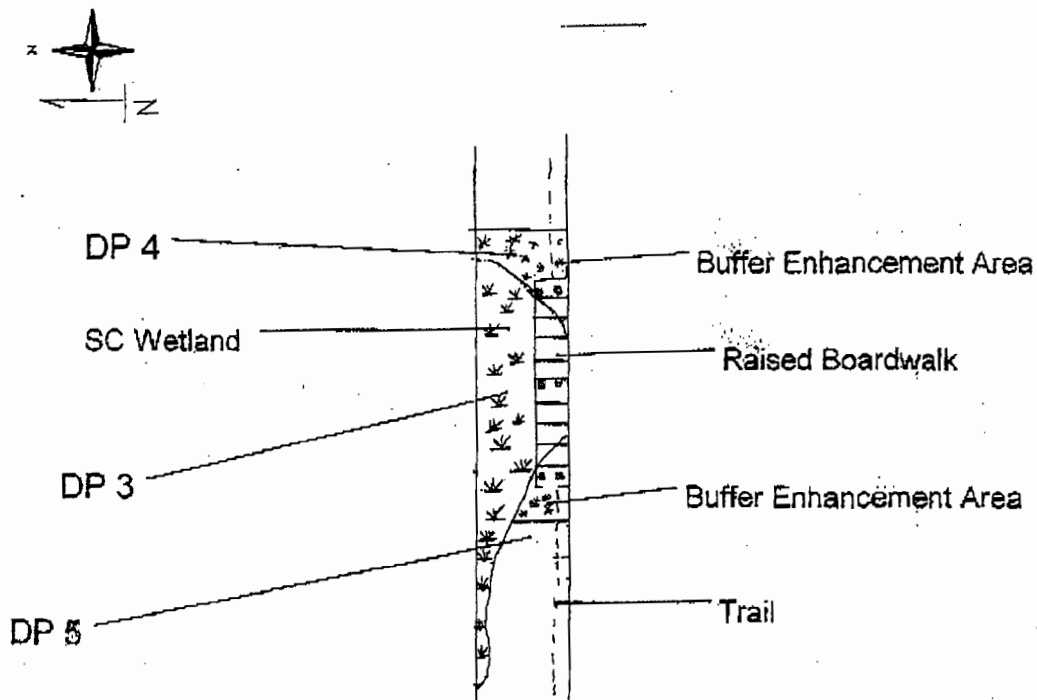
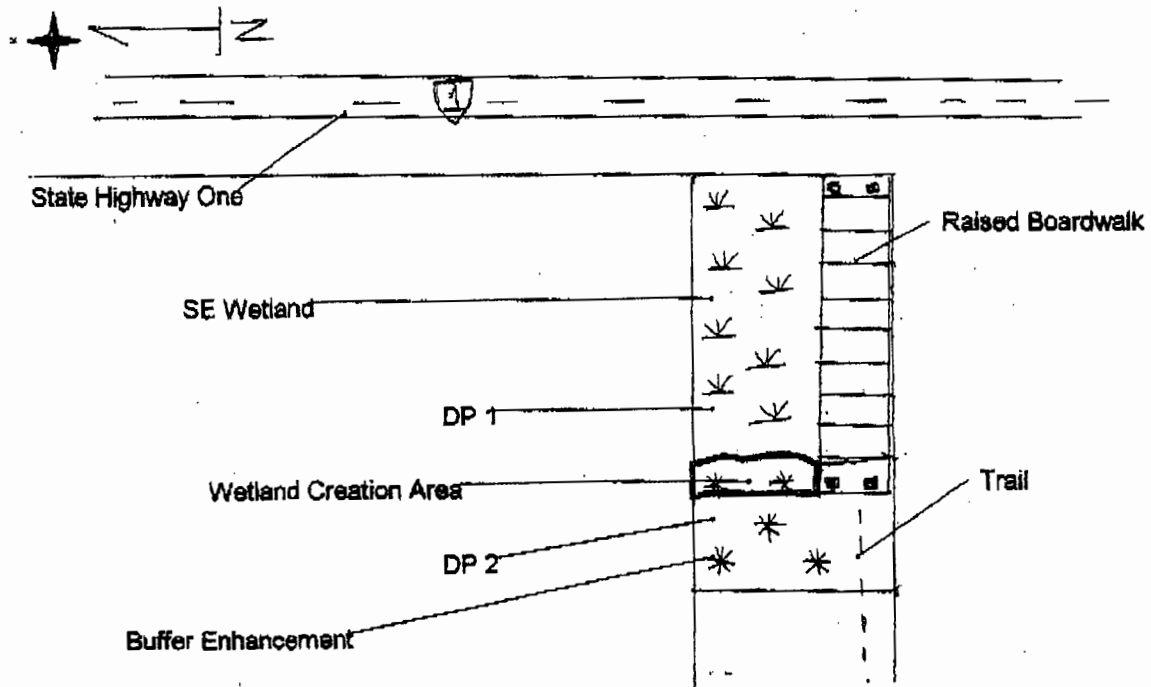
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March 27, 2008



BOARDWALK SAMPLE (side view)

- 150' BOARDWALKING
- ~ 4' WIDE
- ^{Trex} fastened to PT fir with stainless steel screws



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1 SIGN



3 SIGNS



NAVARRO BLUFFLANDS PUBLIC SCENIC TRAIL

Conserved and
managed by



Please help us conserve the unique habitats and beauty of this area and respect the landowner's privacy by staying on designated trails. For your safety, please stay away from the dangerous cliffs at the bluff edge.

We ask that you respect this special place by honoring these requests:

- * Leash your dog * Carry out your trash * Pedestrian use only
- * No motorized vehicles * No bicycles on trail * Day use only * No fires
- * No firearms * Leave the plant and animal life undisturbed

If you would like more information, please contact the Navarre National Park at 904/204-2020.

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE

710 E STREET, SUITE 200

EUREKA, CA 95501

VOICE (707) 445-7833 FAX (707) 445-7877

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT****Please Review Attached Appeal Information Sheet Prior To Completing This Form.****SECTION I. Appellant(s)**

Name: John & Dee Patrick

Mailing Address: 300 Northstar Lane

City: Cloverdale

Zip Code: 95425

Phone: 707-894-7316

SECTION II. Decision Being Appealed

1. Name of local/port government:

Mendocino County Planning & Building and Mendocino County Board of Supervisors

2. Brief description of development being appealed:

Opening of a public access trail from Highway One to the blufftop.

3. Development's location (street address, assessor's parcel no., cross street, etc.):

2300 N. Highway One, Albion, 1 mile south of the town of Albion, about 600' north of Navarro Ridge Road,
APN # 123-290-03

4. Description of decision being appealed (check one.):

- ☐ Approval; no special conditions
- ☒ Approval with special conditions:
- ☐ Denial

RECEIVED

JUL 03 2008

CALIFORNIA
COASTAL COMMISSION**EXHIBIT NO. 7****APPEAL NO.**

A-1-MEN-08-030

MENDOCINO LAND TRUST

APPEAL (1 of 27)

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:APPEAL NO: A-1-MEN-08-030DATE FILED: 7/7/08DISTRICT: North Coast

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- ☐ Planning Director/Zoning Administrator
- ☒ City Council/Board of Supervisors
- ☐ Planning Commission
- ☐ Other

6. Date of local government's decision: 6-24-2008

7. Local government's file number (if any): CDP# 40-2006

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

Mendocino Land Trust, PO Box 1094, Mendocino, CA 95460

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) I was the only person in attendance for this matter. Mendocino Land Trust did not attend.

(2)

(3)

(4)

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APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly **your reasons for this appeal**. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

At the March 27th meeting I was the only person in attendance for this matter. I can outline my concerns under three headings, 1.) Public Safety, 2.) Negative Impact & 3.) Liability.

Public Safety: A.) Blufftop Safety the cliff ranges from 100' to 130' straight down. (photo included) B.) Walking along the highway from the parking area to the trailhead, traffic moves at about 60 mph. C.) Properly informing the public, cliffs, poison oak and other trail hazards.

Negative Impact: A.) Blocking neighbors driveway B.) Garbage left in the parking area. C.) Trespassing on neighbors properties as well as ours. D.) Killing plants and animals, trespassors have killed one of the otters about three years ago. Then brought it up from the water and left it on the trail. E.) Garbage on the trail and over the bluff. F.) Bringing in plants not native to the area. G.) Animals not on a leash.

Liability: A.) Controlling the public along the trail. B.) Policing the trail Who's authority? Who's responsibility. C.) Who's going to be responsibly for someone going off the cliff?

I have serious concerns that the Land Trust is capable of managing this trail. At the Annual Evaluation for Belinda Point Trail, of the 17 speakers at the meeting 14 were not happy with what they had been told prior to the trail opening and what had happened in the year following. I have included a copy of that report for your information.

When this OTD was extracted in 1985 the 55 acre Navarro Headland did not exist. We are less than 1/2 mile from Headland site. There is a provision in the Public Resources Code Section 30212 refers to circumstances which allow OTD's to be terminated, "only if adequate access does not exist nearby". In this case there is now access nearby. Maybe time and effort would be better spent maintaining those trails that are open and do not offer as much risk to the public.

I appreciate the fact that many of my concerns have been addressed by the Coastal Administrator and the Board of Supervisors, however I do not think the Mendocino Land Trust has the where with all to manage the public on the trail in our neighborhood. All the questions asked by the public at the Belinda Point meeting were responded to by the Land Trust staff. Their typical reply was that these issues were some other agencies responsibility. They could not even make to the Coastal Administrator meeting on time let alone manage the public on a trail 20 miles away.

I would appreciate you taking some time to review this OTD. I would appreciate the opportunity to address the Board and answer any questions you may have.

What happens if they fail? Do I have recourse? I have questions no one has been able to answer and I have followed the due course and I would appreciate an opportunity to ask my questions.

Sincerely


John Patrick

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APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

 Signature on File

of Appellant(s) or Authorized Agent

Date: 6/30/08

Note: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby authorize _____
to act as my/our representative and to bind me/us in all matters concerning this appeal.

Signature of Appellant(s)

Date: _____

4427

*Presented to the Coastal Administration
March 27 '08*

My name is John Patrick. My wife & I have owned this property since 2000. Over that time we have made a great effort to protect and maintain this land. We have put some 25 to 30 No Trespassing Signs along the east and south boundaries of our property and still there are many trespassing issues. There have been many occasions that we have called the sheriff to remove trespassers from the property. We have even had staff from our local agencies admitted to trespassing on our property. It is my understanding that the managing agency is charged with and responsible for controlling the public while visiting. Point IS I do not think the MLT can manage the public traffic on the trail, along the roadside or in the parking area. I do not believe it is their concern what impact this will have on any of the landowners and/or neighbors.

I have three basic concerns with this trail, Public Safety, the Negative Impact and Liability.

1). Public Safety:

Bluff top Safety, the bluff at the area to be opened is 100 to 130 feet straight down, an accident won't be a rescue operation it will be a recovery.

Walking along the highway. Traffic moves at a rate of 50-70 mph

Traversing from Highway to the trail. It is a 12' drop from the highway to the trailhead.

2). Negative Impact:

Blocking neighbor's driveway. How will the parking be controlled?

Garbage left in the turnout. Will MLT pick up the garbage? Place trash cans?

Trespassing on all the neighbors' property, will the signage direct people?

Killing Plants and animals, we have battled this from the start. Otter killed

Garbage left on the trail, Paper/plastic bags, plastic bottles, diapers, cigarette butts

People off the trail – a two rail fence and no rail along boardwalk. What about the 9 months it is dry? Our driveway will be next to the path.

Bringing in of non-native plants from other sites along the coast...

3). Land Trust Liability

Controlling and Policing the trail. What responsibility? What authority?

Keep insurance to protect the landowners in case of suit. A policy that names the landowner as Insured

Signage for Poison Oak? What if you did not post that information? Lawsuit

Bluff top signage per the plan "Bluff Unstable" might not be the same as STOP 100' DROP

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I have to question MLT's ability to manage the trail. Their past record with the Belinda Point trail does not reflect that they have the ability.

Per the Belinda Point Annual Evaluation Report October 2006

17 different neighbors/associates spoke up during the meeting.

Of the 17 different people who took the opportunity to speak 3 had favorable things to say. The other 14 were unhappy with a variety of issues.

Concerns about the structure of the Offer and weather it included beach access.

Many neighbors were concerned with the number of vehicles; one reported 35 on one day another reported 24.

Many had complaints with people parking in their driveways. One reported a physical confrontation.

Complaints about people trespassing onto their property to pick mushrooms.

One neighbor reported people getting dressed and undressed on their back patio.

One reported children running through the property and trying to get into the house.

Another homeowner reported that she and her children do not feel safe in their own home.

One homeowner felt that the effort should be directed toward existing Local, State and National recreational places that have facilities and the ability to benefit the public.

One homeowner reported someone fell headfirst off a 15' bluff and was taken away by an ambulance.

The consistent reply from MLT staff was either it is not our responsibility or we do not have the financial resources to supply the needed service. The MLT did indeed create all the needs for services by opening the trail and now claims they do not have resources or it is someone else's problem or responsibility. It would appear they have created many dangerous situations by not planning and preparing prior to opening these trails.

I have some questions about their planning for this trail.

Has there been a study for ESHA's south of the trail on the neighboring property?

How will people get from the Parking Area to the trailhead? There is no account for the fact that the highway is 12' higher than the property.

If some pathway is developed along the highway will the MLT be required to have traffic flaggers per Cal Trans Standard T-13. I did not see any mention in the plan.

Boardwalk SE, will it traverse the 12' drop from the road shoulder to the ground? What about railing or are they going to let people traverse a boardwalk 6-8 feet in the air without a rail?

Boardwalk SC- stringers laid on the ground and trek's screwed to them. Sounds like a dam. Any drainage around the boardwalk planned and/or engineered?

On page six in the second paragraph it states "As noted above, no access from the bluff to the beach will be developed without first obtaining a Coastal Development Use Permit from Mendocino County Planning Division". I'd like to make a point that nowhere in the EXTRACTED OFFER TO DEDICATE is there any reference to beach access. In fact it specifically states BLUFFTOP VIEWING ONLY. There was another OTD on the property to our north that did have a beach access.

There is discussion of a REDUCED BUFFER ANALYSIS however I was unable to find the name of the party that did that report. Maybe it was Appendix A which was not included with my packet.

In this plan it seems we have taken a great deal of time to calculate how many square feet of "moderately low quality wetland habitat" will be affected. However a 4 foot wide 1,000 foot long trail may be of no consequence.

About the work to be done, clearing, trimming, mowing and building of boardwalks, will all this work be done from within the 10' wide easement? What will be done with all the materials that will be removed from the pathway? Will there be hazard insurance for all the workers?

Insurance coverage?? Per "Happy Trails To You" a publication of the Calif. Coastal Conservancy & The Calif. Coastal Commission. Regarding landowner liability and the Recreational Use Statute, "This does not mean that landholders cannot be sued, but it does mean that the chances of their losing a personal injury lawsuit are greatly reduced." What about the cost of defending a lawsuit against landowners? Isn't MLT required to provide that insurance?

Were all the neighbors notified? Even the neighbors across the highway? Within 300'

It seems to me that there are a lot of issues that have not been addressed yet. In light of all the issues not yet addressed I think this needs more consideration.

What about all the existing public lands not adequately posted? MLT's acreage just ½ mile south of us, Albion headlands trail on the south side of Black Gulch, The Black Gulch Beach trail at Heritage House, all the open lands just north of Little River next to Rachael's Inn approximately 300 acres, the property south of Jug handle, Belinda Point and many others. Wouldn't time, money and effort produce better outcomes if it were spent developing current properties that are not apparent to those who use them if they knew they were there?

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Per the Public Resources Code Section 30212 "Only if adequate access does not exist nearby."
When this OTD was extracted the 57 acre site ½ mile to the south did not exist. It would be my request to have this OTD sun-setted like one at Belinda Point.

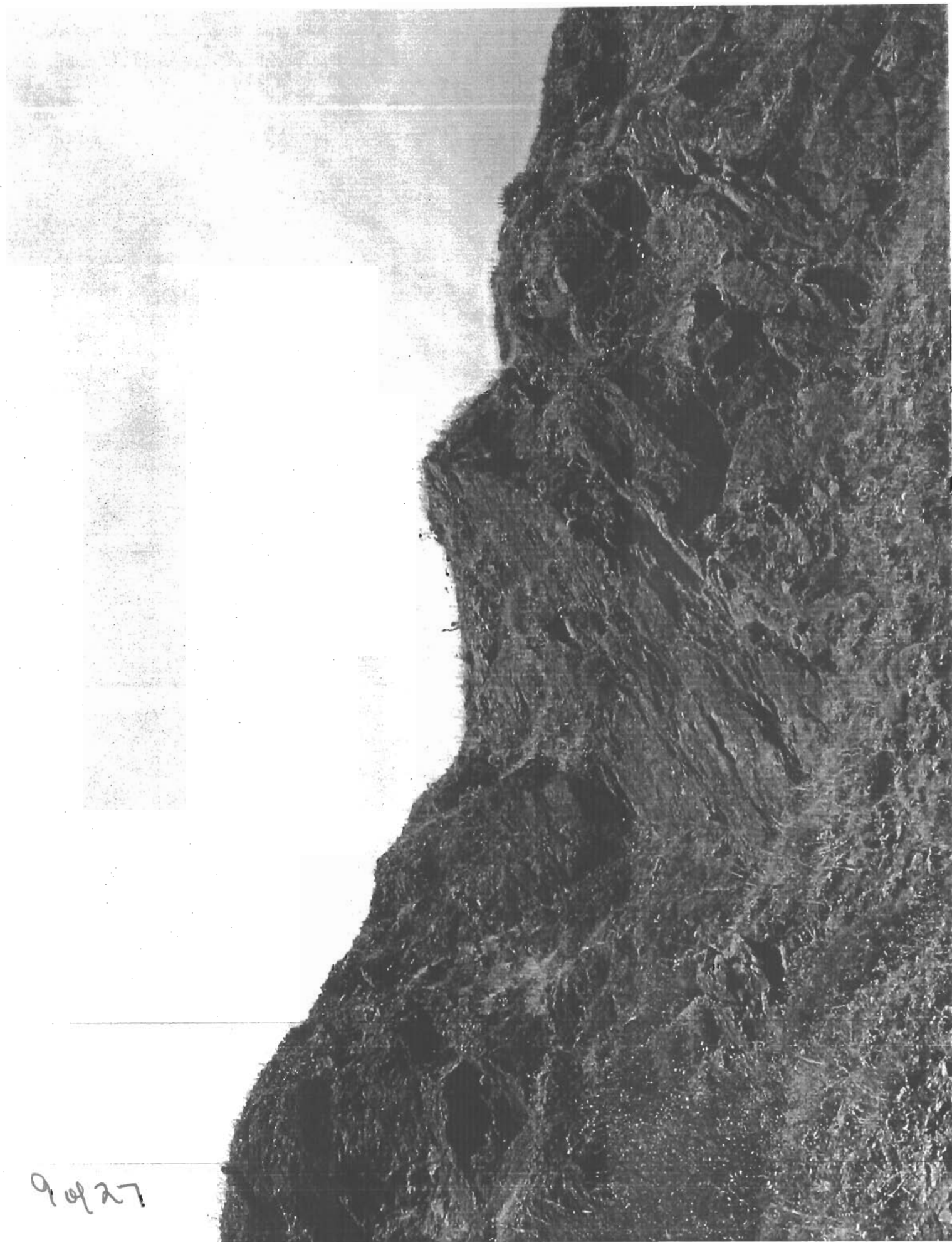
MLT originally agreed to a privacy fence near the bluff next to the house?
Going onto the property without permission.

Combative communications

Late notification with ultimatums

Good neighbor policy??

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October 2006

**MENDOCINO LAND TRUST
ANNUAL EVALUATION REPORT
FOR BELINDA POINT
MENDOCINO COUNTY, CALIFORNIA**



Prepared by:

Louisa Morris
with strategic and editorial assistance from
James Bernard
Coastal Access Program
Mendocino Land Trust

10427

**October 2006
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Introduction

The Mendocino Land Trust (MLT) prepared this report for the California Coastal Commission and the California Coastal Conservancy in accordance with the management plan of August 10, 2004 for the "EFS" and "Follette" public access easements (CDP Nos. 1-89-028 and 1-92-212, respectively).

The Belinda Point trail was officially opened to the public on October 23, 2004. A somewhat lengthy permit process preceded actual trail building, which took place in early October 2004.

Monitoring

Local neighborhood volunteers for the Mendocino Land Trust monitor the Belinda Point trail on a weekly, even daily, basis. MLT staff monitors the trail at least biweekly, exceeding the Management Plan's monthly monitoring requirement. Between September 1, 2005 and September 11, 2006, MLT staff monitored the trail at least 44 times.

User Numbers

Most of the users during the week are local neighbors. On the weekends and at low tides during abalone season, monitors report both out-of-town and local users.

MLT staff monitored the trail at least 44 times since the last annual monitoring report submitted in September 2005. On average, monitors observe between 1 and 3 cars parked at the trailhead, with 2-3 people on the trail. Dog walking, hiking, abalone diving, rock fishing, sunset viewing, running, photographing, and beachcombing are the most common user activities. MLT staff and volunteers were also present at the beginning of abalone season in April and when the season resumed in August to educate and conduct outreach to abalone divers about proper trail usage (see handout attached as Appendix 1). At these abalone outreach visits, no more than 3 cars were seen parked at the trailhead. Belinda Point is not yet on the California Department of Fish and Game abalone punch card, but abalone divers do use the beach access at this location.

Physical Condition

The trail is in good physical condition and has been well established by public use. There are two sections of the trail along the open blufftop where the trail use pattern has been difficult to establish within the 25' easement area. MLT would like to work with the landowner (Walsh) to address this issue.

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MLT obtained a coastal development permit amendment to install approximately 200 feet of **boardwalk** in wet sections of the trail, mostly within 0.1 miles of the trailhead. Volunteer trail crews completed this work in April and June 2006. This winter, MLT will assess the effectiveness of this boardwalk installation in keeping the trail dry in sustained wet weather and lessening the use of bicycles on the trail.

Safety Issues

MLT is not aware of any safety issues on this trail other than trail users needing to use caution traversing the bluff top areas and near the ocean.

MLT has endeavored, in response to landowner concerns about potential fire danger, to discourage smoking at this site.

Since the last monitoring report, MLT contracted with Robertson Engineering to complete a **stairway design** from the top of the bluff to the pocket beach at Belinda Point cove. Prior to completion of this design, Michelucci and Associates completed a soils investigation. MLT completed the coastal development use permit application for this project, and MLT is currently working with the landowner to obtain their signature on this application prior to submitting it to Mendocino County Planning and Building. Installation of the stairway will enable trail users to more safely access the beach at this location and prevent erosion of the bluff face that customary users traverse to reach the beach. At present, the last 20 feet of trail travels down a steep, rocky outcrop or through a fragile seep area.

Trash

Trash has not been a big issue at this site since the opening of the trail. Typical trash on this trail consists of beverage containers, cigarette butts, tissue, food wrappers, clothing, fishing monofilament, balls, and paper. MLT staff and volunteer monitors find most of this litter near the parking area for the trail or washed in by the tides on the beach. Monitors remove all trash at least weekly.

Responsiveness to Usage and Management Issues

MLT organized and facilitated a **community meeting**, held March 28, 2006, to discuss concerns and to solicit feedback on the Belinda Point Trail. The Public meeting also offered an opportunity for MLT to update the interested public about how they could assist and understand prior to abalone season what the rules of usage are for the Belinda Point Trail. At the community meeting, MLT staff provided a PowerPoint presentation covering pertinent trail information and facilitated a dialogue among the participants to inform interested public, landowners, and agencies about the Belinda Point Trail and its management. A newspaper article announcing the event, a "Frequently Asked Questions"

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handout, and minutes from the meeting are attached to this report as Appendices 2, 3, and 4.

Vandalism

Several of the "private property" signs installed by MLT have been bent. In an effort to make this private property signage more effective and friendly to users, MLT replaced these signs in late March 2006 on the Walsh portion of the public access easement with new signage requesting that trail users respect landowner privacy by staying on the trail.

Conclusion

The community outreach has resulted in a better understanding of the coastal access trail issues by users and interested individuals. The installation of the boardwalk has stabilized the trail and created a sense of permanence. The planning and design for the stairway will lead to a safer and less impactful means to the beach.

Appendix 1: Belinda Point Trail User Education and Outreach Handout



Belinda Point Trail User:

As manager of the Belinda Point coastal access easement, we ask that you utilize the trail in a responsible manner. In particular:

- Please stay on the trail even if it is wet. The adjacent driveway is not in the easement and is on private property. Please respect the landowner's rights and privacy.
- Please carry out your trash, including cigarette butts.
- Please keep your dog on a leash.
- The Trail is pedestrian-only and bicycles are not allowed.

The Landowners and the Land Trust ask that you refrain from smoking on the Trail due to fire danger.

Thank you for your cooperation in using the Trail.

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Appendix 2: Newspaper Article Announcing Belinda Point Trail Community Meeting

Mendocino Land Trust to Hold Public Meeting March 28th Concerning Belinda Point Trail

The Mendocino Land Trust is convening and facilitating a public meeting to discuss concerns and solicit feedback on the trail managed by the Land Trust at Belinda Point located south of Fort Bragg on Ocean Drive. The meeting is scheduled for Tuesday evening March 28, 2006, from 6:30-8:30 p.m., and will be held at the Mendocino Coast Botanical Gardens' Meeting Room.

"We are interested in hearing from the community about any concerns and positive feedback they might have regarding how the Belinda Point Trail has been used in its first year and a half," said James Bernard, Land Trust Executive Director. "With abalone season coming up soon, we would like to make sure the Trail works well for both visitors and residents in the neighborhood. We are looking forward to gaining insights from everyone who cares about Belinda Point to help improve the trail."

The Land Trust worked for six years to open the Belinda Point Trail in October 2004. To reach the half-mile long Belinda Point Trail, go 0.8 miles south of the intersection of Highways 1 and 20, and turn onto Ocean Drive, just south of the Mendocino Coast Botanical Gardens. The trailhead is 0.8 miles further south on Ocean Drive.

The Mendocino Land Trust manages three public access easements on the Mendocino Coast and is working to open other sites to the public. For more information on this trail or the Land Trust's Coastal Access Program, please contact James Bernard or Louisa Morris, Program Manager, at (707) 962-0470 or by email at lmorris@mendocinolandtrust.org.

Appendix 3: Frequently Asked Questions About the Belinda Point Trail Access Easement

Frequently Asked Questions About the Belinda Point Trail Access Easement

What is an offer-to-dedicate public access easement?

Offers to Dedicate access easements or OTDs are recorded legal documents that offer interests in land to a government agency or a nonprofit organization. The land interest usually consists of an easement or a right-of-way to a public beach or along the shore. They are usually not more than 10 feet wide and they can be a trail and/or a stairway. OTDs were created as part of the Coastal Commission permitting process as a way to mitigate the cumulative impacts of new coastal development on coastal resources. Vertical access easements provide public access from the nearest public road to the beach, while lateral access easements run along the shore (both are present at Belinda Point, but the beach access is temporarily closed while the Mendocino Land Trust (MLT) plans for safe access). MLT now holds and manages three OTDs: Belinda Point, Cantus Cove, and the Mendocino Bay Overlook.

There are five basic steps to accepting and opening an easement: 1) review of all legal documents; 2) inspect the site; 3) consult landowners and users; 4) evaluate what improvements are needed to open the easement for safe public use and seek appropriate permits; 5) determine how to manage the easement.

⇒ In 2003, Mendocino Land Trust accepted these two public access easements (OTDs) and became manager of the Belinda Point easement.

⇒ On October 23, 2004, the Land Trust officially opened the Belinda Point Trail.

Who manages the Belinda Point Trail?

- Mendocino Land Trust manages the Belinda Point trail and public access easement.
- Mendocino Land Trust is required to monitor all its coastal access trails once a month; MLT staff monitor the Belinda Point trail about once a week.
- Volunteer monitors walk the trail almost daily (weather permitting).
- Monitors (both MLT staff and volunteer) pick up trash and keep notes on monitoring visits.

Who uses the Belinda Point Trail?

The People of California (and other locales), both neighbors and visitors, including:

- ✓ Anglers and abalone divers;
- ✓ Hikers and dog walkers;
- ✓ Whale watchers and bird watchers;
- ✓ Photographers and artists;

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✓ Appreciators of beautiful ocean vistas on the Mendocino Coast.

What uses are not permitted on the Belinda Point Trail?

- Bicycles (this is a pedestrian-only easement)
- Motorized vehicles
- Dogs off-leash

Is there legal access to the beach at Belinda Point?

Yes, there is legal access to the beach and also to the rocks.

Is smoking permitted on the Belinda Point Trail?

- Both the Mendocino Land Trust and the landowners prefer that users not smoke on the Belinda Point Trail, but cannot dictate individual choices to smoke cigarettes.
- The Land Trust and landowners ask users to pack out all trash (including cigarette butts) and that users be aware of fire danger and leave no material burning at Belinda Point.

What are the current management concerns and solutions at Belinda Point?

- ☐ Flooding on the trail (boardwalk planned, at permitting stage)
- ☐ Preventing trespass onto non-easement private property (new signage to be placed, boardwalk)
- ☐ Bluff erosion prevention (seaside daisy planted)
- ☐ Planning for safe access to the cove (soils report received, stairway planning and design in progress)
- ☐ Invasive plant management
- ☐ Abalone and angler outreach (California Department of Fish and Game)
- ☐ Coastal Access signage on Highway One (Caltrans)

How can you help with the Belinda Point trail?

- Stay on the trail and respect private landowners who live near trail
- Carry out your trash and trash you see on the trail
- Educate others who use trail and may not be at this meeting
- Volunteer as a Belinda Point trail monitor (or at Cantus Cove, Mendocino Bay Viewpoint, or Navarro Point)
- Volunteer to help build the Belinda Point boardwalk (once the Land Trust has received the appropriate county permit)

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Appendix 4: Belinda Point Trail Community Meeting Notes

Belinda Point Trail Community Meeting Notes
Tuesday March 28, 2006, 6:30-8:30 p.m.
Meeting Room, Mendocino Coast Botanical Gardens

Meeting Facilitated by James Bernard, Executive Director, Mendocino Land Trust
Notes prepared on-site by Louisa Morris, Coastal Access Program Manager, MLT and
augmented by Bernard.

Overview

The Mendocino Land Trust convened the meeting to hear from the community about any concerns and positive feedback they might have regarding how the Belinda Point Trail has been used in its first year and a half. With abalone season beginning April 1, the Land Trust wanted to make sure the Trail works well for both visitors and residents in the neighborhood. The Land Trust wished to gain insights from everyone who cares about Belinda Point to help improve the trail.

The objectives of the meeting were that participants:

- Learned about how to properly use the trail
- Learned of concerns about the trail
- Discussed possible solutions for the trail
- Had an opportunity to provide input on the trail to the Land Trust, Coastal Commission, Coastal Conservancy, Fish and Game

Presentation

James Bernard provided a PowerPoint presentation to the meeting. The presentation included a status report and discussed concerns and possible solutions.

What is an offer-to-dedicate public access easement? The California Coastal Commission or Mendocino County Planning Division can require a landowner to dedicate a public access easement (an Offer-to-Dedicate or OTD) as a condition of a permit application. An OTD is a public trail easement across private property. In the case of the Belinda Point trail, the easement creating the public trail crosses two landowners' properties, and was required by the Coastal Commission.

Steps in accepting and opening a public access easement are: 1) review of all legal documents; 2) inspect the site; 3) consult landowners and users; 4) evaluate what improvements are needed to open the easement for safe public use; 5) determine how to manage the easement. In 2003, Mendocino Land Trust accepted these two public access easements (OTDs) and became manager of the Belinda Point easement. On October 23, 2004, the Land Trust officially opened the Belinda Point Trail.

Managing the Belinda Point Trail. The Mendocino Land Trust manages the Belinda Point trail and public access easement and is required to monitor all its coastal access

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trails once a month; MLT staff monitor the Belinda Point trail about once a week. Volunteer monitors walk the trail almost daily (weather permitting). Monitors (both MLT staff and volunteers) pick up trash and keep notes on monitoring visits.

Who uses the Belinda Point trail? People of California (and other locales), both neighbors and visitors, including:

- ✓ Anglers and abalone divers;
- ✓ Hikers and dog walkers;
- ✓ Whale watchers and bird watchers;
- ✓ Photographers and artists;
- ✓ Appreciators of beautiful ocean vistas on the Mendocino Coast.

What uses are not permitted on the Belinda Point trail? Bicycles (this is a pedestrian-only easement); motorized vehicles; dogs off-leash.

Is there legal access to the beach at Belinda Point? A map was presented showing public access points to the beach and to sportfish off the rocks.


Is smoking permitted on the Belinda Point trail? Both the Mendocino Land Trust and the landowners prefer that users not smoke on the Belinda Point trail, but cannot dictate individual choices to smoke cigarettes. The Land Trust and landowners ask users to pack out all trash (including cigarette butts) and that you are aware of fire danger and leave nothing burning at Belinda Point.

What are the current management concerns and solutions at Belinda Point?

- Flooding on the trail (boardwalk planned, at permitting stage)
- Preventing trespass onto non-easement private property (new signage to be placed, boardwalk)
- Bluff erosion prevention (seaside daisy planted)
- Planning for safe access to the cove (soils report received, stairway planning and design in progress)
- Invasive plant management
- Abalone and angler outreach (California Department of Fish and Game)
- Coastal Access signage on Highway One (Caltrans)

Opportunity to Share Concerns and Offer Possible Solutions

All participants who wished to address the meeting were offered an opportunity to be heard and contribute their thoughts. Questions posed were addressed by the Land Trust or other knowledgeable parties present.

 Bud Kamb (landowner's consultant) was the agent for EFS Associates, who completed the original subdivision of the land surrounding Belinda Point. Bud had not seen a map showing public access to the ocean prior to the meeting, and did not recall this being part of the dedication. The sign stating "no beach access" was removed. His recollection is that the 25' long path to bluff was the only public access dedication, but he was relying on the County permit file [which did not involve beach access]. He pulled the property's

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title report and has a question: who is the American Land Conservancy (ALC), and what is their role in this? [Louisa responded: ALC held the Offer to Dedicate (OTD) until it transferred the easements to MLT in 2003.]

Linda Locklin (California Coastal Commission Coastal Access Program Manager) clarified the OTD process. Commission and landowner work together to create OTD, and the OTD documents are signed by both entities.

2 Cheryl Walsh (landowner)- worked with Bud, first saw map showing access to the beach in January 2006 (MLT provided this map to Walshes).

3 David Russell (neighbor)- isn't the OTD easement attached to the deed?

James stated that one of the goals of this meeting is to level the playing field and to come to agreement about "what is."

4 Jennifer Wolfman (longtime neighbor and property owner)- her understanding is that the point of the Trail was to access the cove.

5 Jeff Walsh (landowner)- He bought the Belinda Point property in 2000. His understanding was that the Trail was a neighborhood trail. His understanding was that "quiet enjoyment" was the purpose of the Trail. There are a number of people in the neighborhood whose understanding was that this would be a neighborhood trail. The coastal access sign on Highway One creates traffic problems, camping in neighborhood, trash, and human waste. The locals treat the Trail better than the general public, and resource degradation is due to the trail being public. The management sign at the end of driveway does the same thing. There is a difference between monitoring and enforcement; there is a need for more enforcement of rules on the Trail. There is no full-time State Park ranger or game warden present at Belinda Point. He has found arrows, a slingshot, and paraphernalia for growing drugs on the property. MLT doesn't have the resources to enforce the trail rules. His proposed solutions to these issues: 1. Take down sign(s); 2. Install a gate at the trailhead (to be locked evenings and unlocked mornings); 3. Develop a mechanism for patrol and enforcement of rules when the usage is heaviest. Abalone season is coming, which will bring wheelbarrows and confrontations with users. He is concerned about overuse and degradation. Cheryl and Jeff were supportive of coastal access generally, and have been disappointed with the reality of the Trail. There has been too much use.

6 Abby Colbert (neighbor)- She and Larry Colbert (her husband) own Pelican Storage. She is very familiar with the Belinda Point property. Araki successfully fought the requirement for a public access easement on a nearby subdivision. She believes there is sufficient public access already in this neighborhood. She supports public access and MLT; however, the Belinda Point property is narrow, and not suited for public access. The coastal access sign on Highway One is inappropriate (and adds to traffic on a narrow road that cannot support this traffic); Ocean Drive is a narrow road, with not enough parking and no traffic light at the Highway One intersection. She was at the Coastal Permit Administrator (CPA) hearing, and everything predicted there has come true.

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Public access should be developed on properties where it's logical; this is not a logical place for public access.

7 Larry Colbert (neighbor)- He also made comments at the CPA hearing, and tried to reduce the Highway One speed limit to 45 MPH. Boise and Tregoning Lane (also in the vicinity of the trail, though not signed for coastal access off Highway One) are only 14' wide. Public access should not go into a private, quiet neighborhood serviced by a dead end road. Said he has seen over 35 cars parked on this road on a busy day. He supports land acquisitions for public. He does not support construction of a boardwalk, which will create more traffic. He also has concerns about landowner liability.

8 Kelly Raudio (neighbor)- She is the caretaker at Cheryl and Jeff Walsh's house. Last year she counted 27 cars on one occasion, with 97% from out of area. These trail users saw a sign at one of the local campgrounds, and each vehicle had 2-3 people. Trail users were getting dressed and undressed behind and on the Walsh's patio. Also, once there was a lady in a wheelchair on the Walsh's deck. There have also been mushroom pickers, and she (Kelly) calls the sheriff all the time. Kids run through area, and try to get into the house. Her proposed solutions include a rotating gate (like Georgia-Pacific's), which would be locked and unlocked each day. She goes to the Walsh's 2-3 times per day. There are many cars parked up and down (Ocean Drive).

James--offered possible solution for parking issues--overnight parking in particular--neighborhood could petition to the Board of Supervisors to pass ordinance prohibiting overnight parking, and then get Caltrans to install appropriate signage prohibiting overnight parking.

9 Gene LaTorre (neighbor)- He lives across the street from the Trail. People park in his driveway, especially during the muddy season. He had a physical fight over parking with someone. Though he loves the trail; there are issues. His biggest concern is the coastal access sign on Highway One.

10 Peggy Merrill (realtor for Walshes)- said her concerns were already expressed by Jeff and Cheryl Walsh and the Colberts. Her additional question is: What insurance protects Cheryl and Jeff Walsh; and how are they indemnified by MLT and recreational trail users on their property?

James Bernard (MLT) clarified that MLT carries liability insurance for all of its holdings through Land Trust Alliance (LTA).

Jeff Walsh (landowner) would like a copy of MLT's insurance policy.

Cheryl Walsh (landowner)- it was her and Jeff's dream to live in this community. She grew up poor in West Virginia. She believes in access for people, and that this is the right thing to do. Her dream is going down, and MLT is not supportive. She is alone in the house with her kids and fearful. She cited and showed photographs of the recent MLT-sponsored whale-watching hike, after which some participants walked down their driveway [acting on their own]. She is concerned that Kelly Raudio, their caretaker, is

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not safe. She (Kelly and/or Cheryl?) has called the sheriff many times. She claimed that an MLT staff person stated at the recent whale-watching hike, "The hostile homeowners will get mad if you go off trail." She does not feel supported, and feels she was sold "a bill of goods." MLT portrayed the Trail as a neighborhood trail. Abalone divers were not part of her understanding of Trail user groups. She is not a mean person, and does not want to be sued. The situation has been upsetting for her and for her family/children. She hopes that it will get better, and that she will not be scared to live in her home.

James responded that the MLT staff person did not characterize Cheryl as hostile, and stated that this staff person specifically instructed whale-watchers not to go on the Walsh's driveway. James apologized for any misunderstanding that might have occurred.

11
Wilma Follette (landowner) is also a specialist in California native plants. She knew about the coastal access on her property and agreed to it. She hoped that MLT would acquire the Belinda Point property, as it is one of rare remaining coastal prairie locations that was never plowed. She works in botany and lives in Marin; she has North Coast roots. The Follettes purchased their property for its unique vegetation, and have a cabin on it. She weeds (removes invasive exotic plants), with the purpose of getting "back to natives." She thinks she has a signing solution: install additional coastal access signage on Highway One, located at Jefferson Way, Botanical Garden, and the south end of Ocean Drive. Several of these accessways are parklands, with no private property to go through, and with parking and bathroom facilities. The Botanical Gardens has staff on site during business hours. Why all coastal access is being directed to Belinda Point doesn't make sense to her. 30' motor homes have been coming down Ocean Drive. Jughandle State Reserve is also a public access. Not all coastal access points are equal. State Parks' coastal access trails are better suited for bigger groups. There should be limited coastal access at places like Ocean Drive/Belinda Point. She urges that someone take down the Highway One coastal access sign pointing to Ocean Drive. To Dave at Caltrans: "take down that sign." The amount of traffic is too great at present; Belinda Point is not prepared for the world to walk the Trail. 500,000 people are added each year to the State of California, and we don't need more people on this Trail.

Linda Locklin (California Coastal Commission)- She agrees with Wilma Follette that not all coastal access is equal; different users look for different kinds of experiences. [Linda will be meeting with Caltrans the next day, and she will look at the Highway One signage issues raised by Wilma Follette]

James--The signage on Highway One is not something we (MLT) request. He is hearing that people at this meeting want the Highway One coastal access sign removed. Where these signs are placed is Caltrans' call.

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Thais Mazur (neighbor)- She has lived on Ocean Drive since 2000, and has a vision of public coastal access. She carried her baby in a backpack on the trail to Belinda Point before it was officially opened. Jeff Walsh said he would sue her for walking the 'trail.' Then she found out it was legal to walk the trail. She called MLT many times to see when the trail would be built. She is really glad that the Trail is built. She has never seen

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RV's parked there. She goes out early most mornings, and at most she has seen 10-12 cars. She has not seen a lot of traffic on the Trail, and she feels fortunate that the trail exists. She went on the MLT-sponsored whale walk, and the MLT staff present did not use the word "hostile." She hopes things can be worked out.

David Russell (neighbor)--He walks the Trail often, and drives up and down Ocean Drive each day. On average, 0-1 cars are parked at the Trail entrance. He has not ever seen 35 cars. On the MLT-sponsored whale-watching hike, there were three cars parked at the trailhead. His experience is very different than others' expressed at this meeting. The Walshes installed a fence around their property, which was intended to cut off public access, at which point he called MLT. A lot of people enjoy this coastal access and Trail. He also enjoys the Botanical Garden and Jughandle SR; he thinks all coastal access is valuable. He will help build the new boardwalk, and he helped build the Trail. In last six years, he has picked up little trash (and he picks up what he sees). The former coastal access sign pointing to the Botanical Garden was confusing, and the public used to drive down Ocean Drive looking for access there as well. The traffic down Ocean Drive is nothing new, and is not due to the Trail. Thank you to MLT for all we have done for Trail.

James--There is no toilet and no trash can at Belinda Point. MLT has a "pack it in, pack it out" philosophy. MLT's management philosophy is oriented toward people taking personal responsibility for their actions.

Don Bettencourt (neighbor)- He lives on Ocean Drive, in the old Mitchell Creek schoolhouse, and he went to school in Fort Bragg. He watched the making of the Johnny Belinda film. He also helped build the Trail. He was surprised when the coastal access sign went up pointing to Ocean Drive. He is also the President of the Botanical Gardens board. He is glad to see his neighbors at this meeting, and he is concerned about the Trail. He has told boys not to take bikes on the Trail. Parking is a big issue, and abalone divers are also a big issue. Carl Saunders (neighboring landowner, not present at meeting) has the same issues with people trespassing on his property as do the Walshes. The original public trail here was a horseshoe-shaped trail. He made some comments about Jo Ann Ginsburg and the trail requirement by the Coastal Commission. He would like to see the coastal access sign removed from Highway One. Thank you for this open meeting, and thanks to the Coastal Commission and to MLT.

Tom Burnap (neighbor)- He identified himself as an "old new neighbor." He is originally from Huntington Beach, and he came here to the Mendocino Coast when he was 18 years old. He is a transplant, but also a "home boy". He is the manager of the Travel Shores trailer park at present. There are lots of nice people there. There are lots of nice people here, with an affinity for ocean. The population is increasing, and people abuse privileges. He hopes we will consider signage on access. He has not been on the Trail yet, but maybe we should consider changing some of the words on our signs. The undesirables are outnumbered by the good people. Let's work together.

James--We are not going to be able to stop people from coming and using the Trail. It is in how we manage people on the Trail. MLT has limited resources. Our management

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philosophy is low impact, high responsibility. This is not always a good fit for the situations we face. We have not recorded large amounts of trash associated with the Trail. We have not ever recorded more than 10 cars parked at the trailhead. He believes the reports of people here, but we have not seen the numbers stated. As for RVs, the sign on Highway One may be responsible for this issue. The Highway One sign creates a magnet for additional public usage. This is one issue or question needing to be addressed. As for dawn-to-dusk Trail hours, there are two areas to enforce: (1) the Trail itself, and (2) the parking area. His solution to the parking issue is, as suggested, that the neighbors should petition the Board of Supervisors for a "no overnight parking" ordinance. Inside the trail easement, one possible idea is to install a lockable gate, which could be opened in the morning and locked at dusk. This is more than State Parks does at their properties. If you want us to do this, would you pay for it? We (MLT) do not have the resources to be that constant a presence. He puts this back out to the neighbors. State Parks has 15 rangers for 22 properties. Does not think State Parks has staff on properties they manage more than once a day. We are at Belinda Point once a week. As for the overuse issue, we can't stop people from coming, so what can we do better once people get to the Trail?

Cheryl Walsh (landowner) wants management sign moved to the fence (rather than set back from road and on posts), per the Belinda Point Trail Management Plan specifications. What is MLT's job when they have a public trail across private property? She thought MLT would have more of a presence on the Trail.

James--MLT monitors the trail and does not have an armed law enforcement presence. MLT's goal is, through education and persuasion, to get people to follow the Trail guidelines.

Win Bowen (MLT Board Member)- 1. Do State Park rangers have authority over this easement? [Response: No (James Bernard)]. 2. Do rules of trail use have force of law? [Response: Yes (James Bernard), Look at list of rules (Louisa Morris)]. 3. Enforcement issue: Problems throughout the year usually intensify during abalone season. A few carefully timed instances of law enforcement really can help; they can reduce the problems by half.

James--There is a problem in getting the sheriff to enforce what they may consider to be "lesser" crimes. Regarding the wheelbarrow question; is that prohibited on the Trail? He is not sure. This is a pedestrian only easement (no bikes are allowed), but what about strollers and wheelbarrows?

Jeff Walsh (landowner)- We have to enforce rules of Trail, because the sheriff is not very helpful.

Gene LaTorre (neighbor)- His experience is that the Department of Fish and Game is very responsive and came immediately when he called.

Joan Cardellino (State Coastal Conservancy, Project Manager). Her agency, the SCC, provides grant funding to MLT for management of the public access easement. What

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does management involve? Up and down the California coast, we try to manage each easement within the legal terms of that easement. This is an iterative process. We cannot predict how many people will use a public trail. To manage well, we look at what is working and what isn't. There are lots of interested parties involved and lots of user groups. The SCC and MLT are not enforcement agencies. It is not our (SCC, MLT's) job to manage people who are fishing, poaching, etc.; call others for these kinds of issues. We need to clarify each of the roles here. Managing the Trail is an ongoing process. The Trail is intended to serve the public, and is not just for people in the neighborhood.

✓ Gene LaTorre (neighbor)- Do all SCC easements provide access to the ocean, and do you have the authority to limit numbers of users? Do you have the authority to restrict a particular use (i.e., abalone)?

James--Belinda Point is not on the CDFG abalone card.

Gary Combes (CDFG)- The abalone card is used by CDFG for resource management and enforcement.

✓ Larry Colter (neighbor)- He would like to recommend this Trail be used as a case study and that we learn from this experience. There are lots of problems involved in bringing the public into a small area that can't accommodate traffic. It is not safe, and this is a dead end road (Ocean Drive).

✓ Abby Colter (neighbor)- She would like to reiterate what was just said. Can we prohibit taking of abalone at Belinda Point?

Jennifer Wolfman (neighbor)- Is this a traditional use (abalone use)?

James--Yes, abalone diving is a historic use at Belinda Point.

Cheryl Walsh (landowner)- The public cannot go off the trail easement and pick mushrooms.

James--This is correct, the public cannot go off the trail easement and pick mushrooms.

Bud Kamb (landowner consultant)- He would like to revisit the easement to the beach question. He found the staff report, CDP 11-04, April 23, 2004- owners Walsh, agent MLT. Exhibit B of this staff report does not show the trail dedication going to beach. A document created by the County and MLT does not show the public trail to the beach.

Louisa--It is MLT's intention to initiate planning and development of the Trail to beach on a later permit (a CDUP).

Cheryl Walsh (landowner)- She had a different understanding about the public access to the beach. She stated that Louisa also thought it would be a later permit. The Walshes were under the impression that no one could go down to the beach until the County permit was issued.

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Gene LaTorre (neighbor)- There was a "no beach access" sign installed at one point.

James--This sign was up for 2 days, until we realized it was installed in error and removed it.

Cheryl Walsh (landowner)- (to Linda Locklin, California Coastal Commission) Is there any way to change/rescind the public right to access the beach?

Linda Locklin (Coastal Commission): The public has the right to access up to the mean high tide line and the entire Belinda Point cove.

James--The OTD map presented shows four possible locations for the public access to the beach, one of which is being utilized right now. MLT commissioned a soils survey (completed recently), preliminary to beginning the stairway design work. The life expectancy for a stairway to the beach is approximately 25-30 years. MLT and SCC's goal is to design a stairway that is least impacting to resources and most long lived.

Jeff Walsh (landowner)--He talked about installing a gate to control access, with volunteers on a schedule to unlock and lock gate. The Walshes are willing to cover the cost of the gate, and MLT could coordinate the locking and unlocking schedule.

James--This coordination would be very costly and liability to MLT for volunteers to be in this position. MLT does not want to pit neighbor on neighbor, which a gate might do.

17 John Loudon (landowner's contractor)- He proposed the idea of a swinging gate that is not locked, with hours posted on the gate. He built the Walshes' house. He had a question about ADA compliance, as he had a confrontation with wheelchair users on driveway.

Louisa--the County did not require this trail to be ADA accessible. MLT gives the combination to the stanchion at the trailhead to wheelchair users who request it.

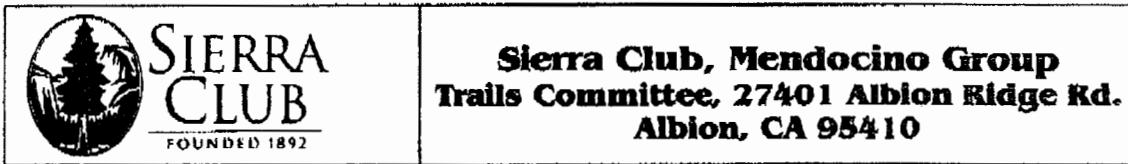
James--The existing stanchion deters bikes and wheelbarrows.

[Lots of ideas voiced--the gate could open one-way, and others].

James--We have wheelchair users who have been given the lock combination for the stanchion sign a liability waiver.

Gene LaTorre (neighbor)- He reported an accident off the bluffs adjacent to the Trail; one of his guests fell off the cliff headfirst, fell 15' and collapsed. Fortunately, Kelly Raudio was home to unlock the Walshes' gate for the ambulance rescue.

The meeting was adjourned.



Aug. 19, 2008

Coastal Commission
North Coast District Office
710 E Street, Suite 200
Eureka, CA 95501
Re: Appeal No. A-1-MEN-08-30 Mendocino Land Trust

Dear Commissioners,

The Sierra Club is very much in support of the efforts of the Mendocino Land Trust (MLT) to open more public accessways along the Mendocino Coast. In this case, the access easement has been in place for over 25 years, yet has never been opened for lack of a managing agency. The current landowner was fully informed about the easement and trail prior to purchasing the parcel, and in fact has doubled the density and impact by subdividing the property, yet is trying to weasel out of the trail obligation.

MLT now has done extensive analysis and planning for an access trail and viewpoint along this mostly-inaccessible stretch of coastline. There are very few points of access along the Albion coast, and this one provides both spectacular views and a direct connection to the California Coastal Trail. The plan has passed both the Planning Commission and Board of Supervisors with strict adherence to the Local Coastal Plan.

The current appeal by the landowner can only be seen as a last ditch attempt to derail the project through his personal desire. The project has been examined in great depth and found appropriate to the setting. Please support the public right to access and deny the appeal.

Sincerely,

Signature on File

Rixanne Wehren
Chair, Trails Committee

RECEIVED

AUG 21 2008

CALIFORNIA
COASTAL COMMISSION

EXHIBIT NO. 8

APPEAL NO.

A-1-MEN-08-030

MENDOCINO LAND TRUST

CORRESPONDENCE