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Staff: Margaret Weber- SF

Staff Report: 10/25/12

Hearing Date: 11/14/12

STAFF REPORT: Recommendations and Findings for Consent Cease and Desist and Restoration Orders

Consent Cease and Desist Order No.: CCC-12-CD-07

Consent Restoration Order No.: CCC-12-RO-07

Related Violation File and NOVA file: V-1-11-003 and CCC-12-NOV-07

Property Owner: Greg and Sandra Moore

Location: 37900 Old Coast Highway, Gualala, Mendocino County,
Assessor's Parcel Number 145-121-03

Violation Description: Unpermitted development that is also in violation of Coastal Development Permit No. A-1-MEN-07-021, including but not limited to: construction of a graded and paved driveway, driveway apron, and concrete driveway roundabout extension; placement of a fence that bisects the Subject Property and a fence perpendicular to the bisecting fence located near the down-coast property line; construction of a concrete walkway; placement of concrete and gravel slurry; installation of a water spigot and all plumbing associated with it; placement of a propane tank; and planting of non-native vegetation; all located within or adjacent to an Environmentally Sensitive Habitat Area ("ESHA") and its buffers.

Persons Subject to these Orders: Greg and Sandra Moore

Substantive File Documents: 1. Public documents in Consent Cease and Desist Order No. CCC-12-CD-07 and Restoration Order No. CCC-12-RO-07 files

2. Coastal Development Permit No. A-1-MEN-07-021

3. Exhibits 1 through 29 and Appendix A of this staff report

CEQA Status:

Exempt (CEQA Guidelines (CG) §§ 15060(c)(2) and (3))
and Categorically Exempt (CG §§ 15061(b)(2), 15307,
15308, and 15321)

SUMMARY OF STAFF RECOMMENDATION

A. OVERVIEW

The property subject to this proceeding is located at 37900 Old Coast Highway, Gualala, Mendocino County, and identified by the Mendocino County Assessor's office as Assessor's Parcel Number 145-121-03 ("Subject Property") (Exhibit #1). The owners of the Subject Property and the persons that undertook or performed the unpermitted development that is the subject of these proceedings are Greg and Sandra Moore ("Respondents").¹

The violations at issue in this proceeding consist of unpermitted development that is also in violation of Coastal Development Permit ("CDP") No. A-1-MEN-07-021, and those violations include, but may not be limited to: construction of a graded and paved driveway, driveway apron, and a concrete driveway roundabout extension, placement of a fence that bisects the Subject Property, erection of a fence perpendicular to the bisecting fence located near the down-coast property line, construction of a concrete walkway, placement of concrete and gravel slurry, installation of a water spigot and all plumbing associated with it, placement of a propane tank, and planting of non-native vegetation, all located within or adjacent to an Environmentally Sensitive Habitat Area ("ESHA") and its buffers. (Exhibit #2) (hereinafter collectively referred to as the "Unpermitted Development").

As described more fully below, in Section V(D), pages 11-15, the Unpermitted Development on the Subject Property appeared some time between the Commission's March 4, 2009 issuance of CDP A-1-MEN-07-021 ("the CDP") and a March 15, 2011 site visit by Commission Staff. The CDP resulted from the fact that, in 2007, Respondents sought and obtained a permit from Mendocino County to convert an existing, legal, non-conforming duplex into two single-family homes, and to add a barn and a gravel driveway addition and fences. This was appealed by the Commission as inconsistent with the LCP policies regarding ESHA, geologic stability, visual resources and water quality findings. Respondents amended their application while it was pending before the Commission to remove the proposals that conflicted with the LCP and obtained Commission approval for their amended project in May, 2008. However, after the

¹ This item was scheduled as a contested enforcement action until this proposed Consent Order was agreed to by Respondents the day before the mailing was completed. Due to the lateness of the agreement, it was difficult to revise the Staff Report and exhibits to reflect this change, but all reasonable efforts were made to do so.

permit issued in March 2009, as Commission Staff confirmed during a March 15, 2011 site visit to the Subject Property, Respondents built much of what they had removed from their proposal and also performed some additional unpermitted development.

The Subject Property's position on an ocean-fronting, bluff top parcel raises concerns regarding the effects of the site's unpermitted development in addition to its placement within ESHA and ESHA buffers. The unpermitted installation of the impermeable graded and paved driveway, impermeable driveway apron, impermeable concrete driveway roundabout extension, and impermeable concrete walkways have altered the Subject Property's drainage runoff course and are not consistent with the Coastal Act nor the LCP's erosion prevention policies. Impervious surfaces by their very nature contribute to the depletion of ground water supplies, interfere with surface waterflow, and have a negative contribution to the quality of water running off into the Pacific Ocean. Also, the Subject Property is presently collecting and directing roof top drainage toward and over the bluff edge, adding another increase to the erosion rate, an increase in geologic instability, and furthermore, is also inconsistent with Respondents' Geotechnical Report and Special Condition 1A. In addition, the down-coast fence is a predominantly 4-foot high chain link fence with the seaward end of the fence extending well above 6 feet in height. This type of chain link fence is incompatible with the character of the surrounding area and impedes the scenic and visual qualities of the coastline visible from the public vantage point of Old Coast Highway.

The Unpermitted Development subject to these proceedings and the ramifications of their resulting habitat damage remain at the Subject Property. The violations must be removed so the habitat can be restored, and the site's temporal loss can be mitigated.

B. DESCRIPTION OF SUBJECT PROPERTY

The Subject Property is located at 37900 Old Coast Highway, approximately one mile north of unincorporated Gualala, in Mendocino County. The Subject Property is a bluff-top lot, overlooking the Pacific Ocean, on the west side of Highway One and Old Coast Highway. The 0.95-acre Subject Property extends from Old Coast Highway to the mean high tide line below the bluff.

The bluff-top area of the Subject Property is part of a nearly level marine terrace. The parcel is vegetated primarily by perennial grasses and forbs with an over story of Bishop pine (*Pinus muricata*) and Monterey Cypress (*Cupressus macrocarpa*). An open forest consisting mostly of native bishop pine and non-native Monterey cypress covers about two-thirds of the Subject Property from the roadway to the single-family home sited near the bluff edge.

A botanical survey was performed in September of 2006 (See Exhibit #4) and concluded that rare coastal bluff morning-glory (*Calystegia purpurata* ssp. *Saxicola*) and blue violet (*Viola adunca*) are present in the bishop pine forest area of the Subject Property and also within the coastal scrub community along the bluff. The most recent survey completed in August of 2011 estimates the total population of coastal bluff morning-glory on the site to numbers between 368 and 537 individuals. Coastal bluff morning-glory is classified by the California Native Plant

Society as a rare, threatened or endangered plant in California and is discussed at length in Section V.E.2.b.i., below.

C. SUMMARY OF VIOLATION AND ATTEMPTS TO RESOLVE

Commission staff became aware of the violations in January of 2011. Since then, staff, Respondents, and their representatives have worked together to resolve these violations amicably to avoid a contested hearing and the potential for litigation. Staff first contacted Respondents concerning the alleged violations on February 1, 2011. Since the initial notice, Staff has written an additional sixteen letters, including ten granting various deadline extensions, and spent many hours on the telephone and in person (see Exhibits 6, 8, 10, 12-20, 21, 23, 24, 26, 27). Negotiations over the terms of potential consent orders began at the end of the summer, but they eventually appeared to be stalling. Consequently, given the potential for further resource damage resulting from the Unpermitted Development and the failure to resolve the violations informally, Staff began proceedings for a contested enforcement action proposing the issuance of Cease and Desist and Restoration Orders to resolve this matter. At the last minute, the day before the mailing, Respondents agreed to the terms of the proposed Consent Orders. These Consent Orders are attached hereto as Appendix A. Staff appreciates Respondents' willingness to resolve this matter amicably and without need for litigation. Staff believes that these proposed Consent Orders are a good resolution of the violations at hand, and recommends that the Commission approve them.

D. STAFF RECOMMENDATION

Staff recommends that the Commission issue Consent Cease and Desist Order No. CCC-12-CD-07 and Consent Restoration Order No. CCC-12-CD-07 ("Consent Orders") to address the violations described above. Through the execution of these Consent Orders, Respondents have agreed to: 1) cease and desist from maintaining any Unpermitted Development on the Subject Property; 2) cease and desist from engaging in any further development on the Subject Property unless authorized pursuant to the Coastal Act; 3) remove all Unpermitted Development; 4) restore and revegetate the impacted areas of the Subject Property, including through the undertaking of mitigation measures to account for the temporal loss of habitat, pursuant to an approved restoration plan; 5) take all steps necessary to ensure compliance with the Coastal Act; 6) accept recordation of a notice of violation on the property, which will be removed as soon as the Consent Orders have been fully complied with, and 7) pay \$100,000 to resolve the penalty claims under the Coastal Act.

TABLE OF CONTENTS

| | |
|--------------------------------------|----------|
| I. MOTION AND RESOLUTION..... | 6 |
|--------------------------------------|----------|

| | |
|---|----|
| II. JURISDICTION | 7 |
| III. COMMISSION’S AUTHORITY | 8 |
| IV. HEARING PROCEDURES | 8 |
| V. FINDINGS AND DECLARATIONS | 9 |
| A. DESCRIPTION OF SUBJECT PROPERTY | 9 |
| B. DESCRIPTION OF COASTAL ACT VIOLATION | 10 |
| C. SUBJECT PROPERTY AND PERMIT HISTORY | 10 |
| D. VIOLATION HISTORY | 11 |
| E. BASIS FOR ISSUING ORDERS | 15 |
| 1. STATUTORY PROVISIONS | 15 |
| a. CEASE AND DESIST ORDER | 15 |
| b. RESTORATION ORDER | 16 |
| 2. FACTUAL SUPPORT FOR STATUTORY ELEMENTS | 16 |
| a. DEVELOPMENT WITHOUT A PERMIT | 16 |
| b. DEVELOPMENT IS NOT CONSISTENT WITH COASTAL ACT | 17 |
| c. CONTINUING RESOURCE DAMAGE | 25 |
| d. ORDERS CONSISTENT WITH CHAPTER 3 POLICIES | 26 |
| 3. BASIS FOR RECORDATION OF A NOTICE OF VIOLATION | 26 |
| F. CALIFORNIA ENVIRONMENTLA QUALITY ACT | 27 |
| G. SUMMARY OF FINDINGS OF FACT | 27 |

APPENDICES

Appendix A Consent Cease and Desist and Restoration Orders

EXHIBITS

| | |
|--------------|--|
| Exhibit 1(a) | Mendocino County Assessors Map |
| Exhibit 1(b) | Bing Map of Subject Property |
| Exhibit 2 | Photograph of Violation (Unpermitted Development): |
| (a) | Graded and Paved Driveway |
| (b) | Graded and Paved Round-a-bout Driveway Extension |
| (c) | Down-Coast Fence (2 photos) |
| (d) | Fencing Bisecting Subject Property |
| (e) | Concrete Walkway |
| (f) | Concrete Gravel Slurry and Water Spigot |
| Exhibit 3 | CDP A-1-MEN-07-021 |
| Exhibit 4 | Botanical Survey dated September 2006 |

- Exhibit 5 Site Map of Unpermitted Development
- Exhibit 6 Letter from CCC staff dated February 1, 2011
- Exhibit 7 Letter from Respondents dated February 26, 2011
- Exhibit 8 Letter from CCC staff dated April 14, 2011
- Exhibit 9 CCC Approved Site Map for Subject Property
- Exhibit 10 Letter from CCC staff dated May 27, 2011
- Exhibit 11 Letter from Respondents dated May 27, 2011
- Exhibit 12 Letter from CCC dated June 15, 2011
- Exhibit 13 Letter from CCC dated June 21, 2011
- Exhibit 14 Letter from CCC dated July 11, 2011
- Exhibit 15 Letter from CCC dated August 22, 2011
- Exhibit 16 Letter from CCC dated September 12, 2011
- Exhibit 17 Letter from CCC dated September 19, 2011
- Exhibit 18 Letter from CCC dated September 26, 2011
- Exhibit 19 Letter from CCC dated November 18, 2011
- Exhibit 20 Letter from CCC dated February 2, 2012
- Exhibit 21 Notice of Intent to Commence Cease and Desist and Restoration Order
Proceedings letter dated May 24, 2012
- Exhibit 22 Letter from Kassouni dated June 8, 2012
- Exhibit 23 Letter from CCC dated June 11, 2012
- Exhibit 24 Letter from CCC dated June 21, 2012
- Exhibit 25 Letter from Kassouni dated June 22, 2012
- Exhibit 26 Letter from CCC dated June 27, 2012
- Exhibit 27 Letter from CCC dated July 3, 2012
- Exhibit 28 Subject Property's Deed Restriction
 - (a) Deed Restriction
 - (b) Legal Description of Subject Property
 - (c) Complete Copy of Notice of Intent to Issue Permit signed by Permit Applicants (Respondents)
- Exhibit 29 Biological Impact Assessment Survey dated August 2011

I. MOTION AND RESOLUTION

Motion 1: Cease and Desist Order

*I move that the Commission **issue** Consent Cease and Desist Order No. CCC-12-CD-07 pursuant to the staff recommendation.*

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in the issuance of the Consent Cease and Desist Order for real property located at 37900 Old Coast Highway, Gualala, in Mendocino County. The motion passes only by an affirmative vote of a majority of Commissioners present.

Resolution to Issue Consent Cease and Desist Order:

The Commission hereby issues Consent Cease and Desist Order No. CCC-12-CD-07, as set forth below, and adopts the findings set forth below on grounds that development, has occurred without the requisite coastal development permit, in violation of CDP A-1-MEN-07-021, and in violation of the Coastal Act.

Motion 2: Consent Restoration Order

*I move that the Commission **issue** Consent Restoration Order No. CCC-12-RO-07 pursuant to the staff recommendation.*

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in issuance of the Consent Restoration Order for real property at 37900 Old Coast Highway, Gualala, in Mendocino County. The motion passes only by an affirmative vote of a majority of Commissioners present.

Resolution to Issue Consent Restoration Order:

The Commission hereby issues Consent Restoration Order No. CCC-12-RO-07, for real property located at 37900 Old Coast Highway, Gualala, in Mendocino County, as set forth below, and adopts the findings set forth below on the grounds that 1) development has occurred without a coastal development permit, 2) the development is inconsistent with the Coastal Act, and 3) the development is causing continuing resource damage.

II. JURISDICTION

The Subject Property is located within an area covered by the Mendocino County Certified Local Coastal Program (LCP). The County approved a Coastal Development Permit (CDP) for development on the Subject Property in April, 2007; however, the local government's CDP approval was appealed to the Coastal Commission.

On July 12, 2007, the Commission found the appeal raised a substantial issue(s) with respect to the approved project's consistency with the County's LCP policies, thus taking jurisdiction over the permitting process. The applicant made revisions to the CDP application while it was pending before the Commission, and the Commission conditionally granted CDP A-1-MEN-07-021 on May 9, 2008, conditioned on Respondents satisfying several special conditions. After Respondents complied with those special conditions that were preconditions to issuance of the CDP, the CDP was issued by the Commission on March 4, 2009. As a result, the governing permit is a Coastal Commission CDP.

Although the development at issue in this report is frequently referred to as "the Unpermitted Development," all of that unpermitted development also constitutes violations of the CDP, as the CDP conditions specifically prohibit both changes from the approved plans without Commission approval (Special Condition 1B) and "future improvements" to the development authorized by the CDP without an amendment or a new CDP (Special Condition 7). Accordingly, the instant

action is designed to enforce those permit conditions. The Commission retains jurisdiction to enforce all of its CDPs.

III. COMMISSION'S AUTHORITY

The Commission can issue a Cease and Desist Order under Section 30810 of the Coastal Act in cases where it finds that the activity that is the subject of the order has occurred either without a required CDP or in violation of a previously granted CDP. The Commission can issue a Restoration Order under Section 30811 of the Coastal Act if it finds that development 1) has occurred without a CDP, 2) is inconsistent with the Coastal Act, and 3) is causing continuing resource damage. These criteria are all met in this case, as summarized briefly here, and discussed in more detail in Section V, below.

The unpermitted activity that has occurred on the Subject Property clearly meets the definition of “development” set forth in Section 30106 of the Coastal Act. Development is defined broadly under the Coastal Act, and includes, among many other actions, the “placement of any solid material or structure; grading, removing, dredging, mining, or extraction of any materials;...change in the density or intensity of use of land;...construction, reconstruction, demolition or alteration of the size of any structure...; and the removal or harvesting of major vegetation other than for agricultural purposes...”. Pursuant to Section 30600 of the Coastal Act, all non-exempt development in the Coastal Zone requires a CDP. No exemption from the permit requirement applies here. In addition, the development at issue here was directly inconsistent with CDP A-1-MEN-07-021. More specifically, the violations include, but are not limited to: construction of a graded and paved driveway, placement of a concrete driveway roundabout extension and concrete apron, placement of a fence that bisects the Subject Property, erection of a fence perpendicular to the bisecting fence located near the down-coast property line, construction of a concrete walkway, placement of concrete and gravel slurry, installation of a water spigot and all plumbing associated with it, placement of a propane tank, and planting of non-native vegetation, all located within or adjacent to an Environmentally Sensitive Habitat Area (“ESHA”) and its buffers. As described more fully below, the Unpermitted Development is inconsistent with the policies in Chapter 3 of the Coastal Act, including but not limited to: Section 30231 (Protection of Water Quality), Section 30240 (protection of environmentally sensitive habitat areas), Section 30251 (Protection of Scenic Areas), and Section 30253 (minimization of adverse impacts/avoiding alteration of natural land forms), and is causing continuing resource damage, as that term is defined in the California Code of Regulations, Title 14 (“14 CCR”), Section 13190.

IV. HEARING PROCEDURES

The procedures for a hearing on a Consent Cease and Desist Order and Restoration Order are outlined in 14 CCR Section 13185 and 14 CCR Section 13195.

For a Consent Cease and Desist Order and Restoration Order hearing, the Chair shall announce the matter and request that all parties, or their representatives present at the hearing identify themselves for the record, indicate what matters are already part of the record, and announce the rules of the proceeding, including time limits for presentations. The Chair shall also announce

the right of any speaker to propose to the Commission, before the close of the hearing, any question(s) for any Commissioner, at his or her discretion, to ask of any other party. Staff shall then present the report and recommendation to the Commission, after which the alleged violator(s), or their representative(s), may present their position(s) with particular attention to those areas where an actual controversy exists. The Chair may then recognize other interested persons, after which time Staff typically responds to the testimony and to any new evidence introduced.

The Commission will receive, consider, and evaluate evidence in accordance with the same standards it uses in its other quasi-judicial proceedings, as specified in 14 CCR Sections 13195 and 13186, incorporating by reference Section 13065. The Chair will close the public hearing after the presentations are completed. The Commissioners may ask questions to any speaker at any time during the hearing or deliberations, including, if any Commissioner so chooses, any questions proposed by any speaker in the manner noted above. Finally, the Commission shall determine, by a majority vote of those present and voting, whether to issue the Consent Cease and Desist Order and Restoration Order, either in the form recommended by the Executive Director, or as amended by the Commission. Passage of the motion above, per the Staff recommendation or as amended by the Commission, will result in issuance of the Consent Cease and Desist Order and Restoration Order.

V. FINDINGS FOR CONSENT CEASE AND DESIST ORDER NO. CCC-12-RO-07 AND CONSENT RESTORATION ORDER CCC-12-RO-07²

A. DESCRIPTION OF SUBJECT PROPERTY

The Subject Property is located at 37900 Old Coast Highway, approximately one mile north of unincorporated Gualala, in Mendocino County. The Subject Property is a bluff-top lot, overlooking the Pacific Ocean, on the west side of Highway One and Old Coast Highway, approximately 300 feet south of the intersection of the two roads. The 0.95-acre Subject Property extends from Old Coast Highway to the mean high tide line below the bluff.

The bluff-top area of the Subject Property is part of a nearly level marine terrace. The parcel is vegetated primarily by perennial grasses and forbs with an over story of Bishop Pine (*Pinus muricata*) and Monterey Cypress (*Cupressus macrocarpa*). An open forest consisting mostly of native bishop pine and non-native Monterey cypress covers about two-thirds of the parcel from the roadway to the single-family home sited near the bluff edge.

A botanical survey was performed in September of 2006 (See Exhibit #6), which concluded that rare coastal bluff morning-glory (*Calystegia purpurata ssp. Saxicola*) is present in the bishop pine forest area of the parcel and also within the coastal scrub community along the bluff. The

² These findings also hereby incorporate by reference the Summary at the beginning of the October 25, 2012 staff report ("STAFF REPORT: Recommendations and Findings for Consent Cease and Desist and Restoration Orders") in which these findings appear, which section is entitled "Summary of Staff Recommendations," and the section entitled "Jurisdiction".

most recent survey completed in August of 2011 estimates the total population to number between 368 and 537 individuals. The California Native Plant Society (CNPS) classifies coastal bluff morning-glory (*Calystegia purpurata* sp. *Saxicola*), as a rare List 1B plant, indicating that the species is rare or endangered in California and elsewhere. Mendocino County's LCP includes habitats of rare and endangered plants within its definition of ESHA, thus the coastal bluff morning-glory is considered to be ESHA. The botanical survey also identified blue violet (*Viola adnuncata*) within the project area. Blue violet can serve as a host plant for endangered Behren's silverspot butterfly.

B. DESCRIPTION OF COASTAL ACT VIOLATION

The Unpermitted Development that has occurred on the Subject Property within either the ESHA or ESHA buffers includes, but may not be limited to: 1) construction of an impermeable concrete driveway, creating an apron opening onto the Old Coast Highway, and expansion of the developed area on site by constructing a concrete driveway extension with a roundabout; 2) the erection of a fence that bisects the subject property in addition to another fence that runs perpendicular to the bisecting fence located near the down-coast property line; 3) construction of a concrete walkway; 4) placement of a propane tank and associated piping; 5) spreading of concrete and gravel slurry throughout the ESHA; 6) installation of a water spigot and all plumbing associated with it; and 7) planting of non-native vegetation. The installation of the concrete surfaces referenced above has covered a significant portion of the Subject Property's surface with an impermeable plane, negatively altering the site's drainage runoff course increasing erosion rates, geologic instability and negatively impacting the water quality below the bluff top. All of the above mentioned development is unpermitted, and inconsistent and in violation of CDP No. A-1-MEN-07-021. A diagram of the location and extent of some of the unpermitted development, created for illustrative purposes, is included as Exhibit 7.

C. SUBJECT PROPERTY AND PERMIT HISTORY

On April 26, 2007, Mendocino County approved coastal development permit CDU #9-2006 for development on the Subject Property ("the County CDP") authorizing the conversion of an existing legal, non-conforming duplex into two single-family homes by: (1) remodeling the duplex into a single unit, including removing the second kitchen and constructing a 530-square foot addition and a 517-square-foot deck addition; (2) constructing a 605-square-foot detached second residential unit with a 528-square-foot garage below; (3) constructing a 510-square-foot barn/shed with a maximum average height of 15 feet; and (4) performing associated development including constructing an extension to the existing gravel driveway and a perimeter fence.

An appeal was filed by Coastal Commissioners Ms. Sara Wan and Mr. Mike Reilly on May 24, 2007. The appeal was based on the County CDP being inconsistent with the County LCP policies to, among other things, protect ESHA, including habitats of California Native Plant Society ("CNPS") designated rare plants, by restricting development within the ESHA and providing appropriate buffer areas that would be no less than 50 to 100 feet in width. The area surrounding the County-approved development is designated ESHA, comprised of a coastal bluff

morning-glory (*Calystegia purpurata* sp. *Saxicola*) population, a rare CNPS List 1B plant. The County CDP authorized development on the site with only a 20-foot buffer around the ESHA for the driveway expansion and a 24-foot buffer around the ESHA for the barn/shed structure. On July 12, 2007, the Commission found that the appeal raised a substantial issue with respect to the project's consistency with the County LCP, including policies to protect ESHA. The Commission continued the hearing on the matter and scheduled the *de novo* review of the proposed development for subsequent meeting.

For the purposes of *de novo* review by the Commission, Respondents amended their project description and submitted a series of revised project plans that changed their originally proposed residential development, as approved by the County, to make it consistent with the County LCP and to protect ESHA. The revisions included increasing the setback from the bluff edge and eliminating the 510-square-foot barn/shed, the new permanent fencing around the perimeter of property, and the gravel driveway extension. These changes, especially removing the barn/shed, fencing, and driveway extension from the proposed project allowed a buffer of 50 feet between the new development and ESHA. Based on these revisions, the Commission conditionally approved CDP A-1-MEN-07-021 on May 9, 2008. The CDP required Respondents to satisfy several special conditions prior to the issuance of the permit. Special Condition No. 1 required Respondents to submit revised plans and a geotechnical report showing all final designs and construction plans were consistent with the recommendations contained in the Geotechnical Investigation Report dated June 24, 2005. Special Condition No. 2 required recordation of a deed restriction independently binding Respondents and their successors to the Special Conditions of the CDP. Special Condition No. 3 required Respondents to confirm that no encroachment permit was needed from the County for any necessary driveway improvements, or that the County of Mendocino Department of Transportation did not require the gravel driveway, or driveway apron, be paved with concrete at all. Respondents submitted, among other things, revised plans demonstrating that all new development would be located a minimum of 50 feet from the ESHA. After Respondents complied with these special conditions, the CDP was issued on March 4, 2009 (Exhibit #3).

D. VIOLATION HISTORY

On March 24, 2010, the County of Mendocino determined that Respondents had constructed a concrete driveway and concrete driveway apron opening onto Old Coast Highway, inconsistent with the conditions of the CDP and without a CDP amendment. This development was some of the exact development that Respondents had removed from their proposed project, allowing the Commission to find the project consistent with the Coastal Act and County LCP. The County did not report the Respondent's paving to the Commission.

On January 13, 2011, the Commission's Enforcement staff was notified by concerned citizens that there was an alleged Coastal Act violation occurring on the Subject Property. The notification stated that Respondents had completely paved the entire driveway, and that the work began around January 3, 2011.

On February 1, 2011, Commission staff contacted Respondents about their alleged violations (Exhibit #6). The letter provided notice to the Respondents of the alleged violations and required them to submit a written response by February 22, 2011, including a detailed project description of what was constructed on the Subject Property, and a removal and restoration plan to restore the Subject Property to be consistent with CDP A-1-MEN-07-021.

On February 17, 2011, Respondents contacted Enforcement staff and asked for a deadline extension to submit the written response because the letter had allegedly been sent to the wrong address initially, and Respondents had plans to go out of town for a week. Staff granted the request and extended the deadline for submittal to March 1, 2011. Enforcement staff received a letter from Respondents on March 1, 2011; however, the communication denied any violations on the Subject Property (Exhibit #7).

On March 15, 2011, Commission staff met with Respondents on the Subject Property and independently confirmed and documented the existence of the Unpermitted Development. During the site visit, Respondents challenged the existence of the coastal bluff morning-glory on the Subject Property. Commission staff explained that the existence of ESHA was initially determined based on Respondents' CDP application, which included information about ESHA that Respondents had not contested. Respondents indicated they wanted to simply transplant the plants to another part of the property and were reluctant to remove the driveway.

On April 14, 2011, Enforcement staff sent another letter outlining Respondents' responsibility for the violations and requesting an as-built site plan describing the extent of unpermitted development (Exhibit #11). A deadline of May 4, 2011 was set for submittal of the as-built site plan. Respondents, on April 28, 2011, again contacted Enforcement staff for an extension to submit the materials. Enforcement staff extended the deadline to submit the as-built plans to May 13, 2011. A hand-drawn site map, dated prior to the issuance of the CDP, was delivered to Commission staff on May 12, 2011.

On May 27, 2011, Enforcement staff sent a letter to Respondents and his contractor, Donald Green (Exhibit #10), summarizing the history of CDP A-1-MEN-07-021 and describing, in detail, Respondents' Coastal Act violations, and documenting the Unpermitted Development activity, as described by Staff from the March 15 site visit, and the violations of several Special Conditions of the CDP. In response to Respondents' site map submission, the letter explained that the hand-drawn site map, submitted on May 12, 2011, was not sufficient because the preparation of the plan predated the CDP and did not reflect whether or not the site was consistent with the CDP requirements. The letter requested that Respondents submit a site map created by an architect or surveyor that reflected current conditions of the Subject Property, in addition to taking steps to bring the property into compliance with the Coastal Act and the previously issued CDP including submitting a CDP amendment to remove the unpermitted development and restore the site, including an as-built site plan, a geotechnical report, and a biological impact assessment. The letter requested a response by June 3, 2011, with a deadline for filing a CDP amendment application by July 1, 2011.

On June 3, 2011, Enforcement staff received a letter from Respondents asking questions about the CDP amendment process, in addition to requesting yet another deadline extension to collect relevant documents (Exhibit #11). As a courtesy and in an attempt to resolve the matter, on June 15, 2011, Enforcement staff sent Respondents a letter that included a CDP amendment application. The June 15 letter described the information necessary to “complete” the amendment application, including an as-built site plan, a biological impact report, and a geotechnical report (Exhibit #12). The letter advised Respondents that Enforcement staff could not guarantee the application’s acceptance. In fact, staff pointed out the relevant regulatory language that the Executive Director may “determine that the amendment request should be rejected for processing and filing on the basis that the proposed amendment would lessen or avoid the intended effect of the previously approved coastal development permit,” citing 14 CCR Section 13166(a), a copy of which was also enclosed with the letter. Staff additionally stated that the water spigot and its plumbing did not appear to pre-date the Commission’s action on the CDP. The spigot and its plumbing was not reported in any previous report conducted on the Subject Property prior to the construction of the permitted and unpermitted development, including the 1996 detailed biotic and rare plant survey completed by Respondents’ consultant, BioConsultant LLC. The letter explained that had the water spigot and its plumbing pre-dated the Commission action on the CDP, it would have been noted in the biological report as it was located in the middle of ESHA. Staff further stated that Respondents’ paving of the driveway apron was an unpermitted encroachment and they only sought a permit after-the-fact from the County Transportation Department when the County informed them of the violation. This was confirmed in a follow-up letter to Respondents from Commission staff dated June 21, 2011 (Exhibit #13).

On June 30, 2011, another deadline extension was requested and in a July 11, 2011 letter from Commission staff, an additional extension of time was granted, to August 20, 2011 to submit the CDP amendment application (Exhibit #14).

On October 16, 2011, after numerous letters and telephone conversations between Commission staff and Respondents regarding the amendment application, including Commission staff’s position that there was a strong likelihood that the Executive Director of the Commission would be required to reject the submittal pursuant to 14 CCR Section 13166(a), Respondents submitted a CDP amendment application purportedly for the removal of Unpermitted Development and the restoration of the Subject Property. The amendment application included a cover letter describing two alternative site plans. The two site plans described in the submittal included “Site Plan A” that “suggests the removal of all improvements that do not conform to the CDP-approved conditions, restoring the remaining portions to the permitted requirements,” and “Site Plan B” that “suggests following Site Plan A with the addition of a gravel/pervious pavement area nearest the two existing garage doors.”

On November 18, 2011, Commission staff sent Respondents a letter requesting additional information in order to find the application legally “complete” (Exhibit #19). From Respondents’ application, it was unclear which components of the alternate plans were proposed as part of the amendment application, and whether the proposal intended only to remove and

restore the unpermitted driveway area, or remove and restore all unpermitted development as described in detail in the May 27 and June 15, 2011 violation letters.

Although Respondents' consultants remained generally in contact with Staff after the November 18, 2011 letter, the Respondents submitted no new information and did not complete the CDP application. Staff sent a follow-up letter on February 2, 2012 (Exhibit #20). This letter summarized the previous correspondence between Commission staff and Respondents, and catalogued the numerous extensions granted to Respondents to submit a CDP amendment application. Staff informed Respondents that they should promptly submit the necessary materials to avoid formal action.

On March 26, 2012, Respondents submitted revisions to their previous submittal. Respondents proposed removing some of the unpermitted development, while maintaining other items within ESHA and ESHA buffers, some of which also contribute to the site's geological instability. These concerns about development within ESHA and ESHA buffers, and geologic instability were the basis for issuing the violation at issue and were not resolved by the Respondents' proposed CDP amendment.

On April 27, 2012, Commission Permitting staff responded to the March 26 submittal stating that the Executive Director had rejected the amendment application because the proposed amendment would lessen or avoid the effect of the previously issued permit. The letter noted that Staff had previously informed Respondents several times that no amendment application could be accepted if it proposed development within the ESHA or ESHA buffer and the Respondents' March 26 amendment application did just that. Therefore, acceptance of the amendment would lessen or avoid the intended effect of the ESHA protection principles established in the original CDP.

The letter noted a number of CDP and Coastal Act conflicts within the application including: (i) replacing the concrete driveway with a new permeable driveway when the CDP did not allow for any new development regarding the then existing gravel driveway; (ii) replacing the concrete walkway with concrete pavers and retention of the side gate to the guest house that would encroach into the ESHA buffer (which is inconsistent with the CDP as it did not provide for any material within the 50 foot buffer); and (iii) retaining the fence located perpendicular to the bisecting fence near the down-coast property line, which again, were unpermitted structures under the CDP because they extended into the ESHA and ESHA buffer.

Commission Staff noted that Respondents' CDP application was the second time they submitted an amendment request that would have lessened or avoided the intended effect of the CDP, without supplying any newly discovered material information from when the original CDP was granted, thereby not meeting the threshold criteria of Section 13166 for such an application to be acceptable. Staff wrote that any future application to amend the CDP that proposes to replace the concrete driveway with gravel, eliminate any development within 50 feet of ESHA, proposes

to remove the unpermitted development and restore the property to what was conditionally approved in the CDP, or requests after-the-fact authorization for unpermitted development to remain where it is outside of 50 feet from ESHA, would likely not conflict with the Commission's action on the original CDP and could also be accepted for processing. Soon after, Respondents began working with Commission staff to address the violations on the Subject Property.

On May 24, 2012, the Executive Director mailed to Respondents a letter both thanking them for their cooperation and setting forth the process to continue working towards resolving their violations amicably. In hopes of reaching a consensual resolution to the Coastal Act violations, the next step was entering into consent Cease and Desist and Restoration Orders. Accordingly, in the May 24 letter, the Executive Director notified Respondents of his intent to commence proceedings for issuance of Cease and Desist and Restoration Orders and recordation of a Notice of Violation (NOI) to address development undertaken in violation of the terms and conditions of their CDP (Exhibit #21) and to establish a framework to legally resolve the violation via a consent order. In accordance with 14 CCR Sections 13181 and 13191, the letter was accompanied by a Statement of Defense (SOD) form, and established a deadline of June 14, 2012 for its completion and return. The letter noted that the matter was tentatively scheduled for the Commission's July 2012 meeting.

On May 30, 2012, Respondents contacted Enforcement staff by telephone, requesting an extension of the deadline to submit the SOD form. On June 8, 2012, Timothy Kassouni, attorney for Respondents, sent the Executive Director a letter introducing himself and explaining that he had been retained by Respondents to address the issues and deadlines contained in the NOI (Exhibit #22). Further, in light of his recent retention, Mr. Kassouni also requested that the deadline to submit the SOD be extended to June 20, 2012.

Over the next four months, Enforcement staff, Mr. Kassouni, and Mr. Moore discussed the terms of the proposed Consent Orders. Commission staff, Respondents, and Mr. Kassouni worked cooperatively to fully resolve the violations and their liabilities under the Coastal Act through the acceptance of the Consent Orders. Our efforts to work together in order to resolve the violations amicably paid off and all parties were eventually able to come to an agreement as evident within the Consent Orders.

E. BASIS FOR ISSUANCE OF ORDERS

1) STATUTORY PROVISIONS

(a) Consent Cease and Desist Order

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

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

(b) The cease and desist order may be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with this division, including immediate removal of any development or material...

(b) Consent Restoration Order

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

In addition to any other authority to order restoration, the commission... may, after a public hearing, order restoration of a site if it finds that [a] the development has occurred without a coastal development permit from the commission, local government, or port governing body, [b] the development is inconsistent with this division, and [c] the development is causing continuing resource damage.

The following paragraphs set forth the basis for the issuance of the proposed Consent Cease and Desist and Restoration Orders by providing substantial evidence that the development meets all of the required grounds listed in Section 30810 and 30811 of the Coastal Act for the Commission to issue a Consent Cease and Desist and Restoration Order.

2) FACTUAL SUPPORT FOR STATUTORY ELEMENTS

(a) Development has occurred without a Coastal Development Permit and inconsistent with CDP A-1-MEN-07-021, which the Commission Previously Issued

As previously presented in Section III of this staff report, the activities at issue in this matter constitute ‘development’ as defined in the Coastal Act and are therefore subject to permitting requirements. Staff has verified that the cited development on the Subject Property is not exempt and was conducted without a CDP and undertaken in direct violation of the terms and conditions of CDP A-1-MEN-07-021. Because the development occurred without the required Coastal Act authorization, this is a violation even independent of the requirements of the existing permit.

However, that CDP authorizing development consisting of converting a legal non-conforming duplex into two single-family homes was also approved subject to several conditions that authorized certain development to occur and also imposed restrictions on what could occur on the Subject Property. These restrictions included the following:

Special Condition 1.B:

The permittee shall undertake development in accordance with the approved final plans. Any proposed changes... shall be reported to the Executive Director. No changes... shall occur without a Commission amendment...

Special Condition 7:

This permit is only for the development described in [CDP] No. A-1-MEN-07-021. Any future improvements to the single-family residence or other approved structures will require a permit amendment or new coastal development permit.

The Unpermitted Development effected changes to the original project that were not authorized by the CDP or approved through an amendment, and thus were in violation of Special Condition 1.B of the CDP. It also constituted a violation of Special Condition 7, as it involved improvements and structures not authorized by any permit or amendment.

Additionally, the unpermitted down coast fence and driveway roundabout extension represent the same development as, or similar development to, that which the applicant removed from its proposed project in order to secure the Commission's approval (based on the substantial issues it raised with respect to its consistency with the Mendocino County LCP's ESHA and ESHA buffer policies). After the Commission found what it determined to be substantial issues and prior to the *de novo* portion of the hearing on the appealed project, Respondents removed from the proposed project the driveway extension and down coast fence. Specifically relying on these changes made to the pending appealed project, staff recommended approval of the CDP application on appeal, and the findings for the Commission's approval reflect this fact. The Commission then granted CDP A-1-MEN-07-021, which specifically did not include these items. Yet, subsequent to the issuance of that permit, Respondents proceeded to build the driveway and fence in violation of the CDP conditions. Therefore, Respondents have undertaken development inconsistent with a previously issued CDP.

Furthermore, the erection of the fence that bisects the Subject Property, the construction of a concrete walkway, placement of concrete and gravel slurry, installation of a water spigot and all plumbing associated with it, placement of a propane tank, and planting of non-native vegetation, all located within or adjacent to an Environmentally Sensitive Habitat Area ("ESHA") and its buffers was unpermitted and occurred without a CDP.

(b) The Unpermitted Development at Issue is Not Consistent with the Coastal Act

The Unpermitted Development described herein is not consistent with Section 30240 (ESHA protection), Section 30253 (limiting adverse impacts of new development), Section 30231 (protecting biological productivity and quality of coastal waters), and Section 30251 (protecting scenic and visual resources) of the Coastal Act, in addition to the analogous sections of the Mendocino County LCP.

i) Protection of Environmentally Sensitive Habitat Areas (ESHA)

Environmentally Sensitive Habitat Areas (ESHA) is defined by Coastal Act Section 30107.5 as:

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

The Mendocino County Land Use Plan (“LUP”) uses an essentially identical definition of ESHA in Section 3.1, as follows:

Any areas in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could easily be disturbed or degraded by human activities and development.

Coastal Act Section 30240 states:

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

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

LUP Section 3.1-7 states:

A buffer area shall be established adjacent to all environmentally sensitive habitat areas. The purpose of this buffer area shall be to provide for a sufficient area to protect the environmentally sensitive habitat from significant degradation resulting from future developments. The width of the buffer area shall be a minimum of 100 feet, unless an applicant can demonstrate, after consultation and agreement with the California Department of Fish and Game, and the County Planning Staff, that 100 feet is not necessary to protect the resources of that particular habitat area... The buffer area shall be measured from the outside edge of the environmentally sensitive habitat areas and shall not be less than 50 feet in width... Development permitted within a buffer area shall generally be the same as those uses permitted in the adjacent environmentally sensitive habitat area and must comply at a minimum with each of the following standards:

1. *It shall be sited and designed to prevent impacts which would significantly degrade such areas;*
2. *It shall be compatible with the continuance of such habitat areas by maintaining their functional capacity and their ability to be self-sustaining and to maintain natural species diversity;*
3. *Structures will be allowed in the buffer area only if there is no other feasible site available on the parcel.*

Coastal Zoning Code Section 20.496.020 sets out the Development Criteria for ESHA and other Resource Areas and states:

(A) Buffer Areas. *A buffer area shall be established adjacent to all environmentally sensitive habitat areas. The purpose of this buffer area shall be to provide for a sufficient area to protect the environmentally sensitive habitat from degradation resulting from future developments and shall be compatible with the continuance of such habitat areas.*

(I) Width. *The width of the buffer area shall be a minimum of one hundred (100) feet, unless an applicant can demonstrate, after consultation and agreement with the California Department of Fish and Game, and County Planning Staff, that one hundred (100) feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. The buffer area shall be measured from the outside edge of the Environmentally Sensitive Habitat Areas and shall not be less than fifty (50) feet in width.*

The Subject Property contains coastal bluff morning-glory (*Calystegia purpurata* ssp. *Saxicola*), a perennial herb in the Convolvulaceae family with growth limited to coastal dunes, scrub, and bluffs in Marin, Sonoma and Mendocino counties. The plant is categorized on the California Native Plant Society (CNPS) List 1B as “rare, threatened or endangered” in California.³ Coastal bluff morning-glory received this classification based on holding just 30 element occurrences⁴ in California, only 21 of which have been spotted within the last 20 years; out of these 21, only 6 demonstrate good long term viability that they will survive the next 50 years. The true rarity of this ESHA establishes its significance to the region and why every effort must be taken to support its prosperity.

ESHA, as defined in Section 30107.5 of the Coastal Act and Section 3.1 of the Mendocino County LUP, is “any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments”.

³ This categorization meets the definitions of Section 1901, Chapter 10 (Native Plant Protection Act) and Sections 2062 and 2067 (California Endangered Species Act) of the California Department of Fish and Game Code, and the plants are therefore eligible for state listing. Additionally, plants under this categorization are also identified as rare under CEQA, based on the criteria outlined in Section 15380(b) of the California Environmental Quality Act.

⁴ The California Native Plant Society defines plant element occurrences as populations, or groups of populations of plants, animals, or natural communities found within 0.25 miles and not separated by significant habitat discontinuities.

Thus, the Coastal Act and LUP establish a two part test for determining ESHA. The first part requires determining whether an area including plants or animals or their habitats is either: (a) rare; or (b) especially valuable because of their special nature or role in an ecosystem. If so, then the second part asks whether such plants, animals, or habitats could be easily disturbed or degraded by human activities. If so, then the area where such plants, animals, or habitats are located is deemed ESHA by Section 30107.5 and LUP Section 3.1.

Coastal bluff morning-glory's CNPS List 1B "rare, threatened or endangered" classification meets the rarity test and thus satisfies the first part of the two part test for determining ESHA. The second part of the test is also satisfied because CNPS determined the coastal bluff morning-glory's rare classification based, in part, on the threatening role development, foot traffic, and non-native plants play in having a negative effect on the plant's limited element occurrences. Since the two part ESHA test is satisfied, coastal bluff morning-glory is considered ESHA under both the Coastal Act and Mendocino County LUP and warrants protection.

Coastal Zoning Code Section 20.496.020 and Mendocino County LCP Section 3.1-7 protect ESHA by mandating buffer areas between development and existing ESHA. Both provisions require a buffer area of ideally 100 feet but no less than 50 feet under circumstances when the habitat can be protected within the reduced space. The Commission appealed the 2007 County CDP based on, among other things, its inconsistencies with these ESHA protection policies. The County-approved development did not provide a sufficient buffer between proposed development and the ESHA contained on the property as mandated by the County LCP.

Under Coastal Act Section 30604, the Commission is required to uphold the integrity of Certified Local Coastal Programs and ensure the strong policies in place to protect ESHA are upheld and that all locally approved CDPs are consistent with the local LCP. The Commission appealed the County-issued CDP based on the mandated ESHA protection policies. Section 30604 requires that all CDPs issued be in conformity with the Certified LCP. The local approval of the 20 foot setback and development within ESHA raised substantial issues with respect to the project's consistency with the ESHA protection policies of the County's LCP. Moreover, upon the Commission taking jurisdiction over the CDP, Respondents submitted revisions to the proposed development, eliminating the Down-Coast Fence and Driveway Extension, and providing a 50 foot buffer for reasonable ESHA protection. Based on these revisions, in May 2008 the Commission conditionally issued CDP A-1-MEN-07-021, determining that the minimum 50 foot buffer offered by the revised proposal was sufficient to protect the ESHA and consistent with Mendocino County LCP. The CDP was issued in March 2009 conditioned upon satisfaction of several special conditions, including Nos. 4, 6 and 7 that ensured the protection of the site's ESHA.

In early 2011, Enforcement staff confirmed that Unpermitted Development had occurred on the Subject Property that was not only inconsistent with the CDP issued by the Commission, but also not consistent with the ESHA protection policies in the Coastal Act and the County LCP. Coastal Act Section 30240, Coastal Zoning Code Section 20.496.020, and LUP Section 3.1-7

carefully limit development within and adjacent to ESHA in order to protect against significant resource disruption. The Unpermitted Development on the Subject Property all impacts the identified ESHA and ESHA buffer areas in ways that directly conflict with these provisions as well as with the terms of CDP A-1-MEN-07-021. For example, the development that is within the actual ESHA is in direct conflict with Section 30240's requirement that the only types of development allowed within ESHA are "uses dependent on such resources." All of the Unpermitted Development within ESHA and ESHA buffers is elective and not dependent on the presence of coastal bluff morning-glory, thus not consistent with Section 30240. In addition, by virtue of its presence within the ESHA it directly displaces plants that could be growing where it is, and the preclusion of such plants is, by definition, a significant disruption of its habitat value.

As mentioned above, the Commission issued the CDP conditioned upon satisfying several special conditions, some of which were established to ensure the protection of the ESHA on the site. Special Conditions 4(a) and 6(a) required no construction activities could encroach on the ESHA protected by the temporary exclusion/construction fencing. Respondents violated these conditions by dumping and spreading the concrete gravel slurry into the ESHA, as well as installing the water spigot and associated materials into the ESHA. The Unpermitted Development has inhibited the ESHA's ability to grow and spread naturally throughout its habitat because said Unpermitted Development is occupying the space necessary to allow for its expansion.

Respondents have made the argument that the Unpermitted Development has not inhibited the ESHA's ability to grow and spread naturally but instead, their actions have fostered ESHA expansion, citing the Biological Impact Assessment Survey of August 2011 which documents ESHA growth from the last survey conducted in 2006 (Exhibit #29). However, what the Respondents did not note is that the referenced biological report actually goes on to explain what caused the ESHA influx and why it is likely to be temporary. The report, written by Respondents' biologist, attributed the ESHA's expansion to both the Respondents' cutting down trees that opened up the tree canopy, allowing for increased sun exposure, and the soil disturbance from grading. Although the ESHA has expanded, so has the area's naturalized velvet grass population which competes with coastal bluff morning-glory for space, nutrients and light. The velvet grass' expansion within the ESHA reduces coastal bluff morning-glory's ability to spread, which the Respondents' biologist predicts will likely lead to a population decline. However, the biologist further predicts that if the Unpermitted Development is removed, the "coastal bluff morning-glory is likely to spread into the areas now covered by the driveway, sidewalk and cement slurry, and [would] re-establish in the area disturbed by fence removal" (Exhibit #29).

Therefore, the Unpermitted Development that occurred on the Subject Property within ESHA and adjacently located within its mandated 50 foot buffer are disrupting the coastal bluff morning-glory's habitat and potential growth, in contravention of the Coastal Act and Mendocino County LCP policies in place to protect environmentally sensitive habitats. Actions to remove the unpermitted development and the revegetation mitigation process will be undertaken pursuant to the Orders. This restoration work will ensure that habitat connectivity will be restored and ecosystem services re-established.

ii) Minimization of Adverse Impacts/Geologic Stability

Coastal Act Section 30253 states in part that new development shall:

- 1) Minimize risks to life and property in areas of high geologic, flood and fire hazard.*
- 2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

Mendocino County LUP Policy 3.4-9 provides:

Any development landward of the blufftop setback shall be constructed so as to ensure that the surface and subsurface drainage does not contribute to the erosion of the bluff face or to the instability of the bluff itself.

Further, the Mendocino County Coastal Zoning Code Section 20.5000.010(A)(3) states that development in Mendocino will, in relevant part:

Neither create nor contribute significantly to erosion, geologic instability or destruction of the site or surrounding areas.

The Coastal Act and the Mendocino County LCP both require that any new development within areas of high geologic hazard must neither create nor contribute to erosion, or geologic instability from subsurface drainage or otherwise. Coastal bluffs, such as the one located on the Subject Property and impacted by the unpermitted development, are unique geomorphic features that are characteristically unstable. Additionally, the coastal bluffs are the type of geologically hazardous land contemplated under the Coastal Act and LCP, because by their nature, coastal bluffs are subject to erosion from uncontrolled surface or sub-surface water runoff and are impacted by wave impact and sea-level rise.

Section 30253 of the Coastal Act requires that new development minimize risk to life and property in areas of high geologic, flood and fire hazard, and assure stability and structural integrity. In fact, the June 24, 2005 “Bace Geotechnical Report” submitted with Respondents’ original CDP application provided: “care should be taken to intercept and divert concentrated surface flows and subsurface seepage away from... the edges of ocean bluffs. Concentrated flows such as from roof downspouts, driveways, area drains and the like, should, where practical, be collected in a close pipe and discharged into a road drainage system. A less desirable alternative would be to have runoff uniformly dispersed away from the structure and edges of the bluff...” Based on these findings, Special Condition 1A of CDP A-1-MEN-07-021 acknowledged the danger of erosion and instability at the bluff by requiring “All final design and construction plans, including bluff setback, foundations, grading, and drainage plans, shall be consistent with the recommendations contained in the Geotechnical Investigation report dated June 24, 2005 prepared by Bace Geotechnical...”

The Respondents' installation of impermeable concrete pavement over the previously approved gravel driveway, the impermeable concrete driveway roundabout extension and driveway apron, and impermeable concrete walkways have altered the drainage runoff course on the property and are not consistent with the Coastal Act nor the LCP's erosion prevention policies. In addition, collecting and directing roof top drainage and the like toward and over the bluff edge will increase erosion and increase geologic instability. Increasing impermeable surfaces through paving lessens the ability for runoff and rainfall to permeate naturally into the ground. As water collects on impermeable surfaces, run-off accelerates, increasing the potential for erosion and sheet-flow run off toward and over the coastal bluff. This altered drainage path represents a potential threat to the geological stability of the bluff adjacent to the Subject Property, in addition to having a negative impact on Pacific Ocean water quality. Allowing the unpermitted concrete to remain on the Subject Property contradicts Section 30253 and Section 30231 of the Coastal Act, as well as Mendocino County LUP Policy 3.4-9, and Section 30231 of the Coastal Act dealing with water quality. Therefore, the development that is the subject of these proceedings is inconsistent with Section 30253 of the Coastal Act and the analogous policies of the County LCP.

Removal of the concrete driveway, driveway extension and apron, and walkway, and restoration of the previously approved gravel driveway and submittal of a geotechnical report addressing drainage issues will be undertaken pursuant to the Orders. This work will ensure that the surface and subsurface drainage patterns will cease their negative impacts on the bluff's erosion rates, the property's geologic stability, Pacific Ocean water quality, and restore the visual qualities of the Subject Property.

iii) Water Quality

Coastal Act Section 30231 states in part relating to water quality that:

The biological productivity and the quality of coastal waters... shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface waterflow.

Mendocino County LUP Policy 3.1-25 states:

The Mendocino Coast is an area containing many types of marine resources of statewide significance. Marine resources shall be maintained, enhanced and, where feasible, restored; areas and species of special biologic or economic significance shall be given special protection; and the biologic productivity of coastal waters shall be sustained.

Adding to the importance of water quality discussion that was mentioned within the "Minimization of Adverse Impacts/ Geologic Stability" section above, the Mendocino County LUP and The Coastal Act both recognize the importance of protecting the biological productivity of coastal waters. The Subject Property is an ocean-fronting, bluff top parcel, which inevitably raises questions about water runoff originating from the Subject Property and draining down the

bluff towards the ocean. This runoff can contain entrained sediment and other pollutants that contribute to degradation of the quality of coastal waters.

The unpermitted concrete driveway, apron, and driveway extension have drastically increased the Subject Property's impervious surface area, not only negatively contributing to the quantity of water runoff from the property into the Pacific Ocean but also contributing to the depletion of ground water supplies and interfering with surface waterflow, which is not consistent with Coastal Act Section 30231. Removing the concrete driveway, apron, and driveway extension and restoring the surfaces to a permeable surface such as gravel, as required within their CDP, would bring the Subject Property into conformity with the Mendocino County LUP and the Coastal Act.

iv) Scenic Resources

Coastal Act Section 30251 states in part relating to scenic qualities that:

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

Mendocino County LUP Policy 3.5-1 states in applicable part:

The scenic and visual qualities of Mendocino County coastal areas shall be considered and protected as a protected 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 landforms, to be visually compatible with the character of surrounding areas, and where feasible, to restore and enhance visual quality in visual degraded areas. New development in highly scenic areas designated by the County of Mendocino Coastal Element shall be subordinate to the character of its setting.

The Mendocino County LUP requires the protection of the scenic and visual qualities of its coastal areas and only allows for new development that does not impede on the public views of said scenic coastal areas. The Down-Coast Fence is predominantly a 4-foot high chain link fence with the seaward end of the fence extending well above 6 feet in height. This type of chain link fence is visually incompatible with the character of the surrounding area, as required by Coastal Act section 30251 and under Mendocino County LUP Policy 3.5-1, because the surrounding neighbors' fences are comprised of short wood stakes. Additionally, the exceptionally tall portions of the Down-Coast Fence impede the scenic and visual qualities of the coastline visible from the public vantage point of Old Coast Highway county road in a manner that is also inconsistent with Coastal Act section 30251 and Mendocino County LUP Policy 3.5-1. The removal of the Down-Coast Fence pursuant to the Consent Orders would restore the scenic and visual qualities of the bluff top and bring the Subject Property into conformity with section 30251 and the Mendocino County LUP.

(c) Unpermitted Development is Causing Continuing Resource Damage

The unpermitted development is causing ‘continuing resource damage’, as those terms are defined by Section 13190 of the Commission’s regulations.

(i) Definition of Continuing Resource Damage

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

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

The term ‘damage’ in the context of Restoration Order proceedings is defined in Section 13190(b) as follows:

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

In this case, the resources affected include the habitat and ecosystem functions provided by the impacted coastal bluff morning-glory, as well as the geologic stability of the site. Coastal bluff morning-glory is classified as an ESHA because of its rare, threatened and endangered status in California; the Coastal Act and Mendocino County LCP mandate its protection through restricting development within the plant’s growth area and corresponding 100 to 50 foot buffer areas. The Unpermitted Development was placed within the ESHA and ESHA buffer and therefore impacted the coastal bluff morning-glory and its buffer area, reducing the quality of the habitat, and affecting the abundance it would have had but for the disruption resulting from the Unpermitted Development.

The term ‘continuing’ is defined by Section 13190(c) of the Commission’s regulations as follows:

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

The Unpermitted Development subject to these proceedings, and the ramifications of their resulting habitat damage, remain at the Subject Property. As described in previous sections, the Unpermitted Development has and continues to negatively impact the ESHA on the Subject Property. Clearly, the Unpermitted Development that remains on the Subject Property is occupying land that would have otherwise been available for the plants or its necessary habitat buffer, is detrimentally impacting the bluff’s geologic stability, negatively affecting the Pacific Ocean’s water quality, and impeding scenic resources. The Respondents’ actions, and the results

thereof, continue to impact these coastal resources by preventing the native ecosystems from existing or functioning properly.

As described above, the Unpermitted Development is causing adverse impacts to resources protected by the Coastal Act that continue to occur as of the date of this proceeding, and therefore damage to resources is “continuing” for purposes of Section 30811 of the Coastal Act. The damage caused by the Unpermitted Development described above satisfies the regulatory definition of “continuing resource damage.” Therefore, the third and final criterion for issuance of a Restoration Order is satisfied.

(d) Orders are Consistent with Chapter 3 of the Coastal Act

The Consent Orders, attached to this staff report, are consistent with the resource protection policies found in Chapter 3 of the Coastal Act. The Consent Orders require Respondents to remove, and restore the land occupied by, development inconsistent with the CDP including: the driveway, the driveway extension, driveway apron, bisecting fence, down coast property line fence, walkway, water spigot, concrete and gravel slurry, and propane tank. Additionally, the Consent Orders require Respondents to cease and desist from conducting any further unpermitted development on the Subject Property. Further, the Consent Orders require restoration of impacted areas and additional mitigation work to account for the temporal loss of habitat during the time the Unpermitted Development was in place. Failure to restore the site would lead to potential invasion of non-native plant species and destruction of the site’s ESHA, and would be inconsistent with the resource protection policies of the Coastal Act. The intent of the Consent Orders is to remove Unpermitted Development and restore native habitat, which would improve ESHA. Additionally, the Consent Orders would restore the unpermitted concrete driveway and driveway extension to a permeable surface that reduces erosion, reduces risks to bluff instability, and allows for more groundwater on the site and cleaner quality of water runoff into the Pacific Ocean. Therefore, the proposed Consent Orders are consistent with Sections 30240, 30231, 30251, and 30253. Further, by restoring native vegetation, the proposed project will increase the abundance and viability of the ESHA and restore the Subject Property’s ecosystem.

Therefore, the Consent Cease and Desist and Restoration Orders are consistent with the Chapter 3 policies of the Coastal Act.

3) BASIS FOR RECORDATION OF A NOTICE OF VIOLATION

Under the Coastal Act, a Notice of Violation (“NOVA”) may be recorded against property that has been developed in violation of the Coastal Act. The NOVA is recorded in the office of the county recorder where the property is located and appears on the title to the property. The NOVA serves a protective function by notifying prospective purchasers that a Coastal Act violation exists on the property and that anyone who purchases the property may be responsible for the full resolution of the violation. The statutory authority for the recordation of a NOVA is set forth in Coastal Act Section 30812. The Respondents here, as part of the Consent Orders, agreed to recordation of a NOVA. This NOVA will be removed as soon as the violations are fully resolved, as provided for in both 30812 and the Consent Orders, themselves

F. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The Commission finds that the issuance of the Consent Orders to compel removal of the unpermitted development and restoration of the Subject Property is exempt from any applicable requirements of the California Environmental Quality Act of 1970, Cal. Pub. Res. Code §§ 21000 et seq. (CEQA), and will not have significant adverse effects on the environment, within the meaning of CEQA. These Consent Orders are exempt from the requirement of preparation of an Environmental Impact Report, based on Sections 15061(b)(2), 15307, 15308 and 15321 of the CEQA Guidelines (14 CCR).

G. SUMMARY OF FINDINGS OF FACT

1. Greg and Sandra Moore are the owners of the property located at 37900 Old Coast Highway, Gualala, Mendocino County, CA (“Subject Property”). The Subject Property at issue herein is identified by the Mendocino County Assessor’s Office as APN 145-121-03. The property is located within the Coastal Zone.
2. The Commission found, in its approval of Coastal Development Permit (CDP) No. A-1-MEN-07-021, which authorized development on the Subject Property, that the property contains Environmentally Sensitive Habitat Areas, namely large swaths of rare coastal bluff morning-glory (*Calystegia purpurata ssp. Saxicola*).
3. Greg and Sandra Moore undertook development on the Subject Property without the required Coastal Act permit and inconsistent with CDP No. A-1-MEN-07-021.
4. Greg and Sandra Moore are liable for the removal, restoration, and payment of penalties pursuant to the Coastal Act.
5. The Unpermitted Development is not consistent with Chapter 3 of the Coastal Act and is causing “continuing resource damage” within the meaning of Coastal Act Section 30811 and Title 14, California Code of Regulations, Section 13190.
6. Coastal Act Section 30810 authorizes the Commission to issue a cease and desist order in these circumstances. Coastal Act Section 30811 authorizes the Commission to issue a restoration order in these circumstances.
7. The work to be performed under these Consent Orders, if completed in compliance with the Orders and the plans required therein, will be consistent with Chapter 3 of the Coastal Act.

APPENDIX A: Consent Cease and Desist and Restoration Orders

**CONSENT CEASE AND DESIST ORDER CCC-12-CD-07 AND CONSENT
RESTORATION ORDER CCC-12-RO-07**

1.0 **Consent Cease and Desist Order CCC-12-CD-07.** Pursuant to its authority under California Public Resources Code ('PRC') Section 30810, the California Coastal Commission ('Commission') hereby orders and authorizes Greg and Sandra Moore, and all their successors, assigns, employees, agents, contractors, and any persons acting in concert with any of the foregoing (hereinafter collectively referred to as 'Respondents') to:

1.1 Cease and desist from engaging in any further development, as that term is defined in PRC Section 30106, that would normally require a coastal development permit on the property identified in Section 8.0, below ('Subject Property'), unless authorized pursuant to the Coastal Act, PRC Sections 30000-30900, which includes through these Consent Orders.

1.2 Cease and desist from maintaining on the Subject Property any of the following: (a) any Unpermitted Development (defined in Section 9.0, below), including any of the unpermitted physical structures and materials on the Subject Property, or other unpermitted changes in the intensity of use to the Subject Property, resulting therefrom; or (b) development inconsistent with Commission Coastal Development Permit No. A-1-MEN-07-021.

1.3 Remove, pursuant to the approved removal plan discussed in Section 5.4 below, all physical items placed or allowed to come to rest on the Subject Property as a result of Unpermitted Development, including, but not necessarily limited to:

1) Graded and paved driveway; 2) concrete driveway roundabout extension; 3) the chain-link fence that bisects the Subject Property; 4) fence that runs near the down-coast property line and also connects to the existing residence; 4) concrete walkway; 5) concrete and gravel slurry; 6) water spigot and all plumbing associated with it, but not including the existing water line that serves the main fence; and; 7) propane tank located in the northeastern portion of the property.

1.4 Fully and completely comply with the terms and conditions of the Consent Restoration Order CCC-12-RO-07, as provided in Section 2.0, below.

2.0 **Consent Restoration Order CCC-12-RO-07.** Pursuant to its authority under PRC Section 30811, the Commission hereby orders and authorizes Respondents to restore the Subject Property as described in Section 5.0, below.

3.0 **NATURE OF ORDERS AND OF CONSENT**

Through the execution of Consent Restoration Order CCC-12-RO-07 and Consent Cease and Desist Order CCC-12-CD-07 (hereinafter collectively referred to as "these Consent

Orders”), Respondents agree to comply with the terms and conditions of these Consent Orders. These Consent Orders authorize and require the removal and restoration activities, among other things, outlined in these Consent Orders. Any development subject to Coastal Act permitting requirements that is not specifically authorized under these Consent Orders requires a Coastal Development Permit. Nothing in these Consent Orders guarantees or conveys any right to development on the Subject Property other than the work expressly authorized by these Consent Orders.

Respondents further agree to condition any contracts for work related to these Consent Orders upon an agreement that any and all employees, agents, and contractors, and any persons acting in concert with any of the foregoing, adhere to and comply with the terms and conditions set forth herein.

Provisions Common to Both Orders. CCC-12-CD-07 and CCC-12-RO-07 are hereinafter collectively referred to as ‘these Consent Orders’.

4.0 Definitions

- 4.1 **‘Driveway’** The concrete driveway that paved over a pre-existing gravel driveway on the Subject Property.
- 4.2 **‘Driveway Extension’** The roundabout attached to the Driveway, part of which is located within a 50 foot buffer around sensitive habitat that was established by Coastal Development Permit (‘CDP’) A-1-MEN-07-021.
- 4.3 **‘Driveway Apron’** The concrete apron opening onto the Old Coast Highway consisting of the 15 feet paved area from Old Coast Highway to the Driveway.
- 4.4 **‘Walkway’** The concrete walkway that extends from the Driveway Extension along the southern side of the residence, part of which is located within a 50 foot buffer around sensitive habitat that was established by CDP A-1-MEN-07-021.
- 4.5 **‘Down-Coast Fence’** The chain-link fence near the southeastern parcel boundary including the fence that connects to the existing residence (adjacent to APN 145-121-04-00).
- 4.6 **‘Bisecting Fence’** The section of fence which is connected to the gate crossing the Driveway approximately 117 feet from the northeast property boundary and crossing the width of the property from approximately the northwestern property line to the Down-Coast Fence.
- 4.7 **‘Water Spigot’** The water spigot installed within the designated ESHA or ESHA buffer located between the existing residence and Old Coast Highway, and all

associated pipes and plumbing, but not including the existing water line that serves the main residence.

- 4.8 **‘Concrete and Gravel Slurry’** The accumulation of construction waste spread within the designated ESHA or ESHA buffer located between the existing residence and Old Coast Highway.

5.0 Restoration Plan.

- 5.1 Prepare and Implement a Restoration Plan as described below to restore impacted areas on the Subject Property. Within 90 days of issuance of these Consent Orders, Respondents shall submit a proposed Restoration Plan for the review and approval of the Commission’s Executive Director. The Restoration Plan shall include a Removal Plan, Geotechnical Plan, Revegetation Plan, Monitoring Plan, and Mitigation Plan consistent with the provisions below for removal of, and restoration of the land occupied by and adjacent to:

The Driveway, Driveway Extension, Driveway Apron, Down-Coast Fence, Bisecting Fence, Walkway, Water Spigot, Concrete and Gravel Slurry, and propane tank.

5.2 **General Provisions.**

- (A) The Restoration Plan shall be prepared by a qualified restoration ecologist(s), resource specialist(s), and/or engineer (‘Specialist(s)’). Prior to the preparation of the Restoration Plan, Respondents shall submit for the Executive Director’s review and approval the qualifications of the proposed Specialist(s), including a description of the educational background, training and experience of the proposed Specialist(s) related to the preparation and implementation of the Restoration Plan described herein. If the Executive Director determines that the qualifications of Respondents’ proposed Specialist(s) are not adequate to conduct such restoration work, he/she shall notify Respondents and, within 20 days of such notification, Respondents shall submit for the Executive Director’s review and approval an alternative Specialist to each one rejected.
- (B) The Restoration Plan shall include a schedule/timeline of activities, the procedures to be used, and identification of the parties who will be conducting the restoration or restoration-related activities.
- (C) The Restoration Plan shall include a detailed description of all equipment to be used. All tools utilized shall be hand tools, which includes any hand held tools to remove concrete, such as jackhammers, unless the Specialist demonstrates to the satisfaction of the Executive Director that mechanized

equipment is needed and will not impact resources protected under the Coastal Act, including, but not limited to: geological stability, integrity of landforms, freedom from erosion, and the existing native vegetation.

- (1) If the use of mechanized equipment is proposed, the Restoration Plan shall include limitations on the hours of operations for all equipment and a contingency plan that addresses, at a minimum: 1) impacts from equipment use; 2) potential spills of fuel or other hazardous releases that may result from the use of mechanized equipment and responses thereto; and 3) best management practices that demonstrate how water quality and coastal water resources will be protected. The Restoration Plan shall designate areas for staging of any construction equipment and materials, including receptacles and temporary stockpiles of graded materials, all of which shall be covered on a daily basis.
- (D) The Restoration Plan shall specify that no demolition or construction materials, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wind or runoff erosion and dispersion.
- (1) All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil.
- (E) The Restoration Plan shall identify the location of the disposal site(s) for the off-site disposal of all materials removed from the Subject Property and all waste generated during restoration activities pursuant to these Consent Orders. If a disposal site is located in the Coastal Zone and is not an existing sanitary landfill, a coastal development permit is required for such disposal. All hazardous waste must be disposed of at a suitable licensed disposal facility.
- (F) The Restoration Plan shall specify the methods to be used during and after restoration to stabilize the soil and make it capable of supporting native vegetation. Such methods shall not include the placement of retaining walls or other permanent structures, grout, geogrid or similar materials. Any soil stabilizers identified for erosion control shall be compatible with native plant recruitment and establishment. The Restoration Plan shall also include all measures that will be installed on the Subject Property and maintained until the impacted areas have been revegetated to minimize erosion and the transport of sediment.

- (G) The Restoration Plan shall identify all areas on which the Restoration Plan is to be implemented, and upon which the restoration will occur ('Restoration Area'). The Restoration Plan shall also state that prior to the initiation of any restoration or removal activities, the boundaries of the Restoration Area shall be physically delineated in the field, using temporary measures such as fencing stakes, colored flags, or colored tape. The Restoration Plan shall state further that all delineation materials shall be removed when no longer needed and verification of such removal shall be provided in the annual monitoring report that corresponds to the reporting period during which the removal occurred.

5.3 **Geotechnical Plan.**

- (A) Respondents shall submit a Geotechnical Plan, prepared by a qualified Specialist, approved pursuant to Section 5.2(A), as part of the Restoration Plan, to address changes in drainage from the unpermitted development and the removal and restoration activities.
 - (1) The drainage control measures must be installed and fully functional on the Restoration Area prior to or concurrent with the initial removal and restoration activities required by these Consent Orders and maintained throughout the removal/restoration process to minimize geologic instability across the site.
- (B) The Geotechnical Plan shall: 1) include a narrative report describing all run-off and drainage changes resulting from the Unpermitted Development; 2) include a narrative report describing all run-off and drainage changes resulting from the removal of the unpermitted development and restoration of the subject property; and 3) identify and delineate on a site or grading plan the locations of all drainage control measures.
- (C) The plan shall indicate that Respondents shall commence implementation of the Geotechnical Plan within no more than thirty (30) days of approval of the Restoration Plan. Additionally, in those areas where drainage control measures may be immediately necessary, Respondents shall install said measures in a timely manner to as to avoid further resource impacts.

5.4 **Removal Plan.**

- (A) As part of the Restoration Plan, Respondents shall submit a Removal Plan, prepared by a qualified Specialist, approved pursuant to Section 5.2(A), to govern the removal and off-site disposal of all Unpermitted Development, including all physical structures and materials on the Subject Property

resulting therefrom from the Unpermitted Development, required to be removed pursuant to these Consent Orders.

- (1) The Removal Plan shall include a site plan showing the location and identity of everything to be removed from the Subject Property.
- (B) The Removal Plan shall provide that removal activities shall not disturb areas outside of the Restoration Area. Measures for the restoration of any area disturbed by the removal activities shall be included within the Revegetation Plan. These measures shall include the restoration of the areas from which the unpermitted development was removed, and any areas disturbed by those removal activities.
- (C) The plan shall indicate that Respondents shall commence removal of the Unpermitted Development, including any of the unpermitted physical structures and materials resulting there from, by commencing implementation of the Removal Plan no more than thirty (30) days from the date of approval of the Restoration Plan.
- (D) Respondents shall complete the removal of all items listed for removal in the Removal Plan within 60 days of the Restoration Plan's approval, with the exception of the approximately 39-foot section of the Down-Coast Fence connecting the existing residence to the downcoast property line and the propane tank, which Respondents shall remove within 270 days of commencement of implementation of the Removal Plan.

5.5 Revegetation Plan.

- (A) Respondents shall submit a Revegetation Plan, prepared by a qualified Specialist, as approved under Section 5.2(A), above, as part of the Restoration Plan, outlining the measures necessary to revegetate the Restoration Area. The Revegetation Plan shall include detailed descriptions, including graphic representations, narrative reports, and photographic evidence as necessary, submitted pursuant to requirements of Section 5.6(B), of vegetation in the Restoration Area prior to any development undertaken on the Subject Property, and the current state of the Subject Property. The Revegetation Plan shall demonstrate that the areas impacted by the Unpermitted Development on the Subject Property will be restored using plant species endemic to and appropriate for the area in which the unpermitted activities occurred.
- (B) The Revegetation Plan shall identify the natural habitat type that is the model for the restoration and describe the desired relative abundance of particular species in each vegetation layer. This section shall explicitly lay

out the restoration goals and objectives for the revegetation. Based on these goals, the plan shall identify the species that are to be planted, and provide a rationale for and describe the size and number of container plants and the rate and method of seed application. The Revegetation Plan shall indicate that plant propagules and seeds must come from local, native genetic stock.

- (1) If plants, cuttings, or seed are obtained from a nursery, the nursery must certify that the materials used are of local origin and are not cultivars. The Revegetation Plan shall provide specifications for preparation of nursery stock. Technical details of planting methods (e.g. spacing, mycorrhizal inoculation, etc.) shall be included.
- (C) The Revegetation Plan shall include a detailed description of the methods that shall be utilized to restore the Restoration Area to the condition that existed prior to the unpermitted development occurring.
- (D) The Revegetation Plan shall include a map showing the type, size, and location of all plant materials that will be planted in the Restoration Area; the location of all non-native plants to be removed from the Restoration Area; the topography of all other landscape features on the site; and the location of photographs taken of the Restoration Areas that will provide reliable photographic evidence for annual monitoring reports, as described in Section 5.6(B)(1), below.
- (E) The Revegetation Plan shall include a detailed explanation of the performance standards that will be utilized to determine the success of the restoration. The performance standards shall identify that 'x' native species appropriate to the habitat should be present, each with at least 'y' percent cover or with a density of at least 'z' individuals per square meter. The description of restoration success shall be described in sufficient detail to enable an independent specialist to duplicate it.
- (F) The Revegetation Plan shall include a schedule for installation of plants and removal of non-native plants. Respondents shall not employ non-native plant species, which could supplant native plant species in the Restoration Area.
 - (1) If the planting schedule requires planting to occur at a certain time of year beyond deadlines set forth herein, the Executive Director may, at the written request of Respondents, extend the deadlines as set forth in Section 15.0 of these Consent Orders in order to achieve optimal growth of the vegetation.

- (2) The Revegetation Plan shall demonstrate that all non-native vegetation within the Restoration Area will be eradicated prior to any remedial grading and revegetation activities on the Subject Property. In addition, the Revegetation Plan shall specify that non-native vegetation removal shall occur year round, for the duration of the restoration project, as defined in Section 5.6.
- (G) The Revegetation Plan shall describe the proposed use of artificial inputs, such as irrigation, fertilizer or herbicides, including the full range of amounts of the inputs that may be utilized. The minimum amount necessary to support the establishment of the plantings for successful restoration shall be utilized. No permanent irrigation system is allowed in the Restoration Area. Temporary above ground irrigation to provide for the establishment of plantings is allowed for a maximum of three (3) years or until the revegetation has become established, whichever comes first.
 - (1) If, after the three (3) year time limit, the vegetation planted pursuant to the Revegetation Plan has not become established, the Executive Director may, upon receipt of a written request from Respondents, allow for the continued use of the temporary irrigation system. The written request shall outline the need for and duration of the proposed extension.
- (H) Respondents shall complete removal and revegetation no more than sixty (60) days after approval of the Restoration Plan.

5.6 Monitoring Plan.

- (A) The plan shall indicate that Respondents shall submit a Monitoring Plan, as part of the Restoration Plan, that describes the monitoring and maintenance methodology, including sampling procedures, sampling frequency, and contingency plans to address potential problems with restoration activities or unsuccessful restoration of the area. The Monitoring Plan shall specify that the restoration Specialist shall conduct at least four site visits annually for the duration of the monitoring period set forth in Section 5.6(B), at intervals specified in the Restoration Plan, for the purposes of inspecting and maintaining, at a minimum, the following: all erosion control measures; non-native species eradication; trash and debris removal; and the health and abundance of original and/or replacement plantings.
- (B) Respondents shall submit a written report, on an annual basis and during the same one-month period of each year (no later than December 31st of the first year), for five (5) years from the completion of implementation of the Revegetation Plan, according to the procedure set forth under Section

5.10, for the review and approval of the Executive Director, prepared by the qualified Specialist, evaluating compliance with the approved Restoration Plan. These reports shall also include photographs taken during the periodic site inspections pursuant to 4.6(A), at the same time of year, from the same pre-designated locations (as identified on the map submitted pursuant to 5.5(D)) indicating the progress of recovery in the Restoration Areas.

- (1) The locations from which the photographs are taken shall not change over the course of the monitoring period unless recommended changes are approved by the Executive Director, pursuant to Section 21.0 of these Consent Orders.
- (C) If periodic inspections or the monitoring reports indicate that the restoration project or a portion thereof is not in conformance with the Restoration Plan, or these Consent Orders, or has failed to meet the goals and/or performance standards specified in the Restoration Plan, Respondents shall submit a revised or supplemental Restoration Plan ('Revised Restoration Plan') for review and approval by the Executive Director. The Revised Restoration Plan shall be prepared by a qualified Specialist, approved by the Executive Director, and shall specify measures to correct those portions of the restoration that have failed or are not in conformance with the original approved Restoration Plan, or these Consent Orders. The Executive Director will then determine whether the Revised Restoration Plan must be processed as a modification of these Consent Orders, a new Restoration Order, or a new or amended coastal development permit. After the Revised Restoration Plan has been approved, these measures, and any subsequent measures necessary to carry out the original approved Restoration Plan, shall be undertaken by Respondents as required by Executive Director until the goals of the original approved Restoration Plan have been met. Following completion of the Revised Restoration Plan's implementation, the duration of the monitoring period, set forth in Section 5.6(D), shall be extended for at least a period of time equal to that during which the project remained out of compliance, but in no case less than two annual reporting periods.
- (D) At the end of the five (5) year monitoring period (or other duration, if the monitoring period is extended pursuant to Section 5.6(C)), Respondents shall submit, according to the procedure set forth under Section 5.10, a final detailed report prepared by a qualified Specialist for the review and approval of the Executive Director.
- (1) If this report indicates that the restoration has in part, or in whole, been unsuccessful, based on the requirements of the approved Restoration Plans, Respondents shall submit a Revised Restoration

Plan, in accordance with the requirements of Section 5.6(C) of the Consent Orders, and the monitoring program shall be revised accordingly.

- 5.7 Upon approval of the Restoration Plan (including the Removal, Geotechnical, Revegetation, and Monitoring Plans) by the Executive Director, Respondents shall fully implement each phase of the Restoration Plan consistent with all of its terms, and the terms set forth herein. At a minimum, Respondents shall complete all work described in the Restoration Plan, except for the work described in the Monitoring Plan, no later than sixty (60) days after the Restoration Plan is approved. The Executive Director may extend this deadline or modify the approved schedule for good cause pursuant to Section 14.0 of these Consent Orders.
- 5.8 Within thirty (30) days of the completion of the work described pursuant to each phase (Removal Plan, Geotechnical, and Revegetation Plan), Respondents shall submit, according to the procedures set forth under Section 5.10, a written report, prepared by a qualified Specialist, for the review and approval of the Executive Director, documenting all restoration work performed on the Subject Property pursuant to the specific component of the Restoration Plan. This report shall include a summary of dates when work was performed and photographs taken from the pre-designated locations (as identified on the map submitted pursuant to Section 5.5(B)) documenting implementation of the respective components of the Restoration Plan, as well as photographs of the Subject Property before the work commenced and after it was completed.
- 5.9 **Mitigation.** Respondents shall submit a Mitigation Plan, prepared by a qualified Specialist, as approved under Section 5.2(A), above, as part of the Restoration Plan, outlining proposed mitigation activities that provide for the creation of an additional 7,000 square feet of habitat on the Subject Property by, among other things, the planting of vegetation native to this location in coastal Mendocino County including, but not limited to, coastal bluff morning glory and blue violet.

The Mitigation Plan shall include a map showing the location of the 7,000 square foot mitigation area. The mitigation area shall be located on the Subject Property between the Old Coast Highway and the existing residence, but shall not be located within existing ESHA. The Mitigation Plan shall be prepared consistent with the requirements set forth in Section 5.2, above.

Respondents shall begin implementation of the Mitigation Plan within sixty (60) days of approval of by the Executive Director, and shall complete all elements of the Plan based upon the deadlines provided in the Plan, but in any case no later than ninety (90) days from the approval of the Plan by the Executive Director.

- 5.10 All plans, reports, photographs and other materials required by these Consent Orders shall be sent to:

California Coastal Commission
Attn: Margaret Weber
45 Fremont Street, Ste 2000
San Francisco, CA 94105

With a copy sent to:

California Coastal Commission
Attn: Nancy Cave
45 Fremont Street, Ste 2000
San Francisco, CA 94105

Additional Provisions Common to Both Orders.

- 6.0 **Revision of Deliverables.** The Executive Director may require revisions to deliverables under these Consent Orders, and the Respondents shall revise any such deliverables consistent with the Executive Director's specifications, and resubmit them for further review and approval by the Executive Director, by the deadline established by the modification request from the Executive Director. The Executive Director may extend the deadline for submittals upon a written request and a showing of good cause, pursuant to Section 15.0 of these Consent Orders.
- 7.0 **Persons Subject to these Orders.** Greg and Sandra Moore and all their successors, assigns, employees, agents, and anyone acting in concert with any of the foregoing, are jointly and severally subject to all the requirements of these Consent Orders. Respondents agree to undertake the work required herein, and agree to cause their current and future employees and agents, and any contractors performing any of the work contemplated or required herein and any persons acting in concert with any of these entities to comply with the terms and conditions of these Consent Orders. By executing these Consent Orders, Respondents attest that they have the authority to conduct the work on the Subject Property required by these Consent Orders and agree to obtain all necessary permissions (access, etc.) to conduct and complete the work required to resolve the violations addressed herein.

8.0 **Identification of the Subject Property.** The property that is the subject of these Consent Orders is located at 37900 Old Coast Highway, Gualala, Mendocino County, California, and is also identified as Mendocino County Assessor's Parcel Number 145-121-03-00.

9.0 **Unpermitted Development.** As used in these Consent Orders, the term "Unpermitted Development" refers to any and all "development," as that term is defined in the Coastal Act (PRC section 30106), that has occurred on the Subject Property and required authorization pursuant to the Coastal Act, but for which no such permit was obtained. The Unpermitted Development at issue in these Consent Orders includes, but is not necessarily limited to:

9.1 The installation of an impermeable concrete driveway and other unpermitted development, including:

- (A) Paving over the pre-existing gravel driveway on the Subject Property to create the Driveway.
- (B) Construction of the unpermitted Driveway Apron opening onto the Old Coast Highway Frontage Road and attached to the Driveway.
- (C) Construction of the unpermitted Driveway Extension connected to the Driveway.

9.2 The construction of the unpermitted Down-Coast Fence, and Bisecting Fence.

9.3 The construction of the Walkway extending around the southern side of the residence.

9.4 The installation of the unpermitted Water Spigot.

9.5 Spreading concrete and gravel slurry.

9.6 Placement of a propane tank.

10.0 **Commission Jurisdiction.** The Commission has jurisdiction over resolution of these alleged Coastal Act violations pursuant to PRC Section 30810 and 30811. Respondents agree not to contest the Commission's jurisdiction to issue or enforce these Consent Orders.

11.0 **Resolution of Matter Via Settlement.**

11.1 Respondents have submitted a "Statement of Defense" form as provided for in Section 13181 and 13191 of Title 14 of the California Code of Regulations, but in

light of the proposed settlement have agreed not to assert these defenses and have agreed not to contest the legal and factual bases, the terms, or the issuance of these Consent Orders, including the allegations of Coastal Act violations contained in the Notice of Intent to Commence Cease and Desist and Restoration Order Proceedings and to Record a Notice of Violation, dated May 24, 2012. Specifically, Respondents have agreed not to contest the issuance or enforcement of these Consent Orders at a public hearing or any other proceeding.

- 11.2 Respondents do not object to recordation by the Executive Director of a notice of violation, pursuant to Public Resources Code Section 30812(b). Accordingly, a notice of violation will be recorded after issuance of these Consent Orders. No later than thirty days after the Commission determines that Respondents have fully complied with these Consent Orders, and has received from Respondents the rescission fee required by the County Recorder's Office, the Executive Director shall record a notice of rescission of the notice of violation, pursuant to Section 30812(f). The notice of rescission shall have the same effect of a withdrawal or expungement under Section 405.61 of the Code of Civil Procedure.
- 11.3 Nothing in these Consent Orders will restrict the submittal of any future application(s) by Respondents for coastal development permits and/or amendments to existing permits, for proposed development on the Subject Property. Said proposed development may include, but is not limited to, a new fence and gate on the down-coast property line with connection to the existing residence, and a new propane tank and gas line. Nothing herein provides any assurance of the Commission's approval of any future application(s) by Respondents for coastal development permits and/or amendments to existing permits.
- 12.0 **Effective Date and Terms of the Consent Orders.** The effective date of these Consent Orders is the date these Consent Orders are issued by the Commission. These Consent Orders shall remain in effect permanently unless and until rescinded by the Commission.
- 13.0 **Findings.** These Consent Orders are issued on the basis of the findings adopted by the Commission, as set forth in the document entitled "Staff Report and Findings for Consent Cease and Desist Order No. CCC-12-CD-07 and Consent Restoration Order No. CCC-12-RO-07." The activities authorized and required in these Consent Orders are consistent with the resource protection policies set forth in Chapter 3 of the Coastal Act. The Commission has authorized the activities required in these Consent Orders as being consistent with the resource protection policies set forth in Chapter 3 of the Coastal Act.
- 14.0 **Settlement/Compliance Obligation.**
- 14.1 In light of the intent of the parties to resolve these matters in settlement, Respondents have agreed to pay a monetary settlement in the amount of \$100,000. Respondents agree to make an initial payment of \$20,000 within 60

days of the issuance of these Consent Orders. Thereafter, Respondents agree to make 4 additional \$20,000 payments on June 15, 2013, December 15, 2013, June 15, 2014, and December 15, 2014, respectively. The settlement monies shall be deposited in the Violation Remediation Account of the California Coastal Conservancy Fund (See Public Resources Code Section 30823), or into such other public account as authorized by applicable California law at the time of the payment, and as designated by the Executive Director. The settlement payments shall be submitted to the Commission's San Francisco Office, at the address provided in Section 5.10, to the attention of Margaret Weber of the Commission, payable to the account designated under the Coastal Act, and include a reference to the numbers of these Consent Orders.

- 14.2 Strict compliance with these Consent Orders by all parties subject thereto is required. Failure to comply with any term or condition of these Consent Orders, including any deadline contained in these Consent Orders, unless the Executive Director grants an extension under Section 15.0, will constitute a violation of these Consent Orders and shall result in Respondents being liable for stipulated penalties in the amount of \$1,000 per day per violation. Respondents shall pay stipulated penalties regardless of whether Respondents have subsequently complied. If Respondents violate these Consent Orders, nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of the Commission to seek any other remedies available, including imposition of civil penalties and other remedies pursuant to Public Resources Code Sections 30820, 30821.6, and 30822 as a result of the lack of compliance with the Consent Orders and for the underlying Coastal Act violations described herein.
- 15.0 **Deadlines.** Prior to the expiration of the deadlines established by these Consent Orders, Respondents may request from the Executive Director an extension of the deadlines. Such a request shall be made in writing, 10 days in advance of the deadline, and directed to the Executive Director, care of Margaret Weber, in the San Francisco office of the Commission. Staff will respond to such a request expeditiously. The Executive Director may grant an extension of deadlines upon a showing of good cause, if the Executive Director determines that Respondents have diligently worked to comply with their obligations under these Consent Orders, but cannot meet deadlines due to unforeseen circumstances beyond their control.
- 16.0 **Severability.** Should any provision of these Consent Orders be found invalid, void or unenforceable, such illegality or unenforceability shall not invalidate the whole, but the Consent Orders shall be construed as if the provision(s) containing the illegal or unenforceable part were not a part hereof.
- 17.0 **Site Access.** Respondents shall provide access to the Subject Property at all reasonable times to Commission staff and any other agency having jurisdiction over the work being performed under these Consent Orders. Nothing in these Consent Orders is intended to limit in any way the right of entry or inspection that any agency may otherwise have by

operation of any law. The Commission staff may enter and move freely about the portions of the Subject Property on which the violations are located, and on adjacent areas of the Subject Property for purposes, including, but not limited to: viewing the areas where development is being performed pursuant to the requirements of these Consent Orders; inspecting records; and contracts relating to the site; and overseeing, inspecting and reviewing the progress of Respondents' implementation of the Restoration Plan and compliance with these Consent Orders. Inspections shall be undertaken at times agreeable to Respondents and within a minimum of 24 hours notice.

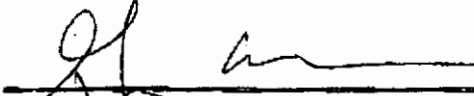
- 18.0 **Government Liabilities.** Neither the State of California, the Commission, nor its employees shall be liable for injuries or damages to persons or property resulting from acts or omissions by Respondents in carrying out activities pursuant to these Consent Orders, nor shall the State of California, the Commission or its employees be held as a party to any contract entered into by Respondents or their agents in carrying out activities pursuant to these Consent Orders.
- 19.0 **Settlement via Consent Orders.** In light of the desire to settle this matter via these Consent Orders and avoid litigation, pursuant to the agreement of the parties as set forth in these Consent Orders, Respondents hereby agree not to seek a stay pursuant to PRC section 30803(b) or to challenge the issuance and enforceability of these Consent Orders or to challenge the Commission's jurisdiction in this matter in a court of law or equity, and waive any pre-existing right to do so.
- 20.0 **Settlement of Claims.** The Commission and Respondents agree that these Consent Orders settle the Commission's monetary claims for relief from Respondents for the violations of the Coastal Act alleged in the Notice of Intent dated May 24, 2012 ("NOI"), occurring prior to the date of these Consent Orders, (specifically including claims for civil penalties, fines, or damages under the Coastal Act, including under Public Resources Code Sections 30805, 30820, and 30822), with the exception that, if Respondents fail to comply with any term or condition of these Consent Orders, the Commission may seek monetary or other claims for both the underlying violations of the Coastal Act and for the violation of these Consent Orders. In addition, these Consent Orders do not limit the Commission from taking enforcement action due to Coastal Act violations on the Subject Property beyond those that are the subject of the NOI.
- 21.0 **Successors and Assigns.** These Consent Orders shall run with the land, binding Respondents, including successors in interest, heirs, assigns, and future owners of the Subject Property. Respondents agree that they shall provide notice to all successors, assigns, and potential purchasers of the Subject Property of any remaining obligations under these Consent Orders. These Consent Orders are a personal legal obligation and Respondents are responsible for the work required by these Consent Orders without regard to the ownership of their property adjacent to the Subject Property.

Moore Consent Cease and Desist and Restoration Orders
CCC-12-CD-07 & CCC-12-RO-07
Page 16 of 16

- 22.0 **Modifications and Amendments.** Except as provided in Section 15.0, and other minor non-substantive modifications, subject to agreement between the Executive Director and Respondents, these Consent Orders may be amended or modified only in accordance with the standards and procedures set forth in Section 13188(b) and Section 13197 of the Commission's administrative regulations.
- 23.0 **Government Jurisdiction.** These Consent Orders shall be interpreted, construed, governed; and enforced under and pursuant to the laws of the State of California.
- 24.0 **Integration.** These Consent Orders constitute the entire agreement between the parties and may not be amended, supplemented, or modified except as provided in these Consent Orders.
- 25.0 **Stipulation.** Respondents and their representatives attest that they have reviewed the terms of these Consent Orders and understand that their consent is final and stipulate to its issuance by the Commission.
- 26.0 **Dismissal of Requests.** Immediately upon issuance of these Consent Orders, Respondents hereby withdraw any outstanding requests that they may have made under the Public Records Act, Cal. Govt. Code sections 6250 *et seq.*, for records from the California Coastal Commission.


IT IS SO STIPULATED AND AGREED:

On behalf of Respondents:



Greg Moore

10-29-12
Date



Sandra Moore

10-24-12
Date

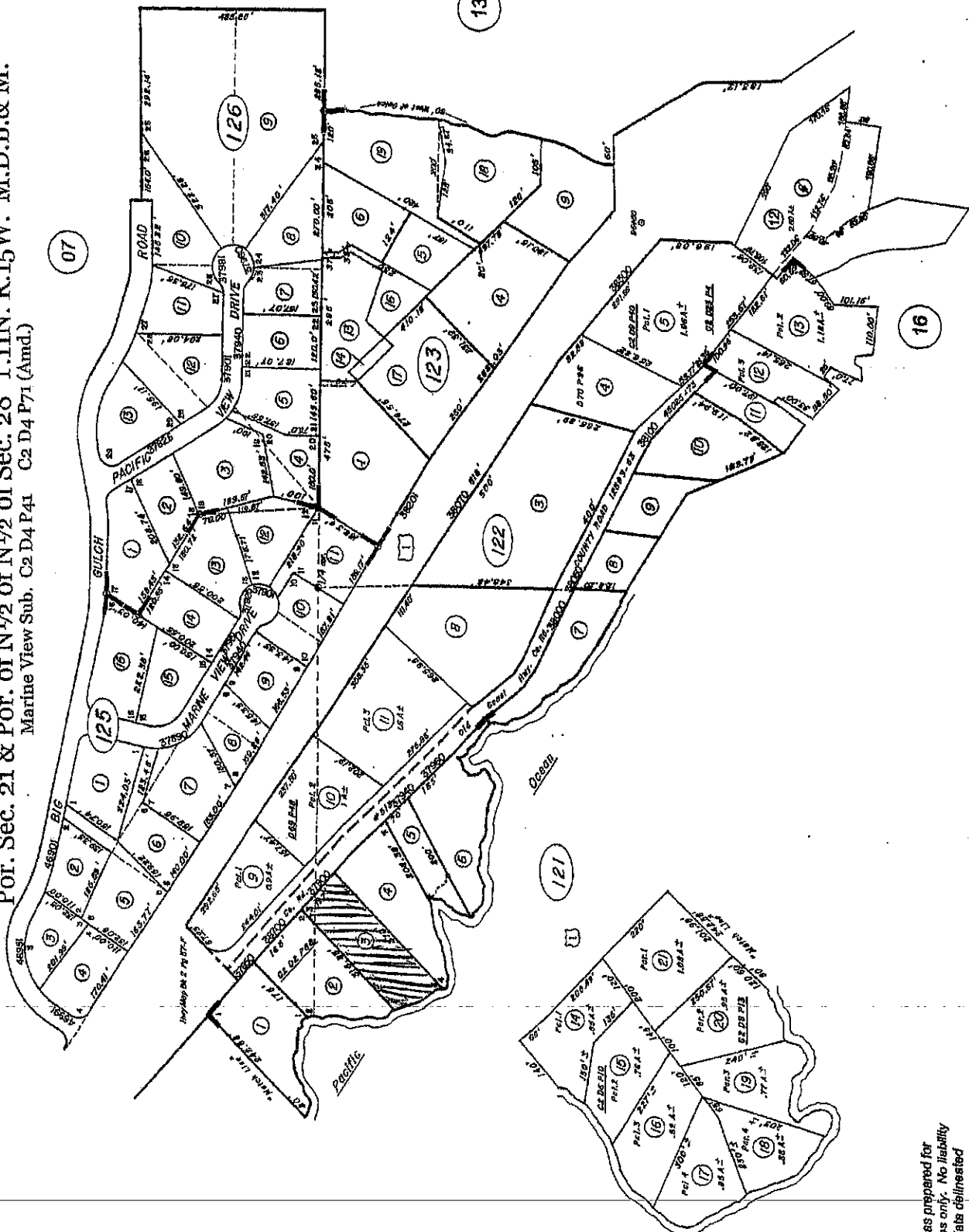
Executed in Santa Monica, California on behalf of the California Coastal Commission:

Charles Lester, Executive Director

Date



Por. Sec. 21 & Por. of N1/2 of Sec. 28 T.11N. R.15W. M.D.B.&M.
Marine View Sub. C2 D4 P41 C2 D4 P71 (Amd.)



Assessor's Map
County of Mendocino, Calif
Updated December 9, 2010

Exhibit 1(a)
CCC-12-CD-07 & CCC-12-RO-07
(Moore)

NOTE: This map was prepared for
assessment purposes only. No liability
is assumed for the data delineated
hereon.

bing Maps

37900 Old Coast Hwy, Gualala, CA 95445

My Notes



On the go? Use m.bing.com to find maps, directions, businesses, and more

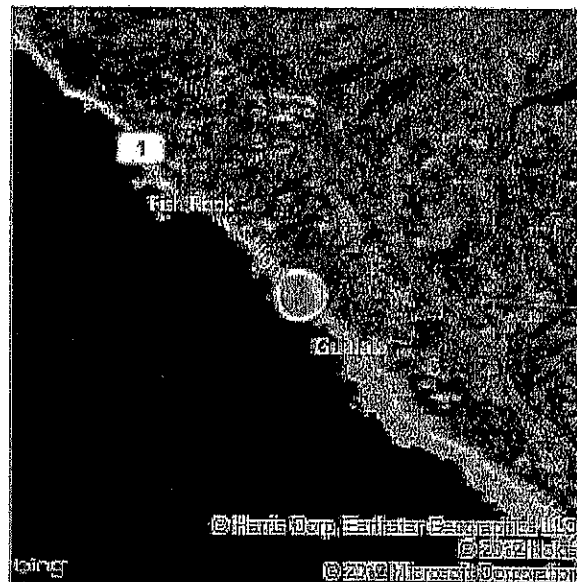




Exhibit 2(a)
CCC-12-CD-07 & CCC-12-RO-07
(Moore)

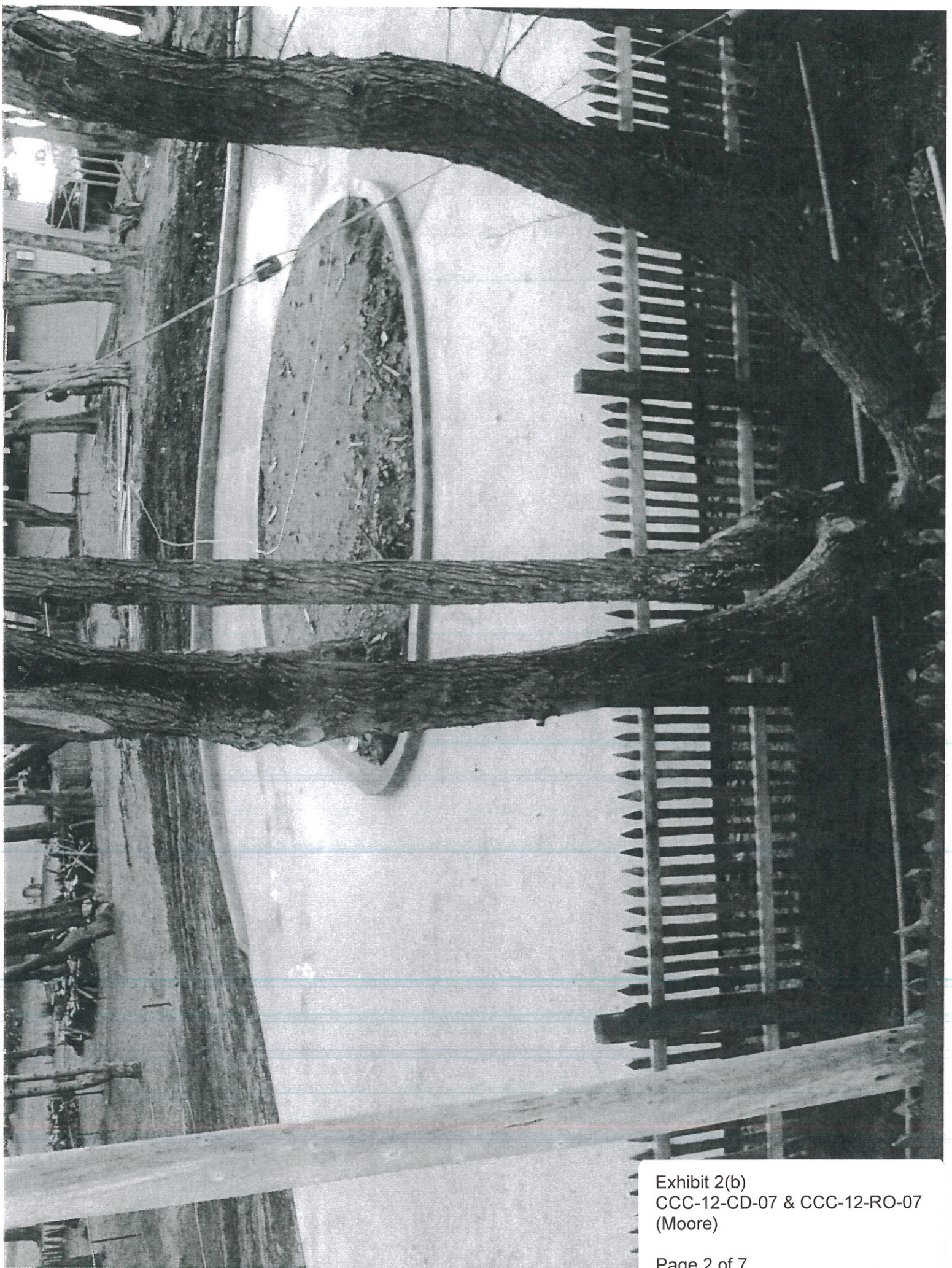


Exhibit 2(b)
CCC-12-CD-07 & CCC-12-RO-07
(Moore)



Exhibit 2(c)
CCC-12-CD-07 & CCC-12-RO-07
(Moore)



Exhibit 2(c)
CCC-12-CD-07 & CCC-12-RO-07
(Moore)



Exhibit 2(d)
CCC-12-CD-07 & CCC-12-RO-07
(Moore)

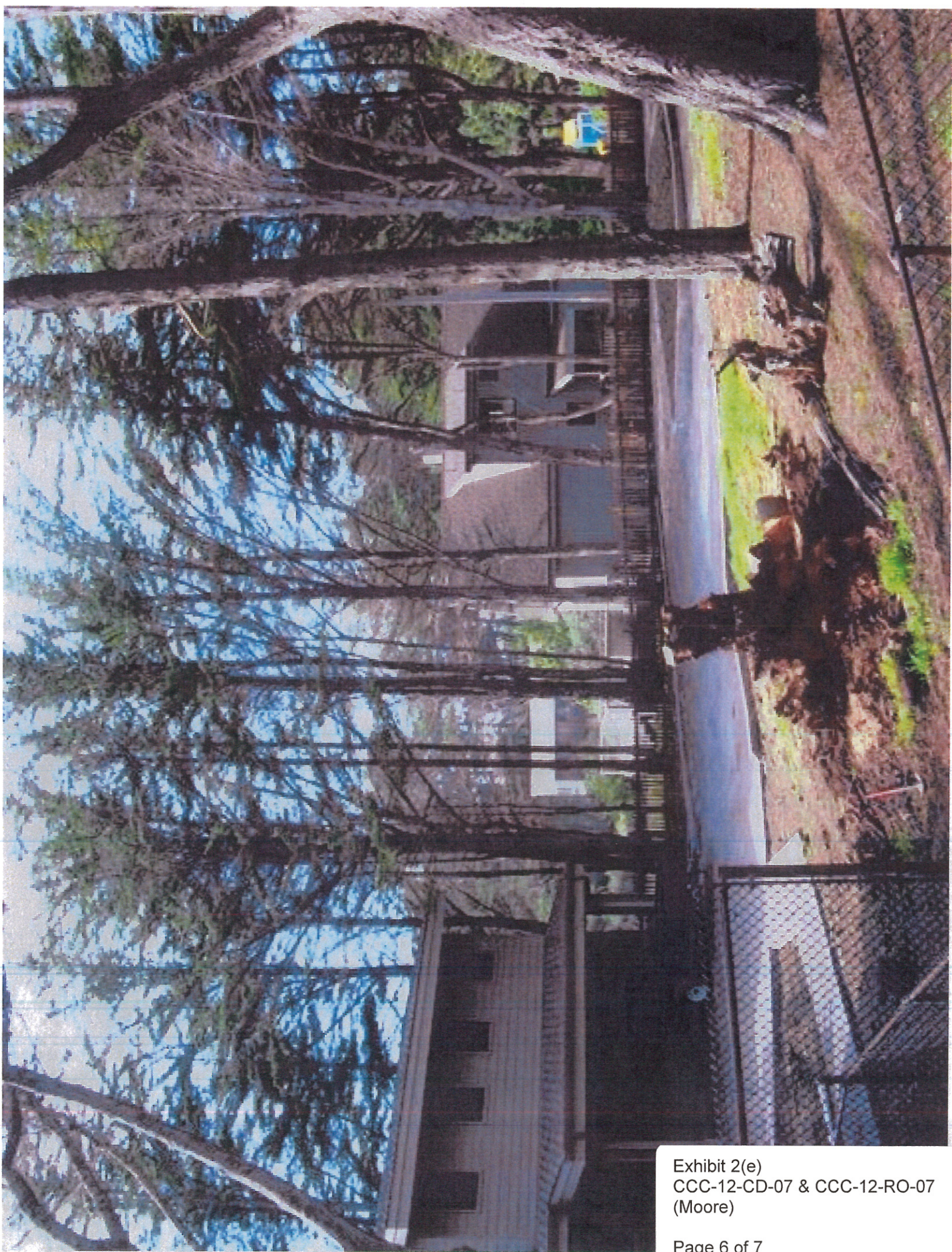


Exhibit 2(e)
CCC-12-CD-07 & CCC-12-RO-07
(Moore)



Exhibit 2(f)
CCC-12-CD-07 & CCC-12-RO-07
(Moore)

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE
710 E STREET, SUITE 200
EUREKA, CA 95501
(707) 445-7833 FAX (707) 445-7877

**RECEIVED**

MAR 10 2009

Page: 1

Date: March 5, 2009

CALIFORNIA
COASTAL COMMISSION

Permit Application No.: A-1-MEN-07-021

COASTAL DEVELOPMENT PERMIT

On May 9, 2008, the California Coastal Commission granted to

Greg & Sandra Moore

this permit subject to the attached Standard and Special conditions, for development consisting of

(1) remodeling the existing duplex structure into a single unit by constructing a 344-square-foot entry-way and laundry room addition and a 70-square-foot hot house addition, remodeling the interior of the structure in a manner that included removing the second kitchen, and installing a 263-square-foot second-floor deck; (2) constructing a 556-square-foot detached second residential unit; (3) installing a total of 818 square feet of additional lower floor decking for both residences; and (4) connecting to utilities

more specifically described in the application filed in the Commission offices.

The development is within the coastal zone at 37900 Old Coast Highway, Gualala (Mendocino County) APN 145-121-03.

Issued on behalf of the California Coastal Commission by

PETER M. DOUGLAS
Executive Director

By: Robert Merrill
District Manager

ACKNOWLEDGMENT:

The undersigned permittee acknowledges receipt of this permit and agrees to abide by all terms and conditions thereof.

The undersigned permittee acknowledges that Government Code Section 818.4 which states in pertinent part that: "A Public entity is not liable for injury caused by the issuance. . . of any permit. . ." applies to the issuance of this permit.

IMPORTANT: THIS PERMIT IS NOT VALID UNLESS AND UNTIL A COPY OF THE PERMIT WITH THE SIGNED ACKNOWLEDGMENT HAS BEEN RETURNED TO THE COMMISSION OFFICE. 14 Cal. Admin. Code Section 13158(a).

3-7-09
Date

Signature of Permittee
Sandra Moore

Exhibit 3
CCC-12-CD-07 & CCC-12-RO-07
(Moore)

Date: March 5, 2009

Permit Application No.: A-1-MEN-07-021

COASTAL DEVELOPMENT PERMIT

STANDARD CONDITIONS:

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

SPECIAL CONDITIONS:

1. **Conformance of the Design and Construction Plans to the Geotechnical Investigation Report**
 - A. All final design and construction plans, including bluff setback, foundations, grading, and drainage plans, shall be consistent with the recommendations contained in the Geotechnical Investigation report dated June 24, 2005 prepared by Bace Geotechnical, except that the detached second unit and associated decks shall be set back 40 feet from the bluff edge and the headscarp of the incipient landslide southeast of the property as identified in the geotechnical report as proposed by the applicant. **PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. A-1-07-021**, the applicant shall submit, for the Executive Director's review and approval, evidence that a licensed professional (Certified Engineering Geologist or Geotechnical Engineer) has reviewed and approved all final design, construction, foundation, grading and drainage plans and has certified that each of those plans is consistent with all of the recommendations specified in the above-referenced geotechnical report approved by the California Coastal Commission for the project site.
 - B. ~~The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission~~

Date: March 5, 2009

Permit Application No.: A-1-MEN-07-021

COASTAL DEVELOPMENT PERMIT

amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

2. Deed Restriction

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

3. Encroachment Permit

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit to the Executive Director a copy of the final, approved Encroachment Permit issued by the Mendocino County Department of Transportation for the installation of any needed driveway improvements onto Old Coast Highway right-of-way, or evidence that no permit is required. The applicant shall inform the Executive Director of any changes to the project required by the Mendocino County Department of Transportation. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

4. Best Management Practices and Construction Responsibilities

The permittee shall comply with the following construction-related requirements:

- A. Prior to the commencement of any other construction activities, the temporary exclusion/construction fencing depicted in the revised site plan dated April 1, 2008 shall be installed to protect coastal bluff morning glory (*Calystegia purpurata* ssp. *Saxicola*) habitat. The temporary/construction fencing shall be maintained in place until the authorized development is completed. No construction related activities shall be allowed to encroach into the areas protected by the temporary exclusion/construction fencing
- B. Any and all excess excavated material resulting from construction activities shall be removed and disposed of at a disposal site outside the coastal zone or placed within the coastal zone pursuant to a valid coastal development permit;
- C. Straw bales, coir rolls, or silt fencing structures shall be installed prior to and maintained throughout the construction period to contain runoff from construction areas, trap entrained

Exhibit 3
CCC-12-CD-07 & CCC-12-RO-07
(Moore)

COASTAL DEVELOPMENT PERMIT

sediment and other pollutants, and prevent discharge of sediment and pollutants downslope toward the ocean;

- D. On-site vegetation shall be maintained to the maximum extent possible during construction activities;
- E. Any disturbed areas shall be replanted or seeded as soon as feasible following completion of construction of the addition to the existing residential structure, installation of the deck additions, construction of the detached second residential unit, and connection to utilities, but in any event no later than May 1st of the next spring season consistent with the planting limitations required by Special Condition No. 6(D);
- F. All on-site stockpiles of construction debris shall be covered and contained at all times to prevent polluted water runoff; and
- G. The canopy and root zones of existing living trees on site shall be protected through temporary fencing or screening during construction.

5. Design Restrictions

- A. The colors of all exterior siding, trim, roofing, and door of the approved addition to the existing residential structure and the approved detached second unit shall be maintained to match or blend with the colors of the residence. In addition, all exterior materials, including roof, windows, and doors, shall not be reflective to minimize glare;
- B. All exterior lights, including any lights attached to the outside of the buildings, shall be the minimum necessary for the safe ingress, egress, and use of the structures, and shall be low-wattage, non-reflective, shielded, and have a directional cast downward such that no light will be directed to shine beyond the boundaries of the subject parcel.

6. Protection of Sensitive Plant Habitat

The permittee shall comply with the following requirements to protect sensitive plant habitat:

- A. Comply with the temporary exclusion/construction fencing requirements of Special Condition No. 4(A).
- B. Invasive plants, including Iceplant (*Carpobrotus* spp.), English ivy (*Hedera helix*), and periwinkle (*Vinca major*) shall be removed from all areas of the parcel in a manner consistent with Mitigation Measure 1(c) of the Biotic Assessment & Rare Plant Survey dated Sept., 2006 and prepared by BioConsultant LLC included as Exhibit 10 of the Commission Staff De Novo Recommendation.
- C. Conduct seasonal high-weed mowing in the area between the existing and authorized residential development and Old Coast Highway to keep weeds and brush from invading the coastal bluff morning glory (*Calystegia purpurata* ssp. *Saxicola*) habitat located in that area.

Exhibit 3
CCC-12-CD-07 & CCC-12-RO-07
(Moore)

Date: March 5, 2009

Permit Application No.: A-1-MEN-07-021

COASTAL DEVELOPMENT PERMIT

- D. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or by the State of California shall be employed or allowed to naturalize or persist at the site of the proposed development. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized within the property.
- E. Rodenticides containing any anticoagulant compounds, including but not limited to, Bromadiolone, Brodifacoum, or Diphacinone, shall not be used.

7. Future Development Restrictions

This permit is only for the development described in Coastal Development Permit No. A-1-MEN-07-021. Any future improvements to the single-family residence or other approved structures will require a permit amendment or a new coastal development permit.

8. No Future Bluff or Shoreline Protective Device

- A. By acceptance of this permit, the applicant agrees, on behalf of himself and all successors and assigns, that no bluff or shoreline protective device(s) shall ever be constructed to protect the detached second residential unit and the new decking in the vicinity of the second unit authorized pursuant to Coastal Development Permit No. A-1-MEN-07-021, in the event that the second residential unit and the new decking are threatened with damage or destruction from waves, erosion, storm conditions, bluff retreat, landslides, ground subsidence, or other natural hazards in the future. By acceptance of this permit, the applicant hereby waives, on behalf of himself and all successors and assigns, any rights to construct such devices to protect the second residential unit and the new decking that may exist under Public Resources Code Section 30235 or under Mendocino County Land Use Plan Policy No. 3.4-12, and Mendocino County Coastal Zoning Code Section 20.500.020(E)(1).
- B. By acceptance of this Permit, the applicant further agrees, on behalf of himself and all successors and assigns, that the landowner shall remove the detached second residential unit and the new decking in the vicinity of the second unit authorized by this permit if any government agency has ordered that the carport is not to be occupied due to any of the hazards identified above. In the event that portions of the carport fall to the beach before they are removed, the landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.
- C. In the event the edge of the bluff recedes to within 10 feet of the detached second residential unit and the new decking in the vicinity of the second unit but no government agency has ordered that the second residential unit and the new decking not be occupied, a geotechnical investigation shall be prepared by a licensed geologist or civil engineer with coastal experience retained by the applicant, that addresses whether any portions of the structure are threatened by waves, erosion, storm conditions, or other natural hazards. The report shall identify all those immediate or potential future measures that could

Exhibit 3
CCC-12-CD-07 & CCC-12-RO-07
(Moore)

Page 5 of 6

Date: March 5, 2009

Permit Application No.: A-1-MEN-07-021

COASTAL DEVELOPMENT PERMIT

stabilize the carport without shore or bluff protection, including but not limited to, removal or relocation of portions of the second residential unit and the new decking. The report shall be submitted to the Executive Director and the appropriate local government official. If the geotechnical report concludes that the second residential unit and the new decking is unsafe for use, the permittee shall, within 90 days of submitting the report, apply for a coastal development permit amendment to remedy the hazard which shall include removal of the threatened portion of the second residential unit and the new decking.

9. Assumption of Risk, Waiver of Liability and Indemnity

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

10. Conditions Imposed By Local Government

This action has no effect on conditions imposed by a local government pursuant to an authority other than the Coastal Act.

BIOTIC ASSESSMENT & RARE PLANT SURVEY

Moore Project
(APN 145-121-003)

Sept., 2006

Prepared for:
Greg & Sandra Moore

Prepared by:
BioConsultant LLC
122 Calistoga Rd. #360
Santa Rosa, CA 95409
Ph/Fx: 539-4488
dmarshall@bioconsultant.net
www.bioconsultant.net



| |
|------------------------------------|
| EXHIBIT NO. 10 |
| APPLICATION NO. |
| A-1-MEN-07-021 |
| MOORE |
| BIOLOGICAL ASSESSMENT (1 of 33) |

TABLE OF CONTENTS

| | |
|--|----|
| SUMMARY | 1 |
| INTRODUCTION | 1 |
| Project Site Location | 2 |
| Proposed Development | 2 |
| Project Site Description | 2 |
| Literature Review | 3 |
| SITE ASSESSMENT AND SURVEY RESULTS | 3 |
| Special-status Plant Assessment | 3 |
| Vegetation Communities | 4 |
| <i>Northern bishop pine forest</i> | 4 |
| <i>Northern coastal scrub</i> | 5 |
| <i>Non-native invasive species</i> | 5 |
| Rare, Threatened and Endangered Plants | 6 |
| Plant Survey Results | 8 |
| <i>Coastal bluff morning-glory</i> | 8 |
| <i>Early blue violet</i> | 10 |
| Wildlife Habitat Assessment and Survey Methodology | 10 |
| Wildlife Survey Results | 11 |
| <i>Behren's silverspot butterfly</i> | 11 |
| BUFFER ZONE ANALYSIS | 12 |
| IMPACT ANALYSIS AND MITIGATION MEASURES | 17 |

Exhibit 4
CCC-12-CD-07 & CCC-12-RO-07
(Moore)

Page 2 of 33

BIOTIC ASSESSMENT AND RARE PLANT SURVEY

Greg and Sandra Moore (APN 145-121-03)

SUMMARY

A biotic assessment and rare plant survey conducted at parcel APN 145-121-03 on May 26, August 7, and September 1, 2006 resulted in the discovery of coastal bluff morning-glory (Calystegia purpurata ssp. saxicola), a CNPS List 1B taxon. Approximately 213 morning-glory plants were observed in an open stand of bishop pine and Monterey cypress located between Old Coast Highway and an existing duplex. An estimated 45 individuals were observed within and alongside northern coastal scrub habitat on the coastal bluff.

The survey also detected a limited population of early blue violet (Viola adunca), the primary larval host plant for the federally endangered Behren's silverspot butterfly (Speyeria zerene behrensis). Due to the presence of the on-site host plant and other potential habitat features, an additional site assessment and survey for the silverspot butterfly was conducted by Richard Arnold, Ph.D., with negative results. The Project Site was assessed as containing only limited resources for special-status wildlife and none were observed during the three-day site visits.

The rare morning-glory plants and their habitat meet the definition within the County of Mendocino's Local Coastal Program (LCP) as an "environmentally sensitive habitat area" (ESHA). The project proposes a reduced buffer width for the rare plant ESHA. This report presents a buffer zone analysis addressing the reduced buffer to the rare plant occurrences, and it offers mitigation measures to avoid, reduce, and mitigate potential negative impacts of the proposed development.

INTRODUCTION

Howard E. Curtis, AIA has applied for Coastal Development Permit (CDP) # 18-2006 on behalf of property owners Greg and Sandra Moore. The CDP application is a remodel and improvement project on a single parcel (APN 145-121-03) in Gualala, California.

The Mendocino County Department of Planning and Building Services is responsible for protecting biotic resources during planned developments in the Coastal Zone, and consequently requires biological studies be submitted with development applications when environmentally sensitive habitat areas (ESHAs) are thought to be nearby. To comply with county regulations to protect rare species and environmentally sensitive habitats, Mr. and Mrs. Moore contracted BioConsultant LLC to perform a site assessment and survey for the presence of potentially occurring special-status plant species and /or sensitive habitat areas on the Project Site. The results of these surveys are presented in this report and will be submitted to the Mendocino County Planning Department representative and to the landowners.

Project Site Location

The Project Site is located one mile north of Gualala and west of State Highway 1. The physical address is 37900 Old Coast Highway, Gualala, CA (APN 145-121-03) (Figure 1). Situated on a coastal bluff in a low-density residential neighborhood, the Project Site lies between Old Coast Highway and the Pacific Ocean and is oriented to the southwest. It is bounded by developed parcels to the north and south.

Proposed Development

The project proposes to convert an existing duplex to a single-family residence with the addition of 450 sq. ft. of living space, 280 sq. ft. of upper deck, and 1315 sq. ft. of lower decking. Part of the addition includes a room extension that will lengthen a portion of the west wall out 4 ft. and extend it 22 ft. to an existing deck. A 510 sq. ft. barn/utility shed and a 640 sq. ft. "granny unit" will be also constructed.

The residence will be serviced by existing utilities and an on-site well and septic system. An existing gravel driveway provides access. Minimal cypress tree (1-2) removal may be necessary for the placement of the granny unit. The development site plan and rare and sensitive plant locations are shown in Figure 2.

Project Site Description

The Project Site's configuration, boundaries, existing and proposed structures, and rare and sensitive plant locations are mapped on Figure 2. A color aerial photo shows the Project Site and the surrounding environmental setting (Figure 3). Used together, Figures 2 and 3 provide a complete representation of the site and its environs.

The rectangular-shaped, 0.95 acre parcel is situated on a level marine terrace, extending from Old Coast Highway to the outer edge of the coastal bluff (see Figure 3). An open forest consisting mostly of native bishop pine and non-native Monterey cypress covers about two thirds of the parcel, from the roadway to the existing duplex. South and west of the duplex, the windswept outer bluff area is primarily composed of dense northern coastal scrub, which spills over the lip of the bluff onto near-vertical sea cliffs.

A gravel driveway runs along the northwest boundary leading to the duplex, and it is flanked by a row of cypresses on the neighboring parcel to the north. A wide mowed path and a row of Monterey pines on the neighboring parcel to the south define the southeast boundary.

According to the Soil Survey of Mendocino County, California, Western Part (2001), the Project Site is underlain by soil mapping unit 225: *Windyhollow loam, 0 to 5 percent slopes*. This very deep, somewhat poorly drained loam is on marine terraces, where it formed in alluvium derived from mixed rock sources. The vegetation is mainly perennial grasses and forbs. Permeability is moderately slow and available water capacity is high. The soil is saturated with water for brief or long periods following episodes of heavy rain from December through April. Surface runoff is very slow or slow, and the hazard of water erosion is slight if the surface is left bare. The main limitations affecting homesite development on the Windyhollow soil are the seasonally saturated soil conditions and the moderately slow permeability in the subsoil. Surface drainage is needed for roads and buildings.

Literature Review

Prior to conducting the field surveys, the California Department of Fish and Game Natural Diversity Database (CNDDB) [2006] was queried for special-status species and natural communities reported from the Gualala, Point Arena, Saunders Reef, and Stewart's Point USGS 7.5 minute quadrangles. The resulting CNDDB list, which includes 12 animal species and 27 plant species categorized as endangered, threatened, rare, sensitive, and/or species of special concern as well as 5 rare natural communities, is attached as Appendix A.

A review of the California Native Plant Society's *Electronic Inventory of Rare and Endangered Plants of California* (CNPS 2006) for the 4-quadrangle area resulted in 14 additional plant species. Appendix B combines the results of the CNDDB and CNPS queries and is a comprehensive list of all 41 special-status plants with potential to occur in the Project Site vicinity.

The following six plant species have cited CNDDB occurrences within one mile of the Project Site: coastal bluff morning-glory, swamp harebell, supple daisy, thin-lobed horkelia, coast lily, and purple-stemmed checkerbloom. An overlapping polygon of the Townsend's big-eared bat and Behren's silverspot butterfly (occurrence #3) located 1.16 miles to the north are the only nearby wildlife records.

SITE ASSESSMENT AND SURVEY RESULTS

BioConsultant LLC staff, Derek Marshall and Linda Esposito, conducted a habitat-based assessment and survey for rare and endangered species on May 26, 2006. The two-person survey effort duration totaled 4.25 hours. The investigators walked the entire site, making a careful search for potentially occurring special-status species. They noted and recorded details of terrain, hydrology, plant communities, and the presence of individual plant and animal species. Plant samples were obtained for diagnostic review in the laboratory.

Having determined the identity of specimens collected May 26 as the special-status coastal bluff morning-glory, they returned to the site on August 7 with BioConsultant LLC staff Kim Fitts to document the size and extent of the population and its proximity to the proposed structures and also to survey for late-flowering special-status plants. Rare plant habitat and other sensitive resources were mapped with GPS. The three-person follow-up survey effort duration totaled 3.5 hours. Kim Fitts and Derek Marshall made a final brief visit on September 1, to count rare plants in the area of impact following the redesign of the project.

Special-status Plant Assessment

The entire parcel was surveyed on foot to the bluff edge. As shown in Figure 3, the sea cliffs at the southwest boundary are mostly sheer rock, with vegetation limited to the upper cliff faces. This vegetation was visually inspected from vantage points on the bluff.

Vegetation Communities

The outer bluff is open except for a half dozen non-native Monterey cypresses (*Cupressus macrocarpa*) located south of the existing duplex. Most of the outer bluff west of the duplex is covered with northern coastal scrub. From the cypress trees to the south edge of the duplex, the ground is variously duff covered, bare, or sparsely vegetated with non-native weeds such as rattlesnake grass (*Briza maxima*) and rough cat's-car (*Hypochaeris radicata*) and native plants including many-colored lupine (*Lupinus variicolor*), pussy ears (*Calochortus tolmiei*), and tufted hairgrass (*Deschampsia cespitosa*). This bearish, duff covered area gives way to a very small remnant of coastal terrace prairie, which grades into the scrub. A single large, sprawling, wind-pruned native grand fir (*Abies grandis*) is centered at the bluff edge. As previously described, an open stand of pine and cypress covers the inner two thirds of the parcel, from the duplex to the roadway, and the boundaries with neighboring parcels are marked by a cypress and a Monterey pine row. There is a cypress-dominated area just east of the duplex.

The pattern of native vegetation suggests that the historical natural communities of the site included coastal terrace prairie as well as northern bishop pine forest and northern coastal scrub. It is likely that coastal terrace prairie was once more extensive, covering the present site of the duplex and some or all of the cypress-dominated area east of the duplex. Bishop pine may be naturally occurring, but it is conceivable that some or all of the trees were planted. Although bishop pine is a native tree and northern bishop pine forest is a component of the local plant community mosaic, the Windyhollow soils of the site typically support perennial grasses and forbs. Bishop pine, which is tolerant of saturated soil conditions, is a suitable tree species to plant as a windbreak on this soil unit, according to the Mendocino County Soil Survey.

Northern bishop pine forest

According to Holland (1986), this community often occurs on sterile, rocky soil and is typically dominated by pure stands of bishop pine (*Pinus muricata*). An understory of shrubs and perennial herbs is nearly continuous in open stands on moist sites and nearly absent from dense stands or dry, rocky sites. Characteristic understory species are bracken (*Pteridium aquilinum* var. *pubescens*), sword fern (*Polystichum munitum*), coffeeberry (*Rhamnus californica*), poison oak (*Toxicodendron diversilobum*), black huckleberry (*Vaccinium ovatum*), and *Rubus* species.

At the Project Site, widely spaced bishop pine and Monterey cypress form the overstory of the forested area along with two small diameter Douglas-firs. A shrub layer is lacking except for a single coffeeberry about 15 ft. tall. Cypress is the sole tree species in the area immediately east of the duplex; here the ground is covered with cypress needles and is devoid of understory vegetation. The remaining forest floor is covered with a thick layer of duff and is relatively sparsely vegetated with ferns, vines, and annual and perennial grasses and forbs. Typical forest natives such as bracken, sword fern, bedstraw (*Galium triflorum*, *G. aparine*), milkwort (*Polygala californica*), yerba buena (*Satureja douglasii*), and trailing California blackberry (*Rubus ursinus*) co-occur with non-native forbs and grasses such as velvet grass (*Holcus lanatus*), bull thistle (*Cirsium vulgare*), and fireweed (*Erechtites glomerata*). There is also a scattering of native plants more

typical of coastal scrub and open grassland, including coast paintbrush (*Castilleja wightii*), coastal bluff morning-glory, and beach strawberry (*Fragaria chiloensis*).

This community is similar to northern bishop pine forest, but in contrast to the native community, there are many planted and/or naturalized cypress trees and a highly modified understory. According to the Holland description, an open bishop pine stand on a moist site such as the subject parcel would typically have a continuous understory with numerous shrubs.

Northern coastal scrub

Holland (1986) describes northern coastal scrub as a community of usually dense shrubs from 0.5 to 2 m. in height with scattered grassy openings, typically occurring on windy, exposed sites with shallow, rocky soils. This community has a patchy distribution along the coast where it is often interspersed with coastal terrace prairie.

At the Project Site, the scrub community is strongly dominated by densely mounded native bearberry (*Arctostaphylos uva-ursi*). It is entirely native in composition, with characteristic species including Henderson's angelica (*Angelica hendersonii*), California blackberry, Carmel ceanothus (*Ceanothus griseus*), coffeeberry, California-aster (*Lessingia filaginifolia* var. *californica*), coast goldenrod (*Solidago spathulata* ssp. *spathulata*), yarrow (*Achillea millefolium*), cows clover (*Trifolium wormskoldii*), California brome (*Bromus carinatus*), and Douglas's iris (*Iris douglasiana*). As seen from the bluff edge, the coastal scrub vegetation on the upper cliff face is similar in composition but also includes liveforever (*Dudleya* sp.), a native succulent.

As stated, a small remnant patch of coastal terrace prairie grades into the scrub habitat. The most important species is tufted hairgrass, a perennial native bunchgrass. Coastal terrace prairie is considered a rare natural community, according to the CNDDB.

Non-native invasive species

A portion of the outer bluff edge (between the wind-pruned grand fir and the cypresses) is covered by common hottentot fig, also known as highway ice plant (*Carpobrotus edulis*). Highway ice plant is a rapidly growing, succulent perennial that has been widely planted for soil stabilization and landscaping. It forms deep, impenetrable mats that spread easily beyond landscape plantings to invade native plant communities. A portion of the ice plant occurrence has apparently been treated with herbicide as evidenced by a grey, tangled mass of dead stems; however, vigorous regrowth is present throughout the treated area. The mat spills over the lip of the bluff onto the upper cliff.

English ivy (*Hedera helix*) is present within the forested area, where it covers the lower trunks of some bishop pines and also occurs as scattered small plants in the understory. Just beyond the east corner of the Project Site, a source plant covers some wooden fencing along the roadway. English ivy also grows against the existing duplex on the east side. This perennial non-native can damage fences, smother forest trees, and destroy understory vegetation.

Greater periwinkle (*Vinca major*) occurs in a single location on the east side of the duplex, in the opening between the existing residences. It is adjacent to the English ivy

occurrence described above. Greater periwinkle forms dense carpets and competes with native species.

Rare, Threatened and Endangered Plants

Of the 41 special-status plant species with potential to occur in the Project Site vicinity (see Appendix B), 24 have potential to occur in habitats present at the Project Site, based upon the May 26, 2006 site assessment. Table 1 lists these species with their common names, blooming times, status, and the plant communities in which they occur.

Table 1. Rare, threatened and endangered plants with potential to occur in habitats present at the Project Site.

| Scientific Name | Common Name | Plant Communities | Bloom Time | Status |
|--|-----------------------------------|--|------------|-------------------------------|
| <i>Agrostis blasdalei</i> | Blasdale's bent grass | Coastal bluff scrub, coastal dunes, coastal prairie | May-Jul | CNPS List 1B.2 |
| <i>Angelica lucida</i> | sea-watch | Coastal bluff scrub, coastal dunes, coastal scrub, marshes & swamps (coastal salt) | May-Sep | CNPS List 4.2 |
| <i>Calamagrostis bolanderi</i> | Bolander's reed grass | Bogs and fens, broadleafed upland forest, closed-cone coniferous forest, coastal scrub, meadows & seeps, marshes & swamps, north coast coniferous forest/mesic | May-Aug | CNPS List 4.2 |
| <i>Calamagrostis foliosa</i> | leafy reed grass | Coastal bluff scrub, north coast coniferous forest/rocky | May-Sep | CNPS List 4.2; CA Rare |
| <i>Calandrinia breweri</i> | Brewer's calandrinia | Chaparral, coastal scrub/sandy or loamy, disturbed sites and burns | Mar-Jun | CNPS List 4.2 |
| <i>Calystegia purpurata</i> ssp. <i>saxicola</i> | coastal bluff morning-glory | Coastal dunes, coastal scrub | May-Sep | CNPS List 1B.2 |
| <i>Campanula californica</i> | swamp harebell | Bogs & fens, closed-cone coniferous forest, coastal prairie, meadows & seeps, marshes & swamps (freshwater), north coast coniferous forest/mesic | Jun-Oct | CNPS List 1B.2 |
| <i>Carex californica</i> | California sedge | Bogs & fens, closed-cone coniferous forest, coastal prairie, meadows & seeps, marshes and swamps (margins) | May-Aug | CNPS List 2.3 |
| <i>Carex saliniformis</i> | deceiving sedge | Coastal prairie, coastal scrub, meadows & seeps, marshes & swamps (coastal salt)/mesic | Jun | CNPS List 1B.2 |
| <i>Castilleja mendocinensis</i> | Mendocino coast Indian paintbrush | Coastal bluff scrub, closed-cone coniferous forest, coastal dunes, coastal prairie, coastal scrub | Apr-Aug | CNPS List 1B.2 |
| <i>Erigeron supplex</i> | supple daisy | Coastal bluff scrub, coastal prairie | May-Jul | CNPS List 1B.2 |
| <i>Fritillaria roderickii</i> | Roderick's fritillary | Coastal bluff scrub, coastal prairie, valley & foothill grassland | Mar-May | CNPS List 1B.1; CA Endangered |
| <i>Gilia capitata</i> ssp. <i>pacifica</i> | Pacific gilia | Coastal bluff scrub, chaparral, coastal prairie, valley & foothill grassland | Apr-Aug | CNPS List 1B.2 |
| <i>Gilia capitata</i> ssp. <i>tomantosa</i> | woolly-headed gilia | Coastal bluff scrub (rocky, outcrops) | May-Jul | CNPS List 1B.1 |
| <i>Lasthenia macrantha</i> ssp. <i>bakeri</i> | Baker's goldfields | Closed-cone coniferous forest, coastal scrub, meadows & seeps, marshes & swamps | Apr-Oct | CNPS List 1B.2 |

| | | | | |
|--|-----------------------------|---|---------|----------------|
| <i>Lasthenia macrantha</i> ssp. <i>macrantha</i> | perennial goldfields | Coastal bluff scrub, coastal dunes, coastal scrub | Jan-Nov | CNPS List 1B.2 |
| <i>Leptosiphon acicularis</i> | bristly leptosiphon | Chaparral, cismontane woodland, coastal prairie, valley & foothill grassland | Apr-Jul | CNPS List 4.2 |
| <i>Lilium maritimum</i> | coast lily | Broadleafed upland forest, closed-cone coniferous forest, coastal prairie, coastal scrub, marshes & swamps (freshwater), north coast coniferous forest | May-Aug | CNPS List 1B.1 |
| <i>Lotus formosissimus</i> | harlequin lotus | Broadleafed upland forest, coastal bluff scrub, closed-cone coniferous forest, cismontane woodland, coastal prairie, coastal scrub, meadows & seeps, marshes & swamps, north coast coniferous forest, valley & foothill grassland/wetlands, roadsides | Mar-Jul | CNPS List 4.2 |
| <i>Perideridia gairdneri</i> ssp. <i>gairdneri</i> | Gairdner's yampah | Broadleafed upland forest, chaparral, coastal prairie, valley & foothill grassland, vernal pools/mesic | Jun-Oct | CNPS List 4.2 |
| <i>Sidalcea malachroides</i> | maple-leaved checkerbloom | Broadleafed upland forest, coastal prairie, coastal scrub, north coast coniferous forest, riparian woodland/often in disturbed areas | Apr-Jul | CNPS List 1B.2 |
| <i>Sidalcea malviflora</i> ssp. <i>purpurea</i> | purple-stemmed checkerbloom | Broadleafed upland forest, coastal prairie | May | CNPS List 1B.2 |
| <i>Stellaria littoralis</i> | beach starwort | Bogs & fens, coastal bluff scrub, coastal dunes, coastal scrub, marshes & swamps | Mar-Jul | CNPS List 4.2 |
| <i>Veratrum fimbriatum</i> | fringed false-hellbore | Bogs & fens, coastal scrub, meadows & seeps, north coast coniferous forest/mesic | Jul-Sep | CNPS List 4.3 |

CNPS List:

- 1B – Rare or Endangered in California and elsewhere
- 2 – Rare or Endangered in California, more common elsewhere
- 3 – Plants for which we need more information – Review list
- 4 – Plants of limited distribution – Watch list

CNPS Threat Code extension:

- 1 – Seriously endangered in California (over 80% of occurrences threatened / high degree and immediacy of threat)
- 2 – Fairly endangered in California (20-80% occurrences threatened)
- 3 – Not very endangered in California (<20% of occurrences threatened or no current threats known)

Early blue violet (*Viola adunca*) is also found in habitats present at the site; this species flowers from April to June.

The ideal time to survey for special-status plants is during the season of active growth and at the blooming time of the target species, and two or more surveys are sometimes required to detect early and late flowering plants. The May 26 and August 7, 2006 rare plant surveys coincided with the blooming period of early blue violet and all but one of the above-listed 24 special-status plants, deceiving sedge, which blooms in June.

Plant Survey Results

Coastal bluff morning-glory, a special-status plant, was discovered at the Project Site. The Behren's silverspot butterfly larval host plant, early blue violet, was also found (see below). No other special-status plants were observed during the surveys.

A careful search revealed only one plant belonging to the sedge (*Carex*) genus, foothill sedge (*Carex tumulicola*), which occurs in the forested area. We can therefore reasonably conclude that deceiving sedge is not present at the Project Site.

Coastal bluff morning-glory

The May 26 survey identified coastal bluff morning-glory (*Calystegia purpurata* ssp. *saxicola*) in the forest and coastal scrub habitats. Noting morphological variation within the population, the investigators collected a sample of plants to analyze in the laboratory and to press as vouchers. On August 7, they mapped the rare plant population extent and counted individuals in each of 5 discrete polygons (Figure 2) by first outlining polygon boundaries with flagging and then walking parallel transects 2 ft. apart. In order to determine the taxonomic affinity of the population to the rare subspecies, they collected additional voucher specimens representing the complete range of morphological variation present at the site.

The population was estimated to number between 258 and 300 individuals. Within four polygons, 213 morning-glory plants were counted in the bishop pine forest (Figure 4), and approximately 45 occur in Polygon 5 in coastal scrub on the outer bluff (Figure 5). Plants ranged from sprawling vines on the forest floor, to clambering vines in coastal scrub and growing up through grand fir on the bluff, to tiny vines in bare soil alongside the existing duplex. The rare morning-glory habitat extent totals 4,365 sq. ft. or 0.1 acre.

Table 2 provides the numbers of individual plants at each location, polygon areas, distances from project-related impacts, and proximity to proposed structures or proposed buffer zones.

Table 2. Species found on Project Site, *Calystegia purpurata* ssp. *saxicola*; August, 2006

| Species ID | # of Plants | Distance From Impact (ft) | Area (Sq ft) | Description |
|---|-------------|------------------------------|---------------|--|
| East of existing duplex- distances measure on-site | | | | |
| Poly 1 | 127 | 25ft.(granny) 30ft.(barn) | 2500 | Located between granny unit and barn |
| Poly 2 | 9 | 80ft.(granny) 40ft.(barn) | 30 | Located between granny unit and barn |
| Poly 3 | 46 | 45ft.(barn) | 145 | Protected with permanent fencing |
| Poly 4 | 31 | 50ft.(barn) | 90 | Protected with permanent fencing |
| West of existing duplex- distances measured on-site | | | | |
| Poly 5 | 45 | 0-60(duplex) | 1600 | >5 plants impacted -- construction fencing |
| TOTAL | 258 | | 4,361 (0.1ac) | |

Coastal bluff morning-glory is a perennial herb belonging to the family Convolvulaceae. According to the CNPS *Electronic Inventory* (2006), it occurs between 10 and 105 meters elevation in Contra Costa, Lake, Mendocino, Marin, and Sonoma counties in coastal dune and coastal scrub habitats and is endemic to California. Coastal bluff morning-glory has no state or federal threatened or endangered status. However, it is a CNPS List 1B.2 taxon. The code "2" in the listing indicates that this taxon is fairly endangered in California, with 20-80% of occurrences threatened.

List 1B plants are rare throughout their range. They are judged to be vulnerable under present circumstances or to have a high potential for becoming so because of their limited or vulnerable habitat, their low numbers of individuals per population (even though they may be wide ranging), or their limited numbers of populations. It is mandatory that they be fully considered during preparation of environmental documents relating to CEQA (CNPS, 2006). Coastal bluff morning-glory is eligible for listing under the California Endangered Species Act (CESA), and as such, the plants and their habitat meet the definition within the County of Mendocino's Local Coastal Program (LCP) as an "environmentally sensitive habitat area" (ESHA).

Coastal bluff morning-glory is one of two subspecies of *Calystegia purpurata*. The common subspecies, climbing morning-glory (*C. purpurata* ssp. *purpurata*), overlaps the rare subspecies in range and grows in chaparral as well as coastal scrub habitats. According to *The Jepson Manual* (Hickman, 1993), features that distinguish coastal bluff morning-glory from the common subspecies are a trailing or weakly climbing growth habit; stems <1 meter long; leaves ovate-triangular to kidney-shaped, with sinuses generally more-or-less closed, tips generally rounded to notched, lobes rounded, and margins more-or-less wavy; and flower bractlets often alternate and lobed. Contrasting features in climbing morning-glory are a strongly climbing growth habit; stems >1 meter long; leaves triangular in shape, with sinuses v-shaped, tips narrowly pointed, lobes strongly angled, and margins not wavy; and flower bractlets opposite and unlobed. Intergradation between the subspecies is common.

Specimens from the Project Site were carefully examined and found to possess the trailing to weakly climbing growth habit as well as an overall preponderance of other features that distinguish the rare taxon from the common one. There were no plants perfectly matching the common ssp. *purpurata*, but numerous individuals matched ssp. *saxicola* in all respects. Some plants displayed intermediate characters, and a small number possessed clear ssp. *purpurata* traits such as triangular leaf shape, narrowly pointed tips, and somewhat angled lobes. However, traits of the rare taxon were more prevalent overall. We therefore determined that the Project Site contains an occurrence of coastal bluff morning-glory.

To confirm our findings, we compared specimens from the Project Site to a digital photograph of a herbarium specimen at the California Consortium of Herbaria website (<http://ucjeps.berkeley.edu/consortium>). In addition, during the August 7 survey, we visited a reference population approximately 200 ft. from the Project Site, CNDDDB occurrence #23, and compared the plants to those of the subject parcel. Richard Brummitt, the recognized authority on the genus *Calystegia*, has positively identified

occurrence #23. We noted that two additional CNDDDB occurrences of the rare taxon (#13 and #22) are located within one mile of the Project Site.

It is our opinion that the on-site population shows evidence of intergradation with the common ssp. *purpurata* but has an overall greater affinity to the rare ssp. *saxicola*. In a brief phone consultation, CDFG staff Corrine Grey stated that pursuit of further expert confirmation was unnecessary. We therefore treat the population as coastal bluff morning-glory in this report (Figure 6).

Early blue violet

A small population of early blue violet (*Viola adunca*) was discovered in two areas at the Project Site (see Figure 2). Violet clusters were flagged and individual plants were counted during the May 26 survey, when the violets were in bloom. A total of 26 to 28 individuals were counted: 19 in the understory of the bishop pine forest; 4-5 west of the duplex in northern coastal scrub; and 3-4 just off-site. Table 3 provides the numbers of individual plants at each location, proximity to proposed structures, and protective measures.

Table 3. Species found on Project Site, early blue violet, *viola adunca*; August, 2006.

| Species ID | # of Plant | Description |
|--------------|--------------|--|
| Viola 1 | 1 | Near barn in pasture area |
| Viola 2 | 3 | Near barn in pasture area |
| Viola 3 | 1 | Near barn in pasture area |
| Viola 4 | 1 | Near barn in pasture area |
| Viola 5 | 1 | Protected with permanent fencing |
| Viola 6 | 2 | Protected with permanent fencing |
| Viola 7 | 8 | Protected with permanent fencing |
| Viola 8 | 2 | Protected with permanent fencing |
| Viola 9 | 4-5 | West of existing duplex- construction fencing |
| Viola 10 | 3-4 | Off site- South of existing duplex- construction fencing |
| TOTAL | 26-28 | |

Early blue violet is a perennial herb with stems clustered on thin, much-branched rhizomes. Because this species forms patches of interconnected plants, it is not always possible to make precise counts of numbers of individuals; however, individual plants were more easily counted under the bishop pine forest due to the sparseness of the understory vegetation.

Wildlife Habitat Assessment and Survey Methodology

Based upon the site assessment and the literature review, the Project Site contains limited resources for special-status wildlife. The absence of aquatic environs and Douglas-fir dominated forested habitat within the Project Site eliminates the majority of the species

on the list. The Project Site is outside of the Point Arena mountain beaver distribution range, and the limited on-site suitable habitat removed this species from consideration. Nesting raptors have no resource due to the lack of appropriate sized and shaped trees.

The pine-dominated site supported little potential habitat for the tree vole and was assessed as marginal at best. Only 2 small diameter Douglas-fir trees were present; however, since bishop pines have been recently documented as supporting vole nests, we surveyed the canopies of all trees. A survey protocol for the Sonoma tree vole is being developed; therefore the survey was conducted in adherence to the red tree vole (*Arborimus longicaudus*) protocol guidelines.

The site does not contain "cave analogs" such as abandoned buildings, bridges, or large hollowed trees required by the Townsend's big-eared bat as roosting habitat. The gradual development in the area and day-to-day human use would further limit bat species like the Townsend's bat, which is sensitive to human proximity.

The botanical survey found a population of early blue violet (*Viola adunca*) in two areas (see the Plant Survey Results section for more detail). Early blue violet is the primary larval host plant for the federally endangered Behren's silverspot butterfly (*Speyeria zerene behrensis*). A limited amount and distribution of potential late season nectar sources were also identified in the botanical surveys: in the understory of the pine forest rough cat's-ear, two species of fireweed (*Erechtites minima* and *E. glomerata*), bull thistle, and two species of sow thistle (*Sonchus asper* and *S. oleraceus*) were present; and yarrow, coast goldenrod, California-aster, manycolored lupine, and rough cat's-ear were noted west of the duplex.

Although the historic occurrences of the Behren's silverspot butterfly in the local area are thought to be extinct, and the closest extant population is located 12 miles (occurrence #7) in Point Arena, the on-site resources may represent marginally suitable habitat for the Behren's silverspot butterfly, as well as for the over-wintering monarch butterfly.

Wildlife Survey Results

The survey effort did not identify any special-status species. Sign of tree vole nests was not detected in the canopies or on the ground, and the species is not expected to occur on-site. No butterfly species were observed during the field studies; however, the surveys were conducted early in the flight period of the Behren's silverspot butterfly and prior to the mid-October arrival of over-wintering monarchs to the northern California coast.

Behren's silverspot butterfly

As stated, Behren's silverspot butterflies were not observed during our field studies; the August 7th date overlapped the summer flight period. The flight period of the single-brood butterfly depends upon environmental conditions and ranges from July to August (USFWS, 2003).

Although the site was assessed as only marginally suitable habitat for the Behren's silverspot butterfly, the proposed development plans have the potential to impact the protected butterfly's habitat, and thus require confirmation as to the suitability of the site to support the Behren's silverspot. Through a brief phone consultation with John Hunter

of USFWS, it was determined that a site assessment and a one-time presence and absence survey conducted by Richard Arnold of Entomological Consulting Services, Ltd., will be sufficient for their use in determining habitat suitability. Mr. Arnold conducted his assessment and survey on August 19, 2006 and concluded that the endangered Silverspot was unlikely to occur on-site because the habitat conditions were unsuitable, despite the presence of the host plant. BioConsultant LLC will send his letter report with a request for technical assistance to Mr. John Hunter for the final determination.

BUFFER ZONE ANALYSIS

Section 20.308.040 of the Mendocino County Coastal Zoning Code defines an environmentally sensitive habitat area (ESHA) as:

...any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could easily be disturbed or degraded by human activities or developments. In Mendocino County, environmentally sensitive habitat areas include, but are not limited to: anadromous fish streams, sand dunes, rookeries and marine mammal haul-out areas, wetlands, riparian areas, areas of pygmy vegetation that contain species of rare or endangered plants, and habitats of rare and endangered plants and animals.

The subject parcel contains an ESHA consisting of a population of a rare plant, coastal bluff morning-glory, and its habitat. There is currently no buffer separating the on-site ESHA from the existing residence and associated structures.

Projects that propose construction with a buffer less than 100ft. from an ESHA must provide information that demonstrates a lesser buffer distance will not have a significant adverse impact on the habitat. The buffer zone analysis utilizing Mendocino LCP Ordinance 20.496.020 (A) through 4 (j) and 20.532.095 (4) is presented in Table 4: Reduced Buffer Analysis.

Table 4. Reduced buffer Zone Analysis.

| Section 20.496.020 Coastal Zoning Ordinance | |
|---|--|
| (A) Buffer Areas. A buffer area shall be established adjacent to all environmentally sensitive habitat areas. The purpose of this buffer area shall be to provide for a sufficient area to protect the environmentally sensitive habitat from degradation resulting from future developments and shall be compatible with the continuance of such habitat areas. | Buffer widths were analyzed based on current on-site habitat conditions, parcel size and configuration, and existing structures. |

| | |
|--|---|
| <p>(1) Width. The width of the buffer area shall be a minimum of one hundred (100) feet, unless an applicant can demonstrate, after consultation and agreement with the California Department of Fish and Game, and County Planning staff, that one hundred (100) feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. The buffer area shall be measured from the outside edge of the Environmentally Sensitive Habitat Areas and shall not be less than fifty (50) feet in width. New land division shall not be allowed which will create new parcels entirely within a buffer area. Developments permitted within a buffer area shall generally be the same as those uses permitted in the adjacent Environmentally Sensitive Habitat Area.</p> | <p>The use of the standard 100ft. buffer for all of the EHSA's polygons would render the Project Site un-developable. Even the use of 50ft. buffers throughout would eliminate the placement of the barn and granny unit. As a result, the focus of this buffer matrix is the analysis of the least environmentally damaging proposal. Additionally, the applicant is not proposing to sub-divide the parcel and the proposed development is consistent with adjacent development within the approved subdivision. There is currently no buffer separating the on-site ESHA from the existing duplex and associated structures.</p> |
| <p>(a) Biological Significance of Adjacent Lands. The degree of significance depends upon the habitat requirements of the species in the habitat area.</p> | <p>The coastal scrub habitat west of the duplex is the preferred habitat type for the rare morning-glory; therefore, it is important to maintain the integrity of the natural habitat in this area. The bishop pine forest, with its highly modified understory, is not a preferred habitat for the rare species.</p> |
| <p>(b) Sensitivity of Species to Disturbance. The width of the buffer zone shall be based, in part, on the distance necessary to ensure that the most sensitive species of plants and animals will not be disturbed significantly by the permitted development.</p> | <p>No buffer currently separates the on-site ESHA (a population of a rare morning-glory numbering between 258-300 individuals) from the existing duplex and associated structures. The rare plants are presently growing right up to the existing structures, but in lesser frequencies as compared to the intact coastal scrub that covers the bluff edge. The species is hardy and resilient and recovers following construction. It is anticipated that survivor plants and those outside the development zone will reoccupy the affected area and once again surround the completed structures. Mitigation measures have been developed to avoid and reduce potential negative impacts to the rare plant habitat ESHA and to improve and preserve the integrity of the rare plant habitat. These include exclusionary fencing during construction; industry best management practices for erosion control; adoption of conservation restrictions to preserve the habitat from future development or landscaping; removal of non-native invasive species; and seasonal high-weed mowing in</p> |

| | |
|---|--|
| | the bishop pine forest to reduce weed competition in this area. |
| b(i) Nesting, feeding, breeding, resting, or other habitat requirements of both resident and migratory fish and wildlife species. | No special-status wildlife species were observed at the Project Site. |
| b(ii) An assessment of the short-term and long-term adaptability of various species to human disturbance. | Common wildlife species are often well adapted to low-level human noise and disturbance. Continued use by the local wildlife community is expected. As stated, the rare morning-glory is hardy and well adapted to grow in and around manmade structures as long as natural habitat is maintained. |
| b(iii) An assessment of the impact and activity levels of the proposed development on the resource. | Adoption of the recommended mitigation measures, i.e., exclusionary fencing and industry best management practices for erosion control combined with invasive plant removal and potential restrictions on further development within the rare plant ESHA, will buffer impacts to the ESHA during and post-development. The proposed remodel and additions represent a relatively small-scale construction project. |
| (c) Susceptibility of Parcel to Erosion. The width of the buffer zone shall be based, in part, on an assessment of the slope, soils, impervious surface coverage, runoff characteristics, and vegetative cover of the parcel and to what degree the development will change the potential for erosion. A sufficient buffer to allow for the interception of any additional material eroded as a result of the proposed development should be provided. | On the Windyhollow soils of the Project Site, surface runoff is very slow or slow, and the hazard of water erosion is slight if the surface is left bare. The proposed development will take place in a nearly level area, and construction is not expected to significantly change the potential for erosion. The contractor will use the industry's best management practices for erosion control. |
| (d) Use of Natural Topographic Features to Locate Development | The building envelope is located in an area of nearly level topography. |
| (e) Use of Existing Cultural Features to Locate Buffer Zones. Cultural features (e.g., roads and dikes) shall be used, where feasible, to buffer habitat areas. Where feasible, development shall be located on the side of roads, dikes, irrigation canals, flood control channels, etc., away from the ESHA. | The development proposes to remodel and expand an existing duplex. The additional structures (barn and granny unit) will be sited based upon the rare plant constraints. |

| | |
|--|---|
| <p>(f) Lot Configuration and Location of Existing Development. Where an existing subdivision or other development is largely built-out and the buildings are a uniform distance from a habitat area, at least that same distance shall be required as a buffer zone for any new development permitted. However, if that distance is less than one hundred (100) feet, additional mitigation measures (e.g., planting of native vegetation) shall be provided to ensure additional protection.</p> | <p>The proposed remodel and additions are within an established subdivision, and the project has proposed appropriate mitigation measures.</p> |
| <p>(g) Type and Scale of Development Proposed. The type and scale of the proposed development will, to a large degree, determine the size of the buffer zone necessary to protect the ESHA. Such evaluations shall be made on a case-by-case basis depending upon the resources involved, the degree to which adjacent lands are already developed, and the type of development already existing in the area.</p> | <p>The project proposes to remodel and expand an existing duplex into a single-family residence on a small parcel. A 640 sq. ft. granny unit and a 510 sq. ft. barn are also proposed. The proposal represents a fairly small-scale construction project within an established subdivision.</p> |
| <p>(2) Configuration. The buffer area shall be measured from the nearest outside edge of the ESHA (e.g., for a wetland from the landward edge of the wetland; for a stream from the landward edge of riparian vegetation or the top of the bluff).</p> | <p>There is currently no buffer separating the on-site ESHA from the existing residence and associated structures. During construction, exclusionary fencing will protect all but 5 of the estimated 258-300 coastal bluff morning-glory plants occurring on-site. Buffer distances will vary depending on individual plant locations with respect to protective fencing and impact areas.</p> |
| <p>(3) Land Division. New subdivisions or boundary line adjustments shall not be allowed which will create or provide for new parcels entirely within a buffer area.</p> | <p>The applicant does not propose subdividing the property or adjusting the boundary lines.</p> |
| <p>4(a) Permitted Development. Development shall be compatible with the continuance of the adjacent habitat area by maintaining the functional capacity, their ability to be self-sustaining and maintain natural species diversity.</p> | <p>The functional capacity and sustainability of the rare plant habitat ESHA will be protected during development with the implementation of mitigation measures (exclusionary/protective fencing, erosion control measures). Seasonal high-weed mowing to keep weeds and brush from invading the rare plant habitat in the pine forest, invasive species removal, and provisions to keep the preferred coastal scrub habitat west of the existing duplex free from development, accessory structures, landscaping, and non-native invasive plants will help to maintain the functional capacity and natural species diversity of the ESHA.</p> |

| | |
|--|--|
| (b) Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel. | The remodel portion is minimal and the plans have been redesigned to place the additions in the only remaining areas outside of the delineated ESHA polygons with the largest buffers possible. The granny unit will be sited closer to the duplex in the area largely devoid of understory with a buffer of 25ft. from the closest part of Polygon 1. The barn will be reconfigured and sited in the area between Polygons 1-2 and 3-4, with a buffer of at least 30ft. between the polygons. These are the most feasible and least environmentally damaging locations for the additions. |
| (c) Development shall be sited and designed to prevent impacts which would degrade adjacent habitat areas. The determination of the best site shall include consideration of drainage, access, soil type, vegetation, hydrological characteristics, elevation, topography, and distance from natural stream channels. | All development is proposed for a nearly level area and sited to avoid the rare plant constraints. The hazard of water erosion is slight for the soils present at the site. |
| (d) Same as 4(a) | Same as 4(a) |
| (e) Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel. Mitigation measures, such as planting riparian vegetation, shall be required to replace the protective values of the buffer area on the parcel, at a minimum ratio of 1:1, which are lost as a result of development under this solution. | As described in 4 (b), the proposed construction will occur in the most feasible and least environmentally damaging location. Mitigation measures are proposed. |
| (f) Development shall minimize the following: impervious surfaces, removal of vegetation, amount of bare soil, noise, dust, artificial light, nutrient runoff, air pollution, and human intrusion into the wetland and minimize alteration of natural landforms. | The areas proposed for the additions are largely devoid of vegetation- no riparian or coastal scrub vegetation will be removed. No bare soil areas will result from the development. The Project as described will cause minimal noise, dust, artificial light and air pollution. |
| (g) Where riparian vegetation is lost due to development, such vegetation shall be replaced at a minimum ratio of one to one (1:1) to restore the protective values of the buffer area. | No riparian vegetation will be removed. |
| (h) Aboveground structures shall allow peak surface water flows from a one hundred (100) year flood to pass with no significant impediment. | The proposed development does not include structures that would significantly impede the flow of water during large storm events. |

| | |
|--|--|
| (i) Hydraulic capacity, subsurface flow patterns, biological diversity, and/or biological or hydrological processes, either terrestrial or aquatic, shall be protected. | Biological diversity in the rare plant habitat ESHA will be protected and enhanced by the proposed mitigation measures. Measures to eradicate non-native invasive species and to keep the rare plant habitat free from development and landscaping will also help to protect biological diversity. |
| (j) Priority for drainage conveyance from a development site shall be through the natural stream environment zones, if any exist, in the development area. In the drainage system design report or development plan, the capacity of natural stream environment zones to convey runoff from the completed development shall be evaluated and integrated with the drainage system wherever possible. No structure shall interrupt the flow of groundwater within a buffer strip. Foundations shall be situated with the long axis of interrupted impermeable vertical surfaces oriented parallel to the groundwater flow direction. Piers may be allowed on a case by case basis. | Natural stream environment zones do not occur in the development area. |
| Sec. 20.532.095 Required Findings For all Coastal Development Permits. | |
| (4) The proposed development will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act. | The proposed development will not have a significant impact on the environment if the recommended mitigations are adopted. |

IMPACT ANALYSIS AND MITIGATION MEASURES

Based upon the literature review, site assessment, and survey results it is our conclusion that the Project Site does not support special-status wildlife species. As stated above, Dr. Arnold concluded that the endangered Silverspot was unlikely to occur on-site because the habitat conditions were unsuitable, despite the presence of scattered host plants. The early blue violet does not meet the definition of an ESHA, and is not protected by USFWS if assessments/surveys have determined that the occurrence does not constitute suitable Silverspot habitat. Therefore, the project as proposed does not specifically protect all individual violets, but the recommended mitigation fencing will protect the majority of the population. See Table 3 and below.

The Project Site contains an ESHA consisting of coastal bluff morning-glory plants and their habitat. As described in this report, an estimated 258 morning-glory plants occur in 5 separate polygons in the bishop pine forest and coastal scrub habitats, occupying a total 0.1 acres. Based upon these findings, the initial building plan has been redesigned to avoid and protect the delineated rare plant occurrences. However, due to the widespread distribution of coastal bluff morning-glory throughout the parcel, the project proposes

reduced buffers and a permanent loss of at least 2 individuals and a probable temporary loss/impact of an additional 3 plants.

The redesigned plans now have sited the granny unit closer to the duplex in the cypress-dominated area largely devoid of understory (Figure 7), and the barn will be reconfigured and sited in the area between Polygons 1- 2 and 3-4 (see Figure 2).

Protective construction and post-construction fencing will protect all of the individual rare plants east of the duplex in the bishop pine forest. West of the duplex, the room expansion will eliminate 2 plants located within 1.5 ft. of the existing structure (Figure 8), and the deck construction will most likely at least temporarily impact 3 plants located immediately adjacent to the existing deck (Figure 9). The remaining population will be protected from construction impacts with exclusionary fencing and a possible deed restriction. Additionally, to improve the overall habitat and protect native species diversity, the removal of invasive plants is recommended.

Potential Impact 1: Impacts to coastal bluff morning-glory and its habitat.

- **Mitigation Measure 1a:** Prior to construction activities, install exclusionary/construction fencing to protect the rare plant population and its habitat. All construction related activities must be contained by the fencing, which should remain undisturbed during all phases of construction. The contractor will follow industry best management practices for erosion control.

As shown in Figure 2, an L-shaped permanent fence shall be installed at 55ft. out from the road. This fence will protect morning glory Polygons 3 and 4, and 13 of the 19 viola plants east of the duplex. A second permanent fence shall be installed at 100 ft. from the road and stretch across the parcel to the south boundary. This will create an L-shaped area for the barn and small pasture. A temporary construction fence will be installed across the width of the parcel at 200 ft. This fence, with the permanent L-shaped fence will enclose morning-glory Polygons 1 and 2, and protect them during construction activities. West of the duplex, a third temporary construction fence will be installed adjacent to the existing deck and extend across the parcel to protect morning glory Polygon #5 and Viola #10. A short section of fencing should be used to protect Viola #10 from general construction impacts.

- **Mitigation Measure 1b:** Conduct seasonal high-weed mowing to keep weeds and brush from invading the rare morning-glory habitat under the pine forest. Leave coastal scrub areas west of the existing duplex undisturbed.
- **Mitigation Measure 1c:** Improve the overall habitat and protect native species diversity by removing non-native invasive plants. *Highway ice plant:* Remove as much of the mat as can be done safely, exercising caution with regard to the dangerously sheer cliff and ignoring stems that extend past the bluff edge. Ice plant is easily removed by hand pulling. Note that stem segments can develop roots and continue to grow when separated from the parent plant. *English ivy:* Carefully cut ivy from tree trunks at waist height, loosen the vines, and remove

the plant by cutting out the roots. Remove the isolated forest understory plants and the vines east of the duplex by hand pulling. *Greater periwinkle*: Because the periwinkle occurrence is relatively small and localized, complete hand removal is the easiest and most effective eradication method. All ice plant stem segments, English ivy vines, and periwinkle runners should be taken off-site to a landfill to prevent reinfestation.

- **Mitigation Measure 1c:** To partially mitigate for the loss of biologically valuable coastal bluff morning-glory plants and habitat, investigate the development of a rare plant conservation area and/or deed restrictions to protect some of the remaining habitat, keeping it free from development, accessory structures, landscaping, and non-native invasive plants. The coastal scrub habitat west of the duplex is the preferred habitat type for the rare morning-glory, and we recommend that this area receive conservation protection.

Potential Impact 2: Impacts to early blue violet.

- **Mitigation Measure 2a:** Prior to construction activities, install protective fencing as described above (see Mitigation Measure 1a).

Exhibit 4
CCC-12-CD-07 & CCC-12-RO-07
(Moore)

Page 21 of 33

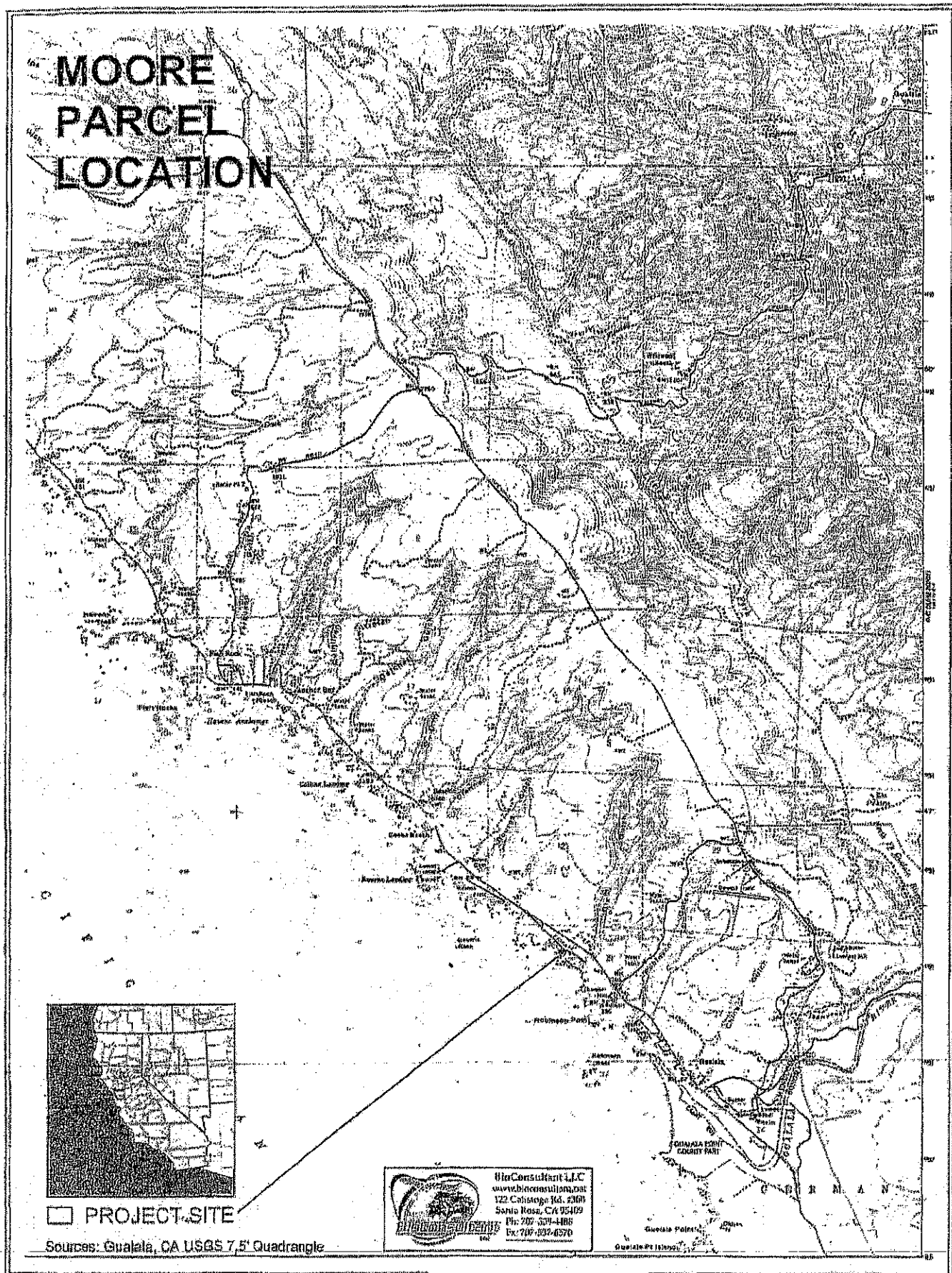
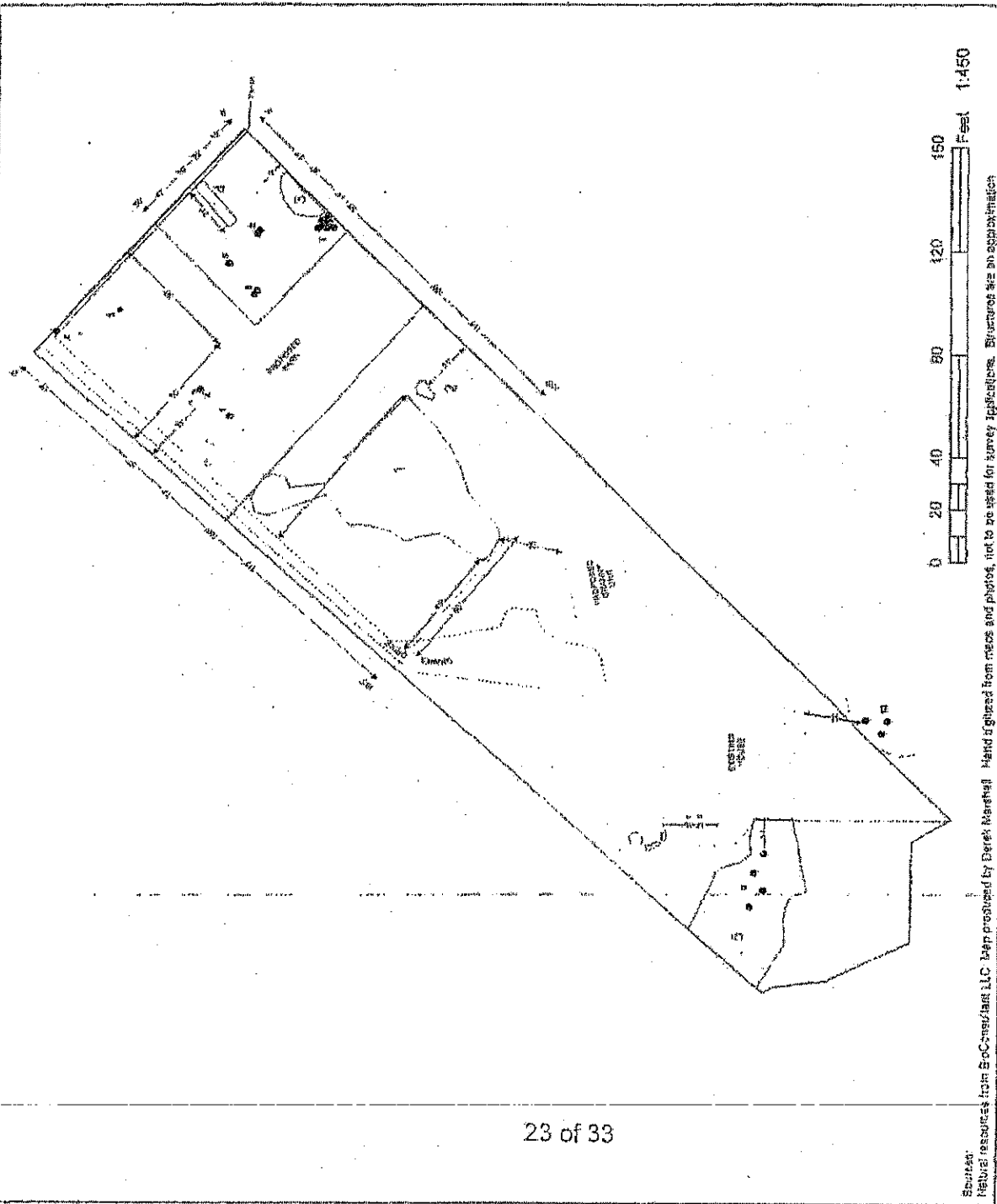
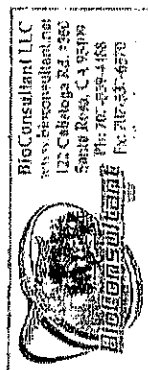
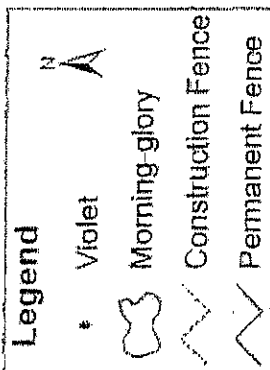


Figure 1. Moore Project parcel location map.

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May, 2006
APN145-121-003

FIG 2



Source: Natural resources from BioConsultant LLC Map produced by Derek Marshall. Hand digitized from maps and photos, not to be used for survey applications. Structures are an approximation.



MOORE
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PROJECT
May, 2006
APN145-121-003

FIG 3



24 of 33

Exhibit 4
CCC-12-CD-07 & CCC-12-RO-07
(Moore)

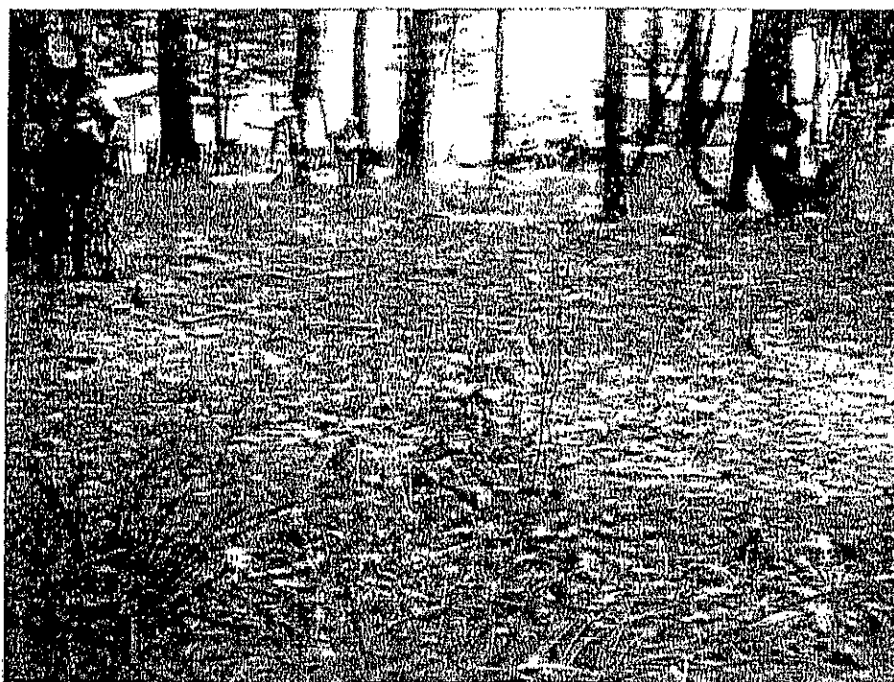


Figure 4. The rare morning-glory bishop pine habitat of Polygon 1 and 2. Blue flags mark the locations of individual plant clusters.



Figure 5. The rare morning-glory coastal scrub habitat of Polygon 5.



Figure 6. Coastal bluff morning-glory (*Calystegia purpurata* ssp. *saxicola*) in the pine forest.

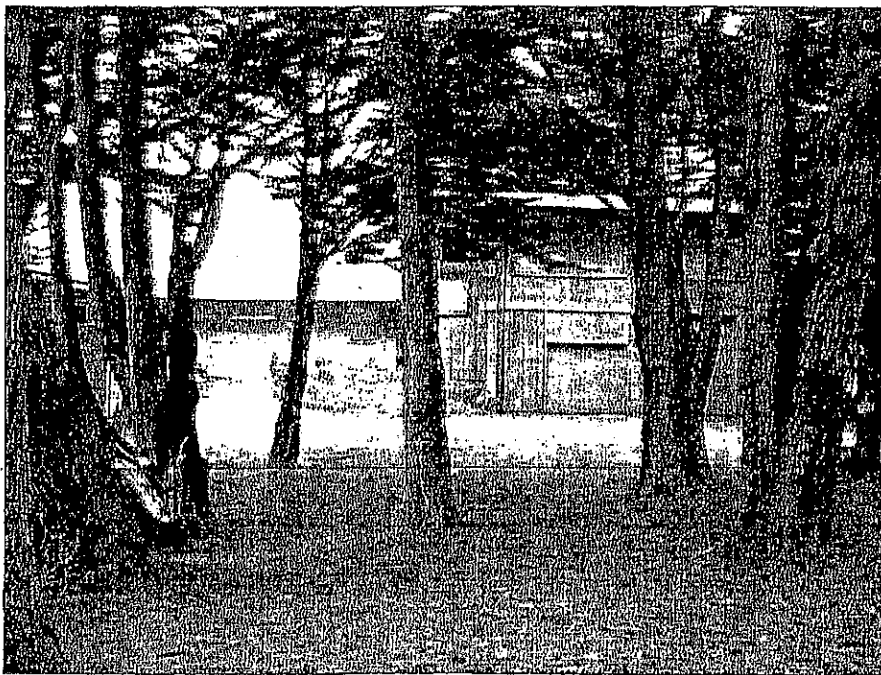


Figure 7. Cypress-dominated area where the granny unit will be sited.

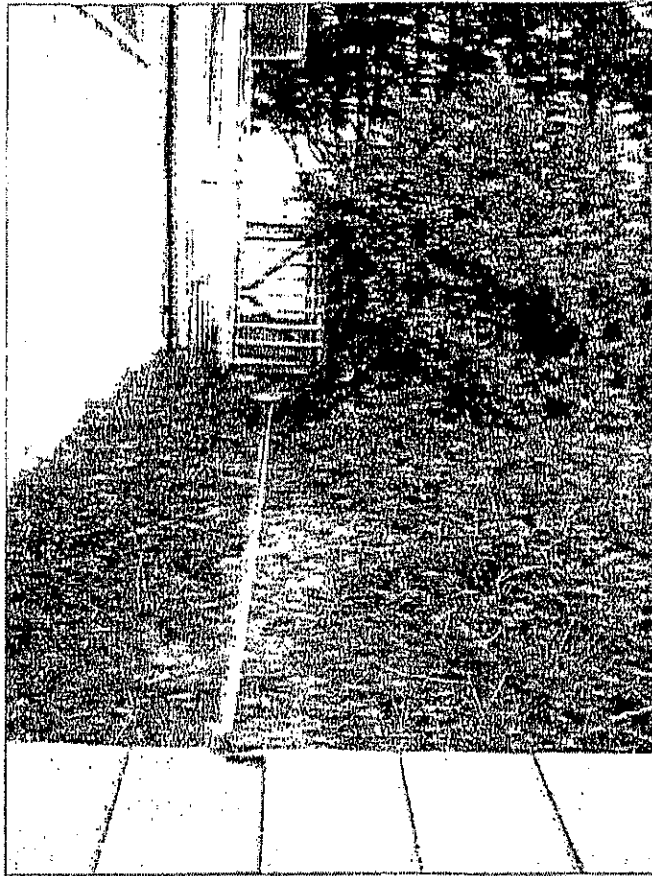


Figure 8. The area of the room expansion. Orange flags denote the locations of the 2 plants within the impact zone.

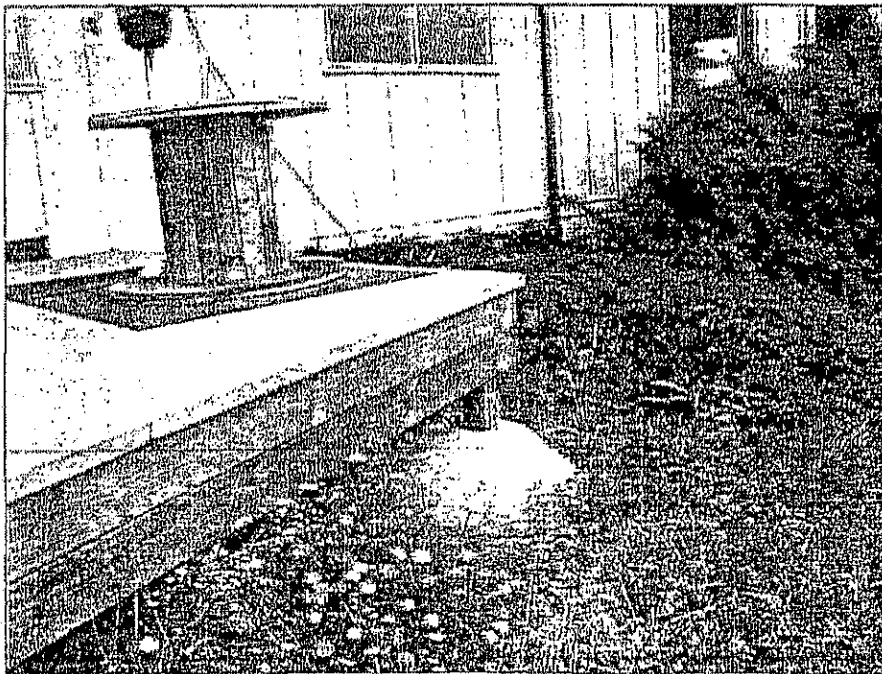


Figure 9. An overall view of the 5 plants located adjacent to the existing structures in the impact zone.

APPENDIX A: CNDDB List of Plants, Animals, & Communities in the four closest
USGS 7.5' Quads.

Appendix A

California Department of Fish and Game- Natural Diversity Database

Plants, Animals, & Communities in Quads: Point Arena, Saunders Reef, Gualala, & Stewarts Point

BioConsultant LLC

| Scientific Name/Common Name | Element Code | Federal Status | State Status | GRank | SRank | CDFG or CNPS/R-E-D |
|--|--------------|----------------|--------------|--------|-------|-----------------------|
| 1 <i>Abronia umbellata</i> esp. <i>breviflora</i> pink sand-verbena | PDNYC010N2 | | | G4G5T2 | S2.1 | 1B/2-3-2 |
| 2 <i>Agrostis blanda</i> f. Blasdale's bent grass | PMPOA040B0 | | | G2 | S2.2 | 1B/3-2-3 |
| 3 <i>Agrostis olivicola</i> var. <i>punta-reyesensis</i> Point Reyes bent grass | PMPOA040A2 | | | G37T1Q | S1.2 | |
| 4 <i>Apelodonta rufa nigra</i> Point Arena mountain beaver | AMAF01011 | Endangered | | G5T1 | S1 | SC |
| 5 <i>Arborelmus pomo</i> Sonoma tree vole | AMAFF10030 | | | G3 | S3 | SC |
| 6 <i>Astragalus aguilicidus</i> Humboldt milk-vetch | PDFAB0F0B0 | | Endangered | G2 | S2.1 | 1B/2-3-3 |
| 7 <i>Calystegia purpurata</i> esp. <i>saxicola</i> coastal bluff morning-glory | PDCON040D2 | | | G4T2 | S2.2 | 1B/2-2-3 |
| 8 <i>Campanula californica</i> swamp harebell | PDCAM020B0 | | | G3 | S3.2 | 1B/1-2-3 |
| 9 <i>Carex californica</i> California sedge | PMCYP032D0 | | | G5 | S2? | 2/3-1-1 |
| 10 <i>Carex lyngbyei</i> Lyngbye's sedge | PMCYP037Y0 | | | G5 | S2.2 | 2/2-2-1 |
| 11 <i>Carex salinaformis</i> deceiving sedge | PMCYP03BY0 | | | G2 | S2.2 | 1B/2-2-3 |
| 12 <i>Castilleja ambigua</i> esp. <i>humboldtensis</i> Humboldt Bay owl-clover | PDSCR0D402 | | | G4T2 | S2.2 | 1B/2-2-3 |
| 13 <i>Castilleja mendocinensis</i> Mendocino coast Indian paintbrush | PDSCR0D3N0 | | | G2 | S2.2 | 1B/2-2-2 |
| 14 <i>Cerorhinca monocerata</i> rhinoceros auklet | ABNNN11010 | | | G5 | S3 | SC |
| 15 Coastal Brackish Marsh | CTT52200CA | | | G2 | S2.1 | |
| 16 Coastal Terrace Prairie | CTT41100CA | | | G2 | S2.1 | |
| 17 Coastal and Valley Freshwater Marsh | CTT52410CA | | | G3 | S2.1 | |
| 18 <i>Corynorhinus townsendii</i> Townsend's big-eared bat | AMACC08010 | | | G4T3T4 | S2S3 | SC |
| 19 <i>Cupressus goveniana</i> esp. <i>pigmaea</i> pygmy cypress | PGCUP04032 | | | G2T2 | S2.2 | 1B/2-2-3 |
| 20 <i>Danaus plexippus</i> monarch butterfly | ILEPP2010 | | | G5 | S3 | |
| 21 <i>Emys (=Clemmys) marmorata marmorata</i> northwestern pond turtle | ARAAD02031 | | | G3G4T3 | S3 | SC |
| 22 <i>Erigeron supplex</i> supple daisy | PDAST3MSZ0 | | | G1 | S1.1 | 1B/3-2-3 |
| 23 <i>Eucyclogobius newberryi</i> tidewater goby | AFCQND4010 | Endangered | | G3 | S2S3 | SC |
| 24 <i>Frailecula cirrhata</i> tufted puffin | ABNNN12010 | | | G5 | S2 | SC |

Appendix A
California Department of Fish and Game- Natural Diversity Database
Plants, Animals, & Communities in Quads: Point Arena, Saunders Reef, Gualala, & Stewarts Point
BioConsultant LLC

| Scientific Name/Common Name | Element Code | Federal Status | State Status | GRank | SRank | CDFG or CNPS/R-E-D |
|---|--------------|----------------|--------------|--------|--------|-----------------------|
| 25 <i>Fritillaria roderickii</i> Roderick's fritillary | PMLILOVDM0 | | Endangered | G1C | S1.1 | 1B/3-3-3 |
| 26 <i>Gilia capitata</i> ssp. <i>pacifica</i> Pacific gilia | PDPLM040B6 | | | G5T3T4 | S2.2? | 1B/2-2-2 |
| 27 <i>Gilia capitata</i> ssp. <i>tomentosa</i> woolly-headed gilia | PDPLM040B9 | | | G5T1 | S1.1 | 1B/3-3-3 |
| 28 <i>Glyceria grandis</i> American manna grass | PMPDA2Y080 | | | G5 | S1.3? | 2/3-4-1 |
| 29 <i>Hesperovox sparsiflora</i> var. <i>bravifolia</i> short-leaved evax | PDASTE5011 | | | G4T3 | S3.2 | 2/2-2-1 |
| 30 <i>Horkelia marinensis</i> Point Reyes horkelia | PDR0S0W0B0 | | | G2 | S2.2 | 1B/3-2-3 |
| 31 <i>Horkelia tenuiloba</i> thin-lobed horkelia | PDR0S0W0E0 | | | G2 | S2.2 | 1B/2-2-3 |
| 32 <i>Lasthenia conjugens</i> Contra Costa goldfields | PDAST5L040 | Endangered | | G1 | S1.1 | 1B/3-3-3 |
| 33 <i>Lasthenia macrantha</i> ssp. <i>bakeri</i> Baker's goldfields | PDAST5L0C4 | | | G3TH | SH | 1B/2-2-3 |
| 34 <i>Lasthenia macrantha</i> ssp. <i>macrantha</i> perennial goldfields | PDAST5L0C5 | | | G3T2 | S2.2 | 1B/2-2-3 |
| 35 <i>Lavinia symmetricus parvipinnis</i> Gualala roach | AFCJB19025 | | | G5T1T2 | S1S2 | SC |
| 36 <i>Lilium maritimum</i> coast lily | PMLIL1A0C0 | | | G2 | S2.1 | 1B/2-3-3 |
| 37 Northern Coastal Bluff Scrub | CTT31100CA | | | G2 | S2.2 | |
| 38 Northern Coastal Salt Marsh | CTT521100A | | | G3 | S3.2 | |
| 39 <i>Oncorhynchus gorbuscha</i> pink salmon | AFCGHA02010 | | | G5 | S1 | SC |
| 40 <i>Rana boylei</i> foothill yellow-legged frog | AAABH010B0 | | | G3 | S2B3 | SC |
| 41 <i>Sidalcea calycosa</i> ssp. <i>rhizomata</i> Point Reyes checkerbloom | PDMAL11012 | | | G5T2 | S2.2 | 1B/2-2-3 |
| 42 <i>Sidalcea malachroides</i> maple-leaved checkerbloom | PDMAL110E0 | | | G3G4 | S3S4.2 | 1B/2-2-2 |
| 43 <i>Sidalcea malviflora</i> ssp. <i>purpurea</i> purple-stemmed checkerbloom | PDMAL110FL | | | G5T2 | S2.2 | 1B/2-2-3 |
| 44 <i>Speyeria zerene behrensi</i> Behren's silverspot butterfly | ILEPJ50B9 | Endangered | | G5T1 | S1 | |

Exhibit 4
CCC-12-CD-07 & CCC-12-RO-07
(Moore)

Page 30 of 33

APPENDIX B: Special- status Plants with Potential to Occur in the Project Site.

Special-status Plants with Potential to Occur in the Project Site Vicinity
Sources: CDFG Natural Diversity Database (2006) and CNPS Electronic Inventory of Rare and Endangered Plants of California (2006)

| Scientific Name | Common Name | Federal Status | State Status | CNPS List | Blooms |
|---|-----------------------------------|----------------|--------------|-----------|---------|
| <i>Abronia umbellata</i> ssp. <i>braviflora</i> | pink sand-verbena | | | List 1B.1 | Jun-Oct |
| <i>Agrostis blanda</i> | Blasdale's bent grass | | | List 1B.2 | May-Jul |
| <i>Agrostis cilvica</i> var. <i>punta-reynensis</i> | Point Reyes bent grass | | | None | May-Jul |
| <i>Angelica lucida</i> | sea-watch | | | List 4.2 | May-Sep |
| <i>Astragalus agnicidus</i> | Humboldt milk-vetch | | Endangered | List 1B.1 | Apr-Aug |
| <i>Calamagrostis bolanderi</i> | Bolander's reed grass | | | List 4.2 | May-Aug |
| <i>Calamagrostis foliosa</i> | leafy reed grass | | Rare | List 4.2 | May-Sep |
| <i>Calandrinia breweri</i> | Brewer's calandrinia | | | List 4.2 | Mar-Jun |
| <i>Calystegia purpurata</i> ssp. <i>axicola</i> | coastal bluff morning-glory | | | List 1B.2 | May-Sep |
| <i>Campanula californica</i> | swamp harebell | | | List 1B.2 | Jun-Oct |
| <i>Carex californica</i> | California sedge | | | List 2.3 | May-Aug |
| <i>Carex lyngbyi</i> | Lyngby's sedge | | | List 2.2 | May-Aug |
| <i>Carex saliniformis</i> | deceiving sedge | | | List 1B.2 | Jun |
| <i>Castilleja ambigua</i> ssp. <i>humboldtensis</i> | Humboldt Bay owl's-clover | | | List 1B.2 | Apr-Aug |
| <i>Castilleja mendocinensis</i> | Mendocino coast Indian paintbrush | | | List 1B.2 | Apr-Aug |
| <i>Ceanothus gloriosus</i> var. <i>gloriosus</i> | Point Reyes ceanothus | | | List 4.3 | Mar-May |
| <i>Cupressus govaniana</i> ssp. <i>plumosa</i> | pygmy cypress | | | List 1B.2 | NA |
| <i>Erigeron biolittii</i> | streamside daisy | | | List 3 | Jun-Oct |
| <i>Erigeron supplex</i> | supple daisy | | | List 1B.2 | May-Jul |
| <i>Fritillaria roderickii</i> | Roderick's fritillary | | Endangered | List 1B.1 | Mar-May |
| <i>Gilia capitata</i> ssp. <i>pacifica</i> | Pacific gilia | | | List 1B.2 | Apr-Aug |
| <i>Gilia capitata</i> ssp. <i>tomentosa</i> | woolly-headed gilia | | | List 1B.1 | May-Jul |
| <i>Glyceria grandis</i> | American manna grass | | | List 2.3 | Jun-Aug |
| <i>Hesperis matronalis</i> var. <i>bravifolia</i> | short-leaved oxeye | | | List 2.2 | Mar-Jun |
| <i>Horkelia marinensis</i> | Point Reyes horkelia | | | List 1B.2 | May-Sep |
| <i>Horkelia tenuiloba</i> | thin-lobed horkelia | | | List 1B.2 | May-Jul |
| <i>Lasthenia conjugens</i> | Central Costa goldfields | Endangered | | List 1B.1 | Mar-Jun |
| <i>Lasthenia macrantha</i> ssp. <i>bakeri</i> | Baker's goldfields | | | List 1B.2 | Apr-Oct |
| <i>Lasthenia macrantha</i> ssp. <i>macrantha</i> | perennial goldfields | | | List 1B.2 | Jan-Nov |
| <i>Leptosiphon acicularis</i> | bristly leptosiphon | | | List 4.2 | Apr-Jul |
| <i>Lilium maritimum</i> | coast lily | | | List 1B.1 | May-Aug |
| <i>Lotus formosissimus</i> | harlequin lotus | | | List 4.2 | Mar-Jul |
| <i>Lycopodium clavatum</i> | running-pine | | | List 2.3 | Jun-Aug |
| <i>Perideridia gairdneri</i> ssp. <i>gairdneri</i> | Gairdner's yampah | | | List 4.2 | Jun-Oct |
| <i>Pleurapogon refractus</i> | nodding semaphore grass | | | List 4.2 | Apr-Aug |
| <i>Sidalcea calycosa</i> ssp. <i>rhizonata</i> | Point Reyes checkerbloom | | | List 1B.2 | Apr-Sep |
| <i>Sidalcea malachroides</i> | maple-leaved checkerbloom | | | List 1B.2 | Apr-Jul |
| <i>Sidalcea malviflora</i> ssp. <i>purpurea</i> | purple-stemmed checkerbloom | | | List 1B.2 | May |
| <i>Stellaria littoralis</i> | beach starwort | | | List 4.2 | Mar-Jul |
| <i>Veratrum fimbriatum</i> | fringed false-hellebore | | | List 4.3 | Jul-Sep |
| <i>Zigadenus micranthus</i> var. <i>fontanus</i> | marsh zigadenus | | | List 4.2 | Apr-Jul |

The California Native Plant Society's (CNPS) Lists

- 1A = Presumed extinct in California
- 1B = Rare or Endangered in California and elsewhere
- 2 = Rare or Endangered in California, more common elsewhere
- 3 = Plants for which we need more information - Review list
- 4 = Plants of limited distribution - Watch list

CNPS Threat Code Extension

- .1 = Seriously endangered in California (over 80% of occurrences threatened / high degree and immediacy of threat)
- .2 = Fairly endangered in California (20-80% of occurrences threatened)
- .3 = Not very endangered in California (<20% of occurrences threatened or no current threats known)

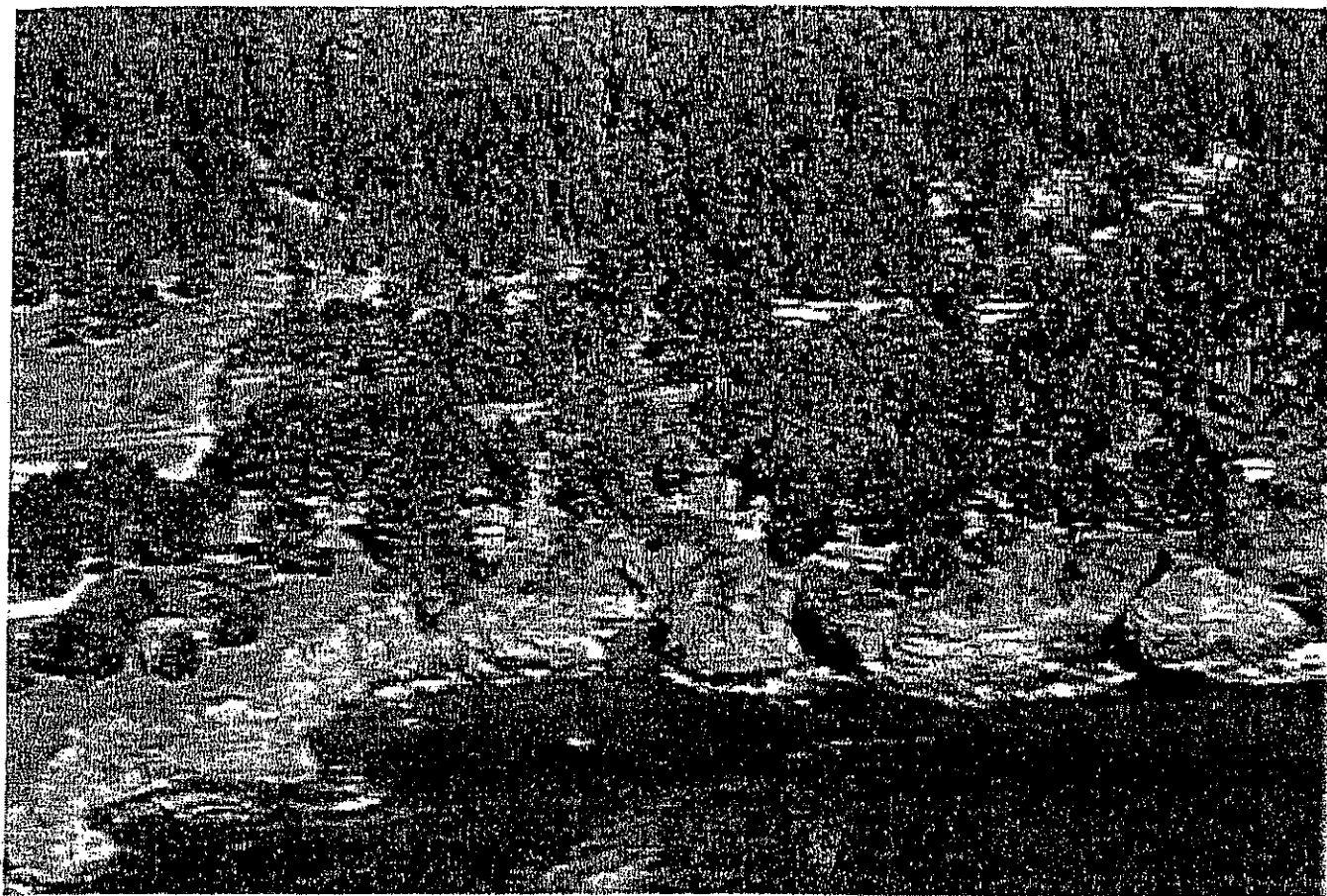


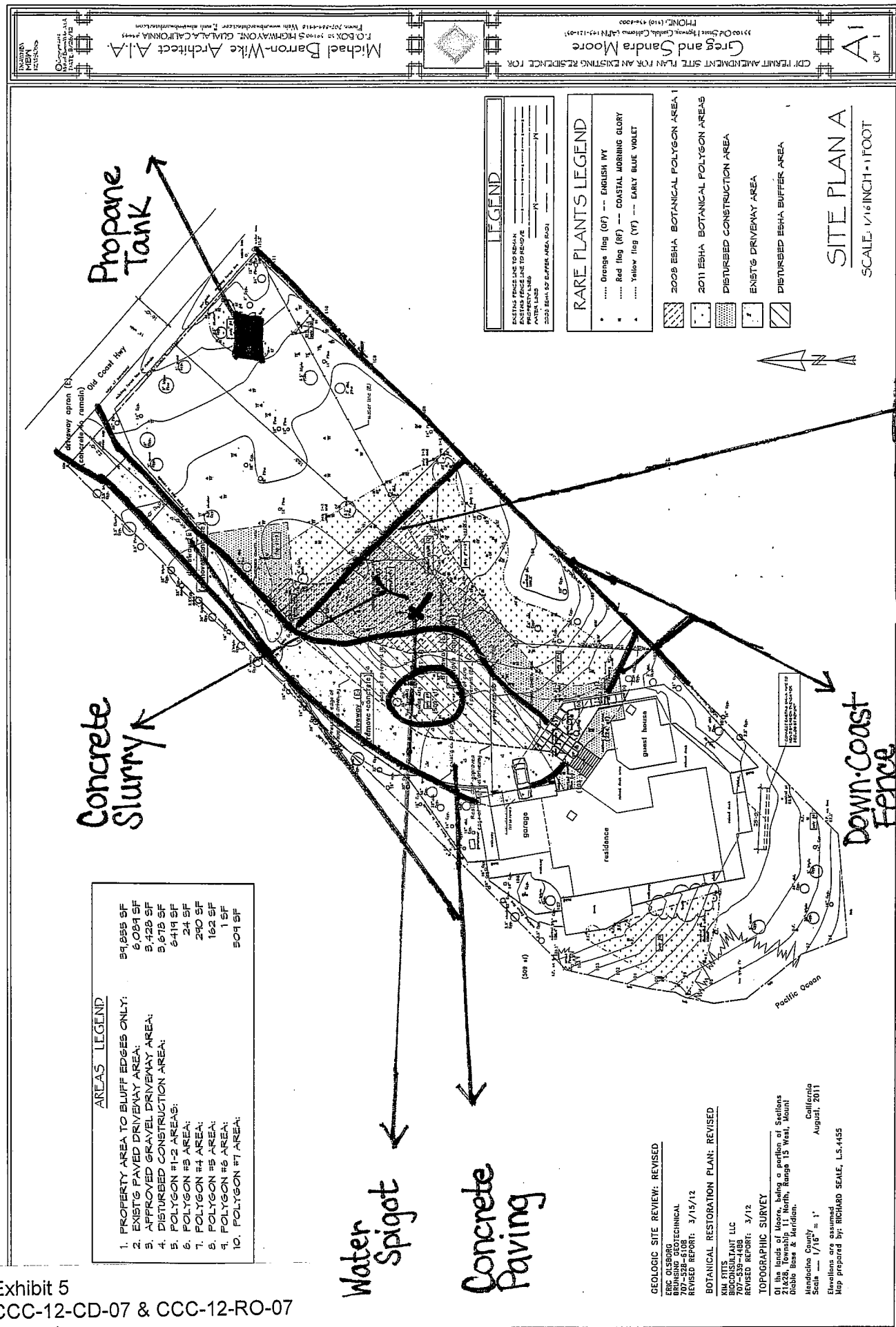
Photo from California Coastal Records Project

<http://www.californiacoastline.org/ccl-bin/captionlist.cgi?searchstr=200504156>

Site Map of Unpermitted Development

Exhibit 5
CCC-12-CD-07 & CCC-12-RO-07
(Moore)

Page 1 of 1



For Illustrative Purposes Only!

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE
710 E STREET • SUITE 200
EUREKA, CA 95501-1865
VOICE (707) 445-7833
FACSIMILE (707) 445-7877



February 1, 2011

SENT BY REGULAR & CERTIFIED MAIL

Greg and Sandra Moore
P.O. Box 23036
Oakland, CA 94623
Certified Mail No: 7008-3230-0002-5330-0972

Donald Greene
TT Construction
P.O. Box 148
Gualala, CA 95445
Certified Mail No: 7008-3230-0002-5330-0989

Property Location: 37900 Old Coast Highway
Gualala, CA 95445
APN 145-121-03

RE: Alleged violations of the Coastal Act and of the terms of CDP A-1-MEN-07-021 including but not limited to: (1) the construction of an unpermitted concrete driveway impacting ESHA and/or ESHA buffer areas; (2) the unpermitted extension of an existing gravel driveway and construction of a gate; (3) the construction of an unpermitted perimeter fence and (4) violation of special conditions 4(a), 6(a) and 7 of CDP A-1-MEN-07-021.

Dear Mr. and Mrs. Moore and Donald Greene:

The California Coastal Act was enacted by the State Legislature in 1976 to provide long-term protection of California's 1,100 mile coastline through implementation of a comprehensive planning and regulatory program designed to manage conservation and development of coastal resources. The California Coastal Commission (Commission) is the state agency created by and charged with administering the Coastal Act of 1976. In making its permit and land use planning decisions, the Commission carries out Coastal Act policies, which, amongst other goals, seek to protect and restore sensitive habitats; protect natural landforms; protect scenic landscapes and views of the sea; protect against loss of life and property from coastal hazards; ensure that new development has adequate available public services and provide maximum public access to the sea.

On January 13, 2011 the Commission's North Coast District Enforcement Program staff was notified of an alleged violation of the Coastal Act occurring at the above-referenced property. It has been confirmed by Commission enforcement staff that Mr. and Mrs. Moore are the property owners of record for the subject property, and that Mr. and Mrs. Moore are also the permittees issued coastal development permit (CDP) A-1-MEN-07-021 by the Commission. Because of this permit issued by the Commission, the subject property falls under the retained CDP jurisdiction of the Commission and is therefore subject to the CDP requirements of the Coastal Act. The alleged violations include but are not limited to the following unpermitted development: 1) construction of a concrete driveway which impacts identified environmentally sensitive habitat areas (ESHA) and/or ESHA buffer areas as established in site plans

Exhibit 6
CCC-12-CD-07 & CCC-12-RO-07
(Moore)

Page 1 of 5

approved by the Commission on March 4, 2009 per the terms of CDP A-1-MEN-07-021; 2) the extension of a gravel driveway and the installation of a gate thereto; and 3) the construction of a perimeter fence in conflict with the approved site plans referenced in (1). Based upon submitted evidence, it also appears that Mr. and Mrs. Moore have also constructed the residential development in a manner that is inconsistent with the residential development approved by CDP A-1-MEN-07-021. As Mr. and Mrs. Moore are already aware, the Commission approved the following project: 1) remodeling the existing duplex structure into a single unit by constructing a 344-sq.ft. entry-way and a laundry room addition, remodeling the interior of the structure in a manner that includes removing the second kitchen, and installing a 263-sq.ft. second-floor deck; 2) constructing a 556-sq.ft. detached second residential unit; (3) installing a total of 818 sq.ft. of additional lower floor decking for both residences; and 4) connecting to utilities. Based upon submitted evidence, it does not appear that Mr. and Mrs. Moore have constructed the residential development in accordance with the Commission's action on CDP A-1-MEN-07-021.

According to Coastal Act section 30600 (a) of the California Coastal Act, any development to occur within the State's defined coastal zone must be in accordance with a Coastal Development Permit. According to section 30106 of the Act, development is defined as:

Development means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant of the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in the connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with the timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511). [Emphasis added]

The construction of a concrete driveway, extension of an existing gravel driveway, erection of a gate and construction of a perimeter fence all constitute development as defined by the Coastal Act.¹ The unpermitted development involves grading, placement of solid material and removal of major vegetation. Section 30600 of the Coastal Act states that anyone performing defined development within the coastal zone must first obtain a coastal development permit (CDP) for such development. Because Mr. and Mrs. Moore do not have a CDP or an amended CDP allowing for these development activities, they are in violation of the Coastal Act permit requirements and in violation of CDP A-1-MEN-07-021.

Based upon Mr. and Mrs. Moore's involvement in the Commission's action on CDP A-1-MEN-07-07, Mr. and Mrs. Moore deleted a proposed extension to the existing gravel driveway from the plans submitted to the Commission due to it being situated as close as 20 feet to identified ESHA (coastal morning glory and blue violet habitat). Further, the Commission did not approve a new concrete driveway extension with a circular design adjacent to the approved residential development.

¹ Note that the description herein of the development at issue is not necessarily an exhaustive listing of all development on the subject property that is in violation of the Coastal Act and/or that may be of concern to the Commission. Until we are able to: 1) conduct a thorough investigation of both the property and the historical record, and 2) perform any additional analysis necessary to assess the relationship between the two, we cannot provide, and do not claim to be providing, such a comprehensive assessment of potential Coastal Act violations. Accordingly, you should not treat the Commission's failure to address other development on the subject property as indicative of the Commission's acceptance of, or acquiescence in, any such development. You should not rely upon any such silence to infer anything about the Commission's position with respect to any such other development.

In addition to performing unpermitted development, Mr. and Mrs. Moore have violated the terms and conditions of CDP A-1-MEN-07-021. Special conditions 4(a) and 6(a) required that no construction activities could encroach on the areas protected by the temporary exclusion/construction fencing required on the site plan dated April 1, 2008, approved by the Commission on March 4, 2009. Special condition 7 states that no future improvements to the residential development or other approved structures could be made without first obtaining an amendment or a new CDP. Thus, Mr. and Mrs. Moore have knowing and intentionally violated CDP A-1-MEN-07-021.

As the representative of TT Construction, Donald Greene of TT Construction has undertaken unpermitted development. As the agent for Mr. and Mrs. Moore, the Commission is also naming TT Construction as an entity who performed unpermitted development on the subject property. According to our records, both Greg and Sandra Moore signed CDP A-1-MEN-07-021. As stated on the Commission's issued permit which was signed on March 7, 2009 and returned to the Commission, Mr. and Mrs. Moore agreed to inform all agents of the terms and conditions of A-1-MEN-07-021. As a State of California licensed contractor, Donald Greene must comply with all required local, state and federal requirements for a construction project. Failure to do so may result in additional formal enforcement action taken by the Commission as specified below and may also result in the Commission enforcement staff filing a complaint with the State of California State Contractor's Licensing Board.

Remedies Available to the Commission to address the cited Coastal Act violations

Commission enforcement staff is considering several remedies available to it under the Coastal Act. Among these are: 1) recording a Notice of Violation on the subject property; 2) seeking appropriate civil monetary penalties against all parties responsible for violating the Coastal Act permit requirements; and 3) maintaining an action for injunctive and declaratory relief, or issuing a formal cease and desist order or restoration order to all parties responsible for violating the Coastal Act.

Notice of Violation

When real property has been developed in a manner which is inconsistent with a previously issued CDP, that development is a violation of the Coastal Act, and the Executive Director of the Commission may, pursuant to Coastal Act section 30812, cause a Notice of Violation (NOV) to be recorded against the real property that has been developed in violation of the CDP. If the Executive Director intends to record a NOV against your property, notice of that intent will be sent to you via regular and certified mail. Pursuant to section 30812, if the owner wishes to object to the recording of an NOV by the Executive Director, the owner is required to respond in writing within 20 days of the postmarked mailing of the NOV. If the owner fails to object in writing within that 20-day-period, the Executive Director shall record the NOV in the county where the subject property is located. If the owner does object to the recording of the NOV within the 20-day-period, a public hearing will be held at the next possible scheduled Commission meeting, at which time staff will present evidence as to why unpermitted development has occurred and why such a NOV should be recorded, and the owner can present evidence to the Commission as to why such a NOV should not be recorded. If the Commission finds that, based upon substantial evidence, a violation has occurred, the NOV shall be recorded.

Civil Penalties (Monetary Relief)

In addition to other remedies, section 30820(a) provides for civil liability to be imposed on any person who performs or who undertakes development without a CDP or in a manner that is inconsistent with any CDP previously issued by the Commission, in an amount that shall not exceed \$30,000 and shall not be less than \$500. Section 30820(b) further provides that additional civil liability may be imposed on any

person who performs or undertakes development without a CDP or that is inconsistent with any CDP previously issued by the Commission, when the person knowingly and intentionally performs or undertakes such development, in an amount not less than \$1,000 and not more than \$15,000 for each day in which the violation persists. Finally, Section 30822 of the Act allows the Commission to maintain a legal action for exemplary damages in cases of intentional and knowing violations, the size of which is left to the discretion of the court. In exercising its discretion, the court shall consider the amount necessary to deter further violations.

Legal Action, and Cease and Desist and Restoration Orders

Section 30803 of the Coastal Act authorizes the Commission to maintain a legal action for declaratory, equitable and monetary relief to restrain any violation of the Act. Coastal Act section 30809 states that if the Executive Director of the Commission determines that any person has undertaken or is threatening to undertake any activity that is inconsistent with any CDP previously issued by the Coastal Commission, the Executive Director may issue an order directing that person to cease and desist. Coastal Act section 30810 states that after conducting a public hearing, the Commission may also issue a permanent cease and desist order. A cease and desist order may be subject to terms and conditions that are necessary to avoid irreparable injury to the area or to ensure compliance with the Coastal Act. In addition, Coastal Act section 30811 states that the Commission may also order restoration of a site if it finds that the development has occurred without a CDP from the Commission, is inconsistent with the Coastal Act and the development is causing continuing resource damage, after conducting a public hearing.

Resolving the Alleged Violation

Mr. and Mrs. Moore:

In order to stop the ongoing nature of the cited Coastal Act violations and correct their impact on coastal resources within the coastal zone, you must agree to do the following:

1. Stop performing any additional development on your property until and unless you have received a CDP amendment from the Commission to do so.
2. Send a written response to this letter which includes a detailed project description of what has been constructed on the property.
3. Submit a removal and restoration plan to return the subject property and development to what has been approved in CDP A-1-MEN-07-021. The restoration plan must include an analysis of impact to identified ESHA and ESHA buffer zones and measures for restoring and mitigating the impact from the unpermitted development. The restoration plan should be prepared by a qualified restoration ecologist and should include a timeline for implementation and post-implementation monitoring to ensure success. The restoration plan must include a plan for implementing additional restoration should the monitoring reports indicate the restoration has not successful.

TT Construction and Donald Greene:

1. Stop performing any additional development activity on the subject property until and unless the property owners have received a CDP amendment from the Commission allowing such development.

Exhibit 6
CCC-12-CD-07 & CCC-12-RO-07
(Moore)

2. Send a written response to this letter explaining why you performed development in conflict with the approved site plans for CDP A-1-MEN-07-021 and without an approved amendment to CDP A-1-MEN-07-021.

Once you have submitted the required responses and removal and restoration plan, the Executive Director will determine whether or not such removal and restoration activities require the issuance of a CDP or an order prior to being implemented. The Commission has not yet decided whether or not to pursue additional monetary remedies or further formal enforcement action with respect to this violation case.

Commission enforcement staff prefers to work cooperatively with alleged violators to resolve Coastal Act violations administratively. However, if you fail to submit a written response to this letter as specified above by February 22, 2011, Commission staff will be obligated to seek formal action by the Executive Director or the Commission to resolve this matter.

Regardless of your choice of actions regarding this situation, please contact me at this office no later than February 22, 2011, to respond to these allegations. You may contact me at 707-445-5348 or in writing at the letterhead address.

Sincerely,



Andrew Minks
Enforcement Program
California Coastal Commission

Cc: Robert Merrill, North Coast District Manager, Eureka
Nancy Cave, Northern California Supervisor, Statewide Enforcement Program, San Francisco
Tamara Gedik, Coastal Program Analyst, Eureka
Teresa Spade, Planner II, Mendocino County

February 26, 2011

California Coastal Commission
North Coast District Office
710 E Street Suite 200
Eureka Ca 95501-1865
Attn: Andrew Minks

Ref: 37900 Old Coast Hwy
Gualala Ca 95445

RECEIVED

MAR 01 2011

CALIFORNIA
COASTAL COMMISSION

Attn: Andrew Minks

We have received a letter of alleged violations in which we have the following responses:

- A) The construction of an unpermitted concrete driveway
 - 1) We were mandated by the county to pave the first 20' of our driveway as a condition of our permit, the balance of the driveway was originally to be re-rock, the contractor said it would not be that much more to go ahead and pave the balance of the driveway to the garage so we agreed. I am not aware of any violations.
- B) The unpermitted extension of an existing gravel driveway and gate
 - 1) See A for the gravel driveway
 - 2) I am not aware that you need a permit to install a gate to protect your property
- C) The construction of an unpermitted perimeter fence.
 - 1) The fencing was a combination of repairing the existing fence which was a direct match to the old fencing. The balance of the fencing was for safety of my children and dogs which is well inside of my property line and is only a dark brown cyclone fencing 4' high very see thru.
- D) Violation of special condition 4(a), GA and 7 of CDP A-1 Men-07-021

Exhibit 7
CCC-12-CD-07 & CCC-12-RO-07
(Moore)

- 1) I am not aware of any violations my contractors committed. If you need any further information feel free to get in contact with my contractors or myself.

As a closing note I am enclosing an E-Mail from my neighbors who I believe is causing all these problems because I will not cater to her needs.

To the best of my knowledge the engineer and the county has seen the project and both don't see any issues with the driveway. After not getting the answer she wants, she went direct to my contractor and starting giving him instructions on what she wanted done. After that didn't work she has now contacted the coastal commission. Once again we are not aware of any violations and will work with you on anything you need to put this issue behind us.

Sincerely,

Greg Moore



CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5200
FAX (415) 904-5400
TDD (415) 597-5885



April 14, 2011

Greg and Sandra Moore
P.O. Box 4067
Oakland, CA 94614
Certified Mail No. 7006 2760 0005 5883 6573

Donald Greene
TT Construction
P.O. Box 148
Gualala, CA 95445
Certified Mail No. 7006 2760 0005 5883 6566

Property Location: 37900 Old Coast Highway
Gualala, CA 95445
APN 145-121-03

Re: Alleged violations of the Coastal Act and to the terms of CDP A-1-MEN-07-021; Coastal Act Violation File No. V-1-11-003

Dear Mr. & Mrs. Moore and Mr. Greene,

I write this letter to respond to your letters dated February 26, 2011 and February 17, 2011 respectively and to give you direction as to how to resolve this matter. We have also conducted a site visit to 37900 Old Coast Highway (subject property). In light of that site visit, and after a thorough review of your responses to our letter dated February 1, 2011, there is additional information that you must provide to commence resolution of the Coastal Act violation existing on the subject property.

TT Construction

TT Construction contends that you consulted with what you believed to be the only agency involved in the project to approve the concrete driveway development. You consulted with the County Road Works Department. However, as a licensed contractor in the Mendocino coastal area, you should have reviewed all permits obtained for development of the property in order to fully understand what could and could not be developed on the subject property. You failed to review the terms and conditions of CDP No. A-1-MEN-07-021. CDP No. A-1-MEN-07-021 did not allow an extension to the existing gravel driveway out of concern for identified and mapped environmentally sensitive habitat (ESHA). CDP No. A-1-MEN-07-021 also required any proposed future development to first be reviewed and approved by the Commission prior to implementation. Your failure to abide by CDP No. A-1-MEN-07-021, as an authorized agent of the Moores, is considered a violation of the Coastal Act.

Moores

As permittees, you agreed to abide by the terms and conditions of CDP A-1-MEN-07-021 and to ensure that all your agents were fully aware of the CDP's terms and conditions. Thus, when you decided to make

Exhibit 8
CCC-12-CD-07 & CCC-12-RO-07
(Moore)

changes in what had been previously approved in that CDP, you should have, as instructed by the terms and conditions of approval, first presented these possible changes to Commission staff in order to determine if they would be allowed under the terms of the CDP. Additionally, although you submitted a response to our February 1, 2011 letter, you did not include in your submittal letter the previously requested removal and restoration plan.

On March 15, 2011, Bob Merrill and Tamara Gedik of our North Coast staff met with Mr. Moore and conducted a site visit of the subject property. They were able to view and assess the completed unpermitted concrete development. You asked to be allowed to keep the unpermitted development. Mr. Merrill responded that he believed that as constructed, the unpermitted concrete development impacted the defined ESHA area as well as the required buffer, and asked you to prepare a plan of the completed development on the same scale as the approved site plan for CDP A-1-MEN-07-021 so that the plan of completed development could be overlain on the approved site plan to assess impact to the ESHA and/or ESHA buffer. Please submit the "as-built" plan of completed development as requested no later than May 4, 2011.

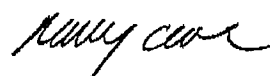
You have also installed perimeter fencing and a gate. Although these may be consistent with the Coastal Act, you still need to first obtain approvals for the changes in your previously approved residential development.

In our letter dated February 1, 2011, we clearly stated that you must cease and desist all development activities until the alleged violation was resolved. Since we sent our letter and received your responses, we have received reports of multiple trees being cut down and removed from the subject property. As stated in the definition of development provided to you in our first letter, removal of major vegetation (or trees) constitutes development under the Coastal Act and you must first discuss your proposed removal activities with staff from our North Coast office. Understandably, you may not have been initially aware that tree removal is considered development under the Coastal Act. Please call our North Coast office to discuss your desire to remove trees and whether or not the trees you have already removed were located within ESHA identified portions of the subject property.

Please submit the as-built plan as soon as possible and in no case later than May 4, 2011. Once we have reviewed your submitted plan, we will discuss further with you necessary removal and restoration activities that must be performed on the subject property. If you fail to submit the requested plan we will be forced to elevate this case for appropriate formal action by the Commission.

If you have any questions concerning this letter, please feel free to contact me at (415) 904-5290.

Sincerely,

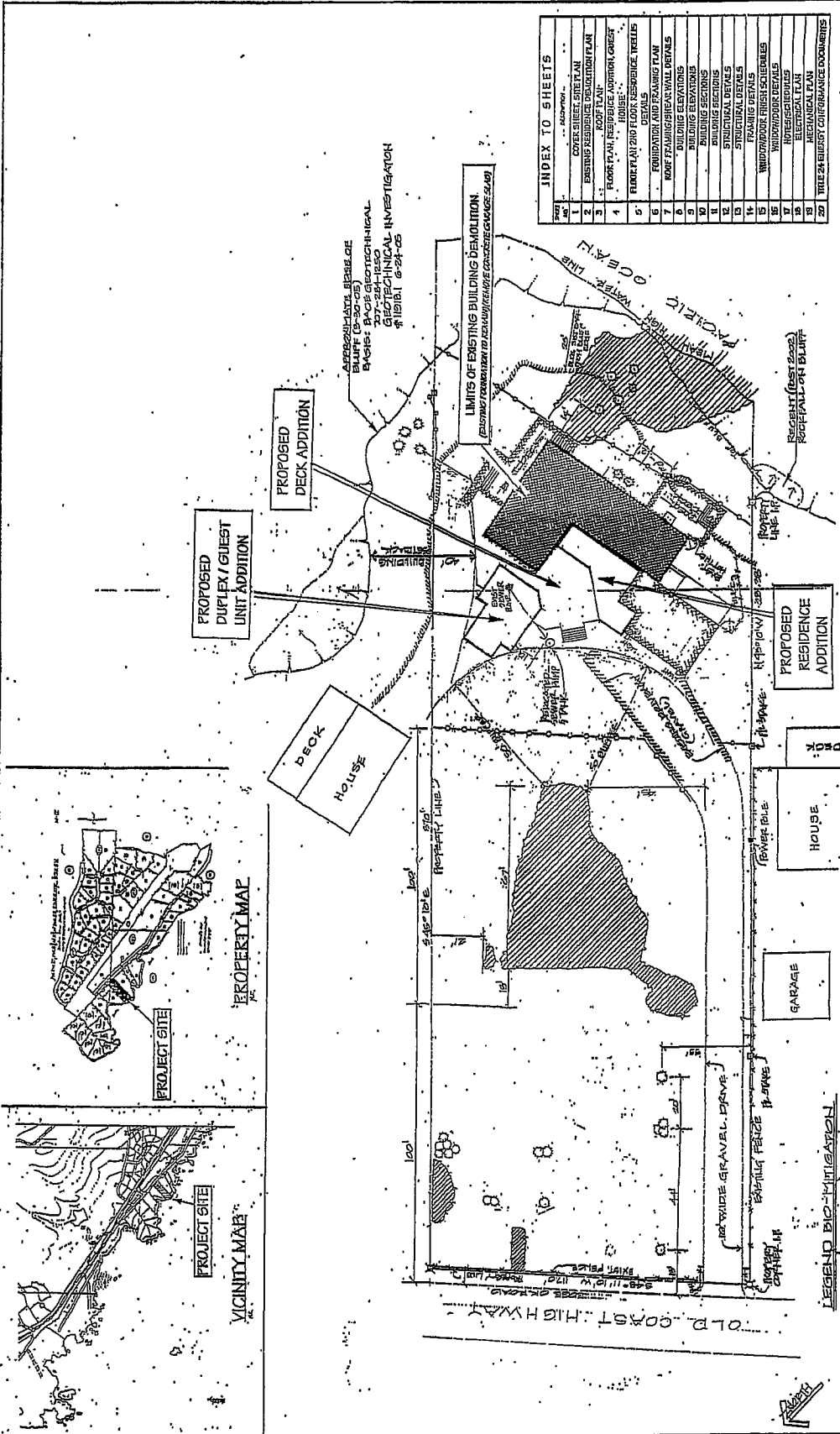


Nancy Cave
Supervisor
Northern California
Enforcement Program

Cc: Bob Merrill, Manager North Coast District
Tamara Gedik, Planner North Coast District

Exhibit 8
CCC-12-CD-07 & CCC-12-RO-07
(Moore)

| INDEX TO SHEETS | |
|-----------------|---|
| PAGE | DESCRIPTION |
| 1 | COVER SHEET |
| 2 | EXISTING RESURFACING DEMONSTRATION PLAN |
| 3 | POOF PLAN |
| 4 | FLOOR PLAN, RESURFACING ADJUNCTION, CRACK |
| 5 | FLOOR PLAN, RESURFACING ADJUNCTION, CRACK |
| 6 | FLOOR PLAN, FLOOR RESURFACING, DETAILS |
| 7 | FOUNDATION AND FRAMING PLAN |
| 8 | ROOF FRAMING, BREAK-VAULT DETAILS |
| 9 | ROOF FRAMING, BREAK-VAULT DETAILS |
| 10 | BUILDING ELEVATIONS |
| 11 | BUILDING SECTIONS |
| 12 | STRUCTURAL DETAILS |
| 13 | STRUCTURAL DETAILS |
| 14 | FRAMING DETAILS |
| 15 | WINDOW/DOOR, FRESH SILL/CRACKS |
| 16 | WINDOW/DOOR DETAILS |
| 17 | INTERIOR FINISHES |
| 18 | MECHANICAL PLAN |
| 19 | MECHANICAL PLAN |
| 20 | TABLE 2: MATERIALS, PERFORMANCE DOCUMENTS |



Appeal No. A-1-MEN-07-021
Applicants: Greg and Sandra Moore
Local Government: County of Mendocino

~~SECRET~~

NOTE: NO INFORMATION SHOWN ON THIS SITE
PLAT. BASED ON BUREAU ASSASSINAT
G RAYE PLAT SURVEY PREPARED BY
BIOCONSULTANT LLC, SANTA ROSA, CA
REPORT DATE: 08/21/2004

CONSTRUCT PERMANENT FENCE
CANNOT TEMPORARY/EXCLUSIVITY
FENCE PRIOR TO ANY OTHER ACTIVITY
MAY BE REMOVED UPON COMPLETION

החלטת הוועדה להקמת מוזיאון תולדות ישראל

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5200
FAX (415) 904-5400
TDD (415) 597-5885



May 27, 2011

Greg and Sandra Moore
P.O. Box 4067
Oakland, CA 94614
Certified Mail No. 7004 1160 0001 3918 8719

Donald Greene
TT Construction
P.O. Box 148
Gualala, CA 95445
Certified Mail No. 7004 1160 0001 3918 8726

Property Location: 37900 Old Coast Highway
Gualala, CA 95445
APN 145-121-03

Re: Alleged violations of the Coastal Act and to the terms of CDP A-1-MEN-07-021, Coastal Act Violation File No. V-1-11-003

Dear Mr. and Mrs. Moore and Mr. Greene,

This letter is in reference to continued alleged violations to the terms of a Coastal Development Permit (CDP) issued for 37900 Old Coast Highway in Gualala, California (subject property), and to provide California Coastal Commission (Commission) staff response to your letters dated February 17, 2011, February 26, 2011, and April 4, 2011 with regards to these violations.

CDP Permit History

The subject property contains significant rare plant habitat (as delineated by BioConsultant in their report to the Moores dated September 2006) and is a bluff top parcel. On July 12, 2007, the Commission found that the appeal of the County of Mendocino's (County) approval of CDU No. 9-2006 for the subject property raised substantial issues with respect to the project's consistency with the Environmentally Sensitive Habitat Area (ESHA) buffer policies and the geologic policies of the County Local Coastal Program (LCP). As such, the County's approval of the proposed project was no longer effective and the Commission reviewed the project *de novo* in a separate coastal permit hearing.

For the purposes of the *de novo* review, Mr. and Mrs. Moore submitted a series of revised project plans. These revisions increased the bluff setback of the detached second unit and established a

Exhibit 10
CCC-12-CD-07 & CCC-12-RO-07
(Moore)

50-foot buffer between new development and the ESHA. Although the Commission typically requires a 100 foot buffer area surrounding ESHA, the Commission agreed with your consultant that a minimum 50 foot buffer area was reasonable protection at this particular site. As such, the final approved site plan which you agreed to and did not challenge after the Commission's permit approval action on May 9, 2008, showed no new development or construction related activities occurring in the ESHA or in the established ESHA 50-ft. buffer areas. Revisions to the proposed project included: (1) eliminating the proposed 510-square foot barn/shed that would have been located as close as 24 feet to the ESHA; (2) eliminating the proposed new permanent fencing that would have been located adjacent to portions of the ESHA; and (3) eliminating the proposed gravel driveway addition that would have been located as close as 20 feet to the ESHA.

Based on these revisions, the Commission granted coastal development permit CDP A-1-MEN-07-021 to Greg & Sandra Moore on May 9, 2008. The Notice of Intent to Issue Permit was sent to you with the purpose to inform you "of the steps necessary to obtain a valid and effective coastal development permit." Emphasized in this letter was that "Commission staff will not issue the CDP until the "prior to issuance" special conditions have been satisfied."

On March 4, 2009 the CDP was issued based on the final approved site plan dated September 2009 and information submitted and approved to satisfy the "prior to issuance" Special Conditions 1, 2 and 3. Specifically, to satisfy Special Condition No. 1, Mr. and Mrs. Moore submitted revised plans and a letter from Thomas Cochrane (Professional Geologist) regarding conformance of the plans to the geotechnical report. In addition, plans were revised to conform with a design restriction to the exterior finish schedule. To satisfy Special Condition No. 2 (Deed Restriction), both of the Moores signed a deed restriction on November 17, 2008 that was recorded in Mendocino County on January 14, 2009. This restriction binds the Moores, their assigns and successors to the Special Conditions listed in the Notice of Intent to Issue Permit dated May 9, 2008. In this deed, it states that "the Commission found that, but for the imposition of the Special Conditions, the proposed development could not be found consistent with the provision of the Act and that a permit could therefore not have been granted." To satisfy Special Condition 3, the Moores submitted a letter dated December 12, 2008 from Tom Peters, Deputy Director of Transportation of the County of Mendocino Department of Transportation. In that letter, Mr. Peters stated that "the existing driveway approach at 37900 Old Coast Highway ... is in substantial conformance with our Residential Driveway Approach standards and no improvements are necessary for this project. Therefore no Encroachment Permit is required."

The final approved site plans and Special Conditions to the CDP clearly indicate the location of ESHA, a 50 foot ESHA buffer and temporary/construction fencing that was to be maintained in place until the authorized development is completed. It was noted in Special Condition 4A that "no construction related activities shall be allowed to encroach into the areas protected by the temporary exclusion/construction fencing." As described below, significant construction related activities have occurred in the areas that were to be protected by the temporary exclusion fencing. Notably, the revisions to the plans that eliminated the permanent fence and driveway addition, as required by the Commission as part of their *de novo* review and approval of the project, were ignored.

As permittees, Mr. and Mrs. Moore are responsible for ensuring that their contractors abide by the terms of the permit. In addition, as a licensed contractor performing work in the coastal zone, Mr. Greene is required to perform that work in accordance with issued coastal permits. Mr. Greene should have thoroughly reviewed all permits issued for the property to ensure that he met the terms and conditions when performing development. Mr. Greene's failure to abide by CDP No. A-1-MEN-07-21 as an authorized agent of the Moores is considered a violation of the Coastal Act. Because the Commission issued the CDP for the development at the subject property, not the County, Mr. Moore and Mr. Greene's responses as to what they did or did not do with the County are not pertinent.

Alleged Permit Violations

We confirmed at our site visit on March 15, 2011 that unpermitted development and construction related activities in conflict with the Commission's CDP terms and conditions have occurred at the subject property.

During the March 15, 2011 site visit and also by letter dated April 14, 2011 we requested as-built drawings of the subject property. On May 12, 2011 we received a hand drawn overlay that appears to match the map scale and alignment of the Commission approved site plan (dated September 2008). Although this overlay is useful, in order to proceed with our investigation and to bring your project into conformance with our permit requirements, we need additional information from you as to who prepared the overlay document. Normally we require formal as-built drawings prepared by a licensed surveyor or architect. However, we have already utilized your document to make preliminary conclusions regarding the cited unpermitted development activity. Based upon our site visit on March 15, 2011 and based upon your submittal of the hand-drawn overlay, you have undertaken development both within the defined ESHA areas as well as within the 50-ft. buffer approved for the defined ESHA.

The unpermitted development violates the following Standard and Special Conditions which you and all of your agents previously agreed to abide by in your CDP.

Standard Condition 5. *Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.* (emphasis added)

On March 7, 2009, Greg and Sandra Moore "acknowledge[d] receipt of this permit and agree[d] to abide by all terms and conditions thereof." All of the terms and conditions are perpetual. The following Special Conditions have been violated by unpermitted development and construction related activities on the subject property.

Special Condition 1.B. *The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.* (emphasis added)

We have conducted a thorough search of our CDP records and there are no amendments to CDP A-1-MEN-07-021 that authorize development at the subject property other than what was shown in the approved final plans. Variations from the approved plans appear to include, but are not limited to: a concrete driveway (both type and extent of construction); a concrete walk; a water spigot; a fence that bisects the property; and a perimeter fence and a gate.

Concrete driveway: The existing driveway on the final approved plans is shown as existing gravel and was limited in its length to the residential units due to the need to protect ESHA. The as-built, newly constructed and unpermitted driveway extends well beyond the footprint of the previous gravel driveway, is constructed within the 50' buffer zone required to protect ESHA, and is finished with impervious concrete rather than permeable gravel. All of these are significant variations from the approved plans that directly impact defined and previously identified sensitive habitat and could impact bluff stability as a result of changes in drainage.

Concrete walk: The concrete walk was not shown on the final approved plan and is within the 50' buffer zone established in the permit for the protection of endangered species. In addition, this impervious walk may act as a conduit for drainage from the driveway out towards the bluff.

Water spigot: The water spigot appears to be constructed within the ESHA zone and was not shown on the final approved plans for the site.

Fence that bisects the property: The fence goes right through the ESHA and was not shown on the final approved plans.

Perimeter fence and gate: The perimeter fence and gate were not shown on the final approved plans.

Importantly, both the extent of the driveway and the location of the fence that bisect the property are issues that were raised by the Commission in 2007 in response to your proposed plans when this permit matter was before the Commission on appeal from the County. On July 5, 2007 you agreed to modify your application and eliminate a driveway extension that was proposed in the 50' buffer zone. On September 21, 2007, your architect sent a revised site plan that was "now consistent with the Biotic Assessment and Rare Plant Survey" prepared by your biologist (BioConsultant) in September 2006. Notably, the changes to the site plan included removing a fence and eliminating the driveway extension, both of which have now been constructed.

Special Condition 2. Deed Restriction. On Nov 17, 2008 you signed a Deed Restriction that bound you and your successors, and assigns to the terms and conditions in the CDP that restrict the use and enjoyment of the subject property. The specific restrictions at this site are noted in the Special Conditions to the permit and include limiting development to only that which is in accordance with the approved site plan. The unpermitted development and construction related activities are therefore a violation of the deed restriction.

Special Condition 3. *The permittee shall submit to the Executive Director a copy of the final, approved Encroachment Permit issued by the Mendocino County Department of Transportation for the installation of any needed driveway improvements onto Old Coast*

Highway right-of-way, or evidence that no permit is required. The applicant shall inform the Executive Director of any changes to the project required by the Mendocino County Department of Transportation. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required. (emphasis added)

As noted above, you submitted evidence that no encroachment permit was required from the County for installation of driveway improvements at the subject property. Specifically, the Deputy Director of Transportation of the County of Mendocino Department of Transportation stated in his letter that no Encroachment Permit is required because "no improvements are necessary for this project."

In the Greene February 17, 2011 letter to us, Mr. Greene stated that the owners were required by the County to construct a 20' deep by 14' wide apron and that this apron was inspected by the Roads Works Department. Please send evidence of this requirement and inspection as it is not consistent with the evidence provided to the Commission as a condition of the issuance of the CDP for the subject property.

In the Moore February 26, 2011 letter to us, Mr. Moore indicated that the Moores were "mandated by the county to pave the first 20' of our driveway as a condition of our permit." This mandated action is not consistent with the evidence you provided to the Commission as a condition on the issuance of your CDP. Please submit a copy of the final approved Encroachment Permit as soon as possible. However, as noted above, even with this Permit approved by the County Department of Transportation you may be in violation of your CDP and with the Coastal Act. Any changes to the final plans that are required by the County should not have been implemented until a Commission amendment is obtained, as stated in Condition 1B cited above.

Special Condition 4. Best Management Practices and Construction Responsibilities.

A. Prior to the commencement of any other construction activities, the temporary exclusion/construction fencing depicted in the revised site plan dated April 1, 2008 shall be installed to protect coastal bluff morning glory (Calystegia purpurata ssp. saxicola) habitat. The temporary/construction fencing shall be maintained in place until the authorized development is completed. No construction related activities shall be allowed to encroach into the areas protected by the temporary exclusion/construction fencing.

D. On-site vegetation shall be maintained to the maximum extent possible during construction activities. (emphasis added)

Based on both our site visit and the overlay provided by you, construction related activities have occurred in the area that was to be protected by the temporary exclusion/construction fencing. Much of the unpermitted concrete driveway is within this area. Associated with the construction of the driveway is a swath of disturbed soil approximately 26 feet wide. This area shows signs of blading and impact from heavy equipment, likely in association with installation of the driveway. In addition to the driveway and bladed areas, other observed unpermitted developments within the protected areas are:

1. A water spigot located in the grassy opening adjacent to the bladed area, 26.6 feet from the curb;
2. Chain-link fencing that appears to have been placed in a similar configuration (in relative alignment with the garage on the parcel to the southwest) to that originally proposed prior to the Commission's *de novo* review of the project and deleted by you in the approved site plans. Importantly, the originally-proposed fence (that was subsequently removed for our approval) was located adjacent to the ESHA and the as-built unapproved fence is within the ESHA fence ; and
3. A vehicle entry gate that spans the concrete driveway and connects to the chain link fencing.

The concrete driveway, bladed area, and other unpermitted developments as described above are not only construction related activities which have occurred within the protected area, but appear to encroach into mapped ESHA buffer areas, and have likely directly impacted ESHA. This is evident based on disturbed soil next to the driveway and ponded water located close to the entrance gate that were observed by Commission staff during the March 15, 2011 site visit.

Special Condition 6. Protection of Sensitive Habitat.

The permittee shall comply with the following requirements to protect sensitive plant habitat:

A. Comply with the temporary exclusion/construction fencing requirements of Special Condition No. 4(A).

The Commission's approval of the CDP was based on revised construction plans that minimized the impact of construction near sensitive habitat areas. This habitat was discovered in 2006 by your biologist who recommended that the standard 100 foot setback to ESHA be reduced to 50 feet. The Commission agreed with this, provided that there was no new construction within the 50 foot ESHA buffer area or within the ESHA itself. As a result of the ESHA on the site, your proposed plans for a barn, granny unit, fence and driveway extension were eliminated and the final approved plans showed no new construction or construction related activities within 50 feet of the ESHA. As noted above, the unpermitted development within the ESHA and 50 foot buffer area is a knowing and intentional violation of the permit in that it shows that you did not protect the sensitive habitat as required in Special Condition 4(A) and as agreed to by you when you accepted the Commission's action on the CDP.

Special Condition 7. Future Development Restrictions. *Any future improvements to the single family residence or other approved structures will require a permit amendment or a new coastal development permit.*

As described in our February 1, 2011 letter to you, the construction of a concrete driveway, extension of an existing gravel driveway, erection of a gate, construction of a perimeter fence, installation of a water spigot and construction of a concrete walk all constitute development as defined by the Coastal Act. Prior to performing the grading, placement of solid material and removal of vegetation, a CDP should have been obtained. Your failure to obtain a CDP is considered a knowing and intentional violation of the Coastal Act, and your actions have resulted in adverse impact to ESHA.

Actions Required

At this time, we are requesting that you complete a CDP amendment application to remove the unpermitted development and restore the subject property. In addition to other filing requirements, this application must include the following:

As-Built Site Plans: Please send a copy of an as-built site plan prepared by a professional architect or licensed surveyor. In addition, please indicate who prepared the overlay sent to us on May 12, 2011.

Biological Impact Assessment: Please submit a report from a qualified ecologist that delineates the extent of impact to the ESHA and the ESHA buffer zone. This report should include a plan to restore the ESHA to its pre-development state.

Geotechnical Report: Please submit a geotechnical report that addresses the effect of the unpermitted concrete driveway and concrete walk on drainage conditions at the subject property and the expected impact of these changes to bluff stability.

You will have to contact our North Coast District Office to discuss what is necessary for you to submit a complete CDP amendment application for consideration. Once we have received the above mentioned documents, Commission enforcement staff will discuss further the required removal and restoration activities that must be performed at the subject property and other measures we believe are necessary to resolve this Coastal Act violation. Because the removal and restoration action is itself development, a new approved CDP amendment is required prior to any work being performed at the site.

If you wish to avoid formal action by the Commission to resolve this situation and are willing to submit a CDP amendment application to remove the unpermitted development and restore the subject property, please indicate so by June 3, 2011. At a minimum, in order for such an action to proceed, we need the above referenced reports, plans and completed CDP amendment application by July 1, 2011. We may be able to grant an extension if you can show good cause, i.e. evidence that you have retained a consultant who requires additional time to complete their investigation.

If you fail to submit the requested information, we will be forced to elevate this case for appropriate formal action by the Commission. Formal actions can include, but are not limited to: 1) recording a Notice of Violation on the subject property; 2) issuing Cease and Desist and Restoration Orders ordering resolution of this matter; 3) seeking appropriate civil monetary penalties against all parties responsible for violating the Coastal Act permit requirements; and 4) maintaining an action for injunctive and declaratory relief. As described in our February 1, 2011 letter to you, when a person knowingly and intentionally performs or undertakes development without a CDP or that is inconsistent with any CDP previously issued by the Commission, civil liability amounts of not less than \$1,000 and not more than \$15,000 per day during which the violation exists.

May 27, 2011

Page -8-

Based on Mr. Greene's letter dated February 17, 2011 and photos we received on January 12, 2011 the unpermitted development occurred between October 2010 and January 2011. Using the January 12, 2011 date, the minimum potential civil liability accrued to date is \$135,000. The maximum civil liability accrued to date is \$2,025,000. This liability continues to accrue every day that the unpermitted development remains at the subject property. In order to avoid these penalties, we suggest that you submit the requested application to remove the unpermitted development and restore the subject property as soon as possible.

If you have any questions concerning this letter, please feel free to contact me at (415) 904-5290 or Joanna Meldrum of my staff at 415-904-5587.

Sincerely,

Nancy Cave
Supervisor
Northern California
Enforcement Program

Cc: Bob Merrill
Tamara Gedik
Teresa Spade, County of Mendocino

Exhibit 10
CCC-12-CD-07 & CCC-12-RO-07
(Moore)

Page 8 of 8

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

Property: 37900 Old Coast Highway
Gualala, Ca 95445
APN 145-121-03
Letter Dated 05/27/2011

Dear Nancy Cave,

I called you & your staff member Juanna Meldrum which I was turned over to a voice mail with a forwarding message to punch in 03 for your legal department which stated it was not a valid number.

I am asking for the CDP Amendment Application, along with the proper information to complete the form for consideration.

Ref: (As built-site Plan)

In your request it was not stated that I had to have a Professional Architect prepare the overlay. Only that it was to scale which I prepared.

Replay to Question on Page 6 Item # 1

The water spigot was there when I bought the property, it was obviously missed in the original drawing.

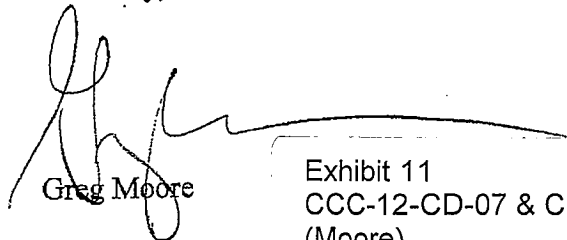
Replay to Question on Page 5 Highway right-of-way

I am a little confused who takes authority, as we were mandated as a part of the final that I was to pave 20 ft. to the street as I was instructed by the Mendocino County Department of Transportation, to receive a final on my house. Enclosed is the documentation.

As I only received this letter today & was unable to get you by phone I am sure I will need^a extension to meet all your requirements, once I receive them.

Also enclosed are pictures of another tree that fell on my property. As I stated in my last letter there are dead trees & numerous broken limbs causing liability to myself and my neighbors, but you still have me on a no work order so at this time, per your instructions I can take no action to make my yard safe from more trees falling due to high winds. Please instruct us what to do, as I no longer want to accept the liability if a tree falls down & causes damage to either neighbor houses or mine.

Sincerely,



Greg Moore

Exhibit 11
CCC-12-CD-07 & CCC-12-RO-07
(Moore)

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5200
FAX (415) 904-5400
TDD (415) 597-5885



June 15, 2011

Greg and Sandra Moore
P.O. Box 4067
Oakland, CA 94614
Certified Mail No. 7004 1160 0001 3918 8733

Property Location: 37900 Old Coast Highway
Gualala, CA 95445
APN 145-121-03

Re: Alleged violations of the Coastal Act and to the terms of CDP A-1-MEN-07-021, Coastal Act Violation File No. V-1-11-003

Dear Mr. and Mrs. Moore,

Thank you for your response to our letter dated May 27, 2011, received by us on June 3, 2011. Enclosed please find an Application for Amendment to Coastal Development Permit (CDP). As noted in our May 27, 2011 letter to you, the scope of work covered by this CDP Amendment application should be to remove the unpermitted development and restore the property located at 37900 Old Coast Highway in Gualala, California (subject property) as conditionally approved by the Commission in CDP A-1-MEN-07-021. Pursuant to 14 Cal. Admin. Code Sections 13164 and 13168, materials to be submitted with the completed form are:

1. Revised plans showing the proposed amendment; these must have been approved by the local planning agency. Please submit evidence of approval.
2. Stamped, addressed envelopes for renotification of all property owners and residents within 100 feet of the development and list of same.

In addition, as per our May 27, 2011 letter, we require the following information with your CDP Amendment application:

1. Formal as-built site plan prepared by a professional architect or licensed surveyor. This can be included as part of the revised plans showing the proposed amendment.
2. A Biological Impact Assessment Report prepared by a qualified ecologist that delineates the extent of impact as a result of the unpermitted development to the ESHA and the

Exhibit 12
CCC-12-CD-07 & CCC-12-RO-07
(Moore)

ESHA buffer zone. This report should include a plan to restore the ESHA to its pre-development state as approved in CDP A-1-MEN-07-021.

3. A Geotechnical Report that addresses the effect of the unpermitted concrete driveway and concrete walk on drainage conditions at the subject property and the expected impact of these changes to bluff stability.

Until we receive the information listed above, we cannot determine what the appropriate fee is for processing your application. Fees for material amendments to coastal development permits are fifty percent (50%) of the permit fee that would currently apply to the permitted development.

Please contact our North Coast District Office (707-445-7833) if you have any questions on what is necessary for you to submit a complete CDP amendment application for consideration. Once we have received the above mentioned documents, Commission enforcement staff will discuss further the required removal and restoration activities that must be performed at the subject property and other measures we believe are necessary to resolve this Coastal Act violation.

Enforcement staff cannot predict whether or not an amendment application you submit will be accepted by the Executive Director. Depending on what type of request you submit, the Executive Director may determine that the amendment request should be rejected for processing and filing on the basis that the proposed amendment would lessen or avoid the intended effect of a previously approved coastal development permit. 14 Cal. Admin. Code Section 13166(a) states:

The executive director shall reject an application for an amendment to an approved permit if he or she determines that the proposed amendment would lessen or avoid the intended effect of an approved or conditionally approved permit unless the applicant presents newly discovered material information, which he could not, with reasonable diligence, have discovered and produced before the permit was granted.

Enclosed is a full copy of 14 Cal. Admin. Code Section 13166 for your review and consideration.

Water Spigot.

We have reviewed the plans, reports, permit files and photos and have not found any evidence that the water spigot now located in the ESHA was pre-existing. Your consultant (BioConsultant LLC) performed a detailed biotic and rare plant survey of the subject property in 2006, well before any new development had occurred on the site. The spigot is not mentioned in their report dated September 2006. Because it would be considered an existing structure in the middle of native ESHA, it is surprising that this spigot was not mentioned. If you have evidence that this spigot was on the subject property when you purchased it (i.e. photographs, permit evidence, or other documents), please submit a copy to us. If you cannot prove that the spigot was on the property when you purchased it, it must be included in the plan to remove unpermitted development from the site and restore the ESHA.

Exhibit 12
CCC-12-CD-07 & CCC-12-RO-07
(Moore)

County of Mendocino Department of Transportation Encroachment permit.

Thank you for submitting documentation related to your encroachment violation and final inspection permit from the County of Mendocino (County). You have repeatedly contended that the County required you to pave 20 feet of your driveway as a condition of your encroachment permit with them. This is not the case. In December 2008, when you were in the process of complying with the conditions attached to CDP A-1-MEN-07-021, the County wrote a letter stating that no improvements to your pre-existing, graveled driveway were necessary and therefore there was no need to issue an encroachment permit. On March 24, 2010, the County determined that you had constructed the concrete driveway without an encroachment permit. You received an encroachment violation letter from the County for constructing the concrete driveway without a permit. On April 13, 2010 you received a second letter from the County in regards to this violation warning you that if you did not apply for an after the fact encroachment permit, you may be required to remove the driveway at your expense and face possible civil penalties. Fifteen days later, on April 28, 2010, the County received an application for an after the fact encroachment permit submitted by your contractor Steve Carriro. The same day Mr. Carriro was issued an after the fact encroachment permit. We spoke with Mr. Tyner of the County Department of Transportation and confirmed that the County did not mandate the paving of the driveway as you claim, but rather that you chose to pave it without approval and in conflict with previous approval issued by the County as well as the Commission, prior to obtaining the necessary encroachment permit from the County and the necessary amendment to your CDP as required under Special Condition 1B.

When you signed the CDP, you agreed to Special Condition 1B that states:

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

Based on the information provided by the County, it appears that the unpermitted concrete driveway was constructed by March 24, 2010. As explained in our May 27, 2011 letter to you, when a person knowingly and intentionally performs or undertakes development without a CDP or that is inconsistent with any CDP previously issued by the Commission, civil liability amounts of not less than \$1,000 and not more than \$15,000 per day shall accrue during the time in which the violation exists. Using the date of March 24, 2010, the minimum potential civil liability accrued to date is \$448,000. The maximum civil liability accrued to date is \$6,720,000. This liability continues to accrue every day that the unpermitted development remains at the subject property. In order to avoid these penalties, we suggest that you submit the requested application to remove the unpermitted development in its entirety and restore the subject property as soon as possible.

June 9, 2011

-Page 4-

Trees

In your letter you contend that the Commission has issued an order preventing you from removing downed trees and limbs. To date, the Commission has not issued an order on the subject property. We have asked you to cease performing unpermitted development on your site unless and until you have all necessary permit approvals. However, since you have raised the issue and inquired, we have contacted the County's planning department and if you believe that there are fallen or other trees that need to be removed from your property, please contact Teresa Spade at (707) 964-5379 to discuss the County's requirements associated with tree removal. We recommend that you contact the County prior to removing any standing trees from your property to avoid incurring a violation from the County.

If you have any questions concerning this letter, please feel free to contact me at (415) 904-5290 or Joanna Meldrum of my staff at 415-904-5587.

Sincerely,

Nancy Cave
Supervisor
Northern California
Enforcement Program

Cc: Bob Merrill
Tamara Gedik
Teresa Spade, County of Mendocino
Paul Tyner, County of Mendocino

Exhibit 12
CCC-12-CD-07 & CCC-12-RO-07
(Moore)

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5200
FAX (415) 904-5400
TDD (415) 597-5885



June 21, 2011

Greg and Sandra Moore
P.O. Box 4067
Oakland, CA 94614
Certified Mail No. 7004 1160 0001 3918 8740

Property Location: 37900 Old Coast Highway
Gualala, CA 95445
APN 145-121-03

Re: Alleged violations of the Coastal Act and to the terms of CDP A-1-MEN-07-021, Coastal Act Violation File No. V-1-11-003

Dear Mr. and Mrs. Moore,

We were informed by the County of Mendocino Department of Transportation that a letter was sent to Mr. Greene on June 20, 2011 stating that the concrete driveway constructed within the County right-of-way at 37900 Old Coast Highway (subject property) was not permitted and was not constructed to County standards. As we stated in our recent letters to you, any development on the subject property either already performed or contemplated for future performance that was not included in your original Coastal Development Permit (CDP) must be approved via a CDP Amendment before any work is performed. This includes any work required by the County in their right-of-way. Please contact our North Coast District staff at 707-445-7833 to discuss that work and whether or not you need to amend CDP A-1-MEN-07-021.

If you have any questions concerning this letter, please feel free to contact me at (415) 904-5290 or Joanna Meldrum of my staff at 415-904-5587.

Sincerely,

Nancy Cave
Supervisor
Northern California
Enforcement Program

Cc: Donald Greene
Steve Carreiro
Bob Merrill
Tamara Gedik
Teresa Spade, County of Mendocino
Paul Tyner, County of Mendocino

Exhibit 13
CCC-12-CD-07 & CCC-12-RO-07
(Moore)

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5200
FAX (415) 904-5400
TDD (415) 597-5885



July 11, 2011

SENT VIA FAX AND REGULAR MAIL

Greg and Sandra Moore
P.O. Box 4067
Oakland, CA 94614

Property Location: 37900 Old Coast Highway
Gualala, CA 95445
APN 145-121-03

Re: Alleged violations of the Coastal Act and to the terms of CDP A-1-MEN-07-021, Coastal Act Violation File No. V-1-11-003

Dear Mr. and Mrs. Moore,

Thank you for forwarding us an email from your architect, Michael Barron-Wike, dated June 30, 2011. Based on that email and its attachment (letter from Mr. Barron-Wike to Kim Fitts, Bioconsultant, LLC) it appears that you have contacted consultants to assist you in preparing your CDP Amendment Application (hereinafter referred to as the application) for your property located at 37900 Old Coast Highway in Gualala, CA (subject property). We understand that Ms. Fitts is not available to complete the biological assessment report until after July 20, 2011 and that the surveyor (Richard Seale) requires that her work be complete before he can complete an as-built site plan that delineates the impacts to ESHA.

As you are aware from both our May 27, 2011 and our June 15, 2011 letters to you, a geotechnical report that addresses the effect of the unpermitted concrete driveway and concrete walk on drainage conditions at the subject property and the expected impact of these changes to bluff stability must be submitted as part of the application. Please let us know if you or your architect has retained a geotechnical consultant to address the drainage and bluff stability issues at the subject property.

In our May 27, 2011 letter we gave you a deadline of July 1, 2011 to submit your complete application, with the required reports and plans. As of today, we have not received a formal request from you for an extension to our July 1, 2011 deadline. Based on your telephone conversation today with Joanna Meldrum, it appears that you intend to submit the application and are in the process of retaining consultants. Even though you have not yet requested an extension of time, we understand that preparing a complete application is time consuming and are willing to grant one extension of time for you to submit a complete application no later than August 20, 2011. This gives you an additional month after your biologist returns to complete

Exhibit 14
CCC-12-CD-07 & CCC-12-RO-07
(Moore)

July 11, 2011

-Page 2-

the application. We see no reason that the work to be undertaken by a geotechnical consultant for the application cannot go forward while you await the return of your biological consultant.

Please confirm that you have retained a geotechnical consultant and that you intend to meet the August 20, 2011 deadline by July 18, 2011.

If you have any questions concerning this letter, please feel free to contact me at (415) 904-5290 or Joanna Meldrum of my staff at 415-904-5587.

Sincerely,

Nancy Cave
Supervisor
Northern California
Enforcement Program

Cc: Bob Merrill
Tamara Gedik
Teresa Spade, County of Mendocino
Paul Tyner, County of Mendocino

Exhibit 14
CCC-12-CD-07 & CCC-12-RO-07
(Moore)

CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5200
FAX (415) 904-5400
TDD (415) 597-5885



August 22, 2011

SENT BY REGULAR & CERTIFIED MAIL

Greg and Sandra Moore
P.O. Box 4067
Oakland, CA 94614
Certified Mail No: 70062760000558835057

Property Location: 37900 Old Coast Highway
Gualala, CA 95445
APN 145-121-03

RE: Alleged violations of the Coastal Act and of the terms of
CDP A-1-MEN-07-021; Coastal Act Violation File No. V-1-
11-003

Dear Mr. and Mrs. Moore:

This letter is a follow up to the phone conversation Mr. Moore had with Leandra Mosca regarding a time extension on your submittal of materials for an Application for Amendment to Coastal Development Permit (CDP). During the conversation Mr. Moore explained that progress was being made on each component of the CDP Amendment application, but coordinating the efforts of the licensed professionals involved in the process required extra time beyond the previously-issued August 20, 2011 deadline.

This letter is confirming that an extension of the deadline for submitting your CDP Amendment application materials has been granted. This application will include all of the materials detailed in our letter dated June 15, 2011. The new deadline for this submittal is September 20, 2011.

If you have any questions regarding this letter you may contact me at (415) 904-5290 or Leandra Mosca at (415) 597-5886.

Sincerely,

Nancy Cave
Northern California Supervisor
Enforcement Program
California Coastal Commission

Exhibit 15
CCC-12-CD-07 & CCC-12-RO-07
(Moore)

Cc: Bob Merrill, Manager, North Coast District
Tamara Gedik, Planner, North Coast District
Teresa Spade, Mendocino County

CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5200
FAX (415) 904-5400
TDD (415) 597-5885



September 12, 2011

SENT BY REGULAR & CERTIFIED MAIL

Greg and Sandra Moore
P.O. Box 4067
Oakland, CA 94614
Certified Mail No: 70062150000347931693

Property Location: 37900 Old Coast Highway
Gualala, CA 95445
APN 145-121-03

RE: Alleged violations of the Coastal Act and of the terms of
CDP A-1-MEN-07-021; Coastal Act Violation File No. V-1-
11-003

Dear Mr. and Mrs. Moore:

This letter is a follow up to the phone conversation between Mr. Moore and Leandra Mosca on September 8, 2011. During the call Mr. Moore gave the Coastal Commission staff permission to speak directly to Michael Barron-Wike, the architect assisting Mr. Moore in the preparation of his CDP Amendment application for the property located at 37900 Old Coast Highway in Gualala, CA. If you have any questions regarding this letter you may contact me at (415) 904-5290 or Leandra Mosca at (415) 597-5886.

Sincerely,

Nancy Cave
Northern California Supervisor
Enforcement Program
California Coastal Commission

Exhibit 16
CCC-12-CD-07 & CCC-12-RO-07
(Moore)

Cc: Bob Merrill, Manager, North Coast District
Tamara Gedik, Planner, North Coast District

CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5200
FAX (415) 904-5400
TDD (415) 597-5885



September 19, 2011

SENT BY REGULAR & CERTIFIED MAIL

Michael Barron-Wike
P. O. Box 30, 39140 South Highway One
Gualala, CA 95445
Certified Mail No: 70062760000558836948

Property Location: 37900 Old Coast Highway
Gualala, CA 95445
APN 145-121-03

RE: CDP Application for Amendment regarding alleged violations of the Coastal Act and of the terms of CDP A-1-MEN-07-021; Coastal Act Violation File No. V-1-11-003 - requested extension of time to submit

Dear Mr. Barron-Wike:

This letter shall serve to summarize the phone conversation that took place on September 13, 2011 and to respond to email from you regarding the Coastal Development Permit (CDP) Application for Amendment you are preparing on behalf of Greg and Sandra Moore for property located at 37900 Old Coast Highway in Gualala, CA (subject property). During the September 13th phone call you explained that you are still waiting for the Geotechnical Report from Eric Olsborg, geologist and consultant, and that you must obtain this component of the CDP Amendment Application before you will be able to compile, complete and submit the application materials to our North Coast office. You also updated us via email on Thursday, September 15th that by this Monday or Tuesday (September 19 or September 20) Mr. Olsborg should have sent his report to you and that you will have all of the CDP Application information complete and submitted either by the end of this week (Friday, September 23) or by the beginning of next week (Monday, September 26).

During our phone call I discussed with you a comment I made in an email exchange regarding your submittal. I wanted to clarify that mere submittal of an application to amend an existing CDP does not guarantee that such an amendment application will be accepted for processing, and if accepted, that such an amendment application will be recommended for approval by North Coast Commission staff. As we have stated repeatedly in prior correspondence with Mr. Moore, enforcement staff cannot predict

Exhibit 17
CCC-12-CD-07 & CCC-12-RO-07
(Moore)

whether or not an amendment application you submit will be accepted by the Executive Director. Depending on what type of request you submit, the Executive Director may determine that the amendment request should be rejected for processing and filing on the basis that the proposed amendment would lessen or avoid the intended effect of a previously approved coastal development permit. 14 Cal. Admin. Code Section 13166(a) states:

The executive director shall reject an application for an amendment to an approved permit if he or she determines that the proposed amendment would lessen or avoid the intended effect of an approved or conditionally approved permit unless the applicant presents newly discovered material information, *which he could not, with reasonable diligence, have discovered and produced before the permit was granted.* (emphasis added)

Thus, any amendment application that includes a request to retain any of the unpermitted development that has already occurred, or includes any new development that would lessen or avoid the intended effect of CDP A-1-MEN-07-021 must be assessed as to its acceptability pursuant to section 13166 of our administrative regulations, and its consistency with the original CDP.

During our conversation and in your email dated September 12, 2011, you indicated that your project biologist had completed an updated botanical report of the property and that you have a copy of that report. If it is possible I would appreciate an advance copy of the Biological Impact Assessment Report. Early submittal of this information will assist Commission staff in helping your client towards resolution of the outstanding Coastal Act violations.

Please contact our North Coast District Office (707-445-7833) if you have any further questions about submitting a complete CDP amendment application for consideration. If you have any questions regarding this letter, please feel free to contact me at (415) 904-5290 or Leandra Mosca of my staff at (415) 597-5886.

Sincerely,

Nancy Cave
Northern California Supervisor
Enforcement Program
California Coastal Commission

Exhibit 17
CCC-12-CD-07 & CCC-12-RO-07
(Moore)

Cc: Bob Merrill, Manager, North Coast District
Tamara Gedik, Planner, North Coast District
Greg and Sandra Moore, Property Owners
Leandra Mosca, Statewide Enforcement Program

CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5200
FAX (415) 904-5400
TDD (415) 597-5885



September 26, 2011

SENT BY REGULAR & CERTIFIED MAIL

Michael Barron-Wike
P. O. Box 30, 39140 South Highway One
Gualala, CA 95445
Certified Mail No: 70062760000558836948

Property Location: 37900 Old Coast Highway
Gualala, CA 95445
APN 145-121-03

RE: CDP Application for Amendment regarding alleged
violations of the Coastal Act and of the terms of CDP A-1-
MEN-07-021; Coastal Act Violation File No. V-1-11-003 –
requested extension of time to submit

Dear Mr. Barron-Wike:

This letter shall serve to summarize and follow-up our phone conversation that took place on September 22nd, 2011 regarding the Coastal Development Permit (CDP) Application for Amendment you are preparing on behalf of Greg and Sandra Moore for property located at 37900 Old Coast Highway in Gualala, CA (subject property). During the phone conversation we addressed a question your clients have about the CDP Amendment application, set a new deadline for the amendment application's submittal and briefly touched on the procedure for submitting the application.

During the phone call you expressed a concern on behalf of your clients about restoring the driveway at 37900 Old Coast Highway to the original conditions outlined in the property's CDP. More specifically, you said that the driveway approved in the original CDP does not provide adequate space for drivers to turn their cars around in order to safely enter Highway 1 from the subject property. You also expressed that with the original driveway plans in place, drivers are likely to use portions of the property designated as Environmentally Sensitive Habitat Areas (ESHA) to turn around because of their proximity to the driveway. Based on this information, you claimed that the addition of a spur to the driveway would protect ESHA and improve safety by providing adequate room for drivers to turn around on the subject property. Your question for me regarding this issue is if the inclusion of what you believe to be a justified driveway spur in the CDP Amendment application will hurt or lessen the application's potential to be approved by Coastal Commission staff.

Exhibit 18
CCC-12-CD-07 & CCC-12-RO-07
(Moore)

We also received your email dated September 26, 2011 regarding the aforementioned driveway spur that your clients have considered including in their CDP Amendment application. While Commission staff, including myself, strive to do our best to help you and your client toward resolution of the outstanding Coastal Act violations, I am not able to make any guarantees or recommendations on this issue. As you are aware, if any proposed development is located within ESHA or within the 50-foot ESHA buffer in conflict with the resource protection policies of the Mendocino County certified LCP and/or in a way that lessens or avoids the intended effect of the originally-approved CDP, then on behalf of the Executive Director the Commission's North Coast permitting staff may have grounds to reject the amendment request per 13166 of the California Code of Regulations. In our view, the need for a turn-around could have been addressed and resolved at the time of the original CDP hearing, when the proposed driveway was discussed and your clients agreed to alter the requested design to what was ultimately permitted by the Commission. As I mentioned during our phone call, you may be able to consult the Commission's North Coast District staff for further discussion of this issue, but there are no guarantees they will be able to discuss the application prior to actual submittal at this time.

This letter also serves to confirm that an extension of the deadline for your client to submit the CDP Amendment application materials has been granted. As we discussed, this application will include all of the materials detailed our letter sent to Mr. and Mrs. Moore dated June 15, 2011. The new deadline for the submittal is October 20th, 2011. Please submit one copy of the application to the Coastal Commission's North Coast District Office located in Eureka, CA and a second copy to the Commission's headquarters in San Francisco at the addresses we confirmed during the phone call. Once we receive your application we will acknowledge receipt and then notify you within 30 days if the application is acceptable for filing, if additional materials are needed in order for it to be a complete application, or if it is rejected by the Executive Director pursuant to section 13166 of the Commission's Regulations. We cannot determine your client's filing fee for this application until we receive the application, as the fee will depend on the proposed amended project contained in the received application.

Please contact our North Coast District Office (707-445-7833) if you have any further questions about submitting a complete CDP amendment application for consideration. If you have any questions regarding this letter, please feel free to contact me at (415) 597-5886 or my supervisor, Nancy Cave, at (415) 904-5290.

Sincerely,

Leandra Mosca
Enforcement Program
California Coastal Commission

Exhibit 18
CCC-12-CD-07 & CCC-12-RO-07
(Moore)

Cc: Nancy Cave, Northern California Enforcement Supervisor
Bob Merrill, Manager, North Coast District
Tamara Gedik, Planner, North Coast District
Greg and Sandra Moore, Property Owners

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE

710, E STREET • SUITE 200

EUREKA, CA 95501-1865

VOICE (707) 445-7833

FACSIMILE (707) 445-7877



November 18, 2011

Michael Barron-Wike
P.O. Box 30
Gualala, CA 95445

SUBJECT: Review of Coastal Development Permit Application No. A-1-MEN-07-021-A1 (Moore) for proposed driveway changes; proposed additional plantings of rare plants; and removal of portions of existing paved driveway encroaching of ESHA buffer and ESHA planting areas.

Dear Mr. Barron-Wike:

We have completed an initial review of the coastal development permit amendment application you submitted on behalf of Greg and Sandra Moore, dated October 16, 2011 and that was received in our office on October 21, 2011 for the above-referenced development project. Certain additional information is needed before we can consider the application complete. Please submit the information requested below, so that we can file your application as complete and schedule the matter for consideration by the Commission.

1. Removal of Unpermitted Driveway and Proposed New Driveway Improvements

The October 16, 2011 submittal includes a cover letter describing two site plans that were transmitted with the application, in response to a letter sent from our Enforcement Program dated June 15, 2011 in regards to unpermitted development at the subject site. The two site plans described in the submittal include "Site Plan A" that "suggests the removal of all improvements that do not conform to the CDP-approved conditions, restoring the remaining portions to the permitted requirements," and "Site Plan B" that "suggests following Site Plan A with the addition of a gravel/pervious pavement area nearest the two existing garage doors..."

Title 14 Section 13166 of the Public Resources code requires the Executive Director to reject an application for an amendment to an approved permit if it's determined that "the proposed amendment would lessen or avoid the intended effect of an approved or conditionally approved permit unless the applicant presents newly discovered material information, which he could not, with reasonable diligence, have discovered and produced before the permit was granted." As the submittal includes a proposal to add gravel/ pervious pavement near the existing garage doors and within the required 50-foot-minimum ESHA buffer for the rare coastal bluff morning-glory (*Calystegia purpurata* ssp. *saxicola*) that would lessen the intended effect of CDP No. A-1-MEN-07-021 and no new material information has been presented, the amendment application cannot be

Exhibit 19
CCC-12-CD-07 & CCC-12-RO-07
(Moore)

accepted as proposed. The amendment application must explicitly propose to only remove unpermitted development and restore areas of unpermitted development to their pre-development state to maintain compliance with the existing coastal development permit conditions and to enable the Executive Director to accept the amendment application.

2. Clarification of Project Details

As noted above, the October 16, 2011 cover letter describes "Site Plan A" that "suggests the removal of all improvements that do not conform to the CDP-approved conditions, [and] restoring the remaining portions to the permitted requirements." The description presented on Site Plan A states "Remove existing turn-around driveway area and restore to borders of 2008 'CDP-approved' edges." On the permit amendment application form, the proposed project description includes "proposed driveway changes; proposed additional plantings of rare plants; and removal of portions of existing paved driveway encroaching on ESHA buffer and ESHA planting areas."

It is unclear from these descriptions exactly what components are proposed as part of the amendment application, and whether the proposal intends only to remove and restore the unpermitted driveway area, or whether the project includes removing and restoring all unpermitted development as referenced in our June 15, 2011 violation letter and as detailed in our May 27, 2011 violation letter. Therefore, please clarify for us the details of the proposed project and whether or not you are proposing at this time to modify your project description to remove and restore all areas of unpermitted development as part of this coastal development permit amendment application. In particular, please specify which of the following unpermitted developments you propose to remove in addition to the driveway, and provide the details for methods of removal for each:

- a. Concrete walk: The October 16, 2011 submittal confirmed that the concrete sidewalk that was not part of the final approved plan is within the 50' buffer zone established in the permit for the protection of the rare coastal bluff morning-glory.
- b. Water spigot: The October 16, 2011 submittal confirmed that the water spigot was installed within rare plant ESHA.
- c. Fence that bisects the property: The October 16, 2011 submittal confirmed that the cyclone fence goes right through the ESHA; the fence was not part of the development design that was approved in coastal development permit A-1-MEN-07-021 issued by the Commission.
- d. Perimeter fence and gate: The October 16, 2011 submittal confirmed that direct impacts to coastal bluff morning-glory plants have occurred in the area of the perimeter fence and gate, which were not part of the development design that was approved in coastal development permit A-1-MEN-07-021 issued by the Commission.

- e. Concrete and gravel slurry: The October 16, 2011 submittal indicated that cement/gravel slurry was dumped and spread out within the ESHA, opposite the paved driveway and gate.
- f. Site Drainage: The October 16, 2011 submittal included a September 16, 2011 Geological/Geotechnical reconnaissance letter that evaluated site drainage conditions. According to the geologic letter, the outlet for the gutter downspouts "...directs water toward the bluff just southwest of the property corner...runoff from the northerly sideyard area between the two properties reaches the bluff..."

Special Condition 1A of coastal development permit A-1-MEN-07-021 issued by the Commission states in part the following: "All final design and construction plans, including bluff setback, foundations, grading, and drainage plans, shall be consistent with the recommendations contained in the Geotechnical Investigation report dated June 24, 2005 prepared by Bace Geotechnical, except that the detached second unit and associated decks shall be set back 40 feet from the bluff edge and the headscarp of the incipient landslide southeast of the property as identified in the geotechnical report as proposed by the applicant..."

The June 24, 2005 Bace Geotechnical report states in part that "Because uncontrolled surface and/or subsurface water is often the cause of bluff instability..., care should be taken to intercept and divert concentrated surface flows and subsurface seepage away from...the edges of the ocean bluffs. Concentrated flows such as from roof downspouts, driveways, area drains and the like should, where practical, be collected in a closed pipe and discharged into a road drainage system. A less desirable alternative would be to have runoff uniformly dispersed away from the structure and the edges of the bluffs (Mendocino County Coastal Zone Ordinances prohibit drain pipes over bluff edges).

Because the current drain system directs water toward the bluff inconsistent with the recommendations contained in the June 24, 2005 Geotechnical Investigation report, the current design is in violation of Special Condition 1A of coastal development permit A-1-MEN-07-021.

If it is not your intent to remedy all the unpermitted changes at this time, please specify. Please be aware that unauthorized changes to the development design approved in the coastal development permit A-1-MEN-07-021 issued by the Commission that are not remedied in the pending amendment may be subject to future enforcement action.

3. Restoration Plan

The October 16, 2011 permit amendment application submittal includes an August 2011 Biological Impact Assessment Survey prepared by the project biologist that presents "Option 1" that proposes to leave unpermitted developments in place, and "Option 2" that

removes unpermitted features. The August 2011 biological survey states the following: "Once the CCC has chosen their preferred option (or elements of each), a comprehensive Restoration Plan will be provided detailing timetables, responsible parties, planting palette, weed management, monitoring reports, and success performance criteria." As indicated above, the Commission cannot accept an amendment for processing that would lessen or avoid the intended effect of an approved or conditionally approved permit unless the applicant presents newly discovered material information, which he could not, with reasonable diligence, have discovered and produced before the permit was granted. Therefore, please submit the final restoration plan that meets the requirements for restoring disturbed areas as previously described above.

4. Preliminary Staging and Debris Removal Plans

When the Commission acts on the coastal development permit amendment application, it will be necessary for the Commission to know the volume (measured in cubic yards) of material to be removed; the method of removal; the precise location and extent of all staging areas required for the project; measures proposed to avoid impacts to ESHA and to minimize encroachment into ESHA buffers; and where driveway demolition and other construction debris from the project will be disposed of. Please provide a preliminary staging plan and a preliminary debris disposal plan that addresses this information for all components of the proposed permit amendment. The submittal should include Best Management Practices (BMPs) that will be employed at the site in order to, among other things, 1) minimize erosion; 2) ensure that sedimentation impacts from runoff will not drain toward the bluff or into ESHA areas; and 3) treat surfaces following driveway removal and removal of other unpermitted development.

5. Reduced Site Plans

The plans you submitted are in 24"-x-36" format. However, for the purpose of report preparation for the Commissioners, all project plans must be received in 8½"-x-11" format. Therefore, please provide us with a set of reduced plans in 8½"-x-11" format. The reduced project plans should be at a legible scale and include a graphic bar scale and an accurate north arrow.

6. Application Fee.

The application will need to be reviewed by the Commission as a material coastal development permit amendment application. The application fee for a material amendment is 50% of the application fee applicable to the underlying permit if it were submitted today. In this case, the permitted development was a 3,513-square-foot single single-family residence with a detached 556-square-foot second residential unit, for a total of 4,069 square feet. Based on the fee schedule for square footage within the range of 1,501 to 5,000 square feet, this corresponds to a fee of \$4,500; 50% of this fee amounts to \$2,250. Please submit a check in that amount made payable to "Coastal Commission."

Michael Barron-Wike

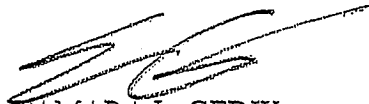
Coastal Development Permit Amendment Application No. A-1-MEN-07-021-A1

November 18, 2011

Page 5

Once we receive the requested information and your application is determined to be complete, we will schedule the permit amendment request for consideration by the Commission at an upcoming Commission hearing.

Sincerely,



TAMARA L. GEDIK

Coastal Program Analyst

Cc: Greg and Sandra Moore

~~Nancy Gave~~ Coastal Commission Statewide Enforcement Unit

Exhibit 19

CCC-12-CD-07 & CCC-12-RO-07
(Moore)

CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5200
FAX (415) 904-5400
TDD (415) 597-5885



February, 2, 2012

SENT BY REGULAR & CERTIFIED MAIL

Greg and Sandra Moore
P.O. Box 4067
Oakland, CA 94614
Certified Mail No: 70102780000134329502

Property Location: 37900 Old Coast Highway
Gualala, CA 95445
APN 145-121-03

Coastal Act Violation No.: V-1-11-003

RE: Resolution of violations of CDP No. A-1-MEN-07-021

Dear Mr. and Mrs. Moore:

This letter is in reference to alleged continuing violations to the terms of Coastal Development Permit A-1-MEN-07-021 (CDP Permit) issued for development at 37900 Old Coast Highway in Gualala, California (subject property), and serves to follow up with you after our North Coast District's Office staff's review of the CDP amendment application that Mr. Barron-Wike submitted on your behalf, dated October 16, 2011 and received by our North Coast District Office on October 21, 2011.

As you may recall, our Enforcement Program sent you a letter on May 27, 2011 that described the coastal development permit history and permitted development for the subject property; explained the alleged CDP Permit violations; and detailed the required actions you must take in order to avoid formal enforcement action by the Commission. More specifically, on Page 7 of that letter, we requested that you submit a CDP amendment application to remove the unpermitted development and restore the subject property affected by the violations to the condition it was in before the violations occurred subject to the terms of the approved site plans and CDP.

Since that time, our office has written a number of follow up letters to you that include but are not limited to: documenting the permit application process (June 15, 2011 letter); providing time extensions (July 11, 2011 and August 22, 2011 letters); and clarifying the submittal requirements (September 19, 2011 and September 27, 2011 letters) for the

Exhibit 20
CCC-12-CD-07 & CCC-12-RO-07
(Moore)

coastal development permit amendment application to remove unpermitted development and restore areas impacted by unpermitted development to their pre-development state. We also informed you in our letters dated June 15, 2011; September 19, 2011; and September 27, 2011 that Title 14 Section 13166 of the Public Resources code requires the Executive Director to reject an application for an amendment to an approved permit if it is determined that "the proposed amendment would lessen or avoid the intended effect of an approved or conditionally approved permit unless the applicant presents newly discovered material information, which he could not, with reasonable diligence, have discovered and produced before the permit was granted."

The CDP amendment application dated October 16, 2011 that your agent Mr. Barron-Wike submitted on your behalf, and that was received in our North Coast District office on October 21, 2011 included two proposals, Site Plan A and Site Plan B. Based upon our North Coast staff's review, it is unclear whether Site Plan A proposes to remedy all of the unpermitted changes, and the second submitted proposal, Site Plan B, clearly does not propose to remove all unpermitted development. Instead, Site Plan B proposes to retain a gravel/pervious pavement within the required 50-foot-minimum ESHA buffer. Because the submittal would lessen the intended effect of CDP No. A-1-MEN-07-021 and no new material information was presented, the amendment application was not accepted as proposed.

On November 18, 2011, Tamara Gedik of our North Coast District sent a letter to you and your agent, Mr. Barron-Wike notifying you that the CDP amendment application submitted on October 21, 2011 was incomplete (see attached letter). We understand that some of your agents have had telephone conversations with Ms. Gedik regarding resolving the incomplete items in your amendment application, but as of today's date you have not made a new submittal to Ms. Gedik. Thus the ongoing violations first discussed with you in early 2011 remain unresolved.

We request that you submit the remaining outstanding materials noted in our November 18, 2011 letter and that you clarify whether it is your intent to remedy all of the unpermitted violations with this CDP amendment application. Please be aware that unauthorized changes to the development design approved in the coastal development permit No. A-1-MEN-021-A1 issued by the Commission that are not remedied may be subject to future enforcement action. Furthermore, if you fail to submit the information requested in our letter dated November 18, 2011, we will be forced to elevate this case for appropriate formal action by the Commission. Formal actions may include, but are not limited to: 1) recording a Notice of Violation on the subject property; 2) issuing Cease and Desist and Restoration Orders ordering resolution of this matter; 3) seeking appropriate civil monetary penalties against all parties responsible for violating the Coastal Act permit requirements; and 4) maintaining an action in addition to monetary relief seeking injunctive and declaratory relief.

Please note that we first notified you of these violations by letter an entire year ago on February 1, 2011, and gave you direction in that letter as to how to resolve these violations. By letters dated April 15, 2011, May 27, 2011 and June 15, 2011 we advised you repeatedly how to resolve these violations. Finally we have given you at least three extensions of time in order to complete a CDP amendment application to resolve these violations. We see no reason to grant additional extensions of time and urge you to submit the necessary materials to our North Coast office promptly in order to avoid formal action by the Commission. The complete application must contain all of the information and clarifications requested in our letter dated November 18, 2011. If you have any questions you may contact me at (415) 904-5290 or Leandra Mosca of my staff at (415) 597-5886.

Sincerely,

Nancy Cave
Northern California Supervisor
Enforcement Program
California Coastal Commission

Exhibit 20
CCC-12-CD-07 & CCC-12-RO-07
(Moore)

Attachment: Letter dated November 18, 2011 from Tamara Gedik to Michael Barron-Wike

Cc: Bob Merrill, Manager, North Coast District
Tamara Gedik, Planner, North Coast District
Leandra Mosca, Enforcement Program, CCC

CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5200
FAX (415) 904-5400
TDD (415) 597-5885

**Via Certified and Regular Mail**

May 24, 2012

Greg and Sandra Moore
P.O. Box 4067
Oakland, CA 94614
(Certified Receipt No. 7005 0390.0001 2128 0460)

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

Location: 37900 Old Coast Highway, Gualala, Mendocino County
Assessor's Parcel Number 145-121-03

Violation Description: Unpermitted concrete driveway and fencing located partially or entirely within ESHA and ESHA buffer area, unpermitted dumping of concrete and gravel slurry and installation of a water spigot within ESHA, and unpermitted concrete walkway within the ESHA buffer area, all in violation of CDP No. A-1-MEN-07-021.

Dear Mr. and Mrs. Moore:

I am directing this notice to you as owners of the property listed above. Commission staff appreciates your efforts to work cooperatively towards a resolution of the alleged Coastal Act¹ violations on your property, as reflected in our letter dated May 27, 2011, and in all of our other letters and discussions with you. As we have stated in previous correspondence and communications, we would like to continue to work with you to resolve these issues amicably. We remain willing and ready to discuss options that could involve agreeing to a consensual resolution to the Coastal Act violations on the property at issue, such as entering into consent Cease and Desist and Restoration Orders.

In order to be able to enter into consent orders, we must initiate the formal enforcement process. Accordingly, the purpose of this letter is to notify you of my intent, as the Executive Director of the California Coastal Commission ("Commission"), to commence proceedings for issuance of Cease and Desist and Restoration Orders and recordation of a Notice of Violation to address development undertaken in direct violation of the terms and conditions of a Coastal Development Permit ("CDP") issued to you by the Commission in 2008 (A-1-MEN-07-021).

¹ The Coastal Act is codified in California Public Resources Code ("PRC") section 30000 to 30900.

The development also occurred without any independent authorization, which, for most of the development, would have been a violation even independent of the requirements of the existing permit. These proceedings are designed to resolve the aforementioned Coastal Act violations through formal enforcement actions, either through a consent or regular order proceeding, and to continue the process of discussions that my staff has already begun with you.

Commission staff has confirmed that development inconsistent with CDP No. A-1-MEN-07-021 (the "Permit"), and not authorized by any independent CDP or any amendment to the Permit, was undertaken on a parcel located at 37900 Old Coast Highway, Gualala, Mendocino County (Assessor's Parcel Number 145-121-03) (referred to herein as "subject property"). The parties subject to these proceedings are Greg and Sandra Moore, as owners of the subject property.

This development includes, but may not be limited to: grading, paving, and placing a concrete impermeable driveway, including an impermeable concrete apron opening onto Old Coast Highway, over an existing permeable gravel driveway; construction of an impermeable concrete driveway roundabout extension; construction of perimeter fencing around the subject property and located within an identified environmentally sensitive habitat area ("ESHA"); construction of fencing bisecting the property; construction of two gates connected to fencing; paving of an impermeable concrete walkway; dumping and spreading of concrete and gravel slurry throughout areas of identified ESHA; and installation of a water spigot within ESHA. Much of this development is located within ESHA consisting of a population of coastal bluff morning-glory (*Calystegia purpurata* ssp. *saxicola*), a rare California Native Plant Species ("CNPS") List 1B plant, or within the 50 foot buffer established by the Permit to protect the ESHA. Buffers around the ESHA, such as is found on your property, are also explicitly protected under the Mendocino County Local Coastal Program ("LCP"). The construction of concrete impermeable development on the property also has the potential to threaten the geologic stability of the coastal bluff-top on the subject property, inconsistent with the protections to coastal bluffs included in Special Condition 1A of the Permit.

The Permit was approved subject to several conditions that imposed restrictions on what could occur on the property. Those restrictions included the following (from Special Condition 1.B.):

The permittee shall undertake development in accordance with the approved final plans. Any proposed changes . . . shall be reported to the Executive Director. No changes . . . shall occur without a Commission amendment . . .

The "Summary of Staff Recommendation" at the beginning of the staff report on the Permit stated that Special Conditions 6 and 7 were added "[t]o ensure the protection of the ESHA on the site." Condition 7 states:

This permit is only for the development described in [CDP] No. A-1-MEN-07-021. Any future improvements to the single-family residence or other approved structures will require a permit amendment or a new coastal development permit.

The instances of development addressed by this Notice include, but are not limited to: grading, paving, and placing a concrete impermeable driveway including an impermeable concrete apron opening onto Old Highway One and over an existing permeable gravel driveway; construction of an impermeable concrete driveway roundabout extension; construction of perimeter fencing around the subject property; construction of fencing bisecting the property; construction of two gates connected to fencing; paving of an impermeable concrete walkway; dumping and spreading of concrete and gravel slurry; and installation of a water spigot. These all constitute changes in the original project that were not reported to the Executive Director or approved through an amendment, and thus were in violation of Special Condition 1.B of the Permit. They also constitute improvements and structures not authorized as required by Special Condition 7. Finally, each of these activities constitute development under the above definition in the Coastal Act (PRC § 30106) and the Mendocino County LCP (Mendocino County Coastal Zoning Code § 20.308.035(d)) and as such, most of it would require some Coastal Act-based authorization even independent of the requirements in the Permit (see PRC § 30600(a) and Mendocino County Coastal Zoning Code § 20.532.010).

In addition, the unpermitted perimeter fencing and driveway roundabout extension represent the same development as, or similar development to, that which the Commission, on July 12, 2007, found to raise substantial issues with respect to its consistency with the Mendocino County LCP, after your application was initially approved by Mendocino County. See June 29, 2007 Staff Report. After the Commission found what it determined to be substantial issues, you removed these items from your application for your CDP before the Commission. Prior to the *de novo* portion of that hearing on the appealed project, you removed the driveway extension and perimeter fencing from the pending appealed project. Relying on these changes made by you to the pending appealed project, staff recommended *de novo* approval of your CDP application on appeal. The Commission then granted you CDP A-1-MEN-07-021, which specifically did not include these items. Yet, subsequent to the issuance of that permit, you proceeded to build the driveway and fence as you had originally proposed to the County but withdrew prior to obtaining Commission approval. Therefore, you have intentionally and knowingly undertaken unpermitted development.

The purpose of these enforcement proceedings is to address development on the subject property that was not authorized pursuant to the Coastal Act and to address development not authorized by and inconsistent with your CDP. The proceedings will propose to address these matters through the issuance of Cease and Desist and Restoration Orders ("Orders") that will direct the owner(s) and of the subject property to: 1) cease and desist from adding any additional structures to the subject property or making any improvements without first securing an amendment to the Permit or a new CDP, or from performing any additional unpermitted development activity (development not authorized pursuant to, or exempt from, the Coastal Act), 2) remove unpermitted development under and according to an approved removal plan, and 3) restore the impacted area pursuant to an approved restoration plan.

Violation History

On April 26, 2007, Mendocino County approved a coastal development permit for a project on the subject property (CDU #9-2006). The County approved development proposing to convert an existing legal non-conforming duplex into two single-family homes. The proposed development included constructing an extension to the existing gravel driveway and extending a perimeter fence. The project was appealed by the California Coastal Commission, with the appellants contending that the County's approval was inconsistent with County LCP policies to protect ESHA, including habitats of rare and endangered plants, with appropriate buffer areas of not less than 50-100 feet in width. The area surrounding the proposed development contains ESHA, including a population of coastal bluff morning-glory (*Calystegia purpurata* ssp. *saxicola*), a rare CNPS List 1B plant. The County-approved development provided only a 20-foot-wide setback from the rare plant ESHA. On July 12, 2007, the Commission found that the appeal raised substantial issues with respect to the project's consistency with the ESHA protection policies of the County's LCP. The Commission thus took jurisdiction over the permit and continued the hearing to conduct its *de novo* review of the proposed development at a later date.

Prior to the *de novo* review, you submitted revisions to your proposed development, which included a proposal for an increased buffer. Commission staff agreed with the consultant working for you that a 50 foot buffer would provide reasonable protection to the ESHA. Thereafter, you eliminated from your plans the proposed new permanent fencing around the perimeter of the property that would have been located within ESHA. You also eliminated the proposal to extend the existing gravel driveway, as it would have encroached into the buffer area as close as 20 feet to the ESHA. You agreed to leave the gravel driveway in its existing form. These changes provided for a buffer of 50 feet between the new development and the ESHA. Based on these revisions, the Commission conditionally granted CDP A-1-MEN-07-021 on May 9, 2008. The CDP was conditioned on the satisfaction of several special conditions prior to the issuance of the permit. Special Condition No. 1 required you to undertake development in accordance with the final project plans and to submit an amendment to the CDP if there were any changes from the approved final plans. Special Condition No. 2 required recordation of a deed restriction binding you and your successors to the Special Conditions of the CDP. Special Condition No. 3 required you to submit evidence that you had obtained any necessary encroachment permit from the County, and to seek an amendment to the CDP if there were any changes required by the County in connection with your securing of any such encroachment permit. To meet Special Condition No. 3, you submitted a letter by the Deputy Director of Transportation of the County of Mendocino Department of Transportation, stating that the existing gravel driveway to the subject property was in conformance with the County's driveway standards and no improvements or encroachment permits were necessary. After you complied with these special conditions, the CDP was issued to you on March 4, 2009. Other special conditions included Special Condition No. 4, which required that you protect the ESHA during construction of your development with fencing and prohibited construction-related activities from encroaching into the ESHA buffer; Special Condition No. 6, which repeated the requirement that you protect ESHA with fencing during the construction of your development; and Special Condition No. 7, which required that prior to any future development to the home or additional structures you would obtain a permit amendment or a new CDP. The staff report

explained that Special Conditions 6 and 7 were added "[t]o ensure the protection of the ESHA on the site."

It appears that sometime starting in 2010 to January 2011, you constructed the extant unpermitted development throughout the subject property. In January 2011, Commission staff received reports of violations on the subject property from Mendocino County indicating that a concrete driveway had been constructed that interfered with drainage on the property. Commission staff contacted you about the violation by letter on February 1, 2011. On March 14, 2011, Commission staff visited the site with you and observed the extent of unpermitted development on the property. Commission staff described the violations in a letter from Commission staff to you dated May 27, 2011. Commission staff requested the submittal of a CDP amendment application to remove the unpermitted development and restore the subject property.

In a letter from Commission staff on May 27, 2011, you were given a deadline of July 1, 2011, to submit a CDP amendment application with all requested materials. This deadline was extended multiple times as you requested additional time to hire contractors and complete the work necessary to produce a geotechnical report and a biological impact report. You finally submitted a CDP amendment application on October 20, 2011. This CDP amendment application was considered unacceptable by staff pursuant to Section 13166(a) of Title 14 of the California Code of Regulations, as it proposed retaining development that existed within an ESHA and development that encroached into the ESHA buffer, in conflict with the Commission's action on CDP No. A-1-MEN-07-021, and which would lessen or avoid the intent of the original permit conditions. You submitted this amendment application to retain unpermitted development despite the fact that Commission enforcement and permit staff had advised you of the applicable law and permit conditions, and had advised you not to submit such an application if you desired to resolve the violation. Furthermore, the submitted amendment application lacked an appropriate restoration plan. You revised your application for a CDP amendment, submitting it on March 26, 2012, after a delay of four months, but it still contained the problematic elements that necessitated rejection of the prior version. I determined that the proposals in the March 2012 CDP amendment application would lessen or avoid the intended effect of the original CDP, since it was proposing retention of unpermitted development situated on ESHA and encroaching on the ESHA buffer, which was directly inconsistent with the original CDP. Your amendment application proposed retaining the perimeter fence, which was constructed directly within the ESHA, retaining the paved driveway and the walkway using paver blocks. This proposed development would still encroach on the 50 foot buffer put in place to protect the ESHA. Furthermore, your application was not based on new material information that you could not have discovered and submitted during the original appealed CDP application process, as required by California Code of Regulations Section 13166.

You have engaged in extensive unpermitted development in violation of several explicit Special Conditions in CDP A-1-MEN-07-021. Despite Commission staff's efforts to work with you since January 2011, you have not been willing to remove all of the unpermitted development on the subject property. As such, it is necessary to resolve this matter through the cease and desist and restoration order process.

The proposed Cease and Desist Order and Restoration Order will jointly direct Greg and Sandra Moore and others subject to the control and/or in a legal relationship with the aforementioned parties to 1) cease and desist from maintaining any development on the subject property not authorized pursuant to the Coastal Act; 2) cease and desist from engaging in any further development on the subject property unless authorized pursuant to the Coastal Act; 3) take all steps, as identified, necessary to comply with the Coastal Act; 4) remove unpermitted development under and according to an approved removal plan; and 5) restore the impacted area pursuant to an approved restoration plan.

Cease and Desist Order

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

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

Section 30810(b) of the Coastal Act states that the Cease and Desist Order may be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with the Coastal Act- including removal of any unpermitted development or material.

The unpermitted development described herein clearly constitutes "development" within the meaning of the definitions in the Coastal Act (PRC § 30106) and the Mendocino County LCP (Mendocino County Coastal Zoning Code § 20.308.035(d)) that required a permit from the Commission, due to, among other things, Special Conditions 1 and 7 of the Permit. Neither a CDP nor a CDP amendment was issued to authorize the subject unpermitted development. As the activities at issue required a coastal development permit and none was obtained, and since that also rendered the development inconsistent with the existing Permit, the criteria of Section 30810(a) of the Coastal Act have been satisfied. For these reasons, I am issuing this Notice of Intent to commence Cease and Desist Order proceedings. The procedures for the issuance of cease and desist orders are described in Sections 13180 through 13188 of the Commission's regulations, which are codified in Title 14 of the California Code of Regulations.

Restoration Order

Section 30811 authorizes the Commission to order restoration of a site as follows:

In addition to any other authority to order restoration, the commission...may, after a public hearing, order restoration of a site if it finds that the development has occurred without a coastal development permit from the commission..., the development is

inconsistent with this division, and the development is causing continuing resource damage.

Pursuant to Section 13191 of the Commission's regulations, I have determined that the specified activities meet the criteria of Section 30811 of the Coastal Act, based on the following:

- 1) The unpermitted development described above has occurred without a CDP or a CDP amendment and is inconsistent with the terms of a previously-issued CDP.
- 2) The unpermitted development is inconsistent with the resource protection policies of the Coastal Act, including, but not limited to the following:
 - a. Section 30240 of the California Coastal Act (protecting and limiting the use of environmentally sensitive habitat areas, or ESHA, and limiting ESHA adjacent development); and
 - b. Section 30253 of the California Coastal Act (requiring minimization of risks in areas of high geologic hazard by assuring stability and that development not contribute to erosion on bluffs and cliffs).
- 3) The unpermitted development remains in place and is thereby causing continuing resource damage, as defined by Section 13190 of the Commission's regulations. The impacts from the unpermitted development remain unmitigated; therefore, the damage to resources protected by the Coastal Act is continuing.

For the reasons stated above, I have decided to commence proceedings for the Commission's issuance of a Restoration Order to restore the subject property. The procedures for the issuance of Restoration Orders are described in Sections 13190 through 13197 of the Commission's regulations, which are codified in Title 14 of the California Code of Regulations.

Response Procedure

In accordance with Section 13181(a) and 13191(a) of the Commission's Regulations, you have the opportunity to respond to the Commission staff's allegations as set forth in this notice of intent to commence Cease and Desist and Restoration Order proceedings by completing the enclosed Statement of Defense (SOD) form. **The SOD form must be returned to the Commission's San Francisco office, directed to the attention of Erik Buehmann, no later than June 14, 2012.**

However, should this matter be resolved via a settlement agreement or a consent order, submittal of a completed statement of defense form would not be necessary. In any case, and in the interim, staff would be happy to accept any information you wish to share regarding this matter.

Commission staff currently intends to schedule the hearings for the Cease and Desist and Restoration Orders during the Commission's July 2012 hearing, in order to resolve these violations expeditiously.

Exhibit 21
CCC-12-CD-07 & CCC-12-RO-07
(Moore)

Notice of Violation against the Coastal Act

As you have been informed in prior letters, the Coastal Act contains a provision for notifying potential, future purchasers of real property of the existence of a Coastal Act violation on the property. The Executive Director of the Commission may record a Notice of Violation against the title to the property pursuant to PRC Section 30812, after providing notice and the opportunity for a hearing. Section 30812 provides, in part:

(a) Whenever the executive director of the commission has determined, based on substantial evidence, that real property has been developed in violation of this division, the executive director may cause a notification of intention to record a notice of violation to be mailed...to the owner of the real property at issue...

(b) ... The notification shall state that if, within 20 days of mailing of the notification, the owner of the real property at issue fails to inform the executive director of the owner's objection to recording the notice of violation, the executive director shall record the notice of violation in the office of each county recorder where all or part of the property is located.

(d) If, after the commission has completed its hearing and the owner has been given the opportunity to present evidence, the commission finds that, based on substantial evidence, a violation has occurred, the executive director shall record the notice of violation...

Should you choose to object to the recording of a Notice of Violation and wish to present evidence to the Coastal Commission at a public hearing on the issue of whether a violation has occurred, you must specifically object, in writing, within 20 calendar days of the postmarked mailing of this notification. The objection should be sent to Erik Buehmann at the Commission's headquarters office (the address is provided above in the letterhead), no later than **June 14, 2012**. Please include the evidence you wish to present to the Coastal Commission in your written response and identify any issues you would like us to consider. If recorded as provided for under Section 30812(b) of the Coastal Act, the Notice of Violation will become part of the chain of title of the subject property and will be subject to review by potential buyers. This notice is intended to put other parties on notice of the status of the property and to avoid unnecessary confusion. The Notice of Violation will be rescinded once the violations are resolved.

Civil Liability/ Exemplary Damages

As we have previously indicated to you in correspondence, the Coastal Act includes a number of penalty provisions for unpermitted development. Section 30820(a)(1) provides for civil liability to be imposed on any person who performs or undertakes development without a CDP and/or that is inconsistent with any CDP previously issued by the Commission in an amount that shall not exceed \$30,000 and shall not be less than \$500 for each instance of development that is in violation of the Coastal Act. Section 30820(b) provides that additional civil liability may be

imposed on any person who performs or undertakes development without a CDP and/or that is inconsistent with any CDP previously issued by the Commission when the person intentionally and knowingly performs or undertakes such development, in an amount not less than \$1,000 and not more than \$15,000 per day for each day in which each violation persists.

Section 30821.6 provides that a violation of a cease and desist order or a restoration order can result in civil fines of up to \$6,000 for each day in which the violation persists. Section 30822 provides for additional exemplary damages.

As you had obtained a CDP issued by the Commission, the unpermitted development in question was undertaken with advance knowledge of the requirements and restrictions of the Coastal Act and the special conditions of the CDP. The extant unpermitted development on the property includes some of the same development removed by you during the process of amending your CDP application prior to the Commission's *de novo* review of your original application. You have knowingly and intentionally undertaking development inconsistent with a previously issued CDP.

Resolution

As we have stated in previous correspondence and communications, we would like to work with you to resolve these issues amicably and to continue the discussions we have had in the past regarding this matter. One option that you may want to consider is to agree to consent orders. Consent cease and desist and restoration orders would provide you with an opportunity to have more input into the process and timing of restoration of the subject property and mitigation of the damages caused by the unpermitted activity. Consent cease and desist and restoration orders could also potentially allow you to negotiate a penalty amount with the Commission staff in order to resolve the violation entirely without any further formal legal action. Consent cease and desist and restoration orders would provide for a permanent resolution of this matter and restoration of the subject property. If you are interested in discussing the possibility of agreeing to consent orders, please contact or send correspondence to the attention of Erik Buehmann in the Commission's San Francisco office by no later than **May 31, 2012**, to discuss options to resolve this case. Again, should we settle this matter, you do not need to expend the time and resources to fill out and return the SOD form mentioned above.

Should you have any questions regarding any of the above items, please contact Erik Buehmann at 415-904-5264 or by letter at the above-listed address.

Sincerely,

CHARLES LESTER
Executive Director
California Coastal Commission

Exhibit 21
CCC-12-CD-07 & CCC-12-RO-07
(Moore)

Enclosure: Statement of Defense Form

cc: Lisa Haage, Chief of Enforcement, CCC
Nancy Cave, Enforcement Supervisor, CCC
Robert Merrill, District Manager, CCC
Erik Buehmann, Enforcement, CCC
Michael Barron-Wike, Architect

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KASSOUNI LAW

Via facsimile and U.S. Mail

June 8, 2012

Charles Lester
Executive Director
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

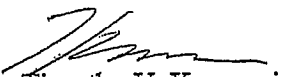
Re: Greg and Sandra Moore, Coastal Commission Notice of Intent to Commence Cease and Desist Order

Dear Mr. Lester:

I have been retained by Greg and Sandra Moore to address the issues and deadlines contained in your correspondence of May 24, 2012, regarding the Coastal Commission's Notice of Intent to Commence Cease and Desist Order. The correspondence contains a deadline of May 31, 2012 to discuss the option of an agreement to a consent order, and another deadline of June 14, 2012 for the submission of evidence and arguments in support of objections to the recording of a Notice of Violation. In light of my recent retention, it is requested that these dates be extended to June 20 for the consent order option, and June 29 for the submission of arguments and evidence, if necessary.

I also left a message with enforcement officer Erik Buehmann on June 8 requesting additional time. Thank you for your attention. I can be reached at the telephone number and address below as well as Timothy@Kassounilaw.com.

Sincerely,


Timothy V. Kassouni

CC: Erik Buehmann

555 CAPITOL MALL, SUITE 900
SACRAMENTO, CALIFORNIA 95814
TELEPHONE 916.930.0030
FACSIMILE 916.930.0033

Exhibit 22
CCC-12-CD-07 & CCC-12-RO-07
(Moore)

CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5200
FAX (415) 904-5400
TDD (415) 527-5885



Via E-Mail and Regular Mail

June 11, 2012

Greg and Sandra Moore
P.O. Box 4067
Oakland, CA 94614

Timothy V. Kassouni
555 Capitol Mall, Suite 900
Sacramento, CA 95814

Subject: Contact and Statement of Defense Deadline

Location: 37900 Old Coast Highway, Gualala, Mendocino County
Assessor's Parcel Number 145-121-03

Violation Description: Unpermitted concrete driveway and fencing located partially or entirely within ESHA and ESHA buffer area; unpermitted dumping of concrete and gravel slurry and installation of a water spigot within ESHA; and unpermitted concrete walkway within the ESHA buffer area; all in violation of CDP No. A-1-MEN-07-021.

Dear Mr. and Ms. Moore and Mr. Kassouni:

This letter is in response to a May 30, 2012 telephone conversation I had with Mr. Moore and a June 11, 2012 telephone conversation I had with Timothy Kassouni, regarding the above-described violations and a request to extend the deadlines to submit a Statement of Defense form ("SOD"). We appreciate that you have expressed your willingness to work with Commission staff to resolve this enforcement case and we are hopeful that we can reach a mutually agreed upon resolution.

As discussed in the May 24, 2012 Notice of Intent to Commence Cease and Desist Order and Restoration Order Proceeding ("NOP"), the submittal of a completed Statement of Defense form is not necessary should this matter be resolved via Consent Orders. Typically, to spare time, effort, and attorney's fees, and to focus on settlement discussions, parties resolving Coastal Act violations with the Commission through Consent Orders elect not to submit the Statement of Defense form. During our May 30 and June 11 conversations, respectively, you requested an extension of the June 14, 2012 deadline to submit the SOD provided for in the NOI. At your request and in an effort to continue to work together to resolve this matter amicably, the

Exhibit 23
CCC-12-CD-07 & CCC-12-RO-07
(Moore)

June 11, 2012

Executive Director has agreed to extend the deadline for submittal of the SOD to June 21, 2012 (from the previous deadline of June 14, 2012).

In the meantime, we would be happy to continue discussing the terms of resolution, and will make ourselves available so that this matter may be resolved expeditiously, saving you time and expense. Should you have any questions regarding this letter or the pending enforcement case, please feel free to contact me at 415-904-5264 or by letter at the above-listed address, and we look forward to our scheduled meeting on June 14 in our offices in San Francisco.

Sincerely,



Erik Buehmann
Enforcement Program
California Coastal Commission

cc: Lisa Haage, Chief of Enforcement, CCC
Nancy Cave, Enforcement Supervisor, CCC
Robert Merrill, District Manager, CCC

CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5200
FAX (415) 904-5400
TDD (415) 597-5885



Via E-Mail and Regular Mail

June 21, 2012

Greg and Sandra Moore
P.O. Box 4067
Oakland, CA 94614

Timothy V. Kassouni
555 Capitol Mall, Suite 900
Sacramento, CA 95814

Subject: Contact and Statement of Defense Deadline

Location: 37900 Old Coast Highway, Gualala, Mendocino County
Assessor's Parcel Number 145-121-03

Violation Description: Unpermitted concrete driveway and fencing located partially or entirely within BSHA and BSHA buffer area; unpermitted dumping of concrete and gravel slurry and installation of a water spigot within BSHA; and unpermitted concrete walkway within the BSHA buffer area; all in violation of CDP No. A-1-MEN-07-021.

Dear Mr. and Ms. Moore and Mr. Kassouni:

This letter is in response to a June 20, 2012 telephone conversation I had with Timothy Kassouni, regarding the above-described violations and a request to extend the deadlines to submit a Statement of Defense form ("SOD"). We appreciate that you have expressed your willingness to work with Commission staff to resolve this enforcement case and we are hopeful that we can reach a mutually agreed upon resolution.

As discussed in the May 24, 2012 Notice of Intent to Commence Cease and Desist Order and Restoration Order Proceeding ("NOI"), the submittal of a completed Statement of Defense form is not necessary should this matter be resolved via Consent Orders. Typically, to spare time, effort, and attorney's fees, and to focus on settlement discussions, parties resolving Coastal Act violations with the Commission through Consent Orders elect not to submit the Statement of Defense form. During conversations with Mr. Moore and Mr. Kassouni on May 30 and June 11, respectively, you requested an extension of the June 14, 2012 deadline to submit the SOD provided for in the NOI. The Executive Director agreed to extend the deadline for submittal of the SOD to June 21, 2012 (from the previous deadline of June 14, 2012).

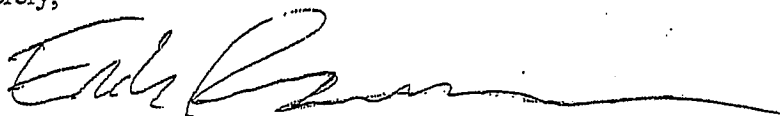
Exhibit 24
CCC-12-CD-07 & CCC-12-RO-07
(Moore)

June 21, 2012

During our conversation on June 20, 2012, Mr. Kassouni requested a second extension of the deadline for submittal of the SOD to facilitate further settlement discussions. At your request and in an effort to continue to work together to resolve this matter amicably, the Executive Director has agreed to extend the deadline for submittal of the SOD to June 28, 2012 (from the deadline of June 21, 2012).

In the meantime, we would be happy to continue discussing the terms of resolution, and will make ourselves available so that this matter may be resolved expeditiously, saving you time and expense. Should you have any questions regarding this letter or the pending enforcement case, please feel free to contact me at 415-904-5264 or by letter at the above-listed address.

Sincerely,



Erik Buehmann
Enforcement Program
California Coastal Commission

cc: Lisa Haage, Chief of Enforcement, CCC
Nancy Cave, Enforcement Supervisor, CCC
Robert Merrill, District Manager, CCC

■

KASSOUNI LAW

June 22, 2012

Erik Buehmann
Enforcement Program
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Re: Greg and Sandra Moore


Dear Mr. Buehmann:

I am in receipt of your correspondence of June 21, 2012, regarding our telephone conference of June 20, 2012. Your letter accurately summarizes our conversation, but I wanted to also confirm several additional points that we discussed. First, I had proposed that I meet with you at least one week following July 14, 2012, as Greg and Sandra Moore will be preparing for and attending their daughter's wedding on that date. This will also allow me sufficient time to review the details of the Commission's proposed Cease and Desist Order. You were going to check your calendar for available dates. In addition, I proposed that an administrative hearing, if necessary, should be scheduled for the September, 2012 agenda, as the Commission will be meeting in Northern California and as this will allow sufficient lead time for the Commission to prepare its staff report.

It is also my understanding that the Commission's deadline for submission of the Statement of Defense (SOD) form will be weekly extended pending our next meeting. I suggested that the SOD form simply be put on hold entirely, but you preferred the weekly extension procedure. To that end you will be confirming the weekly extensions in writing.

Thank you for your attention.

Sincerely,


Timothy V. Kassouni

555 CAPITOL MALL, SUITE 900
SACRAMENTO, CALIFORNIA 95814
TELEPHONE 916.930.0030
FACSIMILE 916.930.0033

Exhibit 25
CCC-12-CD-07 & CCC-12-RO-07
(Moore)

CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5200
FAX (415) 904-5400
TDD (415) 597-5885



Letter sent via Facsimile and Regular Mail

June 27, 2012

Timothy V. Kassouni
555 Capitol Mall, Suite 900
Sacramento, CA 95814

Subject: Contact and Deadline Extension for Statement of Defense Submittal

Coastal Act Violation File No.: V-1-11-003

Location: 37900 Old Coast Highway, Gualala, Mendocino County (Assessor's Parcel Number 145-121-03)

Alleged Violation Description: Unpermitted concrete driveway and fencing located partially or entirely within ESHA and ESHA buffer area; unpermitted dumping of concrete and gravel slurry and installation of a water spigot within ESHA; and unpermitted concrete walkway within the ESHA buffer area; all in violation of CDP No. A-1-MEN-07-021.

Dear Mr. Kassouni:

I would first like to take the opportunity to introduce myself as your new point of Commission staff contact regarding the above-described Coastal Act violation file. As Erik Buehmann mentioned to you in our June 26, 2012 telephone conversation, he is no longer assigned to this enforcement case.

This letter is also in response to what was discussed during our June 26 conversation, regarding the above-described violation file and your request to further extend the deadline to submit a Statement of Defense form ("SOD"), and our mutual agreement to establish a deadline for the submittal of comments to the proposed Consent Cease and Desist and Restoration Orders ("Consent Orders"), which were sent to your client on May 24, 2012. We appreciate Mr. and Mrs. Moore's continued expressed willingness to work with Commission staff to resolve the unpermitted development on their property and we remain hopeful that we will be able to reach a mutually agreed upon resolution.

As discussed in the Notice of Intent to Commence Cease and Desist Order and Restoration Order Proceeding ("NOI") letter dated May 24, 2012, the submittal of a completed Statement of

Exhibit 26
CCC-12-CD-07 & CCC-12-RO-07
(Moore)

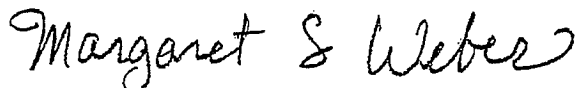
June 27, 2012

Defense form is not necessary should this matter be resolved via Consent Orders. Typically, to spare time, effort, and costs, and to focus on settlement discussions, parties resolving Coastal Act violations with the Commission through Consent Orders elect not to submit the Statement of Defense form so they can concentrate instead on reaching a settlement of the matter. During our June 26 conversation, we agreed to extend the June 28, 2012 deadline for submittal of the SOD to July 6, 2012, to allow time for you to further review the proposed Consent Orders and submit comments to us in the form of a "red-line" document. We, therefore, agreed to establish a July 6, 2012 deadline for the submittal of your comments to the proposed Consent Orders. We will be more than happy to further extend the SOD deadline if we receive your comments to the proposed Consent Orders by the deadlines established, herein. At your request, we resent our proposed consent orders to you on June 26 electronically in Word format to allow you to more easily comment; please let me know if you need an additional copy.

During our June 26 conversation, we agreed that Commission staff would be willing to meet with you and your clients after we have received your written response to our proposed Consent Orders. Additionally, as we discussed, please have your clients send me a letter authorizing you to represent them in the subject enforcement case.

In the meantime, we continue to be available to you and your clients so that this matter can be resolved amicably and expeditiously. Should you have any questions regarding this letter or the pending enforcement case, please feel free to contact me at 415-904-5220 or by letter at the above-listed address.

Sincerely,



Margaret Weber
Enforcement Program
California Coastal Commission

cc: Lisa Haage, Chief of Enforcement, CCC
Nancy Cave, Enforcement Supervisor, CCC
Robert Merrill, District Manager, CCC

Exhibit 26
CCC-12-CD-07 & CCC-12-RO-07
(Moore)

CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5200
FAX (415) 904-5400
TDD (415) 597-5885

**Via Regular Mail and Fax**

July 03, 2012

Timothy V. Kassouni
555 Capitol Mall, Suite 900
Sacramento, CA 95814

Subject: Contact and Statement of Defense Deadline

Location: 37900 Old Coast Highway, Gualala, Mendocino County
Assessor's Parcel Number 145-121-03

Violation Description: Unpermitted concrete driveway and fencing located partially or entirely within ESHA and ESHA buffer area; unpermitted dumping of concrete and gravel slurry and installation of a water spigot within ESHA; and unpermitted concrete walkway within the ESHA buffer area; all in violation of CDP No. A-1-MEN-07-021.

Dear Mr. Kassouni:

This letter serves to confirm the voicemail I left you yesterday afternoon concerning your request for another extension of the deadlines to submit your response to our proposed Consent Cease and Desist Order or in the alternative, a Statement of Defense form ("SOD"). We appreciate Mr. and Mrs. Moore's expressed willingness to work with Commission staff to resolve the violations and we're hopeful that we can reach a mutually agreed upon resolution.

In the spirit of working together to reach a settlement, we have agreed to extend your deadline to the morning of Monday July 9, 2012. If, for some reason, you have not completed your analysis of the Consent Order at this time, please submit what you have so that we can begin our settlement discussions, and be able to gauge whether settlement appears possible. It might be helpful, if you have questions, for us to have a conversation and discuss the issues so that we can move the process forward. We would be more than happy to have such a conversation. If you have any questions about the Consent Orders, feel free to contact me at 415-904-5264. If I am not in the office, you may also contact Lisa Haage at 415-904-5200. I look forward to talking to you.

Sincerely,

Exhibit 27
CCC-12-CD-07 & CCC-12-RO-07
(Moore)

Margaret Weber
Enforcement Program
California Coastal Commission

cc: Lisa Haage, Chief of Enforcement, CCC
Nancy Cave, Enforcement Supervisor, CCC
Robert Merrill, District Manager, CCC

2009-00470

Recorded at the request of:
CALIFORNIA COASTAL COMMISSION
01/14/2009 11:50 AM
Fee: \$58.00 Pgs: 1 of 17

OFFICIAL RECORDS
Susan M. Ransochak - Clerk-Recorder
Mendocino County, CA



1 RECORDING REQUESTED BY:

2 HOWARD CURTIS

3 WHEN RECORDED MAIL TO:

4 California Coastal Commission

5 725 Front Street, Suite 300

6 Santa Cruz, CA 95060-4508

7 Attn: Legal Division

8
9
10 **DEED RESTRICTION**

11 I. WHEREAS, Gregory C. Moore and Sandra L. Moore husband and wife as
12 joint tenants (hereinafter referred to as "Owner(s)") is/are the record owner(s) of

13 the real property described in Exhibit A, attached hereto and incorporated herein by reference
14 (hereinafter referred to as the "Property"); and

15 II. WHEREAS, the California Coastal Commission (hereinafter referred to as the
16 "Commission") is a public agency created and existing under the authority of section 30300 of the
17 California Public Resources Code (hereinafter referred to as the "PRC"), a section of the California
18 Coastal Act of 1976 (Division 20 of the PRC; hereinafter referred to as the "Act"); and

19 III. WHEREAS, the Property is located within the coastal zone as defined in the Act (PRC
20 § 30103); and

21 IV. WHEREAS, pursuant to section 30600(a) of the PRC, Owner(s) applied to the
22 Commission for a coastal development permit to undertake development, as defined in the Act (PRC
23 § 30106), on the Property; and

24 V. WHEREAS, on 9 May, 2008, the Commission conditionally approved
25 coastal development permit number A-1-MEN-07-021 (hereinafter referred to as the "Permit"),
26 subject to, among other conditions, the conditions listed under the heading "Special Conditions" in the
27 Notice of Intent to Issue Permit dated 9 May, 2008, attached hereto as EXHIBIT B

Exhibit 28(a)
CCC-12-CD-07 & CCC-12-RO-07
(Moore)

1 and incorporated herein by reference (hereinafter referred to as the "Special Conditions"), for the
2 reasons stated in the "Findings and Declarations" adopted by the Commission in support of its action,
3 which findings and declarations (along with any other documents that the Permit required to be
4 submitted to the Commission and with which the Permit requires compliance) are available from the
5 Commission upon request; and

6 VI. WHEREAS, the Commission found that, but for the imposition of the Special
7 Conditions, the proposed development could not be found consistent with the provisions of the Act and
8 that a permit could therefore not have been granted; and

9 VII. WHEREAS, Owner(s) has/ve elected to comply with the Special Conditions, which
10 require, among other things, execution and recordation of this Deed Restriction, so as to enable
11 Owner(s) to undertake the development authorized by the Permit;

12 NOW, THEREFORE, in consideration of the issuance of the Permit to Owner(s) by the
13 Commission, the undersigned Owner(s), for himself/herself/themselves and for his/her/their heirs,
14 assigns, and successors-in-interest, hereby irrevocably covenant(s) with the Commission that the Special
15 Conditions (shown in Exhibit B hereto) shall at all times on and after the date on which this Deed
16 Restriction is recorded constitute for all purposes covenants, conditions and restrictions on the use and
17 enjoyment of the Property that are hereby attached to the deed to the Property as fully effective
18 components thereof.

19 1. DURATION. (a) This Deed Restriction shall remain in full force and effect and shall
20 bind Owner(s) and all his/her/their assigns or successors-in-interest during the period that either the
21 development authorized by the Permit, or any part or modification thereof, or the Permit, or any
22 modification or amendment thereof, remains in existence on or with respect to, and thereby confers
23 benefit upon, the Property.

24 (b) Furthermore, in the event of a termination or extinguishment of this Deed Restriction
25 other than pursuant to a Commission-approved amendment to the Permit, the Special Conditions shall,
26 notwithstanding any such termination or extinguishment, continue to restrict the use and enjoyment of
27 the Property as they did prior to that termination or extinguishment and to bind Owner(s) and

1 his/her/their successors-in-interest, so long as either or both of the conditions described in paragraph (a)
2 continue to exist on or with respect to the Property.

3 2. TAXES AND ASSESSMENTS. It is intended that this Deed Restriction is irrevocable
4 and shall constitute an enforceable restriction within the meaning of a) Article XIII, section 8, of the
5 California Constitution; and b) section 402.1 of the California Revenue and Taxation Code or successor
6 statute. Furthermore, this Deed Restriction shall be deemed to constitute a servitude upon and burden to
7 the Property within the meaning of section 3712(d) of the California Revenue and Taxation Code, or
8 successor statute, which survives a sale of tax-deeded property.

9 3. RIGHT OF ENTRY. The Commission or its agent may enter onto the Property at times
10 reasonably acceptable to Owner(s) to ascertain whether the use restrictions set forth above are being
11 observed.

12 4. REMEDIES. Any act, conveyance, contract, or authorization by Owner(s) whether
13 written or oral which uses or would cause to be used or would permit use of the Property contrary to the
14 terms of this Deed Restriction will be deemed a violation and a breach hereof. The Commission and
15 Owner(s) may pursue any and all available legal and/or equitable remedies to enforce the terms and
16 conditions of this Deed Restriction. In the event of a breach, any forbearance on the part of either party
17 to enforce the terms and provisions hereof shall not be deemed a waiver of enforcement rights regarding
18 any subsequent breach.

19 5. SEVERABILITY. If any provision of these restrictions is held to be invalid, or for any
20 reason becomes unenforceable, no other provision shall be affected or impaired.

21
22 Dated: 11-17, 2005

23
24 Business Name (if property is owned by a business): _____

25 Signed: _____

26 Gregory Moore
27 PRINT/TYPE NAME & CAPACITY OF ABOVE

Signed: Sandra L. Moore

Sandra L. Moore
PRINT/TYPE NAME & CAPACITY OF ABOVE

** NOTARY ACKNOWLEDGMENT ON THE NEXT PAGE **

Exhibit 28(a)
CCC-12-CD-07 & CCC-12-RO-07
(Moore)

1 State of California

2 County of Mendocino

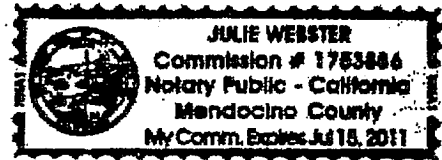
3 On Nov 17, 2008 before me, Julie Webster, personally appeared

4 Gregory Moore + Sandra L Moore, who proved to me on the basis of satisfactory evidence to be the person(s)

5 whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
6 his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity
7 upon behalf of which the person(s) acted, executed the instrument.

8 I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is
9 true and correct.

10
11 WITNESS my hand and official seal.



12
13 Signature Julie Webster

(Seal)

14
15 State of California

16 County of _____

17 On _____ before me, _____, personally appeared

18 _____, who proved to me on the basis of satisfactory evidence to be the person(s)
19 whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
20 his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity
21 upon behalf of which the person(s) acted, executed the instrument.

22 I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is
23 true and correct.

24
25 WITNESS my hand and official seal.

26
27 Signature _____

(Seal)

Exhibit 28(a)
CCC-12-CD-07 & CCC-12-RO-07
(Moore)

EXHIBIT A

(Legal Description of Property)

RECORDING REQUESTED BY
First American Title Company

AND WHEN RECORDED MAIL TO:
Gregory C. Moore and Sandra L Moore
P.O. Box 23036
Oakland, CA 94623



2005-01394
Pg: 1/3

2005-01394
Recorded at the request of
FIRST AMERICAN TITLE
01/20/2005 10:24A
Fee: 13.00 No of Pages: 3

OFFICIAL RECORDS
Marsha A Wharff, Clerk-Recorder
Mendocino County, CA

Space Above This Line for Recorder's Use Only

A.P.N.: 145-121-03-00

File No.: 2304-1726712 (JG)

GRANT DEED

The Undersigned Grantor(s) Declare(s): DOCUMENTARY TRANSFER TAX \$1,052.70; CITY TRANSFER TAX \$0.00;
SURVEY MONUMENT FEE \$

- [☒] computed on the consideration or full value of property conveyed, OR
[☐] computed on the consideration or full value less value of liens and/or encumbrances remaining at time of sale,
[☒] unincorporated area; [☐] City of Gualala, and

| | |
|---|-----------------|
| | \$20.00 PAID |
| X | PCO FILED |
| | Exempt |

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, **Jane Burton Rockey, a married woman as her sole and separate property, and Ann Burton Trentman, a married woman as her sole and separate property, and James Cadbury Burton, a single man, and Ward Cotton Burton, a single man**

hereby GRANTS to **Gregory C. Moore and Sandra L Moore, husband and wife as joint tenants**

the following described property in the unincorporated area of **Gualala**, County of **Mendocino**, State of **California**:

Tract One:

Parcel No. 3 as shown and designated upon the Record of Survey filed September 30, 1963 in Map Case 2, Drawer 2, Page 68, Mendocino County Records, more particularly described as follows:

Commencing at the quarter section corner common to Sections 21 and 28 in Township 11 North, Range 15 West, Mount Diablo Base and Meridian, said quarter section corner being the Northwest corner of the property previously vested in the name of Solbeck; thence from said quarter section corner, South 73° 14' 40" West a distance of 562.08 feet; thence North 44° 48' 10" West a distance of 107.22 feet; thence North 48° 11' 10" West a distance of 67.77 feet to the True Point of Beginning.

Thence from the true point of beginning, North 48° 11' 10" West, 117.00 feet; thence South 45° 10' West a distance of 316.85 feet to the mean high water line of the Pacific Ocean; thence Southerly, in a meandering line that follows the mean high water line, to a point that bears South 45° 10' West from the true point of beginning a distance of 370.00 feet; thence North 45° 10' East a distance of 370.00 feet to the True Point of Beginning.

Excepting therefrom that portion lying below the mean high tide line of the Pacific Ocean.

Mail Tax Statements To: **SAME AS ABOVE**

Exhibit 28(b)
CCC-12-CD-07 & CCC-12-RO-07
(Moore)

Date: 01/12/2005

APNo.: 145-121-03

Tract Two:

Access rights to the ocean as outlined in the Deed, Riverside Town House to Kerr, recorded March 19, 1963 in Book 621, Page 338, Mendocino County Records.

"This deed is being recorded pursuant to that certain Default Judgment filed December 13, 2004, Mendocino County Superior Court of California, Case No. SCUk SVG 04 93549, recorded concurrently herewith."

Dated: 01/12/2005

This document is signed in counterpart & when combined shall be one.

Jane Burton Rockey
Jane Burton Rockey

James Cadbury Burton

Ann Burton Trentman

Ward Cotton Burton
Ward Cotton Burton

James Cadbury Burton, by Ann B. Trentman, pursuant to that certain Default Judgment filed December 13, 2004, Mendocino County Superior Court of California, Case No. SCUk CVG 04 93549

STATE OF ILLINOISCOUNTY OF LAKE} ss.
}

On TUESDAY, JANUARY 18, 2005 before me, JANE BURTON ROCKEY and WARD COTTON BURTON personally appeared PERSONALLY KNOWN TO BE, APPEARED BEFORE ME. personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

This area for official
notarial seal

Signature

Karin J. Baruffi

My Commission Expires: 11-2-06

OFFICIAL SEAL
KARIN J. BARUFFI
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES: 11-02-06

Notary Name: KARIN J. BARUFFI

Notary Registration Number: _____

Notary Phone: 847-432-1924County of Principal Place of Business: LAKE

2005-01394

Pg: 2/2

Exhibit 28(b)

CCC-12-CD-07 & CCC-12-RO-07

(Moore)

Date: 01/10/2005

APNo.: 145-121-03

Tract Two:

Access rights to the ocean as outlined in the Deed, Riverside Town House to Kerr, recorded March 19, 1963 in Book 621, Page 338, Mendocino County Records.

"This deed is being recorded pursuant to that certain Default Judgment filed December 13, 2004, Mendocino County Superior Court of California, Case No. SCUk SVG 04 93549, recorded concurrently herewith."

Dated: 01/10/2005

This document is signed in counterpart & when combined shall be one.

Jane Burton Rockey

Ann Burton Trentman

*Ann Burton Trentman in place
of James Cadbury Burton
pursuant to court
order*

Ward Cotton Burton

James Cadbury Burton, by Ann B. Trentman, pursuant to that certain Default Judgment filed December 13, 2004, Mendocino County Superior Court of California, Case No. SCUk CVG 04 93549

STATE OF

Maryland

}

COUNTY OF

Calvert

} ss.

}

On January 15, 2005, before me, Steven A. Johnson, Notary Public, State of Maryland, personally appeared Ann Burton Trentman, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

This area for official
notarial seal . .

Signature

Steven A. Johnson

(SEAL AFFIXED)

My Commission Expires:

STEVEN A. JOHNSON
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires 03-01-08

Notary Name: Steven A. Johnson

Notary Phone: 410-535-5473

Notary Registration Number: N/A for MD.

County of Principal Place of Business: Calvert



2005-01394

Pg: 3/3

Exhibit 28(b)
CCC-12-CD-07 & CCC-12-RO-07
(Moore)

EXHIBIT B

(Notice of Intent to Issue Permit)

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE
710 E STREET, SUITE 200
EUREKA, CA 95501
(707) 445-7833 FAX (707) 445-7877

Date: May 9, 2008

Permit Application No.: A-1-MEN-07-021

Page: 1 of 8

**NOTICE OF INTENT TO ISSUE PERMIT**

(Upon satisfaction of special conditions)

THIS IS NOT A COASTAL DEVELOPMENT PERMIT

THE SOLE PURPOSE OF THIS NOTICE IS TO INFORM THE APPLICANT OF THE STEPS NECESSARY TO OBTAIN A VALID AND EFFECTIVE COASTAL DEVELOPMENT PERMIT ("CDP"). A Coastal Development Permit for the development described below has been approved but is not yet effective. Development on the site cannot commence until the CDP is effective. In order for the CDP to be effective, Commission staff must issue the CDP to the applicant, and the applicant must sign and return the CDP. **Commission staff cannot issue the CDP until the applicant has fulfilled each of the "prior to issuance" Special Conditions.** A list of all of the Special Conditions for this permit is attached.

The Commission's approval of the CDP is valid for two years from the date of approval. To prevent expiration of the CDP, you must fulfill the "prior to issuance" Special Conditions, obtain and sign the CDP, and commence development within two years of the approval date specified below. You may apply for an extension of the permit pursuant to the Commission's regulations at Cal. Code Regs. title 14, section 13169.

On **May 9, 2008**, the California Coastal Commission approved Coastal Development Permit No. **A-1-MEN-07-021**, requested by **Greg & Sandra Moore** subject to the attached conditions, for development consisting of: **Convert a legal non-conforming duplex into two single-family homes by: (1) remodeling the duplex structure into a single unit by construction a 344-square-foot entry-way and laundry room addition and a 70-square-foot hot house addition, remodeling the interior of the structure in a manner that includes removing the second kitchen, and installing a 263-square-foot second-floor deck; (2) constructing a 556-square-foot detached second residential unit; (3) installing a total of 818 square feet of additional lower floor decking for both residences; and (4) connecting to utilities.** More specifically described in the application file in the Commission offices. **Commission staff will not issue the CDP until the "prior to issuance" special conditions have been satisfied.**

Exhibit 28(c)
CCC-12-CD-07 & CCC-12-RO-07
(Moore)

NOTICE OF INTENT TO ISSUE PERMIT

(Upon satisfaction of special conditions)

Date: May 9, 2008

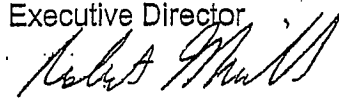
Permit Application No.: A-1-MEN-07-021

Page 2 of 8

The development is within the coastal zone in **37900 Old Coast Highway, Gualala (Mendocino County) 145-121-03.**

If you have any questions regarding how to fulfill the "prior to issuance" Special Conditions for CDP No. A-1-MEN-07-021, please contact the Coastal Program Analyst identified below.

Sincerely,
PETER M. DOUGLAS
Executive Director

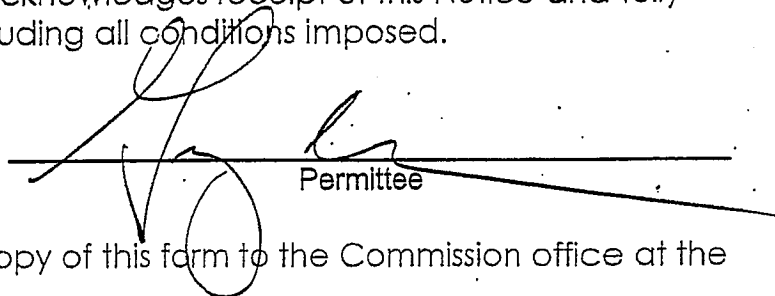


By: Robert Merrill
District Manager
Date: May 9, 2008

ACKNOWLEDGMENT

The undersigned permittee acknowledges receipt of this Notice and fully understands its contents, including all conditions imposed.

12-17-08
Date


Permittee

Please sign and return one copy of this form to the Commission office at the above address.

STANDARD CONDITIONS

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

Exhibit 28(c)
CCC-12-CD-07 & CCC-12-RO-07
(Moore)

NOTICE OF INTENT TO ISSUE PERMIT

(Upon satisfaction of special conditions)

Date: May 9, 2008

Permit Application No.: A-1-MEN-07-021

Page 3 of 8

3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

SPECIAL CONDITIONS:

NOTE: IF THE **SPECIAL CONDITIONS** REQUIRE THAT DOCUMENT(S) BE RECORDED WITH THE COUNTY RECORDER, YOU WILL RECEIVE THE LEGAL FORMS TO COMPLETE (WITH INSTRUCTIONS). IF YOU HAVE ANY QUESTIONS, PLEASE CALL THE DISTRICT OFFICE.

1. **Conformance of the Design and Construction Plans to the Geotechnical Investigation Report**
 - A. All final design and construction plans, including bluff setback, foundations, grading, and drainage plans, shall be consistent with the recommendations contained in the Geotechnical Investigation report dated June 24, 2005 prepared by Bace Geotechnical, except that the detached second unit and associated decks shall be set back 40 feet from the bluff edge and the headscarp of the incipient landslide southeast of the property as identified in the geotechnical report as proposed by the applicant. **PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. A-1-07-021**, the applicant shall submit, for the Executive Director's review and approval, evidence that a licensed professional (Certified Engineering Geologist or Geotechnical Engineer) has reviewed and approved all final design, construction, foundation, grading and drainage plans and has certified that each of those plans is consistent with all of the recommendations specified in the above-referenced geotechnical report approved by the California Coastal Commission for the project site.

Exhibit 28(c)
CCC-12-CD-07 & CCC-12-RO-07
(Moore)

NOTICE OF INTENT TO ISSUE PERMIT

(Upon satisfaction of special conditions)

Date: May 9, 2008

Permit Application No.: A-1-MEN-07-021

Page 4 of 8

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

2. Deed Restriction

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

3. Encroachment Permit

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit to the Executive Director a copy of the final, approved Encroachment Permit issued by the Mendocino County Department of Transportation for the installation of any needed driveway improvements onto Old Coast Highway right-of-way, or evidence that no permit is required. The applicant shall inform the Executive Director of any changes to the project required by the Mendocino County Department of Transportation. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

Exhibit 28(c)
CCC-12-CD-07 & CCC-12-RO-07
(Moore)

NOTICE OF INTENT TO ISSUE PERMIT

(Upon satisfaction of special conditions)

Date: May 9, 2008

Permit Application No.: A-1-MEN-07-021

Page 5 of 8

4. Best Management Practices and Construction Responsibilities

The permittee shall comply with the following construction-related requirements:

- A. Prior to the commencement of any other construction activities, the temporary exclusion/construction fencing depicted in the revised site plan dated April 1, 2008 shall be installed to protect coastal bluff morning glory (*Calystegia purpurata* ssp. *Saxicola*) habitat. The temporary/construction fencing shall be maintained in place until the authorized development is completed. No construction related activities shall be allowed to encroach into the areas protected by the temporary exclusion/construction fencing
- B. Any and all excess excavated material resulting from construction activities shall be removed and disposed of at a disposal site outside the coastal zone or placed within the coastal zone pursuant to a valid coastal development permit;
- C. Straw bales, coir rolls, or silt fencing structures shall be installed prior to and maintained throughout the construction period to contain runoff from construction areas, trap entrained sediment and other pollutants, and prevent discharge of sediment and pollutants downslope toward the ocean;
- D. On-site vegetation shall be maintained to the maximum extent possible during construction activities;
- E. Any disturbed areas shall be replanted or seeded as soon as feasible following completion of construction of the addition to the existing residential structure, installation of the deck additions, construction of the detached second residential unit, and connection to utilities, but in any event no later than May 1st of the next spring season consistent with the planting limitations required by Special Condition No. 6(D);
- F. All on-site stockpiles of construction debris shall be covered and contained at all times to prevent polluted water runoff; and
- G. The canopy and root zones of existing living trees on site shall be protected through temporary fencing or screening during construction.

Exhibit 28(c)
CCC-12-CD-07 & CCC-12-RO-07
(Moore)

NOTICE OF INTENT TO ISSUE PERMIT

(Upon satisfaction of special conditions)

Date: May 9, 2008

Permit Application No.: A-1-MEN-07-021

Page 6 of 8

5. Design Restrictions

- A. The colors of all exterior siding, trim, roofing, and door of the approved addition to the existing residential structure and the approved detached second unit shall be maintained to match or blend with the colors of the residence. In addition, all exterior materials, including roof, windows, and doors, shall not be reflective to minimize glare;
- B. All exterior lights, including any lights attached to the outside of the buildings, shall be the minimum necessary for the safe ingress, egress, and use of the structures, and shall be low-wattage, non-reflective, shielded, and have a directional cast downward such that no light will be directed to shine beyond the boundaries of the subject parcel.

6. Protection of Sensitive Plant Habitat

The permittee shall comply with the following requirements to protect sensitive plant habitat:

- A. Comply with the temporary exclusion/construction fencing requirements of Special Condition No. 4(A).
- B. Invasive plants, including iceplant (*Carpobrotus* spp.), English ivy (*Hedera helix*), and periwinkle (*Vinca major*) shall be removed from all areas of the parcel in a manner consistent with Mitigation Measure 1(c) of the Biotic Assessment & Rare Plant Survey dated Sept., 2006 and prepared by BioConsultant LLC included as Exhibit 10 of the Commission Staff De Novo Recommendation.
- C. Conduct seasonal high-weed mowing in the area between the existing and authorized residential development and Old Coast Highway to keep weeds and brush from invading the coastal bluff morning glory (*Calystegia purpurata* ssp. *Saxicola*) habitat located in that area.
- D. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or by the State of California shall be employed or allowed to naturalize or persist at the site of the proposed development. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized within the property.

Exhibit 28(c)
CCC-12-CD-07 & CCC-12-RO-07
(Moore)

NOTICE OF INTENT TO ISSUE PERMIT

(Upon satisfaction of special conditions)

Date: May 9, 2008

Permit Application No.: A-1-MEN-07-021

Page 7 of 8

- E. Rodenticides containing any anticoagulant compounds, including but not limited to, Bromadiolone, Brodifacoum, or Diphacinone, shall not be used.

7. Future Development Restrictions

This permit is only for the development described in Coastal Development Permit No. A-1-MEN-07-021. Any future improvements to the single-family residence or other approved structures will require a permit amendment or a new coastal development permit.

8. No Future Bluff or Shoreline Protective Device

- A. By acceptance of this permit, the applicant agrees, on behalf of himself and all successors and assigns, that no bluff or shoreline protective device(s) shall ever be constructed to protect the detached second residential unit and the new decking in the vicinity of the second unit authorized pursuant to Coastal Development Permit No. A-1-MEN-07-021, in the event that the second residential unit and the new decking are threatened with damage or destruction from waves, erosion, storm conditions, bluff retreat, landslides, ground subsidence, or other natural hazards in the future. By acceptance of this permit, the applicant hereby waives, on behalf of himself and all successors and assigns, any rights to construct such devices to protect the second residential unit and the new decking that may exist under Public Resources Code Section 30235 or under Mendocino County Land Use Plan Policy No. 3.4-12, and Mendocino County Coastal Zoning Code Section 20.500.020(E)(1).
- B. By acceptance of this Permit, the applicant further agrees, on behalf of himself and all successors and assigns, that the landowner shall remove the detached second residential unit and the new decking in the vicinity of the second unit authorized by this permit if any government agency has ordered that the carport is not to be occupied due to any of the hazards identified above. In the event that portions of the carport fall to the beach before they are removed, the landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

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Date: May 9, 2008

Permit Application No.: A-1-MEN-07-021

Page 8 of 8

- C. In the event the edge of the bluff recedes to within 10 feet of the detached second residential unit and the new decking in the vicinity of the second unit but no government agency has ordered that the second residential unit and the new decking not be occupied, a geotechnical investigation shall be prepared by a licensed geologist or civil engineer with coastal experience retained by the applicant, that addresses whether any portions of the structure are threatened by waves, erosion, storm conditions, or other natural hazards. The report shall identify all those immediate or potential future measures that could stabilize the carport without shore or bluff protection, including but not limited to, removal or relocation of portions of the second residential unit and the new decking. The report shall be submitted to the Executive Director and the appropriate local government official. If the geotechnical report concludes that the second residential unit and the new decking is unsafe for use, the permittee shall, within 90 days of submitting the report, apply for a coastal development permit amendment to remedy the hazard which shall include removal of the threatened portion of the second residential unit and the new decking.

9. Assumption of Risk, Waiver of Liability and Indemnity

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

10. Conditions Imposed By Local Government

This action has no effect on conditions imposed by a local government pursuant to an authority other than the Coastal Act.

Exhibit 28(c)
CCC-12-CD-07 & CCC-12-RO-07
(Moore)

THOMAS E. COCHRANE
CA. Professional Geologist #6124

P.O. Box 358
The Sea Ranch, CA 95497
707-785-2953
Cell 707-292-0602

December 17, 2008

California Coastal Commission
North Coast District Office
710 E Street, Suite 200
Eureka, CA 95501

RE: Permit Application A-1-MEN-07-021, Greg & Sandra Moore, Remodel and construct addition to property located at 37900 Old Coast Highway, Gualala, Mendocino County, California.

Special Conditions: 1. Conformance of the Design and Construction Plans to the Geotechnical Investigation Report.

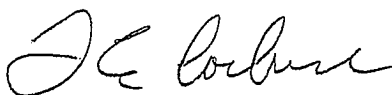
I have met with the Architect, Howard E. Curtis AIA and reviewed the design and construction, grading and drainage plans for the proposed remodel and addition to the above referenced property. These plans are consistent with the recommendations presented in the Bace Geotechnical Report dated June 24, 2005.

I have made a site visit to the property and examined the bluff edge for any additional erosion that might have occurred since the Bace Geotechnical Investigation Report was performed in 2005. Bace Geotechnical indicated a bluff retreat of 2 inches per year and no evidence of gross instability. Current conditions are similar and there is no evidence of any substantial loss or increase in rate of erosion of the bluff front since the Bace Report.

The footprint of the proposed reconstruction in the Bace Report has been downsized to a remodel of the existing residence and a small addition. The footing trenches should be examined by a qualified geotechnical person prior to concrete pouring for any changes in soil conditions at that specific site. However, the addition is inslope from the Bace Geotechnical boring B-2, so we don't expect any change of soil conditions.

I conclude that the current plans are in conformance with Special Condition 1. and the plans should be approved.

Respectfully submitted,



Thomas E. Cochrane
CA. Professional Geologist #6124

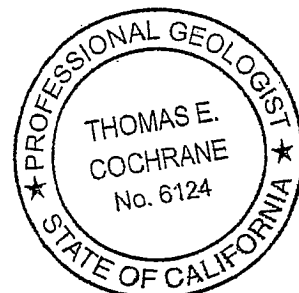


Exhibit 28(c)
CCC-12-CD-07 & CCC-12-RO-07
(Moore)

HOWARD N. DASHIELL
DIRECTOR OF TRANSPORTATION



COUNTY OF MENDOCINO
DEPARTMENT OF TRANSPORTATION

340 LAKE MENDOCINO DRIVE
UKIAH, CALIFORNIA 95482-9432
(707) 463-4363 FAX (707) 463-5474

FUNCTIONS

Administration & Business Services
Airports
County Surveyor
Engineering
Land Improvement
Roads and Bridges
Solid Waste

12 December 2008

Howard Curtis, AIA
Architecture and Planning
P.O. Box 675
Gualala, CA 95445

RE: COASTAL DEVELOPMENT PERMIT NO. CDP 9-2000 (MOORE)
CA COASTAL COMMISSION PERMIT APP. NO. A-1-MEN-07-021

Dear Mr. Curtis:

We have reviewed the existing driveway approach at 37900 Old Coast Highway (CR 513) and have determined that it is in substantial conformance with our Residential Driveway Approach standards and no improvements are necessary for this project. Therefore no Encroachment Permit is required.

If you have any questions you may call me at this office at (707) 463-4076.

Sincerely,

TOM PETERS
Deputy Director of Transportation

cc: Greg and Sandra Moore
Rick Miller, Department of Planning & Building Services
CDP 9-2000

Exhibit 28(c)
CCC-12-CD-07 & CCC-12-RO-07
(Moore)

BIOLOGICAL IMPACT ASSESSMENT SURVEY

GREG AND SANDRA MOORE PROJECT

August 2011

Prepared for:

Greg and Sandra Moore
P.O. Box 23036
Oakland, CA 94623

Prepared by:

BioConsultant LLC
122 Calistoga Rd. #360
Santa Rosa, CA 95409
Ph/Fx: 539-4488
dmarshall@bioconsultant.net
www.bioconsultant.net



BIOLOGICAL IMPACT ASSESSMENT SURVEY _____

Moore Property (APN 145-121-03)

SUMMARY

*This Biological Impact Assessment Report, prepared pursuant to a request by the California Coastal Commission, assesses the impact resulting from unpermitted development within a rare plant ESHA and ESHA buffer at a bluff top property in Gualala, California. Established in 2006, the ESHA is an area of northern bishop pine forest habitat containing a population of coastal bluff morning-glory (*Calystegia purpurata* ssp. *saxicola*). The assessment determined that the rare plant population has increased in both numbers and extent since 2006 and has expanded into the adjacent 50 ft. ESHA buffer. This report presents two options for ensuring the continued viability of the coastal bluff morning-glory population and fulfilling the Coastal Commission request to restore the ESHA to its pre-development state.*

INTRODUCTION

The California Coastal Commission (CCC) has requested a Biological Impact Assessment Report (BIAR), which delineates the extent of impact resulting from unpermitted development within an on-site ESHA and ESHA buffer, be submitted with an amended Coastal Development Permit (CDP). The BIAR should contain a plan to restore the ESHA to its pre-development state as approved in CDP A-1-MEN-07-021.

The subject parcel is located one mile north of Gualala and west of State Highway 1. The physical address is 37900 Old Coast Highway, Gualala, CA (APN 145-121-03).

Background

In 2006, BioConsultant LLC completed a biological study titled *Biotic Assessment and Rare Plant Survey - Greg and Sandra Moore (APN 145-121-03)* for submission with Coastal Development Permit (CDP) # 18-2006. This study resulted in the discovery of a population of coastal bluff morning-glory (*Calystegia purpurata* ssp. *saxicola*), a CNPS List 1B taxon, which meets the definition within the County of Mendocino's Local Coastal Program as an ESHA. The study found an estimated 258-300 morning-glory plants occupying a total 0.1 acres. The majority of the rare plants (approximately 213 individuals) occurred within four separate polygons in open northern bishop pine forest habitat east of the existing residence. An estimated 45 individuals occurred in a single polygon in northern coastal scrub habitat west of the residence.

The survey also detected a limited population of early blue violet (*Viola adunca*), the primary larval host plant for the federally endangered Behren's silverspot butterfly (*Speyeria zerene behrensii*). Due to the presence of the on-site host plant and other potential habitat features, an additional site assessment and survey for the silverspot butterfly was conducted by Richard Arnold, Ph.D., with negative results. Thus the population of early blue violet is not considered an ESHA and it is not part of the impact analysis, but the general status of the plant is provided as a means of site condition comparison.

Based upon the results of the 2006 study, the northern bishop pine forest habitat containing coastal bluff morning-glory was established as an ESHA, and during the permit approval process a reduced buffer of 50 ft. was proposed and approved. As delineated in the 2006 report, the rare plant ESHA in the bishop pine forest extends from the east property boundary 185 ft. to the west. The buffer extends 50 ft. west from the ESHA. The northern coastal scrub habitat containing coastal bluff morning-glory was also established as an ESHA; as the report states, there was no buffer separating the coastal scrub habitat from the residence. The report provided a Buffer Zone Analysis, which addressed the reduced buffer and offered mitigation measures to avoid, reduce, and mitigate potential negative impacts of the proposed development.

During the construction of the approved CDP some development elements were completed without permit approval. These include: (1) paving and extending the existing gravel driveway; (2) installation of a water spigot; (3) construction of a concrete sidewalk; (4) fencing within the ESHA; and (5) tree removal in the ESHA buffer. These elements are all located east of the residence, in the rare plant ESHA in northern bishop pine forest and in the adjacent ESHA buffer.

IMPACT ASSESSMENT SURVEY RESULTS

Methodology

BioConsultant LLC staff biologist Kim Fitts conducted site visits on July 27 and August 12, 2011 to determine the extent of impact to the ESHA and ESHA buffer. The size and extent of the current rare plant population was determined. Individual rare plants were counted or their numbers estimated using the same methodology as in 2006. For a direct comparison of pre-construction and post-construction conditions, comparative photographs were taken of areas photographed in 2006. The assessment / survey duration was 9 hours.

On August 19, 2011 Richard Seale, land surveyor, mapped the locations of the unpermitted development elements in relation to the ESHA and ESHA buffer. The surveyor also mapped the current outlines of rare plant polygons, individual early blue violet plants, and areas of English ivy as delineated on the ground by the biologist. See attached Topographic Map.

Pre-Development Vegetation / ESHA Conditions

According to the 2006 report, the 0.95 acre subject parcel is situated on a level marine terrace, extending southwest from Old Coast Highway to the outer edge of the coastal bluff. The report describes an open northern bishop pine forest consisting mostly of native bishop pine (*Pinus muricata*) and non-native Monterey cypress (*Cupressus macrocarpa*) covering about two thirds of the parcel, from the roadway to the residence, with cypress the sole tree species in the area just east of the residence. Dense northern coastal scrub covered most of the outer bluff west of the residence. The rest of the outer bluff contained a half dozen cypress trees (south of the residence); some bare, duff-covered, or sparsely vegetated areas; and a small patch of coastal terrace prairie that graded into the scrub. A large wind-pruned native grand fir (*Abies grandis*) was centered at the bluff edge southwest of the residence.

Northern bishop pine forest / ESHA as described in 2006

As stated, the rare plant ESHA east of the residence extends 185 ft. west from the eastern property boundary, within the open bishop pine and Monterey cypress forest described in the 2006 report. The forest overstory included two small-diameter Douglas-firs (*Pseudotsuga menziesii*). There was no shrub layer except for a single coffeeberry (*Rhamnus californica*). The forest floor was covered with a thick layer of duff and was relatively sparsely vegetated with ferns, vines, and annual and perennial grasses and forbs. Typical forest natives such as bracken (*Pteridium aquilinum*), sword fern (*Polystichum munitum*), bedstraw (*Galium triflorum*, *G. aparine*), milkwort (*Polygala californica*), yerba buena (*Satureja douglasii*) and trailing California blackberry (*Rubus ursinus*) co-occurred with non-native forbs and grasses such as velvet grass (*Holcus lanatus*), bull thistle (*Cirsium vulgare*), and fireweed (*Erechtites glomerata*). There was a scattering of native plants more typical of coastal scrub and open grassland, including coast paintbrush (*Castilleja wightii*), coastal bluff morning-glory, and beach strawberry (*Fragaria chiloensis*). According to the report, the on-site forest is similar to northern bishop pine forest; in contrast to the native community, however, it contains many non-native cypresses and a highly modified understory, and it is conceivable that some or all of the trees originated as plantings.

As stated, the majority of the on-site coastal bluff morning-glory population detected in 2006 was located in four separate polygons in the rare plant ESHA east of the residence.

ESHA buffer as described in 2006

As stated, the ESHA buffer extends 50 ft. from the western edge of the northern bishop pine forest rare plant ESHA. The ESHA buffer was established as a condition of permit approval and thus was not specifically addressed in the 2006 report. The buffer is situated east of the residence within the open bishop pine forest habitat described in the report. In 2006, cypress was the sole tree species in the area immediately east of the residence; the ground below was devoid of vegetation and covered with cypress needles. This cypress-dominated area corresponds to the part of the ESHA buffer closest to the residence.

No coastal bluff morning-glory plants were detected in the ESHA buffer in 2006.

Northern coastal scrub as described in 2006

The vegetation of the rare plant ESHA west of the residence is described in the 2006 report as a northern coastal scrub community strongly dominated by densely mounded native bearberry (*Arctostaphylos uva-ursi*) and entirely native in composition. Characteristic species included Henderson's angelica (*Angelica hendersonii*), California blackberry, Carmel ceanothus (*Ceanothus griseus*), coffeeberry, California-aster (*Lessingia filaginifolia* var. *californica*), coast goldenrod (*Solidago spathulata* ssp. *spathulata*), yarrow (*Achillea millefolium*), cows clover (*Trifolium wormskioldii*), California brome (*Bromus carinatus*), and Douglas's iris (*Iris douglasiana*). The coastal scrub vegetation on the upper cliff face was similar in composition but also included liveforever (*Dudleya* sp.), a native succulent.

As stated, coastal bluff morning-glory was detected in 2006 in the northern coastal scrub habitat. Outside of the single polygon (polygon 5) that contained most of the rare plants, the report noted the occurrence of five individuals immediately adjacent to existing structures and within the potential construction impact zone. The report predicted the permanent loss of two of these individuals and a probable temporary impact to three individuals from the project as proposed.

Non-native invasive species as described in 2006

The 2006 survey detected three non-native invasive species on-site: ice plant (*Carpobrotus edulis*), English ivy (*Hedera helix*) and greater periwinkle (*Vinca major*).

A mat of ice plant occurred on the outer bluff edge and spilled over onto the upper cliff. English ivy was present in the northern bishop pine forest, covering the lower trunks of some bishop pines and growing as scattered small plants in the understory. English ivy was also found growing against the east side of the existing residence, and a probable source plant was found growing just off-site on wood fencing along the roadway. Greater periwinkle was found in one location, in an opening between the two parts of the existing residence (duplex).

The report noted that all three species are capable of rapid growth and have the potential to invade and destroy native vegetation. As mitigation for the reduced ESHA buffer, the report recommended removal and offered eradication methods.

Early blue violet as described in 2006

The 2006 survey discovered a small population of early blue violet in two areas at the subject parcel. A total of 26-28 individuals were counted: 19 in the understory of the bishop pine forest; 4-5 west of the duplex in northern coastal scrub; and 3-4 just off-site.

Current Vegetation / ESHA Conditions

Northern bishop pine forest / ESHA July-August 2011

The current ESHA vegetation is similar in species composition as compared to 2006, but the structure, density, and relative proportions of component species have changed. The most significant changes are an increase in the density and extent of velvet grass and a considerable accumulation of velvet grass thatch. Plant species typical of northern coastal scrub habitats appear more frequently in the understory. One or more trees have apparently fallen or been cut down.

The understory in 2006 was relatively sparsely vegetated with typical forest natives, non-native grasses, and non-native forbs; it also included a scattering of native coastal scrub / coastal prairie species. Currently the majority of the ESHA is co-dominated by non-native velvet grass and rough cat's-ear, with stands averaging 3 ft. tall. In many places there is a thick layer of velvet grass thatch that has smothered most other species; trailing California blackberry and coastal bluff morning-glory still exist in these areas by climbing up the grasses.

Where velvet grass is relatively less dense, coastal scrub species such as seaside daisy (*Erigeron glaucus*), hedge-nettle (*Stachys ajugoides*) and self-heal (*Prunella vulgaris*) have actually increased in frequency. In a typical location, large patches of self-heal

combine with yerba buena, beach strawberry, and trailing California blackberry to form the ground layer under the velvet grass. In addition, there are some coastal scrub species that were not present in 2006: a single Henderson's angelica (*Angelica hendersonii*), California poppy (*Eschscholzia californica*), several 8-10 in. coyote brush (*Baccharis pilularis*), many 2-10 in. ceanothus (*Ceanothus* sp.), and pearly everlasting (*Anaphalis margaritacea*).

The coastal bluff morning-glory population has increased in overall size and extent; details are given in the section titled, Current Rare Plant Status.

The most significant non-native species are currently velvet grass, rough cat's-ear, and bull thistle. The non-native invasive English ivy, still present on the lower trunks of some bishop pines, is more extensive in the understory than it was in 2006.

A new fence cuts across and encloses a portion of the ESHA. Cyclone fencing cuts across the ESHA at a distance of approximately 117 ft. from the east property boundary, and a metal gate extends across the driveway. The cyclone fence extends to the east boundary, following the south property boundary and the south edge of the new driveway, and joins a new wooden fence with gate that runs along the east boundary. Small numbers of coastal bluff morning-glory are currently climbing up the new fence. The fence installation process probably resulted in some undetermined but minor temporary impact / loss to the morning-glory population, but the rare plant appears to be re-establishing in this area.

The gravel driveway that formed the north border of the 2006 ESHA has been paved and extended to provide a turnaround. The turnaround contains an oval-shaped cut-out. The driveway extension / turnaround has reduced the ESHA, although the primary impact has been to the ESHA buffer (see below).

The area flanking the south side of the driveway was graded prior to paving. Evidence of the extent of grading is apparent from a distinct vegetation line / change from dense 2-3 ft. tall exotic grasses (velvet grass and rattlesnake grass) covering the ungraded area to sparse ground cover dominated by rough cat's-ear in the graded section. In the sparsely vegetated graded area, evidence of the coastal scrub seed bank is apparent with the presence of California poppy, pearly everlasting, hedge-nettle, and tiny seedlings of coastal bluff morning-glory, cypress and ceanothus.

There is currently an area of cement / gravel slurry opposite the driveway and gate at approximately 117 ft. from the driveway entrance. The slurry is apparently leftover material that was dumped and spread out when the driveway was paved.

A water spigot has been installed in the ESHA near the center of the property, approximately 138 ft. from the east property boundary. Soil disturbance is evident in a small area surrounding the spigot; however, there is no evidence of trenching through the ESHA to the spigot from the water main located at the southeast corner of the property. According to the landowner, the main water line to the house was already in place and it was merely tapped into when installing the spigot. Therefore this unpermitted action has

caused minor and at best temporary disturbance to the ESHA habitat and the rare plant population.

Supporting Photographs (Photo Plate 1) shows comparative photos of the ESHA; taken in August of 2006 and August 2011.

Current ESHA buffer July-August 2011

Compared to the ESHA, the ESHA buffer vegetation and overall condition is more dissimilar from 2006, with considerable change in the vegetation and with the addition of the development elements.

At least six Monterey cypress trees are no longer present. (According to the owner, the six trees fell naturally; the poor condition of some of the remaining trees does seem to support this contention.) The trees and stumps were completely chipped and the resulting mulch spread out over the ground.

The remaining ESHA buffer ground layer is variable, with sparsely vegetated areas of little to no vegetation; areas of chipped wood with tiny seedlings; a swath of introduced grasses co-dominated by rattlesnake grass and velvet grass; and, flanking the newly constructed driveway, almost pure rough cat's-ear combined with small seedlings of several coastal scrub natives.

Coastal bluff morning-glory has spread into the ESHA buffer as detailed in the section titled, Current Rare Plant Status.

The graded area flanking the south side of the driveway extends from the ESHA into the ESHA buffer, with the same distinct vegetation line / change indicating the extent of the grading. As described, the vegetation changes from dense 2-3 ft. tall exotic grasses in the ungraded area to sparse ground cover dominated by rough cat's-ear in the graded section; a variety of native coastal scrub species have appeared in the sparsely vegetated, graded area.

The size of the ESHA buffer has been reduced by construction of the sidewalk and driveway extension / turnaround portion of the driveway.

Supporting Photographs (Photo Plates 2 and 3) shows comparative photos of the ESHA buffer; taken in August of 2006 and August 2011. Photo Plate 4 shows the sidewalk and the distinct vegetation change due to the driveway grading.

Northern coastal scrub July-August 2011

The northern coastal scrub habitat is essentially unchanged since 2006; the community and rare plant habitat have not sustained any impact or alteration. Evidence of orange temporary construction fencing was found in several areas separating the northern coastal scrub and rare plant habitat from the existing building, indicating that temporary fencing was placed as recommended in our 2006 report.

We estimated the number of coastal bluff morning-glory plants in polygon 5 to be the same as in 2006. The single deviation from the approved plans is the extension of a

walkway along the back wall; this resulted in the loss of two coastal bluff morning-glory individuals, apparently the same individuals that the 2006 report stated would be permanently lost if the project was constructed as originally proposed.

Supporting Photographs (Photo Plate 5) shows comparative photos of the coastal scrub habitat and Polygon 5; taken in August of 2006 and August 2011.

Non-native invasive species July-August 2011

The ice plant occurrence is unchanged since 2006. Greater periwinkle is no longer present; the opening between the previously existing duplex units, where it occurred in 2006, has been closed off as a result of the remodel. English ivy is no longer present on the east side of the residence due to construction activities. The extent of English ivy in the ESHA east of the residence has increased as stated; the primary areas were flagged with orange pin flags for removal.

Early blue violet July-August 2011

To compare the current site conditions to those of 2006, individual early blue violet plants were flagged with yellow pin flags while re-delineating the coastal bluff morning-glory population. The general locations of the current population match those of 2006, with at least 3 individuals occurring outside of the originally delineated areas alongside the new cyclone fence where it cuts across the ESHA. The number of individual plants is estimated to be about the same as it was in 2006. The area west of the residence was not surveyed for early blue violet.

Current Rare Plant Status

In an effort to compare the current status of the coastal bluff morning-glory population to its condition in 2006, each previously mapped polygon was re-located and the current boundaries were delineated with red flagging. Within each polygon individual plants were counted by walking parallel transects 2 ft. apart, using the same methodology as in 2006.

In 2006, the bishop pine forest ESHA understory was sparsely vegetated and thus individual plants were easily counted. In contrast, during the current survey it was nearly impossible to count individual plants due to the dense, tall vegetation, the often-thick thatch layer, and the natural habit of the rare plant with its many vines frequently entangled with other vegetation. Therefore, precise counts were conducted and then a range of individuals was estimated, taking into account density and the individual plant counts.

The 2006 report established polygons 1-4 within the ESHA east of the residence and polygon 5 west of the residence. Currently, polygons 1 and 2 are not discrete and so are treated as the single polygon 1-2. Polygon 6, south of the residence on the outer bluff, and polygon 7, within the new driveway, are new polygons mapped in 2011.

Table 1 summarizes the comparative distribution of coastal bluff morning-glory in 2006 and 2011, providing estimated numbers of individual plants in each polygon and polygon extent.

| Species ID | # of Plants 2006 | Area (Sq') 2006 | # of Plants 2011 | Area (Sq') 2011 | Current Description |
|--------------|------------------|----------------------|------------------|-----------------------|--------------------------------|
| Poly 1 | 127 | 2500 | - | - | Increased in number and extent |
| Poly 2 | 9 | 30 | - | - | Merged with Poly 1 |
| Poly 1-2 | 136 | 2530 | 200-300 | 6419 | Poly 1 and Poly 2 combined |
| Poly 3 | 46 | 145 | 15-20 | 24 | Decreased in number and extent |
| Poly 4 | 31 | 90 | 90-150 | 290 | Increased in number and extent |
| Poly 5 | 45 | 1600 | 45 | 1600 | Conditions unchanged |
| Poly 6 | - | - | 2 | 1 | Newly established |
| Poly 7 | - | - | 16-20 | 590 | Newly established |
| TOTAL | 258-300 | 4,361 (0.1ac) | 368-537 | 8,924 (0.20ac) | |

Polygon 1-2

Coastal bluff morning-glory has increased in numbers and extent in the area surrounding previously-mapped polygons 1 and 2. There is no longer any gap in morning-glory occurrence, so the two polygons have been merged into polygon 1-2. Coastal bluff morning-glory has expanded from the previously delineated polygon boundaries, spreading west to the edge of the residence and north to the driveway. The rare morning-glories are now found inside planter boxes flanking the front door, along the newly constructed sidewalk, on both sides of the new driveway, and inside the oval of the driveway. Nearly the entire property east of the residence must now be considered to be the ESHA. Supporting Photographs (Photo Plate 6) shows comparative photos of the current habitat and Polygon 1-2; taken in August of 2006 and August 2011.

Polygon 3

Polygon 3 contains fewer coastal bluff morning-glories and has decreased in area as compared to 2006. Installation of the new fence probably resulted in these changes. The fence runs alongside and possibly through polygon 3 as originally delineated.

Polygon 4

Polygon 4 contains more coastal bluff morning-glory plants and has increased in area as compared to 2006. These changes occurred despite the installation of a new wooden fence and gate adjacent to polygon 4 as originally delineated. Supporting Photographs (Photo Plate 7) shows comparative photos of the current habitat and Polygon 4; taken in August of 2006 and August 2011.

Polygon 5

The numbers and extent of coastal bluff morning-glory in polygon 5 appear unchanged from 2006.

Polygon 6

This newly established polygon on the outer bluff contains two tiny coastal bluff morning-glory individuals in bare ground.

Polygon 7

This newly established polygon is located in the oval of the driveway. There is a single tree in the overstory. The existing vegetation consists primarily of non-native grassland species such as rough cat's-ear, rattlesnake grass, English plantain, and scarlet pimpernel. A lesser component of coastal scrub natives includes miner's lettuce (*Claytonia perfoliata*), hedge-nettle, pearly everlasting, small lupines (*Lupinus* sp.) and coastal bluff morning-glory. Some of the morning-glory individuals are quite small.

SUMMARY OF IMPACTS TO THE ESHA / ESHA BUFFER

Direct impacts to the ESHA and ESHA buffer since 2006:

- A new fence cuts across and encloses a portion of the ESHA. Cyclone fencing extends across the ESHA at a distance of 117 ft. from the east property boundary and then follows the south property boundary and the south edge of the driveway to the east boundary. A new wooden fence runs along the east boundary.
- Installation of the fence likely entailed disturbance to the ESHA perimeter in an area at least several feet in width. Direct impacts to coastal bluff morning-glory in polygon 3 appear to have occurred, as the rare plants in this location have decreased in both numbers and extent.
- The previously existing gravel driveway has been paved and extended to provide a turnaround with oval cut-out. The extension and turnaround have reduced the ESHA and the ESHA buffer by 2,661 sf.
- Cement / gravel slurry was apparently dumped and spread out within the ESHA, opposite the paved driveway and gate. The area covered in slurry is included in the extent of the graded /disturbed area below.
- The northern edge of the ESHA and ESHA buffer was graded / disturbed during paving of the driveway; the extent of the disturbed area is 3,678 sf.
- A concrete sidewalk has been constructed within the ESHA buffer. Construction of the sidewalk has reduced the ESHA buffer by 131 sf.
- A water spigot has been installed within the ESHA, approximately 138 ft. from the east property boundary. There is no evidence of trenching, but there is evidence of soil disturbance in a small area surrounding the spigot consistent with minor, temporary disturbance to the ESHA habitat and coastal bluff morning-glory population.

- The total area of impact to the ESHA and ESHA buffer from the placement of the cement / gravel slurry, construction of the sidewalk, and driveway extension / turnaround (including grading), as calculated from the Topographic Map, is 6,470 sf.

Observed changes in the vegetation of the ESHA and ESHA buffer as compared to 2006:

- The coastal bluff morning-glory population has increased in overall size and extent within the ESHA, and the rare plant has spread into the ESHA buffer. Morning-glories have spread from the previously delineated polygon boundaries west to the edge of the residence and north to the driveway. They now occur in planter boxes flanking the front door, along the newly constructed sidewalk, on both sides of the new driveway, and inside the oval of the turnaround. In addition, morning-glories have increased in numbers and extent near the east property boundary (polygon 4). Morning-glories appear to be re-establishing in the area disturbed by fence installation. The only location in which fewer morning-glories cover a reduced area is at the south property boundary (polygon 3). The current assessment found an estimated 368-537 coastal bluff morning-glory occupying a total of 8,924 sf.; the 2006 survey detected an estimated 258-300 individuals occupying a total of 4,361 sf.
- There has been a significant increase in the density and extent of non-native velvet grass and in the presence of velvet grass thatch in the ESHA and ESHA buffer.
- There has been an increase in the frequency and variety of plant species typically associated with northern coastal scrub in the ESHA. Coastal scrub species have appeared in the graded area flanking the south side of the driveway in both the ESHA and ESHA buffer.
- The ESHA tree canopy is more open; an undetermined number of trees have fallen or been removed. At least six Monterey cypress trees are no longer present in the ESHA buffer. The opening of the tree canopy brings increased sunlight to both the ESHA and ESHA buffer.

DISCUSSION

In the ESHA west of the residence, we found that temporary construction fencing had been placed pursuant to our recommendations and the approved CDP. The northern coastal scrub habitat is essentially unchanged from 2006. The coastal bluff morning-glory population appears to be equivalent in size and extent, except for the loss of two individuals alongside the residence. The northern coastal scrub habitat continues to be of high quality, and it represents the preferred habitat for the rare plant. The property owner

has established a deed restriction protecting the ESHA west of the residence, as recommended in the 2006 report.

Two of the mitigations approved and conditioned in the CDP have not been completed. These are the requirement to conduct seasonal high-weed mowing in the rare plant ESHA east of the residence and the requirement to remove non-native invasive species from the subject property.

In the ESHA east of the residence, the coastal bluff morning-glory population has not only increased in size and extent, but it has also spread into the ESHA buffer, reaching all the way to the edge of the remodeled residence and both sides of the new driveway. The entire property east of the residence must now be considered to be the ESHA and will hereafter be referred to as such.

Aside from the increase in coastal bluff morning-glory, the key vegetation changes in the ESHA since 2006 are an increase in the density and extent of velvet grass, an increase in velvet grass thatch, an increase in the frequency and variety of native northern coastal scrub species in the understory, and a more open tree canopy.

The greater density and extent of velvet grass, and the resulting thick layer of velvet grass thatch that has developed over much of the ESHA, is no doubt related not only to the natural tendency of this non-native grass to spread opportunistically, but also to (1) the failure to follow the recommendation to conduct high-weed mowing and (2) improved growth conditions, with added sunlight at the forest floor due to the more open tree canopy.

The increased prevalence and variety of coastal scrub species in the ESHA is related to the opening of the tree canopy, which has improved growing conditions by increasing sun exposure, and the soil disturbance from grading. Both factors have likely enhanced the expression of an existing coastal scrub seed bank. As the 2006 report noted, the ESHA understory was highly modified, and the trees may have originated as plantings. The current findings point to the possibility that northern coastal scrub was historically more extensive in the now-forested area. As this is the preferred habitat for coastal bluff morning-glory, the observed increase in coastal scrub species represents enhancement of the rare plant habitat. However, velvet grass competes with coastal scrub species for space, nutrients and light, reducing their potential to spread and reducing the potential for native shrubs such as coyote brush and ceanothus (currently present as small plants in the understory) to reach the shrub layer.

According to our observations in other Mendocino County locations, coastal bluff morning-glory may rapidly re-establish in disturbed areas on the coastal bluff. At the subject parcel, the rare plant has apparently re-established in the parts of the ESHA disturbed by fence construction, and it has even spread to the graded areas along the driveway and into the new planter boxes and driveway oval. However, if velvet grass continues to expand in the ESHA, becoming even denser and producing a more extensive layer of smothering thatch, it will eventually form a near-monoculture as it has in so many coastal bluff locations. Unchecked velvet grass growth in the ESHA is likely to suppress coastal bluff morning-glory, leading to a decline in the population, and to

suppress the continued appearance of native coastal scrub species that would otherwise enhance the rare plant's habitat.

If the unpermitted features are removed, coastal bluff morning-glory is likely to spread into the areas now covered by the driveway, sidewalk and cement slurry, and to re-establish in the area disturbed by fence removal. Other coastal scrub species might also spread into the newly open areas. But since the ESHA vegetation has changed considerably since 2006, removal of the unpermitted features will not be sufficient to return it to its pre-development state. If the structures are removed and nothing else is done, the threat posed by velvet grass will be undiminished. The spread of velvet grass in the ESHA must be actively addressed whether the unpermitted features are removed or if some of them are allowed to remain.

RECOMMENDATIONS FOR RESTORATION

To achieve the goal of restoring the ESHA to its pre-development state and to ensure the continued viability of coastal bluff morning-glory, we offer two options for CCC consideration. The ESHA is defined as the entire area east of the residence.

In both options the restoration measures are focused on maintaining and enhancing the habitat for coastal bluff morning-glory. Both options include the removal of the spigot and cement / gravel slurry, and both options include invasive species removal. Both options reduce the extent of velvet grass and remove thatch, and both include planting appropriate coastal scrub species within the planter boxes. Temporary fencing will protect the established coastal bluff morning-glory population. A monitoring element will be included in the Restoration Plan.

Once the CCC has chosen their preferred option (or elements of each), a comprehensive Restoration Plan will be provided detailing timetables, responsible parties, planting palette, weed management, monitoring reports, and success performance criteria.

Option 1

Option 1 leaves most of the unpermitted features in place, but enhances the ESHA to provide better habitat for coastal bluff morning-glory. The spigot and cement / gravel slurry are removed, but the driveway, sidewalk and fence are left in place. Initial seasonal high-weed mowing will increase the visibility of both desirable and undesirable species in the ESHA understory, making targeted removal possible. Intensive removal of velvet grass and velvet grass thatch will encourage expression of the coastal scrub seed bank and the growth of coastal scrub species already present. Complete eradication of velvet grass is difficult if not impossible because this species is so well adapted to coastal sites; however, this option will require a significant and measurable reduction in velvet grass cover. Performance criteria for velvet grass removal will be specified in the final Plan. New coastal scrub plantings near the residence will increase the extent of coastal bluff morning-glory's preferred habitat. Option 1 will create less overall disturbance to

the newly establishing portions of the coastal bluff morning-glory population. This option will be monitored for a period of 5 years.

Restoration measure 1: Enhance the ESHA habitat for coastal bluff morning-glory

- Create a high quality coastal scrub habitat /community within the oval, planter boxes and alongside the sidewalk by planting suitable northern coastal scrub species such as ceanothus, low-growing coyote brush, sword fern, cow parsnip (*Heracleum lanatum*), Douglas's iris, and seaside daisy.
- The total area to be enhanced with coastal scrub plantings is approximately 1,000 sf.
- One-gallon containers will be used to speed the rate of restoration. Containers will be purchased locally to insure local genetic integrity. Both Gualala Nursery and Trading Company and the Fort Bragg Botanical Gardens can provide genetically local plantings. If native vegetation derived from local genetic stock is unavailable, native vegetation obtained from genetic stock adjacent to the local area and from within the North Coast sub-region of the California Floristic Province will be used.

Restoration measure 2: Remove non-native invasive species as conditioned in the 2006 CDP

- Ice plant and English ivy should be completely removed as per the original recommendations. *Ice plant*: Remove as much of the mat as can be done safely, exercising caution with regard to the dangerously sheer cliff and ignoring stems that extend past the bluff edge. Ice plant is easily removed by hand pulling. Note that stem segments can develop roots and continue to grow when separated from the parent plant. *English ivy*: Carefully cut ivy from tree trunks at waist height, loosen the vines, and remove the plant by cutting out the roots. Remove plants from the understory by hand pulling. Note that all ice plant stem segments and English ivy vines must be disposed of off-site to prevent re-infestation.
- The status of ice plant and English ivy will be evaluated throughout the monitoring period to ensure that eradication has been successful.

Restoration measure 3: Remove spigot

- Remove the spigot head and tubing from the ESHA.

Restoration measure 4: Remove cement / gravel slurry

- Scrape off the layer of cement / gravel slurry to bare soil to allow the coastal scrub seed bank to express. Actively weed to prevent non-native species establishment.

Restoration measure 5: Conduct seasonal high weed mowing

- Enhance habitat for coastal bluff morning-glory in the rest of the ESHA with an initial high weed mow to remove the top layer of velvet grass and reveal both non-native species and desirable coastal scrub species. Prior to mowing, flag the existing coastal scrub shrubs and set the mower height to avoid them.
- Mow in mid-summer, prior to velvet grass seed set.

Restoration measure 6: Remove velvet grass / thatch and other undesirable species

- Remove velvet grass stems, roots and thatch by hand digging with a Japanese hori-hori knife or similar instrument. The plants can be dug throughout the year but are most easily seen when the pink flowering tops appear in June. Mid-summer removal prior to seed set is preferable. Plants may still be removed when they have died back in fall or winter and may be easier to dig at this time.
- Rake out the velvet grass thatch.
- Focusing primarily on the graded areas, remove rough cat's-ear by hand with the hori-hori knife, being careful to dig out the taproot. Dig up first-year bull thistle plants; cut second-year plants at ground level before they set seed.
- When removing undesirable species, weed newly infested areas first, minimize soil disturbance and leave native species undisturbed.
- The biologist shall instruct and monitor the weed removal crew.

Restoration measure 7: Protect established coastal bluff morning-glory plants

- Prior to construction activities, install exclusionary/construction fencing to protect the rare plant population and its habitat. All construction related activities must be contained by the fencing, which should remain undisturbed during all phases of construction.

Restoration measure 8: Monitoring and Documentation

- In this option the restoration activities will be monitored for 5 years following the plantings. The monitoring biologist will conduct bi-annual site visits (Spring and Fall) for five years.
- Photo-monitoring will be conducted during the bi-annual site visits to document site conditions and to monitor the progress of the plantings and weed management.

- The monitoring biologist will submit brief annual reports. Annual report documentation will be summarized and presented in a final report.

OPTION 2

Option 2 removes all the unpermitted features. The fence, sidewalk, spigot and cement / gravel slurry are removed, and the driveway is returned to the original plan without the turnaround. Initial seasonal high-weed mowing will increase the visibility of both desirable and undesirable species in the ESHA understory, making targeted removal possible. The reduction of velvet grass and velvet grass thatch to roughly it's pre-construction extent will encourage expression of the coastal scrub seed bank and the growth of coastal scrub species already present; performance criteria for velvet grass removal will be specified in the final Plan. New coastal scrub plantings will be made in the planter boxes next to the residence. This option will be monitored for a period of 3 years.

Restoration measure 1: Enhance the ESHA habitat for coastal bluff morning-glory

- Create a high quality coastal scrub habitat /community within the planter boxes by planting suitable northern coastal scrub species such as ceanothus, low-growing coyote brush, sword fern, cow parsnip (*Heracleum lanatum*), Douglas's iris, and seaside daisy.
- The total area to be enhanced with coastal scrub plantings is 327 sf.
- One-gallon containers will be used to speed the rate of restoration. Containers will be purchased locally to insure local genetic integrity. Both Gualala Nursery and Trading Company and the Fort Bragg Botanical Gardens can provide genetically local plantings. If native vegetation derived from local genetic stock is unavailable, native vegetation obtained from genetic stock adjacent to the local area and from within the North Coast sub-region of the California Floristic Province will be used.

Restoration measure 2: Remove non-native invasive species as conditioned in the 2006 CDP

- Ice plant and English ivy should be completely removed as per the original recommendations. *Ice plant*: Remove as much of the mat as can be done safely, exercising caution with regard to the dangerously sheer cliff and ignoring stems that extend past the bluff edge. Ice plant is easily removed by hand pulling. Note that stem segments can develop roots and continue to grow when separated from the parent plant. *English ivy*: Carefully cut ivy from tree trunks at waist height, loosen the vines, and remove the plant by cutting out the roots. Remove plants from the understory by hand pulling. Note that all ice plant stem segments and English ivy vines must be disposed of off-site to prevent re-infestation.

- The status of ice plant and English ivy will be evaluated throughout the monitoring period to ensure that eradication has been successful.

Restoration measure 3: Remove spigot

- Remove the spigot head and tubing from the ESHA.

Restoration measure 4: Remove cement / gravel slurry

- Scrape off the layer of cement / gravel slurry to bare soil to allow the coastal scrub seed bank to express. Actively weed to prevent non-native establishment.

Restoration measure 5: Conduct seasonal high weed mowing

- Enhance habitat for coastal bluff morning-glory in the rest of the ESHA with an initial high weed mow to remove the top layer of velvet grass and reveal both non-native species and desirable coastal scrub species. Prior to mowing, flag the existing coastal scrub shrubs and set the mower height to avoid them.
- Mow in mid-summer, prior to velvet grass seed set.

Restoration measure 6: Remove velvet grass and velvet grass thatch

- Remove velvet grass stems, roots and thatch by hand digging with a Japanese hori-hori knife or similar instrument. The plants can be dug throughout the year but are most easily seen when the pink flowering tops appear in June. Mid-summer removal prior to seed set is preferable. Plants may still be removed when they have died back in fall or winter and may be easier to dig at this time.
- Rake out the velvet grass thatch.
- The biologist shall instruct and monitor the weed removal crew.

Restoration measure 7: Protect established coastal bluff morning-glory plants

- Prior to construction activities, install exclusionary/construction fencing to protect the rare plant population and its habitat. All construction related activities must be contained by the fencing, which should remain undisturbed during all phases of construction.

Restoration measure 8: Monitoring and Documentation

- In this option the restoration activities will be monitored for 3 years following the plantings. The monitoring biologist will conduct bi-annual site visits (Spring and Fall) for three years.

- Photo-monitoring will be conducted during the bi-annual site visits to document site conditions and to monitor the progress of the plantings and weed management.
- The monitoring biologist will submit brief annual reports. Annual report documentation will be summarized and presented in a final report.



2006 (top) view is looking west. 2011 (bottom) view is looking east



Photo Plate 1: 2006 / 2011 ESHA Conditions

Exhibit 29
CCC-12-CD-07 & CCC-12-RO-07
(Moore)



Photo Plate 2: 2006 / 2011 ESHA / Buffer Conditions Note X on missing trees



Photo Plate 3: 2006 / 2011 ESHA / Buffer Conditions

Exhibit 29
CCC-12-CD-07 & CCC-12-RO-07
(Moore)



A view of the sidewalk and planter box where coastal scrub plantings are proposed.



Photo Plate 4: A view of the graded area flanking the driveway and the distinct vegetation line



Photo Plate 5: 2006 / 2011 Polygon 5 Conditions

Exhibit 29
CCC-12-CD-07 & CCC-12-RO-07
(Moore)



Photo Plate 6: 2006 / 2011 Polygon 1-2 Conditions

Exhibit 29
CCC-12-CD-07 & CCC-12-RO-07
(Moore)



Photo Plate 7: 2006 / 2011 Polygon 4 Conditions

Exhibit 29
CCC-12-CD-07 & CCC-12-RO-07
(Moore)