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## STAFF REPORT: REGULAR CALENDAR

**Consistency Determination No.:** CD-024-12

**Federal Agency:** Bureau of Indian Affairs

**Location:** Del Norte County

**Project Description:** Keeter Parcel Fee-to-Trust Project

**Staff Recommendation:** Concurrence

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### SUMMARY OF STAFF RECOMMENDATION

The Bureau of Indian Affairs (BIA) has submitted a consistency determination to place a 2.44 acre parcel currently owned in fee title by the Smith River Rancheria (Tribe) into federal trust status with the United States on behalf of the Tribe. The standard of review for this project is the Chapter 3 policies of the Coastal Act. The proposed fee-to-trust parcel, located in the unincorporated town of Smith River, Del Norte County, is currently developed with a parking lot and a single family residence. The Tribe proposes to demolish the existing residential structure and expand the parking lot to provide 25 recreational vehicle parking stalls. The location of the parcel is within the Tribe's ancestral lands, directly adjacent to tribal trust lands. The Tribe has found this an appropriate site for the recreational vehicle parking lot as it is easily accessible by Highway 101, inside the current Rancheria boundaries, and close to Tribal enterprises which would promote needed Tribal economic opportunities.

The majority of development found on the Tribe's trust and fee lands within the Rancheria boundary in this vicinity includes commercial, administrative, government, and residential development. The parcel is currently zoned Rural Residential Agriculture (RRA) under the Del Norte County LCP, which allows the development of low density rural residential housing and associated non-commercial agriculture activities. While the proposed project is not consistent with the RRA zoning for the parcel, it is consistent with the pattern of development in this area. Locating the parking lot at this site would further concentrate development in an already commercialized area, which would be consistent with the California Coastal Management Program (CCMP) (Coastal Act Section 30250). In addition, the proposed project would provide visitor-serving commercial recreational facilities, a use identified in the Coastal Act as having a higher priority than private residential development (Coastal Act Section 30222).

The project site is not adjacent to the ocean or beaches and the project would not affect access to the coast. Portions of the parking lot would be visible from Highway 101 and Ocean View Drive, and the lot construction would involve the removal of trees which currently shield the site, potentially affecting visual resources. To ensure visual compatibility with the surrounding area the Tribe would maintain the trees along the east end of the parcel adjacent to the road and install low sodium light fixtures and shields to eliminate light pollution. No significant historic, cultural or archaeological resources have been identified at the site, and the Tribe would implement contingency plans in the event that resources are uncovered during construction. The project design and construction plan as proposed would be consistent with the visual and cultural resources policies of the CCMP (Coastal Act Sections 30251 and 30244).

The majority of the parcel has been disturbed by development, grading, paving, mowing and landscaping, and field surveys conducted in 2009 and 2010 did not reveal any special-status plants or animals on the project site. While the site does not contain any water features or isolated wetlands, the construction and operation of the parking lot could pose impacts to offsite water quality through grading, excavation, and stockpiling, and the increase in impermeable surfaces. The Tribe plans to comply with the USEPA's General Storm Water Discharge Permit for Construction Activities and incorporate storm water treatment features into the project design to reduce construction and operation related water quality impacts. The Tribe would also conduct regular maintenance of these features to prevent impacts to surface or groundwater resources. With these measures, the project design and maintenance plans would be consistent with the water quality policies of the CCMP (Coastal Act Sections 30231).

The proposed action would facilitate the Tribe's need for economic development and promote cultural and social preservation by expanding the Tribal land base subject to Tribal sovereignty. Adequate Tribal and public utilities are available to serve the proposed development, and no sensitive coastal resources on the parcel would be adversely affected by the development. The staff therefore recommends the Commission **concur** with the BIA's consistency determination and find the proposal consistent with the development, recreation, land resources, and marine environment policies (Sections 30250, 30222, 30251, 30244, and 30231) of the Coastal Act.

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## I. FEDERAL AGENCY'S CONSISTENCY DETERMINATION

The Bureau of Indian Affairs has determined the project consistent to the maximum extent practicable with the California Coastal Management Program (CCMP).

## II. MOTION AND RESOLUTION

### Motion:

*I move that the Commission **concur** with consistency determination CD-024-12 that the project described therein is fully consistent, and thus is consistent to the maximum extent practicable, with the enforceable policies of the California Coastal Management Program.*

Staff recommends a **YES** vote on the motion. Passage of this motion will result in an agreement with the determination and adoption of the following resolution and findings. An affirmative vote of a majority of the Commissioners present is required to pass the motion.

### Resolution:

*The Commission hereby **concurs** with consistency determination CD-024-12 by the BIA on the grounds that the project is fully consistent, and thus consistent to the maximum extent practicable, with the enforceable policies of the CCMP.*

## III. FINDINGS AND DECLARATIONS

### A. PROJECT DESCRIPTION

The Bureau of Indian Affairs (BIA) has submitted a consistency determination to place a 2.44 acre parcel currently owned in fee title by the Smith River Rancheria (Tribe) into federal trust status with the United States on behalf of the Tribe. The proposed fee-to-trust parcel, known as the Keeter Parcel, is located at 13150 Oceanview Drive, east of Route 101, in the unincorporated town of Smith River, Del Norte County ([Exhibit 1](#)). The Keeter parcel is currently developed with a parking lot on the west side and a single family residence on the east side. The location of the parcel is within the Tribe's ancestral lands, directly adjacent to tribal trust lands to the north and west, tribal fee lands to the south, and Ocean View Drive and a private land parcel to the east ([Exhibit 2](#)). The Tribe proposes to demolish the existing residential structure on the property and expand the parking lot to provide 25 recreational vehicle parking stalls.

The construction of the lot would involve the removal of the existing residence, minor grading to raise the elevation of the low lying portion of the parcel, and tree removal. Access to the lot would be from North Indian Road, through the parcel north of the Keeter parcel, also owned by the Tribe and in federal trust. The lot would provide 25 parking stalls: 9 full length stalls to accommodate Class A recreational vehicles, and 16 compact stalls to accommodate Class B and

C recreational vehicles ([Exhibit 3](#)). The recreational vehicle parking lot would only allow weekend or overnight parking and no individual water supply, electricity, or waste disposal would be available. A central water spigot and drinking fountain would be installed for use by visitors.

The Tribe would comply with USEPA's General Storm Water Discharge Permit for Construction Activities which requires a Storm Water Pollution Prevention Plan, Erosion Control Plan, and a Hazardous Materials Management/Spill Response Plan created and implemented during construction to reduce potential impacts to water quality. In addition, the Tribe would incorporate storm water treatment features into the project design such as vegetated buffers and swales and oil-water separators, to filter the additional storm water runoff. The Tribe has already installed and regularly maintains storm water features such as these on the adjacent Lucky 7 Casino property and would include the recreational vehicle parking lot features as part of their regular maintenance activities.

The proposed development would also involve the removal of one residential septic system. Once the parcel is transferred into trust for the Tribe, a formal County permit for the septic system removal would not be required. However, the Tribe has adopted its own Smith River Rancheria Health and Sanitation Ordinance, which uses the same codes with respect to onsite waste treatment and disposal practices as the County. To maintain visual compatibility with the surrounding area the Tribe would maintain trees on the east side of the parcel adjacent to the road, install a privacy fence or vegetative screen on the south end of the parcel, promote native plant landscaping, and install low sodium light fixtures and shields to eliminate light pollution. If any cultural resources are uncovered during construction activities, the Tribe would halt construction and implement contingency measures to protect these resources subject to 36 CFR 800.13.

The consistency determination includes an *Environmental Assessment* (Natural Investigations Company, April 2012), which provides background information on the Rancheria:

*The 190-acre Smith River Rancheria was established in 1908 as one of the three serving the Tolowa people. However, as part of the California Rancheria Act of 1958, the Smith River Rancheria was terminated. During the period of termination, the land that formerly comprised the Rancheria was allotted to individual members and as much as 40% of that land was sold to non-Indians. On December 15, 1983, the Tolowa Indians of the Smith River Rancheria was restored as a federally-recognized Indian tribe as a result of the Hardwick v. United States, a class-action suit involving 17 California Indian rancherias unlawfully terminated by the United States Bureau of Indian Affairs....*

*The Rancheria is a checkerboard configuration totaling 534.33 acres split between 46 different parcels with various trust and fee holdings. The Tribe operates a number of different facilities on Rancheria lands including administrative offices, the Lucky 7 Casino, Lucky 7 Fuel Mart, Howonquet Community Center/Headstart and Day Care Facility, elder housing, rental units, United Indian Health Services, and Community and Family Services.*

The *Environmental Assessment* performed an analysis on the proposed project and two alternatives, the Reduced Intensity Alternative and the No-Action Alternative. The Reduced Intensity Alternative would still involve placing the parcel into trust for the Tribe, but the recreational parking lot would be half the size, with only 8 compact stalls and 5 full length stalls, maintaining one additional tree on the south end of the parcel. Under a No-Action Alternative, the parcel would not be placed into trust for the Tribe and would not be developed as described. Jurisdiction of the parcel would remain with Del Norte County and the Tribe could develop the parcel consistent with the current County zoning.

The Tribe considered other locations for the development; however the Tribe does not own any properties of sufficient size and appropriate location for the lot. The Tribe has found this an appropriate site for the construction and operation of a recreational vehicle parking lot as it is easily accessible by Highway 101, has frontage on North Indian Road, inside the current Rancheria boundaries, and close to Tribal enterprises which would promote economic opportunities. An alternative road access to the lot via Ocean View Drive was considered, but the option was eliminated due to its potential impacts on traffic flow and safety.

The majority of development on the Tribe's trust and fee lands within the Rancheria boundary in this vicinity, south of Lopez Creek, includes commercial, administrative, government, and residential development. Existing land uses occurring on the adjacent properties are single-family homes to the north, east, and south, and a casino to the west. The parcel is currently zoned Rural Residential Agriculture (RRA) under the Del Norte County LCP which allows the development of low density rural residential housing and associated non-commercial agriculture activities. The proposed project is not consistent with the RRA zoning for the parcel but is consistent with the pattern of development in this area, concentrating this use near a highly commercialized area.

Once the parcel is placed into federal trust status for the Smith River Rancheria, the parcel would no longer be subject to the County's general plan or zoning designation or to other state and local government land use and development regulatory controls. However, the Tribe has developed its own zoning ordinance, Master Plan, and planning board to promote orderly and responsible development of its lands. The Tribe is currently working with Del Norte County to update the County General Plan to make it more compatible with the Tribe's Master Plan.

## **B. CONCENTRATION OF DEVELOPMENT**

Section 30250(a) of the Coastal Act states, in part:

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

The subject parcel owned in fee title by the Smith River Rancheria is currently subject to the development policies of the North Coastal Subarea – Area 1 Planning Unit of the Del Norte County Local Coastal Program (LCP). The parcel is currently zoned Rural Residential Agriculture (RRA) under the Del Norte County LCP, which allows the development of low density rural residential housing and associated non-commercial agriculture activities. The Commission is reviewing the proposed trust transfer and subsequent development plan through a federal consistency determination, so the standard of review is the Chapter 3 policies of the Coastal Act and not the Del Norte County LCP. Because this LCP has been certified by the Commission and incorporated into the California Coastal Management Program (CCMP), it can provide guidance to the Commission as it examines the project’s consistency.

The majority of development found on the Tribe’s trust and fee lands within the Rancheria boundary in this vicinity, south of Lopez creek, includes commercial, administrative, government, and residential development. Existing land uses occurring on the adjacent properties are single-family homes to the north, east, and south, and a casino to the west. A portion of the parcel to the north is currently being developed into a parking lot which would be used to access the proposed recreational vehicle lot. [Exhibit 4](#) highlights the parcels surrounding the subject parcel which are zoned commercial, and or used for commerce or other non-residential uses, which include the parcels directly north and east of the subject parcel and half of the subject parcel itself. The proposed development, while inconsistent with the RRA zoning, is consistent with the pattern of development in this area and would concentrate this use near a commercialized area.

In a recent action (CD-063-10), the Commission noted that Lopez Creek currently serves as a natural boundary between: (1) the commercial, administrative/government, and residential development found on the Tribe’s trust and fee lands within the Rancheria boundary, and other private development near the Smith River to the south; and (2) the more rural residential and agricultural lands to the north and extending to the Oregon border. The proposed development by the Tribe that would occur subsequent to the fee-to-trust transfer would be consistent with the pattern of commercial development in this area of the coastal zone, as recognized in this recent Commission action. In addition, as noted in the previous section of this report, adequate public services are available to serve the development, and as noted in the following section, the proposal would be a higher priority use under the Coastal Act that uses under the site’s current zoning designation. The Commission therefore concludes that the project is consistent with the requirements of Coastal Act Section 30250(a) to concentrate development in areas with adequate public services and where it would not individually or cumulatively adversely affect coastal resources.

### **C. RECREATION**

Section 30222 of the Coastal Act states:

*The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.*

The proposed project would provide low cost visitor-serving commercial recreational facilities, enhancing recreation and tourism in the surrounding area. The subject parcel has not been used for commercial agriculture in the last 20 years and the land is not considered prime agricultural land. Because of the higher priority afforded under Section 30222 to visitor-serving facilities over private residential development, the Commission finds that the project is consistent with Coastal Act Section 30222.

#### **D. SCENIC AND VISUAL RESOURCES**

Section 30251 of the Coastal Act states:

*The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.*

Potential impacts to visual resources by the proposed development could occur from changes to the land, removal of trees, and the operation of a lot where large recreational vehicles would be parked. To protect the view corridors along Ocean View Drive and Highway 101 and maintain consistency with the surrounding area, the proposed development would maintain the line of trees on the east end of the parcel directly adjacent to Ocean View Drive. In addition, the project design would include the installation of a privacy fence or vegetative screen on the south end of the parcel, limit use of signage, promote native plant landscaping, and use low sodium light fixtures and shields to eliminate light pollution. With these measures, the Commission finds the project would protect public views and be consistent with the character of the surrounding area, and would therefore be consistent with Coastal Act Section 30251.

#### **E. WATER QUALITY**

Section 30231 of the Coastal Act states:

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

The majority of the parcel has been disturbed by development, grading, paving, mowing and landscaping, and no special-status habitats were identified. Field surveys conducted in 2009 and 2010 did not reveal any special-status plants or animals and the project site does not contain any water features or isolated wetlands. The construction and operation of the parking lot could pose impacts to water quality through grading, excavation, and stockpiling, and the increase in impermeable surfaces resulting from the surface area paved. The Tribe plans to comply with the requirements of the USEPA's General Storm Water Discharge permit for Construction Activities, which would include a Storm Water Pollution Prevention Plan, Erosion Control Plan, and a Hazardous Materials Management/Spill Response plan created and implemented during construction to reduce potential impacts to water quality.

In addition, storm water treatment features would be incorporated into the project design such as vegetated buffers and swales, and oil-water separators to filter the additional storm water runoff. The Tribe has already installed and regularly maintains storm water features on the adjacent Lucky 7 Casino property and would include the recreational vehicle parking lot features as part of its regular maintenance activities. The Tribe's maintenance of these drainage features includes a yearly cleaning of all the drains, or sooner as needed, checking the oil-water separator bi-weekly, and cleaning out the separator monthly.

The proposed development would also involve the removal of one residential septic system. Once the parcel is transferred to trust for the Tribe a formal approval would not be required by the County for the removal of the septic system. However, the Tribe has adopted its own Smith River Rancheria Health and Sanitation Ordinance which uses the same codes with respect to onsite waste treatment and disposal practices as the County. Removal of the septic system would benefit ground and surface water resources.

The Commission finds that, with the above measures and commitments, the project would adequately protect onsite and offsite water quality and would be consistent with Coastal Act Section 30231.

## **F. CULTURAL RESOURCES**

Section 30244 of the Coastal Act states, in part:

*Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.*

The project site is located within the ancestral lands of the Tolowa Indians, and therefore, the construction of the parking lot could affect cultural resources. The Environmental Assessment included an examination of archival literature and records to identify any previously documented information regarding cultural resources on the project site and conducted an independent field survey to identify any cultural resources currently at the project site. These efforts did not reveal any historic, cultural, and archeological resources at the project site. If any resources are uncovered during construction activities, the Tribe would halt construction and implement contingency measures to protect these resources subject to 36 CFR 800.13. The Smith River

CD-024-12 (Bureau of Indian Affairs)

Rancheria Tribal Historic Preservation Officer and the official BIA Archaeologist would be notified to determine the appropriate mitigation measures to be implemented. With these measures and commitments, the Commission finds the project consistent with Coastal Act Section 30244.

**APPENDIX A: SUBSTANTIVE FILE DOCUMENTS**

Consistency Determination CD-024-12, Bureau of Indian Affairs, Smith River Rancheria's Keeter Parcel Fee-to-Trust Project, April 30, 2012.

*Smith River Rancheria Keeter Parcel Fee-to-Trust Project Environmental Assessment*, April 2012 (Natural Investigations Company)

Consistency Determination CD-063-10, Bureau of Indian Affairs, Smith River Rancheria, Placement of three parcels totaling 22.6 acres into Federal trust status, and development of 26 single family residences and 15,000 square feet of community-serving commercial/retail space

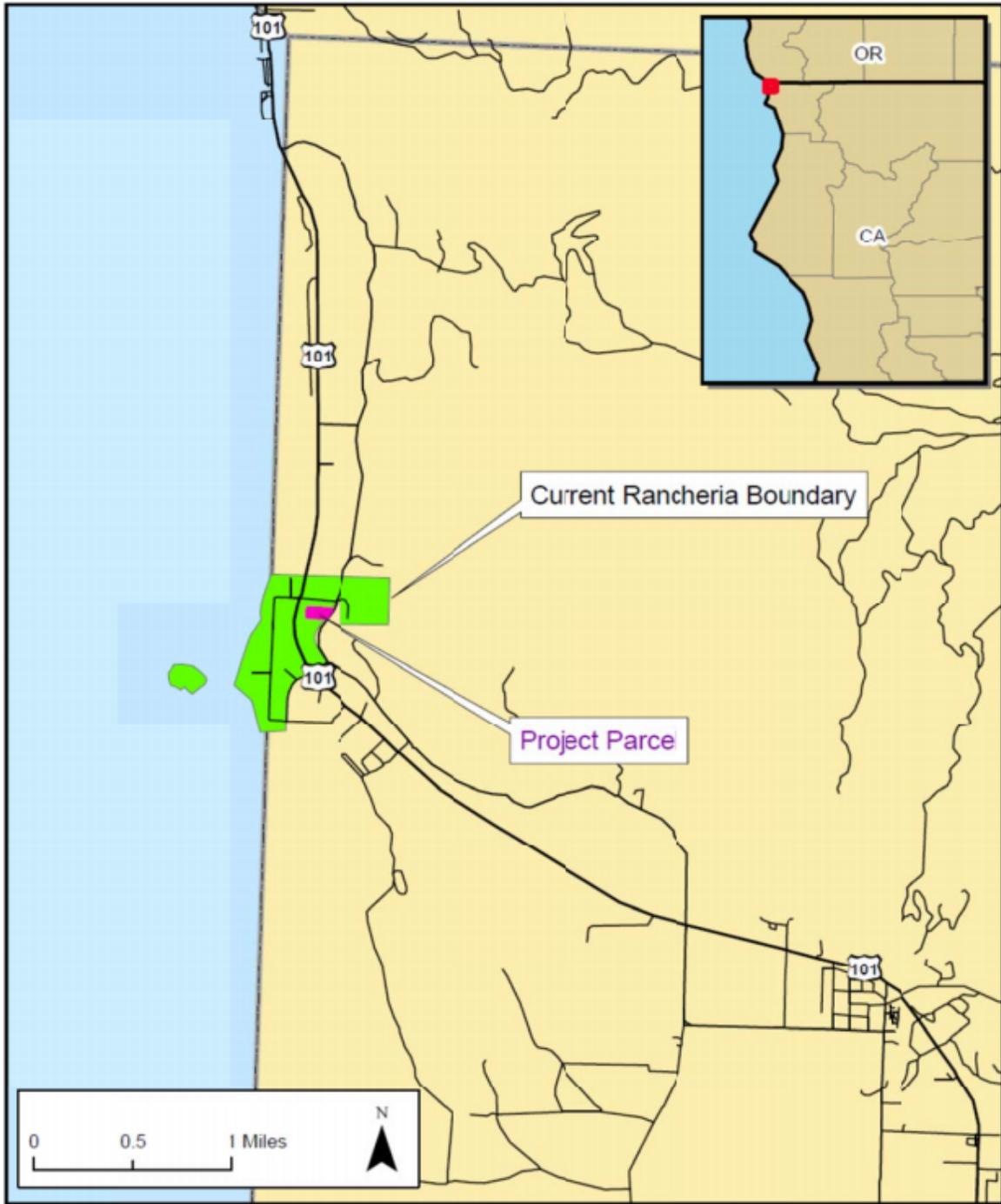
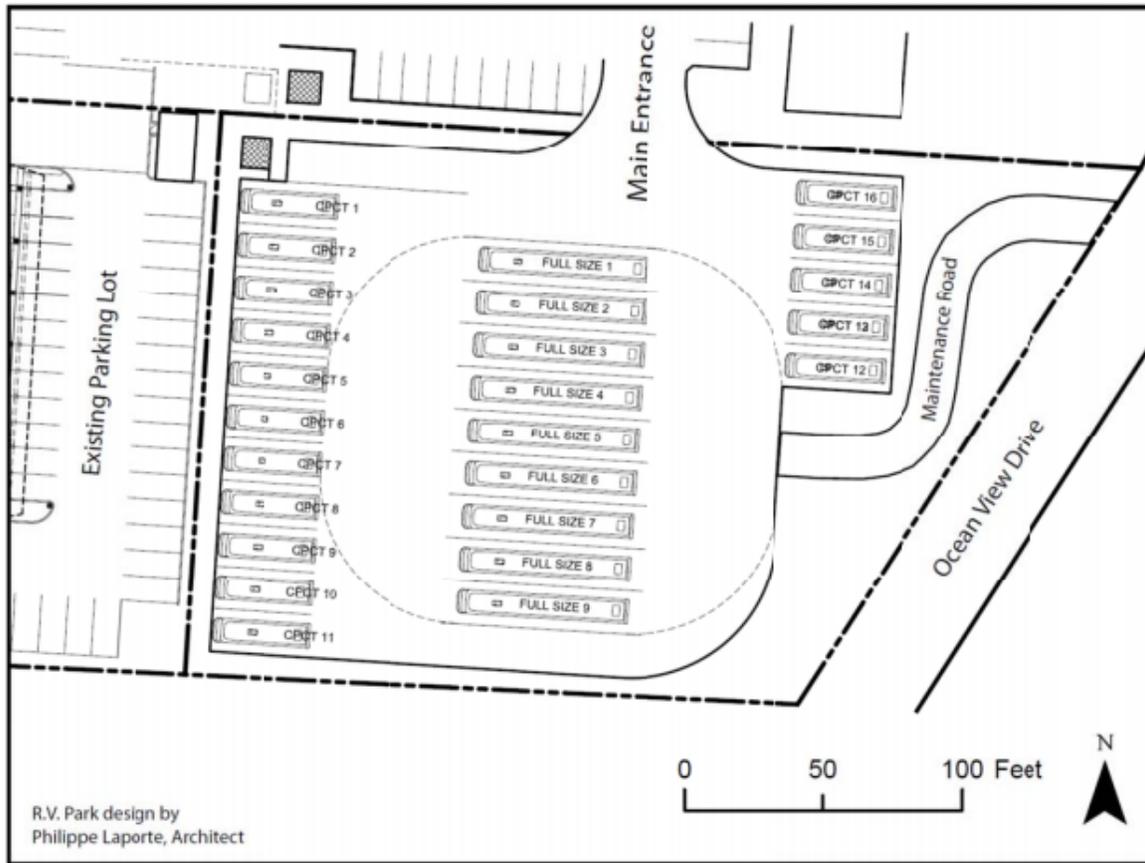


Figure 1-1. Location of Project Site



**Figure 2-1. Existing landuses surrounding the parcel (yellow line) shown on a recent aerial photograph.**

**Exhibit 2 (CD-024-12)**



**Figure 2-3. Detailed Site Plan of the Proposed Action**

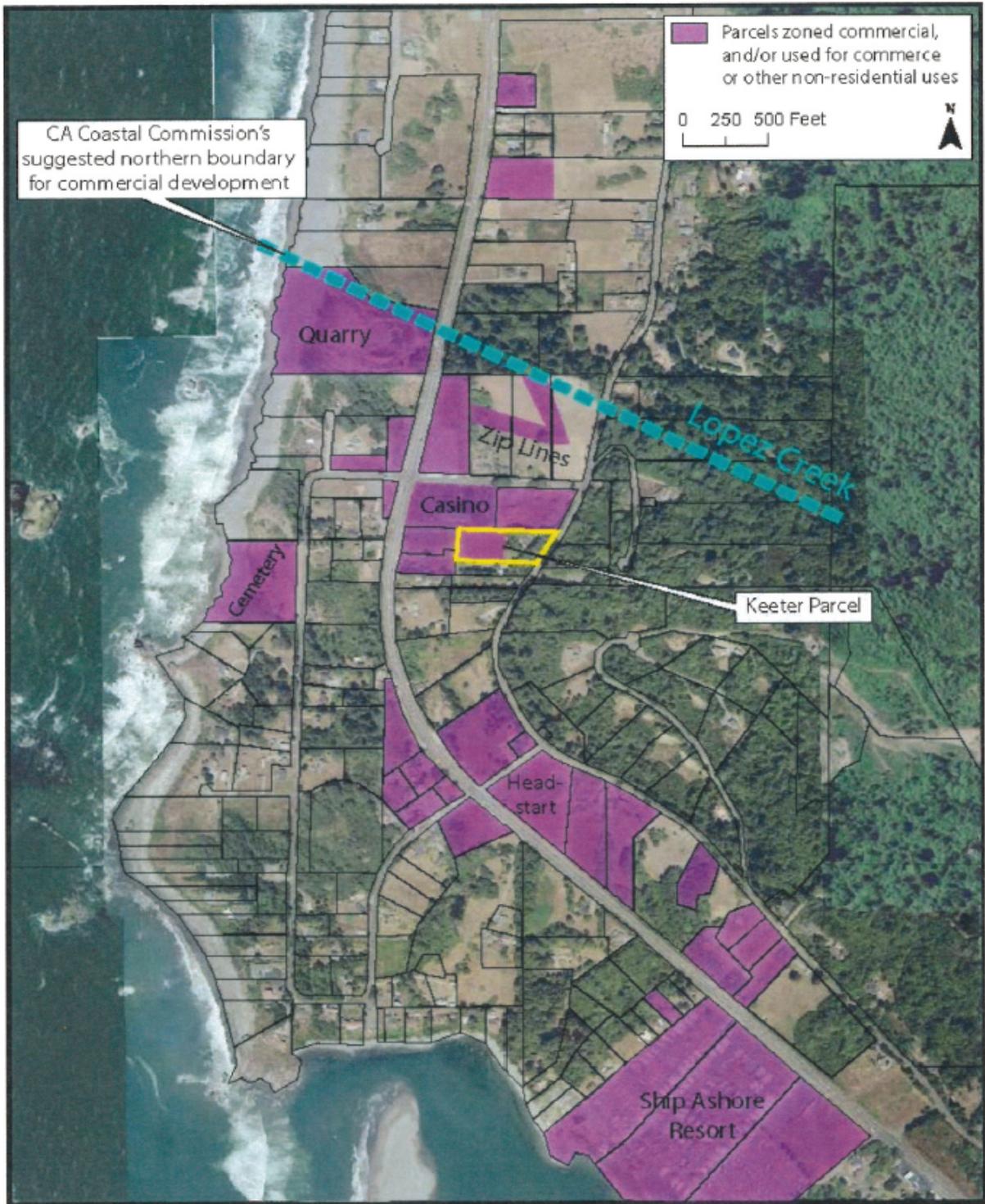


Figure 4. Commercial Land Use Map

Exhibit 4 (CD-024-12)