CALIFORNIA COASTAL COMMISSION NORTH COAST DISTRICT OFFICE 1385 8<sup>th</sup> STREET • SUITE 130 ARCATA, CA 95521 VOICE (707) 826-8950 FACSIMILE (707) 826-8960



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### **MEMORANDUM**

Subject:	Addendum to Commission Meeting for Wednesday, November 13, 2013
	Tamara Gedik, Coastal Program Analyst – North Coast District
	Robert S. Merrill, District Manager – North Coast District
	Alison Dettmer, Deputy Director
From:	Charles Lester, Executive Director
То:	Commissioners and Interested Parties
Date:	November 12, 2013

North Coast District Item W14a, Appeal No. A-1-MEN-13-0241 (CA State Parks)

The purpose of this staff report addendum is to transmit public comments received since publication of the staff report on November 1, 2013 and to supplement the responses to public comments contained in the staff report. The correspondence received since publication of the staff report is included in the attachments at the end of this addendum. The addendum does not alter the conclusions of the staff report. Staff continues to recommend that the appeal raises no substantial issue, as recommended in the November 1, 2013 staff report. The supplemental responses to public comments provided below are hereby incorporated into the relevant portions of the staff report.

Since publication of the staff recommendation on November 1, 2013, the Commission has received a number of items of correspondence on the permit appeal from the public (attached). Some comment letters received (Attachments B, C, D, E, F, G, K, and L) support the Commission staff recommendation that the appeal raises no substantial issue of conformance of the project as approved with the policies of the certified LCP or with the public access policies of the Coastal Act. One comment letter (Attachment M) requests postponement of the public hearing to allow for the item to be heard at a geographically closer location. Other comment letters (Attachments A, H, I, and J) oppose the staff recommendation for various reasons.

## Haul Road Removal and the Protection of Public Access and Fragile Coastal Resources

Comment letters received from one of the appellants (Attachment I) and from other citizens (Attachments A, H, and J) contend that the appeal raises a substantial issue because removal of the haul road eliminates a hardened surface trail that provides access opportunities to less able user groups, thereby resulting in a permanent impairment of public access.

The remnants of the Haul Road do not currently provide a continuous hardened surface trail through the dunes. In a Memorandum dated August 13, 2013 prepared in response to the local appeal of the project to the Board of Supervisors (Exhibit 10 of the Commission staff report), County staff described the portions of the Haul Road to be removed as follows:

The north end, near Ten Mile River, is not a formal access point – access to the Haul Road in this location is by walking through private property that lies between Caltrans right-of-way and State Parks land. Visitors do access this northern portion near the Ten Mile Bridge; however, no formal process of establishing prescriptive access has occurred. Access at this northern point is by traveling over loose sand with relatively steep slopes. The northerly segment of the Haul Road is intact (although portions are covered by drifting sand) for ~2.5 miles. The two remaining Haul Road remnants proposed to be removed (and vary from 220 to 720 feet in length) are disconnected and significantly degraded to the point of providing little to no walkable/useable trail surface. It is approximately one mile from the northern most segment of Haul Road to Ward Avenue.[Emphasis added.]

The Final Mitigated Negative Declaration (MND) prepared by State Parks describes recreational use of the Haul Road in part as follows:

As described in text and photos on pages 6-9, 79, and 115 of the IS/MND, the haul road no longer serves as a contiguous trail, since nearly one mile is completely washed out and much of the remaining approximate two mile sections are either dangerously eroded or partially covered with sand.

Natural processes are currently eroding portions of the haul road, resulting in severely eroded road fragments that are leaning against the shoreline side of the road berm. In its current state, road fragments lying along the shoreline pose a potential threat to coastal waters during high storm events. Establishment of invasive European beachgrass within the project area has displaced native vegetation and created unnatural, oversteepened foredunes that also reduce habitat for the federally-listed western snowy plover.

As explained in the staff report, the appeal raises no substantial issue of conformance of the approved project with the public access policies of the Coastal Act or with the Mendocino County certified LCP because the project as approved allows continued, uninterrupted public access along the shoreline while at the same time, taking into consideration the protection of fragile coastal resources. Mendocino County LUP Policy 3.6-27 and Coastal Act Sections 30210, 30212, and 30214 all require that public access be provided consistent with the protection of natural resources. Section 30210 of the Coastal Act states in applicable part that: "maximum access and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect... natural resource areas from overuse." Section 30212 states in applicable part that "public access from the nearest public roadway and along the coast shall be provided in new development projects except where it is inconsistent with ... the protection of fragile coastal resources." Section 30214(a)(2) and (a)(3) expressly require that the public access policies be applied taking into account the capacity of the site to sustain use and the appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area.

The Final MND states that: "The proposed project would remove unnatural features to restore native habitats and to preserve endangered plant and animal species and their supporting ecosystem." The County's findings and the Final MND present substantial evidence that the removal of the haul road, culverts, and invasive species from the project area will rehabilitate the habitat to a naturally-functioning system. The County's August 13, 2013 Memorandum states:

Maintaining the Haul Road and culverts in place, or constructing a new trail in dune habitat or new stream crossings will continue to disrupt and degrade habitat function, including the reduction of habitat, and interruption of ecosystem processes. Therefore removal of the Haul Road is a feasible less environmentally damaging alternative. The following excerpt from the MND explains the environmental benefit of removing the road (MND, pg. 5):

"The partially eroded haul road and culvert system will continue to impair fen wetland hydrology if no action is taken. The culverts are located behind relatively wide (past or current European beachgrassinfluenced) fore dunes that temporarily protect them from direct storm wave erosion. Partial storm wave erosion of the rusted metal culverts would result in hazardous and esthetically unacceptable conditions, and may result in persistent artificial influence of wetland outlet hydrology. Partial storm wave erosion of the haul road results in formation of a steep cliff-like dune scarp with an asphalt-armored top that impedes establishment of native dune vegetation (root zone restriction, inhibition of colonization). Active removal of the haul road, culverts, and beachgrass would accelerate recovery of the dune and wetland complex within the Preserve, particularly the critical outlets of the fen wetland systems. The proposed project would remove unnatural features to restore native

habitats and to preserve "endangered plant and animal species and their supporting ecosystem"... [Emphasis added.]

The project as approved will provide for public access while protecting fragile coastal resources. In its August 13, 2013 memorandum, the County states that:

The June 11 Staff Report contains analysis that supports Finding #1 [that the proposed development is in conformity with the certified Local Coastal Program]. The Staff Report also includes discussion on Policies 3.1-15 (pg 16-18) and 4.2-19 (pg 12-13 and Special Condition 4) & 4.2-21 (pg 7-8). Well-defined footpaths are not proposed through the dune system. Instead, State Parks will continue to allow "Passive Recreation" in the Preserve, which includes hiking, horseback riding, fishing, swimming, jogging and similar activities to continue along the shore and through the dunes that do not rely on the development of trails or other site improvements (Coastal Zoning Code Section 20.340.015). <u>State Parks</u> will periodically and temporarily limit access to areas within the Preserve as needed [to] protect sensitive habitats in accordance with its land management and resource protection procedures. The remainder of the park will be open for passive recreation access during these closure periods. [Emphasis added.]

The County-approved project provides continued, uninterrupted public access along the shoreline, as described in the Land Use Plan maps, text, and policies described in the Commission staff report. As described on Page 15 of the Commission staff report, the County's findings for approval of the project acknowledged in part that: (a) The Coastal Trail will continue to be available to hikers and equestrians along its shoreline alignment, as shown on the County's certified Land Use maps; (b) the Haul Road is disconnected, deteriorated/washed away or buried within the project area; (c) The opportunity is present to restore full ecological function to a rare habitat which is unique to the Mendocino Coast and the State of California; (d) The benefits of restoring ecological function through removal of an unnatural feature outweigh and overcome arguments for diminished coastal access; and (e) due to the dynamic nature and rare species of the dune environment reconstruction and maintenance of the existing hardened trail surface are not feasible alternatives.

Thus, there remains a high degree of factual support for the local government's decision to find that its approval conforms with public access requirements to maximize public access consistent with the protection of fragile coastal resources. As described in the Commission's staff report, by routing access along the shoreline seaward of the foredunes, the trail will accommodate public access while protecting the fragile resources of the MacKerricher dunes system.

### Haul Road Removal and the Protection of Snowy Plover

Comment letters received from one of the appellants (Attachment I) and from other citizens (Attachments A, H, and J) contend that the appeal raises a substantial issue because removal of the haul road will cause an increase in volunteer trails through sensitive habitat areas, and will direct users to wet sand areas where impacts to western snowy plover breeding habitat will occur.

The Final MND also contains Appendix E.6 that further describes recreational use in the area, and describes the presence of several volunteer trails as part of the existing condition, despite the existence of the remnant Haul Road.

The Haul Road was constructed during a time that preceded current environmental threats. The staff report describes how in 1916 Union Lumber Company completed construction of a railroad through the project area, and in 1945 Union Lumber converted the railroad to a paved road to transport logs to the lumber mill in Fort Bragg. As described in the MacKerricher State Park General Plan (1995<sup>1</sup>), the western snowy plover was federally listed as threatened in March 1993.

The approved project would protect snowy plover habitat by directing hiking along the shoreline away from plover nesting areas. While an appellant asserts in Attachment I that shoreline access along an undesignated wet sand route "goes through the most sensitive Western Snowy Plover breeding zone," page 65 of the 1995 General Plan identifies factors limiting snowy plover survival as including a decreased amount and quality of nesting habitat in addition to increased human use, predation, and colonization of habitat by invasive European beachgrass. The executive summary of the 2007 USFWS Recovery Plan for the Pacific Coast Population of the Western Snowy Plover<sup>2</sup> describes in part that "The Pacific coast population of the western snowy plover breeds primarily above the high tide line on coastal beaches…" The 1995 General Plan states in part that "If deemed warranted and necessary, access will be limited seasonally to beach areas below high tide line, leaving the sensitive areas of soft sand preferred for nesting undisturbed." (Emphasis added). In the Final MND, State Parks addresses concerns relating to potential impacts to western snowy plover by stating:

Pages 23 and 24 of the IS/MND describe detailed project requirements under BIO-7d that are specifically intended to prevent impacts to plovers during project implementation. As described and illustrated on pages 5, 36, 55-56, and 69 of the IS/MND, the removal of the haul road and European beachgrass will open up additional nesting and foraging habitat for plovers. Unnatural barriers will be removed that now prevent plovers

<sup>2</sup> U.S. Fish and Wildlife Service. 2007. Recovery Plan for the Pacific Coast Population of the Western Snowy Plover (*Charadrius alexandrinus nivosus*). In 2 volumes. Sacramento, California. xiv + 751 pages. Available at: http://www.fws.gov/arcata/es/birds/WSP/plover.html

<sup>&</sup>lt;sup>1</sup> Available online at <u>http://www.parks.ca.gov/?page\_id=24747</u>

### *from retreating to safe areas during high tides or when disturbed by humans and dogs.* [Emphasis added.]

Thus, there remains a high degree of factual support for the local government's decision to find that the project will protect the western snowy plover and is consistent with the provisions of Section 30210, 30212, and 30214 of the Coastal Act that require that maximum public access be provided consistent with "the protection of fragile coastal resources" and the need to protect "natural resources from overuse."

### **Bicycle Path**

The appellant (Attachment I) and other commenters also raise concerns that the appeal raises a substantial issue because the road removal eliminates bicycle access currently available along the Haul Road, and that adequate alternate access is not provided. The commenters question the feasibility of developing a bike trail in this area due to constraints that include a lack of continuous property ownership, road alignment limitations, and project costs. Specifically, the commenters (Attachments A, H, and J) claim that Special Condition No. 7 of the County's conditional approval, which is intended to benefit bicyclists, is unrealistic, and even if it could be built, would not be safe for bicyclists.

Special Condition No. 7 requires that State Parks shall help facilitate the development of a Class I bike path along the portions of the park adjoining Highway One, from the Ten Mile River to Ward Avenue, and a Class II bike path in those limited areas where a Class I bike path is not feasible. State Parks must dedicate sufficient area on its own property to facilitate such a bike path to the extent such a dedication of property may help facilitate development of the bike trail. A Class I bike trail is separated from an adjoining roadway by a railing or by sufficient open space to ensure the safety of the bicyclists.

While some remnant portions of the Haul Road may still be used by bicyclists (if they were to carry their bicycle into the dunes first), there is no multi-modal through trail identified on the certified Land Use Plan maps, and thus the approved project does not eliminate a designated through-trail within the project area. Therefore, the LCP does not require the construction of a bicycle trail as part of the project approval. Nonetheless, the inclusion of Special Condition 7 as part of the County's project approval will help to facilitate the future development of a bicycle path along Highway One. Not all portions of Highway One from the Ten Mile River to Ward Avenue adjoin State Parks property. Thus, the applicant cannot provide all the area necessary to develop a bike path adjacent to Highway One. Other property may need to be acquired from other landowners to complete a bike trail. However, where the park adjoins the Highway One right-of-way, the project as approved with the special condition will help facilitate the future development of a Class 1 bicycle path that is safe for bicyclists and avoids sensitive dune habitat.

### Setback Alternative

Additionally, one appellant specifically asserts in their letter (Attachment I) that they believe a feasibility study conducted in 2000 (EDAW) for State parks to study the development of a multi-user trail along the alignment of the Haul Road indicates the Setback Alternative was judged feasible in many respects and has a total footprint of less than an acre.

The "Setback Alternative" is a hardened surface alignment evaluated in the 2000 Feasibility Study. An appellant's letter (Attachment I) presents the excerpt of the Setback Alternative analysis as Exhibit 2 of their letter and contends that "Exhibit 2 of this letter [shows] the Setback Alternative was judged feasible in many respects and has a total footprint of less than an acre." The appellant has highlighted portions of the Setback Alternative analysis favorable to his contentions that indicate dune instability, cultural resource impacts, and costs do not appear to threaten the feasibility of the Setback Alternative, and further contends the total impact of the Setback Alternative would be less than the "direct take of over one acre of endangered plants" that the appellant attributes to the approved project. However, the appellant did not highlight the portions of the analysis that contravene his contentions and which identify unavoidable impacts to wetlands and threatened and endangered species. Wetland impacts resulting from the Setback Alternative are described in part as follows:

As with the Haul Road Alternative, the Setback Alternative would encounter wetlands just west of the Ten Mile River Bridge and at the mouths of Inglenook and Fen creeks. In addition, the bypass segment would encounter seasonal wetlands in the dunes. New trail construction would intersect approximately 780 linear feet of wetland native herbs, while existing trail surfaces to be repaired and maintained would intersect approximately 420 linear feet of wetland native shrubs (Table 5.4-2). <u>Due</u> to the widespread distribution of seasonal wetlands along the bypass alignment, avoiding wetlands is not possible and impacts are expected to be significant and may be unavoidable. Substantial, unavoidable wetlands impacts could threaten the feasibility of the Setback Alternative, because of the extent and cost of mitigation to minimize harm and the potential to conflict with state or federal policies intended to protect wetland habitats. [Emphasis added.]

Impacts to threatened and endangered species resulting from the Setback Alternative are described in part as follows:

Although the bypass segment would be set back east of the former haul road alignment, it would also be constructed through suitable habitat for the listed plants. New trail construction and existing surfaces to be repaired and maintained would each intersect approximately 3,230 feet of suitable habitat (Table 5.4-1). New trail construction would likely require extensive disturbance of the dunes during construction. Take of habitat for listed plants would occur from damage caused by construction vehicles

and movement of earth during grading of the trail. Trail construction may also indirectly affect listed plants by stabilizing the foredunes. Sand removal, repair to existing trail surfaces, and future trail maintenance may have additional impacts. <u>These direct and indirect impacts are</u> <u>expected to be substantial and mitigation opportunities are limited.</u> <u>Consequently, the potential exists that USFWS and/or CDFG would</u> <u>conclude that this alternative would jeopardize the continued existence of</u> <u>these species. Therefore, impacts to listed plants and the potential</u> <u>regulatory response to those impacts threaten the feasibility of the Setback</u> <u>Alternative</u>. [Emphasis added.]

While dune instability, cultural resource impacts, and costs do not appear to threaten the feasibility of the Setback Alternative, the analysis clearly identifies the direct, unavoidable, permanent impacts that could occur to fragile coastal resources as a result of developing the Setback trail design, inconsistent with the requirements of Section 30210, 30212, and 30214 of the Coastal Act that public access be provided consistent with the protection of "fragile coastal resources" and the need to protect "natural resources from overuse." Therefore, there remains a high degree of factual evidence supporting the County's findings that the approved project as conditioned is consistent with the public access policies of the Coastal Act and the certified LCP.

### Analyzed Environmental Impacts

The commenter (Attachment I) asserts that "this project will cause many significant and unanalyzed impacts on the environment. It is speculation, not science, that removing unnatural elements from the Ten Mile Dunes will produce a net environmental benefit."

Natural processes are currently eroding portions of the haul road, resulting in severely eroded road fragments that are leaning against the shoreline side of the road berm. In its current state, road fragments lying along the shoreline pose a potential threat to coastal waters during high storm events. Establishment of invasive European beachgrass within the project area has displaced native vegetation and created unnatural, oversteepened foredunes that also reduce habitat for the federally-listed western snowy plover.

The Final MND states that: "The proposed project would remove unnatural features to restore native habitats and to preserve endangered plant and animal species and their supporting ecosystem." The County's findings and the Final MND present substantial evidence that the removal of the haul road, culverts, and invasive species from the project area will rehabilitate the habitat to a naturally-functioning system. The County's August 13, 2013 Memorandum states:

Maintaining the Haul Road and culverts in place, or constructing a new trail in dune habitat or new stream crossings will continue to disrupt and degrade habitat function, including the reduction of habitat, and interruption of ecosystem processes. Therefore removal of the Haul Road is a feasible less environmentally damaging alternative. The following

# *excerpt from the MND explains the environmental benefit of removing the road (MND, pg. 5)*:

"The partially eroded haul road and culvert system will continue to impair fen wetland hydrology if no action is taken. The culverts are located behind relatively wide (past or current European beachgrassinfluenced) fore dunes that temporarily protect them from direct storm wave erosion. Partial storm wave erosion of the rusted metal culverts would result in hazardous and esthetically unacceptable conditions, and may result in persistent artificial influence of wetland outlet hydrology. Partial storm wave erosion of the haul road results in formation of a steep cliff-like dune scarp with an asphalt-armored top that impedes establishment of native dune vegetation (root zone restriction, inhibition of colonization). Active removal of the haul road, culverts, and beachgrass would accelerate recovery of the dune and wetland complex within the *Preserve*, *particularly the critical outlets of the fen wetland systems. The* proposed project would remove unnatural features to restore native habitats and to preserve "endangered plant and animal species and their *supporting ecosystem*"...[Emphasis added.]

Evidence in the local record does indicate that the wetland fen within the MacKerricher Dunes will likely benefit and expand from culvert removal work and restoration of the creeks. The local record contains a memorandum prepared by coastal ecologist and botanist Peter Baye, PhD (<u>Exhibit 7</u> of the Commission's staff report), that addresses general dune processes in the area and the effects of removing culverts on the hydrology of the fen.

Additionally, the Final MND contains several references<sup>3</sup> to studies and surveys that were utilized as part of the project analysis. The references include but are not limited to: a) Natural Resource Management Plan prepared by CA State Parks in 2007<sup>4</sup>; b) consultations and reports from several coastal ecologists; (c) several memoranda from licensed Engineering Geologists and Specialists at California Geologic Survey; (d) Draft Feasibility Study for the Northern Segment of the MacKerricher Coastal Trail Project prepared by EDAW in 2000; e) 1977 Inglenook Fen, A study and Plan; and f) the MacKerricher State Park General Plan prepared by State Parks in 1995. Many of these studies documented additional survey efforts conducted in association with each publication. The local record also contains aerial imagery and dune processes analysis prepared by State Parks, as well as the memoranda prepared by coastal ecologist and

<sup>&</sup>lt;sup>3</sup> Available at:

http://www.co.mendocino.ca.us/planning/pdf/current/boards/REVISEDmackerricherdune rehabilitationmnd.pdf#page=138

<sup>&</sup>lt;sup>4</sup> While the document remains in draft form, it contains extensive background data and related baseline data documenting protocol survey history within the Preserve for species such as western snowy plover

botanist Peter Baye, PhD referred to above, that further documents general dune processes in the area, and the impact of existing culverts on the hydrology of the fen.

The Commission has found in past actions (CDP 1-12-032, CA State Parks; CD 026-10, National Park Service) that invasive plant species or other alterations can adversely impact the natural dune system. In CDP 1-12-032, the Commission found that the growth of European beachgrass in fragile dune ecosystems "has changed the physical shape of the dunes and affects ongoing dune processes in ways that favor further growth of *Ammophila* and successional species at the expense of the native dune vegetation and the dune ecosystem as a whole." Similarly, the Commission concurred with a consistency determination submitted by the National Park Service (NPS) for a similar dune restoration project (CD 026-10) wherein NPS proposed to remove European beachgrass and iceplant from up to 133 acres of European beachgrass and iceplant from within a 300-acre project area along the shoreline south of Abbott's Lagoon, at Point Reyes in Marin County. The Commission concurred with NPS' findings that stated in part that: "Over-stabilization makes dunes more susceptible to loss from erosion by not enabling them to move or migrate naturally in response to sea level rise and changes in erosional patterns."

Therefore, there is a high degree of factual evidence in the record supporting the County's findings that the removal of the Haul Road, culverts, and invasive plants from within the project area will not significantly degrade wetland, dune, and rare plant habitats but will instead afford an opportunity for natural dune and wetland processes to recover. Therefore, the appeal raises no substantial issue of conformance of the project as approved with the wetland and ESHA protection policies of the certified LCP.

Commission Staff continues to recommend that no substantial issue exists, as recommended in the November 1, 2013 staff report.

James D. Hooper, D.D.S. 203 East Pine Street Fort Bragg, California 95437 (707) 964-2618

November 5, 2013

California Coastal Commission North District Office 1385 Eighth Street, Suite 130 Arcata, CA 95521 Agenda item no. W14a Applicant no. A-1-MEN-13-0241 James D. Hooper, D.D.S. In Opposition as presented Mandate a coastal path for bicycles and emergency access.

Re.: A-1-MEN-13-0241 hearing November 13, at Newport Beach, California Dept. of Parks Dune Rehabilitation proposed project.

Dear Commissioners,

Several years ago I sat on the Citizen Advisory Committee that helped develop the Coastal Plan. At the time we were assured the haul road was to remain as part of the California Coastal Trail System. When California State Parks took over the property from Georgia Pacific they willfully neglected the road which was for many many years an established right of way for commercial, pedestrian, and emergency access to the coast line. After years of willful neglect Parks is planning on destroying what is left. There are several sections that are still good especially on the northward portion. The roadway provided a buffer to moving sand. In the 30's the sand dunes in some areas moved 400 feet east: Besides the buffer and emergency access for resque will the Coastal Commission please demand as a condition an alternate path for emergency use, pedestrians, and bicycles. Currently, bicycles have been forced onto Highway One which I call the suicide route as it has sharp curves, parrow width, and increasing traffic. It is downright dangerous for bicyclists!

Signature on File

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### ATTACHMENT A

November 2, 2013

#### A-1-MEN-13-241

Bob Merrill CALIFORNIA COASTAL COMMISSION 1385 8th Street, #130 Arcata, CA 95521-5772

I urge the Commission to deny the appeal of the State Park project identified as "A-1-MEN-13-241."

I live full-time about one-half mile north of Mackerricher State Park and frequently enjoy hiking in the Inglenook Fen - Ten Mile Dunes Natural Preserve. This project will greatly help restore this Preserve to its natural state by removing remnants of the unrepairable old haul road. This project will also remove non-native invasive European beach grass.

This is a very beneficial project, and this appeal needs to be denied. Thank you for your consideration in this matter.

Sincerely, Signature on File JIM HAVLENA PO Box 40 RECEIVED NOV 05 2013 Fort Bragg, CA 95437-0040 [707] 964-1280 CALIFORNIA CALIFORNMISSION COASTAL COMMISSION NORTH COAST DISTRICT 1. 12 年 14時 1 ATTACHMENT B

# A-1-MEN-13-241

Attn: Bob Merrill California Coastal Commission 1385 8<sup>th</sup> Street, Ste 130 Arcata, CA 95521

Dear Mr. Merrill,

This letter is to ask the Commission to please deny the appeal filed by a Mendocino County individual – A-1-MEN-13-241.

The project spearheaded by California State Parks, specifically MacKerricher State Park north of Fort Bragg in Mendocino County, aims to restore the Inglenook Fed – Ten Mile Dunes Natural Preserve section of MacKerricher State Park.

The project was approved by the Mendocino County Board of Supervisors and the Mendocino County Coastal Planning Administrator. Proposition 84, approved by the voters of California, will fully fund this project.

Major supporters of the project are the California Native Plant Society, Redwood Coast Watersheds Alliance, Sierra Club, Audubon California, and Mendocino Coast Audubon Society.

Sensitive habitat and endangered species will be helped by the removal of the seriously deteriorated Haul Road and European Beach Grass.

Again, please deny the appeal A-1-MEN-13-241.

Thank you very much,

az Signature on File

Karen Anderson Havlena 32803 Ocean Meadows Circle Fort Bragg, CA 95437-9616 Email: <u>kahavlena@yahoo.com</u> Cell: 707-972-5440

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October 31, 2013

Bob Merrill California Coastal Commission 1385 8th Street, Suite 130 Arcata, CA 95521

### RE: Commission Appeal A-1-MEN-13-241 - Oppose Appeal, Support Project

We urge that your staff recommend to the Coastal Commission that no substantial issue exists with respect to Mendocino County's approval of CDP #12-2012, California State Parks' Dune Rehabilitation Project at Inglenook Fen-10 Mile Dunes MacKerricher State Park.

We are in agreement with Mendocino County Coastal Permit Administrator's (CPA) approval of the proposed project and their findings and conditions as adopted in the June 11, 2013 CPA Staff Report, and amended by the Board of Supervisors at their August 26th, 2013 special hearing.

In regard to the proposed road removal, we believe the project to be in conformity with the public access and recreation policies of the California Coastal Act and the Local Coastal Program.

The ocean has washed sections of the remnant road away, leaving hazardous chunks exposed; other portions are covered with sand. The road is discontinuous with other roads, requiring a hearty walk of 20 minutes through sand to reach the remnant portions; current usage is therefore very low. Sea level rise will continue to undermine the remainder. It would be infeasible to retain or to reconnect this piece of road - both because of its impacts to natural ecosystem processes and endangered species habitat, and because maintenance would be nearly impossible in a naturally shifting dunes system.

After having carefully reviewed the issues, taking note that the Parks permit was specifically conditioned by the planning department to enhance recreational opportunities for hikers and bicyclists, considering that Parks has plans to upgrade and maintain the popular hiking and biking sections of haul road within MacKerricher Park south of the Preserve, and that Parks is helping facilitate development of a bike path along Highway 1, we believe that the restoration of these rare natural dune areas is a priority project of statewide significance that deserves our full support.

Sincerely,

### Signature on File

/Joleen Ossello P.O. Box 1141, Mendocino, CA 95460 707-391-7019



NOV 05 2013

CALIFORNIA COASTAL COMMISSION NORTH COAST DISTRICT

### ATTACHMENT D



### CENTER for BIOLOGICAL DIVERSITY

Because life is good.

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October 30, 2013

1385 8th Street, Suite 130

Bob Merrill

NOV 05 2013

CALIFORNIA COASTAL COMMISSION NORTH COAST DISTRICT

Arcata, CA 95521 (707) 826-8950 FAX (707) 826-8960

CA Coastal Commission, North Coast office

### RE: Commission Appeal A-1-MEN-13-241 – Oppose Appeal, Support Project

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Dear Mr. Merrill,

The Center for Biological Diversity urges a staff recommendation to the Coastal Commission that no substantial issue exists with respect to Mendocino County's approval of CDP #12-2012, California State Parks' Dune Rehabilitation Project at Inglenook Fen-10 Mile Dunes MacKerricher State Park. This project supports ecosystem-level restoration of coastal dune habitat within one of the most intact, species-rich remaining mobile coastal dune systems on the North Coast, which is the basis for its special status as a natural preserve within State Parks.

"The purpose of natural preserves shall be to preserve such features as rare or endangered plant and animal species and their supporting ecosystems, representative examples of plant or animal communities existing in California prior to the impact of civilization..." (Pub. Resources Code § 5017.91.)

The Tenmile Dunes system supports two plants found nowhere else: Howell's spineflower (*Chorizanthe howellii*, federally listed) and round-headed Chinese-houses (*Collinsia corymbosa*), as well as the federally listed threatened plant, Menzies' wallflower (*Erysimum menziesii* subsp. *menziesii*), and the rare North coast pink sand-verbena (*Abronia umbellata* subsp. *breviflora*). The beach and outer dunes are an important wintering and at times breeding habitat for the federally listed Pacific population of the western snowy plover (*Charadrius alexandrinus nivosus*). The proposed project is beneficial for long-term, large-scale conservation and management of these species in the Tenmile Dunes ecosystem.

Alaska · Arizona · California · r Adam Keats · Urban Wildlands F Phone: (4

ATTACHMENT E

n - Vermont - Washington, DC San Francisco, CA 94104-2404 versity.org We agree with Mendocino County Coastal Permit Administrator's (CPA) approval of the proposed project and their findings and conditions as adopted in the June 11, 2013, CPA Staff Report, and amended by the Board of Supervisors at their August 26, 2013, special hearing.

In regard to the proposed road removal, we believe the project to be in conformity with the public access and recreation policies of the California Coastal Act and the Local Coastal Program.

Natural beach erosion has already eliminated major segments of the road at the south end of the beach, leaving hazardous chunks exposed; other portions are covered with sand. The southern section of road began washing out in 1983, and nearly 1 mile is completely gone. Most of the remaining sections are covered in sand. The former road has not functioned as a passable trail for bicycles, or people in wheelchairs for over 30 years. Hiking over sand-buried segments is a strenuous activity. Current pedestrian usage of the remaining segments of the road alignment is therefore very low.

It would be infeasible to retain or to reconnect this piece of road - both because of its impacts to natural ecosystem processes and endangered species habitat, and because maintenance would be nearly impossible in a naturally shifting dunes system. State Parks' past attempts to plan for multi-use trail development in dunes were abandoned in 2000 after a lengthy process determined that the project was not feasible based on engineering, cost, incompatibility with land uses, and potential jeopardy to recovery and survival of listed species.

After having carefully reviewed the issues, taking note that the State Parks permit was specifically conditioned by the planning department to enhance recreational opportunities for hikers and bicyclists, considering that State Parks has plans to upgrade and maintain the popular hiking and biking sections of haul road within MacKerricher Park south of the Preserve, and that State Parks is helping facilitate development of a bike path along Highway 1, we believe that the restoration of these rare natural dune areas is a priority project of statewide significance that deserves our full support.

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Thank you for your attention to this matter.

Sincerely,

### Signature on File

Adam Keats Urban Wildlands Program Director November 2, 2013

Bob Merrill California Coastal Commission 1385 8<sup>th</sup> Street, Suite 130 Arcata, CA 95521

RE: Commission Appeal a-1-MEN-13-241 – Oppose Appeal, Support Project

Dear Mr. Merrill,

We are writing to voice our approval of the restoration work planned for the Ten Mile Dunes area. The restoration involves removing 2.7 miles of remnant haul road, removing two culverts and hand-pulling European beach grass. Both the road and the non-native invasive beach grass continue to degrade natural processes and habitat critical to the imperiled plant and wildlife species found there. In addition, the project is funded by the voters of California, and funds have been ear-marked for this project.

We are in full agreement with the Mendocino County Coastal Permit Administrator's (CPA) approval of the proposed project and their findings and conditions as adopted in the June 11, 2013 CPA Staff Report, and amended by the Board of Supervisors at their August 26<sup>th</sup>, 2013 special hearing.

Mendocino County's Ten Mile Dunes Natural Preserve is recognized globally as an important Bird Area that is critical to the threatened Western Snowy Plover. And the county's removal of remnant sections of road and non-native beach grass is critical for the success of these plovers. Removal of this beach grass will protect shorebird habitat and encourage nesting in the preserve.

Please allow the restoration to go ahead as planned. Popular access points and existing trails to the beach and river will be retained. State Parks will explore a feasible route for bikes, such as a bike lane adjacent to Highway One from Ten Mile River to Ward Avenue.

This project will restore the unique environment and wetland diversity of the dune ecosystem and rare native plants including Menzies' wallflower, pink sand verbena, and Howell's spineflower, which is found only in Mackerricher State Park.

Thank you for your consideration.

RECEIVED Sincerely, NOV 06 2013 Signature on File Signature on File CALIFORNIA COASTAL COMMISSION Marybeth Arago & Michael Arago NORTH COAST DISTRICT 32650 Old Willits Rd Fort Bragg, CA 95437

ATTACHMENT F

November 4, 2013

Bob Merrill California Coastal Commission 1385 8th Street, Suite 130 Arcata, CA 95521

RE: Commission Appeal A-1-MEN-13-241 - Oppose Appeal, Support Project

You have received many letters outlining the technical reasons why this project should be supported. I would like to give you my personal impressions to supplement the technical.

My husband and I often stay in northern Fort Bragg at the motels that are on the water side. We use the haul road to go to MacKerricher to the north and Fort Bragg to the south. We sometimes walk and sometimes bike. Both are enjoyable.

I feel it is important that not every inch of the planet be accessible to every imaginable use humans can come up with. There are special places which it behooves us to manage and save for what we refer to as wildlife and which provide us with the extra ordinary experiences that fill our lives and hearts with awe. Ten Mile Dunes is one of these places.

As the planet becomes more populated, and people come up with more and more destructive ways to use it, it is critical that we draw some lines on what uses are appropriate for fragile environments.

I have reviewed the issues, and taken note that the Parks permit was specifically conditioned by the planning department to enhance recreational opportunities for hikers and bicyclists, considered that Parks has plans to upgrade and maintain the popular hiking and biking sections of the haul road within MacKerricher Park south of the Preserve, and understand that Parks is helping facilitate development of a bike path along Highway 1. I, too, believe that the restoration of these rare natural dune areas is a priority project of statewide significance that deserves our full support.

Therefore, now using the technical language, I urge that your staff recommend to the Coastal Commission that no substantial issue exists with respect to Mendocino County's approval of CDP #12-2012, California State Parks' Dune Rehabilitation Project at Inglenook Fen-10 Mile Dunes MacKerricher State Park.

Thank you for your consideration,

### Signature on File

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NOV 07 2013

Susanne Scholz PO Box 2037, Clearlake, CA 95422 707 994-1804 CALIFORNIA COASTAL COMMISSION NORTH COAST DISTRICT

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CALIFORNIA COASTAL COMMISSION NORTH COAST DISTRICT

MEN-13-0241

Bette Goldfarb In Favor or the Appeal Item NO:W14a Opposing the Permit application # A-1-MEN-I3-024]

Dear Commissioners:

I was extremely surprised and dismayed, in the matter of the appeal of the permit for dune rehabilitation in Northern MacKerricher State Park, that the staff recommended "no significant issue". I would like the chance to explain why this not a good decision and request a full de novo hearing on this matter.

The staff refers to certain information that I would like to address.

1. Winter stream crossings close the beach to access. Parks claims crossing of streams will be facilitated by using woody debris and putting up signs directing the public east onto a dune trail. Staff accepts this but it is totally unrealistic. Debris and signs will not last very long under winter conditions and most people cannot hike in the soft sand of the dune trails. There will be no hard surface trail once the Haul Road is removed. Thus a majority of the public who are unable to walk on soft sand will be excluded from this approximately 4 miles of coast for the winter months. Most people need a hard surface trail and will not be able to cross these streams.

2. Another condition added was that a bicycle trail be created. Currently no bicycles are allowed north of Ward Ave. to Ten Mile River either on the beach or in the dunes. State Parks claims that they will facilitate a bicycle trail along Highway 1. Parks admitted at the county meetings when this was brought up that they do not own most of the property along the highway but only some parts, which do not connect to make a trail. Thus saying they will be able to create a bicycle trail is totally false. They cannot accomplish this goal and the trail will probably never be built yet this has been accepted as a condition of the project. Once it is clear that it will not happen the project will have been completed and it will be too late to change the fact that all bicyclist have no access to this entire beach and dune area. Bicycles formerly rode on the Haul Road and now could continue to use the 2.7 miles of Haul Road if it were merely cleared of sand. They could also use simple hard surface trail or boardwalk in the dunes near the coast. Riding on Hwy. 1, as they now are forced to do, is extremely dangerous as it is narrow, curvy, and has a lot of cars and large trucks. It also has little or no views of the ocean and dunes.

3. Staff believes that a hard surface trail in the dunes is impossible. I do not understand this conclusion since there is already 2.7 miles of hard surface haul road that has had virtually no damage. The damaged parts to the south could be replaced with a trail or boardwalks farther east in the dunes. There are successful boardwalks and trails in other parts of MacKerricher Park as there are in other dune parks. Why would it be impossible here? Certainly it makes more sense to leave the 2.7 miles of existing Haul Road and allow hikers and bicyclists to use it for coastal access and then in the future

### ATTACHMENT H

work on how to create the smaller distance to connect it to the southern portion of the haul road at Ward Ave.

4. Staff has concluded that Parks has experts who say that in the long term (although admitting the haul road removal will damage the environment in the short term) this project will benefit the environment. There is much evidence to the contrary as stated in the appeal. Parks has made some serious mistakes in the past and there is too much at stake in this situation to move ahead without more study and addressing the issues raised in the appeal. One of the experts Parks used (Ron LeValley) is currently under indictment by the federal government in a case that involves being paid for work that was not done. I believe this needs to be resolved before his testimony in this case is used. Much of the other support comes from Dr.Peter Baye and it seems prudent that more experts , not just Dr Baye, need to be consulted and information gathered before undertaking a project as potentially damaging to the environment and endangered species as this one. This is especially true due to all the counter evidence given in the appeal.

I am appealing to you on behalf of the majority of the public, including myself who will no longer have access to this coastal area. I have used the Haul Road for 40 years. Now at 70 years old it is difficult for me to walk any distance on soft sand. The beach sand is very often soft, as is any social trail in the dunes. The handicapped will be denied access due to soft sand. Children and parents with small children will find walking on the beach impossible and often dangerous due to sneaker waves. Walking above the high tide is strongly discouraged by State Parks as that is where the endangered Snowy Plover nests. Parks gives no solution or realistic access. We have always been told that good trails protect the environment. Why the turn around in this particular case? A grant providing funds is not an adequate reason to do work that denies access and is destructive to the environment. After this project is completed there will be little or no access and the access there is will be a series of social trails that will have people walking on Snowy Plover nesting grounds and on endangered plants.

This project and the change of status from a State Park to a Nature Preserve appears to be a way to close a park to a large number of people without just saying the park is totally closed. In effect it will do almost the same thing. This will set a very bad precedent for the parks in our state and for coastal access and preservation.

Please keep this from happening. Once the 2.7 miles of Haul Road is removed the damage is done and cannot be repaired. The appellants have a right to a de novo hearing in this matter.

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Sincerely Bette Goldfarb

Signature on File

November 6, 2013

California Coastal Commission North Coast District Office 1385 Eighth Street, Suite 130 Arcata, CA 95521

Re: Opposition to "No Significant Issue" Finding for Appeal A-1-MEN-13-0241

#### Dear Commissioners:

You are about to make a decision with serious long term consequences for the coastal environment and public access. I am appalled that your staff so readily dismiss the substantial and precedent-setting issues raised in the cited appeal, particularly given the concerns they earlier expressed to the applicant in a letter dated August 31, 2012. As an appellant, I ask for your careful consideration of the points I will briefly summarize here. If you care about the environment and public access, please vote to hold a *de novo* hearing at your next meeting to allow input from many concerned local people.

**Issue 1:** Advocates for this project would like you to ignore the inconvenient fact that the haul road has been used for decades as a coastal trial. A bait and switch routine is offered, encouraging you to overlook the "existing coastal access" alignment shown on Mendocino County LCP maps along the haul road and LCP Policy 4.2-21, which urges acquisition of that road. They suggest instead that coastal access is along an undesignated and seasonally dangerous wet sand route that goes through the most sensitive Western Snowy Plover breeding zone. With great access like that, who needs a hard surface trail that could be used to keep people out of sensitive areas, foster greater appreciation of the dune system, and allow non-discriminatory access for all visitors?

This subterfuge ignores the fact that the haul road is a valuable coastal trial still used by bicyclists and walkers despite years of intentional neglect by State Parks. Destroying this existing trail will significantly compromise public access for the less able, bicyclists, and families with strollers who cannot easily negotiate soft sand and stream crossings. The benefits of road removal are questionable (it was built in most areas on the original dune surface and does not impede Western Snowy Plover movements or sand migration); the impacts from road excavation are unequivocal. The real reason to destroy the trail is to permanently impair public access.

Conditions imposed by Mendocino County to address this radical reduction in public access are so weak and unenforceable, there is no realistic prospect improvements to benefit bicyclists and less able visitors will ever be built. No bike route is ever likely to be funded along the very dangerous stretch of Highway 1 east of the Dune Preserve because Caltrans found the cost prohibitive in 2012. There is also no guarantee the discontinuous bike path segments bordering the State Park are even feasible. Trail removal will ensure other visitors such as the elderly and handicapped are forever consigned to visiting the margins of the dune system and no longer able to appreciate the vast and impressive interior. Removal of the trail will also ensure social paths proliferate to cause environmental impacts.

I'm sure you can appreciate why the destruction of an existing coastal trail sets a dangerous precedent, especially for a state agency that manages huge tracts of coastal land and is ostensibly in the business of providing for recreation and education of the public. If you find there is no substantial issue, it sends a message that it is acceptable to extinguish or radically reduce access in a way that disproportionately targets the less able. That strikes many of us as a bad idea.

page 1

### ATTACHMENT I

Project advocates are promoting an agenda that demonizes public access, when there is no evidence humans are causing harm. The people attracted to this environment tend to care deeply about it. They could be a valuable asset in efforts to ensure protection of resources and monitor problems. Why not engage their help? I personally believe it would be far better for the environment to manage access and encourage the public to respect the dune habitat by staying on an designated trail that already exists. The haul road trail is a public asset that should not be lightly cast aside.

I also suggest you do not accept without careful scrutiny the facile conclusion that it is unfeasible to reconnect a trail through the dunes. Your staff cite a 2000 feasibility study in Exhibit 5 of their report as the reason a trail reconnection is not possible. In reality, the outcome of that study was predetermined at least two years earlier through the collusion of staff at State Parks and the US Fish and Wildlife Service, as shown in Exhibit 1 attached to this letter. Interestingly, although that tainted analysis overstates potential impacts to species (they might be nearby), excerpts of the 2000 study provided in Exhibit 2 of this letter show the Setback Alternative was judged feasible in many respects and has a total footprint of less than an acre. Compare that with the direct take of over one acre of endangered plants both of those agencies are pleased to accept for the currently proposed undertaking.

**Issue 2:** The second reason to require a *de novo* hearing is that this project will cause many significant and unanalyzed impacts on the environment. It is speculation, not science, that removing unnatural elements from the Ten Mile Dunes will produce a net environmental benefit. Most of the work will take place in a high erosion hazard zone, yet the applicant makes paltry plans to control erosion.

The applicant's own experts anticipate massive deflation of the fore dunes, wandering streams, and major shoreline retreat. Those are in fact the very "ecosystem processes" they'd like to encourage! Shoreline retreat will be encouraged, not buffered, contributing to the loss of habitat and resources. The wetlands and dune mat communities in the low swales east of the fore dunes will be the first areas that are buried, by their own admission. To project the impact of the planned project, you only need to compare the difference in vegetative cover from 1998 and 2006 using Google Earth satellite imagery, as we do in Exhibit 3 of our appeal.

Put bluntly, the project is nothing more than a radical experiment in restructuring the dunes with no consideration for the impacts to habitats, species, and inland neighbors. The applicant suggests letting nature take its course is for the best, but it is clear that is decidedly inaccurate and indeed highly speculative in outcome. Many impacts have already taken place just from the eradication of European dune grass over the past dozen years or more. When supplying our concerns and evidence to the applicant we were told (verbatim) "it's a done deal," and they did not feel obliged to respond to our concerns. We also supplied evidence of the impacts of sand migration on neighbors, with consequent loss of appraised value and use, as documented in Exhibit 3 of the appeal.

The environmental organizations, experts, and agencies that support this project appear unconcerned about the impacts of this radical experiment on special status species and other resources. They demand our faith that everything will be for the better, when there are concrete reasons to question that optimistic prediction. Some aspects of their project such as removing culverts appear beneficial, but bridges should be used to ensure access across those streams, not unstable driftwood crossings that need perpetual attention.

As an environmental professional, I believe it behooves us to take a slower and more incremental approach to restoration that adopts measures designed to directly ensure resources are protected and enhanced. Perhaps this may strike you as conservative, but isn't caution warranted when you plan the wholesale disruption of a sensitive environment that contains many endangered species and non-renewable archaeological resources?

### Conclusion

I highlight these issues because, as appellants, we look to your wisdom in finding a reasonable balance between public access and environmental protection as they are implemented under the Coastal Act and Mendocino County LCP. We believe project advocates are well intentioned, but their agenda and planned project actions are based on several unproven assumptions that take the pessimistic view that people are a problem, and an existing hard surface trail should be removed for questionable reasons and regardless of the environmental consequences.

I am among many who support environmental restoration and coastal access, but stand opposed to this project as it is currently proposed. Many professionals share my opinion, but are reticent to speak out because they must work with State Parks. I've helped build many coastal trails in Mendocino County over the past 15 years, and personally consider it a travesty to destroy a trail that is not impeding natural sand flow or Western Snowy Plover access to interior foraging areas. I support the culvert removals if foot bridges are built to replace them and maintain access. I believe it would be beneficial to replant the fore dunes with native species to retain those features as buffers against sea level rise and habitat loss.

I have a more optimistic view of the human role in the dune ecosystem than the project advocates. I believe local people who care about the dune ecosystem could be a powerful force to help ensure its protection. I also believe it will be impossible to keep people out. Wouldn't it be better to manage visitation than try to ineffectively exclude people from public lands? I also believe it is entirely feasible to reconnect the coastal trail between Ten Mile Bridge and Ward Avenue in a way that minimizes impacts to species and other resources.

Thank you for considering my input. I hope you will vote in favor of holding a *de novo* hearing at the Commission's December meeting in San Francisco.

Sincerely,

### Signature on File

Thad M. Van Bueren Appellant

Cc: Tamara Gedik, Coastal Commission Analyst

Exhibit 1: State Parks precludes haul road repair in 1998 before even studying it (from USFWS 2007:C-13)

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Exhibit 2 (6 pages total)
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from Trail Alternatives Feasibility Study by EDAW (2000)

### 5.4 SETBACK ALTERNATIVE

The Setback Alternative would include a trail primarily aligned on remaining parts of the haul road, and incorporating a bypass trail across the dunes east of the washout area. This bypass would require approximately 6,400 feet of new trail construction diverging from the haul road just north of Ward Avenue and reconnecting just south of Inglenook Fen. The intent of the Setback Alternative is to reduce this risk of storm wave and coastal erosion damage by moving the trail away from the beach. Surface treatment of the remaining approximately 14,000 feet of existing pavement would be required, which may include repair of potholes, some resurfacing, and sand removal. A trail and parking area could also be constructed in the vicinity of the Ten Mile River Bridge to provide formalized access to the northern end of the study area.

### THREATENED AND ENDANGERED SPECIES

Impacts to Howell's spineflower and Menzies' wallflower from this alignment are expected to be similar to those associated with the Haul Road Alternative. Although the bypass segment would be set back east of the former haul road alignment, it would also be constructed through suitable habitat for the listed plants. New trail construction and existing surfaces to be repaired and maintained would each intersect approximately 3,230 feet of suitable habitat (Table 5.4-1). New trail construction would likely require extensive disturbance of the dunes during construction. Take of habitat for listed plants would occur from damage caused by construction vehicles and movement of earth during grading of the trail. Trail construction may also indirectly affect listed plants by stabilizing the foredunes. Sand removal, repair to existing trail surfaces, and future trail maintenance may have additional impacts. These direct and indirect impacts are expected to be substantial and mitigation opportunities are limited. Consequently, the potential exists that USFWS and/or CDFG would conclude that this alternative would jeopardize the continued existence of these species. Therefore, impacts to listed plants and the potential regulatory response to those impacts threaten the feasibility of the Setback Alternative.

Table 5.4-1   Setback Alternative: Linear Feet of Trail Adjacent to Suitable Habitat for Listed Species							
Listed Plants	3,230	3,234	6,464				
Western Snowy Plover	400	137	537				

The bypass would avoid most of the suitable snowy plover nesting habitat along the washout and damaged sections, but new trail construction would intersect approximately 400 linear feet of potential nesting habitat just south of Fen Creek (Table 5.3-1). Suitable nesting and wintering habitat also occurs between the beach and foredunes along most of the haul road from Ten Mile River to Fen Creek, but the the haul road does not intersect this habitat. Trail construction may have direct

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adverse effects on snowy plovers resulting from the loss of potential nesting habitat. In addition, plovers may be impacted by disturbance from trail construction activities, increased visitor use associated with a developed trail, and repair and maintenance activities (Pasquinelli 1998). However, it is likely that these impacts could be mitigated (e.g., removal of beachgrass). Consequently, potential impacts to snowy plovers are not expected to threaten the feasibility of the Setback Alternative.

### WETLANDS

As with the Haul Road Alternative, the Setback Alternative would encounter wetlands just west of the Ten Mile River Bridge and at the mouths of Inglenook and Fen creeks. In addition, the bypass segment would encounter seasonal wetlands in the dunes. New trail construction would intersect approximately 780 linear feet of wetland native herbs, while existing trail surfaces to be repaired and maintained would intersect approximately 420 linear feet of wetland native shrubs (Table 5.4-2). Due to the widespread distribution of seasonal wetlands along the bypass alignment, avoiding wetlands is not possible and impacts are expected to be significant and may be unavoidable. Substantial, unavoidable wetlands impacts could threaten the feasibility of the Setback Alternative, because of the extent and cost of mitigation to minimize harm and the potential to conflict with state or federal policies intended to protect wetland habitats. Compliance with Executive.Order. 11990 may be possible for the Setback Alternative, if the haul road is found to not be "practicable" (such as for wave action reasons) and substantial measures to minimize harm to wetlands are included. The extent and cost of mitigation may become the primary factor threatening feasibility.

Setback Alterna	Table 5.4-2 Alternative: Linear Feet of Trail Adjacent to Wetlands			
Class	New Trail	Existing Trail	Total Trail	
Open Water	0	0	0	
Wetland Introduced Grasses	0	0	0	
Wetland Native Herbs	779	0	779	
Wetland Native Shrubs	0	415	415	
Wetland Native Trees	0	0	0	
Total Wetlands	779	415	1194	

### DYNAMIC COASTAL DUNE ENVIRONMENT

Potential impacts related to the existing trail surfaces north of the washout are the same as those discussed for the Haul Road Alternative. Measurements and analysis of historic aerial photos suggest there is no immediate threat of beach erosion removing the haul road north of Fen Creek. However, aeolian sand transport across the northern section of the road is locally significant and can be expected to result in continuing maintenance requirements to keep the trail free of excessive sand deposits. New trail bypass set back from the beach passes through a much "tamer" geologic

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environment than the southern section of the Haul Road Alignment, which it is designed to bypass. For the most part, the bypass segment avoids contact with beach processes and coastal erosion. The one exception is where the north end of the bypass rejoins the haul road south of Fen Creek; beach erosion has recently occurred in close proximity to the haul road. This portion of the bypass traverses low elevation vegetated dunes, vegetated deflation hollows, and the lee slopes of actively moving transverse dunes. The lee side of active transverse dunes is typified by wind erosion and long-term removal and export of windblown sand.

It is not expected that new trail construction would have a serious, irreversible impact on the natural dune processes operating along the Setback Alternative route. However, where the Setback Alternative crosses open sand on the lee side of the transverse dunes, the hardened trail would likely be undercut by continued wind erosion. Portions of this section of the trail would likely require regular maintenance to keep the trail relatively free of sand. The trail alignment could be locally routed to take it along the boundary between the deflation terrain to the west and the trailing edge of the transverse dune to the east. This would result in a minimum of sand deposition and sand erosion, while still avoiding regular or extended inundation during periods of flooding in the deflation hollows, thereby reducing maintenance costs and/or rebuilding requirements, compared to the Haul Road Alternative. In the long term, perhaps over 20 years, dune processes and sand movement may require rerouting portions of the Setback Alternative where burial or erosion becomes a continuing problem. Although maintenance costs may be substantial, the issue of dune instability does not appear to threaten feasibility of the Setback Alternative.

### CULTURAL RESOURCES

There are several known archaeological sites adjacent to the Setback Alternative, including three in close proximity to the bypass segment. These sites are potentially eligible for inclusion in the National Register of Historic Places and the California Register of Historical Resources, although it is expected that significant impacts to these sites could be avoided and/or mitigated.

### DPR POLICIES AND PRC PROVISIONS

Construction of the bypass segment of the Setback Alternative may be in conflict with several directives in the Resource Element of the General Plan (1995), including the perpetuation of listed plants and avoidance of trails through wetland areas. It would also conflict with the Land Use Element goal to protect MacKerricher State Park's sensitive resources, including restriction of access to the dunes. It is the responsibility of DPR to determine whether these conflicts threaten the feasibility of this alternative

#### GENERAL COST REASONABLENESS

The Setback Alternative is expected to be costly due to the amount of new trail construction through the dunes. However, maintenance costs would be less than those of the Haul Road Alternative, because the trail alignment could be routed in a manner that would minimize sand erosion and deposition and avoid deflation hollows that are subject regular flooding. Consequently, costs

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associated with construction, repair, and maintenance are not expected to threaten feasibility of the Setback Alternative.

### 5.5 SHORTCUT ALTERNATIVE

The Shortcut Alternative includes a trail connection from the haul road, south of the washout, directly to Highway 1, and then north along the Park boundary on the west side of Highway 1 for approximately 1 mile, where the boundary veers away from the highway and the trail ends. The trail would require approximately 9,500 feet of new construction to complete the segment between the haul road and Highway 1. A substantial amount of the new trail construction would cross the dunes. The intent of the Shortcut Alternative is to avoid as much as possible the resources of the Preserve, while still connecting the coastal trail to Highway 1. A parking area to accommodate 15 to 20 vehicles would be developed where the trail meets Highway 1 at the southeast corner of the study area. Surface treatment of the approximately 1,200 feet of existing pavement from Ward Avenue to the washout would be required, which may include repair of potholes, some resurfacing, and sand removal.

### THREATENED AND ENDANGERED SPECIES

The section of the haul road between Ward Avenue and the washout is adjacent to high concentrations of listed plants. The segment between the haul road and Highway 1 would be constructed through suitable listed plant habitat. New trail construction would intersect approximately 1,700 linear feet, while existing trail surfaces that would be repaired and maintained, would intersect approximately 1,050 linear feet (Table 5.5-1). New trail construction would likely require extensive disturbance of the dunes during construction. Potential impacts to listed plants include damage caused by construction vehicles, and movement of earth during grading of the trail. Trail construction may also impact listed plants through alteration of the natural dune processes and by promoting the spread of European beachgrass. Sand removal, repair to existing trail surfaces, and future trail maintenance may have additional impacts. These direct and indirect impacts are expected to be substantial and fully mitigating these impacts would be difficult. Consequently, this alternative could result in jeopardy opinion being issued by CDFG and/or USFWS. Therefore, impacts to threatened plants and the potential regulatory response to those impacts threaten the feasibility of the Shortcut Alternative.



No snowy plover nesting habitat would be encountered by this alternative.

Table 5.5-1								
Shortcut Alternative: Linear Feet of Trail Adjacent to Suitable Habitat for Listed Species								
Species	New Trail	Existing Trail	Total Trail					
Listed Plants	1,702	1,051	2,753					
Western Snowy Plover	0	0	0					

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MacKerricher Coastal Trail Project California State Parks/RESD

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Feasibility Study EDAW





November 6, 2013 California Coastal Commission North Coast District Office 1385 8th Street, Suite 130, Arcata, CA 95521

### RE: # A-1-MEN-13-0241 (CA State Parks), W-14A

Commissioners,

I have read the staff report to the Commission, and disagree with the recommendation for no substantial issue. I recommend you vote in favor of a substantial issue in existence, and ask for a de novo hearing at your next meeting in San Francisco. My reasons are as follows:

- 1. The removal of the haul road is the destruction of an existing coastal trail that is currently capable of being a multi use trail along the coast that allows views of the dunes and the ocean. If it is removed it likely will never be replaced as a trail that can be used by hikers cyclist, and handicapped persons. The beach sand is very often soft, as is any social trail in the dunes. Walking above the high tide is discouraged by State Parks for protection of the endangered Snowy Plover. Good trails protect the environment; this case is contrary to that dictum. State Parks may have a grant that provides funds, but this is not an adequate reason to do work that denies access and is destructive to the environment. After this project is completed there will be real access and a series of random social trails that will have people walking on Snowy Plover nesting grounds and on endangered plants. Removal of the paved road is diminished use of coastal access.
- 2. The road is bike friendly, safer than the use of narrow Highway 1, which is used by logging trucks and other vehicular traffic. It has been used for years as a coastal trail and is safer than walking on sand as proposed by the State Parks application. Handicapped persons will be denied access due to soft sand. Children and parents with small children will find walking on the beach impossible and often dangerous due to sneaker waves.
- 3. This project appears to be a way to close a park to a large number of people without just saying the park is totally closed. In effect it will do almost the same thing. This will set a very bad precedent for the parks in our state and for coastal access and preservation. The objection to this proposal by State Parks comes from many who live in this area and know it valuable resources. The proposal has not been fairly presented by State Parks. The initial revealing of the project included use of herbicides to remove beach grass and received so much controversy from the public of this small north coast community that the first public meeting was withdrawn, and State Parks amended thereby mitigating the initial declaration. As a mitigated declaration by a state agency that can conduct its own review of the proposal, there was one meeting held at which the public overwhelmingly argued against the proposal. At that meeting State Parks essentially said it made no difference to them,

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this was not a required public review, and allowed comments be submitted, but to the submitted only to the preparer of the initial proposal. There was no review by any higher authority.

- 4. The first time the proposal was heard was at the local Coastal program meeting held by the Mendocino County Planning Commission acting as the local Coastal authority. Again despite the working time hours of the meeting, the public overwhelmingly disapproved of the proposal, but the planning commission passed it, as the appropriate legal procedure had been followed and the local Planners could not object to State Parks assessment of the need for an Environmental Impact report. If this proposal had been submitted by any one beside a State agency with eh standing of California State Parks, it would have required an EIR, but State Parks has an unusual ability to conduct its own environmental review that ignores public concern and input.
- 5. The issue was so controversial that it was appealed to the Board of Supervisors, and only passed by a 3 to 2 margin there because one supervisor was brought to the realization that there would be no money coming to Mendocino County from the project as it had already been contracted out to a company in another county. The Supervisor for the district where the proposal is to take place is against it as it is currently presented.
- 6. Destruction of this multi-use trail by a state agency sets difficult precedent. Future trails destruction or eradication and access for citizens are more easily accomplished. Haul road is a designated Coastal trail, it is paved, accommodates walkers, bikers, equestrians of all ages and handicapped in wheel chairs. This is a scenic alternative to Highway 1, which is narrow without sidewalks or roadside walkways. At present coastal hikers and bikers can reach the Haul Road at the Ten Mile Bridge, and have a scenic view of the dunes and the ocean for the remaining mile into Ft. Bragg. This is the most scenic way to travel, without the concern for the truck and auto traffic on Highway 1.
- 7. The paved Haul Road is a set way of viewing the dunes. Rather than random trails that could threaten flora and fauna of the dunes, the Haul Road directs human access. It is unrealistic to claim using woody debris and putting up signs directing the public east onto a dune trail will facilitate crossing of streams in winter. Debris and signs will not last very long under winter conditions and most people cannot hike in the soft sand of the dune trails, and beach is unsafe for rogue waves. There will be no hard surface trail once the Haul Road is removed.
- 8. The County Supervisor placed a condition that a bicycle trail be created. State Parks admitted at the county meetings that they do not own most of the property along the highway but only some parts, which do not connect to make a trail. State Parks cannot accomplish this goal and the trail will never be built yet this has been accepted as a condition of the project. Currently no bicycles are allowed north of Ward Ave. to Ten Mile River either on the beach or in the dunes. State Parks claims that they will facilitate a bicycle trail along Highway 1. Parks Once it is clear that it will not happen the project will have been completed and it will be too late to change

the fact that all bicyclists have no access to this entire beach and dune area. Bicycles formerly rode on the Haul Road and now could continue to use the 2.7 miles of Haul Road if it were merely cleared of sand. Cycling on Hwy. 1, is extremely dangerous as it is narrow, curvy, and has a lot of cars and large trucks. It also has little or no views of the ocean and dunes.

- 9. Coastal Commission Staff claim a hard surface trail in the dunes is impossible but there is already 2.7 miles of hard surface haul road that has had virtually no damage. The damaged parts to the south could be replaced with a trail or boardwalks farther east in the dunes. There are successful boardwalks and trails in other parts of MacKerricher Park. Retaining the 2.7 miles of existing Haul Road allows hikers and bicyclists to use it for coastal access and future work can create the shorter distance to connect to the southern portion of the haul road at Ward Ave.
- 10. Parks has made some serious mistakes in the past and there is too much at stake in this situation to move ahead without more study and addressing the issues raised in the appeal. Their use of experts is questionable One (Ron LeValley) is currently under indictment by the federal government in a case that involves being paid for work that was not done. And Dr. Peter Baye stands alone in his claims. More experts, not just Dr Baye, need to be consulted and information gathered before undertaking a project as potentially damaging to the environment and endangered species as this one. This is especially true due to all the counter evidence given in the appeal.

Please consider this item for the significant issues that exist, and hold a de novo hearing.

Sincerely,

Ray Duff 45300 Caspar Point Road #46 Caspar, CA 95420

RE: Case # A-1-MEN-13-24 Mov. 4, 2013 RECEIVED Deputy Director Rob Merrill California Coastal Commission NOV 08 2013 CALIFORNIA COASTAL COMMISSION NORTH COAST DISTRICT 1385 8th St. Suitz 130 Ancata, CA 95521 Dean Mr. Menrill, I am writing to use you to support The State Parks project for the Inglemook Fin - 10-Mile Dunes Natural Preserve. I pring to my advocacy of This project Some 35 years of experience monitoring Showy Ploons as a voluntier for Point Reyes Bird Observatory. For about 28 of Those years I have been Surveying in The 10-Mile one It would be wonderful if The plovers nested here again. The proposed project would inlarge the habitat suitable for nesting, as well as improving The area in which They roost and feed arriving here after ussting else where. The numbers over - wintering at 10 - Mile do allem to be slowly increasing. The very small population of Western Snowy Plover (which is coastal and is seldom joined by members of the interior population) useds all the help I can get. An estimated 2100 birds are spread very (OVER) ATTACHMENT K

thinky from British Columbia to Baja California. In This context our 50 or so wintering plovers become very important. Thank you for your consideration of This request. Sincerely,  $\sum_{i=1}^{n} \sum_{\substack{a=1\\a=1}}^{n} \sqrt{\left( \sum_{i=1}^{n} \frac{d^{a}}{d_{i}} \right)^{a}} \sum_{\substack{a=1\\a=1\\a=1}}^{n} \frac{d^{a}}{d_{i}} \sum_{\substack{a=1\\a=1}}^{n} \frac{d^{a}}{d_{i}} \sum_{\substack{a=1\\a=1}}^{n} \frac{d^{a}}{d_{i}} \sum_{\substack{a=1\\a=1\\a=1}}^{n} \frac{d^{a}$ Signature on File DEROTHY TOBKIN COL OC VOM 1987 - Constant Harris Constant References - 127 etc. References - Status 292

JARED HUFFMAN 2ND DISTRICT, CALIFORNIA

COMMITTEE ON NATURAL RESOURCES COMMITTEE ON BUDGET

Congress of the United States

WASHINGTON OFFICE 1630 LONGWORTH HOUSE OFFICE BUILDING WASHINGTON, DC 20515 PHONE: (202) 225–5161 FAX: (202) 225–5163

WEBSITE: huffman.house.gov

House of Representatives

Washington, DC 20515–0502

RECEIVED

NOV 08 2013

CALIFORNIA COASTAL COMMISSION NORTH COAST DISTRICT

October 31, 2013

Bob Merrill California Coastal Commission 1385 8th Street, Suite 130 Arcata, CA 95521

Dear Mr. Merrill:

I am writing to express my support for California State Parks' Dune Rehabilitation Project at Inglenook Fen-10 Mile Dunes in MacKerricher State Park.

California's North Coast features very little intact dune habitat, and this project offers a rare opportunity to enhance habitat and restore natural conditions in this 1,285 acre natural preserve. Notably, the project area on the Mendocino coast is home to three federally listed species (western snowy plover, Howell's spineflower, and Menzies wallflower) and over eight additional special status species.

This project has been reviewed and approved by both the Mendocino County Coastal Permit Administrator and the Mendocino County Board of Supervisors, and has the support of many environmental organization, reflecting community support for the project and thorough environmental review.

In light of the opportunity to enhance habitat for special status species, restore wetlands and dunes, and improve recreational access to this beloved park, I encourage the Coastal Commission to continue to support this project and I ask for your fair and full consideration of this request.

Thank you for your attention to this matter. If you require additional information, please contact Heidi Cusick Dickerson of my Ukiah office at <u>heidi.dickerson@mail.house.gov</u>.

Sincerely,

Signature on File JARED HUFF

Member of Congress

ATTACHMENT L

SAN RAFAEL 999 FIFTH AVENUE, SUITE 290 SAN RAFAEL, CA 94901 PHONE: (415) 258–9657 FAX: (415) 258–9913 PETALUMA 206 G Street, #3 Petaluma, CA 94952 Phone: (707) 981–8967 FORT BRAGG 430 NORTH FRANKLIN STREET P.O. BOX 2208 FORT BRAGG, CA 95437 PHONE: (707) 962–0933 FAX: (707) 962–0905 EUREKA 317 THIRD STREET, SUITE 1 EUREKA, CA 95501 PHONE: (707) 407–3585 FAX: (707) 407–3559

PRINTED ON RECYCLED PAPER
#### Gedik, Tamara@Coastal

From: Sent: To: Subject: webmaster@gualalamac.org Friday, November 08, 2013 12:12 PM Gedik, Tamara@Coastal; gmac@gualalamac.org Appeal No. A-1-MEN-13-0241 (California Department of Parks & Recreation (DPR), Mendocino Co.)

California Coastal Commission:

As a matter of principle, we, GMAC (Gualala Municipal Advisory Council) do not support the hearing of issues at distances of more than 300 miles

from the affected area. We therefore respectfully request the hearing

of the Appeal No. A-1-MEN-13-0241, from Item 10.a of the November agenda, be postponed from the next week's meeting in Newport Beach to next month in San Francisco.

thank you

GMAC

## ATTACHMENT M

## CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE 1385 8<sup>TH</sup> STREET • SUITE 130 ARCATA, CA 95521 VOICE (707) 826-8950 FAX (707) 826-8960



# W14a

Filed:	9/13/13
49 <sup>th</sup> Day:	Waived
Staff:	T. Gedik-A
Staff Report:	11/1/13
Hearing Date:	11/13/13

## STAFF REPORT: APPEAL SUBSTANTIAL ISSUE

Application No.:	A-1-MEN-13-0241
Applicant:	<b>California Department of Parks and Recreation</b> (State Parks)
Appellants:	Thad M. Van Bueren, Stanley E. Anderson, and Eric and Deborah Freeman
Local Government:	County of Mendocino
Local Decision:	Approval with Conditions
Location:	West of Highway One, in the portion of MacKerricher State Park located north of Ward Avenue to the Ten Mile River, in Mendocino County
Project Description:	Dune rehabilitation project that involves: (1) the removal of asphalt and gravel base in three segments of the former Georgia Pacific Haul Road, totaling 2.7 miles; (2) stream channel restoration associated with the removal of two road culvert creek crossings along the Haul Road; and (3) the treatment of European beachgrass and other nonnative weeds within the project area.
Staff Recommendation:	No Substantial Issue

## SUMMARY OF STAFF RECOMMENDATION

The Mendocino County Coastal Permit Administrator approved the proposed dune and stream channel rehabilitation project with modified special conditions at its hearing held on June 11, 2013. The Westport Municipal Advisory Council appealed the local decision to the Mendocino County Board of Supervisors, and on August 26, 2013, the Board denied the appeal and upheld the approval of the Coastal Permit Administrator, with further modifications.

A single appeal was timely filed with the Commission's North Coast District Office on September 13, 2013 by Thad M. Van Bueren, Stanley E. Anderson, and Eric and Deborah Freeman. The appellants outline four stated grounds for appeal, which they summarize as: (1) Impairment of Public Access; (2) Substantial Alteration of Natural Landforms; (3) Significant Impacts to Wetlands, Species, ESHAs, Archaeological/Cultural Resources, and Public Health; and (4) Inadequate Data Supporting Project Approval.

Most of the contentions raised in the appeal present potentially valid grounds for appeal in that they allege the approved development's inconsistency with the policies of the certified LCP. However, each of the several major contentions do not raise a substantial issue of conformance of the project as approved with the policies of the certified LCP or the public access policies of the Coastal Act because there is a high degree of factual support for the local government's decision to find that its approval conforms with the public access provisions to maximize public access consistent with the protection of fragile coastal resources.

Therefore, Commission staff recommends that the Commission find that the appeal raises no substantial issue with respect to the grounds on which it was filed.

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## APPENDICES

- Appendix A: Commission's Appeal Jurisdiction Over Project
- <u>Appendix B</u> Detailed Project Description
- <u>Appendix C</u>– Substantive File Documents
- Appendix D Public Access Coastal Act and LCP Policies
- <u>Appendix E</u> Geologic Hazards and Erosion LCP Policies
- <u>Appendix F</u> Grading, Erosion, and Stormwater Runoff LCP Policies
- Appendix G Environmentally Sensitive Habitat Areas (ESHAs) LCP Policies
- <u>Appendix H</u> Archaeological Resources LCP Policies
- Appendix I Planning and Locating New Development LCP Policies

#### **EXHIBITS**

- Exhibit 1 Regional location map
- Exhibit 2 Vicinity Map/ Aerial Photo
- Exhibit 3 State Parks Project Overview Map
- Exhibit 4 Site photos
- Exhibit 5 Excerpts from March 2000 (EDAW) Draft Feasibility Study
- Exhibit 6 Excerpts from County LUP Apdx. 13, "Coastal Access and Trail Systems"
- Exhibit 7 Memos from CSP Consulting Ecologist
- Exhibit 8 Geotechnical Memos from CA Geological Survey
- Exhibit 9 Public Comments Received Prior to Project Appeal to Coastal Commission
- Exhibit 10 County Memo Re: Consideration of Appeal to Board of Supervisors
- Exhibit 11 Appeal
- Exhibit 12 Notice of Final Local Action and Findings for Approval
- Exhibit 13 Applicant's Response to Appeal Filed with Coastal Commission
- Exhibit 14 Public Comments Received After Project Appeal Filed with Coastal Commission
- Exhibit 15 Applicant's Proposed Implementation of County Special Condition No. 8

## I. MOTION AND RESOLUTION

#### Motion:

I move that the Commission determine and resolve that Appeal No. A-1-MEN-13-0241 does not present a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion by voting "Yes" as is recommended by staff will result in a finding of **No Substantial Issue** and adoption of the following resolution and findings. The local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

#### **Resolution:**

The Commission hereby finds that Appeal No. A-1-MEN-13-0241 raises No Substantial Issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency of the approved development with the certified LCP and/or the public access policies of the Coastal Act.

#### **II. FINDINGS AND DECLARATIONS**

#### A. APPEAL JURISDICTION AND PROCEDURES

Pursuant to Coastal Act Section 30603, the County's approval is appealable to the Commission because the approved development constitutes a major public works project, and because the approved development is located: (1) within a designated "highly scenic area," which is a type of sensitive coastal resource area; (2) within 100 feet of a wetland or stream; (3) within 300 feet of the inland extent of MacKerricher State beach; and (4) between the sea and the first public road paralleling the sea. The grounds for an appeal are limited to an allegation that the approved development does not conform to the standards set forth in the certified local coastal program and as the development is located between the first public road and the sea, the public access policies set forth in the Coastal Act.

Coastal Act Section 30625(b) requires the Commission to hear an appeal unless it determines that no substantial issue exists with respect to the grounds on which the appeal has been filed<sup>1</sup>. Even when the Commission chooses not to hear an appeal, an appellant nevertheless may obtain

<sup>&</sup>lt;sup>1</sup> The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. In previous decisions on appeals, the Commission has generally been guided by the following factors in making substantial issue determinations: (a) the degree of factual and legal support for the local government's decision; (b) the extent and scope of the development as approved or denied by the local government; (c) the significance of the coastal resources affected by the decision; (d) the precedential value of the local government's decision for future interpretations of its LCP; and, (e) whether the appeal raises only local issues, or those of regional or statewide significance.

judicial review of the local government's coastal permit decision by filing a petition for a writ of mandate pursuant to Code of Civil Procedure, Section 1094.5. Commission staff has analyzed the administrative record for the approved project, including the County's Final Local Action Notice for the development (**Exhibit No. 12**), the appellant's claims (**Exhibit No. 11**), and the relevant requirements of the Coastal Act and certified LCP (Appendices  $\underline{D}$ -I) and is recommending that the Commission find that the appeal raises no substantial issue with respect to the grounds on which the appeal has been filed.

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

If the Commission determines that the appeal does raise a substantial issue, the Commission would continue the *de novo* portion of the appeal hearing to a subsequent meeting.

#### B. LOCAL GOVERNMENT ACTION AND FILING OF APPEAL

The Mendocino County Coastal Permit Administrator approved the proposed project with modified special conditions at its hearing held on June 11, 2013. On June 17, 2013, the Westport Municipal Advisory Council appealed the local decision to the Mendocino County Board of Supervisors. On August 13, 2013, the Board of Supervisors heard public comment on the item, and continued the hearing to a Special Meeting held on August 26, 2013. At the August 26, 2013 hearing, the Board of Supervisors denied the appeal and upheld the approval of the Coastal Permit Administrator, with further modifications.

The North Coast District Office received the Notice of Final Local Action on September 3, 2013 (**Exhibit 12**). One appeal was timely filed with the Commission's North Coast District Office on September 13, 2013, within 10 working days of receipt by the Commission of the County's Notice of Final Action. The appeal was filed by: Thad M. Van Bueren; Stanley E. Anderson; and Eric and Deborah Freeman (**Exhibit No. 11**).

## C. SITE DESCRIPTION AND BACKGROUND Site Description

The County-approved project is within MacKerricher State Park, which spans nearly 9 miles along the northern Mendocino County coastline between Fort Bragg and Ten Mile River. According to the 2012 Mitigated Negative Declaration (MND) prepared by State Parks (CSP), MacKerricher State Park spans approximately 2,520 acres divided into a north section and south section located west of Highway One. The northern portion of the park consists of 5.5 miles of sandy shoreline backed by low bluffs and an extensive coastal dune complex referred to as the Ten Mile Dunes. The Ten Mile Dunes complex is considered one of the largest native dune ecosystems in California. According to the MND, the southern portion of the park comprises "an open, relatively flat marine terrace with rocky bluffs and small secluded beaches that gradually slopes up from the Glass Beach parcels, north towards Lake Cleone and Laguna Point." The

County-approved project occurs in the northern portion of the park in the Inglenook Fen-Ten Mile Dunes Natural Preserve, which extends south from Ten Mile River to north of Ward Avenue.

As described in the MacKerricher State Park General Plan (1995, <u>Appendix C</u>), habitat features within MacKerricher State Park include: portions of several streams and lagoons; two natural lakes (one of which is artificially maintained); the last remaining fen in California; coastal brackish and freshwater wetlands; beaches; coastal dune strand vegetation; dune swales; grasslands; coastal scrub; Bishop pine and beach pine forest vegetation communities; and sandy beach, rocky shore, and marine intertidal communities. The area supports a number of special status species, as described further in <u>Finding E.3</u> below. The area is popular amongst recreationists, and common passive recreational activities in the project vicinity include but are not limited to: hiking, diving, surfing, bike-riding, horseback riding, nature study, photography, and beachcombing.

#### Site Background

The MacKerricher State Park General Plan (CSP, June 1995; <u>Appendix C</u>) and the project MND document extensive prehistoric and ethnographic use of the area. Evidence of Native American archaeological sites occurs in MacKerricher State Park that show human use of the area over the past 2,000 years. The documents also describe the establishment and ultimate abandonment of the Mendocino Indian Reservation on approximately 25,000 acres (including the entire Ten Mile Township and all of what is now MacKerricher State Park) in the mid-1800's.

In the late 1800's, logging activities occurred in the area, including development of a sawmill on the south fork of Ten Mile River that later washed away. In 1904, the Union Lumber Company began to concentrate logging operations along Ten Mile River, and in 1916 Union Lumber Company completed construction of a railroad to haul lumber from Ten Mile River to their sawmill ten miles to the south in Fort Bragg. In 1945, Union Lumber removed the rails, paved the roadbed, and began using trucks to transport logs to the mill. Georgia-Pacific Corporation later acquired the property, and "the Haul Road" as it came to be known, continued to support hauling activities until the mid-1980's when parts of the road washed out.

State Parks began acquisition of lands within the project vicinity in 1949 with the purchase of a parcel previously owned by the Park's namesake, and MacKerricher State Park was classified as a state park and named by the California State Park and Recreation Commission in 1963. The haul road was still in private ownership within the boundaries of MacKerricher State Park at the time the Coastal Commission certified Mendocino County's land use plan in 1985<sup>2</sup>, as reflected in policies that directed haul road acquisition priorities such as Land Use Plan Policy 4.1-21 (Appendix D). The certified Land Use Plan (LUP) notes that the park area contains a number of resource areas identified by state agencies and other entities (Appendix I), including MacKerricher State Park<sup>3</sup>; Ten Mile Beach Dunes and Inglenook Fen designated Natural Areas<sup>4</sup>; and Inglenook Fen, Inglenook Creek Marsh, and Ten Mile River Areas of Special Biological

<sup>&</sup>lt;sup>2</sup> The Coastal Commission effectively certified the total LCP (including the zoning and implementation plan portion of the LCP) in 1992

<sup>&</sup>lt;sup>3</sup> Designated by California Department of Parks and Recreation

<sup>&</sup>lt;sup>4</sup> Designated by the California Natural Areas Coordinating Council and designated on the Land Use Maps

Significance<sup>5</sup>. The LUP maps depict dunes, wetlands, and rare/endangered plant habitat throughout MacKerricher State Park, and the LUP describes several of the natural habitats contained in these resource areas, including Ten Mile Dunes and Inglenook Fen (Appendix G).

In 1990, State Parks began preparation of a General Plan intended to guide the management of MacKerricher State Park for the next 10-20 years. The MacKerricher State Park General Plan directed the establishment of the 1,285-acre Inglenook Fen-Ten Mile Dune Natural Preserve (Preserve), in part to recognize the regional and statewide significance of the outstanding natural values of the Inglenook Fen complex and the Ten Mile Dunes. On June 21, 1995, the CA State Park and Recreation Commission adopted: (1) Resolution 20-95 approving the MacKerricher State Park General Plan, and (2) Resolution 21-95 classifying 1,285 acres within MacKerricher State Park as Inglenook Fen-Ten Mile Dunes Preserve. The General Plan document and the Preserve designation have never been submitted to Mendocino County for adoption as an amendment to the LCP, and thus are not part of the standard of review for any development subject to coastal development permit.

In 1994, State Parks acquired the haul road and submitted a proposal for the MacKerricher Coastal Trail Project as part of a statewide application for federal and state funding for five segments of the California Coast Bicycle Route. The primary objective submitted by State Parks was: "To reconstruct and repair the haul road to provide a multi-use recreational trail from the City of Fort Bragg to Highway 1 at Ten Mile River." The funding application prompted evaluation of the project proposal under the California Environmental Quality Act and National Environmental Policy Act (CEQA/NEPA).

Because concerns were raised during consultations with regulatory agencies about unavoidable impacts to sensitive resources, a feasibility study was prepared to evaluate several alternatives. The five alternatives considered included four new trail construction and/or existing trail repair options ("Haul Road Alternative," "Setback Alternative," "Shortcut Alternative," and "Northern Alternative"), and a fifth option described as the "Ward Avenue Terminus" that would not include new trail construction or trail repair in the Preserve. Table 2-1 presented in the 2000 draft feasibility study (EDAW; **Exhibit 5**) summarizes the outcome of the alignment alternative analyses. The draft feasibility study concluded that the "Haul Road (preferred alternative)," "Setback," and "Shortcut" alternatives would likely result in jeopardy determinations from regulatory agencies for impacts to federally-and state-listed species such as Howell's spineflower (*Chorizanthe howellii*) and Menzies' wallflower (*Erysimum menziesii* ssp. *menziesii*). The draft feasibility study further concluded that the "Haul Road" and "Shortcut" alternatives would require trail construction through areas subject to coastal erosion and dune instability requiring extensive and relatively frequent repair and reconstruction. The study highlighted that:

Only the Haul Road and Setback alternatives, by themselves, fulfill the objective of an alternative route to Highway 1 for bicycle travel from Ft. Bragg to Ten Mile River. If this is the paramount objective for developing the trail, the feasibility of its achievement is threatened. Because the primary reason for ISTEA funding of the trail is the bicycle route, this federal funding of the project is also threatened.

State Parks indicates that the draft feasibility report was never finalized and the funding was never obtained.

<sup>&</sup>lt;sup>5</sup> Designated by California Department of Fish and Wildlife

#### **D. PROJECT DESCRIPTION**

In its findings for approval, the County-approved project is described as follows:

California State Parks proposes to restore ecosystem processes in the Inglenook Fen-Ten Mile Dunes Natural Preserve (Preserve) by removing three disconnected segments of roadway in rare dune habitat, removing two culverts and restoring the stream channel, and treating (without herbicides) approximately 60 acres (24.3 hectares) of European beachgrass and other nonnative weeds. Located west of Highway 1, and stretching southward from the Ten Mile River to just north of Ward Avenue, the project is entirely within the boundaries of the 1,285-acre Preserve in MacKerricher State Park, Mendocino County, California. State Parks summarizes the proposed work as follows:

- Remove three segments of abandoned asphalt roadway and underlying rock base totaling 2.7 miles (4.3 km). Some portions of the road will remain intact to protect sensitive resources.
- *Remove two approximately 5-foot diameter (1.5 meter) culverts and associated fill materials to restore the stream bed, bank, and channel to a natural condition and reestablish native plant vegetation.*
- Remove approximately 38 acres (15.4 ha) of previously treated European beachgrass using hand labor and approximately 15 acres (6.07 ha) of previously untreated European beachgrass through a long-term program of hand removal and native plant reestablishment.
- *Remove other non-native plants, including trees and shrubs through a long-term program that includes reestablishing native dune forest in an approximate 7 acre (2.8 ha) area of back dunes.*
- Reestablish federally and state-listed threatened and endangered species and other native plants into suitable habitat by direct seeding, transplanting, or installation of cuttings.
- *Remove iceplant in select areas to increase habitat for the federally listed Howell's spineflower.*

The County findings further detail the project description with excerpts from the MND, as can be found in <u>Appendix B</u>.

#### E. ANALYSIS OF APPELLANTS' APPEAL CONTENTIONS

The appeal filed by Thad M. Van Bueren, Stanley E. Anderson, and Eric and Deborah Freeman is attached as **Exhibit 11**. The appeal raises numerous contentions in support of the appeal outlined under four general categories. The appeal grounds are summarized below.

(1) **Inadequate Protection of Public Access**. The appellants contend that the project as approved is inconsistent with the public access policies of the Coastal Act and the Mendocino County certified LCP, including but not limited to Coastal Act Sections 30210, 30211, 30212, and 30221; and Mendocino County Land Use Plan (LUP) Policies 3.1-15, 3.6-27, 3.6-28, 3.6-29, 4.2-19, and 4.2-21 as detailed below.

(2) **Substantial Alteration of Natural Landforms**. The appellants contend that the removal of the haul road, culverts, and invasive plants as approved will destabilize dunes, alter natural landforms, and facilitate erosion, inconsistent with LUP Policies 3.1-15 and 3.1-33. The appellants further contend that the approved project does not adequately

mitigate to prevent sand migration and erosion hazards such as by incorporating dune stabilization measures, inconsistent with LUP Policy 3.4-1 and 4.2-20, and with Mendocino County Coastal Zoning Code (CZC) Section 20.492.015.

(3) **Significant Impacts to Wetlands, Species, ESHAs, Archaeological/Cultural Resources, and Public Health**. The appellants contend that the approved dune rehabilitation project will result in direct, inadequately mitigated impacts to wetlands, special status species, ESHAs, archaeological resources, and public health. The appellants' further contend that the approved project lacks factual information to support its protection of sensitive coastal resources, and that the project is inconsistent with LUP Policies 3.1-8, 3.1-10, and 3.5-12. Furthermore, the appellants contend that while the approved project addresses potential direct impacts to archaeological resources, "indirect impacts from induced shoreline retreat and stream migration are dismissed." Additionally, the appellants contend that the approved project does not address or analyze the potential for toxic chemicals to exist in the fill underlying the haul road, and how the presence and removal of such toxic chemicals would pose a potential risk to public health.

(4) Inadequate Data Supporting Project Approval. The appellants contend that the data used to support CA State Parks' preparation of Mitigated Negative Declaration (MND) document was inadequate. The appellants itemize "gaps in the MND analysis" as including a need for: (1) "analysis of impacts to wetlands, interior dune plant communities, and neighboring properties from planned destabilization of the fore dunes;" (2) "analysis of the extent and location of lands and habitat acreage that is likely to be lost as a result of shoreline retreat induced by deflation of the fore dunes and removal of road and stream crossing fill;" (3) chemical testing of soil samples from road removal areas, coordination with Department of Toxic Substance Control (DTSC), and proper disposal of materials at a suitable hazardous materials facility; (4) analysis of public use, factual evidence to support curtailing public access, and comparison of "impacts of haul road removal on species preservation/recovery or recreation;" and (5) factual evidence demonstrating the benefits of restoration on species habitat. The appellants further contend that an Environmental Impact Report (EIR) instead of a MND should have been prepared to satisfy the requirements of the California Environmental Quality Act  $(CEOA)^6$ .

The appellants also generally assert that their appeal raises substantial issues because of: a) the precedent set by a state agency to intentionally remove a trail; b) the magnitude of land and shoreline-altering impacts; c) the significance of project impacts to special status species, wetlands, and ESHAs; and d) the inadequacy of facts supporting the County's decision.

As set forth in Section 30603 of the Coastal Act, after certification of its local coastal program, an appeal of a local government-issued coastal development permit is limited to allegations made on the grounds that the approved development does not conform to the standards set forth in the certified local coastal program or the public access policies of the Coastal Act. Most of the

<sup>&</sup>lt;sup>6</sup> The Appellants raise a contention that the Mitigated Negative Declaration that was prepared and adopted for the approved project is inadequate and does not comply with the requirements of the California Environmental Quality Act (CEQA). This contention is not a valid ground for appeal, as the contention does not relate to conformance of the project as approved with the certified LCP or the public access policies of the Coastal Act, and thus also does not raise a substantial issue, as discussed further below.

contentions raised in the appeal present potentially valid grounds for appeal in that they allege the approved development's inconsistency with the access policies of the Coastal Act or the certified LCP. As discussed below, the Commission finds that the appeal raises no substantial issue of conformance of the approved development with the policies of the certified LCP or the public access policies of the Coastal Act.

As discussed below, the Commission finds that the appeal raises no substantial issue of conformance of the approved development with the policies of the certified LCP or the public access policies of the Coastal Act. The analysis of the appellant's contentions is organized by corresponding policy sections contained in the "resources and development" chapter and the "coastal development permit regulations chapter" of the certified Mendocino County LCP, including (1) Public Access; (2) Geologic Hazards and Erosion; (3) Wetlands and Other Environmentally Sensitive Habitat Areas; (4) Archaeological Resources; and (5) Planning and Locating New Development. The appeal contentions regarding inconsistency with Coastal Act and LCP public access policies are addressed under "Public Access." The contentions pertaining to inconsistency with sand migration and erosion hazard policies of the LCP are addressed under the "Geologic Hazards and Erosion" subsection. The contentions of inconsistency with LCP policies relating to coastal resource impacts are addressed below under "Wetlands and Other Environmentally Sensitive Habitat Areas," and "Archaeological Resources." Contentions of inconsistency with LCP policies relating to public health are addressed in the subsection entitled "Planning and Locating New Development." The appeal contentions related to how the project was processed under CEQA are discussed under the "California Environmental Quality Act" subsection.

#### 1. Public Access

The appellants contend that the project as approved is inconsistent with the public access policies of the Coastal Act and the Mendocino County certified LCP, including but not limited to Coastal Act Sections 30210, 30211, 30212, and 30221; and Mendocino County Land Use Plan (LUP) Policies 3.1-15, 3.6-27, 3.6-28, 3.6-29, 4.2-19, and 4.2-21 as detailed below.

The appellants highlight that 2.5 miles of lateral hard surface trail will be removed within the project area. The appellants contend that the approved project contains no proposal or requirement to provide a comparable replacement multi-use coastal trail, and instead is conditioned to include dedication of a discontinuous access easement along the portion of the eastern boundary of the State Park that borders the Caltrans Highway One right-of-way. The appellants state that an access trail is unlikely to be built within the easement in the reasonably foreseeable future.

In their appeal (**Exhibit 11**), the appellants present various reasons that the approved project is inconsistent with the public access policies of the Coastal Act and certified LCP, which can be summarized as contentions that the County's approval to remove portions of the Haul Road: (A) eliminates a multi-use access trail that was envisioned to serve as the Coastal Trail (as depicted on the certified Land Use Maps 10 and 12 and as reflected in LUP Policies 4.2-19 and 4.2-21); (B) eliminates a well-defined public access trail rather than maximizes public access inconsistent with Coastal Act Sections 30210, 30212(c), and 30221 and LUP Policies 3.1-15 and 3.6-21; and (C) interferes with established prescriptive rights inconsistent with Coastal Act Section 30211 and LUP Policy 3.6-27, and does not require dedication of an easement as required by LUP Policy 3.6-28.

#### Contention A: Elimination of Trail Depicted in LCP

The appellants' first public access contention asserts that the approved Haul Road removal eliminates the coastal trail from the area depicted on certified Land Use Maps 10 and 12 and as encouraged by LUP Policy 4.2-21. Land Use maps 10 and 12 (page 33 of **Exhibit 11**) depict the designated coastal trail alongside the west edge of the Haul Road. The appellants assert that "[the trail] was delineated there, rather than directly on top of the road, because the land was still privately owned by Georgia-Pacific Corporation in 1985." Mendocino County LUP Policy 4.2.21 states the following:

The Georgia-Pacific Corporation haul road, under a special management agreement with the California Department of Parks and Recreation, presently provides weekend and holiday vehicular access to the long stretch of public beaches which extend from Fort Bragg north to Ten Mile River. <u>This private</u> <u>roadway</u>, which travels through the entire length of the MacKerricher State Park, <u>should be acquired by DPR and incorporated into its management plan for the</u> <u>park</u>, if at any time during the life of the local Coastal Plan the property owner decides to sell, trade or surrender this property. (<u>Emphasis</u> added)

As discussed above, the approved project involves removal of portions of the Haul Road which have been used by the public as a form of trail for coastal access purposes. As summarized in the County staff report, the Coastal Trail will continue to be available to hikers and equestrians along its shoreline alignment, as shown in the County's certified Land Use Maps. In addition, the public is not excluded from other areas of the dunes within the park. Furthermore, the County has also imposed conditions that are intended to facilitate the development of a Class I or II bike path along the portions of the park adjoining Highway One, from the Ten Mile River to Ward Avenue. These conditions provide that State Parks shall: a) help facilitate a Class II bike path in those areas where a Class I bike path is not feasible; and b) dedicate a sufficient area on its properties adjacent to Highway One to facilitate development of the Class I/II bike path, to the extent that such a future access easement dedication may help facilitate development of a bike path in this area.

The provision of separate pedestrian and bicycle routes along the California Coastal Trail is not unusual. The vision for the California Coastal Trail (CCT) is a continuous interconnected public trail system of one or more parallel alignments along the California coastline. The CCT system is to be located on a variety of terrains, including the beach, bluff edge, hillsides providing scenic vantage points, and within the highway right-of-way. The CCT may take many forms, including informal footpaths, paved sidewalks, and separated bicycle paths. When no other alternative exists, the CCT sometimes comprises the shoulder of the highway.

As part of its final MND submitted in December 2012, State Parks states that subsequent to the certification of the Mendocino County Land Use Plan, "the haul road has since been acquired and incorporated into the MacKerricher State Park General Plan. No sections of the LCP state that the haul road shall be maintained for public access in the Ten Mile Dunes."

While CSP has prepared a General Plan document for MacKerricher State Park (June 1995), the document has never been submitted to Mendocino County for adoption as an amendment to the Recreation Element of the Local Coastal Plan (LCP). Therefore, the General Plan document does not serve as part of the standard of review for any development subject to coastal

development permit requirements. Moreover, the 1995 General Plan does not require that access be provided along a particular alignment.

The purpose of MacKerricher State Park is to make available to the people for their inspiration, enlightenment, and enjoyment, in an essentially natural condition, <u>the</u> <u>outstanding scenic features and natural values, including</u> the coastline embracing offshore environs; the stretches of sandy and rocky beach; the headland bluffs; <u>the Ten Mile</u> <u>Dunes</u>; the marine terraces; the wetland habitats including <u>Lake Cleone and the unique</u> <u>Inglenook Fen</u>; the geology and plant and animal life; the significant archaeological and historical resources; and the scientific values therein. (Emphasis added)

Viewed collectively, the certified Land Use Plan maps, text, and policies propose continuous shoreline access from the south bank of Ten Mile River south to Pudding Creek, but do not specifically designate or require a multi-modal trail along the Haul Road. For example, Section 3.6 of the certified Land Use Plan, "Trail/Bikeway System" states in part the following:

The Land Use Maps show the coastal trail along Highway 1 and Usal Road. It includes all trails in the County's previously adopted trails element and adds numerous short trails to shoreline access points and several longer trails in State Parks. Table 3.6-1 lists trails designated. (see Appendix 13 for Table 3.6-1)

Table 3.6-1 (**Exhibit 6**) presents a summary of the Mendocino County coastal access points and trail system, organized in order from north to south. For the project area, access is described as "Hiking/equestrian trail parallel to beach for 8 miles. Usable from Seaside Creek in summer and from Ten Mile Bridge and Pudding Creek year round. Alternative trail for non-vehicles." The Georgia-Pacific Haul Road is separately described as an access feature located 0.5 mile north of Pudding Creek (south of project area) and "open to Ten Mile River on weekends, holidays, and some winter months." Additionally, the narrative contained in Section 4.2 of the LUP (Appendix D) similarly describes access between Seaside Creek to Pudding Creek Trail, stating in part that:

Because of the sometimes hazardous conditions occasioned by tidal action and stream conditions at the mouth of Ten Mile River, the coastal trail in this area shall be segmented, rather than indicated as a continuous trail system. One segment shall extend from Seaside Creek Beach south to the northern bank of Ten Mile River. <u>Another segment shall extend from the south side of Ten Mile River</u> <u>along the shoreline of MacKerricher State Park to Pudding Creek.</u> (Emphasis added)

LUP Section 3.7 "Recreation and Visitor Serving Facilities" includes Table 3.7-1 which summarizes existing State Park facilities and potential development as of 1980. The table describes "additional potential development per DPR" for MacKerricher State Park that includes "controlled access at Inglenook Fen; shoreline access between Inglenook Fen and Ten Mile River." Therefore, the Commission finds that the contention of the appeal that the approved removal of sections of the Haul Road is inconsistent with the LCP provisions that designate the location of a trail through MacKerricher State Park does not have a factual basis and does not raise a substantial issue of conformance of the approved project with the certified LCP and public access policies of the Coastal Act.

#### Contention B: Approved Project Eliminates and Does Not Maximize Public Access

The appellants' second public access contention asserts that the County's approval of the Haul Road eliminates a well-defined multi-use public access trail rather than maximizing public access, inconsistent with Coastal Act Sections 30210, 30212(c), and 30221 and LUP Policy 3.1-15. The appellants similarly contend that the County's approval to eliminate the haul road creates a discontinuity in the coastal trail, inconsistent with LUP Policy 3.6-21. The appellants claim that:

The destruction of this trail will create a discontinuity or gap in the coastal trail, rather than contributing to the future goal of a connected trail. It must be emphasized here that the word "trail" implies an improved surface useable by people of different abilities, something very different from unimproved "access" which may only be available to the most hardy hikers. If the haul road coastal trail is removed, access along this stretch of coast may be heavily constrained by two unimproved stream crossings and the potential for dangerous winter surf.

The appellants also argue there has been no demonstrated threat to species or dune habitat to warrant trail removal, and that "routing visitors along a designated trail is preferable to allowing impacts from uncontrolled access to the most sensitive natural areas."

Land Use Plan Policy 3.6-21 requires the coordination of a continuously identifiable trail along the Mendocino Coast to be provided in conjunction with Humboldt and Sonoma Counties and the Cities of Fort Bragg and Point Arena. In a Memorandum dated August 13, 2013 prepared in response to the local appeal of the project to the Board of Supervisors (**Exhibit 10**), County staff described coastal access in the area in part as follows:

From Ward Avenue south to Pudding Creek in Fort Bragg, a distance of ~3 miles, [sic] Haul Road provides residents and visitors with paved multi-user access along the shore. The City of Fort Bragg has in place plans to continue this multi-user access trail from Glass Beach south to near the Noyo Harbor. The northern half of the park, where the project is located, provides public access to one of the few remaining 'wild' and undeveloped areas of the County's coastline. This area provides visitors and residents with a unique opportunity to experience a wilderness coastal environment in close proximity to an urban setting.

As summarized in the County staff report, although the approved project involves removal of portions of the Haul Road which have been used by the public coastal access purposes, the Coastal Trail will continue to be available to hikers and equestrians along its shoreline alignment, as shown in the County's certified Land Use Maps. In addition, the public is not excluded from other areas of the dunes within the park. The County has also imposed conditions that are intended to facilitate the development of a Class I or II bike path along the portions of the park adjoining Highway One, from the Ten Mile River to Ward Avenue.

Further, as stated above, Section 30210 of the Coastal Act states in applicable part that "maximum access and recreational opportunities shall be provided for all the people consistent with public safety needs <u>and the need to protect</u> ... <u>natural resource areas from overuse</u>." Section 30212 states in applicable part that "public access from the nearest public roadway and along the coast shall be provided in new development projects except where it is inconsistent with ... the <u>protection of fragile coastal resources</u>." Section 30214(a)(2) and (a)(3) expressly

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require that the public access policies be applied taking into account the capacity of the site to sustain use and the appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area.

LUP Policy 3.1-15 similarly requires in part that where public access is permitted in dunes, welldefined footpaths or other means of directing use and minimizing adverse impacts shall be developed and used.

The certified Land Use Maps and the narratives and policies contained in the certified LCP (Appendices <u>D</u>, <u>G</u>, and <u>I</u>) clearly recognize the sensitive nature of the ecosystem within the project area. As described above and as further detailed in <u>Finding E.3</u> below, the LUP maps depict dunes, wetlands, and rare/endangered plant habitat throughout MacKerricher State Park. All of these habitat types are defined as Environmentally Sensitive Habitat Areas (ESHAs) in Section 3.1 of the LUP and Section 20.496.010 of the Coastal Zoning Code (CZC). Additionally, the narrative contained in Section 3.1 of the LUP (Appendix G) includes several of the natural habitats contained in the project area, including Ten Mile Dunes (one of the largest native dune ecosystems in California) and Inglenook Fen (the last remaining fen in California) as "resource areas which require protection."

In its findings for approval, the County characterized the sensitive nature of the ecosystem in part as follows:

The environmental setting has been described in the MND and in this staff report, characterizing the dune ecosystem, which is defined in County Local Coastal Program as Environmentally Sensitive Habitat Areas and supports: wetlands and riparian areas, a rare coastal dune ecosystem, the only remaining coastal fen in California, eight rare natural communities, and eight special plant species as the important elements.

Home to many species of wildlife and an important stop-over for migratory birds, the Preserve provides USFWS-designated critical wintering and nesting habitat for the western snowy plover. The Preserve also supports two populations of federally endangered plant species. The Inglenook Fen, which occurs between the southernmost and middle dune lobes, is an area of great biological significance. It is the southernmost in a series of fens extending from Alaska south to this area. It is the only known remaining coastal fen in California, containing a unique assemblage of plants and insects representing a relict biotic community from the Pleistocene. Many species growing here are rare or endemic.

State Parks describes in their MND that a feasibility study was prepared in 2000 (EDAW; **Exhibit 5**) to evaluate options to reconstruct and maintain a continuous hardened surface trail through the northern segment of MacKerricher State Park, within the project area. The MND states (page 122):

Summary findings from this report found that a Coastal Trail Project in the Preserve was non-feasible due to economic costs, engineering difficulties and environmental compliance due to threatened and endangered species. Due to these findings State Parks is not currently initiating a trail project in the Preserve, nor are there plans to do so in the future. The existing Coastal Trail runs along the beach on packed or wet sand and provides users access to Ten Mile beach within the Preserve. The 2000 feasibility study states in part the following:

[U.S. Fish and Wildlife Service, USFWS] has expressed concerns regarding potential impacts associated with construction of a trail through the dunes (USFWS, April 1998; USFWS, October, 1998; USFWS, July 1999). Furthermore, USFWS has determined any alignment through the Preserve would result in impacts to federally listed species and that there are limited opportunities for mitigating potential impacts (USFWS, October 1998). USFWS also concluded that impacts to Howell's spineflower could result in a jeopardy opinion (USFWS 1998)...

...In a letter to DPR Associate Parks and Recreation Specialist Gary Shannon, dated June 10, 1998, [California Department of Fish and Game, CDFG] stated that "the entire range of Howell's spineflower coincides with the proposed [Haul Road, Setback, or Shortcut Alternative] Coastal Trail; therefore, it is likely that the proposed project would jeopardize the continued existence of that species." In addition to direct impacts associated with new trail construction, CDFG is also concerned about indirect impacts, including potential effects on dune habitat resulting from the physical presence of a road in the dunes (i.e., dune stabilization). Based on the potential for a CDFG jeopardy opinion, the Haul Road, Setback, and Shortcut alternatives do not appear feasible.

The County staff report summarizes the access issues through the ESHA in part as follows:

The Coastal Trail will continue to be available to hikers and equestrians along its shoreline alignment, as shown on the County's certified Land Use maps...

While the project removes an existing roadway which may be viewed as a trail, this roadway is disconnected, deteriorated/washed away or buried, and diminishes the ecological function of a unique Environmentally Sensitive Habitat Area. The Coastal Act recognizes the need to provide varied types and levels of access, while providing for recreation, and protecting important coastal resources. The benefits of restoring ecological function through removal of an unnatural feature and recent development (relatively speaking to the formation of the dune habitat) outweigh and overcome arguments for diminished coastal access. The opportunity is present to restore full ecological function to a rare habitat which is unique to the Mendocino Coast and the State of California. The policies contained in the LCP do not require the Haul Road to be maintained for access. The argument to maintain the Haul Road for access does not seem to be justified given the value of dune restoration and resource protection and enhancement, when compared to the value of the existing the Haul Road which is deteriorated, segmented, disconnected from the access ways into the Preserve, and due to the dynamic nature and rare species of the dune environment reconstruction and maintenance of existing are not feasible alternatives.

In this instance, given the results of the evaluation State Parks conducted in 2000 to study the feasibility of improving the Haul Road for use as a public access trail, there is a high degree of factual support for the local government's determination that allowing removal of the hard-surface haul road remnants without requiring the construction of a replacement hardened trail through the dunes is necessary for the projection of fragile coastal resources. The Commission finds that providing access and recreational opportunities along the shoreline as approved provides another means of redirecting use to the beach along the shoreline and minimizes the creation and use of social trails that may adversely affect sensitive resources within the dune

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habitat area, consistent with: a) the requirements of Sections 30210, 30212, and 30214 of the Coastal Act that public access be provided consistent with the protection of fragile coastal resources; and b) the requirement of LUP Policy 3.5-15 that development utilize means of directing use and minimizing adverse impacts to dune ESHA.

Also, as approved, the project will provide shoreline beach access for pedestrians and equestrians. As approved, the project will also facilitate the future development of a bicycle path along Highway One.

As noted by the appellants, the project includes the removal of culverted crossings of two streams that accommodate pedestrian access, particularly during the winter storm period when stream flows are largest. Stream crossings at Inglenook and Fen Creeks presently afford the public a safe alternate access to and along the coast during the winter time when high storm events make shoreline access more dangerous for recreationists. The County staff report describes the benefit of removal of the existing stream crossings at Inglenook and Fen Creeks in part as follows:

The MND notes that the Inglenook Fen has been a natural feature for 4,000 to 6,000 years, long before the construction of the road; removal of the road and culverts will not impact the fen. The overall goal of the project is to return the dune system to a more natural state, which is likely to improve drainage within the Preserve in the long-term.

...beneficial changes in the lower hydrology of Fen and Inglenook Creeks will occur from the removal of the culverts and road berm that currently constrict the channels. In turn, this will allow water to spread out and reduce depth at crossing during winter flows. This would result in benefits to plant and animal communities and decrease the danger of flooding...

The County evaluated alternate access options to the existing culverts, including permanent structures such as footbridges. Following consultation with CA Department of Fish and Wildlife, the County determined that footbridges were not a feasible alternative due to the necessary restriction and/or stabilization of the stream channel to secure a footbridge, which would conflict with the goal of restoring the migratory character of the stream channel over time. The County determined that "An alternative to a footbridge might be a log crossing. Due to site conditions and dune environment, events that may make the stream outlet crossing hazardous to fjord [sic] would be few or rare events." As part of its project approval, the County imposed Special Condition No. 8, which requires CA State Parks to "…continue to monitor the stream crossing conditions during winter high flow events for pedestrian access. State Parks shall evaluate alternative stream crossings methods to maintain public access during winter high flow events."

State Parks documented how it will implement Special Condition No. 8. The documentation (**Exhibit 15**) outlines an adaptive management program that includes the monitoring of stream crossings and beach access for pedestrian accessibility during high winter flow events and high tides, the use of appropriate temporary alternative stream crossing methods utilizing the placement, adjustment, and/or enhancement of existing native woody material, redirection of access away from beach areas affected by wave run up during high tides, and the placement of temporary signage to inform people of alternative footpaths. In a letter dated October 21, 2013, Mendocino County staff documented that the adaptive management program proposed by State Parks fulfills the requirements of Special Condition No. 8 of the County CDP. As approved, the adaptive management program will provide for year-round pedestrian access along the shoreline,

preserving an important 2.7- mile link in the California Coastal Trail. By routing access along the shoreline seaward of the foredunes, the trail will accommodate public access while protecting the fragile resources of the MacKerricher dunes system. In addition, the project will facilitate future creation of a bike trail along Highway One. The Commission finds that there is a high degree of factual support for the County's determination that replacing the portions of the Haul Road to be removed with a year-round public access route along the shoreline through use of the approved adaptive management program submitted to satisfy the requirements of Special Condition No. 8 will protect the fragile dune resource while providing public access to and along the shoreline consistent with the public access policies of the Coastal Act and the certified LCP including, but not limited to, Sections 30210 and 30212 of the Coastal Act and LCP policy 3.6-21.

#### <u>Contention C:</u> Interference with Prescriptive Rights and Lack of Dedication of a Public Access <u>Easement</u>

The appellants contend that the approved project may interfere with established prescriptive rights inconsistent with Coastal Act Section 30211 and LUP Policy 3.6-27. The appellants state:

There is a long history of public recreational use of the haul road that dates back to the period when it was privately owned. That long and continuous history of use extends through the period when the road was acquired by CDPR in 1992 and up to the present time. It is quite possible that continuous use established prescriptive rights that would be breached by demolition of the trail.

The appellants further contend that the approved project is inconsistent with LUP Policies 3.6-27 and 3.6-28 (<u>Appendix D</u>) because the County failed to require the dedication of a comparable near-shore lateral easement or alternate trail as part of its project approval.

The Commission notes that prescriptive rights of public access to the shoreline do not accrue over publicly-owned lands. Coastal Act Section 30211 and LUP Policy 3.6-27 require in applicable part that development not interfere with the public's right of access to the sea where acquired through use (i.e., potential prescriptive rights<sup>7</sup> or rights of implied dedication). The County staff report and the MND describe the history of the haul road, including its development as a timber hauling railroad in 1916, conversion to a paved road way in 1949, and vehicular access to the public on weekends in 1977 until a 1983 storm event washed out a portion of the road. The haul road was still in private ownership within the boundaries of MacKerricher State Park until 1994, when State Parks acquired ownership of the haul road from Georgia-Pacific Corporation. The project approved by the County therefore occurs entirely on lands owned and managed by the State of California. In a Memorandum dated August 13, 2013 prepared in response to the local appeal of the project to the Board of Supervisors, County staff responded to the appellants' contention by stating:

Policy 3.6-27 does not apply as the proposed development is on public land and does not conflict with an easement acquired by the public at large by court decree. The proposed project will not interfere with the public's access to the sea. The existing access points to and along the Preserve will be maintained.

<sup>&</sup>lt;sup>7</sup> Prescriptive Rights refer to public rights that are acquired over private lands through use.

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As such, the lands are open to the public for passive recreational uses, which will remain accessible to the public after the remnant road sections are removed. Therefore, the Commission finds that the contention of the appeal that the approved project will interfere with prescriptive rights of public access does not raise a substantial issue of conformance of the project as approved with Section 30211 of the Coastal Act and LUP Policy 3.2-27.

Finally, Policy 3.6-28 states that new development on parcels upon which accessways have been designated on the land use maps shall include an irrevocable offer to dedicate an easement. The provisions requiring offers to dedicate easements for public use are in relation to those developments occurring on private parcels containing the public accessways recognized on the land use plan maps and where the impacts of the development warrant the establishment of an accessway for public use. As discussed above, the County-approved project occurs on lands already held in the public domain and available for public access use. Therefore, the Commission finds that the contention of the appeal that the approved project is inconsistent with LUP Policies 3.6-27 and 3.6-28 because the project does not require recordation of an offer to dedicate an easement for public access policies of the Coastal Act or the standards of the certified LCP.

#### Conclusion regarding public access contentions

The Commission finds that there is a high degree of factual support for the local government's decision to find that its approval conforms with the public access provisions to maximize public access consistent with the protection of fragile coastal resources. Therefore, the Commission finds that the first contention of the appeal that the approved development does not adequately protect public access raises no substantial issue regarding consistency of the approved development with the public access policies and standards of the Coastal Act and the certified LCP.

#### 2. Geologic Hazards and Erosion

The appellants contend that the approved project does not conform to the certified LCP policies because they claim the road, culvert, and invasive species removal will radically alter the dune ecosystem with many adverse consequences including unmitigated impacts to wetlands and neighboring lands.

The Ten Mile Dunes complex is considered one of the largest native dune ecosystems in California, and consists of a series of transverse dunes and associated precipitation ridges. As described by DPR (1995, in EDAW 2000), "Transverse dunes are formed by winds of moderate velocity that move light sand, while precipitation ridges are steep-sided dune features that form where moving sand driven by strong winds is stopped by a mass of vegetation." The Final MND details the geomorphological conditions of the Ten Mile Dune system, describing them in part (p. 85) as follows:

The sand movement and depositional pattern of the dune system is naturally broken into discrete series of transverse mobile dune complexes and intervening deflation plains (dune slacks; wetland and meadow-like flats) with stabilized vegetation. There are currently no major continuous belts of mobile dunes extending from the active foredunes to the more mobile interior dunes; the entire foredune complex terminates with a

landward edge in either stabilized, vegetated dune slacks, or low-relief stabilized dune grassland and scrub.

#### Contention A: Project Will Alter Natural Landforms

The appellants specifically contend that the approved project will alter natural landforms, inconsistent with LUP Policy 3.1-15 and Coastal Zoning Code (CZC) Section 20.492.015.

Mendocino County LUP Policy 3.1-15 directs that dunes shall be preserved and protected as environmentally sensitive habitats for scientific, educational, and passive recreational uses. LUP Policy 3.1-15 (Appendix G) also requires that new development in dunes shall be located in the least environmentally damaging location and shall minimize the removal of natural vegetation and the alteration of natural landforms. CZC Section 20.492.015(a) ("Erosion Standards") requires that the erosion rate shall not exceed the natural or existing level before development.

As discussed further in Finding E.3 below, the County findings demonstrate that the removal of road base, culverts, and invasive species removal from the project area is a restoration project. The current condition consists of a discontinuous stretch of haul road with remnant portions that remain intact surrounded by severely eroded fragments that are leaning against the shoreline side of the road berm. Establishment of invasive European beachgrass within the project area has displaced native vegetation and created unnatural, oversteepened foredunes that also reduce habitat for the federally-listed western snowy plover. The Final MND states that "The proposed project would remove unnatural features to restore native habitats and to preserve endangered plant and animal species and their supporting ecosystem."

The local record clearly demonstrates that the project purpose is to restore natural landforms in an environmental setting where such landforms are currently altered and to remove non-native vegetation to facilitate the establishment of rare and endangered species. Therefore, the Commission finds that the contention of the appeal regarding the protection of natural landforms raises no substantial issue of conformance of the project as approved with the provisions of LUP Policy 3.1-15 and CZC Section 20.492.015 that require natural dune landforms to be preserved and protected from alteration.

#### Contention B: Project Will Result in Unmitigated Destabilization of Dunes

The appellants contend that the approved project does not conform to the certified LCP policies because they claim the road, culvert, and invasive species removal will radically alter the dune ecosystem. The appellants state that the approved actions to remove the haul road, culverts, road fill prisms, and invasive species:

...are expected to deflate the fore dunes, fill low-lying areas of the interior dunes (wetlands and swales favored by sensitive vegetation), allow streams to meander freely in a manner that will extensively reconfigure the near-shore region, and induce significant shoreline retreat.

The appellants further assert that past activities to remove European beachgrass occurred without the benefit of a coastal development permit inconsistent with LUP Policy 3.1-33, and have caused sand encroachment at neighboring lands, thereby devaluing homes. The appellants allege the claim of reduced home value is supported by a comparative appraisal that was submitted as part of their Exhibit 3 (page 104 of 124). The appellants also contend that the impacts resulting from what they characterize as a "dramatic reconfiguration of the dune landscape" remain unanalyzed and unmitigated, inconsistent with the dune stabilization and mitigation measures

they cite as required by LUP Policy 3.4-1 and 4.2-20. While the appellants claim that the project lacks factual information to support its approval, they state:

Absent any analysis of this issue by CDPR, the consequences of the project can nevertheless be readily predicted using CDPR's data and reports supplied by Engineer David Paoli (2013) and Engineering Geophysicist Eric Freeman (2013) (see Exhibit 3). Paoli conservatively estimates the project will induce the eastward migration of an estimated one million cubic yards of sand.

The appellants refer to comparisons of aerial photography to support their assertions that the shore has retreated as much as 130 feet in the area where the Haul Road washed out in 1983, and using aerial imagery they draw correlations and conclusions for predicting foredune deflation and shoreline retreat.

Land Use Plan Policy 3.1-33 requires that vegetation removal that constitutes "development" as defined in the glossary of the coastal element shall require a coastal development permit. In the matter of the subject appeal, the County approved a coastal development permit authorizing development that includes removal of approximately 60 acres of non-native, invasive European beachgrass. The approval also authorizes a long-term program for reestablishing native dune forest in an approximately 7-acre area in the back dunes. Other actions that may have occurred in the past are not the subject of the appealed project approval and are thus not part of the Commission's review.

Regarding whether the approved project is consistent with LUP Policy 4.2-20 which states in applicable part that former Bureau of Land Management lands acquired by State Parks for inclusion within MacKerricher State Park shall be managed as a natural habitat area in conjunction with passive recreational uses and a dune stabilization program, the appellants contend that contrary to the policy, the approved project intentionally destabilizes dunes and threatens nearby homes. Several homes have been built within the active dune system that continues on either side of Highway One within the Ten Mile Dunes area. The County staff report addresses the contention that the approved project destabilizes dunes and threatens nearby property in part by stating,

The argument that the Haul Road removal would trigger increased dune migration over private property, relative to the existing conditions, is found to be unsupported for several reasons cited by experts in the field (paraphrased from P. Baye, Nov. 29, 2012 Memorandum):

1. The proposed project does not create the potential to destablilize or significantly accelerate a massive mobile dune's migration. The volume of sand in the foredunes, and the flux of sand from beach to foredune, is dwarfed by the accumulated mass of mobile sand in the interior landward dunes – particularly of the northern lobe.

2. There is a significant discontinuity and very long dune travel distance (relative to maximum rates of mobile dune travel) between the Haul Road/foredune area, the existing wide stabilized dune wetlands and wetland-dune transition zones, and the landward large mobile dunes. If the foredunes migrate landward, they reach vegetated stabilized wetlands. In other words, there is no pathway for sand to be transported from the foredunes to the mobile dunes without interference from the stabilized, wetland and vegetated areas.

3. Most importantly, there is no evidence of significantly increased foredune mobilization or landward migration rates in the southern area (near Ward Ave) where the Haul Road was previously washed away. In fact, in this area, the foredunes are no more landward than the sections with the Haul Road in place, and the vegetated stabilized areas landward of the foredunes increase the resistance to sand migration.

The Final MND additionally addressed concerns relating to sand movement and neighboring properties as follows:

Seventeen letters raised concerns regarding the potential for increased sand movement and threat to neighboring properties as a result of project implementation. The concerns focused on three major incorrect assumptions: 1) the remaining sections of haul road prevent sand movement from the beach to inland areas; 2) sand movement within a dune system is "erosion" and the dunes should be stabilized; and 3) the project will result in a significant change in sand movement, which would not occur if the project was not implemented. As explained throughout the IS/MND on pages 13, 50, 84-87, and Appendix E.4, sand movement is an integral function of a natural dune system. Grain size, wind speed, vegetation, and dune height are factors that affect the rate of sand movement. In general, once the haul road is removed, the small nearshore dunes would collect more sand and continue to grow, most likely around small clumps of vegetation, until some threshold size is reached. The movement of sand from the nearshore foredunes to farther inland areas is inhibited by the large expanses of dune and wetland vegetation that occur between the foredunes and the separated transverse dunes to the east. While windtransport of sand is a natural process in a dune environment, sand becomes deposited and its movement halted on the eastern fringes of dunes where conifers are established. The past removal of wooded areas backing the eastern edge of the Ten Mile Dunes, by adjacent landowners, has provided an uninterrupted path for wind-carried sand and the landward expansion of the dunes in the Preserve (Barry & Schlinger 1977). The project includes measures to maintain and plant native trees on the eastern fringe of the dunes to reestablish a native dune forest that will interrupt the path of wind carried sand. As stated on pages 13-14: "European beachgrass, Monterey pine, broom, and eucalyptus growing in the 7 acre area will still be removed, but as a secondary priority and slowly over time once the native trees are well established" (emphasis added). Page 90 of the IS/MND explains that sea level rise will continue to influence the inland movement of the dune system, which will affect the Natural Preserve and neighboring properties, regardless of any activities associated with the Dune Rehabilitation Project.

A more detailed discussion of dune movement process within the Natural Preserve is contained in Dr. Peter Baye's response to the letter from the retired College of the Redwoods geology professor.

The November 2012 memorandum prepared by Dr. Baye is included in Exhibit 7.

The Commission has found in past actions (CDP 1-12-032, CA State Parks; CD 026-10, National Park Service) that non-native species, particularly European beachgrass (*Ammophila arenaria*) can adversely impact the natural dune system. In CDP 1-12-032, the Commission found that the growth of European beachgrass in fragile dune ecosystems "has changed the physical shape of the dunes and affects ongoing dune processes in ways that favor further growth of *Ammophila* and successional species at the expense of the native dune vegetation and the dune ecosystem as

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a whole." Similarly, the Commission concurred with a consistency determination submitted by the National Park Service (NPS) for a similar dune restoration project (CD 026-10) wherein NPS proposed to remove European beachgrass and iceplant from up to 133 acres of European beachgrass and iceplant from within a 300-acre project area along the shoreline south of Abbott's Lagoon, at Point Reyes in Marin County. The Commission concurred with NPS' findings that:

With rising sea levels, there will be more frequent and more serious flooding of low-lying coastal areas by extreme tides, storm surges, and wave effects. Coastal dunes offer a buffer against extreme tides and storm surges. This buffering capacity, however, is minimized and potentially eliminated when dunes are over-stabilized by invasive plant species or other alterations. Over-stabilization makes dunes more susceptible to loss from erosion by not enabling them to move or migrate naturally in response to sea level rise and changes in erosional patterns. By removing invasive plant species, natural dune migration processes are restored, enabling dune systems to move and change in response to changes in sediment supply and sea level. This restoration effort helps to preserve these fragile and valuable ecosystems in the face of climate change and ultimately benefits many rare animals and plants, as well as humans.

Regarding whether the approved project includes dune stabilization and mitigation measures, consistent with LCP requirements, the Mendocino County certified LCP contains several provisions that reference "dune stabilization," including LUP Policy 3.1-16, 4.2-20, and CZC Section 20.496.040. LUP Policy 3.1-16 states in applicable part that: "All dune landowners whose property is subject to dune encroachment shall be allowed to take reasonable actions which are deemed necessary to protect existing structures after obtaining a Coastal Development Permit. Such actions may include...planting of vegetation for dune stabilization." Mendocino County CZC Section 20.496.040(A) allows development in dunes for limited purposes, including for (in applicable part): scientific, educational, and passive recreational uses<sup>8</sup>; and "Removal of sand, construction of fences or walls to impede sand movement and <u>planting of vegetation for dune stabilization for dune stabilization for dune stabilization for dune stabilization applicable part): scientific, educational, and passive recreational uses<sup>8</sup>; and "Removal of sand, construction of fences or walls to impede sand movement and <u>planting of vegetation for dune stabilization of fences or walls to impede sand movement and <u>planting of vegetation for dune stabilization where necessary to protect existing structures" (Emphasis added).</u></u></u>

While the dune stabilization requirements of the LCP more specifically apply to vegetation planting measures as a measure to protect existing structures, the County staff report describes that the approved project does nonetheless include a long-term plan to maintain and plant native trees on the eastern edge of the dunes "to reestablish a native dune forest that is intended to halt sand migration further landward. This planting of trees would occur in the seven-acre area proposed for secondary treatment of European beachgrass..."

The Commission therefore finds that there is a high degree of factual evidence supporting the County's findings that the approved project does not exacerbate hazards to homes built adjacent to MacKerricher State park from sand movement, contrary to the appellants' assertions. As described in the Final MND and in the County staff report, and as discussed further in Finding <u>E.3.A</u> below, the conditionally-approved project contains several measures to minimize potentially adverse impacts to a less than significant level. Therefore, the Commission finds that the contention that the approved project destabilizes dunes, threatens private property, and results in adverse unmitigated impacts raises no substantial issue of conformance of the approved project with the dune stabilization policies of the certified LCP.

<sup>&</sup>lt;sup>8</sup> CZC Section 20.496.040(A)(1)

#### 3. Wetlands and Other Environmentally Sensitive Habitat Areas

The appellants contend that the project as approved does not adequately evaluate or mitigate for what the appellants claim will be significant adverse direct and indirect impacts to: (A) wetlands; and (B) listed species and other environmentally sensitive habitat areas (ESHAs). The appellants claim that the approved project lacks factual information to support a determination that the project will not have significant direct and indirect adverse impacts to sensitive coastal resources, inconsistent with a number of LCP policies which the appellants cite specifically as including (but not limited to) LUP Policies 3.1-8 and 3.1-10. The appellants state the following:

The MND acknowledges takes and incidental takes of several endangered and special status species as a result of construction activities. Yet the benefit of this so-called "restoration" for special status species are [sic] never clearly demonstrated. Road removal is expected to directly take 1.00 acre of endangered Howell's spineflower (11% of the entire population of this species concentrated almost entirely in the 1285 preserve) and 0.23 acres of endangered Menzies wallflower. The MND fails to assess impacts on inland wetlands and vegetation communities that will result from destabilizing the dune system and causing massive erosion by removing the road, invasive plants, and culverts.

#### Contention A: Project Will Cause Migrating Sand to Fill Wetlands

The appellants claim that the removal of the Haul Road, culverts, and invasive species will cause migrating sand to fill wetlands. The appellants specifically cite inconsistencies with LUP Policies 3.1-8<sup>9</sup> and 3.1-10 that require the protection of wetlands, and state in part the following:

Wetlands and vegetated areas containing many special status plants and animals will be the first areas filled with migrating sand according to the project MND. Yet that net loss of species and ESHA is not analyzed...CDPR experts stated during the local appeal (with no factual evidence) that there will be no net change in the area covered by wetlands. Freeman's comparative analysis aerial images in Exhibit 3 refutes that unsupported conjecture, showing dramatic losses of wetlands and vegetated swales over the past dozen years due to unpermitted invasive plant removal and the resulting wind dispersal (erosion) of destabilized soils.

The County staff report for the approved project describes the environmental setting of the project, acknowledging the area as an environmentally sensitive habitat area (ESHA) that supports "wetlands and riparian areas, a rare coastal dune ecosystem, the only remaining coastal fen in California, eight rare natural communities, and eight special plant species." The 1995 MacKerricher General Plan (Appendix C) describes a fen as "an ecological intermediate between a bog and a marsh." The MND describes Inglenook Fen, which occurs between the southernmost and middle dune lobes, as an area of great biological significance. It is the southernmost in a series of fens extending from Alaska south to this area. The MND states that Inglenook Fen "is the only known remaining coastal fen in California, containing a unique assemblage of plants

<sup>&</sup>lt;sup>9</sup> Land Use Plan (LUP) Policy 3.1-8 that was cited by the Appellants as part of their appeal does not apply to the development that is the subject of the appeal. Rather, LUP Policy 3.1-8 directs the County to "include performance standards and mitigating measures necessary to reduce adverse impacts on wetlands and wetland buffer areas from permitted developments" during the implementation phase of the LCP. Mendocino County completed the implementation phase of the LCP when the Commission certified their LCP policies in 1992. Therefore, the performance standards and mitigation measures to reduce impacts on wetlands required by LUP 3.1-8 have been incorporated into the LCP and are reflected in the Mendocino County Coastal Zoning Code (CZC) standards.

and insects representing a relict biotic community from the Pleistocene. Many species growing here are rare or endemic." The County staff report further describes the existing condition of the environmental setting as follows:

Coastal strand and dunes are prominent, naturally dynamic habitats within the Preserve, with the native species, including those listed as endangered, being adapted to the movement of sand and water. The Preserve supports a coastal dune ecosystem that includes extensive areas of wetlands and dune habitat with well-preserved relatively natural dynamic features, and some areas with significantly impaired ecological structure and dynamics. One of the most altered zones of the dunes is the foredune (frontal or seaward dune zone), which has been affected by:

• past construction of a linear haul road and road bed along the naturally dynamic foredune zone;

• past construction of two culverts under the haul road draining wetlands (fens) at artificially stabilized locations, forming artificially incised (downcut) channels, controlling the outlets of extensive wetlands within the Preserve, and modifying their dynamics;

• *extensive establishment of European beachgrass that strongly modifies both the foredune structure and hydrology of the wetland outlets* 

The Mendocino County LCP contains several provisions that ensure the protection and enhancement of coastal wetlands. Mendocino County Coastal Zoning Code (CZC) Section 20.488.010(B) requires in part that the productivity of wetlands and streams shall be protected, preserved, and where feasible, restored. CZC Section 20.488.010(D) requires that wetland buffer areas (the transition areas between wetland and upland habitats) shall be protected, preserved, and where feasible, restored. Several LCP policies (**Appendices D-I**) including LUP Policies 3.1-4 and 3.1-10, and CZC Section 20.496.025 limit the types of development allowable within wetland areas. Section 20.496.025(A)(8) allows "restoration projects which are allowable pursuant to Section 30233(a)(7)[6]<sup>10</sup> of the Coastal Act" in which restoration is the sole purpose of the project. Subsection (a)(7)[6] of Coastal Act Section 30233 ("Diking, filling or dredging; continued movement of sediment and nutrients") specifically authorizes "restoration projects to occur in coastal streams.

The Mendocino County LCP defines wetlands as ESHAs. In addition to limiting the allowable uses in wetlands, the LCP also limits the allowable uses within wetland ESHA buffers to only those uses that are: a) permitted in the adjacent environmentally sensitive habitat area; b) compatible with the continuance of the habitat; and c) compliant with specified standards as described in subsections (1)-(3) of LUP Policy 3.1-7 and 4(a)-(k) of Section 20.496.020.

The County findings demonstrate that the removal of road base, culverts, and invasive species from wetlands is a restoration project, which is an allowable use in wetlands pursuant to LUP Policies 3.1-4 and 3.1-10, and CZC Section 20.496.025. For example, in the August 13, 2013

<sup>&</sup>lt;sup>10</sup> The LCP policies refer to a version of Section 30233(a) of the Coastal Act that has since been amended by the legislature. As amended, the reference in Section 30233(a) "restoration purposes" has been renumbered from 30233(a)(7) to 30233(a)(6)

memorandum prepared in response to the local appeal of the project to the Board of Supervisors (**Exhibit 10**), County staff responded to appellants' concerns regarding significant resource degradation and unmitigated impacts resulting from the approved project in part as follows:

The MND and its supporting documentation use science and expert professional judgment to conclude that the proposed project will not degrade the dune habitat and its associated ESHA. The restoration/rehabilitation project will support the continuance and enhancement of the subject ESHAs. Maintaining the Haul Road and culverts in place, or constructing a new trail in dune habitat or new stream crossings will continue to disrupt and degrade habitat function, including the reduction of habitat, and interruption of ecosystem processes. Therefore removal of the Haul Road is a feasible less environmentally damaging alternative. The following excerpt from the MND explains the environmental benefit of removing the road (MND, pg. 5):

"The partially eroded haul road and culvert system will continue to impair fen wetland hydrology if no action is taken. The culverts are located behind relatively wide (past or current European beachgrass-influenced) fore dunes that temporarily protect them from direct storm wave erosion. Partial storm wave erosion of the rusted metal culverts would result in hazardous and esthetically unacceptable conditions, and may result in persistent artificial influence of wetland outlet hydrology. Partial storm wave erosion of the haul road results in formation of a steep cliff-like dune scarp with an asphalt-armored top that impedes establishment of native dune vegetation (root zone restriction, inhibition of colonization). Active removal of the haul road, culverts, and beachgrass would accelerate recovery of the dune and wetland complex within the Preserve, particularly the critical outlets of the fen wetland systems. The proposed project would remove unnatural features to restore native habitats and to preserve "endangered plant and animal species and their supporting ecosystem".

The mitigation measures proposed have been reviewed by experts in their field and accepted by numerous resource agencies (and have incorporated the mitigation measures into additional required permits), including, but not limited to US Fish & Wildlife Service, CA Dept. of Fish and Wildlife, North Coast Regional Water Quality Control Board, CA State Lands Commission, and Air Quality Management.

Therefore, the approved project is a restoration project, which is an allowable use in wetlands under the policies of the LCP. Other provisions of the LCP wetland policies further limit development within wetlands to activities that do not significantly degrade the wetland habitat.

CZC Section 20.532.100(A)(1)(a) states that no development shall be allowed in an ESHA unless: (a) the resource will not be significantly degraded by proposed development, (b) no feasible, less environmentally damaging alternative exists; and (c) all feasible mitigation measures capable of reducing or eliminating project-related impacts have been adopted. Similarly, CZC Sections 20.496.025(B)(1)(a) and 20.496.035(B)(2) require development in wetland and riparian areas shall be the most feasible, least environmentally damaging alternative.

Regarding whether the permissible use would significantly degrade the habitat, the County found that the approved project would not have significant adverse impacts on wetland habitat. In making this determination, the County relied in part, on the Mitigated Negative Declaration (MND) prepared for the project by State Parks and incorporated by reference into the County's

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findings. The MND determined that the restoration project would have "temporary and thus, a less than significant impact on federally protected or state protected wetlands. The project design is to improve wetland habitat by removing culverts and expand wetland habitat by removing an earthen road prism." The MND includes two "Standard Project Requirements<sup>11</sup>" for wetlands to ensure the potential for impacts are further reduced, and Special Condition No. 1 of the County's approval requires that all mitigation measures incorporated into the Final MND shall be adhered to. Additionally, "Specific Project Requirement" Bio-6b contains provisions for culvert removal work at Fen Creek and Inglenook Creek, including adherence to specifications contained within the Streambed Alteration Agreement authorized by CA Department of Fish and Wildlife, and "slash packing and willow sprigging with native vegetation where appropriate for road crossings and culvert removal areas" to control erosion.

The appellants next contend that the approved project will create another kind of wetland impact, the filling of wetlands from sand that the project will cause to migrate after the removal of stabilizing invasive species and the removal of the Haul Road and its culverted crossing of streams.

The Final MND addresses this concern about sand movement filling existing wetlands as follows:

Comments that raised concerns regarding potential impacts to wetlands, including the Inglenook Fen, incorrectly assumed that the dune and wetland complex of the Natural Preserve is a fixed, unchanging environment and that the wetlands are dependent upon this current fixed environment. As discussed on pages 4, 5, 35, 60, 73, and 90 of the IS/MND, the culverts currently constrict the outlets of the creeks, causing incised, relatively deep channels. Sand movement resulting from the removal of the haul road, culverts, and European beachgrass will not eliminate wetlands in the Natural Preserve, rather some wetland features will be buried, while others will emerge through natural processes. Removal will allow the channel outlets to meander naturally, with wetland vegetation forming where suitable based on hydrology and substrate. This is not an impact that should be mitigated, rather an objective of the project to restore natural processes. Also as explained on pages 98-102 in the IS/MND, Inglenook Fen is a natural feature that formed approximately 6,000 years ago; removal of the culverts, which are modern features, will not impact the fen.

As noted in the Final MND, restoring the natural system may cause changes to the wetlands. Natural dune systems along the coast that have not been invaded by European beachgrass or constrained by man-made facilities such as roads with fixed stream crossing, are dynamic environments, Dunes form, diminish, and migrate within these dynamic environments. As noted in the final MND, sand movement will cause some wetlands to be filled but new wetlands will also be created. The specific changes that will result from restoration of the natural dune system and whether the net amount of wetlands will be greater or smaller than what exists today at any given point in the future cannot be determined. However, restoration of the natural dune

<sup>&</sup>lt;sup>11</sup> Bio-3a requires "integration of Standard Project Requirement HAZ-1" to prevent impacts to water quality from possible pollutants (fuels, vehicle fluids) released from vehicles, and heavy equipment during the project. Bio-3b requires that "all fill from road berm that is currently within the creek channel will be removed from the creek bed and channel unless it is otherwise part of the engineering plans that reestablish native topography.

system will allow natural processes for creating and changing wetlands to once again affect the landscape.

Evidence in the local record does indicate, however, that the wetland fen within the MacKerricher Dunes will likely benefit and expand from culvert removal work and restoration of the creeks. The local record contains a memorandum prepared by coastal ecologist and botanist Peter Baye, Phd, that addresses general dune processes in the area and the effects of removing culverts on the hydrology of the fen. The memo states in applicable part (emphasis added):

Foredunes naturally impound drainages and form dune ponds and fens with choked or intermittent outlets, or no outlets (seeping discharge only) at Manchester Dunes, Point Reyes dunes, and at other locations, as well as at Tenmile (MacKerricher) dunes. Moreover, the foundation of the Haul Road is simply transmissive beach and dune sand, not an impermeable barrier of clay or other non-transmissive fill at the depth of the water table. The culverts of the Haul Road in fact provide artificially stable drainage, even in disrepair. It is likely that elimination of concentrated flows at culverts will allow foredunes to increase intermittent impoundment of fen wetlands, favoring wetland expansion in the reserve; there is no mechanism for removal of the culverts and spontaneous restoration of continuous foredunes to increase drainage of the fen.

Therefore, the evidence in the record supports a finding that the wetland fen will likely expand, resulting in expansion of wetlands at the MacKerricher Dunes.

The MND contains several references to studies and surveys that were utilized as part of the project analysis (Appendix C). The references include but are not limited to: a) Natural Resource Management Plan prepared by CA State Parks in 2007<sup>12</sup>; b) consultations and reports from several coastal ecologists; (c) several memoranda from licensed Engineering Geologists and Specialists at California Geologic Survey; (d) Draft Feasibility Study for the Northern Segment of the MacKerricher Coastal Trail Project prepared by EDAW in 2000; e) 1977 Inglenook Fen, A study and Plan; and f) the MacKerricher State Park General Plan prepared by State Parks in 1995. Many of these studies documented additional survey efforts conducted in association with each publication. The local record also contains aerial imagery and dune processes analysis prepared by State Parks, as well as the memoranda prepared by coastal ecologist and botanist Peter Baye, PhD referred to above, that further documents general dune processes in the area, and the impact of existing culverts on the hydrology of the fen.

Thus, there is a high degree of factual support demonstrating that the proposal to restore the wetland and dune habitats by removing road base, culverts, and invasive species would not significantly degrade these habitats but will instead afford an opportunity for natural dune and wetland processes to recover. The County findings and the local record further establish that the project as approved is the least environmentally damaging, most feasible alternative, and that all feasible mitigation measures capable of reducing or eliminating project-related impacts have been adopted. Therefore, the Commission finds that the appellants' contentions regarding impacts to wetlands resulting from the County's conditional approval of the project do not raise a substantial issue of conformance with the policies of the certified LCP pertaining to the

<sup>&</sup>lt;sup>12</sup> While the document remains in draft form, it contains extensive background data and related baseline data documenting protocol survey history within the Preserve for species such as western snowy plover

protection of coastal wetlands, including but not limited to LUP Policies 3.1-4, 3.1-7, and 3.1-10, and CZC Sections 20.488.010, 20.496.020, 20.496.025, 20.496.030, 20.496.035, and 20.532.100.

#### Contention B: Impacts to Sensitive Plant Species

The appellants claim that both direct impacts to sensitive plant species and indirect impacts to all ESHAs resulting from sand movement and invasive species transport will occur. The appellants contend that the approved invasive species removal will destabilize dunes and compromise seed germination of special status species like Menzies wallflower by overly burying seeds. The appellants further contend that the project as approved does not adequately evaluate or mitigate for what they claim will be significant adverse impacts to listed species and other environmentally sensitive habitat areas (ESHAs), and lacks factual information to support both direct and indirect impacts to sensitive coastal resources. The appellants question the validity of State Parks' calculations, in terms of both the quantity of habitat available following dune rehabilitation efforts, and in terms of the quantity and type of mitigation proposed, and reference Exhibits 2 and 3 (pages 19 and 32 of **Exhibit 11**) of their appeal to support their assertions.

As described above, the environmental setting of the project consists of an environmentally sensitive habitat area (ESHA) that supports eight rare natural communities, eight special plant species, and provides USFWS-designated critical wintering and nesting habitat for the western snowy plover. LUP Policy 3.1-15 requires that dunes shall be preserved and protected as environmentally sensitive habitat areas (ESHAs) for scientific, educational, and passive recreational uses, while some development subject to the provisions of LUP 3.1-15. LUP Policy 3.1-7 and CZC Section 20.496.020 (A)(1) allow for development to be permitted within a buffer area if the development is for a use that is the same as those uses permitted in the adjacent environmentally sensitive habitat area, and if the development complies with specified standards as described in subsections (1)-(3) of LUP Policy 3.1-7 and 4(a)-(k) of Section 20.496.020. CZC Section 20.532.100(A)(1)(a) requires that ESHA resources affected by development will not be significantly degraded by the proposed development.

The LCP policies do not expressly authorize non-resource dependent uses nor any other uses within rare plant ESHA. The fact that the LCP policies do not specifically state what uses are allowed within rare plant ESHA does not mean the policy is intended to relax the restriction of Section 30240(a) of the Coastal Act that limits uses in habitat areas to those dependent on habitat resources. An LCP policy that allowed non-resource dependent uses in rare plant ESHA would be inconsistent with and directly conflict with Section 30240(a). Moreover, the provisions in the LCP concerning permissible development in habitat areas are not incompatible with the restrictions in Section 30240(a). These provisions refer generally to maintaining minimum buffers between development and ESHA, which is not inconsistent with restricting development within rare plant ESHA to resource dependent uses. Therefore, the Commission finds that the Mendocino County LCP policies governing rare plant habitat areas restrict development to resource dependent uses that do not significantly disrupt habitat values.

Regarding whether the approved development significantly degrades the habitat, as described in **Finding E.3.A** above, the County's findings document that dunes in the project area have been affected by: a) the past construction of the haul road and road bed; b) past construction of two culverts under the haul road; and c) extensive establishment of the invasive exotic European beachgrass that modifies the foredune structure, among other impacts. The County staff report states the following:

European beachgrass, a nonnative, invasive plant, has displaced native dune plants and rendered large areas of the dunes unsuitable for many native plant and animal species. European beachgrass alters natural dune processes by forming dense, tall vegetation capable of trapping windblown sand within a relatively narrow zone landward of the beach, and regenerating rapidly after burial by sand. This process results in foredunes of high vegetation density, steepness and elevation immediately behind the beach, compared with broad, mounded semi-open foredune zones formed by native prostrate dune vegetation. European beachgrass also modifies sand deposition patterns around the outlets (mouths seaward of culverts) of the wetlands, affecting the hydrology of the wetlands. Segments of the elevated road berm and European beachgrass occur parallel to the beach, displacing nesting habitat for western snowy plovers (listed as Federally Threatened) and creating an access barrier for fledglings to forage.

The Final MND additionally contains a letter responding to concerns raised by one of the appellants, and states in part that "The Mitigation, Monitoring, and Restoration Plan in Appendix E.2 further details measures to ensure that the endangered plant populations, including Howell's spineflower, will increase following project implementation." In addition to measures for rare plants, the Final MND contains a number of biological project requirements to protect birds (including specific provisions for western snowy plover), amphibians, reptiles, invertebrates, tidewater goby (pre-project surveys and avoidance measures), and fish. The County staff report describes some additional mitigation measures required as part of its conditional project approval as follows:

Asphalt and road base are not representative of natural features of the dune ecosystem and landscape, nor do they facilitate or contribute to the restoration or sustenance of natural environmental processes in the dune ecosystem. While the asphalt surface does not support any plant life, project activities related to its removal are likely to have impacts on adjacent land cover types and individual plant and animal species. These impacts are discussed in the MND in sections on the individual vegetation types and plant and animal species (see pgs 52 -72). Project impacts that are considered potentially significant have been addressed for the purposes of avoidance of, or ecological compensation for those impacts in an appended Project Mitigation, Monitoring, and Restoration Plan (Attachment B). Impacts and mitigation measures for specific plants and animals are also included in Attachment B. These measures are essential to address the full scope of Project-related effects. Nevertheless, the primary goal of removing asphalt and road base, along with other artifacts of human industry in the dune ecosystem, is to restore environmental and physical processes in the Project site in order to rehabilitate habitat for native plants and animals. Adaptive management and a longterm strategy for on-going monitoring and management of the present resources is the intended goal and approach of the mitigation monitoring plan. Special Condition 8 is recommended to require State Parks to submit to Planning any modification and/or finalization of the mitigation monitoring plan and long-term strategy. It is expected that State Parks will continue to responsibly mange [sic] its Preserve long after the proposed project is complete to ensure that invasive species are reduced and eliminated and the ecological function is maintained. Special Condition 1 incorporates all of the mitigation measures as a requirement of this permit.

The County findings for approval and the incorporated MND demonstrate that the approved restoration project including the removal of portions of the Haul Road, culverts, and invasive species is an allowable use in rare plant and dune ESHA and as conditionally approved, all feasible mitigation measures capable of reducing or eliminating project-related impacts have been adopted. Thus, there is a high degree of factual support demonstrating that the proposal to restore the ESHA dune habitats by removing road base, culverts, and invasive species will not degrade these habitats but will instead afford an opportunity for natural dune processes to recover.

Regarding permissible uses in ESHA, CZC Section 20.532.100(A)(1)(a) requires that no development shall be allowed in an ESHA unless: (a) the resource will not be significantly degraded by proposed development, (b) no feasible, less environmentally damaging alternative exists; and (c) all feasible mitigation measures capable of reducing or eliminating project-related impacts have been adopted.

The appellants include several excerpts of various documents in Exhibit 3 of their appeal (page 32 of **Exhibit 11**). One excerpt consists of a portion of a document prepared by Appellant Freeman. Item No. 3 in the excerpt describes the presence of "two environmentally protected plant species that reside in large part only in close proximity to the haul road" and shows two photographs of plants adjacent to the eroded road. Appellant Freeman challenges the lack of a "serious scientific study" due to the presence of the plants, stating "results from the attempted growing of these endangered species is not reported," and concluding that "a significant threat to the existence of the species could occur as a result of the actions proposed in this MND plan." The photos do not depict either of the federally endangered species, nor do they depict any rare species but instead show a native species common to dune environments known as yellow sand verbena (*Abronia umbellata* var. *umbellata*). In the Final MND, State Parks responds to concerns alleging the project will negatively impact Federal and State listed plants in part as follows:

*Comments concerning significant impacts to listed plants incorrectly assumed finite* populations in an unchanging environment. However, coastal dune ecosystems, including their associated plant populations, are dynamic and constantly changing. As explained on page 64 of the IS/MND and in Appendix E.2, the listed plants are adapted to and have evolved under changing environmental conditions. Population numbers, especially those of annual or short-lived perennial dune species, can fluctuate dramatically from year to year, as weather patterns and sand movement affect seed dispersal patterns, seed production, and seedling survival. This is the existing condition of the Ten Mile Dunes. As shown in Appendices A.3 and A.4, the area mapped as occupied by Howell's spineflower within the Natural Preserve in 2001 was 0.41 acres; in 2011 the mapped spineflower area totaled 8.9 acres. Regarding Howell's Spineflower (Chorizanthe howellii), one of the comment letters included unsubstantiated recommendations that the environmental document "state what percentage of seed typically germinates into mature plants", and include "Data to illustrate how many annual generations of plant lifecycle it will take for the post-project population levels to reach their pre-project population level". Again, this recommendation incorrectly assumes finite, unchanging populations from year to year. Another letter incorrectly stated that project "activities will destroy 11% of the endangered spineflower population" (the proportion of area occupied by spineflower in 2011 that occurs within the haul road corridor). As stated in the document on pages 90-91, scientific studies on sea level rise and documented evidence of past

storm surge events show that the long-term viability of the nominal "11%" of the spineflower population in the road alignment is very low (with or without project implementation) because it is located immediately behind an active foredune and shoreline that is actively transgressing landward in a location that in the long-term, is unable to provide stable dune habitat for spineflower. Through this project, State Parks proposes to remove unnatural elements where the listed plants cannot grow, which is on the haul road or within European beachgrass clumps, and to mitigate at a ratio of 8 to 1 to compensate for any potential loss of those plant populations that were mapped in 2011. In addition, this project proposes permanent monitoring and restoration efforts that will extend well beyond the typical 5 year required monitoring period (Appendix E.2), and includes consultation and coordination with the California Department of Fish and Game and the US Fish and Wildlife Service.

The Commission finds that the data contained in the Final MND, combined with the administrative record and supporting documents including those described in **Finding E.3.A** above, demonstrate there is a high degree of factual evidence supporting the County's determination that the approved project is a habitat restoration project that will not significantly disrupt habitat values either adjacent to the Haul Road removal area or elsewhere in the dunes. The County findings for approval and the incorporated MND demonstrate that the approved restoration project including the removal of portions of the Haul Road, culverts, and invasive species is an allowable use in rare plant and dune ESHA and as conditionally approved, all feasible mitigation measures capable of reducing or eliminating project-related impacts have been adopted. The Commission further finds that the appellants' contentions lack factual data to support their assertions. Therefore, the County's approval raises no substantial issue with the policies of the certified LCP.

The Commission finds that the appellants' contentions regarding direct and indirect, unmitigated impacts to rare plant and dune ESHAs resulting from the project as approved raises no substantial issue with the ESHA protection policies of the certified LCP, including but not limited to LUP Policies 3.1-7 and 3.1-15, and CZC Sections 20.496.020 and 20.532.100.

#### **Conclusion**

In conclusion, the Commission finds that the third contention of the appeal, that the approved project will have significant adverse impacts on wetlands and other ESHA does not have a factual basis, whereas there is a high degree of factual support demonstrating the removal of the haul road, culverts, and invasive species will ultimately benefit rare and unique dune habitats. The County's findings demonstrate the approved restoration project is an allowable use in ESHAs (including wetlands, dunes, and rare plant habitats) and ESHA buffer areas in the project area, and is consistent with the restoration goals of CZC Section 20.488.010. The County has further demonstrated in its project approval that the restoration project is the least environmentally damaging, feasible alternative and that all feasible mitigation measures capable of reducing or eliminating project-related impacts have been adopted. Thus, the Commission finds that the County's administrative record, viewed in its entirety, supports its determination that the approved development will protect and maintain the overall quality of the coastal zone environment consistent with the ESHA protection policies of the LCP. Therefore, the Commission finds that the contention of the appeal that the approved project will have

significant adverse impacts on wetlands and other ESHA does not raise a substantial issue of conformance with the approved project and the certified LCP.

#### 4. Archaeological Resources

#### a. Appellants Contentions

The appellants contend that although the approved project will protect archaeological resources from direct impacts associated with construction-related activities, the approved project does not conform with LUP 3.5-10 because "indirect impacts from induced shoreline retreat and stream migration are dismissed." The appellants further claim that, "no consideration is given to indirect impacts from this project. Shoreline retreat and stream migration will be encouraged by project actions, and both of those predictable indirect impacts are very likely to wash away and thus completely destroy several delicate and non-renewable sites concentrated in the near shore area."

#### b. Analysis

As described further in **Finding C** above, the MacKerricher State Park General Plan (CSP, June 1995; <u>Appendix C</u>) and the project MND provide extensive documentation about prehistoric and ethnographic use of the area. The MND includes descriptions of the habitation of the area by Coast Yuki and Northern Pomo tribes prior to the 1850's, with the precise boundaries of the two inhabitants unclear. The MND also describes that the project area has a very high degree of archaeological sensitivity, with fourteen archaeological sites documented within and adjacent to the project area, and "copious others" recorded in other areas of the park. The MND indicates that most of the sites are related to Native American utilization of the area, both prehistorically and historically (Mendocino Indian Reservation era).

LUP Policy 3.5-10 (<u>Appendix H</u>) requires the County to review all development permits to ensure that proposed projects will not adversely affect existing archaeological and paleontological resources. LUP Policy 3.5-10 further requires that: (1) prior to approval of any proposed development within an area of known or probable archaeological or paleontological significance, a field survey must be prepared by a qualified professional to determine the extent of the resource; (2) results of the field survey be transmitted to the State Historical Preservation Officer and Cultural Resource Facility at Sonoma State University for comment; (3) the County shall review proposed projects and incorporate reasonable mitigation measures so the development will not adversely affect existing archaeological/paleontological resources; and (4) the development is subject to any additional requirements imposed by the Mendocino County Archaeological Ordinance.

Additionally, Coastal Zoning Code (CZC) Section 20.532.095 (<u>Appendix H</u>) sets forth findings required for all coastal development permits and includes, in part, that the proposed development will not have any adverse impacts on any known archaeological or paleontological resource.

In a Memorandum dated August 13, 2013 (page 5 of **Exhibit 10**) prepared in response to the local appeal of the project to the Board of Supervisors, County staff responded to the appellants' contentions relating to archaeological resources by stating:

Archaeological and Cultural resources were considered during the MND process (see MND pg 79-83 and including Cultural Mitigation Measures), and in the June 11 Staff Report (pg 18-20) which also includes standard and special conditions of approval regarding protection of archaeological resources. The Mitigation Measures and the issues raised were considered by the County Archaeological Commission (April 10, 2013), which determined that adherence to the mitigation measures and project design related to protection of archaeological resources are adequate. The Final MND contained responses to comments received, and a response from State Parks addressing the issues raised (See letter addressed to Mr. Thad Van Bueren, November 26, 2012 in Attachment [D] – Response to Comments). As proposed, the project will not have adverse impacts on archaeological/cultural resources.

In their Final MND comments, CA State Parks responded to a previous comment letter written by the appellant (page 28 of **Exhibit 10**) and indicates that removal of the Haul Road will help protect archaeological resources by allowing sand to naturally migrate and bury the archaeological resources. State Park's response is as follows:

Results of archaeological testing in 2011 by University of Davis (UCD) establish that construction of the Ten Mile River Railroad and truck road conversion not only resulted in direct impacts to the archaeological resources located within this travel corridor, but more wide spread indirect impacts as well. Apparent at most, if not all of the sites located in the western portion of the Preserve where the road is still present, is substantial site deflation and erosion that continues to adversely impact these resources. The haul road impedes natural processes by restricting sand movement on the west and north sides of the grade. The road acts as a barrier and creates "deflation plains" along the landward side of the road that has resulted in wind-scoured areas level with the water table. Unfortunately, archaeological sites situated in these deflation plains have been adversely impacted with exacerbated deflation, erosion, and water inundation due to lack of sand which normally buffers these deposits. Subsurface testing at some of these sites in 2011 indicates the archaeological deposits are severely deflated and that the deposits have an average depth of a few centimeters. Additionally, the deposits appear to have been redistributed as a thin veneer across the plain and lack data potential. Consequently, these sites or components of these sites no longer retain integrity and are not eligible for inclusion into the National Register of Historic Places (NRHP). Removal of the haul road will substantially diminish and/or halt development of these deflation plains by allowing the sand to move eastward and allowing native dune vegetation to become reestablished.

Additionally, State Parks addressed the appellants' concerns regarding indirect impacts to archaeological resources resulting from induced shoreline retreat and stream migration in part as follows:

Page 90 of the IS/MND describes inundation in the dunes and cites studies pertaining to evidence of recent inundation and of changes expected as a result of sea level rise. Mapping from 2003 and more recent studies in the Ten Mile Dunes, demonstrates that all of the archaeological sites west of the haul road have been inundated at least prior to 2003. These comprehensive field studies also indicate that sites east of the haul road but west of the driftwood line have also been inundated at least prior to 2003. Sites positioned on the east side of the haul road are becoming more exposed as the deflation plains (slacks) become more pronounced and hence, will be increasingly effected by inundation undercurrent conditions. The removal of the haul road will allow sand to move and accumulate into the exaggerated slacks, thus covering some of the exposed sites and decreasing the likelihood of site inundation. In the southwestern areas of the Preserve, where natural dune processes occur because the haul road and beachgrass no longer exist, the foredunes rise gradually from the beach, undulate slightly and are well vegetated with low-lying native plants. Where the haul road and beach grass are absent, waves are dispersed over a broader vegetated surface, rather than channeled and concentrated into deflation plains by unnatural elements.

Additional assertions pertaining to erosion and geologic hazards are discussed in <u>Finding E.2</u> above.

The County staff report acknowledges consultation with the State Historic Preservation Officer in relation to a determination that the Haul Road would be ineligible for listing on the National Register of Historic Places "due to the loss of integrity in addition to not meeting any of the four required criteria for listing." To ensure protection of sensitive cultural resources within the project area, the County staff report references mitigation measures that were incorporated into the Final MND and subsequently into the County's conditional project approval as follows:

The Final MND includes numerous measures to ensure protection and reduction of potential impacts to a less than significant level. Special Condition 1 captures the mitigations as a requirement of this permit. Standard Condition Number 8 is recommended, advising the applicant of the requirements of the County's Archaeological Ordinance (Chapter 22.12 of the Mendocino County Code) in the event that archaeological or cultural materials are unearthed during site preparation or construction activities.

The MND describes that part of the mitigation measures for the site will include implementation of a "Sensitive Resources Avoidance Plan." The MND indicates that, due to the sensitive nature of the information, "the specifics of the Avoidance Plan will be provided to the project manager and other appropriate project personnel but will not be included in this document." State Parks has presented to Coastal Commission staff information that clarifies how they intend to implement the mitigation measures proposed in the MND and as required by the County's Special Condition No. 1. State Parks has clarified that monitoring of archaeological resources will extend beyond the footprint of the road removal and instead focus on the entire project area. State Parks has provided Commission staff a copy of the Avoidance Plan with culturally sensitive information redacted. The Avoidance Plan describes the incorporation of a "Post Rehabilitation Archaeological Site Monitoring Program" as follows:

After removal of the haul road and culverts, an archaeological site monitoring program will be implemented to monitor the sites for any for [sic] indication (evidence0 of post project impacts. This program will include monitoring all sites in the Inglenook Fen-Ten Mile Dunes and conducting a "conditions assessment" to look for increases in erosion, deflation, coastal inundation, etc. as a result of project implementation. Starting immediately after project work is completed; the project area will be monitored every six months for three years. After three years, the project area will be monitored annually for two more years for a total of five years. If during this time an increase in site deflation, erosion, costal inundation or any other potential impact exacerbated by project work is noted, appropriate treatment measures will be implemented to insure impacts are maintained at a less than significant level.

The County's findings demonstrate that: (1) archaeological research and surveys were conducted to identify the extent of cultural resources within and adjacent to the project area; (2)

consultation on survey results occurred with the State Historical Preservation Officer; (3) the County's conditional approval of the project included reasonable mitigation measures to ensure the project would not adversely affect archaeological resources; and (4) the County Archaeological Commission has determined that adherence to the mitigation measures and project design related to protection of archaeological resources are adequate.

The Commission finds that the County findings provide factual evidence to demonstrate how the project as conditioned will not adversely affect existing archaeological and paleontological resources Therefore, the Commission finds that the fourth contention of the appeal that the approved development is inconsistent with protecting archaeological resources raises no substantial issue regarding consistency of the approved development with the policies and standards of the certified LCP, including LUP 3.5-10 and CZC Section 20.532.095.

#### 5. Planning and Locating New Development

Contention A: Inadequate Analysis of Toxic Chemicals in Haul Road and Risks to Public Health

The appellants contend that the approved project does not address or analyze the potential for the presence of toxic chemicals in the fill underlying the haul road, and its potential risk to public health. In their appeal, the appellants state:

The project will remove 25,000 cubic yards of soil, ballast and asphalt. The road was built over the same route used by the unregulated Ten Mile branch railroad built in 1916 and covered by the road in 1949. Creosote treated ties and fence posts laden with toxic preservatives are visible on the surface. Historical records and radar imply they are also buried under the road. Freeman (2013) carefully documents in Exhibit 3 why those soils likely contain toxins such as arsenic, asbestos, petroleum products, copper compounds, and possibly dioxin based on historical evidence, visible surface materials, and discoveries at the mill site in Fort Bragg associated with the railroad and haul road.

In Exhibits 2 and 3 of their appeal (pages 19 and 32 of **Exhibit 11**), the appellants cite circumstances and background information relating to the alleged presence of "treated" railroad ties underlying the haul road, and highlight concerns that the Haul Road and railroad ballast will be removed without any prior testing. In a report presented as Exhibit 3 of the appeal (page 64 of **Exhibit 11**), Appellant Freeman contends that "concern stems from three actions undertaken in the region by Cal/EPA all related to previous operations associated with the Fort Bragg Mill:" a) The use of mill flyash (containing high dioxin concentrations) on farm lands from 1986 onward; b) discovery by Department of Toxic Substance Control (DTSC) of elevated levels of metals, polycyclic aromatic hydrocarbons and dioxin at the CNW railroad (Skunk Train) in Fort Bragg following the burning of creosoted rail ties and improper storage of ties; and c) ongoing cleanup activities associated with dioxin, polycyclic aromatic hydrocarbons, and PCB at the mill site in Fort Bragg.

Land Use Plan (LUP) Policy 3.9-1 requires in part that development be approved in a manner that prevents significant adverse cumulative impacts to coastal resources. Mendocino County Coastal Zoning Code (CZC) Section 20.532.095(A)(4) requires that development will not have any significant adverse impacts on the environment.

In a Memorandum dated August 13, 2013 (page 9 of **Exhibit 10**) prepared in response to the local appeal of the project to the Board of Supervisors, County staff responded to the appellants' contentions alleging an undisclosed health threat and lack of sampling for toxic substances.
County staff referenced pages 95-97 of the MND that addressed hazardous material analysis, and acknowledged that "State Parks has told staff that ground penetrating radar was used and found that the majority of railroad tracks and ties were removed when the railroad alignment was converted to a road in 1949."

State Parks states in their MND that:

There is no known hazardous contamination of the area where the haul road is located, and there is no indication that the project area contains any hazardous waste, debris, or soils. It's possible that wooden structural elements or ties from the original rail line remain within the historic road alignment and make up parts of the road base and creek crossings. These materials may consist of pressure-treated wood, which contains several potentially hazardous materials (e.g., arsenic), or weatherproofed in some manner possibly with creosote, a human carcinogen...

State Parks additionally notes in their MND that the Ten Mile Haul Road is not included on a list of hazardous materials sites (Cortese List) compiled by the California Department of Toxic Substances Control, pursuant to Government Code §65962.5. Coastal Commission staff contacted State Parks staff on October 28, 2013 requesting clarification regarding the relationship between the presence of alleged railroad tie toxins in the area and the materials underlying the Haul Road. In response, State Parks staff provided several documents, including a November 9, 2012 memorandum prepared for State Parks by California Geological Survey (CGS) Senior Engineering Geologist Stephen Reynolds. The memo responds to concerns raised by Mendocino County Air Quality Management District (MCAQMD) that the railroad ballast and fill material associated with the paved road might contain naturally occurring asbestos (NOA), dependent on the base materials used for the railroad base rock and haul road bed. The memo (page 1 of **Exhibit 8**) documents CGS' review of geologic maps, historical documents, and historical aerial photographs to evaluate "whether or not railroad ballast and road base needs could be met locally or had to be imported." The memo states in part that:

Records indicate that between 1895 and 1960 there were 14 documented sites where mining [occurred] for aggregate and construction materials, eight of which were within five miles of the project area (3, 4, 5, 6, 8, 9, and 11). These sites are all located in coastal belt Franciscan Formation, far from potential sources of NOA.

The November 2012 CGS memo concludes that "the data...strongly indicates that materials used for railroad ballast and subsequent road construction were derived locally, well outside the area of concern for naturally occurring asbestos." Similarly, an October 24, 2013<sup>13</sup> memorandum prepared by CGS (page 8 of **Exhibit 8**) used historical information and a site visit to evaluate the potential for presence of treated railroad ties and if present, the potential for leaching of polycyclic aromatic hydrocarbons (PAH) into the railroad ballast and underlying soil. The report concluded that the railroad ties would not have been chemically treated, based in part on construction of similar railroads at that time that used untreated disease-resistant old-growth redwood which would have been readily available and inexpensive in the area. Redwood was

<sup>&</sup>lt;sup>13</sup> Although the County's permit approval has been stayed pending Commission action on the appeal pursuant to Public Resources Code Section 30623, State Parks has continued to prepare the documents required by the County's conditional approval, and in this instance consulted with CGS to address the requirements of Special Condition No. 12.

regularly used for railroad ties until it was later replaced with creosote-soaked Douglas fir. The October 2013 memo concludes that:

The data contained in historical documents pertaining to construction of Ten-Mile River logging railroad and haul road, clearly indicate that the railroad-ties used for the Ten-Mile River spur were not treated. In addition, historic documents clearly state that all ties and rails were removed prior to construction of the road. Thus there cannot be treatedtie derived PAH in ballast or soil.

The appellants have also raised concerns relating to toxins found on other project sites in the vicinity. However, the appellants have not submitted any factual evidence demonstrating a correlation between off-site activities and the subject property. For example, while the use of mill flyash on agricultural lands may have occurred from 1986 onward, the MacKerricher-owned "Laguna Ranch" ceased operation in 1908; the railroad was constructed in 1916; and the Haul Road was constructed in 1949, all prior to the described use of flyash. Assertions relating to past burning of creosote ties at a nearby rail yard and site cleanup at a nearby mill site lack any factual evidence or data connecting such activities to the approve project site.

Contrary to the appellants' assertions, there appears to be a greater environmental risk if the remnant Haul Road is not removed but rather left in its current state. The County staff report documents that a major storm event in 1983 washed away a half-mile portion of the road in the Ten-Mile area. The MND describes that annual storms and high winter tides overtop the road in some areas, and undercut the road base in other areas, resulting in asphalt remnants leaning across the coastal side of the remnant road berm. In its current state, there exists a high degree of risk that remnant asphalt and road base material could wash out to sea, thereby polluting coastal waters inconsistent with LUP Policy 3.1-25<sup>14</sup>.

The Commission finds there is a high degree of factual evidence demonstrating that the Countyapproved project adequately evaluated the materials underlying the Haul Road for the presence of potentially-hazardous compounds. The facts in the record support the conclusion that there is little to no threat of the presence of toxic materials in the substrate underlying the Haul Road. Therefore, the project as conditioned (as discussed further below) will not have any significant adverse impacts on the environment, consistent with the public health and safety policies of the certified LCP, including but not limited to LUP Policy 3.9-1 and CZC Section 20.532.095(A)(4). Therefore, for all of the above reasons, the Commission finds that the contentions of the appeal relating to inadequate analysis of chemicals and risks to public health do not raise a substantial issue of conformance of the project as approved with the certified LCP.

# Contention B: Lack of Plan for Hazardous Waste Disposal

The appellants further contend that the project approval lacks a plan to properly dispose of wood waste material or ballast if it does prove to be hazardous.

The Final MND includes Standard Project Requirement HAZ 2(a) titled, "Hazardous Substances Health and Safety," which states:

CSP will include, in any contract documents or in internal work plan documents, health and safety specifications regarding management of potential hazardous incidents. The

<sup>&</sup>lt;sup>14</sup> LUP Policy 3.1-25 (<u>Appendix F</u>) requires in part that: a) Marine resources shall be maintained, enhanced and, where feasible, restored; and b) the biologic productivity of coastal waters shall be sustained.

specifications will include methods for safe handling, collection, and proper disposal of any contaminated soil and refuse uncovered during the excavation and grading procedures; discuss the proper personal protection during project activities; the use of an exclusion zone necessary to prevent exposure to the public; and the proper disposal procedures for any hazardous substances encountered.

Special Condition No. 1 of the County-approved project required compliance with all measures from the 2012 Final Mitigated Negative Declaration for the project. When the County Board of Supervisors denied the local appeal, it upheld the Coastal Permit Administrator decision to approve CDP 12-2012, subject to modifications to the special conditions. The modifications included a modification to Special Condition No. 1 requiring compliance with the MND "…except as modified by these special conditions." Other modifications to the conditionally-approved permit included the addition of Special Condition No. 12 which requires that:

Prior to commencement of the project, State Parks shall submit a plan which shall be approved by the Department of Planning and Building Services for the removal of all railroad ties that may be embedded in the sections of haul road to be removed; all railroad ties that may be scattered or stockpiled in the project area; and all pressure treated fence posts ("peeler cores"), including cut off and embedded remnants, that formerly delineated the State Parks-Georgia Pacific boundary line. Such plan shall include safe handling and best management practices for the removal, handling, storage, transport and disposal of the material that is protective of public and worker safety and the environment.

As conditionally approved, the project includes measures to mitigate impacts associated with any potential risks of discovering and disposing of hazardous materials. Although the County's permit approval has been stayed pending Commission action on the appeal pursuant to Public Resources Code Section 30623, State Parks has continued to prepare the documents required by the County's conditional approval, and in this instance has consulted with CGS to address the requirements of Special Condition No. 12. Therefore, the Commission finds the appellant's contention that the approved project does not adequately address the proper disposal of potential hazardous waste raise no substantial issue of conformance with the policies of the certified LCP, including but not limited to LUP 3.9-1 and CZC Section 20.532.095(A)(4).

# **Conclusion**

The approved project will not create an adverse precedent for future interpretations of the LCP, and the approved project will not result in significant adverse impacts to coastal resources. Therefore, the Commission finds that the appellants' fifth contention regarding the consistency of the approved project with the certified LCP policies relating to public health and welfare raises no substantial issue.

# 6. California Environmental Quality Act

Mendocino County Coastal Zoning Code (CZC) Section 20.532.040 "Project Review—CEQA" states:

Upon acceptance of an application as complete, the Director or his designee shall complete an environmental review of the project as required by the California

Environmental Quality Act (CEQA), shall study the project for conformance with all applicable requirements of this Chapter. The Director shall refer relevant portions of the completed application to those departments, agencies or individuals who received copies of the application during application check, or other individual/group that the department believes may have relevant authority or expertise. The Director or designee shall prepare a written report and recommendation for action on the application with findings and evidence in support thereof.

(Ord. No. 3785 (part), adopted 1991)

**CZC Section 20.532.095** "Required Findings for All Coastal Development Permits" states in part:

- (A) <u>The granting</u> or modification <u>of any coastal development permit by the</u> <u>approving authority shall be supported by findings which establish that:</u>
  - (1) <u>The proposed development is in conformity with the certified local</u> <u>coastal program; and</u>
  - ••••
  - (4) <u>The proposed development will not have any significant adverse impacts</u> on the environment within the meaning of the California Environmental <u>Quality Act</u>.

### a. Appellants Contentions

The appellants contend that the data used to support State Parks' preparation of a Mitigated Negative Declaration (MND) document was inadequate because it lacks adequate analysis of impacts and sufficient mitigation measures to reduce impacts to a less than significant level. The appellants itemize "gaps in the MND analysis" as including a need for: (1) "analysis of impacts to wetlands, interior dune plant communities, and neighboring properties from planned destabilization of the fore dunes;" (2) "analysis of the extent and location of lands and habitat acreage that is likely to be lost as a result of shoreline retreat induced by deflation of the fore dunes and removal of road and stream crossing fill;" (3) chemical testing of soil samples from road removal areas, coordination with Department of Toxic Substance Control (DTSC), and proper disposal of materials at a suitable hazardous materials facility; (4) analysis of public use, factual evidence to support curtailing public access, and comparison of "impacts of haul road removal on species preservation/recovery or recreation;" and (5) factual evidence demonstrating the benefits of restoration on species habitat.

The appellants further contend that an Environmental Impact Report (EIR) instead of a MND should have been prepared to satisfy the requirements of the California Environmental Quality Act (CEQA) because: (a) there is serious public controversy over the environmental effect of the project; and (b) the project may have a significant effect on the environment. The appellants also

raise questions regarding "unresolved aspects of the federal project approval process<sup>15</sup>," and contend that the MND provided inadequate data to support the County's approval of the project.

# b. Analysis

The Appellants raise concerns regarding the manner in which State Parks processed the project under the California Environmental Quality Act (CEQA). The appellants contend that the MND does not adequately address issues related to impacts to habitat, geologic hazards, the presence of toxic contaminants, and public access. Contentions raised by the appellants that the project as approved does not conform to LCP policies and Coastal Act public access policies that relate to these issues are addressed above. The contention about the adequacy of the CEQA review does not allege an inconsistency of the project as approved with the certified LCP. Rather, the appellants allege that the Mitigated Negative Declaration that was prepared and adopted with the approval of the project is inadequate and does not comply with CEQA. These concerns are not valid grounds for appeal, as the concerns do not relate to conformance of the project as approved with the certified LCP and the public access policies of the Coastal Act. The Commission therefore finds that this contention is not a valid ground for appeal pursuant to Section 30603(b)(1) of the Coastal Act.

# F. CONCLUSION

For the reasons stated above, the Commission finds that there is factual and legal evidence in the record to support the County's approval of a CDP for this project when it found that the project is consistent with the relevant LCP policies and the Coastal Act public access policies. The Commission therefore finds that the appeal raises no substantial issue with respect to the grounds on which it was filed.

<sup>&</sup>lt;sup>15</sup> California Department of Transportation (Caltrans) has applied for a coastal development permit to implement a storm repair project at Seaside Beach (immediately north of the project area for the subject appeal), and has proposed to provide funding to CA State Parks for wetland restoration work within the subject project area at MacKerricher State Park, as mitigation for direct impacts to wetlands that will result from the storm repair project. The Coastal Commission appealed the County's approval of the Caltrans Seaside Beach Storm Repair Project on July 22, 2013 (A-1-MEN-13-0224), and the matter of the appeal has not yet been scheduled before the Commission.

# APPENDIX A

# COMMISSION'S APPEAL JURISDICTION OVER THE PROJECT

On June 11, 2013, the County of Mendocino Coastal Permit Administrator approved Coastal Development Permit (CDP) No. 12-2012 that authorized: (1) the removal of asphalt and gravel base in three segments of the former Georgia Pacific Haul Road, totaling 2.7 miles; (2) stream channel restoration associated with the removal of two road culvert creek crossings along the Haul Road; and (3) the removal of European beachgrass and other nonnative weeds within the project area. The project site is located within a designated "highly scenic area" west of Highway One.

After certification of Local Coastal Programs (LCPs), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits (Coastal Act Section 30603). Section 30603 states that an action taken by a local government on a coastal development permit application may be appealed to the Commission for certain kinds of developments, including developments located within certain geographic appeal areas, such as those located between the sea and the first public road paralleling the sea, or within 300 feet of the inland extent of any beach, or of the mean high tide line of the sea where there is no beach, or within 100 feet of any wetland or stream, or within 300 feet of the top of the seaward face of any coastal bluff, or those located in a sensitive coastal resource area. Furthermore, developments approved by counties may be appealed if they are not designated the "principal permitted use" under the certified LCP. Finally, developments which constitute major public works or major energy facilities may be appealed, whether approved or denied by the city or county. The grounds for an appeal are limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program and, if the development is located between the first public road and the sea, the public access policies set forth in the Coastal Act.

The subject development is appealable to the Commission pursuant to Section 30603 of the Coastal Act because (1) the approved development constitutes a major public works project, and because the approved development is located: (2) within a designated "highly scenic area," which is a type of sensitive coastal resource area; (3) within 100 feet of a wetland or stream; (4) within 300 feet of the inland extent of MacKerricher State Beach; and (5) between the sea and the first public road paralleling the sea.

# 1. <u>Major Public Works Project</u>

The project occurs within MacKerricher State Park, on land owned and managed by CA Department of Parks and Recreation as a publicly financed recreational facility. Section 13012(b) defines "Major Public Works" in part as follows:

Notwithstanding the criteria in (a), "major public works" also means publicly financed recreational facilities that serve, affect, or otherwise impact regional or statewide use of the coast by increasing or decreasing public recreational opportunities or facilities.

The approved development involves the restoration of habitat in a manner that will affect regional and statewide public recreational opportunities at a publically financed recreational facility, MacKerricher State Park. Therefore, the subject development is appealable to the Commission pursuant to Section 30603(a)(5) of the Coastal Act.

# 2. Within a Sensitive Coastal Resource Area

Section 30116 of the Coastal Act defines Sensitive Coastal Resource Areas as follows:

"Sensitive coastal resource areas" means those identifiable and geographically bounded land and water areas within the coastal zone of vital interest and sensitivity. "Sensitive coastal resource areas" include the following:

(a) Special marine and land habitat areas, wetlands, lagoons, and estuaries as mapped and designated in Part 4 of the coastal plan.

(b) Areas possessing significant recreational value.

(c) <u>Highly scenic areas.</u> (emphasis added)

(d) Archaeological sites referenced in the California Coastline and Recreation Plan or as designated by the State Historic Preservation Officer.

(e) Special communities or neighborhoods which are significant visitor destination areas.

(f) Areas that provide existing coastal housing or recreational opportunities for low- and moderate-income persons.

(g) Areas where divisions of land could substantially impair or restrict coastal access.

Section 30502 of the Coastal Act indicates that sensitive coastal resource areas are areas within the coastal zone where the protection of coastal resources and public access requires, in addition to the review and approval of zoning ordinances, the review and approval by the Commission of other implementing actions to protect coastal resources. Sensitive coastal resource areas (SCRAs) can be designated either by the Commission pursuant to Section 30502 of the Coastal Act, or by local government by including such a designation in its Local Coastal Program (LCP).

Section 30502 directs the Commission to designate SCRAs not later than September 1, 1977, pursuant to a report which must contain the following information:

(1) A description of the coastal resources to be protected and the reasons why the area has been designated as a sensitive coastal resource area;

(2) A specific determination that the designated area is of regional or statewide significance;

(3) A specific list of significant adverse impacts that could result from development where zoning regulations alone may not adequately protect coastal resources or access;
(4) A map of the area indicating its size and location.

The Commission did not ultimately designate SCRAs or make recommendations to the Legislature, as contemplated by Section 30502 and 30502.5. Because it did not designate SCRAs, the Commission does not have the authority to require local governments to adopt such additional implementing actions. Nothing in Sections 30502 or 30502.5, however, overrides other provisions in the Coastal Act that assign primary responsibility to local governments for determining the contents of LCPs and that authorize local governments to take actions that are more protective of coastal resources than required by the Coastal Act. Such Coastal Act provisions support the position that the Commission does not have the exclusive authority to designate SCRAs. In 1977, the Attorney General's Office advised the Commission that if the

Commission decided not to designate SCRAs, local government approvals of development located in SCRAs delineated in LCPs would nonetheless be appealable to the Commission.

The ability of local governments to designate SCRAs in LCPs is further supported by the legislative history of changes to Section 30603. In 1982, after the 1978 deadline for the Commission to designate SCRAs, the Legislature amended the provisions of Section 30603 that relate to appeals of development located in SCRAs. (Cal. Stats. 1982, c. 43, sec. 19 (AB 321 - Hannigan)). The Legislature's 1982 revisions to the SCRA appeal process demonstrate that the Commission's decision not to designate SCRAs did not have the effect of preventing local governments from designating SCRAs through the LCP process. If the Commission's decision not to designate Act provisions that relate to SCRAs moot, the Legislature's action in 1982 would have been a futile and meaningless exercise. Instead, by deliberately refining the SCRA appeal process, the Legislature confirmed that local governments continue to have the authority to designate SCRAs.

Although a city or county is not required to designate SCRAs in their LCP, at least four local governments have chosen to do so. The Commission has certified LCP's that contain SCRA designations from the City of Grover Beach (1982), San Luis Obispo County (1987), the City of Dana Point (1989) and the segment of Mendocino County's LCP that covers areas outside of the Town of Mendocino (1992).

Designation of SCRAs in this manner is consistent with the reservation of local authority, under Section 30005, to enact certain regulations more protective of coastal resources than what is required by the Act. As noted above, the Coastal Act does not require local governments to designate SCRAs, but local governments are allowed to designate such areas.

The appeal of Mendocino County Coastal Development Permit No. 12-2012 was accepted by the Commission in part, on the basis that the project site is located in a sensitive coastal resource area designated by Mendocino County and certified by the Commission when the County's LCP was certified in 1992.

The applicable designation of sensitive coastal resource areas was accomplished in the LCP by defining sensitive coastal resource areas within the LCP to include "highly scenic areas," and by mapping specific geographic areas on the certified Land Use Maps as "highly scenic." Chapter 5 of the Mendocino County General Plan Coastal Element (the certified Land Use Plan) and Division II of Title 20, Section 20.308.105(6) of the Mendocino County Coastal Zoning Code (CZC), both define "Sensitive Coastal Resource Areas" to mean "those identifiable and geographically bounded land and water areas within the coastal zone of vital interest and sensitivity." Subparts (c) of these sections include "highly scenic areas." This definition closely parallels the definition of SCRA contained in Section 30116 of the Coastal Act. Mendocino LUP Policy 3.5 defines highly scenic areas to include, in applicable part, "those [areas] identified on the Land Use Maps as they are adopted." Adopted Land Use Map Nos. 10 and 12 designate the area inclusive of the site that is the subject of Mendocino County CDP No. 12-2012 as highly scenic. Therefore, it is clear that by defining sensitive coastal resource areas to include highly scenic areas, and by then mapping designated highly scenic areas on the adopted Land Use Maps, the County intended that highly scenic areas be considered sensitive coastal resource areas.

Section 30603 of the Coastal Act states that "after certification of its local coastal program, an action taken by a local government on a coastal development permit may be appealed to the

Commission..." Included in the list of appealable developments are developments approved within sensitive coastal resource areas. Additionally, Division II of Title 20, Section 20.544.020(B)(6) of the certified Mendocino County Coastal Zoning Code specifically includes developments approved "located in a sensitive coastal resource area" as among the types of developments appealable to the Coastal Commission.

Therefore, for all of the above reasons, the Commission finds that as (1) highly scenic areas are designated and mapped in the certified LCP as a sensitive coastal resource area, and (2) approved development located in a sensitive coastal resource area is specifically included among the types of development appealable to the Commission in the certified LCP, Mendocino County's approval of local CDP No. 12-2012 is appealable to the Commission under Section 30603(a)(3) of the Coastal Act and Section 20.544.020(B)(6) of the certified Mendocino County Coastal Zoning Code.

# 3. <u>Within 100 Feet of a Wetland or Stream</u>

The approved development includes culvert removal from Inglenook and Fen Creeks, and removal of invasive species and haul road remnants from within 100 feet of wetlands. As the approved development is located within 100 feet of wetland and riparian features, the subject development is appealable to the Commission pursuant to Section 30603(a)(2) of the Coastal Act.

# 4. <u>Within 300 Feet of the Inland Extent of a State Beach</u>

The project area is located within coastal dunes between the shoreline of the beach at MacKerricher State Park and west of Highway One. Therefore, the subject development is appealable to the Commission pursuant to Section 30603(a)(2) of the Coastal Act.

# 5. <u>Between the First Public Road and the Sea</u>

The subject property is located between Highway One and the Pacific Ocean. The Post LCP Certification Permit and Appeal Jurisdiction Map for the area adopted by the Commission in May of 1992, designates Highway One as the first public road paralleling the sea. Therefore, as the approved development is located between the first public road paralleling the sea and the sea, the subject development is appealable to the Commission pursuant to Section 30603(a)(1) of the Coastal Act.

The decision of the Coastal Permit Administrator was appealed to Mendocino County Board of Supervisors On June 17, 2013. On August 13, 2013, the Board of Supervisors heard public comment on the item, and continued the hearing to a Special Meeting held on August 26, 2013. At the August 26, 2013 hearing, the Board of Supervisors denied the appeal and upheld the approval of the Coastal Permit Administrator, with further modifications.

The North Coast District Office received the Notice of Final Local Action on September 3, 2013 (**Exhibit 12**). One appeal was filed with the Commission's North Coast District Office on September 13, 2013 from the following individuals: Thad M. Van Bueren; Stanley E. Anderson; and Eric and Deborah Freeman (**Exhibit No. 11**). The appeal was filed in a timely manner, within 10 working days of receipt by the Commission of the County's Notice of Final Action.

## APPENDIX B

#### **DETAILED PROJECT DESCRIPTION**

Note: **<u>Finding D</u>** (Project Description) presents a portion of the project description as presented in the County's findings for approval of the project. This appendix contains another part of the County findings for the project and provides a more detailed description of the project elements described in the Project Description finding of this report.

The following represents additional details of the proposed work excerpted (and in some places summarized by staff) from the MND (pgs 6-10).

1. Road Removal.

The proposed road removal is divided into three segments, or portions. Portion 1, the southernmost remnant beginning 0.81 miles (1.3 km) north of the Preserve's southern boundary near Ward Avenue; Portion 2, beginning 0.59 miles (0.95 km) south of Fen Creek; and Portion 3, beginning 0.41 miles (0.66 km) south of Fen Creek and continuing largely intact to the Preserve boundary to the northeast. Two culverts will be removed along Portion 3 at Fen Creek and Inglenook Creek. In general, the project proposes to remove the entire length of the haul road including remnant asphalt surface and underlying road base within the Preserve's dune system, except where removal would harm sensitive resources.

Portion 1 stretches about 720 feet (220 m) in length above the coastal strand. It is disconnected from the existing haul road to the north and south. The portion sits atop foredunes, and annual high winter tides further undercut the portion. Segments of the remaining asphalt are unstable and perched above an actively changing beach/coastal strand. Asphalt segments that have broken off lean against the coastal side of the elevated road berm and are carried to sea by high waves during storm events. Access to Portion 1 would require that project equipment and vehicles travel across wet sand below the high tide line to approach from the coastal side. State Parks staff will conduct daily project area surveys for sensitive species prior to allowing vehicle access on the beach.

Portion 2 is a 262-feet (80 m) segment above the coastal strand approximately 200 feet (61 m) NNE (up the coast) from Portion 1. This portion is also isolated from other road portions without access by the existing haul road. Portion 2 sits atop foredunes and annual high winter tides further undercut it. Large segments of asphalt are leaning against the coastal side of the remnant road berm. Access to Portion 2 will require project equipment and vehicles to travel across wet sand below the high tide line to approach from the coastal side. Similar to requirements for Portion 1, State Parks staff will conduct daily project area surveys for sensitive species prior to allowing [construction] vehicle access on the beach.

Portion 3 is the largest portion of road to be removed. A little under 2.5 miles (4 km), it extends from approximately 755 feet (230 m) NNE (up the coast) from Portion 2 to the northern end of the haul road at the Preserve boundary. The haul road then continues on adjacent private property, where it will not be treated as

part of this project. The road in Portion 3 angles slightly back from the coastal strand, and crosses Fen Creek and Inglenook Creek. This portion can be accessed from the existing haul road in its entirety and is mostly intact with the road base still in place. In numerous places, windblown sand has covered the road to a depth of several feet. Treatment of Portion 3 will include sand removal from the road surface to facilitate vehicle and equipment access as well as asphalt and road base removal using heavy equipment, except in those areas identified to avoid sensitive resources. The stockpiled sand, with associated plant materials and native seed, will be moved back to replace the former road.

## 2. <u>Creek Restoration</u>

Fen Creek is currently channeled to flow beneath the Haul Road through a culvert. Where Inglenook Creek passes under the road, concrete riprap is visible below the western side of the road. Inglenook Creek may be passing through an unseen culvert below the riprap or simply seeping through the structure and partially blocked culvert. Channel restoration for both creeks would include excavating the fill material and pulling out culvert structures to return the channel to a more natural state, and allowing natural processes to establish the channel configurations. Native vegetation will become reestablished where suitable through natural regeneration, or through a combination of natural regeneration augmented with the installation of cuttings and/or direct seeding. All non-ballast materials and structures will be transported offsite for disposal [at a permitted facility] and reused or recycled if possible.

### 3. <u>Invasive Species Treatment</u>

For the proposed project, European beachgrass throughout the Preserve will be removed with hand labor. Primary treatment areas include 15 acres of European beachgrass that have not previously been treated and 38 acres of European beachgrass that will be retreated to gain optimal control. Since 2007, the original cover of 95 acres of European beachgrass has been reduced by approximately 60%; the retreatment areas are contained within the remaining 40%. A secondary treatment area consists of 7 acres (2.8 ha) of European beachgrass growing within an eastern area of the Preserve. Removal of beachgrass in this secondary area will be undertaken through a longterm program that first includes the reestablishment of native trees (pines) to regenerate former areas of dune forest.

#### 4. <u>Construction Activity and Access</u>

State Parks estimates that the total volume of materials to be removed is approximately 25,000 cubic yards (19,114 cubic meters). Materials removed during the project may be temporarily stockpiled within the project area on areas selected to avoid sensitive resources. Materials such as concrete, asphalt, road base and metal culverts would be recycled or reused if possible. The remainder may be hauled approximately 20 miles (32 km) south to the old quarry site on State Parks property at Big River to be used for future park projects, or to a second disposal site has been identified that is approximately 5 miles from the project area, and located on private property within the Ten Mile watershed. The alternative disposal site consists of ranch and timber roads that are in need of surface rocking. A Non-industrial timber management plan (1-94NTMP-002 MEN) is in place to address the environmental requirements associated with rocking the roads.

At the southern end of the Preserve, and for nearly one mile north of the Ward Avenue access, the Haul Road has been completely washed out and no longer exists as a roadway. Heavy equipment necessary for the removal of the road cannot negotiate the existing footpath from the bluffs to the beach. The narrow path is also a popular access point for recreationists. Vehicle traffic on the beach or through the adjacent dune system in this area would cause negative impacts to federally listed plant and wildlife species. South of Fen Creek the road becomes severely eroded and is broken into two disconnected portions. However, the road is intact in the northern portion of the Preserve, although some segments are covered in loose sand. Vehicle access is available to the project site from a gated road located near the Ten Mile River Bridge. Due to the lack of access at the southern end near Ward Ave, all vehicle and equipment access to the work site would be from the north near the Ten Mile River Bridge, making use of the existing roadway to drive equipment as far south as possible. Where the roadway ends, a temporary ramp made of natural rock material may be used to move vehicles from the road berm edge to wet sand on the beach below in order to reach stranded remnants of the old haul road at the southern end of the Preserve. Road removal work will begin at the southern portion of the Preserve, with vehicles returning to the road where it is still intact to haul out materials as the project progresses northward.

If equipment operates 5 days per week, State Parks estimates that removal of the road and the hauling of materials from the stockpile area to disposal sites will take approximately 45 working days, or 9 weeks. Delivery of a portion of those materials to the Big River quarry site would take approximately 21 working days, or 4 weeks.

# APPENDIX C: SUBSTANTIVE FILE DOCUMENTS

California State Parks.1995. MacKerricher State Park General Plan. June1995.

- -----. July 2012. Initial Study/Mitigated Negative Declaration. MacKerricher State Park Dune Rehabilitation Project. Accessible online at: <u>http://www.co.mendocino.ca.us/planning/pdf/current/boards/REVISEDmackerricherdunerehabili</u> <u>tationmnd.pdf</u>
- -----. December 2012. Final Mitigated Negative Declaration. MacKerricher State Park Dune Rehabilitation Project. Accessible online at: <u>http://www.parks.ca.gov/pages/980/files/final%20addendum%20-</u> <u>%20mackerricher%20dune%20rehabilitation%20mnd%20with%20signature.pdf</u>
- ----- December 2012. Final Mitigated Negative Declaration: Responses to Comments. MacKerricher State Park Dune Rehabilitation Project. Accessible online at: <u>http://www.parks.ca.gov/pages/980/files/responses%20to%20comments%2011%2030%20</u> <u>12.pdf</u>
- -----. December 2012. Final Mitigated Negative Declaration: Final Mitigation Monitoring Reporting Program (MMRP). MacKerricher State Park Dune Rehabilitation Project. Accessible online at: <u>http://www.parks.ca.gov/pages/980/files/MMRP%20-</u> %20MacKerricher%20Dune%20Rehabilitation%20-%20final%20corrected.pdf

Mendocino County Local Coastal Program

# Appendix D Coastal Act and Mendocino County LCP Policies Regarding Public Access

#### Coastal Act Section 30001.5 states in part the following:

The legislature further finds and declares that the basic goals of the state for the coastal zone are to: . . .

(c) Maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resources conservation principles and constitutionally protected rights of private property owners.

Coastal Act Sections 30210, 30211, and 30212 require the provision of maximum public access opportunities, with limited exceptions.

#### Coastal Act Section 30210 states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

#### Coastal Act Section 30211 states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

#### LUP Policy 3.6-27 states the following:

No development shall be approved on a site which will conflict with easements acquired by the public at large by court decree. Where evidence of historic public use indicates the potential for the existence of prescriptive rights, but such rights have not been judicially determined, the County shall apply research methods described in the Attorney General's "Manual on Implied Dedication and Prescriptive Rights". Where such research indicates the potential existence of prescriptive rights, an access easement shall be required as a condition of permit approval. Development may be sited on the area of historic public use only if: (1) no development of the parcel would otherwise be possible, or (2) proposed development could not otherwise be sited in a manner which minimizes risks to life and property, or (3) such siting is necessary for consistency with the policies of this plan concerning visual resources, special communities, and archaeological resources. When development must be sited on the area of historic public use an equivalent easement providing access to the same area shall be provided on the site. Coastal Act Section 30212 states in applicable part:

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

(1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,

(2) adequate access exists nearby, or,

(3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

**LUP Policy 3.6-28** states the following:

New development on parcels containing the accessways identified on the land use maps shall include an irrevocable offer to dedicate an easement, as required by other policies in this Chapter, for public use. Such offers shall run for a period of 21 years and shall be to grant and convey to the people of the State of California an easement for access over and across the offeror's property.

**LUP Policy 3.1-15** states in applicable part (emphasis added):

Dunes shall be preserved and protected as Environmentally sensitive habitats for scientific, educational and passive recreational uses. Vehicle traffic shall be prohibited. Where public access through dunes is permitted, well-defined footpaths or other means of directing use and minimizing adverse impacts shall be developed and used.

Section 20.496.040 of the Mendocino County Coastal Zoning Code states:

(A) Development and activities permitted in dunes shall be limited to the following:

(1) Scientific, educational and passive recreational uses.

(2) One single-family dwelling where adequate access, water and sewage disposal capacity exist consistent with applicable Coastal Element policies and development standards of this division.

(3) Removal of sand, construction of fences or walls to impede sand movement and planting of vegetation for dune stabilization where necessary to protect existing structures. These projects shall be subject to provisions regarding sand extraction and shall be processed under conditional use permit procedures.

(4) Footpaths to direct use and minimize adverse impacts where public access is permitted.

The narrative of Section 3.6 of the Land Use Plan, "Trail/Bikeway System" states in part the following:

The Land Use Maps show the coastal trail along Highway 1 and Usal Road. It includes all trails in the County's previously adopted trails element and adds numerous short trails to shoreline access points and several longer trails in State Parks. Table 3.6-1 lists trails designated. (see Appendix 13 for Table 3.6-1)

The Narrative contained in Section 4.2 includes the following:

## Seaside Creek to Pudding Creek Trail

Location: <u>Extending along shoreline from Seaside Creek-Ten Mile River south to</u> <u>Pudding Creek.</u>

Ownership: Mostly public (MacKerricher State Park); private at Ten Mile River mouth. The beach parcel adjoining Ocean Meadows subdivision appears to have been retained by the subdivider; however, a walkway 15 feet wide from the top of the bluff has been improved and dedicated to public use. Owners of four lots (Dorn, Perkins, Miller and Aurswald) have recorded offers of dedication of 1/31 interest in the beach parcel and access along the west property line to the toe of the bluff. See above for ownership at Seaside Creek.

Potential Development: <u>Hiking and equestrian trail following beach for 8 miles. Usable</u> from Seaside Creek in summer and from Ten Mile Bridge and Pudding Creek year round. <u>Alternative coastal trail for non-vehicular use.</u>

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Because of the sometimes hazardous conditions occasioned by tidal action and stream conditions at the mouth of Ten Mile River, the coastal trail in this area shall be segmented, rather than indicated as a continuous trail system. One segment shall extend from Seaside Creek Beach south to the northern bank of Ten Mile River. <u>Another segment shall extend from the south side of Ten Mile River along the shoreline of MacKerricher State Park to Pudding Creek.</u>

# MacKerricher State Park (Northern portion) (Inglenook Grange Trail)

The park is approximately 8 miles long and falls into two planning areas. Funded acquisition could add about 800 acres more or less to the park in the Ten Mile Dunes and Inglenook Fen areas.

Location: South bank of Ten Mile River at Bridge (see discussion above under Ten Mile River Access).

Location: Inglenook Grange.

Ownership: Private and public.

Potential Development: Parking location for limited scientific access to Inglenook Fen.

LUP Policy 3.6-21 states (emphasis added):

The County of Mendocino coastal trail shall be integrated with the coastal trails in the cities of Fort Bragg and Point Arena, and with Humboldt County to the north and Sonoma County to the south so as to provide a continuously identifiable trail along the Mendocino County coast.

Coastal Act Section 30214 states:

(a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:

(1) Topographic and geologic site characteristics.

(2) The capacity of the site to sustain use and at what level of intensity.

(3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.

(4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.

(b) It is the intent of the Legislature that the public access policies of this article be carried out in a reasonable manner that considers the equities and that balances the rights of the individual property owner with the public's constitutional right of access pursuant to <u>Section 4 of Article X of the California Constitution</u>. Nothing in this section or any amendment thereto shall be construed as a limitation on the rights guaranteed to the public under <u>Section 4 of Article X of the California Constitution</u>.

(c) In carrying out the public access policies of this article, the commission and any other responsible public agency shall consider and encourage the utilization of innovative access management techniques, including, but not limited to, agreements with private organizations which would minimize management costs and encourage the use of volunteer programs.

(Amended by: Ch. 919, Stats. 1979; Ch. 285, Stats. 1991.)

LUP Policy 3.6-25 states:

Public access policies shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:

• topographic and geologic site characteristics;

• capacity of the site to sustain use and at what level of intensity;

• fragility of natural resource areas and proximity to residential uses;

• need to provide for management of the access;

• balance between the rights of individual property owners and the public's constitutional rights of access.

LUP Policy 3.6-26 states:

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

Section 20.528.045 of the Mendocino County Coastal Zoning Code states:

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

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

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

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

(D) Set forth provisions for protecting the accessway from vandalism and/or improper use (e.g., guarded gate, security patrol, hours of operation or period/seasons of closure and fees, if any).

(Ord. No. 3785 (part), adopted 1991)

LUP Policy 4.2-19 states (emphasis added):

The Department of Parks and Recreation shall be requested to prepare a General Plan for MacKerricher State Park that provides access to Ten Mile River and Inglenook Fen at designated locations and subject to conditions necessary for preservation of the natural environment of the park. Off-road vehicles shall be excluded. A parking area shall be signed and improved by DPR utilizing the existing widened Caltrans right-of-way located on the west side of Highway 1 several hundred feet south of the Ten Mile River bridge. A trail system shall be developed by DPR, in conjunction with Caltrans and private property owners, to connect this parking area via an existing trail entrance which is located at the southwest corner of the bridge. A fenced trail and a marked, at-grade crossing of the Georgia-Pacific haul road shall connect with the DPR lands on the south bank of Ten Mile River.

Limited access for scientific study of the Inglenook Fen and Sand Hill Lake area shall be provided immediately adjacent to Highway 1 in the vicinity of the Grange Hall upon property to be acquired by the Department of Parks and Recreation.

## LUP Policy 4.2-20 states (emphasis added):

The Land Use Maps indicate that several parcels owned by the Bureau of Land Management are located in the area between Ten Mile River and Sandhill Lake and Inglenook Fen. These lands should be transferred to the California Department of Parks and Recreation. These lands should be incorporated into the existing holding of the adjoining MacKerricher State Park. <u>The area shall be managed as a natural habitat area</u> <u>in conjunction with passive recreational uses and dunes stabilization program</u>.

LUP Policy 4.2-21 states (emphasis added):

<u>The Georgia-Pacific Corporation haul road, under a special management agreement</u> <u>with the California Department of Parks and Recreation, presently provides weekend and</u> <u>holiday vehicular access to the long stretch of public beaches which extend from Fort</u> <u>Bragg north to Ten Mile River. This private roadway, which travels through the entire</u> <u>length of the MacKerricher State Park, should be acquired by DPR and incorporated into</u> <u>its management plan for the park, if at any time during the life of the Local Coastal Plan</u> the property owner desires to sell, trade or surrender this property.

# Appendix E Mendocino County LCP Policies Regarding Geologic Hazards

Section 3.4 of the Land Use Plan, "Definitions" includes in part the following:

Geologic hazards are defined by the LCP Manual to include the following:

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- Tsunami (seismic sea wave) runup areas identified on U.S. Army Corps of Engineers 100-year recurrence maps, by other scientific orhistoric studies, and other known areas of tsunami risk;...
- Beach areas subject to erosion; and...

Section 3.4 of the Land Use Plan, "Hazards Issues" includes in part the following narrative (emphasis added):

... The Mendocino coast sustained damage totalling \$1.5 million from a tsunami generated by the 1964 Alaskan earthquake. The entire exposed coast of Mendocino County is subject to tsunami impact; particularly vulnerable areas include the area between Ten Mile River and Pudding Creek, Noyo Harbor, Albion and Manchester Beach to Iverson Point, including Point Arena. The only secure means of protection from tsunami inundation is avoidance of construction in susceptible areas.

**Erosion**. <u>Beach erosion by wind and waves and bluff erosion by waves, surface runoff,</u> and landslides are continuing occurrences. These processes cause coastal retreat, <u>although their impact varies in different areas</u>. Beaches protect dunes and bluffs, so the reduction of beach area increases the erosion rate of the dunes or bluffs. Runoff and human activities also can increase the rate of cliff retreat. <u>Local geology rather than the littoral processes determine the amount of potential erosion</u>. Building setbacks necessary to protect development along the coast should be based on the specific characteristics of the site...

# LUP Policy 3.4-1 states:

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

LUP Policy 3.4-2 states:

The County shall specify the content of the geologic site investigation report required above. The specific requirements will be based upon the land use and building type as well as by the type and intensity of potential hazards. These site investigation requirements are detailed in Appendix 3.

Section 20.500.015 of the Coastal Zoning Code states:

# (A) Determination of Hazard Areas.

(1) **Preliminary Investigation.** The Coastal Permit Administrator shall review all applications for Coastal Development Permits to determine threats from and impacts on geologic hazards.

(2) Geologic Investigation and Report. In areas of known or potential geologic hazards such as shoreline and blufftop lots and areas delineated on the hazard maps, a geologic investigation and report, prior to development approval, shall be required. The report shall be prepared by a licensed engineering geologist or registered civil engineer pursuant to the site investigation requirements in <u>Chapter 20.532</u>.

(B) Mitigation Required. Where mitigation measures are determined to be necessary, the foundation, construction and earthwork shall be supervised and certified by a licensed engineering geologist or a registered civil engineer with soil analysis expertise who shall certify that the required mitigation measures are incorporated into the development. (Ord. No. 3785 (part), adopted 1991)

LUP Policy 3.4-12 states the following (<u>emphasis added</u>):

Seawalls, breakwaters, revetments, groins, harbor channels and other structures altering natural shoreline processes or retaining walls shall not be permitted unless judged necessary for the protection of existing development or public beaches or coastal dependent uses. Allowed developments shall be processed as conditional uses, following full environmental geologic and engineering review. This review shall include site-specific information pertaining to seasonal storms, tidal surges, tsunami runups, littoral drift, sand accretion and beach and bluff face erosion. In each case, a determination shall be made that no feasible less environmentally damaging alternative is available and that the structure has been designed to eliminate or mitigate adverse impacts upon local shoreline sand supply and to minimize other adverse environmental effects. The design and construction of allowed protective structures shall respect natural landforms, shall provide for lateral beach access, and shall minimize visual impacts through all available means. LUP Policy 3.1-16 states (emphasis added):

<u>All dune landowners whose property is subject to dune encroachment shall be allowed to</u> take reasonable actions which are deemed necessary to protect existing structures after obtaining a Coastal Development Permit.

Such actions may include removal of sand, construction of fences or walls to impede sand movement, and planting of vegetation for dune stabilization. These projects shall be subject to provisions regarding sand extraction, and shall be processed under conditional use procedures. Appropriate public agencies that either own large portions of the dunes or that can provide soil conservation advice and assistance should be invited to participate in necessary dune stabilization projects.

Section 20.496.040 of the Mendocino County Coastal Zoning Code states in applicable part (emphasis added):

(A) Development and activities permitted in dunes shall be limited to the following:

(1) Scientific, educational and passive recreational uses.

(2) One single-family dwelling where adequate access, water and sewage disposal capacity exist consistent with applicable Coastal Element policies and development standards of this division.

(3) <u>Removal of sand, construction of fences or walls to impede sand movement</u> and planting of vegetation for dune stabilization where necessary to protect existing structures. These projects shall be subject to provisions regarding sand extraction and shall be processed under conditional use permit procedures.

(4) Footpaths to direct use and minimize adverse impacts where public access is permitted.

Mendocino County Coastal Zoning Code (CZC) **Section 20.500.010** states the following (<u>emphasis added</u>) (emphasis added):

(A) The purpose of this section is to insure that <u>development in Mendocino</u> <u>County's Coastal Zone shall</u>:

(1) <u>Minimize risk to life and property in areas of high geologic</u>, flood and fire <u>hazard</u>;

(2) Assure structural integrity and stability; and

(3) <u>Neither create nor contribute significantly to erosion, geologic</u> <u>instability or destruction of the site or surrounding areas, nor in any way</u> require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. (Ord. No. 3785 (part), adopted 1991)

Sec. 20.500.020, "Geologic Hazards - Siting and Land Use Restrictions," states in applicable part (emphasis added):

•••

(C) **Tsunami.** In tsunami inundation areas, as illustrated on resource maps or land use maps, only harbor development and related uses shall be allowed. These uses shall be allowed only if a tsunami warning plan has been developed.

•••

# (E) Erosion.

(1) Seawalls, breakwaters, revetments, groins, harbor channels and other structures altering natural shoreline processes or retaining walls shall not be permitted unless judged necessary for the protection of existing development, public beaches or coastal dependent uses. <u>Environmental geologic and engineering review shall include site-specific information pertaining to seasonal storms, tidal surges, tsunami runups, littoral drift, sand accretion and beach and bluff face erosion. In each case, a determination shall be made that no feasible less environmentally damaging alternative is available and that the structure has been designed to eliminate or mitigate adverse impacts upon local shoreline sand supply and to minimize other significant adverse environmental effects.</u>

# Appendix F Mendocino County LCP Policies Regarding Grading, Erosion, and Stormwater Runoff

[Emphases added]

### 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.

**Mendocino County Coastal Zoning Code (CZC) Section 20.492.005** describes the purpose and applicability of Chapter 20.492 (Grading, Erosion, and Runoff) and states (emphasis added):

The approving authority shall review all permit applications for coastal developments to determine the extent of project related impacts due to grading, erosion and runoff. The approving authority shall determine the extent to which the following standards should apply to specific projects, and the extent to which additional studies and/or mitigation are required, specifically development projects within Development Limitations Combining Districts.

(Ord. No. 3785 (part), adopted 1991)

LUP Policy 3.1-15 states (emphasis added):

Dunes shall be preserved and protected as Environmentally sensitive habitats for scientific, educational and passive recreational uses. Vehicle traffic shall be prohibited. Where public access through dunes is permitted, well-defined footpaths or other means of directing use and minimizing adverse impacts shall be developed and used.

<u>New development on dune parcels shall</u> be located in the least environmental damaging location and <u>shall minimize the removal of natural vegetation and alteration of natural</u> <u>landforms.</u> No new parcels shall be created entirely within sand dune habitat. One housing unit shall be authorized on every legal parcel existing on the date of adoption of this plan, provided that adequate access, water, and sewage disposal capacity exists and that the proposed development is consistent with all other applicable policies of this Coastal Element and meets all applicable health standards.

CZC Section 20.492.010 sets grading standards and states (emphasis added):

(A) Grading shall not significantly disrupt natural drainage patterns and shall not significantly increase volumes of surface runoff unless adequate measures are taken to provide for the increase in surface runoff.

(B) Development shall be planned to fit the topography, soils, geology, hydrology, and other conditions existing on the site so that grading is kept to an absolute minimum.

(C) <u>Essential grading shall complement the natural land forms</u>. At the intersection of a manufactured cut or fill slope and a natural slope, a gradual transition or rounding of contours shall be provided.

(D) The cut face of earth excavations and fills shall not be steeper than the safe angle of repose for materials encountered. Where consistent with the recommendations of a soils engineer or engineering geologist, a variety of slope ratios shall be applied to any cut or fill slope in excess of two hundred, (200) feet in length or ten (10) feet in height. For individually developed lots, a variety of slope ratios shall be applied to all cut or fill slopes when a building pad area exceeds four thousand five hundred (4,500) square feet, or when the total graded area of the lot exceeds nine thousand (9,000) square feet. The steepest permissible slope ratio shall be two to one (2:1), corresponding to a fifty (50) percent slope.

(E) The permanently exposed faces of earth cuts and fills shall be stabilized and revegetated, or otherwise protected from erosion.

(F) <u>Adjoining property shall be protected from excavation and filling operations and</u> <u>potential soil erosion.</u>

(G) <u>The area of soil to be disturbed at any one time and the duration of its exposure shall</u> <u>be limited. Erosion and sediment control measures shall be installed as soon as possible</u> <u>following the disturbance of the soils.</u> Construction equipment shall be limited to the actual area to be disturbed according to the approved development plans.

(Ord. No. 3785 (part), adopted 1991)

CZC Section 20.492.015 sets erosion control standards and states in part (emphasis added):

(A) <u>The erosion rate shall not exceed the natural or existing level before development.</u>

(B) Existing vegetation shall be maintained on the construction site to the maximum extent feasible. Trees shall be protected from damage by proper grading techniques.

(C) Areas of disturbed soil shall be reseeded and covered with vegetation as soon as possible after disturbance, but no less than one hundred (100) percent coverage in ninety (90) days after seeding; mulches may be used to cover ground areas temporarily. In environmentally sensitive habitat areas, the revegetation shall be achieved with native vegetation...

(D) Mechanical or vegetative techniques to control erosion may be used where possible or necessary providing that they are fully discussed in the approved development plan.

(E) To control erosion, development shall not be allowed on slopes over thirty (30) percent unless adequate evidence from a registered civil engineer or recognized authority is given that no increase in erosion will occur...

CZC Section 20.492.025 sets runoff standards and states in applicable part (emphasis added):

(A) Water flows in excess of natural flows resulting from project development shall be mitigated...

(C) The acceptability of alternative methods of storm water retention shall be based on appropriate engineering studies. Control methods to regulate the rate of

storm water discharge that may be acceptable include retention of water on level surfaces, the use of grass areas, underground storage, and oversized storm drains with restricted outlets or energy disapators [sic].

(D) Retention facilities and drainage structures shall, where possible, use natural topography and natural vegetation. In other situations, planted trees and vegetation such as shrubs and permanent ground cover shall be maintained by the owner.

(E) Provisions shall be made to infiltrate and/or safely conduct surface water to storm drains or suitable watercourses and to prevent surface runoff from damaging faces of cut and fill slopes...

(*H*) A combination of storage and <u>controlled release of storm water runoff shall</u> <u>be required for all development and construction that drains into wetlands.</u>

(I) <u>The release rate of storm water from all developments that drains into</u> wetlands shall not exceed the rate of storm water runoff from the area in its natural or undeveloped state for all intensities and durations of rainfall. The carrying capacity of the channel directly downstream must be considered in determining the amount of the release. ...

(Ord. No. 3785 (part), adopted 1991; Ord. 4083 (part), adopted 2002.)

# Appendix G Mendocino County LCP Policies Regarding Environmentally Sensitive Habitat Areas (Emphasis added)

## Summary of Applicable LCP Provisions

Environmentally Sensitive Habitat Areas (ESHA) are defined in **Section 3.1** of the Mendocino County Land Use Plan (LUP) 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 be easily disturbed or degraded by human activities and developments.

**Coastal Zoning Code (CZC) Section 20.496.010** *"Environmentally Sensitive Habitat and other Resource Areas—Purpose"* states the following (<u>emphasis added</u>):

...Environmentally Sensitive Habitat Areas (ESHA's) include: anadromous fish streams, sand dunes, rookeries and marine mammal haul-out areas, wetlands, riparian areas, areas of pygmy vegetation which contain species of rare or endangered plants and habitats of rare and endangered plants and animals.

Section 3.1 of the Land Use Plan, "Definitions" includes the following (emphasis added):

**Dunes.** Sand formed in hills or ridges by the wind and sometimes stabilized by vegetation. <u>Dunes are distinct ecosystems made up of various community types</u>, ranging from open unvegetated sand hills to stabilized dune forests, <u>that frequently contain rare</u>, <u>endangered</u>, <u>protected</u>, <u>or unusual plant and animal species</u>. <u>This highly specialized</u> <u>habitat can be extremely unstable</u>, <u>sensitive to the continuous interplay of surf</u>, <u>sand</u>, <u>and</u> <u>wind</u>.

LUP Policy 3.1-15 states (emphasis added):

Dunes shall be preserved and protected as Environmentally sensitive habitats for scientific, educational and passive recreational uses. Vehicle traffic shall be prohibited. Where public access through dunes is permitted, well-defined footpaths or other means of directing use and minimizing adverse impacts shall be developed and used.

New development on dune parcels shall be located in the least environmental damaging location and shall minimize the removal of natural vegetation and alteration of natural landforms. No new parcels shall be created entirely within sand dune habitat. One housing unit shall be authorized on every legal parcel existing on the date of adoption of this plan, provided that adequate access, water, and sewage disposal capacity exists and that the proposed development is consistent with all other applicable policies of this Coastal Element and meets all applicable health standards. Section 20.496.040 of the Mendocino County Coastal Zoning Code states (emphasis added):

(A) Development and activities permitted in dunes shall be limited to the following:

(1) Scientific, educational and passive recreational uses.

(2) One single-family dwelling where adequate access, water and sewage disposal capacity exist consistent with applicable Coastal Element policies and development standards of this division.

(3) Removal of sand, construction of fences or walls to impede sand movement and planting of vegetation for dune stabilization where necessary to protect existing structures. These projects shall be subject to provisions regarding sand extraction and shall be processed under conditional use permit procedures.

(4) Footpaths to direct use and minimize adverse impacts where public access is permitted.

(B) Requirements for development in dune areas are as follows:

(1) Motorized or non-motorized vehicle traffic is prohibited.

(2) New development on dune parcels shall be located in the least environmentally damaging location and shall minimize the removal of natural vegetation and alteration of natural landforms.

(3) No new parcels shall be created entirely in dune habitats.

(4) All sand removal shall be subject to a Coastal Development Use Permit but shall not be allowed on vegetated dunes.

(Ord. No. 3785 (part), adopted 1991)

Wetlands are defined in Section 3.1 of the Mendocino County Land Use Plan (LUP) as follows:

Wetlands. Lands which may be covered periodically or permanently with shallow water, including saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, and fens. Wetlands are extremely fertile and productive environments. Tidal flushing from the ocean and/or nutrient-rich freshwater runoff mix to form a delicate balance responsible for their productivity. They function as nurseries for many aquatic species and serve as feeding and nesting areas for waterfowl, shorebirds and wading birds, as well as a few rare and endangered species.

The edge or upland limit of wetlands is designated by the California Coastal Commission guidelines on wetlands as: (a) the boundary between land with predominantly hydrophytic (adapted to wet conditions) cover and land with predominantly mesophytic (adapted to average conditions) or xerophytic (adapted to dry conditions) cover; (b) the boundary between soil that is predominantly hydric and soil that is predominantly nonhydric; or, in the case of wetlands without vegetation or soils; (c) the boundary between land that is flooded or saturated at some time during years of normal precipitation and land that is not. Areas with drained hydric soils that are no longer capable of supporting hydrophytes (species adapted to wet conditions) are not considered wetlands.

Wetlands are defined in Section 13577 of the Commission Regulations as follows:

Wetland shall be defined as land where the water table is at, near, or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes, and shall also include those types of wetlands where vegetation is lacking and soil is poorly developed or absent as a result of frequent and drastic fluctuations of surface water levels, wave action, water flow, turbidity or high concentrations of salts or other substances in the substrate. Such wetlands can be recognized by the presence of surface water or saturated substrate at some time during each year and their location within, or adjacent to, vegetated wetlands or deep-water habitats.

**Section 3.1 of the Land Use Plan**, "Resource Areas" identifies "certain resource areas which require protection," as identified by state agencies, private environmental groups, and Local Citizens Advisory Committees. These include the following (emphasis added):

State Parks and Reserves<sup>16</sup>

...MacKerricher State Park...

<u>Natural Areas</u> (Includes areas designated by the California Natural Areas Coordinating Council and designated on Land Use Maps)

... Ten Mile Beach Dunes

Inglenook Fen...

<u>Areas of Special Biological Importance</u><sup>17</sup>

Coastal wetlands: ...Sand Lake and Inglenook Fen, Inglenook Creek Marsh, Ten Mile River...

<sup>&</sup>lt;sup>16</sup> Designated by CA Dept. of Parks and Recreation

<sup>&</sup>lt;sup>17</sup> Designated by California Dept. of Fish and [Wildlife]

The narrative contained within LUP Section 3.1 includes the following:

Wetlands. ...<u>Inglenook Fen</u>, in an area of funded acquisition as part of MacKerricher State Park, is a wetland with characteristically waterlogged soils. Fens have distinctively rich organic soil, in contrast to bogs which have highly acid organic soil, and marshes which have an inorganic soil base. <u>The origin of the fen and the rarity of its biotic</u> <u>communities are the subject of a debate that cannot be resolved by the Coastal Element.</u> <u>However, the fen clearly is a wetland subject to protection by the Coastal Act.</u>

**Dunes.** Dunes adjoin the long beaches at Ten Mile River and Manchester State Beach. Off road vehicle activity during 1960's caused a loss of dune vegetation and a subsequent measurable increase in the rate of dune advancement in several specific locations on the edges of the Ten Mile Dunes. <u>Although the dunes are moving in some locations</u>, vegetation such as willow and eucalyptus on the perimeter of the Ten Mile dunes has been shown to retard dune movement and aid in stabilization. Since human activity on dunes retards establishment of stabilizing plants, site investigations are needed to determine what level of use should be permitted in specific dune areas....

...Throughout all policies pertaining to Habitats and Natural Resources shall run the continuous theme that natural habitat areas constitute significant public resources which shall be protected not only for the wildlife which inhabits those areas but for the enjoyment of present and future populations of the State of California...

CZC Sec. 20.488.010 "General Review Standards" states (emphasis added):

(A)<u>Development shall not significantly degrade, or destroy the habitat for, endangered</u> plant and animal species, including native mammals and resident and migratory birds. Diversity, both functionally and numerically, shall be maintained.

(B)<u>The productivity of wetlands, estuaries, tidal zones and streams shall be protected, preserved, and, where feasible, restored.</u>

(C)Approved grading activities shall be conducted in a manner that will assure that environmentally sensitive habitat areas will be protected from adverse impacts that can result from mechanical damage and undesirable changes in the water table, subsurface aeration and impacts to the root system of riparian vegetation, the alteration of surface or <u>subsurface drainage</u>, or other environmental conditions.

(D)Wetland buffer areas (the transition areas between wetland and upland habitats) shall be protected, preserved, and, where feasible, restored.

(Ord. No. 3785 (part), adopted 1991)

LUP Policy 3.1-4 states (emphasis added):

As required by the Coastal Act, <u>development within wetland areas shall be limited to</u>:

# A-1-MEN-13-0241 (CA State Parks)

- *1. Port facility construction or expansion, Section 30233(a)(1).*
- 2. Energy facility construction or expansion, Section 30233(a)(1).
- 3. Coastal-dependent industrial facilities such as commercial fishing facilities, construction or expansion, Section 30233(a)(1).
- 4. Maintenance or restoration of dredged depths or previously dredged depths in: navigational channels, turning basins, vessel berthing and mooring areas, and associated with boat launching ramps.
- 5. In wetland areas, only entrance channels for new or expanded boating facilities may be constructed, except that in a degraded wetland, other boating facilities may be permitted under special circumstances, Section 30233(a)(3). New or expanded boating facilities may be permitted in estuaries, Section 30233(a)(4).
- 6. <u>Incidental public services purposes</u>, including, but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.
- 7. *Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*
- 8. <u>Nature study purposes</u> and salmon restoration projects.
- 9. Aquaculture, or similar resource dependent activities excluding ocean ranching. (See Glossary)

In any of the above instances, the diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes, shall be permitted in accordance with all other applicable provisions of this plan. Such requirements shall include a finding that there is no feasible less environmentally damaging alternative and shall include mitigation measures required to minimize adverse environmental effects, in accordance with Sections 30233 and 30607, and other provisions of the Coastal Act.

Section 20.496.025 of the Mendocino County Coastal Zoning Code states, in part, that (emphasis added):

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

(1) Port facility expansion or construction.

(2) Energy facility expansion or construction.

(3) Coastal-dependent industrial facilities, such as commercial fishing facilities, expansion or construction.

(4) Maintenance or restoration of dredged depths or previously dredged depths in navigation channels, turning basins, vessel berthing and mooring areas, and associated boat launching ramps.

(5) In wetland areas, only entrance channels for new or expanded boating facilities may be constructed, except that, in a degraded wetland, other boating facilities may be permitted under special circumstances.

(6) New or expanded boating facilities may be permitted in estuaries.

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

(8) <u>Restoration projects which are allowable pursuant to Section 30233(a)(7) of</u> the Coastal Act are publicly or privately financed projects in which restoration is the sole purpose of the project ...

(9) Mineral extraction, including sand for restoring beaches, except in ESHA's.

(10) <u>Nature study purposes</u> and salmon restoration projects.

(11) Aquaculture, or similar resource dependent activities excluding ocean ranching.

(B) Requirements for Permitted Development in Wetlands and Estuaries.

(1) <u>Any proposed development that is a permitted development in wetlands and</u> <u>estuaries must meet the following statutory requirements, and supplemental</u> <u>findings pursuant to Section 20.532.100:</u>

(a) <u>There is no feasible, less environmentally damaging alternative;</u>
(b) <u>Where there is no feasible, less environmentally damaging alternative,</u> <u>mitigation measures have been provided to minimize adverse</u> <u>environmental effects.</u>

**Section 20.496.030** of the Mendocino County Coastal Zoning Code states, in part, that (emphasis added):

...(*C*) *Development permitted in streams and rivers shall be limited to the following:* 

Necessary water supply projects.
 Flood control projects.
 <u>(3) Developments which have as the primary function the maintenance or improvement of fish and wildlife habitat.</u>
 New or expanded boating facilities.
 Sand and gravel extraction.

# (D) Requirements for Permitted Development in Streams and Rivers.

(1)All channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible to minimize adverse environmental effects.

(2) Flood control projects shall be subject to both of the following conditions:

(a) The project must be necessary for public safety or to protect the existing development.

(b) There must be no other feasible method for protecting existing structures in the floodplain. (Ord. No. 3785 (part), adopted 1991)

#### Section 20.496.035 of the Mendocino County Coastal Zoning Code states, in part, that:

(A) No development or activity which could degrade the riparian area or diminish its value as a natural resource shall be permitted in the riparian corridor or in any area of riparian vegetation except for the following:

(1) Channelizations, dams or other alterations of rivers and streams as permitted in Section 20.496.030(C);

(2) Pipelines, utility lines and road and trail crossings when no less environmentally damaging alternative route is feasible;

(3) Existing agricultural operations;

(4) Removal of trees for disease control, public safety purposes or personal use for firewood by property owner.

(B) Requirements for development in riparian habitat areas are as follows:

(1) The development shall not significantly disrupt the habitat area and shall minimize potential development impacts or changes to natural stream flow such as increased runoff, sedimentation, biochemical degradation, increased stream temperatures and loss of shade created by development;

(2) No other feasible, less environmentally sensitive alternative exists;

(3) Mitigation measures have been incorporated into the project to minimize adverse impacts upon the habitat;

(4) Where development activities caused the disruption or removal of riparian vegetation, replanting with appropriate native plants shall be required at a minimum ratio of one to one (1:1) and replaced if the survival rate is less than seventy-five (75) percent.

Mendocino County Land Use Plan (LUP) Policy 3.1-2 states the following (<u>emphasis</u> <u>added</u>):

Development proposals in environmentally sensitive habitat areas such as wetlands, riparian zones on streams or <u>sensitive plant or wildlife habitats</u> (all exclusive of buffer zones) including, but not limited to those shown on the Land Use Maps, <u>shall be subject</u> to special review to determine the current extent of the sensitive resource. Where representatives of the County Planning Department, the California Department of Fish and Game, the California Coastal Commission, and the applicant are uncertain about the extent of sensitive habitat on any parcel such disagreements shall be investigated by an on-site inspection by the landowner and/or agents, County Planning Department staff member, a representative of California Department of Fish and Game, a representative of the California Coastal Commission. The on-site inspection shall be coordinated by the County Planning Department and will take place within 3 weeks, weather and site conditions permitting, of the receipt of a written request from the landowner/agent for clarification of sensitive habitat areas.

If all of the members of this group agree that the boundaries of the resource in question should be adjusted following the site inspection, <u>such development should be approved</u> <u>only if specific findings are made which are based upon substantial evidence that the</u> <u>resource as identified will not be significantly degraded by the proposed development. If</u> <u>such findings cannot be made, the development shall be denied</u>. Criteria used for determining the extent of wetlands and other wet environmentally sensitive habitat areas are found in Appendix 8 and shall be used when determining the extent of wetlands.

# **LUP Policy 3.1-7** states the following (<u>emphasis added</u>):

<u>A buffer area shall be established adjacent to all environmentally sensitive habitat areas.</u> 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 County Planning Staff, that 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 50 feet in width. New land division shall not be allowed which will create new parcels entirely within a buffer area. <u>Developments 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:</u>

- 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; and
- 3. 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.

**LUP Policy 3.1-18** states the following (<u>emphasis added</u>):

<u>Public access to sensitive wildlife habitats such as rookeries or haulout areas shall be</u> regulated, to insure that public access will not significantly adversely affect the sensitive resources being protected.

Development within buffer areas recommended by the California Department of Fish and Game to protect rare or endangered wildlife species and their nesting or breeding areas shall meet guidelines and management practices established by the Department of Fish and Game, and must be consistent with other applicable policies of this plan.

CZC Section 20.496.015 states, in applicable part, the following (emphasis added):

(A) Determining Extent of ESHA. The Coastal Permit Administrator shall review, with the assistance of land use maps, all permit applications for coastal developments to determine whether the project has the potential to impact an ESHA. <u>A project has the potential to impact an ESHA if</u>:

(2) <u>The development is proposed to be located within an ESHA, according to</u> <u>an on-site investigation, or documented resource information;</u> ...

(3) <u>The development is proposed to be located within one hundred (100) feet of an</u> <u>environmentally sensitive habitat and/or has potential to negatively impact the</u> <u>long-term maintenance of the habitat</u>, as determined through the project review.

(D) Development Approval. Such development shall only be approved if the following occurs:

(1) All members of the site inspection team agree to the boundaries of the sensitive resource area; and

(2) <u>Findings are made by the approving authority that the resource</u> will not be significantly degraded by the development as set forth in <u>Section 20.532.100(A)(1)</u>.

(E) Denial of Development. If findings cannot be made pursuant to Section 20.532.100(A)(1), the development shall be denied.

CZC Section 20.532.100 states, in applicable part, the following (emphasis added):

In addition to required findings, <u>the approving authority may approve or conditionally</u> <u>approve an application for a permit or variance within the Coastal Zone only if the</u> <u>following findings, as applicable, are made</u>:</u>

(A) Resource Protection Impact Findings.

(1) Development in Environmentally Sensitive Habitat Areas. <u>No development</u> shall be allowed in an ESHA unless the following findings are made:

- (a) <u>The resource as identified will not be significantly degraded by the proposed</u> <u>development.</u>
- (b) <u>There is no feasible less environmentally damaging alternative</u>.

(c) <u>All feasible mitigation measures capable of reducing or eliminating project</u> <u>related impacts have been adopted</u>.

Section 20.496.020 of the CZC states, in applicable part, the following (emphasis added):

(A) **Buffer areas.** A buffer 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.

(1) Width. The width of the buffer area shall be a minimum of one hundred (100) feet, unless an applicant can demonstrate, after consultation with the California Department of Fish and Game, and County Planning staff, that one hundred 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. <u>Developments permitted within a buffer area shall generally be the same as those uses permitted in the adjacent Environmentally Sensitive Habitat Area...</u>

(4) *Permitted Development*. <u>Development permitted within the buffer area shall</u> <u>comply at a minimum with the following standards</u>:

(a) <u>Development shall be compatible with the continuance of the</u> adjacent habitat area by maintaining the functional capacity, their ability to be self-sustaining and maintain natural species diversity.

(b) Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel.

(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. The term "best site" shall be defined as the site having the least impact on the maintenance of the biological and physical integrity of the buffer strip or critical habitat protection area and on the maintenance of the hydrologic capacity of these areas to pass a one hundred (100) year flood without increased damage to the coastal zone natural environment or human systems.

(d) <u>Development shall be compatible with the continuance of such</u> habitat areas by maintaining their functional capacity and their ability to be self-sustaining and to maintain natural species diversity.

(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.

(f) <u>Development shall minimize the following</u>: 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.

(g) <u>Where riparian vegetation is lost due to development, such</u> vegetation shall be replaced at a minimum ratio of one to one (1:1) to restore the protective values of the buffer area.

(h) Aboveground structures shall allow peak surface water flows from a one hundred (100) year flood to pass with no significant impediment.

(i) <u>Hydraulic capacity, subsurface flow patterns, biological diversity,</u> <u>and/or biological or hydrological processes, either terrestrial or aquatic,</u> <u>shall be protected.</u>

(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 whenever 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.

(k) If findings are made that the effects of developing an ESHA buffer area may result in significant adverse impacts to the ESHA, mitigation measures will be required as a condition of project approval. Noise barriers, <u>buffer areas in permanent open space</u>, land dedication for erosion control, and wetland restoration, including off-site drainage improvements, <u>may be required as mitigation measures for developments</u> <u>adjacent to environmentally sensitive habitats</u>.

# Appendix H Mendocino County LCP Policies Regarding Archaeological Resources

## Land Use Plan (LUP) Policy 3.5-10 states (emphasis added):

<u>The County shall review all development permits to ensure that proposed projects will</u> not adversely affect existing archaeological and paleontological resources. Prior to approval of any proposed development within an area of known or probable archaeological or paleontological significance, a limited field survey by a qualified professional shall be required at the applicant's expense to determine the extent of the resource. <u>Results of the field survey shall be transmitted to the State Historical</u> <u>Preservation Officer and Cultural Resource Facility at Sonoma State University for</u> <u>comment. The County shall review all coastal development permits to ensure that</u> <u>proposed projects incorporate reasonable mitigation measures so the development will</u> <u>not adversely affect existing archaeological/paleontological resources</u>. Development in these areas are subject to any additional requirements of the Mendocino County Archaeological Ordinance.

**CZC Section 20.532.095** "Required Findings for All Coastal Development Permits" states in part (emphasis added):

- (A) <u>The granting</u> or modification <u>of any coastal development permit by the</u> <u>approving authority shall be supported by findings which establish that:</u>
  - (1) The proposed development is in conformity with the certified local coastal program; and

•••

(5) <u>The proposed development will not have any adverse impacts on any</u> <u>known archaeological or paleontological resource.</u>

# Appendix I Mendocino County LCP Policies Regarding Planning and Locating New Development

Mendocino County Land Use Plan (LUP) Policy 3.9-1 states (emphasis added):

An intent of the Land Use Plan is to apply the requirement of Section 30250(a) of the Act that new development be in or in close proximity to existing areas able to accommodate it, taking into consideration a variety of incomes, lifestyles, and location preferences. Consideration in allocating residential sites has been given to:

• each community's desired amount and rate of growth.

• providing maximum variety of housing opportunity by including large and small sites, rural and village settings, and shoreline and inland locations.

In addition to the considerations pertaining to the allocation of residential sites listed above, all development proposals shall be regulated to prevent any significant adverse effects, either individually or cumulatively, on coastal resources.

One housing unit shall be authorized on every legal parcel existing on the date of adoption of this plan, provided that adequate access, water, and sewage disposal capacity exists and proposed development is consistent with all applicable policies of this Coastal Element and is in compliance with existing codes and health standards. Determination of service capacity shall be made prior to the issuance of a coastal development permit.

Section 3.1 of the Land Use Plan, "Resource Areas" identifies "certain resource areas which require protection," as identified by state agencies, private environmental groups, and Local Citizens Advisory Committees. These include the following:

State Parks and Reserves<sup>18</sup>

...MacKerricher State Park...

<u>Natural Areas</u> (Includes areas designated by the California Natural Areas Coordinating Council and designated on Land Use Maps)

... Ten Mile Beach Dunes

Inglenook Fen...

<u>Areas of Special Biological Importance</u><sup>19</sup>

<sup>&</sup>lt;sup>18</sup> Designated by CA Dept. of Parks and Recreation

Coastal wetlands: ...Sand Lake and Inglenook Fen, Inglenook Creek Marsh, Ten Mile River...

The narrative contained within LUP Section 3.1 includes the following (emphasis added):

**Wetlands.** ...<u>Inglenook Fen</u>, in an area of funded acquisition as part of MacKerricher State Park, is a wetland with characteristically waterlogged soils. Fens have distinctively rich organic soil, in contrast to bogs which have highly acid organic soil, and marshes which have an inorganic soil base. <u>The origin of the fen and the rarity of its biotic</u> <u>communities are the subject of a debate that cannot be resolved by the Coastal Element.</u> <u>However, the fen clearly is a wetland subject to protection by the Coastal Act.</u>

**Dunes.** Dunes adjoin the long beaches at Ten Mile River and Manchester State Beach. Off road vehicle activity during 1960's caused a loss of dune vegetation and a subsequent measurable increase in the rate of dune advancement in several specific locations on the edges of the Ten Mile Dunes. <u>Although the dunes are moving in some locations</u>, vegetation such as willow and eucalyptus on the perimeter of the Ten Mile dunes has been shown to retard dune movement and aid in stabilization. Since human activity on dunes retards establishment of stabilizing plants, site investigations are needed to determine what level of use should be permitted in specific dune areas....

...Throughout all policies pertaining to Habitats and Natural Resources shall run the continuous theme that natural habitat areas constitute significant public resources which shall be protected not only for the wildlife which inhabits those areas but for the enjoyment of present and future populations of the State of California...

Sec. 20.496.050 "Other Resource Areas" states:

(A) General. Other designated resource areas as identified on Pages 39, 40 and 41 of the Coastal Element dated November 5, 1985 include: State parks and reserves, underwater parks and reserves, areas of special biological significance, natural areas, special treatment areas, fishing access points, areas of special biological importance, significant California ecosystems and coastal marine ecosystems.

### (B) Development of Resource Areas.

Any development within designated resource areas shall be reviewed and established in accord with conditions which could allow some development under mitigating conditions but which assures the continued protection of the resource area.

(Ord. No. 3785 (part), adopted 1991)

<sup>&</sup>lt;sup>19</sup> Designated by California Dept. of Fish and [Wildlife]

**Sec. 20.488.005** of the Mendocino County Coastal Zoning Code (CZC) "Purpose and Applicability" states (emphasis added):

(A)The purpose of the coastal development special review criteria is to <u>insure that</u> <u>proposed development will protect</u>, maintain and where feasible enhance and restore the <u>overall quality of the coastal zone environment and its natural and artificial resources</u>.

(B)The approving authority shall apply the general review standards of this Chapter to all Coastal Development Permit applications.

(Ord. No. 3785 (part), adopted 1991)

CZC Sec. 20.488.010 "General Review Standards" states:

(A)Development shall not significantly degrade, or destroy the habitat for, endangered plant and animal species, including native mammals and resident and migratory birds. Diversity, both functionally and numerically, shall be maintained.

(*B*)*The productivity of wetlands, estuaries, tidal zones and streams shall be protected, preserved, and, where feasible, restored.* 

(C)Approved grading activities shall be conducted in a manner that will assure that environmentally sensitive habitat areas will be protected from adverse impacts that can result from mechanical damage and undesirable changes in the water table, subsurface aeration and impacts to the root system of riparian vegetation, the alteration of surface or subsurface drainage, or other environmental conditions.

(D)Wetland buffer areas (the transition areas between wetland and upland habitats) shall be protected, preserved, and, where feasible, restored.

(Ord. No. 3785 (part), adopted 1991)

**LUP Policy 3.7-7** states (emphasis added):

Within two (2) years of the certification of the Local Coastal Plan the State Department of Parks and Recreation shall develop a comprehensive land use plan and management program to their lands on the Mendocino Coast prior to any additional development or relinquishment of DPR lands. Such plan shall include a tree removal program on all Department of Parks and Recreation lands where so designated on the LUP Maps. Exempted from this requirement for a development plan is any development necessary to ensure the health and safety of the general public. Exempt from the requirement for a comprehensive land use plan and management program is the repair, replacement, or rehabilitation of existing facilities at the 30.5-acre Point Cabrillo Light Station, including the establishment of visitor accommodations and services within existing structures. (Revised 8-30-2005; Resolution 05-153) LUP Policy 4.2-20 states (emphasis added):

The Land Use Maps indicate that several parcels owned by the Bureau of Land Management are located in the area between Ten Mile River and Sandhill Lake and Inglenook Fen. These lands should be transferred to the California Department of Parks and Recreation. These lands should be incorporated into the existing holding of the adjoining MacKerricher State Park. <u>The area shall be managed as a natural habitat area</u> in conjunction with passive recreational uses and dunes stabilization program.

LUP Policy 4.2-21 states (emphasis added):

The Georgia-Pacific Corporation haul road, under a special management agreement with the California Department of Parks and Recreation, presently provides weekend and holiday vehicular access to the long stretch of public beaches which extend from Fort Bragg north to Ten Mile River. This private roadway, which travels through the entire length of the MacKerricher State Park, should be acquired by DPR and incorporated into its management plan for the park, if at any time during the life of the Local Coastal Plan the property owner desires to sell, trade or surrender this property.

**Section 20.496.040** of the Mendocino County Coastal Zoning Code (CZC) states in part (emphasis added):

(A) Development and activities permitted in dunes shall be limited to the following:

(1) Scientific, educational and passive recreational uses.

•••

(4) Footpaths to direct use and minimize adverse impacts where public access is permitted.

(B) Requirements for development in dune areas are as follows:

(1) Motorized or non-motorized vehicle traffic is prohibited.

(2) New development on dune parcels shall be located in the least environmentally damaging location and shall minimize the removal of natural vegetation and alteration of natural landforms.

•••

(Ord. No. 3785 (part), adopted 1991)

**CZC Section 20.340.005** "General Description of Open Space Use Types" states (emphasis added):

Open space use types include land to remain in its natural condition or to include the amount of development necessary to support its active or passive recreational uses. The uses also include certain accessory uses as specified in Chapter 20.456 (Accessory Use Regulations). Public parks are found in the Community Recreation Use Type (Section 20.320.037). (Ord. No. 3785 (part), adopted 1991)

### CZC Section 20.340.010 "Open Space" states:

Land designated to remain in its natural condition or open agricultural use with no structures, except structures normally associated with park or open space use, or other development which is zoned Open Space.

(Ord. No. 3785 (part), adopted 1991)

CZC Section 20.340.015 Passive Recreation (emphasis added).

<u>Leisure activities</u> that do not require permits pursuant to this Division nor constitute "development" as defined in Section 20.308.035(D), and that involve only minor supplementary equipment. Examples <u>include sight seeing</u>, <u>hiking</u>, <u>scuba diving</u>, <u>swimming</u>, <u>sunbathing</u>, <u>jogging</u>, <u>surfing</u>, <u>fishing</u>, <u>bird watching</u>, <u>picnicking</u>, <u>bicycling</u>, <u>horseback riding</u>, <u>boating</u>, <u>photography</u>, <u>nature study and</u> <u>painting</u>.

(Ord. No. 3785 (part), adopted 1991)

### CZC Section 20.340.020 Active Recreation (emphasis added).

<u>Establishment of facilities which constitute "development" as defined in Section</u> <u>20.308.035(D)</u>, and that may have the potential for environmental impacts requiring mitigation or which may involve hazards, generate noise, dust, additional traffic, or have other potential impacts. <u>Examples include</u> construction of spectator sports facilities, recreational boating facilities, shooting ranges, rodeo facilities and <u>recreational trails</u>.

(Ord. No. 3785 (part), adopted 1991)

CZC Section 20.372.005 "Intent" of the Open Space District states:

This district is intended to be applied to lands within the Coastal Zone which are not suited for development or are more valuable in their undeveloped natural state and to public park lands.

(Ord. No. 3785 (part), adopted 1991)

CZC Section 20.372.010 "Principal Permitted Uses for OS Districts" states (emphasis added):

The following use types are permitted in the Open Space District:

(A) Coastal Agricultural Use Types.
Light Agriculture.
(B) Coastal Open Space Use Types.

Open Space; <u>Passive Recreation.</u> (C) Coastal Natural Resource Use Types. Fish and Wildlife Habitat Management; Watershed Management.

(Ord. No. 3785 (part), adopted 1991)

CZC Section 20.372.015 "Conditional Uses for OS Districts" states in part:

The following are permitted uses upon the issuance of a coastal development use permit:

•••

(B) Coastal Civic Use Types.
Alternative Energy Facilities: On-site;
Community Recreation;
Minor Impact Utilities.

•••

•••

(D) Coastal Visitor Accommodations and Services Use Types.

Campground; Hostel; Organized Camp; Recreational Vehicle Campground.

(F) Coastal Open Space Use Types. Active Recreation. (Ord. No. 3785 (part), adopted 1991)

CZC Section 20.368.010 "Principal Permitted Uses for RL Districts" states (emphasis added):

The following use types are permitted in the Range Lands District: (A) Coastal Residential Use Types.

•••

(B) Coastal Agricultural Use Types.

•••

(C) Coastal Open Space Use Types. Passive Recreation.

(D) Coastal Natural Resource Use Types. <u>Fish and Wildlife Habitat Management.</u> (Ord. No. 3785 (part), adopted 1991) CZC Section 20.376.010 "Principal Permitted Uses for RR Districts" states (emphasis added):

The following use types are permitted in the Rural Residential District: (A) Coastal Residential Use Types.

•••

(B) Coastal Agricultural Use Types.

•••

(C) Coastal Open Space Use Types.

Passive Recreation.

(Ord. No. 3785 (part), adopted 1991)

**Coastal Zoning Code (CZC) Section 20.532.095** "Required Findings for All Coastal Development Permits" states (emphasis added):

- (A) <u>The granting or modification of any coastal development permit by the</u> <u>approving authority shall be supported by findings which establish that:</u>
  - (1) <u>The proposed development is in conformity with the certified local</u> <u>coastal program; and</u>
  - (2) The proposed development will be provided with adequate utilities, access roads, drainage and other necessary facilities; and
  - (3) <u>The proposed development is consistent with the purpose and intent of</u> <u>the zoning district applicable to the property, as well as the provisions of</u> <u>this Division and preserves the integrity of the zoning district;</u> and
  - (4) The proposed development will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.
  - (5) <u>The proposed development will not have any adverse impacts on any</u> <u>known archaeological or paleontological resource</u>.
  - (6) Other public services, including but not limited to, solid waste and public roadway capacity have been considered and are adequate to serve the proposed development.





## Appendices A.1 through A.9, Maps, Tables, And Charts, Appendix A.1, Project Overview, replace the appendix with the revised Appendix A.1 to read:



MACKERRICHER STATE PARK DUNE REHABILITATION PROJECT OVERVIEW

Additional text was added to the Project Overview Map to clarify the location of coastal access in response to concerns raised by Coastal Conservancy staff.

Dune Rehabilitation Project MacKerricher State Park California Department of Parks and Recreation





# EXHIBIT NO. 4

APPEAL NO. A-1-MEN-13-0241 (CA STATE PARKS) SITE PHOTOS



FEN CREEK







ROAD BLOWOUT NEAR WARD AVE.











#### **EXHIBIT NO. 5**

Appeal No. A-1-MEN-13-0241 (CA State Parks) EXCERPTS FROM 2000 FEASIBILITY STUDY

Draft Feasibility Study

for the

Northern Segment of the MacKerricher Coastal Trail Project

prepared for:

CA Department of Parks and Recreation Russian River/Mendocino District P.O. Box 123 Duncan Mills, California 95430

contact: Gary Shannon

CA Department of General Services Real Estate Services Division 1102 Q Street, Suite 5100 Sacramento, California 95814

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March 1, 2000



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# 1 EXECUTIVE SUMMARY

### BACKGROUND

Sponsored by the California Department of Parks and Recreation (DPR), the MacKerricher Coastal Trail Project is proposed to reconstruct and repair a former logging road (the haul road) at MacKerricher State Park to provide a recreational trail for non-motorized use from the City of Fort Bragg to Highway 1 at Ten Mile River. The trail is intended to provide a safer route than Highway 1 for bicyclists, as part of the California Coastal Trail. The project also proposes structural repairs to the Pudding Creek Trestle and acquisition of private property to eliminate trespassing to gain park access near Ten Mile River. DPR is seeking funding for the project through the Federal Highway Administration's (FHWA) Intermodal Surface Transportation Efficiency Act (ISTEA) and the California Department of Transportation's Environmental Enhancement and Mitigation (EEM) program.

Over the last two decades, winter storms have seriously damaged or destroyed portions of the haul road at several locations between Lake Cleone and Ten Mile River. In 1983 a major washout permanently closed the haul road to vehicular traffic north of Ward Avenue. Additional erosion of the road has occurred since 1983. In total, over 4,000 linear feet of the haul road would need to be replaced to complete the proposed trail. In addition to new trail construction, the project would include repair and resurfacing a substantial amount of the remaining haul road.

The northernmost segment of the proposed project includes development of a trail though the Inglenook Fen-Ten Mile Dune Natural Preserve (Preserve). This section of the proposed route, beginning at Ward Avenue and ending at Ten Mile River, supports one of the largest native dune complexes in California (Pasquinelli 1998). The Preserve also includes a variety of other terrestrial, wetland, and freshwater habitats. Inglenook Fen, which is located near the middle of the Preserve, is the only remaining coastal fen in California (DPR 1995). The diverse and biologically significant habitats in the Preserve support numerous special-status plant and wildlife species. Significant archaeological sites are also present in the Preserve. The MacKerricher State Park General Plan (1995) directed the establishment of the 1,285-acre Preserve to recognize the regional and statewide significance of the outstanding natural values of the Inglenook Fen complex and the Ten Mile Dunes.

# ENVIRONMENTAL REVIEW AND FEASIBILITY STUDY

Due to the sensitivity and rarity of the resources in the Preserve, state and federal resource agencies have expressed concern regarding potential impacts that would result from implementation of the project. DPR, through consultation with state and federal agencies, has determined that impacts to these sensitive resources could not be entirely avoided and preparation of an Environmental Impact Report/Environmental Impact Statement (EIR/EIS) would be necessary to comply with the California Environmental Quality Act and National Environmental Policy Act (CEQA/NEPA).

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Because of regulatory concerns, the presence of sensitive resources, and coastal storm/erosion hazards, DPR is preparing this feasibility study of the proposed trail through the Preserve, prior to initiating the formal CEQA/NEPA process. This feasibility study consists of an evaluation of five alternative trail alignments. Four of the alternatives include new trail construction and/or repair of the existing trail. New trail construction options considered through the dunes include a combination of raised boardwalk and hardened surface. The fifth alternative, the Ward Avenue Terminus, would not include new trail construction or trail repair in the Preserve.

# SUMMARY OF CONCLUSIONS

Based on the results of this study, the feasibility of three alternatives that would include new trail construction through the Preserve (i.e., Haul Road, Setback, and Shortcut) would be threatened because of regulatory compliance and funding issues. The Ward Avenue Terminus and the Northern alternatives appear to be feasible. Specific threats to the feasibility of the Haul Road, Setback, and Shortcut alternatives include impacts to listed plants and wetlands, damage to trail surfaces from erosion and dune instability, and general cost concerns. Refer to Table 2-1 for a summary description, feasibility constraints, and feasibility conclusions for each alternative.

Two listed plant species, Howell's spineflower (*Chorizanthe howellii*) and Menzies' wallflower (*Erysimum menziesii menziesii*), have the potential to affect the feasibility of the Haul Road, Setback, and Shortcut alternatives. Both species are protected under the state and federal Endangered Species acts. The only known population of Howell's spineflower is located in the vicinity of MacKerricher State Park. Menzies' wallflower is found only in Mendocino and Monterey counties, and the Mendocino County populations of Menzies' wallflower are located primarily in the vicinity of MacKerricher State Park. Impacts to Howell's spineflower and Menzies' wallflower are expected to be so substantial that if DPR proceeds with any of these alternatives, a jeopardy opinion could conceivably be issued by the U.S. Fish and Wildlife Service (USFWS) and/or the California Department of Fish and Game (CDFG). CDFG has already indicated its concerns in a letter to DPR about jeopardizing the continued existence of Howell's spineflower (CDFG 1998). If a jeopardy opinion were issued, the project's eligibility for federal funding would be threatened (D. Harmon, pers. comm., 2000).

Potential impacts to wetlands would also threaten federal funding of the Setback and Shortcut alternatives, because compliance with Executive Order 11990 may not be possible. To comply with Executive Order 11990, DPR would need to demonstrate that all practicable alternatives to avoid filling of wetlands, and practicable measures to minimize harm to wetlands, had been considered.

The Haul Road and Shortcut alternatives would include extensive new trail construction through areas subject to coastal erosion and dune instability. As a result, damage to these trail surfaces is expected to be substantial and would require extensive and relatively frequent repair and potentially extensive reconstruction. In addition, physical features of the hinddunes, such as steepness and instability, would make trail construction problematic. Costs associated with construction and maintenance of these trails would be very high and may substantially exceed the funding currently

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available. These difficulties with construction and repair and the associated costs threaten the feasibility of the Haul Road and Shortcut alternatives.

Other feasibility issues examined in this report include: potential impacts to the western snowy plover and other state- and federally-listed Threatened and Endangered species; compliance with Section 404 of the Clean Water Act; and compliance with Section 106 of the National Historic Preservation Act. These issues were determined to not have the potential to affect the feasibility of any of the proposed alternatives. Consistency with Public Resources Code Provisions and General Plan policies was also examined.

Certain provisions of both the PRC and General Plan require protection of the sensitive resources that are the basis for designating the area as a natural preserve. None of the provisions explicitly prohibit the construction of a trail in the Preserve. They do include provisions requiring public access to state park land. DPR is responsible for determining compliance of the proposed trail with the PRC and General Plan, so it is not known whether this consistency issue would threaten feasibility. DPR must weigh the degree of impact of the proposed trail on sensitive resources with its public access responsibilities.

It should be noted that only the Haul Road and Setback alternatives, by themselves, fulfill the objective of an alternative route to Highway 1 for bicycle travel from Ft. Bragg to Ten Mile River. If this is the paramount objective for developing the trail, the feasibility of its achievement is threatened. Because the primary reason for ISTEA funding of the trail is the bicycle route, this federal funding of the project is also threatened.

Another fundamental question is whether beach recreation users and pedestrians in the dunes should be encouraged, allowed with restrictions, discouraged, or prohibited in the Preserve. The extent of trail facilities is a major factor in determining the amount of public use.

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L	able 2-1 IVE SUMMARY	
Alignment Alternative	Feasibility Constraint	Feasibility Conclusion
Haul Road Alternative. The Haul Road Alternative corresponds to the proposed project as identified in the ISTEA grant proposal. This alternative would include a trail aligned with the former haul road. This would require approximately 5,900 feet of new trail construction in the area south of Inglenook Fen where the haul road has eroded, and surface treatment of approximately 14,000 feet of existing pavement, which may include repair of potholes, some resurfacing, and sand removal.	Compliance with the Federal Endangered Species Act Compliance with the California Endangered Species Act Coastal Erosion and Dune Instability Potential for Project to Exceed Available Funding	FEASIBILITY THREATENED
Setback Alternative. The Setback Alternative would include a trail primarily aligned with the haul road, incorporating a bypass trail across the dunes east of the washout area. This alternative would require approximately 6,400 feet of new trail construction and surface treatment of approximately 14,000 feet of existing pavement, which may include repair of potholes, some resurfacing, and sand removal. Boardwalks would be needed to protect wetland and other sensitive habitat areas.	Compliance with the Federal Endangered Species Act Compliance with the California Endangered Species Act Compliance with Executive Order 11990	FEASIBILITY THREATENED
<u>Shortcut Alternative</u> . The Shortcut Alternative would include a trail from the haul road, just south of the washout, to Highway 1 and north along the Park boundary for approximately one mile. This alternative would require approximately 9,500 feet of new trail construction and surface treatment of approximately 1,200 feet of existing pavement, which may include repair of potholes, some resurfacing, and sand removal. A parking area to accommodate 15-20 vehicles would be developed where the trail meets Highway 1 at the southeast corner of the Preserve. Substantial grading and/or structures would be needed in steep portions off the hinddunes.	Compliance with the Federal Endangered Species Act Compliance with the California Endangered Species Act Compliance with Executive Order 11990 Compliance with Executive Order 11990 Coastal Erosion and Dune Instability Potential for Project to Exceed Available Funding	FEASIBILITY THREATENED

MacKerricher Coastal Trail Project California State Parks/RESD

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Feasibility Study EDAW

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EXECUTIV	le 2-1 E SUMMARY	
enment Alternative	Feasibility Constraint	Feasibility Conclusion
Orthern Alternative. The Northern Alternative would include a trail on the northern portion of the haul road. A parking area would be veloped south of the Ten Mile River Bridge, and a trail would be nstructed to connect the parking area to the haul road. The rest of the dil would follow the alignment of the washout. This alternative would require approximately 1,300 to 2,300 feet of new trail construction d surface treatment of potholes, some resurfacing, and sand moval.	one	FEASIBLE
ard Avenue Terminus. The Ward Avenue Terminus would terminate Ni e existing trail at Ward Avenue. No design features of this alternative we been specified by DPR but they could include expanding the Ward venue beach parking area and development of additional facilities, such restrooms and an interpretive center.	one	FEASIBLE

MacKerricher Coastal Trail Project California State Parks/RESD

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Feasibility Study EDAW

NOT FOR PUBLIC RELEASE

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Public/Agency Comments on the Draft Feasibility Study

for the

# MacKerricher Coastal Trail Project

#### prepared for:

CA Department of Parks and Recreation Russian River/Mendocino District P.O. Box 123 Duncan Mills, California 95430 contact: Gary Shannon

CA Department of General Services Real Estate Services Division 1102 Q Street, Suite 5100 Sacramento, California 95814

contact: Robert Sleppy

prepared by:

EDAW, Inc. 2022 J Street Sacramento, California 95814 contact:

Curtis Alling, AICP

May 17, 2000



# MACKERRICHER COASTAL TRAIL PROJECT

# PUBLIC/AGENCY COMMENTS ON THE DRAFT FEASIBILITY STUDY

# PREFACE

Following the public release of the Draft Feasibility Study for the Northern Segment of the MacKerricher Coastal Trail Project, on March 13, 2000, the California Department of Parks and Recreation (DPR) invited government agencies, private organizations, and concerned citizens to provide written comments on the study and the proposed alternatives. DPR also solicited oral comments from individuals during public and agency meetings that were held on March 20, 2000, to present information on the study. Following these meetings, the comment period was held open for an additional 20-day period for submitting any additional comments.

A list of commentors and all written comments received by DPR from other agencies and the public during the comment period are presented in this document.

Other information regarding this study, including newspaper articles, previous agency letters regarding the project, and a list of persons commenting at the March 20th meetings, may be obtained from the DPR Russian River/Mendocino District office in Duncan Mills.

MacKerricher Coastal Trail Project California State Parks/RESD

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Elsi	C	Dete	Dage
Agency/Group	Commentor	Date	Page
GOVERNMENT AGENCIES	· · · · · · · · · · · · · · · · · · ·		_
U.S. Fish and Wildlife Service	Bruce Halstead	April 7, 2000	1
Dept. of Transportation - North Region	Steve Hansen	March 21, 2000	18
Fort Bragg City Council	Jere Melo	March 20, 2000	19
ORGANIZATIONS/GROUPS		il <sup>0</sup> -	
California Native Plant Society	Lori Hubbart	April 10, 2000	23
College of the Redwoods	Teresa Sholars	March 20, 2000	25
College of the Redwoods	David J. Springer	April 11, 2000	28
Friends of the Ten Mile	Judith Vidaver	March 20, 2000	35
Mendocino Coast Audubon Society	Kris Carter	March 30, 2000	61
Northern California Trails Council, Inc.	Mary Wells	March 28, 2000	77
Northern California Trails Council, Inc.	Nancy Barth	April 10, 2000	78
Ten Mile Coastal Trail Foundation	Stanley E. Anderson	March 20, 2000	79
Ten Mile Coastal Trail Foundation	Eugene M. Lewis	March 20, 2000	87
INDIVIDUALS		'm'	
	Nancy Barth	March 20, 2000	88
	Nancy Barth	March 24, 2000	91
	Lee Edmundson	March 25, 2000	93
	Erica Fielder	April 7, 2000	94
	Andrea Fischer	April 5, 2000	96
	Patricia Jones	April 2, 2000	97
	-Wilbur-Lawson	April_3, 2000	99
	Ron and JoAnn Mitchell	March 24, 2000	10
	David O. Plummer	No Date	10
	Tom Riley	April 2, 2000	10
	Christine Schomer	March 25, 2000	10

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	LIST OF COMMENTORS		1.20
Agency/Group	Commentor	Date	Page
	Smith Family	April 2, 2000	104
	John T. Wallace	April 7, 2000	106
	Harold (Skip) Wollenberg	March 30, 2000	107
	Carolann Wuoltee	March 24, 2000	109
	Louise Young	March 23, 2000	110

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# United States Department of the Interior

FISH AND WILDLIFE SERVICE ARCATA FISH AND WILDLIFE OFFICE 1655 HEINDON ROAD ARCATA, CA 95521 (707) 822-7201 FAX (707) 822-8136

In Reply Refer To: 1-14-1998-104 April 7, 2000

Mr. Greg Picard Parks Superintendent Department of Parks and Recreation Russian River/Mendocino District P.O. Box 440 Mendocino, California 95460

Subject:

Comments on Draft Feasibility Study for the Northern Segment of the MacKerricher Coastal Trail Project, Mendocino County, California

Dear Mr. Picard:

The Fish and Wildlife Service (Service) has reviewed the March 2000 draft feasibility study for the northern segment of the MacKerricher coastal trail project (feasibility study). We have previously provided you or your staff with comments on this proposal in letters dated April 27, 1998 and October 1, 1998. The following comments address the feasibility criteria and biological issues associated with the proposed project.

#### GENERAL COMMENTS

The proposed northern segment of the MacKerricher Coastal Trail Project is a paved pedestrian/bicycle trail located within a natural preserve. A natural preserve is the most protective designation given to any State park system unit. Protection of features such as rare or endangered plant and animal species and their supporting ecosystems is the paramount purpose of a natural preserve. We support providing compatible recreational opportunities within the Inglenook Fen-Ten Mile Dunes Natural Preserve (Preserve) while still meeting the objectives of the Preserve. However, we do not support construction and maintenance of a paved trail through the Preserve due to its impacts on listed species.

The Service previously advised California Department of Parks and Recreation (CDPR) early in the project planning phases that the project would cause unacceptable, unavoidable, and unmitigable conflicts with the recovery of two Federally endangered plant species and the

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Federally threatened western snowy plover (*Charadrius alexandrinus nivosus*). In a letter to Gary Shannon dated April 27, 1998, we made and continue to support the following recommendations. The section of the proposed route beginning at Ward Avenue and ending at the Ten Mile River would likely alter the dune processes (i.e., sand transport), and would adversely affect both listed plant species, the western snowy plover, and their habitats. We see little opportunity to mitigate these adverse effects and recommend ending the trail project at Ward Avenue. Pedestrians should access the Preserve portion of MacKerricher State Park without a paved trail. The remaining portions of the haul road in the Preserve should be removed completely to re-establish natural dune processes. Management objectives of the Preserve should be restoration and protection from increased human caused impacts.

The feasibility study apparently uses a jeopardy threshold for listed species. According to the study, an alternative which does not have the potential to jeopardize the existence of listed species is considered feasible, in terms of compliance with the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.) (Act). This threshold is inappropriate for projects proposed within a natural preserve. We recommend that the feasibility issue on compliance with the Act be changed to evaluate the potential for alternatives to impact the recovery of listed species and the restoration of natural processes within the Preserve.

The recovery of listed species depends, in part, on proper habitat management and protection of Federally listed species and their habitats within the Preserve. Public access in the Preserve needs careful regulation because listed species and their habitats are threatened by uncontrolled equestrian and pedestrian use. European beachgrass has significantly degraded the foredunes of the park, especially west of the existing portions of the haul road. As a result, habitat suitability has been removed or reduced for some species.

Projects proposed in the Preserve must not preclude the restoration potential for the dune system. The feasibility study states that beachgrass has a greater effect on aeolian (i.e., wind driven) processes than the haul road. The major role of beachgrass in interrupting dune processes is well documented, leading to CDPR's plans to remove it from the Preserve. The feasibility study does not address the impacts of the haul road on the ecosystem. If beachgrass were removed, then the haul road would be the only obstacle to sand movement. The haul road would negatively affect dune processes, the preservation of the natural plant communities, and the viability of endangered plant and western snowy plover populations. We recommend that the remnant portions of the haul road be removed from the Preserve.

All of the proposed alternatives considered in the feasibility study, except for the Ward Avenue terminus alternative, impact natural processes of erosion and deposition of sand within the dune system. As a result, future restoration within the Preserve and the recovery of the Federally listed species in the Preserve are affected, and this situation conflicts with the provisions for a natural preserve.

The Service is aware of no other State or Federal land managers in the United States or Canada which have proposed either new construction or reconstruction of hard structural trails or roads for purely recreational purposes in active, mobile foredunes within the last 25 years. In general, Federal and State land managers of dune systems have removed or relocated structures which face long-term erosion hazards or conflicts with natural dune or shoreline movement.

#### RECOMMENDATIONS

We recommend terminating the paved portion of the coastal trail project at Ward Avenue. We are not suggesting closing the area north of Ward Avenue to public use. As stated in our letters dated December 1, 1999 and January 25, 2000, we questioned why a sign which implies the area is closed to comply with the Federal and State Endangered Species Acts was placed at the southern end of the dune system. We have never recommended closing the area to the public. Instead, we asked that you evaluate the potential impacts on Federally listed species and take measures to minimize or avoid these impacts. Public access can be provided in the Preserve by designating the portion of the coastal hiking trail through the Preserve along the beach.

The feasibility study (page 1-4) states that the CDPR needs to address the fundamental issues of whether beach recreation uses, such as pedestrians and/or bicyclists, should be encouraged or discouraged within a sensitive area like the Preserve. We concur with this statement and encourage you to develop a management plan for the Preserve. The plan should consider the appropriate types and amount of public use. No new access or facilities should be provided to the Preserve until completion of the plan. Increased access and use of an area which requires careful regulation may not be consistent with the goals of resource protection.

You are responsible for ensuring your actions do not take listed species. As we have previously stated, we are concerned about the potential impacts of on-going activities, such as equestrian and recreational use, on listed species in the park. The feasibility study implies the only way to control these uses is to develope a paved trail through the Preserve. We disagree with this position and have offered to help develop management strategies to avoid or minimize impacts and still allow public use of the Preserve. The following are examples of options to consider when developing a management strategy: exclude bicycles in the Preserve; encourage pedestrian use on the wet sand; restrict equestrian use to the wet sand during periods of low tides; provide adequate law enforcement; monitor nesting and wintering plovers; use exclosures and/or fences to protect plover nests; install interpretive signs; delineate access routes to the beach that avoid or minimize impacts on listed plants; use modular "sand ladders" or "floating boardwalks" to provide access routes to the beach; restore habitat; remove fencing; and remove remnants of the haul road. We are available to assist you in developing a management strategy for the Preserve.

We again advise you that the potential long-term impacts of constructing and maintaining a paved trail through the Preserve would significantly increase the probability of extinction in the wild for Howell's spineflower (*Chorizanthe howellii*) (Federally endangered), the Mendocino population of Menzies' wallflower (*Erysimum menziesii* ssp. *menziesii*) (Federally endangered), and round-headed Chinese houses (*Collinsia corymbosa*) (subject to review for Federal listing)

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and significantly hinder the recovery of the western snowy plover in Mendocino County. We encourage you to proceed with the coastal trail project from Fort Bragg to Ward Avenue. Although this portion also contains habitat for listed species, we feel that the potential impacts can be adequately avoided or mitigated.

Specific comments on the feasibility study are provided in the enclosure. We appreciate the opportunity to review this document. If you have questions regarding our comments, please contact Robin Hamlin at (707) 822-7201.

Sincerely,

Mang Propp

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Bruce G. Halstead Project Leader

Enclosure (Specific comments)

cc (all w/encl.):

FWS, ATTN: J. Enbring, Sacramento, California
CDPR, ATTN: M. Wright, Chief Deputy Director, Sacramento, California
CDPR, ATTN: G. Shannon, Duncan Mills, California
CDPR, ATTN: R. La Belle, District Superintendent, Duncan Mills, California
CDFG, ATTN: D. Hillyard, Moro Bay, California
Caltrans, ATTN: D. Harmon, Eureka, California
Federal Highways Administration, ATTN: J. Lindley, Division Administrator, Sacramento, California

#### SPECIFIC COMMENTS

Draft Feasibility Study for the Northern Segment of the MacKerricher Coastal Trail Project

### 1 Executive Summary.

Background, page 1-1.

Mention that the California Department of Parks and Recreation (CDPR) applied for the grant to fund this project in 1994. The objective of the project, as originally submitted, was to provide a safe route for bicyclists and pedestrians from Fort Bragg to the Ten Mile River. The portion of the project north of Ward Avenue included construction of 3,000 feet of boardwalk to bypass washout sections in the Ten Mile Dunes.

The alternatives considered in the feasibility study differ significantly from the original proposed alternative. For example, substantial differences include the following: the length of new construction (3,000 feet compared with 5,900 to 9,500 feet); type of structure (boardwalk compared to combination of boardwalk and hardened surface), location of the trail route, length of the trail route (shorter in some alternatives) potential wetland impacts (not previously considered), necessary drainage crossings (none compared to crossings in excess of 100 feet), and required level of National Environmental Policy Act (NEPA) documentation (environmental assessment compared to environmental impact statement). This section should also mention, that substantial changes in the foredunes and the condition of the existing haul road have occurred since the MacKerricher State Park's (Park) General Plan (Plan) was completed.

### 2.1 Project Objectives, page 2-1.

The objectives and needs of the project are not clearly stated. CDPR apparently has developed a project to meet objectives of the Federal Highway Administration's (FHWA) Intermodal Surface Transportation Efficiency Act (ISTEA) program rather than objectives of the Inglenook Fen-Ten Mile Dunes Natural Preserve (Preserve). If the objective is to develop a safe bicycle route along Highway 1 between Fort Bragg and the Ten Mile River, then all possible locations of the route should be considered; routes should not be limited by CDPR ownership. For example, a logical location for a bicycle route between Ward Avenue and the Ten Mile River is directly adjacent to the highway. This route has many advantages to the alternatives, such as bicyclists would not have to contend with blowing sand, and the route would not be constructed through a coastal dune system containing several listed and sensitive species.

The feasibility study refers to this project as part of the California Coastal Trail or the California Coast Bicycle Route. The California Coastal Trail is a hiking trail not a bicycle route that is being developed all along the California coast. In many locations, such as along the Lost Coast in Humboldt County, this hiking trail is designated along beaches. If the objective of this project

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is to designate a section of the California Coastal Trail through MacKerricher State Park, an alternative that designates a hiking route north of Ward Avenue along the beach should be presented.

#### 2.1 Project Status, page 2-2.

In previous letters and discussions, we have recommended that the CDPR ask the FHWA to rescope the project north of Ward Avenue. Disclose whether the discussion between the agencies ever occurred.

#### 2.2 Feasibility Study Purpose, page 2-3.

Discuss the criteria used to develop the five alternatives and how each alternative either meets or does not meet the original objectives of the project as submitted in the grant proposal.

Environmental documents provided pursuant to the NEPA or the Endangered Species Act of 1973, as amended (Act) commonly incorporate background reports by reference, such as feasibility studies. Therefore, the assumptions and perspectives of feasibility studies must match those of NEPA and the Act. NEPA documents must consider and evaluate reasonable project alternatives, based on a common understanding of an underlying project purpose that transcends specific designs of proposed projects. This is particularly important when unresolved conflicts of resource use exist. Federal agencies and courts have consistently rejected analyses of alternatives which so narrowly define project purposes to be virtually circular definitions of preferred alternatives. The feasibility study adopted the project purpose which is essentially identical with the project description in the funding proposal. The study gave no consideration to the underlying basic or overall project purpose. Consequently, the feasibility study evaluated only minor variations of the proposed project which all focused on areas of natural resource conflicts. This is untenable from the perspective of any relevant environmental document [California Environmental Quality Act (CEQA) or NEPA], and it forfeits potential opportunities to explore feasible alternatives which satisfy the basic purpose of the project to provide safe, attractive, continuous bicycle and pedestrian trail access from Fort Bragg to the Ten Mile River. The Service believes that a completely revised evaluation of alternatives is needed, based on a broader understanding of the underlying project's purpose.

#### 2.2 Feasibility Study Approach. page 2-3.

Each alternative was evaluated to determine if it exceeds an established threshold of feasibility. However, the thresholds are not stated. Describe the established threshold for each feasibility issue.

Some of the feasibility issues and inferred thresholds do not seem appropriate for a project proposed in a natural preserve. For example, some of the thresholds are limited to compliance with existing laws and regulations such as the Federal and California Endangered Species Acts and Clean Water Act. The purpose of a natural preserve is defined in the Public Resources Code (PRC), Section 5019.71 as follows: "The purpose of natural preserves shall be to preserve such features as rare or endangered plant and animal species and their supporting ecosystem . . .".

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Meeting the requirements of law does not equate to meeting the objectives of a preserve. Management of a natural preserve should exceed the level of protection of natural resources mandated by merely complying with environmental laws.

The threshold used to determine compliance with the Act is not defined. The threshold appears to be the effect of a proposed alternative on listed species, relative to the potential for jeopardizing the continued existence of listed species. This threshold is not appropriate for a natural preserve. In fact, to evaluate the feasibility of any project in the State park system, based on whether or not it will result in jeopardy of a listed species, is not appropriate. The directive for managing listed plant species in MacKerricher State Park's General Plan is to plan and design projects "... so that special plants will not be adversely affected." This standard is significantly different and at a higher threshold than merely trying to prevent extinction of a species. We recommend that the feasibility issue on compliance with the Federal Endangered Species Act be changed to the following: potential for the project to hinder the long-term recovery of listed animal and plant populations within the Preserve.

We suggest adding the following feasibility issue: potential for the project to hinder future restoration efforts within the Preserve. A direct conflict exists between restoration activities, such as the removal of European beachgrass and the maintenance of a paved trail through the dune system. The Park currently has over \$500,000.00 allocated for restoration work in the Preserve through 2002. No alternative should be selected that precludes the restoration potential for the dune system within the Preserve.

We suggest separating the coastal erosion and dune instability feasibility issue into two feasibility issues: 1) potential for coastal erosion and dune instability to influence the feasibility of constructing and maintaining the trail; and 2) potential for the proposed structure to impact dune processes. Combining these two very different issues is inappropriate. The threshold for allowable impacts on dune processes should be very low; since, this project is proposed within a natural preserve. The PRC definition for a natural preserve states that "Areas set aside as natural preserves shall be of sufficient size to allow, where possible, the dynamics of ecological interaction to continue without interference . . .". If CDPR has unlimited budgets and resources, the threshold level for acceptable impacts on the design and maintenance of a structure may be quite high.

#### 4 Introduction to the Feasibility Issues.

Listed plant species, page 4-2

The report assumes that impacts to the marsh sandwort (*Arenaria paludicola*) can be avoided, because it is only known to occur in the Inglenook Fen. To date, surveys for this species have not occurred in the Preserve. The Service assumes that suitable habitat is occupied unless surveys show otherwise. Potential impacts on this Federally endangered species should be addressed.

# Howell's spineflower and Menzies' wallflower. page 4-2.

The goal within the Preserve should be to facilitate recovery of endangered plant species. The Preserve contains listed species [Howell's spineflower (*Chorizanthe howellii*), Menzies' wallflower (*Erysimum menziesii* ssp. *menziesii*), and marsh sandwort] which have completed recovery plans (U.S. Fish and Wildlife Service 1998a and 1998b). The feasibility study did not reference these recovery plans, which address the recovery and conservation of the species. We recommend that the feasibility study include reference to these plans and include pertinent recommendations in the analysis process. Analysis of the project's impacts on the ability to achieve long-term recovery criteria was entirely lacking in the feasibility study.

The recovery plan for the Howell's spineflower and Menzies' wallflower (U.S. Fish and Wildlife Service 1998a) also features round-headed Chinese houses (*Collinsia corymbosa*) and northcoast phacelia (*Phacelia insularis* var. *continentis*). Both plants are subject to review for listing as endangered. The recovery plan notes that recreational traffic impacts are a reason for listing Howell's spineflower, and it cites the trail project as a potential threat to both the species survival and the integrity of the dune dynamics which sustain its habitat. The recovery plan also emphasizes the need to eradicate European beachgrass at MacKerricher State Park.

Howell's spineflower may be delisted upon restoration of habitat at MacKerricher State Park and its vicinity (Ten Mile Dunes). Restoration includes eradication of European beachgrass and expansion of populations into restored habitat. For delisting to occur, monitoring and history studies will need to demonstrate that the area occupied by Howell's spineflower is increasing and that populations are not being lost to recreational activity.

The recovery plan for marsh sandwort recommends surveys in suitable habitat within its historic range, and it anticipates contingencies for protecting newly discovered populations. Surveys of MacKerricher State Park have detected a new population of the sandwort. The feasibility study incorrectly presumes that the newly discovered population is unique, and that no impacts will occur because it is outside of the project boundary. The Service believes that further survey work may detect additional populations of the sandwort, based on existing habitat conditions. The feasibility study should anticipate the likelihood that additional populations of the sandwort exist in the Park.

#### Listed wildlife species, page 4-3

We are unaware of any surveys for tidewater gobies in either Inglenook or Fen creeks. Unless surveys show these areas are unoccupied, both of these creeks should be considered potential goby habitat. This species is not and should be addressed in the feasibility report.

#### Western snowy ployer, page 4-10

The discussion on whether or not beaches in MacKerricher State Park were designated as snowy plover critical habitat is not relevant to the issue of judging the feasibility of the various alternatives. Federally listed species are protected under the Act with or without the critical habitat designation. The final rule designating critical habitat acknowledges that areas outside of the designated critical habitat may also have an important role in the conservation of the plover. Additional sites may be designated as critical habitat after completion of the snowy plover recovery plan. Based on available survey information, Ten Mile and Virgin Creek beaches both support 10 wintering plovers, which was one criterion used in the final rule to designate critical habitat.

The feasibility study does not and should discuss the importance of the study area to the longterm recovery of the plover in Mendocino County. MacKerricher and Manchester State Parks provide the only suitable habitat in Mendocino County; therefore, these parks are critical for the recovery of this species in this area. To the north of the study area, the nearest (approximately 90 miles) known nesting area is the Eel River, and the nearest (approximately 70 miles) wintering area is McNutt Gulch in Humboldt County. To the south the nearest (approximately 35 miles) wintering area is Manchester Beach in Mendocino County, and the nearest (approximately 95 miles) known nesting area is Salmon Creek in Sonoma County. Plover use of these areas is also threatened by the presence of European beachgrass and incompatible recreational activities.

Recovery of plovers in the study area depends upon the restoration efforts (i.e., beachgrass removal) currently in progress. The presence of beachgrass and the haul road have reduced the amount of unvegetated area above the tideline, decreased the width of the beach, and increased the slope of the beach. The amount of currently suitable plover habitat is reduced, as a result. The study does not but should address impacts of each alternative on future dune restoration.

We believe the maps underestimate both the amounts of current and potential plover habitat. The following are examples of habitat we believe is currently suitable, but not depicted on the map: 1) areas near the Ten Mile River north of the haul road; 2) open sandy areas east of the road; and 3) beach areas west of the road. The feasibility study defines potentially suitable habitat as areas that are currently unsuitable but may be suitable in the future if restoration occurs (i.e., removal of European beachgrass and/or the haul road). The potential habitat depicted on the maps is significantly underestimated. The maps do not show the area west of the haul road currently vegetated with beachgrass as potentially suitable, and they show no areas east of the haul road as potentially suitable.

The map legend shows sightings in August through April as occurring in the non-breeding season and sightings from May through July as part of the breeding season. We consider the breeding season to be from March 1 through September 30. The breeding season depicted on the maps should be defined consistent with our designation of the breeding season.

We suggest adding a discussion about the location of historic nests, since plovers are known to historically nest in the area. Also, include a discussion on the frequency and coverage of surveys in 1998 and 1999. The study states that the surveys were limited to the northernmost one-third of the study area; however, we can not determine if surveys occurred on the east side of the haul road, given the presence of suitable habitat in this area. On page 5-6 the feasibility study states that "no plovers are known to have used the study area for nesting in the last 10 years". To

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document whether nesting attempts have occurred within an area, we recommend weekly surveys throughout the breeding season. We understanding that monthly surveys were conducted in 1998 and 1999 in a portion of the study area. Based on this level of coverage, it is inappropriate to conclude that plovers have not used or attempted to use the study area for nesting in the past 10 years. We recommend that this conclusion be deleted from the final version.

### 4.2 Wetlands, page 4-13.

The feasibility study states that aerial photos, GIS vegetation data, and 1999 field surveys were used to identify wetlands. The study should also discuss criteria used to identify wetlands and how the criteria were applied. Discuss how the mapped wetlands correspond to jurisdictional wetlands, (i.e., are the wetlands mapped likely to be more or less than jurisdictional wetlands). Provide a definition of the following wetland types: herbs, shrubs, and trees. Discuss how these types correspond to the classifications in the following publication: L. M. Cowardin, V. Carter, F.C. Golet, and E.T. LaRoe. 1979. Classification of wetlands and deepwater habitats of the United States. U.S. Department of Interior, Fish and Wildlife Service, Washington, D.C.

### 4.5 DPR Policies and PRC Provisions, page 4-17

A key issue is whether or not the proposed project is consistent with the Preserve designation. However, the discussion on whether the alternatives are compatible with the designation is limited. Provide further clarification on how alternatives are compatible with the objectives of the Preserve's designation. Compatibility with the Preserve designation is combined in the feasibility issue on consistency with statutory provisions and General Plan Policies including the Coastal Act. The conclusion on page 6-4 states that the objectives for resource protection and public access of these policies and provisions directly conflict in many instances. We disagree with this conclusion. In every instance where providing recreational opportunities are mentioned, the policies state recreation will be consistent with resource protection. In addition, as stated on page 4-22 of the feasibility study, when conflicts exist between PRC policies and General Plan policies, PRC policies prevail because they are State law. We feel that recreational opportunities can be provided in the Preserve without the construction of a paved trail and without maintaining the existing portions of the haul road.

We think that all of the alternatives, except for ending the proposed trail at Ward Avenue, conflict with the direction in the PRC regarding natural preserves. For example, the PRC states the following: 1) natural dynamics of ecological preserves shall be allowed to continue without interference; 2) habitat manipulation should be permitted only in areas found by scientific analysis to require manipulation to preserve the species or associations which constitute the basis for the establishment of the natural preserve; and 3) no new facility may be developed in any unit of the State park system unless it is compatible with the classification of that unit. As stated in the Plan, the "natural preserve designation provides guidance and acts as a control upon the department by assuring that future plans will respect the degree of resource sensitivity identified within the preserve."



Since the preserve designation does not allow the use of motorized vehicles, discuss the feasibility of constructing and maintaining the proposed paved trail without mechanized equipment.

# MacKerricher State Park General Plan Policies, page 4-19.

The section on resource element directives should include the following portion of the directive for western snowy plovers: "The department shall . . .assess the effects of European beachgrass and visitor disturbance on habitat. If necessary, closures and habitat restoration efforts shall be initiated."

The section on the facilities element recommendations should have also included the following: "No development should occur in the sand dunes except for the dune boardwalk."

### 4.6 General Cost Reasonableness, page 4-22

The feasibility study focuses only on short-term construction, and it grossly underestimates or understates the feasibility and cost of long-term project maintenance, recurrent rehabilitation, and reconstruction. The study provides no quantitative threshold for "feasible" from a cost:benefit analysis. The study provides no cost estimate comparisons between project construction, and project maintenance over 5, 10, or 20 years. The time during which maintenance costs would not exceed construction costs are not quantified or estimated but should be. Provide comparisons of comparable projects which have been constructed or maintained in similar situations for these time periods. The implications on construction and maintenance costs of the restrictions which prohibit the use of motorized equipment within the preserve are not discussed. For these reasons, the study's conclusions regarding qualitative feasibility are difficult to comprehend or justify.

### 5 Feasibility Analysis.

The feasibility study adopts an unreasonably narrow scope of environmental impact analysis. It essentially assumes a static "snapshot" environmental baseline of existing conditions, and it constrains the geographic scope of impacts to the project footprint and periphery. This approach is unrealistic and highly impractical. One of the most critical issues for evaluation is how the project will affect the long-term development of the dune system as habitat for listed species. This requires evaluation of an alternative's direct, indirect, and cumulative effects over time, and comparison with a "baseline" which includes a projection of pre-existing ecological trends in the future, as well as any "reasonable foreseeable" changes or actions. Otherwise, impact analysis conclusions would be highly artificial, arbitrary, and uninformative for decisionmakers. The planned and funded removal and eventual eradication of European beachgrass is a particularly important "baseline" consideration which was marginally treated in the feasibility study. This action is essential to habitat restoration for western snowy plovers, but it is essentially a management conflict with any hard-stabilized structure. The analysis of this important foreseeable action was superficial, qualitative, and inadequate. Similarly, impacts of the project on listed species was restricted to current locations of plants, rather than the long-term effect on shifting populations in the context of long-term recovery.

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### 5.1 Introduction to the alternatives considered, page 5-1.

EDAW developed five alternatives in consultation with CDPR. Some of the alternatives only meet a portion of the proposed project's objectives. No explanation is given for considering alternatives that do not meet all the objectives of the original proposal. The purpose of this feasibility study should be to determine whether or not the project, as originally proposed, is feasible and compatible with the Preserve designation. This is not an appropriate process to propose new projects within the Preserve. We recommend that prior to proposing projects that increase recreational use within the Preserve the CDPR first must develop a management plan for the Preserve. The plan should determine the appropriate types and amount of recreational use. One concern with the existing project is that it was developed without appropriate consideration of the sensitive resources within the Preserve. The CDPR should not follow this process of project development again.

### 5.2 Ward Avenue terminus alternative, page 5-1.

The Service supports terminating the pedestrian/bicycle trail, as originally proposed, at Ward Avenue. However, we do not support the Ward Avenue terminus alternative as described in the feasibility study. This alternative includes expansion of the Ward Avenue parking area and development of additional facilities. This is the only alternative that includes these developments. Recreational use levels and parking needs would be most likely to increase under the other alternatives that include construction of a trail beyond Ward Avenue. We recommend not constructing any new facilities or parking areas in or adjacent to the Preserve until the Preserve management plan is completed.

### 5.3 Haul Road alternative, page 5-5.

The introductory paragraph for the haul road alternative should discuss the need and feasibility of crossing several significant drainages along this route.

### Threatened and endangered species, page 5-5.

The discussion states that anticipated take could be mitigated with signs and beachgrass removal. The Service would not consider either of these actions as appropriate mitigation within a natural preserve, an area established for conservation purposes. Restoration activities (e.g., removal of non-native plant species) are already occurring within the Preserve, and continuation of these programs should be part of the long-term management of the Preserve, regardless of whether or not this project is implemented. Acceptable mitigation would be acquisition or restoration of habitat that is not currently protected by the Preserve designation. Due to the limited distribution of the species involved, we agree that these opportunities are limited.

We disagree with your conclusions regarding potential impacts of the Haul Road alternative on the snowy plover. The feasibility study concludes that although trail construction may result in direct and indirect impacts to the snowy plover, the study area is not designated as critical habitat, and plovers have not nested in the study area in the last 10 years. It also concludes that take of plovers could be avoided or mitigated with signs and beachgrass removal; therefore, the impacts on the plover are not expected to threaten the feasibility of this alternative. We disagree

with the above conclusion for the following reasons: 1) surveys in the study area adequate to conclude that no nesting has occurred in the last 10 years have not been completed; 2) the data presented in the study show that this area is an important wintering area for plovers; 3) the Park is critical to recovery of plovers in Mendocino County; 4) the proposed alternative would significantly hinder future restoration efforts within the Preserve; 5) as stated earlier, signs and beachgrass removal within a natural preserve are not appropriate mitigation, since these management actions would occur without the project; and 6) a project that could result in adverse affects on plovers is not in compliance with the preserve designation or the Plan.

# 5.3 DPR policies and PRC provisions. page 5-8.

The section should address how the proposed project conflicts with the following direction in the Plan: "No development should occur in the sand dunes except for the dune boardwalk"; and "If inflexible structures must be used, they will be considered expendable and will not be protected against natural forces."

The discussion implies that conflicts exist between policies to protect resources and to provide coastal access. All of the policies regarding recreational opportunities state that coastal access will be provided consistent with resource protection. This section should indicate that since the Preserve designation is State law, it prevails if conflicts exist. Also, discuss that coastal access is currently provided within the Preserve along the beach.

### 5.4 Setback alternative.

# Threatened and endangered species, page 5-9.

Refer to our comments regarding threatened and endangered species (see discussion under the Haul Road alternative).

### 5.5 Shortcut alternative. page 5-12.

Provide a discussion on why this alternative is included in the report, since it does not meet the objectives of the original project, and it has no logical termination point.

### 5.6 Northern alternative. page 5-15.

This alternative discusses the development of a parking area south of the Ten Mile River bridge either on the west or east side of the highway. The parcel depicted on the map on the west side of the highway is the same parcel the CDPR applied to purchase with a California Department of Transportation Environmental Enhancement and Mitigation (EEM) grant. The Park's application for the EEM grant stated that the overall purpose of this acquisition was "... for the protection and enhancement of the coastal dune habitat and associated resources. Because this parcel is part of the larger dune complex ecosystem, its addition would ensure the preservation of unique resource values contained in this parcel and adjoining lands."

The application also stated that the acquired land would become part of the Preserve. In a letter to Greg Picard dated October 1, 1998, we questioned why Gary Shannon, representing the CDPR, testified before the California Coastal Commission that the placement of an agricultural

easement on this parcel would restrict future CDPR plans. We requested the Park inform us on whether or not the CDPR proposed to construct any recreational facilities in connection with the trail project on this parcel. In a response dated October 8, 1998, you replied that you did not know of any specific plans for the parcel other than preservation. An assurances clause exists in the EEM grant that states the following: "If the property is not managed and maintained for the purposes stated in the project agreement, the state shall be reimbursed . . .". The CEQA documentation for the EEM project did not include a California Department of Fish and Game endangered species consultation or any discussion of potential impacts to the Preserve or listed species from the possible development a parking area and the subsequent increased public use. Since this parcel is part of the Preserve, which prohibits motorized equipment, discuss the incompatibility of this proposal with the Preserve designation and the EEM grant.

# 5.6 Threatened and endangered species, page 5-15.

We are concerned about the development of a parking area at the Ten Mile River and the resultant increased recreational use. Development of a larger parking area and facilities at Ten Mile would likely significantly increase pedestrian access and disturbance to optimal snowy plover foraging and nesting sites and listed plant habitat at the north end of the dune system. Expanding public access for recreation will bring a greater number of people to the beach, exacerbating potential conflicts between recreation activities and listed species. According to the feasibility study, the greatest concentration of plovers during the surveys in 1998 and 1999 were in the northern portion of the study area. Human activity is a key factor in the decline of plover breeding populations. Pedestrians can cause mortality and harassment of plovers. They may crush eggs or chase plovers off their nests, causing mortality through exposure of eggs or chicks to weather, blowing sand, or predators. Increased recreational use produces additional trash which may in turn attract and maintain higher populations of avian predators such as ravens.

In addition to construction of the parking area, this alternative involves maintaining the existing northern portion of the haul road. No discussion about the implications of maintaining this portion of the haul road on future restoration activities within the Preserve is presented. European beachgrass is prevalent between the road and the beach along the northern portion of the haul road from the Ten Mile River to the Inglenook Creek outlet (page 3-1 of the feasibility study). Removal of beachgrass, which stabilizes the dunes, may be perceived as counter productive to maintaining this section of road. This portion of the road has facilitated the colonization of beachgrass by providing a relatively stable barrier for vegetative fragments to concentrate and root. In previous letters to CDPR, we have recommended removing this portion of the haul road to allow re-establishment of natural dune processes.

We disagree with the conclusion that impacts on listed species are not expected to "threaten feasibility" of this alternative. The conclusion in the feasibility study appears based on the fact that this alternative will probably not jeopardize the existence of any listed species. As stated earlier, we believe this threshold is inappropriate because the project is located in a natural preserve. We believe this alternative will result in the following: significant direct and indirect impacts on listed plants and the plover; long-term impacts on recovery of all the listed species in

the project area; and significant impacts on future restoration activities within the Preserve.

# 6 Study Conclusions and Subsequent Actions, page 6-1.

Issue 4/4-1, Compliance with Section 404 of the Clean Water Act, page 6-1.

The feasibility study concludes that compliance with Section 404 is not expected to affect the feasibility of any alternative. The feasibility study assumes the project will be eligible for nationwide permit (NWP) number 26. Use of this permit expires on June 5, 2000. It seems unlikely that the CDPR will be in a position to apply for a permit by this date. Based on our review of the new NWP, use of a NWP may not be possible for this project. The likely candidate would be NWP number 14; however, General Condition 25, which addresses Designated Critical Resource Waters, may preclude its use. Therefore, an individual permit may be necessary. As a result, the proposed project will be subject to the 404(b)(1) guidelines test of water dependency. We do not believe that the Setback or Shortcut alternatives could pass this test. The Haul Road and Northern alternatives may require some changes in the proposed new construction at the north end of the project near the Ten Mile River.

In a letter dated October 7, 1999, we advised the U.S. Army Corps of Engineers(Corps) that we identified Inglenook Fen, Sandhill Lake, and all adjacent wetlands to be among the "High Value Waters" which occur within this office's area of responsibility. In the case of the fen and surrounding wetlands, we recommended that the Corps not issue any NWPs to allow for full public interest review subject to the 404(b)(1) guidelines on any project that could alter wetland function and value.

### Issue 4.1-1, Endangered Species Act Compliance, page 6-1.

We disagree with the conclusion that an alternative is only considered infeasible if it potentially will jeopardize the continued existence of a listed species. The proposed action occurs in a natural preserve whose stated objective is to preserve listed species. Any alternative that impairs recovery of listed species conflicts with the preserve designation. The alternative, therefore, should be considered infeasible. We believe that the Haul Road, Setback, Shortcut, and Northern alternatives will significantly compromise future restoration and recovery efforts within the preserve.

We agree with the feasibility study's conclusions that the Haul Road, Setback, and Shortcut alternatives are not feasible because of their potentially significant impacts on listed species. However, we disagree with the study's conclusions regarding the Northern alternative. We believe the Northern alternative will also have the following: significant direct and indirect impacts on listed plants and the plover; long-term impacts on recovery of all listed species in the project area; and significant impacts on future restoration activities within the Preserve. Refer to our comments regarding threatened and endangered species (see discussion under the Northern alternative).

The feasibility study concludes that impacts on listed species due to the Northern alternative could likely be avoided, minimized, and/or mitigated, because it would not include new trail

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construction in habitat suitable for listed species. It also concludes that impacts associated with maintenance activities would be minimized and signs would be used to deter visitors from entering sensitive habitat. We disagree with these conclusions, since new construction likely will occur in suitable habitat for the Menzies' wallflower, and it is improbable to conclude that visitors can be kept out of sensitive habitat unless they are restricted to the paved trail. As discussed previously, we believe minimal opportunities exist to mitigate impacts associated with providing improved access and maintaining a paved trail in the foredunes.

The feasibility study states that the northern portion of the haul road is located within an area of recent accretion and is, therefore, unlikely to be subject to erosion. The lack of erosion in this area is at least, in part, a direct function of the presence of stabilizing beachgrass. Removal of beachgrass will likely increase susceptibility of this section of the haul road to erosion. It would certainly increase sand drift on the road and maintenance costs. Maintenance would be unreasonable, given that the maintenance will be done without motorized equipment.

The feasibility study fails to address the role of the haul road in interrupting dune processes. If beachgrass was removed, then the haul road would be the only obstacle to sand movement and would in and of itself be a major impact to dune processes, to the preservation of natural plant communities, and to the viability of endangered plant and snowy plover populations. Because of its potential impacts on future restoration and recovery of listed species, we believe the Northern alternative is infeasible.

### Issue 4.3-1. Coastal erosion and dune instability, page 6-3.

This section should also address the feasibility of adequately maintaining the trail with nonmotorized equipment.

Appendix A. Feasibility of the coastal trail project through Ten Mile Dunes.

Statements in the geomorphic feasibility study such as the following are not supported: conclusions regarding the setback and shortcut alternatives "... it is not expected that the construction of a bicycle trail would have a serious, irreversible impact on the natural dune processes operating along the proposed route." (pp. 10, 12); and conclusion regarding the setback alternative "... it is not likely to seriously impede aeolian processes or affect long term dune formation." (p. 10). The study states the following regarding the northern alternative: "The effect of the proposed trail on dune processes and sand transport can be reduced by restoration and reconstruction work along the trail alignment" (p. 6). However, the study does not identify or describe the restoration work. The Service recommends that this report's technical conclusions should not be relied upon without additional peer review by recognized physical scientists with disciplinary expertise in coastal engineering and dune geomorphology.

# Literature Cited

U.S. Fish and Wildlife Service. 1998a. Seven coastal plants and the Myrtle's silverspot butterfly recovery plan. Portland, Oregon. 141 pp.

U.S. Fish and Wildlife Service. 1998b. Recovery plan for marsh sandwort (*Arenaria paludicola*) and Gambel's watercress (*Rorippa gambelii*). U.S. Fish and Wildlife Service, Portland, Oregon. 50 pp. + appendices.

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# CITY OF FORT BRAGG

Incorporated August 5, 1889 416 N. Franklin St. Fort Bragg, CA 95437 FAX 707-961-2802

March 20, 2000

Mr. Gary Shannon, Project Director Ten Mile Coastal Trail P.O. Box 123 Duncans Mills, CA 95430-0123

Dear Mr. Shannon:

As an individual member of the Fort Bragg City Council, I wish to emphasize that the only reasonable management for the Ten Mile Dunes area is to include a continuous, hard surface trail between Pudding Creek and Ten Mile River. Following are some specific points and suggestions for the environmental study.

- Following this letter is a copy of Resolution 2210-97, A Resolution of the City Council of the City of Fort Bragg RE: Ten Mile Coastal Trail. The Resolution is still in effect, and it is the desire of the Council that failures on this project cease and that the project is taken to completion.
- Also following is a copy of Resolution 2352-2000, A Resolution of the City of Fort Bragg Supporting Improvements to the Pudding Creek Trestle Bridge as a Stand Alone Project and Urging Early Completion of the Improvements. (Please pardon the underline and strikeout version, but at the writing of this letter, I do not have a finished copy. It was adopted on March 13, 2000.)
- 3. The project has always been represented to the City, Mendocino County and to State legislators as a complete project from Pudding Creek to Ten Mile River during the time I have been aware of it. The Department of Parks and Recreation must consider its own commitment to the local community.
- 4. The Fort Bragg City Council/Redevelopment Agency has improved the old haul road to a nice city street and parking area up to the Pudding Creek trestle. The City was promised access from the trestle to Ten Mile River.
- 5. A group of local citizens have formed the Ten Mile Coastal Trail Foundation to maintain the improvements after the Department completes the project. The Department has represented to the Foundation that the trail project is to run from Pudding Creek to Ten Mile River.
- Under prior private ownership, there was controlled access, when the truck road was not in use, for the public.
- 7. When the first purchase of the dunes was made from Boise Cascade Corporation in the early 1970s, then-Director of Parks and Recreation Herbert Rhoads testified at the Legislature that public access from Pudding Creek to Ten Mile River was a major public goal. Approximately 900 acres of the Jackson State Forest was used to compensate for public acquisition of the Ten Mile Dunes, Pudding Creek Beach and the Mendocino Headlands and Big River Beach.
- When the Department purchased the truck road right-of-way from Georgia-Pacific, a major justification was public access from Pudding Creek to Ten Mile River.
- 9. There have been issues raised from within and outside the Department of Parks and Recreation related to habitat of species listed as threatened or endangered. These issues have then been used by agency personnel and some public members to justify closing the dunes to public access. The purpose of the EIR is to describe ways to mitigate adverse effects on any environment. The naysayers should be challenged to offer positive responses to the problems described.
- 10. Several times during my years in Fort Bragg, the Department has tried to close access to the beach from Mill Creek Drive. Each time there has been a huge controversy, and the Department has had to back down due to public demand and a lack of legal authority. Is the use of habitat for listed species just another tactic to close access to the beach?

FINANCE/WATER WORKS (707) 961-2825 ECONOMIC/COMMUNITY DEVELOPMENT (707) 961-2828 (30 of 43)

- From contact with elected officials in other California cities, I understand that the Department provides
  access to coastal dunes in those cities. The EIR must review what mitigation measures are used in
  other coastal dunes to allow coastal access.
- 12. Currently, access is not supervised in the Ten Mile Dunes. The only control is poor access. The Department has no guidelines to show the public, and its enforcement officers have no real control. It is my opinion that an established trail (or set of trails) will provide guidance for the visiting public and for better education and enforcement of park regulations. By contrast, the boardwalk from the end of Mill Creek Drive to Laguna Point in MacKerricher Park shows that considerable access can be provided with educational data, and that the result is better use of the park without damage.
- 13. There is a need to serve the current demand for coastal access. The State will grow by an estimated 15 million persons in the next 20 years or so. There is a need to use all available resources to make room for those who wish visit the State parks.
- 14. A well-designated hard surface trail will provide some control through peer pressure as well as by law enforcement. Only through good education along the trail can the Department establish the peer pressure to help it achieve goals.

Sincerely Melo Mayor Pro Tempore

CC: Mayor and Council City Manager Deputy City Manager

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# **RESOLUTION NO. 2210-97**

# A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FORT BRAGG RE: TEN MILE COASTAL TRAIL

WHEREAS, the seven miles of coast in the MacKerricher State Park north of Fort Bragg between Pudding Creek and the Ten Mile River offer coast residents and visitors opportunities for hiking, bicycling, fishing, horseback riding, jogging, photography, surfing, nature study and other types of recreation and enjoyment of nature and scenery; and

WHEREAS, use of this portion of the coast by horsemen, hikers and Native Americans was documented as early as 1857, then this route became the southern portion of the historic Humboldt Trail in 1867 and later, in 1916, was used by the Ten Mile Railroad and converted to a truck road in 1949 and, that the truck road was opened to weekend public access for many years until the road was damaged by storms in 1983; and

WHEREAS, this ocean front was dedicated as a hiking and equestrian trail on November 12, 1977 but, due to damage to the former Georgia Pacific truck road by storms since 1983, access is difficult for cyclists and persons with limited walking ability on portions of this coastal trail; and

WHEREAS, the need to reestablish non-motorized access between Pudding Creek and the Ten Mile River is addressed in Policies 4.2-21 and 4.3-7 of the Mendocino County Local Coastal Plan and the MacKerricher-State Park adopted by the State Department of Parks and Recreation; and

WHEREAS, funding for restoration of the Pudding Creek trestle and repair of the damaged portions of trail is becoming available through the Federal Transportation Enhancement Act; and

WHEREAS, the California Transportation Commission and Caltrans has authorized the project.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Fort Bragg urges the State Department of Parks and Recreation to go forward with the proposed restoration, repair and improvement projects so that hikers, cyclists, equestrians and people with limited mobility shall have access to the entire coast between Pudding Creek and the Ten Mile River; and

BE IT FURTHER RESOLVED that the City of Fort Bragg requests that in consideration of people with limited mobility that the State develop a plan for providing motorized vehicular access for special circumstances and events; and

BE IT FURTHER RESOLVED that the Ten Mile Coastal Trail Foundation shall seek funds to assure maintenance of the trail in perpetuity and serve as an educational, historical, recreational and economic resource to Mendocino Coast residents and visitors.

The above and foregoing Resolution was introduced by Councilmember Olbrantz, seconded by Councilmember Melo, and passed and adopted at a regular meeting of the City Council of the City of Fort Bragg held on the 14th day of April, 1997, by the following vote:

Councilmembers Olbrantz, Galli, Huber, Melo and Mayor Peters

None. None.

AGENDA ITEM

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Lindy Peters, Mayor

ATTEST: <u>MCCLGim R Couplent</u> DeeLynn R. Carpenter, CMC/AAE

AYES:

NOES:

ABSENT:

City Clerk

Reso2210-97.doc:Txtdoc97.cvw

# RESOLUTION NO. 2352-2000

# A RESOLUTION OF THE CITY OF FORT BRAGG SUPPORTING THE IMPROVEMENTS TO THE PUDDING CREEK TRESTLE BRIDGE AS A STAND-ALONE PROJECT AND URGING EARLY COMPLETION OF THE IMPROVEMENTS

WHEREAS, in 1994 the California Department of Parks and Recreation was awarded funding for completion of improvements to the Pudding Creek Trestle Bridge as part of a larger project to complete MacKerricher State Park trail enhancements to the north of the Trestle; and

WHEREAS, completion of the Trestle Bridge improvements have since been delayed due to issues related to the portion of the project north of the Trestle; and

WHEREAS, the Trestle Bridge is not currently accessible to the public; and

WHEREAS, the Trestle Bridge is an important cultural, historic and access resource, linking the State Park trail section to the north with the City of Fort Bragg to the south; and

WHEREAS, the City of Fort Bragg strongly supports the earliest possible completion of the Trestle Bridge improvements to enhance trail access and to promote use of the State Park trail and enjoyment of the coastline scenery as a vital amenity for local residents and visitors; and

WHEREAS, preliminary planning and pre-construction work related to the Trestle improvements has been completed or is in process; and

WHEREAS, early completion of the Trestle improvements can best be accomplished through separation of the Trestle Bridge project from the trail enhancements.

NOW, THEREFORE, BE IT RESOLVED that the Fort Bragg City Council strongly supports separation of the Pudding Creek Trestle Bridge improvements as a stand-alone project and supports the earliest completion of said improvements to benefit our community and the region.

BE IT FURTHER RESOLVED that the City Council urges the California Department of Parks and Recreation and other interested parties to undertake any necessary efforts to complete the Pudding Creek Trestle Bridge project as soon as possible.

The above and foregoing Resolution was introduced by Councilmember Melo, seconded by Councilmember Peters, and passed and adopted at a regular meeting of



# United States Department of the Interior

# FISH AND WILDLIFE SERVICE

Coastal California Fish and Wildlife Office 1125 16th Street, Room 209 Arcata, California 95521

707-822-7201 FAX: (707) 822-8136

In Reply Refer To: 1-14-98-104

Mr. Greg Picard Parks Superintendent Department of Parks and Recreation Russian River/Mendocino District P.O. Box 440 Mendocino, California 95460 October 1, 1998

FILE GOPY

Subject: MacKerricher State Park's Proposed Projects in the Inglenook Fen-Ten Mile Dunes Natural Preserve

Dear Mr. Picard:

We are writing to express the view of the Fish and Wildlife Service's (Service) about two of your proposed projects in or adjacent to the Inglenook Fen-Ten Mile Dunes Natural Preserve (Preserve). Our understanding is that funding for the proposed coastal trail project was requested from the Federal Highway Administration's Internodal Surface Transportation Efficiency Act (ISTEA) program and funding for the proposed Ten Mile dunes acquisition was requested from the California Department of Transportation's Environmental Enhancement and Mitigation (EEM) program. The Service finds that these projects may affect (50 C.F.R. § 402.14(a)) the following three Federally listed species: western snowy plover (*Charadrius alexandrinus nivosis*), Menzies' wallflower (*Erysimum memziesii* ssp. *menziesii*), and Howell's spineflower (*Choriznathe howellii*).

# ISTEA Project

This project was originally submitted in 1994 by the Department of Parks and Recreation as part of a statewide package for funding five segments of the California Coast Bicycle Route. The California Coast Bicycle Route was established by Caltrans in 1976 as part of the bicentennial celebration. The route in these five segments currently is on the highway in areas where the road shoulders are generally inadequate to support safe bicycle traffic.

The MacKerricher State Park (Park) project in the statewide package was referred to as the MacKerricher haul road project. Its stated objective was to provide a bicycle and pedestrian trail from Fort Bragg to Highway 1 at the Ten Mile River. This proposed project as originally submitted contained the following components: 1) repair of the Pudding Creek trestle; 2) construct a new trail alignment near Lake Cleone; 3) construct 3,000 feet of boardwalk to bypass washout sections in the Ten Mile Dunes; 3) repair and pave the haul road; and 4) develop a connection to Highway 1 at the Ten Mile River. The project included acquisition of approximately seven acres of private property at the Ten Mile River.

As the Federal agency with responsibility for administering the Endangered Species Act of 1973, as



amended (16 U.S.C. 1531 et seq.), the Service is concerned about potential impacts on Federally listed species. We are primarily concerned about potential impacts from the portion of the proposed trail north of Ward Avenue to Highway 1 at the Ten Mile River in the Preserve. Our understanding from previous meetings with you and your staff is that construction of a boardwalk north of Ward Avenue is no longer being considered because of design problems, costs, future maintenance needs, and also damage to the remaining sections of the haul road that occurred as a result of last winter's storms. Although we have not been provided with your current project design or location of the trail through the Preserve, your staff indicates you are now considering either a 10-foot wide at-grade hardened surface or a raised hardened surface on road base fill. Construction of either of these options would require considerable cut and fill to maintain an acceptable grade through the swales and drainages. Due to last year's storms, a number of features of the ISTEA project north of Ward Avenue have apparently changed significantly from the original proposal. For example, it may no longer be feasible to utilize the old haul road alignment in the washed out portions and the trail may now need to be located significantly farther east into the dunes. The amount of new construction is considerably longer than the 3,000 feet originally proposed. The new trail must now cross a number of drainages, some as wide as 100 feet; therefore, there are potential wetland impacts that were not previously considered.

Rare and endangered species populations and their habitats in the Ten Mile dunes are sensitive to recreational use. The proposed project will likely result in significant impacts to them. As a result, we suggest you prepare a joint Environmental Impact Report/Statement (EIR/S) pursuant to the National Environmental Policy Act of 1969 (NEPA) and the California Environmental Quality Act (CEQA). The Service considers the use of an environmental assessment or categorical exclusion as originally indicated on the ISTEA proposal to be unprecedented and highly inappropriate for any project with potential impacts of this magnitude on multiple rare or endangered species. CEQA has mandatory findings for significance (CEQA guidelines at 15065) which require that an EIR be prepared for any project which would "threaten to reduce the number or restrict the range of a rare or endangered plant or animal...". This proposed project, in the Service's opinion, meets this threshold. Similarly, NEPA (40 C.F.R. § 1508.27(b)(9)) gives substantial weight to endangered or threatened species impacts in determining whether an impact meets the threshold of "significance". Again, this proposed projects' potential impacts on threatened and endangered species meet the threshold of NEPA "significance" in the Service's opinion.

Because of the sensitivity of Preserve resources to impacts from increased recreational use, we recommend that you explore ways to modify the portion of the ISTEA project from Ward Avenue to Highway 1 to reduce or eliminate impacts on listed species. This approach is required in order to comply with NEPA (40 C.F.R. §§ 1502.14(f), 1505.2(c), and 1508.20). An option with fewer environmental concerns would be to develop pedestrian beach access north of Ward Avenue and to direct recreation use along the beach rather than in the foredunes. This option would accommodate the majority of the people's preference to walk along the water rather than in the dunes. It would also be consistent with your General Plan's direction for the dune system which states that protection of critical ecological processes will require that most public use be restricted to the beach. It does not seem prudent to encourage and promote recreational bicycle and pedestrian use into a sensitive dune system where recreational trampling is a primary threat to listed plant species. The California Coast Bicycle Route between Cleone and the Ten Mile River could be located adjacent to Highway 1 rather than in the dune system.

# Previous input from the Service and California Department of Fish and Game (CDFG) on the ISTEA Project

You have received input over the past few years from the Service and CDFG outlining potential adverse impacts to threatened and endangered species from the proposed ISTEA project. The following is a summary of previous comments provided on this project.

We outlined our concerns in a letter to Gary Shannon dated April 27, 1998. This letter stated that we were particularly concerned with the portion of the project north of Ward Avenue through the Preserve. This section of the proposed route, beginning at Ward Avenue and ending at the Ten Mile River, is located in an area that is habitat for the following three Federally listed species: western snowy plover, Menzies' wallflower, and Howell's spineflower. We saw little opportunity to develop compensatory mitigation for adverse affects from constructing a trail in the dunes and recommended the portion of the project north of Ward Avenue be made available to pedestrians only without a paved trail. We also recommended that the remaining portions of the haul road north of Ward Avenue be removed to re-establish natural dune processes. The Preserve is an area where the management priority should be restoration of the dune ecosystem and protection from increased human caused impacts.

During a field trip to the project site on June 5, 1998, Robin Hamlin, of my staff, provided additional input to you on this proposed project. At this meeting, no trail route through the dunes could be identified that would avoid impacts to listed species and little opportunity for mitigating potential impacts was identified in this area. At this meeting, we restated the concerns raised in our April 27 letter. Lengthy discussions took place about the need to rescope the project and develop additional alternatives.

Gary Shannon received a letter dated June 10, 1998, from the Manager of CDFG's Region 3: In this letter CDFG indicated they had major concerns with the portion of the project north of Ward Avenue. Construction of portions of the trail in the Ten Mile dune system and long-term maintenance would result in significant adverse impacts on the dune habitats and Federal and State listed species. They further indicated that the "impacts will be of such nature and magnitude that mitigation to a level of less than significant would not be possible. This could then require [the Park] to make a finding of overriding consideration regarding the significant and unmitigatable impacts of the project. This could effect whether the project is eligible for the funding sources that have been secured." The letter concluded that it is likely the proposed project would jeopardize the continued existence of Howell's spineflower.

In 1996, you also received input from Dr. Peter Baye and Dan Buford of the Service's Sacramento office. Dr. Peter Baye identified field evidence of a high rate of long-term shoreline retreat at the south end of the dune system, and advised that reconstruction of a permanent trail would likely entail frequent repair or reconstruction, and could preclude feasibility of the project. He advised that the shoreline and project design be reviewed by coastal geomorphologists to determine the long-term rate of shoreline-retreat, and-the feasibility of maintaining or armoring the trail before further development of the project. He also indicated that any permanently maintained trail would interfere with natural sand transport dynamics (periodic overwash and onshore wind transport of sand) which maintain the integrity of dune plant communities, including habitat of rare or endangered species. Dan Buford, section 7 coordinator for impacts on western snowy plovers, advised that the proposed trail alignment would likely significantly increase pedestrian (and domestic pet) access to and disturbance of optimal plover foraging and nesting sites at the north end of the system. Both staff strongly advised aligning the trail away from sensitive habitats in the dunes, and recommended that European beachgrass (*Ammophila arenaria*) and haul road



### remnants be eliminated.

### EEM Project

We understand that you also submitted an application for an EEM grant to purchase 54.5 acres adjacent to the northern end of the Park. The project title for this proposal is the Ten Mile Dunes Acquisition. The purpose of this acquisition as described in your grant application is as follows: "The overall purpose for this acquisition is for the protection and enhancement of the coastal dune habitat and associated resources. Because this parcel is part of the larger dune complex ecosystem, its addition would insure the preservation of unique resource values contained in this parcel and adjoining lands. Located on the eastern edge of the dune complex, this acquisition would facilitate a logical and enforceable management of resources and the park boundary." Your application also states that the acquired land would become part of the Preserve. We support this acquisition and the objective as described in your grant application.

The 54.5 acres identified for acquisition currently belong to Henry and Margaret Smith and Don and Margaret Perry (Smith-Perry). The Smith-Perrys recently received a permit from the California Coastal Commission (Commission) to construct a motel on their property near the Ten Mile River. As you are aware, the Commission approved this project with the condition that an agricultural easement be imposed to prevent development on the portion of the 389-acre parcel outside the four-acre building site.

Our understanding is that the 54.5 acres the Park intends to purchase with the EEM grant are included in the Smith-Perry's 389-acre parcel. Robert La Belle, Parks District Superintendent, in a letter dated July 27, 1998 to the Commission stated that any development restrictions imposed on these lands by the Commission could preclude the Park from "making improvements necessary to support and provide designated public access". The July 27 letter also states that "any easement restricting development or improvements could preclude us from [making] improvements associated with resource management and interpretation (displays, trails, etc.), or other facilities necessary to support public use of this parcel." The Smith-Perrys requested that the Commission amend their permit to revise the special condition requiring an agricultural easement to a deed restriction. The proposed amendment to the permit was discussed at the September 9, 1998 Commission hearing in Eureka. At this hearing Gary Shannon, representing State Parks, testified that the agriculture easement would restrict future Park plans for lands you plan to purchase with an EEM grant. We are unclear how the proposed agricultural easement would have prevented the Park from implementing the project purpose as described in the EEM grant application. The Commission's staff report had recommended maintaining the agricultural easement; however, the Commission changed the agricultural easement to a deed restriction largely on the input provided by Park staff at the hearing.

We are interested as to why the Park would ask that a development restriction be dropped from a 389acre parcel adjacent to a Preserve. Our understanding is that you have discussed with the Smith-Perrys the purchase of an additional 7-acre parcel in conjunction with the ISTEA project. This parcel is located outside of the 389-acre parcel discussed by the Commission; therefore, it was not covered by the proposed agricultural easement. If, as implied by your testimony and letter discussed above, your intent is to construct recreational facilities on this parcel in conjunction with the ISTEA coastal trail project, we would like to be informed of this change. Any development on this parcel for recreational use would be interrelated and interdependent to your proposed coastal trail through the Preserve, and therefore, the potential impacts from these projects must be analyzed together. We are uncertain as to your future plans for the 54.5-acre parcel and the potential impacts (including interrelated and interdependent) on Federally listed species. Please inform us of your plans for this parcel and whether or not you are proposing to

construct any recreational facilities in connection with the ISTEA trail project on this parcel.

# Issues and Concerns Common to Both Projects

MacKerricher State Park General Plan. Your General Plan (Plan) was completed in 1995. This Plan established the 1,285 acre Preserve. The following purpose of state natural preserves is stated on page 53 of the Plan:

"The purpose of natural preserves shall be to preserve such features as rare or endangered plant and animal species and their supporting ecosystem, . . . Habitat manipulation shall be permitted only in those areas found by scientific analysis to require manipulation to preserve the species or associations which constitute the basis for the establishment of the natural preserve."

Your plan's discussion on management of the preserve states the following on page 54: "Public access in the foredunes will need careful regulation, as these dunes are the most likely to be disrupted by uncontrolled equestrian or pedestrian use." The Plan calls for construction of a dune boardwalk for the use of pedestrians and bicyclists to bypass the washed out parts to the haul road north of Ward Avenue; however, it also states that "The structure of the boardwalk should not adversely impact the dune surface and should allow for easy relocation as the configuration of the dunes changes over time."; "No development should occur in the sand dunes except for the dune boardwalk."; and "If inflexible structures must be used, they will be considered expendable and will not be protected against natural forces." As currently proposed, it appears the portion of the ISTEA project through the Preserve is inconsistent with the Plan's management direction.

Effects on Species. Several species are potentially affected by both projects. Our concerns are summarized as follows:

### 1. Western Snowy Plover

The western snowy plover, a species Federally listed as threatened, is known to occur during the nesting season in the Park; however, only a few nesting records are documented. Nests were found at Virgin Creek beach in 1994 and north of Ward Avenue in 1989. In 1998, breeding season surveys north of Ward Avenue detected adult plovers, but no nests. The plover nesting season extends from mid-March through mid-September coinciding with the period of greatest human use on the beach. Declines in the Pacific Coast population are attributed to poor reproductive success, resulting from human disturbance, predation, and inclement weather, combined with loss of nesting habitat to European beachgrass and development.

Increased recreational use north of Ward Avenue and the potential resultant increased disturbance to nesting plovers is a major concern. Human activity is a key factor in the decline of plover breeding populations. Pedestrians can cause mortality and harassment of plovers. They may crush eggs or chase plovers off their nests, causing mortality through exposure of eggs or chicks to weather, blowing sand, starvation or predators. Increased recreational use produces additional trash which may in turn attract and maintain higher populations of avian predators such as ravens. Hence, the proposed project is expected to adversely affect this species.

### 2. Chorizanthe howellii

The only known population of the Federally listed endangered Howell's spineflower is located in the Ten Mile river dune system and vicinity. As an annual, it is critical for this species to germinate in an open environment, free of competing species, each year. Therefore, any activities that stabilize the dune system will have long-term negative impacts on this species. The construction of a permanent trail is likely to decrease the magnitude and rate of sand transported to dunes colonized by Howell's spineflower, interfering with the creation of new "gaps" necessary for it's germination and survival. This annual species normally undergoes shifts in local distribution, which makes it difficult to predict impacts. Because of this species extremely limited distribution and the lack of opportunities to minimize or mitigate impacts from the construction of a trail through the Preserve, this project would be likely to adversely affect the continued existence of this species. Since the entire range of this species coincides with the proposed trail, CDFG concluded in their June 10, 1998 letter the project will likely jeopardize this species.

### 3. Other Plants

Menzies' wallflower (*Erysimum menziesii*) is a Federally listed endangered perennial plant. The subspecies *menziesii* occurs in isolated populations along the Monterey Peninsula and in Mendocino County from Ten Mile River south to Fort Bragg. This subspecies is "monocarpic", meaning that it flowers only once in it's lifetime, making successful reproduction more difficult than for plants that flower each year. The species does not have an overwintering seed bank to help increase its chances of survival. Exotic plants, development of suitable habitat, and recreational use are threats to the species. The project is likely to adversely affect this species in the same manner as Howell's spineflower, due to the indirect effects of altered sand transport dynamics and accelerated invasion of European beachgrass. Trampling by pedestrians who go off the designated trail will also be detrimental to both this and the spineflower. Two additional plants, *Collinsia corymbosa* and *Phacelia insularis* var. *continentis*, have extremely limited distributions and occur in the Ten Mile dunes; these plants may be subject to future petitions for listing. They are susceptible to the same threats as the two listed plants.

<u>Geomorphic dynamics and European beachgrass</u>. Beachgrass is in a relatively early stage of invasion in the Ten Mile dunes; therefore, this is an ideal time to concentrate on its removal. We are concerned that construction and maintenance of a trail through the foredunes may directly conflict with and limit opportunities for restoration of the dune community. Removal of beachgrass, which stabilizes the dunes, may be perceived as counter productive to the maintenance of a trail in the foredunes. In addition, in these times of limited budgets, it may not be possible to maintain the trail and accomplish beachgrass removal and dune restoration. The trail will likely facilitate the colonization of beachgrass by providing a relatively stable barrier for storm-deposited vegetative fragments to concentrate and root. This process is already occurring, as evidenced by the migration of beachgrass along the existing haul road. The spread of beachgrass stabilizes the dunes and reduces the amount of unvegetated area above the tideline, decreases the width of the beach, and increases its slope. These changes reduce the amount of potential plover nesting habitat, provide cover for predators, and may hamper movements of young. These changes prevent sand movement from the beach to the back dune area, causing an elongation of the deflation plain and an increase in wetlands at the expense of listed plant and animal habitat.

### Recovery plans

A draft recovery plan is currently being developed for the western snowy plover. The "Seven Coastal Plants and Myrtle Silverspot Butterfly Recovery Plan" is currently being finalized by the Service (Region 1, Portland, Oregon). It covers Howell's spineflower and Menzies' wallflower. The recovery plans will outline strategies necessary to support recovery of these listed species. The final plan for the plants identifies the potential for construction of a foredune road as a threat to these listed plant species, and

establishes criteria for the recovery of these species at the Ten Mile dunes. These recovery criteria depend on eradication of non-native beachgrass and lack of interference with long-term sand transport dynamics of the dune system. The Service utilizes recovery plans in determining whether Federal actions (i.e. funding provided by the Federal Highway Administration) jeopardize listed species.

### Summary

CC:

The Service supports your management direction for the Preserve as stated in your General Plan. We agree that the primary objective for this section of the Park should be "to preserve such features as rare or endangered plant and animal species and their supporting ecosystem". It is unclear how this objective is compatible with developing an alternate paved bicycle route for Highway 1. The management emphasis for the Preserve should be restoration of the native dune system and protection from increased human use. We also support your acquisition of 54.5 acres with the EEM grant and the objective for this parcel as described in your grant application. However, because of apparent conflicting input from your agency to the Commission regarding future plans for this parcel, we would like you to inform us and the public whether or not you are proposing to construct any recreational facilities in connection with the ISTEA trail project on this parcel.

We recommend the ISTEA project north of Ward Avenue be changed. The current project is inconsistent with the original request for ISTEA funding because of the length of new construction required, the type of structure (a hardened surface instead of a boardwalk), location of the trail route, potential wetland impacts, necessary drainage crossings, and required level of NEPA documentation. Impacts on Federally listed species from developing a trail north of Ward Avenue have been clearly stated and are severe, including possible extinction of Howell's spineflower. Additionally, one endangered plant and one threatened bird will be adversely affected with little or no opportunity for mitigation. The portion of the project north of Ward Avenue also appears to be inconsistent with direction in your General Plan for the Preserve. Available data on Federally listed species in the area and the sensitivity of dune systems to recreational impacts and alterations indicate that proceeding with this project as proposed could have significant adverse effects to some species and result in jeopardy to another. When a proposed project jeopardizes the continued existence of a species, the Service issues a biological opinion that describes reasonable and prudent alternative actions to avoid jeopardy.

My staff is available to assist you in collaboratively redesigning the trail project and developing future management goals for the Preserve that facilitate the conservation of Federally listed species. We appreciate your providing as-soon-as possible the information requested in this letter and information on your future plans for the ISTEA project to Robin Hamlin at (707) 822-7201. We are interested in discussing these projects with you at your earliest convenience.

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Sincerely,

Bruce G. Halstead Project Leader

FWS, ATTN: C. Barry, Portland, Oregon
FWS, ATTN: J.Engbring, Olympia, Washington
California Department of Parks and Recreation, Patricia Megason, Director, Sacramento,
California
California Department of Parks and Recreation, Robert La Belle, District Superintendent,
Duncan Mills, California
California Coastal Commission, San Francisco, California
California Department of Fish and Game, Jacqueline Schafer, Director, Sacramento, California
California Department of Fish and Game, Deb Hillyard, Moro Bay, California
Caltrans, Deborah Harmon, Eureka, California
Caltrans, Jan Bulinski, Eureka, California
Caltrans, Gary Bush, Chief Landscape Architecture, Sacramento, California
Caltrans, Marsha Mason, ISTEA Coordinator, Sacramento, California
Secretary of Resources, Douglas P. Wheeler, Sacramento, California
Federal Highways Administration, Jeffrey A. Lindley , Division Administrator, Sacramento,

California

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STATE OF CALIFORNIA - RESOURCES AGENCY Governor

DEPARTMENT OF PARKS AND RECREATION Russian River/Mendocino District 25381 Steelhead Boulevard P.O. Box 123 Duncans Mills, CA 95430





February 18, 2000

Mendocino County Board of Supervisors 501 Low Gap Rd. Ukiah, CA

At the request of Supervisor Campbell we would like to provide you with the current status of the MacKerricher Coastal Trail Project. As many of you know, the Department's original timetable has been delayed by a complexity of environmental issues surrounding this project. The project still remains as originally defined, as a bicycle trail from Pudding Creek (including Pudding Creek Trestle) to Ten Mile River. The project is funded primarily through an I.S.T.E.A. Grant in the amount of \$1.4 million. The following summary will address current progress and funding status.

Currently, a private environmental planning consultant (EDAW) is under contract to prepare an EIR/EIS for the described project. The purpose for the contract is to gather objective resource data and prepare environmental analysis as required under the guidelines of NEPA and CEQA. At the present time, EDAW has been concentrating its efforts in areas of the park north of Ward Ave. The consultant is attempting to develop an environmentally compatible trail solution from Ward Ave. to Ten Mile River. They are preparing a feasibility level assessment to determine if modifications to the original project definition are necessary. Prior to finalizing the feasibility assessment, review meetings will be held with the public and affected regulatory agencies. While these meeting dates have not been finalized, they are expected to take place sometime during the week of March 20<sup>th</sup>.

After resolving feasibility issues and making any necessary project adjustments, further analysis for preparing the EIR/EIS documentation on remaining project areas will continue. Current schedule calls for completion of the environmental document in the spring of 2001. Some delays being experienced due to the complexity of the review and in making meeting arrangements may push the completion date towards summer.

Funding for the project was adjusted in December of 1998. At that time, our Department requested the Preliminary Engineering amount be increased to \$652,000 and the construction funds decreased to \$778,000. The purpose of this was to include the preparation of needed environmental documentation. The grant funding timeframe calls for the project to be ready to go to construction by September 2000. The inability to meet construction deadlines with this and other T.E.A. projects is an issue now being addressed by the California Transportation Commission (CTC). As a result, our Department has requested the (CTC) to allow us to complete the Preliminary Engineering, and allow the construction funds to revert. In doing this, State Parks will be required to obtain and en(42) bfr 43) ding (59)

for construction by July 1, 2003 or the State of California will become responsible for preliminary engineering and feasibility expenditures under Federal rules that govern ISTEA grants.

F I

While we are obviously disappointed about losing construction funding for the project, we remain optimistic about completing the necessary environmental documents. We are further encouraged about the future prospects of obtaining construction funding in honoring our commitment to this valuable project.

Sincerely,

Greg Picard, Park Superintendent

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(43 of 43)



# TABLE 3.6-1 SUMMARY OF DESIGNATED COASTAL ACCESS POINTS AND TRAIL SYSTEM **APPENDIX 13**

	Name	Location	Characteristics	Existing/Potential Development
-	Briceland Road Coastal Trail	County Road 435 from Four Corners to (north of) Bear Harbor paralleling the coast through Sinkyone State Park.	6 miles of County road, suitable for hikers, equestrian. Potential trails connect to shoreline.	Unpaved; complete to Bear Harbor.
તં	Whale Gulch Shoreline	Sinkyone Wilderness State Park. 3 miles south of Humboldt County line, 1 mile southwest of Four Corners.	Sandy beach used for fishing and diving. Reached from Briceland Road from Low Gap Creek.	Undeveloped campground; non-vehicular access from Low Gap Creek.
ຕ່	Bear Harbor Shoreline	Sinkyone Wilderness State Park. 6 miles south of Humboldt County line, 6.2 miles southwest of Four Corners.	Access via Four Corners-Usal Creek Trail. Beach used for fishing and diving.	Undeveloped campground; non-vehicular access for able-bodied persons from end of Briceland Road.
4	Jackass Creek Shoreline	14 miles north of Usal Road turn-off from Highway 1.	Private 500 foot sand beach bordered by rocky shore and cliffs. Access via Four Corners-Usal Creek Trail or Usal Road.	Undeveloped campground; acquire as part of DPR Usal Ranch Project.

(1 of 2)

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15.	Chadbourne Gulch to Newport	West of Highway 1 from 0.7 mile south of Chadbourne Gulch to approximately 1.75 miles north of Ten Mile River.	Blufftop lateral access provides long range scenic views.	Acquire vertical and lateral access for blufftop trail.	
10.	South Kibesillah Gulch Fishing Access Shoreline	West of Highway 1, .5 mile north of Abalobadiah Creek.	Shoreline access from steep bluff. Wildlife Conservation Board ownership, County Management.	Day use; maintain restrooms, picnic tables, improve trail to beach.	
17.	Seaside Creek Shoreline	1 mile north of Ten Mile River bridge.	Beach adjoins Highway 1, providing access to handicapped; possible prescriptive rights.	Acquire accessway and develop parking area.	
18.	Seaside Creek to Pudding Creek Trail	North of Fort Bragg from Seaside Creek-Ten Mile River to Pudding Creek.	Hiking/equestrian trail parallel to beach for 8 miles. Usable from Seaside Creek in summer and from Ten Mile Bridge and Pudding Creek year round. Alternative trail for non-vehicles.	Existing public accessway at Ocean Meadows, coastal trail segmented at mouth of Ten Mile River.	
19	Ten Mile River Access	MacKerricher State Park, west of Highway 1, south bank of river.	Unimproved boat access from G.P. haul road, open weekends and some winter months. Also access to north end of State Park.	Improve boating access; Power boats prohibited, except for out board trolling motors.	
50.	Inglenook Grange Trail	MacKerricher State Park acquisition area, .5 mile north of Little Valley Road.	Undeveloped trail to Inglenook Fen.	Acquire scientific access easement across private property to DPR acquisition area.	
21.	Ward Avenue Shoreline	Cleone, MacKerricher State Park.	Equestrian/hiking underpass to park; limited parking.	No access sign to be installed along Highway 1; maintain existing access.	
52.	Mill Creek Drive Shoreline	MacKerricher State Park, Cleone.	County road provides uncontrolled access to park and large parking area.	Maintain free public access to shoreline parking area.	
53.	Main Entrance Shoreline	MacKerricher State Park, south of Mill Creek Drive.	Camping and day use.	Add 50 campsites.	
24.	Virgin Creek Shoreline	MacKerricher State Park, .1 mile north of Virgin Creek.	State park parcel connecting to Highway 1.	Maintain undeveloped nature.	
25.	Georgia-Pacific Haul Road Access	5 mile north of Pudding Creek.	Open to Ten Mile River on weekends, holidays and some winter months.	Highway sign including regulations.	



(415) 310-5109

# Peter R. Baye, Ph.D. Coastal Ecologist, Botanist 33660 Annapolis Road Annapolis, California 95412

MEMORANDUM



baye@earthlink.net

To: Renée Pasquinelli Senior Environmental Scientist California State Parks, Mendocino District 12301 North Highway 1 – Box 1 Mendocino, CA 95460 (707) 937-5721

EXHIBIT NO. 7

Appeal No. A-1-MEN-13-0241 (CA State Parks) MEMOS FROM CONSULTING ECOLOGIST

Date: November 29, 2012

**SUBJECT:** Haul Road Project CEQA, MacKerricher State Park, Mendocino David Springer, retired geology instructor, comment letter Aug 29, 2012: Response to comments on Haul Road removal project potential effects on dune sand transport processes, patterns, vegetation interactions, and geomorphology; and hydrology of dune wetlands

The comments do not argue that dune remobilization of either foredunes or interior dunes is harmful to CSP natural resources. One of the fundamental objectives of the project is to remove artificial obstructions to natural sand transport within the MacKerricher ecological reserve and allow natural dune geomorphic and ecological processes to re-establish. European beachgrass and the Haul Road are obstructions to natural dune processes, so dune mobilization per se within the ecological reserve is a benign outcome consistent with basic project purpose – not a significant impact in itself. The letter cites and reaffirms the June 13 2012 email supporting the project, which reasonably includes its objectives.

Mr. Springer's comment letter does not present any ecological or geological arguments that either restored foredune mobilization or potential secondary effects like (hypothetical) increased interior dune mobility would adversely affect park natural resources (ecological features) internal to the ecological reserve. The implied argument may be that increased dune mobility of the interior, landward dunes may have significant adverse effects *on private property* or public infrastructure (roads) landward of the active dune field that is gradually encroaching them. This is indicated by the statement on page 2 of the letter referring to encroachment of private property. This is the key underlying issue for CEQA significant impacts. Most of the discussion in the letter is technical support of this (implied) argument. The argument that the haul road removal would cause significant increases in active dune encroachment of private property, relative to baseline conditions, fails for several reasons. The reasons include:

(a) <u>High rates of baseline (existing) dune slipface and precipitation ridge migration</u> (no potential to destabilize or significantly accelerate a massive mobile dune's migration). The volume of sand in the foredunes, and the flux of sand from beach to foredune, is dwarfed by

Peter R. Baye Ph.D. Coastal Ecologist, Botanist, <u>baye@earthlink.net</u> (415) 310-5109 the accumulated mass of mobile sand in the interior landward dunes – particularly of the northern lobe.

(b) Significant discontinuity and very long dune travel distance (relative to maximum rates of mobile dune travel) between the foredunes (project area), wide stabilized dune wetland and wetland-dune transition zones, and the landward large mobile dune masses. Recent aerial photography confirms that there are no significant continuous unvegetated pathways for bedload (saltation) transport between foredunes and the remote mobile interior dune masses; the two are separated by a wide, stabilized, vegetated deflation zone with discontinuous low-level or localized blowouts. No substantial eolian ramps or bare deflation plains exist between foredunes and landward dune complexes. If foredunes migrate landward, they reach vegetated stabilized wetlands and dunes behind them. (This is disputed by Springer; see discussion below)

(c) Most definitively, there is <u>no evidence of significantly increased foredune mobilization or</u> <u>landward migration rates in the extensive southern reach of the Haul Road alignment, where</u> <u>natural erosion has already eliminated the Haul Road surface and its embankment.</u> This is in effect a natural, uncontrolled experimental result that is inconsistent with Springer's prediction that removal of the haul road would cause or risk significant increased landward migration of foredunes. In fact, the foredune blowout zone of the eroded Haul Road penetrates landward no more than the sections with the Haul Road in place, and the vegetated stabilized interior dune slacks landward of them increase resistance to their landward migration.

The baseline (existing) condition of the landward edge of the dunes bordering private property is gradual, progressive encroachment of coniferous forest and mature eucalyptus groves (<u>high dune precipitation ridge</u>) or coastal grassland and scrub (<u>high dune slipface</u>), with sparse, patchy, or absent vegetation on the mobile dune crest and on the very wide and high stoss (windward) slopes of the most landward active dunes. These lee slopes move gradually landward because of the high volume of sand required for a relatively small horizontal shift of the toe of the lee slopes of these massive dunes. In contrast, rapid dune lobe migration associated with broad, convex (not sharp-crested slipface) dune lobes occurs within the interior dunes, but is exceptional and localized at the landward margin of the active dunes.

For the project to have "significant" impacts on the encroachment of private property landward of the mobile dunes, sand transport from the project area (foredunes, Haul Road alignment at the seaward end of the dune system near the beach) would have to be transported across the entire dune field at sufficient volumes and rates to have a detectible effect on the magnitude of ongoing landward dune migration rates at these existing high slipface and precipitation ridge features. Note that there was no argument presented that there is a potential to destabilize existing stable dunes bordering private property or roads; the issue is the alleged potential to increase mobility of existing mobile dunes at the landward edge of the dune system.

Springer's comments do not address the rates of sand transport from beach to dune, or the volume of stored sand in the foredunes that could be mobilized, relative to the flux of sand within the landward massive mobile dunes, and their volumes. The rate of onshore transport from beach to foredune at Tenmile Dunes was assessed by W.S. Cooper (1967), who described the sand supply as "feeble", and recognized that the mobile landward dunes were relict past dune advances from periods of greater sand supply. The supply of sand moving onshore from beach through the dunes has evidently

Peter R. Baye Ph.D. Coastal Ecologist, Botanist, <u>baye@earthlink.net</u> (415) 310-5109 decreased, as indicated by the significant net increase in vegetated deflation plains (dune slack wetlands) since the 1960s. Springer does not address the significant net increase in vegetated deflation plains in the dune system, or their implications for sand transport pathways, rates, and supply. Expansion of the slacks indicates insufficient resupply of sand to bury the slacks at a rate at least equal to the rate at which they are exposed by erosion to the water table. The segregation of multiple "waves" of slacks and residual mobile sand is indicative of gradual exhaustion of the sand supply during migration, in which portions of the migrating mass are stabilized by vegetation and unavailable for rapid reworking by wind.

The details of Springer's comments on the formation of lags of coarse sand lags misinterprets the report and its significance The significance of the lag deposits landward of the foredunes indicates that washovers have been deflated (sand eroded, leaving coarse particles), but not re-buried by migrating foredunes. This indicates *deflation* of the zone landward of the foredunes, including areas where the Haul Road has been eroded away by waves. The significance is that net erosion (deflation) contradicts the prediction of significant foredune migration landward of the Haul Road alignment, even where the Haul Road no longer exists. Similarly, Springer's reference to iron staining (iron oxide weathering) confuses the redox staining of sand in dune slack wetlands (due to alternating reduction and oxidation of iron, a rapid process) from the purely oxidative process of iron oxide weathering of non-quartz minerals in well-drained dune sand, an extremely slow process that occurs with soil development. In fact, buried soil horizons as well as subaerial (non-wetland) organic deposits (woody material) and weathered animal bones indicate the advanced age of the landward interior dunes, and lack of burial by fresh (unweathered) sand from foredunes and beach at the locations of observed iron-stained surface sand – confirming the interpretation of slow subaerial iron oxide weathering of the tan-brown sands deposited above the marine terrace. The wetland-related iron staining observations at seaward low elevations in the dunes are an unrelated and irrelevant phenomenon.

Finally, Springer's inference about the effect of the Haul Road on drainage of the fen wetlands and dune slacks is simply incorrect, and inconsistent with dune-dammed wetland drainages throughout the north-central and northern California coast. Foredunes naturally impound drainages and form dune ponds and fens with choked or intermittent outlets, or no outlets (seepage discharge only) at Manchester Dunes, Point Reyes dunes, and at other locations, as well as at Tenmile (MacKerricher) dunes. Moreover, the foundation of the Haul Road is simply transmissive beach and dune sand, not an impermeable barrier of clay or other non-transmissive fill at the depth of the water table. The culverts of the Haul Road in fact provide artificially stable drainage, even in disrepair. It is likely that elimination of concentrated flows at culverts will allow foredunes to increase intermittent impoundment of fen wetlands, favoring wetland expansion in the reserve; there is no mechanism for removal of the culverts and spontaneous restoration of continuous foredunes to increase drainage of the fen.

Springer's comments on "total loss of vegetative cover" are clearly erroneous, and ignore the natural succession of native dune vegetation and their effect on eoliann sand transport rates. The project will not result in "total loss" of vegetation, but replacement of European beachgrass with native dune forbs, as has occurred throughout the zone of past Haul Rd erosion by waves.

Technical detailed comments on eolian sand transport from classic Bagnold text are simply not relevant to this CEQA document, which identifies dune movement resulting from these processes. CEQA does not promote encyclopedic or introductory review scientific background materials, but focuses on potentially significant impacts.

Peter R. Baye Ph.D. Coastal Ecologist, Botanist, <u>baye@earthlink.net</u> (415) 310-5109



# Peter R. Baye, Ph.D.

Coastal Ecologist, Botanist 33660 Annapolis Road Annapolis, California 95412

> baye@earthlink.net (415) 310-5109



August 23, 2013

Mendocino County Board of Supervisors Carre Brown, 1st District John McCowen, 2nd District John Pinches, 3rd District Dan Gjerde, 4th District Dan Hamburg, 5th District

Via e-mail

501 Low Gap Road, Room 1010 Ukiah, CA 95482

# SUBJECT: Tenmile Dunes rehabilitation: removal of haul road remnants, MacKerricher State Park/Ecological Reserve

To the Mendocino County Board of Supervisors:

I would like to offer my professional opinion on recent public commentary about the removal of the remnants of the former haul road from the beach and dunes at MacKerricher State Park, Inglenook Fen - Ten Mile Dunes Natural Preserve. I am a professional coastal ecologist with over 30 years' experience in coastal dune and wetland conservation, management and restoration, most of it in California during the last 24 years.

I am an independent environmental consultant, formerly senior environmental staff for the U.S. Army Corps of Engineers (San Francisco District) and U.S. Fish and Wildlife Service (Sacramento) where I performed regulatory and environmental planning actions for coastal dunes and wetlands, including Tenmile Dunes, since the early 1990s. I have served as a technical advisor for State Parks dune restoration and management projects at Bodega Dunes, Oceano Dunes, Laguna Creek, and Pilarcitos Creek, and multiple National Park Service dune restoration projects at Point Reyes and the Presidio of San Francisco, and most recently at Ocean Beach in San Francisco. My coastal management consulting work routinely involves reconciling endangered species habitat, dynamic wetlands and dunes, infrastructure, and public access.

The degree of misinformation about the Tenmile Dunes "haul road removal" circulating in public opinion is profoundly erroneous and misleading. The former haul road has been completely eroded into the retreating beach at its southern end, and buried by *naturally* mobile foredunes at its northern end. The demise of the former haul road is the inevitable result of natural coastal processes that cause the beach and dunes to retreat landward as sea level rises, as on all beaches in northern California. *There is no serviceable haul road to rehabilitate*.

The beach retreat and foredune mobility are controlled by natural littoral (ocean shore) processes and the natural dune vegetation responses. The false claims that the haul road remnant removal would cause or contribute to significant dune destabilization impacts have no valid scientific basis or merit. They are founded on arbitrary and misleading assumptions that would not survive scientific peer review by qualified coastal scientists with substantial experience in coastal beach and dune systems.

The project proposed by State Parks is to remove the *remnants* of the road – asphalt slab fragments, buried road base, and collapsed culverts that choke and artificially stabilize wetland outlets. The southern end of the former road alignment is now active beach subject to regular winter wave action.

The construction and former maintenance of the former haul road *depended on long-gone shoreline positions, and on artificial dune stabilization in the Tenmile Dunes by European beachgrass* – a species which is universally regarded among academic and applied ecologists worldwide as one of the most noxious coastal invasive weeds with profound biological and geomorphic impacts throughout the temperate zones of the northern hemisphere. State Parks, following the best available scientific guidance from resource agencies and academic scientists, has worked to remove the remaining European beachgrass infesting the foredunes so that essential natural coastal processes – shoreline retreat and dune migration - and endangered species recovery can proceed in a way that is compatible with passive recreational use of the beach.

In the absence of European beachgrass, any road landward of the beach within the dune system would be precluded by the naturally mobility of the dunes. Dune mobility makes any road surface landward of the beach utterly infeasible. Roads across dunes require physical dune stabilization – which would be both artificial and harmful to the fundamental ecology of this unique dune system. There have been no roads proposed in publicly owned dunes, and only one road proposed across privately owned active, mobile dunes in California in the last 20 years – at Lawson's Landing, Dillon Beach, Marin County. The landowners there wisely withdrew that road proposal during the EIR review because of the severe impacts caused by dune stabilization needed for the road.

No permits have been issued for any new roads or dune stabilization projects in California in the last two decades, to the best of my professional knowledge. Furthermore, even most boardwalks constructed across active coastal dunes have lasted only a few years before they became unusable due to burial by deep sand deposits --- as at Marina State Park in Monterey Bay. The suggestion that it would be feasible to rehabilitate, relocate, or rebuild a road in the Tenmile Dunes is not only not supported by any modern precedent, it is simply not credible as a proposal from a regulatory or funding perspective. You may confirm this by directing your staff to consult with the California Coastal Commission, State Coastal Conservancy (Karyn Gear) and U.S. Fish and Wildlife Service.

Even in San Francisco's urban Ocean Beach, where the Great Highway lies directly in back of the eroding beach and mobile dunes, current long-term planning for sea level rise adaptation is predicated on managed retreat – phased removal of the Great Highway. The local opponents of

the haul road remnant removal project are mired in regressive and outdated, infeasible coastal planning assumptions.

The removal of the hazardous and nuisance-causing remnants of the derelict and longunserviceable haul road alignment is the simplest possible restoration project, and should be considered no more than routine maintenance of the ecological preserve at Tenmile Dunes as the beach and dunes migrate inevitably landward.

Sincerely,

Peter Baye 1

Peter Baye baye@earthlink.net

Copies furnished: California State Parks



# DEPARTMENT OF CONSERVATION

# CALIFORNIA GEOLOGICAL SURVEY

801 K STREET • Suite 1324 • SACRAMENTO, CALIFORNIA 95814 PHONE 916 / 327-0791 • FAX 916 / 323-9264 • TDD 916 / 324-2555 • WEBSITE conservation.ca.gov

To: Angela Liebenberg **Environmental Scientist** California State Parks **EXHIBIT NO. 8** Mendocino district Appeal No. 12301 North Highway 1, Box 1 A-1-MEN-13-0241 Mendocino, California 95460 (CA State Parks) MEMOS FROM CA From: Stephen D. Reynolds GEOLOGICAL SURVEY Sr. Engineering Geologist California Geological Survey 801 K Street, Suite 1324 Sacramento, CA 95814 Date: November 9, 2012 MacKerricher State Park--Ten Mile Dunes Restoration – Potential for Subject: Naturally Occurring Asbestos in Railroad Ballast and Road Base. Mendocino County: T19N, R17W, Sections 4, 5, 8, 17, and T20N, R17W Section 3, Description: Mount Diablo Baseline and Meridian. Quadrangles: Inglenook, California, United States Geological Survey 7.5 minute Quadrangle Series (Topographic), 1955, photo revised 1993. References: 1. Baldo Chris and Theron Brown, 2011, The 40 mile railroad that linked Willits and fort Bragg with "bands of steel and friendship", pub. in HIGHLINE, A Journal of Redwood Logging History, published by Roots Of Motive Power, Inc. Vol 29, No. 2, 28p. 2. Borden, Stanley, 1957, The California western railroad, The Western Railroader, vol. 20, No. 8, Issue No. 212, Copyright 1957 - Francis Guido and Stanley Borden. 3. California Department of Conservation, 2000, Topographically occurring mine symbols (TOMS), Office of Mine Reclamation, Abandoned Mine Program. Geographical Information System database.

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- 14. IBID, 2002, Mendocino County Air Quality Management District policies for areas containing naturally occurring asbestos (NOA), 3p.
- 15. Mendocino Coast Model Railroad & Historical Society, Inc., 2012, Ten Mile Branch - history of a Mendocino redwood logging railroad, <u>http://www.mendorailhistory.org</u>

16. United States Geological Survey and California Geological Survey, 2011, Reported historic asbestos mines, historic asbestos prospects, and other natural occurrences of asbestos in California, U.S. Geological Survey Open-File Report 2011-1188, California Geological Survey Map Sheet 59.

# Aerial Photography:

- 1. California Department of Forestry and Fire Protection, 1947, Black and white aerial photographs, CDF rolls 1-2, and 2-7, nominal scale 1:20,000.
- 2. Cartwright, 1963, Black and white aerial photographs, Mendocino County flight, rolls 6 and 9, nominal scale 1:20,000.
- 3. Cartwright, 1964, Black and white aerial photographs, Mendocino County flight, roll 15, nominal scale 1:20,000.
- 4. CVN , 1952, Black and white aerial photographs, rolls 5K, 12K, 15K, nominal scale 1:20,000.
- 5. US Department of Agriculture, 1998, National Digital Orthophoto Program, Mendocino County, California, cvn 06045.
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# INTRODUCTION

California State Parks (CSP) is undertaking restoration of the Ten-Mile Dunes area of MacKerricher State Park. One of the restoration measures is the removal of approximately three miles of paved logging road and underlying ballast from a previous railroad bed. In reviewing the proposed road removal, the Mendocino County Air Quality Management District (MCAQMD) expressed concern that the railroad ballast and fill material associated with the paved road might contain naturally occurring asbestos (NOA). MCAQMD stated, <u>"While NOA is not normally expected on the Mendocino Coast it is commonly found inland and the District is unaware of the source materials used for the railroad base rock and haul road bed."</u> CSP has requested the California Geological Survey (CGS) to evaluate likely sources of ballast and base-rock, and thus the potential presence of NOA underlying the paved road proposed for removal.

# PURPOSE AND METHODS OF INVESTIGATION

The purpose of CGS efforts was to determine likely sources of rock used in the Ten-Mile logging railroad ballast and the subsequent Ten-Mile logging road base and to evaluate whether those sources could, potentially, contain NOA.

The evaluation involved the review of geologic maps, historical documents and historical aerial photographs. The oldest document reviewed was the 1895-1896 Report of the State Mineralogist (9) for aggregate production in Mendocino County. The most recent document reviewed was a 2011 history of logging railroads in Mendocino County (1).

The evaluation focused on whether or not railroad ballast and road base needs could be met locally or had to be imported. Locally derived materials would be much less costly than imported materials, and thus would be the preferred material.

# BACKGROUND

# Railroad and Road Construction

Logging in Ten-Mile River watershed began in 1875 with logs and milled products transported by six-horse teams (2). It was not until 1916 that a logging rail spur was constructed between Fort Bragg and Ten-Mile River watershed, Figure 1 (1, 2). From Fort Bragg the line followed the coast up to the mouth of Ten-Mile River, Mile Post (MP) 8.0, and then entered the Ten Mile River watershed. The South Fork, Clark Fork (Middle Fork) and the North Fork of Ten-Mile River all had track serving logging camps, with additional logging spurs that were laid temporarily to harvest timber then pulled for re-use elsewhere (2).

Railroads are constructed in a manner that minimizes costs (1, 2, 15). If suitable ballast can be located along the rail alignment, then that material will be used (1). Historically railroads have purchased less than one percent of ballast from commercial sources, relying instead on their own ballast pits that are typically along the alignment (1,5).

As the timber in the more favorable ground was exhausted, Union Lumber Company relied more and more on log trucks to move logs from the steeper terrain to railroad reloads. In 1949, the Ten Mile logging railroad was pulled up and replaced with an off-highway truck road direct to the Fort Bragg saw mill, Figure 1(1, 2). Removal of the rail bed and construction of the road started June 18, 1949 and was completed July 18, 1949 (1, 2, 15).

Thus the two key time periods for use of construction materials are 1916-1917 and 1949.

# <u>Geology</u>

Railroad ballast and road base are derived from geologic materials. Thus geology is the key element in the evaluation. The underlying regional geology is Franciscan Formation, a collection of terrains accreted during subduction of the Pacific Plate beneath the North-American Plate. The terrains in the Franciscan Formation consist of a series of northwest-southeast trending belts. The project lies within the coastal belt,

while the nearest potential sources of NOA lie in the central belt, over 15 miles east of the project, Figure 1(16).

In the project area the coastal belt consists of greywacke sandstone (mixed grain types), arkosic sandstone (quartz-feldspar), argillite (shale/slate), greenstone (metamorphosed submarine volcanic rocks), chert, vein quartz, and limestone, listed in decreasing order of abundance (6,12). No potential sources of NOA are present in these rocks.

Coastal belt greywacke, greenstone, chert, and vein quartz have all been found to be satisfactory for purposes of aggregate, road-base, and ballast (4, 9). These materials occur as gravel and as outcrop along Ten-mile River and its forks.

Greenstone, a metamorphosed submarine basaltic volcanic rock, is a very good, NOA-free material for railroad ballast or road base.

Available geologic data indicates that there are at least 21 sources of ballast/base rock within the coastal belt of the Franciscan Formation (3, 4, 5, 6, 8, 9, and 11). Eleven of those are five miles or less from the project area, Figure 1.

# Aerial Photography

Five sets of vintage black and white aerial photography, 1947, 1952, 1963, 1964, 1998, and one set of color aerial photography, 2010, were reviewed. In the 1947 photos gravel deposits (bars) along Ten-Mile River and its branches exhibited only minor disturbance. However, in the 1952 aerial photography large gravel bars on the main stem exhibited extensive modification typically associated with mining: removal of vegetation, access roads, pits, piles, changes in footprint. On the South Fork there is significant disturbance on and adjacent to a greenstone body approximately 4.7 miles road (haul) distance to the southern portion of the logging haul road.

This is consistent with the scenario of a local source for road construction materials, 1947 being just prior to road construction and 1952 being shortly after road construction.

In aerial photography after 1952 similar features are found not only on the main stem of Ten Mile River, but on the southern and middle (Clark) forks as well. In the 1998 imagery in-stream mining is reduced to several focused and intensely developed locations (including permanent machinery, conveyer belts, etc.), but has expanded to include quarrying of greenstone bodies upslope of the river channels.

The 2010 imagery exhibits the same type and extent of mining as found in the 1998 imagery, only slightly larger, more expansive, workings.

# Mining History

Records indicate that between 1895 and 1960 there were 14 documented<sup>1</sup> sites where mining for aggregate and construction materials, eight of which were within five miles of the project area (3, 4, 5, 6, 8, 9, and 11). These sites are all located in coastal belt Franciscan Formation, far from potential sources of NOA.

# FINDINGS

The data contained in historical documents pertaining to mining and construction of Ten-Mile River logging railroad and haul road, in conjunction with information on location and abundance of construction materials, strongly indicates that materials used for railroad ballast and subsequent road construction were derived locally, well outside the area of concern for naturally occurring asbestos.

<u>Original signed by</u> Stephen D. Reynolds, CEG 1286, CHG 200 Senior Engineering Geologist California Geological Survey

Concur

<u>Original signed by</u> Trinda L. Bedrossian, CEG 1064 Senior Engineering Geologist California Geological Survey

Attachments: Regional Map

CC: Renee Pasquinelli





<sup>&</sup>lt;sup>1</sup> A documented site is one where mining activity was reported to or noted by either the state or federal government. Recorded sites do not include private / non-commercial mine workings, such as those developed by the railroads to supply ballast.
Angela Liebenberg November 9, 2012 Page 7 of 7



(7 of 9)



### DEPARTMENT OF CONSERVATION

CALIFORNIA GEOLOGICAL SURVEY

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PHONE 916 / 327-0791 • FAX 916 / 323-9264 • TDD 916 / 324-2555 • WEBSITE conservation.ca.gov

To:	Renee Enviro Califo Mend 12301 Mend	e Pasquinelli onmental Scientist rnia State Parks ocino district I North Highway 1, Box 1 ocino, California 95460
From:	Steph Sr. Er Califo 801 K Sacra	en D. Reynolds ngineering Geologist rnia Geological Survey Street, Suite 1324 imento, CA 95814
Date:	Octob	per 24, 2013
Subject:	MacK and A	erricher State ParkTen Mile Dunes Restoration – Potential for Presence of Treated Railroad Ties ssociated Treatment Residuals
County:		Mendocino
Description:		T19N, R17W, Sections 4, 5, 8, 17, and T20N, R17W Section 3, Mount Diablo Baseline and Meridian.
Quadrangles	<u>:</u> :	Inglenook, California, United States Geological Survey 7.5 minute Quadrangle Series (Topographic),1955, photo revised 1993.
References	:	
	1.	Baldo Chris and Theron Brown, 2011, The 40 mile railroad that linked Willits and fort Bragg with "bands of steel and friendship", pub. in HIGHLINE, A Journal of Redwood Logging History, published by Roots Of Motive Power, Inc. Vol 29, No. 2, 28p.
	2.	Borden, Stanley, 1957, The California western railroad, The Western Railroader, vol. 20, No. 8, Issue No. 212, Copyright 1957 - Francis Guido and Stanley Borden.
	3.	Gilligan, James P., 1965, Man and the redwoods, 1700 to 1965, pub. Univ. California, School of Forestry.
	4.	Koehler, Arthur, 1917, Guidebook for the identification of woods used for ties and timbers, pub. USDA Forest Service, Forest Products Laboratory, Misc. Report RL-1, US Government Printing Office.
	5.	Maslach, William, 2004, Historical collections of the ten-mile haul road, pub. California State Parks
	6.	Mendocino Coast Model Railroad & Historical Society, Inc., 2012, Ten Mile Branch - history of a Mendocino redwood logging railroad, <u>http://www.mendorailhistory.org</u>
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#### INTRODUCTION

California State Parks (CSP) is undertaking restoration of the Ten-Mile Dunes area of MacKerricher State Park. One of the restoration measures is the removal of approximately three miles of paved logging road and underlying ballast from a previous railroad alignment. During California Coastal Commission permit process, the question was raised as to the presence of treated railroad-ties and potential for soil contamination associated with the leaching of polycyclic aromatic hydrocarbons (PAH) from the treated ties. CSP has requested the California Geological Survey (CGS) to evaluate the potential presence of treated ties and associated polycyclic aromatic hydrocarbons (PAH) in railroad ballast and underlying soil.

The Department of Conservation's mission is to protect Californians and their environment by: Protecting lives and property from earthquakes and landslides; Ensuring safe mining and oil and gas drilling; Conserving California's farmland; and Saving energy and resources through recycling.

#### PURPOSE AND METHODS OF INVESTIGATION

The evaluation involved the review of historical documents and a site visit. The oldest document reviewed was a 1917 United States Forest Service manual on wood for ties and timbers (4). The most recent document reviewed was a 2013 history of the first railroad in Shasta County. The evaluation focused on whether or not treated ties were used in that portion of the railroad traversing MacKerricher State Park and the 10-mile Dune Complex.

#### BACKGROUND

Logging in Ten-Mile River watershed began in 1875 with logs and milled products transported by six-horse teams (2, 6). It was not until 1916 that a logging rail spur was constructed between Fort Bragg and Ten-Mile River watershed (1, 2, 5, and 6). From Fort Bragg the line followed the coast up to the mouth of Ten-Mile River, Mile Post 8.0, and then entered the Ten Mile River watershed. The South Fork, Clark Fork (Middle Fork) and the North Fork of Ten-Mile River all had track serving logging camps, with additional logging spurs that were laid temporarily to harvest timber then pulled for re-use elsewhere (2, 6).

As the timber in the more favorable ground was exhausted, Union Lumber Company relied more and more on log trucks to move logs from the steeper terrain to railroad reloads. In 1949, the Ten Mile logging railroad was pulled up and replaced with an off-highway truck road direct to the Fort Bragg saw mill (2, 5, and 6). Removal of the rail bed and construction of the road started June 18, 1949 and was completed July 18, 1949 (2, 5, and 6).

#### DISCUSSION

As with any commercial endeavor, railroads were constructed in a manner that minimized costs (1, 2, and 6). Even light-gauge railroads such as that used in the Ten-Mile River watershed still required over 1,500 ties per mile (7). Ties represented a significant cost component. Fortunately for rail-based operations in the redwood region, they had a readily available, inexpensive source of material for ties, redwood. Redwood ties were in such demand that at times production at the mill in Albion was solely ties (6).

Redwood's superiority was recognized as early as 1880 by the railroad industry, noting that redwood did not require treatment (7). Redwood was described as naturally resistant to decay, and insect or borer attack and durable, not requiring preservation like non- durable species such as pine and fir (7, 10). A classic example of redwood tie durability is the Union Pacific (now Southern Pacific) Tehama-Shasta line. The line was constructed in 1875 using untreated redwood ties and those same ties were finally taken out of service in 1980 (8).

Given their durability and longevity, treating redwood ties would have been an unnecessary expense, and thus not done. Rather, old-growth, heart-wood ties from the adjacent Ten-Mile River watershed were used to construct the railroad.

Reports and records of the construction of Ten-Mile Haul Road clearly state that all ties and rail were removed prior to laying road base (5). CGS has conducted four site visits to specifically evaluate the remnant road bed and water-course crossings. During this field work, CGS did not find any remnant ties or rail exposed in the eroded sections of the road bed. This is consistent with CSP maintenance records for MacKerricher State Park which lack any notations regarding remnant ties or rails being exposed or eroded out of the road (9). CSP would have made note of such features as they are considered archeological resources. This further corroborates the historical documentation regarding removal of all ties and rails.

#### FINDINGS

The data contained in historical documents pertaining to construction of Ten-Mile River logging railroad and haul road, clearly indicate that the railroad-ties used for the Ten-Mile River spur were not treated. In addition, historic documents clearly state that all ties and rails were removed prior to construction of the road. Thus there cannot be treated-tie derived PAH in ballast or soil.

<u>Original signed by</u> Stephen D. Reynolds, CEG 1286, CHG 200 Senior Engineering Geologist California Geological Survey



CC: Trinda L. Bedrossian

31680 Little Valley road Fort Bragg, CA 95437 June 5, 2012

RECEIVED JUN 0 8 2012 CALIFORNIA COASTAL COMMISSION

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

Dear Commissioner,

I am writing you because of my concerns of what is happening to the Ten Mile Coastal Dunes which lie between MacKerricher State Park and the Ten Mile River on the coast in Mendocino County. I have attached a letter I wrote to the State Parks Department voicing my concerns as to the course of actions the Parks department have chosen to eradicate the dune grass.

I ask that you please consider the points I have made and put a stop to this nonsense. If public comment would be considered I believe the consensus would be to stop their course of action and reconsider making this area user friendly and perhaps at a much lower cost.

Thank you for your consideration.

Sincerely yours,

Signature on File

Susan K Walsh

### EXHIBIT NO. 9

APPLICATION NO. A-1-MEN-13-0241

CALIF. DEPT. OF PARKS & REC. PUBLIC COMMENTS RECEIVED PRIOR TO PROJECT APPEAL TO COASTAL COMMISSION (1 of 45) 31680 Little Valley Road Fort Bragg, CA 95437 June 4, 2012 and the second of the second of the second s

and the first and the start of the start start and the start of the st California State Parks Mendocino District 12301 No Highway 1, Box 1 Mendocino, CA 95460

To Whom It May Concern:

Re: Eradication of The Beach Grass on The Ten Mile Dunes

As a lifelong property owner and resident of the north Mendocino coast area, I have had years of pleasure hiking, picnicking, horseback riding, and surf fishing on the dunes and at the beach on the section from MacKerricher State Park to the Ten Mile River. It saddens me to see what has become of that area in the efforts to remove the beach grass.

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### History of Grass Removal Efforts

First was the labor-intensive hand pulling of the grass, then the burning that took out a number of other beneficial plants and trees, and now the poisoning of said grass. In years past deer, rabbits, and many other little varmints made their homes in the wetland areas scattered throughout the dunes. Now it appears to be a wasteland, with the wetlands slowly being swallowed by the sand. The only wildlife I have seen recently are the shore birds and ravens that are eating the Snowy Plover eggs.

### Best Use of Tax Dollars?

My expertise is not in environmental studies, geology, or botany; it lies in finance, and it pains me to see monies spent tearing up the beach grasses when many of our parks do have the funds to keep them open and operating as they once were. Granted I value the plants and wildlife that are on the endangered list, but I fail to see the wisdom in the process that is being used on the dunes when our parks are slowly being closed or services cut back for lack of funding. Whether the eradication process is funded federally or by the state of California, I resent my tax dollars being used in this manner.

#### Effects of Encroaching Sand

Even as a lay person, I can see where the sand blows freely towards Highway 1. It comes closer each day, as can be viewed clearly at the intersection of Charlene Lane and Highway 1. The beach grasses slowed the drift of the sand; without the grasses, sand blows steadily towards the highway, homes, and other private property. At some point it will affect the property values if it hasn't already. In addition, it is blowing into and diminishing both Sand Lake and the wetlands that were nestled in amongst the dunes.

### **Reconsider Removing Old Haul Road**

I understand a contract was put out to bid to remove the old haul road used by lumber companies many years ago. This slightly elevated road runs along the dunes from the Ten Mile River to the town of Fort Bragg. Again I fail to see the wisdom in removing that road.

### Repurpose Old Haul Road for Cycling and Greater Access Instead

The raised roadbed helps slow the erosion from the movement of the sand, and it would seem to me that a road cleanup would make it an asset of the parks. A cyclist riding on Highway 1 with no shoulder is at great risk, and the old haul road could make a great alternate route.

How wonderful it would be to divert bicycle and other non-vehicular traffic to the old haul road and use it as an access route into Fort Bragg. What a beautiful ride that would be! The old haul road could also allow physically challenged individuals, including wheelchair and service dog users, access to an area they cannot get to now. It seems to me having equipment on the dunes to tear out the haul road goes against the whole purpose of preserving habitat for the Snowy Plover habitat and plants such as Howell's Spineflower and Menzies' Wallflower.

Thank you for considering these comments in the helpful spirit I intend them.

Respectfully,

Susan K. Walsh



California State Parks

### Repurpose Old Haul Road for Cycling and Greater Access Instead

The raised roadbed helps slow the erosion from the movement of the sand, and it would seem to me that a road cleanup would make it an asset of the parks. A cyclist riding on Highway 1 with no shoulder is at great risk, and the old haul road could make a great alternate route.

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Thank you for considering these comments in the helpful spirit I intend them.

Respectfully, Signature on File

Susan K. Walsh

Maryellen Sheppard 27200 N. Highway 1 Fort Bragg, C A 95437

June 14, 2012

Mr. Bob Merrill California Coastal Commission North Coast District 710 E Street, Suite 200 Eureka, CA 95501

Re: Haul Road Removal, Ten Mile Dunes, Mendocino County

Dear Mr. Merrill:

CA State Parks intends to remove the old GP Haul Road. I am opposed to this project. As a neighboring property owner, I am extremely concerned about the potential for dune migration removal of the haul road will cause. The haul road has been in place for over 100 years and it forms a barrier to the movement of sand eastward from the ocean. As far as I know, there have been no studies prepared by State Parks regarding how the removal of this protective barrier will impact dune migration. As an adjacent land owner I am deeply concerned about potential damage to all of the land adjoining the Ten Mile Dune Complex because of this proposed project. I am dismayed that adjacent land owners were not notified by the State regarding its intent to carry out such a damaging project since removal of the road will impact dune migration.

The State intends to employ herbicides as part of this project to remove non-native species from the dunes. Again, as an adjacent land owner, I am surprised at the lack of notification re: the use of dangerous poisons adjacent to my property. According to Mr. Loren Rex, head of Mendocino area parks, the State plans to plant Shore Pines along the beach. These trees will grow to a height that will block ocean views from coastal properties in this area, greatly devaluing land along this part of the Mendocino coast.

I find the State's "plan" to be reckless and lacking in forethought. I respectfully request that this project be stopped immediately. I do not want my property or my health adversely impacted by this expensive, poisonous and unstudied project. With property values already greatly reduced, I doubt Mendocino County wants to further reduce assessments because of this ill-conceived scheme.

Sincerely,	_
Signature on File	
T Maryeller Sheppard 707-954-0540	
	5 of 45

RECEIVED

JUN J 8 2012

CALIFORNIA COASTAL COMMISSION There is a permit pending regarding removing the Ten-Mile Railway Haul Road and two culverts, and depositing the resulting debris in the Mendocino Quarry.

This would be a removal on a geological scale: Two and one-half miles of elevated road and rail berm, and the relocation of two local creek out-flows will create a major alteration in the coastal topography.

Thus a "Negative Mitigated Declaration" is completely inadequate and highly inappropriate for a change of this magnitude.

The State's own Senior Engineering Geologist states in her report that a significant amount of sand will be mobilized, yet the declaration ignores this fact. There are no provisions made to contain this sand, which is subject to nearly continuous wind-driven erosion, and can literally be transported miles over one single windy day.

The debris of this historic old railway undoubtedly contains toxics – creosote, pentachlor, and others, that require special handling. This debris is to be dumped in the Mendocino Woodlands Quarry, which is "within coastal margins", thus such actions should also require coastal commission permit overview.

There are other elements in the plan – not of a construction nature – that will profoundly alter the local environment: Local 'non-native' trees slated for removal and 'non-native' vegetation destroyed with herbicides. Since these 'non-native' trees and grasses are successfully anchoring the sand, destroying them will destabilize the entire dune system. Such destabilization will have repercussions over wide areas.

This entire project – starting with the pending permit – requires careful review and adequate time for public comment. Time is of the essence!

Sincerely,

Ed Sander

Attachments: California Geological Survey Conclusions Ten-Mile Haul Road and the Howell's Spineflower

Cc: Coastal Commission

Building Department

Fort Bragg City Council Fort Bragg Chamber of Commerce

County Supervisors

State Representatives

State Parks.

Advocate

Coast Observer Mendocino Beacon RECEIVED

and and

JUN 1 8 2012

CALIFORNIA COASTAL COMMISSION

6 of 45

# California Geological Survey Conclusions

- Removal of road and culverts, in conjunction with removal of non-native vegetation on the windward side of the road, will eliminate the barriers to natural sand movement within the Ten-Mile Dunes.
- As a result of these natural processes, more sand is likely to blow inland near shore, over the short-term, especially in the northern lobe.
- The additional sand will change the configuration of the dunes as they migrate to the east (i.e. additional transverse dunes could develop and/or grow in height farther inland.) altering the nature of the vegetation and the drainage patterns throughout the dunes.

Tlina L. Bedlossion, PG. 3363, CEG 1064. CPESC. 393 Senior Engineering Geologist, Specialist California Geological Survey



JUN 1 8 2012

CALIFORNIA COASTAL COMMISSION

# Ten-Mile Haul Road and the Howell's Spineflower

The remaining Ten-Mile Haul Road should not be disturbed; it provides and protects seventy-five percent (75%) of the habitat for the Howell's spineflower.

This flower is federally listed as a rare and endangered species. It is shown on the State Biological Resource map to exist almost exclusively in the wind-sheltered and compacted margins of the Haul Road.

Removing the Haul Road will eliminate the majority of the Howell's spineflower's known habitat. It is estimated that ninety-five percent (95%) of its population world-wide exists here in MacKerricher Park, and approximately seventy-five percent (75%) of this population appears in the above-referenced map to be located along the edges of the Ten-Mile Haul Road.

Furthermore, recent spraying of herbicide on near-by dune grass has caused the release of previously anchored sand. On a recent windy day I have personally observed this uncontained sand engulfing some populations of Howell's spineflower.

CALIT. COSTAL COMMERCON ATTENTION BIG MELL THERE IS A BULDING PERMIT PENDING REGARDING THE HAUL ROAD REMOVAL - 15 MILE PUNIES, APPLICANT They DRE CLAIMING & "MITIGATED NEGATIVE DECLARATION" CALIF STOTE PARKS. This is in mappibints for a project of this machitude I have NOTED 2 of The MORE GLARING QUINISIOUS, AND THERE MOLE.

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JUN 1 8 2012

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Signature on File

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CAL	IFORNIA
COASTAI	COMMISSION

# M. Sheppard & Associates

27200 North Highway 1 P.O. Box 1253 Fort Bragg, California 95437 707 964-9121

June 30, 2013

Mendocino County Board of Supervisors 501 Low Gap Road Ukiah, CA 95482

RECEIVED JUL n 8 '2013 CALIFORNIA COASTAL COMMISSION

Re: Ten Mile Dune Rehabilitation Project/CDP#12-2012

Dear Sirs/Madam:

I am the owner of a vacant tract of land that is located adjacent to the Ten Mile/MacKerricher Dunes. I am concerned about the impact this project may have on adjacent land owners like me in terms of increased sand movement due to removal of the road, alteration of the plant habitat and removal of two culverts. One major concern of property owners is the potential decrease in land values that increased sand movement may have on land adjoining the proposed project.

As a real estate appraiser with over thirty years' experience appraising on the coast, I have observed sales of properties that have been negatively impacted by adverse soil conditions. If the project is allowed to continue, properties located adjacent to the dunes could be inundated with sand due to the removal of the old haul road which forms a barrier to sand movement.

I believe the potential loss in value would range from 25% to 69% of market value if an adjacent ownership is rendered unbuildable by increased sand movement. This opinion is based upon the analysis of six land sales, with three sales of buildable tracts contrasted to three sales of tracts that are similar in most property characteristics, but are unbuildable because of adverse soil conditions.

Land Sale 1-A took place June 16, 2009 for \$150,000 or \$12,427 per acre. This property was located mostly in the sand dunes with little or no potential for development as a residential site because the soil condition limited/precluded installation of an on-site septic system.

Land Sale 1-B took place July 8, 2008 for \$550,000 or \$45,454 per acre. Land Sale 1-B took place at the peak of the local real estate market. This sale must be adjusted downward for the passage of time from July 2008 to June 2009. The downward adjustment is equal to approximately 1% per month resulting in a price per acre of \$40,454. LS 1-B was not negatively impacted by sandy soil conditions and was developable as a residential house site.

These paired sales indicate a loss in value of 69% due to the unbuildable state of Land Sale 1-A

Real Estate Appraising • Property Consultation

Mendocino County Board of Supervisors June 30, 2013 page 2

Land sale 2-A took place December 17, 2010 for \$70,000 or \$57,377 per acre. This property was also negatively impacted by a soil condition that precluded development of a septic system.

Land sale 2-B took place June 8, 2011 for \$150,000 or \$150,000 per acre; adjusting this sale downward for the passage of time results in a price per acre of \$141,000. Land Sale 2-B was a buildable lot.

Direct comparison of these two parcels indicates a loss in value of 59% due to the un-useable state of Land Sale 2-A.

Land Sale 3-A took place November 10, 2010 for \$50,000 or \$62,500 per acre. This property was located in an area of hardpan soil and was not developable as a residential site.

Land Sale 3-B took place August 16, 2011 for \$130,000 less \$15,000 for site improvements and \$10,400 for the passage of time results in a price per acre of \$83,680 per acre. This property was similar to the subject in most site characteristics but was a buildable parcel.

Direct comparison of these two parcels indicates a loss in value of 25% due to the unbuildable state of Land Sale 3-A.

It is clear from the available market data, that there would be a negative impact on property values if sand intrusion were to occur on properties adjacent to the Ten Mile Dune Project which could render the parcels unbuildable. The loss in value could range from 25% to 69% of total land value.

Please consider the consequences of this project on local land values and encourage a less radical approach to the removal of the former haul road by California State Parks at the appeal hearing for Coastal Development Permit #12-2012.

Sincerely,

Maryellen Sheppard Real Estate Appraiser, AG002980

cc: Westport Municipal Advisory Council (WMAC 95488@wildblue.net) Bob Merrill, California Coastal Commission Laurie Monarres, Army Corps of Engineers State Senator Noreen Evans Assemblyman Wes Chesbro

### NANCY THORNBURN

217 Hocker Lane Fort Bragg, CA 95437-4057 Tel: (707) 964-1152 E-mail: nancyt@thornburns.com

July 11, 2013

North Coast District Office California Coastal Commission Alison Dettmer, Deputy Director 1385 8th Street, Suite 130 Arcata, CA 95521 RECEIVED

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CALIFORNIA COASTAL COMMISSION

Dear Ms Dettment:

I live in Fort Bragg and am lucky enough to enjoy the beautiful parks along our coast. I have been reading with interest and increasing skepticism, the reports of the meetings with California State Parks regarding the removal of the old haul road between Ward Avenue and Ten Mile River.

My husband and I belong to a walking group that often walks along some of our State Park trails. Last Sunday we were walking along the Big River Trail in Big River State Park near Mendocino. There is an old quarry site along the trail. Much to our surprise there was evidence that grading had been taking place at the quarry. One of our group said that it was going to be one of the disposal sites for the material that's being removed from the haul road. This quarry is approximately 250 feet from the edge of Big River with an elevation rise of approximately 200 feet to the quarry according to the USGS map of the area. How could State Parks be allowed to dump potentially toxic material above Big River? It will certainly leach into the river and undo all of the efforts to restore the river.

According to an article in the Fort Bragg Advocate on June 20, 2013 "State Parks proposes to dig up and truck away 2.7 miles of the remnant road, totaling 25,000 cubic yards. That would total about 2,500 dump truck loads..." and "The material will be disposed of on other state park sites or private property located about 5 miles from the project. The County attached a special condition that State Parks dispose of the materials as close as possible, keeping all that truck traffic off the roads." We cannot allow State Parks to dump above Big River and destroy the restoration that has taken place to date.

A map of the location of the quarry is on the next page.



The more I learn about the removal of the haul road and how State Parks is handling it, the more I'm convinced that you that you must put a halt to this \$750,000 folly before State Parks damages more than it would ever help. The senior environments scientist for State Parks, Renee Pasquinelli, said," the project was a "done deal" because nobody had filed a lawsuit to challenge State Parks' finding that its own project would not have any negative environmental impacts." This is a State Park, owned by the people of California and protected by the Coastal Commission. Does it take a lawsuit to stop an injurious plan? There has not been any appreciable public support for this project. You are our representatives, so please do your job and represent us.

Sincerely,

Signature on File

### Gedik, Tamara@Coastal

From: Sent: To: Cc: Subject: Attachments: Tenaya Middleton <tenayamiddleton@gmail.com> Friday, July 26, 2013 10:44 AM Merrill, Bob@Coastal Gedik, Tamara@Coastal CDP #12-2012 MacKerricher Dunes Rehabilitation Project 2013 BOS letter.doc

Bob Merrill/Tamara Gedik California Coastal Commission North Coast District Office

I am sending a copy of my letter directed to the Mendocino County Board of Supervisors for your information file. Thank you for your support and strong letter during the MND comment period.

Tenaya Middleton Fort Bragg



July 24, 2013

Mendocino County Board of Supervisors 501 Low Gap Road Room 1090 Ukiah, CA 95482

### APPEAL: CDP #12-2012 - MacKerricher Dune Rehabilitation Project

### Dear Supervisors

I have lived in Inglenook since 1989. I walk the northern dunes on a regular basis; my love of the dunes was my primary motive for acquiring property here. As an adjacent landowner, I have concerns regarding the rehabilitation project as proposed for the Inglenook Fen – Ten Mile Natural Preserve. The removal of the northern haul road will effectively extinguish an existing coastal trail and significantly alter the dune environment. DPR states the purpose of the project is to restore ecosystem processes that are essential to the viability of endangered species and their habitats. The magnitude of this project with an unpredictable outcome, stands to affect wetlands, rare and endangered species, neighboring property owners and public health. A higher level of mitigation and special conditions needs to be in place before a CDP permit is granted.

There will be a significant eradication of the Howell's spineflower which favors the stabilized and compacted margins of the haul road; the Menzies wallflower will also be affected. Re-establishment is not assured as the disturbance and soil erosion from the road removal will have substantial impact. Areas of unvegetated potential habitat already exist for reestablishment but no studies have been conducted to prove success.

Nearly one million cubic yards of sand will be released from the foredunes once the road is removed. Wetlands containing special status species will be impacted from sand migration and are a non-renewable resource requiring mitigation on a 1:1 basis to maintain critical habitat. There has already been significant erosion due to ongoing european dune grass removal which began over twelve years ago. According to county ordinance, erosion should not exceed natural level or existing level before development (development, in this case, being the removal of the haul road).

Western Snowy Plover habitat is described as the 100 meter near shore zone which already exists in most places along the road. Removal of the damaged southern portion of the road and two culverts could increase WSP habitat as it has been observed that they favor river openings as nesting habitat. While there is evidence of shoreline retreat in the southern portion, shoreline accretion appears to be taking place in the northern portion, an addition to WSP habitat. The haul road was built on the original dune surface and therefore is no impediment to WSP habitat where it remains intact. Having a DESIGNATED trail away from the near shore zone by keeping the intact portions of the haul road would provide protection for WSP habitat while still allowing safe, nondiscriminatory public access on a designated trail. It has been shown that public access is possible in areas of sensitive habitat with the use of designated trails, exclosures and interpretive signage to promote education and increased appreciation for those environments.

No testing for hazardous materials in the road material has been done. This should be required before any road removal to ensure against toxic airborne particulates and soil being spread or transported to other locations. Currently, any hazards are sequestered under the road surface.

In 1995 DPR drafted the General Plan for MacKerricher with much public input and designated the northern are as natural preserve. The plan stated that the haul road was to be restored with connecting access at Ward Ave. and Ten Mile so that it would be a continuous designated coastal trail all the way to Ft. Bragg. It is shown as the Coastal Trail in the LCP. A feasibility study was conducted in 2000 with one of the alternatives shown as feasible and very similar to the alternative proposed by the Westport Municipal Advisory Council. DPR claimed not to have taxpayer funds; therefore it was not feasible to restore the road .Now after 30 years of benign neglect, there are taxpayer funds to remove it. Furthermore, it appears that DPR never had any intention of restoring the road; already in 1998 in the federal registry document for WSP contained a notation that no boardwalk would be built in MacKerricher. The MacKerricher Dune Rehabilitation Project does not conform to the MacKerricher General Plan, the LCP , or the California Coastal Act as was pointed out in the California Coastal Commission letter to DPR last year during the public comment period for the MND.

### ADDITIONAL CONDITIONS OR ALTERNATIVES TO CDP #12-2012

Scale back the project into phases with assessment and monitoring specified for each phase, set time limits and success thresholds to be met

Repair the southern damaged portion of the haul road and remove the culverts restoring the trail and bridging the stream crossings, provide connecting access within two years

Leave the rest of the haul road intact and approach removal and restoration at a later phase after assessment and monitoring

Sand monitoring system put into place to ensure protection of wetland and neighboring properties for a ten year period, yearly reporting

Wetland assessment and ten year monitoring program put into place before project begins

Put bond into place for a ten year period for neighboring property owners to ensure protection from sand infiltration

European dune grass removed incrementally and replanted with native vegetation within one month

An EIR requirement should be placed on DPR due to the far-reaching scope of this project on the environment before the permit is issued

Hazardous waste assessed through soil sampling and testing before any road removal begins

In closing I would like to state again that I think it is totally possible to have a designated trail through the northern dunes that would balance the objectives of species protection, preservation and enhancement along with non-discriminatory public access. As neighbors, we have been subjected to a decade plus of piles of hand-pulled european beach grass, then the stench of controlled burns of beach grass and finally to troops with back-pack sprayers spraying herbicides on beach grass. Now we are about to lose a designated coastal trail creating massive erosion of the dune ecosystem. Thank you for taking the time to consider my concerns. I hope you will advise your planners to grant this permit only with strict special conditions and mitigations or perhaps send DPR back to the drawing board. DPR has seriously eroded public confidence both on a statewide and local level; this plan is supposedly designed as a rehabilitation and restoration project. As it stands, it is an environmental destruction and once implemented, there is no turning back. I very much want to see the designated coastal trail preserved for all who live here as well as as those who visit our coast, for generations to come.

Sincerely,

Tenaya Middleton P.O. Box 1823 Mendocino, CA 95460

Cc:

Bob Merrill, California Coastal Commission State Senator Noreen Evans Assemblyman Wes Chesboro Laurie Monarres, Army Corps of Engineers 3

Maryellen Sheppard 27200 N. Highway 1 Fort Bragg, CA 95437

August 20, 2012

Renne Pasquinelli California State Parks c/o Russian Gulch State Park 12301 North Highway 1, Box 1 Mendocino, CA 95460

RECEIVED AUG 23 2012 COASTAL COMMISSION

Dear Ms. Pasquinelli:

I believe the Ten Mile Dune Restoration project should be halted because the Mitigated Negative Declaration prepared by State Parks is inadequate. This massive project proposes removal of a long existing dune barrier (the nearly 100 year old haul road), removal of two culverts on Class I streams, destruction of endangered plants and unknown impacts on the sensitive habitat. I have reviewed two geologic reports (Bedrossian and Wollenburg) on the dunes and both of them indicate that sand movement will accelerate because of the removal of the haul road. The project lacks adequate mitigation for sand movement.

The Sand Grain Analysis Report in the MND states that "Removal of the road and culverts, in conjunction with the removal of non-native vegetation on the windward side of the road, will eliminate the barriers to natural sand movement within the Ten Mile Dunes. Natural coastal dune formation processes are likely to be re-established, [...] As a result of these natural processes, more sand is likely to blow inland (nearshore) over the short-term (defined as **50 years**) especially in the northern lobe. The addition of sand will change the configuration of the dunes as they migrate to the east (i.e., additional transverse dunes could develop and/or grow in height farther inland), the nature of the vegetation, and the drainage patterns throughout the dunes."

In the "Geology and Soils" section, p. 86 "Less than significant impact" is check next to the question, "Would the project b) Result in substantial soil erosion or the loss of topsoil?" The discussion on the following page states "Removal of the asphalt and road base would expose the soil beneath, which consists of unconsolidated sand particles. It is expected that the native sands would be dispersed by the prevailing NW winds and blow inland (nearshore) over the short-term (**50 years**), forming a series of longitudinal-shaped foredunes perpendicular to the coastline. The small nearshore dunes would collect more sand and continue to grow, most likely around small clumps of vegetation, until some threshold size is reached. The movement of sand from the nearshore foredunes to farther inland areas is inhibited by the large expanses of dune and wetland vegetation that occur between the foredunes and the separated transverse dunes to the east. These processes are consistent with the goal of the project, i.e., to return the dune system to a more natural state and restore the dynamic processes within the Preserve."

The discussion states that "the movement of sand from the nearshore foredunes to farther inland areas is inhibited by the large expanses of dune and wetland vegetation" yet the geology report in August 20, 2012 page two

the appendix states that "The addition of sand will change the configuration of the dunes as they migrate to the east, the nature of the vegetation, and the drainage patterns throughout the dunes." The geology report states that the removal of the road is likely to cause more sand to blow inland and that this addition of sand will change the nature of the vegetation while the discussion in the MND states that sand movement is inhibited by the large expanses of dune and wetland vegetation.

These statements are absolutely contradictory. How can State Parks claim that there is no impact when their own document can't agree if there is an impact? Geologists say an impact is likely but State Parks changes this statement in their discussion by dismissing their own appendix document. Furthermore, the discussion states that "the small nearshore dunes would collect more sand and continue to grow, [...] until some threshold size is reached." But what happens after this threshold is reached? What is the threshold? What will the sand do after the threshold is reached? These are questions that illustrate a potentially significant effect throughout the dune system. They are effects that are not stated, nor are they mitigated.

State Parks has also failed to recognize the information put forth in their own publication, "Inglenook Fen, A Study and Plan." Page 86-87 shows the outline of the Ten Mile Dune as it evolved from 1920 to 1972. The 1920 line practically cuts the present day sand dune system in half. There are numerous references in the document about the destabilization of the dunes from off road vehicles and how the dunes have moved over pasturelands. Yet State Parks does not recognize the unnatural state these dunes have been in and how more manmade intrusion could cause further destabilization. The effects of this project could be extremely significant and once the road is gone, there will be no putting it back.

In addition to the increased sand movement caused by this project, access to the area, particularly during periods of high water will be negatively and permanently altered. When the culverts are removed, the streams will not be passable. Maintaining access to this portion of the coast is mandated in the State Parks Plan. State Parks' own general plan maps the trail through the Ten Mile Dunes. The trail is also designated as the "California Coastal Trail" (see <a href="http://californiacoastaltrail.info/hikers/hikers\_main.php?DisplayAction=DisplaySection&County\_Id=4&SectionId=345">http://californiacoastaltrail.info/hikers/hikers\_main.php?DisplayAction=DisplaySection&County\_Id=4&SectionId=345</a>). This map of the Coastal Trail has the haul road as the California Coastal Trail from near the Ten Mile River southward to north of Inglenook Creek. The MND proposes to abolish the trail access where it exists through the dunes yet there is no mitigation for this.

State Parks has no regard for the public input. Ms. Renne Pasquinelli stated at an informational meeting held 08/06/2012, that Parks didn't have to have the meeting but they did it anyway. There has been no public input regarding this project. SP has been very protective of this undertaking and has been unwilling to share information until forced to do so by the public. For years SP used herbicides to control European Beach grass with no notice to the public or adjoining land owners.

Implementation has begun prior to approval: SP hired a contractor to remove the road before the MND was complete. Now they are moving ahead with collecting seeds of federally endangered

August 20, 2012 page 3

plants! This sends a message to the public that Parks is going to move ahead with the project no matter what. What if those seeds didn't need to be collected? What will be the environmental impact of collecting the seeds if the project doesn't happen, or, if the project gets put on hold? What's the point of even commenting on the MND if the work is progressing without proper review?

As Assemblymember Jared Huffman, (D-San Rafael), pointed out in a letter written July 20, 2012,"...I've repeatedly expressed my concern about the lack of transparency and the fortress mentality at State Parks." The Dune Restoration Project is an excellent example of those flaws.

The Mitigated Negative Declaration prepared by State Parks does not sufficiently address all the potential negative impacts of this project. The impacts of this operation will be permanent and impossible to reverse. Please stop the Ten Mile Dune Restoration Project.

Sincerely,

## **Signature on File**

Maryellen Sheppard

cc:

Loren Rex, Superintendent, California State Parks <u>lrex@parks.ca.gov</u> Senior Environmental Scientist, California State Parks <u>rpasquinelli@parks.ca.gov</u> Bob Merrill, District Manager, California Coastal Commission <u>bmerrill@coastal.ca.gov</u> Martha McClure, North Coast Representative, California Coastal Commission, <u>mmcclureccc@co.del-norte.ca.us</u>

Wesley Chesbro, Assemblymember, State Capitol, PO Box 942849, Sacramento CA 94249-001 fax (916) 319-2101

Abbie Stockwell Mendocino County Planning Dept 120 West Street Fort Bragg, CA 95437

Jared Huffman 3501 Civic Center Drive Suite 412 San Rafael, CA 94903 Carbon copy, continued

Noreen Evans Ukiah Office 200 N. School Ukiah, CA 95482

Mendocino County Board of Supervisors 501 Low Gap Road, Room 1010 Ukiah, CA 95482

· Carre Brown, 1st District Supervisor (email)

- · John McCowen, 2nd District Supervisor (email)
- · John Pinches, 3rd District Supervisor (email)
- Kendall Smith, 4th District Supervisor (District covering Inglenook) (email) Dan Gjerde, 4<sup>th</sup> District – January 2013. (email)
- Dan Hamburg, 5th District Supervisor (email)

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CA State Parks Dune Project	lease abandon the pla	n to destroy the Haul Road, thus saving taxpayer dollars and preserving coastal access.
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Petition to Save Haul Road

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Petition to Save Haul Road

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TO: North Coast District Office Alison Dettmer, Deputy Director Bob Merrill, District Manager 710 E Street, Suite 200 Eureka, CA 95501 (707) 445-7833 or (707) 445-7834 EAX (707) 445-7877

RECEIVED CALIFORNIA COASTAL COMMISSION

From: Tim McClure 26200 Spruce Lane Fort Bragg, CA 95437 (707)964-5001

Re: MacKerricher State Park Dune Rehabilitation Project Mendocino County

27 of 45

# MACKERRICHER STATE PARK DUNE REHABILITATION PROJECT 8/31/12

TO: Renee Pasquinelli, Senior Environmental Scientist California State Parks Mendocino District 12301 North Highway 1 – Box 1 Mendocino, CA 95460 Fax : (707) 937-2953 Email: <u>rpasquinelli@parks.ca.gov</u>

FROM: Tim McClure 26200 Spruce Lane Fort Bragg, CA 95437 (707) 964-5001 Email: malt66@sbcglobal.net

# REGARDING: MACKERRICHER STATE PARK DUNE REHABILITATION PROJECT

After reviewing the State Parks plan for removal of the Haul Road and dure vegetation, a few questions remain unaddressed:

1. An estimated 25,000 cubic yards of asphalt and road base to be removed and transported 20 miles to be deposited at Big River Quarry. At 10 yards per dump truck this equals 2,500 truck loads. This sounds like a huge impact in itself. As John Kaijankoski pointed out at the public meeting at the Fort Bragg Grange, this much heavy equipment moving so much soil will be a huge impact both at the worksite and at the deposit site. I believe it is difficult for academia such as yourself to comprehend what the realities of heavy equipment moving so much soil entails. I think you are kidding yourself if you think there are not going to be fuel spills or leaks onto the sensitive environment. The process will be noisy, dusty, environmentally destructive and I cannot believe the California Coastal Commission would permit this kind of activity in such a sensitive arena.

## MACKERRICHER STATE PARK DUNE REHABILITATION PROJECT 8/31/12

- There is no estimate in your report for the number of cubic yards of vegetative matter to be removed and how many truckloads this would take and where it would be taken and how this would not create an environmental problem at the deposit site.
- 3. State Parks have been entrusted by the people of California to be good stewards of the commons. I fail to see how motoring thousands of pieces of heavy diesel equipment up and down pristine beaches meets this mandate. The carbon footprint of this project alone should be a deal breaker in this era of heightened awareness of the impacts and implications of global warming. This said, I think you need to step back and rethink this whole boondoggle before more irreparable damage is done to this fragile planet through misguided projects such as this.

Sincerely,

Signature on File

Tim McClure

8/31/12

P.3



California Native Plant Society

Dorothy King Young Chapter . P.O. Box 985 . Point Arena CA 95468

Date:	August 31, 2012		RECEIVER
To:	Robert Merrill California Coastal Commission 707-445-7833 V	707-445-7877 F	AUG 8 1 2012 COASTAL FORNIA
From:	Lori Hubbart, California Native 707-882-1655 V	Plant Society 707-882-1645 F	COMMISSION
Subj:	Comment letter from CNPS – St MacKerricher State Park, Mendo	ate Parks Dune Reh ocino County	abilitation Plan at
Pages:	2 plus cover sheet		

Dear Mr. Merrill,

Attached is a comment letter from the Dorothy King Young Chapter of the California Native Plant Society.

As the letter indicates, CNPS believes this project has been thoroughly researched and planned with the participation of top-notch ecologists.

Please contact me if you have any questions.

Sincerely,

L'd

Signature on File

Lori Hubbart, Conservation Chair California Native Plant Society, Dorothy King Young Chapter

California Native Plant Society

Dorothy King Young Chapter . P.O. Box 985 . Point Arena CA 95468

August 30, 2012

Renee Pasquinelli, Senior Environmental Scientist California State Parks, Mendocino District 12301 North Highway I – Box 1 Mendocino, CA 95460

Re: Comments - MacKerricher State Park Dune Rehabilitation Project

Dear Ms. Pasquinelli,

These comments are submitted on behalf of the Dorothy King Young Chapter of the California Native Plant Society (CNPS). CNPS works to conserve California's native plants in their natural habitats, as supported by good science.

### Science and the Initial Study

CNPS notes that the Initial Study for this project was written in consultation with several scientists who are experts in coastal dune dynamics, coastal California ecosystems and local native flora and fauna. Project plans were clearly based on the best available scientific understanding and opinion.

### Nature preserve status

As stated in the Initial Study, "In 1995, the fen complex and dunes of MacKerricher State Park were classified as the Inglenook Fen-Ten Mile Dunes Natural Preserve to recognize the regional and statewide significance of its outstanding natural values."

CNPS wholly supports this natural preserve classification. Recreational activities within the preserve must be compatible with science-based conservation goals and strategies.

### Removal of "Haul Road" remnants

Remains of the old "Haul Road" are incompatible with restoring native life forms and natural processes. The Initial Study clearly demonstrates the importance of removing the old road to promote natural sand movement and the re-establishment of native dune flora.

### Sand movement

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Natural ecosystem processes include relationships between invertebrates, vertebrates, plants, lichens and bryophytes and other life forms, as well as natural patterns of sand movement. For The Ten Mile Dunes, these processes have been studied and documented. There is no evidence that this project will cause sand drift that would pose a major threat to nearby properties or homes.

Removal of weeds and old asphalt will not result in the dunes becoming vast acres of bare sand. Instead, native dune perennials and shrubs will re-colonize portions of the dunes, providing appropriate levels of stabilization. Local dune plants are adapted to sand movement and are not necessarily killed by being temporarily covered with sand.

It is well-established that coastal dunes can largely restore themselves given 1) the presence of a large, viable seedbank and 2) removal of barriers to restoration such as invasive weeds and inappropriate structures.

### Removal of European beach grass

Early attempts to stabilize the dunes were misinformed and resulted in displacement of a varied and rich native flora with a dense monoculture of European beach grass (Ammophila arenaria).

31 of 45

The decline in native plants brought about a decline in the animal species dependent, directly or indirectly, on those plants. The most obvious example is the endangered snowy plover, a shorebird that requires the wide-view views and easy access to the water provided by low, spreading native dune plants. Young plovers cannot see over or navigate through stands of European beach grass. Thus, the native dune flora promotes survival and population increase of this endangered bird

CNPS supports removal of the non-native, invasive European beach grass as a major step toward rehabilitation of the dunes. This weed has no place in a nature preserve.

#### **Trails and recreation**

CNPS generally favors making natural areas accessible, because people will support what they have learned to know and love. In this case, recreation and trails must be appropriate for the nature preserve classification.

Rebuilding the old "Haul Road" would not be in keeping with the goals of a nature preserve, and that idea was shown to be impractical back in the late 1990s. The remaining rapidly eroding road bed does not belong in a preserve and is not needed as part of the California Coastal Trail.

The Coastal Trail has already been designated to run along beach in the project area. Meanwhile, Caltrans and local officials are discussing the creation of additional, local recreational trails. CNPS is in favor of new trails that cause no environmental harm and promote outdoor recreation for local residents and visitors.

### Conclusion

E.q

The Initial Study is for a *Mitigated* Negative Declaration, which means that any reasonably foreseeable impacts will be mitigated to a level of less-than-significant.

Based on the information available thus far, CNPS supports the project's conservation goals and the actions outlined in the Initial Study to achieve those goal.

Sincerely, Signature on File

Signature on File

Lori Hubbart, Conservation Chair California Native Plant Society, Dorothy King Young Chapter

CC: Loren Rex, Superintendent, California State Parks Irex@parks.ca.gov

Liz Burko, District Superintendent, California State Parks lburko@parks.ca.gov

Bob Merrill, District Manager, California Coastal Commission North Coast Office

Martha McClure, North Coast Representative, California Coastal Commission,

Wesley Chesbro, California State Assembly

Jared Huffman, California State Assembly

Noreen Evans, California State Senate

Abby Stockwell, Mendocino County Planning Dept.

Mendocino County Board of Supervisors

33 of 45

707.882.1645

Tom Kisliuk P. O. Box 426 Westport, CA 95488

August 30, 2012

Renee Pasquinelli California State Parks 12301 North Highway, Box 1 Mendocino, CA 95460

RECEIVED SEP 0 4 2012 CALIFORNIA COASTAL COMMISSION

**Re: Dune Project** 

Dear Project Reviewers:

This letter is intended for Public Comment on the State Parks proposal for a Mitigated Negative Declaration for removing the Haul Road and Dune Grass in the area South of Ten Mile River and North of Ward Avenue.

The document purports to restore approximately 250 acres for native species. The document specifies 53 acres of European Beachgrass removal and the removal of the Haul Road which has a surface area of approximately 6 acres. 250 acres is a gross exaggeration when the project is physically treating 59 acres. It appears the acreage of "restoration" is grossly inaccurate.

Page 20 specifies a mitigation measure of slash packing to prevent erosion and mitigate potential impacts to fish. Slash by definition is un merchantable wood and debris from Timber Harvest Activities. No Timber Harvesting is proposed. No slash will be available on site. This mitigation measure is not feasible and the inclusion of this method in the document is inappropriate. The document does not provide mitigation measures in riparian areas which will be impacted by the proposed project.

The document states both culverts are impaired. The culverts were also noticed as impaired more than a decade ago by Geologist Harold "Skip" Wollenberg (document cited in proposal). It appears reasonable to conclude the culverts have been blocked for a decade or more and as such there will be no fish which require passage back and forth to the ocean. As such both watercourses which apparently are deemed potential habitat should be treated as such regardless of the presence or absence of the Tidewater Goby or Anadromous Species as State Parks has not performed any
#### Page 2

maintenance on the culverts. Mitigation Measures should be appropriate for the Tidewater Goby and other native fish species as the potential habitat for these protected species has been impaired and unavailable for use for more than one decade.

Page 67 states the project does not have potential habitat for Coho Salmon, a State and Federally listed species. The largest landowner in the Inglenook Creek Watershed employs a Fulltime Fisheries Biologist and numerous seasonal Fisheries Technicians. This landowner is the primary party in the promising Silver Salmon restoration projects in Pudding Creek and Ten Mile River. Inglenook Creek is mapped by this landowner as a Class One Watercourse. In addition, both forks of Inglenook Creek are mapped by USGS as perennial watercourses with an extremely low stream gradient. The Inglenook Creek Watershed is nearly 1,000 acres. The culvert at Inglenook Creek has not been functional for more than a decade which can be inferred from the proposed project and the Wollenberg Report. How did State Parks ascertain that Inglenook Creek is not potential habitat for Silver Salmon or Steelhead given the information from USGS and the large landowners Fisheries Expert? I believe the project does not correctly state that Inglenook Creek is potential habitat for Silver Salmon and Steelhead. I understand one of the causes of the Coho's demise is that many small coastal creeks such as Inglenook Creek have been altered so that may not provide habitat for Silver Salmon. It appears the State Parks culvert has not provided potential access for this species in Inglenook Creek for many years.

The document does not correctly identify these Fish species as present in the area nor does it provide any mitigation or protection measures.

DFG Raptor Survey protocols involve being on site at daybreak at a location with superior visibility and other requirements. Please explain why State Parks is not utilizing the Department of Fish and Games Raptor Survey protocols? It appears potential methods for mitigating nesting raptors are not employing the appropriate scientific methods.

The project is not compatible with the approved CEQA document MacKerricher State Park General Plan which specifies the area is also to be managed for public access and recreation. It is an unequivocal fact that the proposed project will destroy public access and will remove recreational opportunities in the area of the project. I believe that CEQA requires that the project include mitigation measures for the proposed removal of the road which is used by the public for recreation. A CEQA document which contains

#### Page 3

objectives and mitigations can only be superseded by a document which also is CEQA certified.

The Mitigated Negative Declaration is therefore unlawful in my opinion. I am the author of a Less than Three Acre Conversion in Caspar California which was approved by Cal Fire as it conformed to the Forest Practice Rules. In the subsequent lawsuit the approval was rescinded (per Leslie Markham, CDF who was in close contact with Cal Fires lead Counsel Ginny Chandler) in observation of the following principle. A resource which has been identified and mitigated under CEQA (in this case wind impacts to an adjacent landowner over 20 years prior) can only be replaced or upgraded by a project which also includes a CEQA review. In short, the State Parks General Plan objectives can not be summarily dismissed for this project which is not undergoing CEQA review.

The checklist on page 39 is not correctly answered. The project has numerous POTENTIAL impacts. The project is designed to remove Recreational Resources.

The project is designed to stimulate natural dune formations which may be construed as increased erosion which by design will impact geology and soils. The determination portion of the checklist confirms my statement that the project proponent in fact states there are potential significant effects which have been mitigated yet in the checklist above it indicates there are no potentially significant impacts.

The primary objective of the project is to re-establish native dune migration or wind created erosion. The Certified Engineering Geologists state increased erosion is a likely result. The project contains no monitoring, mitigation, or feasible protection measures to protect adjacent landowners from the Geologists Opinion that there will be increased erosion.

The mitigation method of planting Pines is not feasible as it is obvious to even a novice that we are experiencing epidemic mortality to native pines in our area due to the Pitch Pine Canker. Mendocino County is in the zone of infestation (per the State of California).

Apparently the document did not scope other State agencies which manage resources as Mendocino County is designated by the State of California in the Zone of Infestation for Pitch Pine Canker. The most infected areas are on the coast. There is no mention of the obvious increasing mortality of pines and the

#### Page 4

likely failure of this mitigation measure which in any case will not be effective until the trees have relatively full crowns and heights that can serve to buffer winds. The desired result of increased erosion which is likely to occur per the CEG's report with no feasible mitigation, monitoring, or other method is not in conformance with CEQA in that the project is likely to deleteriously effect adjacent landowners and no feasible mitigation methods are included in the proposed project.

The project purports to aid in Snowy Plover recovery but there is no evidence that spending \$750,000 or natural dune formation will result in an increase in Snowy Plovers. I presume historically there was a greater population of Snowy Plovers in this area and that was during the 100 years of use of the road grade by Railroads and Logging Trucks. Please rescind this project which is wasteful of public funds, unpopular with the local community, and not in conformance with the existing CEQA document which specifies the area will also be managed for Public Recreation and Coastal Access.

Sincerely,

Signature on File

Tom Kisliuk PO Box 426 Westport, CA 95488 Surfrider Foundation Mendocino Chapter

September 9, 2013

Mary K. Shallenberger, Chair California Coastal Commission 45 Fremont Street Suite 2000 San Francisco, CA 94105-2219 SEP 1 0 Z013

CALIFORNIA COASTAL COMMISSION

Re: Mendocino County Coastal Development Permit 12-2012, MacKerricher State Park Dune Rehabilitation Project

On behalf of the Surfrider Foundation of Mendocino County we would like to express our concerns regarding the Mendocino County Coastal Development Permit 12-2012 for the MacKerricher State Park Dune Rehabilitation Project (the "Project").

The completion and maintenance of the CA Coastal Trail is of paramount importance to the Surfrider Foundation. There is an existing significant gap in an improved and maintained CA Coastal Trail in Mendocino County from Ward Avenue to Ten Mile River. The proposed Project would remove the existing remnants of the Haul Road along the beach. The Surfrider Foundation of Mendocino County is not in favor of resurrecting the old Haul Road along the beach as a road, but we are concerned about the right for continued public access along the beach to enjoy the ocean and this area of the MacKerricher State Park, a large portion of which is designated as the Inglenook Fen-Ten Mile Dunes Natural Preserve.

This Project seems to split the CA Coastal Trail from Ward Avenue to Ten Mile River into two routes that could serve the CA Coastal Trail system: the first route is a natural beach trail; and the second route is a developed and maintained trail along Hwy 1. We support both coastal trail routes.

The Surfrider Foundation of Mendocino County supports the Mendocino County Board of Supervisors Coastal Development Permit 12-2012, only under the following recommended conditions:

- The public shall <u>retain</u> the CA Coastal Trail from Ward Avenue to Ten Mile River for nonmotorized access to the ocean and along the beach for hiking, bicyclists and equestrians, with hiking access within the Preserve area; and
- As soon as feasible, the State of California shall develop and maintain the CA Coastal Trail along Hwy 1 from Ward Avenue to Ten Mile River to primarily serve bicyclists.

Furthermore, we would like to be constructively engaged with State Parks and the California Coastal Commission and respectfully request that we be notified regarding any hearings, staff reports or information regarding the appeal of this Project. Thank you.

Sincerely,

Bob Minery

Bob Whitney 2013.09.09 18:40:39 -07'00'

Bob Whitney, for the Surfrider Foundation of Mendocino County

23801 Iris Terracc

Willits, CA 95490

707-459-3906

Eric Freeman P.O. Box 2390 Mendocino, CA. 95460 September 2, 2013

Bob Merrill District Manager North Coast District, California Coastal Commission 1385 8th Street, Suite 130 Arcata, CA 95521)

RECEIVED SEP 3 1 2013 CALIFORNIA COASTAL CONNNISSION

Dear Mr. Merrill:

I am writing to request DTSC action to require comprehensive soil testing prior to disposal of material from the proposed destruction of the GP Haul Road in the portion of MacKerricher State Park north of Ward Avenue. Concerns about toxins in the road bed and on the ground surface were first brought to the attention of California State Parks (CDPR) in specific responses to their Ten Mile Dunes-Inglenook Fen MND. They were raised again in a hearing of the Mendocino County Planning Department and an appeal of the resulting permit to the Mendocino Board of Supervisors (BOS). Despite CDPR claims of no visible pollution, after photographic demonstration and personal inspection by some members of the BOS, some of our requests have been incorporated as permit conditions by the BOS (See Exhibit 1. Proposed special conditions).

CDPR has accepted these modified permit conditions, stating they can easily be accomplished because they are part of normal park maintenance. It is noteworthy that CDPR's own actions (sawing fence, or 'peeler' posts to reduce predation of western snowy plovers, and leaving remnants in direct ground contact) and lack of follow-through (railroad ties stacked in direct ground contact, where they have remained for years dating back to CDPR acquisition of the acreage), caused the need for these related permit conditions, although they were initially contested by CDPR. (See attached photos Figures 1. and 2.)

However, the conditions incorporated in the BOS permit address only the visible surface pollutants we have pointed out. There are no provisions for testing material from the haul road fill prior to CDPR plans to demolish, transport and disperse it (some 2500 truckloads) on forest and ranch roads in the Ten Mile watershed and in the Big River Quarry adjacent to the Big River, two of the north coast's most important salmon rivers.

The purpose of this letter is to seek an action from the DTSC to ensure comprehensive testing of this road fill and railroad ballast prior to its excavation and removal. We know that the DTSC is familiar with the many corrective actions associated with investigations it has conducted regarding the GP mill site and related sites in Fort Bragg area. Those investigations all resulted in mitigation operations - many are still ongoing. (Enclosed Exhibit 2.)

The ballast and road surface CDPR proposes to remove come from an unregulated railroad constructed in 1916 to transport logs from the Ten Mile River watershed to the mill. In 1949 the railroad from the GP mill site to Camp Two on the Ten Mile River was converted to the current haul road – a feat accomplished in just 21 days. Firsthand accounts relate how the railroad tracks were pulled up by a plow attached to train engines and that some railroad ties and other ballast materials were deposited as fill to widen the road surface to approximately 18 feet. Trains operating on this route are likely responsible for deposition of toxic metals and other hazardous substances currently sequestered by the haul road, especially in areas where trestles were in-filled at stream crossings. These toxic metals most probably include arsenic, copper, chromium and lead. Creosote from railroad ties and dioxin from flyash from the GP power plant and train operations are probably present in the ballast, as well as asbestos and hydrocarbons from overweight off road vehicles used for transportation.

CDPR's response has been to deflect concerns by suggesting that if such pollutants exist they would have been made apparent by the washout of southern portions of the haul road during storm events in 1983. As you are no doubt aware, many toxic metals/pollutants are not visible, thus this response is unacceptable as any form of protective measure, since no testing was done to confirm that pollutants were or were not exposed by these storms.

Ancillary evidence suggests quite the contrary: In the project area, both Inglenook Creek and Fen Creek show no presence of the federally endangered Tide Water Gobi, while in the Ten Mile River to the immediate north, and Virgin Creek and Pudding Creek to the immediate south (where the haul road was not damaged), they are present.

We maintain that these contaminants are best controlled by sequestration in place under the chip sealed surface rather than exposure by demolition and transport to area fisheries. In addition as CDPR now recognizes that treated wood products are indeed a toxin, we believe CDPR should be required to remove treated wood not only from the project area (as required by permit conditions), but use their maintenance or other funds to remove treated wood poles from other portions of MacKerricher park and other parks such as the \*Mendocino Headlands. \*Photographic evidence (Figures 3. and 4.) indicates these poles where placed just before or after the 1988 enactment of Proposition 65.

We, the concerned citizens who sought responsible action by our elected (BOS) and appointed officials (CDPR), now must seek your agency's immediate action to achieve a basic level of protection before CDPR operations commence. The Coastal Development Permit #12-2012 as issued is being appealed to the California Coastal Commission.

Thank you for your investigation of this matter.

Sincerely Signature on File

Eric Freeman

Enclosed or attached: Proposed appeal conditions for Hazardous waste (BOS appeal), photos of visible pollutants (project area and area parks), DTSC local actions summary.

cc. Tom Lanphar (Dept. of Toxic Substance Control 700 Heinz Avenue, Suite 100, Berkeley, CA 94710

Andy Gustavson (County PBS) 501 Low Gap Road, Room 1010 Ukiah, CA 95482

Laurie Monarres (North Branch Chief, Regulatory Division, US Army Engineer District), San Francisco, 333 Market Street, Room 923, San Francisco, CA 94105-1905). Exhibit 1.)

#### From BOS appeal HAZARDOUS WASTE

CDPR (2012:95) states "There is no known hazardous contamination of the area where the haul road is located, and there is no indication that the project area contains any hazardous waste, debris, or soils." Yet they go on to note "it is possible that wooden structural elements or ties from the original rail line remain within the historic road alignment and make up parts of the road base and creek crossings. These materials may consist of pressure-treated wood, which contains several potentially hazardous materials (e.g., arsenic), or weatherproofed in some manner possibly with creosote, a human carcinogen." Since treated ties and fence posts can be readily observed in the project area, CDPR's analysis is grossly negligent and patently false.

In addition to hazardous materials now visible on the surface, the road also served as a railroad from 1916 to 1949. Unregulated railroads are well-known sites, typically containing soils and ballast contaminated with asbestos and metals from brakes, petrochemicals, herbicides, and creosote from treated ties and trestle timbers. The Fort Bragg mill site is heavily contaminated and likely provided fill material used to build the haul road over the former railroad grade. The State Department of Toxic Substances Control (DTSC) has entered into voluntary cleanups of one site used for disposal of flyash from the mill, and the California Western Railroad (Skunk Train) for illegal handling and burning of railroad ties. These facts clearly imply that fill must be tested before any removal. Historic photos of the Ten Mile railroad reveal treated wooden trestles spanned the two stream crossings and many treated ties and timbers were observed during tidal erosion of the southern outlying road segments in the winter of 1998. Remains of another trestle just north of Ward Avenue were revealed when that section of haul road washed away, according to many reliable observers. Lewis (1998) also noted "tires on the trucks of vehicles were penetrated by iron spikes remaining in railroad ties" after the road was chip sealed. While rails were removed in 1949, historical information strongly implies a considerable amount of treated ties and timber were simply filled over to convert the railroad grade into a road.

Railroad ties of that era almost certainly contain creosote and arsenic. Wood preservation typically involves pressure-treating the lumber with pentachlorophenol, creosote, or preservatives containing arsenic or chromium. (It should be noted that after December 31, 2003, many wood preservers cannot use arsenic or chromium based inorganic preservatives.) The wood preserving process creates a number of common waste streams containing these chemicals. For example, once wood has been treated with a preservative, excess preservative drips from the lumber. The F032, F034, and F035 listings designate this preservative drippage as listed hazardous waste. (40 CFR Parts 261) Ground penetrating radar sample cross sections produced reflections that are likely treated timbers or ties (Normal Geophysical 2011). The material used to fill over the former railroad grade and trestles to create the haul road in 1949 also may contain toxins imported from the Fort Bragg mill where dioxin and other contaminants are very well documented as a result of extensive site remediation under the oversight of the DTSC.

In summary, available evidence indicates hazardous materials are present on the surface and they are known to exist under the haul road, based on observation of washed out sections and substantial historical evidence. Toxins are not readily visible to the naked eye—chemical testing is necessary to confirm their presence. Many laws and regulations govern how they must be handled and disposed of to avoid adverse impacts on public health, water quality, and the environment, as summarized by Engineering Geophysicist Freeman (2012, 2013). Yet CDPR has conducted no removal of visible waste nor any sampling to assess these predictable risks.

CDPR plans to take contaminated fill material now sequestered under the haul road to a location (Big River Quarry) adjacent to the Big River watershed(MND, CPRD bid documents). Treated wood waste will be stored at a Russian Gulch State Park facility, and fill material may be spread on acreage adjacent to the Ten Mile River watershed (CDPR communication). Those materials will create contaminated runoff that will could impact both watercourses. No plan exists to properly dispose of the wood waste material which is toxic, or the ballast if it does prove to be hazardous. This is an unacceptable approach based on negligent pre-construction investigation that must be remedied to ensure risks to public health, workers, and the environment are addressed. In addition no consideration or planning exists for the potential introduction of invasive plants at disposal sites or the backtransport of invasive species to the project area.

The following new Special Conditions are therefore proposed:

#### Proposed Hazardous Waste Special Conditions:

Special Condition 11(a). [New] Before the initiation of any project activities, a licensed industrial hygienist shall sample the waters in Fen and Inglenook creeks, and downstream from the culverts, as well as buried soils under the haul road, to test for the presence of hazardous waste and toxic substances. Soil sampling shall include at least two locations at each stream crossing and additional samples at no less than one-quarter mile intervals along any sections of the road that will be removed or uncapped. The resulting report shall include an action plan that addresses material handling procedures, worker safety training, and disposal requirements for hazardous wastes subject to project disturbance. If buried hazardous wastes are present at levels that pose threats to workers, the public, or the environment, the action plan shall address how excavation and disposal must proceed. The report and action plan shall be approved by the California Department of Toxic Substance Control and the County Department of Planning and Building Services (PBS) prior to implementation. Special Condition 11(b). [New] CDPR shall remove all hazardous materials presently exposed on the ground surface in the Preserve, including a large stockpile of ties present in the interior dunes south

of Inglenook Creek. Removal of those contaminated surface materials shall be done in conformance with the action plan in Special Condition 11(a).

Special Condition 11(c). [New] One year after remediation is completed pursuant to the approved action plan in Condition 11(a), the two streams shall be sampled for residual toxins, with the results reported to CDTSC and the Mendocino County PBS.

While not a special condition of this permit, CDPR needs to address that similar usage of treated wood materials by CDPR is also occurring in other sensitive areas within our local park system.



Figure 1. Railroad ties retained without proper storage or disposal in ground comtact.



Figure 2. Examples treated wood cut and left in ground contact.



Figure 3. Miles of treated and marked posts circa pre 1988 note denuded ground below drip lines some in ground contact Mendocino Headlands



Figure 4. California Coastal Records project 1987 and 2002 images (poles apparent in 1993 aerial image) showing timeframe for pole placement (Prop 65 -1988).

Exhibit 2.) DTSC actions Fort Bragg area:

This concern stems from three actions undertaken in the region by Cal/EPA all related to previous operations associated with the Fort Bragg Mill. :

1) Flyash from the mill dating from 1986 onward was land farmed and showed high concentrations of dioxin: APN: 06927014

Based on the information provided in the January 2010 McGuire Ranch Completion Report and in the April 28, 2010 letter report on the additional dioxin sample, DTSC approves the Completion Report and deems the work required under the Voluntary Cleanup Agreement (VCA; Docket No. HAS - VCA 08/09-146) is complete.

2) The DTSC investigated the CNW railroad (Skunk train) for the burning of creosoted rail ties and improper storage of ties. DTSC recent actions: APN: 00805329

The Department of Toxic Substances Control (DTSC) has reviewed and approves the revised RFI Report, dated April 10, 2013. Mendocino Railway submitted this RFI Report in accordance to terms of the June 2005 Corrective Action Consent Agreement (Docket HWCA: P1-04/05-011). The RFI Report addresses the two remaining Solid Waste Management Units (SWMUs) requiring investigation: SWMU #34 – Locomotive Repair Shop and SWMU#35 – Railroad Area Soil.

Based on the results of RFI, further soil or groundwater characterization investigation is required at the Site. The additional work shall include:

· Additional soil investigation to better characterize the extent of lead in all parts of SWMU #35;

· Analysis for arsenic in all future soil samples;

 Additional investigation of groundwater to better identify groundwater gradients and delineate dissolved contamination concentrations.

3) The GP Mill site itself has been the site of ongoing cleanup activities associated with dioxin, polycyclic aromatic hydrocarbons, and PCB. APN: 01843002, APN: 008-010-26-00, 008-020-09, 008-053-34-00, 008-151-22, 008-161-08, 00802009, 00805334, 00815122, 00816108, 00817105, 00817106, 00817107, 018-010-67-00, 018-020-01, 018-030-42-00, 018-040-52-00, 018-120-43, 018-120-44, 018-430-01-00, 018-430-02-00, 018-430-02-00, 018-040-52-00, 018-120-43, 018-120-44, 018-430-01-00, 018-430-02-00, 018-430-02-00, 018-430-02-00, 018-120-43, 018-120-44, 018-430-01-00, 018-430-02-00, 018-43002, 01843002, 01843002, 01843002, 01843002, 01843003, 01843003, 01843008

These related local discoveries are reason enough for concern, even before consideration of the potential pollution caused by the operation of an unregulated rail line, and all the hazardous materials routinely generated in the operation of these types of properties.



Mendocino Coast Cyclists, Inc. PO Box 742

Fort Bragg, CA 95437 www.MendoCC.org ... a pending 501c3 non-profit www.MendoCC.org RECEIVED SEP 1 3 2013 CALIFORNIA COASTAL COMMISSION

September 9, 2013

Tamara Gedik, Coastal Program Analyst California Coastal Commission 1385 8<sup>th</sup> Street, Suite 130 Arcata, CA 95521

RE: Appeal of MacKerricher State Park Dune Rehab/Haul Road Removal (CDP #12-2012)

Dear Ms. Gedik,

I am a member of Mendocino Coast Cyclists, and I support the appeal of Mendocino County Coastal Development Permit #12-2012 for the MacKerricher Dune Rehabilitation Project to the Coastal Commission for reasons explained in the appeal filing.

As a member of Mendocino Coast Cyclists, I strongly support securing, maintaining and restoring the MacKerricher Haul Road between Ward Avenue and Ten Mile River. As a low-cost form of public recreation highlighting the best of our coastal resources, this amenity should not be forever abandoned.

The MacKerricher Haul Road south of Ward Avenue is a huge recreational asset for Fort Bragg and surrounding areas. If the remnants of the original Haul Road north of Ward Avenue were re-connected via a biking/hiking trail, riders and walkers would be able to enjoy an awesome wilderness experience of no cars, no buildings and no civilization all the way to the Ten Mile River, a distance of seven miles one way. The extended trail would automatically become a part of the Pacific Coast Trail and the Pacific Coast Bicycle Route allowing hikers and bikers, including hundreds of touring cyclists every summer, to avoid several miles of dangerous and shoulder-less Highway 1. Please help make Fort Bragg a destination for those who want to get away from it all, improve their health and peace of mind. No other city could offer such a complete get-away so close to downtown.

Therefore, I respectfully request that the portion of the dune restoration project description ("1: removal of asphalt and gravel base in three segments of the former Georgia Pacific Haul Road, totaling 2.7 miles") not be approved without a true and transparent public process analyzing alternatives to the removal of the Haul Road north of Ward Avenue, including reconnecting the lost segments to the fullest extent possible so it may be enjoyed by walkers, runners, cyclists and equestrians and for many more years.

Please feel free to contact me if I can help in any way.

Sincerely,

Signature on File Member, Mendocino Coast Cyclist



COUNTY OF MENDOCINO

**DEPARTMENT OF PLANNING AND BUILDING SERVICES** 860 NORTH BUSH STREET · UKIAH · CALIFORNIA · 95482 120 WEST FIR STREET · FT. BRAGG · CALIFORNIA · 95437 Steve Dunnicliff, Director Telephone 707-463-4281 FAX 707-463-5709 Ft. Bragg Phone 707-964-5379 Ft. Bragg Fax 707-961-2427 pbs@co.mendocino.ca.us www.co.mendocino.ca.us/planning

#### MEMORANDUM

- **DATE:** August 13, 2013
- TO: Board of Supervisors
- FROM: Abbey Stockwell, Planner
- **SUBJECT:** Consideration of Westport Municipal Advisory Council's (WMAC) Appeal of Coastal Development Permit # 12-2012 (California State Parks – Ten Mile Dune Restoration Project).

#### **Project Description**

California State Parks proposes to restore ecosystem processes in the Inglenook Fen-Ten Mile Dunes Natural Preserve (Preserve) by removing three disconnected segments of roadway in rare dune habitat, removing two culverts and restoring the stream channel, and treating (without herbicides) approximately 60 acres (24.3 hectares) of European beachgrass and other nonnative weeds. Located west of Highway 1, and stretching southward from the Ten Mile River to just north of Ward Avenue, the project is entirely within the boundaries of the 1,285acre Preserve in MacKerricher State Park, Mendocino County, California.

State Parks summarizes the proposed work as follows:

- Remove three segments of abandoned asphalt roadway and underlying rock base totaling 2.7 miles (4.3 km). Some portions of the road will remain intact to protect sensitive resources.
- Remove two approximately 5-foot diameter (1.5 meter) culverts and associated fill materials to restore the stream bed, bank, and channel to a natural condition and reestablish native plant vegetation.
- Remove approximately 38 acres (15.4 ha) of previously treated European beachgrass using hand labor and approximately 15 acres (6.07 ha) of previously untreated European beachgrass through a long-term program of hand removal and native plant reestablishment.
- Remove other non-native plants, including trees and shrubs, through a long-term program that includes reestablishing native dune forest in an approximate 7 acre (2.8 ha) area of back dunes.
- Reestablish federally and state-listed threatened and endangered species and other native plants into suitable habitat by direct seeding, transplanting, or installation of cuttings.
- Remove ice plant in select areas to increase habitat for the federally listed Howell's spine flower.

Additional details of the proposed project description and its associated activities are included in the June 11 CDP Staff Report.

EXHIBIT NO. 10 Appeal No. A-1-MEN-13-0241 (CA State Parks) EXCERPTS FROM COUNTY MEMO RE: APPEAL TO BOS

### **Coastal Permit Administrator Action**

On June 11, 2013, the Coastal Permit Administrator considered and approved the CDP with modifications to the conditions of approval (See Attachment A). At this hearing, members of the public provided testimony opposing the project for various reasons, including impacts to coastal access, impacts to rare plant communities, and disposal of hazardous material – similar to the issues raised as the basis for the appeal. The Administrator considered the information provided by staff, the applicants, and the concerned public, and on balance found the project was supported by the provisions contained in the LCP.

### Existing Setting & Coastal Access

As coastal access is a primary reason for the appeal of the proposed project, it is important to note the current and existing conditions as the basis for evaluating access to this portion of MacKerricher State Park.

The project site lies within the northern portion of MacKerricher State Park (also known as the Inglenook Fen-Ten Mile Dunes Natural Preserve, or Preserve), which extends from Ward Avenue in Cleone north to the mouth of the Ten Mile River. Access to this portion of the State Park may be obtained from a parking area and formal access point at Ward Avenue. In the Preserve, the Haul Road does not provide through access north to south. While the roadway was opened to the public for vehicle travel on the weekends in 1977, the Ten Mile Dunes segment was abandoned in 1983 after a storm washed out a half mile portion of the road immediately north of Ward Avenue.

The north end, near Ten Mile River, is not a formal access point – access to the Haul Road in this location is by walking through private property that lies between Caltrans right-of-way and State Parks land. Visitors do access this northern portion near the Ten Mile Bridge; however, no formal process of establishing prescriptive access has occurred. Access at this northern point is by traveling over loose sand with relatively steep slopes. The northerly segment of the Haul Road is intact (although portions are covered by drifting sand) for ~2.5 miles. The two remaining Haul Road remnants proposed to be removed (and vary from 220 to 720 feet in length) are disconnected and significantly degraded to the point of providing little to no walkable/useable trail surface. It is approximately one mile from the northern most segment of Haul Road to Ward Avenue.

From Ward Avenue south to Pudding Creek in Fort Bragg, a distance of ~3 miles, Haul Road provides residents and visitors with paved multi-user access along the shore. The City of Fort Bragg has in place plans to continue this multi-user access trail from Glass Beach south to near the Noyo Harbor. The northern half of the park, where the project is located, provides public access to one of the few remaining 'wild' and undeveloped areas of the County's coastline. This area provides visitors and residents with a unique opportunity to experience a wilderness coastal environment in close proximity to an urban setting.

The Preserve contains an extensive dune system that covers 1,285 acres. This dune system is a highly functional and rare habitat that supports numerous types of rare and endangered plant and animal species and is therefore considered an Environmentally Sensitive Habitat Area (ESHA).

Additional and more specific details regarding the proposed project and the County's LCP policies are found in the Public Access section of the June 11 Staff Report.

#### Response to Appeal

Staff's response to the points raised by the appeal follow the order they are listed in the Appellant's letter (Attachment A).

### 1) Coastal Plan Consistency

The Appellants assert that Finding #1: "*The proposed development is in conformity with the certified Local Coastal Program*" is not supported and that the proposed project violates the following Coastal Element Policies:

- **3.1-8:** The implementation phase of the LCP shall include performance standards and mitigating measures necessary to reduce adverse impacts on wetlands and wetland buffer areas from permitted developments. Such standards and mitigating measures shall be consistent with those recommended in the California Coastal Commission's Statewide Interpretive Guidelines for Wetland and Other Wet Environmentally Sensitive Habitat Areas, adopted February 4, 1981.
- **3.1-15**: Dunes shall be preserved and protected as environmentally sensitive habitats for scientific, educational and passive recreational uses. Vehicle traffic shall be prohibited. Where public access through dunes is permitted, well-defined footpaths or other means of directing use and minimizing adverse impacts shall be developed and used.

New development on dune parcels shall be located in the least environmental damaging location and shall minimize the removal of natural vegetation and alteration of natural landforms. No new parcels shall be created entirely within sand dune habitat. One housing unit shall be authorized on every legal parcel existing on the date of adoption of this plan, provided that adequate access, water, and sewage disposal capacity exists and that the proposed development is consistent with all other applicable policies of this Coastal Element and meets all applicable health standards.

**3.6-27:** No development shall be approved on a site which will conflict with easements acquired by the public at large by court decree. Where evidence of historic public use indicates the potential for the existence of prescriptive rights, but such rights have not been judicially determined, the County shall apply research methods described in the Attorney General's "Manual on Implied Dedication and Prescriptive Rights". Where such research indicates the potential existence of prescriptive rights, an access easement shall be required as a condition of permit approval. Development may be sited on the area of historic public use only if: (1) no development of the parcel would otherwise be possible, or (2) proposed development could not otherwise be sited in a manner which minimizes risks to life and property, or (3) such siting is necessary for consistency with the policies of this plan concerning visual resources, special communities, and archaeological resources. When development must be sited on the area of historic public use an equivalent easement providing access to the same area shall be provided on the site.

In addition, the Appellants argue that the proposed project is inconsistent with the intent of Policy 4.2-21 and the policies and directives included in the State Parks 1995 MacKerricher park General Plan prepared in response to Policy 4.2-19.

- **4.2-19**: The Department of Parks and Recreation shall be requested to prepare a General Plan for MacKerricher State Park that provides access to Ten Mile River and Inglenook Fen at designated locations and subject to conditions necessary for preservation of the natural environment of the park. Off-road vehicles shall be excluded.
- **4.2-21**: The Georgia-Pacific Corporation haul road, under a special management agreement with the California Department of Parks and Recreation, presently provides weekend and holiday vehicular access to the long stretch of public beaches which extend from Fort Bragg north to Ten Mile River. This private roadway, which travels through the entire length of the MacKerricher State Park, should be acquired by DPR and incorporated into its management plan for the park, if at any time during the life of the Local Coastal Plan the property owner desires to sell, trade or surrender this property.

The June 11 Staff Report contains analysis that supports Finding #1. The Staff Report also includes discussion on Policies 3.1-15 (pg 16-18) and 4.2-19 (pg 12-13 and Special Condition 4) & 4.2-21 (pg 7-8). Well-defined footpaths are not proposed through the dune system. Instead, State Parks will continue to allow "Passive Recreation" in the Preserve, which includes hiking, horseback riding, fishing, swimming, jogging and similar activities to continue along the shore and through the dunes that do not rely on the development of trails or other site improvements (Coastal Zoning Code Section 20.340.015). State Parks will periodically and temporarily limit access to areas within the Preserve as needed protect sensitive habitats in accordance with its land management and resource protection procedures. The remainder of the park will be open for passive recreation access during these closure periods.

Policy 3.1-8 does not apply to the proposed project and directs the County zoning code (the implementation measures of the LCP) to include performance standards for wetland mitigation.

Policy 3.6-27 does not apply as the proposed development is on *public land* and does not conflict with an easement acquired by the public at large by court decree. The proposed project will not interfere with the public's access to the sea. The existing access points to and along the Preserve will be maintained.

The County does not have any authority regarding the contents of the MacKerricher Park General Plan and that document is not the basis for review.

### 2) CEQA Environmental Review

The Appellants assert that Finding #4, which states: "The proposed development, if constructed in compliance with the conditions of approval of this coastal development permit and with the mitigation measures incorporated into the project by the certified Mitigated Negative Declaration, in accordance with the California Environmental Quality Act, will not have any significant adverse impacts on the environment;" – is not supported and that the Mitigated Negative Declaration (MND) certified for this project does not adequately mitigate potential impacts to less than significant.

The California Department of Parks and Recreation (State Parks) is the lead agency responsible for project compliance with the California Environmental Quality Act (CEQA). State Parks has prepared an Initial Study and a Mitigated Negative Declaration (MND). In the Final MND, State Parks states:

Pursuant to Section 21082.1 of the California Environmental Quality Act, State Parks has independently reviewed and analyzed the Initial Study and Negative Declaration for the proposed project and finds that these documents reflect the independent judgment of State Parks. State Parks, as lead agency, also confirms that the project mitigation measures detailed in these documents are feasible and will be implemented as stated in the Negative Declaration.

In summary, the MND for the Project found:

No potential for adverse impacts on agricultural resources, mineral resources, population and housing, and recreation associated with the proposed project.

Less than significant impacts in the following areas: aesthetics, air quality, cultural resources, geology and soils, hazards and hazardous materials, hydrology and water quality, land use and planning, mineral resources, noise, population and housing, public services, transportation/traffic, and utilities and service systems.

Full implementation of the mitigation measures included in the MND will reduce potential project-related impacts on biological resources to a less than significant level.

The Notice of Determination for MND (SCH #: 2012052022) was filed December 20, 2012 and no court challenges to the findings, conclusions, or mitigation measures included in the MND were filed within the 30-day statute of limitations.

The Mitigated Negative Declaration (MND) prepared by State Parks describes design features and mitigation measures incorporated into the project to reduce potential impacts to a level of insignificance as required by CEQA. In addition, the project must comply with policies in the County's Coastal Element and regulations in the County's Coastal Zoning Code that impose specific requirements which in some cases may exceed those necessary to satisfy CEQA.

The CEQA issues raised by the Appellants have been addressed in the MND documentation and satisfy the requirements and standards of the Local Coastal Program. The approved CDP includes Special Condition 1 to emphasize that all mitigation measures specified in the MND are conditions of CDP 12-2012.

### 3) Archaeological or Paleontological Resource Impacts

The Appellants disagree with Finding #5: "The proposed development will not have any adverse impacts on any known archaeological or paleontological resource;" and assert that the proposed project will have adverse impacts on archeological sites which are not mitigated.

Archaeological and Cultural resources were considered during the MND process (see MND pg 79-83 and including Cultural Mitigation Measures), and in the June 11 Staff Report (pg 18-20) which also includes standard and special conditions of approval regarding protection of archaeological resources. The Mitigation Measures and the issues raised were considered by the County Archaeological Commission (April 10, 2013), which determined that adherence to the mitigation measures and project design related to protection of archaeological resources are adequate.

The Final MND contained responses to comments received, and a response from State Parks addressing the issues raised (See letter addressed to Mr. Thad Van Bueren, November 26,

2012 in Attachment B – Response to Comments). As proposed, the project will not have adverse impacts on archaeological/cultural resources.

# 4) Coastal Access

The Appellants disagree that Finding #7 is supported and argue that the finding which states that the project is in conformity with public access and recreation policies in Chapter 3 of the CA Coastal Act and the Coastal Element of the General Plan. The Appellants state that the proposed project is inconsistent with specific County policies listed in #1 above. Special Conditions 3-6 are described as inadequate and unenforceable.

Please see the description of the existing coastal access, response that follows #1, and the details and analysis contained in the June 11 Staff Report (Public Access section, pg. 9). Although the isolated remnants of the Haul Road will be removed, the project will maintain existing coastal access along the shore and dunes. A paved or hardened trail through a rare and extremely limited ESHA is not required by the policies contained in the Coastal Act or the LCP – maximum access is provided at MacKerricher State Park specifically and other nearby coastal access points. The restoration of ESHA and removal of damaged and isolated road segments (including creek culverts) within ESHA, protects, enhances, and maintains a significant coastal resource, namely dune habitat. Dune habitat is particularly rare in California; in northern California coastal dunes account for less than 3% of the landscape. In Mendocino County, there is the Ten Mile Dune system and the Manchester Dunes north of Point Arena. Further, the retention of permanent or temporary trail infrastructure, hardened trail or stream crossings, is not supported by resource agencies charged with protecting rare and endangered plants and animal and stream habitat. Staff received the following statement from the California Department of Fish and Wildlife (Richard Macedo, DFW, May 22, 2013 email correspondence):

My Department supports this project. While short term impacts will occur to sensitive species and habitats, these temporary impacts will be overwhelmingly mitigated by the Project's benefits including a) remove habitat altering structures (e.g. haul road and stream crossings), b) remove/control invasive plant species, and c) restore natural function to the species and habitats that will be temporarily impacted. I've issued a lake/streambed alteration agreement (LSAA; draft attached) and am completing an incidental take permit for two state-listed plants that will be temporarily impacted by the project. I've been advised that consideration is being given to installing foot bridges or other devices across Inglenook and Fen Creeks. The attached LSAA does not permit the construction of such devices across these Creeks. Permit concerns aside, I do not support this plan. After the existing culvert crossings are removed, the project will restore the affected stream sections to natural channel function. In the dune-type environment, we expect that stream channels will change position over the years as active dunes interact with post-project unrestricted stream channels. To function properly, installation of foot bridges will require the restriction/stabilization of the affected stream channels to prevent channels from migrating away from the bridge crossings. Construction and maintenance of foot bridges will hamstring the mitigation that my Department supports, that being the return of natural stream function to Inglenook and Fen Creeks.

Additional and related comments are also found on page 14 of June 11 Staff Report. The proposed project is consistent with the County's LCP and the Coastal Act.

# 5) Resource Protection

The Appellants assert that Finding #8 is unsupported, which states:

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

The MND and its supporting documentation use science and expert professional judgment to conclude that the proposed project will not degrade the dune habitat and its associated ESHA. The restoration/rehabilitation project will support the continuance and enhancement of the subject ESHAs. Maintaining the Haul Road and culverts in place, or constructing a new trail in dune habitat or new stream crossings will continue to disrupt and degrade habitat function, including the reduction of habitat, and interruption of ecosystem processes. Therefore removal of the Haul Road is a feasible less environmentally damaging alternative. The following excerpt from the MND explains the environmental benefit of removing the road (MND, pg. 5):

The partially eroded haul road and culvert system will continue to impair fen wetland hydrology if no action is taken. The culverts are located behind relatively wide (past or current European beachgrass-influenced) fore dunes that temporarily protect them from direct storm wave erosion. Partial storm wave erosion of the rusted metal culverts would result in hazardous and esthetically unacceptable conditions, and may result in persistent artificial influence of wetland outlet hydrology. Partial storm wave erosion of the haul road results in formation of a steep cliff-like dune scarp with an asphalt-armored top that impedes establishment of native dune vegetation (root zone restriction, inhibition of colonization). Active removal of the haul road, culverts, and beachgrass would accelerate recovery of the dune and wetland complex within the Preserve, particularly the critical outlets of the fen wetland systems. The proposed project would remove unnatural features to restore native habitats and to preserve "endangered plant and animal species and their supporting ecosystem".

The mitigation measures proposed have been reviewed by experts in their field and accepted by numerous resource agencies (and have incorporated the mitigation measures into additional required permits), including, but not limited to US Fish & Wildlife Service, CA Dept. of Fish and Wildlife, North Coast Regional Water Quality Control Board, CA State Lands Commission, and Air Quality Management.

# 6) Coastal Trail Designation

The Appellants argue that the Haul Road is the designated coastal trail certified by the Coastal Commission. The beach route is described as infeasible because it discriminates against users and is dangerous due to winter waves.

See previous responses regarding coastal access. The Land Use Maps shows the coastal trail aligned adjacent to the shore, not necessarily on the Haul Road through the northern half of the park. This alignment is provided with the proposed project. There is no continuous, paved trail and only remnants of the former Haul Road remain in this area. The proposed dune restoration will restore the fore dunes to a more level topography which will improve safety on the beach by

allowing easier access into the back dunes. An example of what the topography would look like exists at the south end of the Preserve where the Haul Road washed out in the 1980s.

### 7) Removal of Existing Coastal Access

The Appellants claim that the proposed project is inconsistent with the Coastal Act and providing maximum access and disagreement with Special Conditions of approval.

See previous responses regarding coastal access.

### 8) Haul Road Removal

The Appellants argue that removal of the Haul Road is contrary to Policy 3.1-15 and that the road removal will encourage informal trails resulting in impacts to rare and endangered plant and animal habitat.

See response to #1 and #4 above regarding continued passive recreation and managed access through the dunes. State Parks will monitor its mitigation measures for a number of years after the project as well as continue to focus its management priority on protection of rare and endangered plants and animal habitat within this unit within the park. Federal law has also established measures for protecting endangered species which State Parks must follow.

### 9) Haul Road Maintenance

The Appellants argue that the proposed project is inconsistent with LCP policies and assert that the intent of the policies requires State Parks to maintain the Haul Road as a continuous multiuser trail. The project is also inconsistent with the park's General Plan.

The Haul Road is maintained in MacKerricher Park – to the south of the Natural Preserve, in the more developed portion of the park. The portion of the Haul Road within the project area has been destroyed by a series of storms during the last two decades. State Parks has also stated plans to further improve the Haul Road in the southern portion of the park. Removing the deteriorated and segmented portions of the Haul Road in the Preserve and in ESHA, is supported by the resource policies of the LCP and Coastal Act. See previous responses and June 11 Staff Report for additional details. Finally, State Parks is responsible for implementing MacKerricher State Park General Plan policies and programs and are not the subject of the coastal development permit review. In State Parks response to public comments on the MND, the following was included regarding MacKerricher General Plan (pg 3 of Summary Response to Comments):

As explained ...on pages 4, 104, and 105 of the IS/MND, the overarching management of the Inglenook Fen-Ten Mile Dunes Natural Preserve, which contains the entirety of the project, is determined by the unit classification as defined under the Public Resources Code. As explained on page 122 of the IS/MND, a feasibility study conducted in 2000 determined that plans to reconstruct and maintain the haul road, which were described in the MacKerricher State Park General Plan (1995), were infeasible and incompatible with the Preserve classification. Pages 35, 104, and 105 of the IS/MND describe how the project is consistent with the General Plan.

### 10) Sand Dune Impacts

The Appellants state that the MND and CDP did not analyze how much sand will be mobilized or its impacts to the environment or neighboring land owners.

See discussion in the Land Use section of the June 11 Staff Report (pg 7-9).

#### **11) Hazardous Material Impacts**

The Appellants argue that the proposed project poses an undisclosed health threat as no sampling or Phase I hazardous waste study was included in the MND to determine the presence of toxic materials. Hazardous waste can be reasonably anticipated based on comparable studies of the GP mill site where the railroad ties and ballast originated.

The MND addresses prepared by State Parks addressed hazardous materials on pages 95-97. State Parks has told staff that ground penetrating radar was used and found that the majority of railroad tracks and ties were removed when the railroad alignment was converted to a road in 1949.

#### 12) Public Access and Recreation Impact Mitigation

Appellants disagree with Special Conditions 5 & 6 regarding public access and recreation opportunities asserting they cannot be enforced.

Staff finds the conditions to be reasonable requirements to ensure the project is consistent with the County's LCP. State Parks, when accepting the approved permit must sign and agree to follow and implement the conditions of approval. If concerns remain, staff recommends adding a Special Condition #10:

<u>Prior to issuance of the Coastal Development Permit</u>, the applicant shall submit to the Coastal Permit Administrator for review and approval, a plan and/or work schedule to implement the Special Conditions of Approval. Progress reports shall be submitted annually, after project approval and by Dec 31, that describe the steps and milestones achieved to implement the requirements of the Special Conditions.

#### Staff Recommendation

That the Board of Supervisor's deny the appeal and uphold the Coastal Permit Administrator's approval of Coastal Development Permit CDP 12-2012 subject to the findings contained in Attachment C

### **Attachments**

- A. Appeal Letter
- B. Project Vicinity Map
- C. CDP 12-2012, Coastal Permit Administrator, Findings and Conditions of Approval
- D. State Parks, Final Mitigated Negative Declaration, Response to Comments
- E. CDP 12-2012, Coastal Permit Administrator Staff Report, June 11, 2013

# ATTACHMENT A Appeal Letter

Chuck Eyerly Secretary	Sally Grigg Director	Bill Knapp Treasurer	Thad Van Bueren Chair	Judith Vidaver Vice-Chair	Robert Scott Alternate	
Standard Contraction	P. O. Box 3 www.westp	Westport Municipal Advisory Council P. O. Box 307, Westport, CA 95488 www.westportmac.org				
Contraction of the second seco				J	une 15, 2013	
Supervisor I	Dan Gierde			(JUNI	OF MENDOCING	

Attn: Tim Mitchell, Clerk of Board Mendocino County Board of Supervisors 501 Low Gap Road, Room 1010 Ukiah, CA 95482 SUPERVISORS JUN 17 2013 EXECUTIVE OFFICE PER CHIMH, CALIFORNIT

Dear Supervisor Gjerde:

The Westport Municipal Advisory Council attaches for the action of the Board of Supervisors an appeal of the Coastal Development Permit #12-2012 approved by the Coastal Permit Administrator June 11, 2013. We request as much advance notice of the date this hearing will be scheduled so that notification of concerned constituents can occur.

As you are aware, the WMAC serves at the pleasure of the Board with no compensation. We bring this appeal forward in the interest of a large number of concerned constituents. I am personally paying the filing fee Tim Mitchell specified, and a check for \$910.00 is enclosed. In the appeal the WMAC requests a waiver of the fee. If that waiver is granted during deliberation of this matter, the fee should be refunded directly to me.

Please contact me if you have any questions about this appeal.

Sincerely,

M. Ken Bueren

Thad M. Van Bueren Chairman

Enclosure

11

# **Basis for Appeal**

Mendocino County CDP#12-2012 (MacKerricher Dune Rehabilitation Project)

This appeal is filed pursuant to Mendocino County Code 20.544.015. The foundational issues for the appeal reference the Project Findings and Conditions listed in the Staff Report for this permit, as well as revisions to those conditions stipulated in the approval of the permit at the CPA hearing June 11, 2013.

- Staff Finding #1 states "the proposed development is in conformity with the certified Local Coastal Program (LCP)." That finding is not supported. The development violates Policies 3.1-8, 3.1-15, and 3.6-27, the intent of Policy 4.2-21, and the policies and directives in the MacKerricher Park General Plan prepared by the California Department of Parks and Recreation (CDPR) in 1995 in response to LCP Policy 4.2-19. These matters are taken up in more detail below.
- 2. Staff Finding #4 suggests the project "will not have any significant adverse impacts on the environment" if mitigation measures in the Mitigated Negative Declaration (MND) prepared by CDPR and the conditions of the permit are followed. That finding is not supported and we contend the analysis in the MND provides inadequate disclosure. Impacts to archaeological sites, Environmentally Sensitive Habitat Areas (ESHAs), wetlands, neighboring property owners, recreation, and public health have not been reduced below the level of significant adverse impacts. These matters were raised by the public during circulation of the draft MND, but not addressed.
- 3. We disagree with Staff Finding #5 that the project will have no adverse impacts on archaeological resources. The project will facilitate massive deflation of the foredunes and realignment of two watersheds with the direct result that several archaeological sites in that vicinity will be adversely impacted, if not destroyed outright. No mitigation is proposed to reduce those adverse impacts. Impacted sites must be presumed to qualify as historical resources for purposes of CEQA because no formal evaluation took place or was concurred in by the California State Historic Preservation Officer as required pursuant to California Public Resources Code 5024.
- 4. Staff Finding #7 incorrectly finds the project "is in conformity with public access and public recreation policies in Chapter 3 of the California Coastal Act and the Coastal Element of the General Plan." This finding is particularly egregious with respect to Coastal Act Sections 30210 and 30211; and Coastal Element Policies 3.1-8, 3.1-15, and 3.6-27, and the intent of Policy 4.2-21. Special Conditions 3 through 6 provide inadequate and unenforceable actions to compensate for the intentional destruction of this designated coastal trail as discussed in Issues 6-9 and 12.
- 5. Staff Finding #8 draws unsupported conclusions about resource protection from CDPR's MND. Finding 8(a) states resources will "not be significantly degraded," contrary to WMAC's conclusion summarized in Issue 3 and explored further in Issues 4 and 10. Finding 8(b) is flawed because CDPR studied no alternatives when it was reasonable and necessary (under CEQA) to do so. WMAC also disagrees with Finding 8(c) that "all feasible mitigation measures capable of reducing or eliminating project related impacts have been adopted." WMAC will offer suggestions for a reduced project and additional conditions of approval that will more adequately mitigate or avoid adverse impacts.
- 6. The approved permit inappropriately allows destruction of 2.7 miles of existing coastal trail shown on County Land Use Maps 10 and 12 along the haul road. That alignment was certified by the Coastal Commission in 1983. The haul road is the designated coastal trail through MacKerricher Park, not a wet beach route listed in the MND. The beach route is not a viable alternative because it discriminates against many users who still enjoy the haul road and is dangerous in winter due to sleeper waves. In contrast, the coastal trail on the haul road provides access for bicycling, disabled users, strollers, pedestrians, and even horse riding. No comparable alternative trail is required as compensatory mitigation for extinguishing this existing access as required by Mendocino's Coastal Element Policy 3.6-27. Destruction of this historical access is also inconsistent with Coastal Act Section 30211 that requires non-interference with historical prescriptive access rights.

page 1 of 3

### Basis for Appeal-CDP#12-2012)

- 7. The permitted destruction of this existing coastal access is also inconsistent with Coastal Act Section 30210 which assigns high priority to maximizing public access. Instead, it reduces access in a discriminatory manner that will ensure bicyclists and disabled persons can no longer enjoy the northern portion of the park. Special Conditions discussed in Issue 12 do not result in the construction of continuous alternative trail. They only encourage discussion and evaluation that may never produce a comparable replacement trail.
- 8. Removal of the haul road is contrary to County Coastal Element Policy 3.1-15 which requires that public access to the dunes shall be on well-defined paths that direct use to minimize impacts to the natural environment. By destroying the existing designated multi-use coastal trail along the haul road, access will spread potential impacts across a broad area through the propagation of many social trails. Those social trails can be expected to increase impacts to habitats of the endangered Western Snowy Plover and endangered plant species, rather than protecting them.
- 9. County Coastal Element Policy 4.2-21 directs CDPR to acquire the haul road for use as coastal access and incorporate policies regarding it in a management plan for MacKerricher State Park required in Policy 4.2-19. CDPR acquired the road in 1992 and prepared a general plan for the park in 1995. This project violates the intent of Policy 4.2-21 which was designed to acquire the road for public recreational access, not so it could destroy this coastal trail to restore ecosystem processes. The project also violates the park's General Plan policies and directives which direct that it be maintained and reconnected to once again create a continuous multi-use path through the park.
- 10. The project will intentionally destabilize the fore dunes in the northern park, with massive wind and water erosion acknowledged as a predictable outcome. Yet neither the MND and County staff report for the project analyze the volume of sand that will be mobilized or its impacts on the environment and neighboring land owners. Engineer David Paoli estimates nearly a million cubic yards of sand will migrate east, burying wetlands, ESHAs, and neighboring lands. Inadequate impact analysis, protective measures, and compensatory mitigation are identified to address habitat destruction and impacts to endangered and threatened species in violation of County Coastal Element Policy 3.1-8 and Coastal Act Sections 30240 and 30607.1. Monitoring requirements are inadequate and no dedicated compensation fund or bond is established as a condition of permit approval. Thus, the impacts of this induced sand migration on the properties of neighbors are inadequate.
- 11. The haul road was built in 1949 over a railroad grade built in use since 1916. Railroad grades are well known repositories of hazardous petrochemical waste, creosoted rail road ties, arsenic from herbicides, and asbestos from brake linings that likely persist in the and ballast and woody material under the paved road. The project will remove the asphalt road surface which currently acts to sequester contaminants, as well as the hazardous underlying ballast and timbers. Yet no sampling or Phase I hazardous waste study was included in the MND supporting the project to determine the presence of toxic materials or plan for the special handling and disposal that they will require. Treated wood waste is known to contain hazardous chemicals at elevated levels that are subject to California's Hazardous Waste Control Law. Hazardous waste can be reasonably anticipated based on comparable studies of the GP mill site where the former railroad originated (e.g., Cal/EPA docket HWCA P1-00/01-005; DTSC remediation; etc.). There is no evidence Form 6a was filed with Cal EPA in connection with removal of this old railroad grade. This poses an undisclosed health threat relative Standard Condition 6(c) that must be addressed with testing and remediation requirements.
- 12. Special Conditions 5 and 6 will not reduce impacts to public access and recreation because they define unenforceable processes rather than concrete actions. There is no assurance either condition will ever result in the construction of a continuous multi-use trail comparable to the one CDPR proposes to destroy. Special Condition 5 urges only planning for two discontinuous trail segments located far from the sea, with no provisions to actually build it. Special Condition 6 asks for evaluation of alternate pedestrian stream crossing methods with no requirement to implement a solution. It ignores the needs of other users like bicyclists and disabled individuals.

#### Basis for Appeal—CDP#12-2012)

The WMAC recognizes the BOS may take a variety of actions when considering this appeal. When deliberating on this matter, we urge the BOS to consider our allegations that the project approved by the CPA as CDP#12-2012 on June 11, 2013 fails to reduce many adverse impacts and poses serious health threats that have not been investigated or properly considered when planning for the disposal of large volumes of asphalt, ballast, and contaminated soil. We believe by permitting this activity the County is exposing itself to damage claims from workers, offset landowners, and government agencies if the presence of these hazardous materials is not identified prior to aerial exposure. The project also extinguishes an existing prescriptive coastal access without requiring construction of a comparable and non-discriminatory replacement route consistent with many provisions of the Coastal Act and LCP.

The WMAC recognizes the value of ecosystem rehabilitation, but favors an approach that balances that objective with other needs and requirements such as public access and minimizing impacts to ESHAs, wetlands, and neighbors. For this reason we urge deliberation of a reduced project alternative, as well as Special Conditions that will more effectively reduce or eliminate adverse impacts associated with the current project. That approach is entirely consistent with the guiding principles governing the use of State Natural Preserves like the one in the northern portion of MacKerricher State Park as embodied in California Public Resources Code Sections 5019.65 and 5019.71.

It is worth revisiting those principles because they are cited as the rationale for this project. Yet the project is at odds with that guidance. PRC Section 5019.65(a) explicitly states "resource manipulation shall be restricted to the <u>minimum required to negate the deleterious influence of man</u>. Improvements undertaken shall be for the purpose of making the areas available, on a day use basis, for public enjoyment and education in a manner consistent with the preservation of their natural features." Removal of the haul road will result in massive, not minor, restructuring of the dune environment and is inconsistent with the mandate to provide for public access.

# ATTACHMENT B Project Vicinity Map



MACKERRICHER STATE PARK DUNE REHABILITATION PROJECT OVERVIEW

### ATTACHMENT C CDP 12-2012 Approved Findings and Conditions

(Coastal Permit Administrator's June 11, 2013 modifications are shown in strike-thru/underline format.)

### **PROJECT FINDINGS AND CONDITIONS**

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

#### FINDINGS:

- 1. The proposed development is in conformity with the certified Local Coastal Program; and
- 2. The proposed development will be provided with adequate utilities, access roads, drainage and other necessary facilities; and
- 3. The proposed development is consistent with the purpose and intent of the applicable zoning district, as well as all other provisions of Division II, and preserves the integrity of the zoning district; and
- 4. The proposed development, if constructed in compliance with the conditions of approval of this coastal development permit and with the mitigation measures incorporated into the project by the certified Mitigated Negative Declaration, in accordance with the California Environmental Quality Act, will not have any significant adverse impacts on the environment; and
- 5. The proposed development will not have any adverse impacts on any known archaeological or paleontological resource; and
- 6. Other public services, including but not limited to, solid waste and public roadway capacity have been considered and are adequate to serve the proposed development.
- 7. The proposed development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act and Coastal Element of the General Plan.
- 8. Resource Protection Impact Findings:
  - a. The resource as identified will not be significantly degraded by the proposed development.
  - b. There is no feasible less environmentally damaging alternative.
  - c. All feasible mitigation measures capable of reducing or eliminating project related impacts have been adopted.

### **STANDARD CONDITIONS:**

- 1. This action shall become final on the 11<sup>th</sup> day following the decision unless an appeal is filed pursuant to Section 20.544.015 of the Mendocino County Code. The permit shall become effective after the ten working day appeal period to the Coastal Commission has expired and no appeal has been filed with the Coastal Commission. The permit shall expire and become null and void at the expiration of two years after the effective date except where construction and use of the property in reliance on such permit has been initiated prior to its expiration.
- 2. The use and occupancy of the premises shall be established and maintained in conformance with the provisions of Division II of Title 20 of the Mendocino County Code.
- 3. The application, along with supplemental exhibits and related material, shall be considered elements of this permit, and that compliance therewith is mandatory, unless an amendment has been approved by the Coastal Permit Administrator.
- 4. This permit shall be subject to the securing of all necessary permits for the proposed development from County, State and Federal agencies having jurisdiction.
- 5. The applicant shall secure all required building permits for the proposed project as required by the Building Inspection Division of the Department of Planning and Building Services.
- 6. This permit shall be subject to revocation or modification upon a finding of any one or more of the following:
  - a. The permit was obtained or extended by fraud.
  - b. One or more of the conditions upon which the permit was granted have been violated.
  - c. The use for which the permit was granted is conducted so as to be detrimental to the public health, welfare or safety, or to be a nuisance.
- 7. A final judgment of a court of competent jurisdiction has declared one or more conditions to be void or ineffective, or has enjoined or otherwise prohibited the enforcement or operation of one or more such conditions.
- 8. This permit is issued without a legal determination having been made upon the number, size or shape of parcels encompassed within the permit described boundaries. Should, at any time, a legal determination be made that the number, size or shape of parcels within the permit described boundaries are different than that which is legally required by this permit, this permit shall become null and void.
- 9. If any archaeological sites or artifacts are discovered during site excavation or construction activities, the applicant shall cease and desist from all further excavation and disturbances within one hundred (100) feet of the discovery, and make notification of the discovery to the Director of the Department of Planning and Building Services. The Director will coordinate further actions for the protection of the archaeological resources in accordance with Section 22.12.090 of the Mendocino County Code.

### **SPECIAL CONDITIONS:**

- The proposed project shall comply with all measures from the Final Mitigated Negative Declaration for the Inglenook fen-Ten Mile Dunes Natural Preserve Dune Rehabilitation Project, 2012. A copy of this staff report shall be supplied to all contractors and a copy shall be maintained on the job site.
- 2. Non-native trees shall not be removed in the eastern fringes of the proposed project area, adjacent to Inglenook, until the proposed plantings of the native trees' canopy exceeds the elevation of tallest dunes that are upwind (mainly west) of the trees. Native trees shall also be planted on State Parks property in strategic areas to provide greater protection to existing residential developments. State Parks shall develop and distribute an educational handout or flyer for adjacent landowners on how to protect their land through native tree/vegetation plantings or protection measures for existing vegetation, including the identification of nurseries that supply native trees or other appropriate plantings.
- 3. Sand removed and stock piled during project activities shall not be stored in a manner that would accelerate sand migration eastward to the residential properties.
- 4. Prior to September 30, 2014, Applicant shall implement accessibility improvements to the parking lot and trail to the beach at Ward Avenue shall be implemented by the end of the proposed project completion date, including but not limited to: adequate handicap parking (which must be assessed on a regular basis, based on visitor demand), signage, beach-ready wheelchair(s), and appropriate access to the sandy beach. The location and materials of the storage structure (6'x6' shed), parking, and trail improvements (if necessary) shall be submitted to Planning for review and approval.
- 5. State Parks shall explore the feasibility of obtaining a public access easement to provide formal vertical access from Highway 1 to the Preserve as well as a means to provide non-motorized boating access. Feasibility of acquiring an access easement shall be based on landowner willingness. If willing landowner(s) are identified, a dedicated access easement shall be developed, approved by the County and Coastal Commission, and recorded. Feasibility of establishing boating access may be limited due to the presence of federally listed species.
- 6. State Parks shall be required to remove sand on the northern segment of the Haul Road, in the rock-ballast retainment area, if necessary, in order to maintain access to the beach, and install signage to direct visitors to the beach.
- 7. Prior to issuance of the coastal development permit, State Parks shall dedicate a 15-ftaccessway work with CalTrans to help promote development of a Class I/ II bike path along Highway 1, from Ten Mile River to Ward Avenue. Furthermore, to the extent that a future access easement dedication may help to facilitate development of the Class I/II bike path along Highway 1, State Parks shall dedicate sufficient area from the edge of right of way on its properties directly adjacent to Highway 1 from Ten Mile River to Ward Avenue and workwith CalTrans to complete a bike and pedestrian route.
- 8. State Parks shall <u>continue to monitor</u> <del>evaluate</del> the stream crossing conditions during winter high flow events for pedestrian access. <u>State Parks shall evaluate alternative stream</u> <u>crossings methods to maintain public access during winter high flow events</u>. <del>Three years</del> after culvert removal, if conditions are found to be impassable for a significant amount of time during winter months, alternative access shall be pursued.

- 9. The disposal site indentified in the MND as closest to Ten Mile shall be the preferred site for disposal. Use of the Big River Quarry shall be restricted to only on an as-needed basis in order to reduce impacts to coastal visitors. If the Big River Quarry is found to be needed for disposal, a plan shall be developed to ensure that the disposed materials are not contaminated with pampas grass seed and other non-native found at the quarry site. This plan shall be submitted to Planning for review and approval prior to disposal at Big River Quarry.
- 10. State Parks shall submit to Planning any modification and/or finalization of the mitigation monitoring plan and long-term strategy during the life of the project. It is expected that State Parks will continue to responsibly manage its Preserve long after the proposed project is complete to ensure that invasive species are reduced and eliminated and the ecological function is maintained.
- 11. Grading standards from Ch. 20.492 of the MCCZC shall be followed.
  - a. Grading shall not significantly disrupt natural drainage patterns and shall not significantly increase volumes of surface runoff unless adequate measures are taken to provide for the increase in surface runoff.
  - b. Development shall be planned to fit the topography, soils, geology, hydrology, and other conditions existing on the site so that grading is kept to an absolute minimum.
  - c. Essential grading shall complement the natural land forms. At the intersection of a manufactured cut or fill slope and a natural slope, a gradual transition or rounding of contours shall be provided.
  - d. The permanently exposed faces of earth cuts and fills shall be stabilized and revegetated, or otherwise protected from erosion.
  - e. Adjoining property shall be protected from excavation and filling operations and potential soil erosion.
  - f. The area of soil to be disturbed at any one time and the duration of its exposure shall be limited. Erosion and sediment control measures shall be installed as soon as possible following the disturbance of the soils. Construction equipment shall be limited to the actual area to be disturbed according to the approved development plans.

# ATTACHEMENT D Final MND Response to Comments

# MacKerricher State Park Dune Rehabilitation Project

# Summary Responses to Comments

The Mendocino District received 41 comment letters during the public comment period for the Ten Mile Dune Rehabilitation Project at MacKerricher State Park. Eight letters were from agencies, four were from organizations, and twenty-nine were from individuals. Comments pertinent to the Initial Study/Mitigated Negative Declaration differed based on the stated expertise of individuals or the focus of particular agencies.

Positive comments in support of the project generally fell into four main categories: 1) benefits to sensitive species and natural ecosystems, 2) project plans based on best available science, 3) that short-term impacts would be mitigated to a less than significant level, and 4) consistency with Natural Preserve classification. Comments in opposition to the project fell into five main categories: 1) inconsistency with the MacKerricher State Park General Plan, Mendocino County Local Coastal Plan and California Coastal Act, 2) potential loss of recreational opportunity, 3) potential impacts to sensitive species and habitats, 4) potential impacts to neighboring properties from sand movement, and 5) potential impacts to cultural sites. All comments proclaiming the beneficial effects of the project on sensitive species and habitats were from the regulatory agency having jurisdiction over the species or science-based organizations.

Response to comment letters from agency with jurisdictional authority over coastal access and individuals with subject specific scientific expertise in geology and archaeology have been prepared separately, and are contained within this Final MND. All other responses to comments are summarized below under specific categories.

# 1. Biological Resources

Twenty-one comment letters mentioned one or more of the biological resources (e.g., listed plant species, western snowy plover, wetlands); seven said the project would have beneficial results and fourteen raised concerns regarding project impacts. None of the letters that raised concerns regarding potential impacts to biological resources were based on or cited scientific evidence. The letters that recognized the proposed project's beneficial effects included those from the agency with jurisdictional authority over listed species, California Department of Fish and Game, and the environmental organizations that are most concerned with plant and animal protections, Audubon Society, Sierra Club, and the California Native Plant Society.

# Federal and State Listed Plants

Comments concerning significant impacts to listed plants incorrectly assumed finite populations in an unchanging environment. However, coastal dune ecosystems, including their associated plant populations, are dynamic and constantly changing. As explained on page 64 of the IS/MND and in Appendix E.2, the listed plants are adapted to and have evolved under changing environmental conditions. Population numbers, especially those of annual or short-lived perennial dune species, can fluctuate dramatically from year to year,

as weather patterns and sand movement affect seed dispersal patterns, seed production, and seedling survival. This is the existing condition of the Ten Mile Dunes. As shown in Appendices A.3 and A.4, the area mapped as occupied by Howell's spineflower within the Natural Preserve in 2001 was 0.41 acres; in 2011 the mapped spineflower area totaled 8.9 acres. Regarding Howell's Spineflower (Chorizanthe howellii), one of the comment letters included unsubstantiated recommendations that the environmental document "state what percentage of seed typically germinates into mature plants", and include "Data to illustrate how many annual generations of plant lifecycle it will take for the post-project population levels to reach their pre-project population level". Again, this recommendation incorrectly assumes finite, unchanging populations from year to year. Another letter incorrectly stated that project "activities will destroy 11% of the endangered spineflower population" (the proportion of area occupied by spineflower in 2011 that occurs within the haul road corridor). As stated in the document on pages 90-91, scientific studies on sea level rise and documented evidence of past storm surge events show that the long-term viability of the nominal "11%" of the spineflower population in the road alignment is very low (with or without project implementation) because it is located immediately behind an active foredune and shoreline that is actively transgressing landward in a location that in the long-term, is unable to provide stable dune habitat for spineflower. Through this project, State Parks proposes to remove unnatural elements where the listed plants cannot grow, which is on the haul road or within European beachgrass clumps, and to mitigate at a ratio of 8 to 1 to compensate for any potential loss of those plant populations that were mapped in 2011. In addition, this project proposes permanent monitoring and restoration efforts that will extend well beyond the typical 5 year required monitoring period (Appendix E.2), and includes consultation and coordination with the California Department of Fish and Game and the US Fish and Wildlife Service.

#### Western Snowy Plover

Comments concerning potential impacts to the western snowy plover were not as specific, primarily stating that impacts would occur during project implementation. Pages 23 and 24 of the IS/MND describe detailed project requirements under BIO-7d that are specifically intended to prevent impacts to plovers during project implementation. As described and illustrated on pages 5, 36, 55-56, and 69 of the IS/MND, the removal of the haul road and European beachgrass will open up additional nesting and foraging habitat for plovers. Unnatural barriers will be removed that now prevent plovers from retreating to safe areas during high tides or when disturbed by humans and dogs.

### Wetlands

Comments that raised concerns regarding potential impacts to wetlands, including the Inglenook Fen, incorrectly assumed that the dune and wetland complex of the Natural Preserve is a fixed, unchanging environment and that the wetlands are dependent upon this current fixed environment. As discussed on pages 4, 5, 35, 60, 73, and 90 of the IS/MND, the culverts currently constrict the

outlets of the creeks, causing incised, relatively deep channels. Sand movement resulting from the removal of the haul road, culverts, and European beachgrass will not eliminate wetlands in the Natural Preserve, rather some wetland features will be buried, while others will emerge through natural processes. Removal will allow the channel outlets to meander naturally, with wetland vegetation forming where suitable based on hydrology and substrate. This is not an impact that should be mitigated, rather an objective of the project to restore natural processes. Also as explained on pages 98-102 in the IS/MND, Inglenook Fen is a natural feature that formed approximately 6,000 years ago; removal of the culverts, which are modern features, will not impact the fen.

### 2. <u>Consistency with MacKerricher State Park General Plan, Mendocino County</u> <u>Local Coastal Plan, and California Coastal Act</u>

Eight letters raised concerns regarding consistency of the project with the MacKerricher State Park General Plan, Mendocino County Local Coastal Plan, or the California Coastal Act in regards to recreational interests. Two letters claim that the project is consistent, primarily based on the Natural Preserve classification of the unit in which the project is proposed. As explained in detail in the response letter to Coastal Commission staff (included in the final MND), and on pages 4, 104, and 105 of the IS/MND, the overarching management of the Inglenook Fen-Ten Mile Dunes Natural Preserve, which contains the entirety of the project, is determined by the unit classification as defined under the Public Resources Code. As explained on page 122 of the IS/MND, a feasibility study conducted in 2000 determined that plans to reconstruct and maintain the haul road, which were described in the MacKerricher State Park General Plan (1995), were infeasible and incompatible with the Preserve classification. Pages 35, 104, and 105 of the IS/MND describe how the project is consistent with the General Plan. No sections of the Coastal Act or Mendocino Local Coastal Plan were found to be inconsistent with the proposed project, including sections that address coastal access. Rather, numerous sections of the Coastal Act support the project's emphasis on restoration and protection of Environmentally Sensitive Habitat Areas. Starting on page 36 of the IS/MND, additional information and specific citations of sections of the Local Coastal Plan have been added to further demonstrate project consistency. Although page 115 of the IS/MND describes how coastal access to the beach is being retained, in response to the letter from the Coastal Conservancy, a revised project overview map has been prepared and replaces Appendix A.1 for inclusion in the Final MND. The revised map more clearly shows how the east-west alignment of the haul road will be retained at the northern end of the Preserve to connect to a trail leading to the beach. No changes are proposed to the existing coastal access that leads to the beach at the southern end of the Preserve, north of Ward Avenue.

# 3. Recreational Use of the Haul Road

Sixteen letters commented on the recreational use of the haul road, while three letters commented that the haul road was not important for recreation and instead was an impact to sensitive resources. Many of the letters favoring the
retention of remnant sections and/or reconstruction of the haul road referred to it as providing important access for bicyclists, people in wheelchairs, and people with strollers. No letters stated that the authors or others have used the haul road for these purposes in recent decades. As described in text and photos on pages 6-9, 79, and 115 of the IS/MND, the haul road no longer serves as a contiguous trail, since nearly one mile is completely washed out and much of the remaining approximate two mile sections are either dangerously eroded or partially covered with sand. To address current recreational use on the haul road within the Natural Preserve, CSP staff compiled data from site surveys and anecdotal information from staff and volunteers that frequent the Preserve. As shown in the added Appendix E.6, between March and August, 2012, only about 3% of the visitor use observed within the Natural Preserve occurred on the haul road. Surveys were conducted at weekly intervals as part of a plover survey program; visitor use and location was one of the required elements for survey documentation. Park staff and volunteers that have regularly conducted activities within the foredunes for nearly a decade, attest that people with strollers and bicyclists do not use the haul road in the Natural Preserve. The maps included in Appendix E.6 (MacKerricher State Park Dune Rehabilitation Haul Road Condition) show the current haul road condition and the 2003 documented topography of the foredunes in the vicinity of the road.

4. Sand Movement and Potential Impacts to Neighboring Properties Seventeen letters raised concerns regarding the potential for increased sand movement and threat to neighboring properties as a result of project implementation. The concerns focused on three major incorrect assumptions: 1) the remaining sections of haul road prevent sand movement from the beach to inland areas; 2) sand movement within a dune system is "erosion" and the dunes should be stabilized; and 3) the project will result in a significant change in sand movement, which would not occur if the project was not implemented. As explained throughout the IS/MND on pages 13, 50, 84-87, and Appendix E.4, sand movement is an integral function of a natural dune system. Grain size, wind speed, vegetation, and dune height are factors that affect the rate of sand movement. In general, once the haul road is removed, the small nearshore dunes would collect more sand and continue to grow, most likely around small clumps of vegetation, until some threshold size is reached. The movement of sand from the nearshore foredunes to farther inland areas is inhibited by the large expanses of dune and wetland vegetation that occur between the foredunes and the separated transverse dunes to the east. While wind-transport of sand is a natural process in a dune environment, sand becomes deposited and its movement halted on the eastern fringes of dunes where conifers are established. The past removal of wooded areas backing the eastern edge of the Ten Mile Dunes, by adjacent landowners, has provided an uninterrupted path for wind-carried sand and the landward expansion of the dunes in the Preserve (Barry & Schlinger 1977). The project includes measures to maintain and plant native trees on the eastern fringe of the dunes to reestablish a native dune forest that will interrupt the path of wind carried sand. As stated on pages 13-14:

"European beachgrass, Monterey pine, broom, and eucalyptus growing in the 7 acre area will still be removed, but as a secondary priority and <u>slowly over time</u> <u>once the native trees are well established</u>" (emphasis added). Page 90 of the IS/MND explains that sea level rise will continue to influence the inland movement of the dune system, which will affect the Natural Preserve and neighboring properties, regardless of any activities associated with the Dune Rehabilitation Project.

A more detailed discussion of dune movement process within the Natural Preserve is contained in Dr. Peter Baye's response to the letter from the retired College of the Redwoods geology professor.

#### 5. Potential Impacts to Cultural Sites

Ten letters commented that the project would impact cultural resources, either archaeological sites or the haul road. Only two of these commenters were professional archaeologists. As described on pages 74-83 in the Cultural Resources section of the IS/MND, and in the detailed responses prepared by Dionne Gruver for the letter to Thad Van Bueren, the project is designed and contains specific requirements to avoid direct impacts to cultural sites. The existing unnatural features of haul road and European beachgrass have altered natural sand movement, and in some areas, caused archaeological sites to be exposed. The project as proposed will not increase impacts to cultural sites, but will in areas reduce impacts that are occurring as a result of the unnatural features. For example, deflation plains caused by the road berm have exposed archaeological sites immediately inland of the berm; removal of the road may result in the reburial of these sites as mobilized sand from the foredune moves inland. Removal of the road will discourage easy access to some of the archaeological sites, and reduce the potential for theft of sensitive artifacts. As determined through formal evaluation and consultation with the State Historic Preservation Officer, the haul road is not a significant historic resource as its condition has deteriorated substantially.

#### 6. Other Comments

Other comments not included in the discussion above for which explanations are given below, or additional text is added to the final MND include:

- City of Fort Bragg's project The description of the Fort Bragg Trail and Restoration Project, which includes the development of over 3.25 miles of new multiple use trails adjoining and south of MacKerricher State Park has been added to Section 2.11 Related Projects.
- Suggested preparation of an EIR Page 42 of the IS/MND describes the level of environmental documents required under CEQA. Based on extensive survey work and careful project design planning, specific project treatment measures and mitigations were developed so that project work will not cause

a substantial adverse change to the significance of the resources (CEQA Sec. 21084.1.) and as such, an EIR is not warranted.

CEQA Guidelines (Section 15065 (b) (1): Where, prior to commencement of public review of an environmental document, a project proponent agrees to mitigation measures or project modification that would avoid any significant effect on the environment specified by subdivision (a) or would mitigate the significant effect to a point where clearly no significant effect on the environment would occur, a lead agency need not prepare an environment impact report solely because, without mitigation the environmental effects at issue would have been significant.

- 3) Concern regarding the hauling and disposal of road material Page 7 of the IS/MND describes hauling to, and disposal of the road material at the Big River quarry site, approximately 20 miles to the south of the project. Pages 92-94 describe the calculated emissions associated with the road removal and material disposal based on hauling to the Big River quarry site for a maximum of 21 days. However, since preparation of the IS/MND, a second disposal site has been identified that is approximately 5 miles from the project area, and located on private property within the Ten Mile watershed. The alternative disposal site consists of ranch and timber roads that are in need of surface rocking. Disposal at the alternative site would also prevent the need to haul on Highway 1, as a paved, existing private road connects to the project area beneath the Highway 1 bridge. Use of this alternative disposal site will further reduce emissions and temporary impacts to recreational use along the Big River haul road. A Non-industrial timber management plan (1-94NTMP-002 MEN) is in place to address the environmental requirements associated with rocking the roads on the adjacent private property. Description of the alternative disposal site has been added to the final MND.
- 4) One comment raised concerns that a disposal site had not been identified for vegetative material. Appendix E.1 and page 10 of the IS/MND describe how vegetative material and sand will be temporarily stockpiled, then reused within the project area. No vegetative material will be removed from the project area.
- 5) Comments from the Mendocino County Air Quality Control District focused on the need to address potentially occurring natural asbestos, a water source for dust abatement, and access to the project site for review. Pages 31 and 36 of the IS/MND acknowledge the need for consultation and permitting through the Air Quality Control District to address these concerns. Consultation has been initiated and an offer to the District for a site review prior to and during project implementation has already been extended; there will be no restrictions on access for permitting agencies throughout the duration of the project.

State of California • Natural Resources Agency



DEPARTMENT OF PARKS AND RECREATION Mendocino District 12301 North Highway 1 – Box 1 Mendocino, CA 95460

November 26, 2012

Thad M. Van Bueren P.O. Box 326 Westport, CA 95488

RE: Initial Study/Draft Mitigated Negative Declaration Inglenook Fen – Ten Mile Dunes Natural Preserve, MacKerricher State Park Dune Rehabilitation Project

Dear Mr. Van Bueren:

Thank you for your comments during the public review period for the Initial Study/Draft Mitigated Negative Declaration (MND), MacKerricher State Park Dune Rehabilitation Project. To date, State Parks has received comments from you as a professional archaeologist (dated August 14, 2012) that raise concerns regarding potential environmental impacts, and separate comments forwarded from you as an individual or as Chairperson of the Westport Community Advisory Council (dated September 16, 2012, August 5, 2012, August 10, 2012, August 27, 2012) that advocate for the development of a bicycle trail through the Natural Preserve.

Your comments concerning the cultural resources in the project area are addressed below in responses 1-6 to answer questions and concerns pertaining to archaeology. Your comments concerning natural resources and trail development are addressed below in responses 7 and 8.

1. In your letter you suggest that the "IS/MND focuses solely on avoidance of direct impacts to the exclusion of other predictable long term consequences that will result from project implementation including erosion, deflation, and inundation."

Your determination that long-term impacts not identified in the IS/MND would occur, including erosion, deflation, and inundation, is incorrect. The California State Parks professional staff (staff) consulted on this project is familiar with dune system ecology, have conducted three dune restoration projects that involved the removal of European beach grass and understands the ecological processes once this invasive species is removed. This understanding of dune ecology, and each of the archaeological resources recorded in the Area of Potential Effects (APE) in the Inglenook Fen – Ten Mile Dunes Natural Preserve with their current conditions leads to the opposite conclusion, that the project has the potential to reduce erosion, deflation, and inundation currently caused by unnatural features that influence dune processes. Currently, these significant conditions are pervasive at most of the cultural sites situated in the haul road corridor or in locations where beachgrass is well established.

Results of archaeological testing in 2011 by University of Davis (UCD) establish that construction of the Ten Mile River Railroad and truck road conversion not only resulted in direct impacts to the archaeological resources located within this travel corridor, but more wide spread indirect impacts as well. Apparent at most, if not all of the sites located in the western portion of the Preserve where the road is still present, is substantial site deflation and erosion that continues to adversely impact these resources. The haul road impedes

natural processes by restricting sand movement on the west and north sides of the grade. The road acts as a barrier and creates "deflation plains" along the landward side of the road that has resulted in wind-scoured areas level with the water table. Unfortunately, archaeological sites situated in these deflation plains have been adversely impacted with exacerbated deflation, erosion, and water inundation due to lack of sand which normally buffers these deposits. Subsurface testing at some of these sites in 2011 indicates the archaeological deposits are severely deflated and that the deposits have an average depth of a few centimeters. Additionally, the deposits appear to have been redistributed as a thin veneer across the plain and lack data potential. Consequently, these sites or components of these sites no longer retain integrity and are not eligible for inclusion into the National Register of Historic Places (NRHP). Removal of the haul road will substantially diminish and/or halt development of these deflation plains by allowing the sand to move eastward and allowing native dune vegetation to become reestablished.

Scientific studies conducted by California State Parks in the Ten Mile Dunes beginning in the 1970s, and consultation with experts on dune ecology, including Dr. Peter Baye and Harold Wollenberg, provide insight into how the introduction and establishment of European beachgrass has adversely affected not only the natural resources but archaeological resources as well. Pages 5 and 55 of the Initial Study/Draft Mitigated Negative Declaration (IS/MND) describe how the invasive nature of beachgrass has changed the dune topography by a cycle of sand buildup and shoot growth, and has impacted dune vegetation by outcompeting native plants. In the Ten Mile Dunes, European beachgrass has altered the natural dune processes such that sand accretion around clumps of beachgrass has increased dune height, while "wind tunnels" between the abnormally tall and abrupt dune mounds have caused dune surface erosion and deflation plains. As wind is funneled between beachgrass clumps, it not only removes the sand and older prairie soils where the archaeological sites are situated, it also deflates, erodes, and redistributes the archaeological deposits. These impacts have been documented extensively in the site records associated with these resources throughout the dunes where the beachgrass is well established.

Archaeological sites located in these areas infested with beachgrass have not only suffered significant impacts by exacerbated wind action which exposes, deflates, and erodes these sites, the erosional wind channels create natural paths of travel that have attracted pedestrians, equestrians, and occasional off-highway vehicles. This traffic has accelerated site deflation and erosion, and in some instances the paths have cut through deposits to depths up to 1.5 meters.

Page 90 of the IS/MND describes inundation in the dunes and cites studies pertaining to evidence of recent inundation and of changes expected as a result of sea level rise. Mapping from 2003 and more recent studies in the Ten Mile Dunes, demonstrates that all of the archaeological sites west of the haul road have been inundated at least prior to 2003. These comprehensive field studies also indicate that sites east of the haul road but west of the driftwood line have also been inundated at least prior to 2003. Sites positioned on the east side of the haul road are becoming more exposed as the deflation plains (slacks) become more pronounced and hence, will be increasingly effected by inundation under current conditions. The removal of the haul road will allow sand to move and accumulate into the exaggerated slacks, thus covering some of the exposed sites and decreasing the likelihood of site inundation. In the southwestern areas of the Preserve, where natural dune processes occur because the haul road and beachgrass no longer exist, the foredunes rise gradually from the beach, undulate slightly and are well vegetated with low-lying native plants. Where the haul road and beach grass are absent, waves are dispersed over a broader vegetated surface, rather than channeled and concentrated into deflation plains by unnatural elements.

In summary, this project has the capacity to stabilize archaeological deposits by reducing existing conditions that currently exacerbate site erosion and deflation by hindering natural dune processes. It is anticipated that this work will conserve the integrity of some sites identified as significant by improving dune ecology and restoring those natural dune processes that have been impeded for almost 100 years.

2. You commented that many of these archaeological sites in the dunes have survived for centuries, if not millennia despite the natural forces that constantly alter the dunes.

This project will restore the dune ecology back to more natural conditions (Chapter 2, Section 4, Project Objectives) prior to development in the dunes during the 20<sup>th</sup> Century that included construction of the haul road and introduction of European beachgrass. Although natural forces cannot be mitigated (sand will move and sea level will rise over time), human induced impacts that have and continue to adversely impact these unique archaeological resources at an accelerated rate can be lessened.

Most of the archaeological sites situated in the Preserve demonstrate in their records (through successive updates) increasing levels of human induced damage since the 1940s. Damages consisting of severe erosion, deflation, and inundation, though associated with natural forces, have been exacerbated by unnatural obstructions that create abnormally high dunes, deflation plains and wind channels that result in more severe environmental conditions that have destroyed archaeological deposits in the dunes. Removal of segments of the haul road and plots of European beachgrass will slow down these accelerated environmental conditions and perhaps aid in the survival of these sites for another millennia.

3. You comment that this project will intentionally and aggressively restructure the habitats, landforms, and hydrology of the western dunes to the detriment of archaeological site preservation mandated by law and the park's General Plan.

State Parks staff are mandated by federal (National Historic Preservation Act and implementing regulations [36 CFR Part 800]) and state laws (California Environmental Act [CEQA]; Public Resources Code 5024 and process of meeting mandate 5024.5) State Park policies (Department Operations Manual [DOM] 0400 currently under revision) and the specific State Park General Plans to implement projects that are protective of all resources, including archaeological sites. State Parks staff and University of California, Davis Anthropology Department Staff have conducted extensive archival research, intensive pedestrian surveys, and subsurface investigations for this project in 2011 and 2012. These comprehensive studies focused on the entire Preserve. The work of both groups was synthesized and used to evaluate whether the proposed rehabilitation activities would impact resources and if such impacts would cause a substantial adverse change to the significance to the archaeological sites (CEQA Sec. 21094.1). Additionally, State Parks consulted with experts on dune ecology to make informed decisions related to project implementation and potential impacts to the cultural resources, both direct and cumulative from rehabilitation efforts.

State Parks staff redesigned the project and developed treatment measures based on the data generated from these investigations to insure that potential impacts to <u>all</u> the archaeological resources in the Area of Potential Effects (APE) are maintained at a less than significant level. Some of these project revisions include: portions of the haul road will not be removed where archaeological sites are located to avoid impacting subsurface deposits that may be present immediately beneath the feature; plots of European beachgrass will remain in the vicinity of archaeological resources to avoid direct disturbance associated with hand removal; channel banks where culverts are removed will be armored

with willow sprigs and vegetation mats to control erosion; and an aggressive and extended archaeological site adaptive management monitoring program will be implemented at the onset of rehabilitation efforts to document and assess changes in the condition of these resources over time and to evaluate appropriate steps if conditions of the resources decline.

4. You indicate that State Parks failed to use due diligence in assessing project impacts that may cause a substantial adverse change in the significance of historical resources in your statement: "to adequately address significant effects of this project on historical and unique archaeological resources it is necessary to first evaluate whether or not the cultural resources in the project vicinity qualify as unique archaeological sites or historical resources and then analyze all of the adverse changes that will be caused by the project."

CA-MEN-2946H, the former Union Lumber Company Haul Road was evaluated State Parks under PRC 5024.5 and was determined not eligible for listing on either the California Register of Historical Resources or the National Register of Historic Places. Preliminary eligibility determinations were conducted for all other cultural resources documented in the project area. These evaluations were based on archival research including Native American consultation, pedestrian surveys, and subsurface testing at eight sites; however, concurrence of the State Historic Preservation Officer (SHPO) regarding these eligibility determinations has not been pursued to date because, it was determined by State Park staff that this project would not cause significant impacts to the archaeological resources.

The present unavailability of amalgamated evaluative information does not preclude longterm management of unevaluated cultural resources. The mission of State Parks and the nature of land use activities allow California State Parks to thoughtfully steward those properties that are recommended as significant, while protecting unevaluated sites from damage until such time that additional evaluative information can be collected.

CEQA Guidelines (Title 14, Chapter 3) 15064.5(a)(2) states "a resource included in a local register of historical resources, as defined in section 5020.1(k) of the Public Resources Code or identified as significant in an historical resource survey meeting the requirements section 5024.1(g) of the Public Resources Code, shall be presumed to be historically or culturally significant. Public agencies must treat any such resource as significant unless the preponderance of evidence demonstrates that it is not historically or culturally significant."

All sites located in the Area of Potential Effects were treated as "unique archaeological sites" (section 21083.2) or "historical resources" even though many have compromised integrity and do not contain scientific value due to a lack of data potential resulting from both natural forces and those induced by humans. Assuming eligibility, potential substantial adverse environmental effects that might result from project implementation were identified and examined as they relate to each site. Because the original project scope demonstrated the project could cause damage to unique archaeological resources, Park staff changed the project description and developed specific project treatments to preserve resources in place in an undisturbed state and avoid adverse impacts to the archaeological resources.

5. You state that appropriate environmental documents that summarize evaluation results provide a complete analysis of all potentially significant foreseeable impacts, and proposed mitigations in a manner consistent with CEQA and Public Resources Code 5024 were not prepared for this project.

DPR Cultural Resource staff prepared the required documentation you reference; however, these documents contain sensitive information; staff redacted the attached copy for public viewing. When available at the North West Information Center, a professional archaeologist may request these un-redacted documents at cost.

6. You state there is a potential for significant environmental consequences that remain unanalyzed and unmitigated and that preparation of an EIR is required unless the scale of the project is radically reduced.

As referenced- above, State Parks staff and contractors have conducted extensive archival and field studies to determine the APE, identify historic properties within the APE, and assess the effect(s) that the project could have on any historic properties in the APE. Based on this work, the project was redesigned and project treatment measures developed so that project work will not cause a substantial adverse change to the significance of the resources (CEQA Sec. 21084.1.) and as such, an EIR is not warranted.

CEQA Guidelines (Section 15065 (b) (1): Where, prior to commencement of public review of an environmental document, a project proponent agrees to mitigation measures or project modification that would avoid any significant effect on the environment specified by subdivision (a) or would mitigate the significant effect to a point where clearly no significant effect on the environment would occur, a lead agency need not prepare an environment impact report solely because, without mitigation the environmental effects at issue would have been significant.

7. You comment that the project will reduce habitat for endangered plants and destroy" 11% of the endangered Howell's spineflower population, and that "project-induced intrusion of salt water" will reduce critical habitat for endangered plants and animals.

As your opening statements attest, you are a professional archeologist and historian. However, you do not provide reference of expertise in botany, dune ecology, or geomorphology. The environmental document for the MacKerricher Dune Rehabilitation Project was prepared by a team of professional coastal ecologists, and included State Archaeologists, Historians, Engineering Geologists, and Environmental Scientists. Rather than "destroy" populations of endangered species and their critical habitats, the project will greatly benefit these species by increasing critical natural habitat that will lead to the recovery of endangered populations. As explained in detail throughout the IS/MND, the primary objective of the project is "to restore natural processes in a 1285-acre dune ecosystem of statewide significance within a Natural Preserve", including "to restore ecosystem processes that are crucial to the viability of endangered species and their habitats". Pages 4-6 of the IS/MND provide detailed description of how the haul road and European beachgrass have impacted the endangered species, and how removal of these unnatural elements will greatly benefit the species through ecosystem-level restoration. As part of the environmental review process, existing populations of endangered species were documented and mapped in 2011. Your comment mistakenly assumes that the small population of Howell's spineflower that was mapped along the northern section of haul road is a finite population. As a dune annual, the spineflower population fluctuates by orders of magnitude among years, and their distribution changes even without intervention. The project, with mitigation, is expected (reasonably, with expert opinion guiding long-term management that is not occurring otherwise, but for the project) to result in a net long-term gain in both distribution and population size of spineflower in more sustainable and more potentially persistent stable locations. The long-term viability of the nominal "11%" of the spineflower population in the road alignment is very low because it is located immediately behind an active foredune and shoreline that is actively transgressing landward, driven by sea level rise in a location that is doomed in the long-term to provide stable dune habitat for spineflower. In addition to the plants, there is well documented evidence to show that the haul road and European beachgrass directly impact habitat of

the western snowy plover, and that removal of these unnatural elements will expand nesting and foraging opportunities (IS/MND pages, 5, 6, 50, 55, 68-69). We also worked closely with professional biologists from the regulatory agencies that have jurisdiction over the protection of endangered species (CA Department of Fish and Game and US Fish and Wildlife Service) to ensure beneficial results from the proposed project, as is required under state and federal regulations. The Mitigation, Monitoring, and Restoration Plan in Appendix E.2 further details measures to ensure that the endangered plant populations, including Howell's spineflower, will increase following project implementation.

8. As the Chairperson for the Westport Municipal Advisory Council, and as a private individual, you have actively lobbied other agency representatives, local political leaders, and State Park upper managers for the development of a bicycle trail through the Inglenook Fen-Ten Mile Dunes Natural Preserve. For example, in an e-mail message dated August 27, 2012 to State Park Superintendent Loren Rex (and cc'd to District Superintendent Liz Burko, County Supervisor Kendall Smith, County Supervisor Elect Dan Gjerde, and Assemblymember Wesley Chesbro's Field Representative, Ruth Valenzuela), you stated (in part): "My suggestion is that concerns about that aspect of the project might be greatly reduced if State Parks made a commitment to plan an alternate bike/ped/wheelchair route through the northern park. I also believe an environmentally sensitive path is entirely feasible from both a cost and environmental standpoint. That view is based on mapping of critical habitats shown in the IS/MND and my own confidential knowledge of cultural resources." In a letter to Jesse Robertson, CalTrans District 1, and Janet Orth, Mendocino Council of Governments, you again lobbied for development of a Class 1 bicycle trail through the Natural Preserve and included a map showing a proposed location just inland from the existing haul road.

The alternative bicycle trail that you propose, as described above and shown on your map, would cause significant direct, indirect, long-term, cumulative, and irreparable impacts to Environmentally Sensitive Habitat Areas as defined under the Coastal Act, including populations of threatened and endangered species, wetlands, coastal dunes, and extensive archaeological sites. A team of highly respected ecologists, archaeologists, historians, engineering geologists, and environmental scientists surveyed the Ten Mile Dunes extensively and mapped the sensitive resource areas. Not all of these areas have been disclosed to the public, so not all were available to you when you prepared the map. We are not aware of any additional cultural surveys you may have conducted, and/or if you have engaged the services of professional biological and physical scientists to identify a non-impacting bicycle trail route through the dunes. Based on our in-depth knowledge of the Ten Mile Dunes, any bicycle trail route through the dunes would cause significant impacts, even if sensitive sites could be directly avoided during construction. In addition, a multi-use trail would greatly increase visitor use to the dunes, and in turn increase the potential for exposure and vandalism of archaeological resources.

As explained in the IS/MND on pages 7, 115, 122, the haul road through the dunes is deteriorating and does not function as a continuous coastal trail. Plans during the mid-1990's by the Department of Parks and Recreation, which appeared at the time to be consistent with the General Plan, included a proposal to rebuild a continuous hardened surface trail through the dunes to connect washed out sections of the haul road. As explained on page 122 of the IS/MND, a feasibility study was conducted in 2000, which clearly concluded that a hardened trail through the dunes was incompatible with the Natural Preserve designation, and not feasible to construct due to significant environmental concerns. One of the main issues raised during the feasibility analysis was that construction of a hardened trail through the Natural Preserve would not be permitted through the coastal development process (if one was to be proposed), as no segments could avoid causing seriously detrimental effects to the Environmentally Sensitive Habitat

Areas of coastal dunes, wetlands, and endangered species habitat. In addition, no trail could be built to connect the washed out sections of haul road without impacting archaeological sites.

California State Parks appreciates your interest in the Dune Rehabilitation Project at the Inglenook Fen-Ten Mile Dunes Natural Preserve at MacKerricher State Park. Although trail development in the Preserve is not a feasible option, we would be glad to talk with you about trail enhancement to the south, outside of the Natural Preserve, that could avoid significant impacts to sensitive resources, and could better serve the needs of bicyclists, pedestrians, and visitors that are mobility impaired.

Sincerely,

) ware Huun

Dionne Gruver Associate State Archaeologist California State Parks

Renee Pasquerelli

Renée Pasquinelli Sr. Environmental Scientist California State Parks

CC:

Liz Burko, California Department of Parks & Recreation Jan Wooley, California Department of Parks & Recreation Dionne Gruver, California Department of Parks & Recreation Abbey Stockwell, Mendocino County Department of Planning and Building Services State of California • Natural Resources Agency





DEPARTMENT OF PARKS AND RECREATION Mendocino District 12301 North Highway 1 – Box 1 Mendocino, CA 95460

November 26, 2012

Ms. Peggy Shannon P.O. Box Bodega Bay, CA 94922

RE: Initial Study/Draft Mitigated Negative Declaration Inglenook Fen – Ten Mile Dunes Natural Preserve, MacKerricher State Park Dune Rehabilitation Project

Dear Ms. Shannon:

Thank you for your comments during the public review period for the Initial Study/Draft Mitigated Negative Declaration (MND), MacKerricher State Park Dune Rehabilitation Project. Your comments concerning the cultural resources in the project area are appreciated and it is hoped that the following responses will help to answer some of your questions and concerns regarding the project.

1. In your letter you requested copies of the *Specific Project Requirements, Documented Archaeological Site Avoidance Plan* and the PRC §5024.5 review prepared for this rehabilitation project.

These documents are included with this response letter; I hope you find them helpful. You will see that DPR archaeological staff conducted extensive archival research and field studies coordinated with the University of California, Davis (UCD) to make informed decisions about the project and potential impacts to the resources. During 2011 field studies, staff and UCD surveyed the entire Inglenook Fen – Ten Mile Dunes Natural Preserve and tested eight previously recorded archaeological sites to determine if the sites retained integrity. These sites are located in the project area where the most intensive ground disturbing activities associated with project work will be conducted. Based on the findings of these investigations, the project was redesigned and project treatment measures and/or mitigations developed to insure that impacts during and subsequent to project implementation are maintained at a less than significant level.

2. Your comments also referenced a study you conducted throughout MacKerricher State Park that assessed the cultural resources present in the park. You were wondering why this study (*MacKerricher State Park Archaeological Site Assessment, Coastal Erosion Monitoring and Stabilization Project 2003*) was not mentioned in the MND. Additionally, you did not understand how it was possible to conduct adequate impact analysis without referring to this work.

This report was not referenced in the MND because during the literature search in support of this project, your report was not found. This literature search was extensive and included a review of files at the Departments of Parks and Recreations Northern Service Center (NSC); a search of the DPR Unit Data File (UDF); DPR Central Records; records on file with the Northwest Information Center (NWIC); and most importantly, the files retained by the Mendocino District where you worked and where you conducted the study. This report was

not filed in any of these locations. The NWIC provided DPR 523 Forms for the archaeological sites located in the project area. Many of these records contained updated records from your 2000-2003 study with DeGeorgey. Though your report was not obtainable for site impact analysis, we used the updated site records to relocate the archeological resources and site boundaries, make condition assessments of those resources, and determine impacts based on the existing conditions.

If this report is available in your home library, please provide copies to the NWIC; DPR Archaeology, History, and Museums at DPR Headquarters and to the Mendocino District office for their cultural resource files. It is important that you circulate this report since this investigation was so intensive and as you mentioned, resulted in changes to our understanding of these sites.

3. Your letter also states that you are "concerned about the effects of windblown sand on archaeological resources, both burying and exposing resources, a condition that would result from beach grass removal. To address these issues, I installed a dune movement monitoring system that allows one to very simply and reliably document dune movement over time. I also installed metal datums to assist in site relocation."

As is discussed throughout the Initial Study/Draft MND, including pages 4, 5, 50, 58, 64, 84, and 85, dune movement is integral to the dynamic nature of the dune ecosystem. Native vegetation is highly adapted to this changing environment, and readily recolonizes areas where European beachgrass is removed. Sand has blown over the top of archaeological sites and has been scoured from the same sites due to the ever-changing conditions of the dunes for decades, long before European beachgrass was introduced to the Natural Preserve. Pages 5 and 55 of the Initial Study/Draft Mitigated Negative Declaration (IS/MND) describe how the invasive nature of beachgrass has changed the dune topography by a cycle of sand buildup and shoot growth, and has impacted dune vegetation by outcompeting native plants. In the Ten Mile Dunes, European beachgrass has altered the natural dune processes such that sand accretion around clumps of beachgrass has increased dune height, while "wind tunnels" between the abnormally tall and abrupt dune mounds have caused dune surface erosion and deflation plains. As wind is funneled between beachgrass clumps, it not only removes the sand and older prairie soils where the archaeological sites are situated, it also deflates, erodes, and redistributes the archaeological deposits. These impacts have been documented extensively in the site records associated with these resources throughout the dunes where the beachgrass is well established.

We were unable to locate markers within the Natural Preserve that you may have used to track dune movement. However, a November 4, 2003 report by Hans Barnaal, written under contract to California State Parks, discussed datums that were installed south of the Preserve, particularly at Laguna Point.

Thank you again for your comments.

Diorne Huun

Dionne Gruver Associate State Archaeologist California State Parks – Northern Service Center



Major General Anthony L. Jackson, USMC (Ret), Director

DEPARTMENT OF PARKS AND RECREATION Mendocino District 12301 North Highway 1 – Box 1 Mendocino, CA 95460

November 26, 2012

Tamara L. Gedik Coastal Program Analyst California Coastal Commission North Coast District Office 710 E Street, Suite 200 Eureka, CA 95501-1865

Re: Comments on circulated Initial Study/Mitigated Negative Declaration – MacKerricher State Park Dune Rehabilitation Project, Inglenook Fen-Ten Mile Dunes Natural Preserve

Dear Ms. Gedik:

Thank you for reviewing the Initial Study and Mitigated Negative Declaration (IS/MND) and related documents for the MacKerricher Dune Rehabilitation Project and for attending the agency scoping meeting on March 14, 2011. Please accept this letter as response from the California Department of Parks and Recreation to your comment letter dated August 31, 2012 on this project.

You are correct in that the reference to a June 2005 MacKerricher State Park General Plan on page 35 of the IS/MND was a typographical error. The General Plan was approved in 1995 and an updated document has not been prepared. We will correct this error in the final MND.

Your letter states that "our primary concerns with the project as proposed relate to direct, unmitigated impacts to public access". Nothing proposed within the project will cause permanent impacts to existing public access, and no permanent public access closures are proposed for any area of the Inglenook Fen-Ten Mile Dunes Natural Preserve, which contains the entirety of the project. Short term impacts resulting from temporary closures for public safety during immediate road deconstruction activities have been addressed on pages 14 and 114-116 of the IS/MND.

The project proposes to remove remaining deteriorated sections of a former logging road that runs through a Natural Preserve. As explained throughout the IS/MND (pages 4-10, 51, 57, 60, 71-73, 87, 101-102), the road directly impacts natural processes that are critical for ecosystem functions that support sensitive native species and habitats. The road does not serve as a contiguous pedestrian, bicyclist, all accessibility trail, or as a trail used by people with strollers. Some of the statements in your letter, which appear to be based on misinformation include: *"The paved portions provide access to bicyclists and people with strollers. The current proposal to remove the road base and surface of the Haul Road in those areas described in the MND, and the removal of culverts at Inglenook and Fen Creeks interferes with the current intensity of use of the project area by recreationists, and will effectively reduce public access to this area once completed". As is shown in the attached report, between March and August, 2012, only about 3% of the visitor use within the Natural Preserve occurred on the haul road. Surveys were conducted at weekly intervals as part of a plover survey program; visitor use and location was one of the required elements for survey documentation. Park staff and volunteers that* 

have regularly conducted activities within the foredunes for nearly a decade, state that people with strollers and bicyclists do not use the haul road in the Natural Preserve (see attached report). Approximately 1 mile of road is completely washed out and much of the remaining approximate 2 mile sections are either dangerously eroded or partially covered with sand. The attached map (MacKerricher State Park Dune Rehabilitation Haul Road Condition) shows the current haul road condition through the dunes and the 2003 documented topography of the foredunes in the vicinity of the road.

No segment of the California Coastal Trail will be eliminated under the MacKerricher Dune Rehabilitation Project. The California Coastal Trail exists along the beach from Ward Avenue northward to the Ten Mile River, then parallels or follows the southeast-northwest alignment of the haul road to the Ten Mile Bridge. The easternmost half of this alignment section (approximately 225 yards) leading to the bridge is under private ownership and is not part of the proposed project. The proposal for the northwestern segment of the alignment is to remove the asphalt veneer (to allow some recovery by native plant species), but retain the underlying rock ballast, thus retaining a trail surface that will lead to an existing beach trail. The final MND will contain a more detailed description of the treatment proposed for this northernmost segment of the haul road and how coastal access will be provided to the beach. The attached revised project overview map will be included in the final MND.

The Mendocino County certified Local Coastal Plan (LCP) was adopted in 1980 and has not since been updated. The LCP and public access policies of the Coastal Act are cited in your letter as the "standard of review for any development subject to coastal development permit requirements". Although your letter additionally offers comments regarding mitigations for biological resources, no sections of the Coastal Act or LCP are cited regarding the protection of Environmentally Sensitive Habitat Areas. LUP 4.2-19, contained within the Local Coastal Plan (LCP) is cited as directing the Department of Parks and Recreation (DPR) to "prepare a General Plan for MacKerricher State Park that provides access to Ten Mile River and Inglenook Fen at designated locations and subject to conditions necessary for preservation of the natural environment of the park." However, as you note, the General Plan was not submitted to the County for adoption to the Recreation Element, and as such, has not been reviewed or certified by the Coastal Commission. The 1980 adopted LUP Policy 4.2-21 is also cited as recommending that the Georgia-Pacific Corporation haul road (then still under private ownership) be acquired by DPR and incorporated into its management plan for the park. The haul road has since been acquired and incorporated into the MacKerricher State Park General Plan. No sections of the LCP state that the haul road shall be maintained for public access in the Ten Mile dunes.

As part of the EIR process that included adoption of the MacKerricher General Plan by the State Park Commission, the property containing the beach, dunes, and wetlands between Ward Avenue and the Ten Mile River and all elements contained within, was classified as the Inglenook Fen-Ten Mile Dunes Natural Preserve. As stated in the IS/MND (page 4), the *"foundation for State Parks"* management approach for all units is based on the unit classification statutes as defined in the Public Resources Code (PRC § 5019.50 - 5019.80). PRC Section 5019.71 specifies the purpose of Natural Preserves. As such, and as explained in the IS/MND (pages 4 and 104), the overarching management focus of the Inglenook Fen-Ten Mile Dunes Natural Preserve and the purpose of the proposed project are based on State legal mandates defined under the Public Resources Code. Located only within the Preserve boundaries, the primary objective of the project is *"to restore natural processes in a 1285-acre dune ecosystem of statewide significance within a Natural Preserve"* (page 6 of the IS/MND).The full text of PRC Section 5019.71 reads:

Natural preserves consist of distinct nonmarine areas of outstanding natural or scientific significance established within the boundaries of other state park system units. The

purpose of natural preserves shall be to preserve such features as rare or endangered plant and animal species and their supporting ecosystems, representative examples of plant or animal communities existing in California prior to the impact of civilization, geological features illustrative of geological processes, significant fossil occurrences or geological features of cultural or economic interest, or topographic features illustrative of representative or unique biogeographical patterns. Areas set aside as natural preserves shall be of sufficient size to allow, where possible, the natural dynamics of ecological interaction to continue without interference, and to provide, in all cases, a practicable management unit. Habitat manipulation shall be permitted only in those areas found by scientific analysis to require manipulation to preserve the species or associations that constitute the basis for the establishment of the natural preserve.

We find no section of the Coastal Act (PRC § 30000 – 37042) to state or imply that coastal access policies are to override or have precedence over PRC Section 5019.17. We also find no sections of the Coastal Act or the Mendocino LCP that would indicate that the proposed MacKerricher Dune Rehabilitation project would be in conflict with State coastal regulations. Rather, numerous sections of the Coastal Act and the Mendocino County LCP direct the protection of Environmentally Sensitive Habitat Areas, which include dunes, wetlands, and endangered species habitats, and allow for public access where compatible with the protection of sensitive natural resources. Where coastal access is addressed, the intent appears to be to facilitate public access from the nearest public road to the shoreline. However, it does not appear that the intent of coastal policies is to facilitate the development and maintenance of trails and roadways that traverse through sensitive habitats parallel to the beach.

As explained in the Draft IS/MND (pages 7, 115, 122), the haul road through the dunes is deteriorating and does not function as a continuous coastal trail. Plans during the mid-1990's by the Department of Parks and Recreation, which appeared at the time to be consistent with the General Plan, included a proposal to rebuild a continuous hardened surface trail through the dunes to connect washed out sections of the haul road. In response to outcry by the environmental community and regulatory agencies , a feasibility study was conducted in 2000, which clearly concluded that a hardened trail through the dunes was incompatible with the Natural Preserve designation, and not feasible to construct due to significant environmental concerns (Draft IS/MND page 122). We also find no sections of the Coastal Act or Mendocino County LCP that would permit development of hardened trail sections through the Inglenook Fen-Ten Mile Dunes Natural Preserve to create a contiguous trail (if one was to be proposed), as no segments could avoid causing seriously detrimental effects to the Environmentally Sensitive Habitat Areas of coastal dunes, wetlands, and endangered species habitat. In addition, no trail could be built to connect the washed out sections of haul road without impacting archaeological sites.

Listed below are selected sections of the Coastal Act and the Mendocino County LCP and LUP that support the MacKerricher Dune Rehabilitation Project's consistency with coastal regulations (emphasis added).

#### Public Resources Code Division 20 California Coastal Act Section 30001.

The Legislature hereby finds and declares: (a) That the California coastal zone is a distinct and valuable natural resource of vital and enduring interest to all the people and exists as a delicately balanced ecosystem. (b) That the permanent protection of the state's natural and scenic resources is a paramount concern to present and future residents of the state and nation. (c) That to promote the public safety, health, and welfare, and to protect public and private property, wildlife, marine fisheries, and other ocean resources, and the natural environment, it is necessary to protect the ecological balance of the coastal zone and prevent its deterioration and destruction.

(d) That existing developed uses, and future developments that are carefully planned and developed consistent with the policies of this division, are essential to the economic and social well-being of the people of this state and especially to working persons employed

within the coastal zone.

#### Section 30001.5 Legislative findings and declarations; goals

The Legislature further finds and declares that the basic goals of the state for the coastal zone are to:

(a) <u>Protect, maintain, and where feasible, enhance and restore the overall quality of the</u> <u>coastal zone environment and its natural</u> and artificial resources.

(c) Maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone <u>consistent with sound resources conservation</u> <u>principles</u> and constitutionally protected rights of private property owners.

#### Section 30210.

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people <u>consistent with</u> public safety needs and the need to protect public rights, rights of private property owners, and <u>natural resource areas from overuse.</u>

#### Section 30211.

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the <u>use of</u> <u>dry sand and rocky coastal beaches to the first line of terrestrial vegetation.</u>

#### Section 30212.

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where

(1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,

#### Section 30214 Implementation of public access policies; legislative intent

(a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:

(1) Topographic and geologic site characteristics.

(2) The capacity of the site to sustain use and at what level of intensity.

(3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as <u>the fragility of the natural resources in the area</u> and the proximity of the access area to adjacent residential uses.

Section 30240 Environmentally sensitive habitat areas; adjacent developments (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those 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 those areas, and shall be compatible with the continuance of those habitat and recreation areas.

#### Section 30231 Biological productivity; water quality

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 waterflow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

### Mendocino County Coastal Element – Chapter 3 Land Use Plan: Resources and Development Issues and Policies

**3.1-15** Dunes shall be preserved and protected as Environmentally sensitive habitats for scientific, educational and passive recreational uses. Vehicle traffic shall be prohibited. Where public access through dunes is permitted, well-defined footpaths or other means of directing use and minimizing adverse impacts shall be developed and used. New development on dune parcels shall be located in the least environmental damaging location and shall minimize the removal of natural vegetation and alteration of natural landforms.

**3.1-18** <u>Public access to sensitive wildlife habitats such as rookeries or haulout areas</u> shall be regulated, to insure that public access will not significantly adversely affect the sensitive resources being protected.

Development within buffer areas recommended by the California Department of Fish and Game to protect rare or endangered wildlife species and their nesting or breeding areas shall meet guidelines and management practices established by the Department of Fish and Game, and must be consistent with other applicable policies of this plan.

**3.1-25** The Mendocino Coast is an area containing many types of marine resources of statewide significance. <u>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.</u>

**3.1-2** Development proposals in environmentally sensitive habitat areas such as wetlands, riparian zones on streams or sensitive plant or wildlife habitats (all exclusive of buffer zones) including, but not limited to those shown on the Land Use Maps, shall be subject to special review to determine the current extent of the sensitive resource. Where representatives of the County Planning Department, the California Department of Fish and Game, the California Coastal Commission, and the applicant are uncertain about the extent of sensitive habitat on any parcel such disagreements shall be investigated by an on-site inspection by the landowner and/or agents, County Planning Department staff member, a representative of the California Department of Fish and Game, a representative of the California Coastal Commission. The on-site inspection shall be coordinated by the County Planning Department and will take place within 3 weeks, weather and site conditions permitting, of the receipt of a written request from the landowner/agent for clarification of sensitive habitat areas. If all of the members of this group agree that the boundaries of the resource in question should be adjusted following the site inspection, <u>such development should be approved only if specific findings are</u>

made which are based upon substantial evidence that the resource as identified will not be significantly degraded by the proposed development. If such findings cannot be made, the development shall be denied. Criteria used for determining the extent of wetlands and other wet environmentally sensitive habitat areas are found in Appendix 8 and shall be used when determining the extent of wetlands.

## Mendocino County Coastal Element – Chapter 4 Land Use Plan: Descriptions and Policies for Thirteen Planning Areas Seaside Creek to Pudding Creek Trail

"Because of the sometimes hazardous conditions occasioned by tidal action and stream conditions at the mouth of Ten Mile River, the coastal trail in this area shall be segmented, rather than indicated as a continuous trail system. One segment shall extend from Seaside Creek Beach south to the northern bank of Ten Mile River. <u>Another segment shall extend from the south side of Ten Mile River along the shoreline of MacKerricher State Park to Pudding Creek.</u>"

Your comment letter also quotes sections of the MacKerricher State Park General Plan and states that the proposed removal of the northern haul road is inconsistent with policies of the General Plan. Page 3 of the letter quotes the declaration of purpose for MacKerricher State Park as follows:

<u>"The purpose of MacKerricher State Park is to make available to the people</u> for their inspiration, enlightenment, and enjoyment, in an essentially natural condition, <u>the</u> <u>outstanding scenic features and natural values, including</u> the coastline embracing offshore environs; the stretches of sandy and rocky beach; the headland bluffs; <u>the Ten</u> <u>Mile Dunes</u>; the marine terraces; the wetland habitats including <u>Lake Cleone and the</u> <u>unique Inglenook Fen</u>; the geology and plant and animal life; the significant archaeological and historical resources; and the scientific values therein. (Emphasis added)"

Page 3 also quotes page 213 of the General Plan as stating: "The environmentally-preferred alternative would have been the natural and cultural resource protection priority alternative (2). However, that alternative did not fully meet the goal of providing for the public use identified in project's statement of purpose. Therefore, the project proposed in the general plan is a combination of the natural and cultural resource protection priority and public use priority alternatives."

As explained earlier in our response, through the General Plan process, the area containing the proposed project was classified as a Natural Preserve. Removal of the haul road as proposed in the Dune Rehabilitation Project does not conflict with the statements quoted above from the MacKerricher General Plan, is based on sound scientific principles, and is entirely consistent with the Natural Preserve classification. Public access to the Ten Mile Dunes, the stretches of sandy beach, and the Inglenook Fen will not change, and will not be limited as a result of the project. As evidenced from the attached use report, and based on our 20+ years of local park experience, the haul road section that runs through the foredunes of the Natural Preserve no longer functions as a contiguous trail and receives very little public use, as most visitors walk along the beach.

Page 54 of the MacKerricher General Plan reads:

"Natural preserve designation provides guidance and acts as a control upon the department by assuring that future plans will respect the degree of resource sensitivity identified within the preserve. This designation is also an aid in setting priority for field staff who will develop and implement the various resource management plans proposed

in a general plan. Those resource management plans relating to the natural preserve will receive consideration for higher priority based on the relatively greater significance of the resources. Natural preserve status also aids the department when dealing with possible threats to park resources from outside the park. It is a testament that there is support throughout the department for the special protection needed for resources within the preserve.

The many sensitive resources within the natural preserve at MacKerricher State Park will require a variety of management strategies. Different areas will experience different levels of public use, ranging from extremely low and controlled use in the fen to a relatively higher level at Ten Mile Beach. Public access in the foredunes will need careful regulation, as these dunes are the most likely to be disrupted by uncontrolled equestrian or pedestrian use. They are also the least protected from wind blast and wave action and encompass important nesting areas for western snowy plovers.

Most other parts of the dunes can be less controlled and remain undesignated for public use, as there is only a low level of foot traffic. There will be few formal designated access points and pathways. However, it is recognized that some especially fragile resource areas may require barriers to protect threatened features."

Designation of this area as a natural preserve simply supports the already existing authority of the District Superintendent to apply needed management measures, such as occasional fencing of an area, regardless of the preserve status.

Your letter also questions the safety of public access during storm events if the stream crossings are removed as proposed in the project description. As discussed on-site during the March 14, 2011 agency meeting, if the stream crossings were to be retained, not only would this be inconsistent with the purpose of the Natural Preserve, there would be no feasible or safe way to maintain fixed access to the crossings. The foredunes and the outlets of Fen and Inglenook Creeks are dynamic systems subject to unpredictable wave action and hydrologic processes. The photo on page 9 of the Draft IS/MD and the discussion on page 117, illustrate how the eroded remaining sections of haul road in the Natural Preserve create an unsafe barrier to public access between the beach and dunes. Throughout most of the year, Fen and Inglenook Creeks are easily crossed along the beach, as the terrestrial flow generally sinks into the sand at the lowest reaches of the streams. Only during high flow and storm events, at a time when fewer visitors are on the beach, would through access between Ward Avenue and the Ten Mile River be a challenge. Still, even during times when the creek outlets are difficult to cross on foot, visitors would be able to walk along the beach over one mile northward from Ward Avenue to Fen Creek, and nearly 1.5 miles southward from the Ten Mile River to Inglenook Creek.

Ample recreational opportunities exist within the vicinity of MacKerricher State Park and the City of Fort Bragg for multiple-use public access along the coast. The nearly three miles of haul road within the area classified as "State Park" (PRC 5019.53), south of the Natural Preserve (outside of the proposed project area), receive much greater use and primarily traverse the more stable coastal bluffs. As is appropriate, the Department of Parks and Recreation has future plans to repair and improve sections of the haul road that lie outside of the Natural Preserve. The Department has also purchased two beach wheelchairs to be used by people that are mobility impaired who want to access the beach from Ward Avenue northward. The City of Fort Bragg is in the process of implementing plans for a multiple-use public access trail along the coastal bluffs of the former Mill Site, south of Pudding Creek. Once the City's project is completed, the public will have access to more than five miles of contiguous coastal trail between Ward Avenue and the Noyo River.

In reference to a quote from the June 1977 Inglenook Fen Study your letter asks that we "please clarify how exposing Fen Creek to stream flow as proposed will maintain the integrity of the established fen/fencarr system". The Hydrology and Water Quality section of the IS/MND explains (pages 97-103) that Inglenook Fen is a natural feature that formed thousands of years ago when the sand dunes formed a barrier to the movement of surface and ground water from Fen Creek. As stated on pages 101-102 in the IS/MND: "The proposed project would remove remnant road sections and two culverts which currently act as barriers to natural dune formation and dune hydrology. These changes would not substantially increase the rate or amount of surface runoff or increase the potential for offsite flooding. Rather, beneficial changes in the lower hydrology of Fen and Inglenook Creeks will occur from the removal of the culverts and road berm that currently constrict the channels. Inglenook Fen has been a natural feature for 4,000 to 6,000 years (Barry, W.J. and Schlinger, E. I. 1977) long before the construction of the road; removal of the road and culverts will not impact the fen. The overall goal of the project is to return the dune system to a more natural state, which is likely to improve drainage within the Preserve in the long-term. Therefore, the project would have no impact."

We appreciate your acknowledgement of our proposed project efforts to improve habitat for sensitive biological resources and mitigate for impacts that may occur during project activities. In regards to the mitigation measures, Appendix E.2 spells out specific immediate and long-term objectives to mitigate for short-term project impacts to listed plants. The document also explains that the main goal and approach to the plan (pages 1-5 of Appendix E.2) is to develop a long-term strategy for on-going monitoring and adaptive management of natural ecosystems within the Preserve. As stated on page 1: *"The specific goals, actions, and methods in this plan represent an initial phase of a longer term ecological monitoring and adaptive management plan to be designed for the Preserve."* The Mitigation, Monitoring, and Restoration Plan was written by highly qualified and respected ecological consultants, Peter Warner, Dr. Peter Baye, and Teresa Sholars, and under consultation with USFWS and DFG botanical experts. We will continue to work closely with the regulatory agency ecologists to finalize the long-term restoration plan, and will continue to implement approved habitat restoration activities, including weed removal, as a recognized priority within the Natural Preserve.

By removing a deteriorating road that severely impacts ecosystem processes in a Natural Preserve, the proposed MacKerricher Dune Rehabilitation Project offers a rare opportunity for the public to see and experience a functioning natural coastal dune system that supports significant habitat for endangered species. If you have additional questions regarding the project, please do not hesitate to contact me (<u>rpasquinelli@parks.ca.gov</u>, or 707-937-5721). Again, I would be glad to meet with you and other Coastal Commission staff for another site visit at your convenience.

Sincerely,

Renei Pasquerelli

Renee Pasquinelli Senior Environmental Scientist

CC:

Linda Locklin, Statewide Coastal Access Program Manager, CA Coastal Commission Robert S. Merrill, North Coast District Manager, California Coastal Commission Abbey Stockwell, Mendocino County Planning and Building Services, Fort Bragg Karyn Gear, North Coast Program Manager, State Coastal Conservancy Attachments:

State Parks Internal Report: "Visitor Use of the old Haul Road within the Inglenook Fen-Ten Mile Dunes Natural Preserve"

MacKerricher State Park Dune Rehabilitation Haul Road Condition

Revised MacKerricher State Park Dune Rehabilitation Overview Map

STATE OF CALIFORNIA - THE RESOURCES AGENO



NORTH COAST DISTRICT OFFICE. 1385 EIGHTH STREET, SUITE 130 ARCATA, CA 95521 VOICE (707) 826-8950 FAX (707) 826-8960

#### APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

# Please Review Attached Appeal Information Sheet Prior To Completing This RECEIVED

			SEP 1 3 2013
			CALIFORNIA COASTAL COMMISSION
Zip Code:	95488	Phone:	(707) 964-7272
Zip Code:	95437	Phone:	(707) 321-2592
Zip Code:	95460	Phone:	(707) 961-0428
	Zip Code: Zip Code: Zip Code:	Zip Code: 95488 Zip Code: 95437 Zip Code: 95460	Zip Code: 95488 Phone: Zip Code: 95437 Phone: Zip Code: 95460 Phone:

#### SECTION II. Decision Being Appealed

#### Name of local/port government: 1.

#### Mendocino County

2. Brief description of development being appealed:

Coastal development permit for a dune restoration project that involves: (1) the removal of asphalt and gravel base along three segments of the Haul Road Coastal Trail totaling 2.7 miles, (2) stream channel restoration associated with the removal of two Haul Road culvert creek crossings, and (3) the treatment of European beachgrass and other nonnative plants within the project area.

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

In the coastal zone on the west side of Highway 1, located in the northern portion of MacKerricher State Park between Ward Avenue in the community of Cleone and the mouth of the Ten Mile River. Multiple Assessor's parcels totaling 1285 acres including AP#s 01513043, 01513044, 01513053, 06901002, 06901003, 06901004, 06901005, 06901007, 06901008, 06901009, 06901010, 06901035, 06904001, 06904002, 06904003, 06904004, 06904005, 06904006, 06904007, 06904008, 06904009, 06904010, 06905101, 06905114, 06905201, 06909001, 06909002, 06909003, 06909004, 06909005, 06909006, 06909007, 06909008, 06909009, 06909010, 06909013, 06910101, 06910102,

> EXHIBIT NO.11 APPLICATION NO. A-1-MEN-13-0241 CALIF. DEPT. OF PARKS & RECREATION APPEAL (1 of 124)







#### STATE OF CALIFORNIA - THE RESOURCES AGENCY

#### CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE 1385 EIGHTH STREET, SUITE 130 ARCATA, CA 95521 VOICE (707) 826-8950 FAX (707) 826-8960





- 4. Description of decision being appealed (check one):
- Approval; no special conditions
- Approval with special conditions: (See attachment)
- Denial
- **Note:** For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

<u>TO I</u>	BE COMPLETED BY COMMISSION:
APPEAL NO: $(\lambda - 1 - \gamma \gamma)$	1EN-13-0241
DATE FILED:	9/13/13
district: 🔨	Josth Coast

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

- 5. Decision being appealed was made by (check one):
- County Coastal Permit Administrator –June 11, 2013
- County Board of Supervisors—Voted to deny appeal of CPA decision on August 26, 2013
- Planning Commission
- □ Other
- 6. Date of local government's decision: August 26, 2013 by Board of Supervisors

7. Local government's file number (if any): CDP#12-2012

#### SECTION III. Identification of Other Interested Persons

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

a. Name and mailing address of permit applicant:

Renee Pasquinelli California Department of Parks and Recreation 12301 N. Hwy 1, Box 1 Mendocino, CA 95460

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

Supervisor Dan Gjerde
 Mendocino County Board of Supervisors
 Low Gap Road, Room 1010
 Ukiah, CA 95482

(2) Supervisor Carre Brown
 Mendocino County Board of Supervisors
 501 Low Gap Road, Room 1010
 Ukiah, CA 95482

(3) Westport Municipal Advisory Council
 P. O. Box 307
 Westport, CA 95488

(Appellant in County BOS appeal)

(4) Sandra Rosas, Chief
 Caltrans District 1 Environmental Branch
 P.O. Box 3700
 Eureka, CA 95502

(5) Laurie A. Monarres, North Branch Chief—(Did not testify, but responsible for Section 404 permit issuance)
 Regulatory Division, US Army Engineer District San Francisco
 333 Market Street, Room 923
 San Francisco, CA 94105-1905

#### SECTION III. Identification of Other Interested Persons (Continued)

(6) Tom Lanphar, Project Manager—(Did not testify, but DTSC may review hazardous waste disposal issues)
 California Department of Toxic Substances Control
 700 Heinz Avenue, Suite 100
 Berkeley, CA 94710

(7) Bill Knapp 43026 N Hwy 1 Westport CA 95488

(8) Maryellen Sheppard P.O. Box 1253 Fort Bragg, CA 95437

(9) Tenaya Middleton P.O. Box 1823 Mendocino, CA 95460

(10) Diana Leon 33051 Beal Lane Fort Bragg, Ca. 95437

(11) David Paoli 27000 N. Highway 1 Fort Bragg, Ca 954377

(12) Bette Goldfarb P. O. Box 1321 Mendocino, CA 95460

(13) Ray And Loraine Duff 45300 Caspar Point Road #46 Caspar, CA 95420

(14) Lindsay Wansbury 33231 Ocean View Drive Fort Bragg, CA 95437

 (15) Kathy Johnson, President Redwood Coast Seniors, Inc.
 490 N Harold Street Fort Bragg, CA 95437

(16) Bob Whitney, TreasurerMendocino Coast Chapter, Surfrider Foundation23801 Iris TerraceWillits, CA 95490

(13) Ed Sander, Seniors on Bikes 33151 Beal Lane Fort Bragg, CA 95437

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

#### SECTION IV. Reasons Supporting This Appeal

#### **PLEASE NOTE:**

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

#### Decision Being Appealed

The Coastal Development Permit (#12-2012) for the MacKerricher Dune Rehabilitation Project was initially approved by the Mendocino County Coastal Permit Administrator(CPA) at a hearing June 11, 2013 over the objections of many concerned citizens whose comments were voiced and supplied in writing to the County Planning and Building Services Department over the preceding year. The Westport Municipal Advisory Council appealed that decision to the County Board of Supervisors based on substantial evidence of potential adverse impacts on the environment, inconsistencies with the Coastal Act, and inconsistencies with the certified Mendocino County Local Coastal Plan (LCP) certified in 1985 by the California Coastal Commission. The BOS denied the appeal and revised the conditions of permit approval August 26, 2013 (see Exhibit 1).

#### Summary of Reasons for Appeal

This Project is being appealed under Coastal Act Section 30603(a)(1) which provides for appeals of "Developments approved by the local government between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance." The Mendocino County LCP was certified by the Coastal Commission in 1985. The approved project does not conform with that certified LCP and is being appealed on following grounds listed on page 16: (1) "The development fails to provide adequate physical access or public or private commercial use or interferes with such uses;" and (4) "The development may significantly alter existing natural landforms." It is also being appealed pursuant to Coastal Act Section 30603(b)(1) which states "The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division." The Project is inconsistent with Coastal Act public access policies.

This appeal focuses on the following factors: (1) the precedent-setting intentional destruction of an existing hard surface multi-use coastal trail without constructing a comparable replacement trail; (2) the magnitude of land and shoreline-altering impacts of the proposed project; (3) the significance of project impacts to special status species, wetlands, and Environmentally Sensitive Habitat Areas (ESHAs); and (4) the inadequacy of the data supporting the local decision as set forth in a Mitigated Negative Declaration (MND). Each substantial issue is separately considered below. Exhibit 2 supplies a detailed analysis given to the Mendocino County Board of Supervisors during local appeal of the permit and Exhibit 3 supplies expert testimony, agency input, and excerpts from key references that support the allegations in this appeal.

An important prefatory consideration for any discussion of coastal access involves how coastal resources are defined and what priority they are given in the Coastal Act and certified Mendocino County LCP. Figure 1 in the LCP defines a hierarchy of considerations, assigning the highest priority to "agriculture, forestry, and coastal dependent public recreation." The LCP states on page 4 in policy (a) that "*Where policies within the Land Use Plan overlap, the policy which on balance is the most protective of coastal resources shall take precedence.*" The Coastal Act does not specifically define "coastal resources." However, Section 30001.5 of the Coastal Act sets among other legislative goals to (a) "*Protect, maintain and, where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and <u>artificial resources.</u>" These natural and artificial resources discussed in Section 30001.5(a) are taken to include trails that provide opportunities for public access, enjoyment, and education of the coast. Thus, we argue the Coastal Act gives equal priority to the preservation of existing coastal trails as it does to restoration of the natural environment.* 

#### **Discussion**

**1. Precedent-Setting Intentional Impairment of Public Access**: The approved project will retain 0.2 miles of an existing hard surface multi-use coastal trail known as the "haul road" between the northeast corner of MacKerricher State Park and the first curve west of that point to maintain the existing vertical access to the beach at the mouth of the Ten Mile River. The project will allow destruction of 2.5 miles of trail between the west end of the retained vertical access near the mouth of the Ten Mile River. The functional destruction of a comparable replacement trail is planned or required in the approved permit. This intentional destruction of a valued lateral hard surface multi-use coastal trail will significantly impair public access and recreational opportunities, particularly for less able individuals, families with children in strollers, and bicyclists. The rationale for removal is falsely characterized as ecosystem restoration, while no proof is offered of the benefits to species and the road removal will have many substantial impacts on the environment and species (both acknowledged and unanalyzed), as discussed further below.

None of the special conditions approved at the local level (Exhibit 1) adequately compensate for the planned trail destruction. The approved permit fails to require construction of a comparable near-shore alternate trail to compensate for this precedentsetting destruction of lateral coastal access. The Class I/II bicycle easement dedication stipulated in Special Condition 7 will not supply comparable access because it is discontinuous, far from the ocean with infrequent blue water views, dangerous, and unlikely to be built anytime in the foreseeable future due to environmental and funding constraints. This trail destruction is inconsistent with the Coastal Act and LCP policies for the following reasons:

a) The CDPR contention that the haul road is not a coastal access trail is contradicted by Mendocino County Land Use Maps 10 and 12, certified by the Coastal Commission in 1985, which depict the existing coastal trail along the west edge of the haul road. It was delineated there, rather than directly on top of the road, because the land was still privately owned by Georgia-Pacific Corporation in 1985. LCP Policy 4.2-21 states "*The Georgia-Pacific Corporation haul road, under a special management agreement with the California Department of Parks and Recreation, presently provides weekend and holiday vehicular access to the long stretch of public beaches which extend from Fort Bragg north to Ten Mile River. This private roadway, which travels through the entire length of the MacKerricher State Park, should be acquired by DPR and incorporated into its management plan for the park, if at any time during the life of the Local Coastal Plan the property owner desires to sell, trade or surrender this property." The road was acquired by CDPR in 1992.* 

The LCP maps and policies expressed the clear intent that this existing road was to be acquired and used as a public access trail. The road was and continues to be used by the public for many types of non-motorized access. It was fully accessible until CDPR began removing invasive plants without a coastal development permit or any erosion control measures around 2000. Wind erosion has since that time buried about a third of the road in sand, an act of intentional demolition by neglect on the part of CDPR that has partially impaired access. Despite that deliberate impairment, the northern 2.5 mile segment of the road survives as a valuable asset that is still widely used as a multi-use trail. It can be restored to a fully functional multi-use coastal trail with a modest investment. EDAW (2000:5-7) concluded "measurements and analysis of historic aerial photographs suggest there is no immediate threat of beach erosion removing the haul road north of Fen Creek. High rates of sediment transport from the Ten Mile River may actually be adding to beach stability (through local accretion) along this section of the coastline. In fact, the northern section of the coastline has shown both short term and long term beach accretion (widening) during the period of record." The trail thus remains a valuable asset that can provide access for many years to come.

b) The proposed intentional destruction of an existing improved multi-use coastal access trail by a state agency (CDPR) sets a very dangerous precedent that runs counter to the purposes of the Coastal Act and other state laws. The trail traverses a sensitive dune environment that was classified as the Ten Mile Dunes-Inglenook Fen Natural Preserve pursuant to Public Resources Code 5019.71 by the State Parks and Recreation Commission on June 21, 1995. It should be noted that Mendocino County and the California Coastal Commission (CCC) played no role in the approval of that designation with its implied land use change. The CCC also should be aware that CDPR is presently in the process of creating a new rule (law) for Natural and Cultural Preserves that will effectively ensure no future trails are ever likely to be built in the 59 park units affected by that new rule. That action has the strong potential to contradict access policies in the Coastal Act and other legislative mandates on a statewide basis. We argue that controlling access by routing visitors along a designated trail is preferable to allowing impacts from uncontrolled access to the most sensitive natural areas. CDPR has not demonstrated that ongoing public visitation, or even increased visitation, poses any definite threat to species or the dune habitat. We contend that improved access will in fact allow improved monitoring of species and the dune habitat, as well as surveillance and responses to proven threats.

c) Destroying this existing coastal trail is inconsistent with Coastal Act Section 30210 which states "In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously

posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse." This project instead substantially impairs public access and threatens rights of private property owners. It will particularly discriminate against the less able, handicapped, children, and bicyclists by removing a hard-surface lateral trail. CDPR provides no evidence continued use of the trail by the public will have any negative impacts on natural resources, while there are many reasons why retaining, maintaining, and reconnecting this trail to the west end of Ward Avenue is likely to provide benefits for special status plant and animal communities and their habitats as discussed in this appeal.

d) Destroying this existing coastal trail may also be inconsistent with Coastal Act Section 30211 which states "*Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*" There is a long history of public recreational use of the haul road that dates back to the period when it was privately owned. That long and continuous history of use extends through the period when the road was acquired by CDPR in 1992 and up to the present time. It is quite possible that continuous use established prescriptive rights that would be breached by demolition of the trail.

For the same reason, destruction of the road may be inconsistent with LCP Policy 3.6-27 which states "*No development shall be approved on a site which will conflict with easements acquired by the public at large by court decree. Where evidence of historic public use indicates the potential for the existence of prescriptive rights, but such rights have not been judicially determined, the County shall apply research methods described in the Attorney General's "Manual on Implied Dedication and Prescriptive Rights". Where such research indicates the potential existence of prescriptive rights, an access easement shall be required as a condition of permit approval. Development may be sited on the area of historic public use only if: (1) no development of the parcel would otherwise be possible, or (2) proposed development could not otherwise be sited in a manner which minimizes risks to life and property, or (3) such siting is necessary for consistency with the policies of this plan concerning visual resources, special communities, and archaeological resources. When development must be sited on the area of historic public use an equivalent easement providing access to the same area shall be provided on the site."* 

Special Conditions approved by the County fail to require the construction or dedication of a comparable near-shore lateral easement. The Class I/II bicycle path specified in Special Condition 7 along the west side of Highway 1 is not comparable to the haul road trail because it is far from the ocean, often lacks blue water views, is unsafe and much less scenic, and is extremely unlikely to be built in the foreseeable future given the enormous public cost of constructing a new trail. More importantly, that easement will not provide a continuous trail because of many intervening private parcels.

e) The project is also inconsistent with LCP Policy 3.6-28 which states "*New development on parcels containing the accessways identified on the land use maps shall include an irrevocable offer to dedicate an easement, as required by other policies in this Chapter, for public use. Such offers shall run for a period of 21 years and shall be to grant and convey to the people of the State of California an easement for access over and across the offeror's property.*" The LCP maps show the entire length of the haul road as an existing public accessway from Pudding Creek in Fort Bragg north to the Ten Mile bridge on Highway 1. About 1.2 miles of that existing coastal trail washed away north of Ward Avenue in the winter of 1983. CDPR concluded it is not feasible to reconnect that trial based on a very questionable analysis that actually found a "Setback Alternative" feasible on many grounds (See EDAW 2000 excerpt in Exhibit 3). If CDPR is unwilling to honor the policies of the LCP and Coastal Act to reconnect this coastal trail as a continuous hard surface multi-use facility between the Ten Mile vertical access and the west end of Ward Avenue, an easement known as the "Setback Alternative" should be dedicated to another public entity or nonprofit that is willing to construct and maintain such a trail.

f) Coastal Act Section 30212(c) states "Nothing in this division shall restrict public access nor shall it excuse the performance of duties and responsibilities of public agencies which are required by Sections 66478.1 to 66478.14, inclusive, of the Government Code and by Section 4 of Article X of the California Constitution." Government Code Section 66478.3 goes on to elaborate that "The Legislature further finds and declares that it is essential to the health and well-being of all citizens of this state that public access to public natural resources be increased. It is the intent of the Legislature to increase public access to public natural resources." This project will substantially impair access and decrease use. The reasons for excluding people are based on the unproven theory that humans pose threats to the recovery of endangered and special status species. CDPR offers no direct evidence that is in fact true.

g) Elimination of the haul road is inconsistent with LCP Policy 3.1-15 which states "Dunes shall be preserved and protected as Environmentally sensitive habitats for scientific, educational and passive recreational uses. Vehicle traffic

shall be prohibited. Where public access through dunes is permitted, well-defined footpaths or other means of directing use and minimizing adverse impacts shall be developed and used." The use of a well-defined improved trail can minimize impacts to the natural environment, while destruction of the haul road coastal trail will encourage the propagation of social trails that are more likely to impact species and their sensitive habitats Uncontrolled access offers less protection for the sensitive dune environment than directing use onto an existing trail. Retaining the trail, making it more accessible by removing the sand cover, and installing interpretive signage can improve resource protection. It will also facilitate monitoring of sensitive species and surveillance designed to control inappropriate use such as dogs off leash. Encouraging uncontrolled access will increase the incidental take of the western snowy plover (WSP) by encouraging pedestrians to walk through the most sensitive part of their critical habitat along the strand. The existing trail north of Fen Creek is inland of that nesting area and offers no impediment to WSP foraging in the interior. Some special status plants like the endangered Howell's spineflower thrive along the road margins and will be destroyed by the project.

h) Removing this existing coastal trail is inconsistent with LCP Policy 3.6-21 which states "*The County of Mendocino coastal trail shall be integrated with the coastal trails in the cities of Fort Bragg and Point Arena, and with Humboldt County to the north and Sonoma County to the south so as to provide a continuously identifiable trail along the <i>Mendocino County coast*." The destruction of this trail will create a discontinuity or gap in the coastal trail, rather than contributing to the future goal of a connected trail. It must be emphasized here that the word "trail" implies an improved surface useable by people of different abilities, something very different from unimproved "access" which may only be available to the most hardy hikers. If the haul road coastal trail is removed, access along this stretch of coast may be heavily constrained by two unimproved stream crossings and the potential for dangerous winter surf.

i) LCP Policy 4.2-19 provides that "The Department of Parks and Recreation shall be requested to prepare a General Plan for MacKerricher State Park that provides access to Ten Mile River and Inglenook Fen at designated locations and subject to conditions necessary for preservation of the natural environment of the park. Off-road vehicles shall be excluded." A general plan for the park was prepared in 1995, three years after CDPR acquired the haul road. The plan balanced preservation with public access, stating in part "The trestle across Pudding Creek, the haul road, and the associated equestrian trail comprise a critical part of the coastal trail on the Mendocino coast. The coastal trail within the park should soon connect with Fort Bragg, furnishing coastal access to large numbers of people, including disabled persons. This unique recreational resource will run the entire length of the park and will allow pedestrians and bicyclists to approach beach and dune areas that they otherwise could not easily be accessed. Maintaining the haul road in a condition suitable for bicycle use will provide an alternative for bicyclists to busy Highway 1, with an associated avoidance of hazards and accidents" (CDPR 1995:112). The plan defines these desirable actions, among others:

- Repair areas along the haul road that have erosion problems. In some places, this will require shoring the road up. In others, bypasses will be required due to ongoing erosion by the ocean.
- Provide a dune boardwalk to bypass the area north of Ward Avenue where the haul road has been washed out to serve hikers, bikers, and persons with disabilities. Equestrians will use the beach for the northern leg of their coastal trail. (CDPR 1995:153)

The Park General Plan was approved by the State Parks and Recreation Commission <u>before</u> the Natural Preserve designation was approved, giving the General Plan policies legal primacy. In direct contradiction to its own General Plan policies, however, CDPR is pursuing a project designed to intentionally exclude people from the northern part of MacKerricher State Park rather than repairing and maintaining a continuous trial. It may be relevant to consider the standing of the General Plan and classification of the northern park as a natural preserve given the fact that neither were approved or adopted by Mendocino County or the California Coastal Commission.

j) Destruction of coastal access is inconsistent with Coastal Act Section 30221 which states "*Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.*" The Project is located in an area specifically defined in the LCP as suitable for passive recreational activities. Because the dune environment is sensitive, keeping people on a designated trail is preferable to uncontrolled access that will lead most visitors to walk through the coastal strand which is the most sensitive part of the critical habitat of the Western Snowy Plover (WSP) used on very rare occasions as a nesting area. Removing the trail will reduce recreational use and concentrate public access impacts in one of the most sensitive portions of the northern park.

**2. The Magnitude of the Proposed Project**: The approved project does not conform to the certified LCP under the grounds for appeal (4) "*The development may significantly alter existing natural landforms*." The project will radically and intentionally alter the dune ecosystem with many adverse consequences on the environment, ESHAs, wetlands, archaeological resources, and neighboring lands that are not analyzed and unmitigated as explored in Issues 3 and 4 below.

CDPR states in the project MND the objective is to restore natural processes through removal of the haul road, culverts and fill prisms in two streams, and 60 acres of invasive plants. Those actions are expected to deflate the fore dunes, fill low-lying areas of the interior dunes (wetlands and swales favored by sensitive vegetation), allow streams to meander freely in a manner that will extensively reconfigure the near-shore region, and induce significant shoreline retreat.

CDPR (2012:86) acknowledges the project will cause erosion, but audaciously suggests that impact is beneficial and a "less than significant impact." They do so with insufficient analysis of the impacts of this dramatic reconfiguration of the dune landscape. CDPR states the project is <u>not</u> located on a "geologic unit or soil that is unstable, or that would become unstable, as a result of the project and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction, or collapse." That statement is patently false because LCP maps show the fore dunes lie in a high erosion hazard zone prone to lateral spreading. CDPR (2012:87) contradicts itself by stating "It is expected that the native sands would be dispersed by the prevailing NW winds and blow inland (nearshore) over the short-term . . . erosion may also occur within the project area during the removal of culverts and the remnant road sections at the creek crossings."

Certified Engineering Geologist Bedrossian (2011:15) notes in the MND that this erosion "will change the configuration of the dunes as they migrate to the east (i.e., additional transverse dunes could develop and/or grow in height farther inland), the nature of the vegetation, and the drainage patterns throughout the dunes." This suggests the project will dramatically restructure the dune ecosystem, yet those impacts remain unanalyzed and unmitigated. No other developer would get away with intentionally causing such massive erosion. Absent any analysis of this issue by CDPR, the consequences of the project can nevertheless be readily predicted using CDPR's data and reports supplied by Engineer David Paoli (2013) and Engineering Geophysicist Eric Freeman (2013) (see Exhibit 3). Paoli conservatively estimates the project will induce the eastward migration of an estimated one million cubic yards of sand.

Comparisons of aerial photographs reveal the shore has retreated as much as 130 feet in the south since the road washed out in 1983 based on an EDAW study in 2000 for CDPR. The project actions will likely induce the same kind of shoreline retreat in the northern park as impediments to ocean intrusion are removed by deflation of the fore dunes, removal of the road, and the scouring action of the two streams. Fore dune deflation can be readily predicted by comparing aerial images from before and after European beachgrass removal began without a permit over a dozen years ago. Extensive wetland tracts and dune vegetation communities have been buried, a third of the haul road trial is now covered in sand according to the MND, and neighboring lands have been devalued by 25-69% during the same period because of the sand encroachment according to a comparative appraisal by licensed expert Maryellen Sheppard (See her report in Exhibit 3). This restoration experiment will in fact have many adverse consequences to species, the environment, and neighbors. Inducing dramatic changes to the dune environment does not conform to a large number of LCP and Coastal Act policies as discussed below and expanded under consideration of Issue 3.

a) LCP Policy 3.1-15 states in part "... New development on dune parcels shall be located in the least environmental damaging location and shall minimize the removal of natural vegetation and alteration of natural landforms...." This project will intentionally and dramatically alter natural landforms with a complete disregard for the consequences of those actions. The fore dunes will be deflated, streams will meander, and shoreline retreat will be induced.

b) LCP Policy 3.1-33 states "Vegetation removal that constitutes development, as defined in the glossary of this plan, shall require a coastal development permit. The granting of such permit shall be done only when the proposed development is consistent with all other sections and policies of this plan." The effects of past invasive plant eradication efforts show they have had dramatic impacts on wetlands, vegetation communities, and neighbors. CDPR undertook those activities without seeking or obtaining a permit. Now this recently approved project fails to provide adequate measures to control wind erosion in areas that will be denuded by removal of invasive plants. All 60 acres that are denuded during invasive plant removal efforts should be replanted at a reasonable density and monitored to ensure native species succeed and sand migration is minimized. The negligible acreage proposed for replanting in the MND (4.5 acres of endangered species) is inadequate. Invasive species eradication also should be done gradually over several years rather than all at once using an adaptive management strategy to minimize sand migration and ensure successful establishment of native plants.

c) The project is inconsistent with LCP Policy 3.4-1 which states "*The County shall review all applications for Coastal Development permits to determine threats from and impacts on geologic hazards arising from seismic events, tsunami runup, landslides, <u>beach erosion</u>, expansive soils and subsidence and shall require appropriate mitigation measures to minimize such threats. In areas of known or potential geologic hazards, such as shoreline and bluff top lots and areas delineated on the hazards maps the County shall require a geologic investigation and report, prior to development, to be prepared by a licensed engineering geologist or registered civil engineer with expertise in soils analysis to determine if mitigation measures could stabilize the site. Where mitigation measures are determined to be necessary, by the geologist,* 

or registered civil engineer the County shall require that the foundation construction and earthwork be supervised and certified by a licensed engineering geologist, or a registered civil engineer with soil analysis expertise to ensure that the mitigation measures are properly incorporated into the development." The project fails to incorporate stabilization measures that will prevent the massive migration of sands inland from the erosion hazard zone in the fore dunes. Those fore dunes would be suitable for the restoration of endangered and special status native plants and might reasonably act as a buffer against shoreline retreat and future sea level rise. Instead, CDPR plans to facilitate soil loss, shoreline retreat, and consequent significant loss of habitat area.

d) LCP Policy 4.2-20 states "The Land Use Maps indicate that several parcels owned by the Bureau of Land Management are located in the area between Ten Mile River and Sandhill Lake and Inglenook Fen. These lands should be transferred to the California Department of Parks and Recreation. These lands should be incorporated into the existing holding of the adjoining MacKerricher State Park. The area shall be managed as a natural habitat area in conjunction with passive recreational uses and dunes <u>stabilization</u> program." The approved project is inconsistent with that policy because it will result in intentional destabilization of the dunes, burial of Coastal Commission-defined wetlands, and suffocation/destruction of special status plant communities in the dune interior as shown in Freeman's (2013) analysis provided in Exhibit 3. That destabilization is proposed on the unproven theory that radically restructuring the ecosystem is beneficial, without ever considering the actual impacts to special status species or making plans to ensure their survival and restoration according to the goals established in approved restoration plans.

e) The LCP also implements and is required to comply with provisions of the County General Plan and Code of Ordinances that mandate grading and erosion control measures. Special Condition 11 fails to adequately mitigate wind erosion and shoreline retreat impacts because it relied on the inadequate analysis supplied in the CDPR's MND. While it does addresses heavy equipment operations, no provisions are made to reduce wind erosion from invasive plant removal. Denuding the dunes in the high erosion hazard zone of the fore dune region is of particular concern. This induced erosion runs counter to the County Code of Ordinances Section 20.492.015 which states "*The erosion rate shall not exceed the natural or existing level before development*." This underscores Coastal Act Policy 30253(b) which states new development shall "*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.*"

**3. Significant Impacts to Wetlands, Species, ESHAs, Archaeological/Historical Resources, and Public Health**: This project will cause many significant impacts to resources and may pose serious public and environmental health risks that have not been adequately analyzed or mitigated. The MND acknowledges takes and incidental takes of several endangered and special status species as a result of construction activities. Yet the benefit of this so-called "restoration" for special status species are never clearly demonstrated. Road removal is expected to directly take 1.00 acre of endangered Howell's spineflower (11% of the entire population of this species concentrated almost entirely in the 1285 preserve) and 0.23 acres of endangered Menzies wallflower. The MND fails to assess impacts on inland wetlands and vegetation communities that will result from destabilizing the dune system and causing massive erosion by removing the road, invasive plants, and culverts.

The MND (2012:6) inaccurately states "Approximately 250 acres of nesting habitat for the federally listed western snowy plover and 60 acres (24.3 ha) of native dune vegetation, including portions that can support habitat for the federally listed Howell's spineflower and Menzies' wallflower, would be opened up as a result of the removal of the road and European beachgrass." In reality, the project will convert 3.1 acres of exposed asphalt (MND 2012:51) into new habitat that is not critical for the preservation of plants and is outside of the WSP nesting area defined by the US Fish & Wildlife Service in the 2007 final recovery plan for the species as being the zone within 100 meters of the ocean. That zone, which amounts to about 140 acres along the 3.5 mile strand in the preserve, is already available but would be desirably improved by replacing European beach grass with native plants to reduce cover for WSP predators. Removing 60 acres of invasive plants will also provide opportunities for recovery of endangered and special status plants, but strangely, CDPR proposes planting only 4.5 acres of the two endangered plants species.

The inadequately mitigated impacts to wetlands, species, ESHAs, archaeological/historical resources, and public health resulting from the project's systemic remodeling of the landscape in the northern portion of MacKerricher State Park are inconsistent with a number of LCP and Coastal Act policies. Those impacts are caused by the radical alteration of the environment summarized above in Issue 2. The project is an ecosystem experiment, promoted under the rubric of restoration, that conceals many serious environmental consequences and exaggerates or fails to demonstrate clear benefits for the preservation and restoration of special status species. There is an unwarranted assumption by CDPR that it is not responsible for the indirect impacts that will be induced by radically altering the dune ecosystem. The analyses offered in Exhibits 2 and 3 dispel that theory with factual evidence.

Wetlands and vegetated areas containing many special status plants and animals will be the first areas filled with migrating sand according to the project MND. Yet that net loss of species and ESHA is not analyzed and mitigation measures for special status plants and animals are limited solely to construction impacts, failing to address the massive indirect impacts of the project. Wetlands and ESHAs are extremely productive habitats and impacts to them fall under the purview of several LCP and Coastal Act policies, as well as other laws. CDPR experts stated during the local appeal (with no factual evidence) that there will be no net change in the area covered by wetlands. Freeman's 2013 comparative analysis aerial images in Exhibit 3 refutes that unsupported conjecture, showing dramatic losses of wetlands and vegetated swales over the past dozen years due to unpermitted invasive plant removal and the resulting wind dispersal (erosion) of destabilized soils.

In a similar manner, archaeological sites are protected from direct construction impacts by the approved project while indirect impacts from induced shoreline retreat and stream migration are dismissed. Shoreline retreat and stream migration induced by the project both have a strong potential to destroy fragile and non-renewable sites that have not been evaluated to determine if they qualify as historical resources pursuant to Section 15064.5(a)(2-3) of the CEQA Guidelines or Section 106 of the National Historic Preservation Act (because the undertaking is subject to federal laws). Another potentially significant environmental impact involves the unanalyzed potential for toxic chemicals in the fill underlying the haul road. The project will remove 25,000 cubic yards of soil, ballast and asphalt. The road was built over the same route used by the unregulated Ten Mile branch railroad built in 1916 and covered by the road in 1949. Creosote treated ties and fence posts laden with toxic preservatives are visible on the surface. Historical records and radar imply they are also buried under the road. Freeman (2013) carefully documents in Exhibit 3 why those soils likely contain toxins such as arsenic, asbestos, petroleum products, copper compounds, and possibly dioxin based on historical evidence, visible surface materials, and discoveries at the mill site in Fort Bragg associated with the railroad and haul road.

Despite that evidence, CDPR conducted no chemical sampling of the soils it plans to remove and the risks associated with the removal, transport and disposal of the soils have not been properly assessed. The foregoing discussion indicates the project is inconsistent with the LCP, Coastal Act, and a number of other laws for reasons summarized in detail below.

a) The project is inconsistent with LCP Policies 3.1-8 and 3.1-10 which require protection of wetlands and ESHAs, as well as the requirements stipulated in Coastal Act sections 30231 and 30240. LCP Policy 3.1-8 states "*The implementation phase of the LCP shall include performance standards and mitigating measures necessary to reduce adverse impacts on wetlands and wetland buffer areas from permitted developments. Such standards and mitigating measures shall be consistent with those recommended in the California Coastal Commission's Statewide Interpretive Guidelines for Wetland and Other Wet Environmentally Sensitive Habitat Areas, adopted February 4, 1981." This project will induce radical changes in the dune ecosystem that will bury extensive areas of wetlands and other ESHAs without compensating for those losses. The extent of those impacts have not been analyzed in the MND, but evidence supplied in Exhibit 3 offers a rough indication of the magnitude of the impacts that can be expected if no additional conditions are imposed to control wind and water erosion of denuded areas.* 

LCP Policy 3.1-10 states "Areas where riparian vegetation exists, such as riparian corridors, are environmentally sensitive habitat areas and development within such areas shall be limited to only those uses which are dependent on the riparian resources. <u>All such areas shall be protected against any significant disruption of habitat values</u> by requiring mitigation for those uses which are permitted. No structure or development, including dredging, filling, vegetation removal and grading, which could degrade the riparian area or diminish its value as a natural resource shall be permitted in the Riparian Corridor . . . ." The project is also inconsistent with this policy for the same reasons cited for LCP Policy 3.1-8. Some special status plants like the endangered Menzies wallflower may be adversely affected because their seed will not germinate if buried and the short-lived perennial plants may themselves expire.

b) The project does not conform to LCP policy 3.5-10 which states "*The County shall review all development permits to ensure that proposed projects will not adversely affect existing archaeological and paleontological resources. Prior to approval of any proposed development within an area of known or probable archaeological or paleontological significance, a limited field survey by a qualified professional shall be required at the applicant's expense to determine the extent of the resource. Results of the field survey shall be transmitted to the State Historical Preservation Officer and Cultural Resource Facility at Sonoma State University for comment. The County shall review all coastal development will not adversely affect existing archaeological resources. Development in these areas are subject to any additional requirements of the Mendocino County Archaeological Ordinance." Several archaeological resources will be protected from direct impacts of construction, but no consideration is given to the indirect impacts this project. Shoreline retreat and stream migration will be encouraged by project actions, and both of those predictable indirect impacts are very likely to wash away and thus completely destroy several delicate and non-renewable sites concentrated in the near shore area. It is also inconsistent with Coastal Act Section 30244 for the same reason.* 

c) Various LCP and Coastal Act provisions refer in broad terms to pollution issues, though no specific policy directly applies to the proper handling and disposal of toxins likely present in the huge volume of soil that will be removed if this project is allowed to proceed. The potentially contaminated material is largely sequestered under the haul road, although surface materials are also present and should be cleaned up during this project. The Department of Toxic Substances Control should be involved in the review of this serious risk. Soil sampling should occur to assess the magnitude of the problem and define appropriate handling and disposal procedures consistent with state and federal requirements. Toxins are not visible to the naked eye—chemical testing is necessary to confirm their presence. This is one of the serious deficiencies in the MND summarized in Issue 4 below. Many laws and regulations govern how toxins must be handled and disposed of to avoid adverse impacts on public health, worker safety, and the environment as summarized by Freeman in Exhibit 3.

**4. The Data Supporting Approval of this Project Are Inadequate**: An MND was prepared by CDPR to support approval of this project by Mendocino County under the California Environmental Quality Act (CEQA). Inadequacies in that document raised substantial public controversy and well over 60 letters are part of the record presented to the County for consideration. The key impacts that are inadequately analyzed and mitigated have been are summarized above in Issues 1-3. They include indirect impacts of project actions that will induce radical reconfiguration of the terrain of the dune preserve, as well as direct impacts to public access/recreation and significant impacts from inadequately controlled handling and disposal of potential hazardous wastes (public/environmental health). Those potentially significant impacts have been supported by substantial evidence during the CEQA public comment period and coastal permit hearings for the project.

CDPR chose to ignore that substantial evidence of potentially significant adverse impacts, leaving those issues inadequately analyzed and mitigated. Instead of preparing an Environmental Impact Report (EIR) that considered alternatives, the MND was finalized. The inadequacies of the data supporting local approval of the project merit reconsideration by the Coastal Commission. The existence of serious public controversy by itself indicates that preparation of an EIR is desirable, a principle found in Section 15064(h) of the California Administrative Code which states: "In marginal cases where it is not clear whether there is substantial evidence that a project may have a significant effect on the environment, the lead agency shall be guided by the following factors: (1) If there is serious public controversy to be significant and shall prepare an EIR."

Agencies must prepare an EIR for any project that "may have a significant effect on the environment" (PRC 21151). The word "may" means a reasonable possibility (No Oil Inc. v. City of Los Angeles, 13 Cal.3d 68, 83). The phrase "significant effect on the environment" means "a substantial, or potentially substantial, adverse change in the environment" (PRC 21068). If a fair argument can be raised on the basis of substantial evidence that the project may have a significant adverse environmental impact, then an EIR is required (Laurel Heights Improvement Assoc. v. U.C. Regents [1993] 47 Cal.4th 376). Substantial evidence includes "facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts" (PRC 21080). We believe Exhibits 2 and 3 provide facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts that imply the MND supplied insufficient data to support approval of the permit for this project.

The project involves federal funding and permits that are still undergoing review, although that process offers no further opportunities for public input. Caltrans is the lead federal Agency (by delegation from the Federal Highway Administration) for compliance with NEPA, the National Historic Preservation Act, The Clean Water Act, and the federal Endangered Species Act because it plans to carry out wetland mitigation under the auspices of the MacKerricher Dune Rehabilitation Project to address the impacts of the Seaside Storm Repair Project on Highway 1. The ACOE is a cooperating federal agency for thecombined federal compliance process for the two projects because they are responsible for issuing a Section 404 permit under the Clean Water Act. Caltrans processed a Categorical Exemption for the two projects without questioning the adequacy of the data supporting Mendocino County CDP#12-2012.

As appellants, we have demonstrated inadequacies in the data supporting the local approval of this project. An EIR should be required before this project is approved. Approval of a coastal development permit for the project also should take into account unresolved aspects of the federal project approval process. Gaps in the MND analysis can be summarized as follows:

1) The analysis of impacts to wetlands, interior dune plant communities, and neighboring properties from planned destabilization of the fore dunes is inadequate. That analysis may not be required if more satisfactory erosion control measures, monitoring, and adaptive management techniques are imposed to minimize sand transport by wind in areas that will be denuded by project activities such as invasive plant removal and grading. If erosion impacts are not controlled, the extent and magnitude of impacts to special status species, wetlands, and neighbors must receive robust analysis and mitigation measures must be adopted to compensate for predictable losses. Many special status species that are endemic only to the local area (e.g., the Ten Mile shoulderband snail and a rare species of bee) merit special consideration.

- 2) There is no analysis of the extent and location of lands and habitat acreage that is likely to be lost as a result of shoreline retreat induced by deflation of the fore dunes and removal of the road and stream crossing fill. Comparisons of aerial images by EDAW (2000) and Freeman (in Exhibit 3), when combined with other studies cited in the MND, offer a reasonable basis for projecting the indirect impacts of the project which include loss of habitat and impacts to non-renewable archaeological resources that require suitable mitigation.
- 3) Chemical testing of samples of the soil that will be removed by the project should take place to assess risk and inform the development of proper handling and disposal procedures under the guidance of the DTSC. It may be necessary to dispose of toxic materials in a suitable hazardous waste sequestration facility to avoid incidental dispersion into watersheds and aquifers that may pose public and environmental health risks.
- 4) There is no credible analysis of current public use or factual reasons why access should be curtailed to alleviate specific threats to species caused by human access. The analysis in the MND does not compare impacts of haul road removal on species preservation/recovery or recreation.
- 5) There is no clear demonstration that radically altering the dune habitat will actually contribute to the restoration or survival of special status plants or animals rather than further compromising their survival. Letting nature take its course may not be the best restoration strategy. There is also no consideration of the relative sources of risk to species and how best to address them. There is also no consideration of alternate restoration strategies and how they might be creatively combined with public access and the participation of volunteers.

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

#### SECTION V. <u>Certification</u>

(1) Thad M. Van Bueren	Signature of Appellant(s) or Authorized Agent
(1) Stanley E. Anderson	Date: September 11, 2013 Signature on File Signature of Appellant(s) or Authorized Agent
(1) Eric & Deborah Freeman	Date: September 11, 2013 Signature on File Signature of Appellant(s) of Authorized Agent Date: September 11, 2013

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

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

#### Section VI. <u>Agent Authorization</u>

I/We hereby No agent authorize to act as my/our representative and to bind me/us in all matters concerning this appeal.

Signature of Appellant(s)

Date:

*;*…

### Exhibit 1

#### Final Findings and Conditions of Approval Supplied by Mendocino County to the California Coastal Commission on September 4, 2013

(4 pages total)
Pursuant to the provisions of Chapter 20.532 and Chapter 20.536 of the Mendocino County Code, the Board of Supervisors approved CDP#12-2012, adopting the following findings and conditions.

## FINDINGS:

- 1. The proposed development is in conformity with the certified Local Coastal Program; and
- 2. The proposed development will be provided with adequate utilities, access roads, drainage and other necessary facilities; and
- 3. The proposed development is consistent with the purpose and intent of the applicable zoning district, as well as all other provisions of Division II, and preserves the integrity of the zoning district; and
- 4. The proposed development, if constructed in compliance with the conditions of approval of this coastal development permit and with the mitigation measures incorporated into the project by the certified Mitigated Negative Declaration, in accordance with the California Environmental Quality Act, will not have any significant adverse impacts on the environment; and
- 5. The proposed development will not have any adverse impacts on any known archaeological or paleontological resource; and
- 6. Other public services, including but not limited to, solid waste and public roadway capacity have been considered and are adequate to serve the proposed development.
- 7. The proposed development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act and Coastal Element of the General Plan.
- 8. Resource Protection Impact Findings:
  - (a)The resource as identified will not be significantly degraded by the proposed development.
  - (b)There is no feasible less environmentally damaging alternative.
  - (c)All feasible mitigation measures capable of reducing or eliminating project related impacts have been adopted.

## **STANDARD CONDITIONS:**

- This action shall become final on the 11<sup>th</sup> day following the decision unless an appeal is filed pursuant to Section 20.544.015 of the Mendocino County Code. The permit shall become effective after the ten working day appeal period to the Coastal Commission has expired and no appeal has been filed with the Coastal Commission. The permit shall expire and become null and void at the expiration of two years after the effective date except where construction and use of the property in reliance on such permit has been initiated prior to its expiration.
- 2. The use and occupancy of the premises shall be established and maintained in conformance with the provisions of Division II of Title 20 of the Mendocino County Code.
- 3. The application, along with supplemental exhibits and related material, shall be considered elements of this permit, and that compliance therewith is mandatory, unless an amendment has been approved by the Coastal Permit Administrator.
- 4. This permit shall be subject to the securing of all necessary permits for the proposed development from County, State and Federal agencies having jurisdiction.
- 5. The applicant shall secure all required building permits for the proposed project as required by the Building Inspection Division of the Department of Planning and Building Services.
- 6. This permit shall be subject to revocation or modification upon a finding of any one or more of the following: a. The permit was obtained or extended by fraud.
  - b. One or more of the conditions upon which the permit was granted have been violated.
  - c. The use for which the permit was granted is conducted so as to be detrimental to the public health, welfare or safety, or to be a nuisance.
  - d. A final judgment of a court of competent jurisdiction has declared one or more conditions to be void or ineffective, or has enjoined or otherwise prohibited the enforcement or operation of one or more such conditions.
- 7. This permit is issued without a legal determination having been made upon the number, size or shape of parcels encompassed within the permit described boundaries. Should, at any time, a legal determination be made that the number, size or shape of parcels within the permit described boundaries are different than that which is legally required by this permit, this permit shall become null and void.

8. If any archaeological sites or artifacts are discovered during site excavation or construction activities, the applicant shall cease and desist from all further excavation and disturbances within one hundred (100) feet of the discovery, and make notification of the discovery to the Director of the Department of Planning and Building Services. The Director will coordinate further actions for the protection of the archaeological resources in accordance with Section 22.12.090 of the Mendocino County Code.

### **SPECIAL CONDITIONS:**

- 1. The proposed project shall comply with all measures from the Final Mitigated Negative Declaration for the Inglenook Fen-Ten Mile Dunes Natural Preserve Dune Rehabilitation Project 2012, except as modified by these special conditions. A copy of this staff report shall be supplied to all contractors and a copy shall be maintained on the job site.
- 2. Non-native trees shall not be removed in the eastern fringes of the proposed project area. Native trees shall be planted on State Parks property in strategic areas to provide greater protection to existing residential developments. State Parks shall develop and distribute an educational handout or flyer for adjacent landowners on how to protect their land through native tree/vegetation plantings or protection measures for existing vegetation, including the identification of nurseries that supply native trees or other appropriate plantings.
- 3. Sand removed and stockpiled during project activities should not be stored in a manner that would accelerate sand migration eastward to the residential properties.
- 4. Prior to September 30, 2014, Applicant shall implement accessibility improvements to the parking lot and trail to the beach at Ward Avenue, including but not limited to: adequate handicap parking (which must be assessed on a regular basis, based on visitor demand), signage, beach-ready wheelchair(s), and appropriate access to the sandy beach. The location and materials of the storage structure (6'x6' shed), parking, and trail improvements (if necessary) shall be submitted to Planning for review and approval.
- 5. State Parks shall explore the feasibility of obtaining a public access easement to provide formal vertical access from Highway 1 to the Preserve as well as a means to provide nonmotorized boating access. Feasibility of acquiring an access easement shall be based on landowner willingness. If willing landowner(s) are identified, a dedicated access easement shall be developed, approved by the County and Coastal Commission, and recorded. Feasibility of establishing boating access may be limited due to the presence of federally listed species. State Parks shall be required to remove sand on the northern segment of the Haul Road, in the rock-ballast retainment area, if necessary, in order to maintain access to the beach, and install signage to direct visitors to the beach.
- 6. State Parks shall not remove the road surface, but shall be required to remove sand on the northern segment of the Haul Road, in the rock-ballast retainment area, if necessary, in order to maintain access to the beach.
- 7. State Parks shall help facilitate development of a Class I bike path along Highway 1, from Ten Mile River to Ward Avenue, and a Class II bike path in those limited areas where a Class I bike path is not feasible. Furthermore, to the extent that a future access easement dedication may help to facilitate development of the Class I/II bike path along Highway 1, State Parks shall dedicate sufficient area from the edge of right of way on its properties directly adjacent to Highway 1 from Ten Mile River to Ward Avenue.
- 8. State Parks shall continue to monitor the stream crossing conditions during winter high flow events for pedestrian access. State Parks shall evaluate alternative stream crossings methods to maintain public access during winter high flow events.
- 9. The disposal site identified in the MND as closest to Ten Mile shall be the preferred site for disposal. Use of the Big River Quarry shall be restricted to only on an as-needed basis in order to reduce impacts to coastal visitors. If the Big River Quarry is found to be needed for disposal, a plan shall be developed to ensure that the disposed materials are not contaminated with pampas grass seed and other non-native found at the quarry site. This plan shall be submitted to Planning for review and approval prior to disposal at Big River Quarry.
- 10. State Parks shall submit to Planning any modification and/or finalization of the mitigation monitoring plan and long-term strategy during the life of the project. It is expected that State Parks will continue to responsibly mange its Preserve long after the proposed project is complete to ensure that invasive species are reduced and eliminated and the ecological function is maintained.

- 11. Grading standards from Ch. 20.492 of the MCCZC shall be followed:
  - a. Grading shall not significantly disrupt natural drainage patterns and shall not significantly increase volumes of surface runoff unless adequate measures are taken to provide for the increase in surface runoff.
  - b. Development shall be planned to fit the topography, soils, geology, hydrology, and other conditions existing on the site so that grading is kept to an absolute minimum.
  - c. Essential grading shall complement the natural land forms. At the intersection of a manufactured cut or fill slope and a natural slope, a gradual transition or rounding of contours shall be provided.
  - d. The permanently exposed faces of earth cuts and fills shall be stabilized and revegetated, or otherwise protected from erosion.
  - e. Adjoining property shall be protected from excavation and filling operations and potential soil erosion.
  - f. The area of soil to be disturbed at any one time and the duration of its exposure shall be limited. Erosion and sediment control measures shall be installed as soon as possible following the disturbance of the soils. Construction equipment shall be limited to the actual area to be disturbed according to the approved development plans.
- 12. Prior to commencement of the project, State Parks shall submit a plan which shall be approved by the Department of Planning and Building Services for the removal of all railroad ties that may be embedded in the sections of haul road to be removed; all railroad ties that may be scattered or stockpiled in the project area; and all pressure treated fence posts ("peeler cores"), including cut off and embedded remnants, that formerly delineated the State Parks Georgia Pacific boundary line. Such plan shall include safe handling and best management practices for the removal, handling, storage, transport and disposal of the material that is protective of public and worker safety and the environment.

## Detailed Analysis of Substantial Issues supplied on August 5, 2013 to Mendocino County Board of Supervisors during Local Appeal by the Westport Municipal Advisory Council

(13 pages total)

The Coastal Development Permit (#12-2012) for the MacKerricher Dune Rehabilitation Project was approved by the Mendocino County Coastal Permit Administrator at a hearing June 11, 2013 over the objections of many concerned citizens whose comments were voiced and supplied in writing to the County PBS Department over the preceding year. Those concerns provided substantial evidence of potential adverse impacts on the environment that were ignored by the California Department of Parks and Recreation (CDPR) during the preparation of a Mitigated Negative Declaration and then inadequately resolved with 9 Special Conditions imposed by the County CPA when the permit was approved. The key issues that remain unresolved are briefly summarized as follows in priority order:

- 1. Public Access Will Be Extinguished with No Compensatory Trail Construction: 2.7 miles of existing coastal trail will be destroyed with no compensatory recreational access provided as mitigation. This is contrary to Coastal Act (1976), Local Coastal Program (certified 1985), and MacKerricher Park General Plan (1995) policies. It will unfairly discriminate against bicyclists, less able individuals, families with children in strollers, etc. The LCP calls for use of designated trails to keep visitors out of sensitive areas. Trails offer no impediment to Western Snowy Plover movement and foster growth of Howell's spineflower.
- 2. Erosion Impacts on the Environment and Neighbors are Inadequately Mitigated: The project will radically restructure the fore dunes, facilitating the eastward migration of an estimated one million cubic yards of sand and causing severe shoreline retreat. That erosion will bury sensitive vegetation, fill wetlands including the only coastal fen in the state, and cover neighboring properties resulting in devaluation and loss of use. Those effects can be readily predicted by over 12 years of European beachgrass removal without a permit that have covered over a third of the road and devalued neighboring lands by 25-69% based on comparative appraisals. Aerial photos show the shore has retreated as much as 130 feet in the south since the road washed out in 1983, and the project will cause similar a effect that significantly reduces habitat. This major ecosystem alteration is audaciously called beneficial without analysis or adequate mitigation.
- 3. Impacts to Wetlands, Endangered Species and Historical Resources are Inadequately Mitigated: Wetlands and vegetated areas will be the first areas filled with migrating sand, yet the net loss of habitat and plants is not analyzed. The modest 0.68 acres of new wetland created by the project will be dwarfed by burial of wetlands and vegetation. Wetland fill is typically mitigated at a 1:1 ratio, yet no creation of new wetlands is proposed or required. Archaeological sites will not be directly impacted by construction, but removal of nearby invasive plants and haul road segments will induce shoreline retreat that will destroy some fragile and non-renewable sites with no effort to mitigate that irrevocable loss.
- 4. Health Hazards are not Analyzed or Adequately Mitigated: The project will remove soil and ballast that almost certainly contains toxic materials now encapsulated under the Haul Road. The road was built over the former Ten Mile branch railroad built in 1916 and covered by the road in 1949. Creosote treated ties and fence posts laden with toxic preservatives are visible on the surface. Historical records and radar imply they are also buried under the road. Those soils very likely contain toxins such as arsenic, asbestos, petroleum products, copper compounds, and quite possibly dioxin. Yet no sampling has taken place to assess the risk and plan for proper handling and disposal that will protect workers, the public, and the environment.

Before discussing each issue in detail, we first briefly examine the stated purpose of the project and its relationship to proposed project actions. We show that some project actions are beneficial, while others fail to contribute to the stated purpose and actually result in significant environmental harm. Each issue is then carefully analyzed using substantial evidence in the record and additional information supplied by experts. Specific language for additional Special Conditions are proposed to resolve the unmitigated impacts of the Project. Those conditions are numbered sequentially with the ones approved by the CPA for ease of reference. Given the magnitude of the Project's adverse impacts, we anticipate that the applicant may determine only a reduced project is feasible if those additional Special Conditions are imposed. To prepare the ground for a compromise, the WMAC concludes with a suggestion for a reduced project.

# The Approved Permit

The stated purpose of this proposed project is to "restore ecosystem processes crucial to the viability of endangered species and their habitats." It must be noted, however, that California Public Resources Code 5019.71 allows habitat manipulation in Natural Preserves <u>ONLY</u> "where required to preserve species." Rather than following that mandate to preserve species, the approved Project will radically alter the Inglenook Fen-Ten Mile Dunes Natural Preserve in ways that will extinguish a long-established coastal access, adversely impact two endangered plants, bury other sensitive vegetation and wetlands, induce shoreline retreat, and expose hazardous wastes presently sequestered under the Haul Road.

To understand which project actions support species restoration and which will cause harm, it is first essential to know which species are being preserved and what they require to survive. Several endangered and threatened species occur in the Preserve. The highest level of consideration is given to two endangered animals (Western Snowy Plover and Tidewater Goby) and two endangered plants (Howell's spineflower and Menzies wallflower), but other special status species are also present. The following summary briefly considers the preservation needs of those four endangered species, as well as wetland areas including a unique coastal fen.

#### Western Snowy Plover

The Pacific Coast western snowy plover (WSP) is defined as the population nesting adjacent to tidal waters within 50 miles of the Pacific Ocean (Federal Register 2011:16047). The US Fish and Wildlife Service identifies the critical habitat at "MacKerricher Beach" as 1,176 acres extending from the Ten Mile River south to Virgin Creek, with 1,102 acres managed by CDPR and another 74 acres on adjacent private lands. According to USFWS:

Essential features of the unit include large areas of sandy dunes, areas of sandy beach above and below the high-tide line, and generally barren to sparsely vegetated terrain. Threats to nests, chicks and both wintering and breeding adults that may require special management include nonnative vegetation, predators, and disturbance from equestrians and humans with pets. Control of nonnative vegetation and enforcement of existing human-use regulations are needed to ensure the physical or biological features are maintained within the unit. (Federal Register 2011:16069).

The WSP breeding season is from March to September and nests are usually within 100 meters of shore (Federal Register 2011:16069). The 3.7-mile combined ocean and river frontage in the Preserve thus optimally offers about 140 acres of nesting habitat within that near shore zone. Inland areas of the Preserve are included as critical habitat because WSP forage farther inland (USFWS 2007). No WSP nested in the Preserve in the 2001-2003 period (Colwell et al. 2003) and monthly surveys in 1999 show they were absent during the breeding season (CDPR 2000:4-10). Subsequent surveys found up to 3 breeding pairs in 2005 (USFWS 2007:B-9).

Pacific Coast WSP nest in the highest densities near fresh water or brackish wetlands such as river mouths, estuaries, and tidal marshes. Surveys note more chicks fledged from river (57) versus beach (20) nests in northern California between 2001 and 2003 (Colwell et al. 2003). Beach nesting is problematic because those exposed locations suffer heavy impacts from predation and other causes. Beaches are used for wintering, but nesting does not occur at all beaches visited by WSPs. The dietary staples of plovers are invertebrates such as flies, sandhoppers, and crabs. USFWS(2007) favors removal of European beach grass to improve habitat.

CDPR's (2012:6) claim that the project will create 250 acres of <u>new</u> WSP nesting habitat is patently false. Less than 140 acres in the preserve fall within the 100-meter near shore zone favored by WSP for nesting, and most of that habitat is already available (preexisting). At most, the project may open about 15 acres in the nesting zone now covered with European beachgrass and possibly an acre now covered in pavement. About 900 acres in the Preserve comprise critical foraging habitat for the WSP and the project will arguably open 56 acres now covered in road (3 acres) and European Beachgrass (53 acres). However, it must be noted that over 30 acres of beach habitat will likely be lost through shoreline retreat as a result of project actions.

### Tidewater Goby

The tidewater goby (*Eucyclogobius newberryi*) is a small fish that inhabits coastal brackish water habitats entirely within California from Del Norte to San Diego counties. As the USFWS (2005:iii) summarizes, "Tidewater gobies are uniquely adapted to coastal lagoons and the uppermost brackish zone of larger estuaries, rarely invading marine or freshwater habitats. The species is typically found in water less than 1 meter (3.3 feet) deep and salinities of less than 12 parts per thousand." Principal threats include loss and modification of habitat, water diversion, predatory and competitive introduced fish, habitat channelization, and degraded water quality.

This species formerly occurred in 134 localities along the California coast, but has been completely extirpated in 23 locations with survival in up to 70 other locations uncertain due to the small acreage of those critical habitats. Tidewater gobies are abundant in the Ten Mile River and Virgin Creek, with none identified in surveys of Inglenook and Fen creeks. The Recovery Plan for this species identifies as one objective the evaluation and implement of translocation where appropriate (USFWS 2005). The project makes no plans to assess the potential for introduction of this species into Inglenook and Fen Creeks to support their recovery.

### Endangered Plants

Two endangered plants occur in the impact area of the project and both favor settings in semi-stabilized dunes and bordering areas. They do not tolerate competition from introduced species such as European beachgrass. CDPR (2012:Appendix A.4) indicates 11% of the Howell's spineflower (*Chorizanthe howellii*) plants in the Preserve will be impacted by the project (1.0 acre out of a total of 8.9 total acres) and some of the short-lived perennial Menzies wallflower (*Erysimum menziesii* spp. *menziesii*) herbs also will be impacted (0.23 acres out of 147.4 total acres). The Howell's spineflower is found exclusively in the area from Fort Bragg north to the Ten Mile River (USFWS 2011), while the Menzies wallflower occurs in Mendocino and Monterey counties (USFWS 1998).

The Howell's spineflower does well in areas scoured by wind or disturbed by recreational traffic. The USFWS (2011:5) notes "much of the occupied habitat occurs on the edges of pedestrian or horse trails." Maslach (2002) found that moderate foot traffic actually helps maintain and likely creates newspineflower habitat along the edges of the trails. The Recovery Plan for Howell's spineflower states that it "may be considered for delisting when restoration of habitat at MacKerricher State Park and vicinity (Ten Mile Dunes), including eradication of European beachgrass and expansion of populations into restored habitat, has been accomplished. Monitoring and history studies should, by then, demonstrate that the area occupied by the plant is increasing" (USFWS 1998:91). That plan does not call for removal of the haul road.

The USFWS (1998:31) notes the Menzies wallflowers occur "in northern foredune or dune mat community, on the flanks or crests of dunes, open sand areas, sparsely vegetated dunes, and the borders of lupine scrub." They further state "the seed bank is contained in the old standing plants and that seeds in the soil (sand) do not persist" (USFWS 2998:33). Some seed-bearing branches may break off, tumble, and propagate in new locations. This implies the reproductive success of the species <u>may be compromised by rapid burial under sand</u>. The Recovery Plan for this species emphasizes removal of invasive plants, propagation into suitable habitat, and control of vehicular and recreation traffic (USFWS 1998:91). It does not call the removal of the haul road or the creation of new habitat since this species is already widely distributed in the Preserve.

CDPR (2012:6) says the project will open 60 acres now covered by European beachgrass and other exotics for colonization by the two endangered plant species, yet only 4.5 acres will be replanted. While removal of competing invasive plants is desirable, destruction of the haul road will in impact a large portion (11%) of the modest Howell's spineflower population in the Preserve and some Menzies wallflowers. This will create only 3.1 acres of new habitat, a gain that will be offset by a much larger loss of habitat due to induced shoreline retreat. Vast areas in the Preserve are already available for restoration without impacting <u>any</u> plants.

A strong case can also be made that recreational use of the haul road is contributing to the vigor of the Howell's spineflower population in the Preserve. Keeping recreational traffic on the designated haul road trail will also limit impacts from social trails that might adversely affect Menzies wallflowers.

### Wetlands

CDPR (2012:53) notes that "most types of wetlands and riparian communities are considered special status natural communities due to their limited distribution in California." Although not listed as an endangered species, the Ten Mile Shoulderband Snail is found exclusively in wetlands within the Preserve and may be threatened by impacts to those sensitive habitats along with many special status plants. Wetlands are defined more broadly by the Coastal Commission than by the US Army Corps of Engineers who must issue a Section 404 permit for the project under the federal Clean Water Act. Maslach (2012) mapped 28.2 acres of ACOE wetlands and 72.8 acres of Coastal Act wetlands.

Maslach (2012:5) concludes "Approximately 0.68 acres of wetland vegetation may be temporarily disturbed due to construction activities. These temporary impacts will be offset through the removal of culverts and road berm, which will open up more wetland habitat." This statement is misleading for two reasons. First, the area opened up is the same acreage that will be impacted, not more. Of greater import, low-lying areas like the wetlands will be filled by eroding sand unleashed through intentional destablization of the fore dunes.

CDPR's own experts expect sand will migrate, first filling wetlands and vegetated areas and then progressing SE (Bedrossian 2011; PBS 2013:8). They directly acknowledge that destabilized sand from the foredunes will fill wetlands and bury vegetated areas just east of the fore dunes. Yet that loss of wetland habitat is not analyzed or mitigated. We also note Inglenook Fen is the only surviving coastal fen in the state (CDPR 1995). Wetland destruction is typically compensated with mandatory creation of at least an equal amount of new wetland.

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# The Relationship of Project Actions to Species Preservation

With species preservation requirements and restoration objectives now clearly in mind, it is now possible to evaluate proposed project actions in relation to the PRC 5019.71 mandate to limit habitat manipulation to measures necessary to preserve those animals and plants. Those actions include:

- Removing three segments of asphalt roadway and underlying rock base totaling 2.7 miles. Segment 1 is 720 feet long; Segment 2 is 262 feet long; and Segment 3 extends continuously for 2.5 miles from the northern boundary of the park near the Ten Mile Bridge south past Inglenook and Fen Creeks.
- Removing two 5-foot diameter culverts and associated fill materials within 0.68 acres to restore the stream bed, bank, and channel to a natural condition and reestablish native plant vegetation.
- Manually removing 38 acres of previously treated European beachgrass and 15 acres of previously untreated European beachgrass.
- Removing other non-native plants, including trees, shrubs and iceplant through a long-term program that includes reestablishing native dune forest in an approximate 7 acres of back dunes.
- Reestablishing federally and state-listed threatened and endangered species and other native plants into suitable habitat by direct seeding, transplanting, or installation of cuttings.

Our independent analysis of these proposed actions reveals some measures do not preserve endangered species or special status plants and will actually cause appreciable harm. The project thus violates not just the mandate to limit habitat manipulation to preservation actions; it also fails to mitigate many other significant impacts that must be considered under the Coastal Act, Mendocino County Local Coastal Program (LCP), other state and federal environmental laws such as the federal Clean Water Act. These harmful actions are justified not to preserve endangered animals and plants, but simply to "remove unnatural features" (CDPR 2012:12).

Actions that have harmful environmental impacts and serve no preservation objective should be abandoned, or else their significant impacts must be adequately mitigated. To date the public has been informed by CDPR that "the project is a done deal" and public concerns don't need to be addressed. The WMAC and others have repeatedly questioned that premise, raising concerns about potentially significant unmitigated impacts to public recreation; impacts of induced erosion on endangered species, wetlands, and neighbors; and impacts on public health. Instead of analyzing these potentially significant adverse effects in an EIR, CDPR ignored 42 comment letters by experts and the public to produce an inadequate Mitigated Negative Declaration (MND). Saying there are no unmitigated impacts does not make it true, as we will demonstrate.

The most obvious example of an action that causes significantly more harm than benefit to species of concern and causes other significant impacts is the proposed removal of the northern segment of the haul road (2.5 miles). That action will: 1) directly impact 11% of the Howell's spineflower and also some Menzies wallflower populations; 2) contribute to a net loss of habitat by inducing massive erosion and substantial shoreline retreat; 3) expose toxins likely sequestered under the road; and 4) harm Western Snowy Plovers by encouraging visitors to wander through their nesting area instead of using the designated trail on the haul road. The haul road trail offers no barrier to WSP movement, since they already cross it to forage in the interior dunes according to Jim Watkins of the USFWS (2013:pers. com. to Thad Van Bueren).

Other actions are beneficial, but will cause significant impacts if they are pursued in the manner allowed by the approved permit. Removal of European beachgrass and other invasive plants will contribute to the preservation of endangered species by reducing competition for native plants and vegetative cover that conceals WSP predators. Yet denuding 60 acres of exotic plants in this extremely high erosion hazard zone will cause more harm than benefit if it is not done carefully. If eradication proceeds in the same way CDPR has pursued it over the past 12+ years (without a permit), it will add to the massive erosion that has already taken place. Resulting erosion will also cause major shoreline retreat, habitat loss, burial of inland vegetation and wetlands, and impacts on neighboring property owners and archaeological sites.

Some project actions will preserve endangered species and special status habitats in a less ambiguous manner. Those actions include removal of the two short haul road segments that are creating steep banks south of Fen Creek, removal of culverts and about 700 linear feet of fill artificially restricting stream flow in Inglenook and Fen Creeks, and replanting native vegetation. The two southern road segments are eroding into the ocean and likely dispersing toxins. Removing culverts and fill at the stream crossings will create new wetland habitat.

Ecosystem restoration is a valuable goal if it focuses on preserving species based on published recovery plans. However, the project has lost sight of that objective. The approval of the coastal development permit for this project does not mitigate many significant environmental impacts that are examined in detail below. In priority order, those issues are:

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public access; erosion; impacts to species, wetlands, and archaeological sites; and hazardous waste. Special Conditions are proposed to address each of those unmitigated impacts.

# **Public Access**

CDPR (2012:91) states "No official CSP maintained trails exist within the Preserve," but suggests visitors can walk along the beach from Ward Avenue to the Ten Mile River. They state the haul road is rarely used for public access using questionable methods that are intended to imply modest use is equivalent to no use. The haul road is regularly visited despite years of <u>demolition by neglect</u> by CDPR that violates their own policy to maintain this valued multi-use trail (CDPR 1995:111-112, 153). That long history of recreational use of the haul road trail prior to DPR acquisition implies prescriptive access rights persist. The reason one third of the road is now buried is because invasive plants have been removed for over 12 years without proper erosion control.

The approved permit inappropriately allows destruction of 2.7 miles of existing coastal trail clearly depicted along the haul road on County Land Use Maps 10 and 12 certified by the Coastal Commission in 1985. The maps were certified at the same time as the County's Local Coastal Program. At that time, the road was owned by a private timber company that allowed public recreational use. LCP Policy 4.2-21 directed CDPR to acquire the haul road for the obvious purpose of coastal access, and also mandated that policies regarding that use be incorporated in a management plan for MacKerricher State Park required in LCP Policy 4.2-19.

CDPR acquired the haul road in 1992. The road effectively served as prescriptive access based on years of public recreational use predating that public acquisition. In accord with LCP Policy 4.2-19, a general plan for the park was prepared in 1995. That General Plan states:

The trestle across Pudding Creek, the haul road, and the associated equestrian trail comprise a critical part of the coastal trail on the Mendocino coast. The coastal trail within the park should soon connect with Fort Bragg, furnishing coastal access to large numbers of people, including disabled persons. This unique recreational resource will run the entire length of the park and will allow pedestrians and bicyclists to approach beach and dune areas that they otherwise could not easily. Maintaining the haul road in a condition suitable for bicycle use will provide an alternative for bicyclists to busy Highway I, with an associated avoidance of hazards and accidents. (CDPR 1995:112).

CDPR (1995:112) clearly understood at the time their General Plan was adopted and the Natural Preserve was designated by the State Parks and Recreation Commission on June 21, 1995 that "The county Local Coastal Plan mandates the department to provide maximum coastal access via an off-highway hiking and biking trail, specifically for non-vehicular use, for the eight miles from Pudding Creek to Ten Mile River." The facilities Element of the plan directed CDPR to carry out these actions, among others:

- Repair areas along the haul road that have erosion problems. In some places, this will require shoring the road up. In others, bypasses will be required due to ongoing erosion by the ocean.
- Provide a dune boardwalk to bypass the area north of Ward Avenue where the haul road has been washed out to serve hikers, bikers, and persons with disabilities. Equestrians will use the beach for the northern leg of their coastal trail. (CDPR 1995:153)

Contrary to these policies, CDPR has allowed this valued public coastal access to be demolished by neglect. They have in fact purposefully buried it by removing plants in an extreme erosion hazard zone with absolutely no erosion control and no permit. Adding insult to injury, they now propose purposeful destruction of surviving portions of this designated coastal access at great public expense and in direct violation of LCP policies and the underlying intent and provisions of the Coastal Act. Allowing destruction of existing coastal access runs counter to Coastal Act Section 30210 that requires maximizing public access consistent with resource protection. Having a designated trail keeps visitors out of sensitive areas instead of allowing them to walk anywhere. Extinguishing this existing coastal access sets a dangerous precedent, particularly when the agency proposing that action is a public entity that owns vast tracts of coastal land throughout California.

Destruction of this historical access is also inconsistent with Coastal Act Section 30211 that requires non-interference with historical prescriptive access. The haul road has a long history of recreational use prior to CDPR acquisition in 1992 and is still visited despite intentional neglect. Destroying it will <u>discriminate against many users</u> such as the disabled who are unable to traverse the nebulous beach route CDPR espouses. This is inconsistent with the American with Disabilities Act. Special Condition 3 does not result in comparable ADA access for people in wheelchairs.

The beach route CDPR now suggests is "the" coastal access is not the one designated on county land use maps, nor is it a viable alternative. An undefined beach trail is unsuitable for many visitors and dangerous in winter due to sleeper waves

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and the difficulty of crossing two streams during higher winter flows. It does not meet requirements for bicycles, nor does it provide a comparable alternative to the haul road that meets ADA needs. The undesignated beach route also will create direct impacts to WSP nesting from March through September, which runs counter to the imperative to preserve that species.

Elimination of the haul road is also contrary to LCP Policy 3.1-15 which requires that public access to the dunes shall be on well-defined paths to minimize impacts to the natural environment. Destroying the existing coastal trail along the haul road will spread impacts across a broad area through the propagation of many social trails. Those social trails can be expected to increase impacts to Western Snowy Plover nesting areas and some endangered plants, rather than protecting them. The haul road also offers a buffer against shoreline retreat. Thus, removal of this road will induce significant erosion and loss of critical habitat as discussed below.

Special Conditions 4-6 approved by the County Coastal Permit Administrator fail to require the construction of a comparable alternative trail to compensate for extinguishing the haul road multi-use coastal trail as required by LCP Policy 3.6-27. Instead, unenforceable language such as "shall explore the feasibility" (Special Condition 4), "shall work with Caltrans to promote" (Special Condition 5), and "shall evaluate" (Special Condition 6) will not produce a single square foot of usable trail. The WMAC therefore proposes replacing those approved conditions with the more enforceable ones offered below. To determine appropriate mitigation for destruction of all or part of the haul road, its average width is defined as 18 feet based on ground penetrating radar sample sections supplied in the CDPR project bid package. The 2.5 miles of intact trail thus covers 237,600 square feet.

#### Proposed Public Access Special Conditions:

Special Condition 4. **[replacement text]** CDPR shall work with the State Coastal Conservancy to acquire a vertical access easement from the Caltrans vista point at the south end of the Ten Mile Bridge to the haul road at the north end of MacKerricher Park or acquire fee simple title to Mendocino County Assessor's Parcel 015-130-46 if the private owner is willing. CDPR shall provide written evidence within one year of permit issuance if the owner is unwilling. Acquisition of the vertical easement or fee simple title to that property shall proceed if the seller is willing with the express purpose of connecting a Class I multi-use coastal trail along the haul road to the south end of the Ten Mile River highway bridge. CDPR shall seek funding to construct that trail segment within 2 years of acquiring an easement or fee title.

**Special Condition 5**. **[replacement text]** CDPR shall construct a comparable replacement trail at a 1:1 ratio for every square foot of the haul road that will be destroyed or rendered unusable through removal of its asphalt surface. All replacement trail sections shall be connected to retained sections of the haul road, if any, to create a continuous trial with a minimum width of ten feet and a gradient and hard surface suitable for pedestrians, bicyclists, motorized and manual wheelchairs, and equestrian traffic on a year-round basis. If all 2.7 miles of the haul road coastal trail will be rendered unusable, the required length of replacement trail shall be 4.5 miles of 10-feet wide trail. Constructing a continuous trail from the north end of the park at the haul road to the west end of Ward Avenue must occur before additional trail construction outside of the Preserve. All replacement trail sections shall traverse the near shore environment along a route that limits impacts to environmental resources, ensures the longevity of the structure, minimizes future maintenance costs, and maximizes educational opportunities and resource preservation through the use of appropriate interpretive signage. All replacement trail sections shall be completed within one year of the date haul road demolition begins.

**Special Condition 6.** [replacement text] For any portion of the haul road removed at stream crossings, trail bridges shall be constructed to span those watercourses with a width of 10 feet designed to accommodate pedestrians, bicyclists, motorized and manual wheelchairs, and equestrian traffic on a year-round basis. These bridges shall be completed within six months of the road removal at stream crossings.

**Special Condition 10**. **[New]** Upon completion of a continuous 10 feet wide multi-use Class I trail between the south end of the Ten Mile bridge on Highway 1 and the west end of Ward Avenue, CDPR shall allow Caltrans to designate that route as the Pacific Coast Bicycle Route.

# **Erosion**

CDPR (2012:86) acknowledges the project will cause erosion, but audaciously suggests that impact is beneficial and classifies it as a "less than significant impact." They do so with no analysis of: 1) the volume of soil that will be displaced; or 2) where that soil will be deposited. They go on to state the project is not located on a "geologic unit or soil that is unstable, or that would become unstable, as a result of the project and potentially result in on- or off-site landslide, <u>lateral spreading</u>, subsidence, liquefaction, or collapse."

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That statement is patently false because CDPR's MND shows the fore dunes lie in an high erosion hazard zone that is extremely prone to lateral spreading as their own experts readily acknowledge. CDPR (2012:87) itself summarizes the issue by stating "It is expected that the native sands would be dispersed by the prevailing NW winds and blow inland (nearshore) over the short-term . . . erosion may also occur within the project area during the removal of culverts and the remnant road sections at the creek crossings."

Certified Engineering Geologist Bedrossian (2011:15) notes this erosion "will change the configuration of the dunes as they migrate to the east (i.e., additional transverse dunes could develop and/or grow in height farther inland), the nature of the vegetation, and the drainage patterns throughout the dunes." This suggests the project will dramatically restructure the dune ecosystem, <u>yet those impacts are not analyzed or mitigated</u>. No other developer would get away with intentionally causing such massive erosion. Absent any analysis of this issue by CDPR, the consequences of the project can nevertheless be predicted using reports by Maslach (2004), Geologist Harold Wollenberg (2004), Engineer David Paoli (2012), and Geomorphologist Bill Weaver (2000).

Paoli (2012) estimates about one million cubic yards of sand will erode from the foredune area by wind and tidal incursion as the slope flattens through deflation. Most of that material will initially bury the first vegetated inland swale and fill wetlands before progressively moving southeast to bury neighboring private properties. The burial of dune vegetation in the first inland swale may smother plants like the Menzies wallflower if it occurs too rapidly because the seeds of that plant do not remain viable when buried. Sands blown into wetlands may reduce the area of that habitat, with associated impacts to special interest native plants and animals. Yet neither of those potentially significant impacts have been quantified, nor have necessary mitigation measures been imposed.

The project will produce effects that closely mimic the erosion and historical shoreline retreat evident south of Fen Creek. In that area a mile-long segment of the haul road washed out in 1983. Comparisons of aerial photos from different years reveal erosion (shoreline retreat) and accretion (expansion in beach width) within the Preserve since it was acquired by CDPR in 1952. Weaver (2000) notes the shoreline has retreated as much as 130 feet in some areas south of Fen Creek, while it has actually widened at the north where Western Snowy Plover are more prone to nest. The net result is a loss of habitat in the south where the road and invasive plants are now gone and a net increase in habitat north of Fen Creek where the road is still present.

The project can be reasonably expected to reverse that process, causing massive wind erosion in 60 acres that will be denuded of invasive plants, as well as shoreline retreat north of Fen Creek (Freeman 2012; Paoli 2013). The magnitude of this habitat loss is not analyzed by CDPR. If it is comparable to the retreat south of Fen Creek where the haul road and invasive plants are already gone, the habitat loss in the north will easily exceed 30 acres. This induced erosion runs counter to the County Code of Ordinances Section 20.492.015 which states "The erosion rate shall not exceed the natural or existing level before development." CDPR has already caused massive erosion since it began removing European beachgrass over a dozen years ago without a permit. That eradication has covered a third of the haul road coastal trail.

Independent analysis by Engineering Geologist Eric Freeman (2013) shows the magnitude of the sand movement and shoreline retreat that has taken place between the 1950s and the present. Certified Appraiser Maryellen Sheppard (2013) has also analyzed the devaluation of several adjacent properties over the same period, showing real estate values have decreased by 25 to 69% due to sand migration induced by European beachgrass removal over more than a dozen years. Those impacts on neighboring properties will increase if the project proceeds, further reducing neighboring real estate values and even depriving some owners of use when their parcels become unbuildable due to sand encroachment.

Project-induced erosion thus should be minimized through a phased program of invasive plant removal integrated with replanting native species to control fore dune deflation. Retention of the northern haul road should be considered to help buffer sand migration. The following new Special Conditions are proposed to control erosion and address impacts on neighbors. Additional special conditions are proposed to address impacts to special status plant communities, wetlands, and archaeological considered later in this analysis.

### Proposed Erosion Control Special Conditions:

**Special Condition 9(g)**. **[New]** To stabilize soils disturbed and denuded by invasive plant eradication activities and road demolition, native species will be planted as seedlings (perennials) or viable seed (annuals) within one month of removal of that exotic vegetation or the cessation of other direct ground disturbance by other construction activities. Eradication of exotic plants shall be phased over a 5-year period to limit soil erosion, with no more than 15 acres eradicated or retreated per calendar year. The removal of invasive species shall be scheduled to ensure the best prospects for the success of the replanting program. All denuded areas shall be replanted with native species to achieve a nominal 25% ground cover.

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**Special Condition 9(h). [New]** Sand migration into wetlands, landward vegetated swales, and neighboring properties will be monitored at one year intervals for a 10 year period to facilitate adjustment of the invasive plant removal process and measurement of the success of efforts to reestablish native plants and trees. If the replanting program fails to colonize plots denuded of exotic plants with at least 25% native vegetative cover in a given year, replanting shall occur each successive year to ensure that nominal coverage is achieved.

**Special Condition 9(i)**. **[New]** A bond or other surety in the amount of \$2 million dollars shall be established to compensate neighboring property owners for sand encroachment that results in a demonstrable loss of use or devaluation of their property for the 10 years following commencement of the project. A compensation process shall be established in writing and provided to the County and all adjacent private property owners prior to initiating any ground disturbing activities including, but not limited to invasive plant eradication.

# **Hazardous Waste**

CDPR (2012:95) states "There is no known hazardous contamination of the area where the haul road is located, and there is no indication that the project area contains any hazardous waste, debris, or soils." Yet they go on to note "it is possible that wooden structural elements or ties from the original rail line remain within the historic road alignment and make up parts of the road base and creek crossings. These materials may consist of pressure-treated wood, which contains several potentially hazardous materials (e.g., arsenic), or weatherproofed in some manner possibly with creosote, a human carcinogen." Since treated ties and fence posts can be readily observed in the project area, CDPR's analysis appears grossly negligent.

In addition to hazardous materials visible on the surface, the road served as a railroad from 1916 to 1949. Unregulated railroads are well known brownfield sites that typically contain soils and ballast contaminated with asbestos from brakes; petrochemicals, and creosote from treated ties and trestle timbers. The Skunk Railroad and Fort Bragg mill site are both heavily contaminated and likely provided the fill material used to build the haul road over the former railroad grade. These facts imply the fill should be tested before any is removed.

Historic photos of the Ten Mile railroad reveal treated wooden trestles spanned the two stream crossings and many treated ties and timbers were observed during tidal erosion of the southern outlying road segments in the winter of 1998. Remains of another trestle just north of Ward Avenue were revealed when that section of haul road washed away according to many reliable observers. Lewis (1998) also noted "tires on the trucks of vehicles were penetrated by iron spikes remaining in railroad ties" after the road was chip sealed. While rails were removed in 1949, historical information strongly implies a considerable amount of treated ties and timber were simply filled over to convert the railroad grade into a road.

Railroad ties of that age almost certainly contain creosote, and thus arsenic. Ground penetrating radar sample cross sections produced reflections that are likely treated timbers or ties (Norcal Geophysical 2011). The material used to fill over the former railroad grade and trestles to create the haul road in 1949 also may contain toxins imported from the Fort Bragg mill where dioxin and other contaminants are very well documented as a result of extensive site remediation under the oversight of the State Department of Toxic Substances Control.

In summary, available evidence indicates hazardous materials are present on the ground surface and they are also known or reasonably expected to exist under the haul road based on observation of washed out sections and substantial historical evidence. Toxins are not visible to the naked eye—chemical testing is necessary to confirm their presence. Many laws and regulations govern how they must be handled and disposed of to avoid adverse impacts on public health, water quality, and the environment as summarized by Engineering Geologist Freeman (2012, 2013). Yet CDPR has conducted no sampling to assess those predictable risks.

CDPR plans to take contaminated fill material now sequestered under the haul road to a location next to Big River. Treated wood will be taken to Russian Gulch State Park. Those materials may thus create contaminated runoff that will impact both watercourses. No alternate plan exists to properly dispose of the material if does prove to be hazardous waste as we anticipate. This is an unacceptable approach based on negligent pre-construction investigation that must be remedied to ensure risks to public health, workers, and the environment are adequately addressed. The following new Special Conditions are therefore proposed.

### Proposed Hazardous Waste Special Conditions:

**Special Condition 11(a)**. **[New]** Before the initiation of any project activities, a licensed industrial hygienist shall sample the waters in Fen and Inglenook creeks downstream from the culverts, as well buried soils under the haul road to test for

the presence of hazardous waste and toxic substances. Soil sampling shall include at least two locations at each stream crossing and additional samples at no less than one quarter mile intervals along any sections of the road that will be removed or uncapped. The resulting report shall include an action plan that addresses material handling procedures, worker safety training, and disposal requirements for hazardous wastes subject to project disturbance. If buried hazardous wastes are present at levels the pose threats to workers, the public, and the environment, the action plan shall address how excavation and disposal must proceed. The report and action plan shall be approved by the California Department of Toxic Substance Control and the County Department of Planning and Building Services prior to implementation.

**Special Condition 11(b)**. **[New]** CDPR shall remove all hazardous materials presently exposed on the ground surface in the Preserve, including a large stockpile of ties present in the interior dunes south of Inglenook Creek. Removal of those contaminated surface materials shall be done in conformance with the action plan in Special Condition 11(a).

**Special Condition 11(c)**. **[New]** One year after remediation is completed pursuant to the approved action plan in Condition 11(a), the two streams shall be sampled for residual toxins, with the results reported to CDTSC and the Mendocino County PBS.

# **Other Unmitigated Impacts**

The foregoing mitigation measures proposed by the WMAC address some of the most obvious significant impacts of the project that are priorities for concerned local constituents. Radically altering the environment may result in other significant impacts from erosion and shoreline retreat briefly mentioned above. Those indirect impacts include burial of special status plants, filling wetlands, and destroying archaeological sites by causing significant shoreline retreat. Because those impacts remain unanalyzed, their magnitude is uncertain. Developing Special Conditions to address such unknown impacts is thus speculative.

It is important to point out that this project must comply with federal environmental laws and that process <u>has not begun</u>. According to Laurie Monarres, a Regulatory Project Manager at the San Francisco District of the ACOE, CDPR had not applied for the required Section 404 permit (Personal communication to Thad Van Bueren, June 20, 2013). The ACOE is the lead federal agency and their review of the project may alter conditions of approval in ways that the WMAC and Board of Supervisors cannot reliably predict. There is thus no guarantee that WMAC mitigation proposals outlined in this analysis will be considered adequate by the ACOE. Issuance of this coastal development permit may thus be premature and potentially vulnerable because it is predicated on future contingencies that have not been resolved at the time this permit was issued (Sundstrom v. County of Mendocino (1988, 202 Cal.App.3d 296).

Federal compliance must analyze environmental impacts under the National Environmental Policy Act, impacts to wetlands under the Clean Water Act, impacts to endangered species under the Endangered Species Act, and impacts to historical properties under the National Historic Preservation Act. The fact that CDPR finalized its CEQA document without taking into consideration substantial concerns does not eliminate the need to comply with those federal laws. The ACOE must separately notice a NEPA document for this project, take public input, consult USFWS about endangered species, and consult the California State Historic Preservation Officer and local tribes about potential adverse effects on historic properties.

With that caveat in mind, the WMAC believes there are at least two additional potentially significant impacts not discussed above that warrant additional mitigation. The first is that wetlands are likely to be filled, causing impacts to those sensitive areas as a result of poorly controlled erosion. To comply with Executive Order 11990, CDPR will need to demonstrate that all practical alternatives to avoid filling the wetlands and all practical measures to minimize harm to wetlands have been considered. Since no alternatives have been considered, CDPR's environmental analysis is seriously flawed.

Second, while existing mitigation measures appear adequate to avoid direct impacts to archaeological sites, Van Bueren (2012) has raised concerns that shoreline retreat caused by the project as it is presently permitted is likely to destroy several resources. It is unclear if local tribes have been consulted about those potential adverse effects, nor is there any evidence that compliance with Section 106 of the National Historic Preservation Act has been undertaken. Given both unresolved issues, the following additional permit conditions are proposed.

### Other Proposed Special Conditions:

**Special Condition 12. [New]** An Engineering Geologist shall evaluate the potential for the approved project to fill wetlands prior to initiation of any project work. Any anticipated loss of wetland habitat shall be mitigated at a 1:1 ratio based on consultation with the US Army Corps and Engineers and County PBS. The evaluation report shall require a 10-year monitoring program to measure any loss or gain in wetland habitat on an annual basis. If losses occur, they shall be

mitigated with the creation of new wetland at a 1:1 ratio within one year. Annual evaluation reports and a summary of follow up actions shall be supplied to County PBS and the US Army Corps and Engineers each year.

**Special Condition 13. [New]** The State Historic Preservation Officer and local tribes shall be consulted by the US Army Corps of Engineers under Section 106 of the National Historic Preservation Act for this undertaking to evaluate and address potential adverse effects on historic properties including archaeological sites and the historic haul road. If adverse effects will occur, a Memorandum of Agreement shall be executed between the ACOE and SHPO to address how those impacts will be resolved prior to initiation of any project ground disturbance activities including invasive plant eradication. The County Archaeological Commission shall be including as a consulting party in any consultation between the federal lead agency, California SHPO, and CDPR.

# **Proposed Reduced Project Alternative**

The WMAC recognizes that the imposition of these proposed additional Special Conditions may impact the feasibility of the project by requiring expenditures on new mitigation. We are also aware that the Supervisors have several options for resolving the unmitigated significant impacts we have substantiated. The WMAC does not oppose habitat restoration if it can be accomplished without compromising public access and causing other significant adverse impacts on the environment. In the interest of resolving these issues, the WMAC favors a compromise. If the project funding is restricted to the \$750,000 grant, we suggest a substantially reduced project.

Several coastal trail alternatives were evaluated by EDAW in 2000 and their Setback Alternative closely resembles Alternative 2 proposed by concerned citizens in January 2013 (see attached BOS package). That route would retain the northern 2.5 mile haul road segment and construct 6400 feet of new trail to span the gap that extends from a location south of Fen Creek to Ward Avenue. Mapping for that Setback Alternative shows the new trail is outside of Western Snowy Plover nesting zone. The modest footprint 10 feet wide footprint would cover just 1.5 acres, suggesting impacts to endangered plants and wetlands would be far less than those of the current CDPR project (which will impact 1.23 acres of endangered plants and 0.68 acres of wetlands).

CDPR's consultant found "dune instability does not threaten feasibility" of that Setback Alternative (EDAW 2000:5-11) and "the costs of construction, repair, and maintenance also do not threaten the feasibility" (EDAW 2012:5-12). EDAW (2000:5-7) also concluded the northern 2.5 mile segment of haul road is stable:

Measurements and analysis of historic aerial photographs suggest there is no immediate threat of beach erosion removing the haul road north of Fen Creek. High rates of sediment transport from the Ten Mile River may actually be adding to beach stability (through local accretion) along this section of the coastline. In fact, , the northern section of the coastline has shown both short term and long term beach accretion (widening) during the period of record.

The WMAC therefore suggests the following reduced project may be feasible if the Board of Supervisors adopt all of the Special Conditions we have proposed above. This reduced project would likely greatly reduce erosion risks, perhaps eliminating the Need for Special Conditions 9(i), 12, and 13. It would consist of these actions:

- Phased removal of invasive plants and prompt replanting with natives on all 60 acres that are denuded pursuant to the terms of Special Condition 9(g) and 9(h).
- Remove only two eroding segments of haul road in the south and sand cover on northern 2.5 mile long haul road segment
- Retain and permanently maintain rest of haul road as a multi-use all season Class I coastal trail
- Replace culverts with 10 feet wide Class I trail bridges
- Build a multi-use all season Class I coastal trail to reconnect the 6400 gap at south end using the Setback Trail alignment (EDAW 2000) <u>OR</u> enter into a Memorandum of Understanding with the County that commits CDPR to build a continuous trail from the south end of the Ten Mile bridge on State Route 1 to the west end of Ward Avenue within three years.
- Remove toxic surface materials

These actions will demonstrably serve a preservation function and at the same time balance that objective with reasonable public access required by the Coastal Act and Mendocino County's LCP policies. The WMAC believes this reduced project is feasible because cost savings associated with retention of the northern haul road can be used to fund bridges, additional plantings, and other Special Conditions we have requested. We note that strong, light weight fiberglass truss bridges offer a cost effective way to span streams and cellular plastic structural mesh trail offers a low cost alternative to boardwalks. The gap at the south end could be spanned for roughly \$250,000 according to Professional Engineer David Paoli (2013).

The WMAC does have one strong concern regarding implementation of this reduced project <u>if it is carried out under the</u> <u>terms of an MOU</u>. Our research indicates the study performed by EDAW (2000) was compromised by a CDPR position adopted in 1998 that it intended to "prohibit boardwalk construction north of Ward Avenue" (USFWS 2007:C-13) in direct violation of LCP policies, the Coastal Act, and the General Plan for MacKerricher State Park adopted just three years earlier (CDPR 1995) <u>before</u> the Natural Preserve was designated. The result of the feasibility study was, in other words, tainted by a foregone conclusion.

To ensure no environmental <u>double standard</u> is applied to any future effort to reconnect this coastal trail, the WMAC strongly urges Supervisors to ensure the terms of the MOA include a provision that the same mitigation measures used in the current project will also apply to the construction of the Setback trail segment. The footprint of that new trail is only 1.5 acres and it is highly unlikely every square foot of the trail will impact special status plants or wetlands. The trail is outside of ACOE wetlands and is likely to have only modest impacts to Coastal Commission-defined wetlands. It is also outside of the WSP nesting zone.

# Conclusions

The WMAC and others have repeatedly expressed concern about many potentially significant impacts, calling for more thorough analysis in an EIR that considers alternatives. CDPR received 42 written comments from agencies and individuals, and many of those were copied to County Planning staff. The existence of serious public controversy in itself indicates that preparation of an EIR is desirable—a principle expressed in Section 15064(h) of the California Administrative Code which states:

"In marginal cases where it is not clear whether there is substantial evidence that a project may have a significant effect on the environment, the lead agency shall be guided by the following factors: (1) If there is serious public controversy over the environmental effect of a project, the lead agency shall consider the effect or effects subject to the controversy to be significant and shall prepare an EIR."

Agencies must prepare an EIR for any project that "may have a significant effect on the environment" (PRC 21151). The word "may" means a reasonable possibility (No Oil Inc. v. City of Los Angeles, 13 Cal.3d 68, 83). The phrase "significant effect on the environment" means "a substantial, or potentially substantial, adverse change in the environment" (PRC 21068). If a fair argument can be raised on the basis of substantial evidence that the project may have a significant adverse environmental impact, then an EIR is required (Laurel Heights Improvement Assoc. v. U.C. Regents [1993] 47 Cal.4th 376). Substantial evidence includes "facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts" (PRC 21080).

We believe prior evidence supplied during the circulation of the draft MND in August 2012 amply met that threshold. This analysis most certainly supplies substantial evidence of the potential for significant adverse impacts. We support approval of the permit if the Supervisors adopt the Special Conditions we have proposed or approval of the reduced project we have suggested with the removal of Special Conditions 9(i), 12, and 13. We urge Supervisors to go on record as supporting a continuous coastal trail in conformity with the LCP and a resolution sent to Caltrans and CDPR by the Board of Supervisors on August 28, 2012 (see WMAC package supplied to BOS).

# **References Cited**

### See Exhibit 3 for studies by experts, agency input letters, and excerpts of key studies referenced in this analysis.

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  - 2007 Western Snowy Plover (*Charadrius alexandrinus nivos*us) Pacific Coast Population Recovery Plan. Portland, Oregon.
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# **Expert Studies, Agency Input, and Excerpts from Other Pertinent References**

(92 pages following)



### LAND USE ELEMENT

the plan's Resource Element. The Mendocino County Local Coastal Plan (LCP) is also particularly important with respect to this general plan. It concentrates mostly on protecting views, rare or sensitive species and habitats, and on improvements at the park's points of access. It also mandates maintaining a coastal trail from Pudding Creek to Ten Mile River. Specific recommendations will be taken up in the discussions for each of the park areas.

#### PUBLIC OPINION

Public opinion is an integral parameter in the process that the department uses to prepare general plans. Public dialogue represents an intensive effort on the part of the department to ensure that future park management and use considers the desires of the statewide and local visitors who use state parks and of those potentially impacted by this use (e.g., adjacent property owners). Public opinion concerning critical issues helps shape planning alternative proposals and the subsequent choice of a single park plan.

## LAND USE ANALYSIS: APPLYING THE PLANNING PARAMETERS

Land use at MacKerricher State Park is uneven. The park contains some sensitive landscapes that do not invite or endure human intrusion well. The park also experiences high visitation. To date, human activity has been almost entirely confined to the most easily accessible areas in the park. This has led to heavy levels of concentrated use.

Another factor to consider when discussing land use is the wide array of landscape types within the park, including beach, grassy terrace, forest, and lonesome dunes, to name a few. It would be impossible to discuss land use for all of these at one time. Instead, the following discussion will treat the discrete areas that make up the park one by one.

Because the classification and declaration of purpose apply to all areas within the park, they will not be recapitulated for each of them. The suitability of the park's resources for public uses in the various parts of the park appears on Map No. 10, Allowable Use Intensities. Therefore, park area discussions will focus on existing conditions, relevant guidelines from the Resource Element and directives from other planning agencies, and public opinion, as well as problems in each area that should be resolved through the general planning process. There will also be a brief site analysis for each area. Map No. 11, Park Areas and Existing Conditions, appears in the following section. It illustrates how the park's areas relate to each other and to the park as a whole.

# PARK TRAILS

Park trails comprise a discrete land use. The heavy public use areas in the park have many trails. The coastal trail on the haul road is the main park trail. Other major trails are the equestrian trail paralleling the haul road, the trail alongside Mill Creek Drive that provides access for equestrians, and the boardwalks on Laguna Point and around Lake Cleone.

The park also has innumerable volunteer trails. These crisscross Laguna Point, as well as the rest of the coastal terrace. There are also many around Lake Cleone and that cut through the dunes, especially between Pinewood Campground and the beach.

#### THE HAUL ROAD

The haul road is the most unifying element throughout the park, as it traverses most of MacKerricher's varied landscapes. Many of the park's finest and most distant views are from the haul road. It is popular with local residents and park visitors alike.

### MACKERRICHER STATE PARK GENERAL PLAN

The trestle across Pudding Creek, the haul road, and the associated equestrian trail comprise a critical part of the coastal trail on the Mendocino coast. The coastal trail within the park should soon connect with Fort Bragg, furnishing coastal access to large numbers of people, including disabled persons. This unique recreational resource will run the entire length of the park and will allow pedestrians and bicyclists to approach beach and dune areas that they otherwise could not easily. Maintaining the haul road in a condition suitable for bicycle use will provide an alternative for bicyclists to busy Highway 1, with an associated avoidance of hazards and accidents.

#### EXISTING CONDITIONS

Even while active, the haul road functioned for many years as part of the park, as the Georgia-Pacific Company allowed people to drive on it on weekends. Washouts north of Ward Avenue and west of Lake Cleone in the early 1980s brought about the road's closure to logging trucks. Use of the road by joggers, hikers, and bikers increased. Automobiles continued to be allowed south of Surfwood Campground during daylight hours under terms of an agreement between Georgia-Pacific and the department, which then took on the operation and management of the road. The possible sale of the haul road to a private party in early 1992 led Georgia-Pacific to close it to motorized traffic. It has remained closed to this use.

The department has now acquired all of the haul road within the park boundaries and has recently received federal grant funding for needed improvements. The City of Fort Bragg has completed construction of a trailhead and staging area for coastal trail users at the south end of the trestle.

#### RESOURCE ELEMENT GUIDELINES AND/OR OTHER AGENCY DIRECTIVES

The Resource Element cites previous motorized recreation traffic on the haul road as contributing to the decline of wildlife in its vicinity and favors continued closure of the haul road to such traffic.

The county Local Coastal Plan mandates the department to provide maximum coastal access via an off-highway hiking and biking trail, specifically for non-vehicular use, for the eight miles from Pudding Creek to Ten Mile River.

The Fort Bragg LCP calls for an alternate river crossing in addition to Highway 1 at Pudding Creek. The grant-funded new surface and railings to make the trestle ready for public use and the city's trailhead at its south end will fulfill this recommendation.

#### PUBLIC OPINION

Public opinion regarding the haul road was diverse. Only a few visitor surveys mentioned the haul road, probably indicating that it is less of an attraction to out-of-town visitors than many of the park's other features. The people who live nearby the park, however, were much concerned with repairing the washed out sections. Some members of the public also had strong feelings as to whether or not motorized traffic should be allowed to continue using the haul road.

#### SITE ANALYSIS

The haul road now has several deficiencies as a coastal trail. In addition to the washed out parts, it has been poorly maintained and needs resurfacing. The trestle also needs surfacing and a railing to make it safe for public use. Furthermore, access to the haul road is poor in some locations, notably Ten Mile River. Nevertheless, large numbers of people access it at many points even though this requires trespassing on private property in some locations.

For recommendations for improving the haul road and the coastal trail experience, see the Facilities Element, page 153.

- Provide rest areas where pedestrians must walk long distances.
- Avoid subsurface disturbances in areas containing archeological sites.

### TRAIL ACCESS FOR VISITORS WITH DISABILITIES

It is the department's intention to make as many of the park's pedestrian trails as possible usable by visitors with disabilities.

- If feasible, the department will provide a shuttle on the haul road. In the meantime, motorized use of a portion or the haul road should be available to visitors with disabilities on a case by case basis with access from Laguna Point after inquiry at the contact station.
- Furnish non-motorized coastal trail access to the haul road for visitors with disabilities from the Laguna Point parking lot, as well as the north and south coastal trail access points.

### THE HAUL ROAD/COASTAL TRAIL

See the Land Use Element, pages 111-112, for the existing condition of the haul road.

- Improve the trestle for visitor safety before opening it to public use. Inspect the pilings
  for structural integrity; install railings and a safe surface for foot and bicycle traffic.
- Provide required maintenance to the trestle and the haul road. This will entail ongoing planning and funding.
- Keep the haul road closed to motorized traffic except for patrol, maintenance, and emergency vehicles, as well as a shuttle if it is possible to provide this service.
- Improve the surface of the haul road so that it is safe and comfortable for pedestrians and bicyclists.
- Repair areas along the haul road that have erosion problems. In some places, this will
  require shoring the road up. In others, bypasses will be required due to ongoing erosion
  by the ocean.
- Remove volunteer trails on the coastal terrace and in the dunes to which the haul road provides access.
- In the area of Lake Cleone, clear the eroded haul road berm of large chunks of asphalt and other debris that could potentially become a hazard. Shape the berm so that access over it to the beach will be possible.
- Direct coastal and equestrian trail traffic down the east side of the haul road berm and bring it past the lake on paths separate from the park road. This will require bridging the Mill Creek outlet to avoid conflicts between automobiles and other kinds of traffic.
- Provide a dune boardwalk to bypass the area north of Ward Avenue where the haul road has been washed out to serve hikers, bikers, and persons with disabilities. Equestrians will use the beach for the northern leg of their coastal trail.
- Provide rest stops along the haul road where there are intersections with major trails serving park use areas. These should be frequent enough to serve elderly and disabled visitors and should include benches, interpretation, and orientation for coastal trail users.

#### EQUESTRIAN TRAIL

See the Land Use Element, page 113, for the existing condition of the equestrian trail.

 Monitor, maintain, and specially surface where necessary, a designated year-round equestrian trail from Pudding Creek to Ten Mile River.

Chuck Eyerly	Sally Grigg	Bill Knapp	Thad Van Bueren	Judith Vidaver	<b>Robert Scott</b>
Secretary	Director	Treasurer	Chair	Vice-Chair	Alternate



# Westport Municipal Advisory Council

P. O. Box 307, Westport, CA 95488 www.westportmac.org

July 9, 2012

Abbey Stockwell, Project Coordinator Department of Planning and Building Services 120 West Fir Street Fort Bragg, CA 95437

Re: CDP #12-2012 (California Department of Parks & Recreation)

Dear Abbey:

The Westport Municipal Advisory Council held a public hearing on the cited permit application at its regular monthly meeting July 3, 2012. Comments were provided by eight people. Although there was some support for natural ecosystem restoration, significant concerns were expressed about the proposed project. Some of the comments were informed by examination of a draft combined Initial Study and Mitigated Negative Declaration and the approved General Plan for MacKerricher State Park. The WMAC unanimously approved a motion to convey the following summary of concerns:

1. Destruction of Coastal Trail: The proposed project will deliberately deconstruct 2.7 miles of the old haul road. This will preclude access for bicyclists and disabled individuals to an existing coastal trail that is mandated by the Mendocino County Local Coastal Program to provide maximum non-vehicular coastal access from Pudding Creek to the Ten Mile River. The General Plan for MacKerricher Park approved in 1995 specifically mandates on page 153: a) haul road maintenance; b) improving the surface for use of pedestrians and bicyclists; c) repair of areas with erosion problems; and d) providing a dune boardwalk north of Ward Avenue where the haul road has been washed away. The proposed project completely ignores and is inconsistent with those mandates and management directives and provides no mitigation for significantly impairing/destroying that required coastal access for bicyclists and disabled persons.

2. <u>Herbicide Use</u>: Concern exists about the use of herbicides to destroy introduced plants. The type of herbicides is not specified in the permit application, but the public is concerned that such chemicals may impact human and ecosystem health. Other methods of removal should be considered. The environmental consequences of different approaches to controlling invasive species should be thoroughly evaluated, giving priority to the method that causes the least harm.

3. <u>Sand Migration</u>: Adjacent property owners are concerned that the removal of European Beach Grass and portions of the haul road will further destabilize the dunes and cause significant sand migration that will adversely affect neighboring private landowners. Prior efforts to manually remove the beach grass have resulted in significant encroachment of dunes onto properties to the south and east, as well as degradation of the haul road through increased erosion or burial that impairs coastal access. Inadequate consideration is given to reliable methods for controlling sand movement and mitigating impacts to neighbors.

4. <u>Adjacent Landowner Notification</u>: One adjacent landowner who attended the WMAC said she was not notified of this pending permit. All adjacent landowners should be notified, consistent with CEQA policies and case law. Their concerns should be heard and factored into the resolution of the significant impacts this project can be expected to cause.

5. <u>Unintended Consequences</u>: Destabilizing the dunes is a risky proposal with many long term and cumulative consequences for surrounding lands, ecosystems, and cultural resources. Those consequences have not been adequately considered. Historic maps including the 1874 Coast Survey, 1916 Army Corps of Engineers Cape Vizcaino 15 minute quadrangle, and 1966 USGS Inglenook 7.5 minute quadrangle should be compared to the modern distribution of dunes and reliable methods should be proposed to ensure sand migration is controlled and significant impacts are addressed. Native species should be reestablished well prior to any action that will destabilize the dunes to ensure sand migration is controlled. Use of native shore pines appears illadvised due to the spread of pine canker. Sand migration will predictably result in significant impacts such as the deflation of archaeological resources, further erosion/burial of the haul road that impairs use of that coastal access, congestion of hydrologic systems, and movement of the dunes east and south onto neighboring private lands.

The foregoing concerns imply the proposed draft IS/MND is inadequate as means to evaluate and mitigate the significant environmental consequences of this project under CEQA and its implementing regulations and guidance. An EIR should be required with a more robust effort to consider public input and address inconsistencies with the park's General Plan and LCP policies. The park is managed for many purposes according to an approved General Plan, and public coastal access should not be deliberately destroyed without mitigating that loss with a replacement structure such as a boardwalk that from Ward Avenue to the Ten Mile bridge that is accessible to pedestrians, bicyclists, and disabled persons.

We ask that you keep us informed of any revised submittal and notify us in advance of any public hearings on this project so that the citizens within our jurisdiction may continue to provide input as the decision process unfolds. Please contact Chairman Thad Van Bueren at 964-7272 if you have questions about the comments raised by the WMAC.

Sincerely,

harles h. Eyely

Chuck Eyerly, Secretary Westport MAC

Cc: Renee Pasquinelli, California Department of Parks & Recreation Kendall Smith, Fourth District Supervisor Dan Gjerde, Fourth District Supervisor Elect

Chuck Eyerly	Sally Grigg	Bill Knapp	Thad Van Bueren	Judith Vidaver	Robert Scott
Secretary	Director	Treasurer	Chair	Vice-Chair	Alternate



# Westport Municipal Advisory Council

P. O. Box 307, Westport, CA 95488 www.westportmac.org

August 10, 2012

Renee Pasquinelli, Senior Environmental Scientist Mendocino District, California Department of Parks & Recreation 12301 North Highway 1 – Box 1 Mendocino, CA 95460

Re: Comments on revised draft IS/MND for Mackerricher State Park Dune Rehabilitation Project (Mendocino County CDP #12-2012)

Dear Renee:

The WMAC held two public hearings on the cited permit application July 3 and August 7, 2012. Our initial letter to the County is available at http://www.westportmac.org/documents/CDP#12-2012-WMAC\_Comments\_(7-9-2012).pdf. The second hearing focused on the revised draft Initial Study and Mitigated Negative Declaration released by California Department of Parks & Recreation (DPR) on August 1, 2012. While there is public support for natural ecosystem restoration and preservation of sensitive species, widespread concerns were expressed that the project as presently designed will cause significant impacts that are not analyzed or mitigated. As a result, the preparation of an EIR appears mandatory unless the project is substantively revised. The WMAC approved a motion to convey the following concerns:

1. <u>Destruction of Coastal Trail</u>: Rather than letting natural forces remove the haul road as directed in the adopted General Plan (GP) for the park on page 79, the proposed project will purposefully destroy a long-neglected coastal trail specifically designated for improvement and repair for use by pedestrians and bicyclists (GP page 153). Removal of the haul road will significantly impact existing recreational and non-motorized transportation access by pedestrians, bicycles, wheelchairs. No mitigation is proposed to compensate for that loss of access, nor is it reconciled with other existing policies and directives of the General Plan which specify as a fundamental goal for the dunes to "develop recreational access consistent with natural processes" (page 77). Contrary to an unpublicized internal feasibility study, the public does not accept that a trail for pedestrians, bicycles, and wheelchairs through the Coastal Dunes Resource Management Zone is impractical. Low-cost permeable trail tread materials are readily available and could provide a sensitive solution that addresses directives of the General Plan on pages 78-79 by following a route that minimizes resource conflicts and mitigates impacts.

2. <u>Sand Migration</u>: Adjacent property owners are concerned that the removal of European beach grass and portions of the haul road will mobilize sand migration that will adversely affect neighboring private landowners. The IS/MND recognizes sand will migrate, but no mitigation is proposed. Degradation of the haul road north of Ward Avenue and prior efforts of beach grass removal have resulted in documented encroachment of dunes onto adjacent properties east of the park, as well as degradation of the haul road through increased erosion and/or burial that has impaired coastal access. These impacts are not assessed, and no mitigation is proposed to

compensate neighboring landowners for the loss of use and diminishment in land value that will predictably result from destabilizing the foredunes.

While European beach grass has heightened the foredunes, historic photographs verify the haul road was built on the original surface of the unmodified dunes. The haul road also provides critical habitat for the endangered Howell's spineflower and protects cultural resources that will suffer significant impacts from deflation if nearby sections of the road are removed and erosion is purposefully accelerated. Although destruction of 11% of the entire spineflower population in the preserve by this project is considered acceptable and will be mitigated, damage to non-renewable cultural resources is a significant impact that has not been addressed.

The foregoing concerns imply the proposed revised draft IS/MND is inadequate as means to evaluate and mitigate several significant short term and cumulative long term environmental consequences of this project. An EIR should be prepared to consider public input and address inconsistencies with the park's General Plan and Mendocino County's approved Local Coastal Plan. Adjacent property owners should be specifically notified of the pending environmental review and permit approval processes to ensure their views are taken into consideration.

Input received by the WMAC suggests a more modest approach to habitat manipulation is preferred to the radical plan currently proposed. That would be more consistent with Public Resources Code 5019.71, which states that such activities should occur "<u>only</u> (emphasis added) in those areas found by scientific analysis to require manipulation to preserve species or associations that constitute the basis for the establishment of the natural preserve." Those goals can be met with dune grass and culvert removals, as well as replanting. Leaving the haul road will retain critical habitat and preserve both public access and cultural resources.

The public feels attention should be given to balancing <u>all</u> of the Park's General Plan goals and directives, not selectively implementing some goals to the detriment of public access, neighboring land owners, and cultural resources. We suggest focusing solely on critical habitat preservation, leaving the removal of neglected remnants of the haul road until a plan is developed to construct a context-sensitive recreational and non-motorized replacement trail. Contact WMAC Chairman Thad Van Bueren at 964-7272 with questions about these comments.

Sincerely,

hale h. Eyely

Chuck Eyerly, Secretary

 Cc: Abbey Stockwell, Mendocino County Planning & Building Services Department Kendall Smith, Fourth District Supervisor
 Dan Gjerde, Fourth District Supervisor Elect Liz Burko, DPR District Superintendent Janelle Beland, DPR Acting Interim Director Bob Merrill, California Coastal Commission State Senator Noreen Evans State Legislator Wesley Chesbro

Chuck Eyerly	Sally Grigg	Bill Knapp	Thad Van Bueren	Judith Vidaver	<b>Robert Scott</b>
Secretary	Director	Treasurer	Chair	Vice-Chair	Alternate



Westport Municipal Advisory Council

P. O. Box 307, Westport, CA 95488 www.westportmac.org

October 5, 2012

Jesse Robertson Caltrans District 1 P.O. Box 3700 Eureka, CA 95502-3770

and

Janet Orth Mendocino Council of Governments 367 N. State Street, Suite 206 Ukiah, CA 95482

Re: Pacific Coast Bike Route Engineering Feasibility Study for Route 1 in Mendocino County

Dear Jesse and Janet:

The WMAC reviewed letters written by MCOG on August 20<sup>th</sup> and The Mendocino County Board of Supervisors on August 28<sup>th</sup> encouraging Caltrans and the California Department of Parks and Recreation to consider a possible Class I trail through MacKerricher State Park between the Ten Mile River and Fort Bragg. We support their suggestion that Class I trail route options should be evaluated as an alternative to a bike and hike route along the highway shoulder. We also agree that segment is a high priority along the PCBR in Mendocino County.

We recognize that developing a trail through the Dune Preserve at the north end of MacKerricher State Park will pose challenges. However, the possibility should not be dismissed without a detailed alternatives analysis that considers innovative trail tread options and careful selection of an alignment that minimizes environmental impacts. A balanced comparison of Class I and Class II (road shoulder) trail options may reveal that the costs, safety, and environmental consequences of a separated bike and hike route through MacKerricher State Park is in fact preferable for a PCBR alignment along that section of the Mendocino coast.

In a prior community-based transportation planning study last year, the public supported the concept of Class I trails wherever publicly owned coastal parcels or access easements exist west of State Route 1 between the Ten Mile River and Rockport. The reason mentioned in the plan entitled *Westport Area Integrated Multi-Use Coastal Trail Plan* (2011) is that Class I trails are safer, more scenic, and have many other advantages that promote livable communities. We note that no Class I design alternatives were included in the options presented to the public during several workshops held for the current PCBR study in July.

#### WMAC letter of October 5, 2012

The Westport Municipal Advisory Council therefore urges careful consideration of Class I PCBR alternatives wherever they are feasible along the Mendocino coast in the draft plan you are preparing for release sometime later this fall. North of the Ten Mile River, locations for such alignments include Westport Union Landing State Beach, the Caltrans property south of Chadbourne Gulch, and the Kibesillah Trail easement opened by the Mendocino Land Trust in 2012.

Thank you for considering the views or our community. Please contact Chairman Thad Van Bueren at (707) 964-7272 or thadvanbueren@directv.net with any questions.

Sincerely,

Charles h. Eyely

Chuck Eyerly, Secretary

 cc: Abbey Stockwell, Mendocino County Planning & Building Services Department Kendall Smith, Fourth District Supervisor
 Dan Gjerde, Fourth District Supervisor Elect Liz Burko, DPR District Superintendent
 Loren Rex, DPR Sector Superintendent
 Bob Merrill, California Coastal Commission
 State Senator Noreen Evans
 State Legislator Wesley Chesbro Congressman Mike Thompson

Chuck Eyerly	Sally Grigg	Bill Knapp	Thad Van Bueren	Judith Vidaver	Robert Scott
Secretary	Director	Treasurer	Chair	Vice-Chair	Alternate



# Westport Municipal Advisory Council

P. O. Box 307, Westport, CA 95488 www.westportmac.org

February 1, 2013

Abbey Stockwell, Project Coordinator Department of Planning and Building Services 120 West Fir Street Fort Bragg, CA 95437

Re: CDP #12-2012, MacKerricher Dune Rehabilitation Project

Dear Abbey:

The Westport Municipal Advisory Council previously commented on this pending permit last year on July 9 and August 10. At that time we summarized a wide variety of concerns presented at our meetings by local citizens. Since then, the final Mitigated Negative Declaration for the project was filed December 20, 2012 by the California Department of Parks and Recreation.

We believe the final MND has ignored many of the significant impacts of the project mentioned by the public at our hearings. A January 10, 2013 letter submitted to you about this project by 175 concerned local citizens was copied to the WMAC. We agree with some of the key points made in that commentary and urge your department to consider these issues:

- 1. The final MND for the project does not reduce the environmental impacts of the project below a significant level. We thus urge the County to require the preparation of an EIR that analyzes all significant issues raised in the citizen's letter of January 10, 2013.
- 2. The WMAC supports the consideration of the two project alternatives proposed by the citizens group as a way to reduce or otherwise mitigate for the significant environmental effects of the project. Other alternatives may also be worth consideration.

Please keep us informed of any revised submittal and notify us in advance of any public hearing on the permit for this pending project. Please contact Chairman Thad Van Bueren at 964-7272 if you have questions about the comments raised by the WMAC.

Sincerely,

Charles h. Eyely

Chuck Eyerly, Secretary

cc: Dan Gjerde, Fourth District Supervisor Steve Dunnicliff, Mendocino County PBS Director **CPD#12-2012 Comments** (for June 11, 2013 CPA Meeting in Fort Bragg) Thad Van Bueren, Westport Municipal Advisory Council

I'm Thad Van Bueren, here to offer the views of the Westport Municipal Advisory Council and its constituents. The WMAC conveyed concerns in 3 letters to the County. Analysis of the County staff report indicates many impacts are inadequately mitigated or conditioned in the pending permit. I'll focus on recreation and coastal access due to time limits, but other issues also exist. For example, State Parks has begun implementing the project prior to permit approval.

1. Removal of 2.7 miles of haul road and culverts will significantly impact recreation and coastal access. Coastal Act Section 30211 requires that "development shall not interfere with the public's right of access to the sea where acquired through use." This trail has a lengthy pattern of historical and ongoing use. Even if visitation is lower today because the trail has not been maintained, it is still a significant and valued prescriptive easement. We also note that Coastal Act policies such as Section 30210 require maximum access and recreational opportunities, not **extinguishing** that access.

2. Haul road destruction also conflicts with policies of the County's Coastal Element. Policy 4.2.21 directed State Parks to acquire the haul road as coastal access, not to destroy it. County land use maps 10 and 12 clearly show the road as the designated existing coastal access. The wet sand alternative now passed off as THE coastal trail is not the route shown on County maps, nor is it passable for bicycles and disabled visitors.

3. The haul road was acquired by DPR in 1992. The 1995 park general plan states the "coastal trail on the haul road is the main park trial," 12 years after a section washed away north of Ward Avenue. That Plan directed that it be maintained and reconnected. Removing it will not only foreclose existing use of this trail; it will discriminate against bicyclists and disabled visitors.

4. Special Condition 5 does not adequately mitigate loss of the haul road with a realistic or desirable alternative trail. It makes no provision for the construction of a continuous path and is far from the ocean. If the intent of that is to create a viable replacement route, a continuous easement connecting the south end of Ten Mile Bridge with the west end of Ward Avenue must be dedicated along a route that has been studied enough in advance to ensure no resource issues will prevent construction of that multi-use path.

Absent a viable alternative to the existing coastal trail that will be destroyed, the MND and permit conditions are legally inadequate. We therefore object to the approval of this permit as currently proposed. Loss of the haul road is a significant unmitigated impact on recreation and coastal access. Public access is not conveniently ignored or sublimated to natural resource protection. Both require consideration. An EIR should be required to consider a viable all weather alternative trail route if the haul road removal is eventually permitted.

CARMEL J. ANGELO Chief Executive Officer Clerk of the Board



CONTACT INFORMATION 501 Low Gap Road • Room 1010 Ukiah, California 95482 TELEPHONE: (707) 463-4221 FAX: (707) 463-7237 Email: bos@co.mendoctno.ca.us Web: www.co.mendoctno.ca.us/bos

COUNTY OF MENDOCINO BOARD OF SUPERVISORS

August 28, 2012

Charles Fielder Director of District 1 California Department of Transportation P. O. Box 3700 Eureka, CA 95502-3700

Loren Rex

Superintendent of Mendocino District California Department of Parks & Recreation 12301 N. Highway One – Box 1 Mendocino, CA 95460

> Re: Designation of the State Parks Haul Road from Ward Avenue at Cleone south to Elm Street in Fort Bragg as a segment of the Pacific Coast Bike Route in Mendocino County

Dear Director Fielder & Superintendent Rex.

The Mendocino County Board of Supervisors is requesting the Department of Transportation (Caltrans) and the Department of Parks and Recreation (DPR) work together to align the Pacific Coast Bike Route with the part of MacKerricher State Park Haul Road that does not reside in a preserve, that is, the segment from approximately Ward Avenue south to Elm Street in Fort Bragg.

If DPR agrees to work with other agencies to plan for the trail's repair and preservation, the potential designation of this trail section as the Pacific Coast Bike Route would ensure pedestrians and cyclists long-term enjoyment of 3.7 miles of high-quality Class I trail.

In 1976, California law established a Pacific Coast Bike Route along the length of California, part of a larger route that runs from British Columbia to Mexico. Each year, thousands of cyclists ride this route, passing through Mendocino County., for over 100 miles, Additionally, a growing number of local cyclists of all agea use this route, both as commuters, avid cyclists, and as occasional recreationalists.

Recognizing the Pacific Coast Bike Route's popularity with cyclists, the Mendocino Council of Governments (MCOG) and Caltrans are currently evaluating options to improve safety along the 105 miles that reside on State Route 1 in Mendocino County. One option to improve safety, suggested in these and other venues, is to relocate the Pacific Coast Bike Route onto Class I trails where possible. We agree.

If the Haul Road is designated as the Pacific Coast Bike Route, we see multiple opportunities to fund repairs and enhancements to this valued public asset; in all phases from planning grants to construction dollars. We believe the County of Mendocino, the City of Fort Bragg, MCOG, and Caltrans would all be willing partners with DPR in planning and identifying funding opportunities to repair and enhance the Haul Road so the public can use and enjoy this route for many decades to come.

### THE BOARD OF SUPERVISORS

We feel this request is timely since DPR has received a \$395,000 grant to address hydrological changes at Lake Cleone, including traffic flow impacts, trail impacts, and issues of environmental concern. As this grant is scoped, we would like to see this project integrated with plans for the Pacific Coast Bike Route, and the need to provide ADA-compliant access to the north and south segments of the Haul Road at Lake Cleone.

Additionally, regarding the section north of Ward Avenue, in the DPR preserve area, further review is needed regarding the designation of the Pacific Coast Bike Route. We encourage DPR to work with Caltrans to consider alternate trail alignments other than State Route 1, the goal being a Class I trail wherever feasible.

We thank you in advance for your consideration.

Sincerely,

melowen

John McCowen, Chair Mendocino County Board of Supervisors

cc: Jesse Robertson, Regional & Community Planning, Caltrans District 1 Fort Bragg City Council Mendocino Council of Governments State Assembly Member Wes Chesbro State Senator Noreen Evans Congress Member Mike Thompson

(46 of 124)

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

August 31, 2012

Renee Pasquinelli CA State Parks, Mendocino District 12301 North Highway 1- Box 1 Mendocino, CA 95460

SUBJECT: Review of the MacKerricher State Park Dune Rehabilitation Project proposal to restore ecosystem processes in the Inglenook Fen-Ten Mile Dunes Natural Preserve (Preserve) by: (1) removing up to 2.7 miles (4.3 km) of asphalt road and portions of the underlying rock base in foredune habitat; (2) removing two culverts and restoring the stream channels at Inglenook and Fen Creeks; (3) treating approximately 60 acres (24.3 hectares) of European beachgrass and other nonnative weeds; and (4) implementation of mitigation measures for impacts to wetland and rare plant ESHAs resulting from restoration activities.

Dear Renee:

Thank you for the opportunity to review the recirculated Initial Study and Mitigated Negative Declaration (IS/ MND) proposal you submitted for the above-described project, and for your flexibility in accepting our comments today. We additionally appreciate the opportunity you provided us last year on March 14, 2011 to walk the project area with you from Ten Mile River overlook south to Ward Avenue, at which time we also discussed with you our feedback and project concerns.

Prior to submitting comments, our staff reviewed related background documents prepared by your agency, including the 1977 document "Inglenook Fen: A Study and Plan" and the MacKerricher State Park General Plan that was approved by the State Parks and Recreation Commission in June 1995. While the MND also references a June 2005 General Plan document (page 35), we are unaware of a more recent General Plan document and believe this may be a typographical error. Additionally, we have not reviewed the 2007 document prepared by CA State Parks (CSP) entitled "Natural Resource Management Plan Inglenook Fen- Ten Mile Dunes Natural Preserve MacKerricher State Park Mendocino District," because following conversation with you and receipt of the document, we understand it remains in draft form and has not been formally reviewed or adopted at this time.

As we have discussed with you previously, our primary concerns with the project as proposed relate to direct, unmitigated impacts to public access. We additionally offer comments regarding the mitigation measures proposed for direct impacts to rare plant and wetland ESHA. The following comments are presented for your consideration:

Renee Pasquinelli, CA State Parks, Mendocino District MacKerricher S.P. Dune Rehabilitation Project Page 2

### ACCESS ISSUES

The Haul Road is a public access feature situated amongst open dune lands located east of the ocean and west of Highway One in MacKerricher State Park, and draws many visitors throughout the year. Because the project site is located between the first public road and the sea, new development at the site is subject to the Mendocino County LCP (certified in 1992) and the coastal access and recreation policies of the Coastal Act.

The Mendocino County certified LCP identifies several policies specific to the Haul Road within MacKerricher State Park. Land Use Plan (LUP) Policy 4.2-19 directs the Department of Parks and Recreation in part to "prepare a General Plan for MacKerricher State Park that provides access to Ten Mile River and Inglenook Fen at designated locations and subject to conditions necessary for preservation of the natural environment of the park." While CSP has prepared a General Plan document for MacKerricher State Beach (June 1995), the document has never been submitted to Mendocino County for adoption as an amendment to the Recreation Element of the Coastal Plan (LCP), and thus has not been subject to review or certification by the Coastal Commission. Therefore, the General Plan document may provide guidance however the Mendocino County certified LCP and the public access policies of the Coastal Act serve as the standard of review for any development subject to coastal development permit requirements.

Mendocino County LUP Policy 4.2.21 states the following:

The Georgia-Pacific Corporation haul road, under a special management agreement with the California Department of Parks and Recreation, presently provides weekend and holiday vehicular access to the long stretch of public beaches which extend from Fort Bragg north to Ten Mile River. <u>This private roadway</u>, which travels through the entire length of the MacKerricher State Park, should be acquired by DPR and incorporated into its management plan for the park, if at any time during the life of the local Coastal Plan the property owner decides to sell, trade or surrender this property. (<u>Emphasis</u> added)

The Coastal Act places high priority on the protection and maximization of recreation, and access to and along the coast is a key mandate of the Coastal Act. California Coastal Act, Section 30001.5 states in part as follows:

The legislature further finds and declares that the basic goals of the state for the coastal zone are to: . . .

(c) Maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resources conservation principles and constitutionally protected rights of private property owners.

Coastal Act Sections 30210, 30211, and 30212 require the provision of maximum public access opportunities, with limited exceptions. Section 30210 states that maximum access and recreational opportunities shall be provided consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse. Section 30211 states that development shall not interfere with the

Renee Pasquinelli, CA State Parks, Mendocino District MacKerricher S.P. Dune Rehabilitation Project Page 3

public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation. Section 30212 states that public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, adequate access exists nearby, or agriculture would be adversely affected.

The CSP declaration of purpose for MacKerricher State Park is stated as follows:

<u>The purpose of MacKerricher State Park is to make available to the people</u> for their inspiration, enlightenment, and enjoyment, in an essentially natural condition, <u>the outstanding scenic features and natural values</u>, <u>including</u> the coastline embracing offshore environs; the stretches of sandy and rocky beach; the headland bluffs; <u>the Ten Mile Dunes</u>; the marine terraces; the wetland habitats including <u>Lake Cleone and the unique Inglenook Fen</u>; the geology and plant and animal life; the significant archaeological and historical resources; and the scientific values therein. (<u>Emphasis</u> added)

The purpose of the MacKerricher State Park in this way shares a common vision with the Mendocino County certified LCP and the public access policies of Coastal Act. The June 1995 General Plan, which is referred to for general guidance, further endorses this shared vision on page 213 where it states "The environmentally-preferred alternative would have been the natural and cultural resource protection priority alternative (2). However, that alternative did not fully meet the goal of providing for the public use identified in project's statement of purpose. Therefore, the project proposed in the general plan is a combination of the natural and cultural resource protection priority and public use priority alternatives."

However, the current proposal to remove the northern portion of the Haul Road is inconsistent with these policies. Anecdotal information suggests the Haul Road is widely used by the public, and stream crossings at Inglenook and Fen Creeks presently afford the public a safe alternate access to and along the coast during the winter time when high storm events make shoreline access more dangerous for recreationists. The paved portions provide access to bicyclists and people with strollers. The current proposal to remove the road base and surface of the Haul Road in those areas described in the MND, and the removal of culverts at Inglenook and Fen Creeks interferes with the current intensity of use of the project area by recreationists, and will effectively reduce public access to this area once completed. While the MND indicates on pages 116 and 117 that the proposed project would not increase or expand recreational facilities, the MND does not document how the project will affect public access as it relates to the removal of the haul road and stream crossings that currently afford the public winter access. The MND does not provide mitigation measures to replace this public access feature with alternate public access that is commensurate with the paved access and stream crossing features proposed for removal.

While we recognize the delicate balance of protecting sensitive coastal resources, the proposed project must also balance the requirements to protect and maintain existing (or

Renee Pasquinelli, CA State Parks, Mendocino District MacKerricher S.P. Dune Rehabilitation Project Page 4

provide equivalent) public access, consistent with both the Mendocino County certified LCP policies that include but are not limited to LUP Section 3.6 and LUP Policies 4.2-19 through 4.2-21, and the public access policies of the Coastal Act, including Sections 30210, 30211, and 30212.

## **BIOLOGICAL RESOURCES**

The MND indicates that the east side of a culvert at Fen Creek is overgrown with willow, and includes a proposal to remove a rusted culvert from Fen Creek and restore natural stream flow at Fen Creek and Inglenook Creek through the removal of culverts. The June 1977 Inglenook Fen Study indicates that "Inglenook Fen...was formed by the blockage of Fen Creek by coastal sand dunes. The fen is undergoing primary or geologic succession towards a fen-carr." In addition to addressing the impacts to public access resulting from removal of the stream crossing as described above, please clarify how exposing Fen Creek to stream flow as proposed will maintain the integrity of the established fen/fen-carr system.

We appreciate the efforts to improve habitat for sensitive biological resources and the efforts to address mitigation for impacts to sensitive resources that may occur during proposed restoration activities. The mitigation proposal includes in part a proposal to remove weeds for a 5-year period. The time-certain maintenance period does not address site-specific variables that could affect the success of weed management at the site. While the mitigation plan does discuss adaptive management as a component of the project objectives, the mitigation plan does not clearly document whether supplemental years of weed removal (or rare plant/ wetland ESHA establishment, for that matter) will occur if success is not achieved within the specified time. Mitigation and monitoring should therefore specify how mitigation will continue until the success criteria have been satisfied, rather than the termination of mitigation measures upon a particular date.

Thank you for the opportunity to provide comments on this document. Should you have any questions, please call me at (707) 445-7833.

Sincerely,

SIGNATURE ON FILE TAMARA L. GEDIK

Coastal Program Analyst

cc: Linda Locklin, Statewide Coastal Access Program Manager Abbey Stockwell, Mendocino County Planning and Building Services, Fort Bragg August 10, 2012

Ms. Renee Pasquinelli Senior Environmental Scientist California State Parks Mendocino District 12301 North Highway 1 – Box 1 Mendocino, CA 95460

### Subject: Draft Mitigated Negative Declaration for MacKerricher State Park Dune Rehabilitation Project

Dear Ms. Pasquinelli:

As you know, the City of Fort Bragg has spent many years pursuing the Fort Bragg Coastal Trail project on a 130-acre parkland property adjacent to MacKerricher State Park. Once complete, our community will have a seamless corridor of accessible parkland from Noyo River to Ten Mile River. City staff has worked closely with State Parks in planning our project and together we prepared an Environmental Impact Report which addressed both the Fort Bragg Coastal Trail and proposed improvements to State Park's Glass Beach headlands property. The City values its on-going partnership with State Parks and we are keenly interested in projects affecting coastal access in MacKerricher State Park. We appreciate this opportunity to comment on the Draft Initial Study – Mitigated Negative Declaration for the Inglenook Fen-Ten Mile Dunes Natural Preserve MacKerricher State Park Dune Rehabilitation Project.

The City offers the following general and specific comments on the draft Initial Study/Mitigated Negative Declaration (IS/MND):

- 1. The IS/MND is challenging to read and interpret as information about specific impacts, associated mitigations and monitoring measures is scattered throughout the voluminous document. It would be helpful to incorporate summary information from the attached Appendices and specific mitigation measures into the text of the IS/MND.
- 2. In Section 2.8 "Visitation to MacKerricher State Park", it would be useful to data regarding visitation to the Ten Mile Dunes area and the segment of the Haul Road which will be removed. An electronic counter could be placed at the northern terminus of the Haul Road near the Ten Mile Bridge to determine the level of visitor use of this feature. Absent such information, it is not possible to determine the level of impact that removal of the Haul Road might have on public access to the reserve and coastal access and, consequently, it is difficult to evaluate the sufficiency of mitigation measures. This section also contains a conclusive statement that "The Coastal Trail...runs along the shoreline at the beach and would not be permanently affected by the project." While the project may not physically
affect the Coastal Trail/beach, removal of the Haul Road surface along Ten Mile River may adversely affect visitor access to the shoreline and the Coastal Trail.

3. Section 2.11 "Related Projects" should mention the Fort Bragg Coastal Trail and Restoration Project.

#### 4. **Biological Resources**

- IS/MND Page 63. The discussion of Howell's Spineflower (*Chorizanthe howellii*) does not clearly identify the impact of the removal of the Haul Road on this species, though it is clear from the map in Appendix A.3 and the narrative in Appendix A.4, that there are significant populations of the endangered spineflower adjacent to the Haul Road. The discussion of impacts on page 8 of Appendix E-2 references the potential loss of plants during construction activities but does not address the loss of suitable habitat associated with the removal of the Haul Road. While an 8:1 mitigation ratio is proposed on page 21, proposed mitigation measures do not address the loss of stabilized soil which is necessary for the plant's propagation and growth. Similarly, while an objective of successful establishment of the spineflower in "novel habitat" at a 4:1 ratio is referenced on p. 27, it is not clear that there is sufficient "novel habitat" to accomplish that objective.
- IS/MND, Page 64. The discussion of Menzies' Wallflower (*Eryisimum menziesii* ssp. *Menziesii*) has similar issues to those noted above regarding Howell's Spineflower. The IS/MND notes that this population is also located in stabilized soils along the Haul Road, but offers no mitigation measures to address the loss of habitat due to removal of the Haul Road.
- The Special Status Plants map indicates that most of the special status plants are found only in stabilized soils along the Haul Road. The IS/MND should include a discussion of the ability of these plants to survive in a destabilized dune environment and identify other areas of stabilized soils. One possible consideration would be to remove the asphalt surface of the trail but retain the rock and gravel base as a way of retaining the stabilized soils along the Haul Road.

#### 5. Cultural Resources

S/MND Page 80-83. As noted on page 81, the project area has a very high degree of archaeological sensitivity. The narrative does not justify the finding of "Less than Significant Impact." Numerous mitigation measures are proposed that may lessen potential construction-related impacts, however there are no proposed mitigations to address impacts to archaeological sites associated with dune migration and shoreline recession once the Haul Road is removed. State Parks should consider leaving the base rock of the Haul Road in place as a protective cap for cultural resource deposits lying underneath and inland of the road. The MND includes a mitigation measure that requires the completion of a site specific avoidance plan (CULT-2 a). It would make sense to prepare the cultural resource study and avoidance plan prior to completion of the MND in order to ensure that cultural resource impacts are adequately addressed and to ensure that mitigation measures for other impacts do not themselves have impacts on cultural resource areas.

#### 6. Geology and Soils

 The report prepared by the Department of Conservation (Appendix E-4) concludes that the project would result in additional sand migration to the east resulting in additional transverse dune formation/height and impacts on drainage and vegetation patterns throughout the dunes. This warrants a more detailed analysis in the MND with regard to impacts on rare plants, wetlands and adjacent residences.

#### 7. Recreation

 IS/MND, Page 115. The discussion of impacts to Recreation should provide more detail about how the removal of the Haul Road would impact coastal recreational activities. The Haul Road is used by coastal residents and visitors to access this beautiful stretch of coastline. If the Haul Road is removed, visitors will likely traverse the sand dunes and stabilize dune faces with resulting impacts. One possible mitigation is for State Parks to dedicate an easement along the eastern edge of MacKerricher State Park to a land trust or Caltrans for the installation of a bicycle/pedestrian path.

Thank you for your consideration of these comments. If you have any questions, please don't hesitate to contact me at 707-961-1807.

Sincerely,

Marie Jones Community Development Director

cc. City Council City Manager Abby Stockwell, Mendocino County Planning and Building Services Rick Macedo, California Department of Fish and Game



Mendocino Coast Cyclists, Inc.

PO Box 742 Fort Bragg, CA 95437 www.MendoCC.org a pending 501c3 non-profit www.MendoCC.org

June 3, 2013

Abbey Stockwell, Planner Mendocino County Planning & Building Services 120 West Fir Street, Fort Bragg, CA 95437

RE. MacKerricher State Park Dune Rehab/Haul Road Removal (CDP #12-2012)

Dear Ms. Stockwell,

The Mendocino Coast Cyclists club strongly supports securing maintaining and restoring the MacKerricher Haul Road between Ward Avenue and Ten Mile River. We respectfully request that the portion of the dune restoration project description ("1" removal of asphalt and gravel base in three segments of the former Georgia Pacific Haul Road, totaling 2.7 miles") not be approved without a public process analyzing alternatives to its removal.

As we said in our letter to Major General Anthony Jackson in January, the MacKerricher Haul Road south of Ward Avenue is a huge recreational asset for Fort Bragg and surrounding areas. The opportunity to maintain and reconnect the neglected portions of Haul Road north of Ward should not be neglected. Visitors and locals alike could once again experience bicycling and walking along a beautiful portion of the Pacific Ocean, with nothing between them but duries, vast expanses and the freshest air arriving from the west.

Currently, because of the million dollar restoration of the Pudding Creek Trestle, we are able to hike and bike 3.6 miles from the south Trestle parking lot to where the blacktop ends just north of Ward Avenue. If the remnants of the original Hauf Road north of Ward Avenue were re-connected via a biking/hiking trail, siders and walkers would be able to enjoy an awesome wildemess experience of no cars, no buildings and no civilization all the way to the Ten Mile River, a distance of seven miles one way. This would be a beautiful and easy ride or walk for contemplation, exercise or to just get away from it all. No other city can offer such a complete get-away so close to downtown.

The extended trail would automatically become a part of the Pacific Coast Trail and the Pacific Coast Bicycle Route allowing hikers and bikers to avoid several miles of shoulder-less Highway 103. As time goes by such a natural, accessible experience becomes more and more difficult to find. We could have it here. Please help make Fort Bragg a destination for those who want to get away from it all, improve their health and peace of mind.

Mendocino Coast Cyclists encourages State Parks to analyze alternatives – via a public process – to the removal of the Haul Road north of Ward Avenue, including reconnecting the tost segments to the fullest extent possible so it may be enjoyed by walkers, runners, cyclists and equestrians and for many more years

Please feel free to contact us if we can help in any way.

Sincerely,

Mendocino Coast Cyclists Board of Directors

esident

Tom Charters, Treasurer

Amy W resid nn. Dave Wright, Secretary

Encl n/a

CC: Loren Rex, Superintendent, Mendocino County Sector; Noreen Evans, CA State Senator, District 2, Wesley Chesbro, CA State Assemblyman, Mendocino County Board of Supervisors; Visit Mendocion County, Chamber of Commerce, Tamara Gedik, CA Coastal Commission (54 of 124)



PHILLIP J. DOW, EXECUTIVE DIRECTOR

Telephone 707-463-1859 Fax 707-463-2212 www.intendecine.cog.org

August 20, 2012

Charles Fielder Director of District J California Department of Transportation P. O. Box 3700 Eureka, CA 95502-3700

Loren Rex Superintendent of Mendocino District California Department of Parks & Recreation 12301 N. Highway One - Box 1 Mendocino, CA 95460

> Re: Designation of the State Parks Haul Road from Ward Avenue at Cleone south to Elm Street in Fort Bragg as a segment of the Pacific Coast Bike Route in Mendocino County

Dear Director Fielder & Superintendent Rex:

We are asking the Department of Transportation (Caltrans) and the Department of Parks and Recreation (DPR) to work together to align the Pacific Coast Bike Route onto the part of MacKerricher State Park Haul Road that does not reside in a preserve, that is, the segment from Ward Avenue south to Elm Street in Fort Bragg.

Designating this trail section as the Pacific Coast Bike Route would ensure pedestrians and cyclists will have long-term enjoyment of 3.7 miles of high-quality Class I trail, if DPR agrees to work with other agencies to plan for the trail's repair and preservation. A high-quality Class I trail could be created there.

In 1976, California law established a Pacific Coast Bike Route along the length of California, part of a larger route that runs from British Columbia to Mexico. Each year, thousands of cyclists ride this route, passing through the Mendocino Coast.

Recognizing the Pacific Coast Bike Route's popularity with cyclists, MCOG and Caltrans are currently evaluating options to improve safety along the 105 miles that reside on State Route 1 in Mendocino County. One option to improve safety, suggested in these and other venues, is to relocate the Pacific Coast Bike Route onto Class I trails where possible. We agree, Mr. Charles Fielder Mr. Loren Res Page 2 August 20, 2012

If the Haul Road is designated as the Pacific Coast Bike Route, we see multiple opportunities to fund repairs and enhancements to this valued public asset, all phases from planning grants to construction dollars. We believe the County of Mendocino, the City of Fort Bragg, MCOG, and Caltrans all would be willing partners with DPR in planning and identifying funding opportunities to repair and enhance the Haul Road, so that the public can use and enjoy this route for many decades to come.

We feel this request is timely since DPR has received a \$395,000 grant to address hydrological changes at Lake Cleone, including traffic flow impacts, trail impacts, and issues of environmental concern. As this grant is scoped, we would like to see this project integrated with plans for the Pacific Coast Bike Route, and the need to provide ADA-compliant access to the north and south segments of the Haul Road at Lake Cleone.

As to the section of the Haul Road north of Ward Avenue, in the preserve, we encourage DPR to work with Caltrans to consider alternate trail alignments other than State Route 1.

Finally, we will appreciate your timely consideration of this important designation. Please do not hesitate to contact Executive Director Phil Dow for additional information regarding MCOG's interest and role in safety improvements for the cycling public, at (707) 463-1859.

Thank you for your consideration. We look forward to working with you and other agency partners to save and enhance this valued public asset.

Sincerel her

Dan Gjerde, Chair

jmo

cc: Jesse Robertson, Regional & Community Planning, Caltrans District 1 Fort Bragg City Council Supervisor Kendall Smith and Mendocino County Board of Supervisors State Assembly Member Wes Chesbro State Senator Noreen Evans Congress Member Mike Thompson under the road surface has occurred (assuming such information would be presented) or adjacent to the road surface, speculation to the environmental possibilities cannot be mitigated, and the potential exists to expose not only workers but also nearby residents and California State Parks employees to possible exposure to airborne contaminates. The plan as presented further proposes the hauling and subsequent dumping of this excavated material to holding areas, potentially endangering residents along the routes and at the final destinations to exposure as well as the environments at these final locations. As the plan suggests that this material could be repurposed at numerous locations it seems that a full review of this potential issue must be investigated prior to the commencement of work. This is a serious concern which had not been addressed by this MND or the application; research shows that examples of this form of contamination have occurred around the globe.

3) As demonstrated in the report and shown on the included maps, there are two environmentally protected plant species that reside in large part only in close proximity to the haul road. It is possible that these plant species exist in this environment as a direct result of the protection and groundwater support provided by the ballast of this road surface, or the protection afforded by the ballast from natural forces (wind, burial, and erosion). On bluff outcrops and trails to the south near the southern boundary of the project area there appears to be a strong correlation between bedrock fracturing, rubble (shell mounds), or foot-trail collection of moisture and the presence of these endangered plants. Further to the north, where Haul road erosion has occurred, ballast remains now buried beneath sand and is also providing habitat for these endangered

species.



Review of the material available in this MND fails to address any potential relationship between the occurrence of these plants or the possible damage which would occur to the largest known concentration of these endangered plants due to the destruction of the environment provided

by the haul road ballast and as such the removal of the haul roads effect on that habitat. Reference is made to the presence of non-natural road surface (asphalt, chip-seal), but removal of the associated road ballast, as suggested in 2) two above would be consistent with the destruction of habitat. As cited in CAL. PRC. CODE § 5019.71 "Habitat manipulation shall be permitted only in those areas found by scientific analysis to require manipulation to preserve the species or associations that constitute the basis for the establishment of the natural preserve". Since no scientific study of the actual subsurface environment necessary to support these endangered species is cited, and as results from the attempted growing of these endangered species is not reported, nor has it occurred in non-monitored environments, a significant threat to the existence of the species could occur as a result of the actions proposed in this MND plan. It would seem that a serious scientific study of this observation should be conducted prior to the removal of what could be the best habitat for these species, thus explaining the areal limit of these species in the area to be effected by this MND, and should be reported as part of any future document.

4) Review of the original survey documents( from the railroad survey circ. 1917) and currently available digital elevation modeling (NASA based products) shows that there has been an accretion approaching +/\_ 300 feet toward the shore line over much of the length of the rail line since it was originally surveyed in the project area. Due to the fact that logging at this time was in its infancy and minimal upstream erosion had occurred, it would seem to be an excellent starting point for reviewing the effects of both sand accumulation and invasive plant encroachment on the project area's topography, since the invasive plants would not yet have arrived in the area. Over most of the area the Haul road actually lies landward of the current lateral dunes created by the encroachment of non-native plants and over 350' from the mean



sea level line. Using elevation data for the Haul road and mean sea level as a reference it becomes easy to calculate what beach front slopes would be in the absence of the lateral dunes. Most of the slopes would be less than 5 degrees over 350' perpendicular to the shore, relatively flat by comparison to the areas to the south where endangered plants and birds have been mapped and or observed. It is therefore questioned why this road, which would act as a barrier to erosion of State Parks land and potential damage to landward properties should be removed, if removal of the invasive grass species alone has the desired effect on topography. It would appear to be a direct conflict with CAL. PRC. CODE § 5019.71 if removal of the haul road led to not only the destruction of the previously mentioned endangered species habitat but also the erosion of potential beach front habitat for endangered animal species.

5) The plan as submitted is broken into different parts, yet no timeline has been provided to show the expected completion date for each phase, the start date of the subsequent phase or the time period separating various phases for observation of results, leaving the casual observer to believe that this operation will be conducted with no review of the success or damage which may be occurring to the environment as a result of each individual part of the proposed operations.

While I am extremely supportive of the efforts of the California State Parks Department to preserve our natural heritage, it is also imperative that California State Parks Department should be held to the same or a higher standard that we would require of any private entity.

Eric Freeman P.O. Box 2390 Mendocino, CA 95460

### Report on Hazardous Waste in support of proposed Special Conditions 11a, 11b, and 11c of the proposed modifications of Coastal Development Permit #12-2012

This report is supplied by Eric Freeman as a rebuttal to the California State Parks MacKerricher Dune Rehabilitation Project Coastal Permit #12-2012, and as supporting documentation as part of the WMAC permit appeal.

I am a retired, formerly state-licensed Geophysical Engineer, with a degree in Geophysical Engineering (Tau Beta PI) from the Colorado School of Mines, and over 32 years of experience in field. I have closely examined the documents and supporting documents contained in the INGLENOOK FEN – TEN MILE DUNES NATURAL PRESERVE Mitigated Negative Declaration (MND), and referenced documents available. I offer the following comments in rebuttal to information presented to the Mendocino County Coastal Permit Administrator by California Department of Parks and Recreation (CDPR) in support of permit #12-2012.

1) There is no known hazardous contamination of the area where the haul road is located, and there is no indication that the project area contains any hazardous waste, debris, or soils. However, it is possible that wooden structural elements or ties from the original rail line remain within the historic road alignment and make up parts of the road base and creek crossings. These materials may consist of pressure-treated wood, which contains several potentially hazardous materials (e.g., arsenic), or (Sic.) weatherproofed in some manner possibly with creosote, a human carcinogen. (MND pg. 95)

**Rebuttal:** This statement is patently incorrect as it relates to known contamination of the area, and as to indications that the project area contains hazardous waste, debris, or soils. Creosoted wooden structural elements are plainly visible from the Haul Road on the ground and are stacked in the area, as are the remains of treated fence posts cut and left in contact with the surface in close proximity to both Inglenook Creek and Sand Hill Lake. While no in-place structural elements are now visible in locations where the Haul Road has eroded, pictures after the 1983 storm clearly show that such structural elements are present.



#### **Hazardous Waste Report**

Maps from the original installation of the rail line show location and information on the two trestles: One at Sandhills Lake – 165 feet long with 11 Bents, and the second at Inglenook Creek - 463 feet long with 30 Bents, which still remain beneath the asphalt surface. Because it was built as a logging branch, this rail line was not subject to regulation under the Interstate Commerce Act or by the California Public Utilities Commission. The railroad was just an extension of the lumber milling process. Ground-penetrating radar summaries acquired from bid documents also indicate the potential for additional buried objects, and what is assumed to be sand, but may actually be flyash.

#### 6.0 SUMMARY

Based on our interpretations of the GPR data obtained at Locations 1 through 12 and along Lines L1 and L2, the road varies in width from about 16- to 20-ft and the road base ranges in thickness from 0.5- to 1.4-ft. Beneath the road base, the ballast material is approximately 0.4- to 4.1-ft thick. The GPR data also suggests that the composition of the ballast is probably highly variable throughout the length of the road. The fill beneath L1 and L2 ranges in thickness from 2- to 5-ft along Line L1, and 3- to 7-ft beneath Line L2. Based on the history of this road and evidence in the field, the fill beneath L1 and L2 may contain gravel, ballast, and targer cobbles and rock. However, the GPR data also suggests that the base may consist of dune sand. In addition to these findings, the GPR defined evidence that there may be additional buried objects beneath the sides of the road. These include objects associated with past uses of the right-of-way, such as discarded railroad ties and/or former utilities, or with natural objects such as trees and wood debris. Table A below summarizes the interpreted width of roadway materials and average material thickness for each GPR profile location.

Railroad ties which are currently exposed (off the Haul Road to the east on CDPR managed property, and in close proximity to Inglenook Creek) can be traced on aerial imagery back to 2002, when it appears they may have been uncovered by sand movement. Earlier satellite images and California Coastal photography fail to identify them, showing only sand mounds at their location. Photos from July, 2013 and reproduced low-angle aerial photos on the next page show the location of this pile relative to Inglenook Creek. Vegetation growing from the pile provides an idea as to the length of time it has been exposed. This material was plainly visible during the time the area was examined for the various different reports cited in the MND; however no action was undertaken to remove the waste, in direct violation of Federal and State Hazardous Material Codes.

In addition to the visible railroad ties below, there are large amounts of scattered fence posts which have been sawed off and left in direct contact along the length of the post with the surface. It is believed these posts were sawed and left as part of a predatory bird control operation by CDPR or an organization working with CDPR, in an effort to remove perching points for ravens and other known predators of the Western Snowy Plover. These fence posts and creosoted ties are from an era when the primary treatment included arsenic, copper, chromium, or creosote: These substances can show high fish-toxicity, in addition to being categorized as listed below:

(40 CFR Parts 261): Pentachlorophenol is F032. Creosote is F034. Treated wood with arsenic or chromium is F035.

#### Hazardous Waste Report





Treated Wood visible on the ground surface in Project area.

The handling of these materials is controlled by:

§ 67386.4 Handling Requirements

Treated wood waste shall be handled in accordance with all of the following requirements:

(a) The treated wood waste shall be managed so as to prevent scavenging.

(b) The treated wood waste **shall not be disposed of, except as allowed** pursuant to section 67386.3.

(c) The treated wood waste **shall not be burned**, **recycled**, **reclaimed**, **or reused**, except in accordance with the applicable requirements of chapter 6.5 of Division 20 of the California Health and Safety Code.

(d) The treated wood waste <u>shall not be stored for more than 90 days</u> and, when stored, is <u>protected from run-on and run-off, and placed on a surface sufficiently impervious to prevent</u> <u>contact with and any leaching to soil or water.</u>

(e) The treated wood waste shall not be mixed with other wood waste prior to disposal.

(f) The treated wood waste shall be handled in a manner consistent with all applicable requirements of the California Occupational Safety and Health Act of 1973 (Chapter 1 (commencing with Section 6300) of Part 1 of Division 5 of the Labor Code), including all rules, regulations, and orders relating to hazardous waste.

The Department of Toxic Substances Control (DTSC) sampled and analyzed three types of treated wood pursuant to California Code of Regulations (Cal. Code Regs.), Title 22, Section 66262.24. Wood is typically treated with chemical preservatives to improve its durability. Arsenic, chromium, copper, pentachlorophenol, and creosote are all used as preservatives in wood. Unfortunately, these chemicals are also known to be toxic or carcinogenic, and certain levels of exposure to these chemicals can pose serious risks to human health and the environment. The Department of Toxic Substances Control (DTSC) has completed a study of chemicals found in treated wood in order to properly manage wood waste. The results of this study show the toxic characteristics of selected copper-based treated wood products and out-of-service creosote-treated railroad ties.

Wood products treated by ACQ-C and CA-B contain high level of copper, which exceeds California Total Threshold Level of Concentration and Soluble Threshold Level of Concentration regulatory criteria. Therefore, wood products treated by ACQ-C and CA-B have the potential to be a California hazardous waste when disposed.

<u>Creosote-treated railroad ties contain materials toxic to fish</u>. Sampled out-of-service creosotetreated railroad ties have the potential to fail the California regulated acute aquatic 96-hr LC50 bioassay. Therefore, out-of-service creosote-treated railroad ties have the potential to be a non-RCRA hazardous waste when disposed.

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The determination of whether treated wood waste is hazardous waste should be conducted in accordance with the California Code of Regulations (Cal. Code Regs.), Title 22, Division 4.5, Chapter 11. It is the generator's responsibility to determine if a waste is a hazardous waste. The generator must determine if the waste exhibits hazardous waste characteristics by testing the waste according to the approved methods, or applying knowledge of the hazards characteristic of the waste in light of the processes that the materials have undergone. This study did not try to classify any individual waste stream. Although waste classified as hazardous is generally subject to uniform regulatory management requirements (Cal. Code Regs., Title 22, Chapter 12 through Chapter 20), DTSC developed alternative management standards for treated wood waste (Cal. Code Regs., Title 22, Division 4.5, Chapter 34) that adjusted for the unique circumstances associated with treated wood waste. Treated wood waste that is removed from utility services, or classified as Resource Conservation and Recovery Act (RCRA) hazardous waste, is not eligible for the alternative management standards.

Additional concern exists because CDPR intends to remove the Haul Road and Railroad ballast without any prior testing, subsequent to either spreading it on road surfaces in the Ten-Mile River Watershed(CDP# 12-2012), or placing it in the Big River Quarry, in close proximity to the Big River Watershed (CDP# 12-2012, MND). In addition to airborne dust (from excavation operations and potential sifting operations to recover ballast or asphalt suitable for surface road use), this material, if transported to Big River Quarry, will travel on Highway 1 through the towns of Inglenook, Cleone, Fort Bragg, Caspar, and Mendocino.

This concern stems from three actions undertaken in the region by Cal/EPA all related to previous operations associated with the Fort Bragg Mill. :

- 1) <u>Flyash</u> from the mill dating from 1986 onward was land farmed and showed <u>high concentrations of</u> <u>dioxin.</u>
- 2) The DTSC investigated the CNW railroad (Skunk train) for the burning of <u>creosoted rail ties and</u> <u>improper storage of ties</u>. The result showed apparent <u>elevated levels for metals</u>, <u>polycyclic</u> <u>aromatic hydrocarbons and dioxin</u>.
- 3) The GP Mill site itself has been the site of ongoing cleanup activities associated with <u>dioxin</u>, <u>polycyclic aromatic hydrocarbons</u>, and PCB.

These related local discoveries are reason enough for concern, even before consideration of the potential pollution caused by the operation of an unregulated rail line, and all the hazardous materials routinely generated in the operation of these types of properties.

Prior to 1986, documentation as to the handling of flyash at the GP Mill is unavailable, although the plant was responsible for generation of power for its own use, as well as the city of Fort Bragg, from the early 1930's onward.

The Haul Road was constructed over a mere twenty-one days in 1949, including the removal of the existing rail lines. Ballast, trestles, and some ties are known to have been left behind. Thus the

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#### **Hazardous Waste Report**

potential that stored flyash and other disposables/refuse, as well as ties themselves, may have been buried as fill at trestle locations, or used as fill needed to expand the railroad grade to the new road grade, exists. Disposal practices during this time are known to have been less than environmentally sound.

Currently the most common solution is sequestration; either in place, or at a certified landfills, unless toxic levels are too high.

No plan exists to properly dispose of the wood waste material, which is toxic, or the ballast, if it does prove to be hazardous. This is an unacceptable approach based on negligent preconstruction investigation that must be remedied to ensure risks to public health, workers, and the environment are addressed. In addition, no consideration or planning exists for the potential introduction of invasive plants at disposal sites or the back-transport of invasive species to the project area.

As shown above and via presentations from other concerned citizens, these issues, and other environmental issues raised by the public to date, and as raised by the general public during the comment period for the MND, were either not addressed or not adequately addressed by CDPR, thus: <u>CDPR has violated Public</u> <u>Resources Code section 21080, effective September 16, 1983, and California Administrative Code, title 14, section 15070, promulgated effective August 1, 1983:</u>

"The existence of serious public controversy concerning the environmental effect of a project in itself indicates that preparation of an EIR is desirable. One major purpose of an EIR is ... to demonstrate to an apprehensive citizenry that the agency has in fact analyzed and considered the ecological implications of its action." (No Oil, Inc. v. City of Los Angeles, supra, 13 Cal.3d 68, 85-86, 118 Cal. Rptr. 34, 529 P.2d 66, fn.deleted.)

This principle is now codified in California Administrative Code, title 14, section 15064, subdivision (h) which provides: "In marginal cases where it is not clear whether there is substantial evidence that a project may have a significant effect on the environment, the lead agency shall be guided by the following factors: (1) If there is serious public controversy over the environmental effect of a project, the lead agency shall consider the effect or effects subject to the controversy to be significant and shall prepare an EIR."

It is requested that the County Board of Supervisors adopt:

<u>Special Condition 11(a).</u> [New]: Before the initiation of any project activities, a licensed industrial hygienist shall sample the waters in Fen and Inglenook creeks, and downstream from the culverts, as well as buried soils under the haul road to test for the presence of hazardous waste and toxic substances. Soil sampling shall include at least two locations at each stream crossing and additional samples at no less than one-quarter mile intervals along any sections of the road that will be removed or uncapped. The resulting report shall include an action plan that addresses material handling procedures, worker safety training, and disposal requirements for hazardous wastes subject to project disturbance. If buried hazardous wastes are present at levels that pose threats to workers, the public, or the environment, the action plan shall address how excavation and disposal must proceed. The report and action plan shall be approved by the California Department of Toxic Substance Control (DTSC) and the Mendocino County Department of Planning and Building Services (PBS) prior to implementation.

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#### **Hazardous Waste Report**

<u>Special Condition 11(b).</u> [New]: CDPR shall remove all hazardous materials presently exposed on the ground surface in the Preserve, including a large stockpile of ties present in the interior dunes south of Inglenook Creek. Removal of those contaminated surface materials shall be done in conformance with the action plan in Special Condition 11(a).

<u>Special Condition 11(c).</u> [New]: One year after remediation is completed pursuant to the approved action plan in Condition 11(a), the two streams shall be sampled for residual toxins, with the results reported to CDTSC and the Mendocino County PBS.

**REFERENCES CITED** 

Michael Petruska: Chief, Waste Treatment Branch April 15, 1996

BEST DEMONSTRATED AVAILABLE TECHNOLOGY (BDAT) BACKGROUND DOCUMENT FOR WOOD PRESERVING WASTES F032, F034, AND F035 U.S. Environmental Protection Agency

http://www.epa.gov/osw/hazard/tsd/ldr/wood/bdat\_bd.pdf

U.S. Environmental Protection Agency, Office of Solid Waste. SW-846 Test Methods for Evaluating Solid Waste. 3rd Ed., Volume 1B, Washington, D.C., U.S. Environmental Protection Agency. November 1986. (PB 88-239223)

http://www.epa.gov/epawaste/hazard/testmethods/sw846/online/index.htm

40 CFR Parts 261, 266, 268, and 271

http://www.wbdg.org/ccb/EPA/40cfr261.pdf

California Public Resources Code Sections 21080-21098

http://www.leginfo.ca.gov/cgi-bin/displaycode?section=prc&group=21001-22000&file=21080-21098

#### Report on erosion by Engineering Geophysicist Eric Freeman (2013b)

#### Report on Sand Movement (Erosion) in support of proposed Special Conditions 9g, 9h, and 9i of the proposed modifications of Coastal Development Permit #12-2012

This report is supplied by Eric Freeman as a rebuttal to the California State Parks MacKerricher Dune Rehabilitation Project Coastal Permit #12-2012, and as supporting documentation as part of the WMAC permit appeal. I am a retired, formerly state licensed Geophysical Engineer, with a degree in Geophysical Engineering (Tau Beta PI) from the Colorado School of Mines, and over 32 years of experience in field. I have closely examined the documents and supporting documents contained in the INGLENOOK FEN – TEN MILE DUNES NATURAL PRESERVE Mitigated Negative Declaration (MND), and referenced documents available. I offer the following comments in rebuttal to information presented to the Mendocino County Coastal Permit Administrator in support of permit #12-2012 by California Department of Parks and Recreation (CDPR).

The Ten- Mile River dune system is located in MacKerricher State Park (Mendocino County). Beginning in the mid-19th century and by the end of the 20<sup>th</sup> century most of the Ten- Mile River watershed had been logged and relogged. Heavy erosion followed this deforestation, and through the process of littoral drift, sediments from the watershed caused a dramatic increase in sand supply to the rivers, ocean, and thus the dune system (relative to predevelopment levels). In the 1920s, Highway 1 was inundated with sand in this area and had to be realigned. The shoreline accreted sand seaward, and by the 1950's the dunes were relatively stable. Off-road vehicles became popular, and by the 1970's extensive off-road vehicle use led to renewed landward dune movement. Numerous existing riparian swales were inundated; but in some cases vegetation was able to grow faster than it was being buried, eventually ending up on dune crests,; thus slowing the inward movement of sand. Almost every sand particle present today in the dune system made its way down the river, into the ocean, onto the beach, and across the beach to end up in its current location. Therefore an original "natural" condition in respect to these dunes cannot exist without transporting every single grain that experienced human induced erosion back to its original location in the watershed.

The size of a dune is mainly a function of sand supply: the larger the supply from the beach, the higher the dunes. Prevailing wind directions (NW, SW), beach width, longshore current, and time available to build a dune are part of the sand supply picture. Most important however is the sand availability. Sand dunes are eroded by the wind remobilizing sand and blowing it off of the dune, a process known as deflation, and by wave action in the nearshore environment.

The most common deflation feature is the blowout, a depression with a topographically flat floor, which lies below the elevation of the adjacent dunes. Blowouts are flat-floored because sand is blown away until the surface reaches the water table. The wet sand resists being blown away and the surface can become vegetated creating wetland areas. The faster the wind, the bigger the sand sizes that can be picked up and moved. The winnowing of light sand grains leaves behind a dark layer of heavier minerals.

Dune grass stabilizes the sand in which it is growing and the way the grass spreads will affect the shape of the dune. As a result of the clustering nature of some grasses, dunes that are dominated by this grass type may have gaps or overwash passes; other grass types may allow fewer gaps, forming long lateral foredunes. Lateral foredune beach ridges prevent or reduce storm overwash, except in the largest storms. Once grasses stabilize the dune line, additional plants take hold, particularly on the more protected landward side of the dune. Plants on and near beaches may need varying degrees of protection from wind and salt spray. Under natural conditions, the types and density of vegetation are indicators of the age and length of stability of dunes. Grasses may be established within a season, but shrubs may take 10 to 20 years to become established. Thus by reviewing current vegetation we can achieve some idea of beach dune stability.

There are many points to make relative to sand movement and the Ten Mile Inglenook Fen MND, which this permit appeal process addresses. The following are selected rebuttals to comments within the MND, or supporting documents, with the corresponding requested permit actions sought by this appeal. These requested permit actions have historical county or statewide legal basis, and are sited from legal opinions such as:

SUNDSTROM v. COUNTY OF MENDOCINO Robert T. SUNDSTROM, Plaintiff and Appellant, v. COUNTY OF MENDOCINO et al., Defendants and Respondents. Harold K. MILLER, Real Party in Interest. 202 Cal.App.3d 296, No. A038922. Court of Appeal, First District, Division 1, California. June 22, 1988.

>1) Removal of the road and culverts, in conjunction with the removal of non-native vegetation on the windward side of the road, will eliminate the barriers to natural sand movement within the Ten Mile Dunes. (MND pg. 15 Sand Grain Analyses MacKerricher State Park Trinda L. Bedrossian, PG 3363, CEG 1064, CPESC 393 Senior Engineering Geologist, Specialist California Geological Survey )

**Rebuttal:** Removal of beachgrass will indeed eliminate a barrier to sand movement and thus increase sand movement (erosion). However, there is little evidence that the road and culverts are a barrier to sand movement.

Rather, there is a great deal of risk that undesirable consequences will far outweigh any benefit from beachgrass, road and culvert removal: Inland sand movement, environmental hazards associated with removal of untested ballast, the burial and destruction of endangered plants and endangered plant habitat, the increased exposure to inundation with seawater (and its effects on both plants and topography), and the introduction of both non-native material and non-native plants at proposed disposal sites - including Big River Quarry - via the transport and spreading of recovered Haul road-surface and ballast. Another highly-probable unintended consequence is the accidental introduction of new potentially invasive flora (Pampas Grass is a prime example) and fauna transported back from proposed disposal sites to the Ten Mile-Inglenook Fen Preserve.

These consequences are not addressed by the MND, thus there is no proposed mitigation. This appears to be not only a violation of the Big River Watershed Restoration MND procedures, but also risks transport and introduction of non-native material and non-native plants to areas outside of the current scope of the Ten Mile–Inglenook Fen Preserve.

Until native vegetation can be established after beachgrass removal, much of the available sand will move landward, filling wetlands and resulting in both increased dune movement and dune height in the backdune environment. These effects can already be seen using available satellite images acquired before and after nonpermitted beachgrass removal projects. These effects will be shown in a PowerPoint presentation.



Haul Road black line Base image 2013 Terra Metrics Beach and sand dune extents in brown from 1956 aerial image

>2) The presence of the road (including the Ten Mile Railroad) and culverts within the project area has prevented the natural formation of foredunes along Ten Mile Dunes for more than 100 years. As documented in detail by Maslach (2004) and Wollenberg (2004), sand has continued to build up along the majority of the west side of the road. This, in effect, has created one long transverse dune on the windward side of the road, and an equally long deflated area east of the road, except where disrupted by the drainages of Inglenook Creek and Fen Creek. (MND pg. 14 Sand Grain Analyses MacKerricher State Park Trinda L. Bedrossian, PG 3363, CEG 1064, CPESC 393 Senior Engineering Geologist, Specialist California Geological Survey)

**Rebuttal: from the MND:** A review of aerial photographs taken between 1981 and 2010 (CDF, 1981; WAC, 1996 and 2000; USDA, 2010) indicates relatively minor changes have occurred in vegetation cover and drainage patterns along the road during the past thirty years. Vegetation appears to be more well-established farther inland within the northernmost dune lobe than it was in 1981. However, there appears to be less vegetation immediately adjacent to the road than in 1996, both in the northern and southern lobes of the dunes. This may be related to: (1) the accretion of sand and/or the recent removal of non-native vegetation on the west side of the road in the northern lobe of the dunes, and (2) the partial removal of the road itself due to wave action in the two southernmost lobes, particularly during the 1998 El Nino storm events (Lewis, 1998). (From MND pg. 14 Sand Grain Analyses, MacKerricher State Park Trinda L. Bedrossian, PG 3363, CEG 1064, CPESC 393 Senior Engineering Geologist, Specialist California Geological Survey )

**Rebuttal:** Review of photographs from the California Coastal Records Project from the years 1972 and 1979 show that in areas not affected by continuous beachgrass accumulation at that time, minor foredunes were present primarily in the shadow of driftwood along the shoreline west of the haul road, and in the wind shadow of isolated patches of native vegetation, or beachgrass that had not yet coalesced into a beach ridge. Sand coloration allows tracking of deflation paths (denser dark minerals are less capable of wind borne transport) between these initial foredunes: These initial foredunes appear unaffected by the presence of the then-intact Haul Road. Observation shows that early beachgrass density is coincident with proximity to sand sourcing and thus availability (i.e. near the river, northern area), and appears to have initially been present nearest the Haul Road. The primary source of sand accretion is not the Haul Road, but rather beachgrass introduction and subsequent spread, primarily west of the Haul Road initially.



1979 photo Inglenook creek

2002 Inglenook creek

>3) A comparison of photographs of the Ten Mile foredunes from pre-1980 through 2011 demonstrates the effect of European beachgrass on dune structure. Figure 3 BIO-01, a photograph taken in 2001, shows the steep seaward dune faces formed from Ammophila growth. Figure 3 BIO-02 is a photograph from several decades earlier, showing a low- to non-dune profile in the absence of Ammophila (MND pg. 55).

**Rebuttal:** As demonstrated in the second rebuttal (above), these photos indicate that the original rail line and the subsequent haul road - both of which were constructed at or slightly above the original ground surface - have had little to no effect on dune creation west of the haul road, despite being present during periods of maximum

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upriver deforestation and subsequent sand availability. The major agents in lateral foredune formation (beach ridges) have been the introduction and spread of beachgrass and the downstream migration of sediment loads from deforestation during flooding events (sand availability).



Figure 3. BIO-02 (left): Ten Mile Haul Road, pre-1980, prior to European beachgrass invasion, and Figure 3. BIO-03 (right) demonstrating recovery of dune mat vegetation in 2011 following removal of beachgrass

Historic photo printed with permission from the collection of the Fort Bragg - Mendocino Coast Historical Society.

#### Photos from MND

> 4) Areas formerly dominated by European beachgrass, now comprised of elements of native dune vegetation types (e.g., dune mat plant associations), <u>maybe considered</u> as sites for the implementation of compensation measures for project impacts on native vegetation or special-status plant species. Beachgrass removal, as part of the project, <u>will represent partial compensation</u> for impacts rendered to native vegetation within the project area, and rehabilitation of habitat from Ammophila-dominated stands to native vegetation cover will be implemented, monitored, and evaluated as one component of the project Mitigation, Monitoring, and Restoration Plan (Appendix E.2) and its objectives. (MND pg55)

**Rebuttal:** While the current project seeks permitting for beachgrass (Ammophila) removal as a portion of the current project, beachgrass removal <u>– including the use of herbicides</u>, has occurred sporadically over the last 20 years without permits, or environmental reporting, or monitoring, or mitigation. Without any mitigation for this previously non-permitted removal (such as the replanting of native species currently envisioned as mitigation), and without any monitoring or evaluation, or an environmental study of the results from that non-permitted removal, it is impossible to predict with any assurance the results of the current proposal. Rather, the current project permit request starts from a time point that is a direct result of previous non-permitted actions, without consideration for the loss of habitat and the effect on animals, plants, and local communities incurred to date by the previous non-permitted activities. Previous actions by CSP, such as the non-permitted removal of beachgrass, and the effects of Haul Road removal due to neglect and acts of nature, have not been studied - despite CSP's own General Mitigation Plan Goals below (fig1.from MND):

Figure 1. A diagram illustrating the components of the adaptive management process.



General Mitigation Plan Goals

The goals of this mitigation, monitoring, and restoration plan are as follows:

>5) Natural coastal dune formation processes are likely to be re-established, including the formation of foredunes perpendicular to the shoreline along the west side of the three main dune lobes.(MND pg. 15 Sand Grain Analyses MacKerricher State Park Trinda L. Bedrossian, PG 3363, CEG 1064, CPESC 393 Senior Engineering Geologist, Specialist California Geological Survey )

**Rebuttal:** Analysis of post-1983 El Nino aerial photographs shows no generation of significant lateral foredunes in areas west of Haul Road remnants, where the haul road has been absent for over 30 years, and beachgrass has been minimal to nonexistent.

Embryonic transverse dunes perpendicular to the Haul Road are present in some areas to the north where beachgrass had been previously removed, however these initial transverse dunes now suffer less sand availability for dune building, due to better foresting practices in the Ten Mile river watershed since the 1950's, and the partial flushing of accumulated sand stored in the river during the El Nino events of 1964, 1983, and 1998, and the lack of reintroduction of native plants.

Additionally, the successful non-permitted removal of beachgrass in some areas has changed the local topography and thus the wind patterns, leading to the landward transport of previously beachgrass-sequestered sand; this is in essence, erosion. This erosion and sand movement has resulted in the burial of endangered plant

species and wetlands inland, and an influx of sand to the back dunes resulting in increased sand dune movement and sand dune height.

## >6) As a result of these natural processes, more sand is likely to blow inland (nearshore) over the short-term, especially in the northern lobe.(MND pg. 15 Sand Grain Analyses MacKerricher State Park Trinda L. Bedrossian, PG 3363, CEG 1064, CPESC 393 Senior Engineering Geologist, Specialist California Geological Survey )

**Rebuttal:** Analysis indicates this statement is true not only for nearshore, but also for inland dunes, as wind patterns change in response to the removal of beachgrass and storm surges alter the foredunes. For the previously beachgrass-stabilized foredunes west of the Haul Road where beachgrass has been removed through non-permitted activities to date, and as perpendicular foredunes form behind beachgrass remnants and natural vegetation/debris, swales must also form where beachgrass has been removed; this will result in the landward movement of previously beachgrass-encapsulated sand present in these deflation tunnels, which will then be inundated by storms and turn into overwash passes.

Once grasses stabilize the dune line, additional plants take hold, particularly on the more protected landward side of the dune. These plants need varying degrees of protection from the wind, salt spray, and sand movement to survive. Under natural conditions, the types and density of vegetation are indicators of the age and length of stability of dunes. Grasses may be established over short periods of time while shrubs can take 10 to 20 years to become established.

>7) The addition of sand will change the configuration of the dunes as they migrate to the east (i.e., additional transverse dunes could develop and/or grow in height farther inland), the nature of the vegetation, and the drainage patterns throughout the dunes. (MND pg. 17 Sand Grain Analyses MacKerricher State Park Trinda L. Bedrossian, PG 3363, CEG 1064, CPESC 393 Senior Engineering Geologist, Specialist California Geological Survey )

**Rebuttal:** Analysis indicates this statement is also true both nearshore (erosion) and inland (dune building) as wind patterns change in response to the removal of beachgrass-stabilized dunes, foredunes west of the haul road will also change in configuration and size. Areas with established vegetation will see less dramatic effects than those exposed to unbroken wind patterns.

>8) Drifting sand has provided substrate for establishment of dune mat along approximately 30% of the remaining length of road in the Preserve. Along with nascent dune mat forming on sand drifts across the road, a considerable area of this alliance could be directly affected – crushing or removal of individual plants, burial, and so on – by project activities along either side of the road. Up to about 30 acres of dune mat has been estimated for potential project-related impacts, although the actual area affected is likely to be much less. (MND pg. 59)

**Rebuttal:** This statement supports rebuttal contentions and observations that the Haul Road prior to beachgrass invasion and natural removal (via storm damage), and that the Haul Road, is not an obstacle to sand migration, as sand is currently accumulating across it.

>9) Manual removal of European beachgrass comprises a significant portion of the project proposal. As demonstrated in areas cleared of beachgrass to date, the beachgrass alliance displaces native plant communities, especially those nested in the broad Abronia latifolia—Ambrosia chamissonis Alliance. These native-plant

dominated alliances recover rapidly upon removal of Ammophila. Losses of small portions of native plant alliances during haul road de-construction will be compensated through the restoration of natural dune-forming processes and the eventual recovery of native plant communities. (MND pg. 55)

**Rebuttal:** It has not been shown in the MND that this "eventual recovery" has actually occurred in areas where beachgrass has been previously removed by non-permitted activities. No reports have been included that offer any support for this recovery, or that detail the extent or geographic placement of native plant communities at any time prior to beachgrass invasion, Haul Road destruction from natural forces, or prior to non-permitted beachgrass removal efforts.

>10) Along the haul road edges, typical dune mat species composition has been modified by several non-native herbaceous species, including silver European hairgrass (Aira praecox), ripgut brome (Bromusdiandrus), brome fescue (Festuca bromoides), stork's bill filaree (Erodium cicutarium), rough cat's-ear (Hypochaeris radicata), California burclover (Medicago polymorpha), English plantain (Plantagolanceolata), and four-leaved allseed (Polycarpon tetraphyllum); Howell's spineflower (Chorizanthe howellii) also grows in abundance along the haul road edge in gaps between active sand drifts. This local weedy vegetation zone in the haul road edges tracks the local pattern of contamination of dune sand by fine sediment and soil <u>imported with the road base</u>. These weeds are normally excluded by dune sand substrate properties (MND pg.58)

**Rebuttal**: This statement <u>supports</u> contentions that Introduction of non-native material and non-native plants at fill disposal sites (Big River Quarry) and any other sites via the transport and spreading of recovered Haul road surface and ballast, will result in the spreading or introduction of non-native species. Such undesirable outcomes are not addressed by either the MND or listed mitigations, and appear to be not only a <u>violation of the Big River</u> <u>Watershed Restoration documents, but also CSP policies as to non-native plant introduction</u>. (Due to risks inherent in the transportation and introduction of non-native material and non-native plants to any area outside of the current Ten Mile Dunes –Inglenook Fen Preserve project.)

It is hard to envision a ninety-six-year seed bank in the rail ballast or a sixty-four-year seed bank in road gravel surviving under asphalt! While these plants may be nurtured by physical conditions present near the Haul Road, or by fine accumulation or seed accumulation in road bed ballast, there is little to no evidence that they were imported by inclusion in the original gravel fines. This local weedy vegetation zone also includes a federally endangered species: **Howell's spineflower (Chorizanthe howellii).** This comment, if intended as written, suggests that somewhere there is an unidentified population of Howells spineflower in an active or inactive quarry.

This item also suggests a serious need for further review or permit consideration as it opens a point of not addressed in the MND or permit planning review: No consideration was given to the movement of material from the area acting as a transport mechanism for the introduction of non-native vegetation into areas outside the covered MND area, thus no mitigation was envisioned for these actions. And conversely no provisions are made for introduction of invasive plants back into the project area on equipment returning from outside the project area which could back-transport invasive species, such as pampas grass, from the Big River disposal site.

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#### >11) A NOTE ON THE CONCEPTUAL APPROACH FOR THIS PLAN

Beyond the development of a plan that specifically prescribes measures through which to compensate for potential damage or losses of individual rare plants or their habitats (i.e., this mitigation plan), this document represents both a prologue to a broader scaled, long-term effort to sustain the ecological conditions in which these plants grow, as well as the start, perhaps, of another chapter in the Preserve's ecological history. In the recent history of the Preserve, planning and management actions have aimed to rehabilitate and maintain both form and function of its ecosystems. These actions include establishment of the Preserve in 2001 in order to protect its unique environmental and biotic assets, prior campaigns to reduce and eliminate encroachments of human construct and non-native plants, the development of an overall Preserve management plan, and the current road- and European beachgrass-removal proposal and attendant mitigation measures. We intend that the provisions of this plan are consistent with prior planning and management actions, and conducive to improving and maintaining optimal ecological structure and functions throughout the Preserve.

While this specific plan addresses the need for "mitigation" measures applied to sensitive biotic elements that may sustain Project-related impacts, we also aim to establish a comprehensive and holistic, process-oriented approach to Preserve ecosystem management. We are not so interested in mitigation measures formulated to satisfy regulatory quotas or to achieve strictly numerically based objectives as we are in providing for the rehabilitation and maintenance of the entirety of the Preserve's ecology. We aim to work with existing environmental conditions rather than force rigid or contrived solutions into places and habitats where they won't work.

With a more broadly scaled approach to "mitigation" in mind, this plan is developed within a conceptual context of adaptive management: the application of repeated cycles of objective (quantifiable results) formulation, task implementation, monitoring, evaluation, and response to changing ecosystem conditions. The cyclical design of the adaptive management process can be considered an approach to understanding the dynamic state of the Earth, from a human perspective of both uncertainty and curiosity. We will move forward with this uncertainty and curiosity, perhaps to learn some small part of what the Earth has to teach us. (MND)

**Rebuttal:** No one could agree that the provisions of this plan are consistent with prior planning and management actions, because those actions have taken place in an unregulated, unmonitored, and unmitigated manner, lacking permits or technical review of the results obtained. Without demonstrated results, it is impossible to know if these actions have been conducive to improving anything; however it is demonstrable that they have resulted in many negative impacts both to the environment and adjoining landowners.

While CEQA requires public agencies to monitor the implementation of mitigation measures, it does not require the agencies to evaluate the effectiveness of these measures.

#### <u>Summary</u>

Review of remote sensing images and historical photos with an unbiased geological viewpoint, shows that the Haul Road has not been an impediment to normal sand movement in the area. Areas were the Haul Road has been removed by storms may have acted as a levee to saltwater encroachment while in place, but no longer serve that purpose. The Haul Road was the major artery for transport of timber and supplies out of the Ten Mile river watershed sand covering the Haul road does not appear to have been a major issue prior to European beachgrass introduction.

Since introduction and spread of European beachgrass, continual sand accumulation has resulted in the creation of lateral beach ridges. Removing European beachgrass now without compensating for this removal by the introduction of native vegetation capable of slowing deflation of these sand ridges will result in the release of most of the impounded sand. This sand will move in the downwind direction (SE) initially infilling areas in the deflation plane (wetlands), and subsequently moving eastward into the backdune area, and eventually onto neighboring properties. Most of the immediate damage has been caused by the unpermitted, unmitigated removal of European beachgrass resulting in an ongoing major erosion event. This sand would have moved in the same manner naturally although at a slower rate, which would have allowed the recovery of plants now being buried as the initial waves of sand move across the remaining Haul Road. In areas further to the south were the Haul Road was removed in the 1983 storm and no subsequent plantings occurred, there is little evidence that lateral transverse dunes have formed and the area is now one massive overwash pass with the predictable shoreline erosion that accompanies due to sand supply diminishing at the same time .

Removal of the Haul Road is thus a thinly veiled attempt to remove a human construct and thereby diminish access at the expense of our local human communities, endangered plant communities, and offset property owners.

The main question one should ask is, "Why has CSP waited so long to act on this issue with such apparent immediacy when the effects would have been greatly diminished by not allowing more than twenty-five years of additional sand and European beachgrass accumulation to have occurred (thus increasing treatment areas and costs) since being granted stewardship of this area?" The Haul Road, the last piece of affected property relative to European beachgrass removal efforts, was acquired in 1992. The Pacific coast population of the Western Snowy Plover (Charadrius alexandrinus nivosus) was first listed as threatened under provisions of the Endangered Species Act in 1973, and is the primary reason offered by CSP for their immediate need to enact this massive erosion project now.

Therefore in large part the problems being addressed today are a construct of CSP's own earlier failure to address environmental issues as the custodian of the public's lands.

#### **Proposed Erosion Control Special Conditions:**

**Special Condition 9(g). [New]** To stabilize soils disturbed and denuded by invasive plant eradication activities and road demolition, native species will be planted as seedlings (perennials) or viable seed (annuals) within one month of removal of that exotic vegetation or the cessation of other direct ground disturbance by other construction activities. Eradication of exotic plants shall be phased over a 5-year period to limit soil erosion, with no more than 15 acres eradicated or retreated per calendar year. The removal of invasive species shall be scheduled to ensure the best prospects for the success of the replanting program. All areas that are or have been denuded shall be replanted with native species to achieve a nominal 25% ground cover. This special condition is extended to cover those areas already suffering erosion from the previous unpermitted and unmitigated operations already conducted in order to slow the already induced erosion from those actions.

**Special Condition 9(h).** [New] Sand migration into wetlands, landward vegetated swales, and neighboring properties will be monitored at one year intervals for a ten year period to facilitate adjustment of the invasive plant removal process and measurement of the success of efforts to reestablish native plants and trees. If the replanting program fails to colonize plots denuded of exotic plants with at least 25% native vegetative cover in a given year, replanting shall occur each successive year to ensure that nominal coverage is achieved.

**Special Condition 9(i). [New]** A bond or other surety in the amount of two million dollars(\$2,000,000) shall be established to compensate neighboring property owners for sand encroachment that results in a demonstrable loss of use or devaluation of their property for the 10 years following commencement of the project. A compensation process shall be established in writing, and provided to Mendocino County and all adjacent private property owners, prior to initiating any ground disturbing activities, including, but not limited to invasive plant eradication.

Consideration of the WMAC Alternate path option greatly diminishes or removes the need for a Special condition to cover the removal of non-native material, and non-native plants from the project area with the potential to introduce these invasive plants into other areas, and the back transport of invasive from disposal areas back into the project area. This an unrecognized and unmitigated problem.

Sand movement at Ten Mile –

## 6/21/2013 On dune on road

### 6/10/2012 On road







# Comparison 1956-2012 08-23-2012 image



# Comparison 1956-2012 circa 1956



North Lobe study area 08-29-2006 image USDA Farm Service



12-30-2005 dune line -08-23-2012 dune line - North Lobe study area 09-15-2010 image USDA Farm Service



12-30-2005 dune line — 08-23-2012 dune line —

## North Lobe study area 08-23-2012 image



12-30-2005 dune line — 08-23-2012 dune line —

North Lobe North study area 08-29-2006 image USDA Farm Service



North Lobe North study area 09-15-2010 image USDA Farm Service


North Lobe North study area 08-23-2012



North Lobe South study area 08-29-2006 image USDA Farm Service



## North Lobe South study area 08-23-2012







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Beal Lane sand movement/height 09-10-1998 image USGS



Beal Lane sand movement/height 08-29-2006 image USDA Farm Service



# Beal Lane sand movement/height 08-23-2012



### Report on the Destabilization of the Ten Mile Sand Dunes



40 foot sand dune moving through wetlands toward house

By David E. Paoli Professional Engineer

July 29, 2013

### SUMMARY

The focus of this report is on the destabilization of the sand dunes that has already occurred between 2000 and the present day by the removal of European Beach Grass, and the potential future effects of the State Parks program to finish the eradication project and to remove approximately 2.7 miles of Haul Road pavement and base material.

The sand in MacKerricher State Park is classified by the U.S. Soil Conservation Service as a <u>soil</u> and rightly so because numerous plants, both native and non-native, grow on it. The uncontrolled movement of soil is termed<u>erosion</u>. Erosion deliberately induced by man without permits is subject to legal action by Mendocino County, state agencies including the California Coastal Commission and federal agencies including the U.S. Army Corps of Engineers. State Parks has made no secret of their intention to promote massive and widespread movement of sand on hundreds of acres of their land and neighboring properties. State Parks has induced this erosion for 13 years without permits from the County, State or Federal Government. I am requesting a complete stop of any further actions to induce erosion, an evaluation of damage that has already occurred and a plan to redress the damage.

It has been said that pictures are worth a thousand words. The balance of this report will detail my concerns by pictures and words. Just the pictures alone will show erosion smothering small wetlands, sand moving into larger wetlands such as Inglenook Creek and into the one-of-a-kind Fen. I will show pictures of the rare plants growing in profusion of the section of Haul Road that Parks wants to remove. I will supply facts and figures that should have been supplied by State Parks; information that was available to them from their own internal studies but not released. I will detail the methodology that led me to the conclusion that nearly 1 million cubic yards of sand will be available to move through habitat presently occupied by federally listed plants and into wetlands both in and outside the Park.

Finally, the issue of closing the 1-mile gap in the Haul Road between Ward Avenue and Fen Creek will be addressed. If carefully done, the environmental impact and cost of building a path for pedestrians and bicycles can be much less than the impact of removing 2.7 miles of the existing roadway.

It is recognized that the Haul Road has acted as a barrier to sand movement in the direction of the prevailing wind, to the southeast. Since its construction in 1916 and widening in 1949 a large amount of sand has been trapped west of the Haul Road, and the introduction of European Beach Grass allowed the sand to pile even higher. A study commissioned by State Parks in 2003 which was done by Harold Wallenberg and William Maslach quantified some of the issues. This report found that comparing 1952 with 1998 data, in the southern portion of the dunes, the area where the Haul Road washed out in the 1980's, the beach width had decreased by 100 to 130 feet. In the northerly area where the Haul Road was still intact, the beach width increased by an average of 20 feet. This data does not necessarily support the concept of removing the Haul Road to increase habitat for the Snowy Plover.

Another part of this study looked at the frequency of storm-generated waves flooding areas inland from the Haul Road. The conclusion was that in the washed out area, waves were extending inland an average of 1000 feet, while in the intact Haul Road area, the extent was about half of that. My interpretation is that the presence of the Haul Road decreased inundation into existing wetlands and protected endangered plant habitat.

### BACKGROUND

California State Parks, through its efforts to remove non-native plants from MacKerricher State Park, has developed a systematic program of removing European Beach Grass from the park and particularly the extensive area of sand dunes north of Cleone Lake. A staff report by Bill Maslach indicates the removal began in 2000 by hand removal with shovels, which was effective but slow, and very manpower intensive. Around 2005 they burned the grass, which was not so effective, and caused damage to other plants that they did not intend to damage, such as native Pines at Inglenook Creek. During three of the last four years they have sprayed with a selective herbicide, which has reduced the living plants each year to the point that well over 80% of the plants are now dead and the rest are dying. Realizing the political sensitivity of spraying, they discontinued this practice in 2013.

The result is that now the dunes are virtually free of this beach grass. Mission Accomplished, or nearly so. But actions often have more than one consequence, and this is a classic example. The native vegetation left does not have the ability to control the movement of the immense quantity of sand that has been left without stabilizing vegetation and the dunes are moving, generally southeast in direction, into forests, fields, wetlands and residential areas. The sand doesn't respect the difference between public and private properties, environmental protection laws or other rules of man. The sand just respects natural laws such as direction of the prevailing wind and tidal currents. And man has found that all over the world once sand gets moving, it is very hard to stop.

Most of the sand was on the property in question before State Parks took ownership, so it became part of what they bought or were gifted. But modern laws and thinking do not allow an owner to cause extensive erosion to their own land or damage to their neighbor's land without facing consequences. Since this erosion and damage is occurring, I believe the State of California and its numerous agencies have a responsibility to evaluate the situation and find a way to control the damage. My purpose in preparing this report is to document the damage as well as I can do it, and make local, state and federal governments and the public aware of the situation so some positive action will actually occur. I am well aware of California's budget shortfalls, but that is not an excuse for not correcting serious problems that state agencies have created by their own policies.

I have defined the Study Area (Exhibit A) to encompass the following: The Ten Mile River on the north, Ward Avenue on the south, the Pacific Ocean on the west and State Highway 1 on the east. The total area is close to 2000 acres, about 1300 acres of which are active sand dunes. About 1250 acres of the Study Area are in the State Park.

Before the mid 1800's and the advent of settlers, several Indian Tribes had summer and fall encampments close to the coast where they fished and hunted. There are a half dozen middens still visible along this stretch where they camped and deposits of mussel and clamshells where they cooked. Some of these archeological sites are now threatened by Parks' actions.

The advent of much of the recent dunes goes back to the late 1890's, when logging of the Ten Mile River drainage began. In 1916 a logging railroad was built from Fort Bragg into the main branch of the Ten Mile and its tributaries and intensive logging of the Ten Mile Drainage began. The railroad tracks were removed in the late 1940's and the alignment was converted to a truck road featuring huge off-highway trucks , then later after the remaining old growth timber had been removed conventional logging trucks

were used. This railroad alignment still exists all the way to Fort Bragg except for about 1 mile that was eroded away within this study area in the 1980's.

During the early logging era, clear cutting of the redwood forests, usually followed by burning, caused massive erosion. Billions of tons of soil entered the river or was poised to enter. As the soil washed down the river to the ocean segregation occurred by soil grain size. Rocks and gravels tended to settle out before the river mouth, sand settled near the river mouth, silt and clays settled in the ocean. Every winter this upstream erosion and transportation of sediment occurred. In the winters of 1955 and 1964 huge rainfalls were recorded with accompanying flooding-these were "100-year storms" or larger. The sand deposits already present were greatly enriched during those winters of great rainfall.

Meanwhile, MacKerricher State Park, established in 1952, was increasing its land holdings to the north of Cleone Lake. What had been predominately private lands, much of it used for grazing, came on the market as the road system in and out of the Mendocino Coast improved and other areas in California could raise livestock and farm products less expensively and ship it into this area. The farmers and ranchers in this study area also found that large areas of their land were becoming less productive as blowing sand reduced the amount of usable area. These farmers, ranchers and the railroad company introduced European Beach grass during this era to control the migration of sand. The federal Bureau of Land Management also owned land on the north end of the study area that had been predominately sand dunes and had never been in private ownership. The net result was transfer of private land to State Parks or management of the federal holdings.

When the Coastal Commission came into existence in the mid-1970's certain aspects of this area became of great interest. The Inglenook Fen and Sand Hill Lake were unique features on the California Coast and the need to protect them from nearby residential development was considered a priority. Investigation of the dune areas revealed two plant types, the Howell's Spineflower and the Menzies' Wallflower, were rare and endangered plants. Study of the coastline showed that the Snowy Plover was present in several areas along the California Coast, and was listed as threatened in MacKerricher State Park.

### TRAIL REPLACEMENT

A study done in 2000 and commissioned by State Parks explored several alternative trail routes between Ward Avenue and Ten Mile River. One of the alternatives was to construct a new alignment starting about 1000 feet north of Ward Avenue, swing northeast away from the existing washed out area, then parallel the washed out section, swinging back to the existing alignment before the Fen Creek culvert crossing. This basic route is shown on Map 1. The consultant found that this alternative was physically possible but was expensive and had potentially negative impacts on rare plants and archeological sites.

The consultant considered a path section similar to a residential driveway, which would be a graded and compacted subgrade of sand, then up to 6 inches of crushed base rock, then 2 inches of asphalt. This was a standard bike section in 2000.

Since that time, the development of new products has occurred. A hiking/bike path section across sand can be done by smoothing the sand, snapping together sections of plastic similar to heavy egg crates with no bottom, and filling the cells with crushed rock. Exhibit C shows the product from one manufacturer. I have seen installations for driveways at Sea Ranch, have a 5-year old sidewalk

installation using this material at my house and tested several sections on an exposed sand dune on private property. It worked fine in those applications. I installed the 2 Inglenook sites by simply smoothing the sand or sandy loam, snapping the sections together and laying them on the sand and filling them with sand, loam or pea gravel. The only tool used was a shovel. I run my riding mower right over the sidewalk to cut the grass that has grown in the cells.

This particular brand has 20"x20" sections, so a path might be 6"x 20" or 10 feet wide. One cubic yard of crushed rock would fill the cells every 16 feet of path length. So the cost of materials might be \$3 per square foot for the grid, \$0.25 per square foot for the rock, or \$32.50 per lineal foot for a path. A mile of path would then cost \$172,000 for materials. The cost of labor could vary from nearly nothing for volunteers to a higher figure for a licensed contractor. It is interesting to remember that the removal of the Haul Road has a \$750,000 budget.

### **STABILIZING THE DUNES**

Starting in the 1950's the Union Lumber Company, who owned the Haul Road, and local property owners started a program to stabilize the dunes. European Beach Grass was planted along the railroad alignment and at other locations in the Study Area. Over the decades since then this plant spread and flourished. It greatly increased the stability of the dunes by decreasing wind velocity close to the ground surface and by its very extensive root system. This was considered positive by many, but studies by federal Fish and Wildlife Service and State Parks biologists pointed out that this stability might have an adverse impact on the nesting area available for the Snowy Plover and also might decrease area available for the two endangered plant species mentioned above. So they developed a strategy to eliminate the Beach Grass. Studies were done, Environmental documents were prepared, hearings were held, and reports outlining their conclusions and strategy were prepared and implemented.

Meanwhile, the California Coastal Commission had studied and adopted the concept of a Coastal Trail the length of the California Coast. The original trail plan by Mendocino County included the Haul Road alignment between Fort Bragg and Ten Mile River, which seemed to make a lot of sense because most of the expensive trail structure already existed, and the trail would put people in scenery they would enjoy rather than along a state highway with dangerous width, sight distance and noxious fumes. This plan was certified by the Coastal Commission, and this alignment is still part of the legally adopted plan of those two agencies. The Parks biologists, however, were concerned about the environmental impact of bringing more foot traffic and bicyclists into the area even though some studies showed that the Howell's Spineflower seemed to thrive in proximity to human and animal trails. So studies were commissioned by Parks that concluded that letting the Haul Road fall apart and eventually be removed was a good thing for the environment, and the Coastal Trail alignment should be moved to State Highway One where construction and maintenance would become the responsibility of Caltrans rather than State Parks. So all the necessary planning to destabilize the dunes was in place and implementation could begin.

### **DESTABILIZING THE DUNES**

Shown on Exhibit A are the location of fourteen photos I took on May 12, 2012. Photos 1 through 3 show the extent of the naked or nearly naked sand dunes at the north end of the Study Area, near the Ten Mile River. These areas were covered with Beach Grass 5 years ago. Photo 2 shows what dead Beach Grass looks like. The Haul Road at this point is now covered with up to 5 feet of drifting sand.

Photo 4 shows a small island of Willows in the middle of the most northerly dune being smothered by moving sand. Photo 5 shows a home on Beall Lane being threatened as the forty-foot high dune makes its way through the dying wetland area. Photo 7 shows new sand movement into the Inglenook Creek wetlands. Photo 8 shows that erosion of the dune between the ocean and the Haul Road is resulting in sand movement southeast. Photos 10 and 11 show the older dunes that had been stabilized for decades are now being covered by new sand movement that is encroaching into the Fen wetland. Photo 12 shows my trail to the beach, still on private property, being covered every day by new sand intrusion with native plants unable to stop it, and non-native plants (Scotch broom) also being covered. Photos 13 and 14 are taken at Charlene Lane, at the south end of the Study Area, showing the sand dunes on private property moving south and now within 70 feet of Highway 1. Not shown for security purposes is an archeological site that is in an area of rapid sand movement and four feet of the sand cover over the artifact has eroded away within the last two years, threatening to expose the artifact.

Four photos taken in July 2013 are also included. Photo 15 shows a Howell's Spineflower plant happily co-existing with Dune Grass at the edge of the Haul Road. Photo 16 shows Menzies Wallflower growing immediately adjacent to the Haul Road, and even in it. These plants will have to be removed if State Parks implements their Haul Road Removal plan. Photo 17 shows another growth of Howell's in the foreground, the Haul Road in the middle, and Menzies in the background. Photo 18 shows that a 60 inch-long fence post I set about 10 years ago now has 26 inches exposed. This post is on the boundary between State Parks and private property and used to be in a wetland area which has now been filled in by sand. Note the dune on the right, moving several feet closer every year, and the willows in the background being swallowed by the dune.

### **FINAL THOUGHTS**

State Parks personnel have not shown a lot of enthusiasm for any local ideas or initiative, and rebuilding a trail through the park is not on their priority list. However, they and we should remember that they do not own the Park. Title to the Park is held by the State of California and State Parks is simply the Manager that carries out the orders of the owners. The people of California are the owners. Parks rules, regulations and policies are also subject to laws and policies of other agencies. A great local example of this is the design of the new Noyo Bridge. The Coastal Commission decided, with the help of much local input, that the standard bridge railing would negatively affect the public view of Noyo Harbor. The result was the design and construction of a special bridge railing plus CalTrans money to purchase right-of-way for the Pomo Bluffs Trail. So the issue of decreasing public access and viewing opportunities can be a very important factor in this state. There are both public and private agencies and groups that have money and manpower available for trails and these sources should be considered before declaring, "it can't be done."

### **MY NUMBERS**

In August, 2012, using my survey grade Total Station equipment, I surveyed cross sections at right angles to the Haul road at 5 locations, shown on Exhibit A. This is an average of 1 section every half mile, which is not adequate but the best I could do with limited time and resources. I believe that Parks overflew the entire project using the very latest technology and William Maslach of State Parks developed 17 cross sections but that information was apparently never used. These quantities should be key elements in analyzing the Environmental Impact of the project, which I believe demonstrates a serious shortcoming of the work presently done by Parks.

Section A, the most southerly section, is in the gap between the washed out section to the south and the still continuous Haul Road to the north. The ocean storms have removed the Haul Road in this area so I considered it representative of what the Haul Road area to the north would be like after removal of dune grass, pavement and base rock, and the ocean storms have done their work over several winters. In short, it would be representative of what Parks is trying to achieve.

Section B is at the 5-foot diameter culvert where Fen Creek crosses under the Haul Road. Section C is about 700 feet south of Inglenook Creek, while Section D is about 1000 feet north of the Inglenook Creek culvert and Section E is about 1000 feet south of the turn on the north end of the Haul Road. This spacing gave me 2 sections for the north dune, 2 sections for the middle dune and 1 section as a base line. Exhibit B shows these 5 sections. Please note that the horizontal scale and the vertical scale are not the same; the full size drawing has a horizontal scale of 1-inch equals 50 feet and a vertical scale of 1 inch equals 10 feet. This is sometimes done to increase the accuracy of measurements that are plotted by hand, such as these measurements. William Maslach used this same method for his sections.

From Section A I deduced the average slope of beach east of the High Tide Line was 1.5 feet per hundred feet, or 1.5%. Per the legend, the solid lines on each section represent the existing ground lines, while the dashed lines represent the approximate future ground line after the removal of the Haul Road asphalt and base rock cap and the passage of time necessary to obliterate the Haul Road.

My calculations indicate that if the dunes are reshaped as shown on Exhibit B, approximately 698,000 cubic yards of sand will move from its present position on the north dune lobe and 288,000 cubic yards of sand on the middle dune lobe. Most of this sand will move to the east and fill in the low-lying wetland areas immediately east of the Haul Road. If this wetland area were 500 feet wide and 10,000 feet long, the moving sand would bury the wetland with 5 feet of material. Of course this burial will not happen all at once, because the sand will continue to move to the east. But the point is that the sand will have a filling effect in the wetlands. I have already noticed that areas that used to be ponds with winter groundwater have not have surface water showing for the last 5 winters. It would be interesting to compare the 2003 cross sections developed by Mr Maslach with my sections from 2012 to see how much sand west of the Haul Road has already migrated into the wetlands east of the Haul Road.

### IN CONCLUSION

The Parks Plan does not know how much sand is going to move and what effect it will have on wetlands, rare and endangered species, archeological sites and private properties. Consequently their plan cannot claim a Mitigated Negative Declaration because they cannot measure what they are mitigating. I fully intend to submit this report and other documentation to the Army Corps of Engineers because I believe that Parks has been illegally causing damage to wetlands and endangered species for more than 10 years. Their present plan is aimed at increasing the rate and extent of this damage . The flaws in their plan are numerous and obvious. If Mendocino County gives the Plan their approval after receiving extensive information about the flaws of the plan from me and many other concerned citizens, then I believe they will be aiding and abetting the environmental damage that will occur. Potential fines from government agencies and legal actions by agencies and private individuals could certainly be the consequence of ill-advised environmental damage.





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Real Estate Appraising . Property Consultation

### M. Sheppard & Associates

27200 North Highway 1 P.O. Box 1253 Fort Bragg, California 95437 707 964-9121

June 30, 2013

Mendocino County Board of Supervisors 501 Low Gap Road Ukiah, CA 95482

Re: Ten Mile Dune Rehabilitation Project/CDP#12-2012

Dear Sirs/Madam:

I am the owner of a vacant tract of land that is located adjacent to the Ten Mile/MacKerricher Dunes. I am concerned about the impact this project may have on adjacent land owners like me in terms of increased sand movement due to removal of the road, alteration of the plant habitat and removal of two culverts. One major concern of property owners is the potential decrease in land values that increased sand movement may have on land adjoining the proposed project.

As a real estate appraiser with over thirty years' experience appraising on the coast, I have observed sales of properties that have been negatively impacted by adverse soil conditions. If the project is allowed to continue, properties located adjacent to the dunes could be inundated with sand due to the removal of the old haul road which forms a barrier to sand movement.

I believe the potential loss in value would range from 25% to 69% of market value if an adjacent ownership is rendered unbuildable by increased sand movement. This opinion is based upon the analysis of six land sales, with three sales of buildable tracts contrasted to three sales of tracts that are similar in most property characteristics, but are unbuildable because of adverse soil conditions.

Land Sale 1-A took place June 16, 2009 for \$150,000 or \$12,427 per acre. This property was located mostly in the sand dunes with little or no potential for development as a residential site because the soil condition limited/precluded installation of an on-site septic system.

Land Sale 1-B took place July 8, 2008 for \$550,000 or \$45,454 per acre. Land Sale 1-B took place at the peak of the local real estate market. This sale must be adjusted downward for the passage of time from July 2008 to June 2009. The downward adjustment is equal to approximately 1% per month resulting in a price per acre of \$40,454. LS 1-B was not negatively impacted by sandy soil conditions and was developable as a residential house site.

These paired sales indicate a loss in value of 69% due to the unbuildable state of Land Sale 1-A

Mendocino County Board of Supervisors June 30, 2013 page 2

Land sale 2-A took place December 17, 2010 for \$70,000 or \$57,377 per acre. This property was also negatively impacted by a soil condition that precluded development of a septic system.

Land sale 2-B took place June 8, 2011 for \$150,000 or \$150,000 per acre; adjusting this sale downward for the passage of time results in a price per acre of \$141,000. Land Sale 2-B was a buildable lot.

Direct comparison of these two parcels indicates a loss in value of 59% due to the un-useable state of Land Sale 2-A.

Land Sale 3-A took place November 10, 2010 for \$50,000 or \$62,500 per acre. This property was located in an area of hardpan soil and was not developable as a residential site.

Land Sale 3-B took place August 16, 2011 for \$130,000 less \$15,000 for site improvements and \$10,400 for the passage of time results in a price per acre of \$83,680 per acre. This property was similar to the subject in most site characteristics but was a buildable parcel.

Direct comparison of these two parcels indicates a loss in value of 25% due to the unbuildable state of Land Sale 3-A.

It is clear from the available market data, that there would be a negative impact on property values if sand intrusion were to occur on properties adjacent to the Ten Mile Dune Project which could render the parcels unbuildable. The loss in value could range from 25% to 69% of total land value.

Please consider the consequences of this project on local land values and encourage a less radical approach to the removal of the former haul road by California State Parks at the appeal hearing for Coastal Development Permit #12-2012.

Sincerely,

Maryellen Sheppard Real Estate Appraiser, AG002980

cc: Westport Municipal Advisory Council (WMAC 95488@wildblue.net) Bob Merrill, California Coastal Commission Laurie Monarres, Army Corps of Engineers State Senator Noreen Evans Assemblyman Wes Chesbro August 14, 2012

Renee Pasquinelli, Senior Environmental Scientist Mendocino District, California State Parks 12301 North Highway 1 – Box 1 Mendocino, CA 95460

Re: Comments on Mackerricher State Park Dune Rehabilitation Project (Mendocino County CDP #12-2012)

Dear Renee:

As a professional archaeologist and historian with two decades of experience conducting research along the Mendocino coast, I strongly support the concept of natural preserves because they are designated to conserve natural and cultural resources. However, I am opposed to elective natural habitat restoration when it will have significant unmitigated impacts and when it conflicts with other adopted land use policies and laws.

I feel the proposed project's revised draft IS/MND dated July 30, 2012 does not support the conclusion that the proposed MacKerricher Dune Rehabilitation Project will result in "less than significant impacts." Instead, several significant unmitigated impacts of this discretionary project can be reliably predicted. An Environmental Impact Report thus should be mandatory pursuant to the California Environmental Quality Act and its implementing regulations unless the design of the project is substantially altered.

The proposed project consists of removal of about 2.7 miles of a historic road, two culverts and their associated fill prisms spanning Inglenook and Fen creeks, manual removal of invasive plants, and various mitigation measures. The IS/MND acknowledges that these activities will destroy 11% of the endangered Howell's spineflower population, mobilize significant sand migration, facilitate saltwater intrusion, and cause erosion and deflation of the western portion of the coastal dune resource management zone (RMZ). This radical manipulation of the environment has significant cumulative impacts that have not been adequately considered.

The project overview map creates a false impression that impacts of this project will be restricted to geographically discrete areas. In reality, the impact area is much more expansive because the project will induce ocean inundation, scouring, and deflation of the fore dunes. Appendix A.8 foreshadows this larger impact zone. The document fails to analyze how this elective, project-induced restructuring of the park's coastal dune RMZ will reduce critical habitat for endangered and listed plants and permanently damage fragile and nonrenewable cultural resources.

The document mentions over a dozen archaeological sites are present in the vicinity. Yet the IS/MND focuses solely on avoidance of direct impacts to the exclusion of other predictable long term consequences that will result from project implementation. Foreseeable impacts of erosion, deflation, and inundation that will be purposefully induced and accelerated by this proposed project are completely ignored. While natural forces constantly alter the dunes, many of the sites have survived centuries, if not millennia. This elective project will intentionally and aggressively restructure the habitats, landforms, and hydrology of the western dunes to the detriment of archaeological site preservation mandated by law and the park's General Plan.

Section 15065.4(b) of the CEQA Guidelines states "a project with an effect that may cause a substantial adverse change in the significance of an historical resource is a project that may have a significant effect on the environment." An adverse change is one that will "materially impair" the qualities of a historical resource that convey its historical significance. To address the significant effects of this project on historical and unique archaeological resources, it is necessary to first evaluate whether or not the 14 properties in the project vicinity qualify as unique archaeological sites or historical resources, and then analyze <u>all</u> of the adverse changes that will be caused by the project. That includes landscape alterations induced or accelerated as a direct result of implementing this project.

Although the locations of archaeological sites must be protected from public disclosure, the environmental document for this proposed project must summarize the results of evaluations, provide a complete analysis of all potentially significant foreseeable impacts (not just direct short term ones), and propose mitigation in a manner consistent with CEQA and Public Resource Code 5024. The environmental document must specify how all unavoidable impacts will be mitigated. This document does not address those issues. Project-induced erosion and deflation of dune deposits has the potential to significantly impact archaeological sites through direct destruction or deflation of the vertical stratigraphy that is often essential for conveying their significance under Criterion 4 of the California Register of Historical Resources.

In a similar manner, reductions in the critical habitat of endangered and listed plants and animals should be analyzed in relation to project-induced intrusion of salt water. The heightened fore dunes and haul road presently buffer that intrusion. If endangered and listed plants and animals will be adversely affected by increased salt water intrusion caused by the project, that loss of critical habitat also should be analyzed.

In summary, there is a potential for significant environmental consequences that remain unanalyzed and unmitigated. Preparation of an EIR is thus required unless the scale of the project is radically reduced. I feel strongly that it is inappropriate to prioritize preservation of renewable natural resources to the detriment of nonrenewable cultural resources. As an professional archaeologist, I would like to request the confidential cultural resource analysis that will be used to support approval of the undertaking. You may contact me at thadvanbueren@directv.net or (707) 964-7272 if you have questions. Thanks for giving my comments careful consideration.

Sincerely,

Thad M. Van Bueren

Thad M. Van Bueren P.O. Box 326, Westport, CA 95488

cc: Milford Wayne Donaldson, State Historic Preservation Officer
Liz Burko, California Department of Parks & Recreation
Jan Wooley, California Department of Parks & Recreation
Dionne Gruver, California Department of Parks & Recreation
Abbey Stockwell, Mendocino County Department of Planning and Building Services

### Amy Wynn Coastal Development Permits

Land Use Planning 703 North Main Street Fort Bragg CA 95437 ph: 707-964-2537 fx: 707-964-2622 www.AmyWynnCDP.com

August 31, 2012

- TO: Renée Pasquinelli, Senior Environmental Scientist Mendocino District, California State Parks c/o Russian Gulch State Park
  12301 North Highway 1, Box 1 Mendocino CA 95460
- RE: Comments on Revised Draft IS/MND for MacKerricher State Park Dune Rehabilitation Project Mendocino County CDP #12-2012

Dear Renée,

Thank you for revising the original Draft MND for the MacKerricher State Park Dune Rehabilitation project. I appreciate that you have eliminated the proposal to use herbicides for removing the invasive European Beach Grass.

As you know, The Revised Draft MND is a massive document. I have focused my review specifically on the statement in the Draft MND that State Parks has begun implementation of the project prior the adoption of the MND. In particular State Parks has begun the collection of the seeds of federally and state endangered and threatened species, the Howell's spineflower and Meznies's wallflower (Mitigation, Monitoring, and Restoration Plan for Vegetation and Rare Plants, Page 37, Proposed Schedule). Does State Parks have an agreement with the CA Department of Fish & Game and the US Fish & Wildlife Service to take the seeds of these federally and state listed species prior to approval of the project? Please provide evidence of approval for the take of these seeds so that I may better understand this process.

This section of the MND raises some questions for me, which I request be addressed prior to any permitting of this project. Please see further expansion of my comments and questions below.

Thank you for your response to these questions and concerns.

Sincerely, Amy Wynr

### Encl: n/a

CC: Loren Rex, Superintendent CA State Parks; Rick Macedo, Senior Environmental Scientist, DFG; John Hunter, Biologist, USFWS; Abbey Stockwell, Planner, County of Mendocino; Bob Merrill, North Coast Program Manager, CA Coastal Commission; Marie Jones, Community Development Director, City of Fort Bragg; Ruth Valenzuela, Senior Field Representative, Welsey Chesbro's office; Kendall Smith, County of Mendocino 4<sup>th</sup> District Supervisor; Dan Gjerde, County of Mendocino 4<sup>th</sup> District Supervisor elect. All cc copies distributed by email.

### <u>COMMENTS REGARDING APPENDIX E.2:</u> <u>MITIGATION, MONITORING, AND RESTORATION PLAN FOR VEGETATION AND</u> <u>RARE PLANTS</u>

### 1. PROJECT IMPLEMENTATION PRIOR TO APPROVAL OF MND & PRIOR TO ISSUANCE OF PERMITS

The element of this MMP that has me most in a quandary is that implementation of the spineflower and wallflower mitigation has already begun, before the project has been approved. Spineflower and wallflower seed collection began in July 2012. Collection of seeds of species that are both federally and state listed has the potential to significantly negatively impact this year's seed bank. Analysis of this potential impact has not been provided, nor do I see that this action has been approved. This action should not begin without approval of the MND, the Coastal Development Permit and any related permits from USFWS and DFG. Specifically, please address in the responses if and when federal and state permits were acquired, or by what means State Parks has the authority to collect seeds of federally and state endangered and threatened species. Please address the procedure that has been implemented for this project regarding taking viable seed as that action relates to both the Federal Endangered Species Act as well as the County's Local Coastal Program.

Approval of a complex project such as this can take years, especially for controversial projects that are appealable not only to the County Board of Supervisors but also to the California Coastal Commission. If this project is never approved, federally and state endangered plants will have been impacted for no reason. What happens if the seeds that were taken never needed to be collected? What is the environmental impact of collecting viable seeds if the project doesn't happen, or if the project review becomes prolonged or even put on hold? Development of guidelines for propagule (seed) treatments is slated for November 2012, which is four months *after* propagules have been collected. How can you develop a protective protocol for a potentially impactful action after-the-fact?

As clearly stated in the Proposed Schedule, the mitigation methods will be developed *after* the MND comment period ends. It is difficult to meaningfully address a project that does not present specific mitigation methods during the CEQA public comment period. What is the beneficial effect of commenting on a proposed project if the work has already commenced? Are there other project measures that have begun?

"Specific methods and techniques for promoting seed germination, preparing seedbeds, and dispersing and incorporating seeds into substrates, and for other methods pertinent to propagule collections and introductions into planting sites, have not been fully developed. We will compile information on this topic over the next several months, and specific methods for each species, or for suites of species, will be appended to this plan."

MMP, Pg 36, Para 3

### "Proposed Schedule

"A complete schedule for the implementation of this plan has not been completed. <u>Preparatory activities, including propagule collections</u> and pre-Project monitoring, <u>have</u> <u>started as of July 1, 2012</u>. Upon completion of this plan, we will assemble a provisional schedule in coordination with CSP.

"Provisionally identified milestones and due dates are as follows:

- Baseline inventory and monitoring in Project area completed: Aug. 31, 2012
- In-project monitoring for project requirements: as of Project start
- Completion of Years 1 and 2 mitigation plan implementation budget: Oct. 1, 2012
- Mitigation site selections: October 1, 2012
- Development of customized protocols for the monitoring of mitigation measure objectives: initial versions by November 1, 2012
- Completion of standardized photographic monitoring protocols: Nov. 1, 2012
- Establishment of monitoring areas, sites, and plots for compensation and enhancement mitigation measures: November 1, 2012
- Initiation of mitigation site preparatory treatments: no later than November 1, 2012
- <u>Development of guidelines for propagule treatments, seedbed preparations, and</u> dispersal methods and techniques: November 15, 2012
- Introduction of Chorizanthe and Erysimum seeds into compensation sites: Dec. 1 or upon a minimum of 5 inches of precipitation recorded in Fort Bragg after October 1, 2012, whichever is later."

MMP, Pg 37, Para 3

"The following constitutes an **incomplete, and provisionally prioritized,** list of geographical areas, habitat types, and other vegetation types to consider in the selection **of sites for compensation and enhancement measures** specified for Chorizanthe and Erysimum (\* asterisks denote sites of high to moderate priority for site selection purposes)....

"The selection of compensation and enhancement mitigation sites will be completed by October 1, 2012. ... A map will be prepared to display the array of mitigation sites selected and provisional locations of nested plots."

MMP Pg 34-35

### **1.a Recommended Action:**

To address these concerns, I recommend that the County of Mendocino take action to address this activity, such as requiring that:

- 1. Seed collection shall halt until permits have been obtained from all Stakeholder Agencies, including but not limited to County of Mendocino, DFG and USFWS.
- 2. Seeds that have already been collected shall be stored in such a manner to minimize seed mortality.
- 3. Prior to planting of the stored seeds, empirical evidence shall be presented for the approval by the relevant agencies that clearly demonstrates that planting seeds will have at minimum a 50% rate of survival within the first year.

### 2. PRESUMED OBSTRUCTION OF ECOLOGICAL PROCESS AND FUNCTION

State Parks is proposing a major set of mitigations for development (removal of the Haul Road) that is clearly stated as being a "presumed obstruction of ecological process and function." State Parks has begun mitigations for a project that has yet to be approved for impacts based on the removal of a "presumed obstruction."

"While we may not be able quantify the sum of ecological processes and functions, we can use components of ecosystems to communicate how well those ecosystems are functioning. At least, we can <u>convince ourselves</u>, with some arrogance as well as with humility, that designing studies and implementing actions intended to relieve ecosystems of <u>presumed obstructions</u> of ecological process and function will abet our understanding as well as facilitating ecological recovery, insofar as we might presume to know what either means or requires."

MMP, Pg 4, Para 4

### 2.a Recommended Action

To address this concern, I recommend that the County of Mendocino take the following action:

- 1. Prior to approval of this project, the applicant shall provide empirical data that proves a nexus exists between the presence of the existing infrastructure that is being proposed for removal and its presumed obstruction of ecological process and function of the spineflower and wallflower species and their habitats.
- 2. Prior to approval of this project, empirical data shall determine if the presence of the existing infrastructure proposed for removal is aiding the survival of the spineflower and wallflower species.
- 3. If the data proves a nexus exists between the existing infrastructure that is proposed for removal and impacts to federally and state listed species, including snowy plover, empirical analysis shall determine if all of the existing infrastructure must be removed to further the protection of these species or if only portions of the existing infrastructure must be removed.

### 3. HOLISTIC APPROACH DOES NOT PRECLUDE QUANTITATIVE ANALYSIS

I thoroughly appreciate the declared holistic approach to maintaining the unique environmental and biotic assets of the Dunes Preserve. Progressive and innovative approaches by biologists used on private projects are often stifled during agency review when their proposed mitigations break the regulatory mold in an attempt to attain a truly sustainable and successful resolution. Adaptive Management is nothing new, it is the norm; all of the County-approved projects that have potential impacts to resources utilize Adaptive Management. Citing a holistic approach, however, does not preclude the value of quantitative, scientific analysis. A holistic approach incorporates quantitative analysis.

Within the spineflower and wallflower's lifecycles, please state what percentage of seed typically germinates into mature plants: 100%, 50%, 25%? Will State Parks distribute some of the seed that has been collected to like sites immediately? How will State Parks ensure that the collected seed will propagate when seeded on the dunes? What is the mitigation method if the collected seeds begin to die? Will State Parks have left enough un-impacted, viable seed on site to at the very least maintain the existing levels of spineflower and wallflower and their habitats? Please state whether State Parks will continue to collect seed before the approval of this project.

"We are not so interested in mitigation measures formulated to satisfy regulatory quotas or to achieve strictly numerically based objectives as we are in providing for the rehabilitation and maintenance of the entirety of the Preserve's ecology. We aim to work with existing environmental conditions rather than force rigid or contrived solutions into places and habitats where they won't work."

MMP Pg 3, Para 2

### **3.a Recommended Conditions of Approval:**

To address these concerns, I recommend that the County of Mendocino require Conditions of Approval such as:

- . Prior to Issuance of the Coastal Development Permit, the applicant shall provide a quantitative set of guidelines for propagule treatments, seedbed preparations, and dispersal methods and techniques. These guidelines shall specify and provide:
  - a. The percentage of seed that typically germinates into mature plants, when left undisturbed in its existing habitat.
  - b. The percentage of seed that typically germinates into mature plants when the seed is collected, stored and artificially dispersed.
  - c. The percentage of seed that will remain in its existing habitat.
  - d. Data to illustrate how many annual generations of plant lifecycle it will take for the post-project population levels to reach their pre-project population level.

### 4. EXPRESSED UNCERTAINTY FOR SUCCESS OF MITIGATION METHODS

The amount of uncertainty specifically expressed in the Project's MMP leaves one to believe that the proposed mitigation for the impacts to the spineflower and wallflower and their habitats may be unsuccessful. It is essential for State Parks provide more certainty prior to moving foreword with this project. This is particularly significant, given that State Parks is tasked with the legal authority by CEQA to approve the effectiveness of the MND. Please specify what is meant by the statement that "most seeds will likely survive project activities?" Does that mean the spineflower and wallflower seeds that will remain on site are sturdy enough to withstand the impact of the heavy equipment that will perform the removal of the Haul Road?

"The <u>specific nature of impacts</u> to Chorizanthe howellii as a result of Project implantation <u>is</u> <u>uncertain</u>, since annual plants survive from one growing season to the next as seeds – <u>these propagules</u> <u>will likely survive</u> the short-term disturbance effects of the Project. Promoting the environmental conditions conducive for seed germination is decidedly more important than mitigating negative impacts on individual plants. This topic is elaborated below.

"Project implementation will occur primarily <u>during the dormant season</u> for this annual plant --August through onset of the rainy season. Plants extant within the Project area <u>will essentially be dead</u> from the outset of more intensive and destructive work activities -- <u>only seeds survive year to year</u>, and most seeds are "ripe" and parent plants dead by mid-summer. In light of its annual life cycle, consideration of losses of individual plants is immaterial, <u>as most spineflower seeds will likely survive</u> <u>Project activities</u>; seed production and survival for future germination are the essence of the annual plant life cycle. Thus, impacts on potential seed germination opportunities (sites and environmental conditions) within the Project area are more important in considering appropriate compensation. As stated above for Abronia, sustaining and enhancing, where possible, the environmental conditions necessary for long-term species' survival is more critical than are efforts merely to replace individual plants. As provided under "Mitigation and Restoration Objectives" below, mitigation efforts will include <u>attempts to maintain</u> and enhance the northern Preserve spineflower population in or near to the proposed Project area. <u>Long-term conservation measures for this species will be addressed</u> in the forthcoming ecological monitoring and management program for the Preserve."

MMP, Pg 7-9

With so much clearly stated uncertainty regarding the ultimate success of these proposed mitigations, it would be prudent to perform and document mitigations on a test plot prior to any major project implementation. Given the stated holistic approach to maintaining the unique environmental and biotic assets of the Dunes preserve, direct impacts to the existing extent of the spineflower and wallflower habitats should not occur until this (these) test plot(s) are empirically proven to be successful.

### 4.a Recommended Action

To address these concerns, I recommend that the County of Mendocino require the following Conditions of Approval:

- 1. Prior to Issuance of the CDP, test plots shall be approved by the County of Mendocino, with assistance from DFG & USFWS.
- Prior to Issuance of the CDP, the Mitigation and Monitoring Plan, addressing the long-term conservation measures for the spineflower and wallflower, shall be approved by the County of Mendocino, with assistance from DFG and USFWS.
- 3. Prior to Commencement of Development Activities (use of mechanized equipment on dunes, removal of Haul Road and culverts), measures shall be implemented to ensure that viable seed remaining on site will not be impacted by development activities.
- 4. Monitoring shall occur for a minimum of 5 years, with quarterly reporting to the County of Mendocino for the first year and annual reporting to the County, DFG & USFWS for the remaining years.
- 5. If Adaptive Management determines that the mitigation methods need to be revised, the monitoring timeline shall begin anew.













January 10, 2013

Abbey Stockwell, Project Coordinator Department of Planning and Building Services County of Mendocino 120 West Fir Street Fort Bragg, CA 95437

Re: CDP #12-2012 application by California Department of Parks & Recreation (DPR) for the proposed MacKerricher Dune Rehabilitation Project

Dear Ms. Stockwell:

The public and interested agency stakeholders such as the California Coastal Commission, City of Fort Bragg, and Westport Municipal Advisory have sent you letters raising many substantive concerns about the cited permit application. Additional concerns were raised by the public at a well attended meeting hosted by DPR last fall at the Inglenook Grange Hall. Since then, a group of concerned citizens have met to discuss possible alternatives to the DPR project.

While widespread support exists for preservation of the natural ecosystem in the northern portion of MacKerricher State Park, DPR's project goes beyond preservation to propose radical restructuring of that environment. Only one alternative other than the "no project" scenario was proposed in the MND finalized December 19, 2012. Many of us believe that alternative will cause significant impacts that are not adequately analyzed or mitigated. We ask that you give serious consideration to two additional alternatives proposed here. Those alternatives make an effort to avoid some of the significant impacts that are associated with the DPR proposal. All three alternatives are compared below.

### The DPR Project (Alternative 1)

The stated purpose of the project is "to restore ecosystem processes that are crucial to the viability of endangered species and their habitats in the Inglenook Fen-Ten Mile Dunes Natural Preserve." DPR proposes to accomplish that by removing up to 2.7 miles of asphalt road and portions of the underlying rock base, removing two culverts, restoring the stream channels, and manually removing 60 acres of European beachgrass and other nonnative weeds. Those measures are designed to intentionally restructure the dune system by deflating the fore dunes and altering hydrological processes at the mouths of Fen and Inglenook creeks. Deflating the fore dunes will expand the coastal strand habitat for the federally listed endangered snowy plover at the expense of other types of habitats.

The final MND concludes there will be no significant unmitigated environmental impacts. We contest that inadequately analyzed finding, which is contradicted by data in the document, other studies it references, and our own observations. This alternative will have significant unmitigated impacts to recreation and transportation through destruction of the haul road, and it will also induce severe erosion and tidal inundation that will cause significant unanalyzed impacts on wetlands, cultural resources, endangered species, and neighboring landowners. Those impacts are not modeled or mitigated below a significant level, implying an EIR should be required. Each issue is summarized for comparison with the two alternatives we offer.

 <u>Destruction of Coastal Access</u>: Although the analysis of public access in Appendix E6 is badly flawed and thus inconclusive, it documents ongoing pedestrian and bicycle use of the road even after years of demolition by neglect that has reduced the functionality and visibility of this coastal trail due to burial under sand. DPR is directly responsible for that impairment, which runs counter to the policies established in the park's General Plan, the LCP, and Coastal Act. The MND mentions an ineffectual study conducted in 2000 that concluded "that rebuilding a hardened trail through the dunes was incompatible with the Natural Preserve classification." That study was performed with no meaningful public input or consideration of alternatives.

When the LCP was certified the haul road was heavily used by bikes and pedestrians. Yet that fact is ignored in the skewed analysis in Appendix E6 which looks only at recent use. Of course use has diminished because the haul road is now discontinuous and buried by sand due to lengthy neglect. However, it is a fallacy to imply the current level of use means there are no significant impacts to recreation and transportation. This alternative will demolish most of the surviving road in the northern park with no compensating replacement trail. DPR in fact states that no replacement trail will ever be built, contrary to the park's General Plan policies. If true, this implies the project will result in permanent and irrevocable loss of public access. This is simply unacceptable.

The analysis of public access in Appendix E6 has several other serious flaws. The data were collected incidental to other activities, rather than through continuous focused monitoring. The presented evidence is thus anecdotal, not rigorous. The data also misleadingly discriminate who was on the road versus simply near it (what they call the "back dune" on either side of the road), a finding that implies continuous observation, proximity to visitors, and knowing precisely where buried road edges lie. A summary incorrectly concludes no bikes use it (Responses, page 4), yet the data expressly contradict that finding. The findings in Appendix E6 are just one example of the many misleading conclusions drawn throughout the MND.

The MND selectively cites laws and policies that govern public access, while ignoring many others that can and should take precedence. The proposed development is subject to the Mendocino County Local Coastal Plan (certified in 1992) and the coastal access and recreation policies of the California Coastal Act of 1970, both of which override DPR's internal policies such as the General Plan for MacKerricher State Park adopted by the California Parks and Recreation Commission in 1995. The LCP and Coastal Act both place high priority on the protection and maximization of recreation.

LCP Policy 3.1-15 states in part that in dunes "well-defined footpaths or other means of directing use and minimizing adverse impacts shall be developed and used." If the road is removed and there is no designated path, why is there no analysis of the resulting impacts of uncontrolled access on endangered and threatened species? The LCP further directs DPR to acquire the haul road for public access and that acquisition took place. Policies in the park General Plan, although that document was never submitted to Mendocino County for adoption or certification by the Coastal Commission, offer valuable guidance that has been completely ignored in this proposed DPR project alternative.

The haul road is a surviving non-motorized multi-use trail designated for improvement and repair in the park General Plan (page 153). The purpose of the park is "to make available to the people for their inspiration, enlightenment, and enjoyment, in an essentially natural condition, the outstanding scenic features and natural values, including the coastline embracing offshore environs; the stretches of sandy and rocky beach; the headland bluffs; <u>the Ten Mile Dunes</u>; the marine terraces; <u>the wetland habitats including Lake Cleone and the unique Inglenook Fen</u>; the geology and plant and animal life; the significant archaeological and historical resources; and the scientific values therein."

The plan clarifies on page 213 "the environmentally-preferred alternative would have been the natural and cultural resource protection priority alternative. However, that alternative did not fully meet the goal of providing for the public use identified in project's statement of purpose. Therefore, the project proposed in the general plan is a combination of the natural and cultural resource protection priority and public use priority alternatives." This DPR project fails to balance those priorities.

Removal of the haul road will terminate the modest ADA and bicycle access that still survives and will sever pedestrian access across the mouths of Fen and Inglenook creeks in the winter. It also will violate LCP policy 3.1-15 by encouraging the proliferation of many environmentally damaging volunteer pedestrian trails instead of maintaining a designated path. No mitigation is proposed to compensate for this destruction of coastal access and other impacts to the environment. Removal of the haul road will also directly impact the federally-listed endangered Howell's spineflower, which favors the road margins as habitat. Although mitigation is proposed, the DPR alternative will take over 10% of this species in the Natural Preserve. In contrast, retaining the haul road will not hamper the realization of many project goals. It can in fact be used to keep recreational trail users on a designated path if it is restored and maintained.

2. <u>Sand Migration</u>: A primary objective of the proposed DPR alternative is to deflate the fore dunes as a way to expand the open coastal strand habitat for the federally-listed endangered snowy plover. European beach grass has heightened the fore dunes since it was introduced in the mid-twentieth century. The haul road, in contrast, was built on the original (natural) dune surface except where it crosses Fen and Inglenook creeks over modest fill prisms. Removal of the haul road thus will do little to materially aid the deflation of the fore dune. We emphasize this because removing the haul road simply because it is not "natural" is a poor reason to destroy this existing public access.

Deflation of the fore dunes will mobilize sand migration. Yet, no effort is made to calculate how much sand will move or where it will go. This deliberate project-induced erosion will not only restructure the fore dunes; it will bury adjacent lowland areas that presently serve as important plant and wetland habitats, sending excess material farther southeast. This predictable effect is summarily dismissed as insignificant based on an assumption that the ecosystem will simply "adjust." There is no analysis of the net loss to landward ecosystems or their endangered and threatened plants. Engineer David Paoli has prepared calculations based on representative sections that imply the fore dune deflation would cover an area 500 feet wide by 5 feet deep if it occurs uniformly. This substantial impact is simply dismissed without any analysis of its environmental impacts.

The MND suggests migrating sand will move no farther than the first landward swale. This is contradicted by the cited dune expert's report and our observations. Prior European beach grass removal has focused in the southern part of the Natural Preserve where the haul road has been demolished by neglect. Yet the MND does not examine the impacts of those activities in the southern dune lobe, nor their success in accomplishing project objectives. Instead, it misleadingly examines dune encroachment at the east edge of the northern dune lobe where upwind beach grass removal has been limited. The east edge of the southern dune lobe more accurately reveals the results of activities like those DPR proposes. Sand migration there has significantly heightened the back dune, buried buildings, and smothered the Bishop Pine and wetland area west of Route 1.

Removing European beach grass at the western edges of the two northerly dune lobes also will adversely impact neighboring private landowners to the southeast. No mitigation is proposed to address the devaluation and loss of use this implies for those neighbors.

3. <u>Other under-analyzed impacts</u>: The erosion of fore dune sands and removal of fill prisms and culverts at the mouths of Fen and Inglenook creeks will cause a number of other potentially significant environmental impacts that have been inappropriately dismissed without analysis. Although non-renewable historical resources in inland areas may be protected by burial under migrating sands, those located in the fore dunes may be lost as dune deflation is promoted and tidal influences and meandering streams predictably destroy relict islands of higher ground where such resources lie. The mitigation measures for these resources consider only short term direct impacts, without modeling the long term impacts induced by this alternative.

Low lying wetlands also will be radically transformed by the introduction of brackish water, with unanalyzed impacts to the many endangered, threatened and otherwise noteworthy plants that presently thrive in that habitat. The swale behind the fore dune will be rapidly buried to a significant depth, presumably impacting protected species that reside there. The magnitude of these predictable indirect impacts of the DPR alternative are not analyzed. Because they remain so poorly understood, it is almost certain that mitigation measured proposed in the MND are inadequate.

The reasons for pursuing the DPR alternative are based on the designation of the northern portion of the park as a Natural Preserve under Public Resources Code 5019.71, which states that such activities should occur "only in those areas found by scientific analysis to require manipulation to preserve species or associations that constitute the basis for the establishment of the natural preserve." We interpret this statute to mean that environmental manipulations should be conservative in scope, and that they should take into consideration the needs of <u>all</u> species and associations, rather than giving overriding priority to any single species.

The DPR alternative intends to expand the coastal strand to the detriment of landward habitats occupied by numerous threatened and endangered species. This is intended to benefit the endangered snowy plover, although we found no evidence in the MND or sources it cites that this bird has ever successfully propagated within the Natural Preserve. We also find no credible scientific evidence to support the wishful thinking that snowy plover will successfully propagate after strand habitat is expanded at the expense of other types of habitats in the preserve.

To the contrary, European beachgrass removal and the demolition of the haul road by neglect in the southern dune lobe has failed to facilitate snowy plover propagation there. Is it therefore appropriate to carry out additional radical structural modifications of the dune environment and cause many as yet unanalyzed impacts to other species through burial and marine inundation on the off chance snowy plover propagation will occur? It does not appear other impediments to their propagation have been analyzed or used to develop a more modest and effective approach. The radical DPR alternative is inconsistent with intent of PRC 5019.71.

### Alternative 2 (Haul Road Retention)

Retaining the haul road and stream crossing structures is consistent with the park's General Plan, LCP, and Coastal Act because it eliminates impacts associated with the loss of this valuable public coastal access, greatly reduces impacts to the endangered Howell's spineflower that favors the road margin habitat, and will prevent some of the predictable impacts of the DPR alternative such as brackish water intrusion into wetland areas east of the fore dune region. Leaving the road and culverts in place will not interfere with the goal of deflating the fore dune if the benefits of that objective are judged to outweigh its other significant environmental impacts.

Road retention also will free project funding for use in mitigating the predictable impacts of sand migration discussed at length above. One impact of that sand migration is burial of the road, which can be expected to further impair public access for pedestrian, bicycling, and ADA purposes. To address that impact, the permit for the project should be conditioned as follows:

- 1. To mitigate burial of the haul road by migrating sand, DPR will prepare an engineered mitigation solution that will be implemented for a 10 year period to maintain the surviving structure and regularly remove the buildup of sand on its surface.
- 2. DPR shall submit an updated General Plan for MacKerricher State Park to the Mendocino County Planning Department and the California Coastal Commission within one year of permit approval for adoption and certification by those entities as part of the LCP. That update shall balance the need for recreational access with appropriate measures to protect the natural and cultural resource values. The plan shall be revised prior to certification to address public and interested agency input, as well as requirements of the County and Coastal Commission.
- 3. DPR shall submit within two years a project supported with an appropriately scoped environmental document to the Mendocino County Planning Department and the California Coastal Commission to reconnect discontinuous segments of the haul road between the Ten Mile Bridge and the west end of Ward Avenue to create a continuous multi-use non-motorized coastal trail. This project shall incorporate surviving sections of the haul road as feasible, and shall make a concerted effort to consider public input and minimize environmental impacts and mitigation costs. Robust consideration shall be given to alternate tread materials, cost, longevity, maintenance, and a dedicated funding source. A plan for maintaining the facility using a partnership model shall be included.

A suggested alignment for this project is attached as Map 1. That route is intended to minimize environmental impacts. However, adjustments may be required as detailed surveys are pursued to develop the most feasible alignment. This suggested route follows

the east edge of the first vegetated landward swale to avoid most threatened and endangered plants and places the trail in a stable and protected geographic setting to minimize maintenance. Permeable plastic mesh may be one low cost tread material.

4. To mitigate sand migration that will occur if European beach grass is retained as part of this alternative, the following compensatory measures shall be imposed: a) any net loss of wetland habitat resulting from sand burial attributable to the project shall be compensated at a 1:1 ratio as determined by scientific analysis of the geographic distribution of wetlands measured prior to and five years following project implementation; b) any net loss of endangered and threatened plant species east of the fore dune from sand burial attributable to the project shall be compensated at a 1:8 ratio determined by scientific analysis of the geographic reduction of coverage five years following project implementation; c) funding (the amount to be determined by the County) shall be placed in an escrow account at the time the permit is issued for use in compensating neighboring property owners according to a procedure the County Planning and Building Services Department will establish. Excess funds, if any, shall be returned to DPR after 10 years.

### Alternative 3 (Compensatory Trial)

This alternative presupposes the DPR project will be pursued. The following additional mitigation measures/permit conditions should be imposed to ensure all significant impacts of that alternative are in fact reduced to a level that is truly less than significant:

- 1. DPR shall submit an updated General Plan for MacKerricher State Park to the Mendocino County Planning Department and the California Coastal Commission within one year of permit approval for adoption and certification by those entities as part of the LCP. That update shall balance the need for recreational access with appropriate measures to protect the natural and cultural resource values. The plan shall be revised prior to certification to address public and interested agency input, as well as requirements of the County and Coastal Commission.
- 2. Prior to implementing any endangered and threatened plant mitigation measures, DPR shall within two years submit to the Mendocino County Planning Department and the California Coastal Commission a proposed project supported by an appropriately scoped environmental document for a continuous multi-use non-motorized coastal trail between the Ten Mile Bridge and the west end of Ward Avenue that minimizes environmental impacts and mitigation costs. The proposed project shall be developed with robust public input and shall carefully consider alternate tread materials, construction cost, longevity, maintenance, and a dedicated funding source. A plan for maintaining the facility using a partnership model shall be included.

A possible alignment for this project is attached as Map 2. This map depicts a route that may minimize many environmental impacts, but will likely require adjustment as detailed surveys are pursued to develop the most suitable alignment that minimizes significant environmental impacts. Map 2 depicts a route that follows the eastern edge of the first vegetated landward swale where it will avoid most threatened and endangered plants, while also satisfying the need to place the trail in a stable and protected geographic setting that minimizes maintenance. A permeable plastic grid material, perhaps filled
with modest soil ballast, may be one low cost way to build this trail. Two stream crossings are shown at locations where the width of the crossing is narrowest to limit any wetland impacts and reduce the cost of elevated structures.

3. To mitigate sand migration that will occur from European beachgrass removal, the following compensatory measures shall be imposed in addition to those already specified in the MND and its mitigation monitoring and reporting plan: a) any net loss of wetland habitat resulting from sand burial attributable to the project shall be compensated at a 1:1 ratio as determined by scientific analysis of the geographic distribution of wetlands measured prior to and five years following project implementation; b) any net loss of endangered and threatened plant species east of the fore dune from sand burial attributable to the project shall be compensated at a 1:8 ratio determined by scientific analysis of the geographic reduction of coverage five years following project implementation; c) funding (the amount to be determined by the County) shall be placed in an escrow account at the time the permit is issued for use in compensating neighboring property owners according to a procedure the County Planning and Building Services Department will establish. Excess funds, if any, shall be returned to DPR after 10 years.

We believe these two additional project alternatives deserve careful consideration because they reduce to a less than significant level the undisclosed and inadequately analyzed impacts of the proposed DPR project. We urge the County to include these alternatives in the analysis of the permit and impose conditions similar in intent to the ones we have suggested as a way to address significant impacts to recreation, transportation, wetlands, landward plant habitats, and neighboring property owners not addressed in the final MND for the project. We also urge the County to recognize the MND is inadequate, and an EIR should instead be required.

We include a list of the members of the Ad Hoc Committee that contributed their professional engineering, geology, archaeology, biology, and planning expertise to the preparation of the views expressed in this letter. Contact me at thad@mcn.org or 964-7272 with any questions. We thank you for considering our concerns and suggestions.

Sincerely,

Thad M. Van Bueren for/Haul Road Ad Hoc Committee

Attachments: Map 1 (Alternative 2); Map 2 (Alternative 3); Figure showing plastic mesh paving material and standard multi-use trail design; List of Ad Hoc Committee members

cc: Liz Burko, DPR District Superintendent Janelle Beland, DPR Director Bob Merrill, California Coastal Commission State Senator Noreen Evans State Legislator Wesley Chesbro Dan Gjerde, Fourth District Supervisor



August 27, 2013

# NOTICE OF FINAL ACTION

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

CASE#:	CDP #12-2012
OWNER:	California Department of Parks & Recreation
APPLICANT:	Renee Pasquinelli
REQUEST:	Coastal development permit for a dune restoration project that involves: (1) the removal of asphalt and gravel base in three segments of the former Georgia Pacific Haul Road, totaling 2.7 miles; (2) stream channel restoration associated with the removal of two road culvert creek crossings along the Haul Road; and (3) the treatment of European
	beachgrass and other nonnative weeds within the project area.
LOCATION:	In the coastal zone, on the west side of Highway 1, located in MacKerricher State Park, north of Ward Ave in the community of Cleone to Ten Mile River (various Assessor
	Parcel Numbers).
DDO TOOD OO	CODEVISION 111 C 1 1

PROJECT COORDINATOR: Abbey Stockwell

HEARING DATE: The project was originally approved with modifications at the June 11, 2013 Coastal Permit Administrator Hearing. The project was appealed to the Mendocino County Board of Supervisors meeting of August 13, 2013, where public comment was heard. The project was continued to the Mendocino County Board of Supervisors Special Meeting of August 26, 2013. At the August 26, 2013, Special Meeting, the appeal was denied and the Coastal Permit Administrator's approval was upheld, with further modifications.

APPROVING AUTHORITY: Coastal Permit Administrator

ACTION: Approved with Conditions.

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

The project was appealed at the local level.

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

# EXHIBIT NO. 12

APPLICATION NO. A-1-MEN-13-0241 CALIF. DEPT. OF PARKS & RECREATION NOTICE OF FINAL LOCAL ACTION & FINDINGS FOR APPROVAL (1 of 71)



**Board Action**: Upon motion by Supervisor McCowen, seconded by Supervisor Pinches, and carried (3/2, with Supervisors Brown and Gjerde dissenting); IT IS ORDERED that the Board of Supervisors denies the appeal and upholds the Coastal Permit Administrator decision to approve CDP 12-2012 (State Parks), with the following modifications to the Special Conditions:

- Special Condition No. 1 to read: "The proposed project shall comply with all measures from the Final Mitigated Negative Declaration for the Inglenook fen-Ten Mile Dunes Natural Preserve Dune Rehabilitation Project, 2012, except as modified by these special conditions. A copy of this staff report shall be supplied to all contractors and a copy shall be maintained on the job site."
- Special Condition No. 2 to read: "Non-native trees shall not be removed in the eastern fringes of the proposed project area. Native trees shall be planted on State Parks property in strategic areas to provide greater protection to existing residential developments. State Parks shall develop and distribute an educational handout or flyer for adjacent landowners on how to protect their land through native tree/vegetation plantings or protection measures for existing vegetation, including the identification of nurseries that supply native trees or other appropriate plantings."
- Special Condition No. 6 to read: "State Parks shall not remove the road surface, but shall be required to remove sand on the northern segment of the Haul Road, in the rockballast retainment area, if necessary, in order to maintain access to the beach."
- Special Condition No. 7 to read: "State Parks shall help facilitate development of a Class I bike path along Highway 1, from Ten Mile River to Ward Avenue, and a Class II bike path in those limited areas where a Class I bike path is not feasible. Furthermore, to the extent that a future access easement dedication may help to facilitate development of the Class I/II bike path along Highway 1, State Parks shall dedicate sufficient area from the edge of right of way on its properties directly adjacent to Highway 1 from Ten Mile River to Ward Avenue."
- (New) Special Condition No. 12 to read: "Prior to commencement of the project, State Parks shall submit a plan which shall be approved by the Department of Planning and Building Services for the removal of all railroad ties that may be embedded in the sections of haul road to be removed; all railroad ties that may be scattered or stockpiled in the project area; and all pressure treated fence posts ("peeler cores"), including cut off and embedded remnants, that formerly delineated the State Parks – Georgia Pacific boundary line. Such plan shall include safe handling and best management practices for the removal, handling, storage, transport and disposal of the material that is protective of public and worker safety and the environment."





# ATTACHMENT C CDP 12-2012 Approved Findings and Conditions

(Coastal Permit Administrator's June 11, 2013 modifications are shown in strike-thru/underline format.)

# PROJECT FINDINGS AND CONDITIONS

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

# FINDINGS:

- 1. The proposed development is in conformity with the certified Local Coastal Program; and
- The proposed development will be provided with adequate utilities, access roads, drainage and other necessary facilities; and
- The proposed development is consistent with the purpose and intent of the applicable zoning district, as well as all other provisions of Division II, and preserves the integrity of the zoning district; and
- 4. The proposed development, if constructed in compliance with the conditions of approval of this coastal development permit and with the mitigation measures incorporated into the project by the certified Mitigated Negative Declaration, in accordance with the California Environmental Quality Act, will not have any significant adverse impacts on the environment; and
- The proposed development will not have any adverse impacts on any known archaeological or paleontological resource; and
- Other public services, including but not limited to, solid waste and public roadway capacity have been considered and are adequate to serve the proposed development.
  - The proposed development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act and Coastal Element of the General Plan.
  - 8. Resource Protection Impact Findings:
    - The resource as identified will not be significantly degraded by the proposed development.
    - b. There is no feasible less environmentally damaging alternative.
    - c. All feasible mitigation measures capable of reducing or eliminating project related impacts have been adopted.

# STANDARD CONDITIONS:

- 1. This action shall become final on the 11<sup>th</sup> day following the decision unless an appeal is filed pursuant to Section 20.544.015 of the Mendocino County Code. The permit shall become effective after the ten working day appeal period to the Coastal Commission has expired and no appeal has been filed with the Coastal Commission. The permit shall expire and become null and void at the expiration of two years after the effective date except where construction and use of the property in reliance on such permit has been initiated prior to its expiration.
- 2. The use and occupancy of the premises shall be established and maintained in conformance with the provisions of Division II of Title 20 of the Mendocino County Code.
- The application, along with supplemental exhibits and related material, shall be considered elements of this permit, and that compliance therewith is mandatory, unless an amendment has been approved by the Coastal Permit Administrator.
- This permit shall be subject to the securing of all necessary permits for the proposed development from County, State and Federal agencies having jurisdiction.
- The applicant shall secure all required building permits for the proposed project as required by the Building Inspection Division of the Department of Planning and Building Services.
- This permit shall be subject to revocation or modification upon a finding of any one or more of the following:
  - a. The permit was obtained or extended by fraud.
  - b. One or more of the conditions upon which the permit was granted have been violated.
  - c. The use for which the permit was granted is conducted so as to be detrimental to the public health, welfare or safety, or to be a nuisance.
- A final judgment of a court of competent jurisdiction has declared one or more conditions to be void or ineffective, or has enjoined or otherwise prohibited the enforcement or operation of one or more such conditions.
- 8. This permit is issued without a legal determination having been made upon the number, size or shape of parcels encompassed within the permit described boundaries. Should, at any time, a legal determination be made that the number, size or shape of parcels within the permit described boundaries are different than that which is legally required by this permit, this permit shall become null and void.
- 9. If any archaeological sites or artifacts are discovered during site excavation or construction activities, the applicant shall cease and desist from all further excavation and disturbances within one hundred (100) feet of the discovery, and make notification of the discovery to the Director of the Department of Planning and Building Services. The Director will coordinate further actions for the protection of the archaeological resources in accordance with Section 22.12.090 of the Mendocino County Code.

# SPECIAL CONDITIONS:

- The proposed project shall comply with all measures from the Final Mitigated Negative Declaration for the Inglenook fen-Ten Mile Dunes Natural Preserve Dune Rehabilitation Project, 2012. A copy of this staff report shall be supplied to all contractors and a copy shall be maintained on the job site.
- 2. Non-native trees shall not be removed in the eastern fringes of the proposed project area, adjacent to Inglenook, until the proposed plantings of the native trees' canopy exceeds the elevation of tallest dunes that are upwind (mainly west) of the trees. Native trees shall also be planted on State Parks property in strategic areas to provide greater protection to existing residential developments. State Parks shall develop and distribute an educational handout or flyer for adjacent landowners on how to protect their land through native tree/vegetation plantings or protection measures for existing vegetation, including the identification of nurseries that supply native trees or other appropriate plantings.
- Sand removed and stock piled during project activities shall not be stored in a manner that would accelerate sand migration eastward to the residential properties.
- 4. Prior to September 30, 2014, Applicant shall implement accessibility improvements to the parking lot and trail to the beach at Ward Avenue shall be implemented by the end of the proposed project completion date, including but not limited to: adequate handicap parking (which must be assessed on a regular basis, based on visitor demand), signage, beach-ready wheelchair(s), and appropriate access to the sandy beach. The location and materials of the storage structure (6'x6' shed), parking, and trail improvements (if necessary) shall be submitted to Planning for review and approval.
- 5. State Parks shall explore the feasibility of obtaining a public access easement to provide formal vertical access from Highway 1 to the Preserve as well as a means to provide non-motorized boating access. Feasibility of acquiring an access easement shall be based on landowner willingness. If willing landowner(s) are identified, a dedicated access easement shall be developed, approved by the County and Coastal Commission, and recorded. Feasibility of establishing boating access may be limited due to the presence of federally listed species.
- State Parks shall be required to remove sand on the northern segment of the Haul Road, in the rock-ballast retainment area, if necessary, in order to maintain access to the beach, and install signage to direct visitors to the beach.
- 7. Prior to issuance of the coastal development permit, State Parks shall-dedicate a 15-ft accessway work with CalTrans to help promote development of a Class I/ II bike path along Highway 1, from Ten Mile River to Ward Avenue. Furthermore, to the extent that a future access easement dedication may help to facilitate development of the Class I/II bike path along Highway 1, State Parks shall dedicate sufficient area from the edge of right of way on its properties directly adjacent to Highway 1 from Ten Mile River to Ward Avenue and work-with CalTrans to complete a bike and pedestrian route.
- State Parks shall continue to monitor evaluate the stream crossing conditions during winter high flow events for pedestrian access. <u>State Parks shall evaluate alternative stream</u> crossings methods to maintain public access during winter high flow events. Three years after culvert removal, if conditions are found to be impassable for a significant amount of time during winter months, alternative access shall be pursued.

- 9. The disposal site indentified in the MND as closest to Ten Mile shall be the preferred site for disposal. Use of the Big River Quarry shall be restricted to only on an as-needed basis in order to reduce impacts to coastal visitors. If the Big River Quarry is found to be needed for disposal, a plan shall be developed to ensure that the disposed materials are not contaminated with pampas grass seed and other non-native found at the quarry site. This plan shall be submitted to Planning for review and approval prior to disposal at Big River Quarry.
- 10. State Parks shall submit to Planning any modification and/or finalization of the mitigation monitoring plan and long-term strategy during the life of the project. It is expected that State Parks will continue to responsibly manage its Preserve long after the proposed project is complete to ensure that invasive species are reduced and eliminated and the ecological function is maintained.
- 11. Grading standards from Ch. 20.492 of the MCCZC shall be followed.
  - a. Grading shall not significantly disrupt natural drainage patterns and shall not significantly increase volumes of surface runoff unless adequate measures are taken to provide for the increase in surface runoff.
  - b. Development shall be planned to fit the topography, soils, geology, hydrology, and other conditions existing on the site so that grading is kept to an absolute minimum.
  - c. Essential grading shall complement the natural land forms. At the intersection of a manufactured cut or fill slope and a natural slope, a gradual transition or rounding of contours shall be provided.
  - d. The permanently exposed faces of earth cuts and fills shall be stabilized and revegetated, or otherwise protected from erosion.
  - Adjoining property shall be protected from excavation and filling operations and potential soil erosion.
  - f. The area of soil to be disturbed at any one time and the duration of its exposure shall be limited. Erosion and sediment control measures shall be installed as soon as possible following the disturbance of the soils. Construction equipment shall be limited to the actual area to be disturbed according to the approved development plans.

	COASTAL PERMIT ADMINISTRATOR ACTION SHEET
CASE#:	CDP #12-2012 HEARING DATE: 6/11/13
OWNER:	Calif Dept of Parles & Recreation
ENVIRONME	ENTAL CONSIDERATIONS:
	Categorically Exempt
>	K Negative Declaration (State Parks ORd Foncy)
	EIR
FINDINGS:	
V	Per staff report
	Modifications and/or additions
ACTION	
V	Approved
	Denied
	Continued
CONDITIONS	
comprisione	Per staff report
×	Nedifications and/or additions
Special	Conditions # 3,5, (e were Madified. See Attached
	$\Lambda \Lambda C$
	Signed: Coastal Permit Administrator
	A.L. Communities

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CDP 12-2012 (DPR – Ten Mile Dunes) **REVISED SPECIAL CONDITIONS** (Conditions 1, 2, 4, 7, 8, & 9 remain as written in the staff report):

3. Prior to September 30, 2014, Applicant shall implement accessibility improvements to the parking lot and trail to the beach at Ward Avenue shall be implemented by the end of the proposed project completion date, including but not limited to: adequate handicap parking (which must be assessed on a regular basis, based on visitor demand), signage, beach-ready wheelchair(s), and appropriate access to the sandy beach. The location and materials of the storage structure (6'x6' shed), parking, and trail improvements (if necessary) shall be submitted to Planning for review and approval.

5. Prior to issuance of the coastal development permit, State Parks shall dedicate a 15 ft accessway work with CalTrans to help promote development of a Class I/ II bike path along Highway 1, from Ten Mile River to Ward Avenue. Furthermore, to the extent that a future access easement dedication may help to facilitate development of the Class I/II bike path along Highway 1, State Parks shall dedicate sufficient area from the edge of right of way on its properties directly adjacent to Highway 1 from Ten Mile River to Ward Avenue and work with CalTrans to complete a bike and pedestrian route.

6. State Parks shall <u>continue to monitor</u> evaluate the stream crossing conditions during winter high flow events for pedestrian access. <u>State Parks shall evaluate</u> <u>alternative stream crossings methods to maintain public access during winter high flow</u> <u>events</u>. Three years after culvert removal, if conditions are found to be impassable for a significant amount of time during winter months, alternative access shall be pursued.



# COUNTY OF MENDOCINO

360 NORTH BUSH STREET . UKIAH . CALIFORNIA . 95482 120 WEST FIR STREET · FORT BRAGG · CALIFORNIA · 95437

STEVE DUNNICLIFF, DIRECTOR DEPARTMENT OF PLANNING AND BUILDING SERVICES FB FAX: 707-961-2427 pbs@co.mendocino.ca.us www.co.mendocino.ca.us/planning

May 31, 2013

RECEIVED JUN 0 3 2013 CALIFORNIA OASTAL COMMISSION

# PUBLIC NOTICE OF PENDING ACTION STANDARD COASTAL DEVELOPMENT PERMIT

The Mendocino County Coastal Permit Administrator, at a regular meeting to be held Tuesday, June 11, 2013 in the Veterans Memorial Hall, 360 North Harrison Street, Fort Bragg at 10:00 a.m. or as soon thereafter as the item may be heard, will hear the below described project that is located in the Coastal Zone.

CASE #:	CDP #12-2012
DATE FILED:	5/21/2012
OWNER:	California Department Parks & Recreation
APPLICANT:	Renee Pasquinelli
REQUEST:	Coastal development permit for a dune restoration project that involves: (1) the removal of asphalt and gravel base in three segments of the former Georgia Pacific Haul Road, totaling 2.7 miles; (2) stream channel restoration associated with the removal of two road culvert creek crossings along the Haul Road; and (3) the treatment of European
	beachgrass and other nonnative weeds within the project area.
LOCATION:	In the coastal zone, on the west side of Highway 1, located in MacKerricher State Park, north of Ward Ave in the community of Cleone to Ten Mile River (various Assessor
	Parcel Numbers).
nno mon co	

# PROJECT COORDINATOR: Abbey Stockwell

As you are an adjacent property owner and/or interested party, you are invited to appear at the hearing, or to direct written comments to this office at the above address. If you would like to be notified of the Coastal Permit Administrator's action, please submit a written request to this office. All correspondence should contain reference to the above noted case number.

The decision of the Coastal Permit Administrator shall be final unless a written appeal is submitted to the Board of Supervisors with a filing fee within 10 calendar days thereafter. If appealed, the decision of the Board of Supervisors to approve the project shall be final unless appealed to the Coastal Commission in writing within 10 working days following Coastal Commission receipt of a Notice of Final Action on this project.

If you challenge the above case in court, you may be limited to raising only those issues described in this notice or that you or someone else raised at the public hearing, or in written correspondence delivered to the Coastal Permit Administrator at or prior to, the public hearing.

Additional information regarding the above noted case may be obtained by calling the Planning and Building Services Department at 964-5379, Monday through Friday.

Andy Gustavson, Coastal Permit Administrator

CDP# 12-2012 (DPR Ten Mile) June 11, 2013 CPA-1

OWNER:

RECEIVED JUN 03 2013 CALIFORNIA COASTAL CONIMISSI APPLICANT: **REQUEST:** 

LOCATION:

APPEALABLE AREA:

PERMIT TYPE:

TOTAL ACREAGE:

GENERAL PLAN:

ZONING:

EXISTING USES:

ASSESSORS PARCEL NUMBERS:

#### ADJACENT ZONING:

California Department of Parks and Recreation 12301 N. Hwy 1, Box 1 Mendocino, CA 95460

Renee Pasquinelli Senior Environmental Scientist 12301 N. Hwy 1, Box 1 Mendocino, CA 95460

Coastal development permit for a dune restoration project that involves: (1) the removal of asphalt and gravel base in three segments of the former Georgia Pacific Haul Road, totaling 2.7 miles, (2) stream channel restoration associated with the removal two road culvert creek crossings, and (3) the treatment of European beachgrass and other nonnative weeds within the project area.

In the coastal zone, on the west side of Highway 1, located in MacKerricher State Park, north of Ward Ave, in the community of Cleone, to Ten Mile River.

Yes - West of 1st public road and within ESHA

Standard Coastal Development Permit

1,285 acres (total)

OS; RR-10; RL-160

OS [FP]; RR:L-10 [FP][PD]; RL:L-160

MacKerricher State Park: Inglenook Fen-Ten Mile Dunes Natural Preserve

015-130-43; 015-130-44; 015-130-45; 015-130-53; 069-010-01; 069-010-02; 069-010-03; 06-9010-04; 069-010-05; 069-010-07; 069-010-08; 069-010-09; 069-010-10; 069-010-35; 069-040-01; 069-040-02; 069-040-03; 069-040-04; 069-040-05; 069-040-06; 069-040-07; 069-040-08; 069-040-09; 069-040-10; 069-051-01; 069-051-14; 069-052-01; 069-090-01; 069-090-02; 069-090-03; 069-090-04; 069-090-05; 069-090-06; 069-090-07; 069-090-08; 069-090-09; 069-090-10; 069-090-13; 069-101-01; 069-101-02

North: RR:L-10 [PD] East: RL; RR:L-2, RR:L-10 South: RR:L-40

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West: Pacific Ocean

# SUPERVISORIAL DISTRICT:

# CA COASTAL RECORDS PROJECT:

Image 2009 02684 - Image 2009 02716

ENVIRONMENTAL REVIEW: The California Department of Parks and Recreation (State Parks) is the lead agency responsible for project compliance with the California Environmental Quality Act (CEQA). State Parks has prepared an Initial Study and a Mitigated Negative Declaration (MND). In summary, the MND for the Project found:

No potential for adverse impacts on agricultural resources, mineral resources, population and housing, and recreation associated with the proposed project.

Less than significant impacts in the following areas: aesthetics, air quality, cultural resources, geology and soils, hazards and hazardous materials, hydrology and water quality, land use and planning, mineral resources, noise, population and housing, public services, transportation/traffic, and utilities and service systems.

Full implementation of the mitigation measures included in the MND will reduce potential project-related impacts on biological resources to a less than significant level.

The Notice of Determination for MND was filed December 20, 2012 and no court challenges to the MND where filed within the 30-day statute of limitations.

Special Condition 1 is recommended with this coastal development permit to emphasize that all mitigation measures specified in the MND are conditions of CDP 12-2012.

LOCAL COASTAL PROGRAM CONSISTENCY RECOMMENDATION: The Mitigated Negative Declaration (MND) prepared by the State Parks describes design features and mitigation measures incorporated into the project to reduce potential impacts to a level of insignificance as required by CEQA. In addition, the project must also comply with policies in the County's Coastal Element and regulations in the County's Coastal Zoning Code that impose specific requirements which in some cases may exceed those necessary to satisfy CEQA.

The following combines the review of the CEQA analysis completed under the adopted MND with a discussion of requirements found in the County's Local Coastal Plan (LCP). Special conditions are recommended where necessary to achieve compliance with the County's LCP. The following sections also address any comments received from agencies in response to the County's referrals. With the addition of the recommended conditions, the project is consistent with the applicable goals and policies of the Local Coastal Program as described below.

**OTHER RELATED APPLICATIONS:** CDP 18-2012 CalTrans: Request to install a soldier pier drilled retaining wall at Seaside Creek (watershed just north of Ten Mile) and relocate roadway slightly east of its existing location. That project proposes to mitigate its wetland impacts by restoring impacted streams within Ten Mile Dune Rehabilitation project.

**PROJECT DESCRIPTION:** California State Parks proposes to restore ecosystem processes in the Inglenook Fen-Ten Mile Dunes Natural Preserve (Preserve) by removing three disconnected segments of

CDP# 12-2012 (DPR Ten Mile) June 11, 2013 CPA-3

roadway in rare dune habitat, removing two culverts and restoring the stream channel, and treating (without herbicides) approximately 60 acres (24.3 hectares) of European beachgrass and other nonnative weeds. Located west of Highway 1, and stretching southward from the Ten Mile River to just north of Ward Avenue, the project is entirely within the boundaries of the 1,285-acre Preserve in MacKerricher State Park, Mendocino County, California.

State Parks summarizes the proposed work as follows:

- Remove three segments of abandoned asphalt roadway and underlying rock base totaling 2.7 miles (4.3 km). Some portions of the road will remain intact to protect sensitive resources.
- Remove two approximately 5-foot diameter (1.5 meter) culverts and associated fill materials to restore the stream bed, bank, and channel to a natural condition and reestablish native plant vegetation.
- Remove approximately 38 acres (15.4 ha) of previously treated European beachgrass using hand labor and approximately 15 acres (6.07 ha) of previously untreated European beachgrass through a long-term program of hand removal and native plant reestablishment.
- Remove other non-native plants, including trees and shrubs through a long-term program that includes reestablishing native dune forest in an approximate 7 acre (2.8 ha) area of back dunes.
- Reestablish federally and state-listed threatened and endangered species and other native plants into suitable habitat by direct seeding, transplanting, or installation of cuttings.
- Remove iceplant in select areas to increase habitat for the federally listed Howell's spineflower.

The following represents additional details of the proposed work excerpted (and in some places summarized by staff) from the MND (pgs 6-10).

#### 1. Road Removal

The proposed road removal is divided into three segments, or portions. Portion 1, the southernmost remnant beginning 0.81 miles (1.3 km) north of the Preserve's southern boundary near Ward Avenue; Portion 2, beginning 0.59 miles (0.95 km) south of Fen Creek; and Portion 3, beginning 0.41 miles (0.66 km) south of Fen Creek and continuing largely intact to the Preserve boundary to the northeast. Two culverts will be removed along Portion 3 at Fen Creek and Inglenook Creek. In general, the project proposes to remove the entire length of the haul road including remnant asphalt surface and underlying road base within the Preserve's dune system, except where removal would harm sensitive resources.

Portion 1 stretches about 720 feet (220 m) in length above the coastal strand. It is disconnected from the existing haul road to the north and south. The portion sits atop foredunes, and annual high winter tides further undercut the portion. Segments of the remaining asphalt are unstable and perched above an actively changing beach/coastal strand. Asphalt segments that have broken off lean against the coastal side of the elevated road berm and are carried to sea by high waves during storm events. Access to Portion 1 would require that project equipment and vehicles travel across wet sand below the high tide line to approach from the coastal side. State Parks staff will conduct daily project area surveys for sensitive species prior to allowing vehicle access on the beach.

Portion 2 is a 262-feet (80 m) segment above the coastal strand approximately 200 feet (61 m) NNE (up the coast) from Portion 1. This portion is also isolated from other road portions without access by the existing haul road. Portion 2 sits atop foredunes and annual high winter tides further undercut it. Large segments of asphalt are leaning against the coastal side of the remnant road berm. Access to Portion 2 will require project equipment and vehicles to travel across wet sand



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below the high tide line to approach from the coastal side. Similar to requirements for Portion 1, State Parks staff will conduct daily project area surveys for sensitive species prior to allowing vehicle access on the beach.

Portion 3 is the largest portion of road to be removed. A little under 2.5 miles (4 km), it extends from approximately 755 feet (230 m) NNE (up the coast) from Portion 2 to the northern end of the haul road at the Preserve boundary. The haul road then continues on adjacent private property, where it will not be treated as part of this project. The road in Portion 3 angles slightly back from the coastal strand, and crosses Fen Creek and Inglenook Creek. This portion can be accessed from the existing haul road in its entirety and is mostly intact with the road base still in place. In numerous places, windblown sand has covered the road to a depth of several feet. Treatment of Portion 3 will include sand removal from the road surface to facilitate vehicle and equipment access as well as asphalt and road base removal using heavy equipment, except in those areas identified to avoid sensitive resources. The stockpiled sand, with associated plant materials and native seed, will be moved back to replace the former road.

2. Creek Restoration

Fen Creek is currently channeled to flow beneath the Haul Road through a culvert. Where Inglenook Creek passes under the road, concrete riprap is visible below the western side of the road. Inglenook Creek may be passing through an unseen culvert below the riprap or simply seeping through the structure and partially blocked culvert. Channel restoration for both creeks would include excavating the fill material and pulling out culvert structures to return the channel to a more natural state, and allowing natural processes to establish the channel configurations. Native vegetation will become reestablished where suitable through natural regeneration, or through a combination of natural regeneration augmented with the installation of cuttings and/or direct seeding. All non-ballast materials and structures will be transported offsite for disposal [at a permitted facility] and reused or recycled if possible.

3. Invasive Species Treatment

For the proposed project, European beachgrass throughout the Preserve will be removed with hand labor. Primary treatment areas include 15 acres of European beachgrass that have not previously been treated and 38 acres of European beachgrass that will be retreated to gain optimal control. Since 2007, the original cover of 95 acres of European beachgrass has been reduced by approximately 60%; the retreatment areas are contained within the remaining 40%. A secondary treatment area consists of 7 acres (2.8 ha) of European beachgrass growing within an eastern area of the Preserve. Removal of beachgrass in this secondary area will be undertaken through a long-term program that first includes the reestablishment of native trees (pines) to regenerate former areas of dune forest.

4. Construction Activity and Access

State Parks estimates that the total volume of materials to be removed is approximately 25,000 cubic yards (19,114 cubic meters). Materials removed during the project may be temporarily stockpiled within the project area on areas selected to avoid sensitive resources. Materials such as concrete, asphalt, road base and metal culverts would be recycled or reused if possible. The remainder may be hauled approximately 20 miles (32 km) south to the old quarry site on State Parks property at Big River to be used for future park projects, or to a second disposal site has

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been identified that is approximately 5 miles from the project area, and located on private property within the Ten Mile watershed. The alternative disposal site consists of ranch and timber roads that are in need of surface rocking. A Non-industrial timber management plan (1-94NTMP-002 MEN) is in place to address the environmental requirements associated with rocking the roads.

At the southern end of the Preserve, and for nearly one mile north of the Ward Avenue access, the Haul Road has been completely washed out and no longer exists as a roadway. Heavy equipment necessary for the removal of the road cannot negotiate the existing footpath from the bluffs to the beach. The narrow path is also a popular access point for recreationists. Vehicle traffic on the beach or through the adjacent dune system in this area would cause negative impacts to federally listed plant and wildlife species. South of Fen Creek the road becomes severely eroded and is broken into two disconnected portions. However, the road is intact in the northern portion of the Preserve, although some segments are covered in loose sand. Vehicle access is available to the project site from a gated road located near the Ten Mile River Bridge. Due to the lack of access at the southern end near Ward Ave, all vehicle and equipment access to the work site would be from the north near the Ten Mile River Bridge, making use of the existing roadway to drive equipment as far south as possible. Where the roadway ends, a temporary ramp made of natural rock material may be used to move vehicles from the road berm edge to wet sand on the beach below in order to reach stranded remnants of the old haul road at the southern end of the Preserve, Road removal work will begin at the southern portion of the Preserve, with vehicles returning to the road where it is still intact to haul out materials as the project progresses northward.

If equipment operates 5 days per week, State Parks estimates that removal of the road and the hauling of materials from the stockpile area to disposal sites will take approximately 45 working days, or 9 weeks. Delivery of a portion of those materials to the Big River quarry site would take approximately 21 working days, or 4 weeks.

#### MUNICIPAL ADVISORY COUNCIL REVIEW & PUBLIC INPUT

The Westport Municipal Advisory Council (WMAC) commented on the proposed project and submitted letters to the County dated July 9, 2012, and February 1, 2013. Both letters raise concerns about the proposed project. The following is a summarization of the comments received:

1. Intentional removal of a coastal access trail would preclude access for bicycles and disabled individuals.

2. Use of herbicides [staff note: this has been removed from the project]

3. Adjacent property owners are concerned that the road and European beachgrass removal will increase sand migration that will adversely impact adjacent properties. Native species should be established prior to any disturbance that may cause sand migration.

4. The MND does not reduce the environmental impacts of the project below a significant level. Therefore, an EIR should be required.

5. Alternative project designs should be considered.

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Several of the above issues are addressed in the following sections titled: Land Use, Public Access, and Natural Resources. The certified by the state in December 2012, no challenges to the findings and conclusions of the CEQA document were filed. State Parks' Final MND addressed the concerns raised, provides a clear record of the decision-making process, and concludes that all project impacts are reduced to a less than significant level.

# Community Concerns

Staff received several comment letters from members of the concerned public, staff was cc'ed on a number of comments letters that were sent to State Parks during the comment period of the MND. The comments and concerns raised regarding the MND were addressed by State Parks in the Final MND, response to comments. The comments received regarding the Coastal Development Permit raised the same topics and concerns as for the MND and those mentioned above in the WMAC section.

# KEY ISSUES

The proposed project raises issues regarding coastal access, environmentally sensitive habitat areas, archeological resources, and grading which are detailed in this staff report. The proposed project is consistent with policies regarding visual resources, hazards, and transportation, therefore little discussion is provided on these topics.

#### 1. Land Use

The Inglenook Fen-Ten Mile Dunes Natural Preserve (Preserve; 1,285 acres) is located in the northern portion of MacKerricher State Park (2,250 acres total). The Preserve is bordered by the Ten Mile River and estuary to the north, with Highway 1 and rural residential properties forming the eastern boundary. The more developed recreational areas of MacKerricher State Park as well as the community of Cleone are to the south.

The parcels are classified on the Coastal Plan Map as Open Space. The parcel is similarly zoned; OS. The Open Space zoning designation is intended to be "applied to lands within the Coastal Zone which are not suited for development or are more valuable in their undeveloped natural state and to public park lands." Setbacks, building heights, and lot coverage do not apply to the proposed project. The proposed project complies with the intent of the Land Use classification.

The County's Coastal Element lists Ten Mile Beach Dunes, and Inglenook Fen as "Natural Areas." Sand Lake and Inglenook Fen, Inglenook Creek Marsh, Ten Mile River area listed as "Coastal wetlands of Special Biological Importance<sup>1</sup>" within the Coastal Element. No special designations were found for the old Haul Road in the Coastal Element.

Between the highway and ocean the extensive dune system covers 1,285 acres. This dune system is a highly functional and rare habitat that supports numerous types of rare and endangered plant and animal species and is therefore considered an Environmentally Sensitive Habitat Area (ESHA). Dune habitat is particularly rare in California; in northern California coastal dunes account to less than 3% of the landscape. In Mendocino County, there is the Ten Mile Dune system and the Manchester Dunes north of Point Arena.

<sup>&</sup>lt;sup>1</sup> The 1985 Coastal Elements notes that this designation is made by Dept. of Fish and Game

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Ecological function has been impaired by the development of the Haul Road through the foredunes (i.e., the dunes just beyond the beach). Beach shoreline retreat at the Preserve is not perfectly parallel with this road. Differential retreat and growth of the beach has eroded the Haul Road extensively at the south end, but partly buried it with dune sand at the north end. Based on calculations using the most recent data available, approximately 67% of the entire existing road remnant surface is covered to some extent by sand. In the northern portion, up to 29% of the Haul Road is completely covered by sand. The degraded road culverts at the stream crossings continue to stabilize the adjoining roadway and maintain the artificial stream morphology within the drainage of the Inglenook Fen.

European beachgrass, an introduced and non-native plant species, has invaded much of the dune system, altering dune formation and creating steep primary foredunes, and crowding out native plant and animal species within the Preserve. Inglenook Creek and Fen Creek, where the two culverts are proposed to be removed, support plant and animal communities that are not typically found in a dune system. The Mendocino County Coastal Element (1985) contains the following policies:

Policy 4.2-20: The Land Use Maps indicate that several parcels owned by the Bureau of Land Management are located in the area between Ten Mile River and Sandhill Lake and Inglenook Fen. These lands should be transferred to the California Department of Parks and Recreation. These lands should be incorporated into the existing holding of the adjoining MacKerricher State Park. <u>The area shall be managed as a natural habitat area in conjunction</u> with passive recreational uses and dunes stabilization program.

**Policy 4.2-21:** The Georgia-Pacific Corporation haul road, under a special management agreement with the California Department of Parks and Recreation, presently provides weekend and holiday vehicular access to the long stretch of public beaches which extend from Fort Bragg north to Ten Mile River. This private roadway, which travels through the entire length of the <u>MacKerricher State Park, should be acquired by DPR and incorporated into its management</u> plan for the park, if at any time during the life of the Local Coastal Plan the property owner desires to sell, trade or surrender this property.

According to the MND, the Haul Road was originally developed as a timber hauling railroad in 1916. The railroad was converted to a road way in 1949. While State Parks acquired the Preserve portion of MacKerricher SP in 1977 (southern portions of the SP were acquired in the 1950s), Georgia –Pacific continued to own the Haul Road. The roadway was open to the public for vehicle travel on the weekends in 1977 until it was abandoned in the 1983 after a storm washed out a significant portion of the road. State Parks acquired the Haul Road in 1994. The Preserve has been open to the public for passive recreation.

East of the dunes lies a rural residential neighborhood in the area known as Inglenook. Concerns have been raised regarding increased sand migration as a result of the proposed project. Dunes are known dynamic systems that are inherently unstable; the morphology of this system is discussed within the MND and in the responses to comments on the MND. The Ten Mile dune system is characterized in the MND as follows (p.85):

The sand movement and depositional pattern of the dune system is naturally broken into discrete series of transverse mobile dune complexes and intervening deflation plains (dune slacks; wetland and meadow-like flats) with stabilized vegetation. There are currently no major continuous belts of mobile dunes extending from the active foredunes to the more mobile interior dunes; the entire foredune complex terminates with a landward edge in either stabilized, vegetated dune slacks, or low-relief stabilized dune grassland and scrub.

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The interior mobile dune complexes are characterized by wide, unvegetated, gently sloping windward faces located upwind of stabilized dune slacks or low vegetated dunes. The interior mobile dune complexes are remnants of larger, past, more continuous mobile dune sheets that have differentiated into mobile dunes and stabilized slacks. The landward mobile dunes are internally recycling older deposits, while the foredunes only slowly encroaching the vegetated, stabilized slacks and dunes landward.

Visual observation of sands from the foredunes versus the interior dune complex show a clear discontinuity between the freshly deposited beach-foredune sand that lacks iron oxide weathering/staining (wave-washed grayish-white sand), and the internally reworked and older interior/landward transverse dunes that have faint iron oxide weathering evident (warmer tancolored sand). Also there are coarse sand lag surfaces in the seaward dune slacks at the NW that are not present in the interior dunes" (Dr. Peter Baye, e-mail communication, June 22, 2012).

The argument that the Haul Road removal would trigger increased dune migration over private property, relative to the existing conditions, is found to be unsupported for several reasons cited by experts in this field (paraphrased from P. Baye, Nov. 29, 2012 Memorandum):

- The proposed project does not create the potential to destablilize or significantly accelerate a
  massive mobile dune's migration. The volume of sand in the foredunes, and the flux of sand
  from beach to foredune, is dwarfed by the accumulated mass of mobile sand in the interior
  landward dunes particularly of the northern lobe.
- 2. There is a significant discontinuity and very long dune travel distance (relative to maximum rates of mobile dune travel) between the Haul Road/foredune area, the existing wide stabilized dune wetlands and wetland-dune transition zones, and the landward large mobile dunes. If the foredunes migrate landward, they reach vegetated stabilized wetlands. In other words, there is no pathway for sand to be transported from the foredunes to the mobile dunes without interference from the stabilized, wetland and vegetated areas.
- 3. Most importantly, there is no evidence of significantly increased foredune mobilization or landward migration rates in the southern area (near Ward Ave) where the Haul Road was previously washed away. In fact, in this area, the foredunes are no more landward than the sections with the Haul Road in place, and the vegetated stabilized areas landward of the foredunes increase the resistance to sand migration.

The proposed project includes measures to maintain and plant native trees on the eastern edge of the dunes to reestablish a native dune forest that is intended to halt sand migration further landward. This would occur in the seven-acre area proposed for secondary treatment of European beachgrass as well as removal of additional non-native tree species. Tree removal and secondary beachgrass treatment (hand pulling) in this area would occur slowly over time once native trees become established. The MND describes this portion of the project as follows (p.13):

While wind-transport of sand is a natural process in a dune environment, sand becomes deposited and its movement halted on the eastern fringes of dunes where conifers are established. This type of dune is called a precipitation ridge, and is a typical feature of mobile dunes that migrate into forests. The removal of wooded areas backing the eastern edge of the Ten Mile Dunes has

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provided an uninterrupted path for wind-carried sand and the landward expansion of the dunes in the Preserve (Barry & Schlinger 1977).

Thus, the management objective for the 7 acre secondary treatment area is to facilitate reinitiation of native pine forest succession in dunes at the landward margins of the dunes in selected areas, where appropriate.

This would entail partial stabilization of dune scrub landward of the proposed dune forest succession zone. Once the forest canopy reaches elevations exceeding the dunes upwind, the forest canopy would interact with any future mobile dunes by precipitating a steep, slow-moving dune slipface from northwestern winds moving across the dunes, thus allowing sand to deposit on the sheltered dune slipface. This dune would migrate only very slowly landward compared with unvegetated, convex mobile dunes.

Trees provide a dune migration buffer for the residences neighboring the eastern edge of the sand dunes. Native tree establishment will be further encouraged in this area by protecting those that do occur and potentially transplanting seedlings of native trees where appropriate.

**Special Condition 2** is recommended to require that non-native trees shall <u>not</u> be removed in the eastern fringes of the proposed project area until the proposed planting of the native trees' canopy exceeds the elevation of tallest dunes that are upwind (mainly west) of the trees. Native trees shall also be planted on State Parks property in strategic areas to provide greater protection to existing residential developments. Further, State Parks shall be required to develop and distribute an educational handout or flyer for adjacent landowners on how to protect their land through native tree/vegetation plantings or protection measures for existing vegetation, including the identification of nurseries that supply native trees or other appropriate plantings). In addition, sand removed and stock piled during project activities shall not be stored in a manner that would accelerate sand migration eastward to the residential properties.

#### 2. Public Access

The project site lies within the northern portion of MacKerricher State Park, which extends from Ward Avenue in Cleone, north to the mouth of the Ten Mile River. Access to this portion of the State Park may be obtained from a parking area and formal access point at Ward Avenue. The project site may also be accessed by an informal trail from Highway 1 at Ten Mile River. Extensive beach erosion has disrupted continuous roadway access along the shore that once existed between these points. There is no other developed access between Highway 1 and the shore in the northern part of MacKerricher State Park. The four-mile (6.4 km) expanse of sandy beach that lies between these points is designated by the County LCP as part of the California Coastal Trail, which runs along the western edge of the Preserve. This trail offers the public a chance to explore this rare and unique landscape in a wild coastal setting within MacKerricher State Park in relative solitude. This northern portion of the State Park provides an alternative, more "natural" coastal experience than the southern portion of the park where the Haul Road segment south of Ward Avenue to the Pudding Creek Trestle is developed with bluff top boardwalks, campground facilities, and beach access.

The County Land Use maps (Land Use Maps 10 & 11) delineates the general alignment of the California Coastal Trail parallel to and adjacent with the ocean but not necessarily along on the Haul Road. The following Coastal Act access policies apply to the project.

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Section 30210: In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30211: Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30212.5: Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.

The Mendocino County Coastal Element contains policies regarding access and includes the description of areas appropriate for access. Chapter 4.2 of the Coastal Element: Rockport to Little Valley Planning Area, names the following relevant access points (*emphases added*):

#### Seaside Creek to Pudding Creek Trail

Location: Extending along shoreline from Seaside Creek-Ten Mile River south to Pudding Creek. Potential Development: Hiking and equestrian trail following beach for 8 miles. Usable from Seaside Creek in summer and from Ten Mile Bridge and Pudding Creek year round. Alternative coastal trail for non-vehicular use.

Because of the sometimes hazardous conditions occasioned by tidal action and stream conditions at the mouth of Ten Mile River, the coastal trail in this area shall be segmented, rather than indicated as a continuous trail system. One segment shall extend from Seaside Creek Beach south to the northern bank of Ten Mile River. <u>Another segment shall extend from the south side of Ten</u> <u>Mile River along the shoreline of MacKerricher State Park to Pudding Creek</u>.

#### Ten Mile River

Location: Four sites for boating access have been evaluated:

- North bridgehead, Old Highway 1 bridge;
- · County Road 428 at north bank;
- Offer of dedication of floating easement along 1 mile of north bank by Wallihan;
- State property on south bank adjoining west side of Highway I bridge.

Existing Development: Public access to Ten Mile River currently is available only on weekends holidays and some winter months via Fort Bragg to Georgia-Pacific haul road. No boating access is currently available on the Ten Mile River.

Potential Development: The southwest bank access point can be opened by the Department of Parks and Recreation on public lands.

The proposed project is consistent with these policies. It will restore the land to a more level, hummocky topography, allowing easier access (foredunes slope will be reduced) from the beach into the dune swales and back dune areas. The Coastal Trail will continue to be available to hikers and equestrians along its shoreline alignment, as shown on the County's certified Land Use maps. California Coastwalk, a state



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non-profit organization established with the goal of helping to ensure coastal access via the California Coastal Trail, and the Mendocino Land Trust, a local non-profit promoting public access, both describe the general alignment of the trail along the sandy beach, on the west edge of the Preserve. While this alignment by these organizations is not certified according to the CA Coastal Commission, it is recognized by these trail and coastal access advocacy groups based on their familiarity with trail development and public access issues within the project site. They envision the Coastal Trail segment in the northern part of the park as highly variable in terrain and access. The proposed project will not affect public use of the Haul Road to access coastal resources, south of Ward Avenue. State Parks is developing a plan to retain and improve this southern segment of the Haul Road to connect with the City of Fort Bragg's planned bluff top trail project through the old G-P Mill site. Together, the two planned projects will result in more than seven miles of paved coastal trail, which will provide the public with equally spectacular coastal views and access. Coastal access and recreation opportunities are abundant in throughout this area, however dune habitat is extremely limited and rare.

While the project removes an existing roadway which may be viewed as a trail, this roadway is disconnected, deteriorated/washed away or buried, and diminishes the ecological function of a unique Environmentally Sensitive Habitat Area. The Coastal Act recognizes the need to provide varied types and levels of access, while providing for recreation, and protecting important coastal resources. The benefits of restoring ecological function through removal of an unnatural feature and recent development (relatively speaking to the formation of the dune habitat) outweigh and overcome arguments for diminished coastal access. The opportunity is present to restore full ecological function to a rare habitat which is unique to the Mendocino Coast and the State of California. The policies contained in the LCP do not require the Haul Road to be maintained for access. The argument to maintain the Haul Road for access does not seem to be justified given the value of dune restoration and resource protection and enhancement, when compared to the value of the existing the Haul Road which is deteriorated, segmented, disconnected from the access ways into the Preserve, and due to the dynamic nature and rare species of the dune environment reconstruction and maintenance of existing are not feasible alternatives.

At the north and south access ways into the Preserve, access points will remain unchanged (except as conditioned below). Access to the Preserve from the north end is informal, one would walk from the Highway and down steep, loose sand dunes, where a path meets up with the Haul Road on private property, and then transverses onto State Parks. At the southern end, at Ward Ave, there is an existing parking area and access to the beach is down a ramp installed for equestrians or through a tunnel that outlets into a small creek that must be crossed to access the beach. Either access point requires careful attention to foot placement.

Ward Avenue Access: In order to access the Haul Rd within the Preserve from Ward Ave, one must walk north along the beach 0.8 mile, past where the Haul Road washed away in 1982/1983 and the dunes have restored, and hike up a steep sandy slope to get on the Haul Road. Alternatively, one could hike into the foredune/ backdunes area and find the southern end of the Haul Road. Accessibility can be improved at the Ward Avenue. Policies supporting these improvements are as follows:

**Policy 3.6-16**: Access to the beach and to blufftop viewpoints shall be provided for handicapped persons where parking areas can be close enough to beach or viewing level to be reachable by wheelchair ramp. The wheelchair symbol shall be displayed on road signs designating these access points where the means of access is not obvious from the main road.

Policy 4.3-3: The northerly portion of Ward Avenue which extends from Highway 1 at Cleone to the beach access tunnel and parking area shall be indicated on the Land Use Maps as an existing

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Shoreline access route. The Department of Parks and Recreation should include this parking and tunnel access area within their park management plan and the parking area and beach access should be maintained as part of the MacKerricher State Beach. The park management plan should specifically address parking and signing of this access point and make specific recommendations which will mitigate for the adverse impacts of increased visitor use within Cleone Acres Subdivision.

Special Condition 3 is recommended to require ADA accessibility improvements to the parking lot and trail to the beach at Ward Ave, including but not limited to: adequate handicap parking (which must be assessed on a regular basis, based on visitor demand), signage, beach-ready wheelchair(s), and appropriate access to the sandy beach. The location and materials of the beach ready wheelchair storage structure (6'x6' shed), parking, and trail improvements shall be submitted to Planning for review.

**Ten Mile River Access:** As described above, the north end access area of the Preserve is not a formal access point. There is, however, a pull out and parking area adjacent to the southeast end of the Ten Mile Bridge. This area was improved by requirement of the coastal permit to replace the bridge. Residents and visitors do find their way from the parking area, over private property to the Preserve, beach, and Haul Road. The Coastal Element contains the following relevant policies:

Policy 3.6-15: The Department of Fish and Game, Department of Parks and Recreation and appropriate county departments and agencies should be requested to monitor public access to sensitive coastal resource areas such as wetlands, dunes, riparian areas, tide pools, rocky intertidal areas, and other wildlife habitats, whether or not these areas are designated as access points on the Land Use Maps. DFG should, in consultation with the operating agency at each access point, prepare regulations governing use which shall be prominently posted. DFG should determine whether use of specific access points should be controlled to avoid degradation and allow resource recovery by limiting the number of users, by requiring supervision of users, or by closing the access point seasonally or periodically. (Policies regulating scientific access at Inglenook Fen and Havens Neck are listed in Chapter 4.)

**Policy 3.6-22:** In carrying out the coastal access policies of this Coastal Element, the county or other appropriate designated management agency shall consider and encourage the utilization of innovative access management techniques including, but not limited to, agreements with private organizations which would minimize management costs and encourage the use of volunteer programs.

Policy 4.2-17: Department of Parks and Recreation should develop access, including boating, from the south bank, in conjunction with the present weekend holiday Georgia Pacific haul road access program on public lands. At such time as any coastal development permit is sought for land adjacent to the river, if this boating access has not been established, as a condition of permit approval, an offer to dedicate river access shall be required for the area adjacent to the public lands consistent with Policy 3.6-5. If boating access is subsequently established on the public lands, this offer shall be extinguished.

**Policy 4.2-19**: The Department of Parks and Recreation shall be requested to prepare a General Plan for MacKerricher State Park that provides access to Ten Mile River and Inglenook Fen at designated locations and subject to conditions necessary for preservation of the natural environment of the park. Off-road vehicles shall be excluded.

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A parking area shall be signed and improved by DPR utilizing the existing widened Caltrans right-of-way located on the west side of Highway I several hundred feet south of the Ten Mile River bridge. A trail system shall be developed by DPR, in conjunction with Caltrans and private property owners, to connect this parking area via an existing trail entrance which is located at the southwest corner of the bridge. A fenced trail and a marked, at-grade crossing of the Georgia-Pacific haul road shall connect with the DPR lands on the south bank of Ten Mile River.

Limited access for scientific study of the Inglenook Fen and Sand Hill Lake area shall be provided immediately adjacent to Highway 1 in the vicinity of the Grange Hall upon property to be acquired by the Department of Parks and Recreation.

Near the Ten Mile Bridge at the northern extent of the project site, the Haul Road will not be removed on the piece of land that is private property between road right of way and State Parks, leaving a paved access point (private) to the south side of Ten Mile estuary. The remainder of the old Haul Road on private property will still connect to the northern end of the Preserve. Along the southeast-northeast alignment of the Preserve Boundary until the road veers southward, the asphalt layer will be removed and the rock ballast under the asphalt retained. Although creating a formal access trail at this northern end is beyond the scope of the proposed project and potential impacts to federal and state listed species were not evaluated in the CEOA process, staff inquired into the potential of formalizing access at this location. Staff's inquiry to federal and state resource agencies was met with serious concern for potential impacts from increased visitor access, also reinforced was the need to review and analyze as its own project the formalizing of the trail from the highway to the Preserve, rather than add it as a requirement to the proposed project after CEOA was completed. Staff agrees with this recommendation, however, the proposed project provides the opportunity to begin the process to improve and formalize access in this area, which should be pursued. The private property between CalTrans right of way and the Preserve is currently owned by the Conservation Fund, suggesting that a public access easement dedicated to State Parks may be possible to obtain. Other solutions to formalize access in this area may also be possible, such as obtaining access easement on the existing haul road/private access where it connects with Highway 1. The recordation of an easement to establish this access will depend on approval of private property owners. The assessment and construction of a trail will need to be conducted as its own project, subject to its own CDP.

Staff recommends **Special Condition 4** which would require State Parks to explore the feasibility of obtaining a public access easement to provide formal vertical access from Highway 1 to the Preserve as well as a means to provide non-motorized boating access. Staff recognizes that the feasibility of establishing boating access may be limited due to the presence of federally listed species. This condition includes requirements to remove sand on the trail, in the rock-ballast retainment area, if necessary, for maintaining access, and install signage to direct visitors to the beach. In addition, State Parks shall work with the Inglenook Grange Hall in order to develop limited access for scientific study of the Inglenook Fen.

Community concern expressed desire to have improved bicycle access from Ten Mile through to Fort Bragg. Although the existing Haul Road in the Preserve does not connect to Ward Ave, and bicycle access is limited on the existing Haul Road, the north portion of the road is relatively intact (although ~29% has been covered in sand) for ~2.5 miles. CalTrans recently completed the *Pacific Coast Bike Route/California Coastal Trail Engineered Feasibility Study*, February 2013, which identified the bike corridor to be along the Highway from Ten Mile Bridge to Ward Ave, where the trail would connect to the Haul Road south to Fort Bragg. Portions of the Preserve are adjacent to the Highway, providing the opportunity to provide improved bicycle access.



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Special Condition 5 is recommended to require that State Parks dedicate access on the properties adjacent to Highway 1 and work with CalTrans to complete a bike and pedestrian route from Ten Mile River to Ward Ave.

**Culvert Removal and Stream Crossings:** The MND notes that the Inglenook Fen has been a natural feature for 4,000 to 6,000 years, long before the construction of the road; removal of the road and culverts will not impact the fen. The overall goal of the project is to return the dune system to a more natural state, which is likely to improve drainage within the Preserve in the long-term. Currently, these culverts are partially blocked by debris from upstream flows and driftwood from tidal influences.

Stream flow has been channeled through these culverts at least since 1949 when the rail bed was converted to a truck road. Once the culverts are removed and the stream beds have been restored to a more natural state stream flow would be redirected as each creek reestablishes its natural course. These changes would not substantially increase the rate or amount of surface runoff or increase the potential for offsite flooding. Rather, beneficial changes in the lower hydrology of Fen and Inglenook Creeks will occur from the removal of the culverts and road berm that currently constrict the channels. In turn, this will allow water to spread out and reduce depth at crossing during winter flows. This would result in benefits to plant and animal communities and decrease the danger of flooding while still allowing access to through the Preserve. Both Fen Creek and Inglenook Creek are located approximately 1.4 miles from their respective access points, providing a respectable hike to each creek outlet. Through-hikers will be able to find a location to cross the creeks, the peak flow depth in the sandy outlets is typically found to be less than a few inches.

California Dept. of Fish and Wildlife was consulted during the CEQA and CDP review process. Staff discussed with DFW public access and stream crossings during winter flows. In response, staff received the following statement from the California Department of Fish and Wildlife, which concurs with the MND:

In the dune-type environment, we expect that stream channels will change position over the years as active dunes interact with post-project unrestricted stream channels. To function properly, installation of foot bridges will require the restriction/stabilization of the affected stream channels to prevent channels from migrating away from the bridge crossings. Construction and maintenance of foot bridges will hamstring the mitigation that my Department supports, that being the return of natural stream function to Inglenook and Fen Creeks. With the exception of large storm events and the short-term resulting increases in higher stream flows, hikers can select routes closer to beach areas when crossing these streams. During all but a few days of high storm-induced stream flows, hikers can cross these streams without going beyond ankle-high depth. The existing culvert crossings result in an artificially constricted channel with unnaturally deep channels at and immediately downstream of the crossings. Post-project channel geometry will be one that is generally wider and shallower, although the best locations for crossing these channels by foot will likely remain at areas closer to the beach.

Staff agrees with this position and supports the project as proposed. Coastal access and recreation opportunities in this portion of the park are supported and provided for with the proposed project. An alternative to a footbridge might be a log crossing. Due to site conditions and dune environment, events that may make the stream outlet crossing hazardous to fjord would be few or rare events. Special Condition 6 is recommended to require State Parks to evaluate the stream crossing conditions during winter high flow events for pedestrian access. Three years after culvert removal, if conditions are found to



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be impassable for a significant amount of time during winter month, alternative access should be pursued as a new project. (See Attachment A regarding photos and additional information on the Inglenook and Fen Creek).

Visitor Use and Public Safety: State Parks has found that the majority of visitors wish to be near or see the ocean, most visitors are not interested in remaining exclusively on the Haul Road. Survey data and anecdotal observations support the assertion that most visitor use takes place on the beach or in the open dunes, and only a small percentage of visitors make use of the Haul Road as a trail or as a reason for their visit. The Project will help to level the beach grade from waters edge to foredunes and thus eventually replace the over steepened dunes and cliffs that formed along the existing narrow beach by removing the stabilizing effect of the remnant road and invasive European beachgrass have on dune formation. During high tides and storm events, waves will quickly reach the base of the over steepened dunes and thus force visitors to walk, and equestrians to ride, into the back dunes in order to avoid hazardous surf. Removal of the remnant road and eradication of the beachgrass would return the dune processes to a more natural state. The result would be a wider sandy beach, with a more gradual slope leading to low, undulating foredunes that will offer easier hiking and riding conditions and is not as hazardous during high water events.

Additional visitor use statistics can be found in Appendix E.6 of the Final MND. According to these studies, visitor activity within the Natural Preserve is significantly less than in the more developed areas of MacKerricher State Park. Spring and summer visitation to the Preserve, including along the Haul Road, was recorded during bird surveys between March and August 2012. A total of 310 visitors were counted during this period, with an estimated 68% using the beach, 3% on the remnant sections of Haul Road, and 29% in the back dunes, east of the Haul Road (MND, Appendix E.6). Peak visitor season on the coast is typically June through September.

A comparative estimate was also prepared that reviewed visitation to the northern portion of the park with visitation to the southern portion. This estimate for 2012 found that of the total visitors, less than 10% were found within the Preserve, and these visitors were found on the beach. Overall annual visitor statistics were not available for 2012 at the time of this writing, however, in 2011 total visitation to the entire park is estimated to be 309,217, in 2010 709,607 visitors, and over one million visitors in 2009-2006. This illustrates that the beach access and road removal is appropriate and to ability to maintain the level of visitor use will endure after project completion.

It is estimated that to maintain the existing Haul Road, just to remove sand (not including the additional surveys, permitting, environmental assessment & monitoring of the work, or any repaving, etc.) would cost approximately \$25,000/year. This estimate also does not take into account changes from sea level rise. Maintenance or reconstruction of the existing roadway is not in keeping with the intent of the Preserve designation, nor is it consistent with policies contained within the LCP and Coastal Act mandate which declare that protection of coastal resources and habitats are of paramount concern.

**Construction Activity:** Prior to actual project implementation, preparatory actions would be taken in all park areas in which visitor access or recreation may be constrained or restricted due to project activities. Project information and area closure notices would be issued by the Mendocino District State Parks Superintendent and published in local newspapers, as well as posted on the State Parks' website. During work activities, appropriate signs and notices would be provided at main access areas to alert park visitors to potential vehicle traffic or temporary road and area closures. Educational or safety-related information would be posted, and staging areas and travel corridors would be flagged and signed to insure visitor safety. These actions would also be applied to any use of the M1 road to the Big River quarry.

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Special Condition 7 restricts the use of the Big River Quarry for disposal to only an as-needed basis in order to reduce impacts to coastal visitors. Additional concerns regarding disposal at Big River Quarry are expressed in other sections of this staff report, including grading and transportation. Measures to address the additional concerns will be added to this condition.

The proposed project will not diminish, or adversely impact coastal access and recreation; rather an Environmentally Sensitive Habitat Area will be restored. The proposed project is consistent with the policies of the Coastal Act and Mendocino County's LCP.

# 3. Natural Resources

The environmental setting has been described in the MND and in this staff report, characterizing the dune ecosystem, which is defined in County Local Coastal Program as Environmentally Sensitive Habitat Areas and supports: wetlands and riparian areas, a rare coastal dune ecosystem, the only remaining coastal fen in California, eight rare natural communities, and eight special plant species as the important elements.

Home to many species of wildlife and an important stop-over for migratory birds, the Preserve provides USFWS-designated critical wintering and nesting habitat for the western snowy plover. The Preserve also supports two populations of federally endangered plant species. The Inglenook Fen, which occurs between the southernmost and middle dune lobes, is an area of great biological significance. It is the southernmost in a series of fens extending from Alaska south to this area. It is the only known remaining coastal fen in California, containing a unique assemblage of plants and insects representing a relict biotic community from the Pleistocene. Many species growing here are rare or endemic.

The County of Mendocino Coastal Element defines Dunes and Environmentally Sensitive Habitat Area (ESHA) as follows:

Dunes. Sand formed in hills or ridges by the wind and sometimes stabilized by vegetation. Dunes are distinct ecosystems made up of various community types, ranging from open unvegetated sand hills to stabilized dune forests, that frequently contain rare, endangered, protected, or unusual plant and animal species. This highly specialized habitat can be extremely unstable, sensitive to the continuous interplay of surf, sand, and wind.

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 be easily disturbed or degraded by human activities and developments.

The Coastal Element also provides the following pertinent policy:

Policy 3.1-15: Dunes shall be preserved and protected as Environmentally sensitive habitats for scientific, educational and passive recreational uses. Vehicle traffic shall be prohibited. Where public access through dunes is permitted, well-defined footpaths or other means of directing use and minimizing adverse impacts shall be developed and used

The Coastal Act includes the following policies for protection of land and marine habitats:

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Section 30230: Marine resources shall be maintained, enhanced, and, where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231: 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.

Coastal strand and dunes are prominent, naturally dynamic habitats within the Preserve, with the native species, including those listed as endangered, being adapted to the movement of sand and water. The Preserve supports a coastal dune ecosystem that includes extensive areas of wetlands and dune habitat with well-preserved relatively natural dynamic features, and some areas with significantly impaired ecological structure and dynamics. One of the most altered zones of the dunes is the foredune (frontal or seaward dune zone), which has been affected by:

- past construction of a linear haul road and road bed along the naturally dynamic foredune zone;
- past construction of two culverts under the haul road draining wetlands (fens) at artificially stabilized locations, forming artificially incised (downcut) channels, controlling the outlets of extensive wetlands within the Preserve, and modifying their dynamics;
- extensive establishment of European beachgrass that strongly modifies both the foredune structure and hydrology of the wetland outlets

European beachgrass, a nonnative, invasive plant, has displaced native dune plants and rendered large areas of the dunes unsuitable for many native plant and animal species. European beachgrass alters natural dune processes by forming dense, tall vegetation capable of trapping windblown sand within a relatively narrow zone landward of the beach, and regenerating rapidly after burial by sand. This process results in foredunes of high vegetation density, steepness and elevation immediately behind the beach, compared with broad, mounded semi-open foredune zones formed by native prostrate dune vegetation. European beachgrass also modifies sand deposition patterns around the outlets (mouths seaward of culverts) of the wetlands, affecting the hydrology of the wetlands. Segments of the elevated road berm and European beachgrass occur parallel to the beach, displacing nesting habitat for western snowy plovers (listed as Federally Threatened) and creating an access barrier for fledglings to forage.

**Policy 3.1-27:** Clearance of trash and accumulated debris from coastal streams and the improvement of these streams for water supply, recreational use and fishery restoration are projects which are vital to the economic and biologic health of the Mendocino Coast and shall be encouraged whenever possible.

The partially eroded haul road and culvert system will continue to impair fen wetland hydrology if no action is taken. The culverts are located behind relatively wide (past or current European beachgrass-influenced) foredunes that temporarily protect them from direct storm wave erosion. Partial storm wave erosion of the rusted metal culverts would result in hazardous and esthetically unacceptable conditions.

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and may result in persistent artificial influence of wetland outlet hydrology. Partial storm wave erosion of the haul road results in formation of a steep cliff-like dune scarp with an asphalt-armored top that impedes establishment of native dune vegetation (root zone restriction, inhibition of colonization). Active removal of the haul road, culverts, and beachgrass would accelerate recovery of the dune and wetland complex within the Preserve, particularly the critical outlets of the fen wetland systems. The proposed project would remove unnatural, and relatively new development features to restore native habitats and to preserve "endangered plant and animal species and their supporting ecosystem"

Asphalt and road base are not representative of natural features of the dune ecosystem and landscape, nor do they facilitate or contribute to the restoration or sustenance of natural environmental processes in the dune ecosystem. While the asphalt surface does not support any plant life, project activities related to its removal are likely to have impacts on adjacent land cover types and individual plant and animal species. These impacts are discussed in the MND in sections on the individual vegetation types and plant and animal species (see pgs 52 -72). Project impacts that are considered potentially significant have been addressed for the purposes of avoidance of, or ecological compensation for those impacts in an appended Project Mitigation, Monitoring, and Restoration Plan (Attachment B). Impacts and mitigation measures for specific plants and animals are also included in Attachment B. These measures are essential to address the full scope of Project-related effects. Nevertheless, the primary goal of removing asphalt and road base, along with other artifacts of human industry in the dune ecosystem, is to restore environmental and physical processes in the Project site in order to rehabilitate habitat for native plants and animals. Adaptive management and a long-term strategy for on-going monitoring and management of the present resources is the intended goal and approach of the mitigation monitoring plan. Special Condition 8 is recommended to require State Parks to submit to Planning any modification and/or finalization of the mitigation monitoring plan and long-term strategy. It is expected that State Parks will continue to responsibly mange its Preserve long after the proposed project is complete to ensure that invasive species are reduced and eliminated and the ecological function is maintained. Special Condition 1 incorporates all of the mitigation measures as a requirement of this permit.

The proposed project to restore an environmentally sensitive habitat area can not meet the buffer requirements which are typically required by Chapter 20.496 of the MCCZC to protect ESHA from degradation resulting from future development. No future development is proposed at this time, and the proposed work is intended to restore ecological function, therefore buffers are not appropriate for the purposes of the subject project. Regarding permitted development that is allowed within dunes, MCCZC Sec. 20.496.040 includes scientific, educational and passive recreational uses. Restoration activities are permitted through MCCZC Sec. 20.496.025 - Wetlands and Estuaries. The supplement resource findings are included in the Findings section of this report. The MND and its supporting documentation have demonstrated that the proposed project will not degrade the dune habitat and its associated ESHA and the restoration/rehabilitation project will support the continuance and enhancement of the subject ESHAs.

#### 4. Archaeological/Cultural Resources

In 1916, the Union Lumber Company constructed the Ten Mile River Railroad to transport timber from the Ten Mile River watershed to their mill in Fort Bragg. The railroad alignment traveled north from the mill in Fort Bragg, crossing Pudding and Virgin Creeks and continued north along the coastal terrace to Laguna Point. From Laguna Point the grade dropped in elevation to almost level with the beach along the edge of Ten Mile Dunes. At Ten Mile River, the railroad alignment turned east and then south, paralleling the river into the watershed.



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In order for the railroad alignment to maintain elevation along the coast, the Union Lumber Company constructed a berm for the tracks. Construction of the berm at Mill Creek resulted in the formation of Lake Cleone. From 1917 to 1949, the Union Lumber Company transported over 95 percent of their timber harvest to the mill using the Ten Mile Railroad. In 1949, the Union Lumber Company converted the railroad grade to a truck hauling road. This conversion included the removal of rails and ties along the alignment. Several layers of gravel and road base rock were imported from a quarry up the north fork of Ten Mile River. The gravel was used to cap over the grade footprint to construct the road. Eventually, the haul road was paved (chip-sealed). Within MacKerricher SP, the Union Lumber Company continued to use the haul road to transport timber. In the summer of 1977, the Georgia Pacific Corporation (merged operations with Union Lumber Company in 1969) opened the haul road to the public on the weekends. Vehicle use of the road continued until 1983, when a violent storm washed out a half-mile portion of the road along the beach in the Ten Mile Dunes vicinity. It was determined through consultation with the State Historic Preservation Officer that the Haul Road is not eligible for listing on the National Register of Historic Places due to loss of integrity in addition to not meeting any of the four required criteria for listing.

Since being abandoned in 1983, degradation of the haul road has continued and as a result, is no longer viable as a travel corridor in the Preserve. However, the Haul Road south of Ward Avenue is an important recreational venue for the park and is used by visitors for a myriad of recreational activities including biking, hiking, and access to the beach.

During the public comment period of the CEQA MND, a local archaeologist questioned impacts of the proposed project to the archeological resources, these concerns were addressed in the response to comments and Final MND. Fourteen archaeological sites have been documented in and adjacent to the project area, and copious others have been recorded in other areas throughout the park. Most of these sites are related to Native American utilization of the area, both prehistorically and historically (Mendocino Indian Reservation era). Project work associated with these restoration efforts has the potential to impact many of these culturally sensitive areas since most are located within the haul road corridor or in other areas where restoration activities are planned. State Parks further states that removal of the road will allow the natural dune system to re-establish and would prevent the increased exposure of cultural sites (Final MND, Response to Comments, Nov. 26, 2012 letter to Mr. Thad Van Bueren):

Results of archaeological testing in 2011 by University of Davis (UCD) establish that construction of the Ten Mile River Railroad and truck road conversion not only resulted in direct impacts to the archaeological resources located within this travel corridor, but more wide spread indirect impacts as well. Apparent at most, if not all of the sites located in the western portion of the Preserve where the road is still present, is substantial site deflation and erosion that continues to adversely impact these resources. The haul road impedes natural processes by restricting sand movement on the west and north sides of the grade. The road acts as a barrier and creates "deflation plains" along the landward side of the road that has resulted in wind-scoured areas level with the water table. Unfortunately, archaeological sites situated in these deflation plains have been adversely impacted with exacerbated deflation, erosion, and water inundation due to lack of sand which normally buffers these deposits. Subsurface testing at some of these sites in 2011 indicates the archaeological deposits are severely deflated and that the deposits have an average depth of a few centimeters. Additionally, the deposits appear to have been redistributed as a thin veneer across the plain and lack data potential. Consequently, these sites or components of these sites no longer retain integrity and are not eligible for inclusion into the National Register of Historic Places (NRHP). Removal of the haul road will substantially diminish and/or halt



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development of these deflation plains by allowing the sand to move eastward and allowing native dune vegetation to become reestablished.

The application was reviewed by the Mendocino County Archaeological Commission on April 10, 2013, which determined that adherence to the mitigation measures and project designs related to protecting resources are adequate. The Arch. Commission specifically contends that sites CA MEN 427 and CA Men 2015 will be monitored during and after the project. The Final MND includes numerous measures to ensure protection and reduction of potential impacts to a less than significant level. Special Condition 1 captures the mitigations as a requirement of this permit. Standard Condition Number 8 is recommended, advising the applicant of the requirements of the County's Archaeological Ordinance (Chapter 22.12 of the Mendocino County Code) in the event that archaeological or cultural materials are unearthed during site preparation or construction activities.

#### 5. Grading, Erosion and Runoff

State Parks estimates that the total volume of materials to be removed is approximately 25,000 cubic yards (19,114 cubic meters). Materials removed during the project may be temporarily stockpiled within the project area on areas selected to avoid sensitive resources. Materials such as concrete, asphalt, road base and metal culverts would be recycled or reused if possible. The remainder may be hauled approximately 20 miles (32 km) south to the old quarry site on State Parks property at Big River to be used for future park projects, or to a second disposal site has been identified that is approximately 5 miles from the project area, and located on private property within the Ten Mile watershed. The alternative disposal site consists of ranch and timber roads that are in need of surface rocking. A Non-industrial timber management plan (1-94NTMP-002 MEN) is in place to address the environmental requirements associated with rocking the roads on the adjacent private property. Special Condition 7 recommends preference to disposal at the Ten Mile site.

Regarding grading, Chapter 20.492. of the MCCZC states in pertinent part:

#### Grading Standards.

(A)Grading shall not significantly disrupt natural drainage patterns and shall not significantly increase volumes of surface runoff unless adequate measures are taken to provide for the increase in surface runoff.

(B) Development shall be planned to fit the topography, soils, geology, hydrology, and other conditions existing on the site so that grading is kept to an absolute minimum.

(C) Essential grading shall complement the natural land forms. At the intersection of a manufactured cut or fill slope and a natural slope, a gradual transition or rounding of contours shall be provided.

(E) The permanently exposed faces of earth cuts and fills shall be stabilized and revegetated, or otherwise protected from erosion.

(F) Adjoining property shall be protected from excavation and filling operations and potential soil erosion.

(G) The area of soil to be disturbed at any one time and the duration of its exposure shall be limited. Erosion and sediment control measures shall be installed as soon as possible following

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the disturbance of the soils. Construction equipment shall be limited to the actual area to be disturbed according to the approved development plans.

Drainage patterns would likely change within the dune system due to the changes in dune topography, but it is unusual to encounter flowing water over the dunes due to the porous nature of the sand. Where culverts are removed at Fen Creek and Inglenook, the creeks would continue to remain true to their upland channels and downstream lagoon outlets to the ocean, but like any dynamic system, the creeks could alter course in the future due to flooding or natural obstructions. The extent of construction activities is restricted due to the number of sensitive resources. **Special Condition 9** is added to include provisions from MCCZC Sec 20.492.

Approximately 6000 cubic yards (4587 cubic meters) of sand would be removed and temporarily stockpiled in approved locations adjacent to the road berm. Equipment will operate on the existing roadway to remove asphalt and road base. As asphalt and road base are removed by sections, the stockpiled sand, with associated plant materials and native seed, will be moved back to replace the former road. Special Condition 2 includes provisions regarding the stockpiling of sand.

Regarding erosion control, Section 20.492.015 of the MCCZC states in pertinent part:

(A) The erosion rate shall not exceed the natural or existing level before development.

(B) Existing vegetation shall be maintained on the construction site to the maximum extent feasible. Trees shall be protected from damage by proper grading techniques.

(C) Areas of disturbed soil shall be reseeded and covered with vegetation as soon as possible after disturbance, but no less than one hundred (100) percent coverage in ninety (90) days after seeding; mulches may be used to cover ground areas temporarily.

The MND includes Best management Practices to prevent and avoid erosion and sedimentation from project activities. Special Condition 1 captures these measures as requirements of this permit.

#### 6. Transportation/Circulation

The project would not result in a new encroachment within any existing public roadway nor would it affect traffic circulation in the vicinity of the project area. No impacts to transportation/circulation are expected. The project will temporarily increase traffic volumes on local and regional roadways during construction activities.

State Parks characterized construction related traffic this way (MND pg 120):

Most of the vehicle traffic and construction activities associated with the project would occur within the boundaries of MacKerricher SP. Traffic associated with the project would be concentrated at the northern end of the park and in the Preserve. Most visitor use at MacKerricher State Park takes place at the central and southern areas of the park and would therefore not be affected by project activities.

None of the activities proposed as part of this project would have the potential to cause traffic delays on a public road. Highway 1 would be the primary access road leading to the project site. Vehicles would access the project area by using the gated road on the east side of Highway 1 that

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runs beneath the Ten Mile River Bridge. This road is located on private property and is accessed from a logging road that runs east along the southern bank of the Ten Mile River. The logging road is used by private timber operators and residents of the Ten Mile River valley with no indication that the highway intersection has safety or congestion issues.

State Parks estimates that the project would require up to 15 crew transport (passenger or lightduty trucks) vehicles and 17 to 23 light-duty trucks, tractors, and haulers to complete the work.

The crew vehicles would likely make one to two trips daily to and from the project site. Delivery of the construction equipment would require one trip per vehicle to and from the site. Most construction vehicles would remain onsite or parked at the project staging areas when not in use.

State Parks estimates that it would take up to 45 days with equipment working 5 days per week for dump trucks to haul all materials from the stockpile area to disposal sites. The time required to haul materials to the Big River site would be approximately 21 days. The addition of an estimated 15 crew vehicles making an estimated 1 to 2 round-trips daily and 6 highway approved dump trucks making up to 7 trips to and from the site daily would not constitute a substantial increase in traffic volume for Highway 1 or result in additional congestion.

The alternative Ten Mile Disposal site is five miles east of the project site, along the logging road. The alternative disposal site consists of ranch and timber roads that are in need of surface rocking. A Non-industrial timber management plan (1-94NTMP-002 MEN) is in place to address the environmental requirements associated with rocking these roads including storage and stock piling of materials. The above estimate was included in the MND before the Ten Mile site was selected. It is expected that with the preference for the Ten Mile site, impacts to the highway will be significantly reduced.

#### 7. Hazards

Designation of Preserve status within the State Park system required that public vehicle access and vehicle use on the road be prohibited. On those few portions of the haul road that remain intact, vehicle access by park rangers, staff or emergency medical services is currently allowed in the event of an emergency. However, due to relatively low visitor use of the Preserve compared to other areas of MacKerricher SP, very few incidents occur that require emergency response. After removal of the road, access by ATV or other rescue equipment would be possible along the packed, wet sand on the beach.

The project would not create any increase in public service requirements. Demand for services would be equivalent to current calls for beach rescues and other infrequent incidents associated with improper and unauthorized activities. Restoration work and alterations associated with this project would not significantly increase visitation or the demand for public services, and therefore would not necessitate the construction of new facilities.

The proposed project does not present any hazard issues relative to fire or slope failure. There are no known faults, landslides or other geologic hazards in close proximity to the proposed development.

#### 8. Visual Resources

The proposed project will not adversely impact visual resources or public views and will be visually compatible with the surrounding development.

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# 9. Groundwater Resources

No adverse impacts to groundwater resources are anticipated.

### 10. Zoning Requirements

The project complies with the zoning requirements for the Open Space District set forth in 20.372, et.seq., and with all other zoning requirements of Division II of Title 20 of the Mendocino County Code.

# PROJECT FINDINGS AND CONDITIONS

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

#### FINDINGS:

- The proposed development is in conformity with the certified Local Coastal Program; and
- 2. The proposed development will be provided with adequate utilities, access roads, drainage and other necessary facilities; and
- The proposed development is consistent with the purpose and intent of the applicable zoning district, as well as all other provisions of Division II, and preserves the integrity of the zoning district; and
- 4. The proposed development, if constructed in compliance with the conditions of approval of this coastal development permit and with the mitigation measures incorporated into the project by the certified Mitigated Negative Declaration, in accordance with the California Environmental Quality Act, will not have any significant adverse impacts on the environment; and
- 5. The proposed development will not have any adverse impacts on any known archaeological or paleontological resource; and
- 6. Other public services, including but not limited to, solid waste and public roadway capacity have been considered and are adequate to serve the proposed development.
- The proposed development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act and Coastal Element of the General Plan.
- 8. Resource Protection Impact Findings:
  - (a) The resource as identified will not be significantly degraded by the proposed development.
  - (b) There is no feasible less environmentally damaging alternative.
  - (c) All feasible mitigation measures capable of reducing or eliminating project related impacts have been adopted.

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# STANDARD CONDITIONS:

- 1. This action shall become final on the 11<sup>th</sup> day following the decision unless an appeal is filed pursuant to Section 20.544.015 of the Mendocino County Code. The permit shall become effective after the ten working day appeal period to the Coastal Commission has expired and no appeal has been filed with the Coastal Commission. The permit shall expire and become null and void at the expiration of two years after the effective date except where construction and use of the property in reliance on such permit has been initiated prior to its expiration.
- The use and occupancy of the premises shall be established and maintained in conformance with the provisions of Division II of Title 20 of the Mendocino County Code.
- 3. The application, along with supplemental exhibits and related material, shall be considered elements of this permit, and that compliance therewith is mandatory, unless an amendment has been approved by the Coastal Permit Administrator.
- This permit shall be subject to the securing of all necessary permits for the proposed development from County, State and Federal agencies having jurisdiction.
- The applicant shall secure all required building permits for the proposed project as required by the Building Inspection Division of the Department of Planning and Building Services.
- This permit shall be subject to revocation or modification upon a finding of any one or more of the following:
  - a. The permit was obtained or extended by fraud.
  - One or more of the conditions upon which the permit was granted have been violated.
  - c. The use for which the permit was granted is conducted so as to be detrimental to the public health, welfare or safety, or to be a nuisance.
  - d. A final judgment of a court of competent jurisdiction has declared one or more conditions to be void or ineffective, or has enjoined or otherwise prohibited the enforcement or operation of one or more such conditions.
- 7. This permit is issued without a legal determination having been made upon the number, size or shape of parcels encompassed within the permit described boundaries. Should, at any time, a legal determination be made that the number, size or shape of parcels within the permit described boundaries are different than that which is legally required by this permit, this permit shall become null and void.

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8. If any archaeological sites or artifacts are discovered during site excavation or construction activities, the applicant shall cease and desist from all further excavation and disturbances within one hundred (100) feet of the discovery, and make notification of the discovery to the Director of the Department of Planning and Building Services. The Director will coordinate further actions for the protection of the archaeological resources in accordance with Section 22.12.090 of the Mendocino County Code.

# SPECIAL CONDITIONS:

- The proposed project shall comply with all measures from the Final Mitigated Negative Declaration for the Inglenook fen-Ten Mile Dunes Natural Preserve Dune Rehabilitation Project, 2012. A copy of this staff report shall be supplied to all contractors and a copy shall be maintained on the job site.
- 2. Non-native trees shall not be removed in the eastern fringes of the proposed project area, adjacent to Inglenook, until the proposed plantings of the native trees' canopy exceeds the elevation of tallest dunes that are upwind (mainly west) of the trees. Native trees shall also be planted on State Parks property in strategic areas to provide greater protection to existing residential developments. State Parks shall develop and distribute an educational handout or flyer for adjacent landowners on how to protect their land through native tree/vegetation plantings or protection measures for existing vegetation, including the identification of nurseries that supply native trees or other appropriate plantings.

Sand removed and stock piled during project activities shall not be stored in a manner that would accelerate sand migration eastward to the residential properties.

- 3. Accessibility improvements to the parking lot and trail to the beach at Ward Avenue shall be implemented by the end of the proposed project completion date, including but not limited to: adequate handicap parking (which must be assessed on a regular basis, based on visitor demand), signage, beach-ready wheelchair(s), and appropriate access to the sandy beach. The location and materials of the storage structure (6'x6' shed), parking, and trail improvements (if necessary) shall be submitted to Planning for review and approval.
- 4. State Parks shall explore the feasibility of obtaining a public access easement to provide formal vertical access from Highway 1 to the Preserve as well as a means to provide non-motorized boating access. Feasibility of acquiring an access easement shall be based on landowner willingness. If willing landowner(s) are identified, a dedicated access easement shall be developed, approved by the County and Coastal Commission, and recorded. Feasibility of establishing boating access may be limited due to the presence of federally listed species.

State Parks shall be required to remove sand on the northern segment of the Haul Road, in the rock-ballast retainment area, if necessary, in order to maintain access to the beach, and install signage to direct visitors to the beach.

5. Prior to issuance of the coastal development permit, State Parks shall dedicate a 15-ft accessway from the edge of right of way on its properties directly adjacent to Highway 1



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from Ten Mile River to Ward Ave and work with CalTrans to complete a bike and pedestrian route.

 State Parks shall evaluate the stream crossing conditions during winter high flow events for pedestrian access. Three years after culvert removal, if conditions are found to be impassable for a significant amount of time during winter months, alternative access shall be pursued.

7. The disposal site indentified in the MND as closest to Ten Mile shall be the preferred site for disposal. Use of the Big River Quarry shall be restricted to only on an as-needed basis in order to reduce impacts to coastal visitors. If the Big River Quarry is found to be needed for disposal, a plan shall be developed to ensure that the disposed materials are not contaminated with pampas grass seed and other non-native found at the quarry site. This plan shall be submitted to Planning for review and approval prior to disposal at Big River Quarry.

8. State Parks shall submit to Planning any modification and/or finalization of the mitigation monitoring plan and long-term strategy during the life of the project. It is expected that State Parks will continue to responsibly mange its Preserve long after the proposed project is complete to ensure that invasive species are reduced and eliminated and the ecological function is maintained.

9. Grading standards from Ch. 20.492 of the MCCZC shall be followed.

- a. Grading shall not significantly disrupt natural drainage patterns and shall not significantly increase volumes of surface runoff unless adequate measures are taken to provide for the increase in surface runoff.
- b. Development shall be planned to fit the topography, soils, geology, hydrology, and other conditions existing on the site so that grading is kept to an absolute minimum.
- c. Essential grading shall complement the natural land forms. At the intersection of a manufactured cut or fill slope and a natural slope, a gradual transition or rounding of contours shall be provided.
- d. The permanently exposed faces of earth cuts and fills shall be stabilized and revegetated, or otherwise protected from erosion.
- e. Adjoining property shall be protected from excavation and filling operations and potential soil erosion.
- f. The area of soil to be disturbed at any one time and the duration of its exposure shall be limited. Erosion and sediment control measures shall be installed as soon as possible following the disturbance of the soils. Construction equipment shall be limited to the actual area to be disturbed according to the approved development plans.
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Staff Report Prepared By:

Abbey Stockwell

Planner II

Attachments: Exhibit A Exhibit B Exhibit C Exhibit D Exhibit E

bit B Aerial Image bit C Topographic Map bit D Zoning Map bit E Project Map

Location Map

Attachment A Inglenook / Fen Creek Attachment B Mitigation Monitoring & Reporting Plan

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

Appeal Fee: \$945 (For an appeal to the Mendocino County Board of Supervisors.)

#### SUMMARY OF REFERRAL AGENCY COMMENTS:

Planning – Ukiah	No comment.
Department of Transportation	No impact to county roads
Environmental Health - Fort Bragg	Clearance granted
Building Inspection - Fort Bragg	No comment.
Arch. Commission	Report accepted, cultural mitigation measure shall be followed
Assessor	No response.
Department of Fish & Wildlife	Project support, additional comment in Public Access section.
Caltrans	No response.
Native Plant Society	No response.
Coastal Commission	Comments sent on MND
Army Corps of Engr	No response.
Trails Advisory Council	No response.
Air Quality Mgt District	Permit required
WMAC	Comments in WMAC section
RWQCB	No response.
Fort Bragg City Planning	Comments sent on MND
Fort Bragg Fire District	No comment.
US FWS	Concern regarding formalizing the Ten Mile access without adequate impact analysis

#### References:

Pickart, A. and Sawyer, J.O. 1998. Ecology And Restoration of Northern California Coastal Dunes. California Native Plant Society.

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Exhibit A

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OWNER: California Dept. of Parks & Rec APN: 015-130-43, et. al. CASE: CDP 12-2012 AGENT: Renee Pasquinelli ADDRESS: Various

CONTOUR INTERVAL IS 1,000 2,000 Feet 1,000 2,000 Feet

124,000

Q

Exhibit C

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Exhibit D

CDP# 12-2012 (DPR Ten Mile) June 11, 2013 CPA-32



Exhibit E



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MACKERRICHER STATE PARK DUNE KEHABILITATION PROJECT OVERVIEW Exhibit F

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#### Attachment A

SEASONAL CONDITIONS AT FEN CREEK AND INGLENOOK CREEK BEACH CROSSINGS Alison Cebula, California State Parks District Environmental Staff April, 2013

This series of photos demonstrates the seasonal nature of creek crossings and conditions at Fen Creek and Inglenook Creek within the Natural Preserve. Conditions vary from year to year depending on the amount of rainfall received (typically highest during winter months).

The distance from the Ward Avenue access ramp along the beach to Fen Creek is approximately 1.46 miles. The distance from the Ten Mile River along the beach to Inglenook Creek is approximately 1.43 miles.

#### Fen Creek at high flow in March 2012



This photo was taken after a period of heavy rain. When the creek flows across the beach, park staff crosses the creek by using one of the following methods:

- upstream at driftwood logs
- by removing footwear and walking across creek at location in photo.
- by crossing the mouth during low tides.



Fen Creek flow has diminished and seeps into sand near tideline. Crossing is easily navigated in these conditions.



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Typical summer conditions at Fen Creek beach include a wide sandy beach. The creek has receded far upstream and only reaches the surface at isolated pools.

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Mouth of Inglenook Creek at high flow in March 2012



See additional photo of upstream area below.

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Upstream Inglenook Creek at high flow in March 2012



In recent years Inglenook Creek has flow north and spread out across the back beach area against the dunes to the north. Park staff crosses the creek using the following methods:

- walk or jump across where it narrows
- by walking over driftwood logs deposited during tidal events
- by removing footwear and wading across
- by crossing the mouth at low tide

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Creek flow has diminished. The water is shallow enough to cross where the creek has spread out and become "braided". Small islands of sand make it possible to cross without wading through water.

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Inglenook Creek in September 2012



Typical conditions in summer show a wide sandy beach. Inglenook Creek continues to flow from upstream but at such a low flow rate that the water seeps into the sand before it reaches the beach. Subterranean flow likely continues but visitor access is unimpeded.



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#### Access points to Ten Mile Beach within the Natural Preserve

As stated in the MND, this project will not alter or affect any access to the beach or dunes within the Natural Preserve. Currently the main access points used by local residents and visitors are located on the south end of the Preserve at Ward Avenue, and on the north end of the Preserve at the Ten Mile River. The Ward Avenue access consists of a ramp which connects a segment of the Haul Road trail with the beach. Beyond this point visitors must traverse open sand or dunes for approximately 0.81 miles to reach the first isolated segment of the remnant haul road, and 1.3 miles before they reach a section of the remnant haul road that is currently viable or free of sand for any useful distance. The northern access near the Ten Mile River Bridge consists of a narrow and rutted footpath established by visitors across private property that drops across a sand dune onto the old Haul Road below the bridge. This route is approximately 607 feet long, or 0.12 miles. A second access option is to climb a steep sand dune to the dune field above and to cross over the dunes to the old Haul Road at several possible points. This route is approximately 732 feet long, or 0.14 miles. Opponents to the Project have indicated that the haul road within the Preserve has value as an ADA accessible trail, but it is not clear how visitors with mobility issues would currently be accessing any remnants of the road within the Preserve at this time without first negotiating significant distances in soft sand or through vegetation.

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Photos of Main Access Points to Ten Mile Beach and Ten Mile Dunes Ward Avenue – Southern Access Point

A gravel ramp leads to Ten Mile beach from the remnant haul road north of the Ward Avenue parking area.



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Visitors wishing to access the beach or dunes traverse the sandy beach or unofficial trails through bluff and dune habitat to the east. The distance to the first road remnant to be removed is over 0.75 miles to the north. The old haul road between this access point and the first remnant has been washed away



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#### Ten Mile River Bridge – Northern Access Point

Unofficial access point on southwest side of Ten Mile River bridge. Rutted trail through brush is barely visible at middle right of photo. The distance to the haul road below the bridge is 0.12 miles using this route.



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Unofficial access trail up steep sand dune to dune field above.



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Dune field that must be crossed when accessing the Preserve using unofficial access trail at steep dune (see previous photo). The remnant haul road is just visible at the upper right of photo adjacent to the Ten Mile River. The distance to the haul road is 0.14 miles using this route.



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Dune access leading from Ten Mile River bridge area to remnant haul road.



CDP# 12-2012 (DPR Ten Mile) June 11, 2013 CPA-48

From the MacKerricher State Park Dune Rehabilitation Project Mitigated Negative Declaration-Chapter XV Recreation:

The qualities that make this area a haven for wildlife and a hotspot for rare plant communities also attract visitors who seek open space, solitude and a natural landscape relatively untouched by development. Beach combing, bird watching, photography, jogging, horseback riding and picnicking are popular recreational uses of the Preserve, but it is not uncommon for visitors to have the beach or the dunes to themselves, especially in winter.

The Inglenook Fen-Ten Mile Dunes Natural Preserve has two frequently used entry points: at the north end near the Ten Mile River Bridge; and the south end off Ward Avenue, a county road. Both locations accommodate multiple vehicles. The north access point off Highway 1 traverses a California Department of Transportation (Caltrans) right of way and private property before entering the Preserve about 300 yards (275 m) west of the bridge. Although this access has existed for many years and is used mainly by local coast residents it is not a designated trail or official State Park access. Caltrans recently installed interpretive panels, native plants, benches, new parking spaces and "coastal view" signage on the south end of the new Ten Mile River Bridge.

With only these two highly visible entry points for this 4 mile (6.4 km) long area of the Preserve, much of the use occurs near these locations. Whether visitors enter at Ward Avenue or near the Ten Mile River Bridge, the beach is the destination area for most visitors in the Preserve. At Ward Avenue, visitors can follow the old haul road a short distance north on the headlands before it ends at a major washout where a gravel ramp now leads to the beach below. At the Ten Mile area, several noticeable trails lead from the remnant track of the old road along the edge of the Ten Mile River or through the dunes to the ocean. One of these trails is the designated route to the beach for equestrian use. The portion of the Coastal Trail that runs through the Preserve travels over the wet, packed sand along the shoreline. Equestrians are directed to ride on wet sand to protect sensitive plant and animal species. Due to the dynamic nature of the shore environment, conditions along the beach and dunes are constantly changing. Visitors sometimes need to negotiate around waves and across creek outlets along the beach during high tides, storm events and seasonal flooding of creeks.

Outside of the Preserve, the old haul road spans most of the southern portion of MacKerricher State Park, and is part of the Coastal Trail. With the exception of a short detour at Lake Cleone due to a washout, visitors can walk or bicycle the old haul road route from Glass Beach across the Pudding Creek Trestle and continue north for over 3 miles (4.8 km) to Ward Avenue, where the Preserve boundary begins. Shortly beyond this point the remnant road has been completely washed out, severely eroded or covered by sand due to constant wave action, storm events and shifting sand. The remnant road north of Fen Creek sits further back in the dunes and has been spared the force of the waves but is weathered and covered in multiple areas by sand as much as 3 feet (0.91 m) deep. For this reason, the portion of the Coastal Trail that crosses the Preserve is designated along the shoreline

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Attachment B - Mitigation Monitoring and Reporting Plan

Condition/Mitigation Measure	Timing	Responsible for Implementing Mitigations and Conditions	Responsible for Insuring Implementation	Required for Task to be Complete	Date Completed	Status / Comments
RIDI OGICAL RESOURCES						
Biological Mitigations						
For all special status plant species: 1) all plants occurring within the project area that can be avoided will be flagged prior to project implementation, and 2) all areas within 50 ft (15 m) of the road will be searched for weeds, specifically iceplant, and will be removed for a 5 year period.	Prior to, during, and post project implementation	DPR Environmental Scientist	DPR Sr. Environmental Scientist			
No later than August 31, 2017, at least 4 limes the number of pink sand-verbena (Abronia umbellata ssp. brevillora) plants lost or damaged as a result of Project implementation will be introduced through direct seeding and established in suitable habitat in the Preserventation and estables	Prior to, during, and post project implementation	DPR Environmental Scientist	DPR Sr. Erwironmental Scientist			
Cover of non-native plants within 10 meters of pink sand-verbena plants or patches (as specified above in Location/Area) shall be maintained at less than 1% absolute cover. By August 31, 2014, biannually thereafter.	Prior to, during, and post project implementation	DPR Environmental Scientist	DPR Sr. Environmental Scientist			
The habitat area of <i>Chonizanthe howelli</i> (Howell's spineflower) defined by a density of least 1 plant per square meter, shall be maintained at no less than 50% of the mean habitat areas mapped in years 2001, 2011, and 2012, as of June 30, 2014.	Prior to, during, and post project implementation	DPR Environmental Scientist	DPR Sr. Environmental Scientist			
By June 30, 2017, Howell's spineflower will be established in novel habitat (defined as a mean density of at least 1 plant/m2 in areas not occupied in 2012) covering an area at least 4 times the amoun of habitat loss as a direct result of Project-related impacts (restinated at 1.0 acres, as mapped in 2011).	It Prior to, during, and post project implementation	DPR Environmental Scientist	DPR Sr. Environmental Scientist			
As of June 30, 2017, existing Howell's spinetlower habitat (defined as a mean density of at least 1 plant/m2) shall be extended. Preservewide, to incorporate adjacent, new habitat into an area totaling at least twice the habitat area projected to sustain direct Project impacts during its implementation (estimated at 1.0 acres, as mapped in 2011).	Prior to, during, and post project implementation	DPR Environmental Scientist	DPR Sr. Environmental Scientist			
No later than June 30, 2017, the mean density of Howell's spine/lower plants, measured on piots that collectively incorporate at least 2.5 acres of established spineflower habitat, shall be at least twice the density estimated on those plots immediately prior title start of the management action.	Prior to, during, o and post project implementation	DPR Environmental Scientist	DPR Sr. Environmental Scientist			

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Dune Rehabilitation MacKerricher State Park Conditions and Mitigation Monitoring and Reporting Plan

Condition/Mitigation Measure	Timing	Responsible for Implementing Mitigations and Conditions	Responsible for Insuring Implementation	Required for Task to be Complete	Date Completed	Status / Comments	-
As of June 30, 2014, the occupied habitat area of Menzies' wallflower ( <i>Erysimum menziesii</i> ) within the road removal corridor shall be maintained at 100% of the occupied area as mapped in 2011.	Prior to, during, and post project implementation	DPR Environmental Scientist	DPR Sr. Environmental Scientist				1 1
By June 30, 2017, Menzies's waliflower will be established in novel habitat (defined as a mean density of at least 1 plan/m2 in areas not occupied in 2012) to cover an area at least 2 times the area of waliflower habitat affected as a result of Project related activities (estimated at 0.23 acres, as mapped in 2011).	Prior to, during, and post project implementation	DPR Environmental Scientist	DPR Sr. Environmental Scientist				
No later than June 30, 2017, existing habitat for Menzies's wallflower (defined as a mean density of at least 1 plan/ m2) shall be extended into adjacent, currently unoccupied habitat that will cover an area at least 4 times the wallflower habitat area expected to sustain Project-related impacts (estimated at 0.23 acres, as mapped in 2011).	Prior to, during, and post project implementation	DPR Environmental Scientist	DPR Sr. Environmental Scientist				1
No later than June 30, 2017, the mean density of Menzies's wallflower plants, measured on plots that collectively incorporate at east 0.5 acres of established wallflower habitat, shall be at least twice the density estimated on those plots immediately prior to the start of the management action.	Prior to, during, and post project implementation	DPR Environmental Scientist	DPR Sr. Environmental Scientist				
No later than August 31, 2017, at least 4 times the number of Wolf's evening-primrose ( <i>Oenothera wolfi</i> ) plants lost or damaged as a result of Project activities will be introduced through direct seeding and established within suitable habitat in the Preserve.	Prior to, during, and post project implementation	DPR Environmental Scientist	DPR Sr. Environmental Scientist				
Cover of non-native plants within 10 meters of Wolf's evening- primrose plants or patches (as specified above in Location/Area) shall be maintained at less than 1% absolute cover.	Prior to, during, and post project implementation	DPR Environmental Scientist	DPR Sr. Environmental Scientist				
Biological Conditions A CSP-approved biological monitor will conduct a visual survey of project areas immediately before ground-disturbing project adivities are to begin, relocating any globose dune beetle or Ten Mila character and found inh adiacost on the bestles or Ten	Prior to and during project implementation	DPR Environmental Staff	DPR Environmental Scientist				r T
Sand storage reas will be visually surveyed for globose dura Sand storage areas will be visually surveyed for globose dura biological monitor before sand is placed in the area. Any individuals found will be relocated into adjacent, suitable, undisturbed habitat areas.	Prior to and during project implementation	DPR Environmental Staff	DPR Environmental Scientist				-
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tatus / Comments							
Date Completed S							
Required for Task to be Complete							
Responsible for Insuring Implementation	DPR Environmental Scientist	DPR Environmental Scientist	DPR Environmental Scientist	DPR Environmental Scientist	DPR Environmental Scientist	DPR Environmental Scientist	DPR Environmental Scientist
Responsible for mpiementing Mitigations and Conditions	DPR Environmental Staff, Contractor	DPR Environmental Staff, Contractor	DPR Environmental Staff	Contractor	Contractor	Contractor and DPR Environmental Staff	DPR Environmental Staff
Timing	Prior to and during project implementation	Prior to and during project implementation	Prior to and during project implementation	During project implementation	During project implementation	During project implementation	Prior to and during project implementation
Condition/Mitigation Measure	oject personnel will be instructed by a CSP-approved biological onlitor regarding the identification and life history of Ten Mile oulderband snail, and instruction on the appropriate protocol to llow in the event that an individual resembling this species is und in the areas where project work is being conducted.	oject personnel will be instructed by a CSP-approved biological onlior regarding the life history and habitat requirements of nphibians and reptiles, and instruction in the appropriate protocol follow in the event that an amphibian or reptile is found on site.	CSP-approved biological monitor will be on site during all divides to ensure there are no impacts to amphibians or reptiles. mediately prior to the start of work each morning a CSP- proved biological monitor will conduct a visual inspection of the oject zone where activities will take place. If reptiles or nphibians are found, start of work at that project location will be layed until the individuals are captured and relocated upstream into suitable protected habitat by CSP-approved personnel.	treams and riparian zones will not be used as equipment staging refueling areas. Equipment will be stored, serviced, and fueled way from streams and riparian areas. Heavy equipment will be eaned (e.g., power washed, steamed) off-site prior to being used slow the ordinary high water mark.	Fen Creek and Inglenook Creek, stream flow will be diverted flowing specifications detailed in the Water Diversion Plan bimitted with the Streambed Alteration Agreement for the project. There flow is sufficient to be intercepted, a small diversion dam will a built upstream and stream flow piped around the worksite and scharged into the stream below the worksite. If the stream is wing at a slow rate and connot be captured and diverted, filter ructures will be installed downstream to filter turbid discharge m the work site.	rosion control measures will include slash packing and willow prigging with native vegetation where appropriate for road ossings and culvert removal areas at Fen Creek and Inglenook ieek.	nder the direction of USFWS-permitted personnel, qualified staff II conduct pre-project surveys for Tidewaler goby presence in an Creek and Inglenook Creek, at and downstream from the oject area, within 30 days prior to project activity. The USFWS scover plan for titewater coby identifies July 110 October 31 as

Condition/Mitigation Measure	Timing	Responsible for Implementing Mitigations and Conditions	Responsible for Insuring Implementation	Required for Task to be Complete	Date Completed	Status / Comments	-
ks a precaution, avoidance measures recommended by the USFWS will be implemented to prevent potential impacts to dewater goby and habitat. In the event that tidewater goby is retected in either Fen Creek or Inglenook Creek, Technical ussistance will be requested from USFWS.	Prior to and during project implementation	DPR Environmental Staff	DPR Environmental Scientist				1
dditional project requirements will be incorporated with permit conditions in compliance with California Endangered Species Act CESA), California Fish and Game Code 33503, 3503, 55 and 3511, as well as the United States Endangered Species Act of 1973and Migratory Bird Treaty Act of 1918 unless exceptions are authorized hrough permitting and/or technical assistance from the DFG, USFWS, or other appropriate authority.	Prior to, during, and post project implementation	DPR, Environmental Staff	DPR Environmental Scientist				
Prior to project activities a CSP-approved biological monitor will survey project areas and surrounding suitable habitats for nesting oirds. If breeding is discovered, avoidance measures as detailed below will be implemented to minimize disturbance.	Prior to and during project implementation	DPR Environmental Staff	DPR Environmental Scientist				1
All crews working on the project shall be required to follow all State Park regulations. Regulations pertaining to protection of shorebirds, including those prohibiting dogs in the Natural Preserve, shall be strictly enforced. All trash that could potential encourage ravens shall be removed from the site at the end of each work day.	During project implementation	DPR Environmental Staff, Contractor	DPR Environmental Scientist			1	
Any aerial photography conducted in conjunction with the project shall be at an altitude that will not flush shorebirds.	Prior to, during, and post project implementation	Contractor	DPR Environmental Scientist				-
If possible, noise-generating project activities will not occur during the raptor and migratory bird breeding season (February 1 – September 15).	During project implementation	Contractor	DPR Environmental Scientist				
If project-related activities must be scheduled during the breeding season, then focused surveys for nesting migratory bird and raptor species will be conducted by a CSP-approved biologist before project activities occur in these months to identify active nests.	During project implementation	DPR Environmental Staff	DPR Environmental Scientist				
Surveys for active raptor nests will be conducted within a 500-foot (152 m) radius of the project area 10 days prior to the beginning of project work at each site. If nesting raptors are found, no project activities will occur within a 500-foot (152 m) radius of the nest until the young have fledged and the young will no longer be impacted by project activities (as determined by a CSP-approved biologist) and there is no evidence of a second attempt at nesting.	Prior to and during project implementation	DPR Environmental Staff	DPR Environmental Scientist				

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Status / Comments									
Date Completed									
Required for Task to be Complete									
Responsible for Insuring Implementation	DPR Environmental Scientist	DPR Environmental Scientist	DPR Environmental Scientist	DPR Environmental Scientist	DPR Environmental Scientist	DPR Environmental Scientist	DPR Environmental Scientist	DPR Environmental Scientist	DPR Environmental Scientist
Responsible for mplementing Mitigations and Conditions	OPR Environmental Staff	DPR Environmental Staff	DPR Environmental Staff and Contractor	DPR Environmental Staff and Contractor	DPR Environmental Staff	DPR Environmental Staff and Contractor	DPR Environmental Staff and Contractor	DPR Environmental Staff and Contractor	DPR Environmental Staff and Contractor
Timing	Prior to and during project implementation	Prior to project implementation	During project implementation	During project implementation	Prior to and during project implementation	During project implementation	During project implementation	During project implementation	During project implementation
Condition/Mitigation Measure	Surveys for active migratory bird nests will be conducted within a 00-foot (30.5 m) radius of the project area 10 days prior to the eigenning of project work at each work site. If active nests are breated, then no project activities will occur within a 100-foot (30.5 n) radius of the nest location until the young have fledged and the eurn will no longer be impacted by project activities (as	Surveys for burrowing owls and active owl burrows will be anducted within a 164 ft. (50 m) radius of the project area prior to he beginning of project activities	Vo disturbance will occur within 164 ft. (50 m) of occupied wrrowing owl burrows during the nonbreeding season of ieptember 1 through January 31	or the western snowy plover, when practicable, project activities vill occur during the non-breeding season, from September 15 - harch 15.	ach day, prior to the start of project work, all areas within 1000 eet (300 meters) of project activities will be surveyed for the presence of snowy plovers. The first survey will be conducted the lay before the start of the project. Surveys will follow the general urvey methods described in the Mendocino District's Recovery 'turk.	f plovers are not seen in the survey area, the project facilitators will be given direction to proceed, with the condition that a plover urveyor be present to monitor the project while it is ongoing.	f plovers are seen within 560 feet (200 meters) of the project area. rotivities in that area will be cancelled until the next day, and inother survey will be conducted.	Thirds are seen on the second survey, but no nest is found, the project will proceed with a plover surveyor in attendance for nonitoring. Plover surveyors will be responsible for directing reject facilitators to stop or modify activities if plovers exhibit listurbance behavior that is related to the project activity.	f at any time a nest is located within 330 feet (100 meters) of the project, project work in that area will be canceled until the end of he breeding season, or until further monitoring activities document nat the nest is no longer active.

Condition/Mitigation Measure	Timing	Responsible for implementing Mitigations and Conditions	Responsible for Insuring Implementation	Required for Task to be Complete	Date Completed	Status / Comments	
Vehicle use will be minimized to the extent practicable. Vehicles will operate on the haul road instead of the beach whenever practicable. A corridor will be delineated and clearly marked by a qualified monitor to provide vehicle access from the haul road to the beach, only approved corridors will be used for this purpose. Vehicles operating on the beach will be accompanied by a qualified monitor and remain on weted sand whenever possible.	During project implementation	DPR Environmental Staff and Contractor	DPR Environmental Scientist				
Project work, including operation of vehicles, will occur no earlier than ½ hour after sunrise and conclude at least ½ hour before sunset.	During project implementation	DPR Environmental Staff and Contractor	DPR Environmental Scientist				
Coastal strand habitat will not be used as equipment staging or refueling areas. Equipment will be stored, serviced, and fueled away from coastal strand and dune areas. Heavy equipment will be cleaned (e.g., power washed, steamed) off-site prior to being used below the ordinary high water mark.	During project implementation	Contractor	DPR Environmental Scientist				
CSP may consult with USFWS and request technical assistance for site-specific avoidance or milgation measures. Any such changes will be amended into the Mitgated Negative Declaration if necessary. Additional project requirements will be incorporated with permit conditions in compliance with California Endangered Species Act (CESA), and California Fish and Game Code §4500, and the United Stetes Endangered Species Act of 1973.	Prior to, during, and post project implementation	DPR Environmental Staff	DPR Environmental Scientist				
In the event a marine mammal hauls out onto the coastal strand, project activities will be minimized to the extent practicable within 820 feet (250 meters).	During project implementation	DPR Environmental Staff and Contractor	DPR Environmental Scientist				-
Travel along the wet sands below the tide-line will cease within 330 feet (100 meters) of the marine mammal until it has returned to the	During project implementation	DPR Environmental Staff and Contractor	DPR Environmental Scientist				
Project activity will be minimized to the extent practicable until the marine mammal has departed the area.	During project implementation	DPR Environmental Staff and Contractor	DPR Environmental Scientist				
Cultural Resources							
A CSP-qualified Archaeologist will consult with the contractor and project manager to identity all cultural resources that must be protected.	Prior to project implementation	DPR Archaeologist, DPR Environmental Staff, Contractor	Project Manager (DPR Sr. Environmental Scientist)				
A CSP-qualified Archaeologist will flag and/or fence all cultural resources with a buffer of 25 meters for avoidance during project activities. The fencing will be removed after the project has been completed.	Prior to project implementation	DPR Archaeologist	Project Manager (DPR Sr. Environmental Scientist)				
Prior to any earthmoving activities, a CSP-qualified Archaeologist will approve all subsurface work, including the operation of heavy equipment within 82 feet (25 meters) of the identified sensitive resource area.	Prior to project implementation	DPR Archaeologist, Contractor	Project Manager (DPR Sr. Environmental Scientist)				

Condition/Mitigation Measure	Timing	Responsible for Implementing Mitigations and Conditions	Responsible for Insuring Implementation	Required for Task to be Complete	Date Completed	Status / Comments	_
A CSP-qualified Archaeologist will train project personnel in cultural resource identification and protection procedures.	Prior to project implementation	DPR Archaeologist, DPR Environmental Staff, Contractor	Project Manager (DPR Sr. Environmental Scientist)				
Any locations where ground disturbing activities are proposed for the removal of invasive plant species or for planting of native plants will require additional archaeological review. This will include archival research and possible field investigations to identify previously undocumented archaeological resources in specified treatment areas.	Prior to project implementation	DPR Archaeologist, DPR Environmental Staff	Project Manager (DPR Sr. Environmental Scientist)				
A CSP-qualified Archaeologist familiar with the project will provide the project manager a site-specific avoidance plan with associated maps developed for this project. These documents will illustrate the extent of permissible project work at each culturally sensitive area and will be based on the extent of the archaeological constituents, the location of the resource in relation to the area of direct impact, and the level of proposed ground disruptions at each location. Due to the sensitivity of the archaeological resources and associated confidentiality issues, the avoidance plan and maps will monacer and other approvinded project presource in the project	Prior to project implementation	DPR Archaeologist, DPR Environmental Staff, Contractor	Project Manager (DPR Sr. Environmental Scientist)				
A CSP-qualitied Archaeologist familiar with the project will review and authorize all vehicle and equipment staging and material storage sites except those staging/storage locations situated on the currently paved surface of the Haul Road or those locations outside of the park.	Prior to project implementation	DPR Archaeologist, DPR Environmental Staff, Contractor	Project Manager (DPR Sr. Environmental Scientist)				
All excess sand generated from clearing of the haul road can be disposed of in the Preserve; however, disposal locations will not be allowed within the boundaries (with a 25 meter buffer) of archaeological sites. Additionally, prior to disposal of the excess and, locations selected for this activity will need clearance from a CSP-qualitied Archaeologist.	During project implementation	Contractor	Project Manager (DPR Sr. Environmental Scientist)				
Foot traffic through archaeological sites is prohibited unless approved by a CSP-qualified Archaeologist. Additionally, this equipment will be restricted to the hardened footprint of the former haul road. If circumstances dictate the need to deviate from the crad footprint, these areas will require prior clearance from the CSP-approved Archaeologist reviewing the project.	During project implementation	DPR Archaeologist, DPR Environmental Staff, Contractor	Project Manager (DPR Sr. Environmental Scientist)				
Vehicle access and equipment staging will not be allowed in known archaeological site locations.	During project implementation	Contractor, DPR Environmental Staff	Project Manager (DPR Sr. Environmental Scientist)				-
No plant eradication activities will be allowed within the boundary of archaeological deposits. This will include a 25 meter buffer around the site.	During project implementation	DPR Environmental Scientist	Project Manager (DPR Sr. Environmental Scientist)				

Condition/Mitigation Measure	Timing	Responsible for Implementing Mitigations and Conditions	Responsible for Insuring Implementation	Required for Task to be Complete	Date Completed	Status / Comments	
Plant revegetation efforts within the boundary of archaeological sites, including a 25 meter buffer will be limited to seed broadcasting only.	During project implementation	DPR Environmental Scientist	Project Manager (DPR Sr. Environmental Scientist)				
All introduced materials (ballast, road base, asphalt, etc.) associated with the removal of the haul road will be disposed of outside of the Preserve and the greater MacKerricher State Park.	During project implementation	Contractor	Project Manager (DPR Sr. Environmental Scientist)				1
A CSP qualified Archaeologist will monitor all ground disturbing phases of this project at his/her discretion (refer to Specific Project Requirements related to monitoring).	During project implementation	DPR Archaeologist	Project Manager (DPR Sr. Environmental Scientist)				I
The project manager will notify the CSP Northern Service Center or District Cultural Resource Section a minimum of three weeks prior to the start of ground-disturbing work to schedule archaeological monitoring, unless other arrangements are made in advance.	Prior to project implementation	DPR Environmental Scientist	Project Manager (DPR Sr. Environmental Scientist)	1			
If previously undocumented archaeological resources are encountered during removal of the haul road material (asphalt, road base, and ballast), all work will cease at this location. Work can resume 25 meters past the find (point of discovery). If during resumed removal of the haul road evidence suggest the archaeological deposit is still present, than the same protocol described above will be implemented. This will be evidence of the site is not present. This find will be evidence of the site is not present. This find will be	During project implementation	DPR Archaeologist and Contractor	Project Manager (DPR Sr. Environmental Scientist)				
A CSP-qualified Archaeologist will record historic fabric or features discovered during the project (a photograph and/or drawing showing any new material must be prepared or recovered and archived).	During project implementation	DPR Archaeologist	Project Manager (DPR Sr. Environmental Scientist)				1

In CSP-rounding Archaeological Volume decovers provincul, and contract of any properties with an emportanty attention.     In CSP-rounding Archaeological Volume decovers provincul, and contract of any properties with an emportanty attention.       In Contract CSP manufact Archaeological Volume decovers provincul, in RAD and Serversy of the Interpreting Serversy properties with an emportanty and the Archaeological Volume provincul and the Interpreting Archaeological Volume provincul and the Interpreting Archaeological Volume provincul and the Interpreting Archaeological Volume Properties (DPPR Servershop)       Constrained and Serversy of The Interpreting Archaeological Volume Properties (DPPR Servershop)     Decover vision of the Interpreting Archaeological Volume Properties (DPPR Servershop)       To protect Archaeological Volume Archaeological Volume Archaeological Volume Archaeological Volume Archaeological A	Condition/Mitigation Measure	Timing	Responsible for Implementing Mitigations and Conditions	Responsible for Insuring Implementation	Required for Task to be Complete	Date Completed	Status / Comments	
GEOLOGY AND SOILS         GEOLOGY AND SOILS         GEOLOGY AND SOILS         GEOLOGY AND SOILS           Best Management Practices (see periment sections of Appendix E. 15 Best Management Practices) will be used in all project areass to control send'soil movement and surfaces water runoif during execution and removal of the react of manager dayers. If the remark of the mark is and and prevent and surfaces water runoif during execution and removal of the react of manager dayers. If the remark of the react of the react of the react of the react of activity will be used in all project areass to control send'soil movement and surfaces water runoif during execution and removal of the react of activity will be used in all project areas; be contracted of and removal of the runoir of the accounted of a will be used of a surfaces water runoir the accounted of a will be used to the runoir of the accounted of a will be used to the runoir of the accounted of a will be used to the runoir of the accounted of a will be under a surface water runoir the accounted of a will be under a surface water runoir the accounted of a will be under a surface water runoir the accounted of a will be under a surface water runoir the accounted of a water and a prover units will be and runoir a contractor of the runoir and prover units and be actived and prometed of a surface water and and prover and	If a CSP-qualified Archaeological Monitor discovers previbusly undocumented cultural resources during project activities, work within B2 feet (25 meters) of the find will be temporarily halted until the Archaeologist designs and implements appropriate freatments in accordance with the Secretary of the Interior's Standards and Guidalines for archaeological resource protection. I. The project to ensure that project resource protection. Archaeologist will modify the project to ensure that project activities will avoid cultural esources upon review and approval of a CSP-qualified Archaeologist. Archaeologist is not on-site, the project manager will contact the CSP State Representative immediately and will contact the CSP cqualified Archaeologist evaluates the find and determines the appropriate treatment and disposition of the cultural resources.	During project implementation	DPR. Archaeologist	Project Manager (DPR Sr. Environmental Scientist)				
Best Management Practices (see pertinent sections of Appendix E. 1. Beat Management Practices (see pertinent sections of Appendix coordinations and services) will be used in all project areas becontrol and removal of the rand surface areas accession and removal of the rand surface areas accession and removal of the rand surface area (burner burner) accession and removal of the rand surface area (burner burner) accession and removal of the rand surface area (burner burner) accession and removal of the rand surface area (burner burner) accession and removal of the rand surface area (burner burner) accession and removal of the rand surface area (burner burner) accession and removal of the rand surface area (burner burner) accession and removal of the rand surface area (burner burner) accession and removal of the rand surface area (burner burner) GREENHOUSE GAS AND AIR OLALITY CSP and its contractor(s) will mainten all construction equipment in good mechanical condition than allocated and project accessed Bay Area Air Quality Management District (BAAQMD) Regulation IV - Foue 400 - Visible Ernissions imitedions (cal EPA All off-rand and portable dises)-powered equipment, including but not limited to buldocers, graders, crames, loaders, strapers, and off-rand and portable dises)-powered equipment, including but not limited and buldocers, graders, crames, loaders, strapers, and the other when all construction based (cARB)- be used when calend and a Air Resources Control Baard (CARB)- and the other vehicle daser fuel.	GEOLOGY AND SOILS							
GREENHOUSE GÁS AND AIR QUALITY     CSP and its contractor(s) will maintain all construction equipment in good mechanical condition, according to maintacturer's specifications. Construction equipment exhaust emissions will not exceed Bay Area Air Quality Management District (BAAQMD)     During project     Project Manager (DPR Sr. Environmental Scientist)       Regulation IV - Rule 400 - Visible Emissions limitations (Cal EPA)     During project     Contractor       All off-road and portable diesel-powered equipment, including but not limited to buildozers, graders, cranes, loaders, scrapers, implementation     During project       Berkhoes, generator sets, compressors, auxiliary power units, will     During project     Contractor       Euviconmental Kesources Control Board (CARB)-     During project     Contractor	Best Management Practices (see pertinent sections of Appendix E.1 - Best Management Practices) will be used in all project areas to control sand/soil movement and surface water runoff during excavation and removal of the road remnants and cuiverts. If excavation and removal of remnant road materials take place during winter months, temporary erosion control measures will be used to protect and "winterize" any soils stockpiled offsite.	During project Implementation	Contractor	Project Manager (DPR Sr. Environmental Scientist)				
CSP and its contractor(s) will maintain all construction equipment in good mechanical condition, according to manufacturer's specifications. Construction equipment exhaust emissions will not exceed Bay Area Air Quality Management District (BAAQMD) Regulation IV – Rule 400 – Visible Emissions limitations (Cal EPA 2007b). All off-road and portable disesi-powered equipment, including but not limited to buildozers, graders, cranes, loaders, scrapers, backhoes, generator sets, compressors, auxiliary power units, will be fueled with California Air Resources Control Board (CARB)- certified motor vehicle dieset fuel.	GREENHOUSE GAS AND AIR QUALITY							T
All off-road and portable diesel-powered equipment, including but not limited to buildozers, graders, cranes, loaders, scrapers, backhees, generator sets, compressors, auxiliary power units, will be fueled with California Air Resources Control Board (CARB)- certified motor vehicle diesel fuel.     During project During project Environmental Scientist)	CSP and its contractor(s) will maintain all construction equipment in good mechanical condition, according to manufacturer's specifications. Construction equipment exhaust emissions will not exceed Bay Area Air Quality Management District (BAAQMD) Regulation IV – Rule 400 – Visible Emissions fimitations (Cat EPA 2007b).	During project implementation	Contractor	Project Manager (DPR Sr. Environmental Scientist)				
	All off-road and portable diesel-powered equipment, including but not limited to buildozerts, graders, cranes, loaders, scrapers, backhoes, generator sets, compressors, auxiliary power units, will be fueled with California Air Resources Control Board (CARB)- certified motor vehicle diesel fuel.	During project implementation	Contractor	Project Manager (DPR Sr. Environmental Scientist)				

Condition/Mitigation Measure	Timing	Responsible for Implementing Mitigations and Conditions	Responsible for Insuring Implementation	Required for Task to be Complete	Date Completed	Status / Comments
Idling time for all dissel-powered equipment will be limited to five minutes, except as necessary to maintain a continuous workflow or for safety considerations.	During project implementation	Contractor	Project Manager (DPR Sr. Environmental Scientist)			
The use of diesel construction equipment meeting the CARB's 1996 or newer certification standard for off-road heavy-duty diesel engines will be maximized to the extent feasible	During project implementation	Contractor	Project Manager (DPR Sr. Environmental Scientist)			
Electric and/or gasoline-powered equipment, or equipment using alternative fuels, such as compressed natural gas (CNG), liquefied natural gas (LNG), propane, or biodiesel, will be substituted for diesel-powered equipment, when available.	During project implementation	Contractor	Project Manager (DPR Sr. Environmental Scientist)			
Ground-disturbing activities will be suspended when sustained winds exceed 25 miles per hour (40 kilometers per hour). instantaneous gusts exceed 35 miles per hour (56 kilometers per hour), or dust from project activities might obscure driver visibility on public roads.	During project implementation	Contractor	Project Manager (DPR Sr. Environmental Scientist)		Ir.	
As necessary, disturbed areas of the site will be covered (tarped) or watered depending on the conditions, using water trucks and/or sprinkler systems, to prevent airborne dust from leaving the site.	During project implementation	Contractor	Project Manager (DPR Sr. Environmental Scientist)			
If available, reclaimed (non-potable) water will be used.	During project implementation	Contractor	Project Manager (DPR Sr. Environmental Scientist)			
Any dirt stockpiles will be covered (tarped) or watered daily, as necessant to prevent dispersion of windblown dust	During project implementation	Contractor	Project Manager (DPR Sr. Environmental Scientist)			
All trucks hauling dirt, sand, soil, or other loose materials on public roads will be covered or will maintain at least two feet (0.6 meters) of freeboard (minimum vertical distance between top of load and top of trailer), in accordance with California Vehicle Code Section 23114.	During project implementation	Contractor	Project Manager (DPR Sr. Environmental Scientist)			
Project requirements will also be implemented during holidays, weekend periods, or times when work is temporarily suspended, as necessary to control site conditions generating fugitive dust. Contact information for the project manager as well as the Mendocino County Air Quality District will be made available to the public to ensure compliance with applicable regulations.	During project implementation	Contractor	Project Manager (DPR Sr. Environmental Scientist)			
HAZARDS AND HAZARDOUS MATERIALS						
All equipment will be inspected for leaks immediately prior to the start of the project, and regularly inspected thereafter until equipment is removed from park premises.	During project implementation	Contractor	Project Manager (DPR Sr. Environmental Scientist)			
No maintenance or fueling activities will be allowed within 200 feet (61 m) of any body of water.	During project implementation	Contractor	Project Manager (DPR Sr. Environmental Scientist)			

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Status / Comments								
Date Completed	T a							
Required for Task to be Complete								
Responsible for Insuring Implementation	Project Manager (DPR Sr. Environmental Scientist)	Project Manager (DPR Sr. Environmental Scientist)	Project Manager (DPR Sr, Environmental Scientist)	Project Manager (DPR Sr. Environmental Scientist)	Project Manager (DPR Sr. Environmental Scientist)	Project Manager (DPR Sr. Environmental Scientist)	Project Manager (DPR Sr. Environmental Scientist)	Project Manager (DPR Sr. Environmental Scientist)
Responsible for Implementing Mitigations and Conditions	Contractor	DPR Environmental Staff, Contractor	Contractor	Contractor	DPR Environmental Staff, Contractor	DPR Environmental Staff, DPR Superintendent	Contractor	Contractor
Timing	During project implementation	<ul> <li>Prior to and</li> <li>During Project</li> <li>Implementation</li> </ul>	During project implementation	During project implementation	Prior to and During Project Implementation	Prior to and During Project Implementation	Prior to and During Project Implementation	During project implementation
Condition/Mitigation Measure	uel transfer will be done over an impervious surface. Portable intainment equipment will be used during fueling.	Split Prevention, Control, and Countermeasure Plan (SPCC Plan) If be prepared prior to the start of the project and an appropriate will fix maintained onsite throughout the duration of the project. The SPCC Plan will include a map delineating project staging or orage areas and areas where refueling, lubrication, and antienance of equipment may occur. In the event of a split or laterance of equipment may occur. In the event of a split or intractor or equipment the Mendocinn Obstrict Hazardous Split staff and implement the Mendocinn Obstrict Hazardous Split sponse Procedures. Appropriate agencies will be notified in the ent of significant splitage.	ther than emergency repairs, all equipment cleaning and repair Il occur outside of the Natural Preserve at designated authorized es. All contaminated liquids and materials and other hazardous mpounds will be disposed of at a designated authorized site.	hen not in use, hazardous materials will be stored in a locked orage area. Materials will be transported to the work site in spill coft containers and will be secured in the vehicle so as to prevent illage.	SP will include, in any contract documents or in internal work plan comments, health and safety specifications regarding anagement of potential hazardous incidents. The specifications anagement of potential hazardous incidents. The specifications il include methods for safe handling, collection, and proper sposal of any contaminated soil and refuse uncovered during the cavation procedures; discuss the proper personal protection ring project activities; the use of an exclusion zone if necessary prevent exposure to the public; and the proper disposal prevent exposure to the public; and the proper disposal prevent exposure to the public; and the proper disposal	oject information and area closure notices will be issued by the andocino District State Parks superintendent and published in cal newspapers as well as posted on the CSP website.	fire safety plan will be in place prior to the start of any project tivities, including identified fire suppression equipment and mpletion of any required employee training.	park arrestors or turbo-charging (which eliminates sparks in haust) and fire extinguishers will be required for all heavy upment.

Condition/Mitigation Measure	Timing	Responsible for Implementing Mitigations and Conditions	Responsible for Insuring Implementation	Required for Task to be Complete	Date Completed	Status / Comments	
Project work crews will be required to park vehicles away from liammable material, such as dry grass and brush. At the end of aach workday, heavy equipment will be parked at a designated staging area located on asphalt or bare sand to reduce the chance of fire.	During project implementation	Contractor	Project Manager (DPR Sr. Environmental Scientist)				1
Implementation of the SPCC Plan during all phases of the project will insure the proper use, storage, and disposal of any flammable materials used during the project.	During project implementation	Contractor	Project Manager (DPR Sr. Environmental Scientist)				
CSP staff will be required to have a CSP two-way communications radio on site, which will allow direct contract with the Northern Communications dispatch center, to facilitate the rapid dispatch of control crews and equipment in case of a fire. Fire suppression equipment will also be available within the park.	During project implementation	DPR Environmental Staff, Contractor	Project Manager (DPR Sr. Environmental Scientist)				
HYDROLOGY AND WATER QUALITY							-
Any additional requirements identified through the permitting processes will be incorporated into the project design and specifications, and implemented as part of the project scope to avoid potential natural resource impacts.	Prior to and during project implementation	DPR Environmental Staff, Contractor	Project Manager (DPR Sr. Environmental Scientist)				-
State Parks will adopt best management practices (refer to GEO-1) and use materials, methods, and techniques to implement erosion and sedimentation control and to otherwise stabilize stopes and barren soil surfaces, as described in Appendix E.1 - Best Management Practices.	During project implementation	DPR Environmental Staff, Contractor	Project Manager (DPR Sr. Environmental Scientist)				1
Integration of Standard Project Requirement HAZ-1 will prevent impacts to water quality from possible pollutants (fuels, vehicle fluids) released from vehicles, and heavy equipment during the project.	During project implementation	DPR Environmental Staff, Contractor	Project Manager (DPR Sr. Environmental Scientist)				
LAND USE AND PLANNING PROJECT REQUIREMENTS							-
Conditions and requirements identified through the Coastal Development Permit process will be incorporated into the project design and specifications, and implemented as part of the project scope to avoid potential natural resource impacts.	Prior to and during project implementation	DPR Environmental Staff, Contractor	Project Manager (DPR Sr. Environmental Scientist)				
NOISE							-
Project activities will be limited to daylight hours, Monday - Friday. If work during weekends or holidays is required, no work will occur on those days before 7.30 am or after 8 p.m.	During project implementation	Contractor	Project Manager (DPR Sr. Environmental Scientist)				
Internal combustion engines used for any purpose at the job site will be equipped with a muffler of a type recommended by the manufacturer. Equipment and trucks used for project activities will utilize the best available noise control techniques (e.g., engine enclosures, acoustically-attenuating shields or shrouds, intake silencers, ducts, etc.) whenever feasible and necessary.	During project implementation	Contractor	Project Manager (DPR Sr. Environmental Scientist)				

Condition/Mitigation Measure	Timing	Responsible for Implementing Mitigations and Conditions	Responsible for Insuring Implementation	Required for Task to be Complete	Date Completed	Status / Comments
ationary noise sources and staging areas will be located as far m sensitive receptors as possible.	During project implementation	Contractor	Project Manager (DPR Sr, Environmental Scientist)			
# MacKerricher State Park Dune Rehabilitation Project Response to Citizen's Appeal of Mendocino County's Approval of CDP 12-2012 Filed with the California State Coastal Commission, September 2013

A final Mitigated Negative Declaration for the MacKerricher Dune Rehabilitation Project was certified in December 2012. The coastal development permit for the project was approved by Mendocino County Planning on June 11, 2013. The County Planning decision to approve the project was appealed to the Mendocino Board of Supervisors by the Westport Municipal Advisory Council (WMAC). The Board of Supervisors upheld the County Planning decision and denied the appeal on August 26, 2013. Three citizens, including the chairperson of the WMAC, appealed the Mendocino County Planning and Board of Supervisors final decisions to the California Coastal Commission sometime during the week of September 9<sup>th</sup>, 2013.

State Parks has reviewed the appeal and has not identified any new or "significant" issues in the appeal that have not been fully addressed under previous environmental review, permitting, and county LCP processes, including the attendant public processes.

The summary below outlines the issues listed within the appeal documents presented to the Coastal Commission, followed by responses or clarifications by California State Parks with appropriate references from the record.

	ISSUES RAISED IN THE APPEAL	RESPONSE AND CLARIFICATION
1.	Precedent-setting intentional impairment of public access – destruction of valued lateral access multi-use coastal trail with no construction of comparable replacement trail. Haul road was accessible until Parks began removing non-native beach grass in 2000.	The haul road has not served as a contiguous trail for approximately 30 years (text and photos on pages 6-9, 79, and 115 of the IS/MND). Nearly one mile of road at the southern end began washing out in 1983 and is now gone. Much of the remaining approximate two mile sections are either dangerously eroded or partially covered with sand. Existing visitor use on the remnant sections of road is minimal, as most people seek to be on the beach (County Staff Report CDP# 12-2012, page CPA 15, MND Appendix E.6).
2.	Destroying existing coastal trail is inconsistent with Coastal Act Section 30210	Project does not destroy existing coastal trail. The existing coastal trail is along the beach (County Staff Report CDP# 12-2012, pages CPA 9-11); the project does not change or alter this existing trail. As such the project is consistent with Section 30210 (County Staff Report CDP# 12-2012, pages CPA-10), which reads: In carrying out the requirement of Section 4 of Article X of the California Constitution maximum
EXHIBIT NO. 13 Appeal No. A-1-MEN-13-0241		access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety
(CA State Parks)		

APPLICANT'S RESPONSE TO APPEAL

		needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse. <u>Public safety</u> – project removes unsafe, deteriorating sections of road that currently force visitors to be trapped between the beach and upper refuge areas during high wave events (IS/MND page 9, Figure 2.6-02). Unsafe road sections will increase due to Sea Level Rise. <u>Public rights and rights of private property owners</u> to access the beach and dunes will not change as a result of the project. <u>Overuse of natural resource areas</u> – removal of the road, and the lack of multi-use trail development inland from the beach will prevent overuse of fragile dune and wetland ESHAs from visitors that would leave the trail to access the desirable beach.
3.	Destroying existing coastal trail is inconsistent with Coastal Act Section 30211	Project does not destroy existing coastal trail and is consistent with Section 30211(County Staff Report CDP# 12-2012, pages CPA-10): Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation. The project does not in any way interfere with the public's right to access dry sand or the beach, or any other area within the Preserve; access to the beach is from Ward Avenue to the south, the Ten Mile bridge to the north and all sections where public land adjoins Highway 1 to the east.
4.	Project is inconsistent with LCP Policy 3.6-28, dedication of an easement	Project is not inconsistent with Policy 3.6-28, as the property is already under State ownership and is open to the public; access to the coast will not change as a result of the project and as such dedication of an easement through public land is redundant and inappropriate. Dedication of an easement for the purpose of developing a multi- use trail through sensitive species habitat in a Natural Preserve is both inappropriate and inconsistent with State law.
5.	Project will substantially impair access and decrease use, inconsistent with Coastal Act Section 30212.	Section 30212 of Coastal Act states that <i>public</i> access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects <u>except</u> where it is inconsistent with public safety, military security

		needs, <u>or the protection of fragile coastal</u> <u>resources</u> , <u>adequate access exists nearby</u> , or agriculture would be adversely affected. Section 30212(c): Nothing in this division shall restrict public access nor shall it excuse the performance of duties and responsibilities of public agencies which are required by Sections 66478.1 to 66478.14, inclusive, of the Government Code and by Section 4 of Article X of the California Constitution.
		Multi-use trail development would be detrimental to the protection of fragile coastal resources and unmitigable, therefore completely incompatible with the Natural Preserve designation (PRC 5019.71). All areas of the Natural Preserve are accessible by hikers, existing public access will not decrease, will not be restricted, and conditions have been added through the CDP approval process to further enhance public access. (see discussion County Staff Report CDP# 12-2012, pages CPA 10-14).
6.	Elimination of the haul road is inconsistent with LCP Policy 3.1-15. Project will be detrimental to sensitive species and habitats.	The entire project is designed to restore natural ecosystem processes for protection and recovery of threatened and endangered species in a Natural Preserve (see pages 1-3 of the Summary Response to Comments contained within the Final MND, and County Staff Report CDP# 12- 2012, pages CPA 16-18). Retention of the remnant sections of haul road and development of a connecting multi-use trail would not only result in direct unmitigable impacts to endangered species, it would also cause impacts from overuse by increasing the number of unauthorized trails from the haul road to the beach, all of which would traverse through the dune and endangered species ESHAs. The California Coastal Records Project aerial photographs taken from Pudding Creek to Ward Avenue show a multitude of unauthorized trails that leave the southern haul road and crisscross through various sensitive habitats along the coastal bluffs.
7.	Project is inconsistent with the State Park General Plan.	The GP included designation of the Natural Preserve; PRC 5019.71 emphasizes protection of endangered species and their habitats as the priority. No part of the GP indicates that all levels of developed access are to occur in all locations; the document is clear in specifying that

		habitat types and designation of the units. The GP included provisions for development of a boardwalk through the dunes, as it was assumed that such a feature would be compatible with the protection of sensitive species and their habitats. However, the GP was completed nearly 20 years ago at a time when Sea Level Rise and the dynamics of the dune ecosystem were less understood. In the late 1990's, State Parks attempted trail development planning to connect the washed out sections of haul road through Natural Preserve. However, after exhaustive investigation, and extensive comments by regulatory agencies, a feasibility study (EDAW 2000) concluded that a multi-use trail could not be built through the dunes without causing unmitigable, permanent impacts to sensitive species and habitats. It was also determined that construction and maintenance costs would be prohibitive due to the dynamic nature of the dune environment.
8.	Magnitude of project will cause excessive erosion inconsistent with LCP and LUP policies.	The issues raised focus on three major incorrect assumptions: 1) the remaining sections of haul road prevent sand movement from the beach to inland areas; 2) sand movement within a dune system is "erosion" and the dunes should be stabilized; and 3) the project will result in a significant change in sand movement, which would not occur if the project was not implemented. As explained throughout the IS/MND on pages 13, 50, 84-87, and Appendix E.4, sand movement is an integral function of a natural dune system. Grain size, wind speed, vegetation, and dune height are factors that affect the rate of sand movement. In general, once the haul road is removed, the small nearshore dunes would collect more sand and continue to grow, most likely around small clumps of vegetation, until some threshold size is reached. The movement of sand from the nearshore foredunes to farther inland areas is inhibited by the large expanses of dune and wetland vegetation that occur between the foredunes and the separated transverse dunes to the east. While wind-transport of sand is a natural process in a dune environment, sand becomes deposited and its movement halted on the eastern fringes of dunes where conifers are established. The past removal of wooded areas backing the eastern edge of the Ten Mile Dunes, by adjacent landowners, has provided an

		<ul> <li>uninterrupted path for wind-carried sand and the landward expansion of the dunes in the Preserve (Barry &amp; Schlinger 1977). The project includes measures and new conditions to maintain and plant trees on the eastern fringe of the dunes to reestablish a native dune forest that will interrupt the path of wind carried sand. Page 90 of the IS/MND explains that sea level rise will continue to influence the inland movement of the dune system, which will affect the Natural Preserve and neighboring properties, regardless of any activities associated with the Dune Rehabilitation Project.</li> <li>A more detailed discussion of dune movement process within the Natural Preserve is contained in Dr. Peter Baye's response to the letter from the retired College of the Redwoods geology professor.</li> </ul>
9.	Significant Impacts to Wetlands, Species, ESHAs	The appeal incorrectly describes impacts to sensitive species and habitats and incorrectly characterizes habitat and ecosystem processes required to sustain endangered species populations and habitats. The statements within the appeal are not based on, and do not cite scientific evidence. The project was designed by highly respected scientists with decades of experience in coastal ecology. Letters received during the review and permitting processes from science-based agencies and organizations recognized the proposed project's beneficial effects. Project support letters were received from the California Department of Fish and Wildlife, which is the State agency with jurisdictional authority over listed species. Numerous additional support letters were received from major environmental organizations that are most concerned about plant and animal protectionsAudubon Society, Sierra Club, and the California Native Plant Society.
		Comments concerning significant impacts to listed plants incorrectly assume finite populations in an unchanging environment. However, coastal dune ecosystems, including their associated plant populations, are dynamic and constantly changing. As explained on page 64 of the IS/MND and in Appendix E.2, the listed plants are adapted to and have evolved under changing environmental conditions. Population numbers,

especially those of annual or short-lived perennial dune species, can fluctuate dramatically from year to year, as weather patterns and sand movement affect seed dispersal patterns, seed production, and seedling survival. This is the existing condition of the Ten Mile Dunes. As shown in Appendices A.3 and A.4 of the IS/MND, the area mapped as occupied by Howell's spineflower within the Natural Preserve in 2001 was 0.41 acres; in 2011 the mapped spineflower area totaled 8.9 acres. However, rare plant populations, and the 11% of the spineflower that was identified as occurring within the road corridor in 2011, are changing from year to year, and are in no way "finite" or fixed. incorrectly assumes finite, unchanging populations from year to year. Through this project, State Parks proposes to remove unnatural elements where the listed plants cannot grow, which is on the haul road or within European beachgrass clumps, and to mitigate at a ratio of 8 to 1 to compensate for any potential loss of those plant populations that were mapped in 2011. In addition, this project proposes permanent monitoring and restoration efforts that will extend well beyond the typical 5 year required monitoring period (Appendix E.2), and includes consultation and coordination with the California Department of Fish and Wildlife (CDFW) and the US Fish and Wildlife Service (USFWS). An approved Incidental Take Permit has been obtained from the CDFW, and a Biological Opinion from USFWS concurring that the project will not adversely affect federally listed species is forthcoming.
<u>Western Snowy Plover</u> Statements in the appeal referencing the 2007 USFWS Recovery Plan for the western snowy plover are incorrect and misleading. The appeal states that the nesting area is the zone within 100 meters of the ocean. The Recovery Plan actually states: <i>Page and</i> <i>Stenzel (1981) found that nests were usually</i> <i>within 100 meters (328 feet) of water, but could</i> <i>be several hundred meters away when there was</i> <i>no vegetative barrier between the nest and water.</i> <i>They believed the absence of such a barrier is</i> <i>probably important for newly-hatched chicks to</i> <i>have access to the shore. Powell et al. (1995,</i> <i>1996) also reported that nests from southern</i>

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		<i>California were usually</i> <i>located within 100 meters (328 feet) of water,</i> <i>which could be either ocean, lagoon, or river</i> <i>mouth.</i> Pages 23 and 24 of the IS/MND describe detailed project requirements under BIO-7d that are specifically intended to prevent impacts to plovers during project implementation. As described and illustrated on pages 5, 36, 55-56, and 69 of the IS/MND, the removal of the haul road and European beachgrass will open up additional nesting and foraging habitat for plovers. Unnatural barriers will be removed that now prevent plovers from retreating to safe areas during high tides or when disturbed by humans and dogs. The project is strongly supported by the Audubon Society because of its benefits to the western snowy plover.
		Wetlands The appeal also raises concerns regarding potential impacts to wetlands that are erroneous and not based on scientific fact. The appeal documents incorrectly assume that the dune and wetland complex of the Natural Preserve is a fixed, unchanging environment and that the wetlands are dependent upon this current fixed environment. As discussed on pages 4, 5, 35, 60, 73, and 90 of the IS/MND, the culverts currently constrict the outlets of the creeks, causing incised, relatively deep channels. Sand movement resulting from the removal of the haul road, culverts, and European beach grass will not eliminate wetlands in the Natural Preserve, rather some wetland features will be buried, while others will emerge through natural processes. Removal will allow the channel outlets to meander naturally, with wetland vegetation forming where suitable based on hydrology and substrate. This is not an impact that should be mitigated, rather an objective of the project to restore natural processes. Also as explained on pages 98-102 in the IS/MND, Inglenook Fen is a natural feature that formed approximately 6,000 years ago; removal of the culverts, which are modern features, will not impact the fen.
10.	Indirect impacts to archaeological sites are ignored or missed.	Archaeological concerns were thoroughly addressed in a response letter to the appellant, Thad Van Bueren; the letter is included in the Final MND. The project was also approved by the Mendocino County Archaeological Commission. The project as proposed will not

		increase impacts to cultural sites, but will in areas reduce impacts that are occurring as a result of the unnatural features. For example, deflation plains caused by the road berm have exposed archaeological sites immediately inland of the berm; removal of the road may result in the reburial of these sites as mobilized sand from the foredune moves inland. Removal of the road will discourage easy access to some of the archaeological sites, and reduce the potential for theft of sensitive artifacts.
11.	Toxins are likely contained in materials remaining from the railroad; project does not adequately address handling and disposal.	Pages 32 and 95-97 of the IS/MND address the handling of hazardous materials during project implementation. The County Board of Supervisors added a condition requiring State Parks to prepare, and submit for approval, a plan that addresses potential handling of toxics, including railroad ties, to the Mendocino County Department of Planning and Building Services. State Park project managers are also currently in communication with staff from the CA Department of Toxic Substances Control regarding development of that plan.



Sierra Club, Mendocino Group P.O. Box 522 Mendocino, CA 95460

RECEIVED September 18, 2013

Bob Merrill CA Coastal Commission, Northcoast office 1385 8th Street, Suite 130 Arcata, CA 95521 (707) 826-8950 FAX (707) 826-8960

SEP 2 4 2013

CALIFORNIA COASTAL COMMISSION

RE: Appeal of CDP # 12-2012, California State Parks, Dune Rehabilitation Project at Inglenook Fen-10 Mile Dunes, MacKerricher State Park

Dear Mr. Merrill:

Sierra Club urges a recommendation that no substantial issue exists with respect to Mendocino County's approval of CDP #12-2012, California State Parks' Dune Rehabilitation Project.

We are in agreement with Mendocino County Coastal Permit Administrator's (CPA) approval of the proposed project and the findings and conditions as adopted in the June 11, 2013 CPA Staff Report, and amended by the Board of Supervisors at the August 26<sup>th</sup>, 2013 special hearing.

In regard to the proposed road removal, we believe the project to be in conformity with the public access and recreation policies of the California Coastal Act and the Local Coastal Program.

The ocean has washed sections of the remnant road away, leaving hazardous chunks exposed; other portions are covered with sand. The road is discontinuous with other roads, requiring a hearty walk of 20 minutes through sand to reach the remnant portions; current usage is therefore very low. Sea level rise will continue to undermine the remainder. It would be infeasible to retain or to reconnect this piece of road - both because of its impacts to natural ecosystem processes and endangered species habitat, and because maintenance would be nearly impossible in a naturally shifting dunes system.

After having carefully reviewed the issues, taking note that the Parks permit has been conditioned to add recreational opportunities, considering that Parks has plans to upgrade and maintain the popular hiking and biking sections of haul road within MacKerricher State Park south of the Preserve, and that Parks is helping facilitate development of a bike path along Highway 1, Sierra Club believes that the restoration of these rare natural dune areas is a priority project of statewide significance that deserves our full support.

#### Sincerely,

Linda Perkins, Rixanne Wehren, Mary Walsh Mendocino Group Coastal Committee

### EXHIBIT NO. 14

APPLICATION NO. A-1-MEN-13-0241 CALIF. DEPT. OF PARKS & REC. PUBLIC COMMENTS RECEIVED AFTER PROJECT APPEAL FILED WITH COASTAL COMMISSION (1 of 44)

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SEP 2 4 2013

CALIFORNIA COASTAL COMMISSION

September 24, 2013

Robert Merrill, District Manager California Coastal Commission North Coast District Office 710 E Street, Suite 200 Eureka, CA 95501 Fax: 707-445-7877

ALIFORNIA

NATIVE PLANT SOCIETY

Charles Lester, Executive Director California Coastal Commission 45 Fremont Street Suite 2000 San Francisco, CA 94105-2219 Fax: 415-904-5400

Re: Request finding of No Substantial Issue for the appeal of Mendocino County Coastal Development Permit 12-2012 (Ten Mile Dunes Natural Preserve Restoration)

Dorothy King Young Chapter ~ P.O. Box 985, Point Arena, CA 95468

Dear Director Lester and Mr. Merrill,

I am writing on behalf of the Dorothy King Young Chapter of the California Native Plant Society (CNPS) regarding State Parks' proposed project at MacKerricher State Park. The Commission has received an appeal of Mendocino County's decision to approve this project, with special conditions.

#### Benefits/Impacts to native plants

CNPS wishes to make it clear that the botanical information contained in the appeal has little or no merit.

CNPS works closely with recognized authorities in the botany and ecology of California. Having evaluated the State Parks proposal thoroughly, we find that the proposed restoration measures will have an overall, net benefit for the rare plants and plant communities in the Ten Mile Dunes.

### Natural Preserve status and coastal access

The Ten Mile Dune system is classified as a Natural Preserve by the California Department of Parks and Recreation, and with good reason.

This Natural Preserve is one of few remaining intact, relatively pristine dune and wetland complexes remaining in California; estimated that only 3% of intact dune systems remain in northern California. A road bringing a large influx of people into the dunes would fragment and destroy the very features that led to its designation as a Natural Preserve.

Access to the ocean is already provided at the north and south ends of the dunes. State Parks agreed to Mendocino County's condition that the short, northernmost segment of the old Haul Road be left and maintained to provide access to the ocean.

People are also free to walk in the Dunes, but this fragile habitat cannot stand up to large numbers of people, bikes, pets, and other impacts that a 10-foot wide trail would bring.

A road itself would create serious fragmentation, detrimental to the health of the dune ecosystem. Due to wind and sand movement patterns, the sand around the road would erode, just as it has with the Haul Road remnants. This creates a barrier, impeding natural ecosystem processes and restoration of native vegetation.

p.2

There is not even any way to build a road that would withstand the forces of wind and sand in this naturally dynamic, moving dune system. Coast dune ecologist, Peter Baye, has researched this issue as part of his work in San Francisco, where moving dunes are also an issue.

Note also that State Parks staff are eager to work with Caltrans to create a bike trail parallel to Highway One and the Ten Mile Dunes. Parks also has plans to repair the old Haul Road south of the dunes for public access.

In summary, the current level of access is sufficient and appropriate for this Natural Preserve. The idea that all forms of access should be provided everywhere is **not** consistent with the goal of preserving native species and natural ecosystem processes.

#### Quality of Habitat

Note that "pristine" is a very relative term, as there are virtually no wild places not impacted by human activity. Habitat restorability must be given considerable weight in evaluation of habitat condition. While the Ten Mile Dunes may be somewhat degraded due to invasion by weedy European beachgrass (*Ammophila arenaria*) and the presence of old road remnants, coastal dune ecosystems are very amenable to restoration. This has been admirably demonstrated in the Lanphere Dunes in Humboldt County.

### Conclusion

The dune habitat to be restored supports three federally listed species: Menzies wallflower, Howell's spineflower and western snowy plover, plus over eight additional special status species. CNPS is convinced that State Parks restoration plan, with the current level of limited access, is essential for the wellbeing of these species.

The appeal is without merit and is creating a delay that could result in loss of funding for the dunes project. CNPS requests that the Coastal Commission make a finding of No Substantial Issue for the appeal, allowing State Parks to proceed with this important and long-overdue restoration.

Sincerely,

Signature on File

Lori Hubbart, Conservation Chair California Native Plant Society, Dorothy King Young Chapter



### CALIFORNIA

NATIVE PLANT SOCIETY

Dorothy King Young Chapter ~ P.O. Box 985, Point Arena, CA 95468

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CALIFORNIA COASTAL COMMISSION NORTH COAST DISTRIC

# September 24, 2013

Robert Merrill, District Manager California Coastal Commission North Coast District Office 710 E Street, Suite 200 Eureka, CA 95501 Fax: 707-445-7877 Charles Lester, Executive Director California Coastal Commission 45 Fremont Street Suite 2000 San Francisco, CA 94105-2219 Fax: 415-904-5400

Re: Request finding of No Substantial Issue for the appeal of Mendocino County Coastal Development Permit 12-2012 (Ten Mile Dunes Natural Preserve Restoration)

Dear Director Lester and Mr. Merrill,

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### Benefits/Impacts to native plants

CNPS wishes to make it clear that the botanical information contained in the appeal has little or no merit.

CNPS works closely with recognized authorities in the botany and ecology of California. Having evaluated the State Parks proposal thoroughly, we find that the proposed restoration measures will have an overall, net benefit for the rare plants and plant communities in the Ten Mile Dunes.

### Natural Preserve status and coastal access

The Ten Mile Dune system is classified as a Natural Preserve by the California Department of Parks and Recreation, and with good reason.

This Natural Preserve is one of few remaining intact, relatively pristine dune and wetland complexes remaining in California; estimated that only 3% of intact dune systems remain in northern California. A road bringing a large influx of people into the dunes would fragment and destroy the very features that led to its designation as a Natural Preserve.

Access to the ocean is already provided at the north and south ends of the dunes. State Parks agreed to Mendocino County's condition that the short, northernmost segment of the old Haul Road be left and maintained to provide access to the ocean.

People are also free to walk in the Dunes, but this fragile habitat cannot stand up to large numbers of people, bikes, pets, and other impacts that a 10-foot wide trail would bring.

A road itself would create serious fragmentation, detrimental to the health of the dune ecosystem. Due to wind and sand movement patterns, the sand around the road would erode, just as it has with the Haul Road remnants. This creates a barrier, impeding natural ecosystem processes and restoration of native vegetation.

r.q

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There is not even any way to build a road that would withstand the forces of wind and sand in this naturally dynamic, moving dune system. Coast dune ecologist, Peter Baye, has researched this issue as part of his work in San Francisco, where moving dunes are also an issue.

Note also that State Parks staff are eager to work with Caltrans to create a bike trail parallel to Highway One and the Ten Mile Dunes. Parks also has plans to repair the old Haul Road south of the dunes for public access.

In summary, the current level of access is sufficient and appropriate for this Natural Preserve. The idea that all forms of access should be provided everywhere is not consistent with the goal of preserving native species and natural ecosystem processes.

#### Quality of Habitat

Note that "pristine" is a very relative term, as there are virtually no wild places not impacted by human activity. Habitat restorability must be given considerable weight in evaluation of habitat condition. While the Ten Mile Dunes may be somewhat degraded due to invasion by weedy European beachgrass (*Ammophila arenaria*) and the presence of old road remnants, coastal dune ecosystems are very amenable to restoration. This has been admirably demonstrated in the Lanphere Dunes in Humboldt County.

#### Conclusion

The dune habitat to be restored supports three federally listed species: Menzies wallflower, Howell's spineflower and western snowy plover, plus over eight additional special status species. CNPS is convinced that State Parks restoration plan, with the current level of limited access, is essential for the wellbeing of these species.

The appeal is without merit and is creating a delay that could result in loss of funding for the dunes project. CNPS requests that the Coastal Commission make a finding of No Substantial Issue for the appeal, allowing State Parks to proceed with this important and long-overdue restoration.

Sincerely,

Signature on File

Lori Hubbart, Conservation Chair California Native Plant Society, Dorothy King Young Chapter

**CNPS** Letter Page 2

Sep 24 13 05:22a HJ

Sept. 17, 2013

Bob Merrill, District Manager, California Coastal Commission North Coast District Office, 1385 8th Street, Suite 130 Arcata, CA 95521



Dear Mr. Merrill,

This letter requests a finding of *no substantial issue* for the appeal of Mendocino County Coastal Development Permit 12-2012 (Ten Mile Dunes Preserve Restoration).

- The permit complies with the county's Local Coastal Program and the appeal was denied by County Supervisors Aug.26, 2013, in a meeting where appropriate compromise solutions were crafted and appellant concerns were addressed. We fully support the report by the Mendocino County Planning staff and the Supervisors' decision.
- The current appeal is rambling and unfocused with no substantial changes from the original document. It succeeds
  only in creating a delay that will result in death of the project because Prop 84 funding will no longer be available.
- The document's conclusions about the Western Snowy Plover flock in Inglenook Fen-Ten Mile Dunes Natural Preserve are fundamentally flawed and we would like the opportunity to comment on these inaccuracies.
- Most of the Preserve was designated as critical habitat for the Western Snowy Plover by USFWS in 2012. The Preserve also is located in a National Audubon Important Bird Area, an area of significant environmental concern. Spokesmen from Audubon, California Native Plant Society, and Sierra Club supported the project in public hearings.
- The haul road does not provide access to the sea—it runs parallel to the ocean, not perpendicular.
- The haul road has not been in one piece for more than 30 years and during high tides, broken road segments act like sea walls to destroy the natural movement and development of the beach and fore dunes.
- The haul road is not a multiuse road. It is impassable to wheelchairs and strollers.
- The designated CCT segment along Ten Mile Beach from Ward Avenue north to Ten Mile River is an easy hike on
  pounded wet sand that brings people close to water and wildlife. People, horses, marine mammals and shorebirds
  have successfully shared this segment of the CCT since it was dedicated by Coastwalk California several years ago.

We urge you to examine the good science that went into planning this project and we ask you to work with State Parks to save this last remaining coastal fen in the state.

Our volunteer surveyors work under supervision of State Parks biologists and in cooperation with the USFWS Western Snowy Plover recovery program. We have spent more than seven years and 5,500 hours in the field on Mackerricher State Park beaches (mostly on Ten Mile) and continue to spend considerable time in the field on public outreach and education about shorebirds and the story of the Western Snowy Plover on Ten Mile Beach. We are privileged to participate in this research on a beach open to the public—a beach we think is a matchless segment of the California Coastal Trail. For this and many other reasons connected with our experience in the field, we believe the appeal should be denied because there is no substantial issue. And we think the restoration project should start as soon as possible.

Sincere **Signature on File** 

Becky Bowen, Save Our Shorebirds-Mendocino Coast Audubon Society casparbeck@comcast.net

cc: CA Coastal Commission-Dr. C. Lester, L. Locklin

cc: CA State Parks-Maj. Gen. A. L. Jackson, USMC (Ret.), J. Chamberlin, L. Burko, L. Rex, R. Pasquinelli cc: Assemblyperson W. Chesbro, Senator N. Evans, Gov. E. Brown, Rep. J. Huffman

cc: Audubon- G. George, A. Jones, D. Ogden, D. Taylor, J. Ossello, L. Perkins

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CALIFORNIA COASTAL COMMISSION NORTH COAST DISTRICT

SAVE OUR SHOREBIRDS · Mendocino Coast Audubon Society · PO Box 2297 · Fort Bragg, CA 95437 · (707) 962-1602 www.facebook.com/SaveOurShorebirds

9/26/13

California Coastal Commission 1385 Eighth St. Suite 130 Arcata, Ca, 95521

Re: A-1-MEN-13-241 (MacKerricher Dune Rehab)

Dear Commissioners.

I urge the Commission to ask for a continuance hearing of this appeal at least until the December 11-13 meeting in San Francisco to allow for public input. Southern California is too far and too expensive for appellants and interested parties to reasonably attend and would put us at a disadvantage.

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CALIFORNIA

I oppose this project because of the following factors to quote the appeal: "1) its precedent-setting intentional destruction of an existing hard surface multi-use coastal trail without constructing a comparable replacement trail; 2) the magnitude of land and shoreline-altering impacts of the proposed project. 3) the significance of project impacts to special status species, wetlands and Environmentally Sensitive Habitat Areas (ESHAs); and 4) the inadequacy of the data supporting the local decision as set forth in a Mitigated Negative Declaration (MND).

An important prefatory consideration for any discussion of coastal access involves how coastal resources are defined and what priority they are given in the Coastal Act and certified Mendocino County LCP. Figure 1 in the LCP defines a hierarchy of An important prefatory consideration for any discussion of coastal access involves how coastal resources are defined and considerations, assigning the highest priority to "agriculture, forestry, and coastal dependent public recreation." The LCP states on page 4 in policy (a) that "Where policies within the Land Use Plan overlap, the policy which on balance is the most protective of coastal resources shall take precedence." The Coastal Act does not specifically define "coastal resources." However, Section 30001.5 of the Coastal Act sets among other legislative goals to (a) "Protect, maintain and, where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and artificial resources." These natural and artificial resources are presumably constitute coastal resources. Given the emphasis placed on coastal access in the Coastal Act, the artificial resources discussed in Section 30001.5(a) are taken to include trails that provide opportunities for public access, enjoyment, and education of the coast. Thus, we argue the Coastal Act gives equal priority to the preservation of existing coastal trails as it does to restoration of the natural environment." An EIR should be required.

We have cared deeply for the dunes for generations and hope that a segment of the California Coastal Trail can be saved along with the snowy plover. Please allow fair input from the public of the North Coast who oppose this project by waiting to hear it until December where we can attend. Thank you for your consideration,



# Loraine Duff

45800 Caspar Point Road Box 46º Caspar, CA 95420 Phone: (707) 964-3757

September 29, 2015

California Coastal Commission 1385 Eighth Street, Suite 130 Arcata, CA 95521

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OCT 03 2013 CALIFORNIA

COASTAL COMMISSION

NORTH COAST DISTRICT

Re: Commission Appeal A-1-MEN-13-241

Commissioners,

This letter is to ask you to continue Appeal A-1-MEN-13-241 until the December Commission meeting in San Francisco. I have used the Haul Road for years as a trail and walkway from Ft. Bragg to the Ten Mile River. It is a scenic resource and a wonderful way to enjoy the environment.

State Parks now wishes to remove portions of the Haul Road near Ft. Bragg, California. I have always thought of the Haul Road as an existing portion of the Coastal Trail. It is a safe hiking trail and can be used by a variety of users including cyclists, hikers, and equestrians. It is also handicap accessible. It should not be removed without first putting in something equally as good and safe

This appeal (A-1-MEN-13-241) may be on the Coastal Commission agenda for November 13-15 hearing scheduled in Newport Beach. I believe a meeting in Newport Beach is too difficult to attend. It is not really fair to local people who know more about the trail, and a hearing date at the December 11-13 Commission meeting in San Francisco would be preferable to allow public input.

As I see it California State Parks abuses their responsibility and deprives citizens of a resource that is within the very park they promised to protect when they first acquired it. I think the Haul Road is protected by the Coastal Act, and State Parks now chooses to set aside the protection with no comparable replacement of public access. I do not think this matter has received the sort of study necessary for what State Parks wants to do.

State Parks is trying to keep as many people as possible from visiting and enjoying public lands. When they are done there will be no trails which to keep people out of sensitive areas. People will walk wherever they please and spoil the natural resources.

Please continue this item to the December 11-13 Commission meeting in San Francisco.

Signature on File Sincerely Loraine Duff

# Ray Duff

45300 Caspar Point Road #46• Caspar, CA 95420• Phone: (707) 964-3757 E-Mail: rayduf@mcn.org

Date: September 29, 2013

California Coastal Commission 1385 Eighth Street, Suite 130 Arcata, CA 95521

Re: Commission Appeal A-1-MEN-13-241

Commissioners,

I ask you give attention to Appeal A-1-MEN-13-241 as it may come to your attention on Coastal Commission agenda for November 13-15 hearing scheduled in Newport Beach. As a senior resident of the Mendocino coast area, I believe a meeting in Newport Beach is too difficult to attend. This is not really fair to local people, and a hearing date at the December 11-13 Commission meeting in San Francisco would be preferable to allow public input. Please do what you can to continue this matter until the December Commission meeting in San Francisco.

My concerns are related to action California State Parks wishes to take in the Coastal area of Mendocino County, specifically the removal portions of the Haul Road, a long recognized multi-use coastal trail route near Ft. Bragg, California. The Coasta Haul Road is an existing portion of the Coastal Trail and a safe connector for hikes, equestrians, and cyclists. It should not be removed without first installing a comparable trail connection from Ft. Bragg to the Ten Mile River as does the Haul Road.

State Parks reasons incorrectly to deprive the citizenry of California and visitors to the coast of a resource that California State Parks used in the past to justify development of MacKerricher State Park. The land comprising the area of the Haul Road is protected by the Coastal Act, and State Parks now chooses to set aside the protection with no comparable replacement of public access. The removal of the road will result in land and shoreline impacts. There is insufficient study of the impact to wetland, and species that abound the area as related to the removal of road and beach grass with no replacement.

Most important; by their action State Parks will exclude as many people as possible from visiting and enjoying public lands. There will be no trails which to keep people out of sensitive areas. As people cannot be excluded from public lands, this policy shift will encourage visitors to walk wherever they please with no effort to control or prevent impacts. I questions whether this is good public policy.

Please continue this item to allow the public to speak on this issue at the December 11-13 Commission meeting in San Francisco.

Sinceraly

Ray Duff/

Signature on File





Sept. 30, 2013 P.O.Box 1321 Mendocino, CA 95460

# RECEIVED

OCT 03 2013

CALIFORNIA COASTAL COMMISSION NORTH COAST DISTRICT

California Coastal Commission 1385 Eighth St. Suite 130 Arcada, CA 95521

Re: Appeal A-1-MEN-13-241

Dear Coastal Commission;

This letter is a request that the hearing of this appeal be continued to the December meeting in San Francisco. A greater number of people from the Northern California area, nearest to this proposed project, will be able to speak and attend the meeting if it is heard in San Francisco. Since many of these people live near and access this area on a regular basis, they know the most about its use, past, present and future, and should be allowed to testify in person.

Since this State Parks project is not consistent with the Coastal Act, the Mendocino County Coastal Plan and the State Parks own 1995 General Plan, it is important for the Coastal Commission to hear all testimony about the denial of pubic access to this 4 miles of coast and the magnitude of damage to the environment of this Natural Preserve that will result from this project.

The major thrust of this project is to remove 2 1/2 miles of continuous and intact Haul Road which extends from Ten Mile River south to Ward Ave. This Haul Road has provided access to the coast and protected the dune environment by keeping the public on a designated trail for over half a century. It has been used regularly by the public for the 40 years I have lived here. Its removal will harm the environment by intense use of large machinery and 2,500 dump truck loads of road waste removal in a fragile dune area. It will admittedly destroy a percentage of the endangered plants it purports to protect. After removal the public will no longer have access to those miles of beach and dunes unless they enter at Ten Mile River or Ward Ave. (4 miles apart) and walk along the beach or on social trails in the dunes. The beach walk is often a difficult and dangerous option and impossible for many people. Walking in the dunes is difficult due to very soft sand and would create haphazard multiple social trails damaging to that environment.

State Parks states that Haul Road, after removal, would not be replaced by any trail. The beach is being offered as the only designated trail for 4 miles of coastline. There will only be access at Ward Ave and at Ten Mile River, 4 miles apart. As you well know, beach walking is difficult for many and impossible for others. Walking on wet sat is requested by State Parks, however, at higher tides and big seas, higher soft dry sand is often the only option. Elderly people and young children find walking on soft sand for any distance almost impossible. The handicapped and those using wheel chairs, walkers or crutches will not be able to use the beach as a trail. No bicycles will be

allowed by State Parks in this entire area of dunes and beach. Making it more difficult, the beach is often steeply slanted in the tidal zone where there is wet harder sand to walk on and there are several wide streams to cross during winter. All these members of the public have been previously able to use and have easy access on the Haul Road. Everyone using the beach as a trail will often be forced onto the higher soft sand where State Parks signs and brochures tell them not to walk because they will disturb the nesting endangered Snowy Plover. This is a "Catch 22" situation. The public is told the beach is the only trail and then are told not to go on the beach because of the Snowy Plover. Furthermore, anyone walking the wet beach sand must always be vigilant of "sneaker waves", incoming tides and high seas. Every year people are swept away on our coast. For the elderly, handicapped and small children the danger is even greater.

Common sense say to leave the intact 2 1/2 mile portion of the Haul Road and clean off the sand currently on it due to lack of maintenance. Then it will only be necessary to build boardwalks and use eco friendly trail material to connect the intact portion up to Ward Ave (about 1.2 miles) where the Southern portion of the Haul Road begins and continues to Pudding Creek. This will provide, once again, the 10 mile accessible stretch of coast. This 10 mile trail will both protect the fragile dune environment and provide access. It is a win win situation. For anyone who has not visited this area of the coast I would like to make clear that the Southern and Northern areas of the Haul Road are extremely different. In the south there are businesses, motels and homes on the east and headlands and small beaches on the west. In the north (the area of this project) there are only dunes in the east as far as the eye can see and one long 4 mile expanse of beach in the west. The public has a right to real access to both these very different environments, not just the southern portion where the Haul Road will be allowed to remain.

If it is determined that the northern 2/12 miles of Haul Road must be removed. State Parks needs a mandate to mitigate that loss by a replacement hard surface trail that is usable by the same public that has used the Haul Road all these years.

It seems odd that a state agency such as State Parks, which claims to provide and protect public access, inspiration and education, would try to deny that access to the public. But it appears to be the case in this misguided project. I hope that the Coastal Commission will protect the publics' right to this access, while protecting the environment from this destructive project and any future damage from not providing a usable trail. Please protect our access in the Inglenook Fen-Ten Mile Dunes Natural Preserve and the adjacent 4 miles of coastline.

Thank you for your consideration.

Sincerely,

**Signature on File** 

Bette Goldfarb

(7071 961-1683 bettegze comcast.net

11 of 44

Maryellen Sheppard 27200 N. Highway 1 Fort Bragg, CA 95437

September 29, 2013

California Coastal Commission 1385 Eighth St. Suite 130 Arcata, CA 95521

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OCT 03 2013

CALIFORNIA COASTAL COMMISSION NORTH COAST DISTRICT

RE: A-1-MEN-13-241

Dear Coastal Commissioners:

Please postpone or continue the upcoming hearing of A-1-MEN-13-241 tentatively scheduled for the Nov 13-15 meeting in Newport Beach so that it can be heard in Northern California. That will allow concerned Fort Bragg/Mendocino coast residents, who care deeply about State Parks plan to remove the northern portion of the old haul road, to speak at the meeting

On August 13, 2013 the Mendocino County Board of Supervisors held a meeting in Fort Bragg to hear the appeal of CDP12-2012. The meeting was packed to overflowing. The public comment period spanned four hours. "Most speakers opposed the \$750,000-plus project to remove the remnants of the road between Ward Avenue and Ten Mile. State Parks, which faced nearly unanimous speaker opposition at two previous meetings, was supported by half-dozen locals representing local, state and national environmental groups,..."(\*Advocate-News, August 15, 2013). As noted in the quotation, there are many people who wish to give public testimony. Please allow this item to be heard in Northern California.

I am an interested person named in the appeal and my letter regarding the potential loss in value adjacent land owners contained therein. Like many others who object to this project, I spoke at the August 13, 2013 meeting in Fort Bragg and I would like the opportunity to speak at the Coastal Commission hearing, as well. Moving the meeting to Northern California would benefit those who wish to speak and also the commissioners since they would receive first-hand information from interested persons.

No one can say for sure how removal of the intact northern segment of the road will impact adjacent or nearby properties. State Parks' geologist made the following comments in her report: "Removal of the road and culverts, in conjunction with the removal of non-native vegetation on the windward side of the road, will eliminate the barriers to natural sand movement within the Ten Mile Dunes. As a result of these natural processes, more sand is likely to blow inland (nearshore) over the short-term especially in the northern lobe." (Short-term in geologic time is about 50-100 years).

California Coastal Commission September 29, 2013 page 2

The Park's expert stated that sand movement will likely increase and could, therefore, bury more land. Once the sand has inundated a property there will be no recourse for land owners – their property values will decline since sandy soils are difficult to develop in regard to percolation and wells. There is evidence that unbuildable parcels or lots that present development challenges are devalued by adverse soil conditions. Based on my study of six land transactions contrasting buildable parcels to similar but undevelopable tracts, the loss in value attributable to the adverse soil conditions is in the range of 25% to 69%.

Lower property values will convert to lower tax assessments resulting in fewer tax dollars to Mendocino County. I object to the Dune/Haul Road project as proposed because of unforeseen costs to land owners and the County. Who will compensate nearby land owners should their property be inundated and rendered un-useable; State Parks, the County?

Removing the haul road and diminishing coastal access is not what people want. People want safe, accessible trails - what better start than the existing, paved trail? Once the road is gone, it never be rebuilt and any hope of having a coastal trail that stretches from Ten Mile to Noyo will vanish with it. State Parks plans on removing 2.5 miles of useable trail with no offer to mitigate that loss. <u>Should State Parks be allowed to destroy a coastal resource with no mitigation?</u>

We have an opportunity to create an extraordinary trail; a 20 mile roundtrip excursion that would attract users from all over the State and perhaps the world. Isn't that what parkland is meant to be: a world-class resource for all users?

Please don't allow State Parks to remove the haul road without mitigating its loss. A trail that stretches ten miles along the coast would be a significant draw for the entire County. This is an opportunity to improve coastal access, *please* don't let Parks destroy it. I am asking the commissioners to consider the suggested amendments to A-1-MEN-13-241 presented by the Westport MAC and others. Please do your part to provide people with year-round, walkable access to our beautiful coastline.

Very truly yours, Signature on File Maryellen Sheppard

Attachment: Photograph from Advocate-News, August 15, 2013

# Page 12 — Section A — Thursday, August 15, 2013 — ADVOCATE-NEWS





The capacity crowd remained for hours in Town Hall Tuesday. Tony Reed photo.



September 9, 2013

Mary K. Shallenberger, Chair California Coastal Commission 45 Fremont Street Suite 2000 San Francisco, CA 94105-2219

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OCT ( 7 2013 CALIFORNIA COASTAL COMMISSION

Re: Mendocino County Coastal Development Permit 12-2012, MacKerricher State Park Dune Rehabilitation Project

On behalf of the Surfrider Foundation of Mendocino County we would like to express our concerns regarding the Mendocino County Coastal Development Permit 12-2012 for the MacKerricher State Park Dune Rehabilitation Project (the "Project").

The completion and maintenance of the CA Coastal Trail is of paramount importance to the Surfrider Foundation. There is an existing significant gap in an improved and maintained CA Coastal Trail in Mendocino County from Ward Avenue to Ten Mile River. The proposed Project would remove the existing remnants of the Haul Road along the beach. The Surfrider Foundation of Mendocino County is not in favor of resurrecting the old Haul Road along the beach as a <u>road</u>, but we are concerned about the right for continued public access along the beach to enjoy the ocean and this area of the MacKerricher State Park, a large portion of which is designated as the Inglenook Fen-Ten Mile Dunes Natural Preserve.

This Project seems to split the CA Coastal Trail from Ward Avenue to Ten Mile River into two routes that could serve the CA Coastal Trail system: the first route is a natural beach trail; and the second route is a developed and maintained trail along Hwy 1. We support both coastal trail routes.

The Surfrider Foundation of Mendocino County supports the Mendocino County Board of Supervisors Coastal Development Permit 12-2012, only under the following recommended conditions:

- The public shall <u>retain</u> the CA Coastal Trail from Ward Avenue to Ten Mile River for nonmotorized access to the ocean and along the beach for hiking, bicyclists and equestrians, with hiking access within the Preserve area; and
- As soon as feasible, the State of California shall develop and maintain the CA Coastal Trail along Hwy 1 from Ward Avenue to Ten Mile River to primarily serve bicyclists.

Furthermore, we would like to be constructively engaged with State Parks and the California Coastal Commission and respectfully request that we be notified regarding any hearings, staff reports or information regarding the appeal of this Project. Thank you.

Sincerely,

## Signature on File

Bob Whitney 2013.09.09 18:40:39 -07'00'

Bob Whitney, for the Surfrider Foundation of Mendocino County

23801 Iris Terrace

Willits, CA 95490

707-459-3906

Cattornia Coastol tommission We request the commission schedule Appeal A-1-MEN-13-241 for the Dec-11-13 bearing in San Francisco to enable public Comment + otheridance by interested local resident prespla from the area involved in the oppeal Sincerely **Signature on File** . . . / **Signature on File** 

RECEIVED CT 071 CALIFORNIA COASTAL COMMISSION NORTH COAST DISTRICT

Robert & Janice Strecker 31561 Hwy 20 Fort Bragg, CA 95437

# RECEIVED

OCT 11 2013

CALIFORNIA COASTAL COMMISSION NORTH COAST DISTRICT

California Coastal Commission 1385 Eighth Street, Suite 130 Arcata, CA 95521

October 7, 2013

Re: Commission Appeal A-1-MEN-13-241

Attention California Coastal Commissioners:

Please watch for Appeal A-1-MEN-13-241 as it may come to your attention on Coastal Commission agenda for November 13-15 hearing scheduled in Newport Beach., I believe a meeting in Newport Beach is too far and difficult for those of us in Mendocino County to attend. This is not really fair to local people, and a hearing date at the December 11-13 Commission meeting in San Francisco would be preferable to allow public input. Please do what you can to continue this matter until the December Commission meeting in San Francisco.

My concerns are related to action California State Parks wishes to take in the Coastal area of Mendocino County, specifically the removal portions of the Haul Road, a long recognized multi-use coastal trail route near Ft. Bragg, California. The Coast Haul Road is an existing portion of the Coastal Trail and a safe connector for hikes, equestrians, and cyclists. The removal of the road will result in land and shoreline impacts. There is insufficient study of the impact to wetland, and species that abound the area as related to the removal of road and beach grass. It should not be removed without first installing a comparable trail connection from Ft. Bragg to the Ten Mile River as does the Haul Road.

The land comprising the area of the Haul Road is protected by the Coastal Act, please help us to continue this protection and use of our beautiful area.

Please, continue Appeal A-1-MEN-13-241 to allow our local input and the public to speak on this issue at the December 11-13 Commission meeting in San Francisco.

Sincerely Signature on File

Ignice & Robert Strecker

October 9, 2013

California Coastal Commission 1385 Eighth St. #130 Arcata, CA 95521

# RECEIVED

OCT 11 2013

CALIFORNIA COASTAL COMMISSION NORTH COAST DISTRICT

RE: Appeal A-1 MEN-13-0241

Dear Commissioners,

I would like to request a continuance for Appeal A-1MEN-13-0241 (MacKerricher Dunes Restoration Project) to Dec 11-13 in San Francisco. As there is so much concern regarding this project within our community, a location closer to our area would make it possible for people from our area to attend and speak.

The MacKerricher Dune Rehabilitation Project intends to remove 2.7 miles of the Haul Road Coastal Trail without any mitigation for its replacement. Two culverts would be removed with no provision for replacement stream crossings. The public has been told to walk on the beach. However, access would be restricted and difficult on sand as opposed to a hard surface multi-use trail. The beach will be closed during snowy plover nesting season (Mar - Sept) and impassable and unsafe much of the winter due to high surf and high water at stream crossings – what does that leave for public access? Once this section of Coastal Trail in the northern dunes is gone, it will never be replaced, leaving a large gap in the vision of a continuous Coastal Trail for the State of California.

This is a very complex project, the magnitude of which stands to radically alter the dune topography. This alteration has the potential to damage a host of rare and endangered plant species, ESHA's and wetlands. Additionally, neighboring properties are at risk from sand migration with the road and invasive plant removal. The road material itself (former railroad) has not been tested and could pose a public health hazard.

The data set forth in the Mitigated Negative Declaration for this project is inadequate and an EIR should be required. The project violates the standards set forth in the LCP, the Coastal Act and the 1995 General Plan for MacKerricher State Park.

Thank you for considering the preservation of this important designated Coastal Trail; a DESIGNATED trail would preserve public access as well as protect endangered plant and animal species. Please consider hearing this appeal in San Francisco.

Sincerely.

# Signature on File

Tenaya Middleton P.O. Box 1823 Mendocino, CA 95460 Redwood Coast Watersheds Alliance P.O. Box 87 Elk, California 95432 info@rcwa.us (707) 877-3551 357.5555

October 7, 2013

# Bob Merrill California Coastal Commission, Northcoast 1385 8th Street, Suite 130 Arcata, California 95521 (707) 826-8950 826:8960

# RECEIVED

OCT 11 2013

CALIFORNIA COASTAL COMMISSION NORTH COAST DISTRICT

# RE: Commission Appeal A-1-MEN-13-241 - Oppose Appeal, Support Project

Dear Mr. Merrill,

We urge that your staff recommend to the Coastal Commission that no substantial issue exists with respect to Mendocino County's approval of CDP #12-2012, California State Parks' Dune Rehabilitation Project at Inglenook Fen-10 Mile Dunes MacKerricher State Park.

We are in agreement with Mendocino County Coastal Permit Administrator's (CPA) approval of the proposed project and their findings and conditions as adopted in the June 11, 2013 CPA Staff Report, and

amended by the Board of Supervisors at their August 26<sup>th</sup>, 2013 special hearing.

In regard to the proposed road removal, we believe the project to be in conformity with the public access and recreation policies of the California Coastal Act and the Local Coastal Program.

The ocean has washed sections of the remnant road away, leaving hazardous chunks exposed; other portions are covered with sand.

The road is discontinuous with other roads, requiring a hearty walk of 20 minutes through sand to reach the remnant portions; current usage is therefore very low. Sea level rise will continue to undermine the remainder. It would be infeasible to retain or to reconnect this piece of road - both because of its impacts to natural ecosystem processes and endangered species habitat, and because maintenance would be nearly impossible in a naturally shifting dunes system.

After having carefully reviewed the issues, taking note that the Parks permit has been conditioned to add recreational opportunities, considering that Parks has plans to upgrade and maintain the popular hiking and biking sections of haul road within MacKerricher Park south of the Preserve, and that Parks is helping facilitate development of a bike path along Highway 1, we believe that the restoration of these rare natural dune areas is a priority project of statewide significance that deserves our full support.

## Key Points to Consider

\* Purpose of a natural preserve (PRC 5017.91): "The purpose of natural preserves shall be to preserve such features as rare or endangered plant and animal species and their supporting ecosystems, representative examples of plant or animal communities existing in California prior to the impact of civilization..."

\* Natural Preserve is one of few remaining intact, relatively pristine dune and wetland complexes remaining in California; estimated that only 3% of intact dune systems remain in northern California.

\* Project will restore ecosystem processes in a 1,285 acre natural preserve by removing 2.7 miles of remnant sections of a former logging road paralleling the beach, two failing culverts, and European beach grass

\* Project planning and design conducted in collaboration with a team of well respected scientists, including botanical experts, a PhD Coastal Ecologist, and California Geologic Survey Senior staff.

2/4

\* Southern section of road began washing out in 1983; nearly 1 mile is completely gone and most of remaining sections are covered in sand; road has not functioned as a through trail for bicycles, or people in wheelchairs for 30+ years

\* Road base, asphalt veneer, culverts, and European beach grass block natural sand movement, altering natural ecosystem processes that are critical for endangered species

\* Habitat to be restored supports three federally listed species: western snowy plover, Howell's spineflower, and Menzies wallflower, and over eight additional special status species

\* Connecting the washed out sections of road would never be approved through the environmental permitting processes due to direct impacts to endangered species that cannot be mitigated to a level of insignificance

\* State Park attempts to plan for multi-use trail development in dunes were abandoned in 2000 after a lengthy process determined that the project was not feasible based on engineering, cost, incompatibility with unit classification, and jeopardy to survival of listed species

\* Environmental document and permit approvals completed for the project include: an unchallenged Mitigated Negative Declaration, CDFW 1600 permit, Water Quality 401 certification, CDFW Incidental Take Permit, State Lands Commission permit, Air Quality Permit

\* County Coastal Planning and Board of Supervisors approved Coastal Development Permit; approval appealed to the State Coastal Commission based on misinformation formulated by local opposition

3/4

\* Project supported by CDFW, USFWS, Audubon Society, Sierra Club, CNPS, and political representatives Wes Chesbro, Noreen Evans, and Jared Huffman.

\* Time is of the essence, as further State permitting delays may result in loss of Proposition 84 funds to implement the project.

We appreciate your and staffs review of our recommendations.

Sincerely,

**Signature on File** orman L. de Vall

President, Redwood Coast Watersheds Alliance

cc: The Honorable Rep. Jared Huffman, Senator Noreen Evans and Assemblyman Wesley Chesbro RECEIVED OCT 15 2013 CALIFORNIA COASTAL COMMISSION NORTH COAST DISTRICT

205 N. Harold St. Fort Bragg, CA 95437 October 12, 2013

Bob Merrill California Coastal Commission 1385 8th Street, Suite 130 Arcata, CA 95521

RE: Commission Appeal A-1-MEN-13-241 - Oppose Appeal, Support Project

I have spent a fair amount of time in the dunes north of Laguna Point and south of the 10 Mile bridge lately searching for and removing pampas grass from the area. In my searching, I have walked along the old logging road several times. It is really no longer usuable, as the sand has mounded up over it in so many places that hiking and biking are both quite laborious. Since the asphalt itself is toxic and even contains asbestos, I support the State Parks' plan to try to mitigate its presence in the environment. Therefore, I urge that your staff recommend to the Coastal Commission that no substantial issue exists with respect to Mendocino County's approval of CDP #12-2012, California State Parks' Dune Rehabilitation Project at Inglenook Fen-10 Mile Dunes MacKerricher State Park.

I agree with the Mendocino County Coastal Permit Administrator's (CPA's) approval of the proposed project and the findings and conditions adopted in the June 11, 2013 CPA Staff Report, and amended by the Board of Supervisors at their August 26th, 2013 special hearing. In regard to the proposed road removal, I think the project is in conformity with the public access and recreation policies of the California Coastal Act and the Local Coastal Program. The ocean has washed sections of the remnant road away, leaving hazardous chunks exposed; as I noted above, other portions are covered with sand. The road is discontinuous with other roads, requiring a hearty walk of 20 minutes through sand to reach the remnant portions; current usage is therefore very low. Sea level rise will continue to undermine the remainder. It would be infeasible to retain or to reconnect this piece of road - both because of its impacts to natural ecosystem processes and endangered species habitat, and because maintenance would be nearly impossible in a naturally shifting dunes system.

After having carefully reviewed the issues, taking note that the Parks permit was specifically conditioned by the planning department to enhance recreational opportunities for hikers and bicyclists, considering that Parks has plans to upgrade and maintain the popular hiking and biking sections of logging road within MacKerricher Park south of the Preserve, and that Parks is helping facilitate development of a bike path along Highway I, we believe that the restoration of these rare natural dune areas is a priority project of statewide significance that deserves your full support.

Sincerely yours Signature on File James R. (Jary) Stavely (707) 964-4942

October 7, 2013

Bob Merrill, District Manager, California Coastal Commission 1385 8th Street, Suite 130 Arcata, CA 95521

RECEIVED

COASTAL CON

OCT 18 2013

CALIFORNIA



A-1-MEN-13-241

RE: A-1-MEN-13-241 Ten Mile Dunes Restoration Project, Mendocino County Dear Mr. Merrill,

We urge you once again to find no substantial issue for the appeal of this coastal permit so this long-planned and funded restoration work in the state's last remaining coast fen can begin. Here are our specific concerns about the appeal:

The appellant's comments about Western Snowy Plovers in the Preserve are not accurate. All information offered by the appellant (Exhibit 2, page 3) regarding nesting behavior is taken from information published prior to 2006. Attached (p. 7-8) are our data gathered between 2007-2012 (the 2013 data will be available in January). The appellant's use of a 1999 study that states "they [Western Snowy Plovers] were absent in the breeding season" at the Preserve's Ten Mile Beach implies that is the case today. As you can see by the attached, Western Snowy Plovers are in the Preserve during the breeding season (March-September) and the numbers appear to be improving.

What our Save Our Shorebird numbers don't show is perhaps more important: In the field, we are seeing individual plovers returning to Ten Mile Beach year after year (identified by USFWS permitted bands) after periods of absence. And on a spot at Ten Mile Beach where State Parks crews pulled European beach grass, we saw adults rest, forage, breed and build a nest this year.

The appellant is wrong to write Western Snowy Plover nests are "usually within 100 meters of shore." Scientists (Page and Stenzel, 1981) concluded Western Snowy Plover nests can be within 100 meters of water, "but could be several hundred meters away when there was no vegetative barrier between the nest and water." And water could be ocean, a lagoon or river mouth, according to Powell et. al., 1995-1996. The appellant's claim (Exhibit 2, page 3) that "less than 140 acres in the preserve fall within the 100-meter near shore zone favored by WSP for nesting," is a conclusion reached by fancy and not fact.

When the USFWS released the Final Rule in the federal register designating critical habitat for the Western Snowy Plover (categorized as "threatened" on the federal endangered species list) in June, 2012, nearly all of the Inglenook Fen-Ten Mile Dunes Natural Preserve was listed as critical habitat for the Western Snowy Plover. So ground rules for preservation and restoration are set forth by agencies charged with protecting and monitoring wildlife on the endangered species lists. The Ten Mile Dunes restoration project respects those conservation goals without jeopardizing access to the sea in a public park.

Another statement by the appellant (Exhibit 2, Page 5) says the old timber haul road that parallels the beach "offers no barrier to WSP movement, since they already cross it to forage in the interior dunes..." mystifies me. In a decade of frequent bird surveys and hikes at Ten Mile, I have never seen a Western Snowy Plover forage in back dunes.

We don't know exactly what will happen when critical habitat is improved by this restoration project. But we know what goes on now: Plovers do not nest near non-native invasive plant and manmade barriers where chicks can't survive. The following photographs (taken several years ago on the Mendocino Coast) are a Western Snowy Plover nest and two chicks on a nest with one egg. Chicks are about the size of a big grape and they can't fly for at least 28 days after hatching. The only way for a chick to escape human or animal predators is to run and hide. That's impossible in an area covered by a thick tangle of beach grass. Removing non-native grass and other man-made obstructions is an essential part of the USFWS Western Snowy Plover Recovery Plan and is widely recognized as a way to help survival.



Photo (above) by Angela M. Liebenberg, photo at right by Alison I. Cebula, California State Parks.



That's exactly what the Ten Mile Dunes Restoration project will do for Western Snowy Plovers. Vegetation (non-native invasive European beach grass) and the asphalt barrier of the old haul road will be removed and low-lying fore dunes will shape the beach naturally- a beach that will allow plovers safe nesting areas and an escape route for chicks running from predators. The only place Western Snowy Plovers live is the Pacific Coast and there is an estimated number of less than 2,100 adult birds on the U.S. West Coast. The fact that we monitor a population of about 50 adult Western Snowy Plovers in the winter makes this Ten Mile Beach a noteworthy part of the federal recovery plan.

The photos below—all taken near Western Snowy Plover roosting grounds near Ward Avenue, show how the bird's habitat on dry sand is squeezed between rising ocean levels at high tide and the immovable haul road, pieces of which have been chewed away by the ocean. The condition of the beach in these areas also is a safety concern for hikers on the beach during high tide.



barriers will reshape sand into low-lying fore dunes covered with native coastal strand plants that will provide shorebirds a safe habitat for resting and foraging. "Walls" in these photos are more than 6 feet high.

People and birds are not the only animals that will benefit from removal of the haul road and European beach grass. Below is a photograph of a Northern Elephant Seal that spent the better part of July, 2012, molting on Ten Mile Beach in an area covered with native vegetation. The marine mammal picked a spot on the beach with no non-native invasive beach grass. This natural beach habitat made it possible for the seal to sidle up to a dry area to rest. The animal could not have arrived at its perfect molting spot if it had tried to "climb" the steep walls created by the growth of European beach grass above and below the sand's surface. These mammals must get to a dry spot on the sand to molt because salt water stings the exposed new skin.



We'd like to answer—for the record—one Western Snowy Plover question left unanswered during appeal testimony at a public hearing August 13. Speakers implied the Preserve is closed during Western Snowy Plover breeding season from March through September. This misleading insinuation distressed audience members. Here is the truth: A small area may be roped off in the Preserve during breeding season and one can easily walk around such an area—called "symbolic fencing." A small area—usually less than one acre is roped off and the rest of the 1,285-acre Preserve is open—as always—to the public. Anybody who has spent time in the Preserve on Ten Mile Beach knows this.

"Sweet Verbena" after the native plants it used for a pillow.

Appellants also claimed (Exhibit 2, Page 5) that removal of the haul road would harm Western Snowy Plovers "by encouraging visitors to wander through their nesting area instead of using the designated trail on the haul road." People who spend time on Ten Mile Beach know some shorebirds often spend days in dry sand near fore dunes. The birds are stressed whenever anything (human or wildlife) pops over the top of the fore dunes and shuffles down through the sand to the water's edge. People who hike on what's left of the haul road often leave the asphalt to cross fore dunes to get to the water (that's why they come to the Preserve—to walk at the water's edge). The act of emerging over the top of the fore dunes, surprising the birds, and walking west through dry sand to get to the water is more disturbing to the Western Snowy Plovers than humans walking on pounded sand on the designated Coastal Trail down the face of Ten Mile Beach. When humans are walking north to south on the beach, they are in the open and birds can easily see humans approach from a distance (and can react defensively).

Our surveyors count people as well as birds to get a good picture of beach wildlife. As the attached sample data sheet indicates (p. 11-12), volunteers record the number of people observed on wet sand, dry sand and in the dunes during Save Our Shorebirds surveys. The three coastal beaches we survey are Ten Mile Beach (located within Inglenook Fen-Ten Mile Dunes Preserve), Virgin Creek Beach and Glass Beach—all in Mackerricher State Park. In the absence of an electronic or mechanical "people counter," we offer the attached summary (p. 13) as a casual measure of beach visitors. It is not a complete picture, but an indication of how people visit the Preserve.

Protocol for our Ten Mile Beach surveys requires surveyors to cross dunes at the Preserve's north end, hike along the south bank of Ten Mile River and continue to hike 3.8 miles south on Ten Mile Beach to Ward Avenue. Surveys are 2-4 hours long. We conducted 526 surveys of Ten Mile Beach between June, 2007 and June, 2013. We counted 116,179 birds and 4,143 people. The number of people counted included some groups of 20 or more we led on public coastwalks. An average of 7.88 people were observed per survey. Over the same time period, we observed an average of 13.01 people per survey at Virgin Creek (a pocket beach located next to the Southern Haul Road south of Ten Mile Preserve) and an average of 46.21 people on Glass Beach, just south of Pudding Creek Trestle in the town of Fort Bragg.

Each beach has its own character and attraction for the public: Glass Beach is in Fort Bragg and close to Highway 1. On-leash dogs are welcome and hiking is easy along the bluffs, on sand, or on near-shore rocks. Virgin Creek is a destination for bird watchers and surfers which can be reached from the South Haul Road, an all-access trail. The South Haul Road (south of Ward Avenue) is a center of local culture where many people walk every day. The paved walkway is filled with hikers, families with strollers, and bicycles—the trail is easily navigated by anything on wheels. When the new Fort Bragg bluff top hiking trail (on the former Georgia-Pacific site) is connected to this South Haul Road, this allaccess portion of the Coastal Trail will be extended to stretch more than seven miles from Fort Bragg north to Ward Avenue. However, when you cross Ward Avenue, you are in the Preserve and everything changes. It is wild, remote, and windy. Cell phone coverage is spotty. Some dunes are more than 20 feet high. Here are photos:





The photograph at lower right is a wide shot of the Ten Mile Beach segment of the California Coastal Trail in the Preserve. It's the same route hiked by our bird surveyors from Ward Avenue north to Ten Mile River. They are not visible in the photograph, but this portion of the Coastal Trail takes hikers and equestrians across two creek outlets— Fen Creek and Inglenook Creek. Restoration plans call for removal of two creek culverts when the haul road is removed.

We can't give scientific predictions about these crossings after culvert removal, but we can share first-hand observations. Our surveyors hike the trail all year. Now in October, both outfall beds are dry and there is no creek water flowing into the ocean. In fact, for the last few weeks, water flow into the ocean also has stopped at Ten Mile River. In the past seven years (perhaps 6 or 7 times) we have hiked off the trail back up to the haul road to cross when the water flow at the creek mouths was "high" (never more than about 6-10 inches deep). During the dry winter of 2013, the flow was never high enough to force us to leave the beach in order to cross the creek on what's left of the haul road. When culverts are removed and the flow is not channeled, we have a pretty good idea water will sheet in random, shallow, shifting patterns on the beach (as it does at times now, even with channeling). We encourage periodic future evaluations of these crossing points by State Parks management to see what kind of action (if any) could be taken. In the past, nature gave us a solution, as shown below in a photo taken on a shorebird survey on January 11, 2009.



We continue to support the Ten Mile Dunes restoration project for many reasons stated in a previous letter. The Mendocino County Board of Supervisors voted to deny the appeal with good reason after reaching a number of compromise solutions which respect the state's designation of the area as a natural preserve and which conformed to federal and state laws about endangered species. The county staff report is a sound document that is fully researched and accurate in its presentation about the role of the Preserve in the county's certified LCP.

Appellants created confusion by referring to the old haul road as the designated Coastal Trail. It's not an appropriate Coastal Trail, as the county staff report pointed out. The old road runs parallel to the ocean and does not take one to the water's edge. Some road segments are washed out and other segments are seriously deteriorated or covered by the constantly shifting dune sands. When it came time to celebrate the official opening of the segment of the Coastal
Trail in the Preserve, Coastwalk California hikers (and others) walked the beach and helped State Parks personnel put up signs indicating the beach was the Coastal Trail in Inglenook Fen-Ten Mile Dunes Preserve (p. 9-10).

Appellants included letters in their appeal document (and introduced testimony during public hearings) that the old haul road should be either repaired or relocated and replaced to serve as a multi-use road through the Preserve, specifically as a Class 1 bicycle route across the dunes to connect Ward Avenue with Highway 1 at Ten Mile River. Such a paved path through the Preserve would never be permitted under state and federal laws that protect a natural preserve and endangered plant and wildlife species. It is not part of the current permit and inclusion of correspondence about this construction is not appropriate or relevant to this appeal.

We do, however, support special conditions of permit CDP 12-2012 that require State Parks to participate in efforts to create the Pacific Coast Bike Route segment that would connect the South Haul Road that terminates at Ward Avenue to a Class 1 bicycle lane on Highway 1 that will take bikers along the east boundary of the Preserve north to Ten Mile River Bridge.

Our input about the Preserve is based on more than 5,500 hours in the field on Mackerricher State Park beaches (much of that time on Ten Mile) and comes from people who have hiking boots on the ground in the Preserve. Save Our Shorebirds is a long-term ongoing Mendocino Coast Audubon project in partnership with State Parks and in cooperation with USFWS. The project goal is to monitor and protect shorebirds on the Audubon and American Bird Conservancy watchlist. This effort includes outreach and public education about shorebird protection.

By this time, you have valuable input about this restoration project from scientists and experts in soil, endangered species law, dune systems, engineering, wind, water, park history, climate change, biology, stream restoration, archeology, fish, birds, plants, and toxicology—as well as results of a feasibility study in 2000 that recommended abandonment of development of a multi-use trail in the dunes. Just to enhance that knowledge, we thought you might like to hear from the children of Mendocino County, too, who learn about Western Snowy Plovers as part of our classroom work. We've included a copy of a bilingual book illustrated by our local children. "The Life and Times of Pink Lady" was published in 2010-2011 with funding from the Community Foundation of Mendocino County. A copy of the book was given to every coastal elementary school child, and we'd like to share it with you.

Sincarely,

# Signature on File

Becky Bowen/ ( Save Our Shorebirds Mendocino Coast Audubon Society

707 962-1602 casparbeck@comcast.net

cc: CA Coastal Commission—T. Gedik, Dr. C. Lester, L. Locklin CA State Parks—Maj. Gen. A.J. Jackson, MSMC (Ret.), J. Chamberlin, L. Burko, L. Rex, R. Pasquinelli Assembly Member W. Chesbro, Sen. N. Evans, Rep. J. Huffman Audubon—G. George, A. Jones, D. Ogden, D. Taylor, J. Ossello, L. Perkins

> SAVE OUR SHOREBIRDS · Mendocino Coast Audubon Society · PO Box 2297 · Fort Bragg, CA 95437 · (707) 962-1602 www.facebook.com/SaveOurShorebirds

> > 6



Source: Save Our Shorebirds Mendocino Coast Audubon Society

B. Bowen compiler casparbeck@comcast.net

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Source: Save Our Shorebirds, Mendocino Coast Audubon Society

Compiler: B. Bowen casparbeck@comcast.net

707 962-1602

# COASTWALK CALIFORNIA WEBSITE MAP OF CCT IN INGLENOOK FEN-TEN MILE DUNES PRESERVE FROM TEN MILE RIVER SOUTH TO WARD AVENUE.



Source: Coastwalk California www.coastwalk.org

Below, California Coastal Trail sign installation celebration of the CCT along the face of Ten Mile Beach—November, 2007







32 of 44

COASTWALK CALIFORNIA WEBSITE MAP OF CCT FROM SOUTH OF WARD AVENUE

BECT ION LEGEND
Continue Coantal Trail
DA Pacific Bike Route
Coantal Comman Drancows points
Access point
Access
Acces



TO GLASS BEACH IN THE TOWN OF FORT BRAGG, CA

Source: Coastwalk California

www.coastwalk.org

Observer name	Date	Time in:	Tide:
		Time out:	
Location: TM VC G	В		
Weather conditions (cl	oud cover, wind	l, precipitation, et	c):
Beach Use			and an and a start of
(Record number of e Number of stationary	ach user type o Wet sand	bserved in each lo	cation. Tally or "hash" marks are fine.) Total number of visitors contacted:
people (picnic, etc.)	Dry sand		
	Dunes		
Number of walkers/	Wet sand		Notes:
joggers	Dry sand		<u>itoresi</u>
	Dunes	_	
Number of dogs on	Wet sand		
leash	Drv sand		
	Dunes		1+1
Number of dogs off	Wat cand		
leash	Dry sand		
	Dunes		
TOTAL NUMBER OF DOG	<u>SS:</u>		
Number of equestrians	Wet sand	-	
	Dry sand		
	Dunes		
	Sec. al		Second States
Identification of vehicle(: sible):	es are observed s) and license pla	ate (if pos- Desc	s, please contact a Ranger. ription of person(s) involved:
Deserite disturbance to	shoushinds he		the Number rouge of disturbance du
ration, etc.)	silorepiras - De	as specific as poss	ible. (Humber, cause of discurbance, du-
		34 of 44	
		11	

# Audubon SOS Observations

# AUDUBON SOS OBSERVATIONS

## SHOREBIRDS

Black-bellied Plover

American Golden-Plover

Pacific Golden-Plover Snowy Plover Semipalmated Plover Killdeer

Black Oystercatcher

Greater Yellowlegs Lesser Yellowlegs Yellowlegs, unidentified

Willet Wandering Tattler Spotted sandpiper

Whimbrel Long-billed Curlew Marbled Godwit

Ruddy Turnstone Black Turnstone

Surfbird Red Knot Sanderling

Western Sandpiper Least Sandpiper "Peep," unidentified Baird's Sandpiper Pectoral Sandpiper

Rock Sandpiper Dunlin

Short-billed Dowitcher Long-billed Dowitcher Dowitcher, unidentified Wilson's Snipe

Red-necked Phalarope Red Phalarope

### POTENTIAL PLOVER PREDATORS

White-tailed Kite

Northern Harrier

Red-tailed Hawk American Kestrel Merlin Peregrine Falcon Common Raven Gull, total (all species)

Western Gull colony - Glass Beach

#### OTHER SIGNIFICANT OBSERVATIONS

Highlighted species are listed as "watchlisted" by Audubon, American Bird Conservancy

Dead or injured seabirds (species if known)

35 of 44

## Save Our Shorebirds

Mendocino Coast Audubon Society

Survey Data Bird and People Totals-Preliminary Data a/o 7/18/2013

2007-2013 (first two quarters)

Ten Mile Beach

Beach	1				Ave. People
		# Birds Counted*	# People Counted**	# SOS Surveys	Per Survey
	2007	17,787	804	93	
	2008	17,015	799	68	
	2009	21.853	822	101	
	2010	17,817	442	76	
	2011	35,680	677	89	
	2012	23,850	496	80	
	2013	4,008	103	19	
Т	otals	116,179	4,143	526	7.88

Virgin Creek Beach	# Birds Counted*	# People Counted**	# SOS Surveys	
2007	9,682	1,591	92	
2008	10,217	1,507	94	
2009	9,973	1,017	97	
2010	16,234	962	101	
2011	22,940	1,185	111	
2012	24,805	1,616	133	
2013	4,581	803	39	
Totals	98,432	8,681	667	13.01

Flace Baach		# Birds Counted*	# People Counted**	#SOS Surveys	
Glass Deach	2007	a 151	# Feople Counted	90	
	2007	2 650	5 184	88	
	2000	3,055	1 170	83	
	2009	7225	1 /20	37	
	2010	4,557	5 1 20	110	
	2011	10,075	1 689	63	
	2012	1 102	2,085	11	
	Totals	1,405	22 688	491	46 21
	Totals	40,000	22,000	451	-0.21

\*Total All Species Observed (shorebirds and non-shorebirds)

\*\*People Counted on wet and dry sand, stationary and joggers/walkers in dunes and bluffs

October 15, 2013

# RECEIVED

OCT 1 8 2013

CALIFORNIA COASTAL COMMISSION NORTH COAST DISTRICT

California Coastal Commission 1385 Eighth Street, Suite 130 Arcata, CA 95521

## Re: Commission Appeal A-1-MEN-13-241

As a concerned citizen on the Mendocino Coast who regularly visits the area in question, I urge the commission to DENY the appeal.

A great deal of misinformation was presented to the public during the discussion of this project, including telling people that public access would be denied to a large area that is currently being used.

I have lived in this area for over 30 years and have walked the dunes and beaches. I was well aware of the studies done in the late 90's and early 2000. I believe it is those studies that led to the California State Parks plan. As an active member of the Mendocino Coast Audubon Society, I have participated in bird surveys of the area under discussion. Spending time over a period of years in the area has given me an appreciation for how the Ten Mile Dunes preserve is a unique environment that deserves to be restored.

There is good science behind the plan; public access is not being denied. Therefore, again, I urge the commission to DENY the appeal.

Thank you for your consideration

Signature on File ret

Charlene McAllister 45601 Headlands Drive P.O. Box 332 Little River CA 95456 707-937-4463 charmac@mcn.org Redwood Chapter 55A Ridgway Avenue, Santa Rosa, CA P.O. Box 466, Santa Rosa CA 95402 (707) 544-7651 Fax (707) 544-9861 www.redwood.sierraclub.org

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October 9, 2013

Bob Merrill California Coastal Commission 1385 8th Street, Suite 130 Arcata, CA 95521

RE: Commission Appeal A-1-MEN-13-241 - Oppose Appeal, Support Project

Dear Mr. Merrill:

The Redwood Chapter represents some 9,000 Sierra Club members living in northwestern California from the Bay Area to the Oregon border; more than 1000 of our members reside in Mendocino County. The long-term protection of California's coastal habitat has been among our top conservation priorities for many years.

We are writing now to urge that your staff recommend to the Coastal Commission that no substantial issue exists with respect to Mendocino County's approval of CDP #12-2012, California State Parks' Dune Rehabilitation Project at Inglenook Fen-10 Mile Dunes in MacKerricher State Park. We concur with Mendocino County Coastal Permit Administrator's (CPA) approval of the proposed project, including the findings and conditions incorporated in the June 11, 2013 CPA Staff Report, and adopted by the Board of Supervisors at their August 26, 2013 special hearing.

The project area is among the very few relatively pristine dune and wetland complexes left in northern California, where it is estimated that all but three percent of intact dune systems have been destroyed; it supports three federally listed species (western snowy plover, Howell's spineflower, and Menzies wallflower), and over eight additional special status species. Project implementation will restore natural conditions in a 1,285 acre natural preserve by removing 2.7 miles of remnant sections of a former logging road paralleling the beach, two failing culverts, and large quantities of invasive European beach grass.

We believe the proposed road removal project to be in conformity with the public access and recreation policies of the California Coastal Act and the Local Coastal Program. The remnant road does not currently provide significant recreational access, because years of exposure to the elements have destroyed substantial sections of roadbed, and buried other sections in sand: it has not functioned as a through trail for bicycles, or for people in wheelchairs, for more than thirty years. Furthermore, since there are no connections between the remnant road and accessible portions of the park and county road system, reaching the area at all requires a twenty minute walk through loose sand. Reconnecting and restoring this remnant segment of roadway would be completely infeasible not only because of negative impacts to endangered species habitat, but also because of prohibitive maintenance costs in an area where sand dunes are constantly shifting and sea level rise can be expected to continue to undermine the roadbed on an ongoing basis.

Since the Parks permit was specifically conditioned by the planning department to enhance recreational opportunities for hikers and bicyclists, considering that the State Parks Department plans to upgrade and maintain the popular hiking and biking sections of haul road within MacKerricher Park south of the Preserve, and that they are helping to facilitate development of a bike path along Highway 1, it appears clear that the net effect of the project will be to improve public access rather than to impede it.

After reviewing the issues, we believe that the restoration of these rare natural dune areas should be considered as a priority project of statewide significance that merits the full support of the Coastal Commission.

Yours sincerely,

Signature on File

Victoria Brandon Chair, Sierra Club Redwood Chapter

[October 12, 2013 Bob Merrill California Coastal Commission 1385 8th Street, Suite 130 Arcata, CA 95521 RE: Commission Appeal A-1-MEN-13-241 – Oppose Appeal, Support Project

We urge that your staff recommend to the Coastal Commission that no substantial issue exists with respect to Mendocino County's approval of CDP #12-2012, California State Parks' Dune Rehabilitation Project at Inglenook Fen-10 Mile Dunes MacKerricher State Park.

We are in agreement with Mendocino County Coastal Permit Administrator's (CPA) approval of the proposed project and their findings and conditions as adopted in the June 11, 2013 CPA Staff Report, and amended by the Board of Supervisors at their August 26th, 2013 special hearing.

In regard to the proposed road removal, we believe the project to be in conformity with the public access and recreation policies of the California Coastal Act and the Local Coastal Program.

The ocean has washed sections of the remnant road away, leaving hazardous chunks exposed; other portions are covered with sand. The road is discontinuous with other roads, requiring a hearty walk of 20 minutes through sand to reach the remnant portions; current usage is therefore very low. Sea level rise will continue to undermine the remainder. It would be infeasible to retain or to reconnect this piece of road - both because of its impacts to natural ecosystem processes and endangered species habitat, and because maintenance would be nearly impossible in a naturally shifting dunes system.

After having carefully reviewed the issues, taking note that the Parks permit was specifically conditioned by the planning department to enhance recreational opportunities for hikers and bicyclists, considering that Parks has plans to upgrade and maintain the popular hiking and biking sections of haul road within MacKerricher Park south of the Preserve, and that Parks is helping facilitate development of a bike path along Highway 1, we believe that the restoration of these rare natural dune areas is a priority project of statewide significance that deserves our full support.

Sincep

Signature on File Rebert Love 435D N. Whipple Fort Bragg, CA 95437

707-357-4831

RECEIVED

OCT 23 2013

COASTAL COMMISSION NORTH COAST DISTRICT



October 22, 2013

California Coastal Commission North Coast District Office Attn: Bob Merrill, Deputy Director Attn: Tamara Gedik, 1385 8<sup>th</sup> Street, Suite 130 Arcata, CA 95521 220 Montgomery St, Suite 1000 San Francisco, CA 94104-3402 www.ca.audubon.org

# RECEIVED

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CALIFORNIA COASTAL COMMISSION NORTH COAST DISTRICT

Submitted via fax, email and Federal Express

Re: Coastal Development Permit Appeal A-1-MEN-13-241 — Ten Mile Dunes Restoration Project

Dear Coastal Commission:

Now in its second century, Audubon connects people with birds, nature and the environment that supports us all. Our national network of community-based nature centers, chapters, scientific, education, and advocacy programs engages millions of people from all walks of life in conservation action to protect and restore the natural world. Audubon California is the state program of Audubon with over 150,000 members and supporters and 48 chapters.

We thank you for the opportunity to comment on the motion to appeal the Coastal Development Permit 12-2011 (Coastal Development Permit Appeal A-1-MEN-13-241) for the Ten Mile Dunes Restoration Project. We support the project as planned by California State Parks and permitted under the Mendocino County Local Coastal Program, and ask the Coastal Commission to find no substantial issue for the appeal of that permit.

1. The permit has been approved and the appeal has been denied.

Mendocino County Board of Supervisors as part of the LCP program approved the permit, and the appeal was denied by the Board of Supervisors.

2. The restoration site is an Important Bird Area.

National Audubon Society has recognized Mendocino Coast as an Important Bird Area (IBA). The Important Bird Areas Program, administered by the National Audubon Society in the United States, is part of an international effort to designate and support conservation efforts at sites that provide significant breeding, wintering, or migratory habitats for specific species or concentrations of birds. Sites are designated based on specific and standardized criteria and supporting data. This IBA refers to several distinct habitats along a 20-mile stretch of coast from the mouth of Ten Mile River south through Fort Bragg to the Mendocino Headlands. It includes Mackerricher State Park and the Inglenook Fen – Ten Mile Dunes Natural Preserve as a key area for protection.

Removal of the remnant sections of road and non-native plants as planned in the permitted project is of great importance for the many species of migratory shorebirds that use that area, including federally threatened Western Snowy Plover (*Charadrius nivosus*) which winter on that beach and are protected and monitored by our local chapter Mendocino Coast Audubon Society and their volunteers with an outreach program to the Community of Mendocino. Because the plovers are difficult to see in the sand, volunteers erect "symbolic" permeable fencing that marks where the plovers are roosting and do not obstruct public access.

3. We support the mission of the Coastal Commission to provide public access to California's beaches. The restoration plan prepared by California State Parks and permitted by Mendocino County Board of Supervisors provides that access even with removal of the remnant sections of road in the plan.

Thank for your consideration of our comments.

Sincerely,

# Signature on File

Andrea Jones Director, Coastal Programs ajones@audubon.org 805-772-1995

CC:

Dan Taylor, Policy Director, Audubon California Garry George, Chapter Network Director, Audubon California Joleen Osello, President, Mendocino Coast Audubon Society Renee Pasquinellli, California State Parks Jay Chamberlan, California State Parks Judith Steele P O Box 1458 Mendocino CA 95460

To: Bob Merrill California Coastal Commission 1385 8<sup>th</sup> Street Suite 130 Arcata CA 95521

October 25, 2013

Re: Commission Appeal A-1-MEN-13-241- Oppose Appeal, Support Project

This project has been through the process and the public has had many chances to provide their opinions and objections .I am in agreement with the Mendocino County Coastal Permit Administrator's approval of the proposed project.

The State Park's project has been vetted thoroughly and approved by Mendocino County Board of Supervisors. The project will be of statewide significance in restoring the rare natural dunes areas. The natural preserve is one of the few remaining intact relatively pristine dune and wetland complexes in California.

The project, I believe deserves your full support.

Sincerely

# Signature on File

Judith Steele



# October 23, 2013

Dear California Coastal Commission:

RE: A-1-MEN-13-241 (Dep. Of Parks & Rec. MacKerricher Dune Rehab Appeal)

The preservation of public coastal access is very important to both visitors and locals alike here on the Mendocino Coast. Part of the reason the Coastal Act was derived was to protect our already limited coastal access. Mendocino Coastal residents are now facing the fact that we may lose 5 miles of just that. Currently we enjoy 5 miles of an old Haul Rd. to access our dunes and beaches North of Fort Bragg. If allowed to restore this haul rd., it could also be used as an off Highway 1 bike/pedestrian route with coastal access.

We are appealing the Coastal Development Permit for California Parks & Rec. to remove this road.

The fact that Department of Parks & Rec essentially re-zoned the dunes as a Preserve, but did not ask the County or the Coastal Commission to accept that change of use by amending the Mendocino County Local Coastal Program is certainly questionable in my mind.

In the Mendocino County Local Coastal Program it states that it's purpose is to manage and protect resources from any development activity in the Coastal Zone of Mendocino County. One very precious resource is public Coastal Access. With all the Coastal Development agencies and Programs that we have, I just don't see how this can just be pushed through without a second glance. It is almost like DPR answers to no one.

When our appeal was heard by the Mendocino Board of Supervisors here in Fort Bragg, there was an amazing outcry from our community. We had a very large number of concerned community members that showed up during a workday and spent numerous hours giving statements as to why the haul road should not be removed. When will our voice be heard? It seems as though DPR has the authority to do whatever it feels not only with our coast but with our tax dollars!!! Just shy of one million dollars will be spent on the removal of a road that we want to keep. We do not want this!!! Please read the letters and our appeal very carefully as this coast and it's access to it is very precious to us.

I speak for the Westport, Fort Bragg, Caspar, Mendocino & Little River communities when I say, "Don't let them do this".

Sincerely yours,

Signature on File

Junice Ann Gleason 130 Park St. Fort Bragg, CA 95437 RECEIVED

OCT 29 2013

CALIFORNIA COASTAL COMMISSION NORTH COAST DISTRICT

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# COUNTY OF MENDOCINO

DEPARTMENT OF PLANNING AND BUILDING SERVICES FT. BRAGG PHONE 707-964-5379

860 NORTH BUSH STREET · UKIAH · CALIFORNIA · 95482 120 WEST FIR STREET · FT. BRAGG · CALIFORNIA · 95437 STEVE DUNNICLIFF, DIRECTOR TELEPHONE 707-463-4281 FAX 707-463-5709 FT. BRAGG PHONE 707-964-5379 FT. BRAGG FAX 707-961-2427 pbs@co.mendocino.ca.us www.co.mendocino.ca.us/planning

October 21, 2013

Renée Pasquinelli Sr. Environmental Scientist California Department of Parks and Recreation, Mendocino District 12301 North Highway 1 Mendocino, CA 95460 EXHIBIT NO. 15 Appeal No. A-1-MEN-13-0241 (CA State Parks) CSP's PROPOSED IMPLEMENTATION OF COUNTY SPECIAL COND. #8

RE: MacKerricher State Park Dune Rehabilitation Project, CDP 12-2012, Special Condition #8

Ms. Renée Pasquinelli:

I am replying your letter, dated October 17, 2013, regarding the California Department of Parks and Recreation (State Parks) proposal to implement Special Condition #8 of the Mendocino County Coastal Development Permit (CDP 12-2012, "Permit") by providing coastal access across stream channels during winter rain events.

On August 13, 2013, the Mendocino County Board of Supervisors approved the Permit to allow a dune restoration project in MacKerricher State Park (Park) which will remove a road, including creek culverts, in addition to implement a variety of environmental restoration activities that will reestablish the coastal dune ecosystem within the Park. The removal of the creek culverts will eliminate existing creek crossings, which may affect coastal access along the shore during winter rain events. The Permit is on hold pending the outcome of the California Coastal Commission review of the Permit's consistency with the County's Local Coastal Program and the State Coastal Act.

The Permit was approved with Special Condition #8 to help to ensure State Parks will maintain coastal access through the Park after the road and creek culverts have been removed. Special Condition #8 reads as follows.

State Parks shall continue to monitor the stream crossing conditions during winter high flow events for pedestrian access. State Parks shall evaluate alternative stream crossings methods to maintain public access during winter high flow events.

The proposed "adaptive management process", as described in Attachment A of the October 17, 2013 letter, will fulfill the requirement of Special Condition #8. State Parks will monitor and, if necessary, use native woody debris to provide crossings along Inglenook and Fen Creeks during winter storm events. Temporary signage will be installed to direct the public to these crossings during these events. Finally, the placement of these crossings will not impact the creek bed, bank, or channel. These actions by State Parks will help to ensure continuous coastal access is maintained through the Park while the dune restoration project is being implemented and after it is completed.

Thank you,

Andy Gustavson Chief Planner and Coastal Permit Administrator

CC: Bob Merrill, California Coastal Commission Rick Macedo, California Department of Fish and Wildlife Jay Chamberlin, California Department of Parks and Recreation State of California - The Natural Resources Agency

Edmund G. Brown Jr., Governor

Major General Anthony L. Jackson, USMC (Ret), Director



DEPARTMENT OF PARKS AND RECREATION Mendocino District 12301 North Highway 1 – Box 1 Mendocino, California 95460

October 17, 2013

Andy Gustavson, Chief Planner Mendocino County Planning and Building Services 860 North Bush Street Ukiah, California 95482

Re: Implementation of Special Condition #8, Mendocino County CDP 12-2012

Dear Mr. Gustavson:

The California Department of Parks and Recreation (State Parks) is committed to fulfilling the terms of the MacKerricher State Park Dune Rehabilitation Project and special conditions as adopted by the County during the Coastal Development Permitting process. State Parks is writing to present the County with its proposed implementation strategy for one of those conditions, Special Condition #8.

Special Condition #8 was added during the Coastal Development Permitting process to facilitate better coastal access across stream channels during winter rain events. To clarify how State Parks intends to implement this condition, we have prepared the attached document entitled: *Implementation of Special Condition #8, Mendocino County CDP 12-2012 - Facilitating Public Access.* This document outlines an adaptive management process that was prepared by State Parks in collaboration with Coastal Commission staff, and in coordination with California Department of Fish and Wildlife staff. It is our understanding that this adaptive management process addresses the concerns previously raised by Commission staff regarding potential impacts of the project on coastal access. Moreover, all three departments concur that the adaptive management approach described in the attachment is reasonable and sufficient to fulfill the intent of Special Condition #8, consistent with the goals of the project to restore natural functions to the dunes and wetlands.

Please do not hesitate to contact me (<u>Renee.Pasquinelli@parks.ca.gov</u> or by phone at 707-937-5721) if you have further questions or comments regarding the MacKerricher Dune Rehabilitation Project. We greatly appreciate your time and professional guidance through the permitting processes.

Sincerely,

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Renée Pasquinell<sup>1</sup> Sr. Environmental Scientist

cc: Bob Merrill, California Coastal Commission Rick Macedo, California Department of Fish and Wildlife Jay Chamberlin, California Department of Parks and Recreation

# Implementation of Special Condition #8, Mendocino County CDP 12-2012 - Facilitating Public Access

The primary purpose of the MacKerricher State Park Dune Rehabilitation project is to restore natural ecosystem processes and functions to significant coastal dune and wetland habitats by removing unnatural features from the landscape, including remnant sections of road and culverts. As permitted by CA Department of Fish and Wildlife and the Regional Water Quality Control Board, road fill and culverts are to be removed near the outlets of Inglenook and Fen Creeks to restore hydrologic function to the channels. Both creeks are small, the outlet flows are subsurface at the beach for most the year, and are rarely greater than one foot deep during storm events. However, during the Coastal Development Permit application review process, concerns were raised regarding the public's ability to cross Inglenook and Fen Creeks during winter storm events, including when there is wave run up at high tide. In response, County Planning included Special Condition #8 on the list of approval conditions for CDP 12-2012, which reads: *"State Parks shall continue to monitor the stream crossing conditions during winter high flow events."* To implement Special Condition #8, California State Parks will utilize an adaptive management approach that involves the following:

- 1. State Parks shall continue to visually monitor the stream crossing conditions during winter high flow events for pedestrian access. Monitoring shall include an evaluation of whether pedestrian access would also be impeded during wave run up, especially when there are high tides.
- 2. If monitoring demonstrates that pedestrian access is impeded during winter events (e.g. when water flow at stream crossings is above the surface or when wave run up inundates beach routes), State Parks shall utilize appropriate temporary alternative crossing methods, which include the placement, adjustment, and/or enhancement of existing native woody material, and the placement of temporary signage to inform people of alternative footpaths. The photos below show the types of existing woody material currently found on-site.
- 3. The placement, adjustment, and/or enhancement of woody material to facilitate crossings shall involve a process of first assessing the location and availability of instream wood. Where a log exists that can be easily crossed, including during times of wave run up, no further manipulation of wood shall occur. If instream logs appear potentially unstable or marginal as crossings for average hikers, additional logs shall be placed or adjusted across the channel. Log ends may be buried and surfaces may be modified or temporary planks may be attached to provide stable walking surfaces.
- 4. If native material crossings are established as described above, temporary signage shall be installed on the beach coastal trail to direct visitors to appropriate locations, including alternative footpaths.
- 5. If monitoring determines that coastal access is not impeded due to winter storm events as described above, then no action shall be taken to manipulate on-site woody material, or to install signage.
- 6. Any and all work associated with temporary crossings shall comply with all pertinent regulatory requirements, including but not limited to, avoiding any work that could substantially change the bed, bank, or channel of Inglenook or Fen Creeks.



Inglenook Creek, September 2013. Existing large logs accumulated at the culvert outlet.



Inglenook Creek, September 2013. Existing log spans the channel approximately 75 feet downstream of the culvert.