



COUNTY OF MENDOCINO
DEPARTMENT OF PLANNING AND BUILDING SERVICES
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June 30, 2021

Willard Jackson
PO Box 430
Middlebury, VT 05753

Subject: Violation of Coastal Development Use Permit U_2015-0018 Request and Conditions

Dear Applicant,

On March 13, 2015, a Coastal Development Permit application was submitted to the Department of Planning & Building Services. The proposed project entailed the establishment of a recreation trail to be used by the guests of The Inn at Newport Ranch for hiking, ATV-use, and horseback riding. The path of the trail was to originate at the northern terminus of the Kibesillah Rock Access Road (to be referenced as "Access Road") and move southward up the hill to the ridgeline of the trailhead. Construction of the trail included grading and vegetation removal with engineered cuts into the hill. On, August 1, 2019, Coastal Development Use Permit U_2015-0018 was heard and approved by the Planning Commission.

On June 14, 2021, the Department received a voicemail complaint regarding grading activities occurring along Access Road, as well as up to the ridgetop. County staff contacted the complainant to discuss potential violations of the approved Coastal Development Use Permit. The complainant expressed concerns for safety of trail use, erosion issues, and possible impacts to cultural resources. On Friday, June 18, 2021, staff conducted a site visit of the project location to determine the validity of the complaint. Staff found that the trail that had been graded was not in the approved location, and that the area surrounding an identified and recorded cultural resource site had been cleared of vegetation with some light grading. Grading and vegetation removal had also occurred on the west side of Access Road between the proposed trailhead and the presently graded trailhead.

Due to the initial complaint, Staff has reviewed the all Conditions of Approval for the approved Coastal Development Use Permit U_2015-0018 and determined the following conditions to have been violated:

9. *An archaeological monitor shall be present during the initial trail development at the trailhead. The monitor shall ensure the trailhead begins in the buffer for the identified historical resource (Goodwin Homestead) and not within the provision site boundary, as depicted in Attachment O.*

No record or indication to the Department has been provided that an archaeological monitor was present during the initial development at the trailhead. While this could partially be due to the trail not being developed in the approved location, Staff has still determined this condition was violated because of the potential impacts to the identified and recorded cultural resource caused by the vegetation removal and grading.

10. *Any and all grading for the trail shall not commence until the appropriate grading permits are obtained from the Mendocino County Department of Planning & Building Services.*

No grading permits were obtained from the Department to conduct the grading that has occurred and was the reason for the complaint filed against the project.

12. *The applicant shall **acknowledge in writing** to the Department of Planning and Buildings Services that all grading activities and site preparation, at a minimum, shall adhere to the following “Best Management Practices”. The applicant shall submit to the Department of Planning and Building Services an acknowledgement of these grading and site preparation standards.*
- a. That adequate drainage controls be constructed and maintained in such a manner as to prevent contamination of surface and/or ground water, and to prevent erosion.*
 - b. The applicant shall endeavor to protect and maintain as much vegetation on the site as possible, removing only as much as required to conduct the operation.*
 - c. All concentrated water flows, shall be discharged into a functioning storm drain system or into a natural drainage area well away from the top of banks.*
 - d. Temporary erosion and sediment control measures shall be established and maintained until permanent protection is established.*
 - e. Erosion control measures shall include, but are not limited to, seeding and mulching exposed soil on hill slopes, strategic placement of hay bales below areas subject to sheet and rill erosion, and installation of bioengineering materials where necessary. Erosion control measures shall be in place prior to October 1st.*
 - f. All earth-moving activities shall be conducted between May 15th and October 15th of any given calendar year unless wet weather grading protocols are approved by the Department of Planning and Building Services or other agencies having jurisdiction.*
 - g. Pursuant to the California Building Code and Mendocino County Building Regulations a grading permit will be required unless exempted by the Building Official or exempt by one of the following:*
 - An excavation that (1) is less than 2 feet (610 mm) in depth or (2) does not create a cut slope greater than 5 feet (1524 mm) in height and steeper than 1 unit vertical in 1½ units horizontal (66.7% slope).*
 - A fill less than 1 foot (305 mm) in depth and placed on natural terrain with a slope flatter than 1 unit vertical in 5 units horizontal (20% slope), or less than 3 feet (914 mm) in depth, not intended to support structures, that does not exceed 50 cubic yards (38.3 m³) on any one lot and does not obstruct a drainage.*

No written acknowledgement of the “Best Management Practices” was submitted to the Department. It is therefore uncertain as to whether the applicant and/or any agent working on the applicant’s behalf conducted the grading activities in compliance with this condition.

13. *Those “Recommendations” outlined in the Biological Scoping and Botanical Survey Report dated November 20, 2014, prepared by Spade Natural Resources Consulting, shall be adhered to.*

Specifically, the fifth bullet of the Mitigations on Page 13 of the Biological Scoping and Botanical Survey Report by Spade Natural Resources Consulting required that a biologist be present if grading were to occur during the bird breeding season from February to August. Staff has ascertained from the complainant that the grading occurred in the beginning of June, a time of year which Biological Scoping and Botanical Survey Report stated should be avoided unless extra precautions were taken. No indication has been provided to the Department demonstrating a biologist was present during the grading of the current trail.

Additionally, the recent grading and vegetation clearing is not in the approved location for the recreational trail. The trailhead was to be located at the terminus of Access Road, on the west side. The trail was then to ascend south from the trailhead along the hillside before terminating at the ridgetop. Attachment C (Site Plan) of the Staff Report for U_2015-0018 displays the approved trail location.

The following actions must be taken or the permit will be scheduled for a revocation hearing and a violation case opened with the Department's Code Enforcement Division. A meeting may be scheduled before action must be taken to further discuss the violation and provide any clarification as to the requests of the Department to resolve the violation.

Recreational Trail -

As grading has already occurred, two options are being provided to resolve the violation regarding the trail:

1. Restore the graded trail and develop in the correct location.
2. Modify Coastal Development Use Permit to accommodate the presently graded trail. Please note that a modification of a Coastal Development Use Permit is not guaranteed to be approved, and denial would result in Option 1 being the action taken.

Cultural Resources –

Since the identified and recorded cultural resource could have potentially been impacted by the grading and vegetation removal, only one option is being provided as a response to the violation.

1. A full archaeological survey, including subsurface probing and 5 meter minimum transects, shall be conducted at the expense of the applicant. The survey will include the identified and recorded cultural resource location, as well as within 500 feet from the outermost provisional boundary established by Thad Van Bueren in his report dated July 22, 2014, on lands with a slope of less than 20%.

Furthermore, the Northwest Information Center will receive a copy of this letter and any mitigation required by them regarding the potential impacts to the cultural resource site shall also be required to resolve this violation.

A response to this letter, including which actions will be taken, must be received within thirty (30) days of the date of this letter. **Failure to respond will result in a violation case being opened by the Code Enforcement Division and this project will be scheduled for a revocation hearing.** The trail may not be used for any purpose until this complaint is considered resolved.

Please feel free to contact me with any questions between 8:00 a.m. and 4:30p.m., Mondays through Fridays.

Sincerely,

Sam 'Vandy' Vandewater
Senior Planner

CC: Jackson Grube Trust
Gary Quinton
Wynn Coastal Planning
Northwest Information Center
California Cultural and Historical Endowment
Nash Gonzalez