

April 2, 2021 – Public Comment, B_2017-0043

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Planning & Building Services

Dear Coastal Permit Administrator and Subdivision Committee:

I am part of a large neighborhood group - Concerned Neighbors of the Cleone Community (CNCC) - that is **strongly opposed** to the proposed Boundary Line Adjustment request from Travis Swithenbank, B_2017-0043.

Approval of this boundary line adjustment would be a grave omission of CCC's charter to protect and oversee careful regulation of environmentally sustainable development. We absolutely do not wish for this development in our community, and it all starts with the Boundary Line Adj.

The stated BLA isn't just about moving a little bit of land over here in exchange for a little bit of land over there. This BLA request is an effort on the applicant's part to not be encumbered by Coastal Zone policies so he can build as many lots as possible for a major subdivision in a rural community, no matter what type of damage is done to the environment nor the surrounding residential neighborhood.

Coastal Permit Administrator Staff Report - *Italics represent our arguments.*

SITE CHARACTERISTICS

- Parcel A (inland) Marginal Water Resources.
- Parcels A & B occurrences of special status species
- Parcel B (Coastal) hydrologically connected to the Inglenook Fen watershed via an onsite wetland.

COMMENTS – Ca Dept. of Fish & Wildlife (CDFW)

- “CDFW is concerned that future development on EITHER PARCEL may result in significant impacts to the Inglenook Fen.” *They are rightfully concerned.*
- “CDFW notes there were few Bishop Pine trees” *yet there were Bishop Pines and they are ESHA designated. Perhaps if the applicant hadn't conducted years of intensive unpermitted mill operations where he logged thousands of board feet, there might be a few more Bishop Pines.*
- “CDFW notes there needs a biological report to determine which species have the potential to occur.” *In the JACOBSZON Rare Plant Assessment and Botanical Survey of the property,” forty-six (46) special-status plant and wildlife species have the potential to occur within the Study Area and two sensitive biological communities are present (Bishop pine and a wetland).”*

RESPONSE from Coastal Permit Administrator and CNCC

- “Development in areas adjacent to environmentally sensitive habitat areas shall be sited and designed to prevent impacts which would significantly degrade such areas and be compatible with the continuance of such habitat areas. Sensitive species have been identified.”
- “No impacts are anticipated from the proposed BLA.” ***The BLA is not a stand-alone entity. It is intertwined with both parcels. Ecosystems do not stop at fences or lot lines. We counter that there will be irrevocable impacts from the proposed BLA and urge the CPA to reconsider.***
- “Lot B is within a Riparian habitat and Designated Resource Protection Area. Any further development in Lot B will require a Coastal Development Permit and will be further

reviewed at that time”. We urge that no development, under any condition of approval, be up for future review in Lot B and request the CPA to reconsider.

COMMENTS - CalFire

- “...a permit must be obtained from CAL FIRE prior to the commencement of (commercial) operations.”

RESPONSE - CNCC

- *This may be CalFire policy but it’s seemingly arbitrarily handed out. Even though in his subdivision application, Swithenbank checked “**there will not be trees cut nor timber products sold, bartered, traded or exchanged**” -- in 2019 and 2020, he conducted large-scale mill operations on the property. The disturbing activity was reported by neighbors to Code Enforcement, CalFire and Planning. Yet no permits were obtained.*
- *The applicant had a good story for everyone. He was “giving it away” denying any “sale, barter, exchange or trade”. We believe he traded service for goods as commercial companies came and hauled the timber away. They may have dumped some loads “for free” onto family-owned lands but these timber/firewood companies also hauled away loads for themselves as they are in the business of selling firewood...they certainly didn’t do all that harvesting and/or hauling of timber for nothing in return. So in our opinion, that’s called a trade, barter or exchange of goods for services.*

COMMENTS – California Coastal Commission (CCC)

- “The CCC’s concerns include protection of ESHA on Parcel B, project consistency with LCP policies, allowed development on Parcel B and (needed) adequacy of services, such as water. The CCC supports CDFW’s comments that a deed restriction be place on Parcel B which states development shall not occur within 100-feet of the edge of the identified wetland”.

RESPONSE from Coastal Permit Administrator and CNCC

- “Septic and wells for the existing development on Lot A will not be affected by the Boundary Line Adjustment. Due to the location of sufficient water resource on Lot B, it is not anticipated the project will affect future wells.”
- ***Lot A lies in MARGINAL Water Resources.** There is not enough drinking water now, for existing residencies, let alone with a major subdivision. Since 2018, Environmental Health has requested twice for the applicant to hire a Qualified Hydrologist to conduct a Hydrological Study.*
- ***There are three essential reasons wells run dry.** 1) Shallow dug wells, 2) lowering of water table by increased pumping in the immediate area and 3) installation of larger capacity wells (industrial, municipal, agricultural) adjacent to residential areas.*
- ***The aquifer in this neighborhood will not produce enough water to naturally recharge the system because of the increased pumping due to a major subdivision, in addition to worsening climate change and reoccurring droughts.***
- *Travis has been out-of-compliance regarding his septic systems for years. He had 5 residencies on 1 permitted well and septic. After we complained to EH, he “put 2 trailers in storage”. We believe there are still 3 residencies with only 1 permitted well and septic.*
- *Development 100 feet from a critical wetland is NOT sufficient. If the Coastal Commission is serious about its mission, development on Lot B would not be allowed.*
- *We also urge the CPA to reconsider its position that shortsightedly separates the BLA from the whole property. Water, air and soil contamination know no boundaries.*

Speaking of Contamination

The property in question **is on a known contaminated waste and dump site** (Geotracker Case #1NMC613), **which of course includes the Coastal Boundary Line.**

The previous owner for years conducted an illegal crushing operation where he buried vehicles, appliances, lead batteries, tires and other toxic material all over the property. Long-time residents were eye-witnesses to this appalling activity. Except for a letter written from the NC Water Quality Control Board in 2011, over the course of ten years, agencies did not follow up with property owners.

In 2019, neighbors became activated and complained to directors and planners at the Coastal Commission, NC Regional Water Quality Control Board, Ground Water Protection, and Dept. of Planning.

In 2020, the applicant hired Trans Tech Consultants to conduct a soil investigation on Lot A. The work plan was a sad statement to the agency(s) which approved it and unacceptable for the historic contamination at hand. TTC drilled in one little spot, only 6-18 inches deep, and with the location hand-pointed to by Travis Swithenbank...perhaps knowing they needed corroborating site evidence, the Waterboard culled the faded memory of a staff person who took the original contaminated soil sample in 2010.

Neighbors asked for a more thorough characterization of the property and were denied. We went to DTSC and asked if they would become the lead agency in the case but they could only apply phone call pressure to the Waterboard. Then the Waterboard asked us for “proof” of discharge, in order for them to request further soil investigation. We have numerous eye-witness oral reports from neighbors (written observances include: Barbara Williams ltr, Larry Dockins ltr) and Google Earth Pro’s archival images of heavy equipment grading and property degradation but everything was dismissed.

Not surprisingly, contaminated soil findings from TTC’s meager surface sampling were nominal to nonexistent and the company has recommended the case be closed. Wouldn’t Planning, the CCC and the CPA want this handled properly **before** entertaining the idea of allowing residential housing on the parcels? We urge that upon condition of approval for a BLA, a full characterization of the entire property be conducted by the Dept. of Toxic Substances Control.

Coastal Permit Administrator Key Issues – our position

#2. *There is not a community sewage disposal system with “available capacity” as there has been no Qualified Site Evaluator to identify and design suitable septic systems and a Replacement Area for each parcel*

#4. *The Boundary Line Adjustment **WILL** result in a change in density because it opens the door for the applicant to build a major subdivision, thus increasing our rural density by nearly 30%.*

#7. *If the required setback and roads impact Lot 11 acreage, then Lot 11 will not have the legal RR-1 designation.*

#11. *What does “significantly degrade or destroy”, “adequate building site” mean?*

LOT A is not an” adequate building site” if it is on contaminated soil, if there isn’t enough water, if septic is unable to perc properly, if it supports sensitive ecosystems and if all the neighbors oppose the development.

LOT B is not an” adequate building site”, period.

Mendocino County's LAND USE PLAN--Coastal Element
Chapter 2 – 2.2 Map Designations

Rural Village – Coastal, Map Code: RV

Cleone is a designated Rural Village. Part of the written intent says to preserve and maintain the character of the rural atmosphere and visual quality of the following villages: Westport, Cleone, Caspar, Little River, Albion, Elk and Manchester.

As per the County's Land Use Plan 2.2, Intent - **Rural Residential classification, RR-1, is not intended to be a growth area.** We find this development is not compatible with the established physical scale of the area and does not conform to the certified local program (LCP).

Chapter 3— Resources and Development Issues and Policies

3.1 Habitats and Natural Resources – Coastal Element

The property in question supports sensitive biological communities such as **Riparian Zones, Wetlands and Bishop Pine**. It also has numerous underground streams which feed the **critical coastal Inglenook Fen**. Reference 3.1-2, 3.1-10, 3.1-11, 3.1-33, Development.-30106, Coastal Act.

Chapter 3 – Resources and Development Issues and Policies

3.9 Locating and Planning New Development – Coastal Element

3.9-1 An intent of the Land Use Plan is to apply the requirement of **Section 20250(a)** of the Act that new development be in or in close proximity to existing areas able to accommodate it.

Addressing LUP criteria: *Is there a community's desire for this amount and rate of growth? NO. Will there be any significant adverse effects on coastal resources? YES. Does water and sewage disposal capacity exist? NO. Is the proposed development consistent with all applicable policies of this Coastal Element? NO.*

Chapter 4 – Descriptions and Policies for Thirteen Planning Areas North Central CAC

4.3-9 Highway 1 is the coastal zone boundary throughout the northcentral CAC area extending from Fort Bragg north to Cleone. The highway bisects Cleone, which is classified as a RURAL VILLAGE on the Coastal Element Land Use Maps. General Plan land use classifications on the east side of the highway should be matched closely with the Coastal Element classification on the west side of the highway in order to achieve a cohesive community for Cleone.

Summary opposition:

- The BLA is not a stand-alone entity. It is intertwined with both parcels. Ecosystems do not stop at fences or lot lines. We counter that there will be irrevocable impacts from an approved Boundary Line Adjustment.

- The size and scope of this development will cause significant adverse effects individually and cumulatively on residents, coastal resources and most importantly, the water supply. **Shouldn't we have an Environmental Impact Report (ERI)?**
- We find this development is not compatible with the established physical scale of the area and does not conform to the certified local program (LCP).
- LOT A is not an "adequate building site" if it is on contaminated soil, if there isn't enough water, if septic is unable to perc properly, if it supports sensitive ecosystems and if the neighbors oppose the development. LOT B is not an adequate building site, period.
- Cleone is a designated **Rural Village** and its character, rural atmosphere and visual quality is to be preserved and maintained.
- As per the County's LUP, **Rural Residential classification, RR-1, is not intended to be a growth area.**
- The proposed development lies in the **Marginal Water Resources designation** and where most of our homes reside.
- An additional **8 new large homes, 8 new septic systems and 8 new wells could potentially wreak havoc on the neighborhood water table.** This is in addition to his 3 existing residencies.
- The applicant had **unpermitted** septic systems for years and still isn't in compliance.
- Sensitive biological communities include the **Bishop Pine and a Wetland** and underground streams which feed **the critical coastal Inglenook Fen.**
- There are **delicate ecosystems** throughout the two parcels, especially in the Coastal Zone.
- There is an appalling history of **Hazardous Waste & Dumping** on the 22 acres from the previous owner.
- There was disconcerting agency neglect regarding the contaminated site for 10 years and recently a **completely unacceptable surface soil investigation** was conducted.
- **Unpermitted logging and large mill operations** have left unprotected hillsides and open root systems. Adjacent property owners fear soil erosion, toxic slug material and sewage run-off onto their properties.
- Irresponsible: "**call me when your water is running chocolate**", agency quote.
- Doing one's job: "**a case can be closed but still be a contaminated site**", agency quote.

We absolutely do not wish for this dreadful development in our rural community.

Please review public comments and resubmitted letters (originally sent to Sylvia Targ, Coastal Planner 11/20 when we thought there was a boundary line adjustment hearing). The *Concerned Neighbors of the Cleone Community* (CNCC) greatly appreciates your consideration and we **most strongly urge** the Coastal Permit Administrator and the Subdivision Committee **to deny** Travis Swithenbank's request for a Boundary Line Adjustment, B_2017-0043.

THANK YOU. Carla Sarvis, Chair, CNCC

CNCC Members: Carla Sarvis, Alan Wilburn, Royce Peterson, Mary Meline, Dr. Bill Schieve, Elizabeth O'Hara, Dr. Stephen Lane, Barbara and John Williams, Nicole and William Martensen, Larry Dockins, Jane and Keith Oglesby, Eleanor Harvey, Nan Halstead, Anita and John Griffith.

CNCC Supporters: Margaret Iacuanello, Frank Gyselinck, Yolanda and Bruce Fletcher. Mike Higgs, Randy Poe, Steve Sabus, Fred Wright