

RESOLUTION NO. 3854-2015

**RESOLUTION OF THE FORT BRAGG CITY COUNCIL AUTHORIZING CITY
MANAGER TO EXECUTE A SECOND AMENDMENT TO THE LICENSE AGREEMENT
WITH GEORGIA PACIFIC, LLC RELATING TO THE COASTAL RESTORATION AND TRAIL
PROJECT**

WHEREAS, the City of Fort Bragg ("City") is developing a park on an approximately 93 acre site on the western edge of the City adjacent to the Pacific Ocean on the following APNs 008-010-22/24/34/35, 008-020-10/11/12 & 018-430-04/08/10/11; and

WHEREAS, on January 12, 2015, the City Council certified a Subsequent Environmental Impact Report (EIR) for the Project pursuant to CEQA; Title 14, California Code of Regulations, Section 15000 et seq. ("CEQA Guidelines"); and the City's CEQA Implementation Procedures; and

WHEREAS, on January 12, 2015, the City Council approved Coastal Development Permit Amendment (CDP 10-10/14/14), Design Review Amendment (DR 11-10/14/14), Use Permit (USP 11-14), and Variance Amendment (VAR 2-11/14/14); and

WHEREAS, on March 30, 2015 the City Council directed staff to work with GP to transfer the Visitor Center to the City of Fort Bragg for use as an Interpretive Center of the ocean and coastal environment; and

WHEREAS, the City has negotiated a Second Amendment to the License Agreement with Georgia-Pacific LLC to allow for relocation of the Visitor Center building from GP's property to the City's property; and

WHEREAS, based on all the evidence presented, the City Council finds as follows:

1. The Second Amendment to the License Agreement is necessary for the efficient relocation of the Visitor Center to the City's property.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Fort Bragg, does hereby authorize the City Manager to execute the Second Amendment to the License Agreement with Georgia-Pacific LLC, which is attached as "Exhibit A" and incorporated herein, for Relocation of the Visitor Center to City Property.

The above and foregoing Resolution was introduced by Councilmember Peters, seconded by Councilmember Hammerstrom, and passed and adopted at a regular meeting of the City Council of the City of Fort Bragg held on the 28th day of September 2015, by the following vote:


AYES: Councilmembers Peters, Cimolino, Deitz, Hammerstrom, and Mayor Turner.
NOES: None.
ABSENT: None.

ABSTAIN: None.

A handwritten signature in black ink, consisting of a large, stylized loop followed by several horizontal strokes, positioned above a solid horizontal line.

**DAVE TURNER,
Mayor**

ATTEST:

A handwritten signature in black ink, written in a cursive style, positioned above a solid horizontal line.

**June Lemos
City Clerk**

EXHIBIT A

SECOND AMENDMENT TO LICENSE AGREEMENT

This SECOND AMENDMENT TO LICENSE AGREEMENT (the "Amendment") is made and entered into as of this ___ day of ___ 2015 (the "Effective Date"), by and between **GEORGIA-PACIFIC LLC**, a Delaware limited liability company ("GP"), having a mailing address at 133 Peachtree Street NE, Atlanta, Georgia 30303, Attention: Law Department-Real Estate, and the **CITY OF FORT BRAGG**, a municipal corporation (the "City"), having a mailing address at 416 North Franklin Street, Fort Bragg, California 95437, Attention: City Manager.

RECITALS:

WHEREAS, on July 15, 2014, GP and the City entered into a License Agreement for the City's construction of a stormwater management system, temporary earthen berms, and a support and staging area in the Licensed Areas on the GP Property for the City's construction of the Trail on the City Property (the "Original License Agreement");

WHEREAS, on June 30, 2015, GP and the City entered into an amendment to the License Agreement for the City's construction of the Cypress Street access road, property line fencing, and the Elm Street parking lot enlargement in the Licensed Areas on the GP Property (the "License Agreement Amendment"); the Original License Agreement and the License Agreement Amendment are collectively referred to herein as the "License Agreement");

WHEREAS, GP is the fee simple owner of the GP Property;

WHEREAS, the City is the fee simple owner of the City Property;

WHEREAS, the City constructed the Trail and a permanent stormwater management system on the City Property;

WHEREAS, GP allowed the City temporary use of the Licensed Area in accordance with the provisions of the License Agreement in order to allow the City access to construct the Trail and permanent stormwater management system on the City Property;

WHEREAS, the City intends to allow public access to the Trail and host community Trail events on the City Property beginning in the Summer of 2015;

WHEREAS, the City is in the process of installing security fencing on the interior property lines between City Property and GP Property, and on GP Property along the proposed future City Property boundaries as follows: Extending from the Cypress Street entry along the northern and southern boundary of the Cypress Street roadway and along the western boundary of the runway as described in the License Agreement Amendment; and

WHEREAS, the Parties have agreed to the sale of the Visitor Center (as depicted in Exhibit F attached hereto and incorporated herein by reference) by GP to the City for the amount of Ten and No/100 Dollars (\$10.00) and a second amendment to the License Agreement is desired to allow for access by the City and its contractors in order to prepare the Visitor Center for the move,

move the building and restore the site after the move. The scope of work by City employees or any independent contractors retained by the City ("City Parties") is attached hereto as Exhibit G and incorporated herein by reference.

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, GP and the City, intending to be legally bound, hereby agree as follows:

1. **Recitals.** The foregoing recitals are true and correct and hereby incorporated herein.

2. **Defined Terms.** All capitalized terms not defined herein shall have the meanings ascribed to them in the License Agreement.

3. **Section 1.** Section 1, Grant of Licenses, of the License Agreement is hereby amended to read as follows:

1. Grant of Licenses.

(a) **Berm License Area.** GP hereby grants to the City an exclusive license to use the Berm License Area solely for the construction, placement and maintenance of the Berms. The Berms shall be constructed in the location depicted in red on Exhibit A, which location shall not exceed 110 feet from the current eastern edge of the City's Property, and in strict accordance with the Plans and Specifications attached hereto as Exhibit B and incorporated herein by this reference (the "Plans"). The parties hereto acknowledge and agree that the Berms shall consist solely of clean earthen soil, rock and fabric, topped with a layer of top soil and seeded with vegetation. For the avoidance of doubt, the parties agree that the Berms shall not be constructed with asphalt or other similar material that may contain constituents of concern. The City shall be responsible for maintaining the Berms in good repair and in a safe condition, in such a way that the Berms do not constitute a nuisance or hazard on the GP Property.

(b) **Construction License Area.** GP further grants to the City a non-exclusive temporary license to use the Construction License Area (as depicted on Exhibit A and not to exceed 200 feet from the current eastern boundary of the City's Property) as a construction work area for the passage of City employees, City contractors and vehicles, the parking of vehicles and as temporary construction lay-down area in connection with the construction of the Trail and the Berms. The Construction License Area shall not be used for any other purpose. Notwithstanding anything herein to the contrary, the City and its contractors shall be prohibited from performing any maintenance, service, or fueling of any vehicles or equipment (including, without limitation, the changing of oil) on the Construction License Area. Further, the City shall be prohibited from bringing, storing, using, disposing or otherwise handling any Hazardous Materials (as hereinafter defined) in the Construction License Area without the express written permission of GP.

(c) Security Fencing License Area. GP further grants to the City a non-exclusive temporary license to install Security Fencing along the property line between the GP Property and the City Property as depicted on Exhibit C, and use of a temporary work/staging area to provide a lay down area for the fencing and construction equipment not to exceed thirty (30) feet onto the GP Property from the proposed fenceline (the "Security Fencing License Area"). The Security Fencing License Area shall only be used for the temporary work/ staging area and to install Security Fencing meeting the following specifications: (i) poly-coated wire mesh fencing 5-foot high along the interior boundary of City Property and on GP Property as shown in Exhibit C; and (ii) 5-wire fencing 4.5-foot high along the GP Property boundary located south of the Cypress Street extension and along the City Property/GP Property boundary as shown in Exhibit D. Collectively, the poly-coated wire mesh fence and the 5-wire fence are referred to as, the "Security Fencing" for purposes of the Agreement as amended by this Amendment.

(d) Cypress Street Extension/Runway License Area. GP further grants to the City a non-exclusive temporary license to construct access improvements such as paving, gates and safety signage in the Cypress Street Extension/Runway License Area, as shown in Exhibit D. The work in the Cypress Street portion of the Cypress Street Extension/Runway License Area shall be limited to the following: (i) installation of turn movement arrows, stop bars, stop signs; (ii) installation of a short strip of asphalt paving from back of sidewalk to the start of the access road (for pedestrian access from the cross walk to the access road); (iii) installation of road way improvements to include a 24 foot wide asphalt paved road (HMA); (iv) an 8 foot wide gravel shoulder on the southern extent of the road, and a 4 foot wide gravel shoulder on the northern extent of the road; (v) installation of security fencing and vehicle access gates where the GP Property roads cross the Cypress Street License Area; and (vi) the installation of park identification sign, speed limit signs and no trespassing signs. The road alignment shall conform to the alignment of the existing gravel road, and shall extend from the Cypress Street gate to the southern end of the Runway. Public access shall not be allowed until the Future Land Transfer property is transferred to the City of Fort Bragg. The work in the Runway License Area shall be limited to installation of a 5 foot high wire mesh security fence and installation of no trespassing signs.

(e) Elm Street Parking Lot License Area. GP further grants a non-exclusive temporary license to install approximately 0.17 acre of paving adjacent to the Elm Street parking lot on the City Property in the Elm Street Parking Lot License Area as shown Exhibit E. The work in the Elm Street Parking Lot License Area shall be limited to the following: (i) installation of paving (HMA) and striping to construct an additional 33 parking spaces at the Elm Street Parking Lot; (ii) installation of permanent security fencing around the perimeter of the parking area; and (iii) installation of temporary construction fencing and no-trespassing signage (as illustrated in Exhibit E), until such time as the Future Land Transfer property is transferred to the City. Public access shall not be allowed until the

Future Land Transfer property is transferred to the City of Fort Bragg.

(f) Use Limitations. Notwithstanding anything herein to the contrary, the City and its contractors shall be prohibited from performing any maintenance, service, or fueling of any vehicles or equipment (including, without limitation, the changing of oil) on the Security Fencing License Area, the Cypress Street Extension/Runway License Area, and the Elm Street Parking Lot License Area). Notwithstanding the foregoing, with the exception of the HMA paving in the Cypress Street Extension/ Runway License Area and the Elm Street Parking Lot License Area, the City shall be prohibited from bringing, storing, using, disposing or otherwise handling any Hazardous Materials (as hereinafter defined) in the Security Fencing License Area without the express written permission of GP.

(g) Future Replacement of 5-Wire Fencing. In the event that the number of trespassing incidents and attempts by the public to access the GP Property located south of the Cypress Street extension increases during the term of this Amendment, the City shall replace the existing 5-wire fencing with the poly-coated wire-mesh fencing within ninety (90) days of receiving a written request by GP to replace the existing 5-wire fencing.

(h) Restoration of Premises. Following the installation of the Security Fence, City shall remove all vehicles and equipment and restore the License Area to its pre-condition with the Security Fence in place.

(i) Removal of Visitor Center and Associated Improvements. GP further grants to the City a non-exclusive temporary license to access the area of the GP Property where the Visitor Center is currently located (the "Visitor Center License Area") in order to complete the scope of work detailed in Exhibit G, which includes: 1) preparing the Visitor Center for the move; 2) relocation of the Visitor Center and associated decks, arbor, stairs, benches, and fencing to the City's Noyo Center property; and 3) site clean-up and restoration of the current location of the Visitor Center.

4. **Section 2.** Section 2, Access to the License Area, of the License Agreement is hereby amended to read as follows:

2. Access to the Licensed Area.

(a) Access to the Licensed Areas from public roads shall be limited to (i) the Elm Street gate, (ii) the Noyo Point Road gate and (iii) the Cypress Street Gate, provided, however, that upon crossing through the Cypress Street Gate, the City shall then turn left and utilize the roadway extending from the Noyo Point Road Gate to the southern end of the runway as illustrated on Exhibit A. The City shall maintain the roadway leading from Cypress Street Gate to the southern end of the runway. In the event that the roadway is not properly maintained, or if the City's use thereof otherwise causes undue disturbance or disruption to GP's activities, GP reserves the right to terminate the City's license to use the Cypress Street Gate for

construction access immediately upon providing written notice to the City. The City and its contractors and employees are strictly prohibited for any reason from entering any other areas outside the Licensed Area on GP's Property. The City shall not permit the use or occupancy of the Licensed Area by any person or entity other than the City, its contractors or employees that are directly engaged in construction activities for the coastal trail, access and parking improvements, and the Security Fencing. At no time shall any of the roads on GP's Property be blocked by construction vehicles and equipment.

(b) Notwithstanding anything herein to the contrary, for the purposes of the license for removal of the Visitor Center and associated improvements, the City and City Parties shall access the Visitor Center Licensed Area by entering through the Cypress Street gate and turning right. The City and City Parties shall coordinate such access by contacting GP's on-site representative, Mr. Jim Gross, at James.Gross2@gapac.com and shall comply with GP's reasonable security requirements.

5. **Section 3.** Section 3, Term, of the License Agreement is hereby amended to read as follows:

3. Term.

(a) Berm License Area. The license granted herein for the Berm License Area shall commence on the date on which GP has received the City's signed counterpart of this Agreement together with a certificate of insurance and will continue for a period of ten (10) years. Thereafter, either party hereto shall have the option to renew this Agreement for one (1) additional term of five (5) years by providing written notice to the other party no less than ninety (90) days prior to the expiration of the initial ten-year term.

(b) Construction License Area. The license granted herein for the Construction License Area shall commence on the date on which GP has received the City's signed counterpart of this Agreement together with a certificate of insurance and will terminate upon the date that is two (2) years thereafter.

(c) Security Fencing License Area, Cypress Street Extension/Runway License Area, Elm Street Parking Lot License Area. The license granted herein for the Security Fencing License Area, Cypress Street Extension/Runway License Area, and Elm Street Parking Lot License Area shall commence on the date on which GP has received the City's signed counterpart of this Amendment together with a certificate of insurance and will terminate upon the date that is six (6) months thereafter. Thereafter, either party hereto shall have the option to renew this Amendment for one (1) additional term of six (6) months by providing written notice to the other party no less than thirty (30) days prior to the expiration of the initial six (6) -month term under this Section 3.c.

(d) Visitor Center License Area. The license granted herein for the

Visitor Center License Area shall commence on the date on which GP has received the City's signed counterpart of this Amendment together with a certificate of insurance and will terminate on December 31, 2015.

6. Section 9. Section 9, Indemnification, of the License Agreement is hereby amended to read as follows:

9. Indemnification. The City agrees to indemnify GP for all acts and omissions of itself and all of the City Parties in exercising the rights granted in this License Agreement, and the City agrees to indemnify GP and the GP Parties, and to defend and hold GP and the GP Parties free and harmless, from and against any and all losses, costs, damages, liabilities, demands, and expenses (including, without limitation, reasonable attorneys' fees, court costs, costs of litigation and the cost and expense of removing or bonding any liens affecting the Licensed Area) suffered or incurred by GP or any of the GP Parties by reason of the City's or other governmental agency's approval of any of the permits and authorizations required for the improvements contemplated in this License Agreement, and for the exercise of the rights granted to the City and City Parties herein or arising out of the construction and post-construction access to the Berms or the Security Fencing License Area, the Cypress Street License Area, the Elm Street Parking Lot License Area, or any access to the Visitor Center License Area and/or the removal and relocation of the Visitor Center from GP Property, unless due to the sole negligence or willful misconduct of GP or the GP Parties. The indemnity contained in this Section shall expressly survive the expiration or earlier termination for any reason of this License Agreement, as amended.

7. Effect of this Amendment. Except as expressly modified by this Amendment, the License Agreement shall continue in full force and effect according to its terms, and GP and the City hereby ratify and affirm all their respective rights and obligations under the License Agreement as modified by this Amendment, including but not limited to City's indemnification obligations as set forth in the License Agreement. In the event of any conflict between this Amendment and the License Agreement, the provisions of this Amendment shall govern.

8. Binding Agreement. This Amendment shall be binding upon and inure to the benefit of the successors, agents, administrators, or assigns of each of the Parties hereto. Any reference in this Amendment to a specifically named party shall be deemed to apply to any successor, agent, administrator, or assignee of such party who has acquired an interest in compliance with the terms of this Amendment or under law.

9. Counterparts. This Amendment may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, when taken together, shall constitute the same document.

10. California Law. This Amendment shall be governed by and interpreted in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals as of the day and year indicated beneath their signatures.

GP:

GEORGIA-PACIFIC LLC

By  
Gerald A. Shirk
Vice President-Real Estate

Date of Execution: Sept. 21, 2015

CITY:

CITY OF FORT BRAGG

By _____
Linda Ruffing
City Manager

Attest: _____
City Clerk

Approved as to Form

By _____

Date of Execution: _____, 2015

EXHIBIT F: Visitor Center



EXHIBIT G

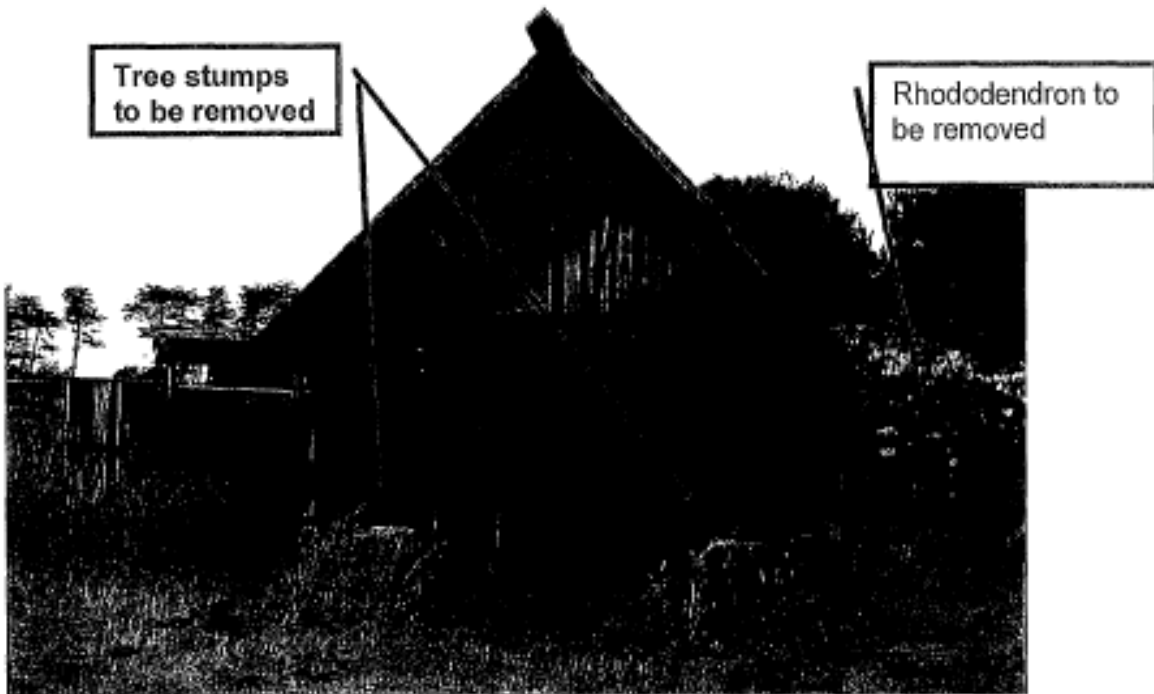
VISITOR CENTER RELOCATION AND SITE RESTORATION PLAN

The City of Fort Bragg (the "City") will hire a qualified house-mover to move the 460 SF building from GP's property. For the purposes of this License Agreement, a "qualified house mover" shall be defined as a company whose core competency and specialty is the relocation of houses and structures. The City will utilize Parlin Forks crews to complete some of the pre-move demolition activities.

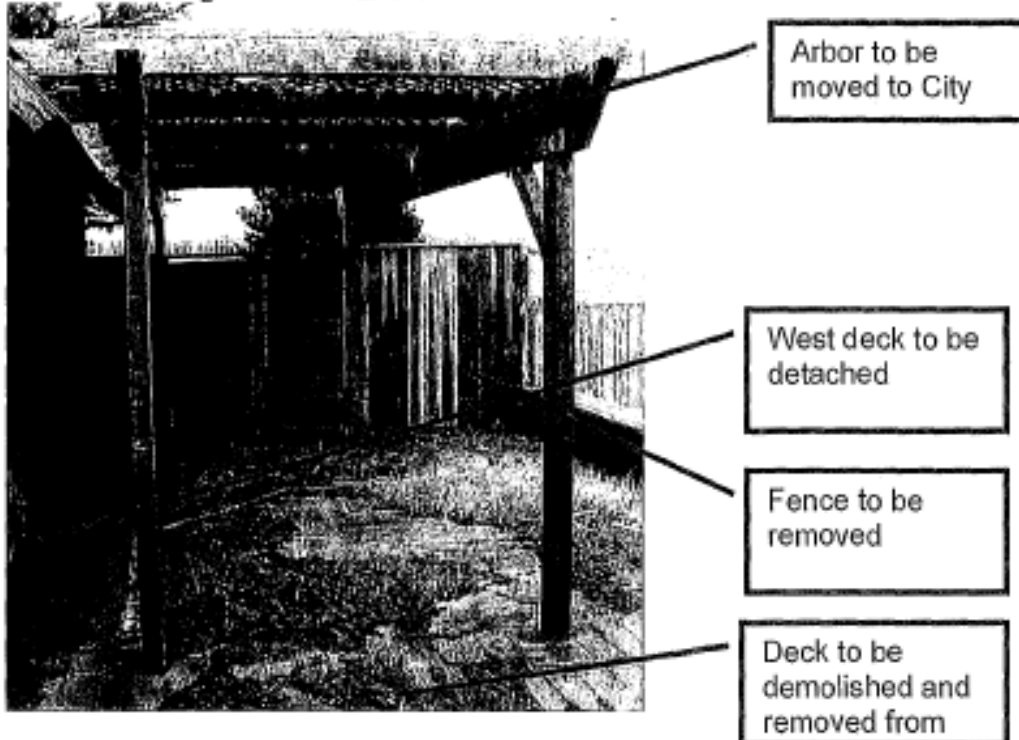
1. Building and Site Preparation

Parlin Forks crew under the supervision of City Staff or City Staff alone will undertake the following activities:

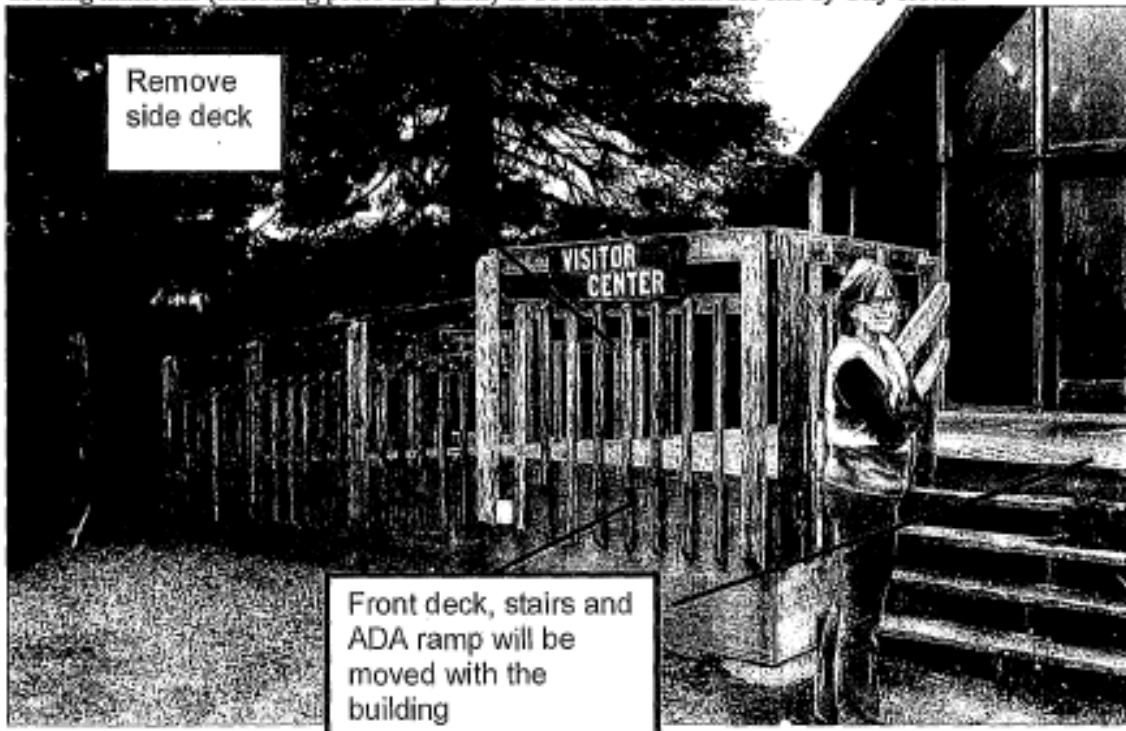
1. Remove tree stumps on the west side of the building. Remove Rhododendron on the east side of the building.



2. Detach decking from the west side of the building and demo west deck, remove fencing, and salvage arbor to be moved.



3. Detach deck from east side of building and demo this portion of the deck. All demolished decking materials (including posts and rails) to be removed from the site by City crews.



3. Remove fencing from around building as needed to access the building for the move. Fence will be salvaged for reuse on the Noyo Center site.



4. Detach electrical connections and remove skirting



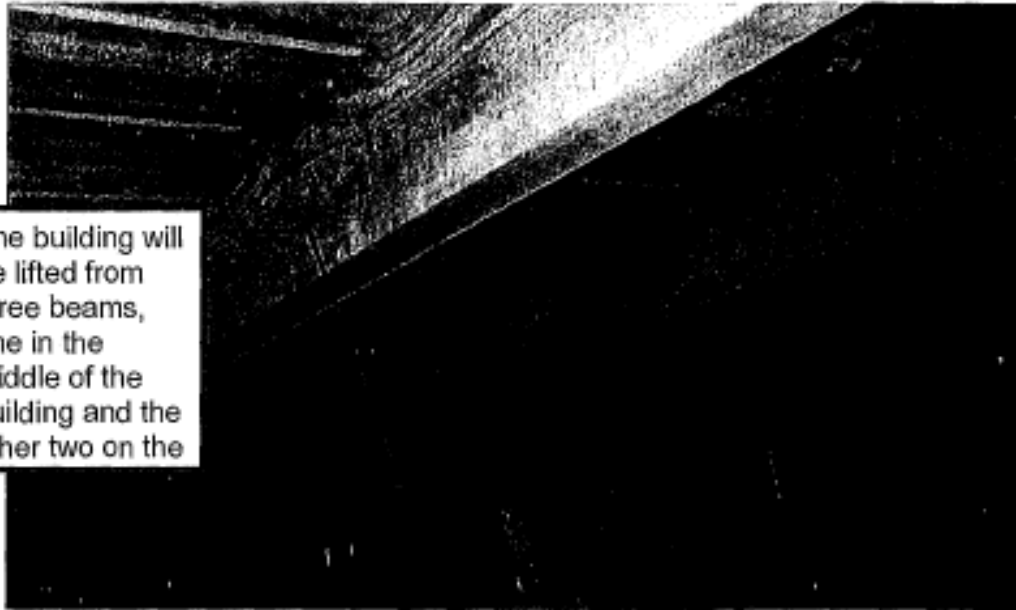
2. Move Building

1. Lift the House. This work shall be undertaken solely by a qualified house-mover. The actual lifting is done by hydraulic jacks. Synchronized, they can lift a building more than a foot in two minutes.



The house will be lifted from a set of cross beams under the structure as illustrated in the photo below.

The building will be lifted from three beams, one in the middle of the building and the other two on the



2. Move the house. The visitor center will then be placed on a truck bed for moving. The truck will back the bed under the visitor center.



The building would be moved approximately 5,050 feet (1.1 miles) as illustrated below.

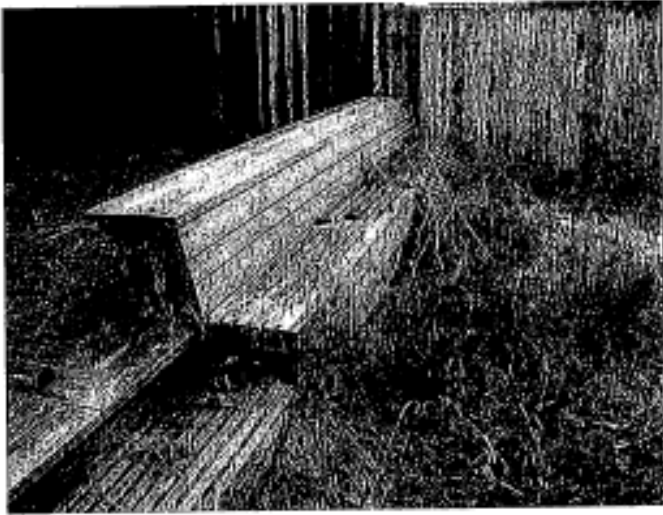


Site Furniture

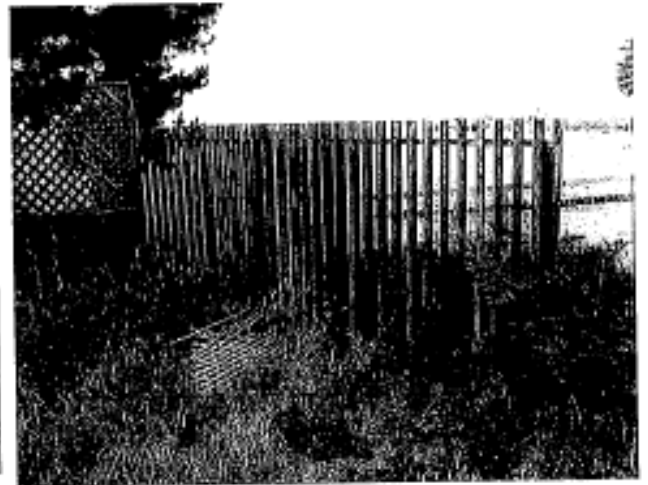
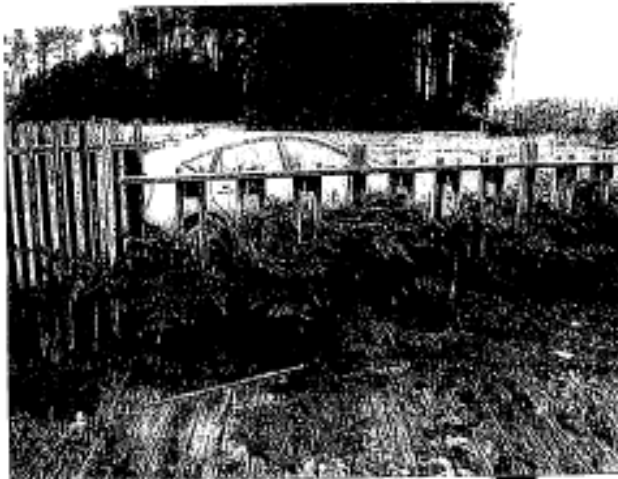
The City shall also relocate the existing trash can enclosure, benches and fencing at the new location.



Trash enclosure



Site bench



Site Fencing

Site Restoration

Site restoration activities will be undertaken by Parlin Forks crew and or City Staff and will consist of the following:

1. Removal of all debris;
2. Removal of any remaining decks and foundation;
3. Grading the site as necessary to result in a uniform flat surface; and
4. Reseeding with native coastal seed mix.

All site restoration work shall be completed within thirty (30) days after removal of the Visitor's Center and associated items. The City shall restore the site to GP's reasonable satisfaction and the City shall promptly remedy any deficiencies in the site restoration raised by GP.