

CALIFORNIA COASTAL COMMISSION

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Th21d

MEMORANDUM

Date: June 9, 2008

To: Commissioners and Interested Parties

From: Peter Douglas, Executive Director
 Tiffany S. Tauber, Coastal Planner – North Coast District
 Robert S. Merrill, District Manager – North Coast District

Subject: **Addendum to Commission Meeting for Thursday, June 12, 2008
 North Coast District Item TH21d, Application No. 1-07-045 (Fort Bragg
 Municipal Improvement District No. 1)**

STAFF NOTE

This addendum presents certain revisions to the staff recommendation for approval of the project with conditions mailed on May 30, 2008. including (1) modifying Special Condition No. 1 to allow more time for submittal of the required sewer force main removal plan and for removing the pipeline itself, (2) modifying Special Condition No. 2 to add to the list of construction responsibilities limitations on the use of invasive plants, (3) adding a new Special Condition No. 10 requiring the submittal of evidence that any necessary approvals from the State lands Commission have been obtained prior to issuance of the permit, and (4) making corresponding changes to the findings. Text to be deleted is shown in ~~strike through~~, text to be added appears in **bold double-underline**

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- I. Changes to the Special Conditions of the Staff Recommendation.
- A. Special Condition No. 1 shall be modified as follows:
1. **Sewer Force Main Removal Plan**
- A. Within ~~180~~ **270** days of Commission approval or such additional time as the Executive Director may grant for good cause, the permittee shall submit a plan for

the review and approval of the Executive Director that provides for the removal of that portion of the existing sewer force main located within, and exposed portions of the pipeline adjacent to the streambed of Pudding Creek. The plan shall be developed in consultation with the California Department of Fish & Game and U.S. Fish and Wildlife Service in a manner that minimizes significant adverse impacts to sensitive fish species.

1. The plan shall demonstrate, at a minimum, that:
 - (a) The existing sewer force main shall be disconnected and flushed with clean water as proposed prior to removal;
 - (b) Removal of the existing sewer force main located within and adjacent to Pudding Creek shall occur outside of the breeding season for tidewater goby;
 - (c) The existing sewer force main located within and adjacent to Pudding Creek shall be removed in a manner that avoids excavating within the stream channel;
 - (d) No construction equipment shall be operated from within the Pudding Creek stream channel or adjacent riparian vegetation;
 - (e) Human intrusion into the creek during pipeline removal operations shall be minimized;
 - (f) Temporary erosion control measures shall be implemented during removal operations including, but not limited to: installing silt fences, fiber rolls, weed free rice straw barriers or similar barriers in a manner that minimizes sedimentation of Pudding Creek; and
 - (g) Within three (3) days following completion of pipeline removal operations, any debris from the site, including the sewer pipeline to be removed, shall be transported to an authorized disposal location where the debris may be lawfully disposed.
 - (h) The portion of the existing force main to be removed shall be removed within ~~two~~ three years of Commission approval of CDP 1-07-045;

2. The plan shall include, at a minimum, the following components:
 - (a) A narrative report describing all pipeline removal methods and equipment to be used during removal operations;

- (b) A site plan showing the location of all temporary sedimentation control measures; and
 - (c) A schedule for removal of the portions of the existing sewer force main located within and adjacent to Pudding Creek consistent with the requirements of 1(b) and 1(h) above.
- B. The permittee shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

REASON FOR CHANGES: The applicant has requested the deadlines specified in the special condition for submittal of the removal plan and removal of the pipeline be extended. The applicant has requested an additional 90 days (changed from 180 days to 270) for submittal of the plan to provide sufficient time for City staff to prepare the plan. The applicant has requested an additional year (changed from two years to three years) for removal of the pipeline as the applicant anticipates funding the project through grants and wants to ensure there will be sufficient time for the applicant to secure the necessary grant funding as well as the necessary regulatory approvals from other agencies for removal of the pipeline. Commission staff believes the additional time is warranted and will not result in any significant adverse impacts on coastal resources. Therefore, Special Condition No. 1 has been modified to accommodate the applicant's request.

- B. Special Condition No. 2 shall be modified as follows:

2. Best Management Practices and Construction Responsibilities

The permittee shall comply with the following construction-related requirements:

- a. Any and all excess excavated material and construction debris resulting from construction activities shall be removed and disposed of at a disposal site outside the coastal zone or placed within the coastal zone pursuant to a valid coastal development permit;

- b. On-site vegetation shall be maintained to the maximum extent possible during construction activities. **Any vegetation that is removed or damaged shall be replaced with native vegetation obtained from local genetic stocks within Mendocino County. If documentation is provided to the Executive Director that demonstrates that native vegetation from local genetic stock is not available, native vegetation obtained from genetic stock outside the local area, but from within the adjacent region of the floristic province, may be used. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or by the State of California shall be planted or allowed to naturalize or persist on the parcel. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized within the property;**
- c. All on-site stockpiles of soil and construction debris placed within the Commission's jurisdiction shall be contained at all times and covered during the rainy season to prevent polluted water runoff;
- d. No construction debris or waste shall be placed or stored where it may be subject to entering coastal waters; ~~and~~
- e. Non-buoyant debris discharged into coastal waters shall be recovered by divers as soon as possible after loss; and
- f. **Rodenticides containing any anticoagulant compounds, including but not limited to, Bromadiolone, Brodifacoum, or Diphacinone, shall not be used.**

REASON FOR CHANGES: Staff is modifying recommended Special Condition No. 2 to include requirements that disturbed vegetation be replaced with native vegetation of local genetic stock to ensure that disturbed areas will be revegetated in a manner that both protects against erosion and sedimentation of Pudding Creek and prevents the introduction of invasive exotic plants to the site that could invade and adversely affect environmentally sensitive habitat in the area. If such invasive exotic plant species were allowed to establish in the area, they could outcompete adjacent native environmentally sensitive plant habitat inconsistent with section 30240 of the Coastal Act.

- C. Special Condition No. 10 shall be added as follows:

10. State Lands Commission Review

PRIOR TO ISSUANCE OF THE PERMIT, the applicant shall submit to the Executive Director, a written determination from the State Lands Commission that:

- a. No State lands are involved in the development; or**
- b. State lands are involved in the development and all permits required by the State Lands Commission have been obtained; or**
- c. State lands may be involved in the development, but pending a final determination an agreement has been made with the State Lands Commission for the project to proceed without prejudice to that determination.**

REASON FOR CHANGE: Since publication of the written staff recommendation on May 30, 2008, Commission staff has been notified by the staff of the State Lands Commission that the placement and use of the existing sewer force main required a lease that was obtained from the State Lands Commission and the proposed modifications to the sewer line will require an amendment to the lease or other authorizations from the State Lands Commission. To ensure that the applicant has all necessary property rights to carry out the project as conditioned consistent with Section 30601.5 of the Coastal Act, staff is adding Special Condition No. 10 to the staff recommendation. The special condition would require the applicant to demonstrate that all necessary approvals have been obtained from the State Lands Commission prior to issuance of the permit.

II. Changes to the Findings of the Staff Recommendation

- A. The second full paragraph of Page 16 within Finding 4, “Environmentally Sensitive Habitat Area,” shall be modified as follows:

The plan required by Special Condition No. 1 is required to be developed in consultation with the California Department of Fish & Game and U.S. Fish and Wildlife Service and is required to demonstrate, at a minimum, that: (a) the existing sewer force main shall be disconnected and flushed with clean water as proposed prior to removal; (b) removal of the existing sewer force main shall occur outside of the breeding season for tidewater goby; (c) the existing sewer force main shall be removed in a manner that avoids excavating within the stream channel; (d) no construction equipment shall be operated from within the Pudding Creek stream channel or adjacent riparian vegetation; (e) human

intrusion into the creek during pipeline removal operations shall be avoided; (f) temporary erosion control measures shall be implemented during removal operations including, but not limited to: installing silt fences, fiber rolls, weed free rice straw barriers or similar barriers in a manner that minimizes sedimentation of Pudding Creek; (g) any debris from the site, including the sewer pipeline to be removed, shall be transported to an authorized disposal location where the debris may be lawfully disposed; and (h) the portion of the existing force main to be removed shall be removed within ~~two~~ **three** years of Commission approval of the permit.

REASON FOR CHANGE: The change in the length of time given for removal of the existing sewer force main from two years to three years is needed to reflect the change made above to Special Condition No. 1.

- B. Before the last paragraph of Finding 4, “Environmentally Sensitive Habitat Area,” add the following paragraphs:

Furthermore, ESHA near the project vicinity could be adversely affected by the development if non-native, invasive plant species were introduced from revegetation efforts at the site required by Special Condition No. 2 for erosion control. Introduced invasive exotic plant species could spread into the ESHA and displace native riparian and wetland vegetation, thereby disrupting the value and function of the adjacent ESHA. To ensure that the ESHA is not adversely impacted by any future revegetation efforts at the site, Special Condition No. 2 also requires that only native and/or non-invasive plant species of native stock be planted at the site.

To help in the establishment of vegetation, rodenticides are sometimes used to prevent rats, moles, voles, and other similar small animals from eating the newly planted saplings. Certain rodenticides, particularly those utilizing blood anticoagulant compounds such as brodifacoum, bromadiolone and diphacinone, have been found to poses significant primary and secondary risks to non-target wildlife present in urban and urban/ wildland areas. As the target species are preyed upon by raptors or other environmentally sensitive predators and scavengers, these compounds can bio-accumulate in the animals that have consumed the rodents to concentrations toxic to the ingesting non-target species. Therefore, to minimize this potential significant adverse cumulative impact to environmentally sensitive wildlife species, Special Condition No. 2 prohibits the use of specified rodenticides at the site.

REASON FOR CHANGES: The findings are being modified to explain why the changes made above to Special Condition No. 2 to prohibit planting of invasive

exotics and the use of rodenticides are necessary to find consistency with Section 30240 of the Coastal Act.

- C. Before Finding 9, “California Environmental Quality Act,” add the following finding and renumber the current Finding 9 as Finding 10:

9. **State Lands Commission Approval**

The project site is located in an area subject to the public trust. Therefore, to ensure that the applicant has the necessary authority to undertake all aspects of the project on these public lands consistent with Section 30601.5 of the Coastal Act, the Commission attaches Special Condition No. 10, which requires that the project be reviewed, and where necessary approved, by the State Lands Commission prior to issuance of the permit.

REASON FOR CHANGES: The finding is added to explain why new Special Condition No. 10 is necessary.

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Th 21d

Date Filed: October 31, 2007
49th Day: December 19, 2007
180th Day: April 28, 2008
Staff: Tiffany S. Tauber
Staff Report: May 30, 2008
Hearing Date: June 12, 2008
Commission Action:

STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: **1-07-045**

APPLICANT: Fort Bragg Municipal Improvement District No.1

PROJECT LOCATION: Parallel to State Route 1 in the vicinity of Pudding Creek, Fort Bragg, Mendocino County (APN 008-010-15).

PROJECT DESCRIPTION: Relocate the City's existing sewer force main by installing approximately 3,000 feet of new, 10-inch-diameter pipeline from the Pudding Creek Lift Station to the nearest manhole on Elm Street at the intersection of Stewart Street. The portion of the project located within the Commission's jurisdiction involves the segment of the proposed sewer main alignment that crosses Pudding Creek. The pipeline would parallel Highway One and would be attached to the bent caps on the west side of the Pudding Creek. The existing sewer force main would be disconnected, flushed with clean water (with all effluent captured, contained and properly

disposed of at Municipal Waster Water Treatment Plant), capped and abandoned in place.

GENERAL PLAN DESIGNATION:	Agricultural (AG) Coastal Zone (CZ)
ZONING DESIGNATION:	Open Space (OS)
LOCAL APPROVALS RECEIVED:	City of Fort Bragg Coastal Development Permit (CDP 6-07)
OTHER APPROVALS REQUIRED:	(1) Department of Fish and Game; (2) U.S. Fish & Wildlife Service, (3) Army Corps of Engineers; (4) Caltrans Encroachment Permit.
SUBSTANTIVE FILE DOCUMENTS:	(1) City of Fort Bragg Local Coastal Program; (2) Final Mitigated Negative Declaration, Pudding Creek Sewer Force Main Relocation (SCH #2007052128)

SUMMARY OF STAFF RECOMMENDATION:

As conditioned, staff believes the proposed project is consistent with the Chapter 3 policies of the Coastal Act and recommends approval of the project with the above-described special conditions.

The City of Fort Bragg has been issued a Cease and Desist Order by the North Coast Regional Water Quality Control Board (RWQCB) for the discharge of untreated wastewater into Pudding Creek caused by failures of the City's existing pressurized sewer force main . A portion of the sewer force main is currently located within the streambed of Pudding Creek. The location of the force main within the channel makes it vulnerable to storm surge, which, on several occasions, has dislodged the pipeline and caused raw sewage to leak into the creek and ultimately into the ocean and onto adjacent beaches.

The City received funding from Proposition 50 (Clean Beaches Initiative) to relocate the sewer force main to minimize the environmental and human health risks associated with failures of the pipeline in its current location. The proposed project involves relocating the sewer force main by installing a new pipeline in a location entirely outside of the Pudding Creek stream channel.

The City would relocate the existing sewer force main by installing approximately 3,000 feet of new, 10-inch-diameter pipeline from the Pudding Creek Lift Station to the nearest

manhole on Elm Street at the intersection of Stewart Street in the City of Fort Bragg. The project is located adjacent to Pudding Creek Beach and portions of MacKerricher State Park.

The portion of the proposed project site that is within the Commission's jurisdiction is the area in and immediately adjacent to Pudding Creek lagoon. The portions of the subject development in this area includes the approximately 300-foot-long portion of the proposed new pipeline that would be attached to the Highway One Bridge over Pudding Creek and any required modification or removal of the portion of the existing sewer line where it crosses the streambed of Pudding Creek. The remaining portions of the development are within the City's coastal development permit jurisdiction. The City granted local coastal development permit No. CDP 6-07 on October 24, 2007.

As proposed, the project would not involve any development within the sensitive fish species ESHA of Pudding Creek or the adjacent riparian habitat. The portion of the sewer force main proposed to be attached to the existing bridge infrastructure would be elevated above the creek and all construction work would be conducted from Highway One. As proposed, the existing sewer force main would be disconnected, flushed with clean water (with all effluent captured, contained and properly disposed of at Municipal Waster Water Treatment Plant), capped, and abandoned in place, including the portion of the existing sewer pipeline located within Pudding Creek stream channel.

The City suggests that abandoning the existing, sewer force main in place will minimize impacts on the biological and botanical resources in and adjacent to Pudding Creek. However, upon discussions between Commission staff and the U.S. Fish and Wildlife Service (USFWS), it was determined that removing the existing sewer force main from the streambed would be of greater benefit to sensitive fish species, including tidewater gobies. According to USFWS, the pipeline, which is partially exposed along the streambed, may be affecting sedimentation patterns of the creek in a manner that has potential adverse impacts tidewater gobies. During Commission staff's informal discussions regarding removal of the existing sewer force main from Pudding Creek, USFWS suggested several conceptual mitigation measures that would avoid take and minimize impacts to tidewater goby habitat from removing the pipeline, including limitations on timing for the removal of the pipeline and restrictions regarding construction methods and equipment.

To eliminate the potential for ongoing adverse impacts to tidewater gobies and other sensitive fish species resulting from leaving in place the portion of the existing sewer line within the stream bed of Pudding Creek, staff recommends Special Condition No. 1 which would require the City to submit a plan for the removal of the portion of the existing sewer force main located within, and adjacent to, the streambed of Pudding Creek. Removal of the existing sewer force main from within the bed and banks of Pudding Creek would restore the creek to its natural condition and improve its value for fish habitat and thus is a use dependent on the resource consistent with the limitations on the use of ESHA imposed by Section 30240(a) of the Coastal Act. Removal of this

portion of the existing sewer force main would also minimize the visual impacts of the proposed abandonment of the existing pipeline and restore the creek to its natural appearance.

A formal consultation process with the USFWS and the Army Corps of Engineers (Corps) would be required for the removal of the existing sewer force main from Pudding Creek. Therefore, the staff recommends Special Condition Nos. 4 and 5 which would require the applicant to provide to the Executive Director a copy of any incidental take permit or other approval issued by the USFWS and the Corps, or evidence that no permit or permission is required. Additionally, as removal of the existing sewer pipeline would involve activity within the bed and banks of Pudding Creek, a Section 1600 Streambed Alteration Agreement or other approval by the Department of Fish and Game is likely required. Therefore, recommended Special Condition No. 6 would similarly require the applicant to submit a copy of any necessary approval required by DFG for the removal of the existing sewer force main located within and adjacent to the Pudding Creek stream channel, or evidence that no approval is required.

Additionally, as discussed in the Water Quality finding, recommended Special Condition Nos. 2 and 3 would require implementation of construction-related Best Management Practices and preparation of a Hazardous Materials Management Plan to further ensure that the ESHA would be protected against any significant disruption of habitat values by protecting the water quality and biological productivity of Pudding Creek.

Staff thus believes that the project as conditioned would (a) protect the ESHA from any significant disruption of habitat values, (b) not significantly degrade adjacent ESHA, and (c) be compatible with the continuance of the habitat area consistent with Section 30240 of the Coastal Act.

Installation of the pipeline on the bridge supports and removal of the exposed portion of the existing pipeline from the bed of the lagoon as required by Special Condition No. 1 may require temporary closure of the sidewalk and the area of beach around the existing pipeline. However, these areas should be closed for no longer than a few weeks, and alternate access is available.

Therefore, as conditioned, staff recommends that the Commission find that the development as conditioned is consistent with the Chapter 3 policies of the Coastal Act.

The Motion to adopt the Staff Recommendation of Approval with Conditions is found on page 5 below.

STAFF NOTES:

1. Standard of Review

The project site is bisected by the boundary between the coastal development permit jurisdiction of the Commission and the City of Fort Bragg. This application seeks Coastal Commission authorization for the portions of the project that are within the Commission's retained jurisdiction where there are submerged areas, tidelands or areas subject to the public trust. The portions of the subject development that are within areas shown on State Lands Commission maps over which the state retains jurisdiction as submerged areas, tidelands, or areas subject to the public trust include the approximately 300-foot-long portion of the proposed new pipeline that would be attached to the Highway One Bridge over Pudding Creek and any required modification or removal of the portion of the existing sewer line where it crosses the streambed of Pudding Creek. The remaining portions of the development are within the City's coastal development permit jurisdiction. The City granted local coastal development permit No. CDP 6-07 on October 24, 2007. The local coastal development permit was not appealed to the Commission. The standard of review that the Commission must apply to Coastal Development Permit Application No. 1-07-045 is the Chapter 3 policies of the Coastal Act.

I. MOTION, STAFF RECOMMENDATION AND RESOLUTION:

The staff recommends that the Commission adopt the following resolution:

Motion:

I move that the Commission approve Coastal Development Permit No. 1-07-045 pursuant to the staff recommendation.

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment.

II. STANDARD CONDITIONS: See Attachment A.

III. SPECIAL CONDITIONS:

1. Sewer Force Main Removal Plan

A. Within 180 days of Commission approval or such additional time as the Executive Director may grant for good cause, the permittee shall submit a plan for the review and approval of the Executive Director that provides for the removal of that portion of the existing sewer force main located within, and exposed portions of the pipeline adjacent to the streambed of Pudding Creek. The plan shall be developed in consultation with the California Department of Fish & Game and U.S. Fish and Wildlife Service in a manner that minimizes significant adverse impacts to sensitive fish species.

1. The plan shall demonstrate, at a minimum, that:

- (a) The existing sewer force main shall be disconnected and flushed with clean water as proposed prior to removal;
- (b) Removal of the existing sewer force main located within and adjacent to Pudding Creek shall occur outside of the breeding season for tidewater goby;
- (c) The existing sewer force main located within and adjacent to Pudding Creek shall be removed in a manner that avoids excavating within the stream channel;
- (d) No construction equipment shall be operated from within the Pudding Creek stream channel or adjacent riparian vegetation;
- (e) Human intrusion into the creek during pipeline removal operations shall be minimized;

- (f) Temporary erosion control measures shall be implemented during removal operations including, but not limited to: installing silt fences, fiber rolls, weed free rice straw barriers or similar barriers in a manner that minimizes sedimentation of Pudding Creek; and
- (g) Within three (3) days following completion of pipeline removal operations, any debris from the site, including the sewer pipeline to be removed, shall be transported to an authorized disposal location where the debris may be lawfully disposed.
- (h) The portion of the existing force main to be removed shall be removed within two years of Commission approval of CDP 1-07-045;

2. The plan shall include, at a minimum, the following components:

- (a) A narrative report describing all pipeline removal methods and equipment to be used during removal operations;
- (b) A site plan showing the location of all temporary sedimentation control measures; and
- (c) A schedule for removal of the portions of the existing sewer force main located within and adjacent to Pudding Creek consistent with the requirements of 1(b) and 1(h) above.

B. The permittee shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

2. **Best Management Practices and Construction Responsibilities**

The permittee shall comply with the following construction-related requirements:

- a. Any and all excess excavated material and construction debris resulting from construction activities shall be removed and disposed of at a disposal site outside the coastal zone or placed within the coastal zone pursuant to a valid coastal development permit;
- b. On-site vegetation shall be maintained to the maximum extent possible during construction activities;

- c. All on-site stockpiles of soil and construction debris placed within the Commission's jurisdiction shall be contained at all times and covered during the rainy season to prevent polluted water runoff;
- d. No construction debris or waste shall be placed or stored where it may be subject to entering coastal waters; and
- e. Non-buoyant debris discharged into coastal waters shall be recovered by divers as soon as possible after loss.

3. Hazardous Materials Management Plan

A. **PRIOR TO ISSUANCE OF THE PERMIT**, the applicant shall submit, for the review and written approval of the Executive Director, a plan to reduce impacts to water quality from the use and management of hazardous materials on the site. The plan shall be prepared by a licensed engineer with experience in hazardous material management.

1. The plan, at a minimum, shall provide for the following:

- (a) Equipment fueling shall occur only during daylight hours in designated fueling areas;
- (b) Oil absorbent booms and/or pads shall be on site at all times during project construction.
- (c) All equipment used during construction shall be free of oil and fuel leaks at all times;
- (d) Provisions for the handling, cleanup and disposal of any hazardous or non-hazardous materials used during the construction project including, but not limited to, paint, asphalt, cement, equipment fuel and oil, and contaminated sediments;
- (e) A schedule for maintenance of containment measures on a regular basis throughout the duration of the project; and
- (f) Reporting protocols to the appropriate public and emergency services agencies in the event of a spill.

B. The permittee shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a

Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

4. U.S. Fish and Wildlife Service Approval

PRIOR TO COMMENCEMENT OF REMOVAL OF THE PORTION OF THE EXISTING SEWER FORCE MAIN IN AND AROUND PUDDING CREEK, the permittee shall provide to the Executive Director a copy of any incidental take permit or other approval issued by the U.S. Fish and Wildlife Service, or evidence that no permit or permission is required for the removal of the existing sewer force main located within and adjacent to the Pudding Creek stream channel. The permittee shall inform the Executive Director of any changes to the project required by the U.S. Fish and Wildlife Service. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

5. Army Corps of Engineers Approval

PRIOR TO COMMENCEMENT OF REMOVAL OF THE PORTION OF THE EXISTING SEWER FORCE MAIN IN AND AROUND PUDDING CREEK, the permittee shall provide to the Executive Director a copy of a permit issued by U.S. Army Corps of Engineers, a letter of permission, or evidence that no permit or permission is required for the removal of the existing sewer force main located within and adjacent to the Pudding Creek stream channel. The permittee shall inform the Executive Director of any changes to the project required by the U.S. Army Corps of Engineers. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

6. Department of Fish and Game Approval

PRIOR TO COMMENCEMENT OF REMOVAL OF THE PORTION OF THE EXISTING SEWER FORCE MAIN IN AND AROUND PUDDING CREEK, the permittee shall submit a copy of any necessary Section 1600 Streambed Alteration Agreement or other approval required by the Department of Fish and Game for the removal of the existing sewer force main located within and adjacent to the Pudding Creek stream channel or evidence that no approval is required. The permittee shall inform the Executive Director of any changes to the project required by the Department of Fish and Game. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

7. Pipeline Color Restrictions

PRIOR TO ISSUANCE OF THE PERMIT, the applicant shall submit to the Executive Director for written approval, a color sample of the exterior treatment of the portion of the pipeline attached to the west side of the Highway One Pudding Creek Bridge demonstrating that the selected color of the pipeline will match the color of the existing concrete bridge infrastructure.

8. Maintenance of Pipeline Color

The permittee shall repaint the exterior of the pipeline as needed over the life of the pipeline to maintain the pipeline in a color that matches the color of the existing concrete bridge infrastructure as required by Special Condition No. 7 and to maintain the painted surfaces of the pipeline in good condition. Painted surfaces shall be considered to be in good condition if the paint is not chipping or peeling. If at any time over the life of the project the Executive Director determines that any of the exterior surfaces of the pipeline require repainting to maintain the required color in good condition, the permittees shall repaint the exterior surfaces determined by the Executive Director to not be in good condition within 45 days of receiving a written request from the Executive Director to repaint, or within such additional time as the Executive Director may grant for good cause.

9. Caltrans Encroachment Permit

PRIOR TO ISSUANCE OF THE PERMIT, the applicant shall submit to the Executive Director a copy of the final, approved Encroachment Permit issued by Caltrans required to install the sewer force main within areas of Caltrans right-of-way, or evidence that no permit is required. The applicant shall inform the Executive Director of any changes to the project required by Caltrans. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

1. Project Background

The City of Fort Bragg has been issued a Cease and Desist Order (No. R1-2007-0015) by the North Coast Regional Water Quality Control Board (RWQCB) for the discharge of untreated wastewater into Pudding Creek caused by failures of the City's existing

pressurized sewer force main (See Exhibit No. 9). A portion of the sewer force main is currently located within the streambed of Pudding Creek. The location of the force main within the channel makes it vulnerable to storm surge, which, on several occasions, has dislodged the pipeline and caused raw sewage to leak into the creek and ultimately into the ocean and onto adjacent beaches. According to the RWQCB Cease and Desist Order, in June 2006, the City reported two spills from the force main that resulted in a discharge of untreated wastewater in excess of approximately 2,500 gallons and approximately 700 gallons, respectively, to an area adjacent to Pudding Creek. In 1989, 1999, 2003, and 2005, the City reported similar ruptures at various sections of the force main that resulted in unpermitted discharges to Pudding Creek. In each case, the City has taken emergency actions to temporarily repair the leaking pipe.

According to the Cease and Desist Order, the Pudding Creek Force Main runs approximately 2,900 feet from the Pudding Creek Pump Station, southward along the beach to Pudding Creek, south under Pudding Creek, and up the bluff where the pipeline terminates into a manhole at the intersection of Elm Street and Highway One. Much of the pipeline along Pudding Creek Beach was installed in 1973-1974 as part of the Pudding Creek Interceptor Project. In 1985, to fix a sewage leak discovered in the force main where it passes under Pudding Creek, the City replaced a 450-foot stretch of the original pipeline from the north side of Pudding Creek, under the creek, and up the southerly bank to the south side of the Highway One Bridge.

In January 2006, a portion of the force main buried under Pudding Creek became exposed, allegedly as a result of a release of an excessively large volume of water from a privately-owned dam on Pudding Creek. A site inspection by the RWQCB revealed that the force main remains exposed and is susceptible to damage or breakage from large floating debris. Additionally, the existing location of the force main within the streambed where it is subject to storm and tidal forces, poses a high potential for failures and the release of untreated wastewater in the future.

The City received funding from Proposition 50 (Clean Beaches Initiative) to relocate the sewer force main to minimize the environmental and human health risks associated with failures of the pipeline in its current location. As discussed in detail below, the proposed project involves relocating the sewer force main by installing a new pipeline in a location entirely outside of the Pudding Creek stream channel.

2. Site Description

The proposed project involves relocating the City's existing sewer force main by installing approximately 3,000 feet of new, 10-inch-diameter pipeline from the Pudding Creek Lift Station to the nearest manhole on Elm Street at the intersection of Stewart Street in the City of Fort Bragg. The project is located adjacent to Pudding Creek Beach and portions of MacKerricher State Park. The project site includes the disturbed areas within an existing access road and parking area adjacent to the sewer lift station at

Pudding Creek Beach, and the State and City-owned road right-of-way from approximately PM 62.50 to PM 62.00 (north to south). (See Exhibit Nos. 1-3.)

The portion of the proposed project site that is within the Commission's jurisdiction is the area in and immediately adjacent to Pudding Creek lagoon. The portions of the subject development in this area includes the approximately 300-foot-long portion of the proposed new pipeline that would be attached to the Highway One Bridge over Pudding Creek and any required modification or removal of the portion of the existing sewer line where it crosses the streambed of Pudding Creek (See Exhibit No. 4). The remaining portions of the development are within the City's coastal development permit jurisdiction. The City granted local coastal development permit No. CDP 6-07 on October 24, 2007.

Pudding Creek is a relatively small coastal stream with a sensitive coastal lagoon floodplain. The creek is located between the larger drainages of the Noyo River to the south and Ten Mile River to the north and has a watershed of approximately 11,000 acres. Typical of most north coast streams, Pudding Creek exhibits strong seasonal fluctuations in discharge, mainly in response to heavy winter rain. Peak flow occurs in January and February, followed by a decline in March and a low flow period, usually beginning in late May. Pudding Creek provides habitat for several sensitive fish species, including the Federal-listed Endangered tidewater goby (*Eucyclogobius newberryi*), Federal and State-listed Endangered coho salmon (*Oncorhynchus kisutch*) and Federal-listed Threatened steelhead (*O. mykiss*).

A mixture of riparian scrub habitat occurs on the banks of Pudding Creek except for directly under the bridge where the banks are void of vegetation. Common riparian plants and trees are generally lacking on the south face of Pudding Creek, but are better developed on the north face. Dominant riparian plants include willow, stinging nettle (*Urtica dioica*), and Himalayan blackberry. Common forb and grass species include shore cinquefoil (*Potentilla anserine* ssp. *pacifica*) and common threesquare (*Scirpus pungens*). Common plants on the south face include horsetail (*Equisetum arvense*), hedge nettle (*Stacys ajugoides*), Himalayan blackberry and various non-native grasses. Due to the proximity of the project area to heavily traveled roads, including Highway One and the Pudding Creek Beach access road, the natural habitats throughout the area are highly disturbed and consist of predominantly weedy invasive plant species.

3. Project Description

The proposed project, in its entirety, involves relocating an existing sewer force main by installing approximately 3,000 feet of new, 10-inch-diameter pipeline in a partially new alignment west of its current alignment from the Pudding Creek Lift Station to the nearest manhole on Elm Street at the intersection of Stewart Street (see Exhibit No. 3). The portion of the project located within the Commission's jurisdiction involves the approximately 300-foot-long portion of the proposed new pipeline that would be attached

to the Highway One Bridge over Pudding Creek and any required modification or removal of the portion of the existing sewer line where it crosses the streambed of Pudding Creek.

Just outside of the Commission's jurisdiction, the sewer force main would surface from the proposed underground trench alignment at roadway level adjacent to the Pudding Creek bridge abutment on the northwest corner of the bridge. The pipeline would be attached to the existing concrete structural supports on the west side of the Highway One bridge over Pudding Creek at approximately roadway level. The pipeline would leave the bridge at a location adjacent to the existing abutment on the southwest corner of the bridge and would reenter the ground at roadway level, again, just outside of the Commission's jurisdiction (see Exhibit No. 4).

The City proposes that design elements may include double-walled construction, pipe hangers or slides and support hardware, horizontal and vertical alignments and elbows for above-ground pipes, and buttresses at each end of the bridge crossing (See Exhibit Nos. 5-7). The pipeline would be designed and attached to the bridge in a manner that would avoid rupture in the event of an earthquake and would provide allowances for differential expansion and contraction of the pipe and bridge material. Pipe material would be installed according to the manufacturer's recommendations. Welding operations for fabrication of sleeves for the encasement of the sewer line crossing the Pudding Creek Bridge would be performed off-site. All existing underground facilities would be protected in place.

The City originally proposed a cement-coated steel pipe for the Pudding Creek bridge crossing, but it was later determined that the sewer pipe would be inserted within an outer steel containment pipe coated with epoxy inside and out to provide greater durability. The City's engineer indicates that this type of epoxy-coated pipe is typically green, but that the pipe can be painted in the factory to match the color of the bridge. Thus, the City proposes to require the project contractor to match the color of the pipe to the subdued color of the existing concrete bridge.

Proposed construction methods include excavating a trench just outside of the Commission's jurisdiction both north and south of the bridge along the pipeline alignment, laying the pipeline, and backfilling with suitable material. Some hand digging may be required in locations with limited access. Material removed from the trench would be stockpiled within the parking areas and roadways within the construction corridor or loaded directly into a dump truck for removal to a designated landfill.

Construction materials and equipment are proposed to be stockpiled within the existing parking area at Pudding Creek Beach. The City proposes that the contractor would implement Best Management Practices (BMPs) to prevent erosion of disturbed areas at all times during the rainy season, and as necessary during the dry season. All stockpiled materials, including imported backfill material, would be protected from wind and stormwater erosion using standard BMPs.

As proposed, the existing sewer force main would be disconnected, flushed with clean water (with all effluent captured, contained and properly disposed of at Municipal Waster Water Treatment Plant), capped and abandoned in place.

The City of Fort Bragg has approved a coastal development permit (CDP 6-07) for the majority of the proposed sewer force main relocation project that falls within the City's coastal permitting jurisdiction. The City expects the proposed project to take approximately six weeks to complete.

4. Environmentally Sensitive Habitat Area

Section 30107.5 of the Coastal Act defines "environmentally sensitive habitat area" as:

any area 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.

Section 30240 of the Coastal Act states in part that:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such 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 30240 of the Coastal Act requires that environmentally sensitive habitat areas (ESHA) be protected against significant disruption of habitat values from adjacent development, and that only uses dependent on the resources of the ESHA be allowed within the ESHA.

The portion of the proposed project within the Commission's jurisdiction is the segment of the pipeline alignment that crosses Pudding Creek. The proposed project involves abandoning the existing sewer force main that is located within the streambed of Pudding Creek and installing a new pipeline affixed to the west side of the bridge infrastructure approximately 35 feet above the creek. Pudding Creek supports special status fish species and riparian habitat and therefore is considered an environmentally sensitive habitat area.

According to a letter from the U.S. Fish and Wildlife Service (USFWS) dated June 18, 2007 regarding the proposed project, the Federally-listed Endangered tidewater goby (*Eucyclogobius newberryi*) inhabits Pudding Creek and portions of the creek are currently proposed for designation as critical habitat for the goby. Additionally, a letter from the Department of Fish and Game (DFG) dated June 28, 2007 regarding the proposed project indicates that Pudding Creek supports viable population of Federal and State-listed Endangered coho salmon (*Oncorhynchus kisutch*) and Federally-listed Threatened steelhead (*O. mykiss*). As Pudding Creek lagoon provides habitat for fish life that is rare and which could be easily disturbed or degraded by human activities and developments, the lagoon constitutes an environmentally sensitive habitat area.

A botanical report was prepared for the proposed project by Ridge to River dated May 9, 2007. A mixture of riparian scrub habitat occurs on the banks of Pudding Creek except for directly under the bridge where the banks are void of vegetation. Common riparian plants and trees are generally lacking on the south face of Pudding Creek, but are more developed on the north face. According to the botanical report, dominant riparian plants include willow, stinging nettle (*Urtica dioica*), and Himalayan blackberry. Common forb and grass species include shore cinquefoil (*Potentilla anserine* ssp. *pacifica*) and common threesquare (*Scirpus pungens*). Common plants on the south face include horsetail (*Equisetum arvense*), hedge nettle (*Stacys ajugoides*), Himalayan blackberry and various non-native grasses. Due to the proximity of the project area to heavily traveled roads, including Highway One and the Pudding Creek Beach access road, the natural habitats throughout the area are highly disturbed and consist of predominantly weedy invasive plant species.

As proposed, the project would not involve any development within Pudding Creek ESHA or the adjacent riparian habitat. The portion of the sewer force main proposed to be attached to the existing bridge infrastructure would be elevated above the creek and all construction work would be conducted from Highway One. As proposed, the existing sewer force main would be disconnected, flushed with clean water (with all effluent captured, contained and properly disposed of at Municipal Waster Water Treatment Plant), capped, and abandoned in place, including the portion of the existing sewer pipeline located within Pudding Creek stream channel (see Exhibit No. 8).

The City proposes that abandoning the existing, sewer force main in place will minimize impacts on the biological and botanical resources in and adjacent to Pudding Creek. However, upon discussions between Commission staff and the U.S. Fish and Wildlife Service (USFWS), it was determined that removing the existing sewer force main from the streambed would be of greater benefit to sensitive fish species, including tidewater gobies. According to USFWS, the pipeline, which is partially exposed along the streambed, may be affecting sedimentation patterns of the creek in a manner that has potential adverse impacts tidewater gobies. During Commission staff's informal discussions regarding removal of the existing sewer force main from Pudding Creek, USFWS suggested several conceptual mitigation measures necessary to avoid take and

minimize impacts to tidewater goby habitat, including limitations on timing for the removal of the pipeline and restrictions regarding construction methods and equipment.

To eliminate the potential for ongoing adverse impacts to tidewater gobies and other sensitive fish species resulting from leaving in place the portion of the existing sewer line within the stream bed of Pudding Creek, the Commission attaches Special Condition No. 1 which requires the City to submit a plan for the removal of the portion of the existing sewer force main located within, and adjacent to, the streambed of Pudding Creek. Removal of the existing sewer force main from within the bed and banks of Pudding Creek would restore the creek to its natural condition and improve its value for fish habitat. Therefore, removal of the force main is a use dependent on the resource consistent with the limitations on the use of ESHA imposed by Section 30240(a) of the Coastal Act.

The plan required by Special Condition No. 1 is required to be developed in consultation with the California Department of Fish & Game and U.S. Fish and Wildlife Service and is required to demonstrate, at a minimum, that: (a) the existing sewer force main shall be disconnected and flushed with clean water as proposed prior to removal; (b) removal of the existing sewer force main shall occur outside of the breeding season for tidewater goby; (c) the existing sewer force main shall be removed in a manner that avoids excavating within the stream channel; (d) no construction equipment shall be operated from within the Pudding Creek stream channel or adjacent riparian vegetation; (e) human intrusion into the creek during pipeline removal operations shall be avoided; (f) temporary erosion control measures shall be implemented during removal operations including, but not limited to: installing silt fences, fiber rolls, weed free rice straw barriers or similar barriers in a manner that minimizes sedimentation of Pudding Creek; (g) any debris from the site, including the sewer pipeline to be removed, shall be transported to an authorized disposal location where the debris may be lawfully disposed; and (h) the portion of the existing force main to be removed shall be removed within two years of Commission approval of the permit.

A formal consultation process with the USFWS and the Army Corps of Engineers (Corps) would be required for the removal of the existing sewer force main from Pudding Creek. Therefore, the Commission attaches Special Condition Nos. 4 and 5 requiring the applicant to provide to the Executive Director a copy of any incidental take permit or other approval issued by the USFWS and the Corps, or evidence that no permit or permission is required. The applicant shall inform the Executive Director of any changes to the project required by the USFWS or the Corps and any such changes shall not be incorporated into the project until the applicants obtain a Commission amendment to the coastal development permit, unless the Executive Director determines that no amendment is legally required. Additionally, as removal of the existing sewer pipeline would involve activity within the bed and banks of Pudding Creek, a Section 1600 Streambed Alteration Agreement or other approval by the Department of Fish and Game is likely required. Therefore, Special Condition No. 6 similarly requires the applicant to submit a copy of any necessary approval required by DFG for the removal of the existing sewer force main

located within and adjacent to the Pudding Creek stream channel, or evidence that no approval is required.

Additionally, as discussed in the Water Quality finding below, Special Condition Nos. 2 and 3, requiring implementation of construction-related Best Management Practices and preparation of a Hazardous Materials Management Plan, would further ensure that the ESHA would be protected against any significant disruption of habitat values by protecting the water quality and biological productivity of Pudding Creek.

The Commission thus finds that the environmentally sensitive habitat area adjacent to the development would be protected against any significant disruption of habitat values, and only a use dependent on the resource would be developed within the ESHA, the removal of the existing sewer force main for habitat restoration purposes. With the mitigation measures discussed above, which are designed to minimize potential significant impacts to sensitive fish species habitat of Pudding Creek, the project as conditioned will (a) protect the ESHA from any significant disruption of habitat values, (b) not significantly degrade adjacent ESHA, and (c) be compatible with the continuance of the habitat area. Therefore, the Commission finds that the project as conditioned is consistent with Section 30240 of the Coastal Act.

5. Water Quality

Section 30230 of the Coastal Act states, in applicable part:

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 of the Coastal Act states:

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

Coastal Act Sections 30230 and 30231 protect the biological productivity and quality of coastal waters, streams, and wetlands through, among other means, controlling runoff and

maintaining natural vegetation. Pudding Creek is a coastal stream that flows into the Pacific Ocean at the northern city limits of Fort Bragg. According to the RWQCB, among the beneficial uses of Pudding Creek are (1) municipal and domestic water supply, (2) industrial process supply, (3) recreation, (4) migration, spawning, and reproduction of aquatic organisms, and (5) habitat for rare, threatened and endangered species. As discussed in the Environmentally Sensitive Habitat findings above, Pudding Creek provides habitat for sensitive fish species, including coho salmon, steelhead, and tidewater goby.

The proposed project involves relocating the City's sewer force main crossing over Pudding Creek by attaching a new sewer pipeline to the existing Highway One bridge bent caps above the creek. The relocation of the sewer line to an area outside of Pudding Creek is intended to improve water quality by eliminating the potential for failure of the sewer line and eliminate the risk of discharge of untreated wastewater to coastal waters. The relocation of the sewer line would not involve any direct disturbance to the bed, banks or channel of the creek. However, potential adverse impacts to the water quality of Pudding Creek could occur in the form of the discharge of hazardous materials and debris from construction into the creek and increased turbidity from erosion and sedimentation.

Some ground disturbance and weedy vegetation removal would occur north and south of the bridge where the pipeline will be buried in a trench. The trenching work would be performed outside of the Commission's retained jurisdiction. However, soil disturbance and vegetation removal adjacent to the creek could result in the discharge of sediment into Pudding Creek causing increased turbidity and adversely affecting sensitive fish and other aquatic species. Sediment is considered a pollutant that affects visibility through the water, and affects plant productivity, animal behavior (such as foraging) and reproduction, and the ability of animals to obtain adequate oxygen from the water. Sediments may physically alter or reduce the amount of habitat available in a watercourse by replacing the pre-existing habitat structure with a stream-bottom habitat composed of substrate materials unsuitable for the pre-existing aquatic community. In addition, sediment is the medium by which many other pollutants are delivered to aquatic environments, as many pollutants are chemically or physically associated with the sediment particles.

To avoid such impacts, the applicant proposes to implement general erosion control measures during construction including the use of silt fences, straw bales, or straw or rice coils, covering stockpiles during the rainy season, and compacting and revegetating disturbed areas following construction. In addition, Special Condition No. 1 of City of Fort Bragg CDP No. 6-07 requires the applicant to file a Stormwater Pollution Prevention Plan (SWPPP) with the North Coast Regional Water Quality Control Board that includes all of the proposed erosion and sedimentation control measures proposed by the applicant.

Debris and construction materials placed within the Commission's jurisdiction could also contribute to pollution of Pudding Creek lagoon. To ensure that Best Management

Practices (BMPs) are implemented during the project, the Commission imposes Special Condition No. 2 that sets forth construction-related responsibilities. These required BMPs include (a) disposing of any excess excavated material and construction debris resulting from construction activities at a disposal site outside the coastal zone or within the coastal zone pursuant to a valid coastal development permit; (b) maintaining on-site vegetation to the maximum extent possible during construction activities; (c) containing all on-site stockpiles of soil and construction debris at all times and covering stockpiles during the rainy season to prevent polluted water runoff; (d) avoiding placing or storing construction debris or waste where it may be subject to entering coastal waters; and (e) recovering any non-buoyant debris discharged into coastal waters as soon as possible after loss.

The proposed project involves the use of potentially hazardous materials on site near coastal waters, including fuels and oils associated with construction equipment. The applicant proposes to prepare a hazardous materials spill response plan based on Best Management Practices for use in the event of an accident or upset that causes the release of a hazardous substance. To ensure that such measures are planned and implemented to minimize adverse water quality impacts associated with discharges of potentially hazardous materials on site during project construction, Special Condition No. 3 requires the applicant to submit for the review and approval by the Executive Director, a Hazardous Materials Management Plan. The plan is required to provide for the following: (a) equipment fueling is to occur only during daylight hours in designated fueling areas located in upland areas and otherwise outside of environmentally sensitive habitat areas; (b) oil absorbent booms and/or pads are required to be on site at all times during project construction; (c) all equipment used during construction shall be free of oil and fuel leaks at all times, (d) provisions for the handling, cleanup and disposal of any hazardous or non-hazardous materials used during the construction project including, but not limited to, paint, asphalt, equipment fuel and oil, and contaminated sediments; (e) a schedule for maintenance of containment measures on a regular basis throughout the duration of the project; and (f) reporting protocols to the appropriate public and emergency services agencies in the event of a spill.

Therefore, as conditioned, the Commission finds that the biological productivity and quality of coastal waters will be maintained and the project, as conditioned, is consistent with Sections 30230 and 30231 of the Coastal Act.

6. Visual Resources

Coastal Act Section 30251 requires permitted development to be designed and sited to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural landforms, and to be visually compatible with the character of surrounding areas.

The majority of the proposed sewer force main relocation project involves installing a new sewer pipeline in an underground trench within a new alignment. The only permanently visible portion of the proposed project involves the section of the pipeline within the Commission's jurisdiction that would be attached to the top of the bent caps on the west side of the Highway One bridge over Pudding Creek adjacent to Pudding Creek Beach and a portion of MacKerricher State Park. The pipeline would be visible from the beach below the bridge and from coastal trails within the park, including the portion of the Coastal Trail atop the Pudding Creek trestle crossing to the north. The pipeline would be attached at the level of the roadway and as close to the bridge deck as possible. Thus, the pipeline would not block any views to or along the coast. Rather, the issue raised by the proposed project is whether the pipeline attached to the west side of the bridge would be visually compatible with the surrounding area as required by Section 30251 of the Coastal Act.

Following discussions with Commission staff, the City considered several alternatives to the proposed siting of the pipeline on the west side of the bridge, including (1) locating the pipeline on the east side of the bridge, and (2) hanging the pipeline underneath the bridge.

As discussed above, the proposed sewer force main relocation project is required pursuant to a Cease and Desist Order from the RWQCB and is being funded by Proposition 50 (Clean Beaches Initiative) funds. Thus, project funding is limited and the City asserts that the increased cost of planning and engineering the pipeline crossing on the east side of the bridge is not feasible. Similarly, the City has indicated that the cost of hanging the pipe under the bridge would be at least double the cost of placing the pipe on top of the existing bent caps as proposed. The City's engineer indicated that "U" shaped pipe hangers would need to be core-drilled deep into the bent caps and would need to be protected from corrosion, which would result in higher construction and annual maintenance costs. Additionally, the City notes that if the pipe were hung under the bridge, it would need to hang down lower than the bent caps and would require elaborate structural strapping. This alternative would cause the pipeline to be even more visible from the beach and lagoon area and coastal trails within MacKerricher State Park than locating the pipe at the level of the roadway. Therefore, there are no feasible alternatives that would completely hide the pipeline from view from public access areas.

The City originally proposed a cement-coated steel pipe for the Pudding Creek bridge crossing, but it was later determined that the sewer pipe would be inserted within an outer steel containment pipe coated with epoxy inside and out to provide greater durability. The City's engineer indicates that this type of epoxy-coated pipe is typically green, but that the pipe can be painted in the factory to match the color of the bridge. Thus, the City proposes to require the project contractor to match the color of the pipe to the subdued color of the existing concrete bridge. Therefore, to ensure that the pipeline blends with the existing bridge infrastructure to the maximum extent possible, Special Condition No. 7 requires the City to submit to the Executive Director for written approval, a color sample of the exterior treatment of the portion of the pipeline attached to the west side of

the Highway One Pudding Creek Bridge demonstrating that the selected color of the pipe matches the color of the existing concrete bridge infrastructure. Special Condition No. 8 requires that the permittee maintain the pipeline over the life of the development in a color that matches the bridge and maintains all of the painted surfaces of the pipeline in good condition that minimizes peeling paint so as not to highlight the pipeline and detract from the appearance of the bridge and the project setting. The Commission finds that as conditioned to require coloring the pipeline in a manner that blends in with the existing bridge infrastructure, the installation of the pipeline on the bridge supports will be visually compatible with the character of the surrounding area.

The existing pipeline where it emerges from underground and crosses the stream bed of the creek is visible from the beach below the bridge and from the bridge itself (See Exhibit No. 8). The exposed pipeline detracts from the appearance of the lagoon and is not visually compatible with the character of the surrounding area as it is an industrial-looking feature in the middle of an otherwise natural lagoon ecosystem. As discussed previously, the exposed pipeline is proposed to be abandoned in place where it will serve no further useful purpose. To eliminate the adverse impacts of abandonment of the exposed pipeline in place to the visual character of the area, the Commission attaches Special Condition No. 1 which requires the City to submit a plan for the removal of the portion of the existing sewer force main located within, and adjacent to, the streambed of Pudding Creek. Removal of this portion of the existing sewer force main would minimize the visual impacts of the proposed abandonment of the existing pipeline and restore the creek to its natural appearance. Therefore, removal of the exposed portion of the force main as required by Special Condition No. 1 is necessary to ensure the development will be compatible with the character of the surrounding area consistent with Section 30251 of the Coastal Act.

The proposed project does not involve the alteration of landforms, as the proposed pipeline alignment would not involve extensive grading beyond standard trench excavation and would not involve changes to any topographic features.

Therefore, the Commission finds that the proposed development, as conditioned, will protect views to and along the ocean and scenic coastal areas, minimize the alteration of landforms, and be compatible with the character of the surrounding area consistent with Section 30251 of the Coastal Act.

7. Public Access

Section 30210 of the Coastal Act requires that maximum public access shall be provided consistent with public safety needs and the need to protect natural resource areas from overuse. Section 30212 of the Coastal Act requires that access from the nearest public roadway to the shoreline be provided in new development projects except where it is inconsistent with public safety, military security, or protection of fragile coastal resources, or adequate access exists nearby. Section 30211 requires that development not

interfere with the public's right to access gained by use or legislative authorization. Section 30214 of the Coastal Act provides that the public access policies of the Coastal Act shall be implemented in a manner that takes into account the capacity of the site and the fragility of natural resources in the area. In applying Sections 30210, 30211, 30212, and 30214 of the Coastal Act, the Commission is also limited by the need to show that any denial of a permit application based on these sections, or any decision to grant a permit subject to special conditions requiring public access, is necessary to avoid or offset a project's adverse impact on public access.

The proposed project is located adjacent to Pudding Creek Beach and portions of MacKerricher State Park. The Pudding Creek Trestle, recently rehabilitated by State Parks for public use, provides pedestrian and bicycle access across the Pudding Creek drainage to and from the south end of the existing South MacKerricher Coastal Trail (Haul Road) and provides an important connection to the Park and Coastal Trail from the City of Fort Bragg. Access and construction materials and equipment staging would occur within and along the parking area and access road used by the public to access Pudding Creek Beach and the trestle. The parking area and access road are located to the north of the Highway One Bridge, outside of the Commission's jurisdiction.

In a letter to the City from State Parks dated June 25, 2007 regarding the proposed project, State Parks requested that the City meet with the park managers to discuss and develop a closure plan for the access road during the construction period. The agreed upon closure plan calls for keeping the beach itself open to the public and for installing display signs to inform the public how to safely park and access the beach at alternate locations in the nearby vicinity.

The project will not have significant adverse impacts on public access within the Commission's jurisdiction. Currently, a sidewalk on the west side of the Highway One Bridge provides pedestrian access across the bridge and the beach area along the northeast side of the lagoon is in public ownership and accessible to the public. Installation of the pipeline on the bridge supports and removal of the exposed portion of the existing pipeline from the bed of the lagoon as required by Special Condition No. 1 may require temporary closure of the sidewalk and the area of beach around the existing pipeline. However, these areas should be closed for no longer than a few weeks, and alternate access is available. Pedestrians and bicyclists can cross Pudding Creek using the recently opened Pudding Creek Trestle which crosses the coastal lagoon closer to the mouth of the lagoon. In addition, large areas of the lagoon beach will remain accessible for public access use. The proposed project would not create any new demand for public access or otherwise create any other burdens on public access.

Therefore, the Commission finds that the proposed project does not have any significant adverse effect on public access, and that the project as proposed without new public access is consistent with the requirements of Coastal Act Sections 30210, 30211, 30212, and 30214.

8. Caltrans Encroachment Permit

In a letter to the City from Caltrans dated June 25, 2007, Caltrans indicates that portions of the proposed project located within the State right of way require an Encroachment Permit. The letter further states that as part of the encroachment permit process, the proposed attachment of the sewer force main to the existing Highway One Pudding Creek Bridge is subject to the review and approval of the Headquarters Office of Structures Maintenance Design. To ensure that the applicant obtains the necessary review and authorization from Caltrans for the proposed project, Special Condition No. 9 requires the applicant to submit a copy of the Encroachment Permit approved by Caltrans prior to commencement of construction, or evidence that no permit is required. The applicant shall inform the Executive Director of any changes to the project required by Caltrans and any such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to the coastal development permit, unless the Executive Director determines that no amendment is legally required.

9. California Environmental Quality Act

The City of Fort Bragg is the lead agency for purposes of CEQA review. The City prepared a Mitigated Negative Declaration for the proposed project consistent with CEQA requirements.

Section 13906 of the Commission's administrative regulation requires Coastal Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as modified by any conditions of approval, is consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are any feasible alternatives or feasible mitigation measures available, which would substantially lessen any significant adverse effect the proposed development may have on the environment.

The Commission incorporates its findings on Coastal Act consistency at this point as if set forth in full, including all associated environmental review documentation and related technical evaluations incorporated by reference into this staff report. Those findings address and respond to all public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the staff report. As discussed above, the proposed project has been conditioned to be consistent with the policies of the Coastal Act. As specifically discussed in these above findings, which are hereby incorporated by reference, mitigation measures that will minimize or avoid all significant adverse environmental impacts have been required. As conditioned, there are no other feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impacts, which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as

conditioned to mitigate the identified impacts, can be found consistent with the requirements of the Coastal Act and to conform to CEQA.

EXHIBITS:

- 1 Regional Location Map
2. Vicinity Map
3. Project Aerial Photo (Existing and Proposed Sewer Force Main Route)
4. Coastal Commission Jurisdiction Map
5. Bridge Crossing Plans
6. Bridge Crossing Perspective Views
7. Pipeline Elevation & Section
8. Photo of Existing Exposed Pipeline in Creek Channel
9. Regional Water Quality Control Board Cease and Desist Order

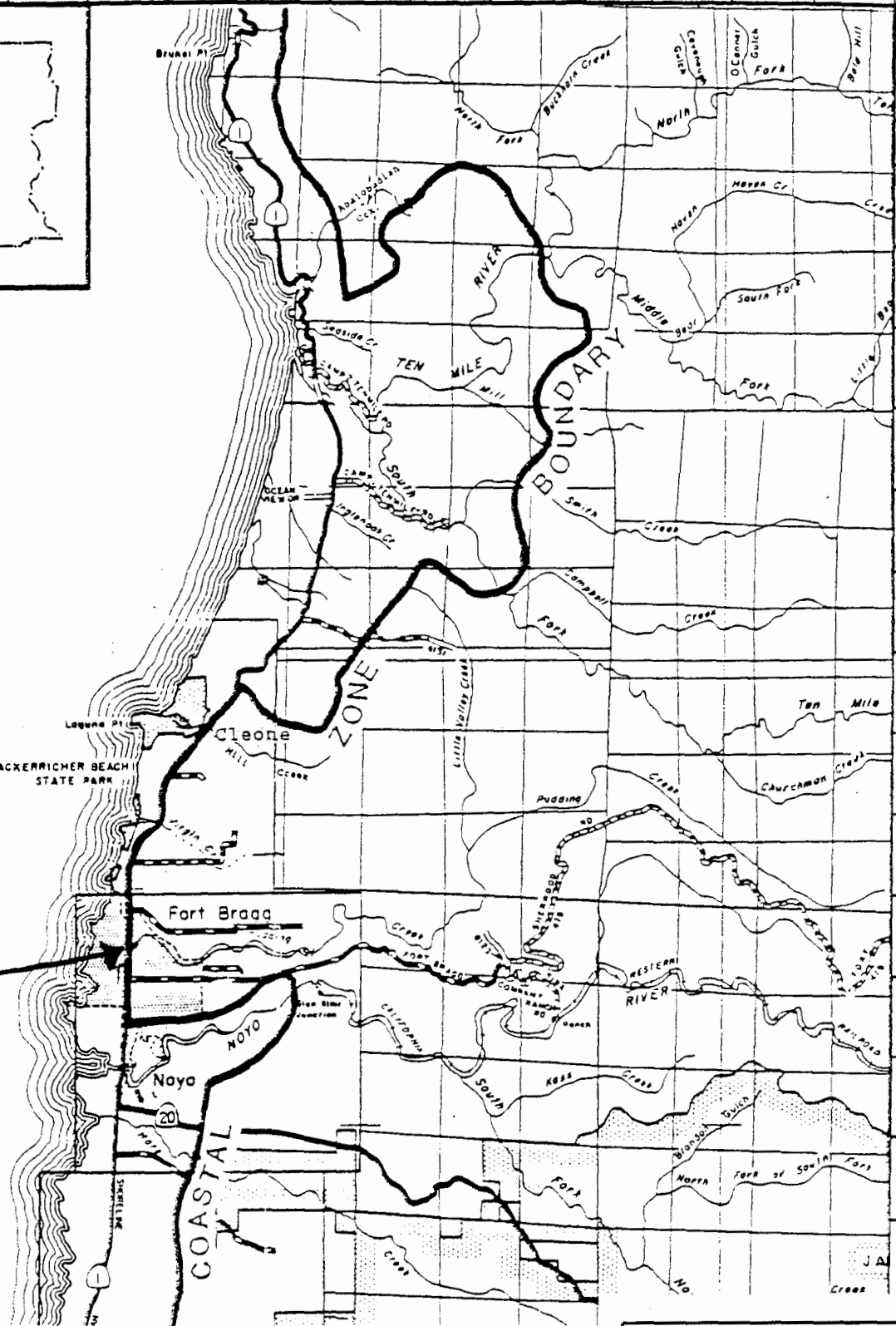
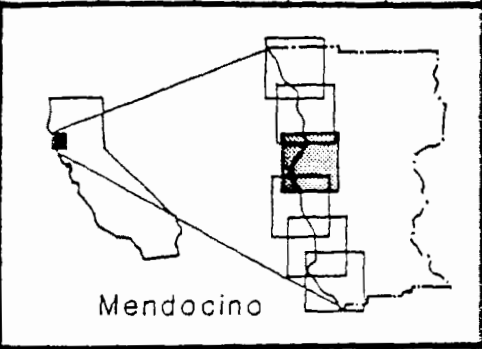
APPENDIX A

STANDARD CONDITIONS

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Interpretation. Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

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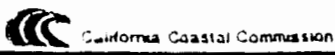


PROJECT LOCATION

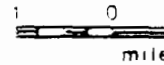
PACIFIC

COASTAL

EXHIBIT NO. 1
APPLICATION NO.
 1-07-045
 FORT BRAGG MUNICIPAL
 IMPROVEMENT DIST. NO. 1
 REGIONAL LOCATION



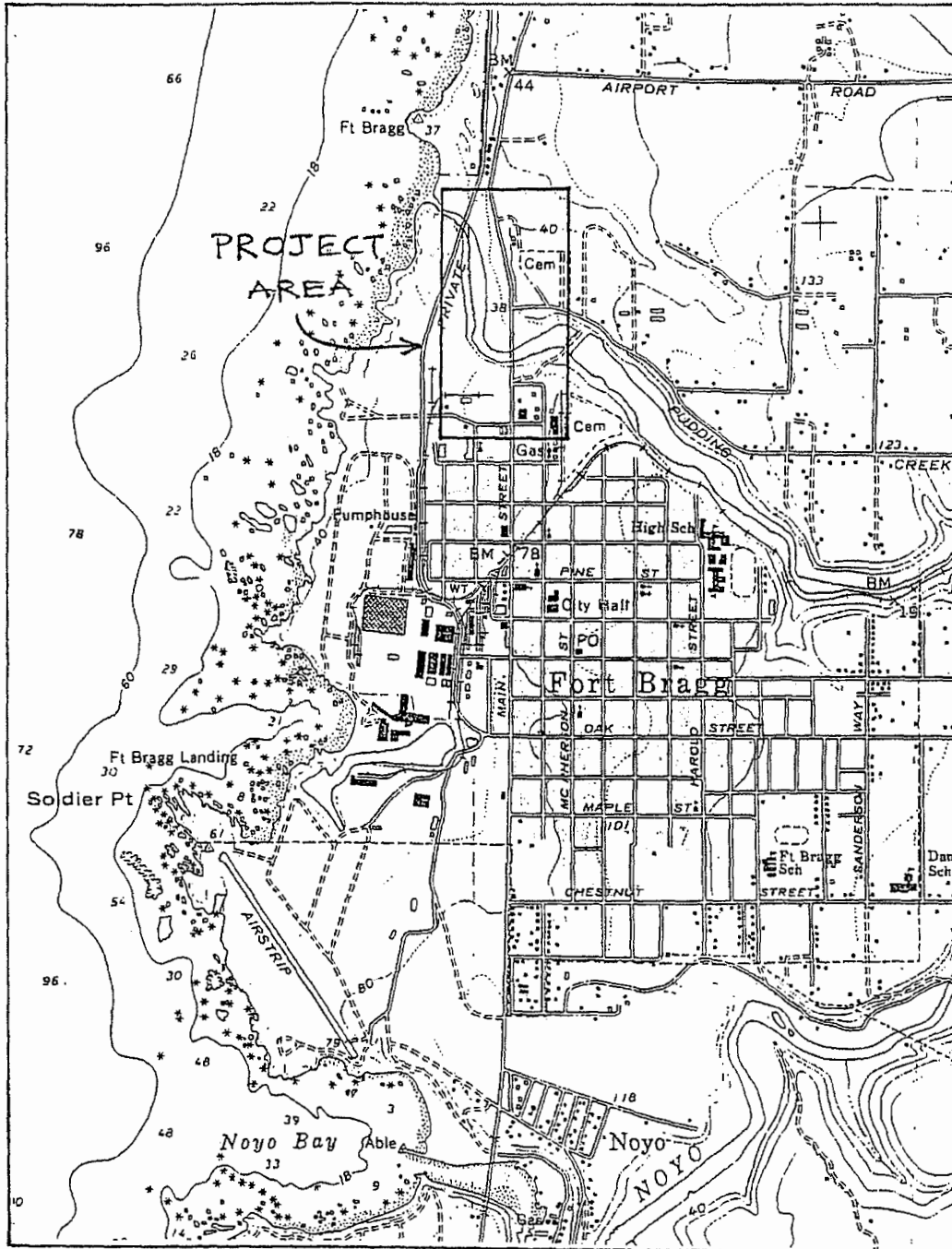
LOCATION MAP



County of Mendocino

City of Fort Bragg
Pudding Creek Force Main Relocation Project

Location Map

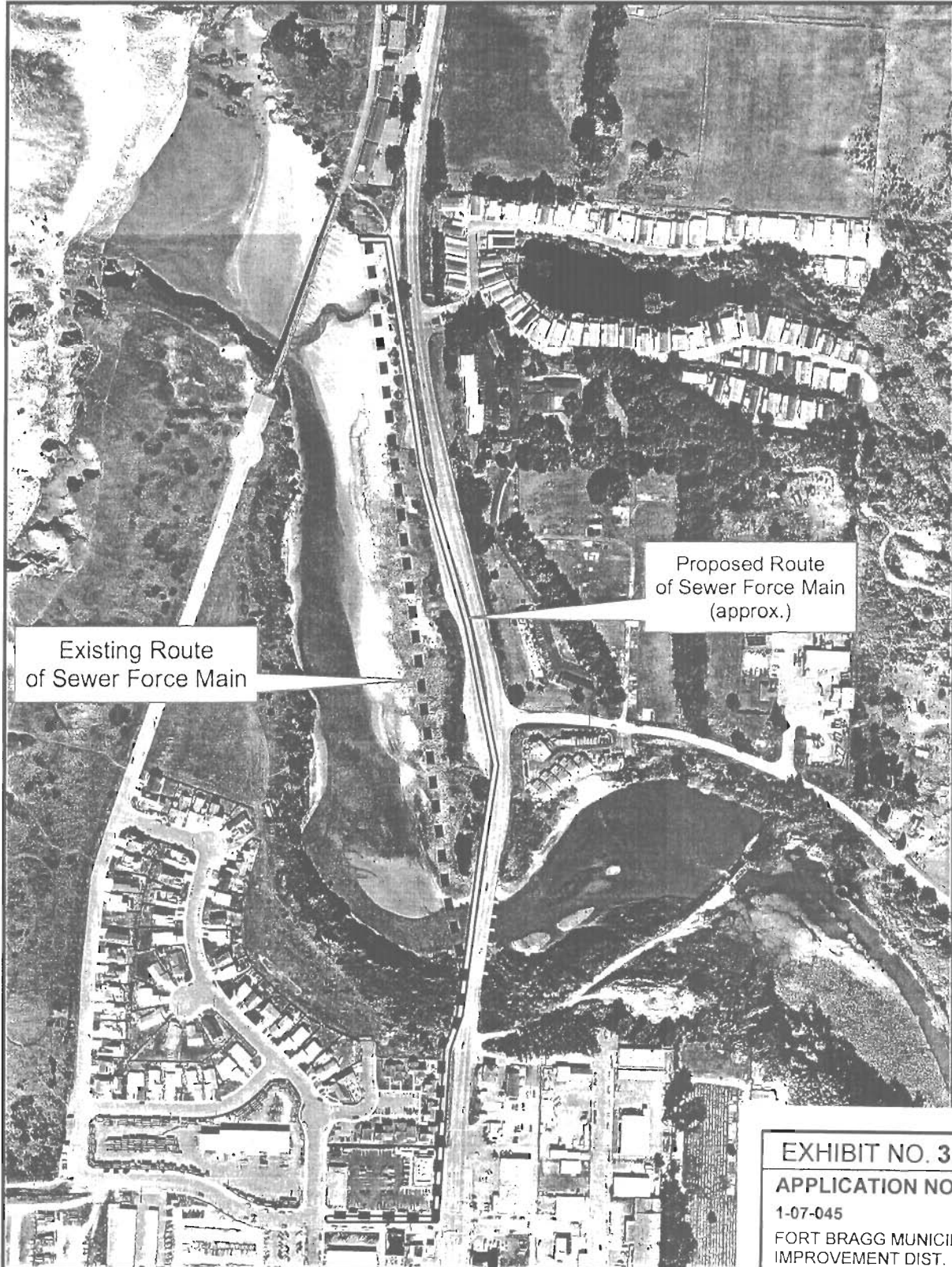


North ↑

Not to Scale

EXHIBIT NO. 2
APPLICATION NO.
1-07-045
FORT BRAGG MUNICIPAL
IMPROVEMENT DIST. NO. 1
VICINITY MAP

pudding Creek Sewer Force Main Proposed Project



Existing Route
of Sewer Force Main

Proposed Route
of Sewer Force Main
(approx.)

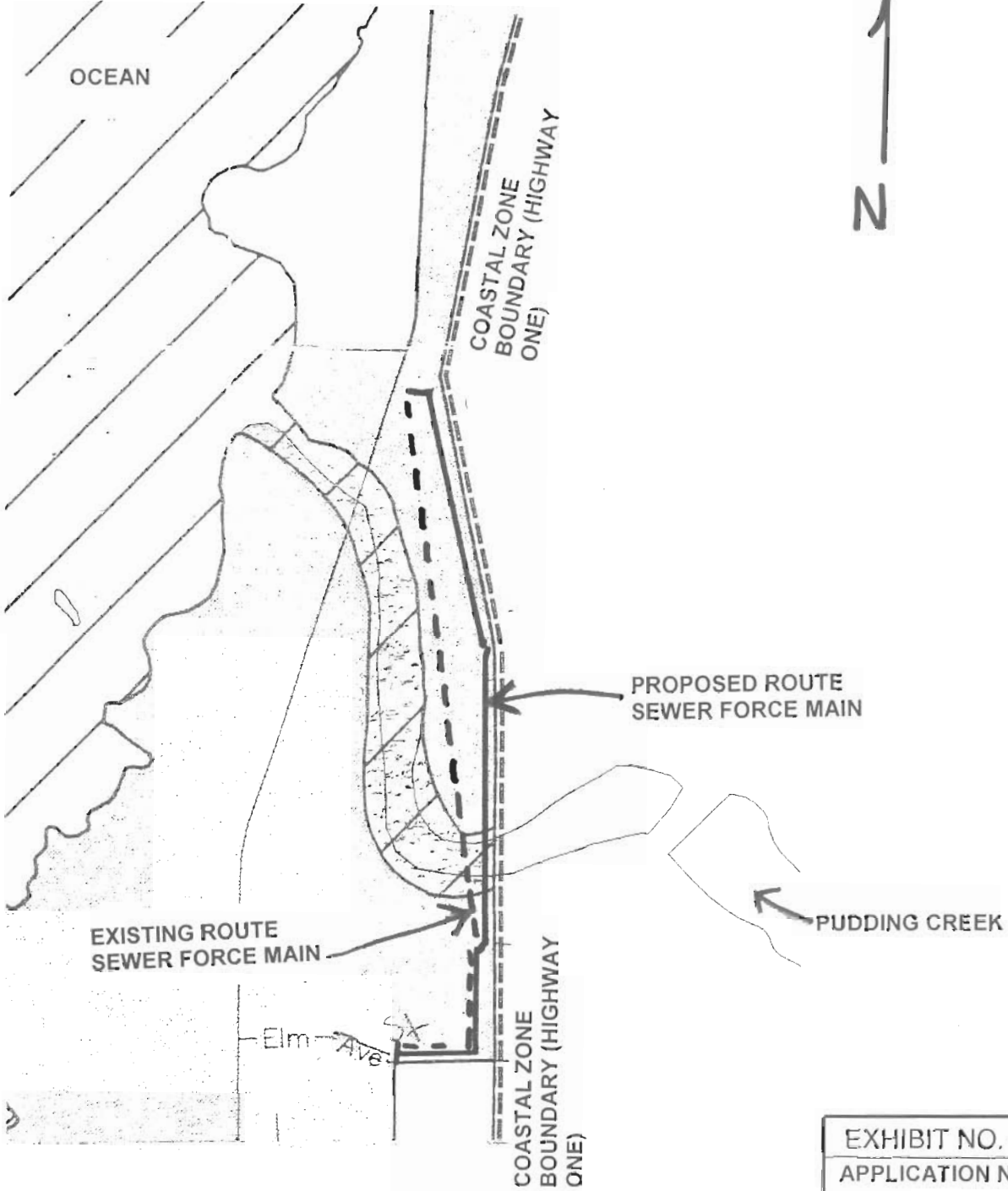
EXHIBIT NO. 3

APPLICATION NO.

1-07-045

FORT BRAGG MUNICIPAL
IMPROVEMENT DIST. NO. 1
PROJECT AERIAL PHOTO

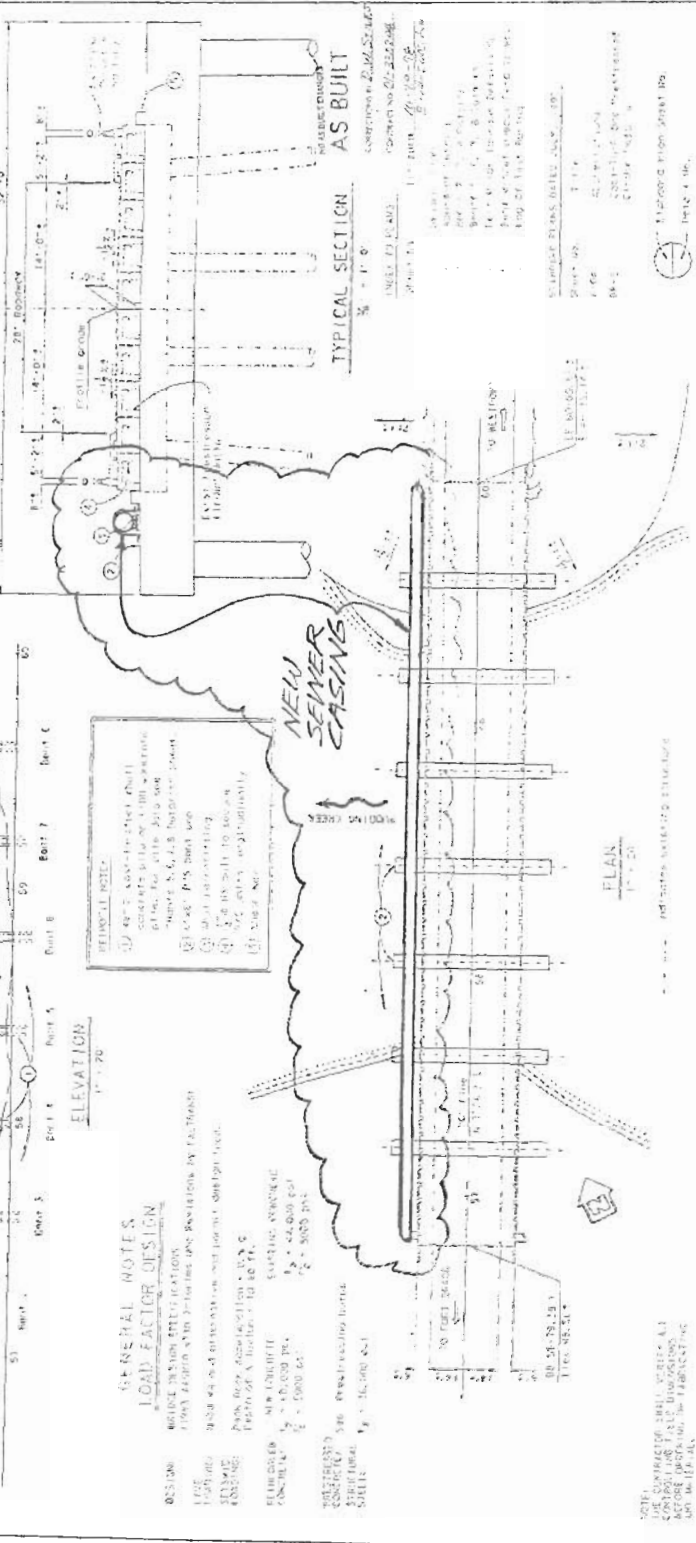
0 355 710 1,420 Feet



COASTAL COMMISSION
JURISDICTION

EXHIBIT NO. 4
APPLICATION NO.
 1-07-045
 FORT BRAGG MUNICIPAL
 IMPROVEMENT DIST. NO. 1
 COMMISSION JURISDICTION

DATE	NO.	BY	REVISION
01	1	ASB	ISSUE FOR PERMIT
02	2	ASB	REVISED PER PERMIT COMMENTS
03	3	ASB	REVISED PER PERMIT COMMENTS
04	4	ASB	REVISED PER PERMIT COMMENTS
05	5	ASB	REVISED PER PERMIT COMMENTS
06	6	ASB	REVISED PER PERMIT COMMENTS
07	7	ASB	REVISED PER PERMIT COMMENTS
08	8	ASB	REVISED PER PERMIT COMMENTS
09	9	ASB	REVISED PER PERMIT COMMENTS
10	10	ASB	REVISED PER PERMIT COMMENTS



GENERAL NOTES

LOAD FACTOR OPTION

BRIDGE DESIGN LOADS SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE AASHTO HDBK. 17.2.1 AND 17.2.2.

BRIDGE DESIGN SPEED SHALL BE 35 MPH UNLESS OTHERWISE NOTED.

BRIDGE DESIGN WIND SPEED SHALL BE 100 MPH UNLESS OTHERWISE NOTED.

BRIDGE DESIGN SEISMICITY SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE AASHTO HDBK. 17.4.1 AND 17.4.2.

BRIDGE DESIGN FLOODING SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE AASHTO HDBK. 17.5.1 AND 17.5.2.

BRIDGE DESIGN COLLISION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE AASHTO HDBK. 17.6.1 AND 17.6.2.

BRIDGE DESIGN CRACKING SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE AASHTO HDBK. 17.7.1 AND 17.7.2.

BRIDGE DESIGN DEFLECTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE AASHTO HDBK. 17.8.1 AND 17.8.2.

BRIDGE DESIGN VIBRATION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE AASHTO HDBK. 17.9.1 AND 17.9.2.

BRIDGE DESIGN TORSION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE AASHTO HDBK. 17.10.1 AND 17.10.2.

BRIDGE DESIGN STABILITY SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE AASHTO HDBK. 17.11.1 AND 17.11.2.

BRIDGE DESIGN FATIGUE SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE AASHTO HDBK. 17.12.1 AND 17.12.2.

BRIDGE DESIGN CORROSION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE AASHTO HDBK. 17.13.1 AND 17.13.2.

BRIDGE DESIGN DURABILITY SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE AASHTO HDBK. 17.14.1 AND 17.14.2.

BRIDGE DESIGN MAINTENANCE SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE AASHTO HDBK. 17.15.1 AND 17.15.2.

BRIDGE DESIGN CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE AASHTO HDBK. 17.16.1 AND 17.16.2.

BRIDGE DESIGN OPERATION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE AASHTO HDBK. 17.17.1 AND 17.17.2.

BRIDGE DESIGN DEMOLITION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE AASHTO HDBK. 17.18.1 AND 17.18.2.

PROJECT NO.	SEISMIC RETROFIT PROJECT 339
SECTION NO.	PIJILING CREEK BRIDGE
DATE	GENERAL PLAN
DESIGNED BY	
CHECKED BY	
APPROVED BY	
STATE OF CALIFORNIA	
DEPARTMENT OF TRANSPORTATION	
REGIONAL OFFICE	
PROJECT NO.	
SECTION NO.	
DATE	
DESIGNED BY	
CHECKED BY	
APPROVED BY	
STATE OF CALIFORNIA	
DEPARTMENT OF TRANSPORTATION	
REGIONAL OFFICE	
PROJECT NO.	
SECTION NO.	
DATE	
DESIGNED BY	
CHECKED BY	
APPROVED BY	

EXHIBIT NO. 5

APPLICATION NO.

1-07-045

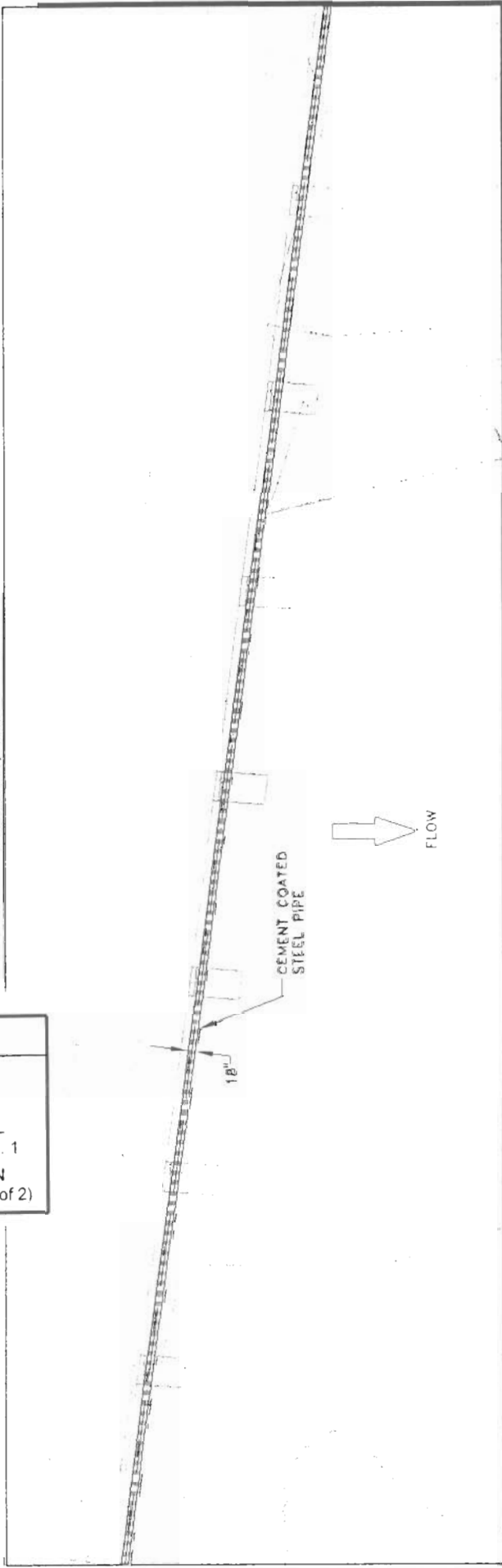
FORT BRAGG MUNICIPAL IMPROVEMENT DIST. NO. 1

BRIDGE CROSSING PLAN

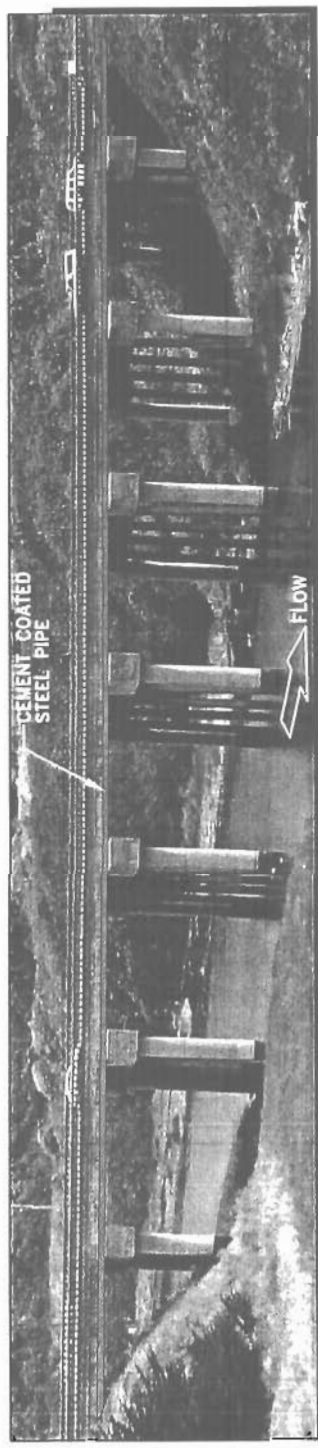
DRAFT

SEWER MAIN RELOCATION
PUDDING CREEK
CITY OF FORT BRAGG, CALIFORNIA
FEBRUARY, 2008

EXHIBIT NO. 6
APPLICATION NO.
1-07-045
FORT BRAGG MUNICIPAL
IMPROVEMENT DIST. NO. 1
BRIDGE CROSSING PLAN
PERSPECTIVE VIEWS (1 of 2)



PLAN VIEW



PERSPECTIVE VIEW
N.T.S.

NOTE:
DESIGN TO BE APPROVED BY CALTRANS.



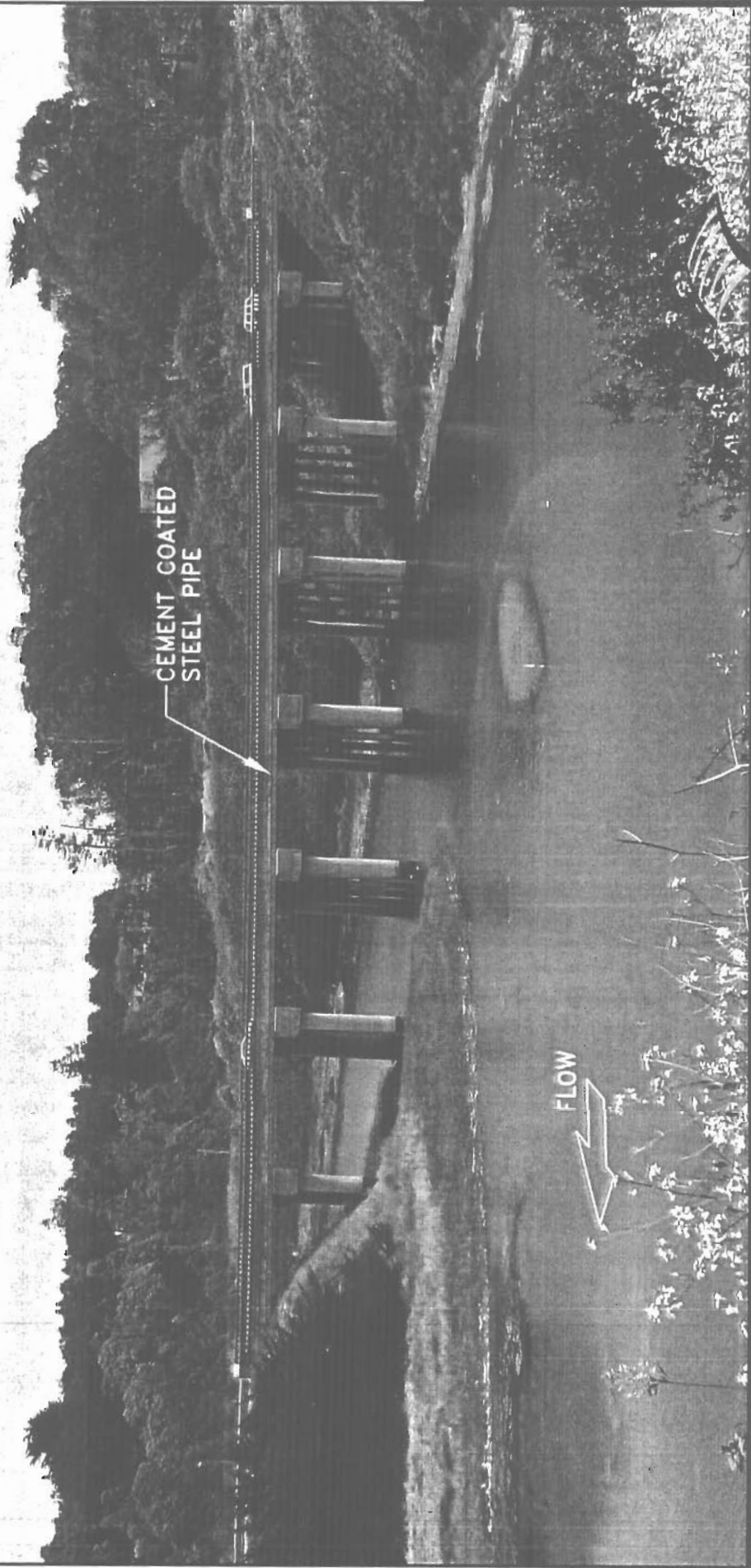
WOOD RODGERS
DEVELOPING INNOVATIVE DESIGN SOLUTIONS
580 Second Street, Ste. 200 Tel 510.208.2400
Oakland, CA. 94607 Fax 510.208.2401

SEWER MAIN RELOCATION
PUDDING CREEK

CITY OF FORT BRAGG, CALIFORNIA

FEBRUARY, 2008

DRAFT



202

PERSPECTIVE VIEW

N.T.S.

WOOD RODGERS
DEVELOPING INNOVATIVE DESIGN SOLUTIONS
580 Second Street Ste. 200 Tel 510.208.2400
Oakland, C.A. 94607 Fax 510.208.2401



WOOD RODGERS
DEVELOPING • INNOVATIVE • DESIGN • SOLUTIONS

Sheet: 1 of 1

Date: 2/21/08

Project No.: 8352

Project: PLIDDING CK SEWER

Subject: CASING SUPPORT @ BIDGE

Prepared By: LIAM Checked By: _____

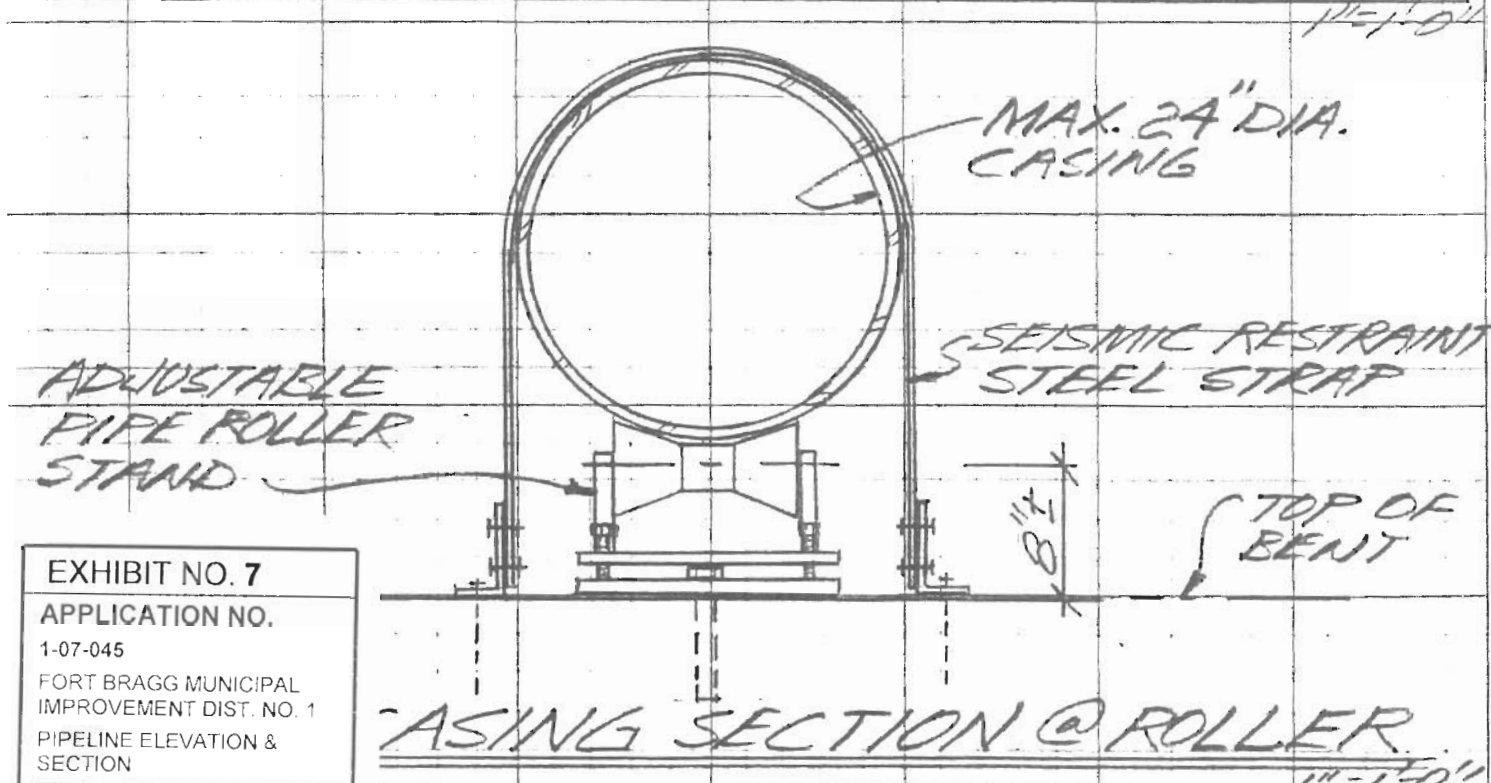
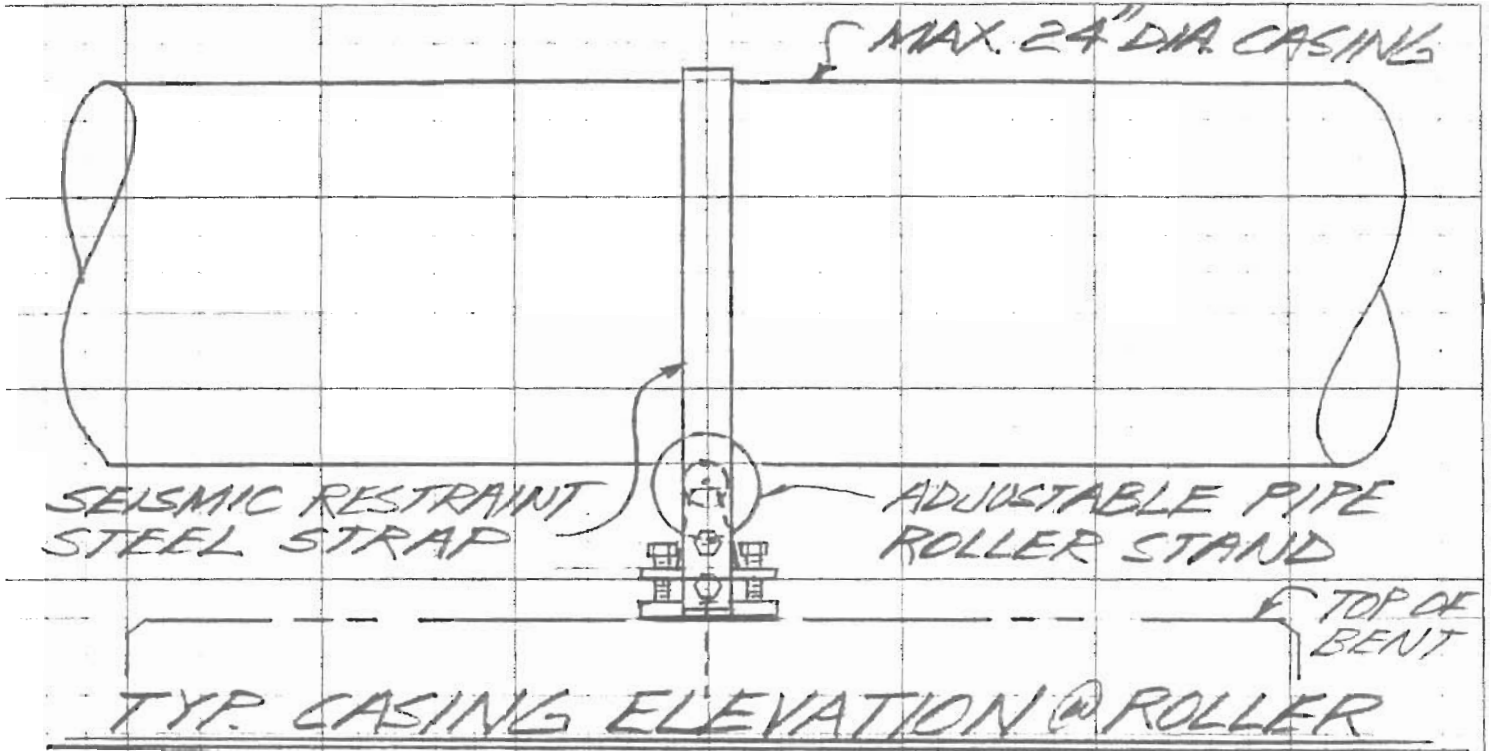
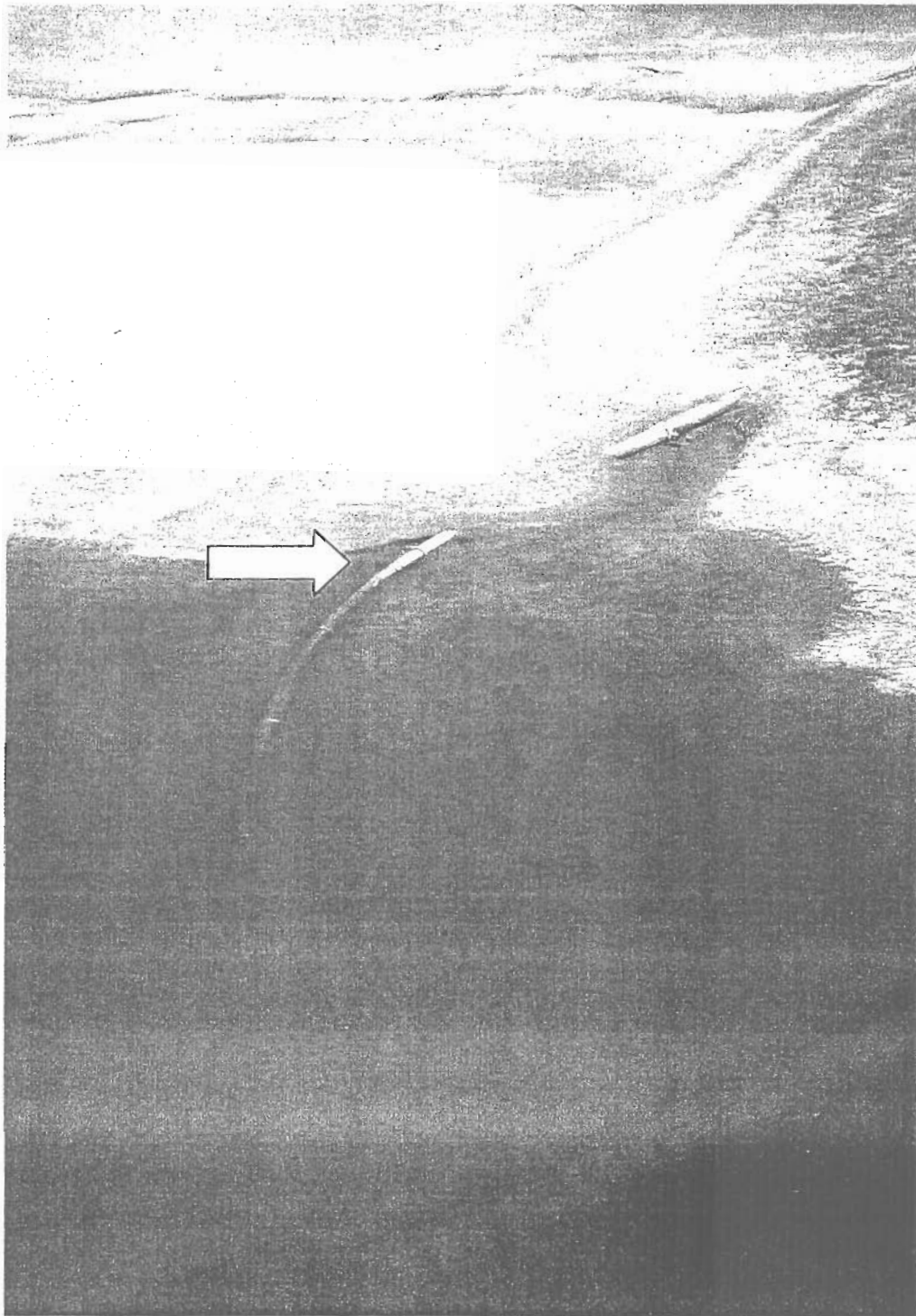


EXHIBIT NO. 7
APPLICATION NO.
1-07-045
FORT BRAGG MUNICIPAL
IMPROVEMENT DIST. NO. 1
PIPELINE ELEVATION &
SECTION



3. The old pressurized sewer main line as it emerges from the beach and is exposed as it crosses Pudding Creek to the west of State Highway One in the shadow of Pudding Creek Bridge.

EXHIBIT NO. 8

APPLICATION NO.

1-07-045

FORT BRAGG MUNICIPAL
IMPROVEMENT DIST. NO. 1

EXISTING SEWER LINE IN
PUDDING CREEK



Linda S. Adams
Agency Secretary

California Regional Water Quality Control Board
North Coast Region
John W. Corbett, Chairman

www.waterboards.ca.gov/northcoast/
5550 Skyline Boulevard, Suite A, Santa Rosa, California 95403
Phone: (877) 721-9203 (toll free) • Office: (707) 576-2220 • FAX: (707) 523-0135

SEP 19 2007



Arnold
Schwarzenegger
Governor

September 17, 2007

Mr. Dave Goble, Director of Public Works
City of Fort Bragg
416 North Franklin Street
Fort Bragg, CA 95437

Dear Mr. Goble:

Subject: Transmittal of Adopted Cease and Desist Order No. R1-2007-0015 for the
Fort Bragg Municipal Improvement District No. 1

File: Fort Bragg Municipal Improvement District No. 1 WWTF
WDID No. 1B84083OMEN

On April 26, 2007, the Regional Water Board adopted Cease and Desist Order No. R1-2007-0015 for the Fort Bragg Municipal Improvement District No. 1. A copy of the Order is enclosed for your records.

Please contact me at (707) 576-2752 if you have any questions.

Sincerely,

Charles Reed
Water Resources Control Engineer

091807_CER_CDPTransielafteradoption

Certified-Return Receipt Requested

Enclosure: Cease and Desist Order No. R1-2007-0015

EXHIBIT NO. 9
APPLICATION NO.
1-07-045
FORT BRAGG MUNICIPAL IMPROVEMENT DIST. NO. 1
REGIONAL BOARD CEASE & DESIST ORDER (1 of 6)

California Environmental Protection Agency

Recycled Paper

California Regional Water Quality Control Board
North Coast Region

CEASE AND DESIST ORDER NO. RI-2007-0015
WDID NO. 1B84083OMEN

REQUIRING FORT BRAGG MUNICIPAL IMPROVEMENT DISTRICT NO. 1 TO CEASE
AND DESIST FROM DISCHARGING WASTE CONTRARY TO REQUIREMENTS
PRESCRIBED BY THE NORTH COAST REGIONAL WATER QUALITY CONTROL
BOARD

Mendocino County

The California Regional Water Quality Control Board, North Coast Region (Regional Water Board), finds that:

1. The Regional Water Board adopted Waste Discharge Requirements Order No. R1-2005-0096 (NPDES Permit No. CA002378) for Fort Bragg Municipal Improvement District No. 1 (hereinafter the Discharger or Permittee) on October 12, 2005. The Order includes discharge prohibitions and permit provisions that must be met at all times.
2. The *Water Quality Control Plan for the North Coast Region* (Basin Plan) designates beneficial uses, establishes water quality objectives, and contains implementation programs and policies to achieve those water quality objectives, protect present and future beneficial water uses, protect public health, and prevent nuisance.
3. In June 2006, the Discharger reported two spills from an 8-inch diameter force main located east of Pudding Creek Beach. Ruptures in the pipeline, known as the Pudding Creek Force Main (Force Main), resulted in a discharge of untreated wastewater in excess of 2,500 gallons to an area adjacent to Pudding Creek on June 1, 2006 and another spill of approximately 700 gallons to the same area on June 16, 2006. In 1989, 1999, 2003, and 2005, the Discharger reported similar ruptures at various sections of the Pudding Creek Force Main that resulted in unpermitted discharges to Pudding Creek. In each case, the Discharger has taken emergency actions to temporarily repair the leaking pipe.
4. The Pudding Creek Force Main runs approximately 2,900 feet from the Pudding Creek Pump Station, southward along the beach to Pudding Creek, south under Pudding Creek, and up the bluff where the pipeline terminates into a manhole at the intersection of Elm Street and Highway One. Much of the pipeline along Pudding Creek Beach was installed in 1973/74 as part of the Pudding Creek Interceptor Project. In 1985, to fix a sewage leak discovered in the Force Main where it passes under Pudding Creek, the Discharger replaced a 450 foot stretch of the original Force Main. The section replaced ran from the north side of Pudding Creek, under Pudding Creek, and up the southerly bank to the south side of the Highway One Bridge that crosses Pudding Creek.
5. On January 3, 2006, the Discharger reported that the portion of the Force Main buried under Pudding Creek had become exposed, allegedly as a result of a release of an excessively large volume of water from a privately-owned dam on Pudding Creek. A site inspection by the Regional Board on December 28, 2006 revealed that the Force Main remains exposed and is susceptible to damage or breakage from large floating debris. Cleanup and Abatement Order No. R1-2007-0011, issued pursuant to Water Code section 13304, was sent to

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the Discharger by the Executive Officer on January 29, 2007, requiring the Discharger to address this problem by March 19, 2007.

6. Pudding Creek is a coastal stream that flows into the Pacific Ocean at the northern city limits of Fort Bragg. Among the beneficial uses of Pudding Creek are municipal and domestic supply (MUN); industrial process supply (PRO); water contact recreation (REC-1); non-contact water recreation (REC-2); migration of aquatic organisms (MIGR); spawning, reproduction and/or early development (SPWN); cold freshwater habitat (COLD); and rare, threatened and endangered species (RARE). The creek also supports populations of both coho salmon and steelhead.
7. Portions of Order No. R1-2005-0096 that will be violated if damage to the Force Main resulted in a discharge of untreated wastewater are as follows:

A. DISCHARGE PROHIBITIONS

2. Creation of a pollution, contamination, or nuisance, as defined by Section 13050 of the California Water Code is prohibited.
4. The discharge of untreated waste or partially treated waste from anywhere within the collection, treatment, or disposal facility, except as provided for bypasses under the conditions in General Provision H.13 of this Order, is prohibited.¹

H. GENERAL PROVISIONS

4. Duty to Mitigate
The Permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this Order that has a reasonable likelihood of adversely affecting human health or the environment.
5. Proper Operation and Maintenance
 - a. The Permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by the Permittee to achieve compliance with this Order. Proper operation and maintenance includes adequate laboratory quality control and appropriate quality assurance procedures. The provision requires the operation of backup or auxiliary facilities of similar systems that are installed by the Permittee only when necessary to achieve compliance with the conditions of the Order. [40 CFR 122.41(e)]
8. The portions of the Basin Plan that will be violated if damage to the Force Main resulted in a discharge of untreated wastewater are as follows:

Section 4. IMPLEMENTATION PLANS

¹ Provision H.13 of Order No. R1-2005-0096 establishes conditions, consistent with federal provisions in 40 Code of Federal Regulations 122.41(m), under which bypass of treatment facilities is allowable. In general, bypass of treatment facilities is prohibited unless the bypass is necessary to either: (1) perform maintenance that cannot feasibly be done any other time; or (2) avoid loss of life, personal injury, or serious property damage. These conditions are not applicable to the threatened discharge that is the subject of this enforcement order.

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POINT SOURCE MEASURES

WASTE DISCHARGE PROHIBITIONS:

The Regional Water Board declares that point source waste discharges, except as stipulated by the Thermal Plan, the Ocean Plan, and the action plans and policies contained in the Point Source Measures section of this Water Quality Control Plan, are prohibited in the following locations in the Region:

North Coastal Basin

6. On all other coastal streams and natural drainageways that flow directly to the ocean all new discharges will be prohibited. Existing discharges to these waters will be eliminated at the earliest practicable date.
9. The Discharger threatens to cause or permit waste to be discharged into waters of the State in violation of its waste discharge requirements order and the Basin Plan. A discharge of inadequately treated waste would affect water quality and could be deleterious to beneficial uses of State waters and impair water quality to such a degree that it becomes a threat to public health and public resources, creating a condition of pollution or nuisance. Without remedial action, the threatened pollution or nuisance remains.
10. Water Code section 13301 states that when a regional board finds that a discharge of waste is taking place, or threatens to take place, in violation of requirements or discharge prohibitions prescribed by the regional board or the State Water Resources Control Board (State Water Board), the regional water board may issue an order to cease and desist and direct that those persons not complying with the requirements or discharge requirements a) comply forthwith, b) comply in accordance with a time schedule set by the board, or c) in the event of a threatened violation, take appropriate remedial or preventive action.
11. This Order provides a time schedule to the Discharger to complete facility upgrades that are needed to permanently repair the failed sewer pipeline and to minimize the potential for future pipeline failures in this location. System upgrades will entail evaluating system components, conducting environmental review, securing funding, planning, designing, and construction and will, necessarily, take an extended time period for completion.
12. This Cease and Desist Order is an enforcement action by a regulatory agency being taken for the protection of the environment and is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code, section 21000 et seq.) in accordance with California Code of Regulations, title 14, sections 15308 and 15321.
13. On April 26, 2007, after due notice to the Discharger and all other affected persons, the Regional Board conducted a public hearing at which the Discharger was heard and evidence received concerning the discharge.
14. The Regional Water Board reserves its authority to take any enforcement action authorized by law. Violations of this Cease and Desist Order may result

in the Regional Board imposing administrative civil liabilities in accordance with applicable laws, including Water Code sections 13350 and 13385, issuing a time schedule order pursuant to Water Code section 13308, or referring the issue to the Attorney General for injunctive relief or monetary remedies.

15. Any person affected by this action of the Regional Water Board may petition the State Water Board to review the action in accordance with section 13320 of the Water Code and section 2050 of title 23 of the California Code of Regulations. The State Water Board must receive the petition within 30 days of the date of this Order. Copies of the law and regulations applicable to filing petitions will be provided upon request. In addition to filing a petition with the State Water Board, any person affected by this Order may request the Regional Water Board to reconsider this Order. Such request should be made within 30 days of the date of this Order. Note that even if reconsideration by the Regional Water Board is sought, filing a petition with the State Water Board within the 30-day period is necessary to preserve the petitioner's legal rights.

THEREFORE, IT IS HEREBY ORDERED that, pursuant to Water Code section 13301, the Discharger shall cease and desist from discharging wastes contrary to the discharge requirements contained in Finding No. 7 and Finding No. 8 (above) and comply with the following time schedule:

1. The Fort Bragg Municipal Improvement District No.1 shall investigate, design and implement facility upgrades that are needed to repair the Pudding Creek Force Main in accordance with the following time schedule:
 - a. By January 1, 2008, complete and submit to the Regional Water Board preliminary design of repairs and improvements to the Pudding Creek Force Main.
 - b. By March 1, 2008, commence CEQA and Coastal Permit development process.
 - c. By September 1, 2008, complete CEQA process.
 - d. By January 1, 2009 complete final project design and advertise for construction bids.
 - e. By May 15, 2009, commence project construction.
 - f. By October 1, 2009, complete project construction.
2. By March 1 and September 1 of each year for the duration of the time schedule, the Fort Bragg Municipal Improvement District No.1 shall provide to the Regional Water Board written updates of the status of the project and an updated projection for project completion.
3. If the Executive Officer of the Regional Board finds that the Discharger fails to comply with the provisions of this Order, the Executive Officer may take all actions authorized by law, including referring this matter to the Attorney General for judicial enforcement or issuing a complaint for administrative civil liability pursuant to Water Code sections 13350 and 13385. The Regional Board reserves its right to take any enforcement actions authorized by law.

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4. If, for any reason, the Discharger is unable to perform any activity or submit any documentation in compliance with the work schedule that will be submitted pursuant to this Order and approved by the Executive Officer, the Discharger may request, in writing, that the Regional Water Board grant an extension of the time. The extension request shall include justification for the delay. An extension may be granted by the Regional Water Board for good cause, in which case this Order will be accordingly revised in writing.

Certification

I, Catherine E. Kuhlman, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, North Coast Region, on April 26, 2007.


for Catherine E. Kuhlman
Executive Officer

(C:\In\001 - Fen Fraagg\001\070407\070407015.doc)

CITY OF FORT BRAGG
COMMUNITY DEVELOPMENT DEPARTMENT
416 North Franklin Street
Fort Bragg, CA 95437
Tel: (707) 961-2823
Fax: (707) 961-2802
www.city.fortbragg.com



Hearing/decision date(s)
October 24, 2007

- City appeal period ended
- Coastal Commission appeal period ended
- prior-to-issuance conditions met

EXHIBIT NO. 10
APPLICATION NO.
1-07-045
FORT BRAGG MUNICIPAL
IMPROVEMENT DIST. NO. 1
LOCAL CDP (1 of 4)

DEVELOPMENT PERMIT


PERMIT TYPE & NO.: Coastal Development Permit (CDP 6-07)
OWNER/APPLICANT: Fort Bragg Municipal Improvement District
AGENT: Dave Goble, Director, Public Works
ADDRESS: Pudding Creek Beach (APN 008-010-15)
DESCRIPTION: Coastal Development Permit to allow the relocation of a sewer force main. Project would include the construction of approximately 3,000 LF of 10 inch sewer force main from the Pudding Creek Lift Station to the nearest manhole on Elm Street at Elm Street's intersection with Stewart Street. The old force main will be cleaned, capped and abandoned in place. The new force main would be located along the access road for MacKerricher State Park at Pudding Creek, on the western shoulder of State Route 1, and across the Pudding Creek Bridge. A Mitigated Negative Declaration and a Mitigation Monitoring Program have been adopted.

PERMIT EFFECTIVE DATE: Ten working days after the California Coastal Commission's receipt of the Notice of Final Action from the City

PERMIT EXPIRATION DATE: Twenty-four months after the permit effective date

CONDITIONS OF APPROVAL: See attached findings and conditions

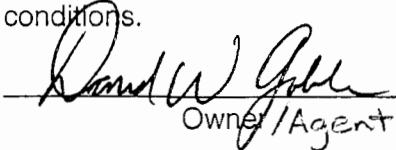
Community Development Department Statement: I hereby certify that all conditions which must be met prior to issuance of this permit have been met and that this permit is deemed by the City of Fort Bragg Community Development Department to be a valid permit subject to all conditions of approval.



Community Development Director

11-08-2007
Date

Owner's Statement: I am the owner of the property subject to this permit (or his/her authorized agent) and I hereby certify that I have reviewed the conditions of approval and will establish and continue the use of the subject property in compliance with the specified conditions and applicable sections of the Fort Bragg Municipal Code. I further grant permission for City staff to enter upon the premises for which the permit is issued to verify compliance with the required conditions.



Owner/Agent

11-8-07
Date

Notice: This permit must be signed and returned to the Community Development Department.

Attachment: Findings and Conditions

FINDINGS

1. The proposed project is in conformity with the certified Local Coastal Program and applicable regulations of the Fort Bragg Municipal Code;
2. The proposed project is consistent with the purpose and intent of the Open Space (OS) and Highway Visitor Commercial (HVC) zoning districts, as well as all other applicable provisions of Title 18 of the Fort Bragg Municipal Code, and applicable provisions of the Fort Bragg Municipal Code in general;
3. The proposed use is necessary and an implied allowed use in the OS and HVC zoning districts in the Coastal Zone;
4. The design, location, size, and operating characteristics of the proposed activity are compatible with the existing and future land uses in the vicinity;
5. The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities (e.g., fire protection, police protection, potable water, schools, solid waste collection and disposal, storm drainage, wastewater collection, treatment, and disposal, etc.), to ensure that the type, density, and intensity of use being proposed would not endanger, jeopardize, or otherwise constitute a hazard to the public interest, health, safety, convenience, or welfare, or be materially injurious to the improvements, persons, property, or uses in the vicinity and zoning district in which the property is located;
6. The proposed development will not have any adverse impacts to any known archaeological or paleontological resource;
7. The proposed development will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act; and
8. The proposed development is in conformity with the public access and public recreation policies of the LCP and Chapter 3 of the California Coastal Act.

STANDARD CONDITIONS

1. This action shall become final on the 11th working day following the decision unless an appeal to the City Council is filed pursuant to Chapter 18.61.063. This action is appealable to the California Coastal Commission pursuant to Chapter 18.61.065.
2. The use and occupancy of the premises shall be established and maintained in conformance with the requirements of this permit and all applicable provisions of the certified LCP.
3. The application, along with supplemental exhibits and related material, shall be considered elements of this permit, and compliance therewith is mandatory, unless an amendment has been approved by the City.
4. This permit shall be subject to the securing of all necessary permits for the proposed development from City, County, State and Federal agencies having jurisdiction. All plans submitted with required permit applications shall be consistent with this approval.
5. The applicant shall secure all required building permits for the proposed project as required by the Building Department.
6. This permit shall be subject to revocation or modification upon a finding of any one or more of the following:
 - (a) That such permit was obtained or extended by fraud.
 - (b) That one or more of the conditions upon which such permit was granted have been violated.
 - (c) That the use for which the permit was granted is so conducted as to be detrimental to the public health, welfare or safety or as 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 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. This Coastal Development Permit approval shall lapse and become null and void two (2) years from the date of approval unless prior to the expiration of two (2) years, construction is commenced and diligently pursued towards completion or an extension is requested and obtained in accordance with LUDC Section 18.71.050.

SPECIAL CONDITIONS

1. Prior to project construction activities, the City and its contractors shall file a NOI and SWPPP with NCWQCB and obtain all necessary permits from other trustee agencies, such as Streambed Alteration Agreements from DFG. All erosion control measures specified in the Mitigated Negative Declaration shall be implemented.
2. Pursuant to consultation with U.S. Fish and Wildlife Service (the Service) for the purpose of protecting the coast wallflower; *Erysimum menziesii* ssp. *concinnum*, orange construction fencing shall be installed immediately west of the area of impact between construction and grading activities and the coast wallflower population. The project planner will identify the location of the population for the ideal location of the fencing.
3. Within thirty days prior to the start of construction, the City shall conduct surveys for cliff swallows (*Petrochelidon pyrrhonota*) and purple martins (*Progne subis*). If no cliff swallows and/or purple martins are detected, then no further mitigation is required. If cliff swallows and/or purple martins are detected, then the following will be implemented: the project engineer would consult with DFG and incorporate recommended measures to avoid or mitigate impacts to the species at this locale into the project scope, as appropriate and feasible. During operations involving attachment of the sewer line to Pudding Creek Bridge applicant shall install fabric, such as canvas or plastic tarps under the bridge during construction to prevent debris from falling into Pudding Creek thus mitigating any potential impacts to Coho, steelhead, tidewater goby, wetlands, and Waters of the United States.
4. The City shall ensure compliance with the following requirements during construction and operation activities: 1) All equipment would be inspected for leaks immediately prior to the start of construction, and regularly inspected thereafter until equipment is removed from project area (i.e. in a location where such activities can be contained without risk to environmental resources); 2) Equipment would be cleaned and repaired (other than emergency repairs) outside the project area. All contaminated water, soil, sludge, spill residue, or other hazardous compounds would be disposed of outside the project area, at a lawfully permitted or authorized site; 3) A spill response plan shall be devised based on best management practices for use in the event of an accident or upset that causes the release of a hazardous substance as might be used on site for surface preparation (i.e. paint), heavy equipment or vehicles during the project such as paint, gasoline, diesel fuel, hydraulic fluid or motor oil.
5. In reference to site CA-MEN-1839, Temporary orange plastic fencing will be installed prior to construction to keep construction activities out of the site area. An archaeological monitor also shall be present during any trenching adjacent to the site. If site deposits are encountered, work will be halted until a suitable strategy is developed in consultation with the City Public Works Department and other parties of interest. In reference to site PC-1, if any person excavating or otherwise disturbing the earth discovers any archaeological site during project construction, the following actions shall be taken: 1) cease and desist from all further excavation and disturbances within 100 feet of the discovery; and 2) notify the Director of Public

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Works within 24 hours of the discovery. Evidence of an archaeological site may include, but is not necessarily limited to shellfish, bones, flaked and ground stone tools, stone flakes produced during tool production, historic artifacts, and historic features such as trash-filled pits and buried foundations. A professional archaeologist on the list maintained by the Northwest Information Center of the California Historical Resources Information System or Listed by the Register of Professional Archaeologists shall be consulted to determine necessary actions.

6. Prior to the issuance of the Coastal Development Permit, the applicant shall submit a paint color sample for the sewer line housing to the Community Development Director or designee for approval.