

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE
710 E STREET • SUITE 200
EUREKA, CA 95501-1865
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F11a

DATE: February 27, 2009

TO: Coastal Commissioners and Interested Parties

FROM: Peter Douglas, Executive Director
Robert Merrill, North Coast District Manager

SUBJECT: **Appeal No. A-1-MEN-09-9 (Moore's, CDP-62-2007)**, 44001Noyo Way, Irish Beach, Mendocino County. Filed February 9, 2009.

Recommendation: Staff recommends that the Commission determine that determine that a **substantial issue exists** with respect to the grounds on which Appeal No. A-1-MEN-09-9 has been filed and that the Commission hold a de novo hearing. **Staff recommends a NO vote on the following motion & resolution:**

Motion & Resolution. I move that the Commission determine and resolve that: Appeal No. A-1-MEN-09-009 raises no substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

Following the staff recommendation will result in the Commission conducting a de novo review of the application, and adoption of the following findings. Passage of this motion, via a yes vote, will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

Findings: On January 22, 2009, the Mendocino County Coastal Permit Administrator approved the installation of extension of a culvert to capture the flow within a 24-ft.-long section of water course and the fill of the culverted area to grade in front of a real estate office at the Irish Beach residential subdivision to provide more parking area and prevent vehicles from accidentally driving into the water course (see Exhibits 1-3). Pursuant to Coastal Act Section 30603, this approval is appealable to the Commission because the approved development is located between the sea and the first public road paralleling the sea and within 100 feet of a wetland. Appellant Gordon Moore's claims the appeal is inconsistent with the LCP because (1) filling a wetland to provide safe parking for vehicles is not an allowable fill purpose, (2) feasible alternatives to filling the wetland exist to serve parking needs and protect vehicles from driving into the watercourse,

and (3) there is the lack of an adequate buffer between the development and environmentally sensitive riparian and Point Arena Mountain Beaver habitat 20 feet away (see Exhibit 4).

Coastal Act Section 30625(b) requires the Commission to hear an appeal unless it determines that no substantial issue exists with respect to the grounds on which the appeal has been filed.¹ Commission staff has analyzed the county's Final Local Action Notice for the development (Exhibit 5), appellant's claims (Exhibit 4), and the relevant requirements of the LCP (Attachment A). Staff recommends that the Commission find that the appeal raises a substantial issue for the following reasons:

First, the County did not adopt findings that establish how filling the water course with the culvert and earthen fill is consistent with the allowable uses for fill in a wetland specified by LUP Policy 3.1-4 and Coastal Zoning Code (CZC) Section 20.496.025. These policies limit the allowable uses for fill in wetlands to the same kinds of uses for which filling of wetlands is permitted under Section 30233 of the Coastal Act. None of these policies allow fill for parking lots for a commercial real estate office or for any other similar use.

Second, the County did not adopt findings that establish how the approved filling of the water course involves the least environmentally damaging feasible alternative consistent with LUP Policy 3.1-4 and Coastal Zoning Code (CZC) Section 20.496.025(B). Under these policies, even if the fill was approved for an allowable use, which the Commission finds is not the case, wetland fill can only be allowed if the fill involved is for the least environmentally damaging feasible alternative. The County findings indicate the filling of the water course will provide additional space for the parking and maneuvering of vehicles visiting the real estate office on the parcel and will eliminate a hazard to vehicles by preventing vehicles from accidentally driving into the water channel that would be filled to grade under the permit. However, the County findings provide no analysis of project alternatives that would address any need for additional parking and address other measures for keeping vehicles out of the water channel. Evidence in the local record indicates the real estate office has existed on the site since prior to 1991. The appellant asserts that the capacity of the existing parking lot only appears to be exceeded on holiday weekends and overflow parking for the real estate office is available on the street. In addition, the appellant points out that the applicant previously removed brushy vegetation adjacent to the water channel that previously separated the channel from existing parking and served to confine vehicles to areas away from the channel. Thus, the need for additional parking has not been established and alternatives to prevent vehicles from accidentally entering the water course such as reestablishing a vegetative barrier or installing a structural barrier have not been examined.

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

Third, with respect to the contention concerning the adequacy of the approved 20-foot buffer between the approved fill of the water course and downstream environmentally sensitive riparian and Point Arena Mountain Beaver habitat areas, the County's findings do not address how the approved development conforms with the requirements of LUP Policy 3.1-7 and CZC Section 20.496.025(A) that a minimum 50-foot buffer be provided. These polices state that an ESHA buffer may be reduced from 100 feet to a minimum of 50 feet if an analysis is provided that demonstrates that based on certain criteria in CZC Section 20.496.020(A), a reduced buffer would be adequate to protect the resource. Although such information was provided by the applicant's consultant, the County's findings do not analyze how the approved 20-foot buffer can be approved despite the requirement that at least a 50-foot buffer must be provided.

Overall, the County has not adopted findings that provide factual and legal support for determining that the approved filling of wetlands and reduction of the minimum buffer width conforms with the pertinent LCP policies. The approval of the filing of a water course without such findings establishes an adverse precedent for allowing similar fill for other projects where there is a substantial issue of conformance with the LCP wetland fill and ESHA policies. The protection of wetlands in the coastal zone is an issue of statewide concern addressed by Section 30233 of the Coastal Act, as it has been long established that wetlands provide significant public benefits such as the providing sensitive habitat, water quality protection, flood control, and aesthetic values.

For the reasons stated above, the Commission finds that Appeal Number A-1-MEN-09-009 raises a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency of the approved development with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

Information Needed for De Novo Review of Application

Section 30621 of the Coastal Act instructs the Commission to provide for a *de novo* hearing on all appeals where it has determined that a substantial issue exists with respect to the grounds on which an appeal has been filed. If the Commission finds a substantial issue as recommended above, staff also recommends that the Commission continue the *de novo* hearing to a subsequent date. The *de novo* portion of the appeal must be continued because the Commission does not have sufficient information to determine what, if any, development can be approved, consistent with the certified LCP.

Given that the project the Commission will be considering *de novo* has come to the Commission after an appeal of a local government action, the Commission has not previously been in the position to request information from the applicant needed to determine if the project can be found to be consistent with the certified LCP.

As discussed above, to make the necessary findings that the proposed wetland fill is the least environmentally damaging feasible alternative, an analysis of the feasibility and relative impact of alternative parking proposals is needed. The alternatives analysis should examine such alternatives as use of street parking, use of other nearby offsite property, including other offsite areas owned by the applicant, the use of alternative vehicle barriers to keep vehicles out of the wetland, and the no

project alternative. Therefore, before the Commission can act on the proposed project *de novo*, the applicant must submit all of the above-identified information.

ATTACHMENT A

LCP EXCERPTS

I. Wetlands LCP Policies

LCP Policies

Mendocino County LUP Policy 3.1-4 states:

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

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

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

Coastal Act Section 30233 states, incorporated by reference into the LUP:

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

- (1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.*
 - (2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*
 - (3) In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities, shall not exceed 25 percent of the degraded wetland.*
 - (4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.*
 - (5) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*
 - (6) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*
 - (7) Restoration purposes.*
 - (8) Nature study, aquaculture, or similar resource dependent activities.*
- (b) Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation. Dredge spoils suitable for beach replenishment should be transported for such purposes to appropriate beaches or into suitable longshore current systems.*
- (c) In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary. Any alteration of coastal wetlands identified by the Department of Fish and Game, including, but not limited to, the 19 coastal wetlands identified in its report entitled, "Acquisition Priorities for the Coastal Wetlands of California", shall be limited to very minor incidental public facilities, restorative measures, nature study, commercial fishing facilities in Bodega Bay,*

and development in already developed parts of south San Diego Bay, if otherwise in accordance with this division.

Coastal Act Section 30607, incorporated by reference into the LUP, states:

Any permit that is issued or any development or action approved on appeal, pursuant to this chapter, shall be subject to reasonable terms and conditions in order to ensure that such development or action will be in accordance with the provisions of this division.

Section 20.496.025 of the Mendocino County Coastal Zoning Code, incorporated by reference into the Town zoning code states, in part, that:

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

- (1) Port facility expansion or construction.*
- (2) Energy facility expansion or construction.*
- (3) Coastal-dependent industrial facilities, such as commercial fishing facilities, expansion or construction.*
- (4) Maintenance or restoration of dredged depths or previously dredged depths in navigation channels, turning basins, vessel berthing and mooring areas, and associated boat launching ramps.*
- (5) In wetland areas, only entrance channels for new or expanded boating facilities may be constructed, except that, in a degraded wetland, other boating facilities may be permitted under special circumstances.*
- (6) New or expanded boating facilities may be permitted in estuaries.*
- (7) Incidental public service purposes which temporarily impact the resource including but not limited to burying cables and pipes, or inspection of piers, and maintenance of existing intake and outfall lines.*
- (8) Restoration projects which are allowable pursuant to Section 30233(a)(7) of the Coastal Act are publicly or privately financed projects in which restoration is the sole purpose of the project...*
- (9) Mineral extraction, including sand for restoring beaches, except in ESHA's.*

(10) Nature study purposes and salmon restoration projects.

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

(B) Requirements for permitted development in wetlands and estuaries.

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

(a) There is no feasible, less environmentally damaging alternative;

(b) Where there is no feasible, less environmentally damaging alternative, mitigation measures have been provided to minimize adverse environmental effects...

II. Environmentally Sensitive Habitat Areas LCP Policies

Environmentally Sensitive Habitat Areas (ESHA) are defined on page 38 of the Mendocino County LUP as:

Any areas in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

Coastal Zoning Code Section 20.496.010 “Environmentally Sensitive Habitat and other Resource Areas—Purpose” states (emphasis added):

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

LUP Policy 3.1-7 states:

A buffer area shall be established adjacent to all environmentally sensitive habitat areas. The purpose of this buffer area shall be to provide for a sufficient area to protect the environmentally sensitive habitat from significant degradation resulting from future developments. The width of the buffer area shall be a minimum of 100 feet, unless an applicant can demonstrate, after consultation and agreement with the California Department of Fish and Game, and County Planning Staff, that 100 feet is not necessary to protect the resources of that particular habitat area and the adjacent upland transitional habitat function of the buffer from possible significant disruption caused by the proposed development. The buffer area shall be measured from the outside edge of the environmentally sensitive habitat areas and shall not be less than 50 feet in width. New land division shall not be allowed which will create new parcels entirely within a buffer area. Developments permitted within a buffer area shall generally be the same as those uses permitted in the adjacent environmentally sensitive habitat area and must comply at a minimum with each of the following standards:

1. It shall be sited and designed to prevent impacts which would significantly degrade such areas;
2. It shall be compatible with the continuance of such habitat areas by maintaining their functional capacity and their ability to be self-sustaining and to maintain natural species diversity; and
3. Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel. Mitigation measures, such as planting riparian vegetation, shall be required to replace the protective values of the buffer area on the parcel, at a minimum ratio of 1:1, which are lost as a result of development under this solution. [emphasis added]

LUP Policy 3.1-10 states:

Areas where riparian vegetation exists, such as riparian corridors, are environmentally sensitive habitat areas and development within such areas shall be limited to only those uses which are dependent on the riparian resources. All such areas shall be protected against any significant disruption of habitat values by requiring mitigation for those uses which are permitted. No structure or development, including dredging, filling, vegetation removal and grading, which could degrade the riparian area or diminish its value as a natural resource shall be permitted in the Riparian Corridor except for:

- Channelizations, dams, or other substantial alterations of rivers and streams as permitted in Policy 3.1-9;
- pipelines, utility lines and road crossings, when no less environmentally damaging alternative route is feasible; ... [emphasis added]

Coastal Zoning Code Section 20.496.020 “Environmentally Sensitive Habitat and other Resource Areas—Development Criteria” states:

*(A) **Buffer Areas.** A buffer area shall be established adjacent to all environmentally sensitive habitat areas. The purpose of this buffer area shall be to provide for a sufficient area to protect the environmentally sensitive habitat from degradation resulting from future developments and shall be compatible with the continuance of such habitat areas.*

*(1) **Width.** The width of the buffer area shall be a minimum of one hundred (100) feet, unless an applicant can demonstrate, after consultation and agreement with the California Department of Fish and Game, and County Planning staff, that one hundred (100) feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. The buffer area shall be measured from the outside edge of the Environmentally Sensitive Habitat Areas and shall not be less than fifty (50) feet in width. New land division shall not be allowed which will create new parcels entirely within a buffer area. Developments permitted within a buffer area shall generally be the same as those uses permitted in the adjacent Environmentally Sensitive Habitat Area.*

Standards for determining the appropriate width of the buffer area are as follows:

*(a) **Biological Significance of Adjacent Lands.** Lands adjacent to a wetland, stream, or riparian habitat area vary in the degree to which they are functionally related to these habitat areas. Functional relationships may exist if species associated with such areas spend a significant portion of their life cycle on adjacent lands. The degree of significance depends upon the habitat requirements of the species in the habitat area (e.g., nesting, feeding, breeding, or resting).*

Where a significant functional relationship exists, the land supporting this relationship shall also be considered to be part of the ESHA, and the buffer zone shall be measured from the edge of these lands and be sufficiently wide to protect these functional relationships. Where no significant functional relationships exist, the buffer shall be measured from the edge of the wetland, stream, or riparian habitat that is adjacent to the proposed development.

*(b) **Sensitivity of Species to Disturbance.** The width of the buffer zone shall be based, in part, on the distance necessary to ensure that the most sensitive species of plants and animals will not be disturbed significantly by the permitted development. Such a determination shall be based on the following after consultation with the Department of Fish and Game or others with similar expertise:*

(i) Nesting, feeding, breeding, resting, or other habitat requirements of both resident and migratory fish and wildlife species;

(ii) *An assessment of the short-term and long-term adaptability of various species to human disturbance;*

(iii) *An assessment of the impact and activity levels of the proposed development on the resource.*

(c) Susceptibility of Parcel to Erosion. *The width of the buffer zone shall be based, in part, on an assessment of the slope, soils, impervious surface coverage, runoff characteristics, and vegetative cover of the parcel and to what degree the development will change the potential for erosion. A sufficient buffer to allow for the interception of any additional material eroded as a result of the proposed development should be provided.*

(d) Use of Natural Topographic Features to Locate Development. *Hills and bluffs adjacent to ESHA's shall be used, where feasible, to buffer habitat areas. Where otherwise permitted, development should be located on the sides of hills away from ESHA's. Similarly, bluff faces should not be developed, but shall be included in the buffer zone.*

(e) Use of Existing Cultural Features to Locate Buffer Zones. *Cultural features (e.g., roads and dikes) shall be used, where feasible, to buffer habitat areas. Where feasible, development shall be located on the side of roads, dikes, irrigation canals, flood control channels, etc., away from the ESHA.*

(f) Lot Configuration and Location of Existing Development. *Where an existing subdivision or other development is largely built-out and the buildings are a uniform distance from a habitat area, at least that same distance shall be required as a buffer zone for any new development permitted. However, if that distance is less than one hundred (100) feet, additional mitigation measures (e.g., planting of native vegetation) shall be provided to ensure additional protection. Where development is proposed in an area that is largely undeveloped, the widest and most protective buffer zone feasible shall be required.*

(g) Type and Scale of Development Proposed. *The type and scale of the proposed development will, to a large degree, determine the size of the buffer zone necessary to protect the ESHA. Such evaluations shall be made on a case-by-case basis depending upon the resources involved, the degree to which adjacent lands are already developed, and the type of development already existing in the area...*

(2) **Configuration.** *The buffer area shall be measured from the nearest outside edge of the ESHA (e.g., for a wetland from the landward edge of the wetland; for a stream from the landward edge of riparian vegetation or the top of the bluff).*

(3) **Land Division.** *New subdivisions or boundary line adjustments shall not be allowed which will create or provide for new parcels entirely within a buffer area.*

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

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

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

(c) *Development shall be sited and designed to prevent impacts which would degrade adjacent habitat areas. The determination of the best site shall include consideration of drainage, access, soil type, vegetation, hydrological characteristics, elevation, topography, and distance from natural stream channels. The term "best site" shall be defined as the site having the least impact on the maintenance of the biological and physical integrity of the buffer strip or critical habitat protection area and on the maintenance of the hydrologic capacity of these areas to pass a one hundred (100) year flood without increased damage to the coastal zone natural environment or human systems.*

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

(e) *Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel. Mitigation measures, such as planting riparian vegetation, shall be required to replace the protective values of the buffer area on the parcel, at a minimum ratio of 1:1, which are lost as a result of development under this solution.*

(f) *Development shall minimize the following: impervious surfaces, removal of vegetation, amount of bare soil, noise, dust, artificial light, nutrient runoff, air pollution, and human intrusion into the wetland and minimize alteration of natural landforms. [emphasis added]*

...

Section 20.532.100 of the Mendocino County Coastal Zoning Code, incorporated by reference into the Town code, states:

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

(A) Resource Protection Impact Findings.

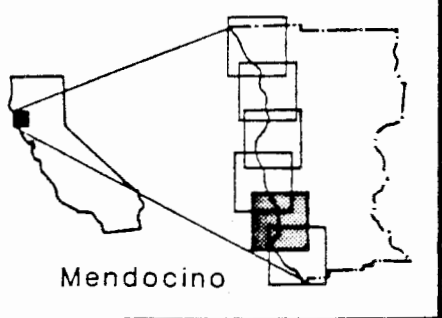
(1) Development in Environmentally Sensitive Habitat Areas. No development shall be allowed in an ESHA unless the following findings are made:

(a) The resource as identified will not be significantly degraded by the proposed development.

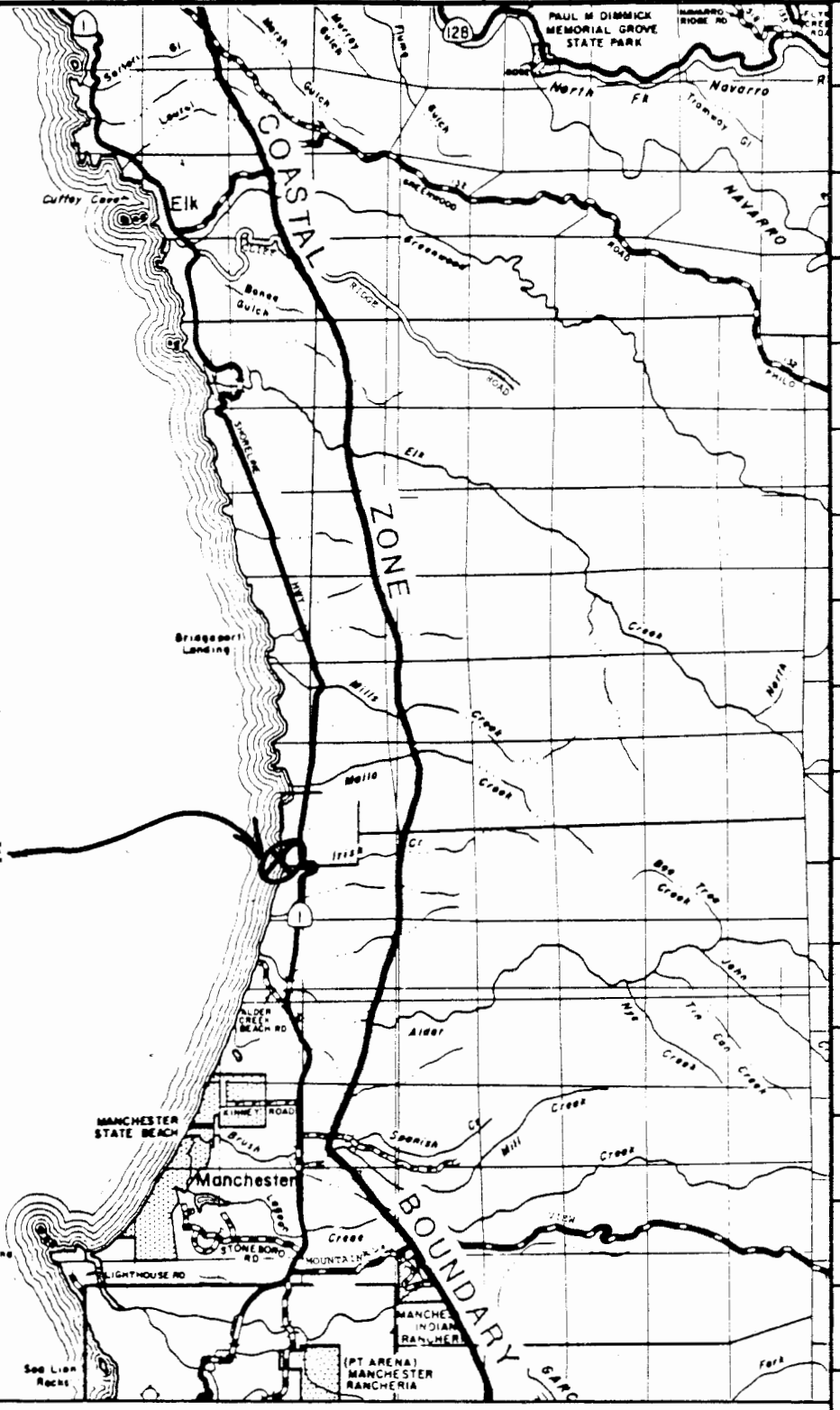
(b) There is no feasible less environmentally damaging alternative.

(c) All feasible mitigation measures capable of reducing or eliminating project related impacts have been adopted (emphases added).

A B C D E F G H I J K L M N O



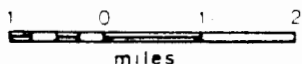
Mendocino



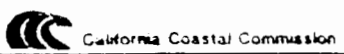
PROJECT SITE

EXHIBIT NO. 1
APPEAL NO.
A-1-MEN-09-009
MOORES
REGIONAL LOCATION

LOCATION MAP



County of Mendocino

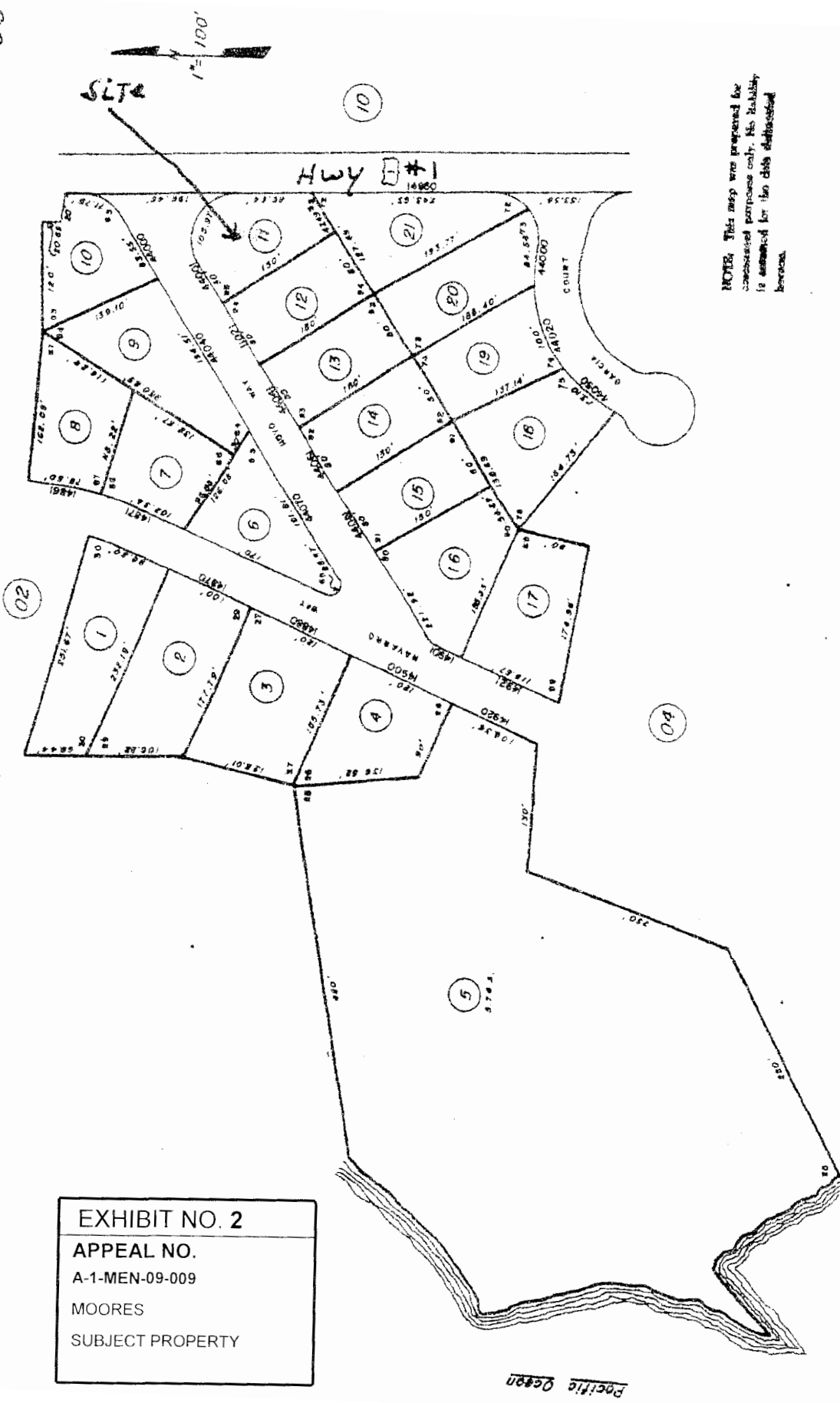


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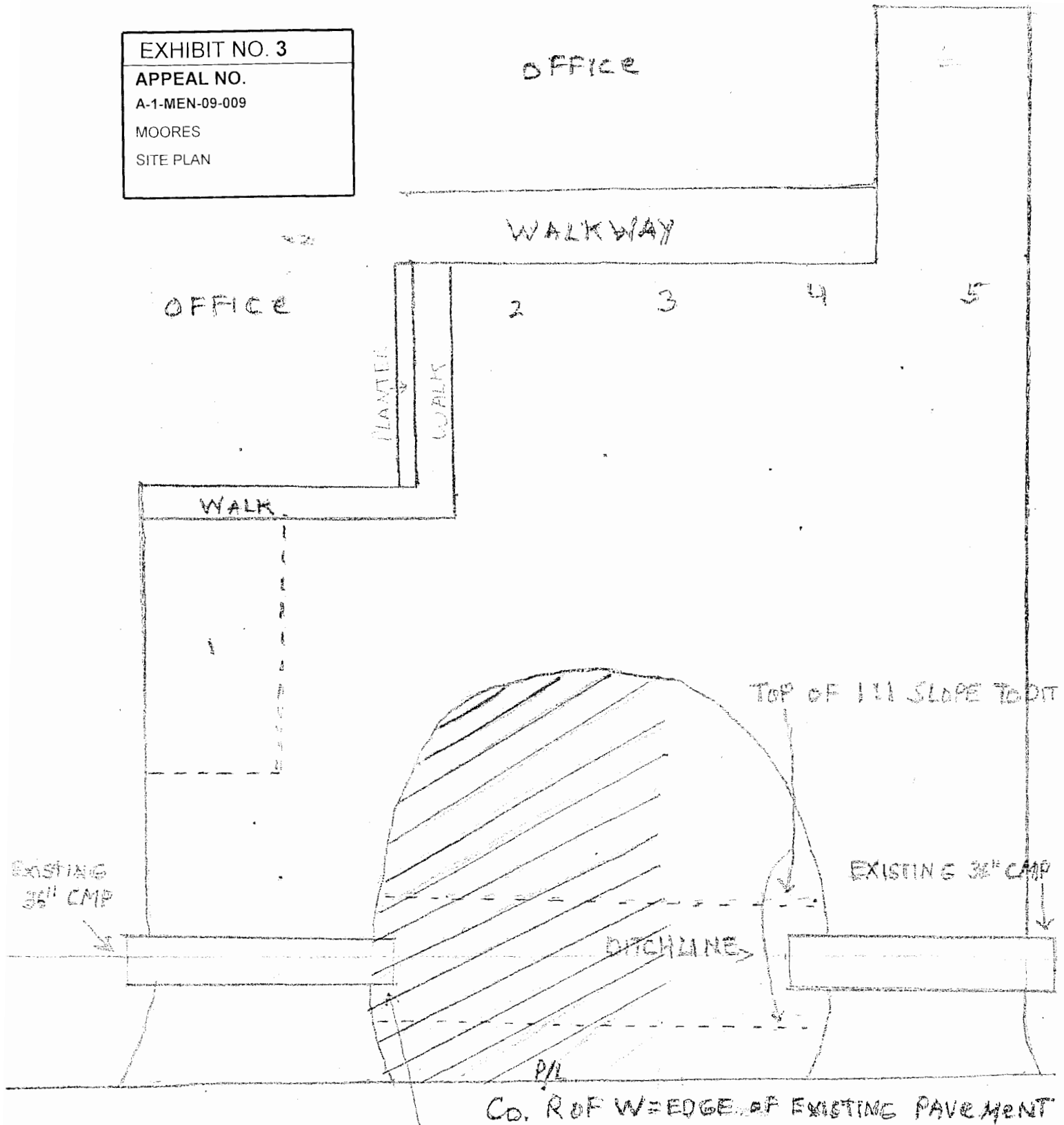
THIS MAP SHOULD BE USED FOR REFERENCE PURPOSES ONLY. NO LIABILITY IS ASSUMED FOR THE ACCURACY OF THE DATA SHOWN. PARCELS MAY NOT COMPLY WITH LOCAL SUBDIVISION OR BUILDING ORDINANCES.



NOTE: This map was prepared for assessment purposes only. No liability is assumed for any data whatsoever hereon.


Assessor's Map
County of Mendocino, Calif.
REVISED 3-13-87

EXHIBIT NO. 3
 APPEAL NO.
 A-1-MEN-09-009
 MOORES
 SITE PLAN



← Hwy #1 90' east of this entrance

CUT OFF SMASHED CULVERT END AND ADD NEW CULVERT

N W →  = LEVEL, ROCK + PAVE

RECEIVED

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE
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FEB 09 2009

CALIFORNIA
COASTAL COMMISSION



APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name: GORDON MOORES
Mailing Address: P.O. Box 337
City: Manchester, Ca Zip Code: 95459 Phone: 707-882-2428

SECTION II. Decision Being Appealed

- Name of local/port government: Mendocino County
- Brief description of development being appealed: Paing over a seasonal streambed to put in 3 parking spaces.
- Development's location (street address, assessor's parcel no., cross street, etc.): 44001 Noyo way, AP. 132-030-119, Noyo way & HWY #1, Erial Beach
- Description of decision being appealed (check one.):

- Approval; no special conditions
- Approval with special conditions:
- Denial

EXHIBIT NO. 4
APPEAL NO. A-1-MEN-09-009
MOORES
APPEAL (1 of 6)

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:	
APPEAL NO:	<u>A-1-MEN-09-009</u>
DATE FILED:	<u>2/9/09</u>
DISTRICT:	<u>North Coast</u>

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- Planning Director/Zoning Administrator
- City Council/Board of Supervisors
- Planning Commission
- Other

6. Date of local government's decision:

1/22/09

7. Local government's file number (if any):

CDD # 62-2807 (MOORES)

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

*William Moore
3830 Sleepy Hollow Rd
Santa Rosa, Ca 95404*

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) *Lisk Beach Architectural Design Committee
P.O. Box 245
Manchester, Ca 95459*

(2)

(3)

(4)

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.


The proposed fill, paving, and creation of 3 new parking places over the existing streambed violates the coastal plan protection of the point arena mountain beaver whose habitat is soft. To the west of the project. Wetland habitat is also soft west of the project. The project is not necessary for office safety (Carrying in the ditch) or for any excess parking. The new parking will fill in a streambed & be seen from Hwy #1, soft to the east. If there was overwhelming need for the project you might argue its merits outweigh the environmental damage. Such is not the case.

The applicant removed vegetation protecting the ditch from drivers accidentally backing into it. Plus creating the "need" to fill the ditch. Several years ago applicant cancelled the agreement between the lower & upper real estate office to share customers on alternating days. There is no need for excess parking. On the holiday weekends when there is overflow traffic they park in the street when the lot is full. The three extra parking places are to suit customers to his lower office vs the upper office. Filling in environmentally sensitive areas should not be permitted for self created needs.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

 Signature on File

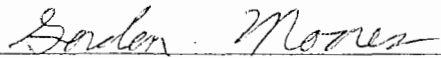
Signature of Appellant(s) or Authorized Agent


Date: 2/6/09

Note: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby
authorize


to act as my/our representative and to bind me/us in all matters concerning this appeal.

 Signature on File

Appellant(s)

Date: 2/6/09

IRISH BEACH ARCHITECTURAL DESIGN COMMITTEE

P.O. Box 245 Manchester, CA 95459

707-882-3183 ibadc@ibiclub.com

www.ibiclub.com

August 14, 2007

Subject: Minor Exterior Improvement application
Unit 1 lot 95 44001 Noyo Way
Lower office door and paving

William Moores
3880 Sleepy Hollow Drive
Santa Rosa, CA 95404

Dear Mr. and Mrs. William Moores,

I have just received a copy of your letter dated July 30, 2007.

It is my opinion that, in previous years, there was committee favoritism, inconsistent rulings and, at times, poor judgment in regards to permit approvals. In the last year, the current committee has made great strides to prevent these problems from reoccurring. Many positive things are happening "behind the scenes" and will be unveiled in the near future on the IBADC website.

Since a previous committee made an error in regards to a past minor exterior project on lot 1/095, it does not require the current committee to take the same position. "Two wrongs don't make a right".

As with any other permit application on any other Irish Beach property, all owners of the property must agree to and sign off on the improvements. Your current application for a minor exterior project does not exhibit the signatures of all property owners of parcel APN: 132-030-11. Please have them sign all of the application documents and then resubmit them.

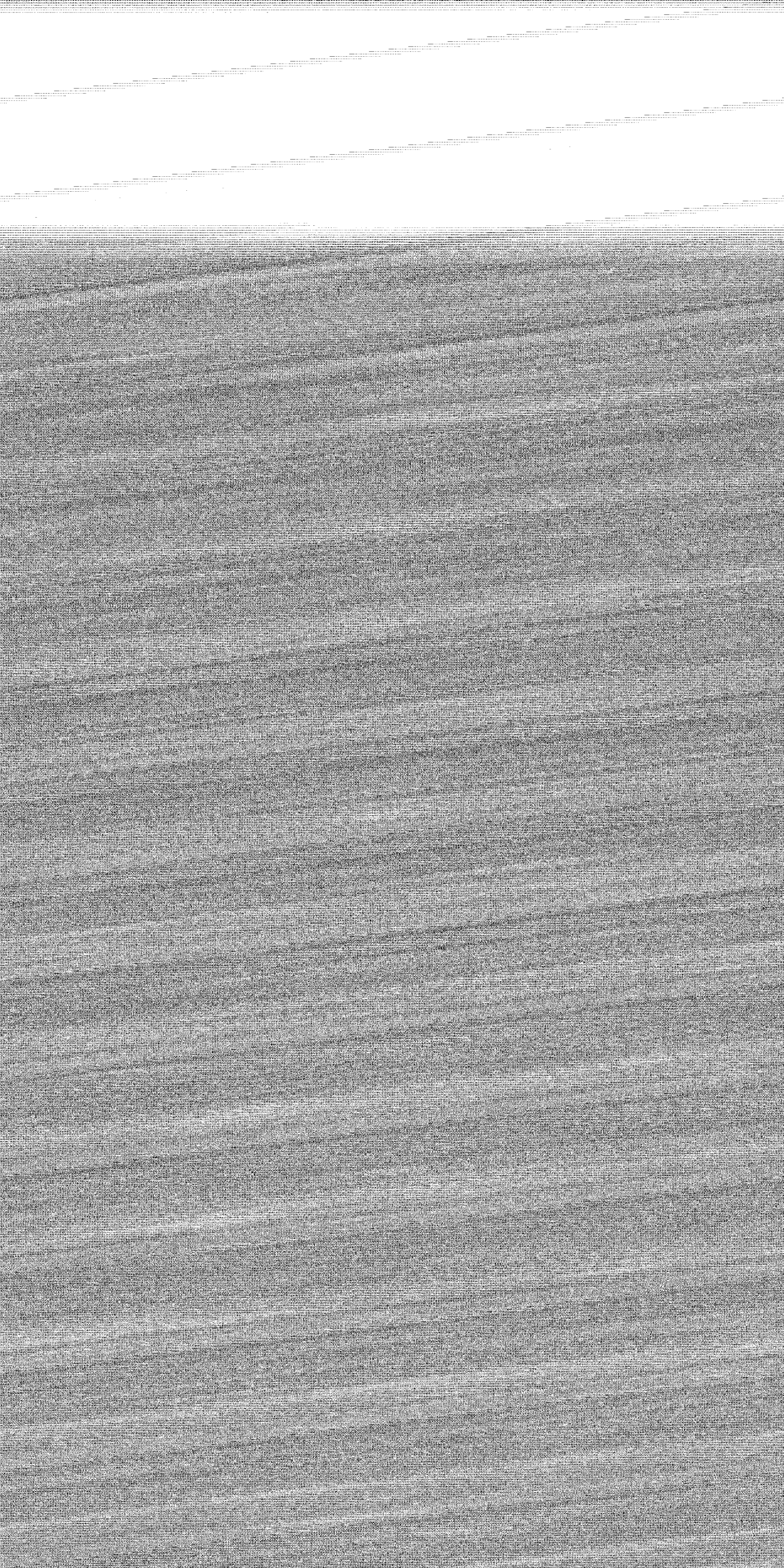
If you have any other concerns, do not hesitate to share them with me.

Sincerely,

Leon Drolet
IBADC Chairman

cc: IBADC Committee Members
Gordon Moores

5 of 6





COUNTY OF MENDOCINO
DEPARTMENT OF PLANNING AND BUILDING SERVICES
790 SOUTH FRANKLIN STREET · FORT BRAGG · CALIFORNIA · 95437

IGNACIO GONZALEZ, DIRECTOR
Telephone 707-964-5379
FAX 707-961-2427
www.co.mendocino.ca.us/planning

081-002222-1

RECEIVED
FEB 05 2009
CALIFORNIA
COASTAL COMMISSION

February 2, 2009

NOTICE OF FINAL ACTION

Action has been completed by the County of Mendocino on the below described project located within the Coastal Zone.

CASE#: CDP #62-2007
OWNER: William Moores
REQUEST: Extend and connect a culvert gap along the road side ditch in front (north) of the real estate office at Irish Beach.
LOCATION: In the Coastal Zone, in the Irish Beach subdivision, on the SW corner of Noyo Way (CR 554) and Highway One, at 44001 Noyo Way (APN: 132-030-11).
PROJECT COORDINATOR: Rick Miller

HEARING DATE: January 22, 2009

APPROVING AUTHORITY: Coastal Permit Administrator

ACTION: Approved with Conditions.

See staff report for the findings and conditions in support of this decision.

The project was not appealed at the local level.

The project is appealable to the Coastal Commission pursuant to Public Resources Code, Section 30603. An aggrieved person may appeal this decision to the Coastal Commission within 10 working days following Coastal Commission receipt of this notice. Appeals must be in writing to the appropriate Coastal Commission district office.

EXHIBIT NO. 5
APPEAL NO. A-1-MEN-09-009
MOORES
NOTICE OF FINAL LOCAL ACTION (1 of 9)

COASTAL PERMIT ADMINISTRATOR ACTION SHEET

CASE#: CDP #62-2007 HEARING DATE: 1/32/09

OWNER: Moore, Wm.

ENVIRONMENTAL CONSIDERATIONS:

- Categorically Exempt
- Negative Declaration
- EIR

FINDINGS:

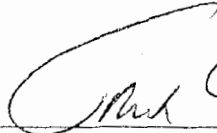
- Per staff report
- Modifications and/or additions

ACTION:

- Approved
- Denied
- Continued _____

CONDITIONS:

- Per staff report
- Modifications and/or additions


Signed: Coastal Permit Administrator

STAFF REPORT FOR
STANDARD COASTAL DEVELOPMENT PERMIT

CDP# 62-2007 (Moore's)
January 22, 2009
CPA-1

OWNER/APPLICANT: William Moores
3880 Sleepy Hollow
Santa Rosa, CA 95404

REQUEST: **RECEIVED**
JAN 15 2009
Extend and connect a culvert gap along the road side
ditch in front (north) of the real estate office at Irish
Beach.

LOCATION: **CALIFORNIA
COASTAL COMMISSION**
In the Coastal Zone, in the Irish Beach subdivision, on
the SW corner of Noyo Way (CR 554) and Highway
One, at 44001 Noyo Way (APN: 132-030-11).

APPEALABLE AREA: Yes, west of the first public road

PERMIT TYPE: Standard

TOTAL ACREAGE: 1,200 ± square feet

ZONING: RR: L-5 PD [SR 12,000 PD]
Suburban Residential

GENERAL PLAN: RR-5 PD [SR-12,000 PD]

EXISTING USES: Real Estate Office

SUPERVISORY DISTRICT: 5th

ENVIRONMENTAL DETERMINATION: Categorically Exempt Classes 1 & 4

CALIFORNIA COASTAL RECORD IMAGE: 200503792

BACKGROUND INFORMATION: When the applicant first contacted County Planning in the summer of 2007 we thought the work could be found exempt from coastal permit requirements. However, after the applicant consulted with the Department of Fish and Game (DFG), they determined that the unculverted drainage area met the definition of a stream and the proposed work required a 1602 Streambed Alteration Agreement (SAA No. R1-07-0277). Based on this finding (the subject feature is a stream) a coastal permit was required per Chapter 20.532 of the MCC. Specifically, the exemptions specified by Section 20.532.020 (A) & (D) of MCC refer back to the California Code of Regulations, Title 14, Subchapter 7, Subsection 13252 (3) & Title 14, Subchapter 7.5, Subsection 13253 (1). These codes handle both repair and maintenance or "improvements" to structures other than single family residences and in both cases they do not permit an exemption in a stream. Furthermore, our code is clear that any "dispute" about the presence of a natural feature such as a stream shall be worked out in consultation with DFG.

PROJECT DESCRIPTION: Extend and connect a culvert gap along the road side ditch in front of the real estate office at Irish Beach. The ditch area that would be provided with a culvert and filled to grade is approximately 24 feet long. The proposed improvement area is currently an open manmade ditch with drainage culverts on either end of the gap. The project would connect the culverts with a new section of

3 of 9

STAFF REPORT FOR
STANDARD COASTAL DEVELOPMENT PERMIT

CDP# 62-2007 (Moores)
January 22, 2009
CPA-2

pipe, backfill and pave the area to match existing grade. The drainage area is parallel and adjacent to Noyo Way, approximately 150 feet west of its intersection with Highway One.

LOCAL COASTAL PROGRAM CONSISTENCY RECOMMENDATION: The proposed project is consistent with the applicable goals and policies of the Local Coastal Program as described below.

Land Use: The proposed drainage/grading improvement would not change the use of the property. The subject site is used as a real estate office. The project would provide more parking area and would correct a circulation problem which has occurred in the past where drivers sometimes accidentally drive into the ditch and get stuck.

The use of the property as a real estate office is not the subject of the permit request. There is a murky history about the status of the existing real estate office use on this Suburban Residentially zoned parcel. Real estate offices are not principally or conditionally allowed in this zoning district. Therefore, this permit makes no attempt to reach a determination about the status of the real estate office's non-conforming status.

Public Access: The project site is located west of Highway One. It is not designated as a potential public access trail location on the LUP maps and no evidence of prescriptive access exists on the site. The proposed work would have no impact on public access.

Hazards: The property is located in an area assigned a moderate fire hazard rating. The development is exempt from the requirements of Calfire. No hazards have been identified in association with the proposed culvert work.

Visual Resources: The parcel is not located in a designated "Highly Scenic Area" but is adjacent to and west of Highway One. The proposed culvert extension would not result in any visual impact.

Natural Resources: The parcel is currently a developed parcel with areal estate office and associated parking lot. The project site is surrounded on all sides by paved areas and is completely disjointed from any natural area. Alison Gardner, botanist, provided an analysis of the ditch feature. She stated the area to be filled was short and deep and continually maintained by the owner. The area is mostly lined with European grasses on the banks and some occasional seedlings and small riparian plants which are routinely trimmed. On either side of the project area is a riparian plant community growing in association with the drainage course. She states, "*Because of the high maintenance on this section of ditch, and the nonexistence of any rare plants upstream, there is no significant riparian habitat that would be impacted by this project.*" Ms. Gardner also provided an ESHA buffer analysis and a development within the buffer analysis per Chapter 20.496 of MCC.

John Hunter, USFWS, has reviewed the proposed project. He described the project site as a small circular grassy patch containing the ditch which is completely surrounded by pavement. Mr. Hunter has determined that the project area is not suitable habitat for the Point Arena mountain beaver. He said that USFWS is not aware of any beaver or suitable beaver habitat upstream from the project site (east of Highway One), so the culvert placement and paving would not create a barrier to dispersal or movement among occupied sites in the vicinity. Mr. Hunter summarized that the proposed work would not likely result in the incidental take of Point Arena mountain beaver.

Several biologists with the Department of Fish and Game have visited the site in conjunction with the County CDP and their SAA permit. DFG has approved the project (and will issue the SAA once the CDP

STAFF REPORT FOR
STANDARD COASTAL DEVELOPMENT PERMIT

CDP# 62-2007 (Moores)
January 22, 2009
CPA-3

is issued) and is requiring standard best management practice type conditions to the work through their SAA permit.

Staff does not anticipate the project would result in any loss of natural habitat. The proposed project would be consistent with the LCP's ESHA protection policies.

Archaeological/Cultural Resources: The project site is currently developed. Standard Condition Number 8 advises the applicant of the County's "discovery clause" which establishes procedures to follow in the unlikely event that archaeological or cultural materials are unearthed during construction activities.

Groundwater Resources: The site is located within an area mapped as Moderate Groundwater Resources. The project will be conditioned by the SAA administered by DFG (No. R1-07-0277) and staff does not anticipate any negative impacts on groundwater resources as a result of the project.

Transportation/Circulation: The project would not change traffic volumes on local and regional roadways. The proposed culvert work would occur adjacent to Noyo Way, a County maintained road. County DOT has stated that the proposed work would not occur in the county right-of-way. It is possible that the fog line (white line) stripping might be in the right-of-way. Due to the proximity of the project with the county road, staff is recommending Special Condition #1 be added to the permit requiring the applicant to obtain written approval from County DOT prior to proceeding with the project.

Zoning Requirements: The project complies with the zoning requirements for the Suburban Residential District set forth in Chapter 20.384 of the Coastal Zoning Code, and with all other zoning requirements of Division II of Title 20 of the Mendocino County Code.

PROJECT FINDINGS AND CONDITIONS: Pursuant to the provisions of Chapter 20.532 and Chapter 20.536 of the Mendocino County Code, staff recommends that the Coastal Permit Administrator approve the proposed project, and adopt the following findings and conditions.

FINDINGS:

1. The proposed development is in conformity with the certified Local Coastal Program; and
2. The proposed development will be provided with adequate utilities, access roads, drainage and other necessary facilities; and
3. The proposed development is consistent with the purpose and intent of the applicable zoning district, as well as all other provisions of Division II, and preserves the integrity of the zoning district; and
4. The proposed development, if constructed in compliance with the conditions of approval, will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act; and
5. The proposed development will not have any adverse impacts on any known archaeological or paleontological resource; and

STAFF REPORT FOR
STANDARD COASTAL DEVELOPMENT PERMIT

CDP# 62-2007 (Moores)
January 22, 2009
CPA-4

6. Other public services, including but not limited to, solid waste and public roadway capacity have been considered and are adequate to serve the proposed development; and
7. The proposed development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act and Coastal Element of the General Plan.

STANDARD CONDITIONS:

1. This action shall become final on the 11th day following the decision unless an appeal is filed pursuant to Section 20.544.015 of the Mendocino County Code. The permit shall become effective after the ten working day appeal period to the Coastal Commission has expired and no appeal has been filed with the Coastal Commission. The permit shall expire and become null and void at the expiration of two years after the effective date except where construction and use of the property in reliance on such permit has been initiated prior to its expiration.

To remain valid, progress towards completion of the project must be continuous. The applicant has sole responsibility for renewing this application before the expiration date. The County will not provide a notice prior to the expiration date.

2. The use and occupancy of the premises shall be established and maintained in conformance with the provisions of Division II of Title 20 of the Mendocino County Code.
3. The application, along with supplemental exhibits and related material, shall be considered elements of this permit, and that compliance therewith is mandatory, unless an amendment has been approved by the Coastal Permit Administrator.
4. This permit is subject to the securing of all necessary permits for the proposed development from County, State and Federal agencies having jurisdiction.
5. The applicant shall secure all required building permits for the proposed project as required by the Building Inspection Division of the Department of Planning and Building Services.
6. This permit shall be subject to revocation or modification upon a finding of any one or more of the following:
 - a. The permit was obtained or extended by fraud.
 - b. One or more of the conditions upon which the permit was granted have been violated.
 - c. The use for which the permit was granted is conducted so as to be detrimental to the public health, welfare or safety, or to be a nuisance.

STAFF REPORT FOR
STANDARD COASTAL DEVELOPMENT PERMIT

CDP# 62-2007 (Moore's)
January 22, 2009
CPA-5

- d. A final judgment of a court of competent jurisdiction has declared one or more conditions to be void or ineffective, or has enjoined or otherwise prohibited the enforcement or operation of one or more such conditions.
7. This permit is issued without a legal determination having been made upon the number, size or shape of parcels encompassed within the permit described boundaries. Should, at any time, a legal determination be made that the number, size or shape of parcels within the permit described boundaries are different than that which is legally required by this permit, this permit shall become null and void.
8. If any archaeological sites or artifacts are discovered during site excavation or construction activities, the applicant shall cease and desist from all further excavation and disturbances within one hundred feet of the discovery, and make notification of the discovery to the Director of the Department of Planning and Building Services. The Director will coordinate further actions for the protection of the archaeological resources in accordance with Section 22.12.090 of the Mendocino County Code.

SPECIAL CONDITION:

1. Prior to the commencement construction activities, the applicant shall obtain written approval from the County DOT for the project whether an encroachment permit is required or not. Written approval from DOT shall be provided to the County Planning Division by the applicant.

Staff Report Prepared By:

1.12.09

Date



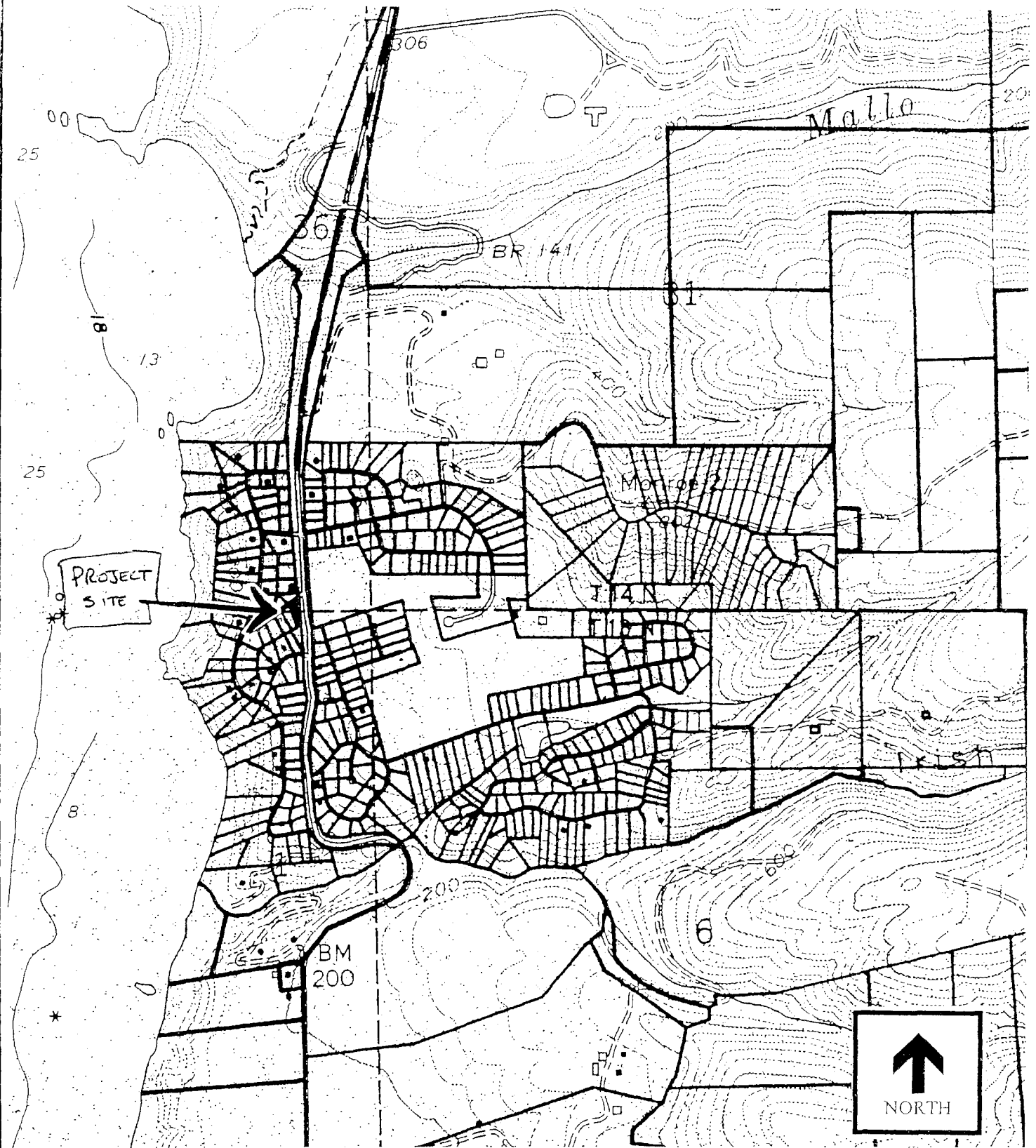
Rick Miller
Senior Planner

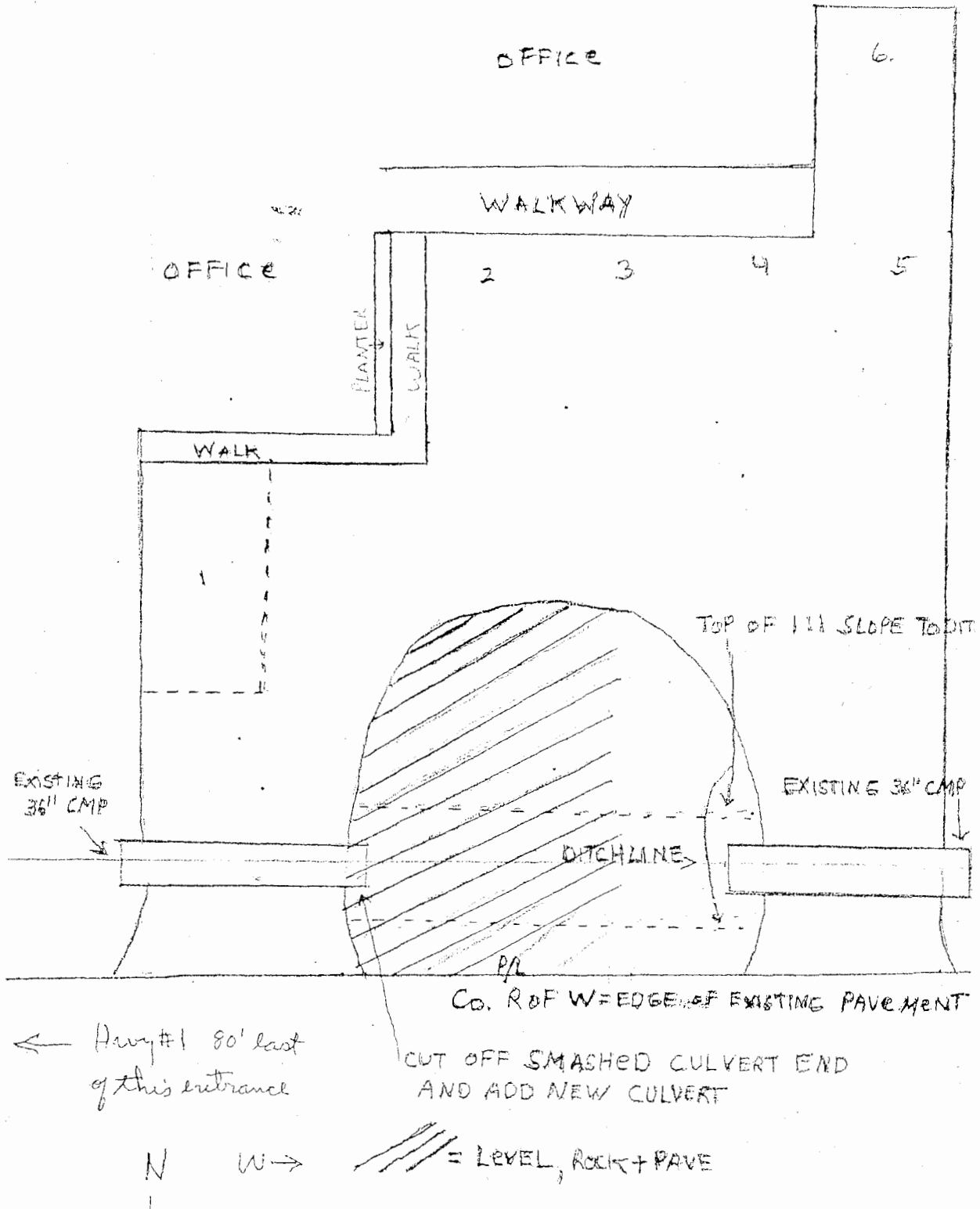
Attachments: Exhibit A: Location Map
Exhibit B: Site Plan

Appeal Period: Ten calendar days for the Mendocino County Board of Supervisors, followed by ten working days for the California Coastal Commission following the Commission's receipt of the Notice of Final Action from the County.

Appeal Fee: \$945.00 (For an appeal to the Mendocino County Board of Supervisors.)

7 of 9







DEPARTMENT OF FISH AND GAME

http://www.dfg.ca.gov
Northern Region
619 Second Street
Eureka, California 95501
(707) 441-2075

RECEIVED



MAY 21 2008

PLANNING & BUILDING DEPT
FORT BRASS, CA

August 9, 2007

Mr. William Moores
3880 Sleepy Hollow Drive
Santa Rosa, CA 95404

Dear Mr. Moores:

Lake or Streambed Alteration Notification No. R1-07-0277
Irish Beach Realty Office Culvert Extension

Enclosed are the conditions of the Department of Fish and Game regarding your project on an unnamed tributary to the Black Butte River proposed in Notification No. R1-07-0277. The conditions are in agreement form, naming you as the project Entity (Responsible Party). Two original copies are enclosed. Please carefully read the conditions. If the conditions are acceptable to you, please sign two copies of the agreement and return them to the Northern Region of the Department at the following address:

Streambed Alterations
California Department of Fish and Game
619 Second Street
Eureka, California 95501

If the conditions are not acceptable to you, please contact my office within 30 calendar days by telephoning Environmental Scientist Tracie Nelson at (707) 836-8675 to further refine these measures, or by immediately writing to me at 619 Second Street, Eureka, California 95501.

Once received by the Department, the draft agreement will be reviewed for California Environmental Quality Act compliance. When compliance has been determined, the agreement will be signed by Habitat Conservation Program Manager Mark Stopher or his representative. A signed original copy of the agreement will be returned to you by mail.

Thank you once again for assisting the Department in its effort to conserve California's fish and wildlife resources.

Sincerely,

William Condon
Senior Environmental Scientist
Coastal Conservation Planning

Cc: Gordon Moores
P.O. Box 337
Manchester, CA 95459

EXHIBIT NO. 6
APPEAL NO.
A-1-MEN-09-009
MOORES
FISH & GAME STREAMBED ALTERATION AGREEMENT (1 of 7)



DEPARTMENT OF FISH AND GAME

http://www.dfg.ca.gov
Northern Region
601 Locust Street
Redding, California 96001
(530) 225-2367

RECEIVED



MAY 21 2007

PLACER COUNTY, CALIFORNIA
FOR RECORD

NOTIFICATION NO. R1-07-0277
(1 encroachment)

AGREEMENT REGARDING PROPOSED LAKE OR STREAMBED ALTERATION
Irish Beach Culvert Extension

THIS AGREEMENT, entered into between the State of California, Department of Fish and Game, hereinafter called DFG, and William Moores, hereinafter called the Entity (Responsible Party), is as follows:

WHEREAS, pursuant to Division 2, Chapter 6 of California Fish and Game Code (Code), the Responsible Party, on May 22, 2007, notified the DFG of the intention to divert or obstruct the natural flow of, or change the bed, channel, or bank of, or use material from the streambed of, the following waters: an Unnamed Tributary to the Pacific Ocean, in the County of Mendocino. These waters are located in Section 31, Township 14 North, Range 16 West; MDB&M, in the Mallo Pass U.S. Geological Survey 7.5-minute quadrangle.

WHEREAS, DFG has determined that without implementation of the conditions contained within this agreement, such operations may substantially adversely affect existing fish and wildlife resources including, but not limited to: northwestern pond turtle, foothill yellow-legged frog, and other aquatic and riparian species.

THEREFORE, DFG hereby proposes measures to protect fish and wildlife resources during the Responsible Party's work. The Responsible Party hereby agrees to accept and conduct all activities in accordance with the following:

ADMINISTRATIVE PROVISIONS:

- 1) If the Responsible Party's work changes from that stated in the notification specified above, this agreement is no longer valid and a new notification shall be submitted to DFG. Failure to comply with the provisions of this agreement and with other pertinent Code sections, including but not limited to Code sections 5650, 5652, 5901, 5937, and 5948, may result in prosecution.
2) Additional projects may be added to this agreement by amendment with approval by DFG.
3) DFG reserves the right to authorize minor language revisions to this agreement provided both DFG and the Responsible Party concur with minor language changes and both initial and date changes on the respective documents belonging to both the Responsible Party and DFG.
4) Nothing in this agreement authorizes the Responsible Party to trespass on any land or property, nor does it relieve the Responsible Party of responsibility for compliance with applicable federal, state, or local laws or ordinances. A consummated agreement does not constitute DFG endorsement of the proposed operation, or assure DFG's concurrence with permits required from other agencies.

2 of 7

- 5) The provisions contained in this agreement constitute the limit of activities agreed to and resolved by this agreement. The signing of this agreement does not imply that the Responsible Party is precluded from doing other activities at the site. However, activities not specifically agreed to and resolved by this agreement shall be subject to separate notification pursuant to Code sections 1600 *et seq.*
- 6) In accordance with Code section 1605, the Responsible Party may request one extension of this agreement, provided that the request is made in writing prior to the expiration of its original term. DFG shall grant the extension if the appropriate extension fee is paid unless it determines that the agreement requires modification because the measures contained in the agreement no longer protect the fish and wildlife resources that the activity may substantially adversely affect. If the Responsible Party fails to request the extension prior to the agreement's termination then the Responsible Party shall submit a new notification with fees and required information to DFG. Any activity conducted under an expired agreement is a violation of Code section 1600 *et seq.*
- 7) The Responsible Party shall provide a copy of this agreement to all contractors, subcontractors, and the Responsible Party's project supervisors. Copies of the agreement and any amendment thereto shall be readily available at work sites at all times during periods of active work and must be presented to any DFG personnel, or personnel from another agency upon demand.
- 8) The Responsible Party agrees to allow DFG employees access to any property it owns and/or manages for the purpose of inspecting and/or monitoring the activities covered by this agreement, provided DFG: a) provides 24 hours advance notice; and b) allows the Responsible Party or representatives to participate in the inspection and/or monitoring. This condition does not apply to DFG enforcement personnel.
- 9) All provisions of this agreement remain in force throughout the term of the agreement. Any provisions of the agreement may be amended or the agreement may be terminated at any time provided such amendment and/or termination are agreed to in writing by both parties. Mutually-approved amendments become part of the original agreement and are subject to all previously negotiated provisions.
- 10) It is understood DFG will enter into this lake or streambed alteration agreement for purposes of establishing protective features for fish and wildlife. The decision to proceed with the project is the sole responsibility of the Responsible Party, and is not required by this agreement. It is further agreed all liability and/or incurred cost related to or arising out of the Responsible Party's project and the fish and wildlife protective measures of this agreement, remain the sole responsibility of the Responsible Party. The Responsible Party agrees to hold harmless the State of California and DFG against any related claim made by any party or parties for personal injury or any other damages.
- 11) This agreement is not intended as an approval of a project or of specific project features by DFG. Independent review and recommendations will be provided by DFG as appropriate on those projects where local, state, or federal permits or other environmental reports are required.
- 12) All persons and organizations named herein as the Responsible Party shall be jointly and severally liable for the performance and execution of all provisions of this agreement.

3 of 7

13) Suspension and Cancellation. DFG may suspend or cancel this agreement if DFG determines that circumstances warrant suspension or cancellation. The circumstances that might warrant suspension or cancellation include, but are not limited to, the following:

- a) Failure by the Responsible Party, or his/her employees, agents, representatives, contractors, and/or subcontractors, to comply with any of the terms and measures of this agreement.
- b) DFG determines that the information the Responsible Party provided to DFG to develop this agreement, or the information contained in a notification, is incomplete or inaccurate.
- c) DFG obtains new information that shows the work authorized by this agreement could substantially adversely affect fish and wildlife resources, notwithstanding Responsible Party's compliance with the agreement.
- d) DFG determines that measures to protect fish and wildlife resources different from those included in this agreement are necessary to protect those resources.
- e) There is a substantial change in conditions. For purposes of this agreement, "substantial change in conditions" shall mean one or more of the following: 1) the work described in this agreement is substantially changed; 2) conditions affecting fish and wildlife resources substantially change; and/or 3) the work conducted under this agreement have adversely affected, or will adversely affect, fish and wildlife resources, notwithstanding that Responsible Party has complied, or will comply with, the terms and measures of this agreement.

Scope of Suspension. At the discretion of DFG, any action to suspend this agreement may be limited in scope to address the specific problem or problems resulting in the suspension. Hence, DFG may limit the suspension to specified work or specified areas. DFG shall notify Responsible Party of any suspension of the agreement, or any part thereof, in writing. Any suspension shall take effect immediately upon receipt of such notice by Responsible Party, or in accordance with the instructions contained in the notice. Such notice will identify the reason or reasons for the suspension, the actions necessary to correct the problem, and the scope of the suspension.

Reinstatement Following Suspension. DFG may lift any suspension when it has determined that Responsible Party has adequately addressed the problem or problems resulting in the suspension and that reinstatement of the agreement will not cause harm to fish and wildlife resources.

OPERATIONAL PROVISIONS

NOTIFICATION MATERIALS AND PROJECT DESCRIPTION:

14) Except where otherwise stipulated in this agreement, all work shall be in accordance with the work plans submitted with Notification No. R1-07-0277, as modified or amended as of June 6, 2007.

15) This agreement pertains to one encroachment (permanent culvert replacement and extension) at 44001 Noyo Way, Manchester, CA 95404, on Assessor's Parcel Number 132-030-11, directly at the north end of the reality office parking lot.

PROJECT TIMING AND COORDINATION:

16) This agreement becomes effective on the date of DFG's signature and terminates 5 years from the effective date.

4 of 7

17) All work shall be confined to the period June 1 through October 15 of each year.

GENERAL CONDITIONS FOR ALL ENCROACHMENTS

18) Equipment shall not operate in a live (flowing) stream or wetted channel.

19) No fill material shall be placed within a stream except as specified in this agreement. Pit-run rock may be used as bedding material for permanent culverts. No native fill shall be placed in a live stream. Any fill material used shall be placed and/or removed in such a manner that it shall cause no sediment discharge or siltation in the stream.

20) Adequate and effective erosion and siltation control measures shall be used to prevent sediment or turbid or silt-laden water from entering streams. Where needed, the Responsible Party shall use native vegetation or other treatments including jute netting, straw wattles, and geotextiles to protect and stabilize soils.

21) All bare mineral soil exposed in conjunction with crossing construction, deconstruction, maintenance or repair, shall be treated for erosion prior to the onset of precipitation capable of generating run-off or the end of the yearly work period, whichever comes first. Restoration shall include the seeding and mulching of all bare mineral soil exposed in conjunction with encroachment work. Erosion control shall consist of at least 2 to 4 inches straw mulch and 100 lbs/acre equivalent barley seed. No annual (Italian) ryegrass (*Lolium multiflorum*) shall be used.

22) Encroachments and associated structures, fills, and other exposed soils shall be armored as needed to protect fill, abutments, and the stream channel and banks from erosion. Armoring shall be comprised of rock riprap, large woody debris (LWD), or other non-polluting materials and shall be constructed to remain in place during periods of high flow events. When used on permanent culverts, armoring shall extend at least as high as the top of the culvert, and shall prevent bank erosion by extending a sufficient distance upstream and downstream along the banks.

23) Encroachments shall be constructed, deconstructed, and maintained in a manner that minimizes to the extent feasible headcutting or downcutting of the stream channel by installing grade control such as riprap, woody debris, or through other effective measures.

24) Work at encroachments shall be left in a finished condition with all hydrologic connectivity from the road or ditch to the crossing eliminated as feasible and effective erosion control in place prior to any rainfall event capable of generating runoff. Effective erosion control shall extend away from the crossing to at least the first waterbreak.

25) Disturbance or removal of vegetation shall not exceed the minimum necessary to complete operations.

26) The Responsible Party shall provide site maintenance including, but not limited to, re-applying erosion control to minimize surface erosion and ensuring drainage structures, streambeds and banks remain sufficiently armored and/or stable.

27) Structures and associated materials not designed to withstand high seasonal flows shall be removed to areas above the ordinary high water mark before such flows occur or the end of the yearly work period, whichever comes first.

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28) Refueling of equipment and vehicles and storing, adding or draining lubricants, coolants or hydraulic fluids shall not take place within or near stream beds, banks or channels. All such fluids and containers shall be disposed of properly. Heavy equipment parked within or near streambeds, banks or channels shall use drip pans or other devices (i.e., absorbent blankets, sheet barriers or other materials) as needed to prevent soil and water contamination.

29) No debris, soil, silt, sand, bark, slash, sawdust, rubbish, cement or concrete washings, oil or petroleum products, or other organic or earthen material from any logging, construction, or associated activity of whatever nature shall be allowed to enter into or be placed where it may be washed by rainfall or runoff into Waters of the State. When operations are completed, any excess materials or debris shall be removed from the work area.

SITE-SPECIFIC CONDITIONS

30) Permanent culverts shall extend lengthwise completely beyond the toe of fill. Permanent culverts shall be sized to pass the 100 year storm flow. Culverts and their outfall structures shall be aligned with the stream channel, as wide as or wider than the channel width, and shall be placed with the bottom set at or slightly below the natural streambed elevation to the maximum extent feasible. If permanent culverts cannot be set to grade, they shall have downspouts and/or energy dissipators below the outfall as needed to effectively control erosion. If half-round downspouts (flumes) are used, they shall be placed in line with the culvert, sized larger than the culvert and of sufficient size to accommodate entire anticipated stream flow. Downspouts shall be securely attached to the culvert and staked or otherwise anchored to the fill slope. Downspouts shall be placed so they are in contact with soil or the fill slope, and shall not be cut or otherwise modified to create a hinge.

CONCURRENCE

RESPONSIBLE PARTY

CALIFORNIA DEPARTMENT OF FISH AND GAME

(Signature)

MARK STOPHER
Habitat Conservation Program Manager
Northern Region

(Print Name)

(Date)

(Title/Organization)

(Date)

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