

## CALIFORNIA COASTAL COMMISSION

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# W21a

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Staff:	Robert S. Merrill
Staff Report:	April 24, 2009
Hearing Date:	May 6, 2009
Commission Action:	

## STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.:	1-05-060
APPLICANT:	<b>DENNIS &amp; SUSIE DELBIAGGIO</b>
PROJECT LOCATION:	At the southwest corner of the intersection of Fulmor Road with Port Kenyon Road, at 118 Port Kenyon Road, north of Ferndale, Humboldt County (APNs 100-172-06 and 100-172-23)
PROJECT DESCRIPTION:	Convert a rural residence to a construction contractors yard by: (1) converting the existing house to office space by remodeling the interior to add a bathroom, remove the kitchen, install work areas; (2) constructing a 740-square-foot office space addition to the converted house; (3) constructing a 3,700-square-foot office/shop building with an 80-foot by 40-foot work area and a 20-foot by 25-foot office bathroom; (4) constructing a 2,700-square-foot pole barn storage building; (5) grading 1,000 cubic yards of earthen material from 23,290 square feet of area along the west side of an existing drainage swale to increase floodway capacity; (6) installing a 6-foot-

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high wood fence around site; (7) planting 18 trees along the outside of the fence; (8) installing asphalt parking and driveway area; and (9) upgrading the existing septic system.

LOCAL PLAN DESIGNATIONS: APNs 100-172-06: Commercial General (CG);  
APNs 100-172-23: Exclusive Agriculture (CHECK)

LOCAL ZONING DESIGNATIONS: APNs 100-172-06: Commercial General with  
Flood Hazard Area Combining Zone (CG/F)

APNs 100-172-23: Agriculture Exclusive  
(AE)

LOCAL APPROVALS RECEIVED: Humboldt County Conditional Use Permit  
(CUP 02-32)

OTHER APPROVALS REQUIRED: None required

SUBSTANTIVE FILE DOCUMENTS: (1) Humboldt County Local Coastal Program

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SUMMARY OF STAFF RECOMMENDATION:

Staff recommends that the Commission approve with conditions the coastal development permit application.

The applicants propose to convert a rural residence to a construction contractor's office and yard at 118 Port Kenyon Road, approximately one mile north of Ferndale near the Salt River in Humboldt County. The proposed development includes (1) converting the existing house to office space by remodeling the interior to add a bathroom, remove the kitchen, install work areas; (2) constructing a 740-square-foot office space addition to the converted house; (3) constructing a 3,700- square-foot office/shop building with an 80-foot by 40-foot work area and a 20-foot by 25-foot office bathroom; (4) constructing a 2,700 - square-foot pole barn storage building; (5) grading 1,000 cubic yards of earthen material from 23,290 square feet of area along the west side of an existing drainage swale to increase floodway capacity; (6) installing a 6-foot-high wood fence around site; (7) planting 18 trees along the outside of the fence; (8) installing asphalt parking and driveway area; and (9) upgrading the existing septic system. Elements of the conversion project have already been completed, and the applicant is seeking after-the-fact authorization for those portions of the project.

The principal issue raised by the development is whether the development would minimize risks to life and property in areas of high flood hazard, as required by Section 30253 of the

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Coastal Act. The subject property is located in the lower Eel River Valley and is within the flood plain of both the Salt and Eel Rivers. The Salt River is a tributary of the Eel and is located just north of the subject property across Port Kenyon Road and an adjoining row of parcels. Both rivers flood periodically. Because of the flooding hazards, the area where the subject property is located has been identified both as “an area of special flood hazard” and as being within a “floodway” by the Federal Insurance Administration (FIA) of the Federal Emergency Management Agency (FEMA).

The fact that the subject property is located both within an area of special flood hazard and within a floodway means there are two principal kinds of flood risk are associated with development at the site. First, there is the risk that the development itself will be inundated with flood waters during times of flood which not only directly threatens the health and safety of people and causes damage to property on the site itself, but also threatens those downstream by sweeping up materials that could contain hazardous substances or become projectiles that could increase the danger to downstream properties. Second, there is the risk that the development within the floodway will increase the risk of flooding of other property on nearby lands by displacing the capacity of the existing floodway to convey flood waters and thereby causing flood waters to spread to a wider area.

To minimize hazards associated with the hazards associated with inundation of the property, staff is recommending Special Condition No. 3 which would require that the new office/shop building and the addition to the existing structure that has been converted from a house to an office be constructed in a manner that elevates the lowest floor of the structures at least one foot above the base flood elevation. The condition would also require that lumber to stored in the open side pole barn storage structure that will have no floor must be stored on elevated platforms or racks where the lumber could be stored one foot or more above base flood level. The condition also would require that the structures and platforms be anchored and designed to withstand the forces of flood currents and requires that final plans for all of the structures be submitted with certifications from an engineer or architect that the structures as shown in the final plans will conform with the floor and platform height requirements and the anchoring and design standards.

Constructing the structures as conditioned would elevate the occupants and contents of the building to an elevation that would remain safe and dry during anticipated flood events in a manner that conforms with federal and local flood damage prevention requirements. In addition, staff recommends Special Condition No. 2 which would require certain operational measures be applied to monitor and respond to forecasted flood events to further minimize flood hazard risks. Staff recommends that the Commission finds that development of the office/shop building as conditioned would minimize risks to life and property from flood inundation hazards.

To minimize hazards associated with displacement of floodway capacity by the new development, the applicants propose to grade and excavate 1,000 cubic yards of material along the south side of the drainage swale is proposed to expand the floodway to compensate for the reduction in floodway capacity. The grading plan produced by the

applicants' engineers indicates that excavating a 23,476-square-foot area along the south side of the drainage swale that cuts through the property to an average depth of 1.1 feet will remove 25,824 cubic feet or 956 cubic yards of material to expand the floodway capacity by that amount. The applicants' engineers have indicated to Coastal Commission staff that the total displacement of floodway volume by the proposed development will be less than that amount. Thus, as designed, the development will not reduce the floodway capacity. To ensure that the floodway capacity is expanded as proposed in a timely manner, staff recommends Special Condition No. 3(D). The special condition would require the applicants to submit a final grading plan that provides for completion of the proposed grading of material from the south side of the drainage swale to expand the floodway capacity prior to construction of any of the new buildings or building addition authorized by this permit. In addition, the special condition would require that the plans be accompanied by certification by a qualified engineer or architect that the proposed grading will sufficiently offset the encroachment of all of the new structures authorized by the permit into the floodway and will not result in any increase in flood levels during the occurrence of the base flood discharge.

To ensure that the development is visually compatible with the visual character of the area, staff is recommending special conditions that would require that trees that have been planted around the perimeter of the yard compound and the perimeter wooden fence be maintained and replaced as needed over the life of the project.

The proposed development does not encroach into the large wetland swale that bisects the property and there is no other known environmentally sensitive habitat present on the site. To ensure that (a) the development will not significantly degrade the wetland ESHA and will be compatible with the continuance of the wetland habitat area in a manner consistent with Section 30240 of the Coastal Act, and (b) the development will maintain and enhance the biological productivity and functional capacity of the habitat consistent with Section 30231, staff is recommending special conditions that would require submittal of an erosion and runoff control plan and a hazardous materials management plan. These plans would be required to include provisions to prevent water quality impacts that might degrade the wetland habitat.

As conditioned, staff believes that the project is fully 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 3.**

### **STAFF NOTES**

**1. Standard of Review**

The proposed project is located in the Commission's retained jurisdiction. Humboldt County has a certified LCP, but the site is within an area shown on State Lands Commission maps over which the state retains a public trust interest. Therefore, the standard of review that the Commission must apply to the project is the Chapter 3 policies of the Coastal Act.

The proposed project area is bisected by the boundary between the retained coastal development permit (CDP) jurisdiction of the Commission and the CDP jurisdiction delegated to Humboldt County by the Commission through the County's certified Local Coastal Program. The proposed development involving the conversion of a residence to the contractor's construction yard on the northerly of the two parcels of the subject property is located entirely within the retained CDP jurisdiction of the Commission. Portions of the excavation work to expand the floodway proposed on the southerly of the two parcels of the subject property are located within the County's permit jurisdiction.

The Coastal Act was amended by Senate Bill 1843 in 2006, effective January 1, 2007. The amendment added Section 30601.3 to the Coastal Act. Section 30601.3 authorizes the Commission to process a consolidated coastal development permit application when requested by the local government and the applicant and approved by the Executive Director for projects that would otherwise require coastal development permits from both the Commission and from a local government with a certified LCP. In this case, the Humboldt County Board of Supervisors adopted a resolution and both the applicants and the County submitted letters requesting consolidated processing of the coastal development permit application by the Commission for the subject project, which was approved by the Executive Director.

The policies of Chapter 3 of the Coastal Act provide the legal standard of review for a consolidated coastal development permit application submitted pursuant to Section 30601.3. The local government's certified LCP may be used as guidance.

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**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. 1-05-060 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. Permit Expiration and Condition Compliance**

Because some of the proposed development has already commenced, this coastal development permit shall be deemed issued upon the Commission's approval and will not expire. Failure to comply with the special conditions of this permit may result in the institution of an action to enforce those conditions under the provisions of Chapter 9 of the Coastal Act.

**2. Flood Hazard Minimization and Response Responsibilities**

The permittee shall comply with the following flood hazard minimization and response requirements:

- A. Any storage of hazardous, flammable, explosive, and buoyant materials on the subject property shall only occur within approved structures in storage areas that are elevated at least one foot above the final certified base flood elevation, preliminarily determined to be 24.5 feet above mean sea level (NGVD 1929 Datum).

- B. Storage within the pole barn structure shall be limited to construction trucks and other equipment used in the construction contractor's business, metal form brackets, and lumber. Any lumber stored in the pole barn structure shall be stored on pallets on an elevated platform or rack designed to withstand hydrostatic and hydrodynamic loads and effects of buoyancy that will keep the pallets of lumber at least one foot above the final certified base flood elevation.
- C. A fork lift capable of quickly removing pallets of stored lumber from the pole barn structure shall be kept at the site in running order.
- D. All trucks and other equipment stored on the site shall be in running order and able to transport to other locations above flood waters in case of flooding.
- E. Rain fall and river conditions shall be monitored throughout the winter. Vehicles and construction equipment shall be moved to off-site locations above forecasted flood elevations in the event of forecasted floods higher than the lowest ground elevations of APN 100-172-006, or above 16 feet above mean sea level (NGVD 1929 Vertical Datum). Lumber stored one foot above the final certified base flood elevation within the pole barn storage structure consistent with the requirements of Section (B) above shall be moved to off-site locations above forecasted flood elevations in the event of forecasted floods higher than the final certified base flood elevation, preliminarily determined to be approximately 23.5 feet above mean sea level (NGVD 1929 datum).
- F. At all times during the winter, an employee of the contractor's business shall be assigned the responsibility to implement the requirements of this condition including, but not limited to, taking action to move vehicles, equipment, and materials to off-site locations in the event of forecasted floods.

**3. Final Construction and Grading Plans and Minimization of Flood Hazards**

- A. **PRIOR TO COMMENCEMENT OF CONSTRUCTION OF THE NEW OFFICE/SHOP BUILDING**, the applicant shall submit for the review and approval of the Executive Director (1) final construction plans for the new office/shop building, (2) certification by a qualified engineer or architect that the lowest floor of the office/shop building as shown in the final plans will be elevated at least one foot above the base flood elevation (preliminarily determined to be approximately 24.5 feet above mean sea level, NGVD 1929 Datum) or the building will be designed to be flood-proofed and capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy, (3) certification by a qualified engineer or architect that the office/shop building as shown in the final plans will be anchored to prevent flotation, collapse, or lateral movement of the structure resulting from

hydrodynamic and hydrostatic loads, including the effect of buoyancy, and (4) evidence that the final plans and certifications required in sections (1)-(3) above have been approved by the Humboldt County Building Department

**B. PRIOR TO COMMENCEMENT OF CONSTRUCTION OF THE ADDITION TO THE HOUSE THAT HAS BEEN CONVERTED TO AN OFFICE**, the applicant shall submit for the review and approval of the Executive Director (1) final construction plans for the addition showing that the floor of the addition will be elevated at least one foot above the base flood elevation, (2) certification by a qualified engineer or architect that the lowest floor of the addition as shown in the final plans will be elevated at least one foot above the base flood elevation, (3) certification by a qualified engineer or architect that the addition as shown in the final plans will be anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effect of buoyancy, and (4) evidence that the final plans and certifications required in sections (1)-(3) above have been approved by the Humboldt County Building Department. The required floor elevation may be attained either by designing the addition as a split level from the floor of the existing building or as a continuous floor by raising the floor of the entire building and the addition to the required elevation.

**C. PRIOR TO COMMENCEMENT OF CONSTRUCTION OF THE NEW POLE BARN STORAGE STRUCTURE**, the applicant shall submit for the review and approval of the Executive Director (1) final construction plans for the new pole barn storage structure that either provide for the installation of platforms or racks within the structure for the storage of lumber at an elevation at least one foot above the base flood elevation or states that no lumber shall be stored within the structure, (2) certification by a qualified engineer or architect that the storage area of any platforms or racks for the storage of lumber to be included in the pole barn as shown in the final plans will be elevated at least one foot above the base flood elevation, (3) certification by a qualified engineer or architect that the pole barn storage structure and any platforms or racks for the storage of lumber to be included in the pole barn structure as shown in the final plans will be anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effect of buoyancy, and (4) evidence that the final plans and certifications required in sections (1)-(3) above have been approved by the Humboldt County Building Department

**D. PRIOR TO COMMENCEMENT OF GRADING OF THE EXPANDED FLOODWAY AND PRIOR TO COMMENCEMENT OF CONSTRUCTION OF THE APPROVED BUILDINGS**, the applicant shall submit for the review and approval of the Executive Director (1) a final grading plan that provides for

completion of the proposed grading of 956 cubic yards of material from the 22,390-square-foot area from the south side of the drainage swale on APN 100-172-023 to expand the floodway capacity prior to construction of any of the new buildings or building addition authorized by this permit, (1) certification by a qualified engineer or architect that the proposed grading will sufficiently offset the encroachment of all of the new structures authorized by Coastal Development Permit No. 1-05-060 into the floodway and will not result in any increase in flood levels during the occurrence of the base flood discharge, (3) evidence that the certification required in section (1) above has been approved by the Humboldt County Building Department.

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

**4. Assumption of Risk**

By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from flooding; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

**5. Future Development Restriction**

This permit is only for the development described in Coastal Development Permit No. 1-05-060. Pursuant to Title 14 California Code of Regulations section 13253(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(b) shall not apply to the development governed by Coastal Development Permit No. 1-05-060. Accordingly, any future improvements to the single family house authorized by this permit, including but not limited to repair and maintenance identified as requiring a permit in Public Resources section 30610(d) and Title 14 California Code of Regulations sections 13252(a)-(b), shall require an amendment to CDP Permit No. 1-05-060 from the Commission or shall require

an additional coastal development permit from the Commission or from the applicable certified local government

**6. Erosion and Runoff Control Plan**

**A. PRIOR TO COMMENCEMENT OF ANY ADDITIONAL DEVELOPMENT AFTER MAY 6, 2009**, the applicants shall submit an Erosion and Runoff Control Plan for review and approval of the Executive Director. The Erosion and Runoff Control Plan shall incorporate design elements and/or Best Management Practices (BMPs) which will serve to minimize the volume and velocity of stormwater runoff leaving the developed site, and to capture sediment and other pollutants contained in stormwater runoff from the development, by facilitating on-site infiltration and trapping of sediment generated from construction. The final drainage and runoff control plan shall at a minimum include the following provisions:

1. Silt fencing shall be installed at the upland/wetland boundary (17-foot contour, NGVD 1929 datum) adjacent to the area of APN 100-172-23 to be excavated to expand floodway capacity prior to, and maintained throughout, the excavation work to contain runoff from the area to be graded, trap entrained sediment and other pollutants, and prevent discharge of sediment and pollutants to the adjacent wetlands;
2. Vegetation at the site shall be maintained to the maximum extent possible. On-site vegetation shall be maintained to the maximum extent possible during construction activities;
3. Any disturbed areas shall be replanted or seeded with sterile non-native grasses or native vegetation obtained from local genetic stocks immediately following project completion. 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 may be used. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be identified from time to time by the State of California, shall be employed or allowed to naturalize or persist on the site. No plant species listed as a 'noxious weed' by the governments of the State of California or the United States shall be utilized within the property;
4. All on-site debris stockpiles shall be covered and contained at all times;
5. Runoff from the roof, paved driveway and vehicle parking areas, and other impervious surfaces of the development shall be collected and directed in a non-

erosive manner into pervious areas of the site (i.e. undeveloped vegetated areas, landscaped areas) to achieve infiltration to the maximum extent practicable;

6. The washing-out of concrete delivery vehicles, disposal of solid waste, or release of any hazardous materials on the parcel shall be prohibited, and any accidental spill of such materials shall be promptly cleaned up and restored;
  7. Staging and stockpiling of construction equipment and materials shall be limited to upland areas outside of wetland habitat areas;
  8. Any excess excavated material and other construction debris resulting from construction activities shall be removed immediately upon completion of construction and shall be disposed of at a locally authorized disposal site outside the coastal zone or within the coastal zone pursuant to a valid coastal development permit; and
  9. All grading and excavation work to expand the floodway shall be limited to the dry season between April 15<sup>th</sup> and October 30<sup>th</sup>.
  10. A schedule for the installation and maintenance of the required best management practices that will ensure installation and maintenance during construction and for the completed development, and a statement designating who shall be responsible for the long-term management of the devices.
- B. The permittee shall undertake development in accordance with the approved Erosion and Runoff Control plan. Any proposed changes to the approved plan shall be reported to the Executive Director. No changes to the approved plan shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

**7. Hazardous Materials Management Plan**

A. **PRIOR TO COMMENCEMENT OF ANY ADDITIONAL DEVELOPMENT AFTER MAY 6, 2009**, 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;
  - (c) All vehicles or equipment stored or used at the site shall be kept 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 at the site including, but not limited to, cement, equipment fuel, paints, solvents, oil, and other chemicals stored at the site; and
  - (e) 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.

**8. Landscaping Restrictions**

- A. All existing trees and all trees planted pursuant to the proposed planting plan submitted with the application prepared by Ontiveros & Associates entitled, "Phase One Planting Plan Dennis Del Biaggio APN #100-172-006 and dated July 28, 2005 shall be maintained in good growing condition throughout the life of the project. If any of the trees become decadent, rotten, or weakened by decay or disease, or are removed for any reason, they shall be immediately replaced with native non-invasive tree species common to the area that will grow to a similar or greater girth and height. All proposed plantings shall be obtained from local genetic stocks within Humboldt 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.
- B. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Exotic Pest Plant Council, or by the State of California shall be used to replace trees as required by Section B above. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be used as a replacement planting within the property.
- C. Rodenticides containing any anticoagulant compounds, including but not limited to, Bromadiolone, Brodifacoum, or Diphacinone, shall not be used.

**9. Design Restrictions**

- A. The wooden fencing installed pursuant to this authorization around the perimeter of the proposed construction contractor's office and yard shall be maintained throughout the life of the project. Any portions of the fencing that collapse or are otherwise damaged or removed shall be immediately repaired or replaced in-kind with wooden fencing. The fence shall be maintained in natural wood tone colors.
- B. All exterior lights, including any lights attached to the outside of the buildings, shall be the minimum necessary for the safe ingress, egress, and use of the structures, and shall be low-wattage, non-reflective, shielded, and have a directional cast downward such that no light will be directed to shine beyond the boundaries of the northerly parcel fronting on Port Kenyon Road (APN 100-172-06).

**10. Deed Restriction**

**PRIOR TO COMMENCEMENT OF ANY ADDITIONAL DEVELOPMENT**

**AFTER MAY 6, 2009**, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

**11. State Lands Commission Review**

**PRIOR TO COMMENCEMENT OF ANY ADDITIONAL DEVELOPMENT**

**AFTER MAY 6, 2009**, the applicant shall submit to the Executive Director, for review and approval, a written determination from the State Lands Commission that:

- A. No State or public trust lands are involved in the development; or

- B. State or public trust lands are involved in the development and all permits required by the State Lands Commission for the approved project as conditioned by the Commission have been obtained; or
- C. State or public trust lands may be involved in the development, but pending a final determination, an agreement has been made with the State Lands Commission for the approved project as conditioned by the Commission to proceed without prejudice to that determination.

**12. Humboldt County Encroachment Permit**

**PRIOR TO COMMENCEMENT OF ANY ADDITIONAL DEVELOPMENT AFTER MAY 6, 2009**, the applicant shall submit for the review and approval of the Executive Director a copy of an Encroachment Permit issued by Humboldt County Department of Public Works for the construction of the proposed driveway, or evidence that no permit is required. The applicant shall inform the Executive Director of any changes to the project required by the County. 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:

**A. Site Description and Background**

The subject property is located approximately one mile north of Ferndale near the Salt River, a tributary of the Eel River in the lower Eel River Valley of Humboldt County. The property is adjacent to the south of the intersection of Fulmor Road with Port Kenyon Road, at 118 Port Kenyon Road. The southeastern boundary of the subject property borders on State Highway 211, the main road connecting the City of Ferndale with Fernbridge over the Eel River and U.S. Highway 101.

The surrounding area is mostly used and zoned for agricultural use with 60-acre minimum parcel sizes, although most of the parcels extending west from the subject property along Port Kenyon Road are zoned and developed for rural residential use. The residential parcels are generally a half-acre in size with smaller older single-family homes. Several parcels along Port Kenyon Road are zoned for commercial use. According to County staff, the mix of land use in the area is reflective of land use patterns of the early 20<sup>th</sup> century when the area was first developed as a small agricultural community and small

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commercial businesses mainly served the immediately adjoining farmers and other residents.

The subject property consists of two adjoining parcels. The approximately 1.2-acre northerly parcel (APN 100-172-06) adjacent to Port Kenyon Road is generally flat and has been previously developed over virtually all of its extent. The parcel is locally designated and zoned as Commercial General, although the site has been used primarily as residential property in the past. Within the last few years, this parcel has been converted from its former residential use to a construction contractor's office and yard. The roughly rectangular parcel currently contains (1) a 2,640-square-foot structure in the southwest corner of the parcel built originally as a house that has been converted to a construction contractor's business office, (2) a 2,060-square-foot accessory building along the southern boundary and near the middle of the parcel currently used for storing equipment and materials for the construction contractor business, (3) a graveled area on the eastern side of the parcel used for storage of vehicles and construction materials used in the business, (4) paved driveway and parking areas located approximately in the middle of the parcel, (5) a septic system in the northwest corner of the parcel that has been recently upgraded, (6) an existing propane tank on a foundation located along the southern parcel boundary between the two buildings, (7) an existing well located between the southern parcel boundary and the accessory building, and (8) fencing and landscaping around most of the perimeter of the parcel. The site is served by community water.

The approximately 3.2-acre undeveloped southerly parcel (APN 100-172-23) extends south from the northerly parcel to Highway 211. The roughly trapezoidal-shaped parcel is locally designated and zoned as Agricultural Exclusive and has been used for cattle grazing. As a result of its past use, the parcel is vegetated mostly by imported pasture grasses and other herbaceous vegetation and is largely devoid of trees. The dominant topographic feature of the otherwise generally flat site is an approximately 150-foot-wide drainage swale that extends from underneath a bridge along Highway 211 to the east and crosses approximately 350 feet through the entire middle of the property in a southeast to northwest direction. The approximately 30-40-foot deep swale has been characterized as a Palustrine emergent wetland that is inundated to varying degrees depending on the season and amount of rainfall. A wetland delineation has determined that the wetland portion of the swale extends from the bottom of the swale to approximately the 17-foot (NGVD 29 Datum) contour line on the south side of the swale. No other known environmentally sensitive habitat is located on the subject property.

The subject property is located within an area designated on FEMA Flood Insurance Rate Maps as a 100-year flood hazard area. The County zoning for the property includes a Flood Hazard Area combining zone. In addition, all of the property is mapped on FEMA maps as within a designated flood way.

The subject property is not located within a designated highly scenic area. In addition, there are no known archaeological resources present on the site.

The proposed project area is bisected by the boundary between the retained coastal development permit (CDP) jurisdiction of the Commission and the CDP jurisdiction delegated to Humboldt County by the Commission through the County's certified Local Coastal Program. The entire northerly parcel and approximately two-thirds of the southerly parcel are within the Commission's retained jurisdiction. Most of the area south of the drainage swale is within the County's coastal development permit jurisdiction.

**B. Project Description**

The proposed project involves the conversion of a rural residential property to a construction contractor's office and yard. Elements of the conversion project have already been completed and the applicant is seeking after-the-fact authorization for these project elements including: (1) remodelling the 2,640-square-foot single-story former residence in the southwest corner of the parcel located at 118 Port Kenyon Road for conversion into a business office, (2) conversion of the 2,060-square-foot accessory building along the southern boundary and near the middle of the parcel as a storage facility for storing equipment and materials, (3) grading and gravelling a 23,476-square-foot area on the eastern side of the parcel for storage of vehicles and construction materials, (4) paving to construct a larger driveway and a parking area north of the two structures, (5) upgrading an existing septic system in the northwest corner of the parcel, (6) installing fencing around most of the perimeter of the parcel consisting of a 6-foot-high solid wooden fence around the north, west, and east sides of the northerly parcel and a wooden split rail fence along the south side of the parcel, and (7) installing landscaping along the perimeter and outside of the new fencing improvements to supplement the 10 existing trees that exist in these areas. The landscaping that has been installed as part of the project includes the installation of 18 trees, including 8 Leyland Cypress, 6 Pittosporum Tenuiflorum trees, 4 Mayten trees, 4 Strawberry trees, and 7 Redtip Photinia trees. In addition, the planting plan included the installation of approximately 9,500 square feet of turf within the interior of the facility.

The applicant is also seeking authorization for proposed additional improvements to complete the conversion and development of the site into the construction contractor's business and storage yard. These additional improvements include: (8) the construction of a 740-square-foot addition along the north side of the new office that had been converted from a house; (9) constructing a 3,700-square-foot office/shop building with an 80-foot by 40-foot work area and a 20-foot by 25-foot office bathroom in the northeast corner of the parcel; (4) constructing a 2,700-square-foot pole barn storage building in the southeast portion of the parcel; and (5) grading 1,000 cubic yards of earthen material from 23,290 square feet of area along the south side of an existing drainage swale. The grading and excavation would be performed above the 17-foot contour in an upland area adjacent to the wetlands of the drainage swale to avoid disturbance of the wetlands. The grading and excavation work would essentially create a flat bench adjacent to and just above wetlands

of the existing drainage swale. The excavated material is proposed to be taken to an authorized disposal site outside of the coastal zone.

The proposed new structures are designed to take into account the location of the property within the FEMA designated flood plain and floodway. The proposed new pole barn structure consists essentially of a gravel-covered area covered by a roof supported by metal poles. The pole barn is designed without sides to allow flood waters to flow through the building and so as not to displace a volume of space equal to the size of the pole barn structure from the floodway. The County's Flood Damage Prevention Ordinance (FDPO) requires that development within a "design floodway" not result in a rise in flood height for the base flood event by reducing the capacity of the flood way to convey flood waters during major flood events and causing flood waters to spread to a wider area. The proposed grading and excavation of 1,000 cubic yards of material along the south side of the drainage swale is proposed to expand the floodway to compensate for the reduction in floodway capacity that will result from construction of the proposed new 3,700-square-foot office/shop building. In addition, the floor of the office/shop building will be positioned at an elevation of 24.5-feet, one foot above the anticipated flood elevation height (23.5 feet) as determined by engineering calculations using FEMA flood maps.

The applicant has also proposed a flood event plan specifying various operational measures that will be followed to reduce flood hazard risks. The applicant's flood event plan includes the following measures:

1. No storage of any hazardous materials shall be allowed in any area below the base flood elevation.
1. All lumber and materials stored under the pole barn roof cover shall be stacked on pallets so that it can be quickly and neatly removed from the site in case of a flood event.
2. All trucks and other equipment shall be in running order and easy to transport to other locations above flood waters, in case of flooding.
3. Rain fall and river conditions shall be monitored through-out the winter as the river comes to both warning and flood stage. Action will be taken to move vehicles, equipment, and materials in flood danger to off-site locations in the event of forecasted floods.
4. At all times during the winter an employee of the contractor's business shall be assigned the responsibility to implement the flood plan including taking action to move vehicles, equipment, and materials to off-site locations in the event of forecasted floods.

5. A copy of the Flood Event Plan shall be posted in all buildings and become part of the operations.

**C. Coastal Development Permit Review Background**

In 2003, Humboldt County approved a conditional use permit and variance to allow conversion of the residential use of the northerly parcel of the subject property to the contractor's yard. At the time, the County assumed in error that the parcel was within the County's coastal development permit jurisdiction and also granted a coastal development permit for the project. In 2005, the applicants applied to the County for certain permit amendments, at which time it was determined that the parcel for which the County had approved the coastal development permit is actually within the Commission's retained coastal development permit jurisdiction. Upon being informed of the error in jurisdiction, the applicants submitted Coastal Development Permit Application No. 1-05-043 to the Commission seeking authorization for the development that had occurred to that point, including (1) remodeling the interior of the existing house and accessory structure, (2) upgrading the septic system, (3) replacing the perimeter fence with the upgraded fence, and (4) installing landscaping.

The County's 2005 amendments to the County use permit authorized additional development. This additional development includes the proposed development described above that has not yet been developed, including 8) the construction of a 740-square-foot addition along the north side of the new office that had been converted from a house; (9) constructing a 3,700- square-foot office/shop building with an 80-foot by 40-foot work area and a 20-foot by 25-foot office bathroom in the northeast corner of the parcel; (4) constructing a 2,700 -square-foot pole barn storage building in the southeast portion of the parcel; and (5) grading 1,000 cubic yards of earthen material from 23,290 square feet of area along the south side of an existing drainage swale on the applicant's southerly parcel, APN 100-172-023. All of this additional development also requires coastal development permit authorization and is functionally-related to the development proposed in the initial coastal development permit application submitted to the Commission, CDP Application No. 1-05-043. After consulting with Commission staff, the applicant decided to withdraw the previously submitted coastal development application and replace it with the current application for Coastal Development Permit No. 1-05-060 which seeks coastal development permit authorization for the entire development, including both the development performed to date and the proposed additional development proposed to complete conversion of the former residential development to the construction contractor's office and yard.

**D. Planning and Locating New Development**

Coastal Act Section 30250(a) states, in part, the following:

*(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources.*

Section 30250(a) of the Coastal Act states that new development shall be located in or near existing developed areas able to accommodate it or in other areas with adequate public services and where it will not have significant adverse effects on coastal resources. The intent of this policy is to channel development toward more urbanized areas where services are provided and potential impacts to resources are minimized.

The proposed project involves the conversion of a parcel used for a single family residence to a construction contractor's office and yard and grading on an adjoining agricultural parcel also owned by the applicant to retain floodway capacity. The parcel of the subject property where the construction contractor's office and yard is proposed (APN 100-172-06) is located within a developed area and is planned and zoned locally as Commercial General. The proposed construction contractor's office and yard use conforms to the Heavy Commercial Use Type under Section 313-172.5 of the County zoning ordinance. This use type includes activities such as transfer, storage or processing of used, scrap or waste materials, including automobile wrecking, the sales, storage of building materials, construction and agricultural equipment, kennels, and animal hospitals. Heavy Commercial Uses are conditionally allowed within the Commercial General zoning district. The County approved a use permit for the development in October of 2003. The grading to be performed on the adjoining agricultural parcel (APN 100-172-23) does not change the use or affect the continued agricultural use of the parcel. Therefore, the proposed development is located in and adjacent to an existing developed area planned for such use.

The subject parcel is located in an area served by community water and an on-site sewage disposal system. The Humboldt County Department of Environmental Health approved the proposed upgrades to the septic system in 2001 as being adequate to serve the proposed use. As discussed above, the septic system upgrades have already been completed without benefit of a coastal development permit. The Health Department inspected and approved the final construction of the septic system upgrades in June of 2004. Therefore, there are adequate services in place to accommodate the proposed development.

As discussed in the following findings, the proposed development has been conditioned to minimize flood hazards risks and to avoid significant adverse impacts to environmentally sensitive habitat areas, visual resources, agricultural use, water quality, and other coastal resources.

Therefore, the Commission finds that as conditioned, the proposed development is consistent with Coastal Act Section 30250(a) in that it is located in or adjacent to a developed area with adequate water and sewage treatment capability to accommodate it, and it will not cause significant adverse effects, either individually or cumulatively, on coastal resources.

**E. Flood Hazards**

Section 30253 of the Coastal Act states, in applicable part:

*New development shall:*

*(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*

Section 30212 of the Coastal Act states, in applicable part:

*(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or, (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.*

*(b) For purposes of this section, "new development" does not include:*

...

*(3) Improvements to any structure which do not change the intensity of its use, which do not increase either the floor area, height, or bulk of the structure by more than 10 percent, which do not block or impede public access, and which do not result in a seaward encroachment by the structure. [emphasis added]*

...

Section 30253 requires that new development minimize risks to life and property in areas of flood hazard.

The subject property is located in the lower Eel River Valley and is within the flood plain of both the Salt and Eel Rivers. The Salt River is a tributary of the Eel and is located just north of the subject property across Port Kenyon Road and an adjoining row of parcels. Both rivers flood periodically.

Because of the flooding hazards, the area where the subject property is located has been identified both as "an area of special flood hazard" and as being within a "floodway" by the

Federal Insurance Administration (FIA) of the Federal Emergency Management Agency (FEMA). The FIA produces Flood Insurance Rate Maps (FIRM) for the United States which include, among other information, delineations of special flood hazard areas where there is a one percent (1%) or greater chance of flooding in any given year. In addition, the FIA produces Flood Boundary Floodway Maps which delineate in part both the areas of flood hazard and the floodways. A floodway is defined as the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot (1'). The "base flood" is defined as the flood having a one percent (1%) chance of being equaled or exceeded in any given year and is commonly called a 100-year flood. At the subject property, the base flood elevation has been determined to be 23.5 feet above mean sea level (NGVD 1929 datum). It should be noted that the floodway is a "design" floodway that is based on mathematical modeling, and the configuration of the floodway does not necessarily match topographical features on the ground. Flood Insurance Rate Maps and Flood Boundary Floodway Maps are included within Flood Insurance Studies produced by the FIA. The Flood Insurance Study for the County of Humboldt was published in 1982 and has been amended several times since then.

The fact that the subject property is located both within an area of special flood hazard and within a floodway means there are two principal kinds of flood risk are associated with development at the site. First, there is the risk that the development itself will be inundated with flood waters during times of flood which not only directly threatens the health and safety of people and causes damage to property on the site itself, but also threatens those downstream by sweeping up materials that could contain hazardous substances or become projectiles that could increase the danger to downstream properties. Second, there is the risk that the development within the floodway will increase the risk of flooding of other property on nearby lands by displacing the capacity of the existing floodway to convey flood waters and thereby causing flood waters to spread to a wider area.

#### Minimizing Hazards Associated with Inundation Risks

The principal strategies commonly employed for minimizing the hazards associated with the first kind of flood risk, inundation of the property, are to either elevate the lowest floor of a new building above the anticipated height of flood waters so that the occupants and contents of the building remain high and dry or "floodproof" the structure. Floodproofing involves making the portions of the structure below the base flood level watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

The Humboldt County Flood Damage Prevention ordinance requires that a local flood plain development permit be obtained before construction or development within any area of special flood hazard. The flood plain development permit is usually issued in conjunction with a building permit. The ordinance also requires that new structures proposed in areas

of special flood hazard have the floor elevation of the lowest floor of the structure, including any basement, be established at least one-foot above base flood elevation. Residential structures must meet this standard. The ordinance allows non-residential structures to be floodproofed instead. The County requires that a registered professional engineer, architect, or similar professional certify prior to issuance of the flood plain development permit that the design of the structure complies with these requirements. The ordinance further requires that building in areas of special flood hazard be anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effect of buoyancy.

The applicant proposes to satisfy the requirements of the County ordinance and minimize the hazards of flood inundation for the proposed new office/shop structure by elevating the lowest floor of the structure one foot above the base flood elevation. The existing ground elevation at the new office building is 20 feet above mean sea level (NGVD 1929 datum) and as noted above, the base flood elevation at the subject property has been determined to be 23.5 feet above mean sea level (NGVD 1929 datum). Therefore, the lowest floor of the new office/shop structure would be established at 24.5 feet, or 4.5 feet above the ground in that location. As this proposed design would elevate the occupants and contents of the building to an elevation that would remain safe and dry during anticipated flood events in a manner that conforms with federal and local flood damage prevention requirements, the Commission finds that development of the office/shop building in the proposed manner would minimize risks to life and property from flood inundation hazards. To ensure that the structure is built in the proposed manner, the Commission attaches Special Condition No. 3(A) which requires that the applicant submit for the review and approval of the Executive Director the final construction plans for the new office/shop building with certification by a qualified engineer or architect that the lowest floor of the office/shop building as shown in the final plans is elevated at least one foot above the base flood elevation (to an elevation of 24.5 feet). The plans must also be certified by a qualified engineer or architect as demonstrating that the office/shop building will be anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effect of buoyancy. Finally, Special Condition No. 3(A) requires that the plans be submitted with evidence that the final plans and certifications have been approved by the Humboldt County Building Department.

With regard to the proposed addition to the existing building that has been converted from a house to an office, the applicant has not specifically proposed to floodproof or elevate the floor of the addition because it is not clear at this point that floodproofing or elevating the floor of the structure would be required by the County. The County requires additions to existing buildings and the existing buildings themselves to meet the standards of the Flood Damage Prevention Ordinance when the addition involves a “substantial improvement,” which occurs when the total cost of the improvements equals 50% of the market value of the structure before the start of construction of the improvements. The cost of the proposed improvements and the market value of the existing structure have not yet been assessed.

The standard of review for the coastal development permit application considered by the Commission is the Chapter 3 policies of the Coastal Act, not the Humboldt County Flood Damage Prevention Ordinance. To find consistency with Section 30253 of Chapter 3 of the Coastal Act and approve the project, the Commission must find that the proposed new development minimizes risks to life and property in area of high flood hazards. The proposed addition to the building would increase the floor area of the 2,640-square-foot building by 740 square feet, or by 28%. The addition to the existing building is a form of new development that must minimize risks to life and property in an area of high flood hazards such as the subject property. Therefore, the Commission finds that if it is feasible to elevate the finished floor of the addition one foot above base flood elevation or floodproof the addition to minimize risks to life and property from the hazards of flood inundation of the addition, such measures must be employed in the construction of the building addition.

The existing ground elevation at the building addition is approximately 20 feet above mean sea level, or 4.5 feet below an elevation one foot above base flood elevation. The floor elevation of the existing building is somewhat higher than the ground elevation as it is built on a foundation. Thus, the difference between the floor elevation of the existing structure and the floor elevation of the addition built to conform to flood elevation requirements of the County ordinance is a maximum of only a few feet. The building addition to the existing building could be built as a split level design with a few steps and a wheelchair ramp connection the two levels. Alternatively, the existing building could be remodeled to raise the floor elevation to the same level as the building addition. Thus, the Commission finds that it is feasible to construct the finished floor of the addition one foot above base flood elevation. Constructing the addition in this manner would minimize risks to life and property from the hazards of flood inundation of the addition by elevating the occupants and contents of the addition to an elevation that would remain safe and dry during anticipated flood events. To ensure that the structure is built in the proposed manner, the Commission attaches Special Condition No. 3(B) which requires that the applicant submit for the review and approval of the Executive Director the final construction plans for the new building addition with certification by a qualified engineer or architect that the lowest floor of the building addition as shown in the final plans is elevated at least one foot above the base flood elevation (to an elevation of 24.5 feet). The plans must also be certified by a qualified engineer or architect as demonstrating that the building addition will be anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effect of buoyancy. Finally, Special Condition No. 3(C) requires that the plans be submitted with evidence that the final plans and certifications have been approved by the Humboldt County Building Department.

The proposed pole barn storage structure would be an open-sided structure constructed without a floor. The structure would provide cover for vehicles, equipment, lumber, and other construction materials that are proposed to be stored on a gravel surface placed over the ground. Thus, the pole barn structure does not provide any elevated refuge or other protection during a flood. However, the applicant proposes a flood events plan as part of

the project that includes a series of operational measures to reduce inundation hazards associated with the pole barn structure. These measures include the following:

1. No storage of any hazardous materials shall be allowed in any area below the base flood elevation, including under the pole barn structure. Storage in the pole barn structure would be limited to lumber, metal form brackets, construction trucks and other equipment.
2. All lumber and materials stored under the pole barn roof cover shall be stacked on pallets so that it can be quickly and neatly removed from the site in case of a flood event.
3. All trucks and other equipment shall be in running order and easy to transport to other locations above flood waters, in case of flooding.
4. Rain fall and river conditions shall be monitored through-out the winter as the river comes to both warning and flood stage. Action will be taken to move vehicles, equipment, and materials in flood danger to off-site locations in the event of forecasted floods.
5. At all times during the winter an employee of the contractor's business shall be assigned the responsibility to implement the flood plan including taking action to move vehicles, equipment, and materials to off-site locations in the event of forecasted floods.
6. A copy of the Flood Event Plan shall be posted in all buildings and become part of the operations.

The proposed flood events plan relies on the fact that flood events are usually preceded by warnings from local and state emergency services officials that are broadcast through the media of the impending flood together with projections of how high particular streams and rivers may rise above flood stage. Such warnings usually begin many hours before flooding occurs, providing time for evacuations and other preparation for the flooding. Thus, there will be time before most flood events for the applicant to carry out the proposed flood event plan and move trucks, other equipment, lumber, and other materials from the pole barn storage structure to higher ground in off-site locations that will not be directly affected by flooding. However, the success of the flood events plan is dependent on a number of factors occurring, including (a) warning of the flood being given sufficiently ahead of time to allow for movement of the equipment and materials, (b) the warning being received in time by employees at the project site to move the equipment and materials, (c) sufficient numbers of employees actually being present and available to move the stored items, (d) the fork lift and other vehicles to be used for transporting the stored equipment and materials being in running order, and (e) roads between the construction contractor's yard and off-site higher ground destination for the items to be moved remaining open and

unobstructed by the flooding or emergency vehicles. The failure of any one or more of these factors to occur would cause the plan to fail, allowing equipment and material stored under the pole barn structure to be swept away by flood waters and jeopardize public safety and public and private property.

The possibility of failure of the flood events plan is of particular concern with regard to the proposed storage of lumber on pallets at ground level under the pole barn structure. The applicants' flood events plan proposes that no hazardous materials would be stored under the pole barn structure, but the plan specifically proposes to store lumber. Unlike many materials that might be stored, lumber floats and can be easily swept away by flood waters and become projectiles that endanger the health and safety of persons downstream and threaten to damage structures and other property downstream. This risk could be further minimized either by ensuring the lumber would be stored above flood levels or prohibiting its storage at the site altogether. Therefore, the Commission attaches Special Condition No. 3(C) which requires the applicant to submit for the review and approval of the Executive Director final construction plans for the new pole barn storage structure that either provide for the installation of platforms or racks within the structure for the storage of lumber at an elevation at least one foot above the base flood elevation or states that no lumber shall be stored within the structure. The special condition requires the plan to be accompanied by certification by a qualified engineer or architect that the storage area of any platforms or racks for the storage of lumber to be included in the pole barn as shown in the final plans will in fact be elevated at least one foot above the base flood elevation and that the pole barn storage structure and any platforms or racks shown in the final plans will be anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effect of buoyancy. Finally, the condition requires the submittal of evidence that the final plans and certifications have been approved by the Humboldt County Building Department.

If the applicants' flood events plan were modified to ensure that any lumber stored under the pole barn storage structure or elsewhere on the subject site is stored in properly anchored facilities above flood waters, the plan would help minimize risks to life and property. Therefore the Commission attaches Special Condition No. 2 which requires the applicant to implement the flood hazard minimization and response measures proposed in the plan with this modification. The requirements of Special Condition No. 2 also provide more specificity as to when vehicles and equipment stored under the pole barn storage structure must be moved to higher ground. Section E of Special Condition No. 2 requires vehicles and construction equipment to be moved when forecasted floods are higher than the lowest ground elevations of the parcel, or above 16 feet above mean sea level. This modification will help ensure that any time flood waters are forecast to flood the property, the vehicles and equipment will be moved.

As conditioned, the proposed new structures will be designed to elevate the occupants and contents of the buildings above flood waters and to be anchored in a manner that will prevent flotation, collapse, or lateral movement from the effects of flood waters flowing

through the site. In addition, the conditions of the permit will ensure that the proposed construction contractor's office and yard will be operated in a manner that will reduce the chances that vehicles, equipment, and materials to be stored at the site will be damaged or be dangerous to downstream persons and property in the event of flooding. Therefore, the Commission finds that the development as conditioned will minimize risks to life and property from flood me hazards associated with the inundation of the site with flood waters.

Minimizing Hazards Associated with Reducing Floodway Capacity

As noted previously, the subject property is within a County-designated "design" floodway that extends over the entire property. The principal strategy commonly employed for mitigating the effects that development within a floodway has on displacing the capacity of the existing floodway to convey flood waters and cause flood waters to spread is to compensate for the reduction of floodway capacity by expanding the capacity of the floodway in another location.

Humboldt County's Flood Damage Prevention Ordinance requires that development within a "design floodway" not result in a rise in flood height for the base flood event. The intent of the "no rise" provision of the ordinance is to preclude new development that would displace area and volume needed for conveying flood waters during major flood events that could otherwise spread the flooding to a wider area.

As noted above, the proposed new structures are designed to take into account the location of the property within the FEMA designated floodway. The proposed new pole barn structure is designed without sides to allow flood waters to flow through the building and so as not to displace a volume of space equal to the size of the pole barn structure from the floodway. The proposed grading and excavation of 1,000 cubic yards of material along the south side of the drainage swale is proposed to expand the floodway to compensate for the reduction in floodway capacity that will result from construction of the proposed new 3,700-square-foot office/shop building, the proposed addition to the existing office building on the site, and all other portions of the project. The grading plan produced by the applicants' engineers indicates that excavating the 23,476-square-foot area to an average depth of 1.1 feet will remove 25,824 cubic feet or 956 cubic yards of material to expand the floodway capacity by that amount. The applicants' engineers have indicated to Coastal Commission staff that the total displacement of floodway volume by the proposed development will be less than that amount. Thus, as designed, the development will not reduce the floodway capacity.

The submitted grading plan does not indicate when the excavation work would be performed relative to the construction of the buildings that would reduce the capacity of the floodway in its current configuration. If the excavation work were to significantly trail construction of the approved buildings, the possibility exists that a flood event would occur in the interval and the new buildings would displace flood waters in a manner that would

cause flooding of a greater area than would have occurred if the development had not proceeded. Therefore, to ensure that such a result does not occur, the Commission attaches Special Condition No. 3(D). The special condition required the applicants to submit a final grading plan that provides for completion of the proposed grading of material from the south side of the drainage swale to expand the floodway capacity prior to construction of any of the new buildings or building addition authorized by this permit. In addition, the special condition requires that the plans be accompanied by certification by a qualified engineer or architect that the proposed grading will sufficiently offset the encroachment of all of the new structures authorized by Coastal Development Permit No. 1-05-060 into the floodway and will not result in any increase in flood levels during the occurrence of the base flood discharge. Finally, the special condition requires the submittal of evidence that the grading and required certification has been approved by the Humboldt County Building Department.

As conditioned, the grading and excavation of 956 cubic yards of material along the south side of the drainage swale to expand the floodway will compensate for the reduction in floodway capacity that will result from construction of the proposed new 3,700-square-foot office/shop building, the proposed addition to the existing office building on the site, and all other portions of the project. Therefore, the Commission finds that the development as conditioned will minimize risks to life and property from flood hazards associated with developing buildings within the floodway.

#### Other Flood Hazard Mitigations

Although the permit has been conditioned to minimize risks to life and property from flood hazards, some risk remains. Therefore, the Commission attaches Special Condition No. 4. The special condition requires the landowner to assume the risks of flooding hazards to the property and waive any claim of liability on the part of the Commission. Given that the applicant has chosen to implement the project despite flooding risks, the applicant must assume the risks. In this way, the applicant is notified that the Commission is not liable for damage as a result of approving the permit for development. The condition also requires the applicant to indemnify the Commission in the event that third parties bring an action against the Commission as a result of the failure of the development to withstand hazards.

Furthermore, to ensure that all future owners of the property are aware of the flood hazard present at the site, the Commission's immunity from liability, and the indemnity afforded the Commission, Special Condition No. 10 requires recordation of a deed restriction that imposes the special conditions of the permit as covenants, conditions, and restrictions on the use of the property.

As conditioned, the proposed development will minimize risks to life and property from flood hazards. However, the Commission notes that future additions to the structures authorized by the coastal development permit could be subject to inundation hazards and displace floodway capacity, thereby increasing risks from flood hazards. Many additions

to buildings are normally exempt from the need to obtain a coastal development permit under Section 30610(b) of the Coastal Act. Thus, unless the Commission specifies in advance, the Commission would not normally be able to review such development to ensure that flood hazards are avoided.

The Commission further notes that Section 30610(b) of the Coastal Act specifically exempts certain additions to existing structures other than single family residences and public works facilities from coastal development permit requirements. Pursuant to this exemption, once a structure has been constructed, certain additions that the applicant might propose in the future are normally exempt from the need for a permit or permit amendment.

To avoid such risks to life and property in flood hazard areas from the development of otherwise exempt additions to structure, Section 30610(b) requires the Commission to specify by regulation those classes of development that involve a risk of adverse environmental effects and require that a permit be obtained for such improvements. Pursuant to Section 30610(b) of the Coastal Act, the Commission adopted Section 13253 of Title 14 of the California Code of regulations. Section 13253(b)(6) specifically authorizes the Commission to require a permit for additions to existing structure that could involve a risk of adverse environmental effect by indicating in the development permit issued for the original structure that any future improvements would require a development permit. As noted above, development of certain additions to the approved structures could involve a risk of initiating significant adverse flood hazards. Therefore, in accordance with provisions of Section 13253(b)(6) of Title 14 of the California Code of Regulations, the Commission attaches Special Condition No. 5, which requires a coastal development permit or a permit amendment for all additions and improvements to the structures on the subject property that might otherwise be exempt from coastal permit requirements. This condition will allow future development to be reviewed by the Commission to ensure that future improvements will not be sited or designed in a manner that would result in significant adverse flood hazard consequences.

As discussed above, Special Condition No. 10 also requires that the applicant record and execute a deed restriction approved by the Executive Director against the property that imposes the special conditions of this permit as covenants, conditions, and restrictions on the use and enjoyment of the property. Special Condition No. 10 also will help assure that future owners are aware of these CDP requirements applicable to all future development.

### Conclusion

For all of the above reasons, the Commission finds that as conditioned, the project would minimize risks to life and property from flood hazards and is consistent with Section 30253 of the Coastal Act.

**F. Protection of Environmentally Sensitive Wetland Habitat and Coastal Water Quality.**

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.*

Section 30240 of the Coastal Act states:

- (a) *Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those 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.*

Coastal Act Section 30107.7 defines “environmentally sensitive area as meaning:

*...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.*

Coastal Act Section 30231 protects the biological productivity and quality of coastal waters, streams, and wetlands through, among other means, minimizing adverse effects of waste water discharges and entrainment, and controlling runoff.

Section 30240 of the Coastal Act states that development in areas adjacent to environmentally sensitive habitat 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 areas.

The portion of the subject property where establishment of the construction contractor’s office and yard is proposed does not contain any known environmentally sensitive habitat. However, the southerly of the two parcels of the subject property contains an approximately 150-foot-wide drainage swale that extends from underneath a bridge along

Highway 211 to the east and crosses approximately 350 feet through the entire middle of the property in a southeast to northwest direction. The approximately 40-foot deep swale has been characterized as a Palustrine emergent wetland that is inundated to varying degrees depending on the season and amount of rainfall. A wetland delineation has determined that the wetland portion of the swale extends from the bottom of the swale to approximately the 17-foot (NGVD 29 Datum) contour line on the south side of the swale. The substantial wetland provides habitat for migratory birds and other wildlife and is a form of environmentally sensitive habitat.

None of the proposed development is located within the wetland ESHA. The development associated with the conversion of the former residential use of the northerly parcel to the construction contractor's office and yard is located approximately 40 to 140 feet away from the swale and is separated by pasture lands. The proposed expansion of the floodway by excavating the approximately 23,000-square-foot area adjacent to the south side of the drainage swale has been carefully located so as not to avoid the wetlands associated with the swale. The proposed grading work will be performed at and above an elevation of 17 feet above mean sea level (NGVD 1929 datum) along the gentle slope that forms the south side of the swale. A wetland delineation performed for the project has determined that the southern boundary of the wetlands is just north of the 17-foot contour line.

Although none of the development would encroach into the wetland, the ESHA could be adversely affected by the proposed development from site runoff that could impact the water quality of the ESHA. The northerly parcel of subject property is developed with an existing residence that has been converted to a construction contractor's office, an accessory building, paved driveway and parking areas, and related development. The approximately 40-140-foot-wide area between this development and the wetland is largely undeveloped pasture land covered with pasture grasses and other vegetation. This area will maintain a pervious area necessary for stormwater infiltration. However, the increase in impervious surface area from the larger development would lead to an increase in the volume and velocity of stormwater runoff that can be expected to leave the site. Pollutants commonly found in runoff associated with commercial uses of this kind commonly include petroleum hydrocarbons including oil and grease from vehicles; heavy metals; synthetic organic chemicals including paint and cleaners; and soap and dirt from washing vehicles. The excavation work to expand the floodway along the south side of the drainage swale would primarily expose soil that could be carried by stormwater runoff into the adjacent wetland area. The discharge of these pollutants to ESHA can cause cumulative adverse impacts such as: eutrophication and anoxic conditions resulting in the alteration of aquatic habitat, including adverse changes to species composition and size; excess nutrients causing algae blooms and sedimentation increasing turbidity which both reduce the penetration of sunlight needed by aquatic vegetation which provide food and cover for aquatic species; disruptions to the reproductive cycle of aquatic species; and acute and sublethal toxicity in aquatic organisms leading to adverse changes in reproduction and feeding behavior. Such impacts reduce the quality and biological productivity of environmentally sensitive habitat areas.

The approximately 40-140-foot-wide pasture area that exists between the proposed contractor's office and yard on the northerly parcel and the wetland will remain undeveloped areas of high infiltration capability that will minimize the amount of runoff potentially reaching the ESHA from the northerly parcel. However, to ensure the protection of the quality and biological productivity of the ESHA by minimizing the volume of stormwater runoff that could potentially drain to the ESHA, the Commission attaches Special Condition No. 6. The condition requires the applicant to submit an erosion and runoff control plan for the review and approval of the Executive Director prior to the issuance of the coastal development permit. Special Condition No. 6 requires the Erosion and Runoff Control Plan to include provisions for (1) installing silt fencing along the upland/wetland boundary adjacent to the area to be excavated to capture sediment from the grading before it flows with runoff into the wetland, (2) maintaining on-site vegetation to the maximum extent possible during construction, (3) replanting or seeding any disturbed areas with native vegetation or sterile non-native grasses following project completion, (4) covering and containing all on-site stockpiles of construction debris to prevent polluted water runoff, (5) to ensure that runoff from the completed development is not directed toward the ESHA, Special Condition No. 4 also requires the erosion and runoff control plan to demonstrate that all runoff from the roof, and other impervious surfaces of the development would be collected and directed into pervious areas on the site for infiltration, (6) prohibiting the washing-out of concrete delivery vehicles and the disposal or release of waste or hazardous materials on the site, (7) requiring staging to be performed only in upland areas, (8) requiring disposal of excess excavated material and construction debris at a locally authorized disposal site outside of the coastal zone or within the coastal zone pursuant to a valid coastal development permit, (9) limiting excavation work to the dry season between April 15th and October 30<sup>th</sup>, and (10) requiring maintenance of the required best management practices.

The construction contractor's yard operation will include the use and storage of fuels, oil, paint, solvents, and other chemicals used in the construction business. In addition, construction vehicles that require diesel and other fuels and oils will be stored at the facility. Many of these substances are hazardous and could contribute to pollution of groundwater and the adjacent wetland area. Therefore, the Commission attaches Special Condition No. 7 which requires that the applicant submit for the review and approval of the Executive Director a hazardous materials management plan to reduce the impact to water quality from the use and management of hazardous materials on the site. The condition requires that the plan provide for equipment fueling only in daylight areas in designated fueling areas, maintaining on the site absorbent pads and other equipment needed for the cleanup of and disposal of hazardous materials used at the site, and reporting protocols to the appropriate agencies in the event of a spill.

The ESHA could be adversely affected by the development if non-native, invasive plant species were introduced from revegetation of areas disturbed during construction and landscaping at the site. 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 planting of invasive species, the revegetation provision of the erosion and runoff control plan required by Special Condition No. 6 requires that only native plant species of native stock or sterile non-native grasses that will not invade the surrounding area be used for the revegetation. The perimeter of the contractor's yard compound on the northerly parcel has been landscaped with trees to reduce the visual impact of the development. To maintain the visual screening provided by the trees over the life of the project, Special Condition No. 8 requires the replacement of any of the trees that die. To prevent such future replacement of trees from contributing to the introduction of invasive species into nearby environmentally sensitive habitat, Special Condition No. 8 requires that such replacement trees be comprised of native plant species of native stock.

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, the Commission attaches Special Condition No. 8 which prohibits the use of specified rodenticides on the property.

The proposed project will not encroach into the environmentally sensitive wetland habitat on the subject property. In addition, the mitigation measures discussed above will minimize any potential impacts to the water quality or other elements of the environmentally sensitive wetland habitat area. Therefore, the Commission finds that the project as conditioned will not significantly degrade adjacent ESHA and will be compatible with the continuance of the wetland habitat area consistent with Section 30240 of the Coastal Act. The Commission further finds that the project, as proposed, will maintain and enhance the biological productivity and functional capacity of the habitat consistent with the requirements of Section 30231 of the Coastal Act.

**G. Visual Resources**

Section 30251 of the Coastal Act states:

*The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the*

*character of surrounding areas and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas...shall be subordinate to the character of its setting.*

Section 30251 sets forth three principal limitations on new development. First, new development must be sited and designed to protect views to and along the ocean and scenic coastal areas. Second, new development must minimize the alteration of natural landforms. Finally, new development must be visually compatible with the character of surrounding areas and if located within a highly scenic area, the development must not only be compatible with the character of the surrounding area but must also be subordinate to the character of its setting.

The proposed development is not located in a designated highly scenic area. In addition, with its location approximately three miles inland from the ocean shoreline, the development does not block views to and along the ocean and scenic coastal areas. However, the project site is within a prominent location visible from Highway 211, the main road connecting the historic City of Ferndale, a major tourist destination within the coastal zone along the North Coast, with Highway 101 and points north and south. The project site is also directly in view from adjacent Port Kenyon Road. As the proposed project is surrounded by open agricultural lands, rural residences, and an east-west trending band of riparian habitat to the north along the Salt River and as the development is not located adjacent to other commercial or industrial land use, the principal consideration in evaluating the development's conformance with the visual resource protection provisions of Section 30251 of the Coastal Act is whether the development is compatible with the character of its setting. In addition, as the project involves the excavation of approximately 1,000 cubic yards of material over an approximately 23,290-square-foot area, a second consideration regarding the conformance of the development with Section 30251 is whether the development would minimize the alteration of natural landforms

#### **Compatibility With Character of Surrounding Area**

The proposed development involves the conversion of the northerly of the two parcels involved in the project from a residential use to a construction contractor's office and yard. The exterior appearances of both the former house and the former residential accessory building on the site that have been converted to an office and storage facility respectively, have not been significantly changed. However, the project also involves the construction of two additional structures, including a separate 3,700-square-foot office/storage building and an approximately 2,700-square-foot pole barn storage structure. The pole barn structure will be located at the southwesterly corner of the northern parcel, in the portion of the parcel that is closest to and most visible from Highway 211. The new office/storage building will be most prominent from Port Kenyon Road and also from portions of Highway 211. The form and height of these new structures will be generally consistent with the varying bulk and height of other structures in the surrounding area including the residences along Port Kenyon Road and the numerous agricultural barns and accessory

structures in the larger surrounding area. However, the pole barn structure will be open-sided which would allow all of the construction vehicles, equipment and other materials to be stored under the roof covering of the structure to be plainly visible from the highway if not visually screened. In addition, the open areas of the proposed development on the northerly parcel will often be the scene of the movement of vehicles, equipment, and materials associated with the business. If not screened, the views of these structures, the stored vehicles, equipment, and materials, and the activity associated with the business would contrast greatly with the views of (1) the open agricultural fields that exists between Highway 211 and the development and throughout much of the surrounding area, (2) the string of rural residences that extend westward along Port Kenyon Road, and (3) the backdrop of riparian vegetation north of Port Kenyon Road that lines the course of the Salt River.

To minimize the visual impact of the development and to help blend the appearance of the proposed construction contractor's office and yard with the surrounding development and landscape, the applicant proposes the installation of a fence and landscaping around the perimeter of the contractor's yard. The fencing consists of a 6-foot-high solid wooden fence around the north, west, and east sides of the northerly parcel and a wooden split rail fence along the south side of the parcel. The planting plan involves the installation of 18 trees, including 8 Leyland Cypress, 6 Pittosporum Tenuiflorum trees, 4 Mayten trees, 4 Strawberry trees, and 7 Redtip Photina trees. In addition, the planting plan includes the installation of approximately 9,500 square feet of turf within the interior of the facility. The fence installation and landscaping have already been completed, and these features do help soften the appearance of the yard. Although the fence does not completely block all view of the yard, the solid portion of the fence does shield much of the view of the yard from Port Kenyon Road and for southwest-bound travelers along Highway 211. The split rail fence along the south side of the compound offers partial screening as viewed by northeast-bound travelers along Highway 211. In addition, the natural wood color of the fence helps soften the appearance of the painted buildings, shiny metal equipment, and stored construction materials. Furthermore, the existing and planted trees play a significant role in blending the appearance of the yard into the backdrop of the east-west trending band of riparian vegetation that exists along the Salt River to the north of the property across Port Kenyon Road as viewed by travelers heading northeast on Highway 211. The trees also help break up the expanse of the solid screening fence along Port Kenyon Road. As the trees mature, the vegetation will further soften the appearance of the yard.

As proposed, the installation of the wooden fencing and trees screen and soften the appearance of the construction contractor's office and yard in a manner that greatly contributes to ensuring the compatibility of the development with the character of its surrounding area. However, the fencing and landscaping must be maintained to ensure their continued effectiveness in mitigating the visual impact of the development. Therefore, the Commission attaches Special Condition No. 8 and 9. Special Condition No. 8 requires the applicant to maintain all of the existing trees and all the trees planted pursuant to the proposed planting plan submitted with the application in good growing condition throughout the life of the project. If any of the trees

become decadent, rotten, or weakened by decay or disease, or are removed for any reason, the applicant must immediately replace the trees with native non-invasive tree species common to the area that will grow to a similar or greater girth and height. Similarly, Special Condition No. 9 requires the applicant to maintain the wooden fencing throughout the life of the project. Any portions of the fencing that collapse or are otherwise damaged or removed must be immediately repaired or replaced in-kind with wooden fencing, and the fence must be maintained in natural wood tone colors.

Even with the fencing and landscaping, the development would not be compatible with the character of its surroundings at night if the yard were to include excessive lighting that shines beyond the boundaries of the parcel and produces glare. The public roads that constitute the major public vantage points with views of the development are certainly used at night, especially Highway 211. Therefore, the Commission attaches Special Condition 9(B). To minimize potential glare from any exterior lighting, Special Condition No. 9(B) requires that all exterior lights be the minimum necessary for the safe ingress and egress of structures and be low-wattage, non-reflective, shielded, and be cast downward such that no light will be directed to shine beyond the boundaries of the subject parcel.

Therefore, the Commission finds that the proposed development, as conditioned, is consistent with the requirements of Section 30251 of the Coastal Act that approved development be visually compatible with the character of the surrounding area.

### **Alteration of Natural Landforms**

As noted above, the project involves the excavation of 1,000 cubic yards of earthen material from an approximately 23,290-square-foot area along the south side of an existing drainage swale. The proposed grading and excavation is proposed to expand the floodway to compensate for the reduction in floodway capacity that will result from construction of the proposed new 3,700-square-foot office/shop building, the 740-square-foot addition to one of the existing buildings, and the other elements of the development. The grading and excavation would not result in a significant alteration of natural landforms as it would serve to only slightly expand the existing topographical depression at the site that constitutes the drainage swale. The existing drainage swale already covers approximately one and a half acres or about half of the area of the southerly parcel of the subject property and the swale extends over large areas both east and west of the site. To avoid disturbance of the wetlands within the swale, the grading and excavation would essentially create a flat bench adjacent to and just above wetlands of the existing drainage swale. The appearance of the raised bench area may be somewhat more noticeable than if the excavation instead were to simply expand the swale by excavating through the side of the swale from the base of the swale. However, by expanding outward from side of the swale at an elevation above the wetlands but still below the top of the swale, the grading would not alter the fundamental visual character of the swale. The side of the proposed bench that will rise to the elevation of the land area adjacent to the swale will be shaped to a gradual 1 vertical to 2 horizontal

slope. In addition, the bench will only be approximately three feet deep and the existing swale is only approximately 10 feet deep from the top of the surrounding plain to the bottom of the swale. The gradual slope of the bench and the relatively shallow depth of the bench and swale will generally conform to the minor undulations of the surrounding plain and topography. Therefore, the development will minimize the alteration of natural landforms consistent with the requirements of Section 30251 of the Coastal Act.

In conclusion, the Commission finds that the proposed development, as conditioned, is consistent with requirements of Section 30251 of the Coastal Act 35 as the development would (1) not significantly adversely affect views to and along the ocean, (2) minimize the alteration of natural land forms, and (3) be visually compatible with the character of the surrounding area. , and (4) include exterior lighting that would be designed to minimize glare beyond the boundaries of the parcel.

#### **H. State Waters**

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, the Commission attaches Special Condition No. 11, which requires that the project be reviewed and where necessary approved by the State Lands Commission prior to the commencement of development.

#### **I. Alleged Violation**

Certain development has allegedly taken place at the project site without the benefit of a valid coastal development permit, including (1) remodelling a 2,640-square-foot single-story former residence for conversion into a business office, (2) conversion of a 2,060-square-foot accessory building as a storage facility for storing equipment and materials, (3) grading and gravelling an area for the storage of vehicles and construction materials, (4) paving an area to construct a larger driveway and a parking area, (5) upgrading an existing septic system, (6) installing fencing around most of the perimeter of the northerly parcel, and (7) installing landscaping along the perimeter and outside of the new fencing improvements. Although certain development has allegedly taken place at the project site without the benefit of a coastal development permit, consideration of the application by the Commission has been based solely upon the proposed project's conformance with the Chapter 3 policies of the Coastal Act. Approval of this permit does not constitute a waiver of any legal action with regard to the alleged violations nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal development permit.

#### **J. California Environmental Quality Act**

Humboldt County is the lead agency for purposes of CEQA review. In its action to approve a use permit for the development, the County determined that the proposed

project is categorically exempt from environmental review under Section 15303(c) of CEQA.

Section 13096 of the Commission's administrative regulations requires Commission approval of a coastal development permit application to be supported by findings showing that the application, as modified by any conditions of approval, is consistent with any applicable requirement 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 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. As discussed above, the proposed project is consistent with the requirements of the applicable policies of the Coastal Act. These 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 approved, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact that the activity would have on the environment. Therefore, the Commission finds that the proposed project can be found consistent with the requirements of the Coastal Act and to conform to CEQA.

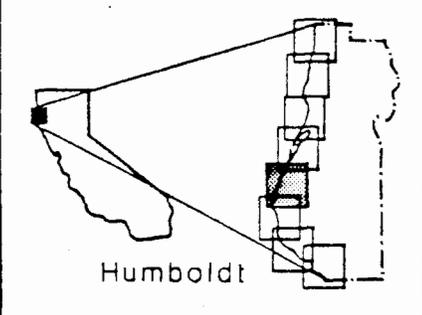
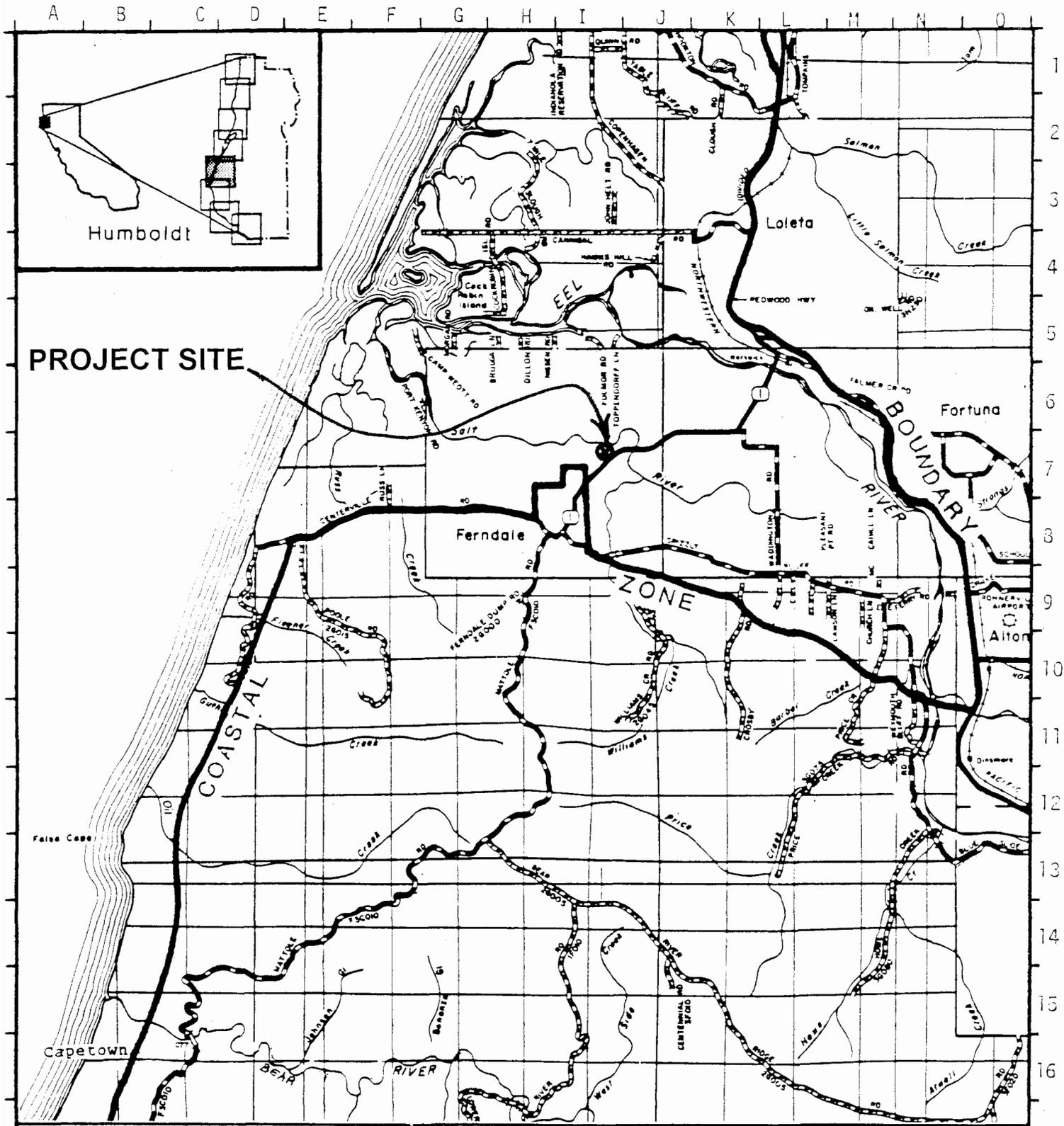
**EXHIBITS:**

1. Regional Location Map
2. Project Vicinity Map
3. Parcel Map
4. Site Plan
5. Floodway Excavation Cross Section
6. Planting Plan

**APPENDIX A**

STANDARD CONDITIONS

1. Notice of Receipt and Acknowledgement. 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. Interpretation. Any questions of intent of interpretation of any condition will be resolved by the Executive Director of the Commission.
3. 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.
4. 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.



Humboldt

PROJECT SITE

Ferndale

COASTAL ZONE

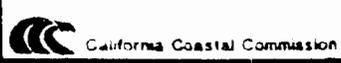
BOUNDARY

Fortuna

Alton

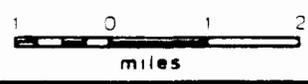
Capetown

BEAR RIVER



County of Humboldt

EXHIBIT NO. 1  
 APPLICATION NO.  
 1-05-060  
 DELBIAGGIO  
 REGIONAL LOCATION MAP



18

# PROJECT SITE

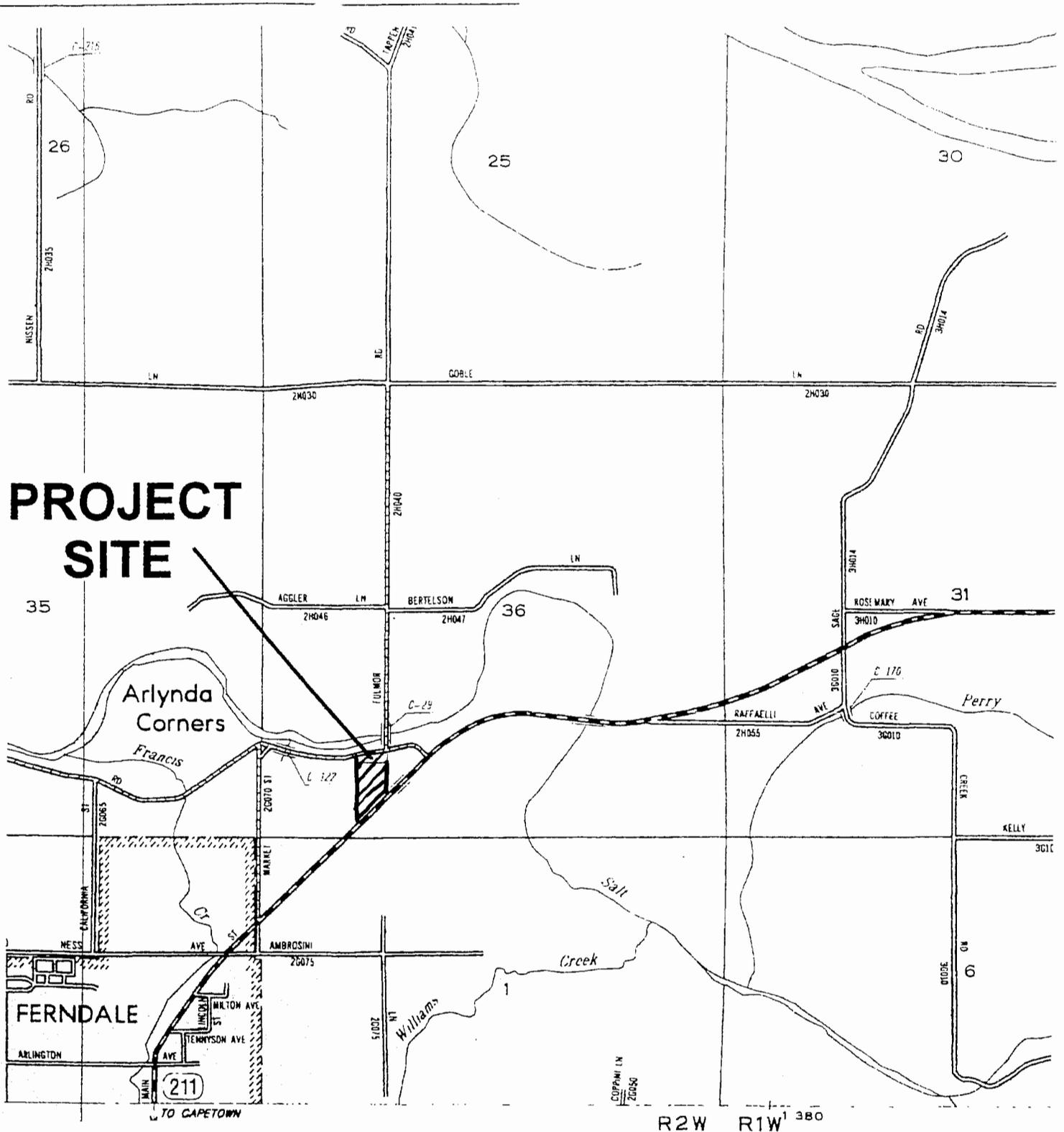


EXHIBIT NO. 2  
APPLICATION NO.  
1-05-060  
DELBIAGGIO  
PROJECT VICINITY MAP



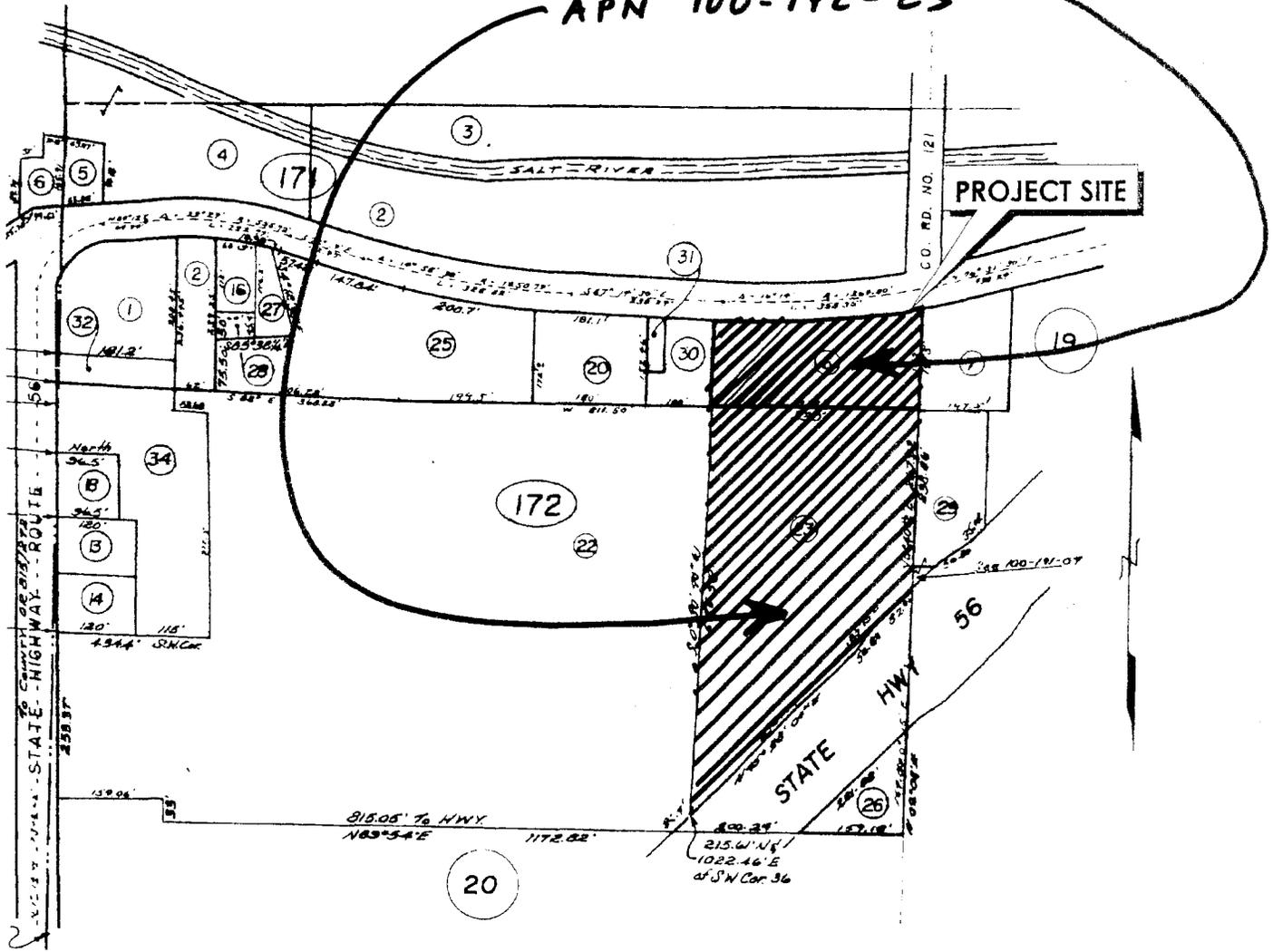
Map is not drawn to scale.

SW 1/4 SEC 36, 3N, 2W

100-17  
T.C.A.  
1" = 200'  
2/14/63

APN 100-172-06

APN 100-172-23



NOTE: DEED DIMENSIONS ARE TO SIDE OF ROAD, WHICH IS INDEFINITE.  
PAVEMENT IS 18' WIDE.

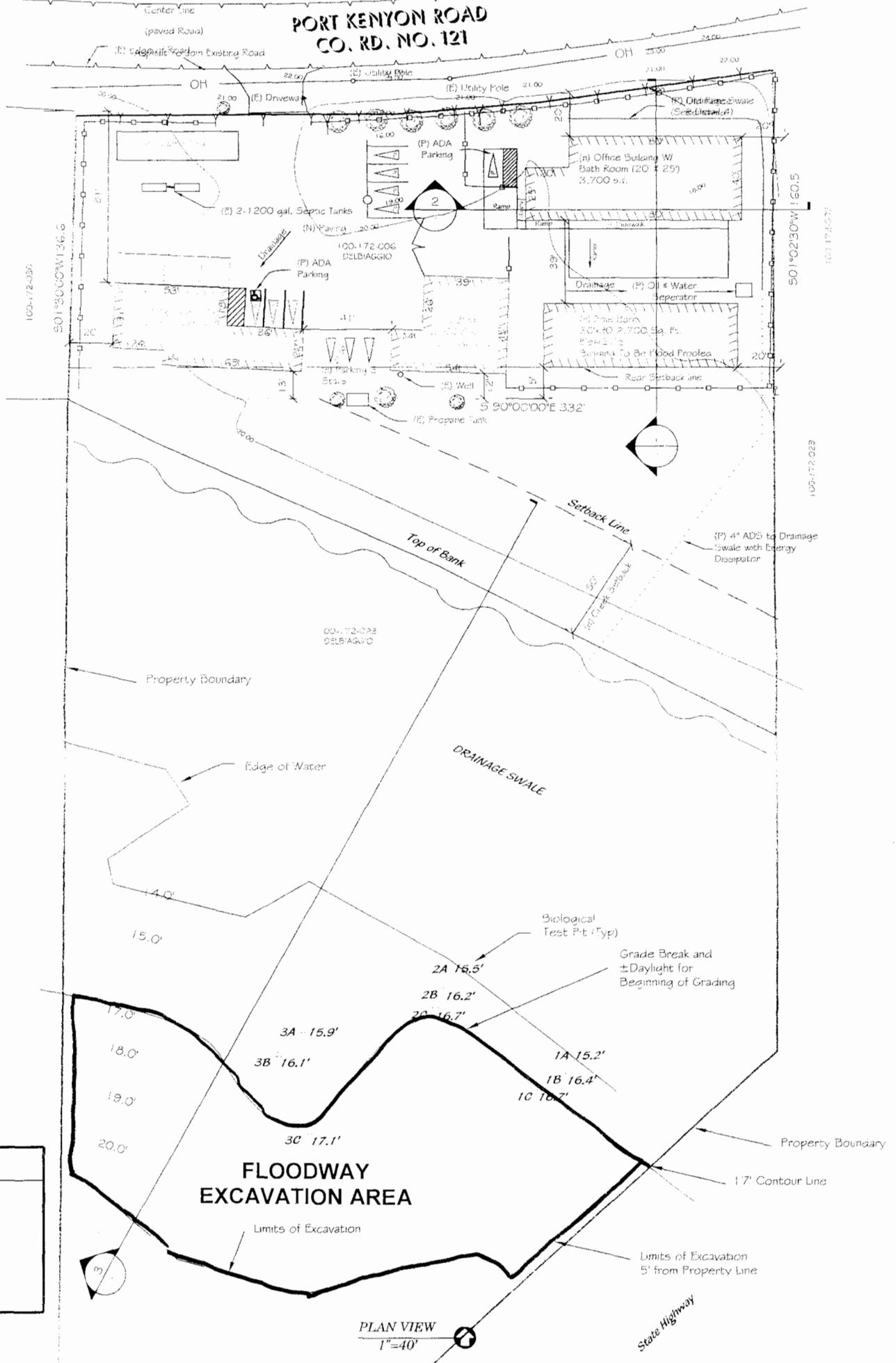
### ASSESSOR PARCEL MAP

EXHIBIT NO. 3
APPLICATION NO.
1-05-060
DELBIAGGIO
PARCEL MAP

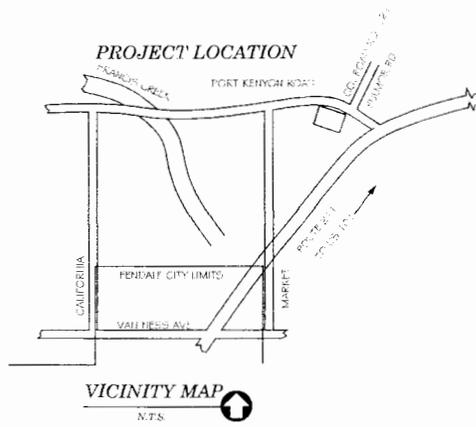


MAP NOT TO SCALE

**PORT KENYON ROAD  
CO. RD. NO. 121**



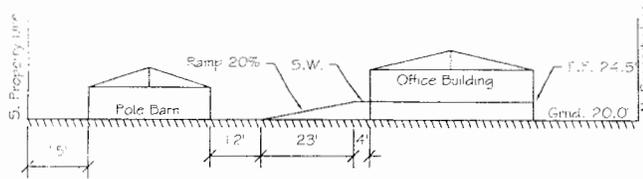
**EXHIBIT NO. 4**  
**APPLICATION NO.**  
 1-05-060  
 DELBIAGGIO  
 SITE PLAN



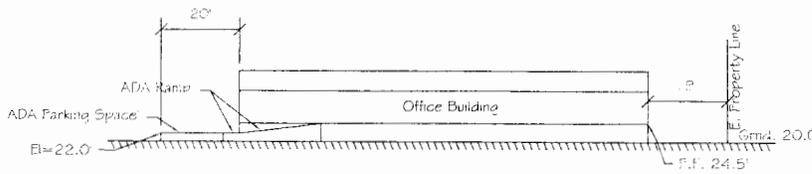
## FLOODWAY NOTES

Existing Ground Elevation at New Office Building is 20'. The Flood Elevation for the Area is 23.5'. Therefore, the New Office BLDG is Proposed to One Foot Above Flood Bldg Elevation or 24.5'. The Amount of Water this New Office Bldg will Displace is 940 C.Y. It is proposed to grade the South Side of the Drainage Swale to Compensate for the Displaced Water. The Graded Area of 23,476 s.f. by 1.1' Depth Totals 25,824 c.f. or 956 c.y. The New Pole Barn is Proposed to be Built at Grade and Wet Flood Proofed.

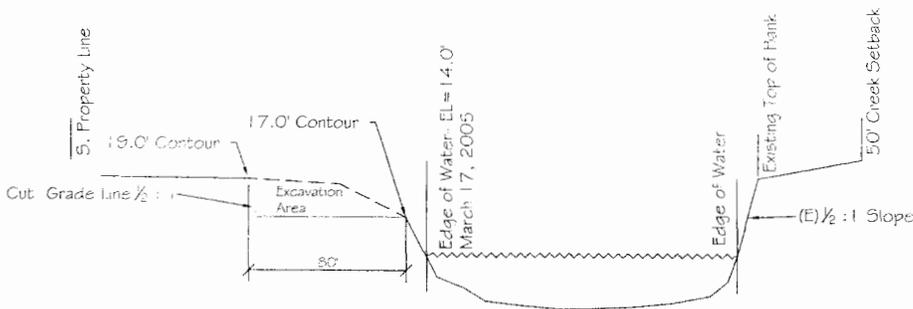
Excavated material from the property will be hauled off by Dave Truttali Gravel to a stockpile at their facility.



**1** CROSS SECTION  
1" = 30' Horizontal & Vertical



**2** CROSS SECTION  
1" = 30' Horizontal & Vertical



**3** CROSS-SECTION  
1" = 60' Horizontal  
1" = 10' Vertical

**EXHIBIT NO. 5**  
**APPLICATION NO.**  
1-05-060  
DELBIAGGIO  
FLOODWAY EXCAVATION  
CROSS SECTION

**PLANTING PLAN**

EXISTING LANDSCAPING  
TREES - 10 GAL. AND LARGER  
100-171-002

**PROPOSED LANDSCAPING**

COMMON NAME	SYMBOL	APPROX. QUANTITIES
CYPRESS (EVERGREEN)	A	8
TRIFOLIUM	B	6
WATER TREE	C	4
STRAWBERRY TREE	D	4
REDTIP PRUNEA	E	7

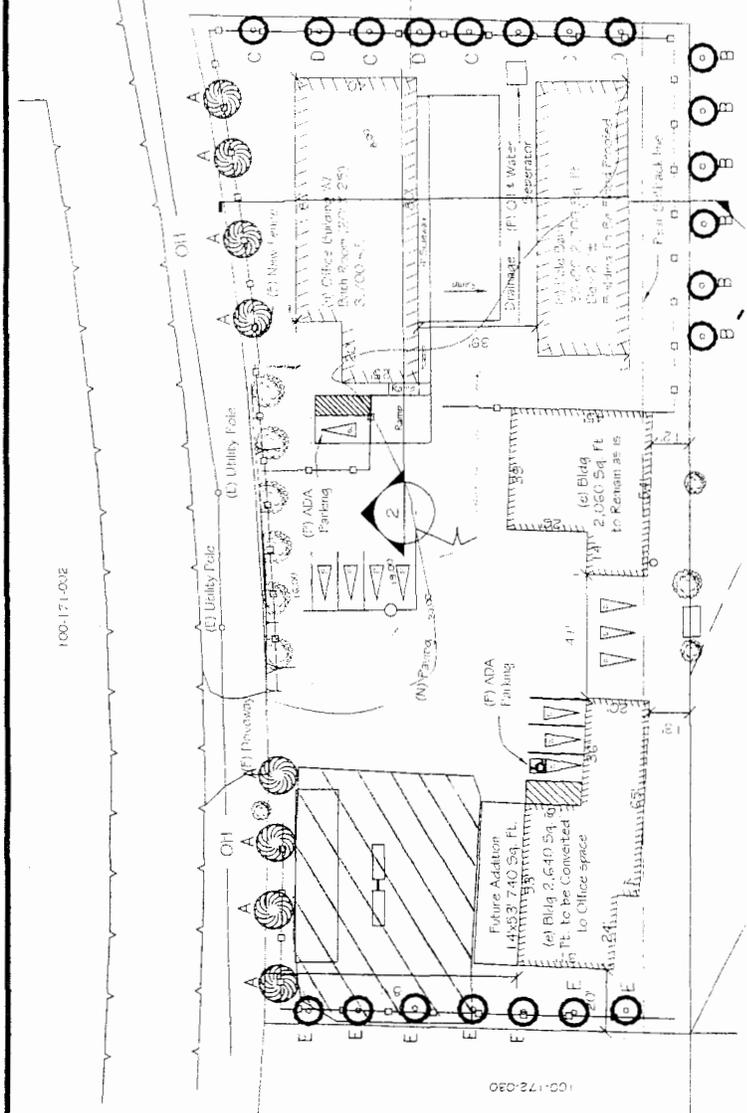
SHRUB - 5 GAL.

**GROUND COVER AND TURF**

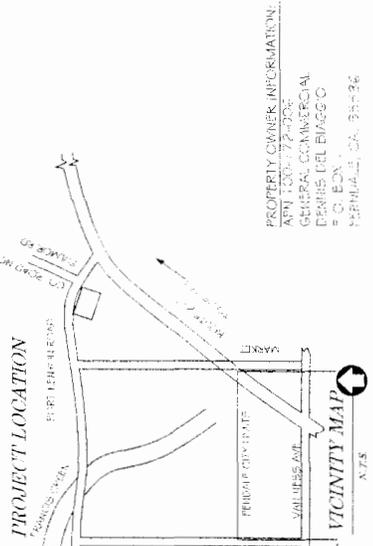
COMMON NAME	SYMBOL	APPROX. QUANTITIES
GRASS	F	8,000 SQ. FT.

TOP TO BE REMOVED AND REPLACED WITH TURF OR GRASS  
MATERIALS TO BE SPECIFIED BY CONTRACTOR

ALL PLANTINGS TO BE DONE IN ACCORDANCE WITH THE FOLLOWING SPECIFICATIONS:  
1. ALL PLANTINGS TO BE DONE IN ACCORDANCE WITH THE FOLLOWING SPECIFICATIONS:  
2. ALL PLANTINGS TO BE DONE IN ACCORDANCE WITH THE FOLLOWING SPECIFICATIONS:  
3. ALL PLANTINGS TO BE DONE IN ACCORDANCE WITH THE FOLLOWING SPECIFICATIONS:



**LANDSCAPE NOTES**  
These Landscape Plantings have already been installed.



PROPERTY OWNER INFORMATION:  
ATM 1200-172-002  
GENERAL COMMERCIAL  
DENNIS DEL BIAGGIO  
P.O. BOX  
MERRILL, CA. 95536

**PHASE ONE PLANTING PLAN**  
**DENNIS DEL BIAGGIO**  
APN# 100-172-006

167 S. Fortuna Blvd., Fortuna, CA 95540  
P.O. Box 892, Fortuna, CA 95540  
Phone (707) 725-7410  
FAX (707) 725-7411

**Ontiveros & Associates**  
Consulting Engineers & Surveyors

JOB No.: 05-034  
DATE: 7/28/05  
DRAWN BY: KVP  
SHEET: 2 OF 2  
SCALE: 1" = 40'

**EXHIBIT NO. 6**  
**APPLICATION NO.**  
1-05-060  
**DELBIAGGIO**  
**PLANTING PLAN**