

## CALIFORNIA COASTAL COMMISSION

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# Th11a

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Staff: Melissa B. Kraemer  
Staff Report: January 28, 2010  
Hearing Date: February 11, 2010  
Commission Action:

## STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: **1-09-033**

APPLICANT: **Eureka Broadcasting Inc.**

AGENT: McClelland Consulting, Attn: Marty McClelland

PROJECT LOCATION: Within diked former tidelands south of Eureka Slough located northeast of the north end of Marsh Road in the Myrtle town area, just east of the Eureka city limits, in Humboldt County (APN 014-271-08).

PROJECT DESCRIPTION: Replace two 245-foot-high radio broadcasting antennae and appurtenant facilities, including guy rods and anchors, antenna radials, and coaxial cables.

LOCAL PLAN DESIGNATION: Agricultural Exclusive (AE).

LOCAL ZONING DESIGNATION: Agricultural Exclusive with Transitional Agricultural Lands Combining Zone (AE/T) and Natural Resources with Coastal Wetlands Combining Zone (NR/W).

LOCAL APPROVALS RECEIVED: Humboldt County Conditional Use Permit No. 08-11, approved by the Planning Commission on July 2, 2009.

OTHER APPROVALS RECEIVED: U.S. Army Corps of Engineers Nationwide Permit #18 (Minor Discharges). Issued August 26, 2009; File No. 2009-00310N; and

North Coast Regional Water Quality Control Board  
CWA Section 401 Water Quality Certification. Issued  
November 2, 2009; WDID No. 1B09100WNHU.

**SUBSTANTIVE FILE  
DOCUMENTS:**

Initial Study and Draft Mitigated Negative  
Declaration for the project (SCH No. 2009062014);

Letter dated November 6, 2008 from Ms. Stephanie  
Morrissette of Mad River Biologists (Eureka, CA)  
to Mr. Marty McClelland of McClelland Consulting  
(Kneeland, CA) regarding "Biological and Wetland  
Investigation for Eureka Broadcasting Antenna  
Replacement Project;"

*A Cultural Resources Investigation for the Eureka  
Broadcasting Radio Tower Antennae Replaceemnt  
Project Located in Humboldt County, California,*  
prepared by Roscoe and Associates, Bayside, CA,  
July 2009; and

Humboldt County Local Coastal Program

**SUMMARY OF STAFF RECOMMENDATION**

Staff recommends that the Commission approve with conditions this follow-up permit application for the replacement of two 245-foot-high radio broadcasting antennae and appurtenant facilities, which were authorized by the Executive Director under Emergency Permit No. 1-09-042-G in October of 2009. The applicant is seeking permanent authorization of development partially completed under temporary authorization granted by the emergency permit.

The applicant's two 245-ft-tall radio broadcasting antennae and appurtenant facilities were first installed in 1955 in diked former tidelands (grazed seasonal wetlands) just north of the KINS radio station at 1101 Marsh Road in the Myrtle town area east of Eureka in Humboldt County. The facility broadcasts the signal from four commercial radio stations in the region, at least one of which is designated by the Federal Communications Commission (FCC) as the Local Primary I (LP) station for Humboldt County. LP stations are relied upon by the Humboldt County Office of Emergency Services, the County Sheriff's Office, and the National Weather Service for broadcast of Emergency Alert System (EAS) announcements to the public in the County.

Prior to the development authorized by Emergency Permit No. 1-09-042-G, existing facilities included two antennae foundations (each approximately 5 square feet in size) for two 245-ft-high antennae, each located within a fenced area approximately 10 feet by 10 feet by 8 feet high. The fencing is a requirement of the FCC for this type of facility.

Each antenna was supported by three guy wires, and each guy wire was anchored to a concrete foundation approximately 1.2 cubic feet in size. An elevated wooden walkway (“catwalk”) provides access from the radio station to the antennae and an alignment for the existing coaxial cables.

The majority of the project area, except for the area immediately around the antennae foundations within the fencing, is used as agricultural grazing land, and the area is planned and zoned Agricultural Exclusive under the Humboldt County certified LCP. The existing facility is considered a legal nonconforming use, and the County issued a conditional use permit for the project on July 2, 2009. In addition, nearly the entire facility is located in diked former tidelands which function as (mostly grazed) seasonal wetlands.

The proposed project involves both permanent and temporary impacts to seasonal wetlands. A total of 8 square feet of seasonal wetlands would be impacted by the placement of the proposed concrete and rebar jackets around the existing tower foundations. Additionally, a total of 108 square feet of grazed seasonal wetlands would be temporarily disturbed through the proposed excavation for installation of “deadman anchors” for new guy wire support. Areas of temporary wetland impact are proposed to be fully restored to pre-project conditions by harboring the top soil layer during construction activities, keeping it moist, and replacing it as the top layer upon completion of anchor installation. Any bare soil areas would be subsequently reseeded with an appropriate mix of pasture species. To compensate for the 8 square feet of permanent wetland impacts, the applicant proposes to remove the above-ground portion of the existing concrete guy wire anchors to a depth of 18-inches below ground surface. Removal of the existing concrete anchors and backfilling with native soil materials and existing vegetation would create 12 square feet of wetlands similar to the surrounding wetlands (i.e., grazed seasonal wetlands). Thus, the applicant proposes a mitigation ratio of 1.5-to-1 for permanent impacts to seasonal wetlands.

Staff believes that the mitigation ratios proposed are appropriate in this particular case because (1) the wetlands being impacted are at the relatively drier end of the wetland moisture gradient and do not function as wetlands year-round, and (2) in this region of abundant fog and rain and moist, water-retaining soils, mitigation wetlands have a relatively high probability of successfully achieving the wetland functions and values for which they are intended to compensate.

Staff also believes that the proposed fill is for an allowable use pursuant to Coastal Act Section 30233(a)(4), because the proposed fill is for an “incidental public service purpose.” As discussed above, the FCC has designated the subject broadcasting facility as the “Local Primary I” (LP) station for Humboldt County, and as such the station is relied upon for the broadcast of Emergency Alert System (EAS) announcements (e.g., severe weather announcements, Amber Alerts, etc.) to the public in the County. The applicant monitors all EAS broadcasts (e.g., from the National Weather Service, the County Office of Emergency Services, and the County Sheriff’s Office), and if it receives an EAS announcement, it uses its radio broadcasting signal to broadcast the information

to other monitoring stations in the region for their subsequent rebroadcast. In this way the radio broadcasting facility (and specifically the antennae towers which result in the need for fill) serve as an essential link in the dissemination of important public safety information throughout the region. In addition, staff believes that the proposed fill is incidental to “something else as primary,” in that the project is designed to replace in-kind, and in the same location, 55-year-old radio broadcasting antennae, which are only a component of a larger radio broadcasting facility and incidental to the primary service provided overall by the radio broadcasting facility. The development does not involve the installation of a new radio broadcasting facility but merely allows for the ongoing use of the existing radio broadcasting facility without increasing the broadcasting capacity of the facility.

Staff further believes that the proposed project represents the least environmentally damaging feasible alternative and recommends the following mitigation measures to ensure that the proposed improvements to the radio broadcasting facility will not adversely affect the biological productivity and functional capacity of coastal waters or marine resources, consistent with Section 30233 of the Coastal Act: (1) Special Condition No. 1 would require that a vegetation mitigation monitoring report be submitted to the Executive Director within 90 days of project completion to ensure the successful revegetation of areas disturbed by project activities; and (2) Special Condition No. 2 would require that revegetation be performed only with native plants obtained from local genetic stocks or sterile non-native grasses. The condition also would prohibit the use of certain anticoagulant-based rodenticides in the project area.

In addition, staff recommends Special Condition No. 3 to ensure that the development would not adversely impact archaeological resources and Special Condition No. 4 to protect the area’s visual resources. As conditioned, staff believes the proposed project is consistent with all applicable Chapter 3 policies of the Coastal Act and recommends approval of the project with special conditions.

**The Motion to adopt the staff recommendation is found on Page 6.**

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## STAFF NOTES

### **1. Jurisdiction & Standard of Review**

The proposed project area is bisected by the boundary between the retained coastal development permit jurisdiction of the Commission and the coastal development permit jurisdiction delegated to Humboldt County by the Commission through the County’s certified Local Coastal Program. Both of the existing towers and associated appurtenant facilities to be replaced are in the Commission’s retained jurisdiction, but at least a portion of the equipment access route and catwalk to the towers is within the County’s jurisdiction.

Section 30601.3 of the Coastal Act 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.

## **2. Follow-up CDP to Emergency Permit No. 1-09-042-G**

On October 6, 2009 the Executive Director approved Emergency Permit No. 1-09-042-G for the work proposed under the subject coastal development permit application. The emergency permit was reported to the Commission by the North Coast District Manager at the October 7, 2009 meeting in Oceanside.

Emergency permit No. 1-09-042-G authorized the replacement of two 245-foot-high radio broadcasting antennae and appurtenant facilities including guy rods and anchors, antenna radials, and coaxial cables within diked former tidelands south of Eureka Slough located northeast of the north end of Marsh Road, just east of Eureka, Humboldt County (APN 014-271-08). In approving the emergency permit, the Executive Director found that the radio antennae towers were in danger of collapse and needed to be replaced prior to the onset of the rainy season, when wet conditions would impair construction access and further damage the corroded, cracked tower anchoring systems. Because (1) the radio facilities are relied upon by the Humboldt County Office of Emergency Services, the County Sheriff's Office, and the National Weather Service for broadcast of Emergency Alert System (EAS) announcements in the county; (2) KINS Radio (owned by the applicant) is designated as the Local Primary I (LP) station for Humboldt County which initiates EAS event codes for rebroadcast by other affiliated stations in the area; and (3) further damage to the radio towers could result in the inability to effectively distribute EAS announcements in the county, the Executive Director found that the situation required immediate action to ensure the EAS signal is available for broadcast to the public by area radio stations to help prevent loss of life and/or damage to property in case of emergency, and constituted an emergency as defined by Title 14 of the California Code of Regulations, Section 13009.

The applicant began the emergency work in October 2009 and completed approximately two-thirds of the necessary work prior to the onset of the rainy season in November, when the ground became too soft to effectively access the project area. The remaining project work, involving a portion of the ground system (radial installation and bonding), is planned for completion in the summer of 2010, when the ground is dry.

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**I. MOTION, STAFF RECOMMENDATION, & RESOLUTION:**

The staff recommends that the Commission adopt the following resolution:

**Motion:**

*I move that the Commission approve Coastal Development Permit No. 1-09-033 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 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 either: (1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment; or (2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

**II. STANDARD CONDITIONS: See Appendix A.**

**III. SPECIAL CONDITIONS:**

**1. Seasonal Wetland Vegetation Mitigation Monitoring**

The permittee shall submit a vegetation mitigation monitoring report to the North Coast District Office for the review and written approval of the Executive Director within 90 days of project completion. The monitoring report shall contain photographs documenting the removal of concrete anchor bases and the restoration of the surrounding ground surface to create 12 square feet of seasonal wetland habitat. The report also shall evaluate whether the objective of reestablishing vegetation in all of the seasonal wetland areas impacted by project construction to a level of coverage and density equivalent to vegetation coverage and density of the surrounding undisturbed areas has been achieved by comparing (a) percent cover of hydrophytic vegetation; (b) percent cover of native vegetation; and (c) plant species diversity. If the report indicates that the revegetation of any of the disturbed areas has not been successful, in part or in whole, the permittee shall submit a revised revegetation program to achieve the objective. The revised revegetation program shall require an amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

## **2. Restoration Site Revegetation**

Revegetation of the project site shall comply with the following standards and limitations:

- A. Only native plant species shall be planted. 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 of 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.
- B. All planting shall be completed within 60 days after completion of construction.
- C. The use of rodenticides containing any anticoagulant compounds, including, but not limited to, Bromadiolone, Brodifacoum or Diphacinone shall not be used.

## **3. Protection of Archaeological Resources**

- A. If an area of historic or prehistoric cultural resources or human remains are discovered during the course of the project, all construction shall cease and shall not recommence except as provided in subsection (B) hereof, and a qualified cultural resource specialist shall analyze the significance of the find.
- B. A permittee seeking to recommence construction following discovery of the cultural deposits shall submit an archaeological plan for the review and approval of the Executive Director.
  - 1) If the Executive Director approves the Archaeological Plan and determines that the Archaeological Plan’s recommended changes to the proposed development or mitigation measures are *de minimis* in nature and scope, construction may recommence after this determination is made by the Executive Director.
  - 2) If the Executive Director approves the Archaeological Plan but determines that the changes therein are not *de minimis*, construction may not recommence until after an amendment to this permit is approved by the Commission.

## **4. Abandonment of Radio Broadcasting Antennae**

**PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit a written agreement which states that if in the future the approved

replacement antennae are ever no longer needed, the applicant agrees to abandon the antennae and be responsible for the removal of the structures and the restoration of the site consistent with the character of the surrounding area. Before performing any work in response to the requirements of this condition, the applicant shall obtain a coastal development permit amendment from the Commission.

#### **IV. FINDINGS & DECLARATIONS**

The Commission hereby finds and declares as follows:

##### **A. Environmental Setting & Project Description**

The applicant is seeking permanent authorization of development partially completed under temporary authorization granted by Emergency Permit No. 1-09-042-G, approved by the Executive Director in October of 2009 (Exhibit No. 5). The applicant's two 245-ft-tall radio broadcasting antennae and appurtenant facilities were first installed in 1955 in diked former tidelands (grazed seasonal wetlands) just north of the KINS radio station at 1101 Marsh Road in the Myrtle town area just east of Eureka in Humboldt County (Exhibit Nos. 1-3). The facility broadcasts the signal from four commercial radio stations in the region, at least two of which are designated by the Federal Communications Commission as the Local Primary I (LP) station for Humboldt County. LP stations are relied upon by the Humboldt County Office of Emergency Services, the County Sheriff's Office, and the National Weather Service for broadcast of Emergency Alert System (EAS) announcements to the public in the County.

Prior to the development authorized by Emergency Permit No. 1-09-042-G, existing facilities included two antennae foundations (each approximately 5 square feet in size) for two 245-ft-high antennae, each located within a fenced area approximately 10 feet by 10 feet by 8 feet high. The fencing is a requirement of the Federal Communications Commission for this type of facility. Each antenna was supported by three guy wires, and each guy wire was anchored to a concrete foundation approximately 1.2 cubic feet in size. An elevated wooden walkway ("catwalk") provides access from the radio station to the antennae and an alignment for the existing coaxial cables.

The project site is located adjacent to Eureka Slough, which flows into Humboldt Bay less than one mile downstream of the project area. The National Wetlands Inventory classifies the wetlands in the project area as palustrine (freshwater) emergent, persistent, and seasonally flooded. Additionally, a biological and wetlands investigation completed for the project by Mad River Biologists on November 6, 2008 identifies vegetation characteristic of regional brackish marsh habitats around the eastern-most tower including salt grass (*Distichlis spicata*), arrow-grass (*Triglochin maritima*), spear oracle (*Atriplex triangularis*), cinquefoil (*Potentilla anserina* ssp. *anserina*), and sickle grass (*Parapholis strigosa*). Noted freshwater marsh species include creeping buttercup (*Ranunculus repens*), creeping bentgrass (*Agrostis stolonifera*), rushes (*Juncus* spp.), mannagrass (*Glyceria occidentalis*), and water foxtail (*Alopecurus geniculatus*). Drier sites around the catwalk leading to the antennae are dominated by nonnative species

including Himalayan blackberry (*Rubus discolor*), tall fescue (*Festuca arundinacea*), velvet grass (*Holcus lanatus*), and perennial ryegrass (*Lolium perenne*). However, the wetland investigation concludes that “vegetation throughout the project area is predominately hydrophytic (i.e., representative of wetland vegetation).” The biological report did not identify any special-status plant species located within the proposed project area.

The majority of the project area, except for the area immediately around the antennae foundations within the fencing 10 feet by 10 feet by 8 feet high, is used as agricultural grazing land, and the area is planned and zoned Agricultural Exclusive under the Humboldt County certified Local Coastal Program. The existing facility is considered a legal nonconforming use, and the County issued a Conditional Use Permit for the proposed project on July 2, 2009.

The project involves structural reinforcement of existing antennae foundations, replacement of the two 245-foot high antennae, replacement of guy wires and associated “deadman” anchors, replacement of the coaxial cables, minor repairs to the wooden catwalk, and installation of copper radials necessary for AM radio broadcast transmission (Exhibit No. 4). The radials are composed of #10 copper wire, are approximately 245 feet in length, and are installed every 3 degrees radiating out from the base of the antennae foundations. The radial installation equipment has a blade that “slices” the soil to a depth of approximately 12 inches, places the radial in this opening, and then “rolls back” and restores the ground to its original configuration. Structural reinforcement of the existing tower foundations involves excavation to remove soil from around the perimeter of each concrete foundation to allow for installation of a 6-inch thick concrete and rebar “jacket” around the perimeter of each foundation. Installation of the new deadman anchors to support the replaced guy wires involves excavation of an approximately 18-square-foot area to a depth of 6 feet and pouring concrete into a 3-cubic-foot form placed in the bottom of the excavation. During excavation activities, the top soil layer is proposed to be stored separately and kept moist to facilitate revegetation of disturbed areas. After the concrete has cured, the form is to be removed, and the guy wires will be attached to the anchors below ground surface. The anchors are to be covered with approximately 3 feet of fill using previously excavated materials to restore the surface. The point of contact of each 1.25-inch diameter guy wire with the ground surface is to be the only permanent impact to the wetland surface associated with installation of the new anchors.

The proposed concrete and rebar jackets around the existing tower foundations will result in permanent impacts to 8 square feet of seasonal wetlands (diked former tidelands). The proposed excavations for the deadman anchors will result in temporary impacts to 108 square feet of seasonal wetlands (diked former tidelands). As discussed above, areas of temporary wetland impact are proposed to be fully restored to pre-project conditions by harboring the top soil layer during construction activities, keeping it moist, and replacing it as the top layer upon completion of anchor installation. Any bare soil areas will be subsequently reseeded with an appropriate mix of pasture species. To compensate for the 8 square feet of permanent wetland impacts, the applicant proposes to remove the above-

ground portion of the existing concrete guy wire anchors to a depth of 18-inches below ground surface. Removal of the existing concrete anchors and backfilling with native soil materials and existing vegetation will create 12 square feet of wetlands similar to the surrounding wetlands (i.e., grazed seasonal wetlands). Thus, the applicant proposes a mitigation ratio of 1.5-to-1 for permanent impacts to seasonal wetlands.

The two antennae towers are visible from a number of public vantage points, including along Highway 101 between Eureka and Arcata. Each tower is a striped (red and white) monopole equipped with lighting. Because of the proximity of the facility to Murray Field Airport, the antennae must comply with specific lighting standards of the Federal Aviation Administration. The project does not propose additional lighting beyond the current standard, but existing lighting is to be replaced with energy-efficient LED lighting.

The installation of the replacement antennae and approximately two-thirds of the overall project was completed under Emergency Permit No. 1-09-042-G, which the Executive Director approved on October 6, 2009 (Exhibit No. 5). The remaining project work, involving a portion of the ground system (radial installation and bonding), is planned for completion in the summer of 2010, when the ground is dry.

**B. Protection of Marine Resources, Water Quality, & Wetland Habitats**

Section 30108.2 defines “fill” as the placement of earth or any other substance or material in a wetland or submerged area. The project involves both filling and dredging (excavating) in seasonal wetlands (diked former tidelands).

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

*Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes. [Emphasis added.]*

Section 30231 of the Coastal Act addresses the protection of water quality and marine resources in conjunction with development and other land use activities. Section 30231 states as follows:

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

Section 30233(a) of the Coastal Act provides, in applicable part, the following (emphasis added):

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

- (1) *New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.*
- (2) *Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*
- (3) *In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.*
- (4) *Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*
- (5) *Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*
- (6) *Restoration purposes.*
- (7) *Nature study, aquaculture, or similar resource dependent activities.*

...

The above policies set forth a number of different limitations on what development projects may be allowed in coastal waters and wetlands. For analysis purposes, the limitations can be grouped into four general categories or tests, as follows:

- The purpose of the filling, diking, or dredging is for one of the seven uses enumerated in Section 30233(a);
- The project has no feasible less environmentally damaging alternative;
- Feasible mitigation measures have been provided to minimize adverse environmental effects; and
- The biological productivity and functional capacity of the habitat shall be maintained and enhanced where feasible.

Each category is discussed separately below.

### **1. Permissible Use for Fill**

The first test set forth above is that any proposed filling, diking, or dredging in wetlands must be for an allowable purpose as specified under Section 30233 of the Coastal Act.

The relevant category of use listed under Section 30233(a) that relates to the proposed project is subcategory (4), stated as follows:

- (4) *Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*

To determine if the proposed filling is for an incidental public service purpose, the Commission must determine (a) that the proposed filling is for a public service purpose, and (b) that the proposed fill is incidental to that purpose.

The Commission finds that the proposed fill for the upgrading of the existing radio broadcasting facility is for a “public service purpose” because the Federal Communications Commission has designated the subject broadcasting facility as the “Local Primary I” (LP) station for Humboldt County, and as such the station is relied upon by the Humboldt County Office of Emergency Services, the County Sheriff’s Office, and the National Weather Service for the broadcast of Emergency Alert System (EAS) announcements (e.g., severe weather announcements, Amber Alerts, etc.) to the public in the County. The applicant monitors all EAS broadcasts (e.g., from the National Weather Service, the County Office of Emergency Services, and the County Sheriff’s Office), and if it receives an EAS announcement, it uses its radio broadcasting signal to broadcast the information to other monitoring stations in the region for their subsequent rebroadcast. In this way the radio broadcasting facility (and specifically the antennae towers) serves as an essential link in the dissemination of important public safety information throughout the region. Therefore, the Commission finds that the proposed fill is for a public service purpose.

In addition, the Commission finds that the proposed fill is incidental to “something else as primary,” in that the project is designed to replace in-kind, and in the same location, 55-year-old radio broadcasting antennae, which are only a component of a larger radio broadcasting facility and incidental to the primary service provided overall by the radio broadcasting facility. The development does not involve the installation of a new radio broadcasting facility but merely allows for the ongoing use of the existing radio broadcasting facility without increasing the broadcasting capacity of the facility. Moreover, the specific dredging and filling activities proposed, which include the burial of copper wire radials radiating out from the base of each antennae tower, the modification of deadman anchors to secure the antennae tower guy wires, and the installation of a 6-inch thick concrete and rebar jacket around each of the two antennae foundations are similar to “*burying cables... and maintenance of existing intake and outfall lines*” activities specifically enumerated as incidental public service purposes in Section 30233(a)(4).

Therefore, the Commission finds that the filling of wetlands for the proposed development is for an incidental public service purpose and thus is an allowable use pursuant to Section 30233(a)(4) of the Coastal Act.

## **2. Least Environmentally Damaging Feasible Alternative**

The second test of Section 30233(a) is whether there are feasible less environmentally damaging alternatives to the proposed project. In this case, the Commission has considered project options and determines that there are no feasible less environmentally damaging alternatives to the project as conditioned. Alternatives that have been identified include (a) complete removal and replacement of existing guy wire anchors; (b) using a different location for the necessary facility improvements; and (c) the “no project” alternative.

**(a) Complete Removal and Replacement of Existing Guy Wire Anchors**

As proposed, the project involves removal of the upper 18 inches of each existing concrete, trapezoidal-shaped guy wire anchor to be abandoned (which is the portion of each anchor that extends up through the surface of the wetland) resulting in a net gain of approximately 12 square feet of grazed seasonal wetland habitat. New guy wires are proposed to be anchored to new deadman anchors installed at a depth of approximately 6 feet below ground surface, resulting in temporary impacts to approximately 108 square feet of grazed seasonal wetlands. Consideration was given to complete removal and replacement of each of the six existing concrete guy wire anchors (each approximately 3 feet square on average by 5 feet high) to be abandoned by removing current anchors and installing new concrete anchors. The complete removal of existing anchors would result in six holes, each approximately 25 square feet in size and at least 5 feet deep. Thus, excavation would total approximately 150 cubic feet (~6 cubic yards), and the resulting voids created by the displaced anchors would require the introduction of approximately 28 cubic yards off-site fill. In addition, removal of the concrete would require transport and off-site disposal.

Due to the substantially larger area of excavation and the introduction of significant amounts of off-site fill, the Commission finds that this alternative is not a less environmentally damaging feasible alternative to the proposed project, as conditioned.

**(b) Using a Different Location for the Necessary Facility Improvements**

Consideration was given to using a different location for the necessary facility improvements. However, this alternative was determined to be infeasible since the applicant does not own or lease additional property on which to locate the radio broadcasting facility. Consideration was also given to relocating the improve facility on upland portions of the project site, such as where the radio station office building is located. However, the antennae towers are required to be located away from occupied structures as a public safety precaution, and no other upland areas are located on the applicant’s property on which to relocate the tower facility. Due to the number of stations the applicant operates, the FCC requirement that the facility not exceed a specific power capacity and be “directional” in nature (which requires the use of two towers rather than just a single tower so as not to interfere with other licensed stations outside the area that were in existence prior to the applicant’s facility), and its responsibility as the Local Primary I station for Humboldt County Office of Emergency Services, it is not possible to consolidate the antennae to a single tower structure. Furthermore, the applicant’s proposal to utilize existing infrastructure and make in-kind improvements to

the existing facility was determined to be a less environmentally damaging feasible alternative to constructing a brand new facility, which would require the disturbance of a much larger area.

Therefore the Commission finds that using a different location for the necessary facility improvements is not a less environmentally damaging feasible alternative to the proposed project, as conditioned.

**(c) No Project Alternative**

The “no project” alternative means that no improvements would occur to the existing radio broadcasting facility, which is in danger of collapse due to age and wear. In the event that the facility were to collapse or suffer further damage, the Humboldt County Office of Emergency Services would be unable to distribute Emergency Alert System (EAS) announcements to the public in the County, as the existing facility has been designated by the Federal Communications Commission as the Local Primary I station for Humboldt County to initiate EAS event codes for rebroadcast to affiliated radio stations to help prevent loss of life and/or damage to property in case of emergency. In addition, collapse of the towers would result in the dispersal of structural debris over a large area of seasonal wetlands directly impacting the wetlands and requiring disturbance of an even larger surrounding area to remove the debris. Therefore, the Commission finds that the no project alternative is not a less environmentally damaging feasible alternative to the proposed project, as conditioned.

**(d) Conclusion**

Based on the above alternatives analysis, the Commission concludes that the proposed project is the least environmentally damaging feasible alternative.

**3. Feasible Mitigation Measures**

The third test set forth by Sections 30230, 30231, and 30233 of the Coastal Act is whether feasible mitigation measures have been provided to minimize adverse environmental impacts. Depending on the manner in which the proposed project has been conducted to date and will be completed, the significant adverse impacts of the project may include (a) a net loss of wetland habitat from temporary and permanent wetland impacts associated with the proposed construction; (b) impacts to adjacent wetland habitats from construction activities; (c) introduction through re-planting of exotic invasive plants species that could displace native vegetation in surrounding natural habitats; and (d) use of certain rodenticides that could deleteriously bio-accumulate in predator bird species. The potential impacts and their mitigations are discussed in the following sections:

**(a) Net Loss of Wetland Habitat**

As discussed above, the project involves both filling (temporarily and permanently) and dredging (excavating) in coastal wetlands:

- The proposed concrete and rebar jackets around the existing tower foundations will result in permanent impacts to a total of 8 square feet of seasonal wetlands (diked former tidelands);
- The proposed excavations for the “deadman” anchors will result in temporary impacts to 108 square feet of seasonal wetlands (diked former tidelands).

Areas of temporary wetland impact are proposed to be fully restored to pre-project conditions by harboring (stockpiling) the top soil layer (with its existing vegetation) during construction activities, keeping it moist, and replacing it as the top layer upon completion of anchor installation. Any bare soil areas will be subsequently reseeded with an appropriate mix of pasture species. In this way, the applicant proposes that all areas temporarily impacted by construction activities will be restored, and there will be no net loss of wetland habitat in these “temporarily impacted” areas.

To compensate for the 8 square feet of permanent wetland impacts, the applicant proposes to remove the above-ground portion of the existing concrete guy wire anchors to a depth of 18-inches below ground surface. Removal of the upper portions of the guy wire anchors to be abandoned will have less impact on the surrounding wetlands than complete removal of the anchors, as a smaller area of excavation at each anchor will be required and less fill will need to be removed. Removal of the upper portions of existing concrete anchors and backfilling above the remaining portions of the anchors with native soil materials will create 12 square feet of wetlands similar to the surrounding wetlands (i.e., seasonal wetlands). Thus, the applicant proposes a mitigation ratio of 1.5-to-1 for permanent impacts to seasonal wetlands.

The applicant asserts that the proposed mitigation ratios are appropriate because the proposed wetlands to be restored (temporarily impacted wetlands and the mitigation site for permanent wetland impacts) will be located on site, the seasonal wetlands to be impacted are highly disturbed, lack connectivity to a natural water source, are limited in vegetation diversity, are dominated by nonnative species, and serve few ecosystem functions and values. The Commission agrees that the mitigation ratios as proposed are appropriate in this particular case because (1) the wetlands being impacted are at the relatively drier end of the wetland moisture gradient and do not function as wetlands year-round, and (2) in this region of abundant fog and rain and moist, water-retaining soils, mitigation wetlands have a relatively high probability of successfully achieving the wetland functions and values for which they are intended to compensate.

As discussed above, the majority of the project work was completed under Emergency Permit No. 1-09-042-G in October of 2009, and according to the applicant, the areas of temporary wetland impact have successfully revegetated (through natural recolonization as well as reseeded by the rancher who leases the property for cattle grazing) with plant species similar to the surrounding pastureland, and the mitigation for the permanent wetland impact has been completed resulting in the successful creation of 12 additional square feet of seasonal wetland habitat. However, no report documenting the wetland restoration success has been submitted to date. To ensure that all areas of temporary

wetland impact are successfully restored and at least 12 square feet of new seasonal wetlands are created as proposed to compensate for the 8 square feet of permanent wetland impacts resulting from the project, the Commission attaches **Special Condition No. 1**. This condition requires that a vegetation mitigation monitoring report be submitted to the Executive Director within 90 days of project completion to ensure that the vegetation coverage standards at the mitigation site and in the areas of temporary impact have been achieved. The required report will compare the (a) percent cover of hydrophytic vegetation; (b) percent cover of native vegetation; and (c) plant species diversity within the disturbed areas and surrounding undisturbed areas to determine whether the disturbed areas have successfully revegetated. If the report indicates that the revegetation of any of the disturbed areas has not been successful, in part or in whole, the permittee is required to submit a revised revegetation program to achieve the objective.

**(b) Introduction of Invasive Exotic Species**

The use of non-invasive plant species adjacent to environmentally sensitive habitat areas (ESHAs), such as riparian habitats and grazed seasonal wetlands, is critical to protecting such areas from disturbance. If invasive species are planted adjacent to an ESHA they can displace native species and alter the composition, function, and biological productivity of the ESHA.

As discussed above, the applicant is proposing to revegetate areas that are temporarily disturbed during construction activities as necessary with a seed-mix appropriate for local pasture habitats. To ensure that no invasive plant species are seeded in the project area, **Special Condition No. 2** requires that revegetation shall be performed only with native plants obtained from local genetic stocks or sterile non-native grasses. The special condition also prohibits the planting of any 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. Furthermore, no plant species listed as a “noxious weed” by the governments of the State of California or the United States are to be utilized in the revegetation portion of the project.

**(c) Use of Anti-Coagulant-Based Rodenticides**

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 pose 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. To avoid this potential cumulative impact to environmentally sensitive wildlife species, **Special Condition No. 2-C** contains a prohibition on the use of such anticoagulant-based rodenticides.

**(d) Conclusion**

Thus, the Commission finds that feasible mitigation is required to minimize all significant adverse impacts associated with the proposed dredging and filling of coastal wetlands, as is required by Sections 30230, 30231, and 30233 of the Coastal Act.

**4. Maintenance & Enhancement of Marine Habitat Values**

The fourth limitation set by Sections 3023, 30231, and 30233 of the Coastal Act is that any proposed filling in tidal waters or submerged lands must maintain and enhance the biological productivity and functional capacity of the habitat, where feasible.

As discussed above, the conditions of the permit will ensure that the project will not have significant adverse impacts on coastal wetlands in and around the project vicinity. The mitigation measures incorporated into the project and required by the special conditions discussed above will ensure that the proposed improvements to the radio broadcasting facility will not adversely affect the biological productivity and functional capacity of coastal waters or marine resources. Furthermore, by providing for a new seasonal wetland habitat on site as proposed by the applicant, the area will be enhanced.

Therefore, the Commission finds that the project, as conditioned, will maintain and enhance the biological productivity and functional capacity of the habitat consistent with the requirements of Sections 30230, 30231, and 30233 of the Coastal Act.

**5. Conclusion**

In summary, the Commission finds that the project is for an allowable use, that there is no less environmentally damaging feasible alternative, that feasible mitigation is required to minimize all significant adverse impacts associated with the filling of coastal wetlands, and that wetland habitat values will be maintained or enhanced. Therefore, the Commission finds that the proposed development, as conditioned, is consistent with Sections 30230, 30231, and 30233 of the Coastal Act.

**C. Archaeological Resources**

Coastal Act Section 30244 states as follows:

*Where development would adversely impact archeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.*

The diked former tidelands and surrounding areas are located within the ethnographic territory of the Wiyot Indians. Wiyot settlements existed along Humboldt Bay and along the banks of many of the streams and sloughs in this area.

Due to the documentation of four ancestral Native American archaeological sites in the project vicinity, the North Coast Information Center requested, during the CEQA process, that a cultural resources assessment be completed for the project. In July of 2009, Roscoe & Associates completed a cultural resources investigation of the project area,

including a record and literature search and a surface reconnaissance survey of the project site. The investigation identified a previously recorded shell midden adjacent to but outside of the project area. The report recommends consultation with local tribes if potential archaeological resources are unearthed during project construction.

To ensure protection of any archaeological resources that may be discovered at the site during project construction, the Commission attaches **Special Condition No. 3** to require that if an area of cultural deposits is discovered during the course of the project, all construction must cease and a qualified cultural resource specialist must analyze the significance of the find. To recommence construction following discovery of cultural deposits, the applicant is required to submit a supplementary archaeological plan for the review and approval of the Executive Director to determine whether the changes are *de minimis* in nature and scope, or whether an amendment to this permit is required.

The Commission thus finds that the proposed project, as conditioned, is consistent with Coastal Act Section 30244, as the development will include mitigation measures to ensure that the development will not adversely impact archaeological resources.

#### **D. Visual Resources**

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

As discussed above, the existing facility (the two antennae towers) is visible from a number of public vantage points, including along Highway 101 between Eureka and Arcata. Because of the proximity of the facility to Murray Airfield, the antennae must comply with specific lighting standards of the Federal Aviation Administration. The project does not propose additional lighting beyond the current standard, but existing lighting is to be replaced with energy-efficient LED lighting.

The project as designed and sited will not significantly obstruct any views to or along the ocean or scenic coastal areas, nor will it result in any appreciable alteration of any natural landforms. Although a certain amount of grading and minor fill placement is required to complete the project, the improved facility will replace an existing facility and will not significantly alter the shape, form, or character of the landscape from that which currently exists. Moreover, the proposed project will be visually compatible with the character of the surrounding area, as the existing antennae have been in place and functioning since 1955 and are a part of the visual character of the area. The proposed replacement antennae will be similar in size, color, and lighting to the existing antennae. Nonetheless, the antennae towers are visible from a distance and stand out from the surrounding low-lying hills, sloughs, grazing lands, and wetlands, and both the existing and proposed towers detract from the visual appearance of the area that would exist if the towers were not present. Therefore, the Commission attaches **Special Condition No. 4**, which requires that if due to changes in technology or other reasons the antennae are no longer

needed in the future for radio broadcasting, the applicant shall agree to abandon the towers and obtain a coastal development permit amendment from the Commission for the removal of all permanent structures associated with the towers and the restoration of the site.

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

**E. Public Access**

Coastal Act Sections 30210, 30211, and 30212 require the provision of maximum public access opportunities, with limited exceptions. Coastal Act Section 30210 requires, in applicable part, that maximum public access and recreational opportunities be provided when consistent with public safety, private property rights, and natural resource protection. Section 30211 requires, in applicable part, that development not interfere with the public's right of access to the sea where acquired through use (i.e., potential prescriptive rights or rights of implied dedication). Section 30212 requires, in applicable part, that public access from the nearest public roadway to the shoreline and along the coast be provided in new development projects, except in certain instances, such as when adequate access exists nearby or when the provision of public access would be inconsistent with public safety. In applying Sections 30211 and 30212, the Commission is limited by the need to show that any denial of a permit application based on these sections, or any decision to grant a permit subject to special conditions requiring public access, is necessary to avoid or offset a project's adverse impact on existing or potential public access.

The project site is located between the first public road and the sea (Eureka Slough, which flows into Humboldt Bay, is considered to be an arm of the sea). No existing public access to a beach or shoreline is available in the project area, and the proposed project does not involve any changes or additional restrictions to existing public access that would interfere with or reduce the amount of area public access and recreational opportunities. In addition, the development will not increase density and will not increase the demand for public access facilities in the area, as the replacement of the antennae towers will not draw new residents or visitors to the area.

Therefore, the project will have no significant adverse effect on public access, and the Commission finds that the project, as proposed without new public access, is consistent with the public access policies of the Coastal Act.

**F. Agricultural Resources**

The Coastal Act sets forth policies that relate to the protection of agricultural land and limit the conversion of agricultural lands to non-agricultural uses. Sections 30241 and 30242 address methods to be undertaken to maintain the maximum amount of prime

agricultural land in production and to minimize conflicts between agricultural and urban land uses.

The proposed project involves excavation and facility upgrades in part within grazed seasonal wetlands, which are planned and zoned Agriculture Exclusive in the certified LCP and are actively used for cattle grazing. Although project construction will result in temporary disruption to agricultural activities in the area, the project will not result in a conversion of agricultural lands to non-agricultural uses. The entire area except for the fencing surrounding the antennae tower bases, which has been in place since 1955, is open to cattle grazing and will continue to be open to cattle grazing following facility improvements. As discussed above, the applicant will restore any disturbed areas to pre-project conditions through harboring and replacing the top soil following construction and reseeding as necessary with appropriate pasture vegetation similar to vegetation that dominates the grazed seasonal wetlands in the area at the present time. Thus, once restored, the project site will provide the same amount of forage and grazing capacity as the site currently provides.

Therefore, the Commission finds that the proposed project does not constitute a conversion of agricultural lands and is consistent with Sections 30241 and 30242 of the Coastal Act.

#### **G. Other Agency Approvals**

The project requires review and authorization by the U.S. Army Corps of Engineers. Pursuant to the Federal Coastal Zone Management Act, any permit issued by a federal agency for activities that affect the coastal zone must be consistent with the coastal zone management program for that state. Under agreements between the Coastal Commission and the U.S. Army Corps of Engineers, the Corps will not issue a permit until the Coastal Commission approves a federal consistency certification for the project or approves a permit. On August 26, 2009, the Commission's North Coast District Office received a notice from the Corps that the project qualifies for Corps authorization under Nationwide Permit No. 18 (Minor Discharges). The project also requires authorization from the North Coast Regional Water Quality Control Board pursuant to Section 401 of the Clean Water Act. On November 2, 2009, the Board issued WDID No. 1B09100WNHU authorizing the project. Finally, the project requires a conditional use permit from Humboldt County since the facility represents a legal nonconforming use/structure within land that is designated and zoned Agriculture Exclusive under the certified Humboldt County LCP. The Humboldt County Planning Commission approved CUP No. 08-11 on July 2, 2009.

#### **H. California Environmental Quality Act**

Humboldt County served as the lead agency for the project for CEQA purposes. The County adopted a Mitigated Negative Declaration for the project on July 2, 2009 (SCH No. 2009062014).

Section 13906 of the Commission's administrative regulation requires Coastal Commission approval of Coastal Development Permit applications to be supported by a

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

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

**V. EXHIBITS:**

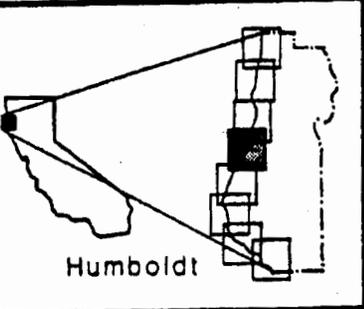
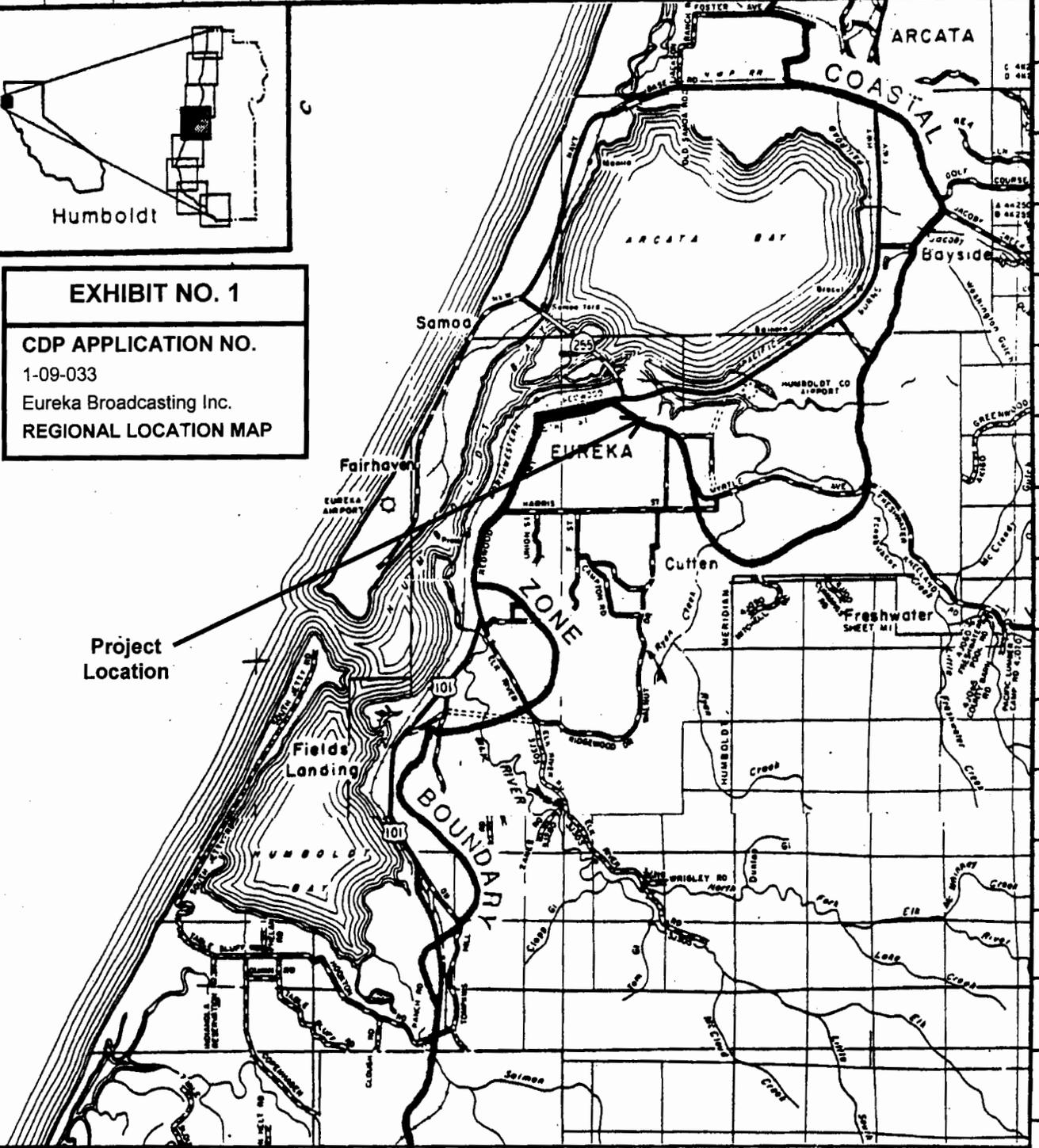
1. Regional Location Map
2. Vicinity Map
3. Aerial Photo
4. Project Plans
5. Emergency Permit No. 1-09-042-G issued October 6, 2009

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

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



**EXHIBIT NO. 1**

**CDP APPLICATION NO.**

1-09-033

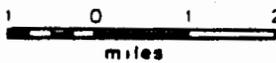
Eureka Broadcasting Inc.

**REGIONAL LOCATION MAP**

Project Location



**LOCATION MAP**



County of Humboldt

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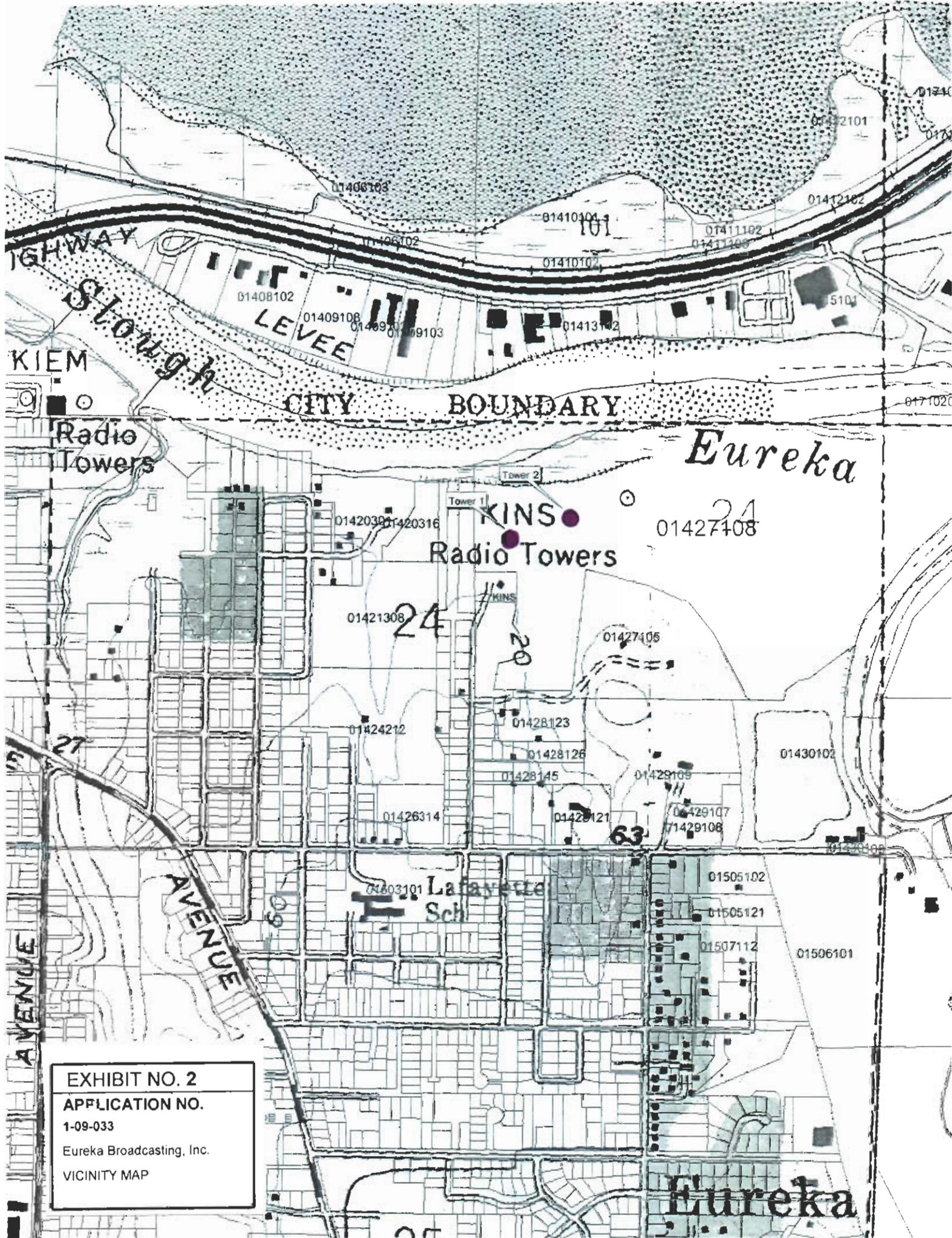


EXHIBIT NO. 2  
 APPLICATION NO.  
 1-09-033  
 Eureka Broadcasting, Inc.  
 VICINITY MAP

01413112

01415101

017

Tower 2

Tower 1

01427108

KINS

01427105

01428123

01428126

01428145

01429109

01430102

01428130

01429107

01429108

**EXHIBIT NO. 3**

**APPLICATION NO.**

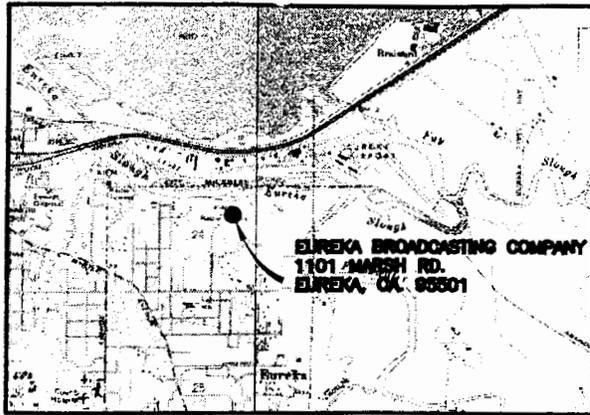
1-09-033

Eureka Broadcasting, Inc.

AERIAL PHOTO

01505102





VICINITY MAP

NO SCALE



PROJECT DESCRIPTION: REMOVE & REPLACE (2) 240' TALL ROAD BROADCASTING ANTENNA (T1 & T2) AND APPURTENANT STRUCTURES

FLOT PLAN NOTES:

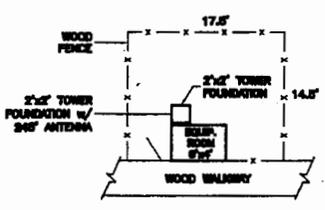
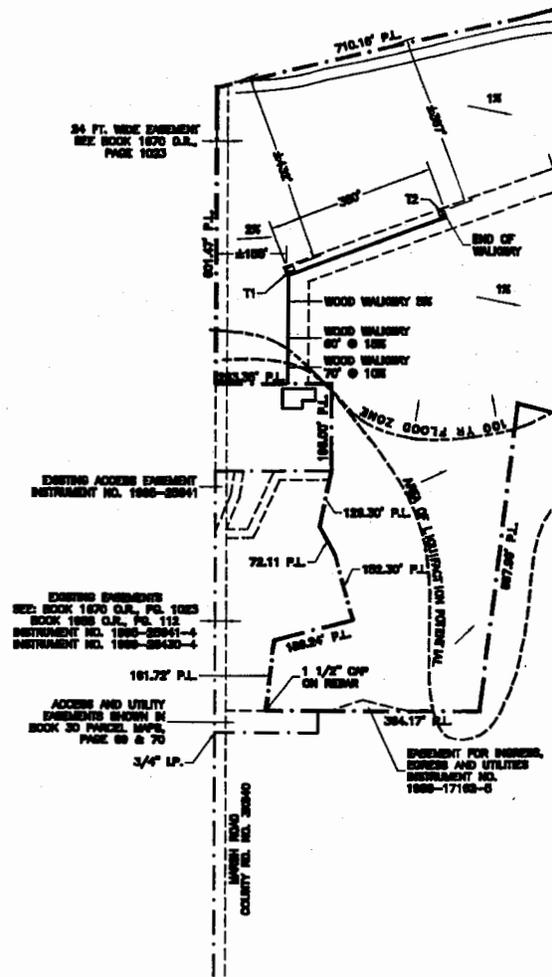
- 1.) PROPERTY LINES & EASEMENTS PER PARCEL MAP (2408 BOOK 33 OF PARCEL MAPS, PAGE 11)
- 2.) MAJORITY OF PARCEL WITHIN 100 YR FLOOD ZONE.
- 3.) NO PROPOSED DAMS OR STORAGE DAMS.
- 4.) NO PROPOSED GRADING OR FILL.
- 5.) NO TREES TO BE REMOVED.

THIS PROPERTY MAY BE ENCLUMBED BY THE FOLLOWING RECORDED INSTRUMENTS:

- BOOK 479 O.R., PAGE 457 - EASEMENT FOR SIGNS, EDGES, ERECTION AND MAINTENANCE OF ROAD TOWERS GRANTED TO CARROLL R HAUSER AND ORVELYN A. HAUSER (SHOWN HEREON)
- BOOK 730 O.R., PAGE 383 - EASEMENT GRANTED TO HUMBOLDT COMMUNITY SERVICES DISTRICT (SHOWN HEREON)
- BOOK 1670 O.R., PAGE 1023 - EASEMENT FOR SIGNS AND EDGES (SHOWN HEREON) GRANTED TO KENNETH E. KLINGEL.
- BOOK 1988 O.R., PAGE 112 - EASEMENT FOR PACIFIC GAS AND ELECTRIC CO. FACILITIES (SHOWN HEREON)
- INSTRUMENT NO. 1994-18705-3 - DEVELOPMENT PLAN NOTICE
- INSTRUMENT NO. 1998-28941-4 - EASEMENT FOR SIGNS, EDGES AND PUBLIC UTILITIES (SHOWN HEREON) GRANTED TO EUREKA BROADCASTING COMPANY.
- INSTRUMENT NO. 1998-28430-4 - EASEMENT GRANTED TO HUMBOLDT COMMUNITY SERVICES DISTRICT (SHOWN HEREON)
- INSTRUMENT NO. 1998-28488-37 - COVENANTS, CONDITIONS & RESTRICTION.
- BOOK 30 PARCEL MAPS, PAGE 68 AND 70 - ACCESS AND UTILITY EASEMENT (SHOWN HEREON)
- INSTRUMENT NO. 1998-17188-6 AND 2000-13880-3 - EASEMENTS FOR SIGNS, EDGES AND PUBLIC UTILITIES (SHOWN HEREON) GRANTED TO MARY C. MATHEWS AND FRANCIS S. MATHEWS.
- INSTRUMENT NO. 1998-31083-1 - NOTICE OF CONSTRUCTION REQUIREMENTS
- INSTRUMENT NO. 1998-31083-4 - NOTICE OF DEVELOPMENT PLAN
- INSTRUMENT NO. 1998-31084-7 - COVENANT AND AGREEMENT
- INSTRUMENT NO. 2000-1171-4 - AVIGATION EASEMENT GRANTED TO THE COUNTY OF HUMBOLDT

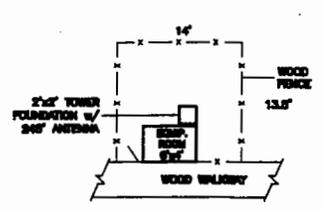
EASEMENTS

- PARCEL A IS A 20 FOOT WIDE EASEMENT FOR SIGNS, EDGES AND UTILITIES OVER PARCEL 1 FOR THE BENEFIT OF PARCEL 2.
- PARCEL B IS AN EASEMENT OF VARIOUS WIDTHS (30 FT. AND 34 FT.) FOR SIGNS, EDGES AND UTILITIES OVER PARCEL 1 FOR THE BENEFIT OF PARCEL 2.



TOWER 1 (T1)

SCALE: 1"=10'



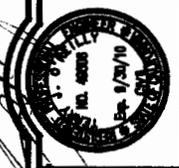
TOWER 2 (T2)

SCALE: 1"=10'

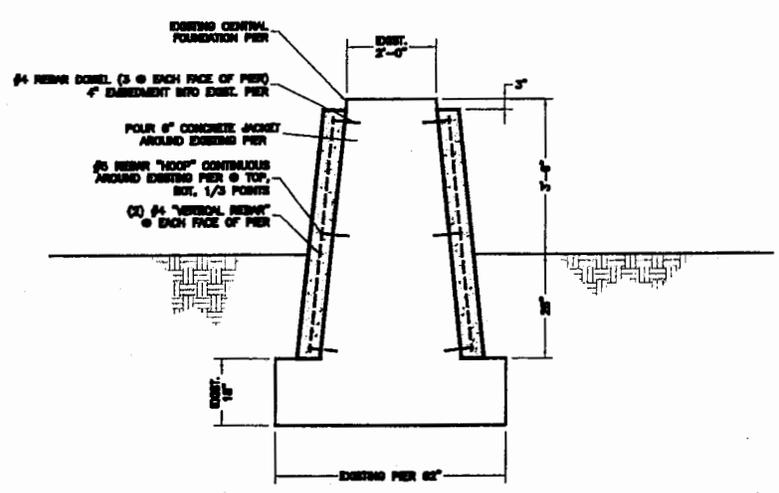
2 of 4

*Handwritten signature and notes:*  
 10-8-08  
 TOR

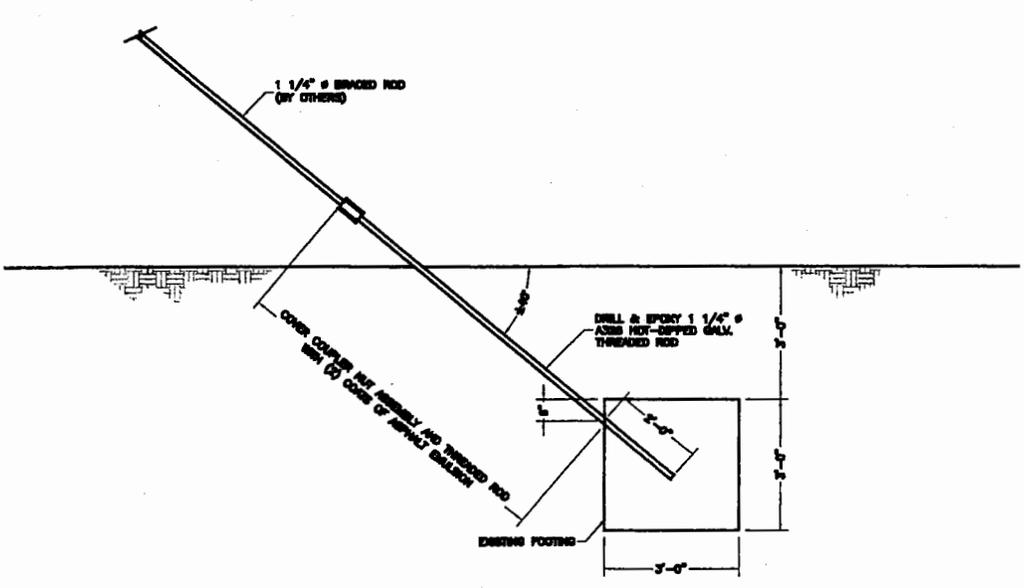
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**WHITCHURCH ENGINEERING, INC.**  
 610 9th Street Fremont, California 94540  
 Phone (707) 725-8626



**A** **CENTRAL FOUNDATION PIER SECTION**  
 SCALE: 1/2"=1'-0"



**B** **BRACED ROD FOUNDATION SECTION**  
 SCALE: 1/2"=1'-0"

**ANTENNA TOWER FOUNDATION MODIFICATION**  
 KNS Radio Tower 1101 Marsh Rd. Eureka, Ca.  
**FOUNDATION PLAN/SECTION**  
 For: Hugo Popelstein KNS Radio 1101 Marsh Rd. Eureka, Ca. 95501 (707) 442-8744

|        |           |
|--------|-----------|
| Date   | SEP 4 '08 |
| Scale  | AS NOTED  |
| Design | TOR       |
| Drawn  | GJK       |
| Job    | KNS0801   |
| Sheet  | 1         |
| Of     | 1         |

394

**FOUNDATION GENERAL NOTES**

1. FOUNDATION DESIGN HAS BEEN DEVELOPED IN ACCORDANCE WITH GENERALLY ACCEPTED PROFESSIONAL ENGINEERING PRACTICES AND PROVIDED WITHIN THE LIMITS OF THE SUBSEQUENT DATA PROVIDED. FOUNDATION DESIGN MODIFICATIONS MAY BE REQUIRED IN THE EVENT THE FOLLOWING PARAMETERS ARE NOT APPLICABLE FOR THE SUBSEQUENT CONSTRUCTION REQUIREMENTS.

- A) ALLOWABLE SOIL BEARING CAPACITY AT 4' DEPTH-LIMITED.
- B) MAXIMUM VIBRANT FUNDAMENTAL DEPTH LESS THAN FOUNDATION DEPTH.

2. WORK SHALL BE IN ACCORDANCE WITH LOCAL CODES, SPECIAL REGULATIONS AND UNLESS OTHERWISE NOTED, THE LATEST EDITIONS OF ALL 200 "BUILDING CODE REQUIREMENTS FOR REINFORCED CONCRETE" AND THE CURRENT CALIFORNIA BUILDING CODE. PROCEDURES FOR THE PROTECTION OF EXISTING AND EXTERIOR CONSTRUCTION SHALL BE ESTABLISHED PRIOR TO FOUNDATION INSTALLATION.

3. CONCRETE MIXTURES SHALL CONFORM TO THE APPROPRIATE STATE REQUIREMENTS FOR EXPOSED STRUCTURAL CONCRETE.

- 4. MATERIALS
  - A. CONCRETE - CONCRETE SHALL BE READY-MIXED AND SHALL CONFORM TO BEC STANDARD NO. 10-1. MINIMUM APPROXIMATE SIZE - 1 1/2" SLUMP - 4" PLUS OR MINUS 1" SO SOFT COMPRESSIVE STRENGTH - 3,000 P.S.I. CEMENT - PORTLAND CEMENT CONFORMING TO USC SEC. 190.25 TYPE I OR II. AGGREGATES - SHALL CONFORM TO USC SEC. 190.25.
  - B. REINFORCING - REINFORCING BARS SHALL BE SUPPLIED BARS CONFORMING TO ASTM A601 GRADE 60 WITH BARS LIGHTLY GALVANIZED INTO THE SERVICE ENVIRONMENT. THE SIZE, TYPE OF BARS, AND WELD SPACING, ALL WELDED REINFORCING BARS SHALL MEET THE REQUIREMENTS OF ASTM A700/CONCRETE TO THESE REINFORCING BARS, UNLESS OTHERWISE NOTED ON PLANS, SHALL BE.

-3" WHERE CONCRETE IS ONLY ABOVE AND PERMANENTLY EXPOSED TO WEAR.  
 1 1/2" FOR 3/8" OR SMALLER BARS WHERE CONCRETE IS EXPOSED TO WEAR OR WEATHER AFTER THE REMOVAL OF FORMS.  
 -3/4" FOR #11 BARS AND SMALLER IN SLABS AND WALLS WHERE CONCRETE IS NOT EXPOSED TO WEAR OR IN CONTACT WITH THE GROUND.

5. FORMS - FORMS SHALL CONFORM TO THE SHAPE, LINE AND DIMENSIONS SHOWN ON THE PLANS AND SHALL BE SUFFICIENTLY STIFF TO PREVENT LAGGING OF BARS OR FORMS FROM MOVING. FORMS SHALL BE SECURELY BRACED AND HELD IN PLACE. FORMS SHALL BE SETTED DOWN JUST PRIOR TO PLACING CONCRETE. ALL FORMS SHALL BE REMOVED AFTER THE CONCRETE HAS SET.

- 6. REINFORCEMENT -
  - A. REINFORCING - REINFORCING BARS SHALL BE ACCURATELY PLACED AND SECURED AND SHALL BE SUPPORTED BY CHAIRS, SPACERS OR BUSHES. ALL BAR SPLICES SHALL BE LAPPED A MINIMUM OF 40 BAR DIAMETERS WELDED CONCRETE BARS. REINFORCING SHALL BE FREE OF ALL LOOSE RUST OR SCALE.
  - B. PLACING - THE CONCRETE SHALL BE PLACED IN A MANNER SO AS TO PREVENT SEPARATION OF THE MATERIAL AND SHALL BE WELL CONSOLIDATED TO PREVENT THE FORMING OF Voids.
  - C. FORMS REMOVED SHALL BE GIVEN A "BUMP" FORM. ALL Voids AND BUSHES SHALL BE REMOVED PRIOR TO FINISHING.
  - D. GROUND - EXPOSED SURFACES OF CONCRETE SHALL BE LEFT READY FOR A FINISH OF AT LEAST 30 DAYS AFTER BEING EXPOSED.

7. VERIFY DIMENSIONS THE PRECEDENCE OVER DIMENSIONS. DO NOT SCALE THE DIMENSIONS. WHERE DIMENSIONS OCCUR, VERIFY THE DIMENSION'S REFERENCE FOR CLARIFICATION.

8. FOUNDATION INSTALLATION SHALL BE SUPERVISED BY PERSONNEL INDISPENSIBLE AND EXPERIENCED WITH THE PROPOSED FOUNDATION TYPE. CONSTRUCTION SHALL BE IN ACCORDANCE WITH GENERALLY ACCEPTED INSTALLATION PRACTICES.

9. FOUNDATION DESIGN ASSIGNED FIELD SUPERVISORS WILL BE HELD TO VERIFY THAT CONSTRUCTION MATERIALS, INSTALLATION METHODS AND FINISHING DESIGN REQUIREMENTS ARE ACCEPTABLE UNDER ALL CONDITIONS EXISTING AT THE SITE.

10. LOOSE MATERIAL SHALL BE REMOVED FROM SURFACES OF FOUNDATION CRACKS PRIOR TO CONCRETE PLACING. SURFACES OF EXISTING PILES SHALL BE CLEAN AND FREE OF RUST OR ORGANIC MATERIAL.

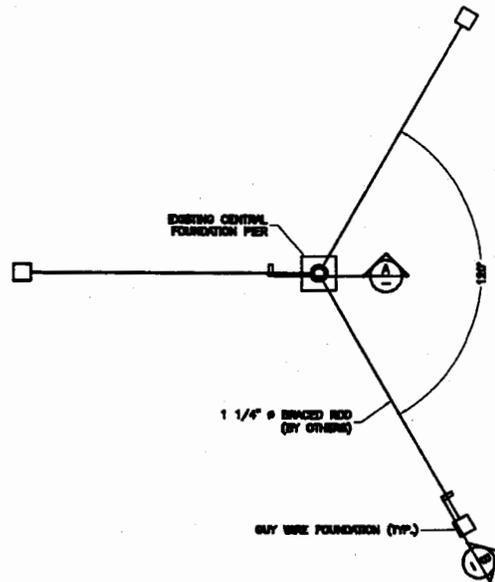
11. CONCRETE SHALL BE PLACED IN A MANNER THAT WILL PREVENT SEPARATION OF CONCRETE MATERIALS, SEPARATION OF BARS OR BUSHES, AND OTHER OCCURRENCES WHICH MAY REDUCE THE STRENGTH OR DURABILITY OF THE FOUNDATION.

12. EXPOSED SURFACES OF CONCRETE SHALL BE COVERED 3/4" X 3/4" MINIMUM.

13. THE CONTRACTOR SHALL COMPLY WITH ALL OF THE APPLICABLE REQUIREMENTS OF THE FEDERAL "BUILDING-CODING OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970" AND ANY APPLICABLE FEDERAL, STATE, AND LOCAL ORDINANCES. CONTRACTOR AGREES THAT HE SHALL ASSUME SOLE AND COMPLETE RESPONSIBILITY FOR HIS OWN CONSTRUCTION CLAIMS THE CORNER OF CONSTRUCTION OF THIS PROJECT, INCLUDING SAFETY OF ALL PERSONS AND PROPERTY, THAT THIS REQUIREMENT SHALL APPLY CONSECUTIVELY AND NOT BE LIMITED TO REMOTE WORKING AREAS, AND THAT THE CONTRACTOR SHALL, BEFORE, DURING, AND AFTER THE WORK, AND THE CONTRACTOR SHALL BE RESPONSIBLE FOR ANY AND ALL LIABILITY, RISK, OR ALIENATION IN CONNECTION WITH THE PERFORMANCE OF WORK ON THIS PROJECT, INCLUDING FOR LIABILITY ARISING FROM THE NEGLIGENCE OF THE DESIGN OR THE CONTRACTOR.

14. CONTRACTOR SHALL VERIFY ALL DIMENSIONS AND CONDITIONS SHOWN ON THE PLANS PRIOR TO COMMENCING ANY MATERIALS AND PRIOR TO COMMENCING CONSTRUCTION. THE CONTRACTOR SHALL VERIFY THE DIMENSIONS AND MATERIALS OF ANY DISCREPANCIES PRIOR TO PROCEEDING WITH WORK.

15. CONTRACTOR TO PREVENT UNLAWFUL UNLICENSED DESIGN CONSTRUCTION.



**1** TOWER LEG LAYOUT DETAIL  
 NO SCALE NOTE: TOWER LEG LAYOUT OCCURS AT (2) LOCATIONS ON-SITE

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## CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE  
710 E STREET • SUITE 200  
EUREKA, CA 95501-6813  
VOICE (707) 445-7833  
FACSIMILE (707) 445-7877  
www.coastal.ca.gov



EXHIBIT NO. 5

APPLICATION NO.

1-09-033

Eureka Broadcasting, Inc.

EMERGENCY PERMIT NO.  
1-09-042-G (1 of 4)**EMERGENCY PERMIT**

Eureka Broadcasting Company  
Attn: Hugo Papstein  
1101 Marsh Road  
Eureka, CA 95501

Date: October 6, 2009  
Emergency Permit No. 1-09-042-G

**LOCATION OF EMERGENCY WORK:**

Within diked former tidelands south of Eureka Slough located northeast of the north end of Marsh Road, just east of Eureka, Humboldt County (APN 014-271-08).

**WORK PROPOSED:**

Replacement of two 245-foot-high radio broadcasting antennae and appurtenant facilities including guy rods and anchors, antenna radials, and coaxial cables.

**PERMIT RATIONALE:**

This letter constitutes approval of the emergency work you or your representative has requested be done at the location listed above. I understand from your information that based on recent inspections, the radio antennae towers are in danger of collapse and must be replaced prior to the onset of the rainy season, when wet conditions would impair construction access and further damage the corroded, cracked tower anchoring systems. I further understand that the radio facilities are relied upon by the County of Humboldt Office of Emergency Services, the Humboldt County Sheriff's Office, and the National Weather Service for broadcast of Emergency Alert System (EAS) announcements in the county. KINS Radio is designated as the Local Primary I (LP) station for Humboldt County, which initiates EAS event codes for rebroadcast by other affiliated stations in the area, and further damage to the radio towers could result in the inability to effectively distribute EAS announcements in the county. Therefore, the situation requires immediate action to ensure the EAS signal is available for broadcast to the public by area radio stations, to help prevent loss of life and/or damage to property in case of emergency, and constitutes an emergency as defined by Title 14 of the California Code of Regulations, Section 13009.

The Executive Director of the Coastal Commission hereby finds that:

- (a) An emergency exists which requires action more quickly than permitted by the procedures for administrative or ordinary permits and the development can and will be completed within 30 days unless otherwise specified by the terms of this permit; and
- (b) Public comment on the proposed emergency action has been reviewed as time allows; and
- (c) As conditioned, the work proposed would be consistent with the requirements of the California Coastal Act of 1976.

The work is hereby approved, subject to the conditions listed on the attached page.

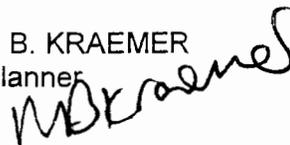


Emergency Permit Number: 1-09-042-G  
Eureka Broadcasting Company  
Date: October 6, 2009  
Page 2

Sincerely,

PETER M. DOUGLAS  
Executive Director

MELISSA B. KRAEMER  
Coastal Planner



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**CONDITIONS OF APPROVAL**

1. The enclosed Emergency Permit Acceptance form must be signed by the APPLICANT and returned within 15 days.
2. Only work specifically described in this permit and for the specific property listed above is authorized. The project shall be undertaken in accordance with the plans and other information submitted to the Coastal Commission. Any additional work requires separate authorization from the Executive Director.
3. The work authorized by this permit must be completed within 30 days or by November 5, 2009.
4. All temporary access roads and staging areas shall be limited to the locations and sizes specified in the permit application.
5. The permittee shall use relevant best management practices (BMPs) as detailed in the "California Storm Water Best Management Practices Handbooks," by Camp, Dresser & McKee, et al. for the Storm Water Quality Task Force (see <http://www.cabmphandbooks.com>).
6. Effective erosion control measures shall be in place at all times during construction. A supply of erosion control materials shall be maintained on site to facilitate a quick response to unanticipated storm events or emergencies. If continued erosion is likely to occur after construction is completed, then appropriate erosion prevention measures shall be implemented and maintained until erosion has subsided. Erosion control devices are temporary structures and shall be removed after completion of construction.
7. Work sites shall be winterized at the end of each day when significant rains are forecast that may cause unfinished excavation to erode.
8. No construction materials, debris, or waste shall be placed or stored where it may be subject to entering coastal waters or seasonal wetlands outside of repair areas and temporary staging areas and access roads.
9. During construction, all trash shall be properly contained, removed from the work site, and disposed of on a regular basis to avoid contamination of habitat during construction activities. Following construction, all trash and construction debris shall be removed from work areas and disposed of properly.
10. All construction debris shall be removed and disposed of in an upland location at an approved disposal facility within 10 days of project completion or by November 15, 2009, whichever is earliest.
11. Any fueling and maintenance of construction equipment shall occur within upland areas outside of environmentally sensitive habitat areas or within designated staging areas.

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12. Fuels, lubricants, and solvents shall not be allowed to enter the coastal waters or seasonal wetlands. Hazardous materials management equipment including absorbent pads shall be available immediately on-hand at the project site, and a registered first-response, professional hazardous materials clean-up/remediation service shall be locally available on call.
13. After project completion, all exposed soils present in and around the project site which may deliver sediment to coastal waters or seasonal wetlands shall be stabilized with mulch, seeding, and/or placement of erosion control blankets. Erosion control seeding shall include only native, regionally appropriate species or noninvasive agricultural species. 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.
14. In exercising this permit, the applicant agrees to hold the California Coastal Commission harmless of any liabilities for damage to public or private properties or personal injury that may result from the project.
15. This permit does not obviate the need to obtain necessary authorizations and/or permits from other agencies, including the U.S. Army Corps of Engineers, the California Department of Fish and Game, the County of Humboldt, the North Coast Regional Water Quality Control Board, and/or other agencies as appropriate.

The emergency work is considered to be temporary work done in an emergency situation. If the property owner wishes to have the emergency work become a permanent development, a regular Coastal Development Permit must be obtained. A regular permit or permit amendment would be subject to all of the provisions of the California Coastal Act and may be conditioned accordingly. The permittee has submitted Coastal Development Permit Application No. 1-09-033 seeking permanent authorization for the work authorized by this emergency permit on a temporary basis. If CDP Application No. 1-09-033 or another CDP application seeking permanent authorization for the development is not approved, the owner must obtain a CDP for removal of the development authorized on a temporary basis by this emergency permit.

If you have any questions about the provisions of this emergency permit, please call the Commission's North Coast District Office at the address and telephone number list on the first page.

Encl.: Emergency Permit Acceptance Form, Regular Application Form

Cc: Steve Werner, Humboldt County Planning Division, Eureka  
Carol Heidsiek, U.S. Army Corps of Engineers, Eureka  
Marty McClelland, Agent, Eureka

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