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Appeal filed:	4/28/2011
49 th day:	6/16/2011
Staff report prepared:	6/02/2011
Staff report prepared by:	M. Faust
Hearing date:	6/16/2011

APPEAL STAFF REPORT SUBSTANTIAL ISSUE DETERMINATION ONLY

IMPORTANT NOTE: The Commission does not ordinarily take public testimony during this phase of the appeal hearing unless at least three commissioners request it. If the Commission finds that the appeal raises a substantial issue, it will schedule the *de novo* phase of the hearing for a future meeting, during which it will take public testimony. Send written comments to the letterhead address above.

Appeal NumberA-1-DNC-11-019 (DNC Coastal Grading Permit #CGP2011-05C)

Applicant.....California Department of Transportation

Appellant.....Friends of Del Norte

Local government.....Del Norte County

Local decisionApproved with conditions on April 6, 2011

Project location.....Smith River riparian corridor, near Smith River (Dr. Fine) Bridge, Highway 101, 14 miles north of Crescent City

Project descriptionGeotechnical drilling to investigate geologic conditions for the design of the future Highway 101 Smith River (Dr. Fine) Bridge replacement (drilling plan prepared by Caltrans attached as Exhibit 4), including construction of permanent gravel-surfaced access roads, grading of approximately 2,500 sq. ft. platform within the south bank of the Smith River (for barge deployment of heavy equipment), and the drilling and impact-driving of 29 boreholes to depths of up to 250 feet below surface within the waters of the river and the adjacent riparian corridor east & west of the existing bridge (see Exhibits 2 and 3).

Staff recommendation...Substantial Issue Exists

Motion & Resolution.....Page 6

STAFF SUMMARY

The staff recommends that the Commission, after public hearing, determine that a SUBSTANTIAL ISSUE exists with respect to the grounds on which the appeal has been filed and that the Commission hold a *de novo* hearing, because the appeal has raised a substantial issue with the local government's action and its consistency with the certified Local Coastal Program (LCP).

On April 6, 2011 the Del Norte County Planning Commission approved a coastal development permit (called a Coastal Grading Permit in Del Norte County) with conditions (Local government permit #CGP2011-05C) for a geotechnical drilling project proposed by Caltrans as part of the planned replacement of the Smith River (Dr. Fine) Bridge, Highway 101, 14 miles north of Crescent City. Caltrans' drilling plan is attached as Exhibit 4. The County staff report discusses components of the plan that arise within the area of the Commission's retained permit jurisdiction (the drilling plan activities traverse both the area of the Commission's retained jurisdiction and the area of the Commission's appellate jurisdiction) but notes that the County's permit only authorizes work within the area of the County's coastal permit jurisdiction.

The Appellant contends that neither the County in approving the permit or Caltrans in proposing the project have addressed the requirements set forth in the County's certified LCP that sensitive habitat and species be identified and protected, and that projects proposed in wetlands or in areas adjacent to wetlands or non-wetland environmentally sensitive habitat areas be sited and designed to prevent impacts which could significantly degrade such areas.

The County Planning Commission staff report dated April 7, 2011 describes the project sufficiently to raise the potential for the project as approved to result in the adverse effects on coastal resources cited by the Appellant, but does not analyze the potential impacts of the development approved by the County. The approved project would result in the construction of permanent (gravel-surfaced) roads within the riparian corridor of the Smith River, in areas that were previously planted as wetland mitigation sites, and in other areas that contain wetlands and the habitat of sensitive species. The wetlands and other sensitive habitat areas have not been appropriately delineated, and the County's administrative record provided in response to the appeal contains no evidence that wetland delineations, biological surveys or reports, or other substantive information that would allow the County to analyze the projects impacts on the coastal resources of the Smith River corridor were included in the record supporting the Planning Commission's approval of the subject project. The County's staff report therefore does not analyze the potential adverse impacts to coastal resources described by the Appellant (Exhibit 6), or the similar concerns raised by the Appellant in written comments submitted to the Planning Commission before the project was approved (Exhibit 7). Thus, the degree of legal and factual support for the County's decision is not sufficient to demonstrate that the approved development is consistent with the ESHA protection policies of the LCP.

The policies of Del Norte County's certified LUP cited by the Appellant and set forth in Section 4 above require the accurate delineation and protection of wetlands and other environmentally sensitive habitat areas. The policies also require that projects be sited and designed to protect sensitive resources. The Appellant asserts that alternatives to the approved project may exist that would be sited and/or designed to better protect sensitive coastal resources but that these alternatives were not considered by the County in approving the project. As Sections 30233 and 30240 of the Coastal Act require that wetlands and ESHA in the coastal zone be protected from the impacts of development, and the cumulative impact of the loss of wetlands and ESHA over time throughout the coastal zone has been significant, the appeal raises issues of statewide significance rather than just a local issue. In addition, the Appellant correctly asserts that the subject area of the Smith River that would be affected by the approved project is a federally-designated Wild and Scenic River, a designation that denotes a special resource area of national value. Thus, the properly filed appeal raises substantial issues in terms of marine and water resources, including wetlands, ESHA, and water quality, as well as related issues concerning the adequate consideration of alternatives that would avoid or reduce the potentially significant and adverse impacts of the approved project on sensitive coastal resources.

For all of these reasons, Staff recommends that the Commission find that a **substantial issue exists** with respect to the grounds on which the appeal has been filed and that the Commission take jurisdiction over the CDP application. A *de novo* hearing on this matter would be scheduled at a future date: 1) after the Applicant has provided additional information and alternatives analyses (see information requirements in the findings set forth below) sufficient to allow these core LCP questions to be answered, and 2) after the Applicant has submitted a complete application for the necessary amendment of CDP 1-96-010 if no alternative for geotechnical drilling activities would avoid removal of the restored habitat areas.

The motion to adopt the staff recommendation of Substantial Issue is found on page 6.

1. Appeal Procedures

After certification of Local Coastal Programs (LCPs), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits (Coastal Act Section 30603). Section 30603 states that an action taken by a local government on a coastal development permit application may be appealed to the Commission for certain kinds of developments, including developments located within certain geographic appeal areas, such as those located between the sea and the first public road paralleling the sea, or within 300 feet of the inland extent of any beach, or of the mean high tide line of the sea where there is no beach, or within 100 feet of any wetland or stream, or within 300 feet of the top of the seaward face of any coastal bluff, or those located in a sensitive coastal resource area. Furthermore, developments approved by counties may be appealed if they are not designated the

“principal permitted use” under the certified LCP. Finally, developments which constitute major public works or major energy facilities may be appealed, whether approved or denied by the city or county. The grounds for an appeal are limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program and, if the development is located between the first public road and the sea, the public access policies set forth in the Coastal Act.

Pursuant to Coastal Act Section 30603, this approval is appealable to the Commission because the approved development is located between the sea and the first public road paralleling the sea and within 100 feet of a wetland or stream, and because the approved development constitutes a major public works project.

2. Substantial Issue Determination: Commission Procedures

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that the appeal raises no substantial issue of conformity of the approved project with the certified LCP. Since the staff is recommending substantial issue, unless three Commissioners object, it is presumed that the appeal raises a substantial issue and the Commission may proceed to its *de novo* review. In this case the staff recommends that the *de novo* review occur at a subsequent meeting.

The Commission ordinarily does not take public testimony during this phase (substantial issue determination) of the appeal hearing unless three Commissioners request it. If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. The only persons qualified to testify before the Commission on the substantial issue question are the applicant, the appellant and persons who made their views known to the local government (or their representatives). Testimony from other persons regarding substantial issue must be submitted in writing.

Unless it is determined that there is no substantial issue (which requires the affirmative vote of a majority of the appointed Commissioners present), the Commission will proceed to the *de novo* portion of the appeal hearing and review the merits of the proposed project (in this case, staff recommends that the *de novo* review occur at a subsequent hearing). Oral and written public testimony will be taken during this *de novo* review whenever it occurs.

3. Filing of Appeal

The appeal to the Commission by the Friends of Del Norte (see Exhibit No. 6) was filed in a timely manner on April 28, 2011, within 10 working days of receipt by the Commission on April 19, 2011 of the County’s Notice of Final Local Action (Exhibit No. 5).

4. Exhibits and Substantive File Documents

Exhibits:

1. Regional Location Map and Coastal Commission Post-Certification Coastal Zone Map for Del Norte County Smith River Area (Map 1)
2. Project Site Map based on Caltrans' right-of-way map
(fold-out map, in color, 11 x 17 inches, original prepared by Caltrans)
3. Drilling Plan Map
(fold-out map, in color, 11 x 17 inches, original prepared by Caltrans)
4. Caltrans' Project Description for Smith River Geotechnical Drilling Plan
5. Notice of Final Action and Staff Report – Del Norte County
6. Appeal submitted by Friends of Del Norte April 28, 2011
7. Previous correspondence from Friends of Del Norte, submitted to the County Planning Commission on April 6, 2011 (at the subject project hearing)
8. Coastal Development Permit 1-96-010 (Caltrans, seismic retrofit of bridge)
Approved by Coastal Commission July 10, 1996 and acknowledged by Caltrans staff representative signature on August 12, 1996
9. Excerpt from Notice of Completion & Environmental Document Transmittal to State Clearinghouse, including Notice of Preparation of a Draft Environmental Impact Report for Dr. Fine Bridge Replacement Project, dated October 18, 2010
10. Comment letter to Caltrans on NOP (Ex.9), dated November 18, 2010
11. Comment letter to Caltrans regarding incomplete status of Coastal Development Permit Application No. 1-11-012 for geotechnical drilling for the Smith River (Dr. Fine) Bridge replacement

Substantive File Documents:

Del Norte County certified Local Coastal Program.

I. MOTION, STAFF RECOMMENDATION & RESOLUTION

Recommendation:

Staff recommends that the Commission determine that a substantial issue exists with respect to the grounds on which Appeal No. A-1-DNC-11-019 has been filed and that the Commission hold a *de novo* hearing at a subsequent meeting.

Staff recommends a NO vote on the following motion and resolution:

Motion & Resolution. I move that the Commission determine and resolve that: Appeal No. A-1-DNC-11-019 raises no substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

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

II. FINDINGS and DECLARATIONS:

The Commission hereby incorporates the information set forth above into these findings, and further finds and declares as follows:

A. APPELLANT'S CONTENTIONS

The Appellant contends that the project as approved is inconsistent with specific policies and provisions of the County's certified Local Coastal Program that are protective of marine and water resources, wetlands, riparian habitat, sensitive habitat buffers, and environmentally sensitive habitat and species. The Appellant contends that neither the County in approving the permit or Caltrans in proposing the project have addressed the requirements set forth in the County's certified LCP that sensitive habitat and species be identified and protected, and that projects proposed in areas adjacent to environmentally sensitive habitat areas be sited and designed to prevent impacts which could significantly degrade such areas. Specifically, the Appellant contends that wetlands and other sensitive habitat areas and buffers have not been adequately delineated or identified by Caltrans or by the County prior to approving the subject permit.

In addition, the Appellant contends that the approved permit authorizes the removal of wetland and riparian corridor vegetation planted as mitigation for a previous Caltrans project to seismically retrofit the subject bridge in 1997, as required by special

conditions of CDP 1-96-010 approved by the Coastal Commission. The Appellant contends that the mitigation area now contains significant habitat including ponded areas of special importance to the Northern Red-legged Frog.

The Appellant further contends that, in awareness of the loss of the previously restored wetland mitigation site, substantial compensatory wetland mitigation should be required. The Appellant points out that the County's approval does not acknowledge that the approved project would have effects on wetland habitat, and the permit does not require any on-site or off-site wetland mitigation.

Finally, the Appellant contends that other drilling alternatives should be evaluated to ensure that the impacts to riparian areas, wetlands, and ESHA in general are minimized. The Appellant suggests, for example, that since Caltrans proposes barge-based deployment of heavy equipment within the river (for geotechnical investigation), that equipment could potentially cover some of the northwestern testing sites. Such an alternative may allow the barge-based drilling equipment to reach some of the landward borehole locations, which in turn could eliminate some of the clearance of wetland restoration areas (where the most valuable amphibian habitat has been established) approved to provide new roads for land-based drilling rig access.

B. PROJECT SETTING & DESCRIPTION

Project Setting

The location of the appealed project is the area near the Smith River (Dr. Fine) bridge on Highway 101, approximately 14 miles north of Crescent City, in Del Norte County. Caltrans intends to replace the subject bridge in the near future, and is presently preparing a Draft Environmental Impact Report (EIR). (See Exhibits 1 – 4). The Del Norte County Visitor's Bureau describes the Smith River vividly:

“The Smith is the largest wild and scenic river in the United States that has been left un-dammed. Since the river system maintains almost 200 miles of hospitable salmon and steelhead habitat, the river sees some of the finest runs of Chinook salmon and steelhead in the country. The Smith boasts the state record for the largest steelhead caught weighing in at whopping 27 lbs. 4 oz. and the second largest Chinook at 86 lbs. The river is also home to cutthroat, some of which reside in the river year-round while others run to salt.

The area averages about 100 inches of rain per year, which explains the powerful flows of the river. The free-flowing river has been known to rise or fall as much as six feet in a day and is admired for its exquisite emerald green color.

Once heavily logged, most of the watershed is made up of parks. Most of the river is easily accessible from paved state highways...”

Project Description

Caltrans has previously performed geotechnical investigations for the design of the new bridge support structures, including by means of drilling through the existing bridge deck into the river bed below. Now, however, Caltrans proposes to undertake a much more intensive geotechnical investigation project for the purpose of further evaluating subsurface conditions for alternative bridge design options that would be located fully to the east of, or to the west of, the existing bridge.¹ According to Caltrans, these alternatives call for expanded geotechnical studies, for which Caltrans has prepared a further plan titled: "Phase 2 Drilling Plan for the proposed Smith River (Dr. Fine) Bridge Replacement spanning the Smith River in Del Norte County on Route 101," dated April 23, 2010 (see Exhibits 2 - 4).

The drilling plan approved by the County (Exhibits 4 and 5) contains extensive descriptions of activities that would be undertaken by Caltrans seasonally over the next three years of drilling investigations. The plan relies on construction of access roads, barge staging platform areas (grading a 2,500 sq. ft. pad into the southern bank of the Smith River), drafting water from the river for drilling operations, using drilling muds containing polymer solutions and other components in or adjacent to the waters of the Smith River (a salmonid stream). The testing protocol also includes impact hammer-driven core extraction methods. Caltrans indicates that implementation of the drilling plan will require the construction of access roads sized to accommodate the transport of heavy equipment to the bridge environs north and south of the river, and into the river itself (via barging). Installation of the access roads, staging areas, and other features will require grading, fill of wetlands, and clearance of riparian vegetation, including the removal of trees and other native plants and shrubs installed by Caltrans in 1997 as required by the special conditions of a coastal development permit approved by the Commission for the seismic retrofit of the existing bridge (CDP 1-96-010 Caltrans).

C. DEL NORTE COUNTY CDP APPROVAL

On February 7, 2011 Caltrans submitted an application to Del Norte County for a CDP/Coastal Grading Permit for the "Phase 2" drilling plan. The application does not distinguish between portions of the plan that arise in the Commission's retained and appellate jurisdictions (the plan includes activities in each area). Activities arising in both areas were discussed in the County's staff report dated April 7, 2011, though the report notes that the permit approval applies only to the activities arising in the County's

¹ Caltrans staff has previously noted that the geotechnical investigations undertaken on the bridge deck were located in a manner that would evaluate subsurface conditions that would affect the design of a new bridge relying on "half-width" construction, which recycles the existing bridge footprint and tends to minimize riparian and other area disturbance, compared with constructing the new bridge on a completely independent alignment, either east or west of the existing bridge, for which the further geotechnical investigations are now necessary. In a meeting of Commission and Caltrans staff on May 18, 2011, Caltrans staff stated that Caltrans has eliminated half-width construction as an alternative for the new bridge; Commission staff has requested that the DEIR include this option in the alternatives analysis.

permit jurisdiction. (The drilling plan proposed by Caltrans and the county staff report for approval by the Planning Commission are attached as Exhibits 4 and 5.)

Del Norte County staff filed the application as complete on March 10, 2011. On April 6, 2011 the Del Norte County Planning Commission approved a CDP/Coastal Grading Permit authorizing implementation of the geotechnical investigation plan. The decision of the Planning Commission was not appealed at the local level to the County Board of Supervisors. The County's Notice of Final Action was received by the Commission staff on April 19, 2011(Exhibit No.5). Section 13573 of the Commission's regulations allows for appeals of local approvals to be made directly to the Commission without first having exhausted all local appeals when, as here, the local jurisdiction charges an appeal fee for the filing and processing of local appeals.

The County's approval of the project was appealed to the Coastal Commission in a timely manner on August 28, 2011, within 10-working days after receipt by the Commission of the Notice of Final Local Action (Exhibit 6). Friends of Del Norte also submitted a letter of comment to the County Planning Commission at the April 6, 2011 public hearing (Exhibit 7).

D. OTHER RELATED PERMITS

On April 1, 2011 Caltrans submitted a related application to the Commission's North Coast District Office for a coastal development permit for the portion of the drilling plan arising in the area of the Commission's retained jurisdiction (which generally includes the river between the Ordinary High Water (OHW) lines shown on Exhibits 2 and 3. Exhibit 1 also contains a copy of the Commission's post-certification coastal map including the Smith River/Highway 101 area of Map 1. CDP application number 1-11-012 was determined to be incomplete for further filing review on May 1, 2011 (Exhibit 11). Caltrans has not submitted the additional information requested by staff.

Section 30601.3 of the Coastal Act authorizes the Commission to process a consolidated coastal development permit application when agreed to by the local government, the applicant, and 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. The local government's certified LCP may be used as guidance. The standard of review applied to combined-review projects is the Chapter 3 policies of the Coastal Act.)

Caltrans staff explained in a meeting with Commission staff on May 18, 2011 that Caltrans did not seek combined review of the pending geotechnical work for the bridge replacement because they consider the work to be a separate project and anticipated receiving County permits more quickly than permits for the in-water activities that must be reviewed by Commission staff and other state and federal agencies and scheduled for a future Coastal Commission hearing. Caltrans indicated that the differential outcomes of these schedules might have allowed geotechnical crews to commence

drilling in the area of the County's permit this spring. If the Commission finds Substantial Issue, the combined review process would still be available.

Commission staff has notified Caltrans that the Executive Director has determined that an amendment of CDP 1-96-010 is also required and must be approved by the Coastal Commission prior to processing a permit for any further disturbance of the site as the County approved project would allow areas required to be restored and retained as riparian mitigation areas under CDP 1-96-010 to be cleared of vegetation and paved with gravel.

E. SUBSTANTIAL ISSUE ANALYSIS

Section 30603(b)(1) of the Coastal Act states:

The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division.

1. Appellants' Contentions That are Valid Grounds for Appeal

The contentions raised in the appeal present potentially valid grounds for appeal in that they allege the project's inconsistency with policies of the certified LCP. The appellant contends that the project as approved is inconsistent with LCP policies regarding the protection of marine and water resources, including wetlands, riparian corridor vegetation, and other ESHA, as it has not been demonstrated that the project as approved has been sited and designed to prevent impacts or degradation to wetlands and other ESHA and to assure protection of these environmentally sensitive habitat areas.

Coastal Act Section 30625(b) states that the Commission shall hear an appeal unless it determines:

With respect to appeals to the commission after certification of a local coastal program, that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603.

The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. The Commission's regulations indicate simply that the Commission will hear an appeal unless it "*finds that the appeal raises no significant question*" (Title 14, Section 13115(b), California Code of Regulations.) In previous decisions on appeals, the Commission has been guided by the following factors:

- The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP and with the public access policies of the Coastal Act;

- The extent and scope of the development as approved or denied by the local government;
- The significance of the coastal resources affected by the decision;
- The precedential value of the local government's decision for future interpretations of its LCP; and
- Whether the appeal raises only local issues, or those of regional or statewide significance.

Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing petition for a writ of mandate pursuant to Code of Civil Procedure Section 1094.5.

In this case, for the reasons discussed further below, the Commission exercises its discretion and determines that the appeal raises a substantial issue with regard to the approved project's conformance with the certified Del Norte County LCP for the reasons discussed below.

a. Allegations Raising Substantial Issue

The Appellant contends that the project record for the approved development does not include adequate analysis (including appropriate wetlands delineations), or appropriate consideration of alternatives, to substantiate the County's authorization of heavy equipment access routes (the approved project includes installation of permanent access roads in various locations within the Smith River corridor and the grading within the riverbank area south of the river of a 2,500 sq. ft. barge staging pad) within the sensitive wetlands and other habitat resources of the Smith River corridor.

The Appellant asserts that a thorough examination of the subject site's environmental resources is necessary in order to demonstrate that the development has been sited and designed to prevent impacts or degradation to wetlands and that protection of these environmentally sensitive habitat areas can be assured as required by the certified Land Use Plan (LUP).

Specifically, the Appellant contends that the County's approval of Caltrans' proposed geotechnical investigation plan did not adequately consider and is not consistent with the following policies and provisions of Del Norte County's certified LUP (See Exhibit 6):

Applicable LCP Policies and Standards:

Section IV-C of the Marine and Water Resources Chapter of the County of Del Norte LUP states:

Sensitive Habitat Types: Several biologically sensitive habitat types, designated through the application of the above criteria, are found in the Coastal Zone of Del Norte County. These include: offshore rocks;

intertidal areas; estuaries; wetlands; riparian vegetation systems; sea cliffs; and coastal sand dunes...

As stated above, the Marine and Water Resources chapter of the LUP includes “wetlands” among its list of “sensitive habitat types,” defining such as areas as:

‘Wetland’ means lands within the Coastal Zone which may be covered periodically or permanently with shallow water and include saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, bogs, and fens.

Marine and Water Resources Policy VI.C.1, .3 & .4 of Del Norte LUP states:

- 1. The County seeks to maintain and where feasible enhance the existing quality of all marine and water resources.*
- 3. All surface and subsurface waters shall be maintained at the highest level of quality to insure the safety of the public health and the biological productivity of coastal waters.*
- 4. Wastes from industrial, agricultural, domestic and other uses shall not impair or contribute significantly to a cumulative impairment of water quality to the extent of causing a public health hazard or adversely impacting the biological productivity of coastal waters.*

Marine and Water Resources Policy VI.C.6 of the County of Del Norte LUP states:

Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas. Development in areas adjacent to environmentally sensitive habitat areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.

Marine and Water Resources Policy VII.D.4f & g of the County of Del Norte LUP states:

f. Development in areas adjacent to environmentally sensitive habitat areas shall be sited and designed to prevent impacts which could significantly degrade such areas, and shall be compatible with the continuance of such habitat areas. The primary tool to reduce the above impacts around wetlands between the development and the edge of the wetland shall be a buffer of one-hundred feet in width. A buffer of less than one-hundred feet may be utilized where it can be determined that there is no adverse impact on the wetland. A determination to utilize a buffer area of less than one-hundred feet shall be done in cooperation with the California Department of Fish and Game and the County's determination shall be based upon specific findings as to the adequacy of the proposed buffer to protect the identified resource. Firewood removal by owner for on site use and commercial timber harvest pursuant to CDF

timber harvest requirements are to be considered as allowable uses within one-hundred foot buffer areas.

g. Due to the scale of the constraints maps, questions may arise as to the specific boundary limits of an identified environmentally sensitive habitat area. Where there is a dispute over the boundary or location of an environmentally sensitive habitats area, the following may be requested of the applicant:

- i.) A base map delineating topographic lines, adjacent roads, location of dikes, levees, flood control channels and tide gates.*
- ii.) Vegetation map.*
- iii.) Soils map.*

Review of this information shall be in cooperation with the Department of Fish and Game and the County's determination shall be based upon specific findings as to whether an area is or is not an environmentally sensitive habitat area based on land use plan criteria, definition, and criteria included in commission guidelines for wetland and other wet environmentally sensitive habitat areas as adopted February 4, 1981. The Department of Fish and Game shall have up to fifteen days upon receipt of County notice to provide review and cooperation.

Marine and Water Resources Policy VII., 4 (Riparian Vegetation) of the County of Del Norte LUP states:

Riparian vegetation shall be maintained along streams, creeks and sloughs and other water courses within the Coastal Zone for their qualities as wildlife habitat, stream buffer zones, and bank stabilization.

The Appellant contends that the project as approved is inconsistent with specific policies and provisions of the County's certified Local Coastal Program, Land Use Plan (LUP) (set forth above) that are protective of marine and water resources, wetlands, riparian habitat, sensitive habitat buffers, and environmentally sensitive habitat and species.

The Appellant further contends that wetlands and other sensitive habitat areas and buffers have not been adequately delineated or identified by Caltrans or by the County prior to approving the subject permit, and that without the resultant information, the County cannot establish appropriate locations or alternatives for the approved development. The Appellant asserts that sensitive species and their habitat are present within the areas that will be disturbed, including areas that were previously planted as riparian wetland mitigation for CDP 1-96-010 (Exhibit 8), if the project is implemented as approved, and that alternatives may exist that would reduce or avoid these impacts but that these alternatives have not been adequately identified or considered.

The special conditions of approval imposed by the Coastal Commission in approving CDP 1-96-010 required that Caltrans install, maintain, monitor, and report to the Executive Director on the progress of, riparian wetland vegetation (including tree plantings) in areas disturbed by the seismic retrofit of the existing bridge (in 1997). Monitoring reports submitted by Caltrans in 1998 and 1999 indicate that the restoration work occurred and was becoming well established (a final monitoring report required in 2000 was not submitted by Caltrans).²

The County Planning Commission staff report dated April 7, 2011 describes the project sufficiently to raise the potential for the project as approved to result in the adverse effects on coastal resources cited by the Appellant, but does not analyze the potential impacts of the development approved by the County. The approved project would result in the construction of permanent (gravel-surfaced) roads within the riparian corridor of the Smith River, in areas that were previously planted as wetland mitigation sites, and in other areas that contain wetlands and the habitat of sensitive species. The wetlands and other sensitive habitat areas have not been appropriately delineated, and the County's administrative record provided in response to the appeal contains no evidence that wetland delineations, biological surveys or reports, or other substantive information that would allow the County to analyze the projects impacts on the coastal resources of the Smith River corridor were included in the record supporting the Planning Commission's approval of the subject project. The County's staff report therefore does not analyze the potential adverse impacts to coastal resources described by the Appellant (Exhibit 6), or the similar concerns raised by the Appellant in written comments submitted to the Planning Commission before the project was approved (Exhibit 7). Thus, the degree of legal and factual support for the County's decision is not sufficient to demonstrate that the approved development is consistent with the ESHA protection policies of the LCP.

The policies of Del Norte County's certified LUP cited by the Appellant and set forth in Section 4 above require the accurate delineation and protection of wetlands and other environmentally sensitive habitat areas. The policies also require that projects be sited and designed to protect sensitive resources. The Appellant asserts that alternatives to the approved project may exist that would be sited and/or designed to better protect sensitive coastal resources but that these alternatives were not considered by the County in approving the project. As Sections 30233 and 30240 of the Coastal Act require that wetlands and ESHA in the coastal zone be protected from the impacts of development, and the cumulative impact of the loss of wetlands and ESHA over time throughout the coastal zone has been significant, the appeal raises issues of statewide

² Commission staff has notified Caltrans that the Executive Director has determined that an amendment of CDP 1-96-010 is required and must be approved by the Coastal Commission prior to processing a permit for any further disturbance of the site. In addition, Commission staff have notified Caltrans that additional compensatory wetland mitigation would likely be required, if such an amendment is approved by the Commission, to address the loss of the mitigation site and the additional temporal losses of wetland habitat that will accrue if the trees and other wetland vegetation are removed as Caltrans presently proposes to install permanent roads for geotechnical drilling access.

significance rather than just a local issue. In addition, the Appellant correctly asserts that the subject area of the Smith River that would be affected by the approved project is a federally-designated Wild and Scenic River, a designation that denotes a special resource area of national value. Thus, the properly filed appeal raises substantial issues in terms of marine and water resources, including wetlands, ESHA, and water quality, as well as related issues concerning the adequate consideration of alternatives that would avoid or reduce the potentially significant and adverse impacts of the approved project on sensitive coastal resources.

The Commission finds that the appeal raises a substantial issue of conformance with the certified LUP policies protective ESHA, wetlands, riparian resources, and water quality. As approved, non-resource dependent uses would potentially be allowed within wetland and riparian habitat areas and other environmentally sensitive habitat areas that have not been adequately delineated or otherwise identified for biological sensitivity. Therefore, the Commission finds that the appeal raises a substantial issue of conformance of the approved project with the wetland and ESHA protection provisions of the certified LCP, including, but not limited to, the provisions of Policies 1 and 3 of Section VI.C of the Marine and Water Resources (MWR) chapter of the certified LUP that wetlands be maintained; the requirements of Policies 6 and 4.f of MWR chapters VI.C and VII.D, respectively, that ESHA shall be protected against any significant disruption of habitat values, and development in areas adjacent to ESHA shall be sited and designed to prevent impacts which would significantly degrade such areas; the requirements of Policy 4.a of MWR Section VII.E that riparian vegetation shall be maintained for its qualities as wildlife habitat, stream buffer zones, and bank stabilization.

Conclusion:

All of the various foregoing contentions have been evaluated against the claim that they raise a substantial issue of conformance of the local approval with the certified LCP. The Commission finds that, as discussed above, the appeal raises a substantial issue with respect to the conformance of the approved project with the policies of the LCP regarding the protection of wetland and other ESHA resources. Therefore, the Commission takes jurisdiction over the CDP application for the proposed project

F. INFORMATION NEEDED FOR *DE NOVO* REVIEW OF APPLICATION

As stated above, Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue exists with respect to the grounds on which an appeal has been filed. Section 30621 of the Coastal Act instructs the Commission to provide for a *de novo* hearing on all appeals where it has determined that a substantial issue exists with respect to the grounds on which an appeal has been filed. If the Commission finds substantial issue as recommended above, staff also recommends that the Commission continue the *de novo* portion of the appeal hearing to a subsequent date. The *de novo* portion of the appeal hearing must be continued because the Commission does not have sufficient

information to determine how development can be approved consistent with the certified LCP.

Given that the project the Commission will be considering *de novo* has come to the Commission after an appeal of a local government action, the Commission has not previously been in the position to request information from the applicant needed to determine if the portion of the project within the County's jurisdiction can be found to be consistent with the certified LCP.³ The following section sets forth the minimum information needed by the Commission to evaluate the development *de novo*.

1. Complete Project Description

To adequately evaluate the proposed project for consistency with the policies of Del Norte County's certified LCP, particularly the policies cited above that are pertinent to the protection of wetlands and other environmentally sensitive habitat areas, the Commission must have a complete project description. Such a description would include at a minimum the following information so that the Commission can evaluate the nature and extent of the potential effects of the project on sensitive coastal resources:

- Site plan(s), to-scale (at 1":1200' or closer scale for all referenced plans set forth herein, on multiple sheets as necessary), showing detailed location and limits of all proposed development, such as the barge pad, access roads, drilling location areas, and any staging locations for associated equipment placement, parking, storage, etc., where any of these activities will result in the disturbance of soils or vegetation. Components that would be permanent (not returned to pre-existing conditions upon completion of the geotechnical investigation) should be identified separately from components that would be temporary (immediately graded to original contours/revegetated) upon completion of the drilling activities.
- Grading plan(s), to-scale, showing all cut and fill operations, including daylight lines and cross-sections. Include location and limits of stockpile area(s) for cut or fill material, including gravel. Specify size and kind of gravel fill or surfacing materials and the location and limits of gravel placement.
- To-scale, surveyed locations of previously restored wetland habitat areas that were planted in 1997 pursuant to the approved special conditions of CDP 1-96-010, following Caltrans' seismic retrofit of the existing Smith River (Dr. Fine) Bridge.

³ The Staff has reviewed a coastal development permit application (CDP Application No. 1-11-012) submitted by Caltrans on April 1, 2011 for the portion of the same geotechnical drilling program that is within the Commission's retained jurisdiction; the proposed borehole locations span areas of the Commission's retained and appellate jurisdiction. The Staff determined that the pending application was incomplete for further review, and requested additional information that would also assist in the further review of the pending appeal, in a letter dated May 1, 2011 attached hereto as Exhibit 11.

- Site plan view of the footprint of proposed project disturbance (temporary and permanent) overlain on spatial information showing the location and limits of wetlands (delineated in accordance with the Commission's requirements, including copies of the original data sheets, maps with soil test locations, and field notes) and other sensitive habitat (such as riparian vegetation that provides habitat to red-legged frog and various sensitive bird species that have been identified as utilizing habitat resources within or within close proximity to, the subject project area). Any multi-stemmed/trunked tree and any tree with a trunk diameter of 4" or greater that would be limbed or removed should be individually identified as to location and species.
- Detailed project schedule identifying specific construction windows for any activities that could temporarily or permanently disturb potentially sensitive species or habitat areas within or adjacent to the project site, including timing of and limitations on vegetation modification, disturbance of potential amphibian habitat or bird nesting locations, drilling activities that could startle or otherwise disturb sensitive species, etc. Include any proposals for night activities, including the introduction of artificial lighting sources.
- Since Caltrans is considering the geotechnical investigation to be a separate project from the future bridge replacement project, and thus cannot ensure that the subject bridge would be constructed, or upon what timeline such construction may arise (Caltrans notified Commission staff on May 31, 2011 that the public release of the Draft Environmental Impact Report for the Smith River/Dr. Fine Bridge replacement project has been delayed from February 2011 until sometime in 2012), a detailed revegetation/restoration plan is necessary. Such a plan should include plans for restorative grading of any disturbed areas, and erosion control and revegetation plans relying on appropriate selections of locally obtained native plant stock/cuttings/seed.
- Storage and final disposal plan for drilling cuttings and other waste materials from the 29 proposed boreholes. Identify temporary (daily) and interim storage locations of 55-gallon drums noted for collection of wastes, and identify permanent and properly licensed disposal site for the waste materials.
- Proposed prevention measures to ensure that drilling methods, including equipment access, chemical constituents added to the drilling fluids, or other project activities (such as equipment and materials storage or fueling activities) do not contaminate groundwater resources or cross-contaminate existing locations of soil contamination with uncontaminated areas or water resources (within the river, its gravel beds and banks, or groundwater) that have been identified by Caltrans.
- Proposed emergency response equipment and plans to contain, control, and remediate any unauthorized discharge into the Smith River.

- To-scale site plan view showing the locations and limits, and constituents, of any contaminated soils that have been identified by Caltrans or its consultants anywhere within or near the project limits.
- Hydroacoustic analysis completed by a qualified acoustician of the noise levels that will be produced by the geotechnical investigation activities (whether staged on land or within the river), including use of impact hammer, within the aquatic habitat of the Smith River.

2. Complete Alternatives Analysis

The Appellant has raised the concern that the approved project may overlook ways in which the barge-based component of the project (which arises partially within the area of the Commission's retained jurisdiction and is thus part of the presently incomplete, pending CDP application no. 1-11-012 submitted by Caltrans on April 1, 2011) could be more strategically used to access on-land borehole locations. Such an alternative, if feasible, could reduce the removal of previous wetland mitigation areas required as part of the seismic retrofit of the bridge in 1997 (CDP No. 1-96-010, discussed above). The Commission finds it necessary to obtain an analysis of this alternative so that the least environmentally damaging feasible project can be identified.

As discussed above, the Appellant has raised the concern that the approved project relies on geotechnical drilling plans for which no alternatives have been analyzed. The Caltrans District 1 (which includes Del Norte County) public information website includes information about another project that appears to be substantially related to the subject bridge replacement project, and calls for a wider bridge and southbound acceleration lane to accommodate oversized commercial trucks (STAA-sized). The proposed boreholes appear to be located along the linear outside area of a future bridge sized and designed to accommodate a southbound acceleration lane in addition to traffic lanes for the first time. The upgrades of Highway 197 appear to require a significantly wider design of the future Smith River/Dr. Fine replacement bridge, as compared with the footprint of the existing bridge. The addition of the width required for the replacement bridge to incorporate new traffic (an STAA truck acceleration lane) has not been directly identified in the supporting documents for the related projects, including the geotechnical investigations for the bridge replacement project approved by the County.

The possible relationship between a specific future replacement bridge design incorporating STAA truck turning requirements, and the specific borehole locations identified in the project approved by the County has not been analyzed in the record of the County's approval or in the STAA project documents. Exhibits 2 and 3 (prepared by Caltrans) show the junction of existing Highway 197 and existing Highway 101, and also show outlines of the areas Caltrans would widen to upgrade Highway 197 to STAA truck status.

The D1 link to the Highway 197 project is as follows:

http://www.dot.ca.gov/dist1/d1projects/197-199_staa/

Exhibits 2 and 3 and the website links given above show that Highway 197 terminates at Highway 101 just north of the subject bridge/project location and that the distance between the two points is very short. The STAA upgrade of Highway 197 calls for changes to Highway 197 that would allow extra-large (“STAA”) commercial trucks to legally travel on Highway 197 from Grants Pass, Oregon, and ultimately via inland I-5. (STAA-sized trucks already travel Highway 101 in the Smith River area from Oregon south to Crescent City.) The Highway 197 project would widen some locations of Highway 197, straighten curves and make other upgrades to enable extra-large sized commercial trucks to travel legally on the winding route of Highway 197 along the Smith River (the route in its present alignment is too hazardous for such trucks).

As can be seen from Exhibits 2 and 3, however, an alternative exists that would not require STAA trucks on Highway 197 to turn directly across Highway 101 onto the future replacement bridge. The alternative is noted in the DEIR available on the Caltrans website link included above, and would utilize Fred Haight Drive to the north and west of the bridge as a route to establish an STAA truck southbound merger with Highway 101. Use of this alternative would potentially eliminate the need for an acceleration lane on the future Smith River replacement bridge, thereby reducing the bridge width by as much as 14 feet from this change alone. In addition, this change would reduce distance from the existing bridge deck to the borehole locations approved by the County. The Commission requires therefore for *de novo* review the alternative geotechnical requirements for support structures for a reduced replacement bridge width excluding a southbound acceleration lane, as well as alternative geotechnical investigation requirements associated with staging drilling equipment off the existing bridge deck (including the use of traffic control measures to free a complete lane for this purpose, if necessary) for the reduced and the proposed options.

The Commission staff has previously recommended that Caltrans evaluate half-width construction techniques and replacement bridge designs that would recycle more of the existing disturbed area than would bridge design and construction alternatives that place a new, and much wider bridge on either a completely eastern or completely western alignment relative to the existing bridge. There are several sub-alternatives reliant on half-width construction variations that could incorporate some of the advantages – particularly reduced impacts on environmentally sensitive coastal resources – that would be considered in such an alternatives analysis. One of the advantages of the alternatives analysis would be investigating options to reduce the impacts of the geotechnical drilling associated with such an analysis. The Commission requires for *de novo* review of the geotechnical drilling plan project, that an alternatives analysis be submitted that shows where borehole locations would be located for each design alternative for the future bridge, including the present proposal as well as alternative bridge design support structures, and supporting information to indicate that no alternatives for bridge design would be precluded by the drilling program.

The Caltrans D1 public website link to the Smith River/Dr. Fine Bridge project is also provided by Caltrans:

http://www.dot.ca.gov/dist1/d1projects/dr_fine/

3. Supporting Studies and Delineations

The Appellant identified the need for the preparation of, and consideration of, adequate wetlands delineations and surveys for the presence of sensitive species and environmentally sensitive habitat areas. The Commission requires such delineations and biological studies to evaluate the potential impacts of the proposed project on the sensitive resources pertinent to the certified Del Norte County LCP policies protective of these resources and cited above.

The Commission requires that Caltrans submit protocol surveys for any sensitive plants or wildlife that may be present in or near the subject project area, as well as any other biological surveys, delineations, Biological Assessments, Natural Environmental Studies or other pertinent substantive analyses of species and habitats that may be affected by the subject project, including copies of associated original field notes, data sheets, and pertinent maps.

4. Approved Amendment of CDP 1-96-010

As discussed above, if Caltrans is unable to identify a feasible alternative that would avoid adverse impacts on the wetland habitat previously restored in accordance with the special conditions of CDP 1-96-010 (seismic retrofit of the existing bridge, undertaken by Caltrans in 1997), Caltrans must submit a complete application for the amendment of CDP 1-96-010. The Commission would consider the amendment prior to the *de novo* review of the pending project for the geotechnical drilling plan.

Dr. Fine Bridge Replacement Project 1-DN-101 PM 35.8/36.5

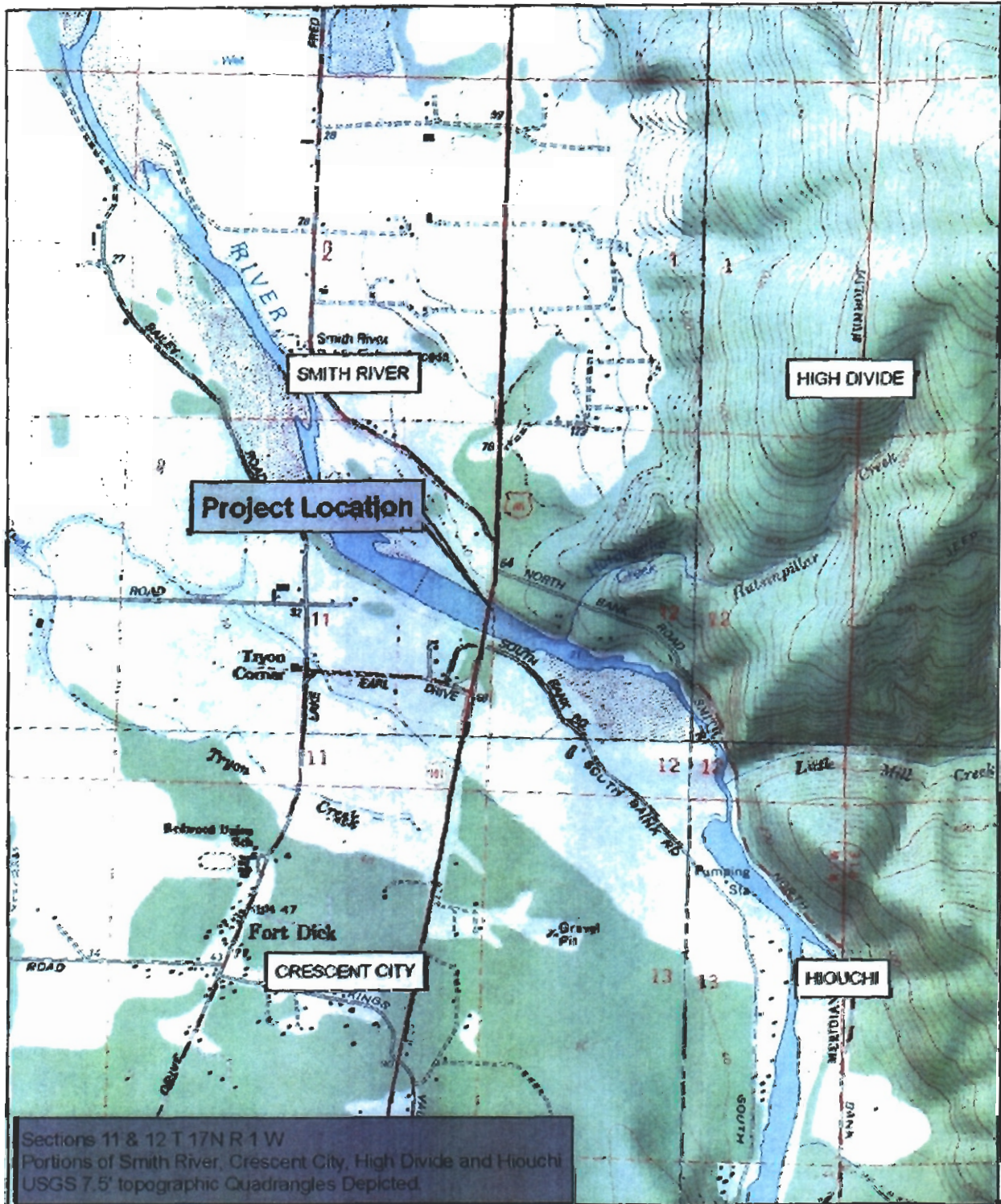
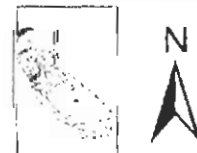
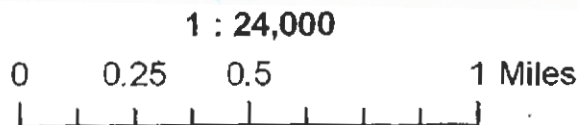


EXHIBIT NO. 1

APPEAL NO.
A-1-DNC-11-019 - CALTRANS

**REGIONAL LOCATION MAP AND
COASTAL COMMISSION POST-
CERTIFICATION COASTAL ZONE
MAP FOR DEL NORTE COUNTY
SMITH RIVER AREA (1 of 3)**



1010 (1/1/87)

- 1. Any development approved by a county that is not designated as a principal permitted use under zoning approved pursuant to the applicable Local Coastal Program;
- 2. Any development that constitutes a major public works project or a major energy facility.

In areas where a parcel is bisected by the appeals jurisdiction boundary, only that portion of the parcel within the area defined as appealable is subject to the Commission's appeal jurisdiction.

Prepared By: MS, J/c		Date: 3/25/81
Adopted by Commission: 8/11/83		
Revisions		
Date	By	Comm. Action
11/86	JM	11/12/86

1) prepared to show where the California Commission retains post-LCP certification permit jurisdiction pursuant to PRC § 30513(b), and (c)(2). In addition, developments may be pursuant to PRC § 30603(a)(3), (d)(4), (e) and (f) concerning the precise location of any area defined in the above information. This plat may be updated as may not include all lands where post-LCP jurisdiction is retained by

3000 5000 5280

FEET

MISSION COASTAL ZONE

Map 1

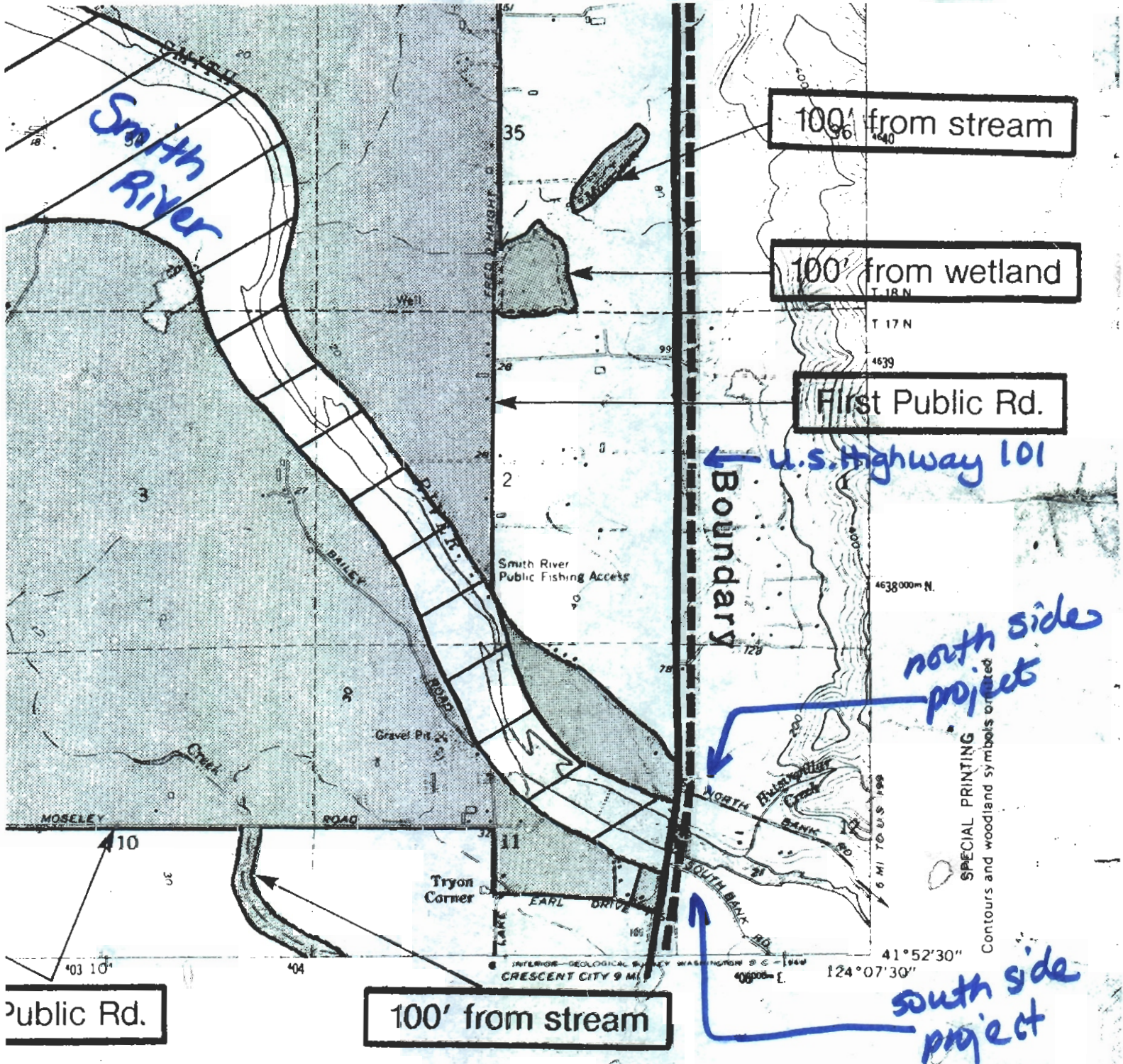
DEL NORTE COUNTY
SMITH RIVER

ACRES 40
10
DATE: 5/1/87
BY: MMC

2

6

203



NOTE

In addition to these geographic areas of appeal jurisdiction the following types of development are appealable throughout the coastal zone pursuant to PRC Section 30603 (a)(4) and (a)(5):

1. Any development approved by a county that is not designated as a principal permitted use under zoning approved pursuant to the applicable Local Coastal Program;
2. Any development that constitutes a major public works project or a major energy facility.

In areas where a parcel is bisected by the appeals jurisdic-

SPECIAL PRINTING
Contours and woodland symbols omitted

3 of 3

COUNTY OF DEL NORTE
T. 17N. R. 1W. H.M.

SECTION 11



EXHIBIT NO. 2
APPEAL NO.
 A-1-DNC-11-019
CALTRANS
PROJECT SITE MAP BASED ON CALTRANS RIGHT-OF-WAY MAP

- ARCHEOLOGICAL TRENCH
- ACCESS ROAD
- WEST BRIDGE ALTERNATIVE BORE HOLE LOCATIONS
- EAST BRIDGE ALTERNATIVE BORE HOLE LOCATIONS

OHW - ORDINARY HIGH WATER
NOTES:
 1. LOCATIONS OF BORE HOLES ARE ONLY APPROXIMATE.
 2. LOCATION OF ACCESS ROADS WILL VARY, AND DEPENDS ON FINAL LOCATION OF BRIDGE COLUMNS

STATE OF CALIFORNIA
 BUSINESS, TRANSPORTATION AND HOUSING AGENCY
 DEPARTMENT OF TRANSPORTATION
RIGHT OF WAY
PERMIT TO ENTER 3
01-DN-101-PM 35.8/36.5
 FOR PREVIOUS R/W INFORMATION SEE MAP(S)

GRANTOR NOTES
 Areas shown enclose underlying fee (see Access) (limiting public way).
 Indicates Underlying Fee (UF) Area
 Indicates Indeterminate UF
 TITLE CODES:
 F-Access Rights Only
 E-Easement
 T-Other Temp Eas (see Remarks)
 O-Other (see Remarks)

NOTES
 Coordinates and bearings are on CCS 1983(1991,36) Zone. Distances are in feet unless otherwise noted.
 Distances are given in feet unless otherwise noted.
 All distances are in feet unless otherwise noted.

LEGEND
 Access Prohibited
 Access Subscribed
 Existing R/W Subscribed
 Access Easement (Private)
 Indeterminate Right of Bearing
 Indeterminate Found Monument
 OHW
 Indicated calculated point (does not imply measurement)
 (1) to (5) as shown
 required for others

TO DESIGN: 04/26/10	EA(8): 4.5640	FAB:
DISTRICT COUNTY ROUTE	SHEET PM	SHEET NO. TOTAL SHEETS
01 DN 101	36.3	2 2

GRANTOR

TITLE CODE	GRANTOR	TOTAL AREA (square feet or as noted)	REQUIRED (UF)	EXCESS (UF)	REMARKS
0	PALMER WESTBROOK INC.	316 AC	316 AC	0	ARCHEOLOGICAL INVESTIGATION; ACCESS TO LOCATION OF TO BE DETERMINED; AP 105-020-14, 20
0	WELLS FARGO BK NA TRUST	5 AC	5 AC	0	HAZARDOUS MATERIAL INVESTIGATION; ACCESS TO AND LOCATION OF TO BE DETERMINED; AP 105-700-01
0	Calvary Chapel of the Redwoods	11 AC	11 AC	0	HAZARDOUS MATERIAL INVESTIGATION; ACCESS TO & LOCATION OF TO BE DETERMINED; AP 105-020-07
0					HAZARDOUS MATERIAL INVESTIGATION; DRILL & HAND AUGER LOCATIONS TO BE DETERMINED
0					BORE HOLE LOCATIONS; ACCESS TO & EXACT LOCATION OF TO BE DETERMINED

LOGICAL INVESTIGATION SITES TO BE AGREED ON BY OWNERS/OCCUPANTS TO BE ACROSS NATIVE GROUND BY ALL EQUIPMENT; REGULAR TRUCKS, BACKHOES/DRILL RIG 3 TO BE 3.5 FT WIDE BY 6 TO 10 FT LONG, DEPTH TO VARY FROM 3 TO 10 FT UNBURIED SURFACES TO BE BACKFILLED AND/OR COMPACTED