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Filed:	June 11, 1999
49 <sup>th</sup> Day:	June 30, 1999
180 <sup>th</sup> Day:	December 9, 1999
Date of Extension Request:	January 10, 2000
Length of Extension:	90 Days
Final Date for Commission Action:	April 14, 2000
Staff:	Jim Baskin
Staff Report:	March 23, 2000
Hearing Date:	April 14, 2000
Commission Action:	

STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 1-99-052

APPLICANT: Stornetta Brothers

PROJECT LOCATION: Western Terminus of Miner Hole Road, approximately one mile west of its intersection with State Highway One, 1½ miles north of the City of Point Arena, Mendocino County. APN 133-030-05.

PROJECT DESCRIPTION: Remove an earthen berm placed across a private farm road, and place and grade the approximately 25 cubic yards of excavated material onto the farm road.

LOCAL APPROVALS RECEIVED: County of Mendocino LCP Consistency Review No. 00-01, approved February 25, 2000.

OTHER APPROVALS REQUIRED: U.S. Army Corps of Engineers approval may be required.

SUBSTANTIVE FILE DOCUMENTS: County of Mendocino Local Coastal Program; Garcia River Sediment Total Daily Maximum Load; and RWQCB North Coast Water Quality Control (Basin) Plan

### **SUMMARY OF STAFF RECOMMENDATION**

Staff recommends that the Commission approve with conditions the proposed removal of approximately 25 cubic yards of earthen berm materials placed across a private farm road located at the western end of Miner Hole Road and the grading and placement of the excavated material onto the road. The proposed project would resolve a coastal development violation wherein the applicant placed the berm across the existing road to prevent further trespassing on private pasturelands. This work was performed without a coastal development permit. The project site is located adjacent to the tidal-influenced reaches of the lower Garcia River on lands subject to the public trust and is thus located within the Commission's permit jurisdiction.

It is uncertain whether past use of the site for access purposes has given rise to public prescriptive rights. There is anecdotal evidence of long-standing use of the site for pedestrian fishing access and some indication of vehicular access use by recreational boaters, primarily drift boaters, but the matter remains unresolved at this time. No investigation for implied dedication of public access has been conducted in association with this application as the proposed project does not entail development of a type which would "... interfere with the public's right of access to the sea." On the contrary, the proposed development would restore the site to conditions that existed prior to construction of the berm and eliminate an unpermitted development that may have interfered with potential prescriptive rights of access to the sea.

In addition to its coastal access ramifications, the project also raises potential issues regarding protection of environmentally sensitive habitat areas (ESHAs) and preventing discharges of sediment-laden stormwater runoff into coastal waters.

The project site is located adjacent to ESHAs at the outward edge of the riparian corridor adjacent to the Garcia River. The project setting is a single-lane unsurfaced farm road traversing through and around a willow thicket from the end of the County road and running roughly parallel to the Garcia River. The road and berm themselves are not considered to be ESHA nor are they within wetlands. In addition, removal of the berm would not involve filling or grading in wetlands.

With respect to the potential impacts to environmentally sensitive areas, staff consulted with the U.S. Fish and Wildlife Service, the California Department of Fish and Game and North Coast Regional Water Quality Control Board regarding potential impacts to estuarine, riparian and coastal scrub habitats, and water resources. Of particular concerns identified by these agencies were the potential project effects on the beneficial uses of the Garcia River and to federal and state listed fish species such as the coho salmon and coastal cutthroat trout. In addition, the project site is within the limited range area of the Point Arena mountain beaver (*Aplodontia rufa nigra*), a federally listed endangered species.

These resources agencies have concluded that the project as proposed is not likely to create significant adverse affects on fish and wildlife resources and beneficial water uses provided the disposal of the berm materials is undertaken as proposed by the applicant within certain parameters. To avoid potential sedimentation of coastal waters, the agencies recommend that the project not be conducted during the rainy season and that the disposal site be stabilized by tamping the materials and revegetating the site. Therefore, staff has recommended special conditions relating to the methods and timing for removal of the berm materials to insure that the project is carried out in a manner which avoids impacts to coastal waters from soil disturbances associated with the use of heavy equipment.

With respect to potential impacts to mountain beaver habitat, the U.S. Fish and Wildlife Service has inspected the site and determined that the project site is not located in an area where the species typically burrows. Such burrows are usually in well-drained densely vegetated or forested hillsides near spring seeps. Similarly, the project does not involve removal or disturbance of large areas of vegetation where the rodent forages. Therefore, the berm removal as conditioned will not have significant adverse impacts on mountain beaver habitat.

Staff believes the proposed project as conditioned is consistent with the Coastal Act and recommends approval.

#### STAFF NOTES

1. Jurisdiction and Standard of Review

The proposed project is located along the Garcia River, about a mile from the ocean, in Mendocino County. Mendocino County has a certified LCP, but the site is within an area shown on State Lands Commission maps over which the state retains a public trust interest. Therefore, the standard of review that the Commission must apply to the project is the Coastal Act.

#### STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. MOTION, STAFF RECOMMENDATION, AND RESOLUTION

The staff recommends that the Commission adopt the following resolution:

**Motion:**

I move that the Commission approve Coastal Development Permit No. 1-99-052 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 the 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 attached.

III. **SPECIAL CONDITIONS:**

1. **Berm Removal and Disposal Methods**

The proposed development shall be conducted in accordance with the methods and techniques described in the application project description dated January 1, 2000 and March 2, 2000, prepared by Larry Stornetta, Applicant, as amended by these special conditions. These methods and techniques include, but are not limited to the following specific measures:

- A. All work in or near the riparian corridor of the Garcia River shall be confined to the period of June 1, 2000 through October 15, 2000.
- B. The berm materials will generally be removed with a backhoe or tractor. Care shall be taken (i.e., the use of hand shovels) in removing materials in proximity to any tree trunks embedded in the berm or surrounding major vegetation to ensure that the trees are not damaged. The berm materials shall be excavated to an elevation matching the grade of the adjacent ground.
- C. The berm materials shall be placed and graded onto the portion of the farm road to the north and west of the berm location as proposed by the permittee. The fill depths shall not exceed one foot in depth or have side slopes in excess of 1.5:1.

- D. Once placed and graded, the berm materials shall be stabilized by tamping with a turf roller, or other similar equipment, to prevent erosion of the materials during precipitation or high river stages. Although the berm materials should be tamped firm, they should not be compacted to a point where interference with revegetation efforts could occur.
- E. Upon completion of the berm removal, the roadbed and any areas outside of the existing roadbed disturbed by the removal, placement, and grading of the berm construction activities will be revegetated with a grass seed mixture, free of invasive or noxious plant species. Once re-seeded, the area from which the berm was removed shall be mulched with a covering of hay straw; hay bales shall be placed around the perimeter of the disposal fill area.
- F. No trees, wetlands, or riparian vegetation shall be removed or otherwise disturbed during the berm removal construction activities.

2. **Public Rights**

By accepting this permit, the applicant acknowledges that: (1) issuance of the permit shall not constitute a waiver of any public rights which may exist on the property; and (2) issuance of the permit and construction of the permitted development shall not be used or construed to interfere with any public prescriptive or public trust rights that may exist on the property.

3. **Condition Compliance**

**BY OCTOBER 15, 2000**, or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to issuance of this permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

IV. **FINDINGS AND DECLARATIONS.**

A. **Project Description.**

In mid 1999, Coastal Commission staff became aware of a development having been undertaken on the Stornetta Brothers Ranch near Point Arena, California without benefit of a coastal development permit. An earthen berm of approximately 10 feet in height, 15 feet in length and with a base width of 8 feet had been pushed-up across a ranch road leading down to the Garcia River. A field visit by Commission staff verified the presence of the berm and subsequent discussions with the property owner revealed the intent of the development to be part of an ongoing effort to control access through the property.

While the owner expressed no reservations to recognizing access for pedestrian fishermen, there was strong reluctance to allowing access to a wider assortment of users through the property. The berm was particularly intended to curtail further vehicular access in this area in response to incidents of property destruction, vandalism, illegal camping and littering associated with trespassing by an ever-widening diversity of coastal users onto adjacent private lands.

By certified letter of June 1, 1999, the property owner was informed that the unpermitted placement of the berm constituted a violation of the Coastal Act. The letter described two options for resolving the violation, either by applying for an after-the-fact coastal development permit for retaining the berm, or for a permit to remove the berm. By letter dated June 24, 1999, Mr. Larry Stornetta indicated his intent to remove the berm from the property, and subsequently filed an application for a coastal development permit consistent with the statement of intent.

The proposed project consists of the removal of the 10-foot high x 15-foot long x 8-foot wide earthen berm. The development is proposed to resolve the alleged Coastal Act violation. The applicant also originally considered including replacing the berm with a gate and fencing, however, that portion of the development was subsequently deleted by amendment of the project description.

The applicant proposes to remove the approximately 25 cubic yards of the berm materials by excavation with a backhoe or tractor. The materials would then be spread over an adjoining area (where the material originated) not exceeding one foot in depth and then re-seeded.

B. Site Description.

The project site is located along the lower flanks of the Garcia River on an approximately 1,800-acre ranch, approximately 1½ miles north of the City of Point Arena in southern Mendocino County. The site is located on a private farm road extending westerly from the western terminus of Miner Hole Road, approximately one mile west of Miner Hole Road's intersection with State Highway One. The berm is located within the terraced floodplain approximately 40 yards south of the river and 20 yards west from the end of the County road.

The project setting comprises a single-lane, heavily rutted farm road leading off of the end of the gravel-surfaced County road skirting the edge of the riparian corridor adjoining the river. Except for the wheel tracks, much of the road is grass covered. This road has been used for access to farm ranching operations. According to the property owner, the private road has also been used to gain access to the Garcia River for fishing and recreational boating by kayakers and other small craft users sometimes with, and sometimes without the permission of the owner. Surrounding land uses are primarily

agricultural in nature, comprising fenced rangelands and cultivated fields for cattle fodder.

C. Public Access

Coastal Act Sections 30210, 30211, and 30212 require the provision of maximum public access opportunities, with limited exceptions.

Section 30210 states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30211 states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30212 states:

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

- (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,
- (2) adequate access exists nearby, or,
- (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

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 adjacent to the Garcia River, an "arm of the sea," approximately one mile upstream of where the waterway enters the Pacific Ocean north of Point Arena. The closest public coastal access point to and along the river mouth and ocean coast is at Manchester State Park, whose entrance is located approximately three miles north of the project site. Coastal blufftop access is also available to visitors of the Point Arena Lighthouse historical recreational area 1½ miles to the south of the project site. However, no access from the lighthouse area to the shore or mouth of the Garcia River is available due to the steep unstable headlands.

Although no public access easement exists at the site and no formal determination on prescriptive rights has been made regarding public access through the subject property, the project area has long been referenced as an informal access to the Garcia River:

The California Coastal Access Guide (State of California, California Coastal Commission, 4<sup>th</sup> ed., rev, ©1991) has the following entry regarding the project site:

***GARCIA RIVER ACCESS:*** *Minor Hole Rd., a gravel road off Hwy.1, leads across private lands to the south bank of the Garcia River, which is a popular fishing access. The area is noted as a wintering habitat for tundra swans. No dogs, camping, or hunting permitted; do not trespass on adjacent private property. (emphases added)*

In addition, the coastal access inventory of the Mendocino County LCP (adopted November 8, 1985) addresses this access point to the Garcia River in applicable part as follows:

***Garcia River***

*Location: End of Minor (sic) Hole Road (County Road 509A), one mile north of the City of Point Arena.*

*Ownership: Private; public use in accord with posted regulations is acceptable to the owner; prescriptive rights may exist.*

*Existing Development: Fishing access.*

*Potential Development: Improved parking area; sign on highway.*

*Policy:*



4.11-8 There should be no access through agricultural lands in this area, finding that over use of the encroachment will be detrimental to the agricultural resource. On the existing road to the terminus, signs shall indicate that unleashed dogs, hunting, and camping are prohibited. (emphases added)

Further, in the findings for Coastal Development Permit No. 1-82-251, a preceding permit for gravel mining and major vegetation removal, the permit findings stated the following with regard to requirements for public access and land uses at the site:

Although the affected property is located between the sea and the nearest public road (Highway One) public access is not desirable at this time. The Mendocino County LCP draft land use plan as proposed by Blayne/Dyett and supported by the Commission staff recommends public access for fishing between the northern terminus of Minor (sic) Hole Road and the Garcia River. However, the Planning Commission, in its review of the draft and the property owners are adamantly (sic) opposed to public access at this location because of a potential conflict between the access easement and agricultural use of the land. The applicants allow use of their property by fishermen and wish to maintain full control over the use of the land to minimize these conflicts. Commission staff is also considering a public access program near the Loran Coast Guard station and the mouth of the Garcia River; however, these programs have not been finalized because of the potential conflicts with the agricultural operation. (emphases added)

It is clear from the excerpts cited above that there is a longstanding history of debate regarding the appropriate levels and types of access at the project site. While the status of the subject property remains unresolved with respect to the existence of an implied dedication, the effect of the proposed development (i.e., the removal of the berm) would not interfere with any existing or potential public rights of access.

The berm was installed for the purpose of preventing further vehicular trespassing onto actively productive agricultural lands. This action resulted in a physical barrier being placed across an existing private road which effectively blocks further vehicular passage along the route and presents a steep mound for pedestrian users to either traverse or circumvent if they wishes to continue to access the river at this locale. Had the property owners sought an after-the-fact coastal development permit to retain the berm, an investigation for the presence of an implied dedication would have been appropriate. However, the proposed project would result in the removal of the unpermitted physical barrier and would restore the site to its pre-construction conditions. No matter what implied dedication rights may exist or be found to exist on the project property, the project would not interfere with or otherwise alter the time, place and manner of access opportunities that existed prior to installation of the berm.

Accordingly, the project would not interfere with the public's right of access to the sea from the first public roadway. Neither would the project have adverse impacts on existing or potential public access necessitating the need for special conditions to protect public access. Therefore the Commission finds that the proposed project, which does not include new public access, is consistent with the public access policies of the Coastal Act.

D. Water Quality Issues.

Section 30231 of the Coastal Act addresses the protection of coastal water quality in conjunction with development and other land use activities. Section 30231 reads:

*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 substantially interference with the surface water flow, encouraging, wastewater reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*  
(emphases added)

The project site is located in the lower Garcia River watershed. The Garcia River watershed was listed on California's 1996 Clean Water Act (CWA) Section 303(d) list as water limited due to sedimentation. The level of sedimentation in the Garcia River was judged to exceed the existing water quality standards necessary to protect the beneficial uses of the basin, particularly the cold-water fishery. In particular, accelerated erosion from land use practices and other causes was identified as impacting the migration, spawning, reproduction, and early development of cold water fish such as coho salmon and steelhead trout. Based on these findings, the U.S. Environmental Protection Agency assigned a high priority status to the Garcia River in its program workplan for development of a Sediment Total Maximum Daily Load (TMDL) Plan.

The Garcia River TMDL Plan is one of only eight finalized plans within California. The plan includes a problem assessment study, identifies attainment targets, sets linkages between various land uses and sedimentation contributions, and establishes loading allocations by river reach. Although programmatic implementation measures for the Garcia River TMDL Plan have yet to be developed by the Regional Water Quality Control Board, it is clear from the plan that all feasible measures to reduce sedimentation should be considered and incorporated into the review and approval of land use activities within the watershed. In fact, the plan specifically encourages voluntary efforts in this regard as interim measures until the implementation program is finalized.

Both the proposed removal and placement of excavated of berm materials could cause sedimentation impacts on the river if not adequately mitigated.

#### Effects of Berm Removal

The berm is located at the outer edge of the riparian corridor adjacent to the Garcia River. The berm was constructed across an existing farm road and there is no evidence that the portion of the road where the berm was constructed is a wetland. However, areas adjacent to the berm through which heavy mechanized equipment must pass to access the berm will occasionally have standing water during the winter months. If berm removal operations were conducted during these times, increased sedimentation into the Garcia River could result from soil disturbances. Accordingly, Special Condition #1 limits the work to be undertaken during the drier time of the year, June through the middle of October. This will prevent and reduce potential sedimentation of coastal waters.

#### Effects of Debris Disposal

Disposal of the debris materials similarly has the potential for causing increased sedimentation of coastal waters. If the berm materials are situated such that they can be eroded by rising river waters, further siltation of the lower Garcia River basin could result.

In discussing this aspect of the proposed project with RWQCB staff, however, it is evident that the scope and scale of the project ( $\pm 25 \text{ yd}^3$ ) is relatively minor in comparison to the overall quantity of sediment passing through the Garcia River basin (estimated at 2,160 tons/square mile/year). Mass wasting associated with large landslides and slips, failing logging roads, and timber harvesting activities contribute a far greater portion to the over sediment output of the river than compared with materials associated with agricultural grading practices. The concerns of the Regional Board regarding this project's contribution to water quality degradation of the Garcia River watershed are similarly proportionate. RWQCB staff have indicated that the applicant could dispose of the berm materials in the area from whence they were obtained as the applicants have proposed, provided the materials are stabilized by being tamped in place and re-seeded to prevent their entrainment into runoff or high river flows (pers. comm., John Hannum, NCRWQCB). Special Condition No. 1 includes measures to assure that berm disposal does not contribute to sedimentation of coastal watercourses. These measures include operational criteria for the berm's removal and disposal, and requirements for stabilizing the disposal materials by tamping and re-seeding the area with a grass cover.

The proposed project would restore the site to the conditions that existed prior to the berm's construction. Special Conditions have been recommended which will address the excavation and disposal of the berm materials such that siltation sedimentation does not result. These actions will ensure that the biological productivity and quality of coastal waters will be maintained. Therefore, as conditioned, the project is consistent with Section 30231.

E. Environmentally Sensitive Habitat Areas

Section 30240 of the Coastal Act addresses the protection of environmentally sensitive habitat areas, to wit:

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

*(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

The project site is located approximately 40 feet from the southern banks of the river on the outward edge of its riparian corridor. Vegetation cover of the surrounding area can be characterized as a mixture of a riparian woodland and coastal scrub-shrub plant communities, comprised predominantly of Sitka willow (Salix sitchensis), arroyo willow (Salix lasiolepis), red alder (Alnus rubra), coyote brush (Baccharis pilularis), blackberry brambles (Rubus sp.), cow parsnip (Heracleum lanatum), evergreen huckleberry (Vaccinium ovatum), California figwort (Scrophularia californica), hedge-nettle (Stachys ajugoides var. rigida), salal (Gaultheria shallon) and a variety of upland grasses.

The berm was placed across an unpaved farm road at a point where surrounding trees have grown partially into the roadway. The berm partially engulfed the lower trunks and limbs of several willows and alders on either side of the segment of road where it was placed. These trees are considered to be environmentally sensitive habitat areas (ESHAs) as they are part of the riparian vegetative corridor along the Garcia River. The proposed development is allowable as it entails restoration within and adjacent to ESHA and is thus a use dependent on the resource. However, some care will need to be taken during the removal of the berm materials to ensure that undue damage to the adjacent mature trees from demolition operations is avoided. Special Condition No. 1 includes in the criteria for berm removal instructions that hand tools are to be used in the removal of materials near the embedded trees to avoid damage by backhoe attachments. It should be noted that while the portion of the farm road proposed as the disposal area is adjacent to riparian habitat, it is not ESHA itself. Accordingly, replacing and grading the berm materials back in this location does not constitute the introduction of new uses within an ESHA.

With respect to fish and wildlife habitat, the Garcia River is a first-order coastal watercourse that empties into the Pacific Ocean approximately one mile to the northeast. Coho salmon (Oncorhynchus kisutch) and cutthroat trout (Oncorhynchus clarki clarki) are anadromous fish species native to the Garcia River basin. The National Marine Fisheries Service has listed the coho salmon as a threatened species and cutthroat trout

are considered a species of special concern by the California Department of Fish and Game. Sedimentation resulting from the proposed grading activities could contribute to degradation of the riverine habitat of these fish species. Therefore, the Commission attaches Special Condition No. 1, which includes measures to assure that berm disposal does not contribute to sedimentation of coastal watercourses. These measures include operational criteria for the berm's removal and disposal, and requirements for stabilizing the disposal materials by tamping and re-seeding the area with a grass cover.

The project site is also within the limited range of the Point Arena mountain beaver (*Aplodontia rufa nigra*). The mountain beaver is listed as a federally endangered species by the U.S. Fish and Wildlife Service and a high priority Species of Special Concern with the California Department of Fish and Game. The mountain beaver has been compared to an overgrown pocket gopher or tailless muskrat. The Point Arena mountain beaver type locality is entirely in western Mendocino County, within an area of approximately 24 square miles between the town of Point Arena to the south and Alder Creek drainage to the north. Mountain beavers are found in cool, wet areas, often near seeping springs. They are generally solitary, nocturnal animals that may cluster in loosely associated groupings. The Point Arena sub-species prefers scrub thickets on north-facing slopes or ridges and gullies, as well as well-drained herbaceous and wooded areas. Mountain beavers feed on plants with high water content; they also eat the bark and possibly the roots of deciduous trees. Females bear their young in late February or March. Only one litter is produced annually, consisting of 2 or 3 young.

Given the presence of the Point Arena mountain beaver (PAMB) in the area, Commission staff consulted with the U.S. Fish and Wildlife Service to determine whether the proposed development would adversely affect mountain beaver habitat. U.S. Fish and Wildlife Service (USFWS) staff visited the project site and found no evidence of mountain beaver presence or activity in the vicinity of the berm. Further, as mountain beavers generally inhabit burrows in well-drained hillsides, USFWS staff have determined that it is unlikely any of the species utilize the berm surroundings. In a report-letter summarizing the results of the site visit, USFWS staff stated:

The Service has reviewed the correspondence received from the Coastal Commission dated February 6, 2000 and March 2, 2000. In addition, Mr. John Hunter of my staff, accompanied by Mr. Scott Koller representing the California Department of Fish and Game, conducted a visit to the site on March 9, 2000. During that site visit no evidence of PAMB were found in the immediate vicinity of the proposed project. Accordingly, the Service has determined that the project, as described in the March 2, 2000 correspondence, is not likely to result in take of PAMB and that no mitigation measures for this species are necessary.

Special Condition No. 1 has been attached to insure that the removal of the berm and the subsequent disposal of debris materials are properly conducted such that riparian habitat

is not disturbed and additional sedimentation of the lower river would not result from the project. Further, the site has been surveyed for the presence of threatened and endangered species and relevant resource agency staff have indicated that berm removal is not likely to adversely effect known listed species within the vicinity if the project to undertaken as conditioned. Therefore, the Commission finds that the proposed project as conditioned is consistent with Section 30240 of the Coastal Act as no environmentally sensitive habitat within the Commission's jurisdiction will be adversely affected by the project.

F. Alleged Violation.

The installation of the berm was performed without benefit of a coastal development permit. The proposed project is intended to resolve this alleged Coastal Act violation by removing the unauthorized berm and restoring the site to pre-installation conditions. Although berm construction occurred without required authorizations, consideration of this permit application by the Commission for berm removal has been based solely upon the Chapter 3 policies of the Coastal Act. Approval of the permit does not constitute a waiver of any legal action with regard to the alleged violation, nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit.

G. California Environmental Quality Act.

Section 13906 of the California Code of Regulation requires Coastal Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Public Resources Code 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 that the activity may have on the environment.

The proposed project has been conditioned to be consistent with the policies of the Coastal Act and the requirements of PRC §21080.5(d). Special condition(s) have been attached to require mitigation measures which will minimize all adverse environmental impacts. 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 to conform to CEQA.

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**EXHIBITS:**

1. Regional Location Map
2. Vicinity Map
3. Jurisdictional Map (excerpt)
4. Site Plan
5. Agency Review Correspondence

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. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent of interpretation of any condition will be resolved by the Executive Director of the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. 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.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.



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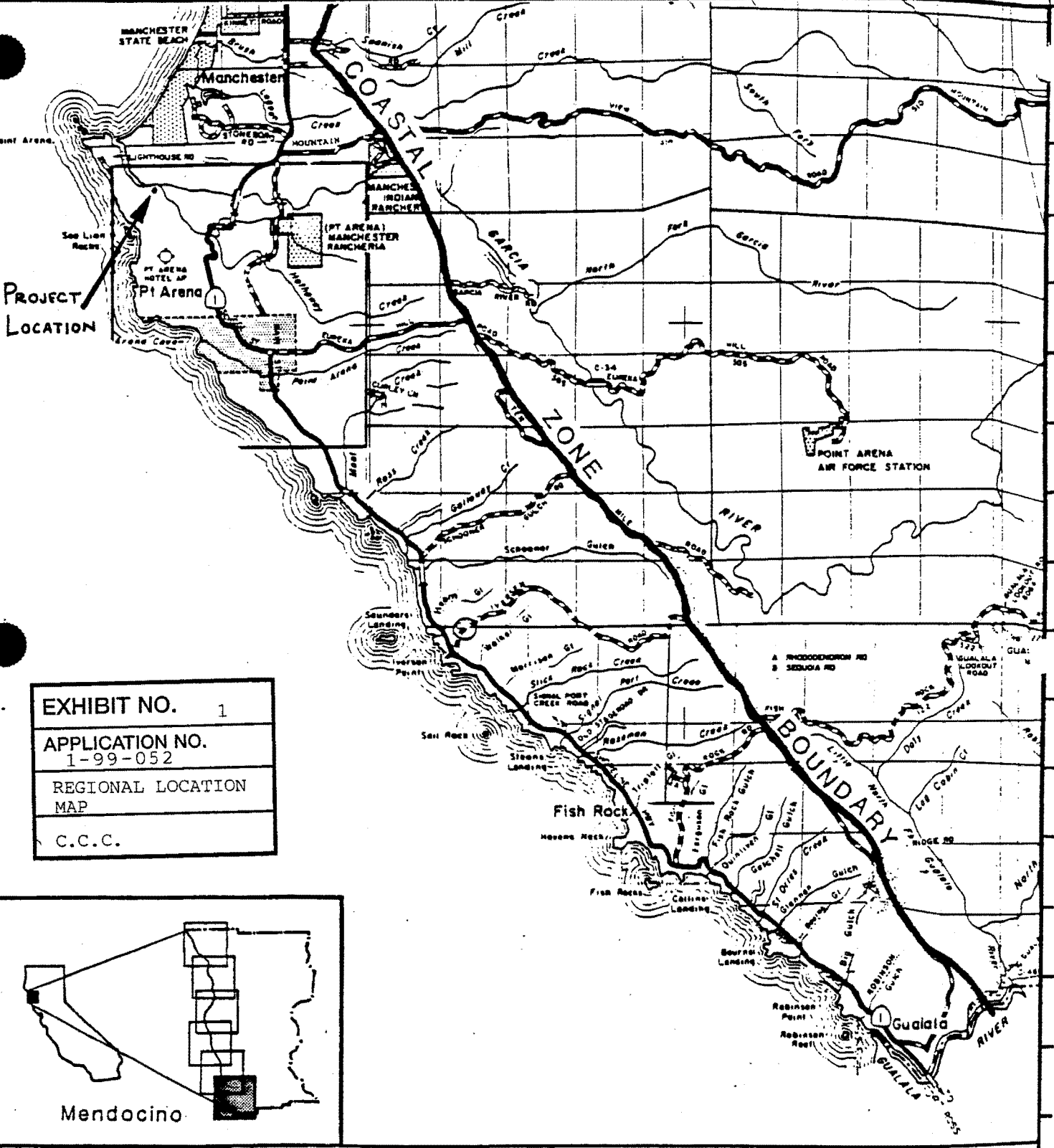
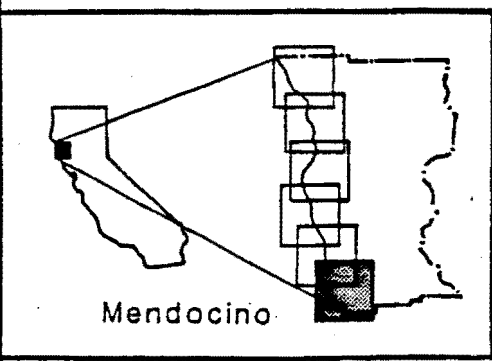


EXHIBIT NO.	1
APPLICATION NO.	1-99-052
REGIONAL LOCATION MAP	
C.C.C.	



Mendocino

LOCATION MAP



Point Arena

Lighthouse

COAST GUARD RESERVATION

BM 54

Garcla River

PROJECT LOCATION

T 13 N  
T 12 N

BM

72

Sea Lion Rocks

COAST GUARD RESERVATION

Eoran Mast

WT

F I C

EXHIBIT NO. 2
APPLICATION NO. 1-99-052
VICINITY MAP
C.C.C.

57'30"

Point Arena

Lighthouse

COAST GUARD RESERVATION

BM 64

PROJECT LOCATION

34

T 13 N BM

T 12 N

Sand Point

Docks

COAST GUARD RESERVATION

Coast Mast

Water

Pt Arena Latitude

42' 10"

Arena Cove

BM 217

Well

Water

Radio Facility

Lookout

100' from

EXHIBIT NO.	3
APPLICATION NO.	1-99-052
JURISDICTIONAL MAP	
C.C.C.	

P A C I F I C

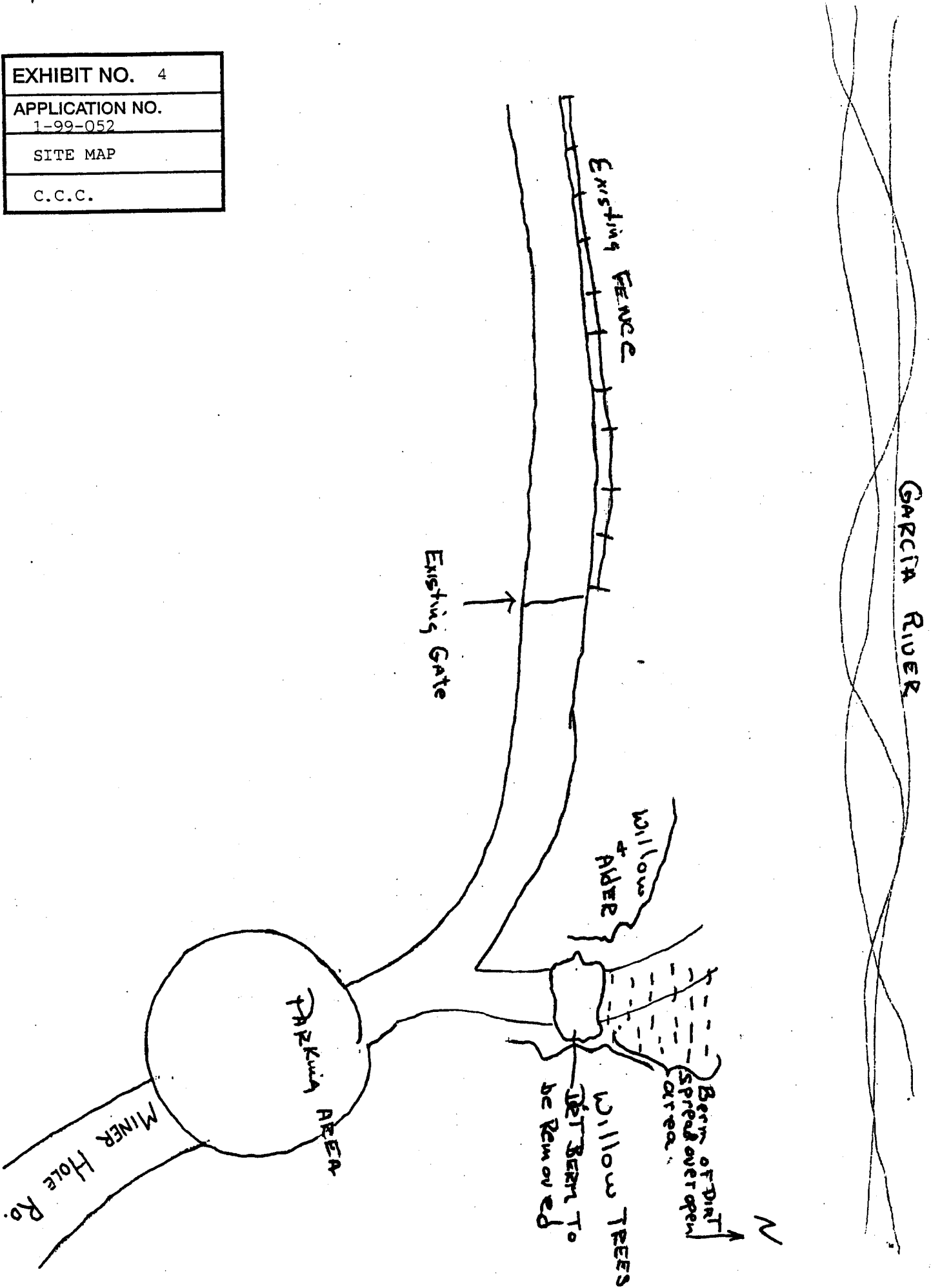
55'

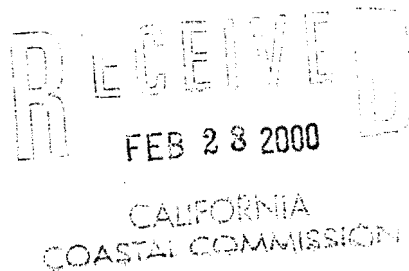
204

50'

5

EXHIBIT NO. 4
APPLICATION NO. 1-99-052
SITE MAP
C.C.C.





RAYMOND HALL  
DIRECTOR

COUNTY OF MENDOCINO

TELEPHONE  
(707) 964-5379

**DEPARTMENT OF PLANNING AND BUILDING SERVICES**

MAILING ADDRESS:  
790 SO. FRANKLIN  
FORT BRAGG, CA 95437

Date Submitted: January 4, 2000

LCP #00-01

**LCP CONSISTENCY REVIEW FORM**

This form is to be completed by the Mendocino County Planning Department and submitted to the California Coastal Commission in lieu of Appendix B as part of a Coastal Development Permit application.

1. Owner: Millie, Judith and Edith Stornetta
2. Applicant: Larry Stornetta
3. Project Description: Removal of a man-made berm of soil approximately 44 cubic yards in size. The soil to be distributed to the north of the existing berm and planted with grass seed. A gate consisting of two posts and a cable to be installed to prevent uncontrolled vehicular access. Wire fence to connect to existing fence to the west.
4. Project Address: 24450 So. Highway 1
5. Assessor's Parcel Number: 133-030-05
6. Parcel Size: 80 acres ±
7. LCP Designation: Agriculture
8. Existing Zoning: Agriculture/ Flood Plain (AG-FP)

EXHIBIT NO.	5
APPLICATION NO.	1-99-052
AGENCY REVIEW	CORRESPONDENCE
C. C. C.	

9. **Local Coastal Plan Consistency:** The project site in the location of the proposed improvements consists of low growing vegetation containing potentially riparian characteristics. According to the applicant, no removal of trees will occur. The site is currently posted with signs requiring owner permission to trespass. The location is currently used by the property owner and others to access the Garcia River which is located approximately 100 feet to the north. The ground between the access road and the berm has been disturbed by vehicular use off of the access road. Eliminating the berm and gating the access point should reduce the on-going disturbance from vehicles while allowing for infrequent owner access and on-going pedestrian access.

Because the site is located close to the river, there would be less potential for increased sedimentation if the berm material is removed from the flood plain area and placed elsewhere.

Soil stabilization for the disturbed areas needs to be addressed. This could be accomplished via a revegetation plan or by allowing the area to re-establish naturally. The method of soil stabilization should be prepared or reviewed by a qualified biological expert or botanist.

As discussed with Coastal Commission staff, the area to be disturbed would not constitute development within a wetland or riparian area since the berm is a man-made structure which does not significantly enhance or detract from nearby wetland or riparian habitat. It does not appear that significant riparian vegetation will be removed. Therefore the Environmentally Sensitive Habitat Area (ESHA) standards would not be applied to this project. The project would restore the landforms to more closely match the original configuration.

The following excerpts from the Coastal Zoning Code regulate the requested development:

**Sec. 20.492.010 Grading Standards**

- (A) Grading shall not significantly disrupt natural drainage patterns and shall not significantly increase volumes of surface runoff unless adequate measures are taken to provide for the increase in surface runoff.
- (C) Essential grading shall complement the natural land forms. At the intersection of a manufactured cut or fill slope and a natural slope, a gradual transition or rounding of contours shall be provided.
- (E) The permanently exposed faces of earth cuts and fills shall be stabilized and revegetated, or otherwise protected from erosion.
- (F) Adjoining property shall be protected from excavation and filling operations and potential soil erosion.
- (G) The area of soil to be disturbed at any one time and the duration of its exposure shall be limited. Erosion and sediment control measures shall be installed as soon as possible following the disturbance of the soils. Construction equipment shall be limited to the actual area to be disturbed according to the approved development plans.

**Sec. 20.492.015 Erosion Standards**

- (A) The erosion rate shall not exceed the natural or existing level before development.
- (B) Existing vegetation shall be maintained on the construction site to the maximum extent feasible. Trees shall be protected from damage by proper grading techniques.
- (C) Areas of disturbed soil shall be reseeded and covered with vegetation as soon as possible after disturbance, but no less than one hundred (100) percent coverage in ninety (90) days after seeding; mulches may be used to cover ground areas temporarily. In environmentally sensitive habitat areas, the revegetation shall be achieved with native vegetation. In buffer areas

adjacent to environmentally sensitive habitats, non-native vegetation may be used provided that it is non-invasive and would not adversely affect the environmentally sensitive habitat area.

- (D) Mechanical or vegetative techniques to control erosion may be used where possible or necessary providing that they are fully discussed in the approved development plan.

**Sec. 20.492.020 Sedimentation Standards**

- (B) To prevent sedimentation of off-site areas, vegetation shall be maintained to the maximum extent possible on the development site. Where necessarily removed during construction, native vegetation shall be replanted to help control sedimentation.
- (C) Temporary mechanical means of controlling sedimentation, such as hay baling or temporary berms around the site, may be used as part of an overall grading plan, subject to the approval of the Coastal Permit Administrator.
- (D) Design of sedimentation control devices shall be coordinated with runoff control structure to provide the most protection.
- (E) The grading plan when required shall set forth a schedule for the construction and maintenance of any structure to be developed under this section, and shall include a statement designating who shall be responsible for the long-term management of the devices.

**Sec. 20.496.025 Wetlands and Estuaries**

**(B) Requirements for Permitted Development in Wetlands and Estuaries.**

- (1) Any proposed development that is a permitted development in Wetlands and Estuaries must meet the following statutory requirements, and supplemental findings pursuant to Section 20.532.100:
  - (a) There is no feasible, less environmentally damaging alternative.
  - (b) Where there is no feasible, less environmentally damaging alternative, mitigation measures have been provided to minimize adverse environmental effects.

**Sec. 20.532.100 Supplemental Findings**

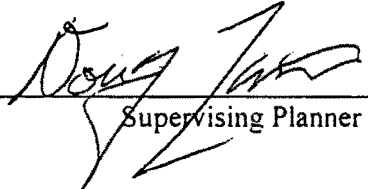
In addition to required findings, the approving authority may approve or conditionally approve an application for a permit or variance within the Coastal Zone only if the following findings, as applicable, are made:

- (A) **Resource Protection Impact Findings.**

- (1) **Development in Environmentally Sensitive Habitat Areas.** No development shall be allowed in an ESHA unless the following findings are made:
  - (a) The resource as identified will not be significantly degraded by the proposed development.
  - (b) There is no feasible less environmentally damaging alternative.
  - (c) All feasible mitigation measures capable of reducing or eliminating project related impacts have been adopted.
  
- (2) **Impact Finding For Resource Lands Designated AG, RL and FL.** No permit shall be granted in these zoning districts until the following finding is made:
  - (a) The proposed use is compatible with the long-term protection of resource lands.

**Discussion:** There are no significant changes to the accessibility of the river as a result of this project. Because of the small scale of this project and the negligible impact to natural resources and agriculture, this project conforms to the LCP policies as long as slope stabilization is performed accordance with Chapter 20.492.

9. California Environmental Quality Act/Project Status - Categorically exempt, Class 4

Signed:  Date: 2-25-00  
Title: Supervising Planner





United States Department of the Interior

FISH AND WILDLIFE SERVICE  
ARCATA FISH AND WILDLIFE OFFICE  
1655 HEINDON ROAD  
ARCATA, CA 95521  
(707) 822-7201  
FAX (707) 822-8136

RECEIVED  
MAR 20 2000  
CALIFORNIA  
COASTAL COMMISSION

In Reply Refer To:  
1-14-2000-238

March 16, 2000

Mr. Jim Baskin  
Coastal Planner  
California Coastal Commission  
North Coast District Office  
710 E Street, Suite 200  
Eureka, CA 95501-1865

**Subject:** Response to Request for Technical Assistance Regarding Berm Removal Project  
on Minor Hole Road

Dear Mr. Baskin:


This responds to your request, that was received in our office on February 17, 2000, asking for U.S. Fish and Wildlife Service (Service) technical assistance on the above project. At issue in the request is the likelihood of incidental take of Point Arena mountain beaver (PAMB, *Aplodontia rufa nigra*) as a result of operations associated with the above project. PAMB is listed as endangered under the Endangered Species Act of 1973, as amended.

The Service has reviewed the correspondence received from the California Coastal Commission dated February 16, 2000 and March 2, 2000. In addition, Mr. John Hunter of my staff, accompanied by Mr. Scott Koller representing the California Department of Fish and Game, conducted a visit to the site on March 9, 2000. During that site visit no evidence of PAMB were found in the immediate vicinity of the proposed project. Accordingly, the Service has determined that this project, as described in the March 2, 2000 correspondence, is not likely to result in take of PAMB and that no mitigation measures for this species are necessary.

If you have questions regarding this response, please contact Mr. John Hunter at the Arcata Fish and Wildlife Office at (707) 822-7201.

Sincerely,



 Phil Detrich  
HCP Team Project Leader

cc: Larry Stornetta, 24450 South Highway 1, Point Arena, CA 95468

cc: Scott Koller, California Department of Fish and Game, P.O. Box 602, Willits, CA 95490