

**CALIFORNIA COASTAL COMMISSION**

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Staff:	Jim Baskin
Staff Report:	May 26, 2000
Hearing Date:	June 16, 2000
Commission Action:	

**STAFF REPORT: REGULAR CALENDAR**

APPLICATION NO.:	<b>1-00-005</b>
APPLICANT (S):	<b>Clarence Westbrook and Harry Wetherell</b>
AGENT (S):	David Schneider, Pacific Affiliates, Inc.
PROJECT LOCATION:	The upstream portion of the Woodruff Gravel Bar in the Smith River, 1.5 miles downstream from the Dr. Fine Bridge (US 101), in the Smith River Area of Del Norte County. APNs 105-020-02, -03, & -21.
PROJECT DESCRIPTION:	Seasonal extraction of up to 60,000 cubic yards of river-run gravel per year over a five-year period.
PLAN DESIGNATION:	RCA-1, General Resource Conservation Area.
ZONING:	RCA-2(r) & (e), Designated Resource Conservation Area – riparian and estuary.
LOCAL APPROVALS RECEIVED:	Del Norte County Use / Coastal Development Permit No. UP8969C, renewed February 1, 2000;
OTHER APPROVALS RECEIVED:	State Lands Commission trust lands review; and DOC Office of Mine Reclamation reclamation plan review.

**OTHER APPROVALS REQUIRED:**

California Department of Fish and Game Sec. 1603 Streambed Alteration Agreement, and U.S. Army Corps of Engineers Sec. 404 permit.

**SUBSTANTIVE FILE DOCUMENTS:**

Smith River Gravel Study, California Department of Water Resources, January, 1974; Biological Opinion – U.S. Army Corps of Engineers Letter of Permission Procedure to Permit Gravel Mining in Del Norte County, California, National Marine Fisheries Service, August, 1997; Pre Harvest 1999 Hydrologist Report on the Smith River, Rowdy Creek, & Hunter Creek, Del Norte County, California, Gerald W. Larue, June, 1999; and Del Norte County Gravel Extraction on the Lower Smith River and Rowdy Creek, (draft program-matic mitigated negative declaration), April, 2000.

**SUMMARY OF STAFF RECOMMENDATION**

Staff recommends that the Commission approve with conditions the coastal development permit for sand and gravel extraction, processing and stockpiling. The applicants propose to extract gravel on a seasonal but on-going basis from a gravel bar along the lower Smith River from a site located approximately 1½ miles downstream from the Highway 101 (Dr. Fine Bridge) crossing. The Commission previously granted a five-year permit to the applicant in 1995 (CDP-1-95-16) and the current application seeks to authorize extraction for an additional five years. As has been required on past permit actions, staff recommends that the Commission require the applicants to submit gravel extraction plans annually for review and approval of the Executive Director as a way of ensuring that gravel extraction each year does not exceed the annual replenishment of the site by the river, and that other potential impacts of the gravel extraction season are avoided. Staff also recommends that the development be authorized only until 2005.

The bar contains environmentally sensitive riparian vegetation areas. To prevent disturbance of such habitat, staff recommends that the Commission require that the annual gravel extraction plan also include the submittal of yearly botanical surveys, and that gravel extraction be conditioned to avoid environmentally sensitive habitat areas and other locations where gravel extraction could have adverse impacts. In recognition of the fact that areas of the bar contain very young vegetation that has not developed to the point where it provides appreciable habitat value, and that the Coastal Act defines environmentally sensitive areas in such a way as to only include riparian vegetation with habitat value, the condition does not ban extraction in all areas containing vegetation, but only those areas where the riparian vegetation has reached a size and extent where there

is an expectation of appreciable habitat values for nesting, forage and cover of wildlife being afforded.

In developing the recommended conditions, staff has considered the requirements imposed on the applicants by other regulatory agencies, including the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the California Department of Fish and Game.

As conditioned, staff believes that the proposed project is fully consistent with the Coastal Act.

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### **STAFF NOTES**

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

The site of the proposed surface mining project is within a gravel bar within the Smith River, 1.5 miles downstream of the State Highway 101 bridge. The project is located within the Coastal Commission's area of original or retained jurisdiction. The standard of review is the applicable Chapter 3 policies of the Coastal Act.

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### **I. MOTION, STAFF RECOMMENDATION, AND RESOLUTION**

The staff recommends that the Commission adopt the following resolution:

#### **Motion:**

I move that the Commission approve Coastal Development Permit No. 1-00-005 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, subject to the conditions specified below, for the proposed development on the grounds that, as conditioned, the development 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. Annual Administrative Approval to Continue Operations.**

**COMMENCING WITH THE 2000 EXTRACTION SEASON AND PRIOR TO THE START OF EACH SEASONAL GRAVEL EXTRACTION OPERATIONS,** the permittees shall submit for the review and approval of the Executive Director an annual report that contains the following:

- A. Engineering data prepared by a California Registered Engineer or a qualified Hydrologist or Geologist) that includes two sets of dated, standardized, scaled, and surveyed, cross-sections and longitudinal- sections depicting existing grade elevations and configurations at the upstream end of the extraction area, at the middle of the extraction area, at the downstream end of the extraction area, and a longitudinal (parallel to the river) bisection of the extraction area, with the first set of sections showing the extraction area at the end of the prior extraction season (October/November) and the second set showing the extraction area in the Spring for the upcoming season;
- B. A gravel extraction plan for the upcoming season containing cross-sections, maps, and associated calculations that accurately depicts the proposed extraction area, and demonstrates that the proposed extraction will be consistent with the extraction limits specified in Special Condition No. 2, below.
- C. An updated aerial photograph of the project area shown at a scale of 1 inch equals 600 feet or better taken in February of the applicable year;
- D. An analysis of any changes or impacts upon the habitat values and geomorphology of the area of the river in the vicinity of the project site. The analysis shall include a botanical survey prepared by a qualified professional with experience in riparian vegetation and wetlands identification and mapping approved by the Executive Director that maps all vegetation found in potential extraction areas of the site and highlights the location and extent of all vegetated areas containing woody riparian vegetation that is either (i) part of a contiguous riparian vegetation 1/16-of-an-acre or larger or (ii) one-inch-in-diameter at breast height (DBH) or greater. If the only areas proposed for extraction are devoid of

vegetation, the applicant may substitute the submittal of photographs (including an aerial) that are sufficient in the opinion of the Executive Director to demonstrate that no vegetation exists in the proposed extraction areas in lieu of the botanical survey.

The Executive Director shall approve the annual report if the annual report adequately provides the required information and if the proposed gravel extraction for the coming season is consistent with the terms and conditions of this permit, including the requirements of Condition No. 2 regarding extraction limits. Within 10 working days of receipt of the annual report, the Executive Director shall review the report and either approve the report as submitted or respond in writing to the permittees as to why the submitted report is inconsistent with the conditions of the permit. The permittees shall not commence gravel extraction operations for the season until the Executive Director has approved the annual report in writing.

The permittees shall undertake development in accordance with the approved annual report for that year. Any proposed changes to the approved annual report shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is required.

2. Annual Extraction Limits.

Extraction of material shall be subject to the following limitations:

- A. The permittees shall extract material only by gravel bar skimming in a manner that will maintain a sloped extraction area, with the exception that trenching approved by the California Department of Fish and Game that is needed to maintain fish passage and cold-water refugia along the Smith River is also allowed. If trenching methods are approved by the California Department of Fish and Game, a berm shall be constructed and maintained during trenching along the entire length of the excavated area to prevent turbidity by keeping the flowing river separate from the excavation area. After completion of gravel extraction operations, the permittees shall remove the berm to prevent the creation of fish traps.
- B. The permittees shall extract no more than: (1) 60,000 cubic yards of gravel from the site per year.
- C. Excavation shall not occur in the active channel (except for the trenching and related placement of temporary diversion and impoundment structures authorized by the California Department of Fish and Game for fish passage and cold-water refugia enhancements along the Smith River) and shall be limited to exposed river

bar areas a minimum of one (1) vertical foot elevation above the current water surface and a minimum of six (6) feet horizontally from the current water's edge.

- D. No gravel extraction shall be undertaken within 500 feet of a bridge or the length of a bridge, whichever is greater, and within 500 feet of any other structure (i.e., water intake, dam, etc.) Gravel removal may encroach within this setback if as part of the annual mining plan to be submitted and approved by the Executive Director pursuant to Special Condition 2, the applicants submit written permission by owners of these structures and information demonstrating that the proposed encroachment will not adversely affect the integrity of the structures;
- E. The extraction of in-stream aggregate shall be limited to those sites that have experienced sufficient replenishment to accommodate the proposed mining. Areas with sufficient replenishment are those areas that have sufficient aggraded material where a skimming mining operation would leave the final surface elevation of the area to be mined above the low water level of the river with a sloped extraction area that drains towards the main channel of the river;
- F. Gravel extraction operations shall not be conducted within the first 300 feet of the upstream point of the bar.
- G. Gravel extraction operations shall not disturb or remove any of the riparian vegetation on the river banks or along the northeast flank of the bar delineated as "persistent Palustrine Scrub-Shrub habitat type" (PSS1-2, within the "Westbrook Gravel Bar Vegetation Assessment" (NMRC, 4/11/00).
- H. Gravel extraction operations shall not disturb or remove any of the riparian vegetation within the gravel bar delineated as "non-persistent Palustrine Scrub-Shrub habitat type" (NPSS1-2, within the "Westbrook Gravel Bar Vegetation Assessment" (NMRC, 4/11/00) that is either: (1) part of contiguous riparian vegetation complex 1/16 acre or larger, or (2) has a trunk diameter-at-breast-height of one inch (1") or greater
- I. Gravel operations shall be designed to avoid adversely affecting any state or federally listed rare or endangered species that is discovered at the project site during the life of the permit.

3. Extraction Season.

Extraction shall only be performed during the period from June 1 to October 1 of each year. All re-grading required by Special Condition No. 4 must be completed by October 15.

4. Seasonal Site Closure.

The excavation area during any given year must be re-graded before October 15. Re-grading includes filling in depressions created by the mining, grading the excavation site according to prescribed grade, sloping downward to the river channel, removing all seasonal crossings and grading out the abutments to conform with the surrounding topography, and removing all temporary fills (e.g., diversion and impoundment devices associated with authorized trenching operations) from the bar.

5. Termination of Gravel Extraction Operations.

The gravel extraction authorized by this permit shall terminate on February 1, 2005. Continued gravel operations after that date shall require a new coastal development permit.

6. Resource Protection.

The gravel extraction and processing operations shall not disturb or remove any of the established riparian vegetation habitat along the banks of the river, nor any of the riparian vegetation areas on the gravel bar limited by Special Condition No. 2. No new haul roads shall be cut through the habitat. Furthermore, the operations shall not push any material or equipment into the low flow channel of the river.

7. Permit Amendment.

Any proposal to take more than the maximum permitted 60,000 cubic yards of materials, to take more than the amount of gravel sufficiently replenished by the river the preceding high flow season, to increase the size of the permitted area, to extract in a manner contrary to the extraction limitations set forth in Special Condition No. 2, to install either culverted or railroad flatcar seasonal crossings, or to make other changes to the proposed operation shall require an amendment to this permit.

8. Dust Abatement.

The permittees shall regularly water the dirt access road through the use of a water truck where the road passes through and along the riparian corridor on the north bank of the Smith River.

9. Annual Approvals of Other Agencies.

PRIOR TO THE START OF EACH SEASON'S GRAVEL EXTRACTION OPERATIONS, the permittees shall provide the Executive Director a copy of any permits or letters of permission issued by the U.S. Army Corps of Engineers, the County of Del Norte, and the California Department of Fish and Game, or evidence that no

permit or permission is required by each of these agencies. The permittees shall inform the Executive Director of any changes to the project required by the U.S. Army Corps of Engineers, the County of Del Norte, and the California Department of Fish and Game. Such changes shall not be incorporated into the project until the permittees obtain a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is required.

#### IV. FINDINGS AND DECLARATIONS.

##### A. Site Description.

The project site comprises the upstream portion of the Woodruff Gravel Bar, located in the bed of the Smith River about 1.5 miles downstream and west of the Highway 101 crossing (Dr. Fine Memorial Bridge) in Del Norte County. Together with the "lower Woodruff Bar," on which the Tidewater, Inc. conducts a permitted mining operation, this depositional feature is also known as the "Crockett Bar." The Woodruff/Crockett Gravel Bar is one of five gravel bars that are located within the coastal zone along the lower reaches of the Smith River. The lower Smith River flows through a broad alluvial floodplain that is extensively used for agriculture. The project site is within the area of Commission's retained permit jurisdiction and is not governed by the certified LCP. Lands adjacent to the project site have land use plan designations of Prime Agriculture and Resource Conservation Area (AE, RCA), implemented through a Designated Resource Conservation Area - Estuary (RCA-2 (e)) zoning district.

From bank to bank, the river is about 600-700 feet wide in the area of Woodruff Bar. However, during the summer and early fall months when low flow conditions prevail, the river is confined to a main channel of approximately 100 feet in width. The banks of the river are 20-30 high and are covered with well established riparian vegetation dominated by a Sitka willow (Salix sitchensis) and red alder (Alnus rubra) plant community. These dominants are interspersed with tan oak (Lithocarpus densiflora) and firs (Abies sp.), with an understory composed primarily of Himalaya blackberry (Rubus discolor), California blackberry (Rubus ursinus), French broom (Genista monspessulana), coyote brush (Baccharis pilularis), and various forbs, ferns and upland grasses.

The proposed gravel extraction area on the upper portion of Woodruff Bar is approximately 1,680 feet long by 350 feet wide. The applicants have mined this reach only sporadically, with approximately 80,000 cubic yards of aggregate harvested over the last two years, within the permitted 60,000 cubic yards/year limit. Recent and past volumetric assessments (Larue, 1997, 1998, 1999) indicate that in excess of 60,000 cubic yards of material are available within the proposed extraction area.

In its present configuration, the perennial main channel of the Smith River runs along the western side of the Woodruff Bar with a seasonal channel flanking its eastern side. The



seasonal channel is dry during the summer and early fall gravel extraction season. Access to the gravel bar is via an unimproved gravel road that crosses the seasonal channel and ascends the riverbank to a levee road leading to Fred Haight Drive. An approximately 4-acre (300-ft. x 600-ft.) cleared and graded stockpiling area lies off of the access road approximately 250 feet from the riverbanks (see Exhibit No. 4).

The proposed gravel extraction area was the subject of a wetlands investigation conducted in July, 1995, by Karen Theiss and Associates, Biological and Environmental Consultants. An updated vegetation assessment for the project site was prepared by Natural Resources Management Corporation (NRMC) in April, 2000. Among other observations, these investigations note that the bar is subject to hydrologic scouring during high flow periods over the winter and early spring seasons during normal rainfall years. This regime causes vegetative cover on the site to be limited to low-water vegetation characterized mostly by herbaceous and scattered young willows.

B. Project Description.

The applicants propose to seasonally remove up to 60,000 cubic yards of river-run sand and gravel aggregates annually over a five year period from an approximately 14-acre extraction area within the upper Woodruff Bar. Extraction will be accomplished through bar "skimming," where bands of bar materials are shallowly scraped by mechanized equipment, such as excavators, bulldozers or front-end loaders. The materials are loaded onto dump trucks and transported to the designated stockpile area for further processing (i.e., screening, crushing). As discussed further under Findings Section IV. E., below, the operational area and techniques are subject to limitations to protect area riparian and riverine resources. In addition, bar skimming may be augmented by trenching extraction in the interest of enhancing river channel passage and habitat utilization for fish and other wildlife. Trenching would be subject to specific design and oversight by the California Department of Fish and Game (CDFG).

C. Project History.

The proposed project seeks reauthorization of an ongoing gravel extraction operation that the Commission last approved in September of 1995 under Permit No. 1-95-16. Permit 1-95-16 authorized gravel extraction for five years, expiring on February 1, 2000. The applicants are requesting to remove the same amount of gravel that was previously approved under Permit No. 1-95-16 for another five-year period. The proposed operation is effectively identical to that previously authorized in terms of requested extraction quantities, operational areas, removal methodologies, and time period for authorization.

The project requires a coastal development permit from the Commission because the gravel bar is located within the Commission's area of original or retained permit jurisdiction (see Exhibit No. 3). The project before the Commission calls for removing sand and gravel only from the bar. All processing and stockpiling of the excavated

materials will be done away from the gravel bar and outside of the Coastal Commission's permit jurisdiction. The project requires two separate coastal development permits: one from the Commission to remove the gravel from the bar, and a second permit from Del Norte County for temporarily stockpiling and processing the materials at an upland portion of the applicants' property. The local coastal development permit was approved by the County in February of this year. The project was not appealed to the Commission. The applicants have also obtained an annually renewable, five-year County use permit for the entire project (i.e., extraction, stockpiling, and processing). The local use permit, initially issued in 1989, was renewed on June 2, 1999, subject to an annual review/renewal on February 1 of every year until the permit expires on February 1, 2004.

Gravel bar extraction operations are seasonal activities. The gravel extraction season usually runs from July 15<sup>th</sup> to October 15<sup>th</sup> of each year based on the CDFG's annual Streambed Alteration Agreement, pursuant to Section 1603 of the California Fish and Game Code (CF&GC). This period of time coincides with low water conditions on the river when substantial portions of the gravel bars are exposed and are above the live waters of the river.

In the past, the applicants have taken gravel from the Woodruff Gravel Bar using skimming operations, trenching operations, or a combination of both methods. The skimming method is the traditional method of taking gravel from the bars. Gravel removal by skimming occurs outside of the low-flow channel of the river. In skimming operations at the site, the operator skims gravel from the top of the bar in a manner that creates a shallow-sloped plain rising gently back from the river to the landward edge of the bar. Gravel removal equipment includes front-end loaders, scrapers, pushcats, excavators, or equivalent equipment. Gravel is transported from the extraction site by dump trucks or off-road trucks and stockpiled on the upland portion of the subject property. After completion of gravel extraction operations, the applicants return the gravel bar to a smoothly graded condition, sloping toward the main channel at no less than a two-percent grade, and without any pits, potholes, trenches, mounds, or stockpiles to prevent the creation of fish traps.

Trenching operations can be used to: 1) encourage future gravel recruitment; 2) increase the capacity of the low-flow channel; 3) create deep-water habitat for aquatic species; and 4) maintain the geomorphology of the river's bar and riffle, bank, and channel configuration.

Trenching has been undertaken at the site as recently as 1996, and has resulted in geomorphic alterations beneficial to both gravel recruitment and aquatic habitat at the site. It should be noted that the CDFG Section 1603 Streambed Alteration Agreement for the most current extraction season (1999) limited the applicants to extraction by skimming.

D. Smith River Resource Issues and Regulatory Background.

The Smith River has 11 gravel bars that have been mined on a regular or periodic basis. Five of these bars are located on the lower Smith River within the coastal zone (i.e., downstream of the Highway 101 / Dr. Fine Bridge). The gravel bars on the Smith River contain a renewable resource of cobbles, gravel, sand, and other rock-derived products. There has been an on-going demand for gravel and aggregate products within Del Norte County because of the construction of a variety of private developments and public facility improvements.

The Smith River and its tributaries are ranked among the most significant anadromous fisheries in Northern California. Chinook salmon (Oncorhynchus tshawytscha), coho salmon (Oncorhynchus kisutch), Klamath Mountain Province steelhead (Oncorhynchus mykiss irideus), and coastal cutthroat trout (Oncorhynchus clarki clarki) are among the most important species with regard to commercial and sports fisheries. The project area and the lower Smith River are mainly important for the anadromous fish as a migration route to and from upstream spawning grounds, as only an insignificant amount of spawning area remains in the lower Smith River due to sedimentation of this river system.

In addition to the fish and wildlife habitat the river affords, the Smith River is also recognized for its significant recreational and aesthetic values. In 1972, the Smith River was included in the original listing of waterways under the California Wild and Scenic Act (PRC §5093.50 *et seq.*). The reach of river passing through the project site is classified as "recreational." PRC Section 5093.53 defines recreational rivers or river segments as: "...those rivers or segments of rivers that are readily accessible by road or railroad, that may have some development along their shorelines, and that may have undergone some impoundment or diversion in the past." Restrictions on land uses along recreational rivers are not as stringent as those on their "wild" or "scenic" counterparts, and are primarily limited to prohibiting the construction of dams or other permanent diversion structures. The protection and enhancement of recreational uses are stressed with particular emphasis placed on ensuring that river front development does not block or impede recreational access within navigable waters.

The Smith River also provides domestic water supply to many residents of northern Del Norte County, including the City of Crescent City, the unincorporated town of Smith River, and Pelican Bay State Prison. Water is drafted from the river's aquifer through subsurface "Ranney Well" pumps operated by the City of Crescent City and several other community services districts. The current (1997) water consumption rate is approximately 62 million gallons per month.

Beginning in 1975 with the adoption of the Surface Mining and Reclamation Act or "SMARA" (PRC §2710 *et seq.*), the regulation of gravel mining has been a steadily

evolving process. Reauthorization and amendments to the Federal Clean Water Act (CWA) in the early 1990's saw the U.S. Army Corps of Engineers (USACE) becoming more actively involved in regulating many in-stream gravel operations under the auspices of the CWA Section 404 permit program. In 1997, the USACE issued a Letter of Permission for the Del Norte County in-stream gravel mining operations which established a programmatic framework of extraction performance standards alleviating the need for individual Section 404 permits. The extent of the Corps' CWA Section 404 authority with respect to in-stream gravel mining has subsequently been addressed and modified through several judicial rulings known as the "Tulloch Ruling Decisions."

Until the 1990's, there had been little coordinated review of the combined effects of the various gravel mining operations. An in-stream gravel mining operation can require the approval of a number of different agencies. Permits granted in the past by the various approving agencies were site-specific and granted with little acknowledgement of the cumulative effects of gravel mining.

By the late 1990's the listing and candidacy of several anadromous salmonid fish species by the National Marine Fisheries Service (NMFS) resulted in habitat and incidental take consultation requirements under the Federal Endangered Species Act to be applied to riverine activities such as gravel mining. Recently, the California Department of Fish and Game's Section 1603 Streamside Alteration Agreement process began to include a tiered environmental review of such projects pursuant to the California Environmental Quality Act (CEQA).

The County is currently in the process of updating its environmental documentation for the 11 Smith River gravel operations. A draft programmatic Mitigated Negative Declaration is currently being circulated for comments (SCH #200004\_\_\_\_\_). This document updates the previous project analyses conducted during the late 1980's and early 1990's, incorporating mitigation and monitoring provisions in response to changes in regulatory programs, environmental review requirements, and federal and state threatened and endangered species listing (i.e., coho salmon, steelhead) which have occurred since their preparation. Under both the current and proposed mitigation and monitoring programs, assessments of river and habitat conditions are conducted annually to determine appropriate quantities and areas for extraction for the upcoming season. The information required under Special Condition No. 1 will be used in this process so as to better manage these renewable resources and avoid cumulative impacts to coastal resources.

These developments have underscored how close multi-agency review coordination and a comprehensive approach to river management of in-stream surface mining projects may be the only way in which permitted operations will be sustainable in the future.

E. Protection of Riverine Environment.

The proposed project involves the surface mining extraction of sand and gravel from the Smith River using heavy mechanized equipment for grading and dredging operations. Several Coastal Act policies address protection of the portion of the river environment below the ordinary high water mark from the impacts of development such as gravel mining. These policies include Sections 30231 and 30233. Section 30231 applies generally to any development in riverine environments and other kinds of water bodies in the coastal zone. Section 30233 applies to any diking, filling, or dredging project in a river and other coastal waters. Gravel extraction within a riverbed is a form of dredging within a wetland.

Section 30231 of the Coastal Act states, in applicable part:

*The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes... shall be maintained and, where feasible restored...*

Section 30233 of the Coastal Act states, in applicable part:

- (a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:*
  - (1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.*
  - (2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*
  - (3) In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subsection (b) of Section 30411, for boating facilities, including berthing areas turning basins, necessary navigation channels, or any necessary support service facilities, shall not exceed 25 percent of the degraded wetland.*
  - (4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities, and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.*

- (5) *Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*
- (6) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.
- (7) *Restoration purposes.*
- (8) *Nature study, aquaculture, or similar resource dependent activities...* (emphasis added)

(c) *In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary...*

The above policy sets forth a number of different limitations on what fill and dredging projects may be allowed in coastal waters. For analysis purposes, the limitations can be grouped into four general categories or tests. These tests are:

1. That the purpose of the fill and dredging is for one of the eight uses allowed under Section 30233;
2. That feasible mitigation measures have been provided to minimize the adverse environmental effects; and
3. That the project has no feasible less environmentally damaging alternative;
4. That the biological productivity and functional capacity of the habitat shall be maintained and enhanced where feasible.

1. Permissible Use for Dredging of Coastal Waters

The first test set forth above is that any proposed fill, diking or dredging must be for an allowable purpose as enumerated under Section 30233 of the Coastal Act. The proposed project involves dredging for mineral extraction. Surface mining of gravel aggregate materials is specifically enumerated as a permissible use in the above-cited policy, provided the activity is not undertaken in environmentally sensitive areas.

Section 30233(a) (6) allows dredging for mineral extraction, provided the activity is not undertaken in environmentally sensitive areas. Therefore, to the extent that the proposed gravel extraction will avoid environmentally sensitive areas, the proposed project is consistent with the use limitations under Section 30233(a)(6).

The proposed project has the potential to affect environmentally sensitive areas. A stand of mature riparian vegetation has established itself along the northeastern side of the Woodruff Gravel Bar. The riparian area is shrub-dominated by Sitka willow (Salix

sitchensis), some Pacific willow (Salix lucida spp. lasianda), and a persistent herbaceous layer due to infrequent high water scour of the area. The height of the willows ranges from 10 to 30 feet, with trunk diameters of 1 to 4 inches. This area exhibits mid-seral characteristics of a developing stratified canopy offering potential forage and cover utilization by various riparian birds, amphibians, and small mammals.

The Coastal Commission has previously determined in numerous permit actions that most forms of riparian vegetation are environmentally sensitive. The Commission has consistently conditioned permits for development near such riparian woodlands along streams and rivers to avoid disturbances of riparian areas where mature vegetation exists.

The majority of the riparian coastal scrub-shrub vegetation on the gravel bar is inundated during high flows and is often uprooted and scoured by river flows. The hydrodynamics of the river can cause the channel itself to migrate over time, which in time can eliminate more stands of riparian scrub vegetation from one year to the next. As a result, much of the vegetation is young, having only grown a season or several seasons since the time of the last inundation severe enough to remove the plants previously growing there.

Given that some of this vegetation is very new and underdeveloped, it may not provide habitat values sufficient enough for the areas to be characterized as environmentally sensitive.

Section 30107.5 of the Coastal Act defines "environmentally sensitive area" as:

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

Under this definition, any area supporting a plant, animal, or habitat is environmentally sensitive if the area meets two main criteria: (1) the plant, animal, or habitat is either rare or of special value because of their unique nature or role in the ecosystem, and (2) the area could be easily disturbed or degraded by human activities and developments. The non-persistent scrub-shrub riparian areas clearly meet the second criterion in that the gravel extraction materials on the river bar, such as proposed by the applicant, can quickly obliterate any of this habitat the extraction activities comes in contact with. With regard to the first criterion, the riparian scrub-shrub vegetation is not rare, as it usually does not contain rare or endangered species and can be found extensively on the many gravel bars along North Coast waterways. In general, riparian vegetation must grow to a certain size and mass before it can begin to contribute significantly to the river ecosystem. A willow sprig growing in isolation that has just taken root and only rises a few inches out of the ground cannot provide much forage area, nesting opportunities, or much screening from predators for birds and other animals who choose to use it. As the sprig grows taller, however, and as more riparian plants colonize the surrounding area,

the sprig, and the plants now growing in association with it, can start to provide forage, nesting, and cover opportunities that make it especially valuable habitat and therefore an environmentally sensitive area.

There is no clear-cut answer to the question of just when in the growth and development of riparian scrub-shrub vegetation it reaches the point where it can be considered environmentally sensitive. In discussions with CDFG staff, Commission staff has learned that no specific plant height and diameter, coverage, age, etc. thresholds exist for riparian vegetation that define when habitat value sufficient to categorize the vegetation as environmentally sensitive. Part of the reason for this uncertainty is that there can be tremendous variability in the values of riparian vegetation of the same size from one location to the next depending on such factors as surrounding habitat and vegetation, surrounding land uses, river configuration, etc.

One existing standard that may provide useful guidance for determining when riparian scrub-shrub vegetation reaches the point of becoming environmentally sensitive is a standard imposed in the USACE Letter of Permission (LOP) Procedure authorizing gravel mining in Del Norte County. The LOP, which was first issued in 1997, was developed by the Corps after a number of interagency meetings and consultations with representatives of various state and federal agencies. The LOP sets a number of restrictions on the gravel extraction projects that it authorizes. One such restriction concerns riparian vegetation. The restriction states as follows:

All riparian and woody vegetation and wetlands must be avoided to the maximum extent possible. Any riparian vegetation or wetland that is to be disturbed must be clearly identified by mapping. Woody vegetation that is part of a contiguous 1/8-acre complex or is at least two inches in diameter breast height (DBH) must be mitigated if it is disturbed. Impacts to other woody vegetation must be described and a summary submitted to the corps with the gravel extraction plans. These impacts may require mitigation at the discretion of the Corps...

The restriction establishes a threshold for when impacts to riparian vegetation must be mitigated. The threshold is reached any time the riparian area that would be disturbed contains woody vegetation that is part of a contiguous 1/8-acre complex or is at least two inches (2") diameter at breast height.

Under its administration of CWA Section 404 (and the related Section 10 of the Rivers and Harbors Act of 1899), the Corps does not limit mineral extraction in coastal wetlands and other coastal water bodies to the same extent that Coastal Act Section 30233 does. As previously stated, Section 30233(a)(6) only allows the dredge or fill of wetlands or open coastal waters for mineral extraction if the mineral extraction occurs outside of environmentally sensitive areas. Thus, although the Corps can allow mineral extraction



in an environmentally sensitive area so long as mitigation is provided, the Commission cannot allow mineral extraction within an environmentally sensitive area at all.

Thus, the purpose in determining when mitigation should be required is not the same as determining when riparian vegetation area reaches a level of growth and development such that it should be considered environmentally sensitive.

By requiring mitigation whenever a riparian vegetation area that is to be disturbed contains woody vegetation that is part of a contiguous 1/8-acre complex or is at least 2 inches DBH, the Corps' LOP indicates that vegetation at this level already is providing habitat value. Otherwise, if the vegetation were not providing habitat value there would be no need for mitigation. Therefore, the Commission finds that the riparian vegetation must reach a form of growth and development where it provides important habitat values at some point before the Corps' threshold is reached. Acknowledgement of this fact is contained in the rest of the Corps' standards which indicate that impacts to other woody vegetation not rising to the threshold level must also be described and submitted to the Corps and may require mitigation at the discretion of the Corps.

In discussions with CDFG staff, Commission staff has discerned that under average growing conditions, a willow tree that is one inch (1") in DBH or part of a contiguous 1/16-acre complex would likely have survived for one growing season. Given that riparian vegetation is only becoming established during the first growing season, the vegetation may not provide significant habitat value at this point. On the other hand, vegetation that has survived more than one growing season would be established and likely to be used by wildlife. Therefore, the Commission finds that the riparian scrub-shrub vegetation should be characterized as an environmentally sensitive area when the vegetation contains woody vegetation that is part of a contiguous complex of 1/16-acre or larger or is 1" or larger in DBH. In addition, by restricting extraction in vegetated areas that are essentially half as developed as the riparian vegetation for which mitigation is indicated under the Corps' LOP, the Commission will minimize the chances that any riparian vegetation providing significant habitat value will be disturbed by the proposed gravel extraction.

To ensure that mineral extraction proposed by the applicants each year is not performed within an environmentally sensitive riparian vegetation area of the Woodruff Bar and thereby remains a dredging and fill development allowable under Coastal Act Section 30233(a)(6), the Commission attaches Special Condition No. 1 which establishes an annual administrative review process to occur prior to each year's extraction operation. The condition requires, in part, that the applicants submit for the review and approval by the Executive Director an annual gravel extraction plan for the upcoming season together with a botanical survey prepared by a qualified biologist or other professional that maps all vegetated areas found in potential extraction areas of the site and highlights the location and extent of all vegetation containing woody vegetation meeting the above-described areal and growth habit criteria for environmentally sensitive areas. The

condition requires that the plan be consistent with the extraction limits set forth in Special Condition No. 2, including the restriction of sub-section H which states that gravel extraction operations shall not disturb or remove any area of riparian vegetation growing on the gravel bar meeting either the areal extent or plant girth criteria discussed above.

Therefore, as conditioned herein, the proposed gravel extraction operation is consistent with the use limitations of Section 30233 of the Coastal Act on dredging in coastal water bodies as the mining operation is for mineral extraction in areas that are not environmentally sensitive, consistent with Section 30233(a)(6).

## 2. Feasible Mitigation Measures

The second test set forth by the dredging and fill policy of the Coastal Act is whether feasible mitigation measures have been provided to minimize the adverse environmental impacts of the proposed project.

Depending on the manner in which the gravel operation is conducted, the portions of the proposed project to be conducted below the ordinary high water mark could have four potentially significant adverse effects on the natural environment of the lower Smith River. These impacts include: (a) alteration of the riverbed and increased bank erosion; (b) impacts on fisheries; (c) impacts on environmentally sensitive riparian vegetation; and (d) impacts to the water quality of the river. The potential impacts and their mitigation are discussed in the following sections:

### (a) River Morphology

As discussed above, a potential major impact of gravel mining operations is degradation of the riverbed and erosion of the riverbanks. Such impacts can occur if the amount of gravel extracted from a particular part of the river over time exceeds the amount of gravel deposited on the site through natural recruitment—the downstream movement of sand and gravel materials. Bed degradation and bank erosion can also result from the manner in which gravel is extracted. For example, if gravel bars are skimmed too close to the low-water surface or are left with a very shallow slope, at higher flow stages the river will tend to spread across the bar, reducing the overall depth of flow and resulting in rapid channel migration or instigation of a multi-channel “braided” configuration. This is also true of watercourse reaches where aggradation of materials is a problem. Such sites tend to trap gravel that would otherwise move downstream, potentially trapping or impeding fish migration up and down the river.

The applicants propose to extract a maximum of 60,000 cubic yards of sand and gravel annually from the site. Although this amount is small relative to the overall permitted gravel mining activity along the Smith River (up to 390,000

cubic yards annually), extraction without consideration of replenishment of the site could cause bed degradation and riverbank erosion.

Therefore, to ensure that the mineral extraction proposed by the applicants does not exceed the natural replenishment of gravel, degrade the riverbed, or induce bank erosion, the Commission attaches Special Condition No. 1 which establishes an annual administrative review process to occur prior to each year's extraction operation. The condition requires, in part, that the applicants submit for the review and approval by the Executive Director an annual gravel extraction plan for the upcoming season together with field surveys and annual assessments that determine the levels and volume of gravel recruitment over the preceding high-flow season and identify areas where mining can occur without causing bed degradation. The condition requires that the plan be consistent with the extraction limits set forth in Special Condition No. 2, including the restriction of subsection E which states that gravel extraction operations shall be limited to those sites that have experienced sufficient replenishment to accommodate the proposed mining.

Other limitations imposed by Special Condition No. 2 will also ensure that the amount and location of mining will not lead to adverse bed degradation. Subsection A of the condition states that the applicants shall extract material only by gravel skimming in a manner that will maintain a sloped extraction area, except for excavation to improve channel passage or create cold-water refugia for the benefit of fish species that has been specifically approved by CDFG. Leaving the bar with a prescribed slope (usual 2-3%) will encourage future gravel recruitment and minimize bed degradation. Subsection C. of the condition states that the excavation shall not occur in the active channel (except for the above-referenced permissible enhancement trenching authorized by CDFG) and shall be limited to areas a minimum of one (1) vertical foot elevation above the current water surface and a minimum of six (6) feet horizontally from the current water's edge. The requirement will ensure that disturbance of the active channel will be avoided. To further minimize the chances of bed degradation and stream bank erosion and its consequences to existing structures along the river, subsection D of the condition states that no gravel extraction shall be performed within 500 feet of a bridge or any other structure (i.e., water intake, dam, etc.). This restriction will reduce to a level of insignificance any potential impacts to bridges and other public facilities that might exist in the area.

Finally, if the trenching method is used, the applicants are required by Special Condition No. 2.A to construct and maintain a berm along the entire length of the excavated area to prevent turbid water from entering the flowing river. The applicants typically begin excavation on the downstream end of the bermed gravel bar and excavate in an upstream direction that is parallel to the river, with the depth and width of the trench determined by the CDFG prior to the start of operations. After completion of gravel extraction operations, the applicants would be required

by Special Condition 2.A to breach the berm in several locations to prevent the creation of fish traps.

The Commission finds that the annual mining plan and monitoring procedures imposed by Special Condition No. 1, together with the above-described extraction limitations imposed by Special Condition No. 2 will avoid riverbed degradation impacts from the project.

(b) Fisheries

As noted previously, the Smith River and its tributaries are ranked among the most significant fisheries in Northern California for anadromous species, including the coho salmon, listed in 1997 as a "threatened" species, and Klamath Mountain Province steelhead, currently a candidate for listing, pursuant to the federal Endangered Species Act. The project area and the lower Smith River is mainly important as a stretch for migrating fish to transit to and from spawning areas further upstream. This stretch of the river itself is not a significant spawning area.

Extraction of gravel during the summer months will not adversely affect fisheries. However, gravel mining operations need to be out of the river bed before the rainy season to prevent impacts to fisheries, as the runs of the various species of anadromous fish and down the river increase in the fall with the rise in river levels and remain at high levels through the early spring.

In recent CF&GC Section 1603 Streamside Alteration Agreements issued for gravel extraction near the project site, the CDFG has limited gravel extraction operations to June 1 through October 15 each year, which corresponds to the period when potential impacts to fisheries is lowest. Therefore, the Commission attaches Special Condition No. 3 which requires mining and all post-extraction bar grooming work and equipment removal to be performed during the summer months and ending October 15 of each year to ensure no disturbance of anadromous fish.

The Commission finds that the limitations of Special Conditions 1 through 4 will ensure that the project will not adversely affect fisheries.

(c) Riparian Vegetation

An updated vegetation assessment (NRMC, 2000) prepared for the project application indicates the presence of three habitat / vegetation types covering the Woodruff Bar as follows:

**R2US1**     Riverine Unconsolidated Shore     24 acres

Unconsolidated gravels and cobbles that support sparse annual and/or opportunistic vegetation. Probable species composition of white sweet clover (Melilotus alba), English plantain (Plantago lanceolata), dock (Rumex sp.), and Jerusalem oak (Chenopodium botrys).

**NPSS1-2**     Non-persistent Palustrine Scrub-Shrub     6 acres

Shrub-dominated with woody vegetation in the process of annual revegetation. Associated with slightly elevated locations on the bar where strong current deflections have formed depositional areas. Sitka willow (Salix sitchensis) of 2 to 4 foot-height, 1 to 3 inch diameter dominant, with a few reaching 10 to 15-foot-height with 1 to 3 inch diameters.

**PSS1-2**     Persistent Palustrine Scrub-Shrub     3 acres

Shrub-dominated with woody vegetation developing into a persistent layer of vegetation at higher parts of the bar due to infrequent scouring along the northeastern side of the bar. Sitka willow (Salix sitchensis) of 10 to 30 foot-height, 1 to 4-inch diameter dominant, with a few Pacific willows (Salix lucida spp. lasianдра). Associated non-native herbaceous layer composed of Himalaya blackberry (Rubus spectabilis), California blackberry (Rubus ursinus), French broom (Genista monspessulana), coyotebrush (Bacharis pilularis), lupine (Lupinus sp.), Jerusalem oak (Chenopodium botrys), wild radish (Raphanus sativus), mugwort (Artemisia douglasiana), English plantain (Plantago lanceolata), Klamath weed (Hypericum perforatum), bouncing bet (Saponaria officinalis), and orchard grass (Dactylis glomerata).

As discussed under Findings Section IV.E.1 above, the Persistent Palustrine Scrub-Shrub habitat type (PSS1-2) and portions of the Non-persistent Palustrine Scrub-Shrub (NPSS1-2) habitat types contain mature riparian vegetation with habitat values. Thus, the proposed project has the potential to adversely affect environmentally sensitive riparian scrub-shrub vegetation on the Woodruff Bar. To prevent disturbances of this habitat, Special Condition No. 1 requires in part, that the applicants submit for the review and approval of the Executive Director an annual gravel extraction plan for the upcoming season together with a botanical survey prepared by a qualified biologist that maps all vegetation found on potential extraction areas of the site and highlights the location and extent of all vegetation that meets the criteria discussed in Findings Section IV.E.1. The condition requires that the plan be consistent with the extraction limits set forth in Special Condition No. 2, including the restrictions of subsections G and H that state that gravel extraction operations shall not disturb or remove any area of

environmentally sensitive vegetation growing on the gravel bar. In this manner, disturbance to all of the environmentally sensitive riparian vegetation on the bar will be avoided.

(d) Water Quality

If properly managed, the proposed gravel operations should not adversely affect the river's water quality. However, excessive or sloppy gravel extraction operations could adversely impact water quality, and ultimately the biological productivity and fisheries resources of the river. For example, pushing gravel materials into the water could degrade water quality and biological productivity by increasing the turbidity of the water.

To prevent such occurrences, the Commission attaches Special Condition No. 6 that requires that gravel extraction not push any material into the river.

e) Rare and Endangered Species

Although no threatened or endangered species other than the coho salmon discussed above are known to exist at the project site, it is possible that threatened or endangered species could colonize the site in future years. To ensure that gravel mining plans submitted pursuant to Special Condition No. 2 will be designed to avoid any new habitat of threatened or endangered species that colonize the site in future years, the Commission includes in the list of extraction limitations imposed through Special Condition No. 3, subsection (j). The subsection states that gravel extraction shall be designed to avoid adversely affecting any other state or federally listed rare or endangered species that is discovered at the project site during the life of the permit.

3. Alternatives

The third test set forth by the dredging and fill policies of the Coastal Act, is that the proposed dredging or fill project must have no feasible less environmentally damaging alternative. In this case, the Commission has considered the various identified alternatives, and determines that there is no feasible less environmentally damaging alternatives to the project as conditioned in Special Conditions 1-7. A total of four possible alternatives have been identified, including: (a) the "no project" alternative; (b) obtaining sand and gravel from quarry operations; (c) obtaining sand and gravel from alluvial terrace deposits in the Smith River floodplain; and (d) modifying the proposed project. As explained below, each of these alternatives are infeasible and/or more environmentally damaging than the proposed project.

(a) No Project Alternative

The no project alternative means that the proposed gravel extraction project would not be undertaken. Without extraction from this site, an equivalent amount of sand and gravel materials would be obtained from other sources to meet regional demand for cement and concrete aggregate products for the construction of roads, buildings, and other development. Increasing production from other river bar extraction operations would have environmental impacts similar or greater than the proposed project.

The proposed project is located in an area where gravel has historically accumulated and been mined. Mining in many other parts of the river where gravel does not accumulate could lead to changes in river geomorphology which, in turn, could cause a variety of adverse impacts such as increase sedimentation, bank erosion, or the undermining of bridge supports, resulting in the loss of environmentally sensitive riparian habitat areas and/or adjacent agricultural lands.

As discussed below, obtaining additional sand and gravel from terrace deposits along the valley floors of local rivers would also create environmental impacts similar to or greater than the proposed project. The Commission therefore finds that the "no project" alternative is not a feasible less environmentally damaging alternative to the project as conditioned.

(b) Obtaining Sand and Gravel from Quarry Operations.

Excavation from the river could be avoided if an equivalent amount of sand and gravel could be obtained from upland quarries. However, there are few quarries in the vicinity where it would be economically feasible to obtain material of sufficient quality and quantity to that available at the project site. Many of the upland areas of Del Norte County are underlain by the Franciscan Formation, comprised of a complex of massive greywacke sandstone, greenstone, and serpentine, interspersed with less competent (for construction applications) clays and silt materials. To produce aggregate products similar to that obtainable from river bars would require extensive screening, crushing, and washing processes. As these quarry sites are generally located in remote areas with limited water supplies and where no nearby processing facilities are available, the unprocessed materials would need to be transported greater distances, with associated traffic and air quality impacts. The Commission therefore finds that substituting gravel extracted from quarry operations is not a feasible less environmentally damaging alternative.

(c) Obtaining Sand and Gravel from Alluvial Deposits.

Excavation from the river could similarly be avoided if an equivalent amount of sand and gravel products could be obtained from alluvial deposits in the floodplain of the lower Smith River. The floodplain of the Smith River is underlain by substantial amounts of sand and gravel deposited over the last several thousand years. However, taking gravel from these alluvial deposits would have its own environmental impacts. Almost all of the Smith River floodplain is devoted to agricultural production and related uses. Converting productive coastal agricultural areas to other uses such as mineral extraction would not be consistent with the Coastal Act policies that call for the protection of agricultural lands. In addition, most of the remaining undeveloped areas in the lower Smith River floodplain are covered by mature riparian vegetation that would be considered environmentally sensitive areas. Extracting gravel from such areas would result in far more impact than would extraction at the project site as conditioned by the permit. The Commission therefore finds that substituting gravel extraction from alluvial floodplain deposits of the lower Smith River is not a feasible environmentally less damaging alternative.

(d) Modifying the Proposed Project as Conditioned.

Various modifications to the project as proposed and conditioned could be made in an attempt to reduce the environmental effects. One such modification would be to mine in different locations at the project site. However, this modification would not result in less impact than the project as conditioned under this permit. As discussed previously, the proposed project has been conditioned to restrict mining to areas that would avoid adverse impacts to coastal resources. Therefore, modifying the proposed gravel extraction project to require mining in different locations at the project site could result in greater impacts on coastal resources and would not create an environmentally less damaging alternative.

Another modification would be to mine in some but not all of the proposed extraction areas. The project has been designed to provide a variety of mining options to correspond with the spatial variability of gravel replenishment. Limiting the size or number of potential extraction areas would reduce the flexibility provided in the project design as conditioned by this permit to assign subsequent season's gravel mining to those areas having the least impact to the geomorphology and ecology of the river system. Consequently, more environmental impact is likely to result.

No other feasible modification to the proposed extraction scheme has been identified. Therefore, the Commission finds that modifying the proposed gravel extraction project as conditioned is not a feasible less environmentally damaging alternative.



The Commission finds, as conditioned herein, the proposed gravel extraction operation is consistent with the requirements of Section 30233 of the Coastal Act, in that feasible mitigation measures have been provided to minimized adverse environmental effects. The gravel extraction limitations imposed through Special Condition No. 2 that are designed to prevent impacts to river morphology, riparian vegetation, threatened and endangered species, and water quality together with the requirements of Special Condition Nos. 4 and 6 to limit the extraction season and avoid placement of material into the active channel will ensure that the proposed gravel extraction operation will avoid adverse impacts to the Smith River. There, the proposed project, as conditioned, will minimize adverse environmental effects by avoiding such impacts altogether.

4. Maintenance and Enhancement of Estuarine Habitat Values

The fourth general limitation set by Sections 30231 and 30233(a) of the Coastal Act on fill and dredging projects is that any such proposed project shall maintain and enhance the biological productivity and functional capacity of the habitat, where feasible.

As discussed in the section of this finding on mitigation, the conditions of the permit will ensure that the project will not have adverse impacts on water quality, riparian vegetation, rare and endangered species, stream morphology, or other coastal resources. By avoiding impacts to coastal resources, the Commission finds that the project will maintain the biological productivity and functional capacity of the habitat consistent with the requirements of Sections 30231 and 30233 of the Coastal Act.

The Commission thus finds that the project is an allowable use, that there is no feasible less environmentally damaging alternative, that no mitigation is required for the insignificant impacts associated with the dredging of coastal waters, and that estuarine habitat values will be maintained or enhanced. Therefore the Commission finds that the proposed development, as conditioned, is consistent with Section 30233 of the Coastal Act.

F. Protection of Environmentally Sensitive Habitat Areas.

Section 30240 of the Coastal Act states that environmentally sensitive habitat areas shall be protected. Section 30240 states:

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

As discussed in Finding A, above, the Woodruff Bar is located adjacent to a well developed riparian corridor along the edge of the riverbank that is considered an environmentally sensitive habitat area. The proposed project will not adversely affect this riparian habitat. None of the habitat will be disturbed by the extraction operations itself. In addition, existing haul roads through the riparian will be used to truck gravel from the bar to the stockpiling and processing area. No new haul roads are proposed to be cut through the riparian woodland. To ensure that no new haul roads are created through riparian woodland, the Commission attaches Special Condition No. 6 that requires that the proposed project not disturb or remove any of the established riparian vegetation at the site and prohibits the cutting of new haul roads through the habitat.

Because the extracted gravel will be loaded directly onto trucks and hauled to the adjoining upland stockpile/processing area and in turn to off-site construction sites or processing facilities, truck traffic during the extraction season could become significant, depending upon the local demand for aggregate materials. Typically, dump trucks of 10 to 15-cubic-yard-capacity are used to transport aggregate materials on surfaced roads. Based on an estimated 19-week, 5-day working week, up to approximately 40 to 60 truckloads of extracted material per day could be expected to transport the full 60,000 cubic yard annual extraction entitlement from the site. The continual passing of trucks could degrade the quality of the riparian habitat by raising dust that would coat parts of the habitat. The impacts of truck traffic could be reduced in part, by controlling the dust problem. Therefore, the Commission attaches Special Condition No. 8 that requires the applicants to regularly water the roadway with the use of a water truck to keep the dust down.

As conditioned, the Commission finds that the project is consistent with Section 30240 of the Coastal Act, as the project will avoid significant adverse impacts to the environmentally sensitive habitat area found on the site.

G. Visual Resources.

Section 30251 of the Coastal Act provides in applicable part that the scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall: (a) be sited and designed to protect views to and along the ocean and scenic coastal areas, and (b) be visually compatible with the character of surrounding areas.

Due to grade and vegetation screening, the gravel extraction operations will generally not be visible from Highway 101 or Fred Haight Drive, the principal public roads in the area. Glimpses of the extraction operation would be afforded from the northern termini of Lake Earl Drive or Lower Lake Road approximately ¼ mile to the south and ½ mile to the northwest of the project site, respectively. The extraction operation has existed at the site for many years, and many of the approximately half dozen gravel operations occurring along the lower Smith River are similarly visible from public roads. The proposed

project will not be any more prominent than the gravel extraction that has occurred in the past. Therefore, the Commission finds that the proposed project is visually compatible with the character of the area as gravel extraction operations here and in the vicinity have long been a part of the viewshed.

To ensure that the Commission would have the opportunity to review any future proposals by the applicants to change other aspects of the project that could affect visual resources in their conformity with Coastal Act Section 30251, the Commission attaches Special Condition No. 7. The condition states that any substantial changes to the proposed operation shall require an amendment of the permit.

Therefore, the Commission finds that, as conditioned, the proposed project is consistent with the visual resource policies of Section 30251 of the Coastal Act as the project is compatible with the visual character of the surrounding area and will not block views to and along the coast.

#### H. Public Access.

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.

The project site is located between the first public road (Fred Haight Drive) and the sea (the Smith River is considered to be an arm of the sea in this area). Accordingly, a public access finding is required for the project.

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.

Four shoreline access points presently exist within the coastal zone and the lower Smith River (i.e., downstream and west of the Dr. Fine or Highway 101 Bridge). From west to east, these access points are located at: (1) the southerly end of the mouth of the Smith River; (2) the Ship-a-Shore resort; (3) the southerly end of Sarina Road; and (4) the County-owned Smith River Fishing Access Point  $\frac{3}{4}$  mile upstream of the project site near the Bailey Gravel Bar. There is no evidence of potential prescriptive rights within the project area.

Recreational use of the lower Smith River is extensive. The principal public access use of the project site that does occur is by fishermen who go out to the river channel for recreational fishing. Other public access and recreational uses of this stretch of the river include canoeing and kayaking. The prime fishing seasons occur during the wet months, when gravel extraction is not occurring. The peak canoeing and boating use takes place during the spring before the gravel extraction season begins. Thus, the project will not significantly affect the fishermen, canoeists, or other recreational boaters. Furthermore, gravel extraction operations have been occurring at the site for many years. The continued extraction authorized by this permit will not create any additional burdens on public access than have existed in the past. The project will not create any new demands for fishing access or other public access use.

Therefore, the proposed project would not have any adverse effects on public access. The Commission finds that the project, which does not include any new public access is consistent with the public access policies of the Coastal Act.

I. Permit Termination.

As noted in the Permit History subsection of the Project Description finding of this report, regulation of gravel mining operations along the Smith River has been evolving rapidly over the last few years and is likely to continue to evolve in the future. The review of monitoring data required by the USACE, CDFG, County of Del Norte, and other regulatory bodies may be beneficial in suggesting ways in the future that the gravel operations could be conducted to more optimally protect the river. Therefore, to enable the Commission to review future mining at the applicants' site in light of new information and changed circumstances that may develop over the next few years, the Commission attaches Special Condition No. 5, which states that the authorization for gravel extraction shall terminate on February 1, 2005.

The Commission notes that it may be necessary for the applicants to amend the authorization even before the end of the permit in mid-winter 2005. The Smith River is a dynamic environment that can change dramatically in the course of a single winter due to the forces of high water flows. Standard Condition No. 2 requires that the project adhere to the project plans submitted with the application, as modified by the conditions of the permit. In the event that changes in the riverine environment necessitate changes to the extraction and/or reclamation plans for the project, such changes will require further review by the Commission.

J. State Lands Commission Review.

The project is located in the bed of the Smith River, a navigable river, between the ordinary high water marks. As such, the State of California may hold a public trust

easement and other property interests in the site. Any such property interest of the State would be administered by the State Lands Commission (SLC).

SLC staff have reviewed the proposed project and have provided a response regarding the public interests over the site (see Exhibit No. 5). Due to staff and funding limitations, the extent of the State's sovereign interest at the project location has not been determined. Although SLC staff indicates that no SLC authorization will be required at this time, the SLC reserves the right to re-examine the line of tidal influence and to require a mineral extraction lease if the facts justify it. Therefore, State lands may be involved in the development, but the applicants have demonstrated a sufficient legal property interest in the site to carry out the project and to comply with the terms and conditions of this permit.

K. Department of Fish and Game Review.

The project requires an annual CF&GC Section 1603 Streambed Alteration Agreement from the CDFG. The applicants have not yet received an agreement for the 2000 gravel extraction season. Therefore, to ensure that the project area reviewed by CDFG is the same project area that was reviewed under this permit by the Commission, and to ensure that extraction does not exceed the seasonal extraction limits established under Special Condition No. 2, the Commission attaches Special Condition No. 9 which requires that prior to commencing each gravel season, the applicants submit a copy of the Section 1603 agreement obtained from CDFG applicable to that season.

L. U.S. Army Corps of Engineers Review.

The project is within and adjacent to a navigable waterway and is subject to review by the U.S. Army Corps of Engineers (USACE). Pursuant to the Federal Coastal Management Act, any permit issued by a federal agency for activities that affect the coastal zone must be consistent with the coastal zone management program for that state. Under agreements between the Coastal Commission and the USACE, the Corps will not issue a permit until the Coastal Commission approves a federal consistency certification for the project or approves a permit. To ensure that the project ultimately approved by the Corps is the same as the project authorized herein, the Commission attaches Special Condition No. 9 which requires that prior to commencing each gravel extraction season, the applicants demonstrate that it has all necessary approvals from the USACE for the proposed gravel extraction to be performed that season.

M. California Environmental Quality Act.

Section 13906 of the California Code of Regulation requires Coastal Commission approval of a coastal development permit application to be supported by findings showing that the application, as modified by any conditions of approval, is consistent with any applicable 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 feasible alternatives or feasible mitigation measures available, which would significantly lessen any significant effect that the activity may have on the environment.

As discussed above, the proposed project has been conditioned in order to be found consistent with the policies of the Coastal Act. As specifically discussed in these above findings which are hereby incorporated by reference, mitigation measures which will minimize all adverse environmental impact have been required. These required mitigation measures include requirements that: (1) limit extraction to avoid environmentally sensitive habitat areas, rare and endangered species, migratory fish, and extractions that could lead to changes in river morphology; and (2) call for the preparation of annual gravel extraction plans that meet extraction limits to be reviewed by the Commission and other agencies. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact that the activity would have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, can be found consistent with the requirements of the Coastal Act and 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

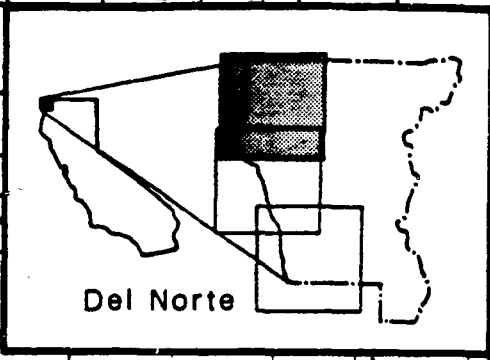
1. Notice of Receipt and Acknowledgement. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. 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.



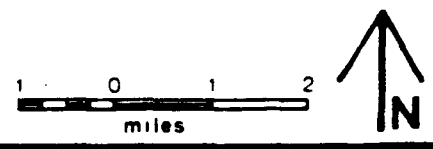
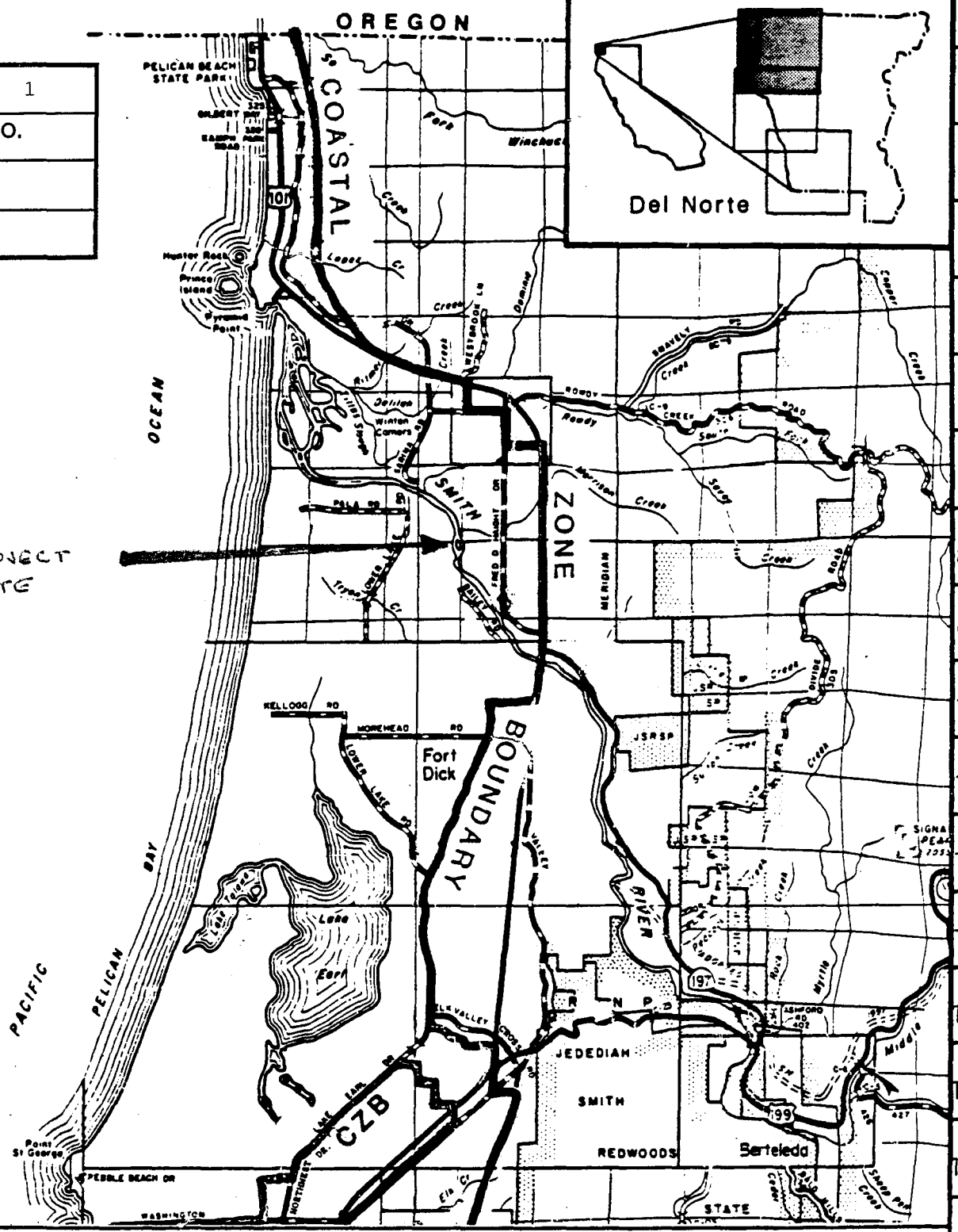


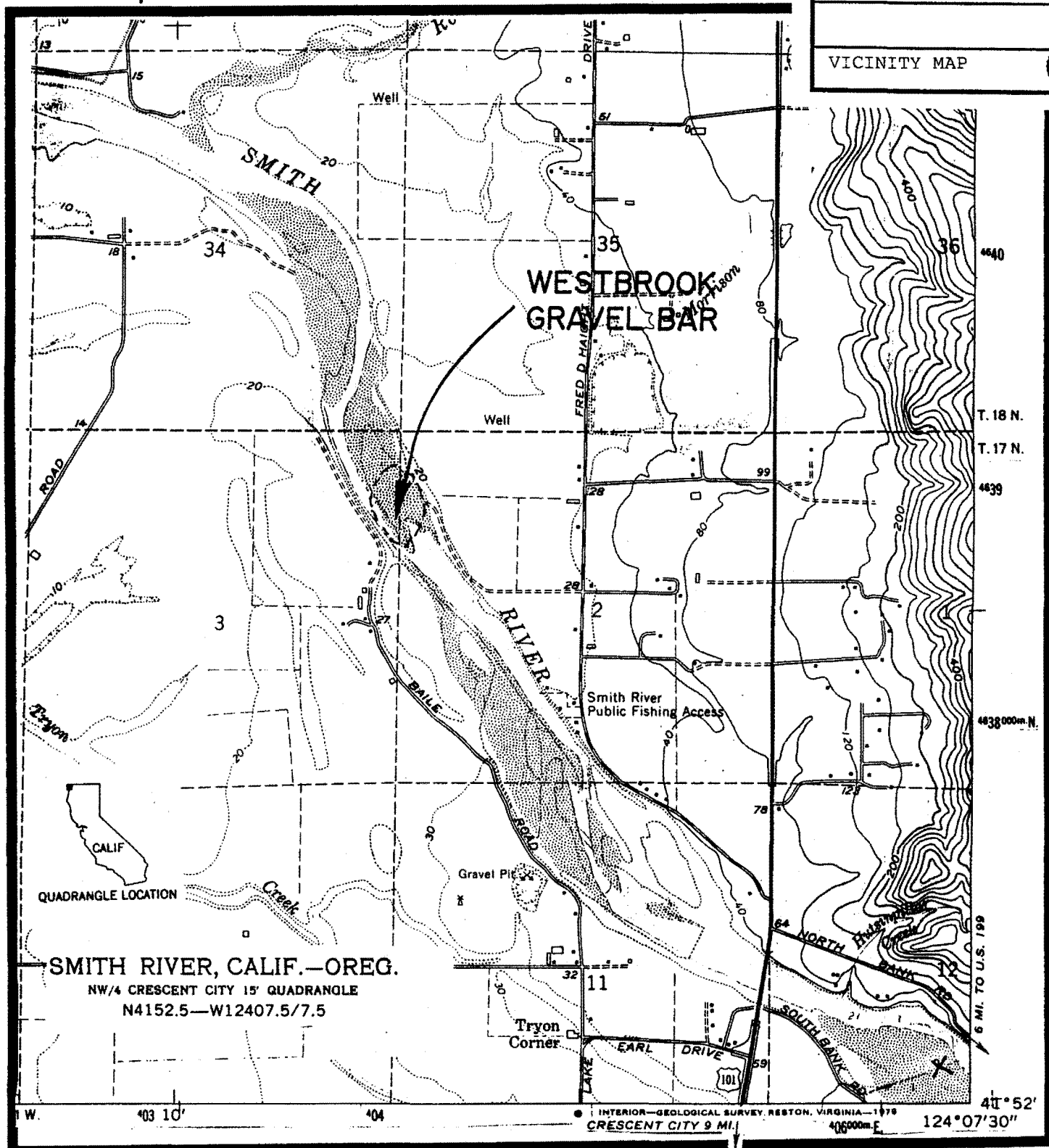
A B C D E F G H I J K L M N O

EXHIBIT NO.	1
APPLICATION NO.	1-00-005
LOCATION MAP	



PROJECT  
SITE





PURPOSE: Commercial Gravel  
Extraction

DATUM: msl

APPLICANTS: Harry Wetherell and Taylor Westbrook

AT: WESTBROOK BAR, aka  
UPPER WOODRUFF BAR

ON: Smith River  
Del Norte County, California

APN's: 105-020-02, 105-020-03 & 105-020-21

**EXHIBIT 4.1 - LOCATION MAP**

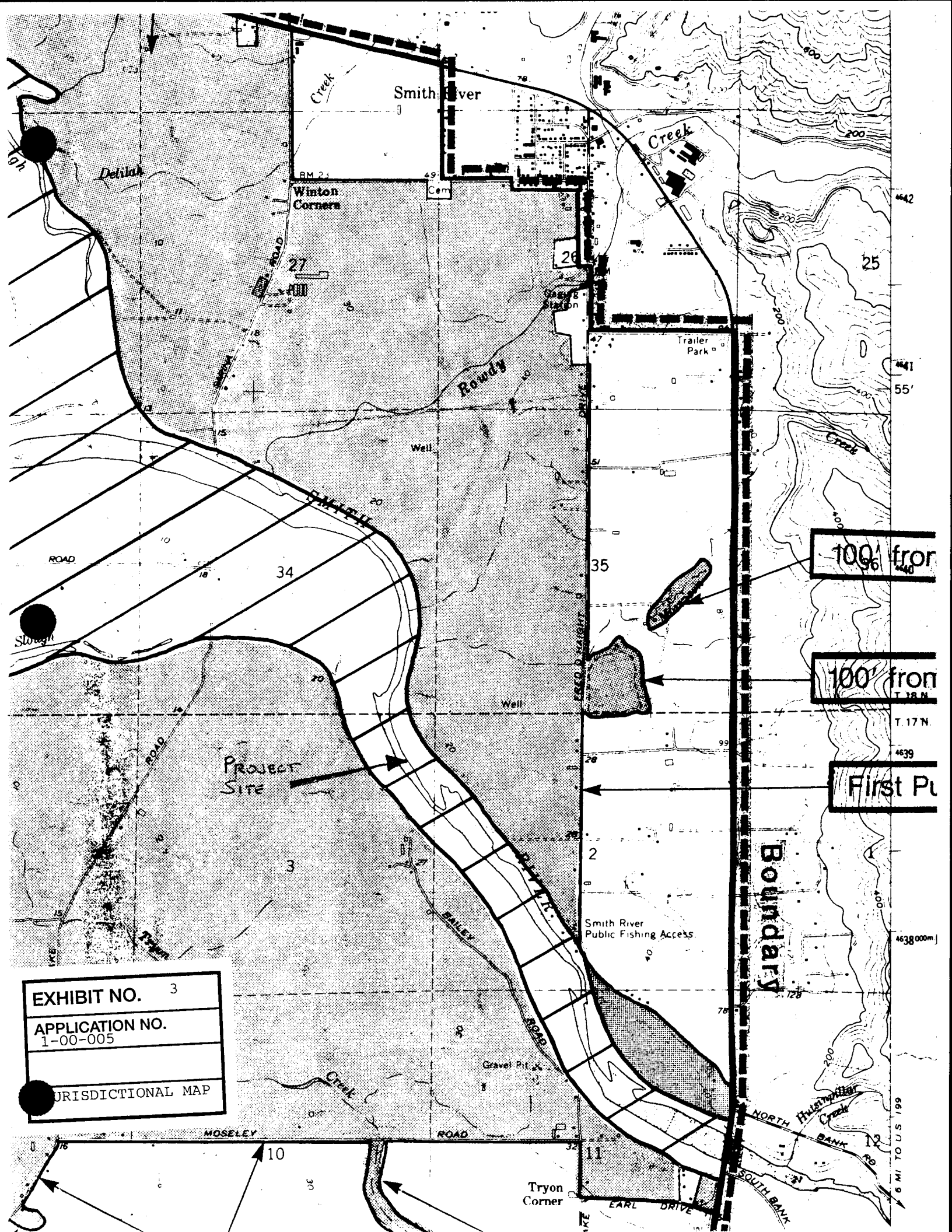
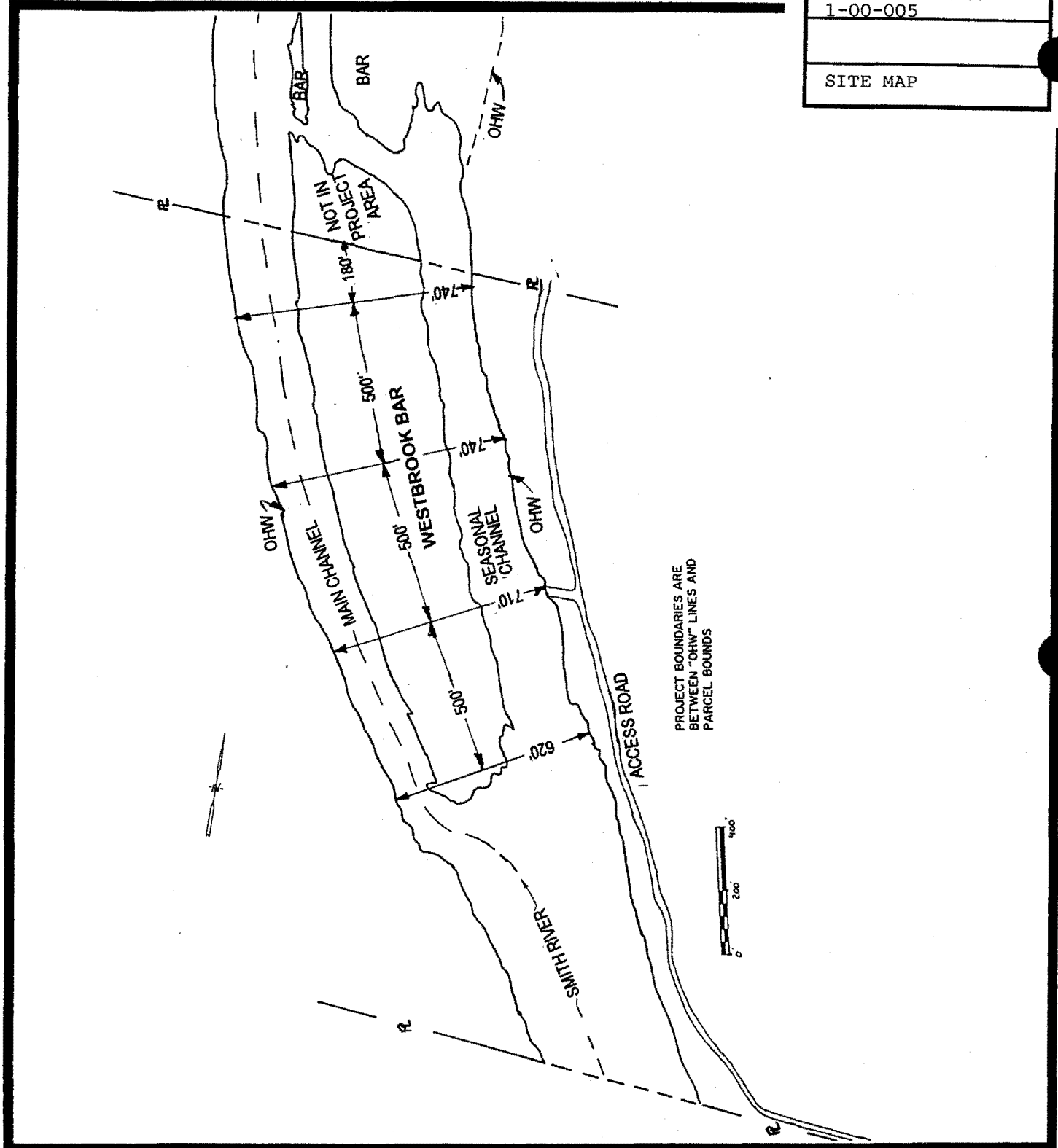


EXHIBIT NO. 3  
APPLICATION NO. 1-00-005  
JURISDICTIONAL MAP

EXHIBIT NO. 4

APPLICATION NO.  
1-00-005

SITE MAP



PURPOSE: Commercial Gravel  
Extraction

DATUM: msl

APPLICANTS: Harry Wetherell and Taylor Westbrook

AT: WESTBROOK BAR, aka  
UPPER WOODRUFF BAR

ON: Smith River  
Del Norte County, California

APN's: 105-020-02, 105-020-03 & 105-020-21

**EXHIBIT 4.2 - PROJECT AREA BOUNDARY MAP**

HARRY WETHERELL  
05-020-02

**TEDSEN**  
105-020-08

**SMITH RIVER**

**NPSS1-2**

**HAUL ROAD  
(SEASONAL)**

SEASONAL CHANNEL  
(DRY IN SUMMER)

NOT IN THE  
PROJECT AREA



HAUL ROAD  
(SEASONAL)

**BAR**

**WESTBROOK**  
105-020-21

WESTBROOK  
105-020-21

CROCKETT  
103-020-44

**PACIFIC AFFILIATES, INC.**  
A CONSULTING ENGINEERING GROUP  
990 W. Waterfront Drive  
Eureka, CA 95501-0173

AERIAL PHOTOGRAPH

EXHIBIT NO. 5  
APPLICATION NO. 1-00-005

**EXHIBIT NO. 5**



STATE OF CALIFORNIA

GRAY DAVIS, Governor

**CALIFORNIA STATE LANDS COMMISSION**100 Howe Avenue, Suite 100-South  
Sacramento, CA 95825-8202**PAUL D. THAYER, Executive Officer**

(916) 574-1800 FAX (916) 574-1810

California Relay Service From TDD Phone 1-800-735-2922  
from Voice Phone 1-800-735-2929

Contact Phone: (916) 574-1900

Contact FAX: (916) 574-1835

January 7, 2000

File Ref.: SD 95-03-10.4

Ms. Janeth Mariante  
Pacific Affiliates, Inc.  
990 W. Waterfront Drive  
Eureka, CA 95501

Dear Ms. Mariante:

**SUBJECT: Mining of River Bed Gravels, Smith River 1 ½ Miles  
Downstream of Dr. Fine Bridge, Hwy 101 Sec. 3, T17N R7W,  
HBM, Del Norte County**

This letter is in response to your recent telephone inquiry regarding the subject project. As expressed in our letter dated August 7, 1995, staff of the State Lands Commission (SLC) has reviewed the material you provided on the subject project.

The State of California acquired sovereign ownership of all tidelands and submerged lands and beds of navigable waterways upon its admission to the United States in 1850. The State holds these lands for the benefit of all people of the State for statewide Public Trust purposes which includes waterborne commerce, navigation, fisheries, water-related recreation, habitat preservation and open space. The landward boundaries of the State's sovereign interests are often based upon the ordinary high water marks of these waterways as they last naturally existed. Thus, such boundaries may not be readily apparent from present day site inspections. The State's sovereign interests are under the jurisdiction of the SLC.

The Smith River is State-owned sovereign land as described above. However, due to staff and funding limitations, the extent of the State's sovereign interest, at the project location, has not been determined. Therefore, no SLC authorization will be required at this time. A lease may be required at such time in the future that the exact extent of the State's fee ownership is determined.

This letter is not intended, nor should it be construed as, a waiver or limitation of any right, title, or interest of the State of California in any lands under its jurisdiction.

EXHIBIT NO. 6

APPLICATION NO.  
1-00-005REVIEW AGENCY  
CORRESPONDENCE

Ms. Janeth Mariante  
SD 95-03-10.4  
January 7, 2000  
Page 2

Please feel free to call me at (916) 574-1818 if you have any questions.

Sincerely,



NINETTE LEE  
Public Land Management Specialist