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Staff:	Jim Baskin
Staff Report:	June 23, 2000
Hearing Date:	July 14, 2000
Commission Action:	

STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: **1-00-018**

APPLICANT: **Alan Murray DBA: White Rock Resort Cabins**

PROJECT LOCATION: 16800 Highway 101 North, Smith River, Del Norte County; APN 101-720-01

PROJECT DESCRIPTION: 1) Removal of approximately 300 cubic yards of quarry rock (4 in. - 6 in. diameter), concrete slurry, and cemented-in-place sandbags from a coastal bluff and beach area.

LOCAL APPROVALS RECEIVED: County of Del Norte Grading / Coastal Development Permit No. GP99-018C.

OTHER APPROVALS REQUIRED: U.S. Army Corps of Engineers CWA §404 Permit and Regional Water Quality Control Board CWA §401 Certification.

SUBSTANTIVE FILE DOCUMENTS: Del Norte County Local Coastal Program; and Cease and Desist Order CCC-00-CD-01.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission approve with conditions the proposed removal of approximately 300 cubic yards of rock and grouting fill materials, and cement sandbags placed upon a coastal bluff and rock outcroppings located on the open ocean shore adjacent to the White Rock Resort Cabins (aka: "Nautical Inn RV Park") in northernmost Del Norte County.

The installation of the fill materials was performed without benefit of a coastal development permit. The Commission responded to this unpermitted activity with the issuance of a Cease and Desist Order directing the applicant to either remove the fill materials or obtain after-the-fact approval of them (CCC-00-CD-01, issued on 1/14/2000). The proposed project is intended to comply with the removal option specified in the order by removing the unauthorized materials and restoring the site to pre-installation conditions. Based on an assessment of possible project options, staff believes the proposed hand-removal method to be the least environmentally damaging feasible alternative for removing the fill. In order for the project to be found consistent with the Coastal Act, special conditions have been recommended. These include time restrictions for completing the work and criteria for the disposal location of the fill materials. Staff believes these conditions are necessary to ensure consistency with the Coastal Act policies regarding the avoidance of hazards and protecting other environmentally sensitive coastal resource areas.

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 in tidelands within the Coastal Commission's area of original jurisdiction. Therefore, the standard of review that the Commission must apply to the project is the Coastal Act.

Adjoining portions of the site located above the high tide line are within the County of Del Norte's coastal development permit jurisdiction. On April 5, 2000, the County of Del Norte approved coastal grading permit GP99-018C authorizing those portions of the removal project within County's jurisdiction. The County's action on GP99-018C was not appealed to the Commission.

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. 1-00-018 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. Timing of Removal of Fill Materials

A. WITHIN 90 DAYS OF COMMISSION ACTION ON THIS CDP APPLICATION, or within such additional time as the Executive Director may grant for good cause, the applicant shall remove all fill materials authorized for removal under this permit, including all rock, grouting materials, and cemented-in-place sand bags previously placed at the site. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

2. Construction Responsibilities and Debris Removal

The fill materials authorized for removal under this permit shall be removed from the project site and disposed of at a disposal site outside of the California coastal zone where materials may be lawfully disposed. None of the fill materials to be removed, debris, or waste shall be placed or stored temporarily before disposal where it may be subject to wave erosion and dispersion.

3. U.S. Army Corps of Engineers Approval

PRIOR TO COMMENCEMENT OF CONSTRUCTION, permittee shall provide to the Executive Director a copy of a permit issued by the U.S. Army Corps of Engineers, or letter of permission, or evidence that no permit or permission is required. The applicant shall inform the Executive Director of any changes to the project required by the U.S. Army Corps of Engineers. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is required.

IV. FINDINGS AND DECLARATIONS.

A. Site Description.

The project site is located along the Pacific Ocean, approximately ½ mile from the California-Oregon border, in northernmost Del Norte County. The site is adjacent to the "White Rock Resort Cabins" RV Park, located just north of the intersection of State Highway 101 and Ocean View Drive (see Exhibits 1 and 2). The site occupies the boulder-strewn shoreline and adjacent blufftop terrace, extending approximately 25 feet above the surf zone. The project setting comprises a rural seaside area developed with a mixture of single-family residences, public park facilities, and several private visitor-serving commercial uses, including the subject RV park, bed and breakfast inn, motels and restaurants. The southern end of Pelican State Beach lies approximately 100 yards north of the project site. Landward of the project site across Highway 101 the area is developed with a mixture of agricultural and low-density rural residential uses.

The portions of the overall project site that are located at or below the mean high tide line of the sea are within the Commission's area of original coastal development permit jurisdiction (see Exhibit 3). Adjoining portions of the site located above the high tide line are within the County of Del Norte's coastal development permit jurisdiction. The portion of the subject property within the County's certified LCP jurisdiction has a land use designation of Visitor Commercial (VC), implemented through a Commercial Recreation with Coastal Access and Geologic Hazard Combining Zoning District (CR-C(a)(h)) under the County of Del Norte's certified LCP. On April 5, 2000, the County of Del Norte approved coastal grading permit GP99-018C authorizing those portions of the

removal project within County's jurisdiction. The County's action on GP99-018C was not appealed to the Commission.

B. Project Description and Background.

The proposed project consists of the removal of approximately 300 cubic yards of 4 to 6 inch diameter "pit run" greenstone rock intermixed with gravel and other fines, concrete grouting, and cemented-in-place sandbags placed on, over, and at the base of a coastal bluff. These materials were put in place on or about January 12, 1999 without a coastal development permit being secured. The unpermitted placement of these materials was the subject of an enforcement investigation by the Commission spanning much of 1999. The Commission issued Cease and Desist Order No. CCC-00-CD-01 to the applicant on January 14, 2000.

The Cease and Desist Order instructed the applicant to file a completed coastal development permit application within 60 days for either removal of the materials or to seek an after-the-fact permit to retain the materials as a shoreline protective measure. A further extension of the submittal deadline to April 5, 2000 was subsequently granted by the Executive Director on March 9, 2000. On April 6, 2000, Commission staff received the subject permit application (mailed April 3, 2000) for removal of the unpermitted fill. On May 9, 2000, following receipt of supplemental information requested by Commission staff, the application was filed as complete.

As detailed within the application, the removal of the fill materials would be accomplished by hand labor using 5± gallon plastic buckets hand carried to either the terrace above the fill site via a private beach stairway, or hand-delivered to a conveyor system placed between the fill and the top of the terrace. These materials would then be loaded on a truck and transported to a site outside of the coastal zone for disposal. The applicant indicates the material would be taken approximately 7 to 8 miles to the north, to property owned by the applicant in the State of Oregon. The work is anticipated to require five to eight workers and take approximately 80 hours to complete. The removal activities would need to be conducted in four to seven hour shifts in conjunction with the tidal cycle, as safe access by workers to portions of the project site is limited during high tides.

Some of the aggregated fill materials will need to be broken into manageable pieces for manual-transport. Some of these materials (i.e., rock/grout composites and sandbags) have also been cemented onto the native shoreline rocks for which prying and scraping may be required. This activity may require the use of hammers, chisels, pry bars, or other similar hand tools in order for the materials to be fully removed and may cause some marring of the surface of the underlying mudstone and greenstone rocks. In addition, the placement of the proposed conveyor system and worker activity may result in some trampling to blufftop vegetation, mainly landscaping grasses. The bluff top and bluff

face contain no environmentally sensitive habitat and thus the potential damage is not viewed as being substantial or environmentally significant.

C. Dredging in Coastal Waters and the Protection of Marine Resources.

The removal of the 300± cubic yards of fill materials from within the tidal zone represents a form of dredging under the Coastal Act. Several sections of the Coastal Act address dredging and development within coastal waters. Section 30231 provides in applicable part that:

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

Section 30233(a) provides as follows, 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 subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and 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...*
- (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... [emphases added]*

The above policies set forth a number of different limitations on what types of dredging projects may be allowed in coastal waters. For analysis purposes, the limitations applicable to the subject project can be grouped into four general categories or tests. These tests are:

1. The purpose of the dredging is either for one of the eight uses allowed under Section 30233;
2. The project has no feasible less environmentally damaging alternative;
3. Adequate mitigation measures are provided to minimize the adverse impacts of the proposed project on habitat values; and
4. Habitat values are maintained and enhanced.

1. Permissible Use for Dredging

The first general limitation set forth by the above-referenced Chapter 3 policies is that any proposed dredging can only be allowed for certain limited purposes. Under Section 30233(a), dredging in coastal waters can only be performed for one of eight different uses, including under sub-section (7), "restoration purposes." The proposed project consists of the removal of solid rock fill, concrete grouting, and cemented-in-place sand bags in response to a Cease and Desist Order regarding unpermitted fill development. The intent of the Cease and Desist Order allowed and the subsequent permit application proposes to return the project site to conditions that existed prior to the placement of the

unpermitted fill materials. As such, the project entails "restoration purposes." Therefore the Commission finds that the purpose of the fill is consistent with subsection (7) of Section 30233(a) of the Coastal Act.

2. No Feasible Less Environmentally Damaging Alternatives

The second general limitation set forth by the above-referenced Chapter 3 policies is that any proposed fill project must have no less environmentally damaging feasible alternative. Coastal Act Section 30233 does not allow the dredging of coastal waters if there is a feasible, less environmentally damaging alternative to the project. Alternatives to the project as proposed must be considered before a finding can be made that the proposed dredging is the least environmentally damaging feasible alternative. Potentially feasible less environmentally damaging alternatives identified and considered by the applicant and staff include: (a) the "no project" alternative; (b) further capping of the fill material, (c) fill material removal utilizing an overhead crane located on the blufftop, and (d) fill materials removal by backhoe and dump truck from the beach.

No Project Alternative.

The "no project" alternative would be to leave the previously placed fill materials in place without removal. This alternative would not meet the project objectives of removing previously placed fill material placed without benefit of a coastal development permit. Thus, the alternative is not acceptable.

Even if the no project alternative were acceptable with respect to project objectives, the alternative would not be a feasible less environmentally damaging alternative than the proposed removal of the fill material, as conditioned.

The Cease and Desist Order did provide the applicant with the option of pursuing an "after-the-fact" coastal development permit to legitimize the placement of rock, concrete grouting and sandbagging, effectively, to undertake "no project." However, when compared to the proposed project in which all of these impacts would be eliminated or avoided, retention of the fill materials would have several potentially significant adverse environmental impacts, including:

- Impacts to visual resources along the beach and coastal bluff;
- Coverage of beach and rock areas previously available for public access use;
- Loss of rocky habitat and any beach habitat covered up by the fill materials;
- Potential geologic instability; and
- Impacts to water quality from erosion of fill materials.

Although the applicant ultimately decided to submit an application for removal of the fill materials, the application nonetheless contained several technical reports concluding that leaving the fill materials in place would be less environmentally damaging. These reports, included: "Short Letter Report, Geologic Evaluation, Marine Terrace Bluff Pit-Run Fill Hard Facing, White Rock Resort" (Ferrero Geologic, 4/19/99), "Biological Characterization of Shoreline Habitat – White Rock Resort Cabins, 16800 Highway 101 North, Smith River California (Mad River Biologists, 1/31/00), and the letter-report addendum entitled "Pending Coastal Development Permit Application for Removal of Fill Materials, White Rock Resort, Pelican Beach Area, Del Norte County, California" (Mad River Biologists, undated) [see Exhibit Nos. 4, 5 & 6].

These reports conclude that retention of the fill materials to be the least environmentally damaging alternative from several geologic, biological, and coastal access perspectives, including:

- "The bluff would be disturbed by removal of the fill material, which could lead to accelerated erosion." (Ferrero, p.6)
- "The impact on biological resources from placing the fill material is minimal. The fill material is very much like the natural sand and gravel originating from the eroding bluff... (T)he effect on biological resources from bringing equipment suitable for removing the fill from the site would likely be greater than leaving the fill in place. This would include the option of removing the fill literally bucket by bucket, as the associated foot traffic could cause temporary, but potentially substantial compaction of the beach, with its admittedly temporary but negative effect on organisms living in the sand. The use of the conveyor belt or pulley system could have adverse impacts on the bluff, depending on the placement and use of the equipment." (Mad River Biologists I, p. 2)
- "Removal of the fill is not recommended due to the potential for greater erosive damage to the bluff and/or beach access routes during removal activities. The adverse effect of the continued erosion of the fill material is probably insignificant relative to the natural erosion." (Mad River Biologists I, p. 3)
- "Further disturbances to biological resources from removal activities, while potentially minimal, would be greater than leaving the fill material in place." (Mad River Biologists II, p. 2).

The conclusions within these reports were largely based upon qualitative judgements limited to the writers' fields of expertise and did not include consideration of the full range of coastal resource issues (i.e., availability of nearby coastal accessways, water quality, visual resources, standards for demonstrating long-term stability of shoreline protective devices, past permit decisions, Coastal Act compliance and enforcement

considerations). The removal methodology to which retention was compared did not necessarily match that being proposed, but included variants of Alternatives 3 and 4 as well. In addition, no factual data (e.g., comparison of bluff retreat rates, site-specific surveys of intertidal habitat utilization that could potentially be affected by hand-removal, analysis of coastal access activity in the project vicinity) was provided within these reports to substantiate their conclusions. The Mad River Biologists' report, for example, states concerns over increased bluff erosion and compaction of the beach due to carrying off the rocks. Increased bluff erosion will not be caused by the removal activities *per se* and the compaction of upper beach sand by workmen carrying buckets of rocks will be temporary and have insignificant biological effects. As the report points out, most marine animals & algae are found lower on the beach. There will be a low density of infaunal organisms in the sand on the high beach, but effects of trampling will probably be erased with the next tide. Thus, the biological report includes no substantial basis for recommending no action.

Accordingly, from the materials submitted with the application, it is not possible to reasonably conclude that leaving the fill materials in place would have less potential adverse environmental effects. The "no project" alternative is therefore not a feasible less environmentally damaging alternative to the project as conditioned.

Further Capping of Fill Materials.

This alternative was identified within the Ferrero report as an option which "...balances environmental and bluff protection concerns." Under this alternative, the fill materials would be left in place and further capped with additional erosion resistant materials to form a hardened bluff face revetment. Some site preparation would be required --- spreading the fill rock out from the thicker sections into adjacent thin sections and reducing the slope profile --- prior to the placement of approximately 500 cubic yards of "one-man stone" riprap.

As noted within the Ferrero report, this alternative is presented as being "...the most practical and environmentally correct solution *given the situation as it exists*, regardless of permitting and political issues." [emphasis in original] No technical data was provided to substantiate the need for the revetment pursuant to Coastal Act Section 30235 (i.e., to serve coastal-dependent uses, protect existing structures or public beaches in danger from erosion, or eliminate or mitigate adverse impacts on local shoreline sand supply). In addition, the report does not acknowledge the environmental effects of the fill materials as placed, including impacts on public access, oceanfront recreation, biological resources, and visual resources.

Lowering the slope of the materials would mean that the fill materials extend further onto the beach, potentially blocking further coastal access and recreational uses in the project vicinity. The placement of additional revetment materials will likely have other potentially negative effects. For example, no engineering analysis was provided demonstrating the long-term stability of the structure or ensuring that its construction

would not cause or worsen geologic stability on- or off-site. Accordingly, from the materials submitted with the application, it is not possible to reasonably conclude that further capping of the fill materials would have less potential adverse environmental effects. This alternative is therefore not a feasible less environmentally damaging alternative.

Removal of Fill Materials by Overhead Crane.

The applicant considered other methods for removal of the fill materials, including the use of an overhead crane operated from the blufftop. This alternative would conceivably reduce the amount of time needed to conduct the project by half (40 hours) and concentrate beach foot-traffic to a smaller area of potential disturbance. As reported within the alternatives analysis prepared by the applicant's agent (Oscar Larson & Associates, 4/00), the crane would be required to be placed in proximity to the blufftop edge where bluff damage or failure might result. In addition, the agent stated that this option would also require the removal of one or more of the "units" placed within the adjacent White Rock Resort Cabins (and related loss of rental revenues) to station the crane, a consequence not acceptable to the owner. Accordingly, this alternative was not pursued or analyzed further.

The removal of fill materials by overhead crane would not result in appreciably less impact. Workers would still be needed to extricate the fill materials from the bluff face, rock outcroppings and beach, and to load the materials into the crane bucket. Consequently, the trampling effects to the sandy beach areas and bluff would not be avoided. Removal by crane would, however, reduce the number of trips along the beach and up the stairway to haul the rocks to the top of the bluff. While this reduction in foot-traffic is notable, this activity has no appreciable impacts, as the affected area does not contain appreciable environmentally sensitive habitat and any trampling effects would be erased by the next in-coming tide. Therefore, even without the potential stability problems of locating the crane on the bluff near the edge, the alternative would be at least as environmentally damaging if not more environmentally damaging than the proposed project.

Therefore, the removal of the materials by overhead crane is not a feasible environmentally less damaging alternative to the proposed removal by hand-carrying and conveyor system, as conditioned.

Removal of Fill Materials by Backhoe and Dump Truck.

Another possible alternative identified by the applicant involves removing the fill materials by mechanized equipment operated on the beach. Under this option a backhoe and dump truck would be brought down onto the beach via the coastal accessway at Pelican State Beach ¼ mile north of the project site. Materials would be scrapped off the bluff face and beach rocks with the backhoe bucket, loaded into the dump truck and transported back off of the beach via the state beach access point.

While this option would possibly allow for the most expeditious removal of the fill materials, it would undoubtedly have much greater negative environmental consequences. The heavy weight of the machinery could damage both the state beach's access road and intertidal areas. Scrapping of the bluff face and beach rock outcroppings by backhoe would also likely result in greater alteration of these natural landforms than would removal with hand tools. The likelihood of the risk of accidental hazardous materials releases (i.e., fuel spills, leaking lubricants) into coastal waters is similarly increased under this option. In addition, the feasibility of this alternative is questionable, given the probable unwillingness of the California Department of Parks and Recreation to grant permission for vehicular access across the state beach and the presence of boulders on the beach complicating ingress/egress. Therefore, the Commission finds that removal of fill materials by backhoe and dump truck via the beach is not a feasible less environmentally damaging alternative than the proposed removal method.

Conclusion

As discussed above, alternatives to the proposed project, including (a) retaining the material, (b) removing the fill materials by overhead crane via the blufftop, (c) further capping of the fill materials, or (d) removal of the fill materials via beach access by backhoe and dump truck are not feasible less environmentally damaging alternatives. Therefore, the Commission finds that the proposed development is consistent with the requirement of Section 30233 of the Coastal Act that no dredging project be approved if there is a feasible less environmentally damaging alternative.

3. Mitigation for Adverse Impacts

A third general limitation set forth by Sections 30231 and 30233(a) is that adequate mitigation to minimize the adverse impacts of the proposed project on habitat values must be provided.

Feasible mitigation measures are available to mitigate the potential significant adverse impacts of the project. The two main impacts of the proposed project are (1) risks to life and property in areas of high geologic and flood hazard exposure, and (2) ensuring that the biological productivity and water quality is maintained during and after fill removal work.

As discussed in Findings Section IV.A above, "Project Background And Description," removal of the fill materials would require an estimated 80 consecutive hours to complete. Due to inundation of portions of the project site during high tides, the work would need to be conducted in 4-7 hour shifts bracketed around a low tide to avoid undue exposure of workers to flood hazards. During the fall and winter storm seasons, the intensity of tidal hazards increases with the added threat of "swell" waves.

In order to minimize the risks to life from waves, high tides, and storm surges, the Commission attaches Special Condition No. 1, which requires that all fill materials be removed from the project site within 90 days of Commission action on the permit. During this period (\pm July 15 to October 15), ocean waters are generally at their calmest with respect to having a relatively muted tidal range and low probability of major storm events. This work period would allow adequate time for the fill materials to be removed with minimal risk to life and property.

To ensure that the fill materials being removed are not placed elsewhere in the coastal zone where they may similarly have adverse effects on coastal resources, the Commission attaches Special Condition No. 2. This special condition restricts the disposal site to a disposal facility outside of the coastal zone where they may be lawfully disposed, consistent with the applicant's described disposal site. To ensure that the materials being removed are kept out of coastal waters during the removal process, the condition also requires that the fill materials be temporarily stored in a location where they will not be subject to tidal forces.

The Commission concludes that as conditioned, the proposed project will include adequate mitigation to minimize risks to life and property from flood hazards and prevent potential impacts to coastal waters. The Commission thus finds, that as conditioned, the proposed project is consistent with the third test for approvable dredging projects set forth in Section 30233 of the Coastal Act and the requirements of Section 30231 of the Act in that adequate mitigation for the adverse environmental effects of the proposed project will be provided.

4. Maintenance and Enhancement of Estuarine Habitat Values

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

The proposed mitigation plan will both maintain and enhance the biological productivity and functional capacity of the nearshore coastal waters of the Pelican Beach area. As discussed above, the project entails the removal of fill materials placed without first securing a coastal development permit. Though the fill materials may appear similar to natural materials in the project site vicinity, the potentially significant adverse effects of these materials have not been determined. While removal of the materials will involve some insignificant and transient environmental effects (i.e., minor trampling of the upper tidal zone and blufftop, minor marring of the bluff face and rock outcroppings), the proposed project would restore the site to the conditions that existed prior to the placement of the fill materials, thereby maintaining the biological productivity and functional habitat that previously existed.

Special Conditions have been attached that will address the timing and disposal of the berm materials such that undue exposure to tidal surge hazards and coastal water degradation does not result. These conditions will further ensure that the biological productivity and quality of coastal waters will be maintained. Therefore, the Commission finds that the project, as conditioned, will maintain the biological productivity and quality of the Pelican Beach nearshore environment, consistent with Section 30231 of the Coastal Act. Similarly, as conditioned, the proposed project will maintain the functional capacity of the intertidal wetlands as required by Section 30233(c).

D. Geologic Hazards and New Development.

The Coastal Act contains policies to assure that new development provides structural integrity, minimizes risks to life and property in areas of high geologic, flood, and fire hazards, and does not create or contribute to erosion. Section 30253 of the Coastal Act states in applicable part:

New development shall:

- (1) *Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
- (2) *Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

As discussed under the preceding findings section, the project will involve work within the intertidal zone along the open ocean shoreline. Workers engaged in the removal of fill materials will be subject to risks associated with wave action, high tides, and storm surge "swell." Special Condition No. 1 has been attached to ensure that the project is completed in a timeframe where exposure to these hazards will be minimized.

The Commission finds, that as conditioned, the proposed project will include adequate measures to insure structural stability, minimize risks to life and property from tidal flood hazards, and ensure that erosion, geologic stability, or destruction of the site is prevented, consistent with Section 30253 of the Coastal Act.

E. Public Access.

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

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 on an open water shoreline adjacent to the Pacific Ocean. Within ¼ mile to the north of the project area are coastal access facilities, namely Pelican State Beach, a five-acre undeveloped beach strand extending to the Oregon border. During removal work, access to a small portion of the public beach below the White Rock Resort Cabins / Nautical Inn RV Park (approximately 1/10 acre) comprising the filled area and lateral pathway to the beach stairway will be affected. The stairway is private and serves only the White Rock Resort Cabins owners and guests. Public access to the beach is available from several nearby points, including Pelican State Beach 1/8 mile to the north. The beach area in front of the project site would also remain open during removal work. In addition, the effects on coastal access will be temporary as the work is anticipated to take approximately two weeks to complete, and thus the project would not significantly interfere with public access to and along the shoreline in the project vicinity.

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.

F. U.S. Army Corps of Engineers Review

The applicant has submitted an application for a permit for the project to the U.S. Army Corps of Engineers. Pursuant to the Federal Coastal Zone Management Act, any permit issued by a federal agency for activities that affect the coastal zone must be consistent with the coastal zone management program for that state. Under agreements between the Coastal Commission and the U.S. Army Corps of Engineers, the Corps will not issue a permit until the Coastal Commission approves a federal consistency certification or permit for the project. To ensure that the project ultimately approved by the Corps is the same as the project authorized herein, the Commission attaches Special Condition No. 3 which requires the permittee to submit to the Executive Director evidence of U.S. Army Corps of Engineers approval for the project prior to the commencement of work.

G. Implementation of Cease and Desist Order.

The installation of the fill materials was performed without benefit of a coastal development permit. The Commission responded to this unpermitted activity with the issuance of a Cease and Desist Order directing the applicant to either remove the fill materials or obtain after-the-fact approval of them (CCC-00-CD-01, issued on 1/14/2000). The proposed project is intended to comply with the removal option specified in the order by removing the unauthorized materials and restoring the site to pre-installation conditions. Approval of the permit does not constitute a waiver of any other enforcement remedies provided by Chapter 9 of the Coastal Act with regard to the alleged violation.

Section 30810 of the Coastal Act provides for the issuance of cease and desist orders by the Commission if the Commission determines that any person or governmental agency

has undertaken, or is threatening to undertake, any activity that requires a permit from the Commission without securing the permit. Section 30810(b) states the following:

The cease and desist order may be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with this division, including immediate removal of any development or material or the setting of a schedule within which steps shall be taken to obtain a permit pursuant to this division.

Pursuant to Section 30810 of the Coastal Act, the Commission issued Cease and Desist Order No. CCC-00-CD-01 to the applicant on January 14, 2000. As noted previously, The Cease and Desist Order instructed the applicant to file a completed coastal development permit application within 60 days for either removal of the materials or to seek an after-the-fact permit to retain the materials as a shoreline protective measure. A further extension of the submittal deadline to April 5, 2000 was subsequently granted by the Executive Director on March 9, 2000. On April 6, 2000, Commission staff received the subject permit application (mailed April 3, 2000) for removal of the unpermitted fill. On May 9, 2000, following receipt of supplemental information requested by Commission staff, the application was filed as complete.

Section V-C of the cease and desist order provides that the applicant shall "...fully comply with the terms, conditions, and deadlines of any coastal development permit for either the retention or the removal of the unpermitted development as the Commission and/or the County may impose." This provision enables the Commission to implement the directives of Section 30810(b) of the Coastal Act through the imposition of conditions of approval of the permit for removal of the unpermitted fill. Such conditions could include measures that are necessary to ensure compliance with the Coastal Act, including immediate removal of any development or material.

The Commission finds that to ensure compliance with the Coastal Act, the fill material that was placed at the project site must be removed in a timely manner. Coastal Development Permit Application No. 1-00-18 authorizes this removal. As stated in the project description finding above, the applicant estimates that the proposed removal would take approximately 80 hours to complete. As the necessary coastal development permit has now been granted for the removal work, and as the applicant estimates that the work should take 80 hours, the Commission finds that it would be timely to remove the unpermitted fill material pursuant to Coastal Development Permit Application No. 1-00-18 within 90 days of Commission action on the permit. This time period would allow for any time necessary to secure any needed permit from the U.S. Army Corps of Engineers or a determination that no Corps permit is needed pursuant to Special Condition No. 3 of this permit, to schedule the development work, and to perform the required removal work. Therefore, the Commission attaches Special Condition No. 1, which requires that the applicant remove all fill materials authorized for removal under this permit, including all rock, grouting materials, and cemented-in-place sand bags previously placed at the site

within 90 days of Commission action on the permit. The condition provides that the Executive Director may grant additional time for good cause.

H. California Environmental Quality Act.

Section 13906 of the Commission's administrative regulations 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). 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. 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.

EXHIBITS:

1. Regional Location Map
2. Vicinity Map
3. Jurisdictional Map (excerpt)
4. Project Site Plans
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. Interpretation. Any questions of intent of interpretation of any condition will be resolved by the Executive Director of the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.



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

PROJECT SITE

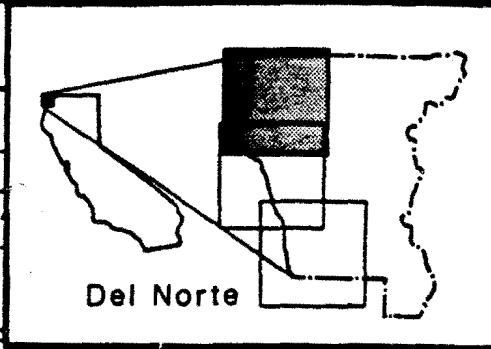
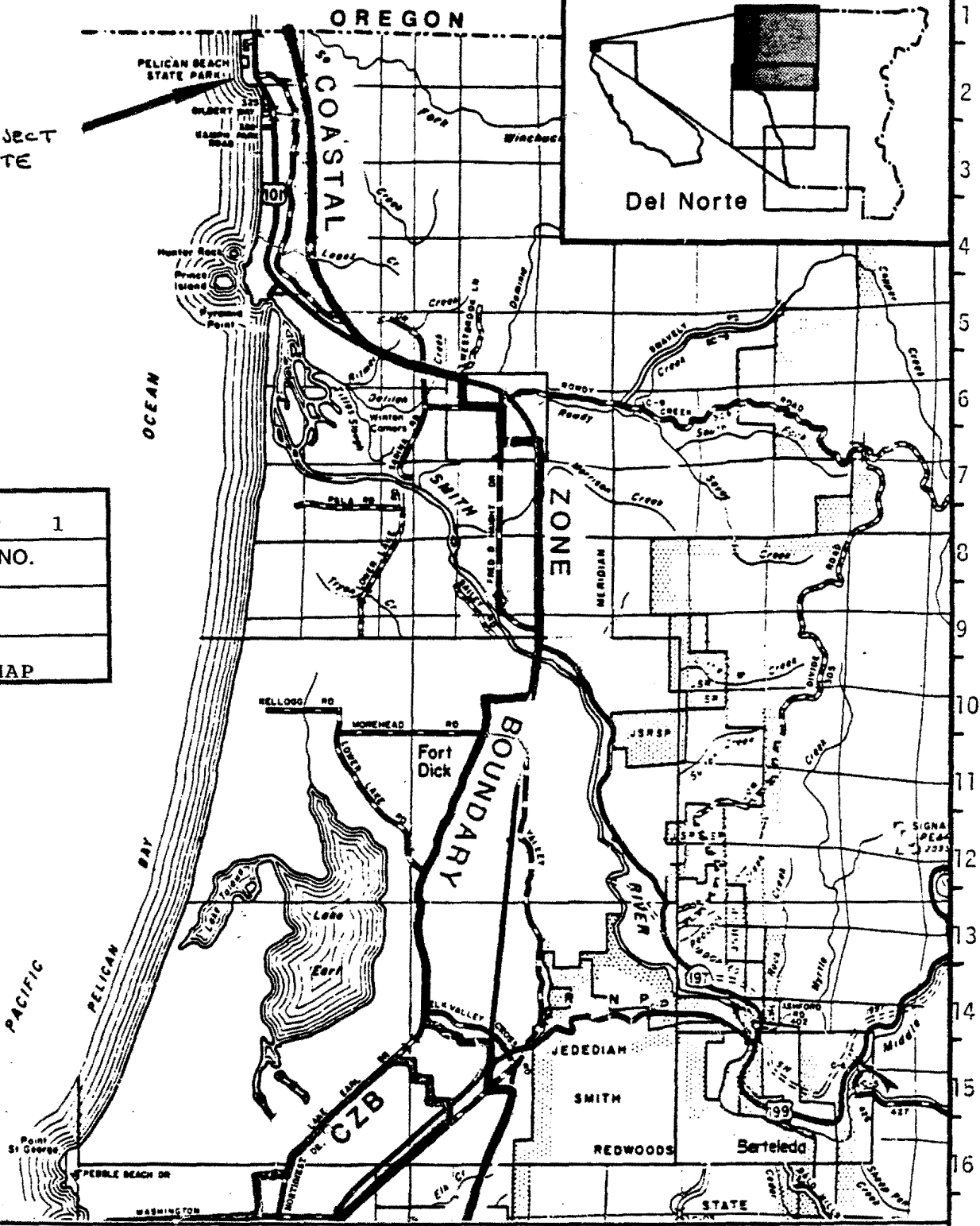


EXHIBIT NO.	1
APPLICATION NO.	1-00-018
LOCATION MAP	



MOUNT EMILY (OR) [1:24K]

topozone.com

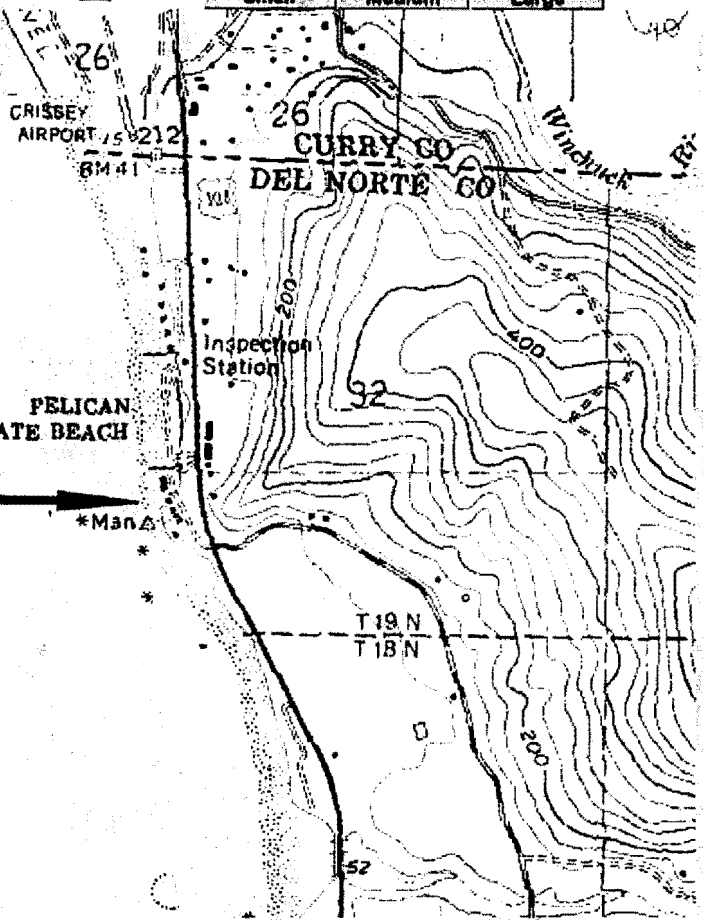
Copyright © 2000 Maps a la carte, Inc.

USGS Source Quads [1:100,000] [1:200,000]

USGS Source Quads

MOUNT EMILY (OR) [1:24K]

Small Medium Large



CRESCENT CITY (CA,OR) [1:100K]

USGS Source Quads

CRESCENT CITY (CA,OR) [1:100K]

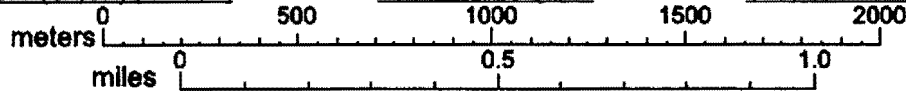


EXHIBIT NO.	2
APPLICATION NO.	1-00-018
VICINITY MAP	

First Public Rd.

100' from stream

300' from bluff

100' from wetland

First Public Rd.

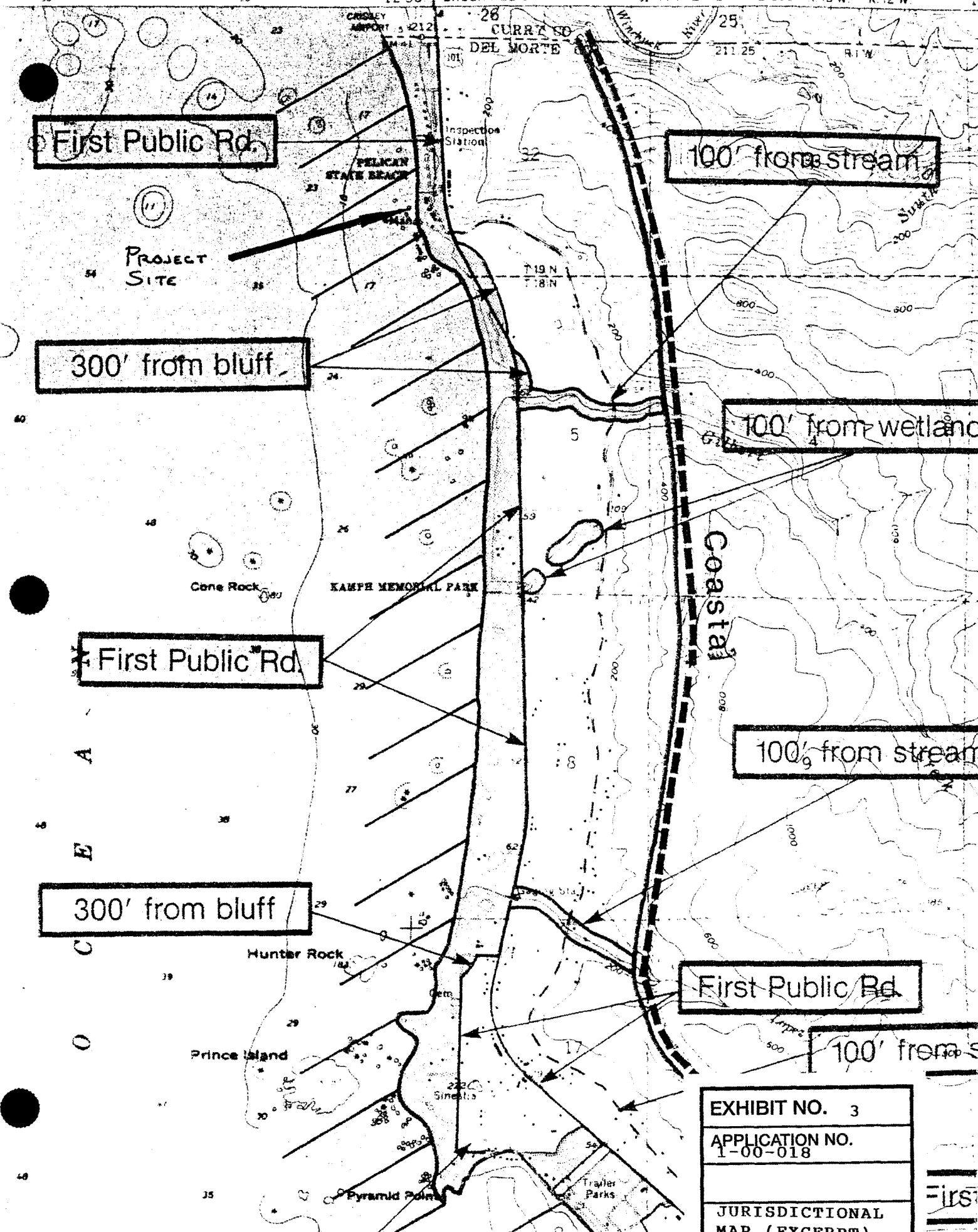
100' from stream

300' from bluff

First Public Rd.

100' from stream

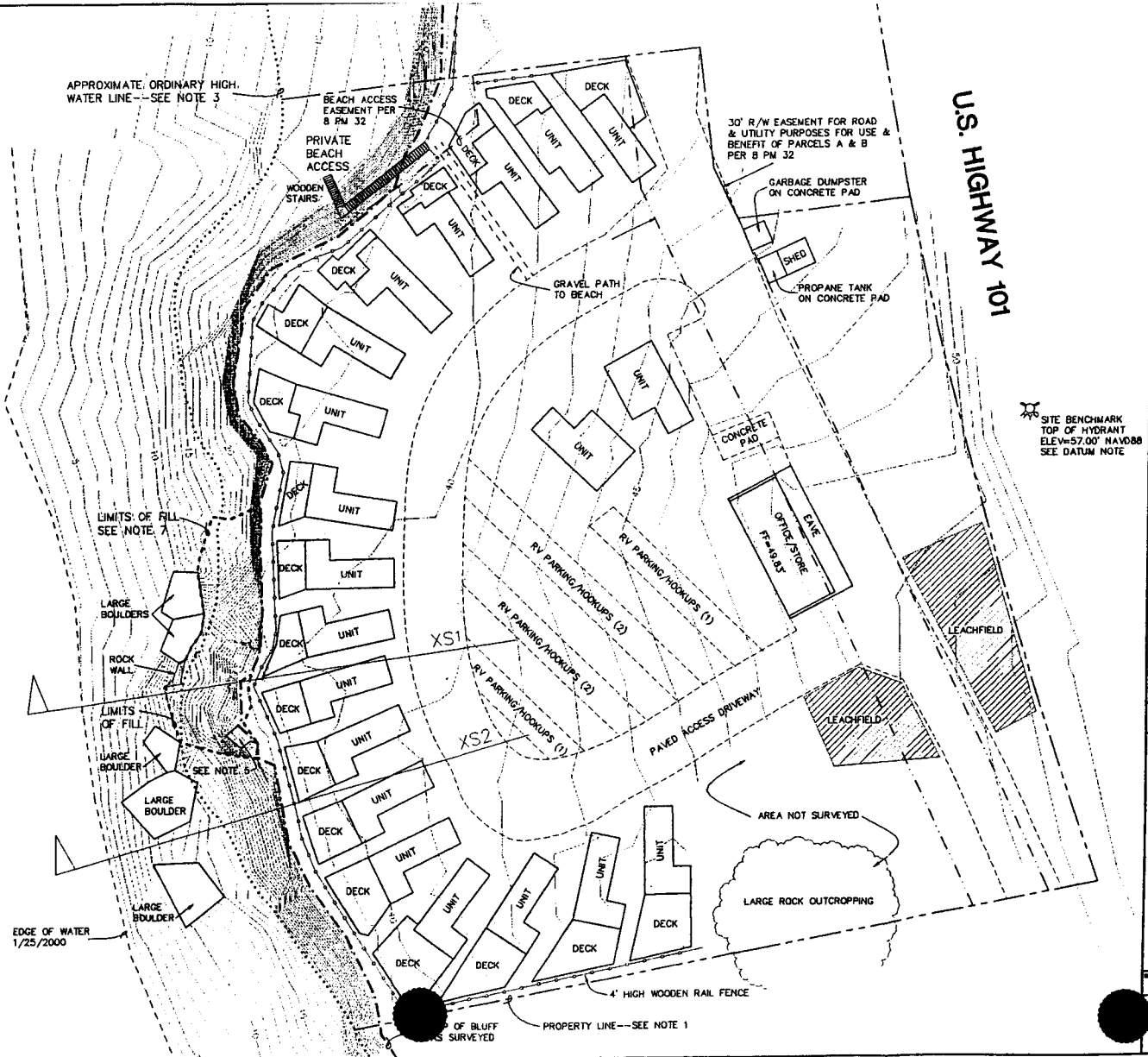
EXHIBIT NO. 3
APPLICATION NO. 1-00-018
JURISDICTIONAL MAP (EXCERPT)



Firs

PROJECT NOTES

- PROPERTY LINES SHOWN HEREON ARE BASED UPON TIES TO RECORD MONUMENTS AS SHOWN ON THE PARCEL MAP FOR ALAN MURRAY BY MICHAEL YOUNG AND ASSOCIATES AS RECORDED IN BOOK 8, PAGE 32 OF PARCEL MAPS, DEL NORTE COUNTY RECORDS.
- DATUM FOR CONTOURS, SITE BENCHMARK, AND FINISH FLOOR ELEVATIONS IS NAVD88 BASED ON TRIGONOMETRIC LEVEL TIES TO NGS BENCHMARK "A 1399," DRIVEN STEEL ROD IN WELL AT ELEVATION 63.30' PER NGS DATA SHEET.
- "APPROXIMATE ORDINARY HIGH WATER LINE" AS SHOWN HEREON IS FROM THE PARCEL MAP AS NOTED ABOVE. THIS OFFICE DID NOT DETERMINE THE MEAN HIGH TIDE LINE.
- UNDERGROUND UTILITIES ARE NOT SHOWN. CONTACT U.S.A. PRIOR TO ANY EXCAVATION ON SITE. IN ADDITION, PRIVATE UTILITIES MAY EXIST ON SITE.
- A LARGE BOULDER IS EMBEDDED IN THE TOP OF BLUFF LINE IN THIS AREA AND OVERHANGS THE TOE OF THE BLUFF. UNDERNEATH THIS BOULDER SANDBAGS HAVE BEEN CEMENTED INTO PLACE IN TWO SMALL AREAS.
- LEACHFIELD AREAS AS SHOWN HEREON ARE APPROXIMATE AND ARE BASED ON A SITE PLAN BY MICHAEL YOUNG & ASSOCIATES, NO DATE OR TITLE ON PORTION PROVIDED TO THIS OFFICE.
- THE FILL SHALL BE REMOVED THROUGH THE USE OF MANUAL LABOR USING PLASTIC BUCKETS 5± GALLONS IN SIZE. THE MATERIALS ARE EITHER TO BE HAND-CARRIED FROM THE FILL LOCATION TO THE TERRACE ABOVE USING LADDERS UP THE BLUFF FACE, OR HAND-DELIVERED TO A CONVEYOR SYSTEM PLACED BETWEEN THE FILL AND THE TOP OF THE TERRACE.
- FROM THE TERRACE THE MATERIALS ARE TO BE TRANSPORTED TO THE OWNER'S PROPERTY LOCATED IN THE STATE OF OREGON.

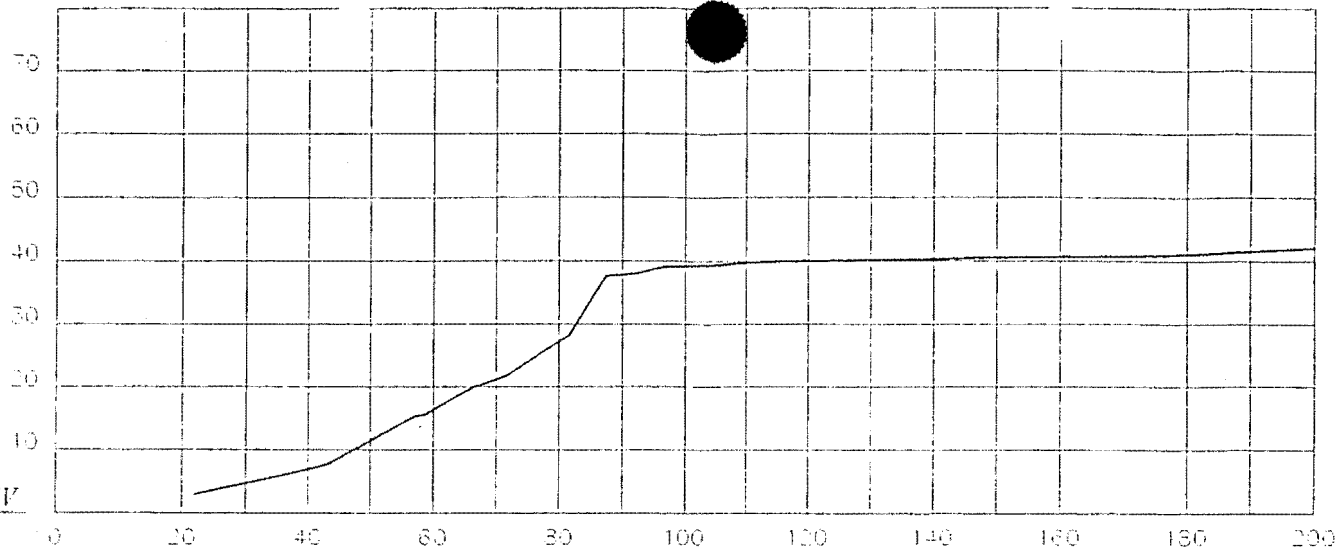


<p>ADD'D NOTES & R. 8. 2/24/00 MODIFICATIONS PER COUNTY COMMENTS 3.3/00</p> <p>REV 1 REV 2</p>	<p>OSCAR LARSON & ASSOCIATES CONSULTING ENGINEERS & LAND SURVEYORS 317 West Street #200, San Jose, CA 95128 (415) 435-1100</p>	<p>DATE: _____ PRINT DATE: _____</p>
<p>SITE/GRADING PLAN</p> <p>MURRAY APN 101-720-01 DEL NORTE COUNTY, CA</p>		<p>Scale: 1" = 40'</p> <p>Drawn by: 6566.1/TOPO</p> <p>1 of 2</p>

DATUM ELEV

0

GROUP BLUFF
SECTION XS1



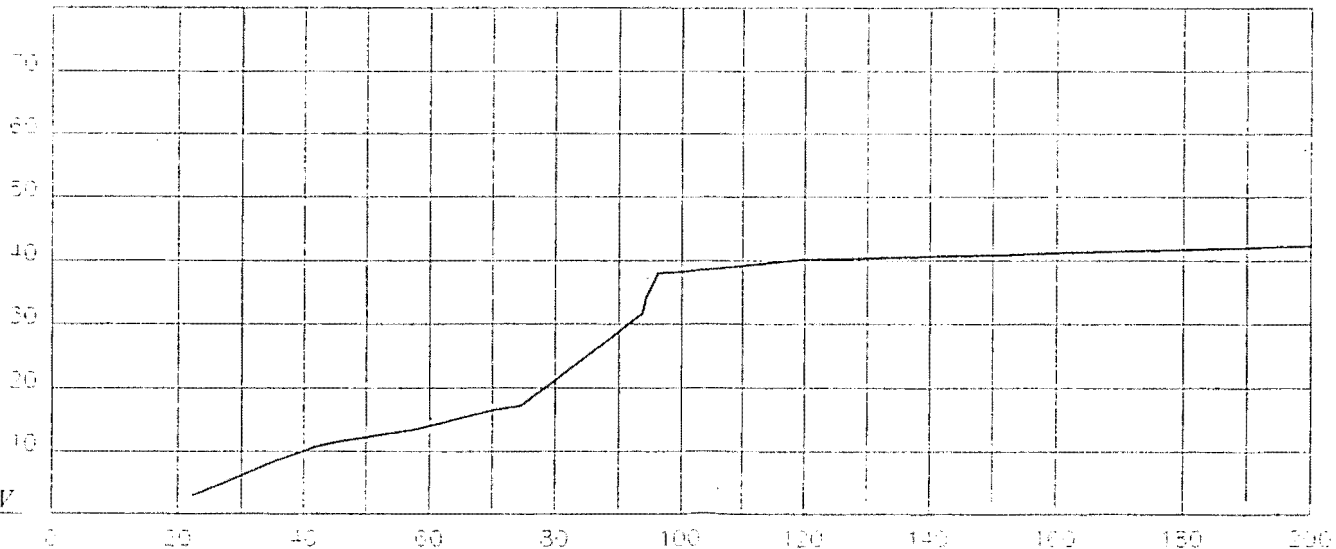
SECTION THRU FILLED BLUFF--XS1

HORIZONTAL & VERTICAL SCALES: 1" = 20'

DATUM ELEV

0

GROUP BLUFF
SECTION XS2



SECTION THRU NATURAL BLUFF--XS2

HORIZONTAL & VERTICAL SCALES: 1" = 20'

Oscar Larson & Associates
Civil Engineers & Surveyors
217 West Street, P.O. Box 3808, Los Angeles, CA 90010
PH: (213) 481-1111

SECTIONS

MURP
APN 101-
DEL NORTE COUNTY, CA

6656TOPO
2 OF 2

ATTACHMENT 3

METHOD OF REMOVAL

Existing Conditions

The site plan provides the location and extent of the fill as of 26 January 2000. Within the geologic report, cross sections (not surveyed) of the fill are provided as of the date of the report.

Differences between the two may be attributed to erosion of the fill owing to wave action.

The fill is composed of 4-inch to 6-inch crushed aggregate containing smaller crushed materials. The invoices from Freeman Rock indicate that approximately 240 tons of rock were placed during January 1999.

Method

It is proposed that the rock be removed through the use of manual labor using plastic buckets ± 5 gallons in size.

The materials are either to be:

- hand-carried from the fill location to the terrace above using ladders up the bluff face, or
- hand-delivered to a conveyor system placed between the fill and the top of the terrace,
- from the terrace the materials are to be transported to the disposal site to:
 - ▶ either the source quarry located between 1 to 2 miles to the south of the project site, or
 - ▶ a property owned by Mr. Murray located 7 to 8 miles north of the project site in Oregon

Alternatives Considered

1. The use of a backhoe and dump trucks was considered. This would require the use of the nearest equipment access point located at the State Park approximately 1/4 mile north of the project site. This option was seen to be not feasible due to the limitations in access to the fill by equipment owing to the boulders surrounding the fill site. In addition, the heavy equipment could damage the access road, with appropriate mitigation (and cost) required.
2. The use of a crane was considered. This option would require the placement of equipment close enough to the edge of the bluff to be effective, while not too close to the edge where bluff damage (or failure) could result. In addition, one or more of the recreational vehicles would require temporary relocation. This is not acceptable to the owner due to the potential loss of income.

Timing

The activities associated with the removal will have to take into account the effects (especially loss of access) of high tide waters upon the fill site.

For the requested removal method, it has been estimated that a crew of 5 to 8 people could take approximately 80 hours to remove and place the fill as noted.

For the alternative method involving a crane, the time period estimated is 40 hours (controlled mostly by manually placing the fill into the crane's bucket to avoid damage to the boulders or bluff face).

No estimate is provided for the use of a backhoe and dump truck due to the inaccessibility of the fill by the equipment.

Other Considerations

In carrying out the proposed removal by hand and mechanical means, it is expected that the bluff face may be damaged by removal activities. This potential damage is seen as not substantially nor environmentally significant.

A minor loss of existing vegetation (previously planted grasses) is expected. The placement should have no significant long-term adverse effects on coastal views as proposed.



California Regional Water Quality Control Board

North Coast Region

William A. Hoy, Chairman



Gray Davis
Governor

Winston H. Hickox
Secretary for
Environmental
Protection

Internet Address: <http://www.swrcb.ca.gov/~rwqcb1/>
5550 Skylane Boulevard, Suite A, Santa Rosa, California 95403
Phone (707) 576-2220 FAX (707) 523-0135

April 27, 2000

RECEIVED
MAY 01 2000

CALIFORNIA
COASTAL COMMISSION



Mr. Martin G. McClelland
Oscar Larson and Associates
P.O. Box 3806
Eureka, CA 95502

Dear Mr. McClelland:

Subject: Request for Certification, Allan Murray, White Rock Resort Cabins

We have reviewed your request for Water Quality Certification for the removal of fill as required by a corrective action of the California Coastal Commission.

The project as described will remove approximately 240 tons of rock by using manual labor and possibly a conveyor. Judging from the description of the work it is unlikely that any water quality impacts will be associated with the project. It is Regional Water Board staff's recommendation that a conditional waiver be granted following a 15 day public notice period on our web page. You may view the notice on <http://www.swrcb.ca.gov/rwqcb1>.

Please call me at (707) 576-2683 if you have any questions.

Sincerely,

William T. Rodriguez
Sanitary Engineering Associate

WTR:ejl/wtrmurraylet

cc: Corps of Engineers, Eureka

cc to
Alan Murray
Fred Gaines
Jim Baskin
orig. to File 6566.1

California Environmental Protection Agency

Recycled Paper



EXHIBIT NO. 5
APPLICATION NO. 1-00-018
AGENCY REVIEW
CORRESPONDENCE
(1 of 3)

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) 574-1856
Contact FAX: (916) 574-1835

August 26, 1999

File Ref: SD 1999-06-14.2

Oscar Larson and Associates
 Attention: Mr. Martin G. McClelland
 317 Third Street
 P.O. Box 3806
 Eureka, CA 95502

Dear Mr. McClelland:

SUBJECT: Grading Permit Application at White Rock Resort Adjacent to 16800 Highway 101 North, Smith River, Del Norte County Assessor's Parcel No. APN 101-720-01

This office has received a copy of the Del Norte County Grading Permit application and additional information relative to the above referenced project which includes the retention of approximately 300 cubic yards of quarry rock and the proposed placement of an additional 500 cubic yards of stone riprap at the base of the bluff adjacent to the White Rock Resort.

For your information and as general background, 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 the people of the State for statewide public trust purposes which include waterborne commerce, navigation, fisheries, water-related recreation, habitat preservation, and open space. The landward boundaries of the State's ownership interest are often based upon the ordinary high water marks of these waterways as they last naturally existed.

Due to staff and funding limitations, this office has not initiated a study of this area to define the precise nature and extent of the State's interest, if any. We do not believe that we will be able to conduct such a study within the foreseeable future. In light of the foregoing circumstances, we will not require a lease at this time. However, we reserve the right to require a lease at any time in the future if it is determined that the project, or some portion thereof, occupies State property.

This letter is not intended, nor shall 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.

If you have any questions, please contact me at (916) 574-1856.

Sincerely,

A handwritten signature in cursive script, appearing to read "Judy Ludlow".

JUDY LUDLOW

Public Land Management Specialist