

CALIFORNIA COASTAL COMMISSION

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Date Filed: May 15, 2003
49th Day: July 3, 2003
180th Day: November 11, 2003
Staff: Tiffany S. Tauber
Staff Report: June 20, 2003
Hearing Date: July 10, 2003
Commission Action:

STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: **1-03-022**

APPLICANT: **Rodney DuFour**

PROJECT LOCATION: 123 Crab Street, King Salmon area south of Eureka, Humboldt County (APN 305-231-08)

PROJECT DESCRIPTION: Construction of a two-story, 875-square-foot single-family residence and paved driveway, and removal of an existing 96-square-foot shed. The project also seeks after-the-fact authorization for a 153-square-foot deck and a canvas-covered parking structure.

GENERAL PLAN DESIGNATION: Residential Single Family with Flood combining zone (RS-5/F)

ZONING DESIGNATION: Residential/ Low Density (RL), 3-7 units per acre

LOCAL APPROVALS RECEIVED: None Required
OTHER APPROVALS: None Required
SUBSTANTIVE FILE DOCUMENTS: Humboldt County Local Coastal Program

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends approval with special conditions of the proposed construction of a two-story, 875-square-foot single-family residence (572-square-foot footprint), a paved driveway to serve the residence, and removal of a 96-square-foot portion of an existing storage shed. The staff also recommends approval of after-the-fact authorization for a 153-square-foot deck and a canvas-covered parking structure.

The project site is located in a densely developed, unincorporated residential area south of the City of Eureka adjacent to Humboldt Bay known as King Salmon. The rear of the site is located adjacent to an arm of Fisherman's Channel, a tidal channel that flows to Humboldt Bay.

The primary issue raised by the proposed development of the subject property is the potential for flooding. The project site is designated in the County's LCP as being within a flood hazard combining zone. To ensure that the proposed residence is designed to minimize risks to life and property from flood hazards and ensure consistency with Section 30253 of the Coastal Act, staff recommends Special Condition No. 1 that requires the applicant to provide evidence of a Flood Elevation Certificate approved by the Humboldt County Building Department as being adequate to demonstrate that the finished foundation would be at least one foot above the Base Flood Elevation. Special Condition No. 2 requires the applicant to acknowledge and assume the risks of flooding to the applicant and the property that is the subject of this permit. Special Condition No. 4 also requires recordation of a deed restriction to ensure that all future owners of the property are aware of the flood hazard present at the site and the property owner's acknowledgement and assumption of the risk condition discussed above.

The proposed project would also result in an increase in impervious surface area at the site and would therefore increase the amount of potential surface runoff leaving the site. To minimize the volume and velocity of surface runoff leaving the site and ensure consistency with Sections 30230 and 30231 of the Coastal Act, staff recommends Special Condition No. 3 which requires the applicant to direct roof gutter downspouts to landscaped areas as proposed to maximize stormwater infiltration.

As conditioned, staff believes that the project is fully consistent with the Chapter 3 policies of the Coastal Act.

STAFF NOTE:

1. **Standard of Review**

The proposed development is located in an area shown on State Lands Commission maps as being subject to the public trust. Therefore, the proposed development is within the Commission's retained coastal development permit jurisdiction and the standard of review for the permit application is the Coastal Act.

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. 1-03-022 pursuant to the staff recommendation.

Staff Recommendation of Approval:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution to Approve the 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 Attachment A.

III. SPECIAL CONDITIONS:

1. Flood Elevation Certificate

The finished foundation shall be constructed at least one foot above the Base Flood Elevation. **PRIOR TO COMMENCEMENT OF CONSTRUCTION**, the applicant shall provide to the Executive Director a copy of a Flood Elevation Certificate, prepared by a qualified, registered land surveyor, engineer, or architect, and approved by the Humboldt County Building Department demonstrating that the finished foundation of the residence would be at least one foot above the Base Flood Elevation. The applicant shall inform the Executive Director of any changes to the project required by the Humboldt County Building Department. 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 legally required.

2. Assumption of Risk

By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from flooding; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

3. Site Drainage

All roof gutter downspouts shall be directed to landscaped areas as proposed and shown on Exhibit No. 2 so as to maximize stormwater infiltration.

4. Deed Restriction

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions

of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

5. Condition Compliance

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 satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to issuance of this permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

1. Site Description & Project Description

The applicant proposes to construct a two-story, 875-square-foot single-family residence (572-square-foot footprint) and a paved driveway to serve the residence. The applicant also seeks after the fact permit authorization for a parking structure and deck.

Additionally, the applicant proposes to remove an existing 96-square-foot shed. The subject property is located at 123 Crab Street in the unincorporated community of King Salmon, along the Humboldt Bay shoreline approximately two miles south of Eureka in Humboldt County (Exhibits No. 1 & 2).

The King Salmon subdivision consists of former tidelands that were filled during the mid-1900's and later subdivided. Most of the surrounding lots in the residentially zoned neighborhood have been developed with single-family residences displaying a variety of architectural styles. The rear of the flat, rectangular property backs up to an arm of Fisherman's Channel, a man-made tidal channel that connects to Humboldt Bay. No views to the bay are affected through the property.

The subject parcel is currently developed with an existing 153-square-foot deck, a ramp and floating dock over the channel, a 231-square-foot, canvas-covered parking structure, a 64-square-foot shed, and a 96-square-foot shed addition. According to historic photos, the ramp, floating dock, and shed were constructed sometime before 1970, prior to

coastal development permit requirements. The deck, parking structure, and shed addition were constructed without benefit of a coastal development permit after the Coastal Act came into effect and therefore, constitute unpermitted development. This coastal development permit application seeks authorization to retain the parking structure and deck and seeks authorization to remove the shed addition. The upland area of the property is covered by grass lawn and contains no environmentally sensitive habitat. The parcel is served by community sewer and water. The proposed project does not involve any grading, as the parcel is relatively flat.

2. Locating and Planning New Development

Section 30250(a) of the Coastal Act states that new development shall be located within or near existing developed areas able to accommodate it or in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. The intent of this policy is to channel development toward more urbanized areas where services are provided and potential impacts to resources are minimized.

The subject property is within a developed residential neighborhood zoned residential single-family with 5,000-square-foot minimum parcel sizes, where 3-7 residential units per acre is a principally permitted use.

The subject parcel is located in a developed subdivision with community water and sewer systems that would serve the proposed residence and thus, the area has adequate services to accommodate the proposed development.

The subject parcel is located in a designated flood combining zone indicating potential flood hazard. As discussed in Finding No. 3 below, the proposed development has been conditioned to minimize flood hazards. Additionally, as discussed in Finding No. 4 below, the project has been conditioned to minimize adverse impacts to coastal water quality.

Therefore, the Commission finds that as conditioned, the proposed development is consistent with Coastal Act Section 30250(a) in that it is located in a developed area, it has adequate water and sewer capability to accommodate it, and it will not cause significant adverse effects, either individually or cumulatively, to coastal resources.

3. Flood Hazard

Section 30253 states in applicable part:

New development shall:

(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

Coastal Act Section 30253 requires in applicable part that new development minimize risks to life and property in areas of high geologic, flood, and fire hazard and neither create nor contribute significantly to erosion or geologic instability.

The primary natural hazard affecting development of the subject property is flooding. The project site is designated in the County's LCP as being within a flood combining zone. All portions of the flat site will be subject to flooding from extreme high tides. Consequently, the primary way to minimize flooding risks is to raise the structure above flood elevations. According to the County Building Department, the 100-year Base Flood Elevation (BFE) in the King Salmon area is estimated to be 6 feet NGVD. Humboldt County building permit regulations require new residences to have a finished floor elevation at least one-foot above Base Flood Elevation. The County requires the applicant to provide a Flood Elevation Certificate prepared by a registered land surveyor, engineer, or architect in accordance with Federal Emergency Management Agency (FEMA) guidelines demonstrating that the finished foundation would be constructed at least one foot above the Base Flood Elevation prior to issuance of the County building permit.

To ensure that the proposed residence is designed to minimize risks to life and property from flood hazards as required by Coastal Act Section 30253, the Commission attaches Special Condition No. 1 that requires the applicant to provide evidence of a Flood Elevation Certificate approved by the Humboldt County Building Department as being adequate to demonstrate that the finished foundation would be at least one foot above the Base Flood Elevation.

Additionally, the Commission attaches Special Condition No. 2 which requires the landowner to assume the risks of flooding hazards to the property and waive any claim of liability on the part of the Commission. Given that the applicants have chosen to implement the project despite flooding risks, the applicant must assume the risks. In this way, the applicant is notified that the Commission is not liable for damage as a result of approving the permit for development. The condition also requires the applicant to indemnify the Commission in the event that third parties bring an action against the Commission as a result of the failure of the development to withstand hazards.

Furthermore, to ensure that all future owners of the property are aware of the flood hazard present at the site, the Commission's immunity from liability, and the indemnity afforded the Commission, Special Condition No. 4 requires recordation of a deed restriction that imposes the special conditions of the permit as covenants, conditions, and restrictions on the use of the property.

Therefore, as conditioned, the project would minimize risks to life and property from flood hazards and is consistent with Section 30253 of the Coastal Act.

4. Water Quality

Sections 30231 and 30230 of the Coastal Act address the protection of coastal water quality and marine resources in conjunction with development and other land use activities. Section 30231 states:

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

Section 30230 of the Coastal Act states:

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

Sections 30230 and 30231 of the Coastal Act require that the biological productivity and the quality of coastal waters be maintained and, where feasible, restored through among other means, minimizing adverse effects of wastewater discharge and entrainment, and controlling runoff.

The rear of the subject parcels backs up to an arm of Fisherman's Channel, a tidal channel that connects to Humboldt Bay. The subject site is flat and is vegetated with grass. The majority of stormwater at the site currently infiltrates prior to leaving the site as surface runoff. The proposed residence and paved driveway would result in approximately 800-square-feet of impervious surface area at the site. The increase in impervious surface area would decrease the infiltrative function and capacity of the existing permeable land on site. The reduction in permeable surface area therefore leads to an increase in the volume and velocity of stormwater runoff that can be expected to leave the site. Stormwater runoff from residential areas can convey pollutants to receiving waters potentially resulting in adverse impacts to the biological productivity and the quality of coastal waters.

The applicant proposes to direct all roof gutters to landscaped areas totaling approximately 500-square-feet in size. Both the landscaped areas and the driveway would slope toward the street (2% grade) and away from the channel. Therefore, as runoff from impervious surfaces would be directed to landscaped areas to provide infiltration and would not be directed toward the channel that connects to Humboldt Bay, the project as proposed would not result in adverse impacts to the quality and biological productivity of coastal waters and would minimize the volume of stormwater entering the bay.

To ensure the protection of the quality and biological productivity of the coastal waters by minimizing the volume of stormwater runoff that could potentially drain to the tidal channel that flows to Humboldt Bay, the Commission attaches Special Condition No. 3. The condition requires the applicant to direct gutter downspouts to pervious areas on the site (landscaped areas) as proposed and shown on Exhibit No. 2.

Section 30412 prevents the Commission from modifying, adopting conditions, or taking any action in conflict with any determination by the State Water Resources Control Board or any California regional water quality control board in matters relating to water quality. There are no existing National Pollutant Discharge Elimination System (NPDES) permits that apply to the site and the proposed project does not require any permits from the Regional Water Quality Control Board. Therefore, conditions and/or BMPs required by the Commission to minimize adverse impacts to water quality from the proposed development would not conflict with actions of the RWQCB consistent with the requirements of Coastal Act Section 30412.

Therefore, as conditioned, the Commission finds that the proposed project is consistent with Sections 30230, 30231, and 30412 of the Coastal Act.

5. Visual Resources

Section 30251 of the Coastal Act states that the scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance, and requires in applicable part that permitted development be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, and to be visually compatible with the character of surrounding areas.

The proposed single-family residence is located in a densely developed residential area. The residence would be visible from public streets within the subdivision and boat access channels within the subdivision. However, the residence would not be visible from any designated scenic public road or public park, or the open waters of Humboldt Bay. The development would thus not block any public views of the ocean, Humboldt Bay, or other coastal areas. The project would not result in the alteration of natural landforms, as the site is relatively flat and does not require grading. The character of the King Salmon

area is largely defined by a diversity of architectural styles and sizes of residences ranging from small, manufactured homes to larger two-story homes. The proposed two-story residence would be of similar size, scale, and architectural style to other development in the neighborhood. Thus, the project would also be visually compatible with the residential character of the surrounding area.

Therefore, the project would be consistent with Section 30251, as the project would not adversely affect views to or along the coast, result in major landform alteration, or be incompatible with the character of the surrounding area.

6. Public Access

Section 30210 of the Coastal Act requires that maximum public access shall be provided consistent with public safety needs and the need to protect natural resource areas from overuse. Section 30212 of the Coastal Act requires that access from the nearest public roadway to the shoreline be provided in new development projects except where it is inconsistent with public safety, military security, or protection of fragile coastal resources, or adequate access exists nearby. Section 30211 requires that development not interfere with the public's right to access gained by use or legislative authorization. Section 30214 of the Coastal Act provides that the public access policies of the Coastal Act shall be implemented in a manner that takes into account the capacity of the site and the fragility of natural resources in the area. In applying Sections 30210, 30211, 30212, and 30214, the Commission is also 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 access.

The proposed project would not adversely affect public access. The project site does not front directly on Humboldt Bay, as it is separated from the Bay tidelands by other parts of the King Salmon subdivision. The entire bayfront of the subdivision, along the west side of Buhne Drive, is open and available for public access use. Although the rear of the property lies adjacent to an arm of the Fisherman's Channel, a tidal channel that connects to Humboldt Bay, no evidence has been presented to suggest that an implied dedication of a public access easement to or along the 50-foot-wide channel shoreline of the property has occurred. Therefore, the proposed project would not adversely affect any existing rights of access that may have been acquired through use, as no existing public access would be blocked by the proposed development.

Therefore, the Commission finds that the proposed project does not have any significant adverse effect on public access, and that the project as proposed without new public access is consistent with the requirements of Coastal Act Sections 30210, 30211, 30212, and 30214.

7. Alleged Violation

As noted above, construction of a 153-square-foot deck, a portion of a shed, and a canvas-covered parking structure occurred at the site in an area within the Commission's jurisdiction without the benefit of a coastal development permit. This coastal development permit application seeks authorization to retain the parking structure and the deck and seeks authorization to remove the shed addition. The Commission has attached several conditions to mitigate the impacts of the development.

Consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Review of this permit does not constitute a waiver of any legal action with regard to the cited alleged violation nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit.

8. California Environmental Quality Act (CEQA)

Section 13096 of the Commission's administrative regulations requires 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 requirement 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 feasible alternatives or feasible mitigation measures available, which would substantially lessen any significant adverse effect the proposed development may have on the environment.

The Commission incorporates its findings on Coastal Act consistency at this point as if set forth in full. As discussed above, the proposed project has been conditioned to be found consistent with the policies of the Coastal Act. These findings address and respond to all public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the staff report. Mitigation measures that will minimize or avoid all significant adverse environmental impact have been required. 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.

Rodney DuFour

1-03-022

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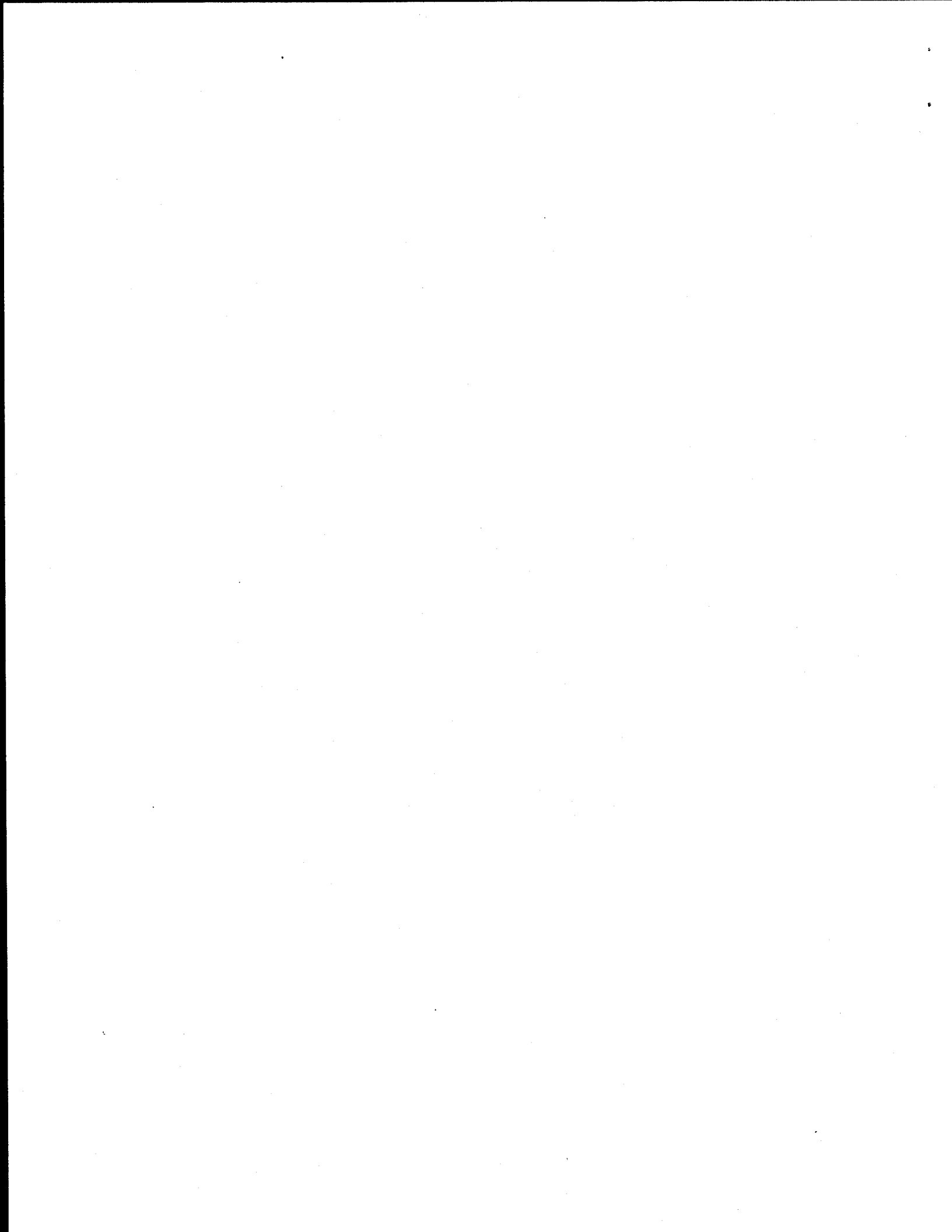
EXHIBITS:

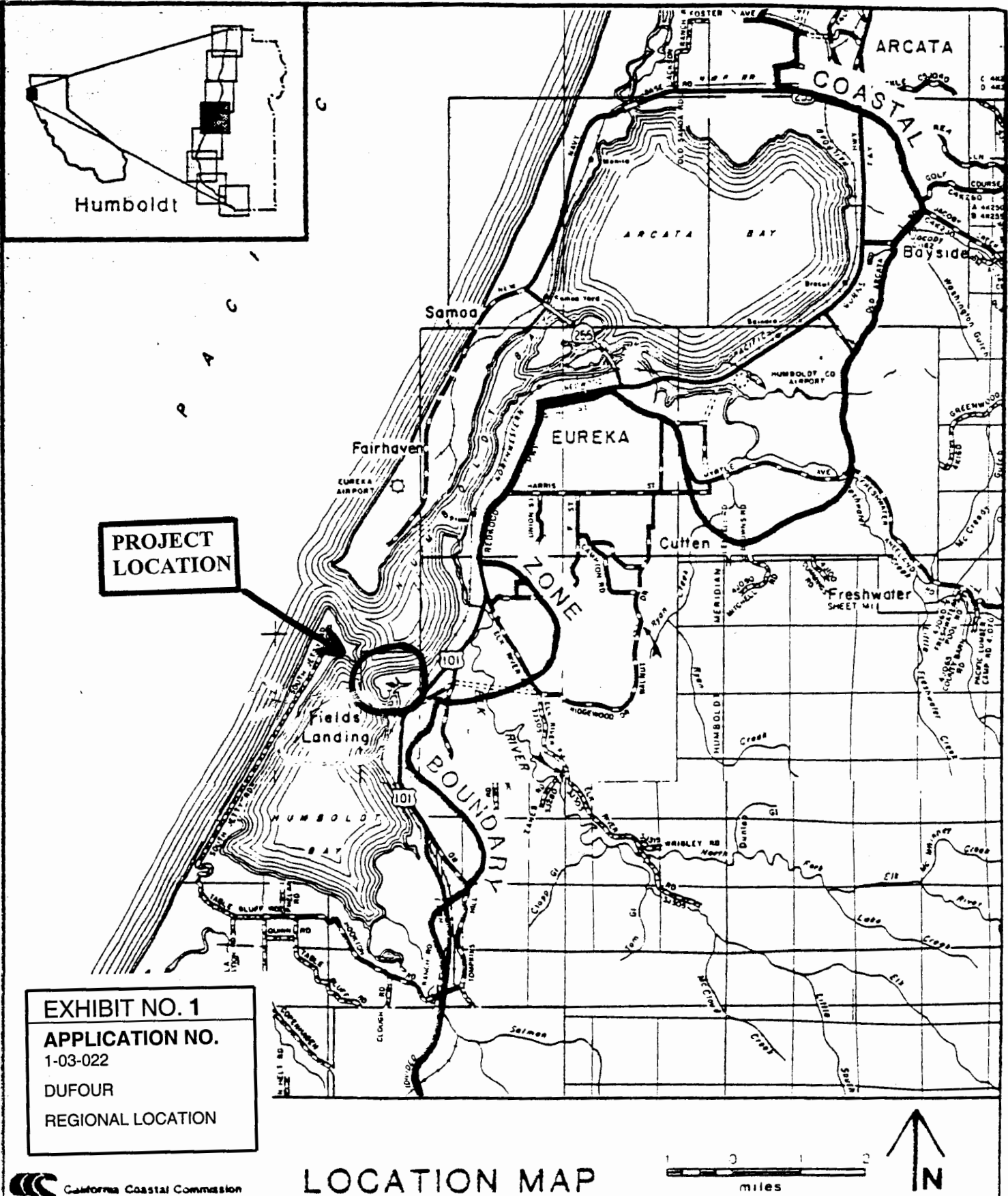
1. Regional Location
2. Vicinity Map
3. Site Plan
4. Site Plan Cross-Section

ATTACHMENT A

Standard Conditions:

1. Notice of Receipt and Acknowledgment. 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 period 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 or 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.

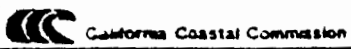




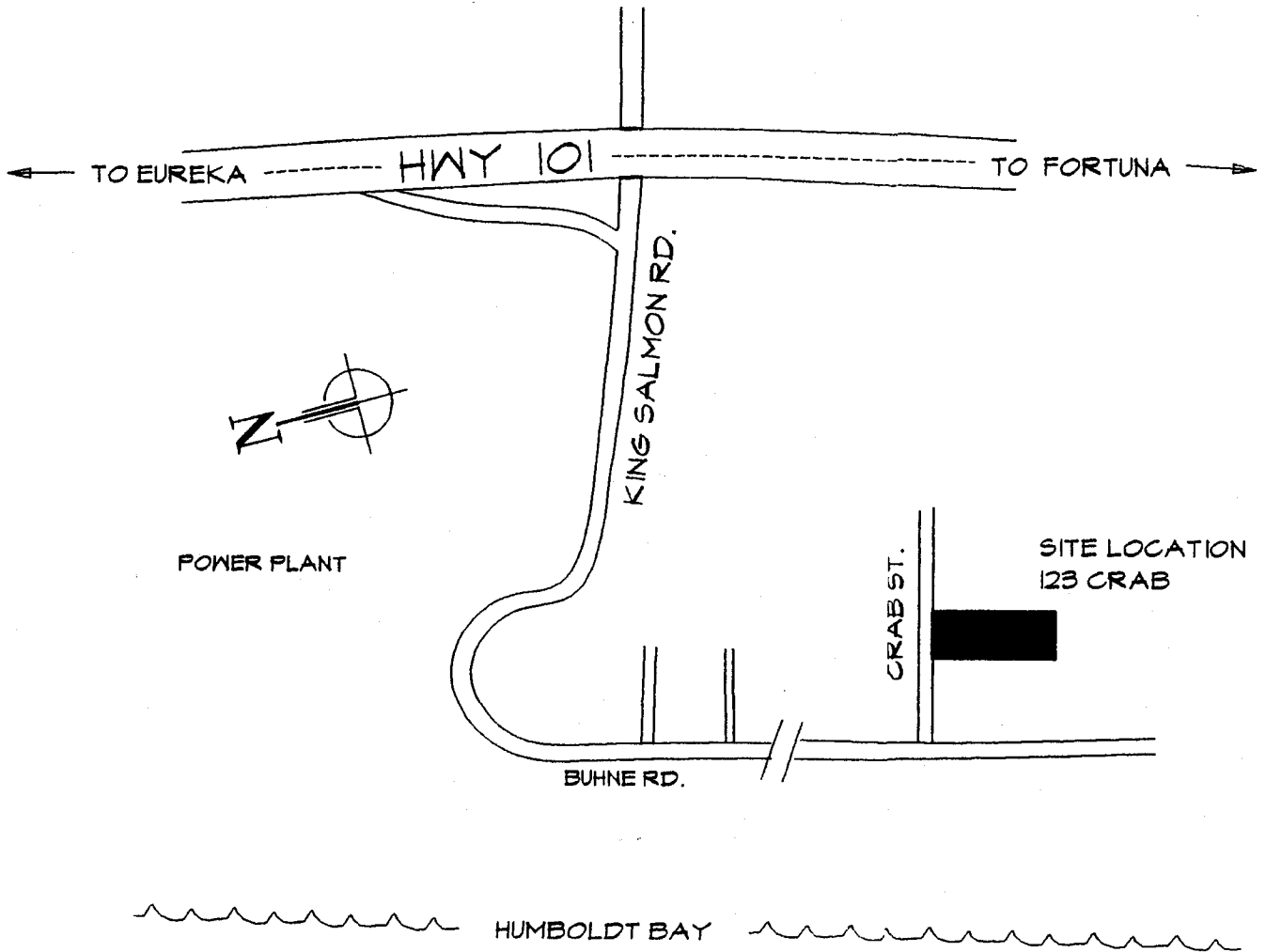
**PROJECT
LOCATION**

EXHIBIT NO. 1
APPLICATION NO.
 1-03-022
 DUFOUR
 REGIONAL LOCATION

LOCATION MAP



VICINITY MAP



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|------------------------------------|
| EXHIBIT NO. 2 |
| APPLICATION NO. 1-03-022 |
| DUFOUR |
| VICINITY MAP |

DATA

OWNERS:

ROD DUFOUR
685 SPRING ST. # 131
FRIDAY HARBOR, WA 98250

PROJECT LOCATION:

123 CRAB STREET
KING SALMON, CA

PARCEL:

A.P.# 305-231-008

ACRERAGE:

.12 ACRES N

UTILITIES:

- SEWER - (E) CITY SEWER
- WATER - CITY WATER
- ELECTRICITY - PG&E
- TELEPHONE - PAC. BELL
- GAS - NATURAL GAS

NOTES:

- 1....NO CREEKS, RIVERS, PONDS, BEACHES OR SAND DUNES LOCATED ON PROPERTY.
- 2....CANAL / ESTUARY LOCATED AT SOUTH SIDE OF PROPERTY.
- 3....NO VEGETATION OR TREES TO BE REMOVED.
- 4....NO KNOWN ARCHAEOLOGICAL RESOURCES ON PROPERTY.
- 5....NO NEW FILL ON PROPERTY
- 6....NO KNOWN EASEMENTS.

VICINITY MAP

N.T.S.

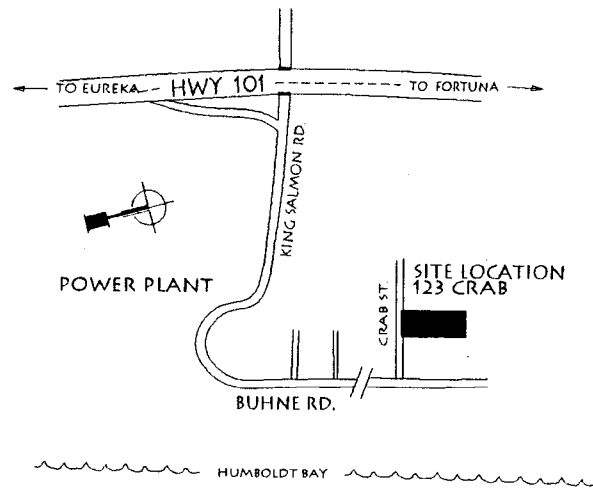


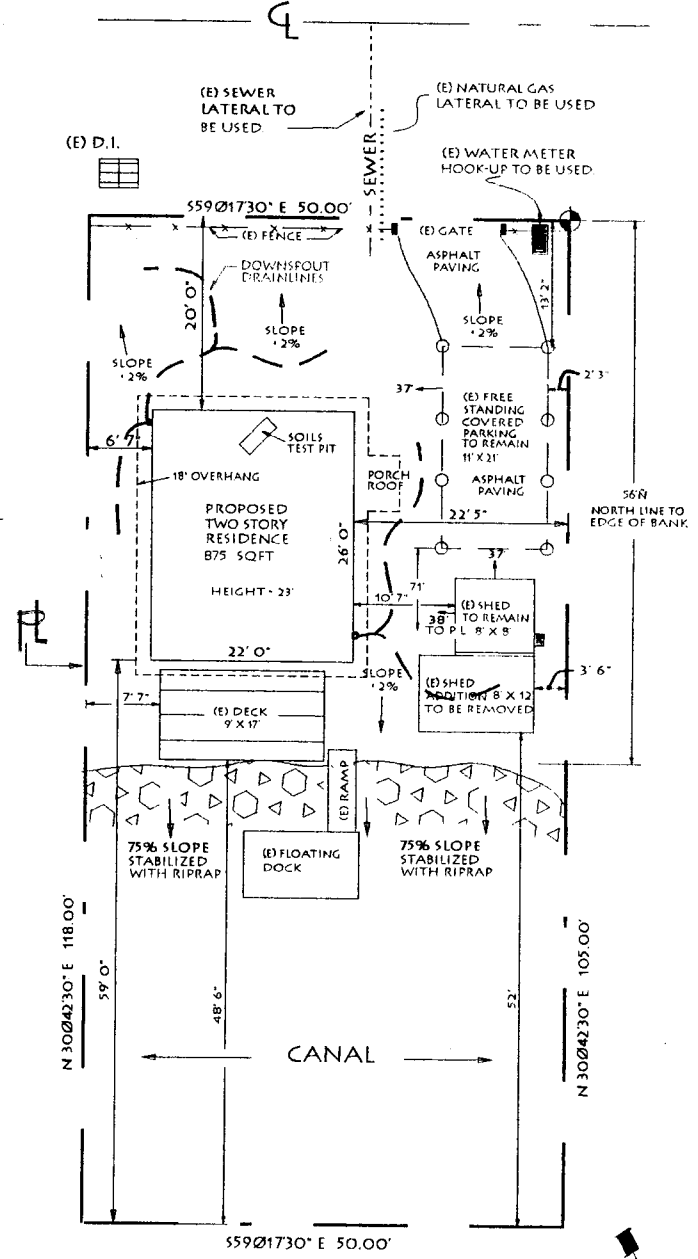
EXHIBIT NO. 3
APPLICATION NO.
 1-03-022
 DUFOUR
 SITE PLAN

PROJECT DESCRIPTION

REMOVE (E) ADDITION TO (E) SHED AND REPLACE WITH VEGETABLE GARDEN AREA. CONSTRUCT A NEW TWO STORY, 875 SQUARE FOOT RESIDENCE WITH A FOOTPRINT OF 572 SQUARE FEET. CREATE A DRIVEWAY APRON OF ASPHALT PAVING TO 25 FEET FROM ROAD AS SHOWN. USE (E) WATER, SEWER, GAS AND POWER. RUN GUTTERS FROM ROOF TO LANDSCAPING AND NOT DIRECTLY INTO CANAL.

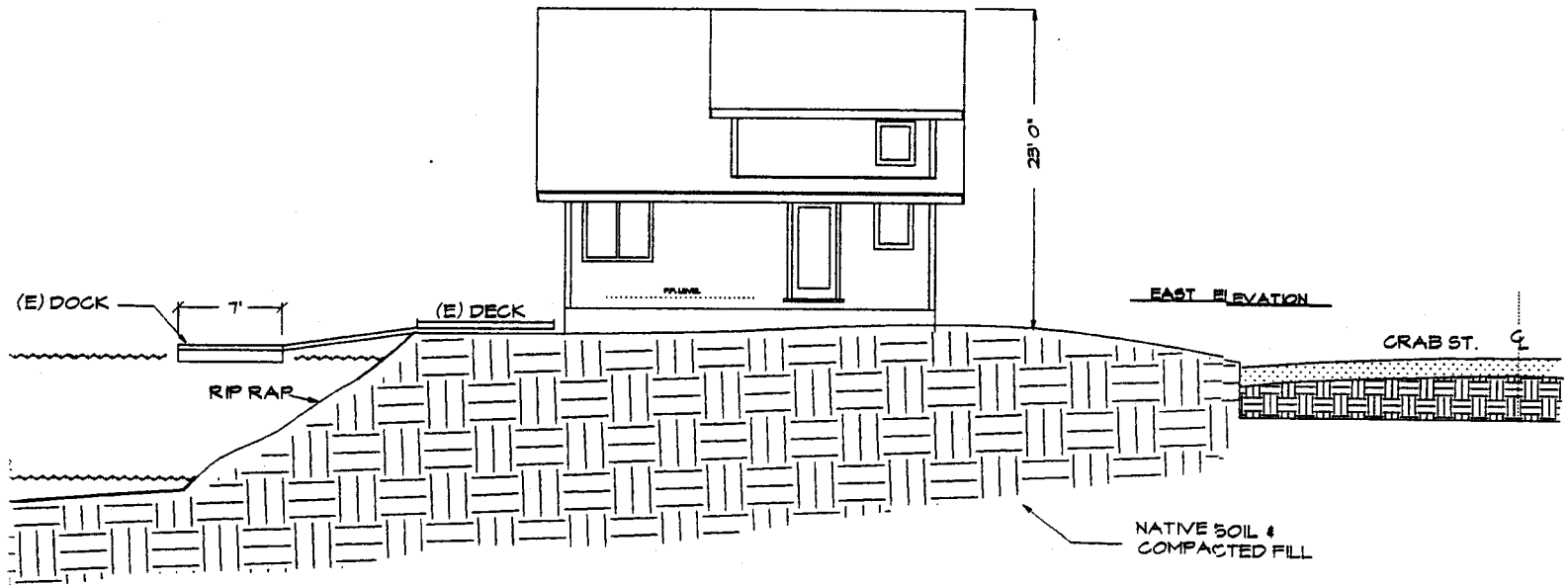
CRAB STREET

40' WIDE



PLOT PLAN

SCALE: 1" = 20'-0"



**CROSS SECTION THROUGH PROPOSED
DWELLING FACING WEST**

SCALE: 1" = 10'-0"

| |
|------------------------------------|
| EXHIBIT NO. 4 |
| APPLICATION NO. 1-03-022 |
| DUFOUR ELEVATION |