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Staff: Robert S. Merrill
Staff Report: August 22, 2003
Continued Hearing Date: September 12, 2003
Commission Action:

REVISED STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: **1-02-165**

APPLICANT: Phil Ayers – E.G. Ayers Distributing, Inc.

AGENT: Omsberg & Company

PROJECT LOCATION: 5819 South Broadway, in the Spruce Point area south of Eureka, Humboldt County (APN 305-101-28)

PROJECT DESCRIPTION: Demolition of an existing 3,486-square-foot detached accessory building and construction of a 3,600-square-foot accessory building to be attached to an existing warehouse structure and associated landscaping.

GENERAL PLAN DESIGNATION: Commercial General (CG)

ZONING DESIGNATION: Commercial General with Coastal Resources Dependent, Flood Hazards and Wetlands Combining Zones (CG/C,F,W)

LOCAL APPROVALS RECEIVED: Humboldt County Conditional Use Permit
Modification (CUP-22-97M)

OTHER APPROVALS REQUIRED: None

SUBSTANTIVE FILE DOCUMENTS: (1) Humboldt County Local Coastal Program;
(2) CDP File No. 1-92-180

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends approval with conditions of the coastal development permit application submitted by Phil Ayers of E.G. Ayers Distributing, Inc. for the proposed remodeling of an existing warehouse and food products distribution center including: (1) the demolition of a 3,486-square-foot detached accessory building, (2) construction of a 3,600-square-foot accessory building to be attached to the existing warehouse structure, and (3) associated landscaping at 5819 South Broadway, in the Spruce Point area south of Eureka, Humboldt County. The staff recommended special conditions would ensure the protection of environmentally sensitive habitat and that the development is safe from flood hazards.

The project site is located adjacent to an undeveloped parcel that contains riparian willow and alder vegetation and freshwater marsh habitat. Existing development (i.e. pavement) on the site comes to within approximately 15 feet of the ESHA on the adjoining property. The proposed development would encroach no further upon the ESHA, and the changes to the development on the site resulting from the proposed project would reduce the impacts on the ESHA. The proposed warehouse structure would be set back approximately 9 feet further away from the willow and alder vegetation that borders the freshwater marsh located on the adjacent parcel than the existing warehouse structure proposed to be removed.

To ensure the protection of wetland habitat values, staff recommends Special Condition Nos. 1, 2, 3, and 6. Special Condition No. 1 requires a coastal development permit or a permit amendment for all future improvements to the new accessory structure that might otherwise be exempt from coastal permit requirements pursuant to Section 30610(b) of the Coastal Act. This condition will allow all future expansions and other improvements to the new accessory structure to be reviewed by the Commission to ensure that such future improvements will not be sited or designed in a manner that would result in adverse impacts to environmentally sensitive habitat. This condition will have no effect on other types of development that are considered exempt under 30610 of the Coastal Act; aside from improvements or additions to the approved accessory structure that would have otherwise been exempt from coastal development permit requirements

pursuant to Section 30610(b) of the Coastal Act, under Special Condition No. 1, the exemptions from the need to obtain coastal development permits contained in Section 30610 of the Coastal Act would still apply, including, but not limited to, the exemptions provided by: (1) Section 30610(d) of the Coastal Act for repair or maintenance activities that do not result in an addition or enlargement or expansion of the approved structure except for those extraordinary methods of repair and maintenance involving a risk of substantial adverse environmental impact as defined in Section 13252(a) and (b) of the Commission's regulations; (2) Section 30610(f) of the Coastal Act for the installation, testing, and placement in service or the replacement of any necessary utility connection between an existing service facility and the approved development; and (3) Section 30610(g) of the Coastal Act for the replacement of any structure destroyed by a disaster that meets certain criteria specified in Section 30610(g).

The applicant is proposing to incorporate landscaping at various locations throughout the site. The landscaping plan submitted with the application does not include any invasive plants that could encroach into the wetland area. To ensure that the landscaping that is actually installed does not include any invasive plants that could encroach into the wetland habitat and displace wetland vegetation, Special Condition No. 2 requires that landscaping be performed consistent with the submitted landscaping plan. Special Condition No. 3 requires that prior to issuance of the coastal development permit, the applicant submit for the review and approval of the Executive Director, a plan for the disposal of construction-related debris to ensure that debris resulting from the demolition of the existing warehouse is properly disposed to prevent debris and pollutants from entering the adjacent wetlands. Special Condition No. 6 requires that a deed restriction be recorded informing future buyers of the property of the special conditions of the permit, including the limitations on the design, future improvement, and use of the southern wall of the development. Such notice to future buyers will better ensure that in the future, the development is not modified or used in a manner that would compromise the wetland buffer.

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. To ensure that the proposed development is designed to minimize risks to life and property from flood hazards, staff recommends Special Condition No. 4 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. Staff also recommends Special Condition No. 5 that requires the applicant to acknowledge and assume the risks of flooding to the applicant and the property that is the subject of this permit.

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

STAFF NOTES:

1. Standard of Review

The proposed project is located in Humboldt County. Humboldt County has a certified LCP, but the project site that is the subject of Coastal Development Permit No. 1-02-165 is located within an area shown on State Lands Commission maps over which the state retains a public trust interest. Therefore, the site is within the Commission's retained jurisdiction and the standard of review that the Commission must apply to the project is the Chapter 3 policies of the Coastal Act.

2. Continuance from May Agenda.

This application had been previously scheduled for a public hearing at the May 8, 2003 Commission meeting. Prior to the hearing, the applicants requested that the hearing be postponed for two purposes. First, the applicants wanted additional time to submit an amendment to the project description to provide for the paving of a proposed fire safety access lane to be established between the proposed new accessory structure and the southern property line of the site that had been requested by the local fire district. Since the May postponement, the applicants' agent has submitted a letter dated June 10, 2003 amending the project description to include the paving of the fire safety access lane and associated improvements (see Exhibit 6). This revised staff recommendation incorporates the applicants' submitted amendments to the project.

Second, the applicants wanted additional time to review and respond to the Commission staff recommended Special Condition No. 1, which would impose a requirement that a coastal development permit or a permit amendment be obtained for all future improvements to the new accessory structure, including improvements that would otherwise be exempt from coastal permit requirements pursuant to Section 30610(b) of the Coastal Act. This condition was recommended to ensure that all future additions and improvements to the new accessory structure would be reviewed by the Commission to ensure that such future improvements would not be sited or designed in a manner that would result in adverse impacts to environmentally sensitive habitat. Although the applicants do not object to the imposition of a condition intended to allow the Commission to review future additions and improvements for their effect on environmentally sensitive habitat, the applicants were concerned about the specific language in the condition recommended by staff. The applicants are specifically concerned that the language could be interpreted as requiring that coastal development permits be obtained for any kind of routine maintenance or repair that might be proposed in the future. The applicants were also concerned that such an interpretation of the condition would affect their ability to sell the property in the future if they ever wish to do so.

Since the May postponement, the applicants' attorney submitted a letter dated July 22, 2003, suggesting two main changes to the language of recommended Special Condition No. 1. (See Exhibit 7.) The first change suggests some revised condition language that is intended to make it clearer that only certain kinds of extraordinary methods of repair and maintenance identified in Section 13252 of the Commission's regulations will need coastal development permit authorization and that the Coastal Act exemption for other kinds of repair or maintenance activities would continue to apply to the development. The second change suggested in the letter would add language that would attempt to enumerate the specific kinds of possible future improvements to the proposed new accessory structure that would require a coastal development permit.

The original version of Special Condition No. 1 that staff had recommended in the staff report published before the May meeting has been commonly applied by the Commission to numerous coastal development permits the Commission has approved statewide. Staff believes the language of the condition correctly indicates that only certain kinds of future repair or maintenance activities need coastal development permit authorization and that the Coastal Act exemption for other kinds of repair or maintenance activities would continue to apply to the development. Staff believes that only an incorrect reading of the language of the condition would lead to an interpretation that all future repair and maintenance activities would require coastal development permit authorization. However, staff also believes the clarification suggested in the applicants' attorney's July 22, 2003 letter relating to this aspect of the condition is consistent with the intent of the originally recommended condition and is consistent with the applicable exemption provisions of the Coastal Act and the Commission's regulations. Therefore, in the interest of resolving the dispute over the wording of the condition, staff has revised the language of recommended Special Condition No. 1 in this revised staff report to incorporate the clarification suggested by the applicants' attorney.

Staff does not recommend that the Commission accept, however, the second language change suggested by the applicants that would attempt to enumerate the specific kinds of future improvements to the proposed new accessory structure that would require a coastal development permit. The list is not exhaustive of the kinds of future improvements that would actually require a permit and would therefore create the misimpression that certain improvements that are not specifically enumerated are exempt from coastal development permit requirements. Since all future improvements or additions to the approved structure will require a permit, staff believes it would be impractical to attempt to list every single repair or maintenance activity or improvement that would require a permit. Therefore, the staff recommendation does not incorporate this second suggested language change. However, staff has added finding language to the section of Finding 3, "Protection of Adjacent Environmentally Sensitive Habitat Area (ESHA) and Water Quality," that describes the condition and discusses its purpose to make it clearer that the language of the special condition only eliminates the exemption contained in Section 30610(b) that would otherwise apply for certain improvements to an existing structure and that development activities described in Section 30610 of the Coastal Act, other than improvements or additions to the approved accessory structure pursuant to Section

30610(b) of the Coastal Act, would remain exempt from coastal development permit requirements. The development activities that remain exempted are those development activities exempted pursuant to Sections 30610(a) and 30610(c-i) of the Coastal Act, which include, and are not limited to exemptions for: (1) repair or maintenance activities that do not result in an addition or enlargement or expansion of the approved structure except for those extraordinary methods of repair and maintenance involving a risk of substantial adverse environmental impact as defined in Section 13252(a) and (b) of the Commission's regulations; (2) the installation, testing, and placement in service or the replacement of any necessary utility connection between an existing service facility and the approved development; and (3) the replacement of any structure destroyed by a disaster that meets certain criteria specified in Section 30610(g).

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. 1-02-165 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. Future Development Restriction

This permit is only for the development described in coastal development permit No. 1-02-165. Pursuant to Title 14 California Code of Regulations section 13253(b)(6), the exemptions otherwise provided in Public Resources Code section 30610(b) shall not apply to the development governed by the coastal development permit No. 1-02-165. Accordingly, any future improvements to this structure authorized by this permit shall require an amendment to permit no. 1-02-165 from the Commission or shall require an additional coastal permit from the Commission or from the applicable certified local government. In addition thereto, an amendment to permit no. 1-02-165 from the Commission or an additional coastal permit from the Commission or from the applicable certified local government shall be required for any repair or maintenance identified as requiring a permit in Public Resources Code Section 30610(d) and Title 14, California Code of Regulations Sections 13252(a)-(b).

2. Landscaping Plan

- A. The permittee shall undertake development in accordance with the landscaping plan submitted with the application entitled "*Landscape Plan for E.G. Ayers Distributing, Inc.*" prepared by Omsberg & Company and dated October 11, 2002. No invasive exotic plant species shall be substituted for the non-invasive plant species depicted in the plan.
- B. Any proposed changes to the approved plan shall be reported to the Executive Director. No changes to the approved plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

3. Debris Disposal Plan

- A. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for the review and approval of the Executive Director a plan for the disposal of construction-related debris. The plan shall describe the manner by which the material will be removed from the site and identify all debris disposal sites that will be utilized. The plan shall demonstrate that all disposal sites are in upland areas where construction-related debris from the project may be lawfully disposed.
- B. The permittee shall undertake development in accordance with the approved plan. Any proposed changes to the approved plan shall be reported to the Executive

Director. No changes to the approved plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

4. Flood Elevation Certificate

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 development would be 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.

5. 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.

6. 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 landowner has executed and recorded against the parcel 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 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.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

1. Site & Project Description

The project site is located at 5819 South Broadway, south of Eich Road, in the Spruce Point area south of Eureka. The 1.4-acre property is developed with an existing 3,486-square-foot warehouse and an approximately 26,900-square-foot accessory structure. The facility is used for the storage and distribution of food products. Virtually all of the remainder of the parcel is either paved with asphalt or graveled for truck parking and outdoor storage. The only exception is an unpaved, approximately 9-foot-wide corridor planted with grass between the existing accessory structure and the southern property line. This narrow grassy area fronts a dense stand of willow and alder vegetation that extends to a freshwater marsh area located on the adjacent parcel. However, no wetlands or other environmentally sensitive habitat areas exist on the subject parcel itself.

The proposed project involves demolition of an existing 3,486-square-foot detached warehouse building and the existing concrete pad beneath the building, construction of a 3,600-square-foot accessory building to be attached to an existing warehouse structure, associated landscaping, construction of a paved fire safety access lane between the new accessory building and the southern property line, and repaving the exposed areas within the footprint of the accessory structure to be demolished. The new accessory structure would be approximately 22 feet in height and would accommodate the loading/unloading of three semi-trucks. The proposed paving would be engineered to direct storm water runoff away from the wetland buffer to oil and water separators near the street that will be built pursuant to conditions of previously issued coastal development permits for other development on the property. The proposed project involves no changes in the amount of office space, the number of employees, or the basic operations of the facility.

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 proposed project site is within a partially developed area along South Broadway, east of Highway 101. The parcel is designated in Humboldt County's Humboldt Bay Area

Plan as Commercial General (CG) and is also zoned as CG with Coastal Resources Dependent, Flood Hazards and Wetland combining zones (CG/C, F, W). The Commercial General designation and zoning allows for the proposed warehouse addition as a conditionally permitted use under the County's Local Coastal Program. The County has approved a conditional use permit for the proposed project (CUP-22-97M). The site is served by municipal sewer and water service.

As discussed in Finding No. 3 below, development of the parcel could adversely affect the habitat values of the wetland areas immediately adjacent to the south on an adjoining parcel. However, as conditioned to (1) prohibit windows, doors, lighting, and reflective material along the side of the building adjacent to the wetland, (2) require only native, or otherwise non-invasive landscaping plants, and (3) ensure that all construction debris is properly disposed of, the project will not significantly degrade the adjacent environmentally sensitive habitat area.

Therefore, the Commission finds that 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. **Protection of Adjacent Environmentally Sensitive Habitat Area (ESHA) and Water Quality**

Section 30240(b) of the Coastal Act states in applicable part:

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

Section 30231 of the Coastal Act addresses the protection of coastal water quality and wetland 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 substantially interference with the surface water flow, encouraging, wastewater reclamation, maintaining natural vegetation buffer areas that

protect riparian habitats, and minimizing alteration of natural streams. (Emphasis added)

Section 30240(b) requires that environmentally sensitive habitat areas (ESHAs) be protected against any significant disruption of habitat values potentially resulting from adjacent development. The project site is located adjacent to an undeveloped parcel that contains ESHA. A 40-foot-wide corridor of dense riparian willow and alder vegetation flanks a freshwater marsh. The extent and quality of the freshwater marsh has been diminished by the placement of fill prior to the Coastal Act. However, the marsh and associated seasonal wetlands still occupy sizeable areas between South Broadway and Humboldt Hill Road to the east. During previous permit actions on the project site by the Commission, the Department of Fish and Game commented that numerous species of wildlife inhabit the marshes in the immediate vicinity of the project site including mallard, teal, scaup, bufflehead, scoter, coot, egret, heron, snipe, sandpipers, and mammals such as skunks, weasels, and voles.

As discussed previously, the project site is already developed as a warehouse/distribution center with two existing buildings and paved and graveled areas used for truck parking and outdoor storage that extend all the way to the southern property line. Thus, the proposed project is not new development that would establish a buffer for the first time over vacant land between proposed development and the ESHA on the adjoining property. Rather, the proposed project is a partial redevelopment of a portion of the site. The narrow approximately 15-foot-wide buffer of undisturbed open space on the adjacent parcel between the edge of the existing development (i.e. pavement and a short stretch of planted grass area) and the riparian vegetation bordering the freshwater marsh was established when the applicants' site was originally developed many years ago. The entire area north of the buffer on the applicants' property will continue to be used as part of the warehouse/distribution center that exists at the site.

The proposed project would not encroach upon the buffer of open space that exists currently. In addition, the proposed repaving of the site would direct all storm water runoff at the site that could potentially carry pollutant loads away from the adjacent wetlands to oil and water separators required to be installed elsewhere on the site pursuant to previously issued coastal development permits for other development at the site. The runoff would be treated before being discharged to the street.

The proposed project will also reduce the impacts of the warehouse/distribution center on the adjacent ESHA in several ways. First, the proposed warehouse structure would be set back approximately 9 feet further away from the willow and alder vegetation that borders the freshwater marsh located on the adjacent parcel than the existing warehouse structure proposed to be removed. The proposed warehouse addition would be located as close as approximately 30 feet from the willow and alder vegetation and 70 feet from the freshwater marsh.

Second, the project would consolidate the structures into one. The proposed structure would be attached to the existing large warehouse and would replace the existing detached structure. As a result, operations at the site would be enclosed within one warehouse, thereby minimizing the amount of human activity outside of and around the warehouse such as voices, loud noises, and the visible presence of people, which can discourage birds and other wildlife from using the adjacent habitat. Third, the proposed building design does not include windows, doors, or lighting on the southern wall of the building. The solid wall would further screen human activities within the building from birds and other wildlife using the wetlands and riparian area.

To ensure the protection of wetland habitat values, the Commission attaches Special Condition Nos. 1, 2, 3, and 6. Special Condition No. 1 requires the warehouse addition to be constructed without doors, windows, lighting, or other reflective materials along the southern wall facing the wetland area as proposed by the applicant. As a result, the wall of the building would act as an additional physical barrier to minimize physical, light, and noise disturbance to the riparian and wetland habitat. However, the Commission notes that future improvements to the approved structure, such as further additions to the warehouse, could be sited and designed in a manner that would result in adverse impacts to the environmentally sensitive habitat. Many such additions are normally exempt from the need to obtain coastal development permits pursuant to Section 30610(b) of the Coastal Act. Thus, the Commission would not normally review such development to ensure that impacts to sensitive habitat are avoided.

To avoid such impacts to coastal resources from the development of otherwise exempt additions to existing structures, Section 30610(b) requires the Commission to specify by regulation those classes of development which involve a risk of adverse environmental effects and require that a permit be obtained for such improvements. Pursuant to Section 30610(b) of the Coastal Act, the Commission adopted Section 13253 of Title 14 of the California Code of Regulations. Section 13253(b)(6) specifically authorizes the Commission to require a permit for additions to existing structures that could involve a risk of adverse environmental effect by indicating in the development permit issued for the original structure that any future improvements to the approved structure would require a development permit. As noted above, certain additions or improvements to the approved warehouse could involve a risk of adverse impacts to the environmentally sensitive habitat adjacent to the site. Therefore, in accordance with provisions of Section 13253 (b)(6) of Title 14 of the California Code of Regulations, the Commission attaches Special Condition No. 1 which requires a coastal development permit or a permit amendment for all future improvements to the approved structure, including improvements that might otherwise be exempt from coastal permit requirements pursuant to Section 30610(b) of the Coastal Act. This condition will allow all future improvements to the approved structure to be reviewed by the Commission to ensure that such future improvements will not be sited or designed in a manner that would result in adverse impacts to environmentally sensitive habitat. This condition will have no effect on other types of development that are considered exempt under 30610 of the Coastal Act; aside from improvements or additions to the approved accessory structure that have

otherwise been exempt from coastal development permit requirements pursuant to Section 30610(b) of the Coastal Act, under Special Condition No. 1, the exemptions from the need to obtain coastal development permits contained in Section 30610 of the Coastal Act would still apply, including, but not limited to, the exemptions provided by: (1) Section 30610(d) of the Coastal Act for repair or maintenance activities that do not result in an addition or enlargement or expansion of the approved structure except for those extraordinary methods of repair and maintenance involving a risk of substantial adverse environmental impact as defined in Section 13252(a) and (b) of the Commission's regulations; (2) Section 30610(f) of the Coastal Act for the installation, testing, and placement in service or the replacement of any necessary utility connection between an existing service facility and the approved development; and (3) Section 30610(g) of the Coastal Act for the replacement of any structure destroyed by a disaster that meets certain criteria specified in Section 30610(g). Special Condition No. 6 also requires recordation of a deed restriction to ensure that all future owners of the property are aware of the requirement to obtain a permit for development that would otherwise be exempt. This requirement will reduce the potential for future landowners to make improvements to the approved structure without first obtaining a permit as required by this condition.

The applicant is proposing to incorporate landscaping at various locations throughout the site. The landscaping plan submitted with the application does not include any invasive plants that could encroach into the wetland area. To ensure that the landscaping that is actually installed does not include any invasive plants that could encroach into the wetland habitat and displace wetland vegetation, Special Condition No. 2 requires that landscaping be performed consistent with the submitted landscaping plan.

The demolition of the existing warehouse structure would generate a significant amount of debris that if not properly disposed of could result in debris and pollutants entering the adjacent wetlands. To ensure that debris is adequately disposed of in an approved location, the Commission attaches Special Condition No. 3 requiring that prior to issuance of the coastal development permit, the applicant submit for the review and approval of the Executive Director, a plan for the disposal of construction-related debris. The plan must describe the manner by which the material would be removed from the construction site, identify all debris disposal sites that would be utilized and demonstrate that all disposal sites are in upland areas where construction-related debris from the project may be lawfully disposed.

Lastly, Special Condition No. 6 requires that a deed restriction be recorded informing future buyers of the property of the special conditions of the permit, including the limitations on the design, future improvement, and use of the southern wall of the development. Such notice to future buyers will better ensure that in the future, the development is not modified or used in a manner that would compromise the wetland buffer.

With the mitigation measures discussed above, which are designed to minimize any potential impacts to the adjacent wetland habitat, the project as conditioned will not

significantly degrade adjacent ESHA and will be compatible with the continuance of those habitat areas. Therefore, the Commission finds that the project as conditioned is consistent with Sections 30240(b) and 30231 of the Coastal Act.

4. 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. According to the FEMA Flood Insurance Rate Map, the project site is located in flood zone "A" or the 100-year flood plain. As a result, all development must conform to the County's flood damage prevention ordinance and the applicant is required to obtain a Flood Elevation Certificate from the County Building Inspection Division. The primary way to minimize flooding risks is to raise the structure above flood elevations. 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 above the Base Flood Elevation prior to issuance of the County building permit.

To ensure that the proposed development 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. 4 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 above the Base Flood Elevation.

The Commission also attaches Special Condition No. 5 that 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 applicant has 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.

In addition, Special Condition No. 6 requires that a deed restriction be recorded informing future buyers of the property of the special conditions of the permit, including the required Flood Elevation Certificate and the requirement that the landowner assume the risk and indemnify the Commission from all liability associated with the approved development. Recordation of such a deed restriction will provide notice to future buyers of the property, lending institutions, and insurance agencies that the property is safe for an indefinite period of time and for further development indefinitely into the future. In addition, the condition ensures that future owners will be informed of the Commission's immunity from liability and the indemnity afforded the Commission.

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.

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 project is located in an existing commercial and light industrial area and is surrounded by existing commercial development, some undeveloped parcels, and freshwater marsh. The proposed building site for the new warehouse addition is currently a partially graveled and partially paved lot developed with an existing warehouse and office. The subject site is inland of Highway 101 and does not offer views to or along Humboldt Bay or other coastal areas and thus, would not block views to or along the coast. Additionally, the warehouse addition would be consistent with the color, design, materials, and height of the existing adjacent building and thus, would be compatible with the surrounding development. Furthermore, the site is essentially flat and would not involve grading or alteration of natural landforms.

Therefore, the Commission finds that the proposed development is consistent with Section 30251 of the Coastal Act as the development will not block views to and along the coast, will not involve any alteration of land forms, and the proposed demolition activities would not result in any adverse change to the visual character of the area.

6. 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. 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. As discussed above, the proposed project has been conditioned 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 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.

Exhibits:

1. Regional Location
2. Vicinity Location
3. Site Plan
4. Elevations
5. Building Plan
6. Amendment to Project Description
7. Applicants' Attorney's Correspondence

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.

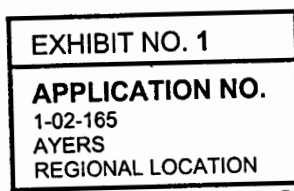


EXHIBIT NO. 1

APPLICATION NO.

1-02-165

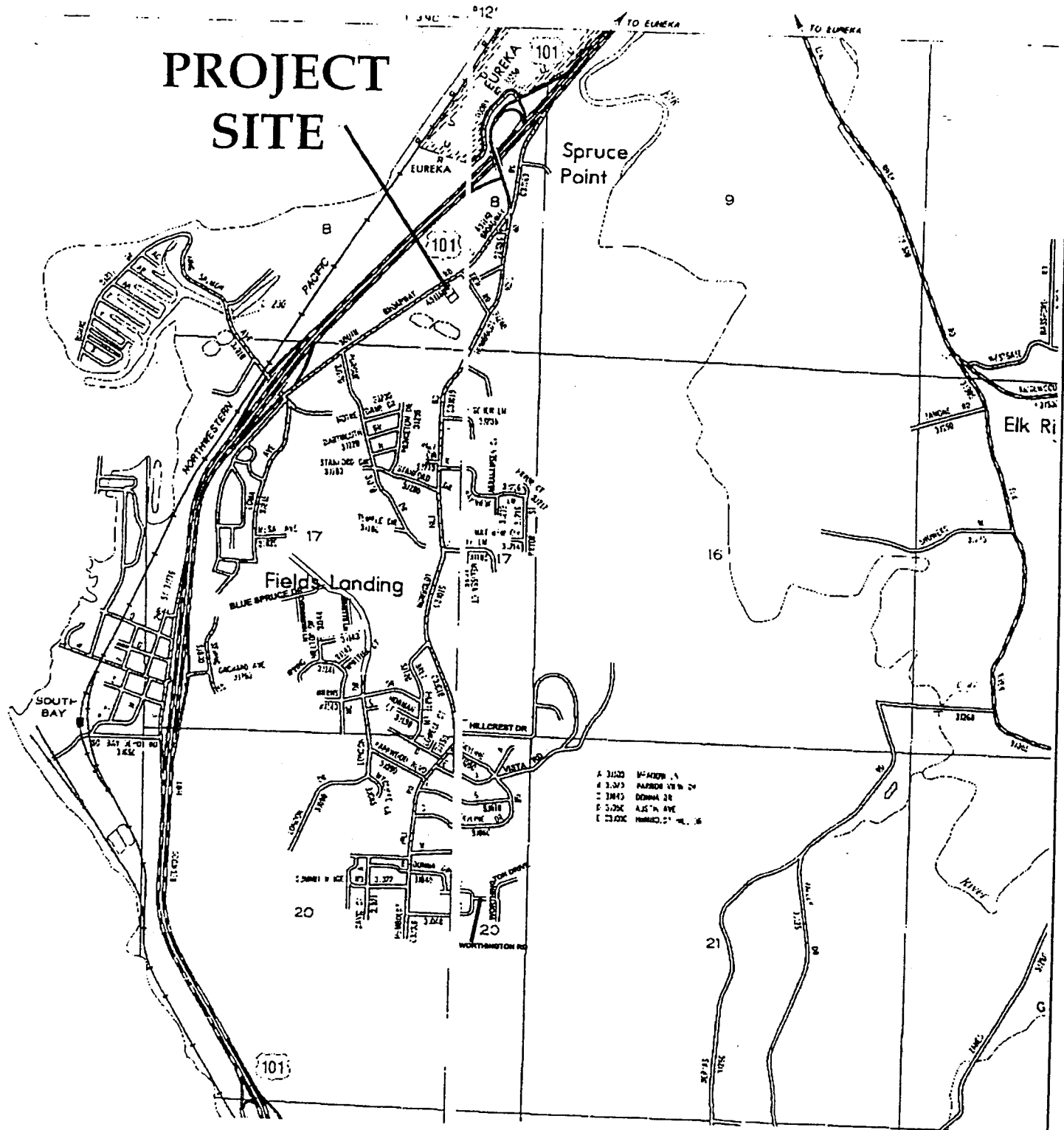
AYERS

REGIONAL LOCATION

PROJECT SITE

LOCATION MAP

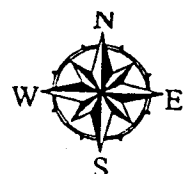
PROJECT SITE \



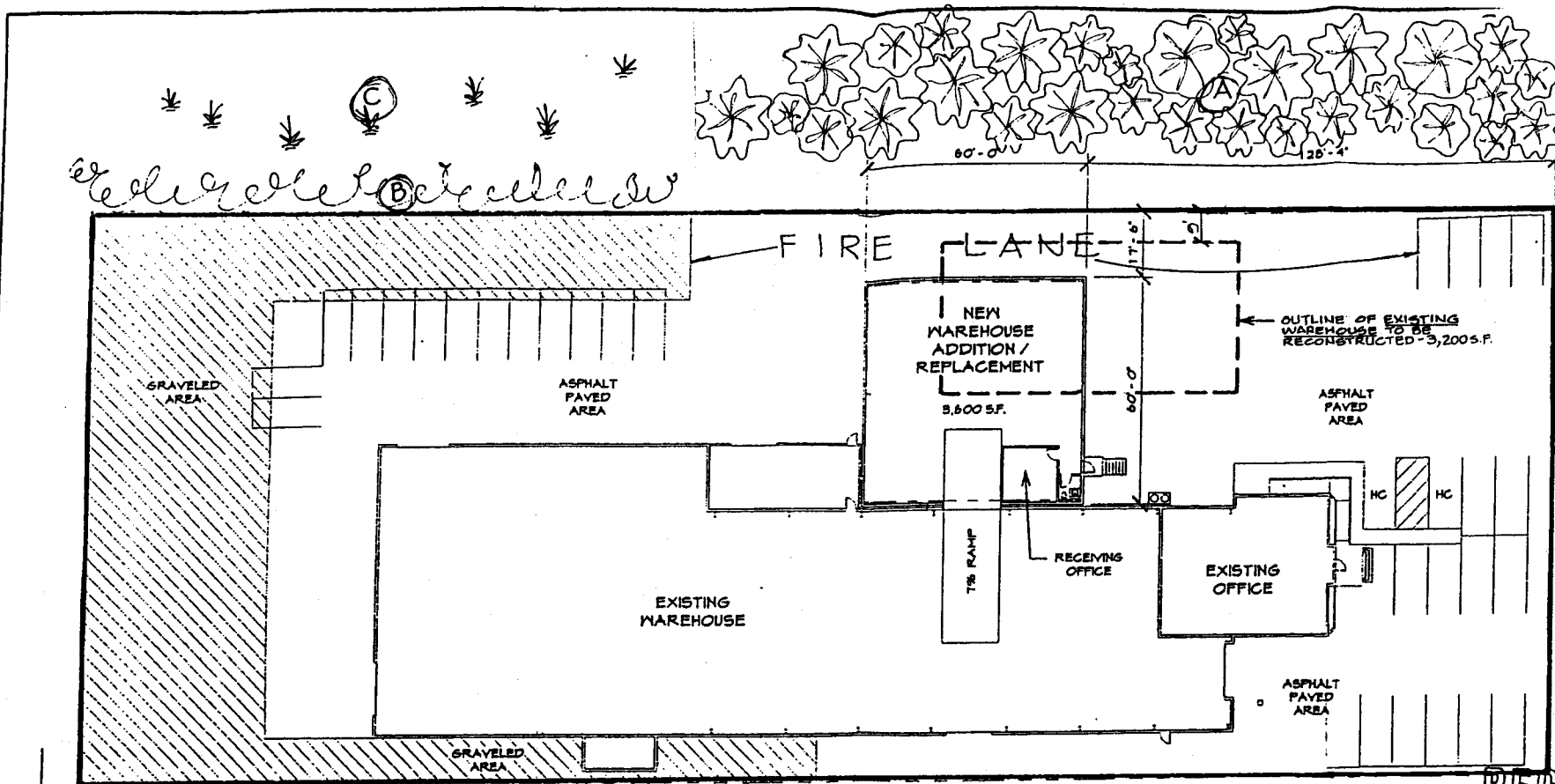
EUREKA AREA
APN: 305-101-28
SECTION 8 T4N R1W H. B. & M.
LOCATION MAP

EXHIBIT NO. 2

APPLICATION NO.
1-02-165
AYERS
VICINITY MAP



Map is not drawn to scale.



1 SITE PLAN
1" = 30'-0"

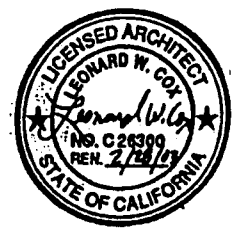
- "A" VEGETATION BUFFER
- "B" BERRIES
- "C" SWAMP SEDGE - WETLAND AREAS

NOTE:

NO PARKING - FIRE LANE
PER COUNTY PLANNING DEPARTMENT
10/22/02

EXHIBIT NO. 3
APPLICATION NO.
1-02-165
AYERS
SITE PLAN

REVISED PARKING PLAN
AYERS - MODIFICATION APPLICATION
10/22/02



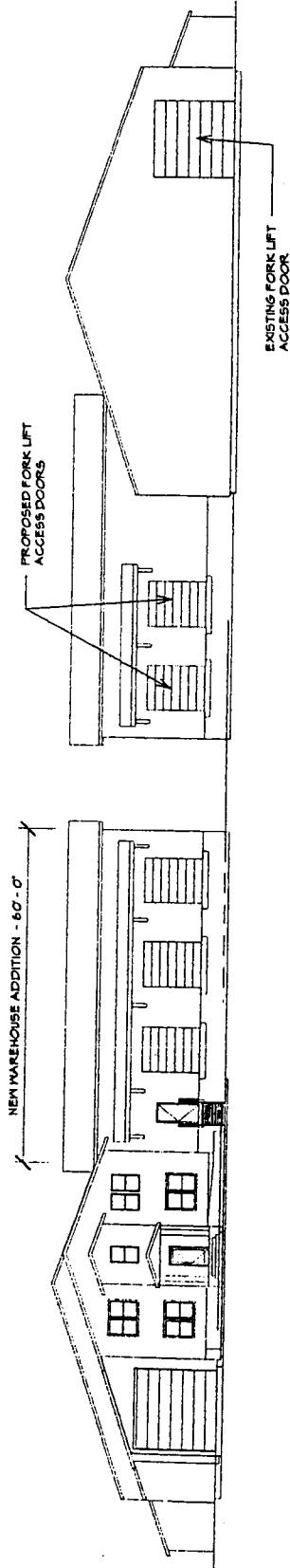
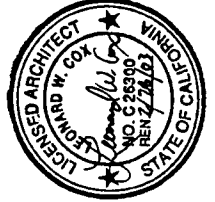
RECEIVED
OCT 23 2002
HUMBOLDT COUNTY
PLANNING COMMISSION

LEONARD COX ARCHITECT
P.O. BOX 905, FERNDALE, CA 95536
(707) 542-0303

E.G. AYERS WAREHOUSE ADDITION

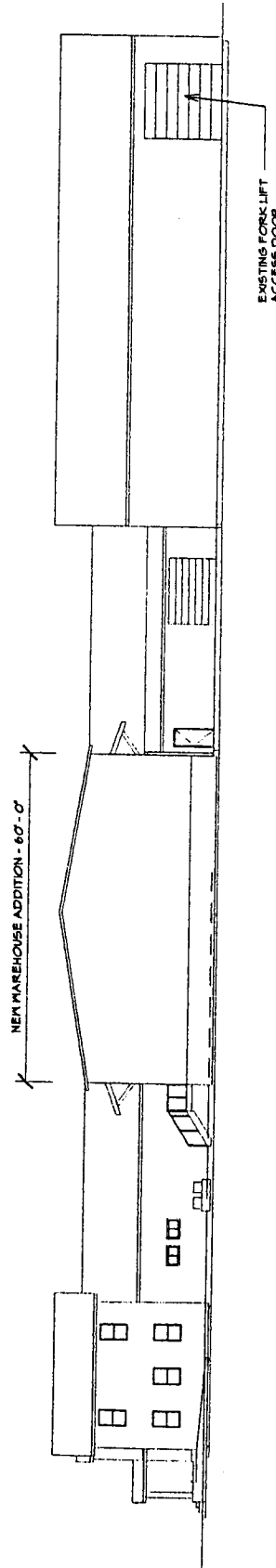
6/26/02

A-1



1 NORTH ELEVATION
1" = 20'-0"

3 SOUTH ELEVATION
1" = 20'-0"



2 WEST ELEVATION
1" = 20'-0"

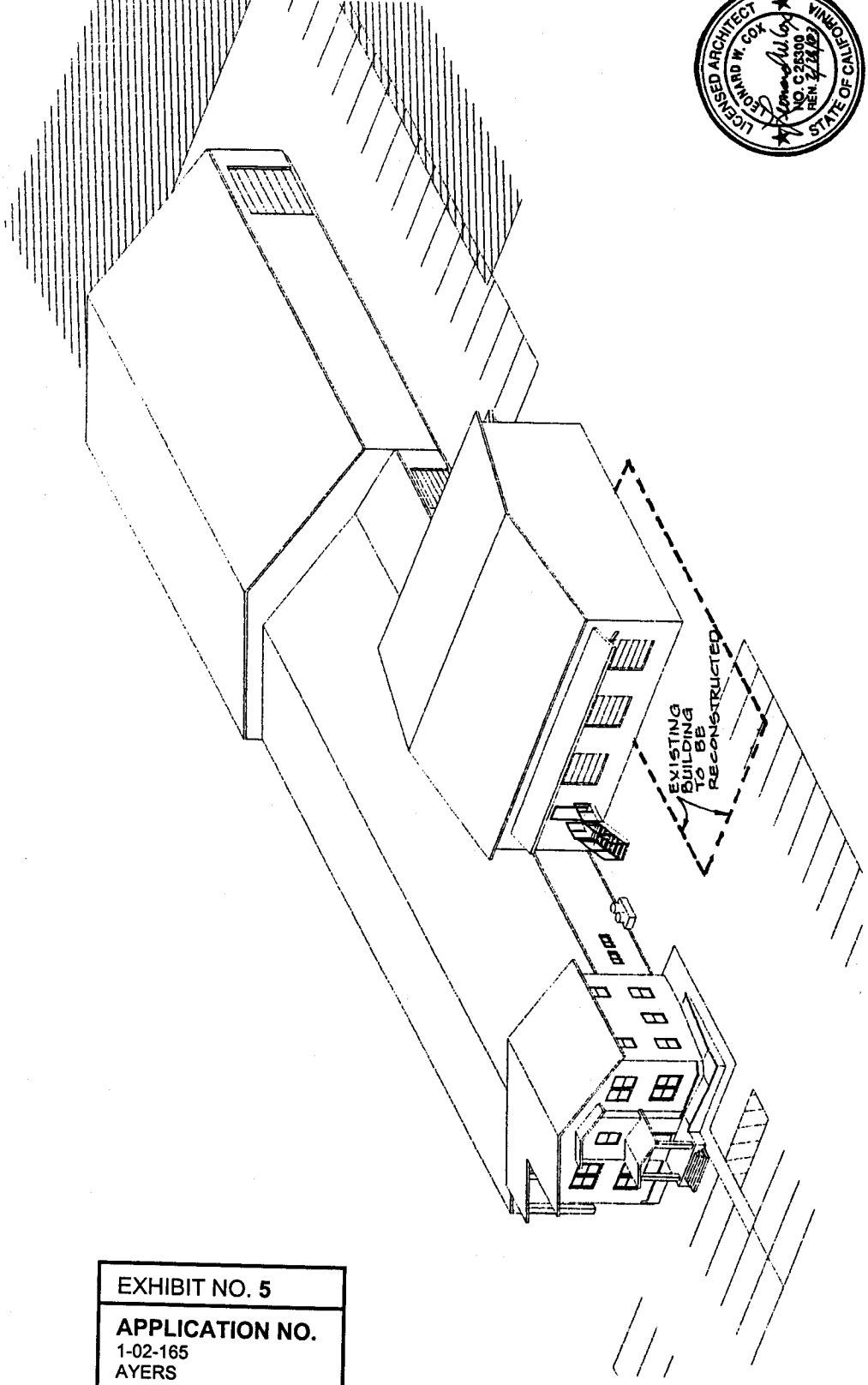
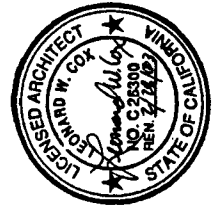
EXHIBIT NO. 4
APPLICATION NO.
1-02-165
AYERS
ELEVATIONS

LEONARD COX ARCHITECT
P.O. BOX 905, FERRDALE, CA 95536
(707) 786-4203

M. G. AYERS WAREHOUSE ADDITION

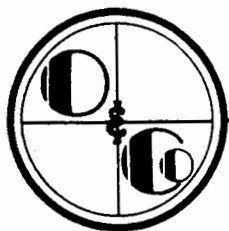
6/28/02

A-3



1 AXONOMETRIC VIEW

EXHIBIT NO. 5
APPLICATION NO.
1-02-165
AYERS
BUILDING PLAN



OMSBERG & COMPANY

SURVEYORS

ENGINEERS

EXHIBIT NO. 6

APPLICATION NO.

1-02-165

AYERS

AMENDMENT TO
PROJECT DESCRIPTION
(1 of 2)

June 10, 2003

Tiffany Tauber, Coastal Planner
California Coastal Commission
North Coast District Office
710 E Street, Ste. 200
Eureka, CA 95501

RECEIVED

JUN 13 2003

CALIFORNIA
COASTAL COMMISSION

Re: **Revised Project Description - CDP Application 1-02-165**
Phil Ayers - E.G. Ayers Distributing, Inc.
5819 South Broadway, Eureka, CA 95501
APN 305-101-28

Tiffany,

Per our recent conversation, please accept this letter as the revised project description for the above project.

Amended Project Description:

Demolition of an existing 3,486 square-foot accessory building and construction of a 3,600 square-foot accessory building to be attached to an existing warehouse structure, associated landscaping, and construction of a Fire Safety Access Lane as prescribed by the local County approved CDP Modification. At the time of building demolition, the existing damaged concrete pad beneath subject building will be removed and replaced with a concrete pad at the appropriate elevation to incorporate an engineered drainage design to direct run-off to the proposed oil / water separator on-site. The new concrete pad will also include a "No Parking Fire Safety Access Lane" for emergency fire access per local Humboldt Fire District #1 request. The proposed concrete pad will be constructed to provide traction for a higher traffic index for fire trucks should the need arise, extending south from the new building to the property line as shown on the application plat.

Concrete Fire Safety Lane Discussion:

If left as grass as exists, the potential for emergency vehicles getting "stuck" in the area is high. When analyzing the site circumstances for options to provide the Fire District provide traction for a higher traffic index for fire trucks, the applicant considered the proposed concrete pad and pervious paving stones as his alternatives. The concrete option is self explanatory. The concrete will be engineered to adhere to the overall drainage plan, directing storm water runoff away from the wetland buffer, to the proposed drainage facilities on-site and adjacent to South Broadway. All concrete poured would include the appropriate framing to keep concrete from leaving the site.

The paving stone option would require the following installation procedures to provide successful results: To maintain the engineering capability of directing flow to the proposed oil / water separator at South Broadway and away from the adjacent wetland buffer area, the area would have to be excavated a minimum 2 feet, and filled to incorporate the minimal slope and gutter elevations needed to direct runoff to the west, away from the wetland buffer. The area would be lined with aggregate, with sand as a top

Tiffany Tauber, Coastal Planner
June 10, 2003
Page Two

layer. The paving stones would be installed on their side, and their crevices filled with planting media to support grass, and planted with seed or the original turf of the area. This would keep the area pervious, and provide the needed weight bearing capacity and traction for fire trucks if needed.

The applicant has chosen the concrete option as it requires the least invasive installation and construction measures for the area, and provides the needed weight bearing capacity and traction for fire trucks if needed as requested by the local Fire District.

Engineered Drainage Discussion:

We do not anticipate needing to add any new asphalt for the construction of the building that will be attached to the existing warehouse / office structure on site. To finalize the pre-construction drainage plans for the project (on the subject parcel under County permit and on the parcel immediately to the north under separate County and State permits), further inspection of the interior of the building to be removed was completed by this office.


As you are aware, all active permits for both properties have conditions of approval that specify engineered direction of all stormwater runoff from roof tops, downspouts, loading and parking areas to South Broadway via valley gutters and the installation of drainage facilities that include oil / water separators.

Upon inspection, the building that is to be demolished is on a cracked concrete pad that lies approximately 3 inches above the elevation of the rest of the existing asphalted / concrete area.

As called out in the Commission's staff report and in Humboldt County Planning Commission's approved CDP, to protect the ESHA from potential increased stormwater runoff can not take place unless we remove the slab under the building at the time of demolition and replace it with new concrete incorporating the engineered drainage system features to direct the flow to South Broadway, away from the wetland buffer.

Thank you for the time you have spent on behalf of this project, and your consideration of the above. We look forward to hearing from your office soon with regard to an anticipated hearing date in front of the Commission. Please call our office should you have any questions.

Sincerely,



Julie Williams
Planner / Project Manager
97-1063 Revised Project Description.doc

cc: Phil Ayers
E.G. Ayers

2 of 2

THOMAS D. ROWE
JOHN R. STOKES, III
CHRIS JOHNSON HAMER

JOHN R. STOKES (1917-2001)
DOROTHY L. STEEVES (1926-1996)

STOKES, STEEVES, ROWE & HAMER

ATTORNEYS AT LAW
A PARTNERSHIP

381 BAYSIDE ROAD
P.O. BOX 1109
ARCATA, CALIFORNIA
95518-1109

AREA CODE 707

TELEPHONE
822-1771

FAX 822-1901

July 22, 2003

VIA FAX & U.S. MAIL (415-904-5200)

Ann Cheddar
Legal Department
California Coastal Commission
45 Fremont Street, Ste. 2000
San Francisco, CA 94105-2219

Re: Ayers Distributing, Inc.
Permit No. 1-02-165 ("Modification Project")
Humboldt County APN 305-101-28

Dear Ms. Cheddar:

After speaking with you, I re-reviewed the file and the applicable code sections and regulations, as well as the staff report. As I had mentioned, one of our concerns was the potential adverse affect on my clients' ability to sell the property if they ever wish to do so, by the implication that any kind of routine maintenance or repair would need a Coastal permit.

On re-reviewing these materials, I see this ambiguity is caused by the ambiguity in wording in Condition No. 1, which says:

"Accordingly, any future improvements to this structure authorized by this permit, including but not limited to repair or maintenance identified as requiring a permit in Public Resources Code Section 30610(d) and California Code of Regulations Sections 13252(a)-(b), shall require an amendment to permit no. 1-02-165 from the Commission or an additional coastal permit from the Commission or from the applicable certified local government "

If this were to read:

"Accordingly, any future improvements to this structure authorized by this permit shall require an amendment to permit no. 1-02-165 from the Commission or shall require an additional coastal permit from the Commission or from the applicable certified local government. In addition thereto, an amendment to permit no. 1-02-165 from the Commission or an

EXHIBIT NO. 7

APPLICATION NO.

1-02-165

AYERS

APPLICANTS' ATTORNEY'S
CORRESPONDENCE
(1 of 3)

Ann Cheddar
Legal Department
California Coastal Commission
July 22, 2003
Page 2

additional coastal permit from the Commission or from the applicable certified local government shall be required for any repair or maintenance identified as requiring a permit in Public Resources Code Section 30610(d) and California Code of Regulations sections 13252(a)-(b)."

The foregoing makes it clear that only the type of repair or maintenance listed in the referenced code section and regulations needs a permit or an amendment to a permit.

We also would request an additional amendment to the deed condition to be recommended in the staff report, to more closely tailor the restrictions to be placed on improvements without an additional permit to meet the concerns expressed in the staff report. Rather than saying:

"Accordingly, any future improvements to this structure authorized by this permit shall require an amendment to permit no. 1-02-165 from the Commission or shall require an additional coastal permit from the Commission or from the applicable certified local government."

We suggest the following:

"Any future improvements to this structure authorized by this permit which (a) would involve the installation of any windows, doors, lighting or reflective material along the south side of the building adjacent to the wetland; (b) would include any landscaping which would include non-native or invasive landscaping plants or would otherwise not be in accordance with the application entitled "*Landscape Plan for E.G. Aycers Distribution, Inc.*," prepared by Omsberg & Company dated October 11, 2002; (c) would result in encroachment upon the 15-foot wide buffer of open space between the edge of the pavement and the riparian vegetation bordering the freshwater marsh; (d) would result in an increase in storm water runoff at the site; or (e) would result in the warehouse structure or addition being closer than approximately 30 feet from the willow and alder vegetation and closer than approximately 70 feet from the freshwater marsh; shall require an amendment to permit no. 1-02-165 from the Commission or shall require an additional coastal permit from the Commission or from the applicable certified local government. ."

By the foregoing, I tried to address the staff's concerns as expressed in the staff report as closely as possible, by requiring

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Ann Cheddar
Legal Department
California Coastal Commission
July 22, 2003
Page 3

anything violating their conditions to require a permit or amendment. There would not, however, be a blanket requirement of a permit or amendment for any improvement whatsoever.


The blanket requirement has, or could be read as having, the effect of eliminating all the exemptions listed in Public Resources Code Section 30610 (e), (f), (g), (h), and (i), as all the activities described there are technically "improvements". As drafted, the staff's proposed condition requires a permit or amendment to permit for "any improvements".

I look forward to discussing this with you the first week of August, as we agreed.

Very truly yours,

STOKES, STEEVES, ROWE & HAMER

By


Chris Johnson Hamer

cc: Client

393

