

## CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE  
710 E STREET • SUITE 200  
EUREKA, CA 95501-1865  
VOICE (707) 445-7833  
FACSIMILE (707) 445-7877

MAILING ADDRESS:  
P. O. BOX 4908  
EUREKA, CA 95502-4908

## RECORD PACKET COPY



# F6b

Date Filed: April 7, 2004  
49th Day: May 26, 2004  
180<sup>th</sup> Day: October 4, 2004  
Staff: Jim Baskin  
Staff Report: October 29 2004  
Hearing Date: November 19, 2004  
Commission Action:

STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: **1-04-021**

APPLICANT: **HUGH AND IRENE HOLT**

PROJECT LOCATION: 1826 Ocean Avenue, McKinleyville, Humboldt County, (APN 508-171-08)

PROJECT DESCRIPTION: Removal of approximately 200 sand bags which were stacked against the eroding river bank and restoration of the site by depositing the sand on the beach below the bank where it was borrowed and planting willow sprigs (obtained on site) to stabilize the bare banks along the Mad River.

GENERAL PLAN DESIGNATION: Residential Single Family – Five-acre Minimum Parcel Size with Riparian Corridor Combining Zone (RS-5/R)

ZONING DESIGNATION: Residential Estates (RE)

LOCAL APPROVALS REQUIRED: None Required

OTHER APPROVALS REQUIRED: None

SUBSTANTIVE FILE DOCUMENTS: Violation File No. V-1-04-001 (Holt)

---

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends approval with special conditions of a coastal development permit to remove approximately 200 sandbags placed at the base of a riverbank on a blufftop lot ostensibly to prevent coastal erosion of the parcel. The sand content of the bags would then be returned to the riverside area from which they were taken and the denuded area replanted with willow sprigs obtained onsite. The sandbags were installed without benefit of a coastal development permit and the permit applicant is seeking a permit to restore the site back to its original pre-development conditions.

The site is located in an area of low-density residential development on seaward side of an uplifted marine terrace overlooking the Mad River estuary. This area has undergone significant geomorphic changes over the last several decades, as the mouth of the Mad River migrated northward, parallel to the ocean, from its former mouth ½ mile to the south of the project parcel to its current location roughly ½ mile to the north of the site. As a result of these changes, the base of the bluff has become subject to erosive river and tidal bore flows causing portions of the bluff to become denuded of vegetation and slough off into the river.

Although the violation would resolve the previously unpermitted development, the application for restoring the site raises issues with regard to consistency with the environmentally sensitive resource protection standards of Coastal Act as to whether during the course of conducting the restoration work ESHA and water quality impacts to the Mad River are avoided. Staff is recommending two special conditions to minimize the resource impact of the development.

First, to ensure that the contents of the sandbags are placed in a manner that would not result in entry of bag debris into the river or the covering of environmentally sensitive areas with the bags' contents, staff recommends Special Condition No. 1, which requires the applicants to dispose of the sandbags and their contents in a proper manner that would avoid these impacts. Second, to ensure the greatest degree of success for the proposed willow planting restoration project component, staff recommends Special Condition No. 2 that requires the applicants to plant the willow cuttings subject to established restoration propagation standards.

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 on the eastern banks of the Mad River estuary in Humboldt County, at and below the mean high tide line (+7.09' NGVD29) elevation. Thus, the project is located within the Coastal Commission's area of original or retained jurisdiction (see Exhibit No. 3). The standard of review is the applicable Chapter 3 policies of 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. 1-01-021 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. Removal of Sandbag Revetment**

The contents of the sandbags shall be deposited on unvegetated open areas along the riverbank in proximity to the revetment site. Care shall be taken to not bury any emergent riparian vegetation and to spread the materials out evenly onto the beach so as not to cause a form barrier along the river.

#### **2. Revetment Site Revegetation**

The revetment site shall be revegetated as proposed and comply with the following standards and limitations:

- a. Cuttings shall be taken from nearby willow trees and planted during the period of November 1 to March 1;
- b. The stakes shall be obtained from long, upright branches taken off the parent plant by cutting the branch at an angle, so that it makes a point. Live stakes shall be between 18 and 24 inches long and at least three-eighths of an inch ( $\frac{3}{8}$ " ) in diameter;
- c. Leaves and small branches shall be removed from the stakes as soon as possible after cutting them, to keep the stakes from drying out;
- d. Stakes shall be planted within 24 hours of their cutting for best results. The cuttings shall be kept moist and wet by storing them in buckets or wet burlap sacks. The cuttings shall be kept in the shade until they are planted; and
- e. The stakes shall be inserted angle-cut end down a minimum of one foot deep into the riverbank, with three to six inches of the cutting exposed above the ground surface to allow for leaf sprouting.

#### **3. Permit Expiration and Condition Compliance**

Because some of the proposed development has already commenced, this coastal development permit shall be deemed issued upon the Commission's approval and will not expire. Failure to comply with the special conditions of this permit may result in the institution of an action to enforce those conditions 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 project site is located on the banks of the Mad River estuary. The site lies approximately 25 feet from the base of a blufftop lot located on the west side of Ocean Drive within the unincorporated town of McKinleyville (see Exhibit Nos. 1, 2, and 3). The site is located in an area of low-density residential development within an established urbanized community area. The property ranges in elevation from approximately two to 40 feet above mean sea level and is developed with a single-family residence on the uplifted portion of the lot constructed prior to the Coastal Act. The area immediately surrounding the project site is vegetated with a riparian forest community containing Pacific willow (Salix lasiolepis) and red alder (Alnus rubra) and related undergrowth species.

The applicant seeks authorization for the removal of approximately 20 remaining 14" x 26" 50-pound polyethylene sandbags placed along the eastern riverbank in an effort to prevent further encroachment of the erosive river and tidal flows onto the base of the bluff. (see Exhibit No. 4). Roughly 200 sandbags were placed in tiers along the entire roughly 70-foot width of the parcel in mid-2003. Since their initial placement, high river flows, storm surge, and tidal bores have further eroded the riverbank, winnowing away at a sandy stratum beneath the sandbag revetment. This loss of material undermined the stack of sandbags, causing them to tumble down the bank and/or to burst open. To prevent the entry of the plastic bag liners into the river, the applicants have collected the bags off of the riverbanks as they have become dislodged, emptying their contents onto nearby sandy river shore areas and disposing of the bags as solid waste. The applicants propose to remove the remaining sandbags in a similar fashion.

Once the remaining sandbags have been removed, the applicants are proposing to plant willow cuttings, pruned from nearby trees, along the denuded area where the bags were situated to help stabilize the bank.

##### 2. Diking, Dredging, and Filling of Estuaries.

Section 30108.2 of the Coastal Act defines "fill" as:

*'Fill' means earth or any other substance or material, including pilings placed for the purposes of erecting structures thereon, placed in a submerged area.*

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...*

Coastal Act Section 30233 states, in applicable part:

*(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:*

...

*(7) Restoration purposes...*

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

The applicants propose to remove the remaining sandbags and deposit their contents onto the adjoining riverbank areas. This action would entail the placement of approximately 8.3 cubic feet of sand materials onto the banks of the Mad River estuary at and below the Ordinary High Water elevation at the site, a form of fill. Thus, in addition to the general resource protective provisions of Section 30231, the project is also subject to the requirements of Coastal Act Section 30233.

The above policies set forth a number of different limitations on what types of diking, filling, or 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, diking or filling is for one of the eight uses enumerated in Section 30233(a);
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 Fill

The first general limitation set forth by the above-referenced Chapter 3 policies is that any proposed filling can only be allowed for certain limited purposes. Under Section 30233(a), filling in estuaries 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 sand bags in response to an Enforcement Unit investigation regarding unpermitted shoreline revetment development. The proposed development would return the project site to conditions that existed prior to the placement of the unpermitted fill materials. As such, the proposed fill is solely for "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, diking, or filling 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. Only one potentially feasible less environmentally damaging alternative has been identified, the "no project" alternative.

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 Enforcement Unit did provide the applicant with the option of pursuing an "after-the-fact" coastal development permit to legitimize the placement of the 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 areas previously available for public access use;
- Loss of beach habitat covered up by the fill materials;
- Potential instigation of geologic instability; and
- Impacts to water quality from erosion of failing fill materials.

Accordingly, from the materials submitted with the application and given that the sandbag revetment structure has undergone continued incremental failure since being put in place 14 months ago, 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.

#### Conclusion

As discussed above, the “no project” alternative to the proposed project is not a feasible less environmentally damaging alternative. Therefore, the Commission finds that the proposed development is consistent with the requirement of Section 30233 of the Coastal Act that no dredging, diking, or filling 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 main mitigation issue of the proposed project is ensuring that the biological productivity and water quality is maintained during and after fill removal work. Removal of the bags would expose the bank to increased erosion from runoff and river flows that would increase sedimentation of the river. The applicants propose to plant willow stakes to help stabilize the bank and minimize erosion.

As discussed in Findings Section IV.A above, “Project Setting and Description,” removal of the fill materials is estimated to take one-half day to complete. No timeline for the proposed planting of willows was identified in the permit application, although the applicants indicated that they have planted several hundred such planting over the last 1½ years that have now become established at the site

In order to maximize the success of the proposed willow plantings and minimize the adverse impacts of the proposed project on habitat values consistent with Section



30233(a), the Commission attaches Special Condition No. 2. Special Condition No. 2 requires that the willow cuttings be planted during the dormant season of the winter of 2004-2005, subject to established vegetation restoration practices. During this period ( $\pm$  November 1 to March 1), auxin production in most temperate plants is suppressed to the point where the growth of root tissue occurs at higher rates than foliage from apical and lateral buds. Planting cuttings during this period will allow adequate time for the stem tissue to undergo adventitious differentiation into root tissue and for the new roots to become established prior to the onset of budding in the early spring, when, if adequate roots have not developed, the plants could desiccate and expire.

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, namely emergent riparian vegetation, the Commission attaches Special Condition No. 1. Special Condition No. 1 restricts the disposal site of the sandbag contents to bare sandy areas. To ensure that the bagging materials are kept out of coastal waters, the condition also requires that the emptied sandbags be removed from the site and properly disposed of.

The Commission concludes that as conditioned, the proposed project will include adequate mitigation to minimize impacts to biological productivity and coastal waters. The Commission thus finds, that as conditioned, the proposed project is consistent with the third test for approvable diking, filling, or 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.

##### 5. Maintenance and Enhancement of Estuarine Habitat Values

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

The proposed restoration work will both maintain and enhance the biological productivity and functional capacity of the nearshore coastal waters of the Mad River estuary. As discussed above, the project entails the removal of fill materials placed without first securing a coastal development permit. While removal of the materials could cause erosion and sedimentation, conditions have been required that would minimize this impact. In addition, 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 disposal of the sandbag materials such that impacts to environmentally sensitive habitat areas and coastal water degradation do not result. In addition, the proposed revegetation of the site is required to be conducted at a time and in a manner that would maximize the success of establishing the plantings. 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 Mad River estuary nearshore environment, consistent with Section 30231 of the Coastal Act. Similarly, as conditioned, the proposed project will maintain the functional capacity of estuaries as required by Section 30233(c).

**3. 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.

Although the project site is located between the first public road (Ocean Drive) and the sea, it will not otherwise adversely affect public access. There are no trails that provide shoreline access through the subject property and therefore, the removal of the sandbags, the placement of the sandbags' contents on the riverbank, and the restoration of denuded areas with willow cuttings would not result in a barrier to public coastal access. Furthermore, the proposed restoration work would not change the nature or intensity of use of the site and thus, would not create any new demand for public access or otherwise create any additional burdens on public access.

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.

**4. Alleged Violation.**

As noted above, the sandbag revetment was constructed at the site in an area within the Commission's jurisdiction without the benefit of a coastal development permit. 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.

**5. 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 which 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.

**V. EXHIBITS:**

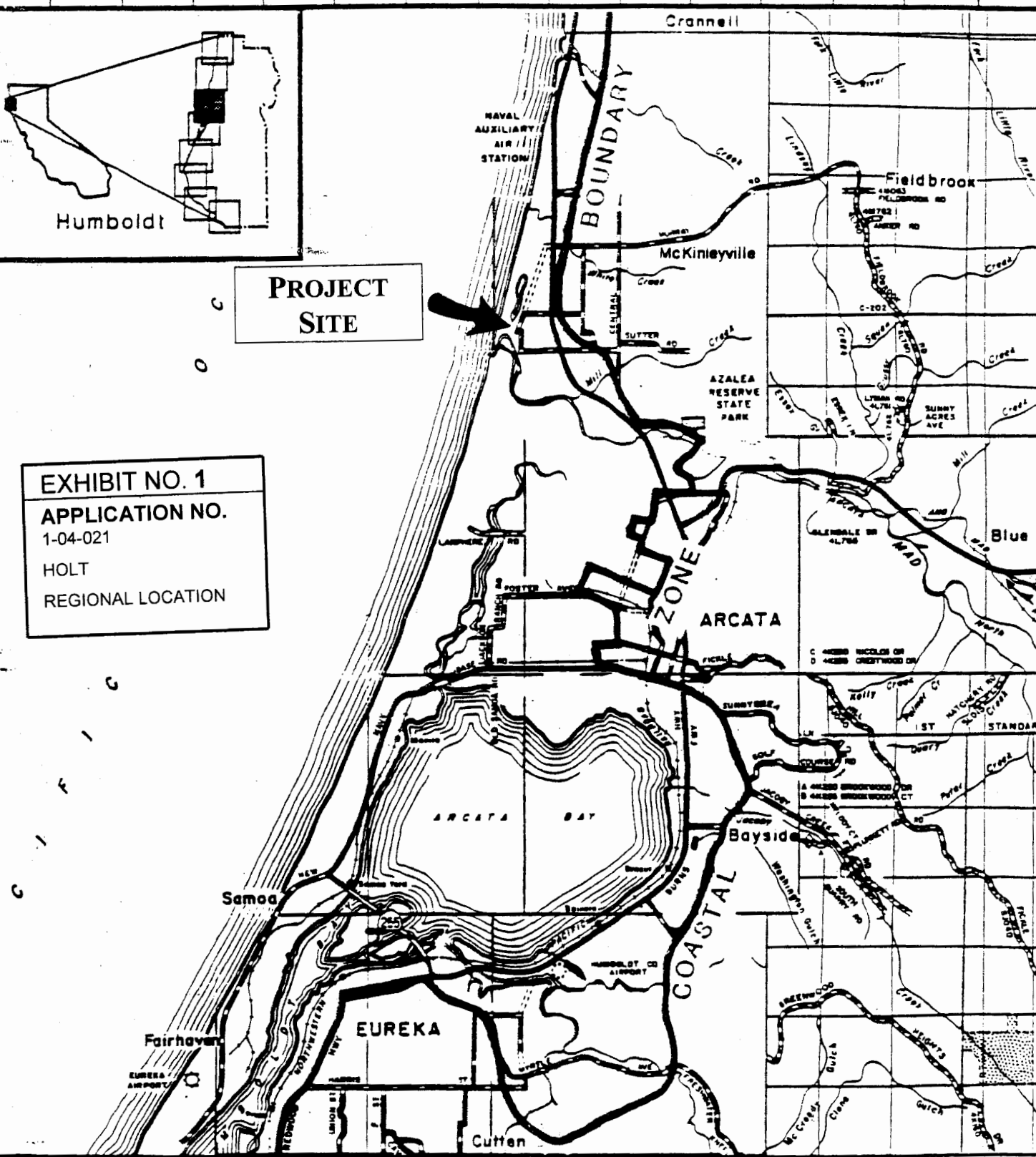
1. Regional Location
2. Vicinity Map
3. Pre-development (2001) Site Aerial Photo
4. Site Plan

**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. **Interpretation.** Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
3. **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.
4. **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.

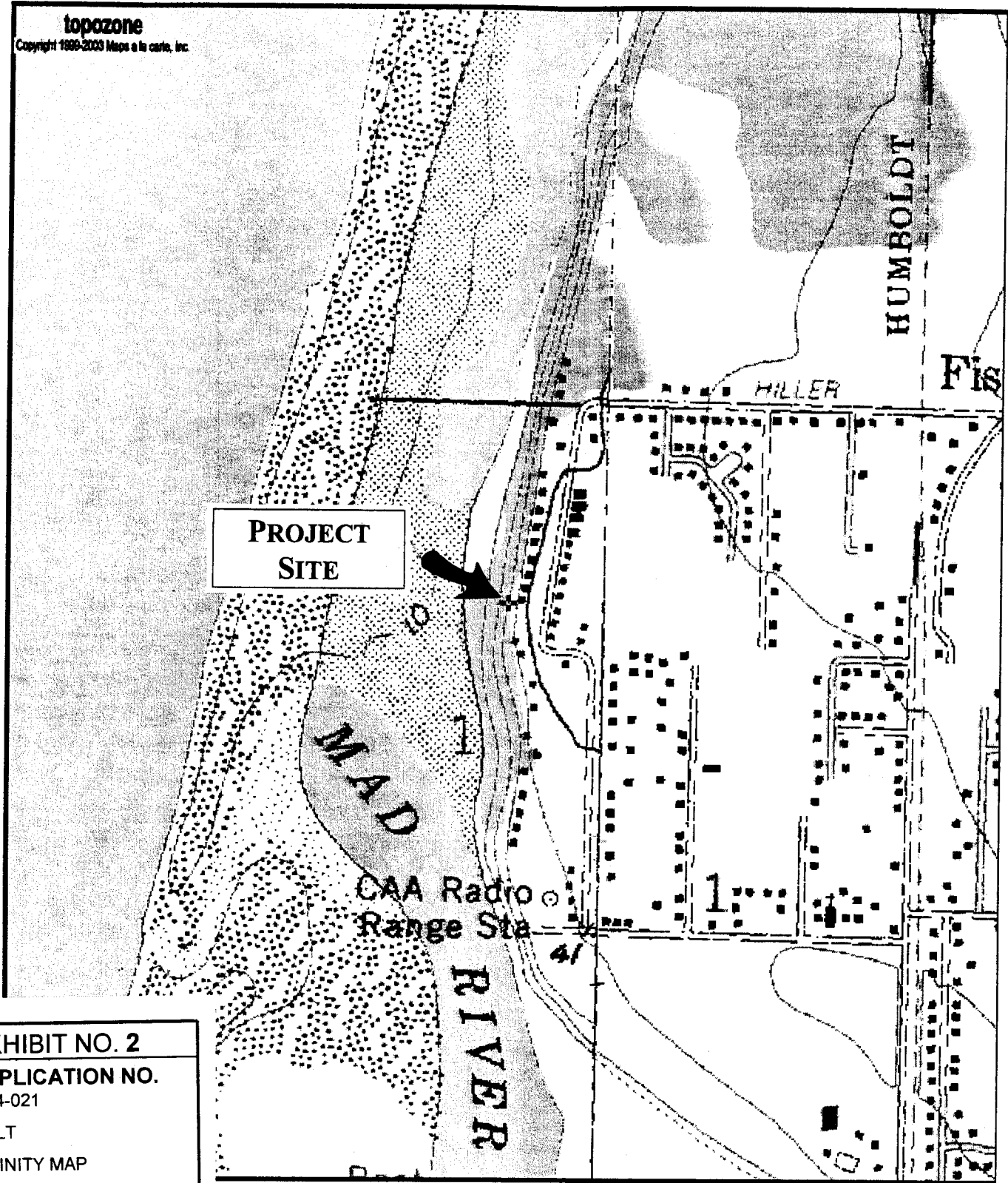
A B C D E F G H I J K L M N O



**PROJECT SITE**

**EXHIBIT NO. 1**  
**APPLICATION NO.**  
 1-04-021  
 HOLT  
 REGIONAL LOCATION





**PROJECT  
SITE**

**MAD  
RIVER**

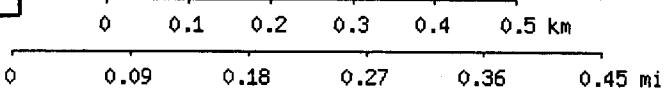
CAA Radio  
Range Sta

**HUMBOLDT**

**HILLER**

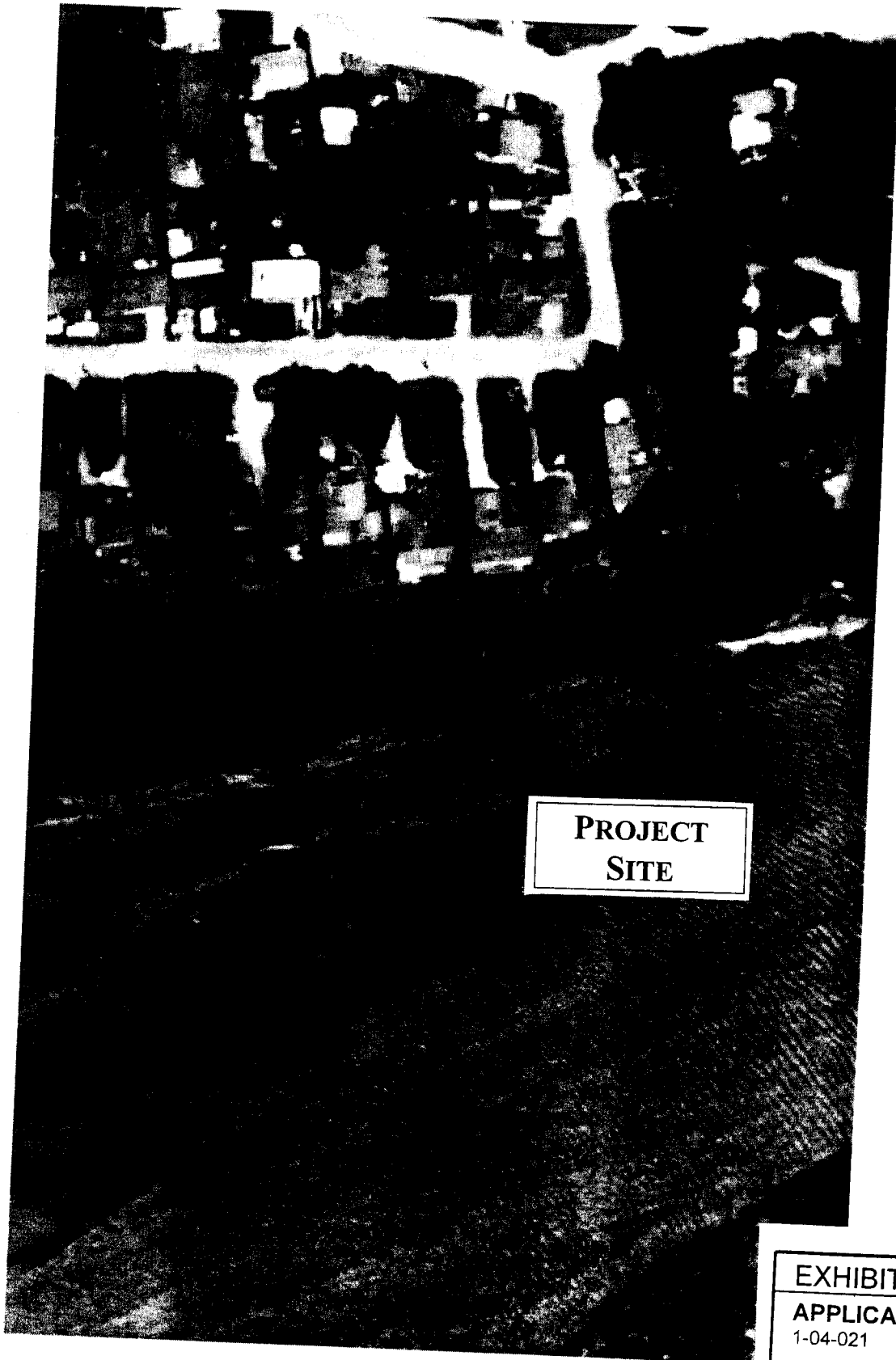
**FIS**

**EXHIBIT NO. 2**  
**APPLICATION NO.**  
1-04-021  
HOLT  
VICINITY MAP



Map center is UTM 10 405038E 4532586N (WGS84/NAD83)  
**TYEE CITY** quadrangle  
Projection is UTM Zone 10 NAD83 Datum

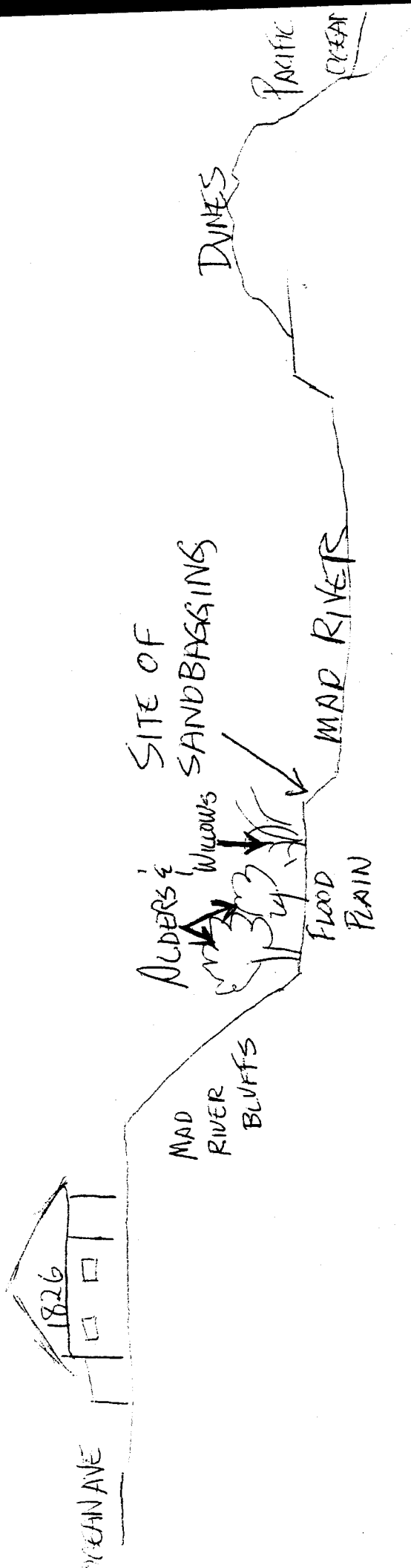
\* M  
G  
M=16.29  
G=-0.739



**PROJECT  
SITE**

**EXHIBIT NO. 3**  
**APPLICATION NO.**  
1-04-021  
HOLT  
PRE-DEVELOPMENT  
(2001) SITE AERIAL PHOTO

# PROFILE



<b>EXHIBIT NO. 4</b>
<b>APPLICATION NO.</b> 1-04-021
HOLT
SITE PLAN