

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE

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Date Filed:	July 23, 2004
49th Day:	September 9, 2004
180 th Day:	January 19, 2005
Staff:	Robert Merrill
Staff Report:	August 26, 2004
Hearing Date:	September 9, 2004
Commission Action:	

STAFF REPORT: REGULAR CALENDAR**APPLICATION NO:****1-04-045****APPLICANT:****LELAND ROCK & CHARLES
DWELLEY****AGENTS:****Keith D. Hess****PROJECT LOCATION:**

Along the Van Duzen River, at the confluence of the Van Duzen and Eel Rivers west of the Highway 101 bridge, near Alton, Humboldt County. APNs 201-261-09 & 205-121-01.

PROJECT DESCRIPTION:

Extract up to 100,000 cubic yards of sand and gravel from river gravel bars and install seasonal truck crossings as needed over the low flow channel consisting of two railroad flat cars each, and stockpiling gravel in a pile not to exceed 15 feet high, 220-foot-wide, and 535-foot-long at an upland area adjacent to the highway.

PLAN DESIGNATION:	Agricultural Exclusive
ZONING DESIGNATION:	Agricultural Exclusive with archaeological, flood hazard, and riparian combining zones (AE-A,F,R)
LOCAL APPROVALS RECEIVED:	Humboldt County: (1) Use Permit (CUP-28-94); (2) Reclamation Plan Approval No. RP-05-94
OTHER APPROVALS REQUIRED:	State Lands Commission; California Department of Fish & Game Section 1603 Streambed Alteration Agreement; U.S. Army Corps of Engineers Section 404 Permit
SUBSTANTIVE FILE DOCUMENTS:	Humboldt County LCP; Humboldt County Program Environmental Impact Report on Gravel Removal from the Lower Eel River; National Marine Fisheries Service August 13, 2004 biological opinion reviewing the Corps Letter of Permission procedure 2004-1.

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends that the Commission approve with conditions the coastal development permit for gravel extraction and stockpiling. The applicant proposes to extract up to 100,000 cubic yards of gravel from a gravel bar along the Van Duzen River, from the Highway 101 bridge west to the river's junction with the Eel River (Exhibit No. 1 & 2). The Commission previously granted a five-year permit to the applicant in 1996 (CDP-1-96-068) and two one-year permits in 2002 (CDP 1-02-006) and 2003 (CDP 1-03-048).

Gravel mining along rivers is regulated by a variety of local, state, and federal agencies. In recent years, with the listing of various salmonid fish species as threatened under the state and federal Endangered Species Acts, considerable attention has been paid to changing mining protocols to best protect the threatened fish species from mining impacts. The development of multi-year gravel mining permitting protocols by involved resource agencies has been on-going. The U.S. Army Corps of Engineers (Corps) granted a Letter of Permission (LOP) in the late 1990s to provide multi-year authorization under the Clean Water Act for the gravel extraction operations in Humboldt County. For the past several years the U.S. Army Corps of Engineers

(Corps) has been working to issue a new LOP with revised terms and conditions to better address the protection of threatened salmonids and other environmental resources of the river. As the process of developing a new LOP has taken several years, the process has necessitated the extension of the previous LOP on an annual basis. The new LOP and the extensions of the old LOP has necessitated consultation between the U.S. Army Corps of Engineers (Corps) with NOAA Fisheries under Section 7 of the federal Endangered Species Act on the effects of the permit extensions and new LOP on the threatened salmonid species. On August 13, 2004, NOAA Fisheries published a new biological opinion addressing the new 5-year LOP to be issued by the CORPS. The biological opinion finds that activities that would be authorized under the LOP are not likely to jeopardize the continued existence of the threatened salmonid species or result in the destruction or adverse modification of coho salmon designated critical habitat. The biological opinions that have been issued by NOAA Fisheries as a result of those consultations have provided new information and recommendations for improving limitations on gravel mining to better protect threatened salmonid species.

In previous actions on gravel mining projects over the past few years, the Commission has relied on the information and recommendations of the biological opinions on the one-year extensions of the old LOP to shape coastal development permit requirements for the protection of fisheries and as evidence that gravel mining conducted in accordance with the recommendations would not result in significant adverse impacts on threatened salmonids. These biological opinions of the last several years have only addressed the impacts of gravel mining on fisheries for that particular year. As the biological opinions issued between 2001 and 2003 did not address the effects of gravel mining in future years, and no other credible information was available to the Commission to determine that proposed gravel mining activities would not adversely affect threatened salmonids and would be consistent with the environmentally sensitive habitat protection policies of the Coastal Act, the Commission has limited its coastal development permit authorizations to one year periods. With publication of the August 13, 2004 biological opinion on the new 5-year LOP, evidence exists that gravel operations conducted in accordance with the LOP would not adversely affect threatened salmonids over the next five years. Therefore, special condition No. 6 indicates the gravel operations authorized by the permit shall terminate in five years instead of just one year.

Staff recommends a number of special conditions requiring measures to prevent disturbances to both riverine and terrestrial habitat. In developing the recommended conditions, staff has considered the information and recommendations contained in the NOAA Fisheries biological opinion, as well as requirements imposed on the applicants by other agencies, including the USACE, the U.S. Fish and Wildlife Service (USFWS), the California Department of Fish and Game (CDFG), the State Lands Commission (SLC), and the County of Humboldt Extraction Review Committee (CHERT).

A central component of the recommended conditions is the requirement of Special Condition No. 2 that the permittee submit an annual extraction plan. A river system is dynamic, and the amount of aggregate accumulating on the bars and the exact configuration of bars and channels vary to some degree from year to year. As a result, the Corps, the Department of Fish & Game, NOAA Fisheries, all require each operator to prepare an annual gravel extraction plan that takes into account the conditions that year. Each of these agencies require that the annual plan be reviewed by CHERT, a County panel of consulting geologists and hydrologists who comment on the plans and recommend changes. Similarly, Special Condition No. 2 would require the submittal of an annual gravel extraction plan for review and approval of the Executive Director prior to the commencement of gravel extraction operations in any particular year. The condition requires that the annual plan be consistent with the recommendations of CHERT, NOAA Fisheries, and other agencies, and that the plan conform to certain limitations on mining set forth in Special Condition No. 3. The limitations incorporate the mitigation measures contained in LOP Procedure 2004-1 and recommended by NOAA Fisheries and the Corps to protect threatened salmonid species and maintain channel form, as well as other limitations to ensure consistency with the environmentally sensitive habitat and public access policies of the Coastal Act.

Among the specific limitations derived from the biological opinion are requirements that (1) only the particular extraction methods proposed by the Corps and reviewed by NOAA Fisheries be used including: (a) very narrow skims, (b) concentrating on-bar gravel extraction from horseshoe-shaped "deep skims," (c) developing "alcove trenches" within the outboard secondary channels on the lower end of the bars; (d) wetland pits; and (e) longitudinal "dry trenching" down the length of a portion of the bars. The biological opinion concludes that due to site-specific geomorphic and biological conditions affecting the site, traditional bar skimming at the Rock & Dwelley site would cause further degradation of the river channel and additional adverse indirect effects on threatened salmonids. Thus, any skimming operation is limited to skims that are only 90 feet in width or less. Other limitations derived from the biological opinion are requirements that (2) the head of the gravel bars to be mined be maintained as buffers where gravel extraction would be precluded to provide protection of the natural stream flow steering effect provided by an undisturbed bar; (3) vertical offsets of the gravel extraction area from the low flow channel of the river that exists during the summer mining season be used to help minimize sedimentation impacts on the river; and (4) mining and all post-extraction bar grooming work and equipment removal be performed during the summer months and completed by October 15 to ensure no significant disturbance to anadromous fish (Special Condition No. 8). Gravel mining operations on the river bed need to cease before the rainy season to prevent significant adverse impacts to fisheries, as the runs of the various species of anadromous fish up and down the river increase in the fall with the rise in river water levels and remain at high levels through the early spring. The condition would allow the Executive Director to approve an extension of gravel extraction and regrading activities to as late as November 1 if dry weather

conditioned are forecasted, the permittee has received all necessary approvals to extend gravel operations over the extension period from the other reviewing agencies, and if at the end of each day the site is left in a reclaimed state to protect the site should rain occur and river flows unexpectedly rise.

Several of the recommended conditions would impose requirements necessary to achieve consistency with Coastal Act policies that may not be needed to achieve consistency with the requirements of other reviewing agencies.

First, Special Condition 3(f) would prevent disturbance of environmentally sensitive riparian vegetation growing on the gravel bars. The condition would prohibit mining in those areas of the gravel bars where the riparian vegetation has reached a size and extent to where there is an expectation of appreciable habitat values for nesting, forage and cover of wildlife being afforded thereby constituting environmentally sensitive habitat under the Coastal Act. Although the Corps permits for gravel mining have often required mitigation for extraction within riparian areas, the Corps has still allowed extraction within riparian areas. The Coastal Act precludes the Commission from approving this type of extraction because of the prohibition within Section 30233(a)(6) on mining within an ESHA.

For the same reason, the conditions recommended by staff would preclude mining and related gravel extraction development within the wetted channel of the river. The Commission notes that the applicant's current application does not specifically include wet-trenching extraction, or any other extraction within a wetted channel. However, the applicants do propose to install seasonal crossings with abutments that could extend into the flowing water of secondary channels. To ensure that mineral extraction and associated activities such as the installation of seasonal crossings within an environmentally sensitive habitat area as precluded by Coastal Act Sections 30233(a)(6) and 30240 does not occur, Special Condition No. 3.b would require that excavation not occur within the actual wetted channel, where sensitive salmonid species could be present, and (2) Special condition 8(c) prohibits any portion of the seasonal crossing abutments from extending into the wetted channel.

In addition, the staff recommendation includes special conditions designed to avoid significant adverse impacts to coastal water quality consistent with Section 30231 of the Coastal Act. Special Condition No. 2(A)(7) requires that a runoff control plan be reviewed and approved by the Executive Director as part of the annual final gravel extraction plan ensuring that mining equipment be maintained and operated in such a manner so as not to allow for release of petroleum products into the river, that spill clean-up materials be available on the worksite, and that operators and sub-contractors undergo spill contingency training. Special Condition No. 3 requires the applicant to perform the mining project on the exposed gravel bar, to avoid in-water activities that might result in sedimentation of the river. Special Condition No. 5 requires that all materials be

promptly removed from the river after the cessation of mining and prior to the start of the rainy season. Special Condition No. 7 prohibits placing any material into the river during gravel extraction activities.

Furthermore, Special Condition No. 8 will ensure that any truck crossings of the channel installed by the applicants will not block passage down the river. The condition requires that any proposed seasonal crossing of the low flow or secondary channels that can be expected to maintain flow year round shall be of the railroad flatcar or bridge variety rather than culverted fill crossings. The condition also requires that the crossing be installed in such a manner that a minimum three-foot vertical clearance is maintained above the surface of the water. Canoes and kayaks would be able to pass through such a crossing. The condition is necessary to achieve consistency with Coastal Act Section 30210, which requires in applicable part that maximum public access and recreational opportunities be provided when consistent with public safety, private property rights, and natural resource protection. As conditioned, the project would not significantly affect the fishermen, canoeists or other recreational boaters.

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

The Motion to adopt the Staff Recommendation of Approval with Conditions is found on page 7.

STAFF NOTES:

1. Standard of Review

The proposed project is located in the Commission's retained jurisdiction. Humboldt County has a certified LCP, but the site is within an area shown on State Lands Commission maps over which the state retains a public trust interest. Therefore, the standard of review that the Commission must apply to the project is the Chapter 3 policies of the Coastal Act.

2. Addendum

This staff report does not contain the recommended findings for approval. Due to staffing shortages, staff was unable to complete the findings prior to the mailing of the staff report. Staff will present the recommended findings for approval of the project as part of an addendum at the Commission meeting. The findings will be very similar to those contained in the staff recommendation for CDP Application 1-04-011, Eureka Sand and Gravel, which was completed and mailed on August 27, 2004.

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. 1-04-045 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 feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment.

II. STANDARD CONDITIONS: See Attachment A.

III. SPECIAL CONDITIONS:

1. State Lands Commission Review

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director, a written determination from the State Lands Commission that:

- a. No State lands are involved in the development; or
- b. State lands are involved in the development and all permits required by the State Lands Commission have been obtained; or

- c. State lands may be involved in the development, but pending a final determination an agreement has been made with the State Lands Commission for the project to proceed without prejudice to that determination.

2. Annual Gravel Extraction Plan

A. **PRIOR TO THE START OF EACH YEAR'S GRAVEL EXTRACTION**

OPERATIONS, the applicant shall submit, for the review and written approval of the Executive Director, a final gravel extraction plan for that gravel extraction season consistent with the terms and conditions of this permit and that contains the following:

1. A gravel extraction plan of the annual gravel extraction operation containing cross-sections, maps, and associated calculations that accurately depict the proposed extraction area, demonstrates that the proposed extraction will be consistent with the extraction limits specified in Special Condition Nos. 3 and 4 below, and is prepared in conformance with the requirements of the Letter of Permission Procedure 2004-1 issued by the U.S. Army Corps of Engineers, San Francisco District;
2. A pre-extraction vertical rather than oblique aerial photo of the site taken during the spring of the year of mining at a scale of 1:6000 and upon which the proposed extraction activities have been diagrammed;
3. A botanical survey prepared by a qualified biologist with experience in riparian and wetland vegetation mapping, for the review and approval of the Executive Director, that maps all vegetation found in potential extraction areas of the site and highlights the location and extent of all vegetated areas containing woody riparian vegetation that is either (i) part of a contiguous riparian vegetation complex 1/16-of-an-acre or larger or (ii) one-inch-in-diameter at breast height (DBH) or greater. If the areas proposed for extraction are devoid of vegetation, the applicant may substitute the submittal of photographs (including aerial) that are sufficient in the opinion of the Executive Director to demonstrate that no vegetation exists in the proposed extraction areas in lieu of the botanical survey;
4. A copy of the gravel extraction plan recommended by the County of Humboldt Extraction Review Team (CHERT), unless review by CHERT is not required by the County, and evidence that the final gravel extraction plan is consistent with the recommendations of the CHERT as well as consistent with all standard and special conditions of this permit;

5. A post-extraction survey of the prior year's mining activities (if any) conducted following cessation of extraction and before alteration of the extraction area by flow following fall rains, that includes the amount and dimension of material excavated from each area mined and is prepared in conformance with the requirements of the Letter of Permission Procedure 2004-1 issued by the U.S. Army Corps of Engineers, San Francisco District;
6. The results of biological monitoring report data required by the Letter of Permission Procedure 2004-1 issued by the U.S. Army Corps of Engineers, San Francisco District;
7. A plan for run-off control to avoid significant adverse impacts on coastal resources. The runoff control plan shall include, at a minimum, the following components:
 - (a) The erosion control, run-off, spill prevention and response plan shall demonstrate that:
 - (1) Run-off from the gravel mining extraction and stockpiling sites shall not increase sedimentation in coastal waters;
 - (2) Run-off from the gravel mining extraction and stockpiling sites shall not result in pollutants entering coastal waters;
 - (3) Best Management Practices (BMPs) shall be used to prevent entry of polluted stormwater runoff into coastal waters during the transportation and storage of excavated materials, including but not limited to:
 - (4) A suite of the following temporary erosion and runoff control measures, as described in detail within in the "California Storm Water Best Management Commercial-Industrial and Construction Activity Handbooks, developed by Camp, Dresser & McKee, *et al.* for the Storm Water Quality Task Force, shall be used during mining: *Spill Prevention and Control* (CA12), *Vehicle and Equipment Fueling* (CA31), *Vehicle and Equipment Maintenance* (CA32), *Employee / Subcontractor Training* (CA40), and *Dust Control* (ESC21);
 - (2) A narrative report describing all temporary runoff control measures to be used during mining;

- (3) A site plan showing the location of all temporary runoff control measures; and
 - (4) A schedule for installation and removal of the temporary runoff control measures.
- B. The permittee shall undertake development in accordance with the approved final gravel extraction plan. Any proposed changes to the approved final gravel extraction plan shall be reported to the Executive Director. No changes to the approved final gravel extraction plan shall occur without a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

3. Extraction Limitations

Extraction of material shall be subject to the following limitations:

- a. Consistent with the proposed project description, the permittee shall extract no more than 270,000 cubic yards of gravel from the project site;
- b. The permittee shall only extract material by very narrow skims, dry trenching, horseshoe-shaped deep skims, wetland pits, or alcove extractions in the manner described in Letter of Permission Procedure 2004-1 issued by the U.S. Army Corps of Engineers, San Francisco District NOAA Fisheries Biological Opinion. Very narrow skims shall be limited to 90 feet total width as measured across the top of the extraction;
- c. Excavation shall not occur in the active channel (area where water is flowing unimpeded through the river channel);
- d. Extraction quantities shall not exceed (1) the proposed cubic yards per year of gravel extraction, (2) any specific allocation limit required by the Army Corps of Engineers, and (3) the long term average sustained yield based on estimates of mean annual recruitment, as utilized by CHERT;
- e. Gravel extraction operations shall not disturb or remove any of the riparian vegetation on the river banks;
- f. Gravel extraction operations shall not disturb or remove any of the riparian vegetation on the gravel bar that is either: (1) part of contiguous riparian

vegetation complex 1/16 acre or larger, or (2) one-inch-in-diameter at breast height (DBH) or greater;

- g. Horseshoe extractions shall occur on the part of the gravel bar that is downstream from the widest point of the bar and must be set back from the low flow channel with vertical offsets;
- h. Dry trench extractions shall be (1) limited to excavation on an exposed dry travel bar; (2) either shallow and stay above the water table, or deep and extend below the water table, and (3) breached on the downstream end and connected to the river to prevent fish stranding after excavation when the sediment in the trench has settled;
- i. Alcove extractions shall be (1) located on the downstream end of gravel bars where naturally occurring alcoves form and provide refuge for salmonids; (2) regularly shaped or irregularly shaped to avoid riparian vegetation; (3) open to the low flow channel on the downstream end to prevent fish stranding; and (4) extracted to a depth either above or below the water table; and
- j. Any Bar-skimming extractions that are consistent with subsection b above that are proposed adjacent to the low flow channel shall have a minimum skim floor elevation at the elevation of the 35% exceedence flow.
- k. The upstream end of the bar (head) shall not be mined or otherwise altered by gravel extraction operations. The minimum head of the bar shall be defined as that portion of the bar that extends from at least the upper third of the bar to the upstream end of the bar that is exposed at summer low flow.

4. Extraction Season

Extraction and all reclamation required by Special Condition No. 5 must be completed by October 15 of each season. The Executive Director may approve an extension of gravel extraction and reclamation activities beyond that date to as late as November 1 if the permittee has submitted a request for an extension in writing, the Executive Director determines that dry weather conditions are forecast for the extension period, and any necessary extensions of time have been granted by the Department of Fish and Game, the U.S. Army Corps of Engineers, and NOAA Fisheries. No extraction or reclamation activities shall occur after October 15 unless the permittee has first received approval of an extension of time in writing from the Executive Director. The permittee must have reclaimed all portions of the seasonal development area except for removal of any authorized seasonal crossings before an extension can be authorized.

5. Seasonal Site Closure

The seasonal development area must be reclaimed before October 15, or by the extended date approved by the Executive Director pursuant to Special Condition No. 4 above. The site must be reclaimed when extraction has been completed. Reclamation includes: (a) filling in depressions created by the mining that are not part of the approved extraction method; (b) grading the excavation site according to prescribed grade; and (c) removing all seasonal crossings and grading out the abutments to conform with surrounding topography and removing all temporary fills from the bar. After October 15, the development area must be reclaimed daily except for the removal of authorized seasonal crossings.

6. Permit Termination Date

The gravel operations authorized by this permit shall terminate on November 1, 2008. Continued gravel operations after that date shall require a new coastal development permit.

7. Resource Protection

The gravel extraction and processing operations shall not disturb or remove any of the established riparian vegetation habitat along the banks of the river, nor any of the riparian vegetation areas on the gravel bar limited by Special Condition No. 3. No new haul roads shall be cut through the habitat. No debris, soil, silt, sand, bark, slash, sawdust, rubbish, cement or concrete, oil or petroleum products, or other organic or earthen material from any gravel extraction or reclamation activities shall be allowed to enter into or be placed where it may be washed by rainfall or runoff into river waters.

8. Seasonal Crossings

Any proposed crossing of the low flow channel or secondary channels that could be expected to maintain flow year-round shall be subject to the following criteria:

- a. The crossing shall be of the railroad flatcar or bridge variety, placed in a manner so as to span the channel with a minimum clearance of three (3) feet above the water surface;
- b. Stream channel crossing locations shall be determined on a site-specific basis. Special consideration shall be given to the proposed placement of the channel

crossings at riffles and based on findings from CHERT that the location will minimize adverse effects to salmonids;

- c. No portion of the abutments shall extend into the wetted channel;
- d. The presence of heavy equipment in the wetted low-flow channel shall be minimized by limiting the number of heavy equipment crossings during each crossing installation or removal. A maximum of two crossing per installation or removal is allowed, although one crossing is preferred. Heavy equipment shall not be used in the wetted low-flow channel except for channel crossing installation and removal;
- e. Channel crossings shall only be placed after June 30 of each year; and
- f. Channel crossing removal shall be completed by October 15 of each year or by the extended date approved by the Executive Director pursuant to Special Condition No. 5 above.

9. Streambed Alteration Agreement

PRIOR TO THE START OF EACH YEAR'S GRAVEL EXTRACTION

OPERATIONS, the permittee shall submit a copy of any necessary Section 1603 Streambed Alteration Agreement or other approval required by the Department of Fish and Game for the project for that gravel extraction season which is consistent with all terms and conditions of this permit. The applicant shall inform the Executive Director of any changes to the project required by the Department of Fish and Game. 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.

10. Army Corps of Engineers Approval

PRIOR TO THE START OF EACH YEAR'S GRAVEL EXTRACTION

OPERATIONS, the permittee shall submit a copy of any authorization issued by the U.S. Army Corps of Engineers granting approval for the project for that year's gravel extraction season which is consistent with all terms and conditions of this permit, or evidence that no seasonal authorization is required. The applicant shall inform the Executive Director of any changes to the project required by the Army Corps of Engineers. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

11. Western Snowy Plover

- A. If gravel extraction commences before September 15, gravel extraction operations shall occur at least 1,000 feet from active plover areas. Except as specified below, daily plover surveys by an USFWS approved biologist shall be conducted prior to commencement of daily on-site activities and continue consistent with subsections A(1)-A(3) below:
 - 1. If an active plover nest is within the area of planned operations or a 1,000 foot buffer area, activities within 1,000 feet of the nest shall be delayed until the nest hatches and the adult and chicks have vacated the area of concern.
 - 2. Extraction activities within 1,000 feet of any active plover nest without daily surveys may only occur if, three consecutive days of plover surveys conducted by an approved biologist are completed within the 1,000 foot buffer area and the area of operations with no detections of plovers or nests.
 - 3. If 3 consecutive days of no plover detections within the area of operations and the 1,000 foot buffer area cannot be documented, daily surveys shall be performed by an approved biologist and with gravel extraction operations shall occur at least 1,000-feet from any active plover nest.
- B. All pre-extraction activities conducted in suitable nesting habitat prior to August 22 of each year shall be preceded by plover surveys completed each day pre-extraction activities are planned to occur. The surveys shall be completed by a biologist approved by the USFWS prior to daily initiation of any pre-operational activities (i.e. topographic surveys). In instances where work must be completed within 1,000 feet of a nest found during pre-operational surveys, the permittee shall adhere to the procedures identified by the approved biologist to avoid potential take of plover adults, juveniles, chicks, and eggs, and shall modify or halt any activity the approved biologist identifies as adversely affecting the plovers. Other surveys (i.e. hydrologic and biological resources) not directly conducted in suitable habitat, but needing access through or near suitable habitat, may be conducted without intensive plover surveys so long as the USFWS is consulted first and the surveys are conducted according to the procedures for working in or near suitable plover habitat areas identified by USFWS.
- C. Vehicle use in suitable plover habitat shall be minimized to the maximum extent feasible during the plover nesting season prior to September 15.
 - 1. Vehicle use in suitable plover habitat on the gravel bars shall be restricted to 10 mph, unless on a haul road, where speeds shall be restricted to 30 mph.

The first three vehicle trips on access/haul roads in suitable habitat each day shall not exceed 10 mph.

2. Vehicle use in suitable habitat associated with gravel extraction operations shall be restricted to the daytime, between 0.5 hours before sunrise and 0.5 hours past sunset.

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

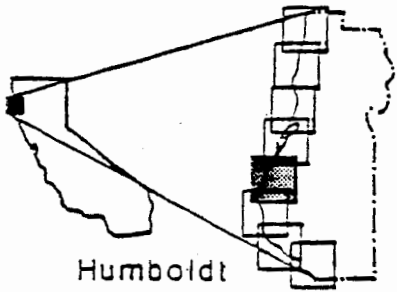
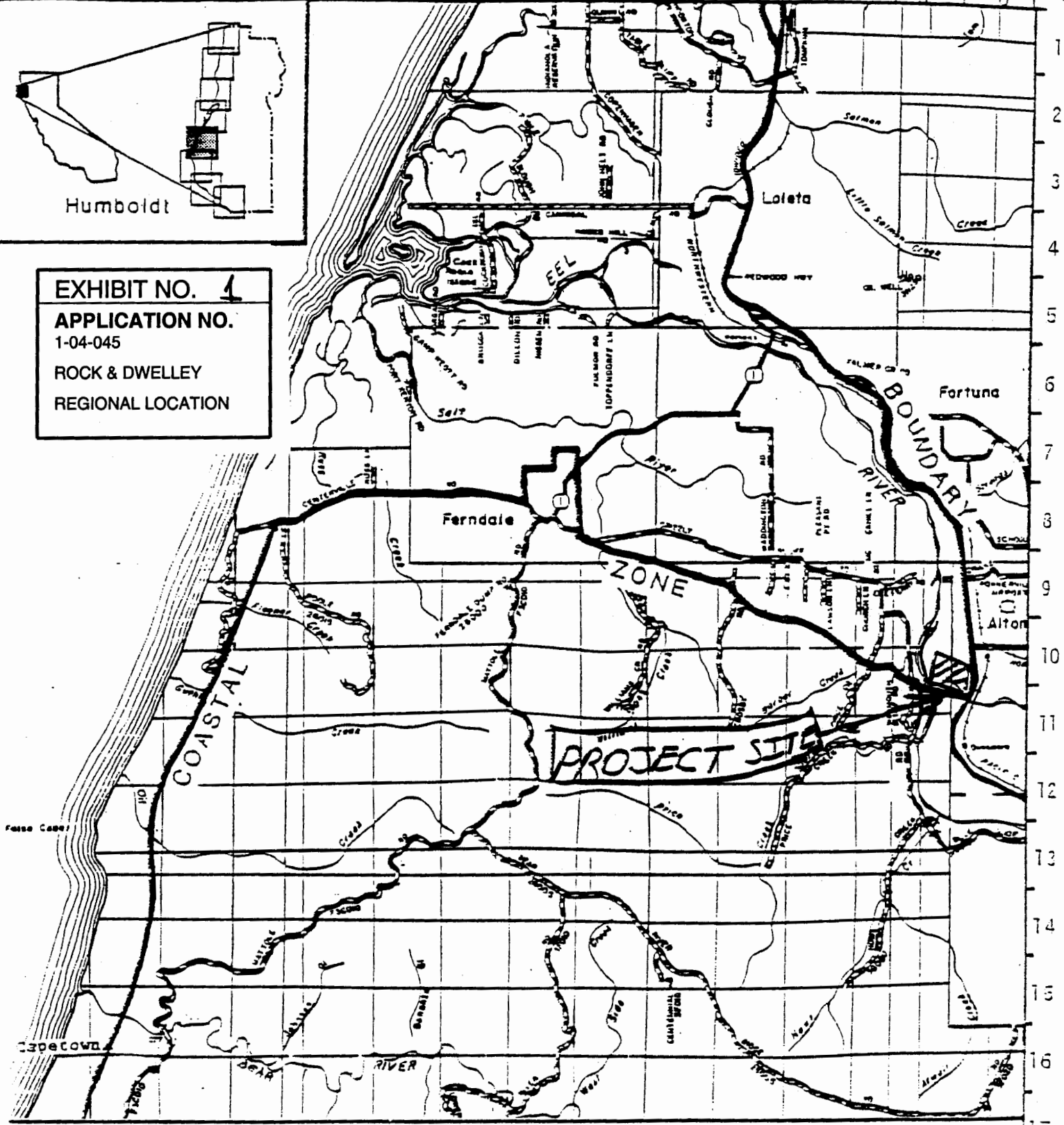
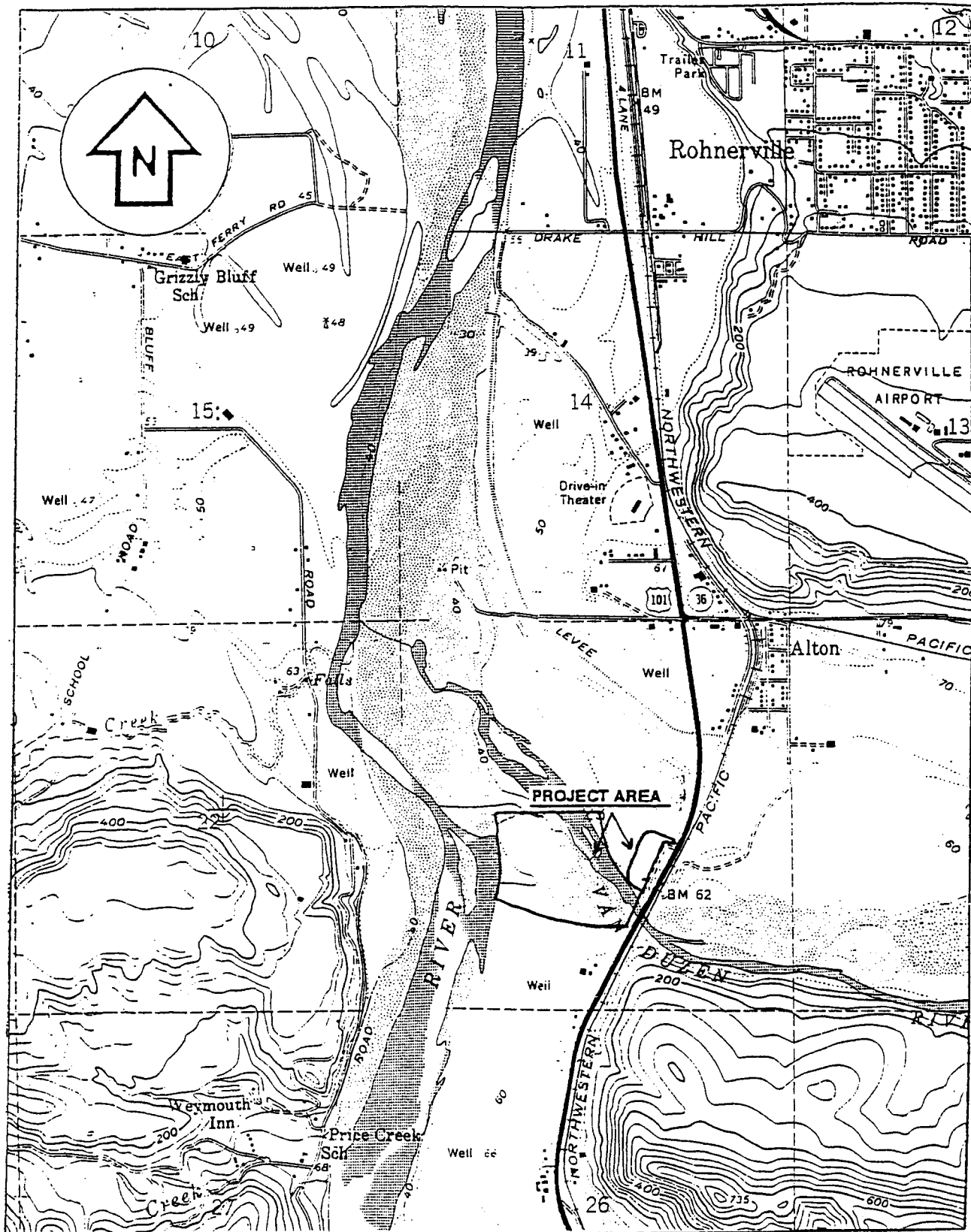


EXHIBIT NO. 4
APPLICATION NO.
 1-04-045
ROCK & DWELLEY
REGIONAL LOCATION





PURPOSE: VICINITY MAP

APPLICANT: LELAND ROCK/CHARLES DWELLEY

DATUM: NGVD

AT: VAN DUZEN RIVER, MILE 0-0.7 ±
SEC. 23, T2N, R1W, HUMB. MER.

NOTES:

1. SCALE 1"= 2,000'

NEAR: ALTON
COUNTY: HUMBOLDT STATE: CA

2. APN 206- 261-09 & 205-121-05

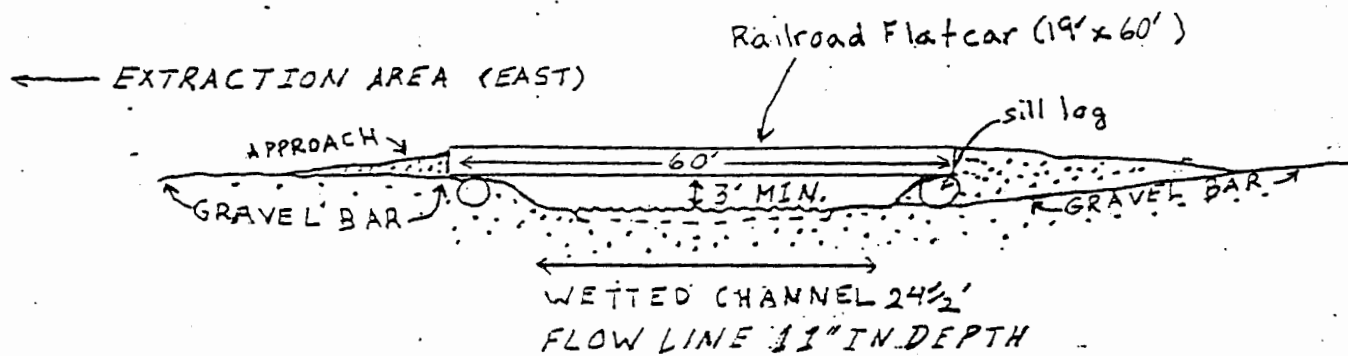
EXHIBIT NO. 2

APPLICATION NO.
1-04-045

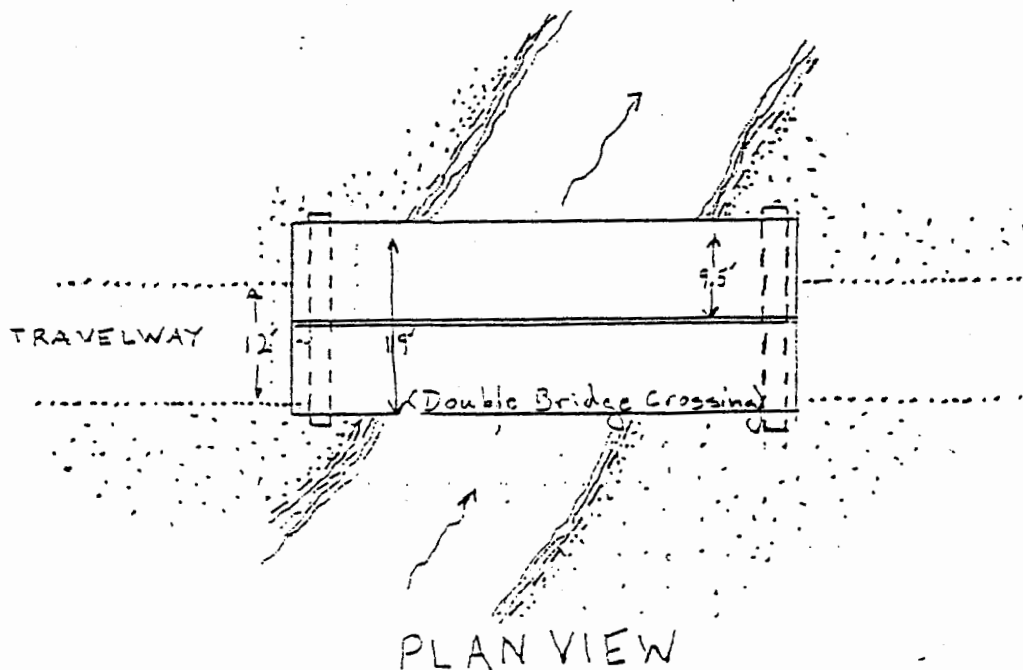
ROCK & DWELLEY
VICINITY MAP

Typical Summer Bridge Crossing Dimensions

(Actual conditions existing during 1996 extraction season)



SECTIONAL VIEW



PLAN VIEW

EXHIBIT NO. 3

APPLICATION NO.

1-04-045

ROCK & DWELLEY

TYPICAL STREAM
CROSSING



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE

Southwest Region
501 West Ocean Boulevard, Suite 4200
Long Beach, California 90802- 4213

AUG 13 2004

151422SWR04AR9101: SF

Mr. Calvin Fong
Chief, Regulatory Branch
Department of the Army, Corps of Engineers
333 Market Street
San Francisco, California 94105-2197

Dear Mr. Fong:

This letter transmits the National Marine Fisheries Service's (NOAA Fisheries) biological opinion (Opinion) based on our review of Letter of Permission procedure 2004-1 (LOP 2004-1) for proposed gravel extraction operations in rivers of Humboldt County, California Project, and its effects on Southern Oregon/Northern California Coast (SONCC) coho salmon (*Oncorhynchus kisutch*) and its designated critical habitat, California Coastal (CC) Chinook salmon (*O. tshawytscha*) and Northern California (NC) steelhead (*O. mykiss*), pursuant to section 7(a)(2) of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*). This Opinion (Enclosure 1) is based on the best available information provided to NOAA Fisheries by the U.S. Department of the Army, Corps of Engineers (file number 284270N), and other relevant published studies and unpublished information.

After reviewing the best available scientific and commercial information, the current status of SONCC coho salmon, CC Chinook salmon and NC steelhead, the environmental baseline for the action area, the anticipated effects of the Project, and cumulative effects, it is NOAA Fisheries' biological opinion that LOP 2004-1, as proposed, is not likely to jeopardize the continued existence of these three species or result in the destruction or adverse modification of SONCC coho salmon critical habitat.

Essential Fish Habitat Consultation

In addition, recent amendments to the Magnuson-Stevens Fishery Conservation and Management Act (MSA) require Federal agencies to consult with NOAA Fisheries regarding any action or proposed action that may adversely affect essential fish habitat (EFH) for Federally managed fish species. NOAA Fisheries evaluated the Project for potential adverse effects to EFH pursuant to section 305(b)(2) of the MSA.

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COASTAL COMMISSION

EXHIBIT NO. 4
APPLICATION NO. 1-04-045
ROCK & DWELLEY BIOLOGICAL OPINION COVER LETTER

(1 of 2)



The action area of the Project includes areas identified as EFH for various life stages of Chinook salmon and coho salmon, species that are Federally-managed under the Pacific Coast Salmon Fishery Management Plan. After reviewing the effects of the Project, NOAA Fisheries has determined that the proposed action may adversely affect coho salmon and Chinook salmon EFH. However, NOAA Fisheries has no conservation measures to recommend over what is currently proposed. Conservation recommendations provided in past gravel mining consultations were incorporated into the proposed action. For more information on EFH, see our website at <http://swr.nmfs.noaa.gov>.

If you have any questions regarding these consultations, please contact Mr. Sam Flanagan at (707) 825-5173.

Sincerely,

A handwritten signature in cursive script that reads "Rodney R. McInnis".

Rodney R. McInnis
Regional Administrator

Enclosure

cc: Mr. Kelly Reid, Corps of Engineer