

3 CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE

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RECORD PACKET COPY

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Application No.: 1-04-072

Date: October 14, 2005

ADMINISTRATIVE PERMIT**APPLICANT:****Gerhardt & Barbara Rohrbach****PROJECT DESCRIPTION:**

After-the-fact replacement of an existing culvert with a new, 18-inch-diameter, 20-foot-long culvert in the same location.

PROJECT LOCATION:

At the corner of Myrtle Avenue and Spears Road at 2588 Spears Road, east of Eureka, Humboldt County (APN 402-301-028).

EXECUTIVE DIRECTOR'S DETERMINATION: The findings for this determination, and for any special conditions, appear on subsequent pages.

NOTE: P.R.C. Section 30624 provides that this permit shall not become effective until it is reported to the Commission at its next meeting. If one-third or more of the appointed membership of the Commission so request, the application will be removed from the administrative calendar and set for public hearing at a subsequent Commission meeting. Our office will notify you if such removal occurs.

This permit will be reported to the Commission at the following time and place:

OCTOBER 14, 2005 8:00 a.m.
Marriott San Diego Hotel & Marina
333 West Harbor Drive
San Diego, CA 92101

IMPORTANT - Before you may proceed with development, the following must occur:

Pursuant to 14 Cal. Admin. Code Sections 13150(b) and 13158, you must sign the enclosed duplicate copy acknowledging the permit's receipt and accepting its contents, including all conditions, and return it to our office. Following the Commission's meeting, and once we have received the signed acknowledgment and evidence of compliance with all special conditions, we will send you a Notice of Administrative Permit Effectiveness.

BEFORE YOU CAN OBTAIN ANY LOCAL PERMITS AND PROCEED WITH DEVELOPMENT, YOU MUST HAVE RECEIVED BOTH YOUR ADMINISTRATIVE PERMIT AND THE NOTICE OF PERMIT EFFECTIVENESS FROM THIS OFFICE.

PETER DOUGLAS

Executive Director

By: Tiffany S. Tauber

Title: Coastal Planner

ROBERT S. MERRICK

PER SECRETARY TAUBER

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 or 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.

EXECUTIVE DIRECTOR'S DETERMINATION (continued):

The Executive Director hereby determines that the proposed development is a category of development which, pursuant to PRC Section 30624, qualifies for approval by the Executive Director through the issuance of an administrative permit. Subject to Standard and Special Conditions as attached, said development is in conformity with the provisions of Chapter 3 of the Coastal Act of 1976, will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3, and will not have any significant impacts on the environment within the meaning of the California Environmental Quality Act. If located between the nearest public road and the sea, this development is in conformity with the public access and public recreation policies of Chapter 3.

FINDINGS FOR EXECUTIVE DIRECTOR'S DETERMINATION:

1. Project and Site Description

The proposed project involves after-the-fact authorization of the removal of an existing culvert and the installation of a new culvert in the same location. The project site is located at the corner of Myrtle Avenue and Spears Road at 2588 Spears Road north of Eureka in an area of rural residential development. The site is developed with an existing barn and is used as horse pasture.

A perennial drainage is located adjacent to Spears Road along the eastern property boundary and flows under Myrtle Avenue toward Freshwater Slough and the former tidelands on the west side of Myrtle Avenue. The area surrounding the drainage is primarily vegetated with ruderal grass species. The existing culvert located at the northeast corner of the subject property had rusted and was in a state of disrepair. The applicant removed and replaced the culvert without benefit of a coastal development permit. The applicant is now seeking after-the-fact approval of the removal of the culvert and the installation of a new, 18-inch-diameter by 20-foot-long culvert in the same location. The project involves grading approximately eight cubic yards of material to install the culvert, and backfilling the material in the same location. No new fill is proposed to be placed at the site.

2. Permit Authority - Extraordinary Methods of Repair and Maintenance

Coastal Act Section 30610(d) generally exempts from Coastal Act permitting requirements the repair or maintenance of structures that does not result in an addition to, or enlargement or expansion of, the structure being repaired or maintained. However, the Commission retains authority to review certain extraordinary methods of repair and maintenance of existing structures that involve a risk of substantial adverse environmental impact as enumerated in Section 13252 of the Commission regulations.

Section 30610 of the Coastal Act provides, in relevant part:

Notwithstanding any other provision of this division, no coastal development permit shall be required pursuant to this chapter for the following types of development and in the following areas:

...

(d) Repair or maintenance activities that do not result in an addition to, or enlargement or expansion of, the object of those repair or maintenance activities; provided, however, that if the commission determines that certain extraordinary methods of repair and maintenance involve a risk of substantial adverse environmental impact, it shall, by regulation, require that a permit be obtained pursuant to this chapter. [Emphasis added]

Section 13252 of the Commission regulations provides, in relevant part:

(a) For purposes of Public Resources Code section 30610(d), the following extraordinary methods of repair and maintenance shall require a coastal development permit because they involve a risk of substantial adverse environmental impact:

(3) Any repair or maintenance to facilities or structures or work located in an environmentally sensitive habitat area, any sand area, within 50 feet of the edge of a coastal bluff or environmentally sensitive habitat area, or within 20 feet of coastal waters or streams that include:

(A) The placement or removal, whether temporary or permanent, of rip-rap, rocks, sand or other beach materials or any other forms of solid materials;

(B) The presence, whether temporary or permanent, of mechanized equipment or construction materials.

All repair and maintenance activities governed by the above provisions shall be subject to the permit regulations promulgated pursuant to the Coastal Act, including but not limited to the regulations governing administrative and emergency permits. The provisions of this section shall not be applicable to methods of repair and maintenance undertaken by the ports listed in Public Resources Code section 30700 unless so provided elsewhere in these regulations. The provisions of this section shall not be applicable to those activities specifically described in the document entitled Repair, Maintenance and Utility Hookups, adopted by the Commission on September 5, 1978 unless a proposed activity will have a risk of substantial adverse impact on public access, environmentally sensitive habitat area, wetlands, or public views to the ocean.

[Emphasis added]

The proposed culvert replacement is considered a repair and maintenance project because it does not involve an addition to, or enlargement or expansion of, the culvert or surrounding levee. The approximately 20-foot-long culvert to be replaced is just one small portion of the larger levee and drainage system that extends along Myrtle Avenue. Although certain types of repair projects are exempt from CDP requirements, Section 13252 of the regulations requires a coastal development permit for extraordinary methods of repair and maintenance enumerated in the regulation. The proposed culvert replacement involves the placement of construction materials and removal and placement of solid materials within 20 feet of the coastal waters that run along the eastern property boundary of the subject site. Therefore, the proposed repair project requires a coastal development permit under Sections 13252(a)(1) of the Commission regulations.

In considering a permit application for a repair or maintenance project pursuant to the above-cited authority, the Commission reviews whether the proposed *method* of repair or maintenance is consistent with the Chapter 3 policies of the Coastal Act. The Commission's evaluation of such repair and maintenance projects does not extend to an evaluation of the conformity with the Coastal Act of the underlying existing development.

3. Water Quality

The Coastal Act protects the quality of coastal streams through, among other means, preventing sediment-contaminated runoff that may result from unauthorized grading (which includes placement of unauthorized fill material), and through the maintenance of vegetation that reduces the loss of topsoil from wind and rain. Unauthorized grading, soil disturbance, and vegetation removal may result in the discharge of sediment pollution into site runoff, which upon entering coastal waters, adversely affects fish and other sensitive aquatic species. Section 30231 of the Coastal Act provides:

Section 30231 Biological productivity; water quality

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

As noted previously, the subject proposal includes after-the-fact authorization for removal of an existing culvert and placement of a new culvert in the same location at the corner of Spears Road and Myrtle Avenue, Humboldt County. The project involves replacing an existing culvert with a new, 18-inch-diameter by 20-foot-long culvert at a drainage that runs along the eastern edge of the subject property. The culvert directs drainage from the subject property toward another culvert that directs flow under Myrtle Avenue and toward the grazed seasonal wetlands (former tidelands) on the west side of the road.

The applicant has indicated that approximately eight cubic yards of soil was cut to remove the old culvert and that this same soil was replaced following placement of the new culvert with no import of additional fill material. Based on a site inspection by Commission staff, the area where the culvert work occurred was covered with straw as an erosion control measure and is being recolonized by surrounding ruderal grasses. Thus, there is no bare soil exposed in a manner that would cause erosion and sedimentation of the watercourse. However, construction debris was observed at the site, specifically a

portion of rusted culvert adjacent to the watercourse. To ensure that all construction debris is removed from the site to prevent the debris or contaminated runoff from the debris from entering coastal waters, the Commission attaches Special Condition No. 2 requiring all construction debris to be removed from the site and disposed of at an authorized location within 30 days of permit approval.

Therefore, the Executive Director finds that the proposed project, as conditioned, is consistent with Section 30231 of the Coastal Act.

4. Violation

Although construction has taken place prior to submission of the subject permit application, consideration of the application by the Executive Director has been based solely upon the Chapter 3 policies of the Coastal Act. Approval of this permit does not constitute a waiver of any legal action with regard to the alleged violations nor does it constitute an admission as to the legality of any development undertaken on the subject sites without a coastal development permit.

5. California Environmental Quality Act

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 Executive Director 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 achieve consistency between the proposed project and the requirements of the applicable policies of the Coastal Act. These findings address and respond to all public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the staff report. Mitigation measures that will minimize or avoid all significant adverse environmental impact have been required. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact that the activity would have on the environment. Therefore, the Executive Director 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.

SPECIAL CONDITIONS

1. Permit Expiration and Condition Compliance

Because some of the proposed development has already commenced, this coastal development permit 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.

2. Debris Disposal

ROHRBACH

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Within thirty (30) days of the permit becoming effective, or within such additional time as the Executive Director may deem appropriate, the permittee shall remove any project debris from the site, including portions of rusted culvert, and dispose of the material at an authorized disposal location.

ACKNOWLEDGMENT OF PERMIT RECEIPT/ACCEPTANCE OF CONTENTS:

I/We acknowledge that I/we have received a copy of this permit and have accepted its contents including all conditions.

Applicant's Signature

Date of Signing

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

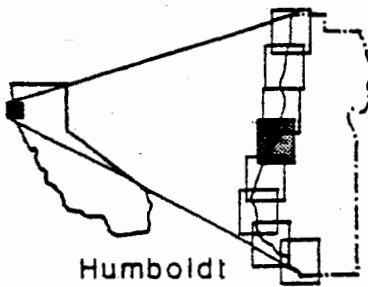
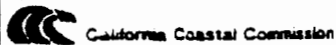
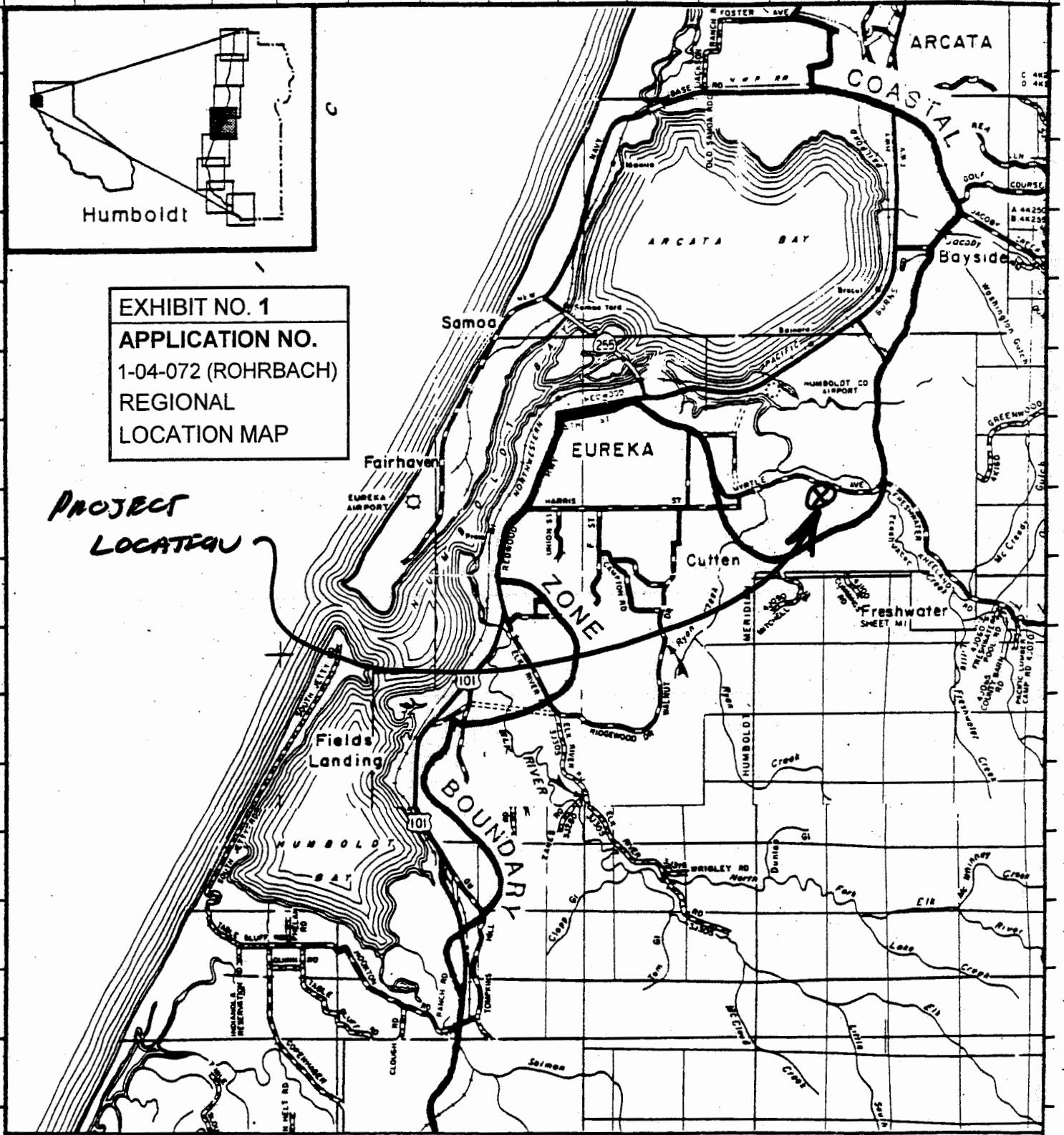


EXHIBIT NO. 1
APPLICATION NO.
1-04-072 (ROHRBACH)
REGIONAL
LOCATION MAP

PROJECT
LOCATION

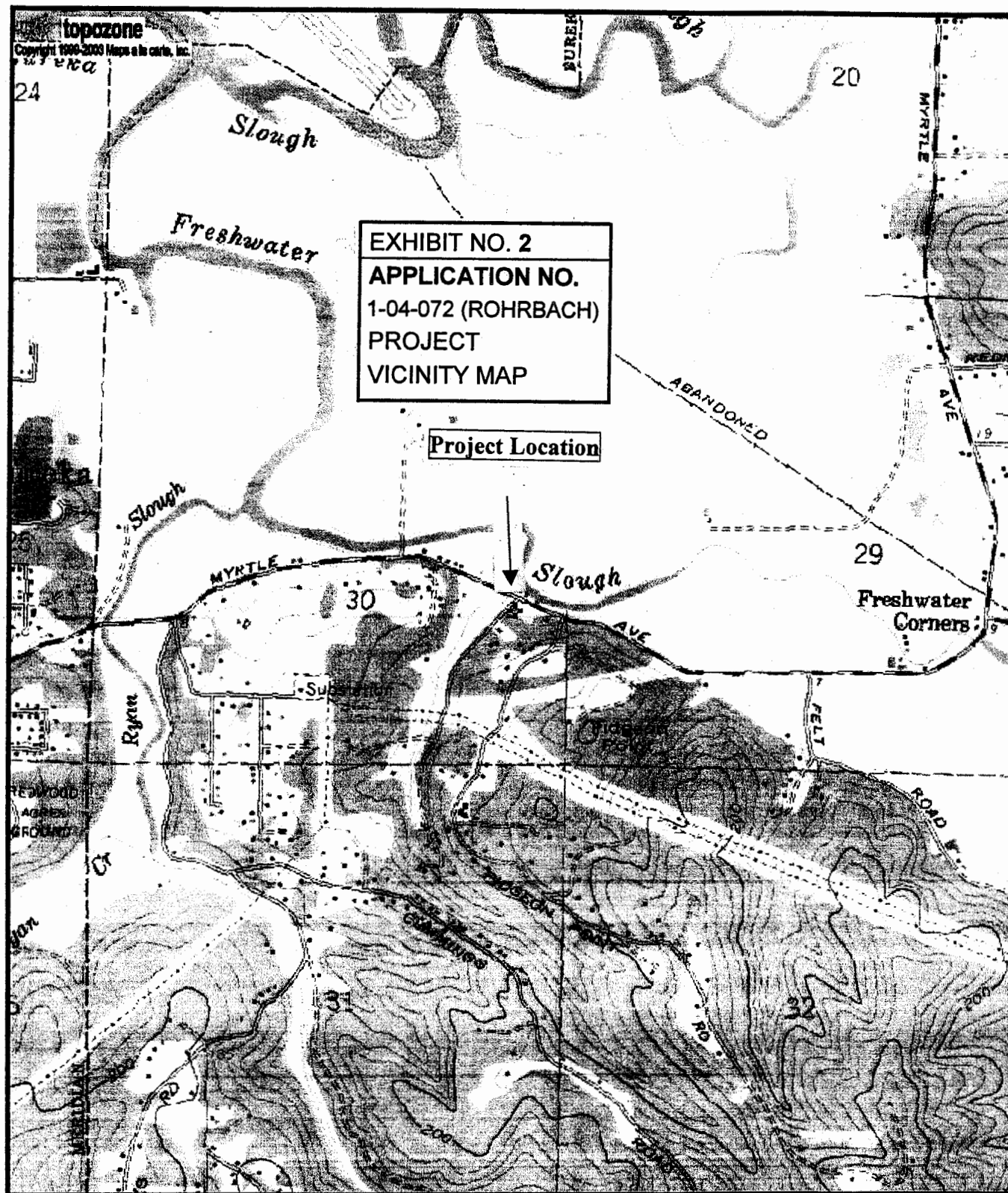


LOCATION MAP



County of Humboldt

Sheet 4 of 8



0 0.3 0.6 0.9 1.2 1.5 km
0 0.2 0.4 0.6 0.8 1 mi

Map center is UTM 10 406813E 4515532N (WGS84/NAD83)

ARCATA SOUTH quadrangle

Projection is UTM Zone 10 NAD83 Datum



M=16.228
G=-0.722

MYRTLE AVE.

679.37 FT

EXISTING GATE

EXISTING BARN

EXISTING TREE

EXISTING TREE

REPLACEMENT
18" DIAMETER
20' LONG CULVERT
UNCHANGED GRADIENT
UNCHANGED FILL

EXISTING YEAR-ROUND NATURAL CREEK

SPEARS RD.

EXHIBIT NO. 3

APPLICATION NO.

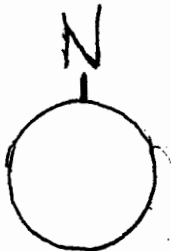
1-04-072 (ROHRBACH)

PROJECT

AREA SITE MAP

AP# 402-301-028
GERHARDT & BARBARA ROHRBACH
2588 SPEARS RD.
EUREKA, CA 95503
707-443-6619

NOT TO SCALE



16 FT

245 FT

35 FT

8 FT

162.35 FT

327.61 FT

91.41 FT

250 FT