

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE MAILING ADDRESS:
710 E STREET • SUITE 200 P. O. BOX 4908
EUREKA, CA 95501-1865 EUREKA, CA 95502-4908
VOICE (707) 445-7833
FACSIMILE (707) 445-7877



W12a

Filed: October 31, 2005
49th Day: December 15, 2005
Staff: Jim Baskin
Staff Report: December 1, 2005
Hearing Date: December 14, 2005
Commission Action:

STAFF REPORT: APPEAL**SUBSTANTIAL ISSUE**

APPEAL NO.: **A-1-FTB -05-053**

APPLICANT: **Georgia-Pacific Corporation**

LOCAL GOVERNMENT: City of Fort Bragg

DECISION: Approval with Conditions

PROJECT LOCATION: At the former Georgia-Pacific California Wood Products Manufacturing Facility, 90 West Redwood Avenue, Fort Bragg; APNs 008-010-26, 008-020-09, 008-151-22, 008-053-34, 008-161-08, 018-010-67, 018-020-01, 018-030-42, 018-040-52, 018-120-43, 018-120-44, 018-430-01, 018-430-02, 018-430-07, 018-430-08.

PROJECT DESCRIPTION: *Georgia-Pacific Mill Site Remediation Foundation Removal, Assessment and Interim Remedial Measures Project* – Entailing: (1) removal of building foundations and, if necessary, additional investigation and interim remedial measures (IRMs) at the following areas: (a) Compressor House, (b) Former Sawmill #1, (c) Powerhouse and associated buildings, (d) Fuel Barn, (e) Chipper Building, (f) Water Treatment Plant, (g) Powerhouse Fuel

Storage Building, (h) Sewage Pumping Station, (i) Dewatering Slabs, (j) Water Supply Switch Building, (k) Former Mobile Equipment Shop, and (l) associated subsurface structures; (2) removal of debris from Glass Beaches #1 through #3; and (3) removal of geophysical anomalies on Parcels 3 and 10 of the former Georgia-Pacific Sawmill site.

APPELLANTS:

- (1) North Coast Action; and
- (2) Sierra Club – Redwood Chapter, Mendocino Group.

SUBSTANTIVE FILE DOCUMENTS:

- (1) Staff Report and Environmental Review Documentation for City of Fort Bragg *Coastal Development Permit CDP 3-05* and Local Appeal;
- (2) *Work Plan for Foundation Removal, Additional Investigation, and Interim Remedial Measures*; including appendices (Acton-Mickelson Environmental, Inc., March 21, 2005 with subsequent revisions and addenda);
- (3) *Stormwater Pollution Prevention Plan for Foundation Removal, Additional Investigation, and Interim Remedial Measures* (Acton-Mickelson Environmental, Inc., September 28, 2005);
- (4) *Jurisdiction Determination and Habitat Assessment* (TRC Companies, Inc., August 2003);
- (5) *Botanical Field Study of Some of the Bluff Areas at the GP Mills Site* (Teresa Scholars, Biological Consultant, undated);
- (6) *Late Season Botanical Survey for the GP Mill Site Bluffs* (Teresa Scholars, Biological Consultant, August 16, 2005);
- (7) *Conceptual Glass Beach 3 Mitigation and Monitoring Plan* (Teresa Scholars, Biological Consultant, September 22, 2005);
- (8) *Conceptual Revegetation Plan Former Georgia-Pacific California Wood Products Manufacturing Facility* (Circuit Rider Productions, Inc., September 22, 2005);
- (9) *Engineering Geologic Reconnaissance Report – Planned Blufftop Access Trail Georgia-Pacific Property Fort Bragg, California* (Brunsing Associates, Inc., September 29, 2005);

- (9) Draft, *Site Specific Treatment Plan for Cultural Resources Georgia-Pacific Lumber Mill Fort Bragg, California* (TRC Companies, Inc., undated);
(10) *Archaeological Survey of the Georgia-Pacific Lumber Mill Fort Bragg, California* (TRC Companies, Inc., March 2003); and
(11) City of Fort Bragg Local Coastal Program.
-

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission, after conducting a public hearing, determine that a substantial issue exists with respect to the grounds on which the appeal has been filed, and that the Commission open and continue the *de novo* portion of the appeal hearing, because the appellants have raised a substantial issue with the local government's action and its consistency with the certified Local Coastal Program (LCP).

At a local appeal hearing, the Fort Bragg City Council upheld its planning commission's preceding action to approve with conditions a coastal development use permit for the site assessment phase of a hazardous materials remediation project at the 435-acre site of the former Georgia-Pacific Corporation's sawmill complex situated along a 1½-mile expanse of uplifted marine terrace on the City of Fort Bragg's ocean frontage. The development entails the removal of concrete foundations at a complex of 26 industrial buildings, including and surrounding the site's central sawmill and co-generation power plant, to expose the underlying areas for assessments of the presence, concentrations, and extent of chemical contaminants. Interim remedial actions, including extraction and on-site stockpiling of underlying contaminated soil materials, and backfilling of the excavated areas, would be undertaken as needed to stabilize the sites to prevent the further spread of contaminants through adjoining soils and groundwater. Solid waste refuse and construction debris would be removed from three bluff face sites above the so-called "Glass Beaches 1-3." In addition, excavations would be conducted at various locales on two of the mill properties (Parcel "3" and "10") to ascertain the composition of buried "geophysical anomalies" at these sites. If determined to not contain hazardous material contaminants requiring special treatment and handling, the debris would similarly be extricated and removed from the sites for disposal.

The appellants contend that the approved project raises a substantial issue of conformance with the City's LCP policies pertaining to: (1) the protection of coastal waters; (2) the protection of marine resources; (3) development in and adjacent to environmentally sensitive habitat areas (ESHAs); (4) geologic stability; and (5) the protection of archaeological resources.

Staff recommends that the Commission find that the development, as approved by the City, raises a substantial issue of conformance with the policies of the certified LCP regarding development within ESHAs and the avoidance of geologic hazards.

The approved project would partly entail the extrication of solid waste refuse embedded in the beachfront bluff face and the excavation and possible removal of presently unidentified, buried metallic materials from the upper coastal bluff areas flanking the mill site. The City's LCP includes within its ESHA policies the designation of coastal bluffs and the adjoining intertidal and marine areas that flank the western side of the mill below these work sites as ESHA. The LCP policies require that environmentally sensitive habitat areas be protected against any significant disruption of habitat values, and only uses dependent upon such resources be allowed within such areas. The certified LUP points out that the rocky intertidal areas and the adjoining terrestrial areas contain extremely biologically rich tide pools, sea stacks, nesting grounds, bluffs, and kelp beds and attributes their relatively pristine condition in part to the fact that the bluffs and the former adjacent industrial activity have formed an effective buffer protecting the habitat from human disruption.

Although considerable attention and coverage was given to the project effects on rare plants within the bluff areas and wetlands on the terrace, the permit application materials submitted to the City and the project record prepared by the City in their review of the proposed development did not fully address the presence or protection of faunal biological resources, including potential bird nesting habitat, along the bluff faces or the protection of coastal marine resources in the adjacent rocky intertidal ESHA. These analyses failed to identify: (1) the presence of any threatened, endangered, or species-of-concern animal species within the coastal bluff and intertidal and marine ESHAs; (2) the various resident and migratory animal species that inhabit or utilize these ESHAs; (3) the various resting, feeding, breeding, and nesting requirements of these species to determine the habitat functions of these ESHAs; (4) the relative susceptibility of the habitat functions of these ESHAs at the site to disturbance; (5) the transitional habitat needs of the area between these ESHAs and the development; (6) the specific impacts of development on the sensitive habitat resources; and (7) mitigation measures that would reduce impacts to any sensitive animal species utilizing these ESHAs to less than significant levels. The City's findings for approval also do not explain how the approved development within the coastal bluff ESHA is for a use dependent on the resources within the ESHA, or how the approved development adjacent to the rocky intertidal ESHA would not degrade this adjacent ESHA and would be compatible with the continuance of that adjacent ESHA.

As regards the avoiding and minimizing geologic instability, the LCP requires that development within Fort Bragg minimize risks to life and property in areas of high geologic hazard, assure structural integrity and stability, neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area, nor in any way require the construction of protective devices that would substantially

alter natural landforms along bluffs and cliffs. To accomplish this goal, development within “areas of demonstration,” such as on or in close proximity to breaks in topography, such as bluff faces, must demonstrate by credible evidence that the area is stable for development and will neither create a geologic hazard nor diminish the stability of the area. As approved, the excavation and removal of waste materials from the bluff areas will involve the use of heavy mechanized equipment on and in proximity to areas determined to be composed of fill materials of indeterminate composition and stability. Although the City based its approval of this portion of the project on the conclusions and recommendations as set forth in a geo-technical investigation that generally addressed conditions at some of the identified clean-up sites along the blufftop, the report was prepared primarily for purposes of siting and designing a coastal access trail planned to be constructed at a future time along the blufftop, rather than conducting extensive ground-disturbing activities within an area of questionable stability.

With respect to the protection of coastal waters, staff notes that while many of these contentions relate to specific policies within the City’s LCP regarding the avoidance and minimization of runoff and erosional impacts, they also involve determinations made by the North Coast Regional Water Quality Control Board in its approval of the assessment work plan, a regulatory function subject to the authority of that agency. Given the complexity of the subject area and the scant time available before a hearing on the appeal must be held, staff at this time has not developed a recommendation as to whether these appellate points independently raise a substantial issue of conformance of the project as approved by the City with the standards of its LCP. Nonetheless, the Commission’s water quality unit staff note that other alternatives to the approved assessment and interim remedial actions exist that would allow for comprehensive assessment of the contaminants underlying the building foundations without having to remove the foundation materials at this time. Such alternatives to foundation removal could avoid the possible spreading of the contaminants further through mobilization in surface or groundwater and thereby avoid potential significant adverse effects on down-gradient coastal marine resources if not properly designed and implemented.

Staff further recommends that the Commission find that the contention raised regarding the consistency the lack of archaeologist oversight at all intrusive investigations, while a valid contention, does not raise a substantial issue as to the approved project’s consistency with the LCP archaeological protection standards.

Staff also recommends that the Commission find that the contentions relating directly to the actions of the regional water quality control board pursuant to federal and state water quality regulatory law with regard to their approval of particular assessment and attainment numerical standards, hazardous material characterization methodologies and as well as those noting the degree of community concern surrounding the subject development, the alleged lack of regional board expertise, the absence of an independent environmental advisor having been retained by the City, and those speculating as to whether the project is subject to further federal or state fish and wildlife agency review,

are not founded on the conformance of the approved project with the policies of the City LCP or the access policies of the Coastal Act, and therefore represent invalid appeal contentions.

Staff further recommends that the Commission continue the *de novo* portion of the appeal hearing to a subsequent meeting because the Commission does not have sufficient information from the applicant to determine if the current project can be found consistent with the environmental protection policies of the certified LCP. To allow for such review, the applicant is requested to provide a assessment of potential bird nesting habitat along the coastal bluffs of the site, including the identification of mitigation measures intended to reduce adverse impacts on nesting grounds from the proposed excavation and clean-up activities in and near these areas. A project-specific geotechnical evaluation of the excavation and material extrication work to be conducted in the coastal bluff areas would also be required. This evaluation must also include an analysis of the engineering and biological impacts to the coastal bluff and rocky intertidal resource areas including impacts from runoff generated from all excavation and clean-up sites. Finally, to verify that adequate and appropriately sited areas exist on the project site for the proposed on-site stockpiling of concrete foundation debris, and excavated contaminated soils and waste materials, an estimate of the maximum volume of these materials shall be required, including a site map depicting adequately sized areas on the project site situated beyond the outer boundary of all environmentally sensitive wetlands rare plant, and geologically unstable areas and where these materials would be placed. The stockpiling plan should also include detail “typicals” regarding the maximum dimensions of the stockpiles, access spacing, and other associated specifications for the environmentally safe storage of the materials.

The Motion to adopt the Staff Recommendation of Substantial Issue is found on page 9.

STAFF NOTES:

1. Appeal Process.

After certification of Local Coastal Programs (LCPs), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits (Coastal Act Section 30603).

Section 30603 states that an action taken by a local government on a coastal development permit application may be appealed to the Commission for certain kinds of developments, including developments located within certain geographic appeal areas, such as those located between the sea and the first public road paralleling the sea,¹ or

¹ Per Section 13011 of the California Code of Regulations, the “first public road paralleling the sea” means that road nearest to the sea, as defined in Section 30115 of the Public Resources Code,

within one hundred feet of a wetland or stream or three hundred feet of the mean high tide line or inland extent of any beach or top of the seaward face of a coastal bluff, or those located in a sensitive coastal resource area.

Furthermore, developments approved by counties may be appealed if they are not designated the "principal permitted use" under the certified LCP. Finally, developments constituting major public works or major energy facilities may be appealed whether approved or denied by the city or county. The grounds for an appeal are limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program and, if development is located between the first public road and the sea, the public access and public recreation policies set forth in the Coastal Act.

The subject development is appealable to the Commission pursuant to Section 30603(a)(1), (2), and (3) of the Coastal Act because it is: (a) situated on a site that lies between the first public road and the sea; (b) within 300 feet of the inland extent of a beach or of the mean high tideline of the sea where there is no beach; (c) located within 100 feet of a wetland or stream; and (d) within 300 feet of the top of the seaward face of any coastal bluff.

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that the appeal raises no substantial issue of conformity of the approved project with the certified LCP or, for development located within the first public road and the sea, the access policies of the Coastal Act. Since the staff is recommending substantial issue, unless three Commissioners object, it is presumed that the appeal raises a substantial issue and the Commission may proceed to its *de novo* review.

If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised.

The only persons qualified to testify before the Commission on the substantial issue question are the applicants, the appellant and persons who made their views known to the local government (or their representatives). Testimony from other persons regarding substantial issue must be submitted in writing.

which: (a) Is lawfully open to uninterrupted public use and is suitable for such use; (b) Is publicly maintained; (c) Is an improved, all-weather road open to motor vehicle traffic in at least one direction; (d) Is not subject to any restrictions on use by the public except when closed due to an emergency or when closed temporarily for military purposes; and (e) Does in fact connect with other public roads providing a continuous access system, and generally parallels and follows the shoreline of the sea so as to include all portions of the sea where the physical features such as bays, lagoons, estuaries, and wetlands cause the waters of the sea to extend landward of the generally continuous coastline.

Unless it is determined that there is no substantial issue, the Commission will proceed to the *de novo* portion of the appeal hearing and review the merits of the proposed project. This *de novo* review may occur at the same or subsequent meeting. If the Commission were to conduct a *de novo* hearing on the appeal, because the proposed development is located between the first public road and the sea, the applicable test for the Commission to consider would be whether the development is in conformity with the certified Local Coastal Program and with the public access and public recreation policies of the Coastal Act.

2. Filing of Appeal.

A joint appeal was filed by: (1) North Coast Action; and (2) Sierra Club – Redwood Chapter, Mendocino Group (see Exhibit No. 5). The appeal to the Commission was filed in a timely manner on October 27, 2005, within 10 working days of receipt by the Commission on October 17, 2005 of the City's Notice of Final Local Action (see Exhibit No. 4).

3. Limitations on Commission's Actions Regarding Water Quality.

Article Two, Chapter Five of the Coastal Act (California Public Resources Code Sections 30410-30420) establishes specific limitations on the actions of the Commission that may overlap with the authority of other state regulatory agencies. With respect to the administration of water quality, Section 30412(b) directs that the Commission shall not "...modify, adopt conditions, or take any action in conflict with any determination by the State Water Resources Control Board or any California regional water quality control board in matters relating to water quality or the administration of water rights." Exceptions to these limitations are provided to permit the Commission to exercise its authority to regulate development as granted by the Coastal Act, and certain aspects of publicly owned wastewater treatment works located within the coastal zone. As to the former exception, under Section 30230 and 30231 of the Coastal Act, the Commission is charged with the assuring that marine resources, with particular emphasis on the productivity, health, and population levels of its biological components, are maintained, enhanced, and where feasible restored. The state and regional water control boards have direct and/or delegated authority to regulate the chemical and thermal characteristics of surface and groundwater resources, specifically in controlling the presence and concentrations of chemical constituents within the aqueous environment, in the interest of protecting human health, biological resources, and other "beneficial uses" of the waters of the state and the nation. The Commission acknowledges the distinctions in these responsibilities and limits its actions accordingly to preclude conflicts in instances where a water board has made determinations on a development project that is also subject to the Commission's authority, particularly with regard to the setting of quantitative limitations on point and non-point source pollutants through the issuance of National Pollution Discharge Elimination Permits, waste discharge requirements, cease and desist directives, and cleanup and abatement orders.

The Commission's actions as to whether the subject appeal raises a substantial issue and any subsequent decision to hear the appeal *de novo*, are undertaken pursuant solely to the authority duly granted to the Commission by the Coastal Act, are limited to ensuring the approved development's conformance with the standards of the certified Local Coastal Program of the City of Fort Bragg (including those related to the qualitative protection of coastal waters) and the access policies of the Coastal Act, and in no way represent actions which modify, supplant, condition, or otherwise conflict with a determination of either the state or any regional water quality control board in matters relating to water quality or the administration of water rights.

4. Availability of Additional Development and Local Agency Action Details.

For purposes of brevity in this report, many of the project description details, referenced technical studies, revisions, and addenda, and serial state and local agency review correspondence and project revisions cited in the appeal have not been included due to the accumulated bulk of these items. These documents, as well as additional information on the Georgia-Pacific Mill Reuse Studies and Specific Plan process are available at the following Internet sites:

<http://www.swrcb.ca.gov/rwqcb1/geninfo/gp/gp.html>

<http://fbcity.securesitehosts.com/pages/viewpage.lasso?pagename=4|GPMillMain>

Copies of all relevant coastal development permit and appeal materials can be obtained from the Commission's North Coast District Office.

I. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE:

Pursuant to Section 30603(b) of the Coastal Act and as discussed below, the staff recommends that the Commission determine that a substantial issue exists with respect to the grounds on which the appeal has been filed. The proper motion is:

MOTION:

I move that the Commission determine that Appeal No. A-1-FTB-05-053 raises NO Substantial Issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.

STAFF RECOMMENDATION:

Staff recommends a **NO** vote. Failure of this motion will result in a *de novo* hearing on the application, and adoption of the following resolution and findings.

Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

RESOLUTION TO FIND SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. A-1-FTB-05-053 presents a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

II. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. APPELLANTS' CONTENTIONS

The Commission received a joint appeal from: (1) North Coast Action; and (2) Sierra Club – Redwood Chapter, Mendocino Group.

The appellants contend that the project as approved by the City does not conform with the LCP policies concerning the protection of coastal bluff, marine, intertidal, and coastal bluff environmentally sensitive habitat areas, as the extent and types of wildlife utilization of these coastal resources were not established, the specific impacts associated with the stockpiling of contaminated materials and/or the excavation and removal of solid waste debris were not fully analyzed, and the adequacy of the mitigation measures to protect these resources was not adequately substantiated or properly structured as part of the permit approval process. Furthermore, the appellants contend that an issue is raised as to the consistency of the approved project with LCP provisions for the protection of the quality of coastal waters. In addition, the appellants raise contentions alleging inconsistency of the local action with the City's LCP policies regarding archaeological resources protection and requirements for avoiding, minimizing exposure to, and instigation of geologic instability.

The appellants' contentions are summarized below, and the full text of the contentions is also included in Exhibit No. 5.

1. Review by Regional Water Quality Control Board.

The first set of contentions raised by the applicants relate to the actions of the North Coast Regional Board and, in turn, the City of Fort Bragg, in approving and accepting the work plan for this phase of hazards materials assessment and interim remediation

measure implementation as being adequately detailed and structured to ensure the remediation work is performed effectively. The appellants assert that in its current format, the work plan could further exacerbate the water quality degradation on the project properties and such potential impacts could be avoided if further site-specific assessment and remedial goals, standards, and details are provided. In addition, the appellants report that there is great concern in the community given the long history, size and complexity of the past industrial activities at the project site. The appellants also note that the City has had no impartial environmental advisor working in its behalf, and instead has deferred largely to the applicant's consultant and the regional water quality control board for determining the appropriate level of detail and methodologies to be used for this phase of the remediation assessment process. Finally, the appellants assert that there is insufficient expertise at the regional water quality control board to adequately administer the clean-up at such a large and complex site.

2. Protection of Coastal Waters.

Associated with and interrelated to the first set of appellate points, the appellants also contend that the project as approved is inconsistent with LCP policies regarding protection of coastal waters. The appellants first note that the application did not provide precise volumes of the concrete foundation materials that would be removed nor the amount of contaminated soil materials that would be excavated and stockpiled at the site. Further, the appellants observe that the applicant did not disclose methodologies for conducting excavations within groundwater-saturated areas, screening and separating the differing contaminants and possible cross-contaminated materials, or what specific follow-up site characterizations to be conducted once the materials were removed. Moreover, the appellants cite that the lack of risk assessment based attainment goals having been established for this phase of the remediation investigation, and deferment of studying the background levels in the vicinity of the areas specified for assessment and interim remediation work, represent significant gaps in the site characterization process. Without such information, the appellants argue, the City could not adequately assess what potential impacts to marine resources might result from the project and a determination of the development's consistency with the standards of the LCP cannot be made. Accordingly, the appellants assert that the City did not fully consider the potential significant impacts the project could have on the marine resources adjoining the project site.

3. Development within Environmentally Sensitive Habitat Areas.

The appellants contend that the development as approved by the City is inconsistent with LCP policies requiring that development be sited and designed to avoid impacts to adjacent environmentally sensitive habitat areas (ESHAs) from several perspectives. The appellants generally contend that the approved development does not adequately protect coastal marine resources. Such marine resources include the adjoining intertidal and marine areas that flank the western side of the mill and which are identified as ESHA in

the City's LCP. The appellants also contend that in authorizing the clean-up and excavation activities to be conducted within the coastal bluff ESHA and in proximity to the rocky intertidal ESHA inadequate consideration was given to the timing of these activities to potentially coincide with the use of the area for nesting sites for the Black oystercatcher, Pelagic cormorant, Pigeon guillemot, and western gull, four species of seabirds known to utilize the Ft. Bragg coast as part of their breeding range.

Additionally, the appellants argue that depending on the severity of disturbance, the activities could be a violation of Section 3503 of the California Fish and Game Code. The appellants state that the California Department of Fish and Game should have been notified and consulted regarding their opinion on the timing of these activities. In addition, the appellants note that a permit from the Migratory Bird Division of the U.S. Fish and Wildlife Service (USFWS) might be needed to conduct activities during the nesting season and that the USFWS should be contacted and consulted on these activities. Having not undertaken these analyses and consultations, the appellants conclude that the project as approved by the City is inconsistent with LCP provisions for the protection of environmentally sensitive habitat areas within and adjoining the portions of the project site slated for assessment and interim remedial work.

4. Geologic Instability.

The appellants also contend that inadequate attention has been given to exposure to and instigation of geologic instability at the project site, as required by the City's LCP. The appellants cite two City land use plan policies and the Commission's interpretative guidelines with regard to this geologic stability, and contend that because no comprehensive, site-specific geologic and soils report was apparently prepared, the City has not adequately considered the potential impacts to stability and related erosional impacts to rocky intertidal environmentally sensitive habitat areas for the landform alterations to be made to the coastal bluff.

5. Protection of Archaeological Resources.

Finally, the appellants contend that the City did not include all feasible mitigation measures for the protection of archaeological resources counter to the directives of the LCP insofar as oversight by a qualified archaeologist was not required for all intrusive investigations at the site.

B. LOCAL GOVERNMENT ACTION

On February 11, 2005, the City of Fort Bragg Community Development Department filed a coastal development permit application from the Georgia-Pacific Corporation for the removal of concrete foundation materials, hazardous materials and the implementation of interim remediation at eleven building site locations within the 435-acre property of the applicant's former lumber mill complex located between Highway One the Pacific

Ocean, and Noyo Bay, on the western shoreline of the City of Fort Bragg in west-central Mendocino County. The application also sought authorization to excavate and remove refuse and construction debris materials from three coastal bluff areas above so-called "Glass Beaches 1-3." In addition, the applicants requested permission to excavate numerous locations on two of the mill site bluff top parcels to ascertain the composition of various metallic "geophysical anomalies" discovered in the area and to similar remove the materials if they do not constitute hazardous materials.

The purpose of the approved project is to allow areas on the mill site where initial soil borings have indicated the presence of hazardous materials to be uncovered so that they may be further assessed as to the extent of contamination for development of a comprehensive remediation clean-up plan. Interim remediation measures, including the excavation of exposed contaminated soil materials, and temporary stockpiling for future in-situ treatment or removal to a appropriate disposal facility, and back-filling the excavations, would be implemented depending upon the presence, composition, and concentrations of any contaminated materials encountered. In addition, the applicants requested authorizations to remove refuse and debris materials at the coastal bluff sites to reduce the liability associated possible injuries to humans and wildlife with the presence of these materials, especially with regard to the on-going efforts by the Coastal Conservancy and the City to acquire and develop a public blufftop trail in these areas.

Following completion of the Community Development Department staff's review of the project, and the requisite preparation and circulation of environmental review documentation, on August 10, 2005, the Fort Bragg Planning Commission approved with conditions Coastal Development Permit No. CDP 3-05 for the subject development (see Exhibit No. 4). The planning commission attached fifty-eight special conditions. Principal conditions included requirements that: (1) the project be conducted in conformance with the excavation and stockpiling, performance standards set forth in the work plan and stormwater pollution prevention plan; (2) all other applicable permits be obtained prior to commencement and copies thereof be provided to the City; (3) a final dust prevention and control plan be submitted for the review and approval of the City Engineer; (4) temporary fencing be erected around the impounded wetlands at the site and no equipment or stockpiling be placed within 50 feet of wetland areas or within 100 feet from the outer perimeter of rare plant areas; (5) a copy of the finalized rare plant mitigation and monitoring plan approved by the California Department of Fish and Game be submitted to the City; (6) a final revegetation plan be submitted for the review and approval of the Community Development Director; (7) additional rare plant surveys be conducted for those plants which were not in their blooming cycle at the time preceding botanical reports had been prepared; and (8) if evidence of cultural resource materials are uncovered, all work cease and a qualified archaeologist be consulted as to the significance of the materials and appropriate disposition and/or mitigation measures (see Exhibit No. 4).

The decision of the planning commission was locally appealed to the Fort Bragg City Council. On October 11, 2005, the Council upheld its planning commission's conditional approval of the development, affecting no changes to the permit scope or conditions, and denied the appeal. The City then issued a Notice of Final Local Action that was received by Commission staff on October 17, 2005. The appellants filed their appeals to the Commission on October 27, 2005, within 10 working days after receipt by the Commission of the Notice of Final Local Action (see Exhibit No. 4).

C. SITE AND PROJECT DESCRIPTION

The project site consists of portions of the approximately 435-acre Georgia-Pacific Corporation lumber mill complex situated on the uplifted marine terrace that spans a roughly four-mile-long stretch of open ocean coastline to the west of Highway One and the city center of Fort Bragg. Immediately to the south of the site lies the mouth embayment of the Noyo River. The project area is bounded on the north by low-density single-family residential housing (see Exhibit Nos. 1 and 2). The property consists of a generally flat, heavily graded industrial site with scattered thickets of brushy vegetation along its western coastal bluff face, and within and around the various log curing and fire suppression ponds developed on the site.

The project site properties are situated within the incorporated boundaries and the coastal development permit jurisdiction of the City of Fort Bragg. The site is designated in the City's Land Use Plan as "Heavy Industrial" (HI), implemented through a Heavy Industrial with Coastal Zone combining zoning designation (HI-CZ). The property is not situated within any viewpoint, view corridor, or highly scenic area as designated in the visual resources inventory of the LCP's Land Use Plan. Due to the elevation of the project site relative to the beach and ocean, and, until recently, the presence of intervening industrial structures and timber products processing and storage areas, no public views of blue across the property from Highway One to and along blue-water areas of the ocean and designated scenic areas exist. The views that are afforded across the property are limited to either glimpses of distant horizon vistas from Highway One, or lateral views of the coastal bluff areas as viewed from the public-accessible areas at Glass Beach to the north and from the beach areas to the west of Ocean Front Park at the mouth of the Noyo River.

The approved development consists of the second phase of site assessment work associated with the voluntary hazardous waste clean-up of the former Georgia-Pacific Corporation sawmill complex. Since October 2002, when the mill ceased production and closed, the site has undergone a series of assessments for brownfields redevelopment of the site. Preliminary evaluations as part of the Georgia-Pacific Mill Site Reuse Study and Specific Plan projects have been performed to identify the location and extent of past industrial hazardous material contamination on the mill properties, including numerous soils and groundwater samples taken from the network of surface-grab, auger-bored and trench- excavated and monitoring well sample points on the site. In addition, to eliminate

the source of these contaminants, much of the industrial machinery has been removed from the site and many of the former industrial buildings have been demolished (see City of Fort Bragg Coastal Development Permit Nos. CDP 1-03 and 2-04).

Notwithstanding whatever mix of uses may eventually be provided for under the specific planning process, the applicants acknowledge that thorough remediation and clean-up of the property will facilitate redevelopment of the property. Accordingly, the current owner/applicant is voluntarily pursuing the current hazardous waste assessment and clean-up, and the specific planning efforts to enhance the marketability of the property.

The current round of assessments authorized by the City's coastal development permit approval entail the removal of concrete building foundations from the 26 structure complex of former industrial buildings clustered on the central portion of the mill site inland of Soldier's Bay / Fort Bragg Landing and at the site of the mobile equipment shops to the northeast of the sawmill complex. The clean-up work to be performed at Glass Beaches 1-3 is located along the northwestern bluff face of the mill property, while the exploratory and material removal activities slated to be conducted on Parcels "3" and "10" are situated on the upper bluffs flanking the north and south sides of the Soldier Bay / Fort Bragg Landing inlet (see Exhibit Nos. 1-3). Heavy tractored and rubber-tired construction equipment including excavators, backhoes, dump trucks, and hand and power tools would be utilized to perform the concrete break-out, material excavation/extrication, and transportation to stockpile areas located along the eastern side of the sawmill / powerhouse / water treatment complex and equipment shop buildings, and inland of the Glass Beach and Parcel 3/10 sites.

Once the concrete foundation rubble and refuse materials are removed from the building sites and bluff areas and secured at the designated storage locations, the exposed areas would be examined for the presence and extent of any underlying hazardous materials. A soils sampling grid would be established over and around the exposed foundation areas. An adaptive management approach would be taken with respect to the specific spacing and number of sampling points. Soil samples would then be collected and analyzed for a variety of chemical constituents, including Total Petroleum Hydrocarbons as gasoline, diesel, diesel with silica gel cleanup, and motor oil (TPHg, TPHd, TPHdsgc, TPHo), solvents in the form of Volatile and Semi-Volatile Organic Compounds (VOCs), Polynuclear Aromatic Hydrocarbons (PAH), Polychlorinated biphenyls (PCBs), Organochlorine pesticides, Dioxins and furans, site-specific pesticides/herbicides, certain heavy metals subject to California water quality regulations, Hexavalent chromium, and tannins and lignin compounds.

As warranted by field conditions to be determined by the work site supervisor, "interim remedial measures," including the further excavation of contaminated soils to unspecified depths for either direct removal from the sites to an appropriate disposal facility or stockpiling of the materials on the mill property for in-place treatment or eventual transport and disposal, would be implemented. Additional soil column testing for

chemical contaminants would be performed as warranted by site conditions and the determination of the site supervisor and/or regional water board staff.

The excavation and stockpiling activities would be performed pursuant to certain water quality best management practices and performance standards, including provisions for covering the excavation and stockpiles with plastic sheeting, constructing berms, placing stormwater and soil debris interception barriers, discontinuing work during windy periods, site watering from fugitive dust abatement, and conducting the excavation to minimize further introduction of the contaminants in groundwater (see Exhibit Nos. 6 and 7). Excavated areas would then be back-filled with clean aggregate materials to stabilize the building sites.

The information derived from this round of assessment activities would then be reviewed by the North Coast Regional Water Quality Control Board to determine appropriate follow-up characterization and clean-up goals and activities to be carried out in a subsequent Remedial Action Plan (RAP). Additional coastal development permits will be needed for those activities within the finalized RAP that meet the definition of “development” under the Coastal Act.

D. SUBSTANTIAL ISSUE ANALYSIS

Section 30603(b)(1) of the Coastal Act states:

The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division.

Some of the contentions raised in this appeal present potentially valid grounds for appeal in that they allege the project’s inconsistency with policies of the certified LCP and/or with the public access policies of the Coastal Act. These contentions allege that the approval of the project by the County raises significant issues related to LCP provisions regarding: (1) development within environmentally sensitive habitat areas; (2) the protection of coastal waters; (3) avoidance of geologic hazards; and (4) the protection of archaeological resources.

The Commission finds that the other allegations regarding the: (a) setting of specific assessment and screening standards the approval of particular stormwater pollution prevention plan methodologies pursuant to authority granted to the board by federal and state water quality statutes; (b) alleged lack of expertise of the regional water quality control board; (c) lack of an independent environmental advisor having been retained by the City; (d) and the project being subject to possible further regulatory authority by the California Department of Fish and Game and/or the U.S. Fish and Wildlife Service

represent contentions that are not based on the approved projects consistency with the standards of the City's LCP, and as such, are invalid grounds for basing an appeal.

1. APPEAL CONTENTIONS BASED ON VALID GROUNDS

Four of the contentions raised in the appeal are based on valid grounds in that they allege that the approved project is inconsistent with the standards of the City's certified LCP or the access policies of the Coastal Act. These four contentions related to: (1) development within and adjacent to environmentally sensitive habitat areas (ESHAs); (2) avoidance and minimization of geologic hazards; (3) the protection of coastal waters; and (4) the protection of archaeological resources.

Coastal Act Section 30625(b) states that the Commission shall hear an appeal unless it determines:

With respect to appeals to the commission after certification of a local coastal program, that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603.

The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. The Commission's regulations indicate simply that the Commission will hear an appeal unless it "finds that the appeal raises no significant question" (Title 14, Section 13115(b), California Code of Regulations.) In previous decisions on appeals, the Commission has been guided by the following factors:

- The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP and with the public access policies of the Coastal Act;
- The extent and scope of the development as approved or denied by the local government;
- The significance of the coastal resources affected by the decision;
- The precedential value of the local government's decision for future interpretations of its LCP; and
- Whether the appeal raises only local issues, or those of regional or statewide significance.

Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing petition for a writ of mandate pursuant to Code of Civil Procedure Section 1094.5.

In this case, for the reasons discussed further below, the Commission exercises its discretion and determines that with respect to the allegations concerning the consistency of the project as approved with the provisions of the LCP regarding development within and adjacent to the coastal bluff and rocky intertidal ESHAs and the avoidance of geologic hazards, the appeal raises a substantial issue with regard to the approved project's conformance with the certified City of Fort Bragg LCP.

With regard to the appeal allegation regarding the protection of coastal waters, while acknowledging the potential impacts to these coastal resources that could result from the approved methods by which the assessment work would be conducted, because of the complexity of the subject and the limited time to fully consider the implications of these approved actions, the Commission reaches no conclusion as to the substantiveness of this appellate point. This lack of a conclusion with respect to the substantiveness of the appellants' marine resource contentions does not affect the overall findings of the Commission whether the subject appeal raises a substantial issue, because, as discussed in Findings Sections II.D.1.a.(1) and (2), the Commission finds that the appeal independently raises substantial issue with regard to the approved development's consistency with the LCP standards regarding the protection of environmentally sensitive habitat areas and the avoidance and minimization of geologic instability.

As further discussed below, the Commission finds that with respect to the allegation regarding the protection of archaeological resources, the development as approved by the City raises no substantial issue with the certified LCP.

a. Allegations Raising Substantial Issue.

(1) Development within and Adjacent to ESHAs

(a) Appellants' Stated Contentions

With regard to the appellate issue regarding development in or adjacent to environmentally sensitive habitat areas, the appellants state:

The proposed scope of work for the investigation/removal action at Glass Beach 2 and Glass Beach 3 sites does not include provisions for identification and protection of coastal marine resources or any oversight by an agency charged with the stewardship of coastal resources. The planned excavation of these sites in April's just at the beginning of the nesting season for four species known to use the Ft. Bragg coast for breeding range. The four species include the Black oystercatcher, Pelagic cormorant, Pigeon guillemot, and western gull. Construction/demolition could impact the nesting activities...

(b) Applicable LCP Policies and Standards:

Sections A and G of Chapter IX of the City of Fort Bragg's Land Use Plan incorporates by reiteration the Coastal Act's definition of "environmentally sensitive habitat area," stating in applicable part:

'Environmentally sensitive habitat area' means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which would be easily disturbed or degraded by human activities and developments.' (Section 30107.5)... [Parenthetic in original.]

LUP Policy IX-1 of the City of Fort Bragg's Land Use Plan states:

General Policy. Environmentally sensitive habitat areas in the city's Coastal Zone include: Intertidal and marine areas, coastal bluffs, wetlands, and riparian habitats. Such areas shall be protected against any significant disruption of habitat values, and only uses dependent upon such resources shall be allowed within such areas. Development in areas adjacent to environmentally sensitive habitat areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.

Intertidal and marine areas, coastal bluffs, wetlands, and riparian habitats shall be protected against any significant disruption of habitat values and only uses dependent upon such resources shall be allowed within such areas. [Emphases added].

The City's ESHA inventory, as set forth in Sections H.1 and H.2 of the Land Use Plan states the following with regard to the environmentally sensitive coastal bluff and rocky intertidal marine areas along the project site's western ocean frontage:

Coastal bluff environments are sensitive habitats because endemic vegetation is often rare or uncommon and because, if the bluffs are denuded, the potential for erosion of the bluffs is significant. Erosion of coastal bluffs could impact rocky intertidal areas at the base of the cliffs...

The rocky intertidal areas along the coast south of Glass Beach to Noyo Bay contain extremely biologically rich tide pools, rocks, nesting grounds, bluffs and kelp beds. The bluffs and adjacent industrial activity form an effective buffer protecting these habitats from human disruption. They are presently in a relatively pristine condition and biologically quite productive. In addition to limiting public access, the adjacent industrial land use should be closely monitored to assure these areas are not impacted, e.g., via water runoff. Rocky intertidal areas exist south of Noyo

Bay which also must be protected, e.g., via setbacks for development on bluffs and close monitoring and mitigations to assure no significant increase in water runoff to these areas...

Section 18.61.025 of the City of Fort Bragg Zoning Code states, in applicable part:

A. The city shall protect all environmentally sensitive habitat areas against any significant disruption of habitat values.

1. Development in areas adjacent to environmentally sensitive areas shall be sited and designed to prevent impacts which would significantly degrade such areas.
2. Development shall be compatible with the protection and continuance of environmentally sensitive habitat areas...

B. *Specific Criteria.*

The following standards provide guidelines for development occurring near a sensitive habitat area:

1. Sensitive habitat areas. Environmentally sensitive habitat areas shall include, but not be limited to the following:
 - a. Intertidal and marine areas.
 - b. Coastal bluffs...
4. Bluff/riparian vegetation (BRV) areas. Developments proposed within the area designed bluff/riparian vegetation (BRV) on the Coastal Environmental Map shall be reviewed pursuant to the special review process set out in Section XVII (E) of the Land Use Plan and the provisions of this section.
 - a. Prior to the issuance of a coastal development permit in BRV areas, the approving authority shall require an assessment of the impact on bluff and riparian vegetation, to be undertaken by a qualified biologist.*
 - b. Where the assessment reveals the existence of an environmentally sensitive habitat area pursuant to the definitions contained in Chapter IX of the Coastal Land Use Plan, the necessary buffers and/or mitigation measures shall be imposed to assure habitat protection or restoration.*
 - c. Standards for determining the appropriate width of required buffer zones are contained in this section and Section XVIII of the Coastal Land Use Plan... [Emphasis added.]*

(c) Discussion:

As observed in the foregoing quoted LUP sections and documented in recent studies,² the rocky intertidal area and its immediate landward coastal bluff environs where the Glass Beach and Parcel 3/10 clean-up and investigations would be performed are coastal marine resources of high ecological value. Due to their susceptibility to disturbance and degradation from human activities and development, and because they may provide habitat to especially rare or especially valuable plant and animal life, the LCP sets forth review standards for use in approving development in and in proximity to such designated sensitive areas. Most notably, the effects on the biological resources that utilizes the ESHAs are to be considered, restrictions placed on the permissible uses within ESHAs, limiting them to those dependent upon and compatible with the resources therein, and requiring that the design and siting of the development or activity be appropriate for preventing impacts that would significantly degrade such areas.

A review of the local agency record for the project reveals that significant coverage was given to locating and addressing the potential impacts to rare plants from the proposed clean-up and excavation activities on the coastal bluff areas. A description and inventory was developed of the various vegetation communities and component species on the coastal bluffs in proximity to the sawmill complex, Glass Beaches 1-3 and the headland areas flanking Soldier's Bay where the exaction work on Parcels 3 and 10 would be performed. Site maps of the location of several listed rare and sensitive plant species, including Mendocino coast Indian paintbrush (*Castilleja mendocinensis*), Blasdale's bent-grass (*Agrostis blasdalei*), and short-eared evax (*Hesperevax sparsifolia* var. *brevifolia*) were also prepared. From these data, recommendations were developed in subsequently prepared mitigation and monitoring programs and conceptual revegetation plans to reduce the potential significant adverse impacts of the proposed excavation and clean-up work to less-than-significant levels through a combination of impact avoidance strategies restoration actions. These actions included the performance of follow-up botanical surveys for certain rare plant species which were not in bloom at the time the majority of the botanical assessment work was conducted.

Similar attention to detail was also found in the delineation and habitat assessment investigations performed for the wetland areas on the terrace portions of the mill site. However, with the exception of generalized treatment within the habitat assessment document prepared primarily with particular emphasis on the wetlands at the site, no similar in-depth coverage was given to the other faunal biological resources on the coastal bluff and rocky intertidal areas where the excavation and clean-up work would be performed. With regard to potential bird nesting uses in these locales, the habitat assessment noted:

Potential nesting for migratory bird species including passerines, waterfowl, and raptors exists in a variety of habitats within the project area

² "Field Report for A Marine Biological Survey of the Proposed pacific Marine Farms Mariculture Facility at Fort Bragg, California," Applied Marine Sciences, Inc., September 2001

including industrial ponds, non-native grasslands, the nursery, and riparian areas to the north, Fort Bragg Landing Beach and the cliffs along the coast...

The tufted puffin (*Fratercula cirrhata*) is an open ocean bird that nests along the coast on islands, islets, or (rarely) mainland cliffs... They require sod or earth to create burrows in which they nest on cliffs and grassy slopes. There is potential habitat for these species to nest in the cliffs along the western margin of the Facility...

The federally threatened western snowy plover (*Charadrius alexandrinus novosus*) inhabits sandy beaches, salt pond levees, and shores of large alkali lakes and requires sandy, gravelly or friable soils for nesting. Potential nesting habitat, although degraded, exists for these species on the beach at Fort Bragg Landing...

Nesting habitat exists on the Facility for sensitive avian species including the western snowy plover, tri-colored blackbird, tufted puffin, raptors (including osprey), waterfowl, and other migratory species. All migratory bird species are protected by the Migratory Bird Act of 1918. The nesting and breeding season for raptors is February through September. Most other migratory birds nest and breed from March through September.

To avoid disturbance of areas that may provide habitat for sensitive plant and wildlife species, the following recommendations should be followed:

- Limit construction activities to previously disturbed areas within the Facility to avoid potential habitat for sensitive species along the outer margins of the property.
- Schedule pond closure and all construction operations (including dam removal) outside of the nesting and breeding season of raptors (February through September) and other migratory birds including western snowy plover (March through September)
- In construction operations are required during these months, a qualified biologist should conduct pre-construction surveys to identify active nests in the project area. Should nests be found, a determination will be made in consultation with the CDFG and USFWS whether or not construction will impact the nests. If a determination. [Parenthetics in original; emphases added.]

The proposed clean-up work on and along the relatively remote coastal bluff areas above Glass Beaches 2 and 3 and above Soldier's Bay/Fort Bragg Landing Beach on Parcels 3

and 10 will entail the operation of heavy motorized construction equipment and the presence of human hand labor crews to remove refuse materials, solid wastes and excavate fill materials. To avoid potential water quality impacts associated with conducting this work during the wet season, these activities would be performed during the drier mid-April to mid-October timeframe, partially coinciding with the nesting season of several of the sensitive bird species who may be utilizing this portion of the project site for habitat. Notwithstanding the identification of the potential habitat for sensitive bird species within the habitat assessment prepared for the project and the specific mitigation measures to prevent noise and human activity impacts to these species as discussed above, the City did not include any further discussion in its analysis and findings of these potential impacts to an identified ESHA resource, nor indicated why inclusion of the recommended mitigation measures would or would not be warranted.

Moreover, unlike those included for the protection of the rare plant resources within the coastal bluff ESHA, no similar special conditions were attached to the approval of the subject coastal development permit providing for supplemental pre-construction surveys during these species' nesting season or measures to avoid these potential impacts through scheduling work outside of the nesting season. In addition, the City's findings for approval also do not explain how the proposed development within the coastal bluff ESHA is for a use dependent on the resources within the ESHA. A portion of the approved grading and excavation work would occur directly within areas identified in the certified LCP as coastal bluff ESHA. LUP Policy IX-1 specifically requires that only uses dependent upon ESHA resources shall be allowed within ESHA.

In addition, as discussed in Finding Section II.D.1.a.(2) below, notwithstanding the implementation of sediment and erosion control measures during the course of the work at Glass Beaches 1-3 and on Parcel 3 and 10, without geologic evidence prior to approval, it cannot be determined that the proposed clean-up and excavation work has been sufficiently designed to absolutely ensure that geologic stability related erosion and sedimentation impacts to the sensitive resources biological resources due to the operation of heavy mechanized equipment near the bluff edge would not result after the clean-up and excavation work had been completed and the control devices removed. Regardless of the City's requirement that a final grading plan be submitted for review and approval prior to commencement of the work, if the earth work has not been appropriately designed to take into account the bearing strength of the materials near the blufftop edge where the heavy equipment would be staged and effects the extrication of materials could have on the competence of the fill materials in which they are buried and/or embedded, the proposed development could threaten the stability of the coastal bluff and result in erosional impacts to sensitive coastal resources.

The coastal bluff ESHA in which the proposed refuse clean-up and exploratory excavation and buried materials extrication would be performed is a significant coastal resource. The City's LCP identifies the coastal bluff ESHA as a significant resource, whose relatively pristine condition is due in part to the bluff area having been relatively

undisturbed by human activity because of being closed off to the public for industrial use. The area has significant ecological value, especially in terms of the rare plants growing therein, its potential for seabird habitat, its largely undamaged adjoining tide pools and offshore rocks, and the fact that its four-mile length spans a relatively long distance along the shoreline.

In addition, the adjoining rocky intertidal marine resources that flank the western side of the mill are specifically identified as ESHA in the City's LCP. The City's findings for approval do not explain how the approved development adjacent to the rocky intertidal ESHA would not degrade this adjacent ESHA and would be compatible with the continuance of that adjacent ESHA.

Thus, the degree of factual and legal support for the City's decision is not sufficient to demonstrate that the development is consistent with the ESHA protection policies of the LCP. Therefore, the Commission finds that the approved project raises a substantial issue of conformance with the provisions of the certified LCP for the protection of environmentally sensitive coastal bluff and rocky intertidal marine areas, including Land Use Plan Policy IX-1 and Section 18.61.025 of the City of Fort Bragg Zoning Code.

With respect to the contentions alleging the approved development's potential violation with the California Fish and Game Code and possibly being further subject to the regulatory authority of the U.S. Fish and Wildlife Service, as discussed further in Findings Section II.D.3 below, the Commission finds these to be invalid as they are based on an alleged lack of compliance with natural resource law rather than the approved development's consistency with the standards of the City's certified LCP or the public access and recreation policies of the Coastal Act.

(2). Avoidance and Minimizing Exposure to Geologic Instability

(a) Appellants' Stated Contentions

With respect to the issue of the development as approved by the City being inconsistent with the standards of the LCP for avoiding geologic hazards, the appellants state:

There has been inadequate attention given to the geology and soils in accordance with the Coastal Commission's Interpretative Guidelines. We do not find any comprehensive site specific geology and soils report. This seems highly relevant with respect to the excavations proposed for the anomalies described in the Work Plan. The potential for hazardous activities with respect to bluff tops and the potential for harmful impacts to the rocky intertidal areas seem to contradict LCP Policies IX-1 and VI-5/XI-2.

(b) Cited and/or Applicable LCP Policies and Standards

Policy IX-1 of the City of Fort Bragg's Land Use Plan states:

General Policy. Environmentally sensitive habitat areas in the city's Coastal Zone include: Intertidal and marine areas, coastal bluffs, wetlands, and riparian habitats. Such areas shall be protected against any significant disruption of habitat values, and only uses dependent upon such resources shall be allowed within such areas. Development in areas adjacent to environmentally sensitive habitat areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.

Intertidal and marine areas, coastal bluffs, wetlands, and riparian habitats shall be protected against any significant disruption of habitat values and only uses dependent upon such resources shall be allowed within such areas.

Policy VI-5/XI-2 of the City of Fort Bragg's Land Use Plan states:

Alteration of Landforms. The alteration of cliffs, bluff tops, faces or bases, of other natural land forms shall be minimized in the Coastal Zone and especially in runoff ("RO") special review areas. Such changes may be allowed only if mitigation measures sufficient to allow for the interception of any material eroded as a result of the proposed development have been provided.

Section 18.61.026 of the City of Fort Bragg's Zoning Ordinance states, in applicable part:

A. Development in Fort Bragg's Coastal Zone shall (1) minimize risks to life and property in areas of high geologic and flood hazard, (2) assure structural integrity and stability, (3) neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area, nor in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

B. All development occurring in a demonstration area, as defined below, must demonstrate by credible evidence that the area is stable for development and will neither create a geologic hazard nor diminish the stability of the area pursuant to the following specific standards.

1. A demonstration area of stability shall include the base, face and top of all bluffs and cliffs. The extent of the bluff top includes the area between the face of the bluff and a line described on the bluff top by the intersection of a plane inclined at a twenty

(20) degree angle from a horizontal plane passing through the toe of the bluff or cliff, or fifty (50) feet inland from the edge of the bluff or cliff, whichever is greater.

2. In a demonstration area, the applicant shall file a report evaluating the geologic conditions of the site and effects of development, to be prepared by a registered geologist, a professional civil engineer with expertise in soils or foundation engineering, or a certified engineering geologist.

C. *Alteration of cliffs, bluff tops, faces or bases and other natural landforms shall be minimized in the Coastal Zone and especially in RO, runoff review areas. Any material eroded as a result of development must be intercepted. The runoff standards provided in Section 18.61.022(B) shall apply... [Emphases added.]*

Cited Section 18.61.022(B) further references Chapter XVII, Section E of the City's Land Use Plan, which states, in applicable part:

E. Special Review Areas

Special review areas are designated on the map with abbreviations. Any proposed development on parcels which are located in whole or in part within the special review areas will require a report by a qualified professional as well as review of that report by the approving agency to ensure that Coastal Act and Local Coastal Program policies concerning the sensitive resource or feature are properly treated in the specific proposed development. These review requirements are in addition to the bluff hazard review noted in Chapter XI. The types of special review areas and required reports are as follows: ...

RO --- Runoff. The impacts of runoff erosion, and natural landform modification shall be evaluated by a civil engineer. Where induced, runoff may have significant biological effects, review by a biologist will be necessary. The evaluation will identify mitigation measures necessary to minimize the adverse effects of runoff. [Emphasis added.]

(c) Discussion

Section 18.61.026 of the City of Fort Bragg's Zoning Ordinance require: (1) that the approving authority review all applications for coastal development permits to determine threats from and impacts on geologic hazards, and in areas of known or potential geologic hazards such as shoreline and bluff top lots and areas; (2) require a geologic investigation and report prior to development approval; and (3) that any authorized alteration of cliffs, bluff tops, faces or bases and other natural landforms be minimized. As incorporated by reference within Section 18.61.026, Zoning Ordinance Section

18.61.022(B) further requires that for development occurring in runoff special review areas, as mapped on the Land Use Plan's Coastal Environment Map: (1) any material eroded as a result of development must be intercepted; (2) the impacts of runoff erosion, and natural landform modification be evaluated by a civil engineer; (3) as such induced, runoff may have significant biological effects, review by a biologist is necessary; and (4) the evaluation identify mitigation measures necessary to minimize the adverse effects of runoff.

The proposed clean-up work on the coastal bluff above Glass Beaches 1-3 and on the upper bluff areas on Parcels 3 and 10 are all located within the "area of demonstration" as defined in Section 18.61.026.B.1 of the City of Fort Bragg's Zoning Ordinance. Pursuant to Section 18.61.026.B.2, a report evaluating the geologic conditions of the site and the effects of development is to be prepared by a registered geologist, a professional civil engineer with expertise in soils or foundation engineering, or a certified engineering geologist and filed with the City for that agency's review and approval. In addition, the entire coastal bluff area along the western side of the G-P mill site appears on the LUP Coastal Environment Map with an "RO" designation indicating its status as a special review area subject to additional engineering and biological review, and the inclusion of mitigation measures relating to potential runoff impacts associated with runoff from the development.

The geotechnical information submitted with the project application (Brunsing Associates, Inc., September 29, 2004) was prepared primarily for the siting and design of a coastal access trail planned for construction at a future time along the blufftop edge of the mill property (see Exhibit No. 9). The report does not specifically address the subject excavation and clean-up work to be conducted within the coastal bluff areas, as the principal purpose of the report was to determine how far back from the bluff edge a bluff top public access path would need to be set back to avoid bluff retreat hazards over the next 150 years. Notwithstanding the differing scope and intent of the evaluation, the report does address in general terms the geologic conditions at the bluff top that would be applicable to the proposed excavation and clean-up activities at these locations:

The Georgia-Pacific property is situated on a near-level, elevated, marine terrace that is bordered by steep ocean bluffs. The terrace was created during the Pleistocene Epoch, when sea level fluctuations caused by glaciation created a series of steps or terraces cut into the coastal bedrock by wave erosion. The bluffs along the westerly and southerly limit of the property extend from Glass Beach at the north end, to Noyo Bay Beach (outside the harbor entrance) at the south end...

The bluffs have an average slope gradient of approximately one quarter horizontal to one vertical (1¼H:1V) with local areas that are near vertical. The bluffs are serrated with many small, generally northwest-trending inlets and peninsulas. There are many sea caves within the lower bluffs,

including one 'blowhole' west of the southeast end of the airstrip. Many inlets are former sea caves where the cave roof has collapsed and eroded away. The "blowhole" as noted on Plate 23 is a sea cave where the roof over the back of the cave has collapsed, leaving an arch over the front of the cave.

Ground-water seepage was observed within swales and coming from bedrock fractures in the lower bluffs...

Pockets of debris (wood, iron, concrete, etc.) are located on the bluffs. Some fill deposits on the lower bluffs are cemented by red-orange iron oxide...

Several, poured concrete walls are located at the bluff edge where debris was formerly dumped into the ocean. BACE observed several log retaining structures on the bluffs, partially covered by vegetation. The remains of a sewer outfall as well as several storm drain outlets are located within the northerly, upper bluffs.

The site bedrock consists of sedimentary and igneous rocks of the Tertiary-Cretaceous Franciscan Complex coastal belt. Locally, these rocks consist of dark gray to brown, sandstone, shale, and volcanic rocks that are generally little to closely fractured, moderately hard to hard, and little to moderately weathered... There is a consistent, northwest-trending strike where bedding is exposed within the Franciscan Complex rocks. This accounts for the northwest linear trend of most of the peninsulas and offshore rocks in the vicinity. Rock bedding orientation observed within the bluffs generally consists of a northwest trending strike with steep dips, approximately 67 to 90 degrees from horizontal, to the southwest and northeast. Much of the bedding is discontinuous and contorted...

The bedrock is partially covered by as much as 30 feet of Pleistocene terrace deposits and man-placed fills at the site. The bedrock-terrace deposit contact is generally flat lying. The terrace deposits consist of silty fine sand, sandy silt, with clean (little or no clay or sat) sand and minor sandy clayey silt. The upper 2 to 4 feet of the terrace deposits generally consists of dark colored sandy silt-silty sand topsoil.

Man placed fills, consisting of soil with concrete, iron, and wood debris, have been placed on the upper bluffs at various locations. The fill deposits appear to be as much as 20 feet in thickness. Rip rap (large rocks and or broken concrete) has been placed by Georgia-Pacific for erosion protection at several locations within the property bluffs. [Parenthetics in original]

The appellant questions whether the analysis within the geologic engineering reconnaissance report adequately addresses the hazards associated with the proposed project. The appellant cites LUP policies requiring that the alteration of cliffs, bluff tops, faces or bases, of other natural land forms be minimized, such changes only be allowed if mitigation measures sufficient to allow for the interception of any material eroded as a result of the proposed development have been provided, and that environmentally sensitive areas be protected from erosion-related runoff.

With regard to compliance with Section 18.61.026.B.2 that a report evaluating the geologic conditions of the site and the effects of the proposed development be prepared by a registered geologist, a professional civil engineer with expertise in soils or foundation engineering, or a certified engineering geologist and filed with the City for review and approval, the submitted report was for a different, far less ground-disturbing development type that, with the exception of co-terminus location, shares few if any similarities with the subject proposed project. Consequently, although a geologic investigation was prepared for site development, the report does not provide sufficient evidence before the City prior to project approval to assure that the proposed development would not cause or contribute to geologic hazards inconsistent with LCP geologic hazard policies.

Finally, as the development project involves the use of heavy mechanized equipment in excavating and selectively extricating debris embedded with fill material of dubious structural competency situated above bedrock of varying stability (i.e., fractured lithology with numerous underlying sea caves and groundwater seeps), a substantial issue of conformance with the standards of the LCP for assuring that the potential impacts to biological resources from runoff associated with the alteration of cliffs, bluff tops, faces or bases is raised by the City's failure to require that such analysis be prepared before its decision on the subject coastal development permit.

Based on the information in the record before the City, a substantial issue is raised as to whether the project as approved would assure structural integrity and geologic stability. In addition, notwithstanding the implementation of sediment and erosion control measures during the course of the work at Glass Beaches 1-3 and on Parcel 3 and 10, without geologic evidence prior to approval, it cannot be determined that the proposed clean-up and excavation work has been sufficiently designed to absolutely ensure that geologic stability related erosion and sedimentation impacts to the sensitive resources biological resources due to the operation of heavy mechanized equipment near the bluff edge would not result after the clean-up and excavation work had been completed and the control devices removed. Regardless of the City's requirement that a final grading plan be submitted for review and approval prior to commencement of the work, if the earth work has not been appropriately designed to take into account the bearing strength of the materials near the blufftop edge where the heavy equipment would be staged and effects the extrication of materials could have on the competence of the fill materials in which

they are buried and/or embedded, the proposed development could threaten the stability of the coastal bluff and result in erosional impacts to sensitive coastal resources contrary to LUP Policies IX-1 and XI-5/XI-2 and Zoning Ordinance Section 18.61.026.

Thus, the degree of factual and legal support for the City's decision is not sufficient to demonstrate that the development is consistent with the geologic hazards policies of the LCP. Therefore, the Commission finds that the approved project raises a substantial issue of conformance with the provisions of the certified LCP for the avoidance and minimization of exposure to geologic instability, including LUP Policies IX-1 and XI-5/XI-2, and Section 18.61.026 of the City of Fort Bragg's Zoning Ordinance.

(2) Conclusion

Therefore, for the reasons set forth above, the Commission finds that a substantial issue is raised by the appeal with regard to the approved development's consistency with the standards of the City of Fort Bragg's Local Coastal Program with respect to: (1) the protection of environmentally sensitive habitat areas; and (2) avoidance of geologic hazards.

b. Appellants' Contentions That Relate to the Protection of Coastal Waters

The appellants contend that the project as approved lacks sufficient descriptive detail and contains numerous ambiguities as to what assessment methods and operational contingencies would be implemented, and to what attainment levels the remediation work would be targeted. The appellants assert that without further detailing of the quantities of materials to be excavated, stockpiled, and processed for eventual disposal, further impacts to water quality and marine resources may result.

(1) Appellants' Stated Contentions

We are very concerned that this proposed investigation and clean-up may negatively impact current and future coastal resources along the four miles of coast which this site includes and may have serious negative health impacts for people, plants and animals that inhabit this coastal environment...

The Work Plan and previous Work Plans and Reports have not developed risk-based cleanup goals that are specifically developed for the protection of human health or environmental/ecological receptors. They have not identified what receptors they are protecting [if any]. Risk-based cleanup goals must be established that are protective of human health and the environment and the goals must adequately reflect future land use and cumulative risk(s). These goals are what should guide the depth and extent

of excavation that occurs at the site, as well as how the material is handled as it is excavated, staged, and sent for disposal.

The Work Plan and previous Work Plans and Reports have not developed background concentrations for groundwater or soil in the vicinity of the site. One of the indices for assessing extent of contamination is a comparison of background concentrations to site or specific area location media concentrations. Background has not been developed for the area and this constitutes a significant data gap in the site characterization process.

The Work Plan does not provide the detailed logic as to how clean versus contaminated soil will be separated in the field and stockpiled. Petroleum contaminated soils may be discolored and/or odiferous while metals and dioxin contaminated soils will not have noticeable characteristics that are reliable to allow for separation of clean versus contaminated soil. Further, given the site hydrogeology, how will excavation of foundations and/or soil in the saturated zone be addressed? No specific criteria are provided. In addition, how will they determine the size of the area needed to stage the contaminated soils if they have no idea of the extent of contamination, and therefore the volume of soil to be removed? ...

The Work Plan fails to provide sufficient detail for follow-on investigation(s) subsequent to removal of the foundations. Details concerning follow-on characterization detailing step-out sampling and vertical delineation are vague and inadequate. The work plan only indicates that additional characterization will be conducted "if necessary". What are the criteria for determining whether additional investigation is necessary? Based on the data presented in the work plan, the screening criteria have been exceeded in some instances by an order of magnitude. This usually indicates a need to conduct further evaluation. Also, for several of the sites, specifically, the chipper building, the dewatering slabs, and the sewage pumping station, no data has been collected to identify the type of contamination...

The proposed scope of work for the investigation/removal action at Glass Beach 2 and Glass Beach 3 sites does not include provisions for identification and protection of coastal marine resources or any oversight by an agency charged with the stewardship of coastal resources...

Nowhere is there an estimate of the quantity of concrete that is to be excavated. The only estimate that suggests this quantity is the square footage of buildings reported in the original Work Plan, a figure which exceeded 800,000 square feet...

(2) Applicable LCP Policies and Standards:

Policy VI-3 of the Fort Bragg Land Use Plan states:

Special Review of Runoff Prone and Runoff Sensitive Areas. The city shall require all development occurring in the runoff ("RO") special review areas on the Coastal Environment Map to undergo the special review process set out in Chapter XVII, Section E. Permitted development in these areas will be designed to protect and maintain the biological productivity and quality of coastal waters, marine resources, and riparian habitats, and to maintain optimum populations of marine organisms.
[Emphasis added.]

Section 18.61.022 of the Fort Bragg Zoning Ordinance states:

Water and marine resources shall be maintained, enhanced and where feasible restored pursuant to the following specific standards: ...

B. Runoff and soil erosion.

New development located in the (RO) Runoff Special Review Areas shall undergo the review process set out in Section XVII (E) of the Land Use Plan and as subject to the following standards:

- 1. Runoff shall be controlled in new developments such that biological productivity and quality of coastal waters, marine resources and riparian habitats is protected, maintained and where appropriate restored. New development shall not cause increases in soil erosion nor disturb wetland or riparian habitats.*
- 2. Where there is the threat of such harm associated with new development, report or reports shall be prepared by a soils engineer, biologist and/or other qualified professionals to assess such threats and to recommend measures to eliminate or minimize harm.*
- 3. The approving authority shall require that appropriate mitigation measures be adopted prior to project approval. Mitigation measures must be sufficient to intercept any eroded material and provide for disposal.*
- 4. Among specific mechanisms or measures which shall be utilized where appropriate to minimize harm are the following:*
 - a. Stripping of vegetation, grading or other soil disturbance shall be done in a manner which will minimize soil erosion.*
 - b. Whenever feasible, natural vegetation shall be retained and protected.*

- c. *The extent of the disturbed area and the duration of its exposure shall be kept within practical limits.*
 - d. *Either temporary seeding, mulching or other suitable stabilization measures shall be used to protect exposed critical areas during construction or other land disturbance.*
 - e. *Drainage provisions shall accommodate increased runoff resulting from modified soil and surface conditions during and after development or disturbance. Such provisions shall be in addition to all existing requirements.*
 - f. *Water runoff shall be minimized and retained on site whenever possible to facilitate water recharge.*
 - g. *Sediment should be contained on site when feasible.*
 - h. *Diversions, sediment basins and similar required structures shall be installed prior to any on site grading or disturbance.*
 - i. *Any drainage systems required shall be completed and made operational at the earliest possible time during construction.*
 - j. *Interceptor ditches shall be established above all cut and fill slopes and the intercepted water conveyed to a stable channel or drainageway with adequate capacity.*
 - k. *Soil erosion and sediment control measures installed under this chapter shall be adequately maintained for one year after completion of the approved plan, or until such time as the soil is permanently stabilized to the satisfaction of the municipal engineer.*
 - l. *Runoff from areas of concentrated impervious cover (e.g., roofs, driveways, roads) shall be collected and transported to natural drainage channels with sufficient capacity to accept the discharge without undue erosion.*
5. *New development shall minimize the alteration of cliffs, bluff tops, faces or bases and other natural landforms. Such changes may be permitted by the approving authority only if mitigation measures sufficient to allow for the interception of any material eroded as a result of the proposed development have been provided.*

Cited Section 18.61.022(B) further references Chapter XVII, Section E of the City's Land Use Plan, which states, in applicable part:

E. Special Review Areas

Special review areas are designated on the map with abbreviations. Any proposed development on parcels which are located in whole or in part

within the special review areas will require a report by a qualified professional as well as review of that report by the approving agency to ensure that Coastal Act and Local Coastal Program policies concerning the sensitive resource or feature are properly treated in the specific proposed development. These review requirements are in addition to the bluff hazard review noted in Chapter XI. The types of special review areas and required reports are as follows: ...

RO --- Runoff. The impacts of runoff erosion, and natural landform modification shall be evaluated by a civil engineer. Where induced, runoff may have significant biological effects, review by a biologist will be necessary. The evaluation will identify mitigation measures necessary to minimize the adverse effects of runoff. [Emphasis added.]

(3) Discussion

The appeal raises a series of contention points regarding the protection of water quality and coastal waters. Many of these points regard allegations that the project as approved lacks sufficient descriptive detail and is too ambiguous in its scope to assure that impacts to coastal waters would be adequately avoided and/or reduced to less than significant levels, and that further degradation of these resources might not incidentally result.

The applicants rebut that due to the nature of hazardous materials assessment projects, and the lack of construction plans for the building foundations proposed for removal, precise quantification of the materials to be excavated and either removed for disposal or stockpiled on site cannot be provided at this point in the overall remediation project. Instead, by necessity, the applicants argue, an adaptive management approach needs to be taken with these project details, wherein the associated permits should be structured to exclude certain activities, practices, and effects rather than limit the authorizations to a specifically quantified development. Moreover, the applicants state that the degree of detail (or lack thereof) the North Coast Regional Water Quality Control Board and the City accepted as constituting a complete development application packet is typical of other hazardous materials assessment projects throughout the state.

Jack Gregg, PhD, of the Commission's Water Quality Unit has briefly reviewed the City's approved coastal development permit and the application materials associated with the proposed assessment and clean-up project. Notwithstanding the excavation and storage performance standards and erosion and stormwater runoff control measures developed and made a condition of the permit approval, and the assurances of the applicants regarding the project having been adequately detailed, Dr. Gregg observes, with respect to the foundation removal component of the project:

The removal of the building foundations without adequate characterization will threaten coastal resources (water quality, tide pools, etc.) by allowing

release of polluted materials through erosion of soils and infiltration of surface waters into the site soils. The building foundations minimize or eliminate infiltration that can drive shallow groundwater through polluted materials and minimizes erosion that can carry contaminated materials away from the building sites. Adequate site characterization can be accomplished by drilling through or around the foundation materials enabling a more accurate estimation of the site restoration activities required.

Thus, a concern is raised as to whether the permitted development is designed to protect and maintain the biological productivity and quality of coastal waters and marine resources consistent with LUP Policy VI-3, especially with regard to alternatives the proposed building foundation removal. Therefore, the contentions raise a potential issue with regard to the protection of coastal waters and marine resources as required by the LCP in that special review of the engineering and biological implications of runoff from the proposed clean-up and assessment activities was not provided.

However, the Commission notes that many of these same issues involve determinations that fall under the auspices of the North Coast Regional Water Quality Control Board in their review and approval of the subject work and stormwater pollution prevention plans for the project. As discussed in Staff Note No. 3 on page 8, the Commission is limited in its actions from conflicting with any determination of a regional water quality control board with respect to water quality matters under that agency's authority.

Given the complexity of the project and the limited time available to review all aspects of the project, the development of an analysis detailing which portions of the project approval should be considered as independently related to the standards of the LCP and which are primarily governed by the authority of the regional water board for which has a conflict must be avoided, has not been possible. Thus, the Commission reaches no conclusion as to whether the appeal contentions regarding the protection of water quality and marine resources raises a substantial issue of LCP consistency.

This lack of a conclusion with respect to the substantiveness of the appellants' marine resource contentions does not affect the overall findings of the Commission whether the subject appeal raises a substantial issue, because, as discussed in Findings Sections II.D.1.a.(1) and (2), the Commission finds that the appeal independently raises substantial issue with regard to the approved development's consistency with the LCP standards regarding the protection of environmentally sensitive habitat areas and the avoidance and minimization of geologic instability.

c. Appellants' Contentions That Do Not Raise a Substantial Issue

As discussed below, the Commission finds that with respect to the appellant's allegations regarding the adequacy of the measures for the protection of archaeological resources

included in the project approved by the City, raises no substantial issue with the certified LCP or the access provisions of the Coastal Act.

(1) Protection of Archaeological Resources

(a) Appellants' Contentions

The appellants state the following with regard to their contention that the approved project lacks consistency with LUP policies regarding protection of archaeological resources:

The former mill site area probably has multiple Native American Indian archeological sites present. Oversight by a qualified Archeologist should be required for all intrusive investigations.

(b) Applicable LCP Policies and Standards:

Policy XIII-2 of the City of Fort Bragg Land Use Plan states:

Archaeological Discoveries During Construction. When in the course of grading, digging or any other development process, evidence of archaeological artifacts is discovered, all work which would damage such resources shall cease and city planning staff shall be notified immediately of the discovery. City planning staff shall notify the State Historical Preservation Officer and the Sonoma State University Cultural Resources Facility of the find. At the request of the State Historical Preservation Officer, development at the site may be halted until an archaeological assessment of the site can be made and mitigation measures developed.

Chapter XVII, Section E of the City's Land Use Plan states, in applicable part:

E. Special Review Areas

Special review areas are designated on the map with abbreviations. Any proposed development on parcels which are located in whole or in part within the special review areas will require a report by a qualified professional as well as review of that report by the approving agency to ensure that Coastal Act and Local Coastal Program policies concerning the sensitive resource or feature are properly treated in the specific proposed development. These review requirements are in addition to the bluff hazard review noted in Chapter XI. The types of special review areas and required reports are as follows: ...

AR --- Archaeology. A report is to be prepared by a qualified archaeologist or anthropologist. The report shall identify and evaluate all archaeological and paleontological resources, assess the effects of the proposed development on those resources, and recommend resource preservation or mitigation measures. A copy of the report shall be transmitted to the State Historical Preservation Officer and the Cultural Resource Facility at Sonoma State University for their review and comment. They shall be requested to comment on all aspects of the report, including the recommended preservation and/or mitigation measures.

Similarly Chapter XVII, Section F.20 of the City's Land Use Plan states, in applicable part:

Any proposed development on parcels which are located in whole or in part within the special review areas will require a report by a qualified professional as well as review of the report by the city to ensure that Coastal Act and Local Coastal Program policies concerning the sensitive resources or features are properly treated in the specific proposed development. These review requirements are in addition to the bluff hazard review. Special studies may be completed prior to submission of an application, as part of an environmental impact report, or as an independent document. In any case, the selection of the professional preparing the report must be with the approval of the permitting agency. A discussion of the special review areas and required reports follows:

a. Archaeology Review (AR). A report must be prepared by a qualified archaeologist or anthropologist. The report shall identify and evaluate all archaeological and paleontological resources, assess the effects of the proposed development on those resources and recommend resource preservation and mitigation measures. A copy of the report shall be submitted to the State Historical Preservation Officer and the Cultural Resource Facility at Sonoma State University for their review and comment. They shall be requested to comment on all aspects of the report, including the recommended preservation and/or mitigation measures.

(c) Discussion

The City's LCP sets forth several policies regarding the protection of archaeological resources. LUP Policy XIII-2 requires that, when in the course of grading, digging or any other development process, evidence of archaeological artifacts is discovered, all work which would damage such resources be ceased and city planning staff be notified immediately of the discovery. City planning staff are directed to notify the State Historical Preservation Officer (SHPO) and the Sonoma State University Cultural Resources Facility of the find. At the request of the State Historical Preservation Officer,

development at the site may be halted until an archaeological assessment of the site can be made and mitigation measures developed. In addition, due to the designation on the Coastal Environment Map of portions of the project site as being situated within an archaeology special review area, Sections E and F.20 of LUP Chapter XVII reiterate the requirements that an archaeological investigation be prepared, mitigation and conservation measures be identified, and the report transmitted to the SHPO and Sonoma State University for further consultation.

The appellant contends that the project as approved is inconsistent with LUP policies regarding protection of archaeological resources in that oversight by a qualified archeologist was not required for all intrusive hazardous materials assessment investigations. The appellants suggest that, given the likely presence of multiple Native American cultural resource sites on the mill property, such close scrutiny would be warranted.

A cultural resources site reconnaissance was prepared for the proposed project (*Archaeological Survey of the Georgia-Pacific Lumber Mill Fort Bragg, California* (TRC Companies, Inc., March 2003). In its staff report for the subject coastal development permit, the City Community Development Department stated the following with respect to the site analysis:

A records search at the California Historic Resources Information System identified six previously recorded cultural resource sites located within the property boundaries and two sites immediately adjacent to the property. A field assessment of the Mill Site was conducted including a pedestrian survey and examination of existing buildings to assess their age and architectural significance. The field assessment identified five previously recorded sites on the property and identified five additional sites. The five previously recorded sites were recorded more than 50 years ago and consist of low to moderately dense shell middens along with associated artifacts. Three additional prehistoric sites were identified by the pedestrian survey including an additional shell middens and two campsites...

The results of the field survey indicate that there is a high potential for as yet unidentified cultural resource sites in large portions of the property. A follow-on Site Specific Treatment Plan for Cultural Resources, prepared by TRC, includes a map which defines areas with moderate and high potential for cultural resources. Specific mitigation measures are identified to protect, test and preserve archaeological resources. The cultural resources investigation included consultation with Native Americans. The results of the Native American consultation are recorded in confidential Appendix F of the Archaeological Survey...

The results of the initial cultural resources investigation indicated that the entire property has achieved significance as an historic district under the California Register of Historic Places. The study recommended that a Site Specific Treatment Plan be developed to provide detailed measures to mitigate negative impacts to cultural resources on the property. TRC prepared two follow-on studies: Phase II Determination of Significance-Standing Structures and Site Specific Treatment Plan for Cultural Resources.

The site-specific treatment plan contains numerous mitigation measures for preventing and reducing impacts to archaeological resources, including:

- Pre-construction surficial and shallow subsurface testing and evaluation of all areas proposed for excavation and the survey staking of the outer extent of known cultural resource areas.
- On-site observation of excavation and other ground disturbing activities in areas with moderate and high resource site potential rate by an qualified archaeologist with authority to halt demolition/construction work upon the discovery of potentially significant cultural resources.
- Operational standards for the incidental discovery of cultural resource artifacts or human remains within designated low site potential rated areas, including provisions for halting work until an archaeologist and/or coroner has assessed the significance of the discovered materials.
- Special performance standards for any work to be performed in unique resource areas including the Pomo cemetery and any dredging to be conducted in inter-tidal areas (not applicable to this assessment and interim remediation project).

As a result of the findings and recommendations within the site reconnaissance report, the City attached the following special conditions to the approval of the coastal development permit to mitigate any potential impacts to cultural resources associated with the building foundation removal, assessment, and interim remedial measures implementation to a level of insignificance:

26. All areas where subsurface disturbances will occur will be documented, monitored, and tested in general accordance with the Site Specific Treatment Plan for Cultural Resources prepared by TRC (2003).
27. Subsurface disturbance in areas considered to have moderate or high potential for prehistoric or historic resources will be monitored by an archaeologist and Native American representative. The following locations are identified as having moderate or high potential for prehistoric or historic resources.

Location	Potential for Prehistoric Resources	Potential for Historic Resources
Former Sawmill #1	Moderate	High
Powerhouse	Moderate	High
Former Mobile Equipment Shop		High
Glass Beach #1	High	
Glass Beach #2	High	High
Glass Beach #3		Moderate
Parcel 3- Geo-physical Anomalies		Moderate/High
Parcel 10- Geophysical Anomalies	Moderate/High	

28. In the event prehistoric archaeological resources (marked by shellfish remains, flaked and ground stone tools, fire affected rock, human bone, or other related materials) are unearthed during site excavation and grading activities, all work in the vicinity of the site shall cease immediately, the Community Development Department shall be notified, and the proper disposition of resources shall be accomplished as required by LUDC Section 18.50.030(D).

Based on the information in the record before the City, the Commission finds that no substantial issue is raised as to whether the project as approved would assure adequate protection to archaeological resources at the project site: The requisite archaeological investigation was performed which included the identification of mitigation measures for the protection of such resources. The report was transmitted to the SHPO and Sonoma State University as directed in LUP Policy XIII-2 and Sections E and F.20 of LUP Chapter XVII. In addition, the specific mitigation measures were incorporated as special conditions in the approved coastal development permit.

Therefore, given the cultural resource protection measures required by the City in its approval of the project and discussed above, including among other mitigations, the requirement that disturbance in areas considered to have moderate or high potential for archaeological resources shall be monitored, and the lack of an LCP standard that specifically directs that all intrusive ground-disturbing hazardous materials assessment investigations everywhere be subject to oversight by a qualified archaeologist, the Commission finds that there is sufficient factual and legal support for the City's decision that the development is consistent with the archaeological resources protection policies of the certified LCP. Therefore, no substantial issue is raised of the conformance of the

project as approved with LCP policies regarding the protection of archaeological resources.

2. **APPELLANT'S CONTENTIONS THAT ARE NOT VALID GROUNDS FOR APPEAL.**

Some of the appellants' contention points are not based on valid grounds for appeal. These contentions regard: (1) the protection of water quality as expressed in terms of grievances with the actions and determinations of the North Coast Regional Water Quality Control Board (NCRWQCB) in approving the subject assessment, interim remedial measures, and stormwater pollution prevention work plans; (2) the alleged lack of expertise of the NCRWQCB; (3) the relative level of community concern relating to the hazardous materials remediation at the Georgia-Pacific Corporation mill site; (4) the lack of an independent environmental advisor having been retained by the City; and (5) whether the project is subject to further federal or state fish and wildlife agency review. These contentions do not present potentially valid grounds for appeal as they do not relate to the project's consistency with policies and standards of the certified LCP.

(a) Appellants' Stated Contentions

Criteria for establishing hazardous waste characteristics for soils are not contained in the document [e.g., Title 22 waste levels or RCRA waste levels, etc.]. Contaminated groundwater encountered during excavation is not addressed in the document. How will waste water or de-watering waste be characterized and disposed? Clear, detailed logic separation, testing, storage, manifesting and disposal of contaminated soils and water has not been adequately provided in the Work Plan or appendices. The work plan cites existing permits and containment plans that were not designed for, or intended to address specific circumstances that can occur during a remedial activity. These plans should be amended to address the issuer at hand, and the amendments should be reviewed and approved prior to any work being initiated at the site...

The Work Plan proposes to use the San Francisco Bay Regional Water Quality Control Boards [SFBRWQCB] Environmental Screening Levels [ESLs] as screening criteria for soil and groundwater. The ESLs have caveats and limitations on how they can be used and they do not account for multiple contaminants being present in the contaminated media at the same time [i.e., the ESLs do not address cumulative risk]. The ESLs were developed by a geologist in the SFBRWQCB; they have not been peer reviewed by toxicologists in Cal/EPA. The ESLs for environmental receptors have not been peer reviewed by State or Federal resource agencies charged with the protection of those resources. Logic for use of the ESLs is fuzzy at best. The RWQCB should be asked to explain why

they believe that the ESL's, which were developed for another region to screen contamination, or any of the other guidelines cited in the work plan, are appropriate as de facto cleanup numbers. Again, what are they protecting, and how well will those receptors be protected if nothing else is done to characterize/remediate the site once the foundations are gone...

The NPDES permit CAS #000002 addresses suspended material, settleable material, sediment, turbidity and pH in storm water runoff, not hazardous waste constituents. The permit covers construction related activities for State-wide construction activities; it is not specific to the GP site. Demolition, investigation, and remediation of hazardous waste sites are not construction-related activities that are covered under this type of permit. Contaminated soil, sediments, and surface water will be generated during the proposed scope of work. The proposed activities should require either an addendum to the original NPDES permit or a new permit. Since contamination is already documented on the site, all soil sediment, and water should be analyzed prior to it leaving the site...

[D]epending on the severity of disturbance, the activities could be a violation of CA Fish and Game code, section 3503. CA Fish and Game should be notified and consulted regarding their opinion on the timing of these activities. It is also likely that a permit from the Migratory Bird Division of the US Fish and Wildlife Service will be needed to conduct activities during the nesting season. US Fish and Wildlife Service should be contacted and consulted on these activities...

There is great concern in the community given the long history, size and complexity of the site.

The City has had no impartial environmental advisor working in its behalf.

The Work Plan was prepared by an entity working for the applicant and we feel there is insufficient expertise at the RWQCB to handle such a large and complex site...

(b) Applicable Coastal Act Provisions

Section 30603 of the Coastal Act states, in applicable part:

(a) *After certification of its local coastal program, an action taken by a local government on a coastal development permit application may be appealed to the commission for only the following types of developments:*

- (1) *Developments approved by the local government between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance.*
- (2) *Developments approved by the local government not included within paragraph (1) that are located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff.*
- (3) *Developments approved by the local government not included within paragraph (1) or (2) that are located in a sensitive coastal resource area.*
- (4) *Any development approved by a coastal county that is not designated as the principal permitted use under the zoning ordinance or zoning district map approved pursuant to Chapter 6 (commencing with Section 30500).*
- (5) *Any development which constitutes a major public works project or a major energy facility.*

(b)(1) The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division... [Emphasis added.]

(c) Discussion

As set forth in the Coastal Act provisions cited above, after certification of its local coastal program, an appeal of a local government-issued coastal development permit is limited to allegations made on the grounds that the development does not conform to the standards set forth in the certified local coastal program or the public access policies of the Coastal Act.

None of the above enumerated appeal allegations are based on grounds of an alleged inconsistency of the project as approved by the City with a standard of the LCP or the access policies of the Coastal Act. The City of Fort Bragg's certified land use plan and coastal zoning ordinance contain no provisions specifically controlling the form and content of hazardous materials site assessment and remediation action plans with respect to appropriate waste characterization standards, environmental screening levels, or stormwater pollution prevention plans. Nor does the LCP set forth any policies or standards requiring further regulatory subjugation of coastal development projects to the

California Department of Fish and Game or the U.S. Fish and Wildlife Service, enhanced permit review scrutiny due to heightened community concern, and the retention of an independent environmental advisor in the administration of hazardous materials assessment and remediation related permit matters, or addressing the competency of the staff of the North Coast Regional Water Quality Control Board. Given the lack of such LCP policies and standards, the Commission finds that the five contention points enumerated above are not valid grounds for an appeal.

3. Conclusion.

All of the various foregoing contentions have been evaluated against the claim that they raise a substantial issue of conformance of the local approval with the certified LCP. The Commission finds that, as discussed above, the appeal raises a substantial issue with respect to the conformance of the approved project with the policies of the LCP regarding: (1) the protection of environmentally sensitive habitat areas; and (2) the avoidance and minimization of exposure to geologic instability.

E. INFORMATION NEEDED FOR *DE NOVO* REVIEW OF APPLICATION

As stated above, Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue exists with respect to the grounds on which an appeal has been filed. Section 30621 of the Coastal Act instructs the Commission to provide for a *de novo* hearing on all appeals where it has determined that a substantial issue exists with respect to the grounds on which an appeal has been filed. If the Commission finds substantial issue as recommended above, staff also recommends that the Commission open and continue the *de novo* portion of the appeal hearing to a subsequent date. The *de novo* portion of the appeal hearing must be continued because the Commission does not have sufficient information to determine how development can be approved consistent with the certified LCP.

Given that the project the Commission will be considering *de novo* has come to the Commission after an appeal of a local government action, the Commission has not previously been in the position to request information from the applicant needed to determine if the project can be found to be consistent with the certified LCP. Following is a discussion of the information needed to evaluate the development.

1. Avian Habitat Utilization and Impact Assessment

As discussed above, because the proposed use would entail development in or adjacent to identified environmentally sensitive habitat areas, the development must conform to the certified LCP provisions that require the protection the ESHA resources within the rocky intertidal marine and coastal bluff areas where

the proposed clean-up and excavation work would be performed at Glass Beaches 1-3 and Parcel 3 and 10.

LUP Policy IX-1 and Zoning Ordinance Sections 18.61.025.A instruct that development not be permitted unless it has been shown to be sited and designed to prevent impacts which could significantly degrade environmentally sensitive habitat areas and be compatible with the continuance of such areas. Given the above requisite findings for approval, *de novo* analysis of the coastal development permit application by the Commission would involve consideration of the project's conformance with the ESHA policies and standards of the certified LCP.

The habitat and wetland assessment by the various biological and botanical consultants does not fully analyze the impacts of the Glass Beach 1-3 and Parcel 3-10 clean-up and excavation work on the avian habitat onsite and in the vicinity of these work sites. The presence or absence of utilization of the site by migratory birds was not comprehensively determined, especially the locations in close proximity to planned excavation and debris removal areas where such wildlife utilization may be disrupted due to heavy equipment noise and human presence. To properly determine that the potential impacts of the proposed clean-up and excavation work at Glass Beaches 1-3 and Parcel 3 and 10 have been reduced to less than significant levels, the applicant must submit an avian habitat utilization evaluation addressing: (1) the various resident and migratory species that inhabit or utilize, or are likely to inhabit or utilize the affected coastal bluff and rocky intertidal areas; (2) the various resting, feeding, breeding, and nesting requirements and seasons of these species; (3) the relative susceptibility of the species engaging in these activities at the site to disturbance; (4) the transitional habitat needs of these species between the rocky intertidal areas and bluffs and the development; and (5) appropriate mitigation measures, such as conducting the subject work after the relevant nesting seasons have ended if a pre-construction surveys indicate the presence of these species.

2. Rocky Intertidal ESHA Engineering and Biological Assessment

To allow for a finding of consistency with Section 18.61.026.C, the subject report must also include an impact analysis prepared pursuant to the criteria set forth in Zoning Ordinance Section 18.61.022(B) and LUP Chapter XVII, Section E, including the requirement that a civil engineer and biologist co-assess the potential impacts of stormwater runoff, sedimentation, erosion landsliding and other mass movements of marine terrace and fill materials, and other project-related effects on site stability of the coastal bluffs and the biological resources of the rocky intertidal areas adjacent to the coastal bluffs where development would be performed, respectively.

3. Coastal Bluff Geo-technical Analysis

No project-specific geological analysis has been prepared addressing the relative stability of the coastal bluffs to withstand the use of heavy mechanized equipment such as excavators, backhoes, and dump trucks, and transiting by work crews in the excavation and extrication of surficial and buried refuse and solid waste, and the related effects of such material removal, in the Glass Beach 1-3 and Parcel 3 and 10 work areas. For the Commission to conclude that the development is consistent with the geologic hazards policies and standards of the LCP, a geo-technical investigation of the coastal bluffs in these work areas, prepared to the criteria set forth in Section 18.61.026.B of the City of Fort Bragg's Zoning Ordinance must be provided.

4. Excavation and Stockpile Quantification Estimate and Site Plan Map

The project as currently proposed does not specify precise volumes of the concrete foundation debris and soil materials to be excavated and stockpiled at the project site for further in-place remediation, appropriate reuse, or eventual offsite disposal. While the Commission acknowledges that a firm calculation of these quantities will depend upon the exact depth of the building foundations and the extent, type, and concentration of hazardous materials likely to be found underlying the former building site, the Commission must reasonable verify that adequate space exists on the project property to accommodate the safe and appropriate stockpiling of these materials without encroachment into environmentally sensitive wetland and rare plant areas and their buffers. To facilitate this verification, the applicant must provide a worst-case estimate of the total volume of concrete rubble and excavated contaminated soils that would result from the proposed site assessment activities. In addition, the applicant must provide a site map depicting all areas outside of delineated wetlands and rare plant habitat and buffer areas where the materials could be appropriately stockpiled. The site plan should also include information on particular stockpiling standards (e.g., the maximum height, width, length, and side-slopes of stockpile windrows) to assist the Commission in ascertaining if adequate space for on-site stockpiling is available.

Without the above information, the Commission cannot reach a final determination concerning the project's consistency of the project with the environmentally sensitive habitat area policies of the LCP. Therefore, before the Commission can act on the proposed project *de novo*, the applicant must submit all of the above-identified information.

III. EXHIBITS:

1. Regional Location Map
2. Vicinity Maps
3. Site Plans
4. Notice of Final Local Action
5. Appeal, filed October 27, 2005 (North Coast Action; Sierra Club – Redwood Chapter-Mendocino Group)
6. Excerpt, *Work Plan for Foundation Removal, Additional Investigation, and Interim Remedial Measures, Appendix D – Excavation and Soil Management Plan*
7. Excerpt, *Stormwater Pollution Prevention Plan for Foundation Removal, Additional Investigation, and Interim Remedial Measures*
8. Excerpt, *Jurisdiction Determination and Habitat Assessment* (TRC Companies, Inc., August 2003)
9. Excerpt, City of Fort Bragg Land Use Plan “Coastal Environment Map”
10. Excerpt, *Engineering Geologic Reconnaissance Report – Planned Blufftop Access Trail Georgia-Pacific Property Fort Bragg, California* (Brunsing Associates, Inc., September 29, 2005)
11. Review Agency Correspondence
12. General Correspondence