

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



RECORD PACKET COPY

F9a

Filed: July 11, 2005
 49th Day: August 29, 2005
 Staff: Jim Baskin
 Staff Report: July 22, 2005
 Hearing Date: August 12, 2005
 Commission Action:

STAFF REPORT: APPEAL**SUBSTANTIAL ISSUE**

APPEAL NO.: A-1-EUR -05-031

APPLICANT: **Durham-Dayton Industrial Partners**

LOCAL GOVERNMENT: City of Eureka

DECISION: Approval with Conditions

PROJECT LOCATION: 4640 Broadway, Eureka; APNs 302-171-034 & -037; at the northwest corner of the intersection of Pound Road and the Herrick Avenue off-ramp western frontage road.

PROJECT DESCRIPTION: *Eureka South Gate Industrial Park* – Construction of approximate 92,500 square-feet of warehousing and office space on two boundary-adjusted parcels comprising a combined area of approximately 8.8 acres situated between Highway 101 and the Elk River Wetlands Mitigation Area.

APPELLANTS: 1) Environmental Protection Information Center;
 2) Humboldt Baykeeper and Ecological Rights Foundation; and
 3) Commissioners Patrick Krueer and Meg Caldwell.

SUBSTANTIVE FILE: 1) Commission Coastal Development Permit No. 1-85-89;

- DOCUMENTS
- 2) City of Eureka Coastal Development Permit CDP 03-007; and
 - 3) City of Eureka 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 LCP.

The Eureka City Council approved with conditions a coastal development use permit for the development of 92,500 square-feet of warehouse and office structures and related site improvements within an approximately 7.7-acre portion of two boundary-adjusted parcels totaling an 8.8-acre area located between Highway 101 and the Elk River Wetland Mitigation Area (ERWMA), at the southern entrance to the City of Eureka, Humboldt County.

The appellants contend that the approved project raises a substantial issue of conformance with the City's LCP policies pertaining to the protection of environmentally sensitive habitat areas (ESHAs) and coastal water quality.

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 the protection of ESHAs. The approved project would provide for wetland buffers ranging in width from one to fifty feet. The City's LCP ESHA policies require a 100-foot buffer around wetlands, and allow a reduced-width buffer only if it has been determined that a reduced-width buffer will adequately protect the resources of the wetlands. 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 adequacy of the reduced-width buffers to protect the wetlands ESHAs on or in proximity to the site being developed for the proposed warehousing, trans-shipping terminal, and office uses. Although a technical analysis accompanied the applicant's request for a reduced-width buffer around the majority of wetlands at the site, the analysis failed to identify: (1) the presence of any rare, threatened and/or endangered plant species within the ESHA; (2) the various resident and migratory animal species that inhabit or utilize the ESHA; (3) the various resting, feeding, breeding, and nesting requirements of these species to determine the habitat functions of the wetland; (4) the relative susceptibility of the habitat functions of the ESHA at the site to disturbance; (5) the transitional habitat needs of the area between the ESHA and the development; (6) the specific impacts of development on the sensitive habitat resources; and (7) why the particular buffer widths established would be sufficient.

Staff further recommends that the Commission find that the two other contentions raised regarding consistency with City water quality protection and wetland and estuary resource management planning, while valid contentions, do not raise substantial issues as to the approved project's consistency with the LCP.

Staff also 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.

The Motion to adopt the Staff Recommendation of Substantial Issue is found on Page 5.

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 or 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 sea¹, the public access and public recreation policies set forth in the Coastal Act.

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, 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

The subject development is appealable to the Commission pursuant to both Section 30603(a)(1) and (2) of the Coastal Act because it is: (a) located within 100 feet of a wetland or stream; and (b) situated on a site that lies between the first public road and the sea.

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. 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.

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.

Three separate appeals were filed by: (1) the Environmental Protection Information Center (EPIC); (2) Humboldt Baykeeper and Ecological Rights Foundation (Humboldt Baykeeper); and (3) Commissioners Kruer and Caldwell (see Exhibit No. 7). All of the appeals to the Commission were filed in a timely manner on July 11, 2005, within 10 working days of receipt by the Commission on June 24, 2005 of the City's Notice of Final Local Action.²

bays, lagoons, estuaries, and wetlands cause the waters of the sea to extend landward of the generally continuous coastline.

² Pursuant to 14 CCR §13110, the appeal period commenced on June 27, 2005, the next working day following the receipt of the City's *Notice of Final Local Action* on June 24, 2005, and ran for the 10-working day period (excluding weekends and the Independence Day holiday) ending July 11, 2005.

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-EUR-05-031 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-EUR-05-031 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 appeals from: (1) Environmental Protection Information Center (EPIC); (2) Humboldt Baykeeper and Ecological Rights Foundation (Humboldt Baykeeper); and (3) Commissioners Caldwell and Kruer.

The appellants contend that the project as approved by the City does not conform with the LCP policies concerning the protection of wetland environmentally sensitive habitat areas, as the extent and types of wildlife utilization of these coastal resources was not established, the specific impacts associated with the approved transfer station on wildlife was not identified, and the adequacy of the proposed reduced-width buffers to protect

these resources was not adequately substantiated or reviewed 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 wetland restoration program requirements.

The appellants' contentions are summarized below, and the full text of the contentions is also included in Exhibit Nos. 5, 6, and 7.

1. Protection of Wetlands.

All three 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). The LCP requires the use of perimeter buffer areas around wetland areas, within which development would be precluded or restricted, as the primary tool to ensure the avoidance of significant adverse impacts. The LCP ESHA policies require a 100-foot buffer around wetlands, and allow a reduced-width buffer only if it has been determined that a reduced-width buffer will adequately protect the resources of the wetlands. The approved project would provide for wetland buffers ranging in width from one to seventy-five feet.

The appellants assert that the adequacy of these reduced-width buffers were not adequately demonstrated, as the technical studies prepared for the project did not thoroughly address the efficacy of the approved buffers of less than 100-foot-widths to protect the wetlands on the site. The appellants assert that the City should have required further analysis to document the extent and significance of use of these wetlands by wildlife, including the identification of the species utilizing the area, the types of habitat being used, the degree to which the approved development will adversely impact these uses, and the sufficiency of the reduced-width buffers to reduce these impacts so that the habitat utilized by the wildlife would be protected from any significant disruptions and further degradation. Having not undertaken such analysis, the appellants conclude that the project as approved by the City is inconsistent with LCP provisions for the protection of wetlands as the adequacy of the reduced-width buffers to reduce impacts of the development between warehousing and shipping terminal activity areas and structures, and the edge of all wetlands has not been established.

2. Water Quality Protection.

Appellant EPIC contends that the project as approved is inconsistent with LUP policies regarding protection of water quality. The appellant contends that the development would result in water pollutants entering Elk River and Humboldt Bay. The appellant contends that impacts resulting from stormwater runoff have not been adequately addressed and that there is no maintenance program for the proposed oil/water separators.

3. Wetland Restoration Program Policies.

Appellant EPIC also contends that a wetland program should be in place as required by the City's LCP. The appellant contends that because the City has not developed a wetland program, the impact of development at the subject site in relation to the wetland and estuarine habitats of the Elk River/Humboldt Bay area is unknown and therefore, the impacts cannot be adequately assessed.

B. LOCAL GOVERNMENT ACTION

On November 11, 2003, the City of Eureka Community Development Department accepted for filing a completed coastal development permit application from the Durham-Dayton Industrial Partners for the development of a warehousing and trans-shipping terminal, and office complex on an approximately 7.7-acre portion of a 8.8-acre parcel located between Highway 101 and the Elk River Wetlands Mitigation Area (ERWMA) at the southern entrance to the City of Eureka in west-central Humboldt County. The purpose of the approved commercial-industrial facility is to provide a centralized location for the receipt, storage, and subsequent delivery re-shipment of vegetable and fruit commodities and other comestibles to area grocery outlets, and to develop other facilities for commercial-industrial uses.

Following completion of the Community Development Department staff's review of the project, and the requisite preparation and circulation of environmental review documentation, on June 21, 2005, the Eureka City Council approved with conditions Coastal Development Permit No. CDP-03-007 for the portions of the subject development situated within the City's coastal development permitting jurisdiction (see Exhibit No. 3). The Council attached seven special conditions. Principal conditions included requirements that: (1) a cultural resources monitor be retained from the Table Bluff Rancheria – Wiyot Tribe and be present during all excavations and ground-disturbing activities conducted at the site; (2) project demolition, grading, and construction be performed in conformance with relevant air quality standards to the satisfaction of the North Coast Unified Air Quality Management District; and (3) authorizations be obtained from the U.S. Army Corps of Engineers as may be required for any discharges of dredged or fill materials into waters of the United States. In addition, the City adopted a mitigation and monitoring program, setting project design and layout specifications for exterior lighting, the installation and maintenance of oil-water separator/clarifiers, emergency services ingress and egress, parking and loading areas, and wetland buffer fencing, and establishing protocols for the protection of any cultural resources that might be encountered during construction at the site.

The decision of the City Council regarding the conditional approval of the industrial park improvements was final. The City then issued a Notice of Final Local Action that was received by Commission staff on June 24, 2005. The appellants filed their appeals to the Commission on July 11, 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 two parcels comprising an irregularly shaped 8.8-acre area located northwest of the intersection of Pound Road with the western frontage road of Highway 101 that runs north from the Herrick Road overpass, at the southern entrance to the City of Eureka (see Exhibit Nos.1-3). The property consists of a generally flat, cleared lot with scattered thickets of brushy vegetation along its southern, western, and northern sides.

The middle of the site is currently developed with a variety of partially dilapidated structures and paved areas, covering approximately 34,425 square-feet, or about 0.8 acre of the property. These buildings and their surrounding graveled areas are utilized by a variety of shipping and storage uses, including a wholesale produce distributor and for the parking of long haul trucking trailers.

Residual unfilled wetland areas in the form of vegetated drainage swales are situated along the western perimeter and across the southwestern third of the site. Plant cover in these areas is dominated by a canopy of intermixed red alder (*Alnus rubra*) and Scouler willow (*Salix scouleriana*) with patches of including Pacific silverweed (*Potentilla anserina*), pickleweed (*Salicornia virginica*), creeping buttercup (*Ranunculus repens*), seaside arrowgrass (*Triglochin maritime*), brassbuttons (*Cotula coronopifolia*), and soft rush (*Juncus effusus*).

The persistently-flooded forested wetlands within the northern ½-acre panhandle of the property site, with the exception of the relatively short (four- to six-foot-height) dike running along western side of the property, are integrated with the freshwater and brackish wetlands complex within the Elk River Wetlands Mitigation Area (ERWMA) situated to the west of the project site. Vegetation cover in these is composed of a canopy of red alder and Scouler willow, with emergent wetland species including common cattail (*Typhus latifolia*), slough sedge (*Carex obnupta*), Pacific silverweed, and soft rush within clearings and as understory beneath the willows and alders. Several inches to approximately three feet of standing freshwater exist in these areas throughout the year.

Located across Pound Road approximately 50 to 60 feet to the south of the project parcels, a fourth wetland area exists. This roughly 40-acre area comprises a former palustrine wetland that appears to have been connected to the Elk River estuary by a trench and is now tidally influenced. Under the Cowardin classification system³, this area is considered an estuarine intertidal emergent persistent mixohaline (brackish) wetland. The vegetation in this area is composed of predominantly obligate hydrophytes, including pickleweed and seaside arrowgrass.

³ Refer to U.S. Fish and Wildlife Service - Office of Biological Services' Publication No. FWS/OBS-79/31 "Classification of Wetlands and Deepwater Habitats of the United States" (Lewis M. Cowardin, et al, USGPO December 1979) for a further discussion of the definition of the extent of wetland habitats.

The project site is situated within the coastal zone and lies within the incorporated boundaries of the City of Eureka. The subject property is bisected by the coastal development permit jurisdictional boundary between the Commission's retained jurisdiction and the City of Eureka's certified permitting area. Approximately 5.3 acres of the site lies within the Commission's permit jurisdictional area with the remaining 3.5 acres located within the City's permitting area. Thus, the portion of the development that is the subject of the appeals is subject to the policies and standards of the City of Eureka's certified Local Coastal Program (LCP). A coastal development permit for the portions of the project within the Commission's jurisdiction has yet to be submitted. Immediately to the west of the site lies the Elk River Wetland Mitigation Area (ERWMA).

The site is designated in the City's Land Use Plan as "General Industrial" (GI), implemented through a "Heavy Industrial" (MG) zoning designation. The subject property is not 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 property's location approximately 1/4-mile inland from the inner shoreline of Humboldt Bay and the presence of surrounding public and private land development and natural vegetation screening, no public views across the property to and along the ocean and designated scenic areas exist.

The approved development consists of a food products warehousing, trans-shipping terminal, and office complex that would entail the construction of 92,500 square-feet of building floor area. In addition to the terminal and office buildings, various other site improvements would include the paving of interior traffic lanes and off-street parking and loading facilities, the installation of an oil-water separator-based stormwater drainage collection, conveyance, and treatment system, and the construction of two six-foot-tall solid wooden fences along the outboard side of the approved ten-foot wide buffer around the wetlands along the northern side of the property and along the western perimeter of the property. The course of the westerly line fencing would be routed easterly onto the parcel and around the edge of the residual wetlands along the western side of the property (see Exhibit No. 5).

The warehousing, trans-shipping terminal, and office uses are considered principal permitted uses as "cold storage plants," "freight forwarding terminal," "offices, not including medical and dental offices," "trucking terminals," and "warehouses, except for the storage of fuel and flammable liquids" under the MG zoning district standards.

Domestic and process water supply, and sewage disposal services would be provided to the facility from the City of Eureka's municipal water and wastewater systems.

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.

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.

All three contentions raised in the appeals present potentially valid grounds for appeal in that they allege the approved project's inconsistency with policies of the certified LCP. These contentions allege that the approval of the project by the City is inconsistent with LCP provisions regarding: (1) the protection of wetlands ESHA; (2) preventing degradation of coastal water quality; and (3) wetlands mitigation management program requirements.

In this case, for the reasons discussed further below, the Commission exercises its discretion and determines that with respect to the allegation concerning the consistency of the project as approved with the provisions of the LCP regarding the protection of wetlands ESHA, the appeals raise a substantial issue with regard to the approved project's conformance with the certified City of Eureka LCP.

1. **Allegations Raising Substantial Issue.**

a. **Protection of Wetlands ESHA**

The appellants contend that the project record for the approved development does not include adequate analysis to substantiate that the approved reduced-width buffers of between one and seventy-five feet in width around the wetlands on the site would be adequate to protect the resources of the wetlands from the impacts associated with the solid waste transfer station inconsistent with the policies and standards of the City of Eureka LCP. The appellants assert that a thorough examination of the environmental sensitive resource areas surrounding the property is necessary in order to demonstrate that the development has been sited and designed to prevent impacts or degradation to wetlands and that protection of these environmentally sensitive habitat areas can be assured as required by the certified Land Use Plan (LUP).

Applicable LCP Policies and Standards:

Policy 6.A.6 of the City of Eureka Land Use Plan states, in applicable part:

The City declares the following to be environmentally sensitive habitat areas within the Coastal Zone: ...

b. *Wetlands...*

Policy 6.A.7 of the City of Eureka Land Use Plan states:

Within the Coastal Zone, the City shall ensure that environmentally sensitive habitat areas are protected against any significant disruption of their habitat values, and that only uses dependent on such resources be allowed within such areas. The City shall require that development in areas adjacent to environmentally sensitive habitat areas be sited and designed to prevent impacts which would significantly degrade such areas, and be compatible with the continuance of such habitat areas. [Emphasis added.]

Policy 6.A.8 of the City of Eureka Land Use Plan states:

Within the Coastal Zone, prior to the approval of a development, the City shall require that all development on lots or parcels designated NR (Natural Resources) on the Land Use Diagram or within 250 feet of such

designation, or development potentially affecting an environmentally sensitive habitat area, shall be found to be in conformity with the applicable habitat protection policies of the General Plan. All development plans, drainage plans, and grading plans submitted as part of an application shall show the precise location of the habitat(s) potentially affected by the proposed project and the manner in which they will be protected, enhanced, or restored. [Emphasis added; parentheses in original.]

Policy 6.A.19 of the City of Eureka Land Use Plan states:

The City shall require establishment of a buffer for permitted development adjacent to all environmentally sensitive areas. The minimum width of a buffer shall be 100 feet, unless the applicant for the development demonstrates on the basis of site specific information, the type and size of the proposed development, and/or proposed mitigation (such as the planting of vegetation) that will achieve the purpose(s) of the buffer, that a smaller buffer will protect the resources of the habitat area. As necessary to protect the environmentally sensitive area, the City may require a buffer greater than 100 feet. The buffer shall be measured from the edge of the environmentally sensitive area nearest the proposed development to the edge of the development nearest to the environmentally sensitive area. Maps and supplemental information submitted as part of the application shall be used to specifically define these boundaries. [Emphasis added.]

Section 156.052 of the City of Eureka's Coastal Zoning Code Regulations states, in applicable part:

...

(C) *Environmentally sensitive habitat areas.*

(1) *Environmentally sensitive habitat areas within the city's coastal zone shall include:*

- (a) *Rivers, creeks, sloughs, gulches and associated riparian habitats, including Eureka Slough, Fay Slough, Cut-Off Slough, Freshwater Slough, Cooper Slough, Second Sloughs, Third Slough, and Elk River.*
- (b) *Wetlands and estuaries, including that portion of Humboldt Bay within the city's jurisdiction, riparian areas, and vegetated dunes.*
- (c) *Indian Island, Daby Island, and Woodley Island wildlife area.*
- (d) *Other habitat areas, such as rookeries, and rare or endangered species on state or federal lists.*
- (e) *Grazed or farmed wetlands.*

(2) *These areas are generally portrayed on the resources maps, where they are designated as wetlands or other natural resources.*

(D) *Protection of environmentally sensitive habitat areas. Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources, including restoration and enhancement projects, 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.*

(E) *Development in or near natural resource areas. Prior to the approval of a development permit, all developments on lots or parcels shown on the land use plan and/or resource maps with a natural resource designation or within 250 feet of such designation, or development affecting an environmentally sensitive habitat area, shall be found to be in conformity with the applicable habitat protection policies of the Local Coastal Program. All development plans and grading plans shall show the precise location of the habitat(s) potentially affected by the proposed project and the manner in which they will be protected, enhanced, or restored. Projects which could adversely impact an environmentally sensitive habitat area may be subject to a site inspection by a qualified biologist to be selected jointly by the city and the applicant. Where mitigation, restoration, or enhancement activities are required to be performed pursuant to other applicable portions of this Local Coastal Program, they shall be required to be performed on city-owned lands on the Elk River Spit or on other available and suitable mitigation, restoration, or enhancement sites...*

(O) *Buffers. A buffer shall be established for permitted development adjacent to all environmentally sensitive areas. The width of a buffer shall be 100 feet, unless the applicant for the development demonstrates on the basis of information, the type and size of the proposed development, and/or proposed mitigation (such as planting of vegetation) that will achieve the purposes of the buffer, that a smaller buffer will protect the resources of the habitat area. For a wetland, the buffer should be measured from the landward edge of the wetland. For a stream or river, the buffer should be measured landward from the landward edge of riparian vegetation or from the top edge of the bank (such as, in channelized streams). Maps and supplemental information submitted as part of the application should be used to specifically determine these boundaries.*

(P) *Barriers. To protect wetlands against physical intrusion, wetland buffer areas shall incorporate attractively designed and strategically located barriers and informational signs...*

(R) *Disagreement over boundary.*

(1) Where there is a disagreement over the boundary, location, or current status of an environmentally sensitive area identified in Local Coastal Program, Policy 5.5 or which is designated on the resources maps, the applicant shall be required to provide the city with:

(a) A base map delineating topographic lines, adjacent roads, location of dikes, levees, or flood control channels and tide gates, as applicable;

(b) A vegetation map, including species that may indicate the existence or non-existence of the sensitive environmental habitat area;

(c) A soils map delineating hydric and non-hydric soils; and

(d) A census of animal species that may indicate the existence or non-existence of the sensitive environmental habitat area.

(2) The city shall transmit the information provided by the applicant to the Department of Fish and Game for review and comment. Any comments and recommendations provided by the Department shall be immediately sent to the applicant for his or her response. The city shall make its decision concerning the boundary, location, or current status of the environmentally sensitive habitat area in question based on the substantial evidence in the record and shall adopt findings to support its actions. [Emphases added.]

Section 156.056(E) of the City of Eureka's Coastal Zoning Code Regulations states, in applicable part:

Precedence of natural resources. Development type and density shall be that specified by the land use categories and designations in the land use plan map. However, natural resource designations and policies shall take precedence in all cases, except as otherwise provided in this Local Coastal Program, consistent with applicable policies of the Coastal Act...
[Emphasis added.]

Section 156.107 of the City of Eureka's Coastal Zoning Code Regulations directs that:

A coastal development permit shall be approved only upon making the finding that the proposed development conforms to the policies of the certified local coastal program.

Discussion:

The project site contains remnants of wetlands along its northern and southwestern portions. In addition, the site is adjacent to wetlands along its southern, western, and northern boundaries. These onsite and offsite areas consist of land exhibiting a prevalence of hydrophytic vegetation, near-surface hydrology, and/or hydric soils. These areas were the subject of a wetland delineation report (SHN Consulting Engineers and Geologists, Inc.) prepared for the purpose of establishing the location and extent of the wetlands and determining appropriate buffers around these areas.

Four distinct wetland areas were delineated on and adjacent to the site (see Exhibit No. 8). To the south of the site, beginning at the base of the fill slope of the south side of Pound Road, is an estuarine/palustrine scrub-shrub wetland, notated within the wetland delineation report as "Wetland/ESHA T." To the west of the site, beginning at the base of the fill slope of the west side of the dike-road, lies "Wetland/ESHA M," a palustrine emergent wetland created and subsequently enhanced as a mitigation area in the 1980s as part of the development of the Elk River Wetlands Mitigation Area (ERWMA). On the northern quarter of the site is a palustrine forested / emergent wetland and associated wetland drainage course, denoted as "Wetland/ESHA A." In the central portion of the western border of the site, a wetland drainage course with emergent vegetation in portions lies at the approximate property line between the site and City property to the west ("Wetland/ESHA B").

The location and extent of the buffers were illustrated on a map and/or described within the delineation report incorporated as a technical study within the project environmental document. Table 1 below, summarizes the location and size of the onsite and adjoining wetlands in proximity to the development, their approved buffer widths, and lists other mitigation measures required of the project:

Table One: Eureka South Gate Industrial Park Wetland Areas and Buffers

Wetland/ESHA Designator	Location	Size (acres)	Approved Buffer Width (feet)	Other Identified Protective Features and Mitigation Measures
Onsite Wetlands				
"A"	Northern panhandle of site	±0.50	10	• 6-ft solid wooden fence
"B"	Along mid-western portion of site	±0.12	0	• Preceding offsite replacement at ERWMA • 6-ft solid wooden fence
Offsite Wetlands				
"M"	Within ERWMA to the west across low dike	52	30-50	• 6-ft solid wooden fence • Presence of offsite dike • Drainage improvements • Loading area restrictions

Wetland/ESHA Designator	Location	Size (acres)	Approved Buffer Width (feet)	Other Identified Protective Features and Mitigation Measures
"T"	To the south across Pound Road	±40	Not specified	None specified (>100 feet from City-permitted development)

As cited above, the LUP's Natural Resources chapter and the City's coastal zoning regulations contain policies and standards intended to ensure that such environmentally sensitive areas are protected from development. Policies 6.A.7 and 6.A.19, and as implemented through CZC Sections 156.052(D), (E), and (O), require that development be sited and designed to prevent impacts and degradation and that a 100-foot-wide buffer be established between the edge of the wetlands and any proposed development. Provisions are also included to allow for a reduced buffer width subject to the City making specific findings as to the adequacy of the reduced buffer to protect the wetland areas, taking into account the type and size of the proposed development, and/or other proposed mitigation measures (e.g., the planting of vegetation) that will achieve the purposes of the buffer.

Buffers provide separation from development and environmentally sensitive habitat areas (ESHAs) to minimize disturbance to plants and animals inhabiting an ESHA and to protect the habitat values of the area. Buffers are typically intended to create a spatial separation between potentially disruptive activity typically associated with development such as noise, lighting, and human activity which can disrupt feeding, nesting, and behavior patterns of wildlife. Buffer areas also provide transitional habitat between development and environmentally sensitive habitat areas. Additionally, buffers are often required to provide a vegetated area to capture and treat drainage and stormwater runoff from development to minimize the amount of pollutants potentially entering environmentally sensitive habitat areas and receiving waters.

Buffers to Onsite Wetlands

In its approval of this industrial-commercial project, the City allowed a reduced-width buffer of between zero to ten feet in width around the edge of the onsite wetlands on the mid-western side and northernmost quarter of the project site, respectively, and ranging from 25 to 50 feet from the off-site wetlands within the ERWMA to the west of the property. The City contends that, since previous imposed impacts to the onsite wetlands along the mid-western side of the property had been previously mitigated through acquisition and enhancement of the ERWMA, the protection of existing wetland areas, though not filled as authorized under preceding Commission-issued Coastal Development Permit No. 1-85-89 and City of Eureka Coastal Development Permit No. 1-85 has been addressed and does not need to be further protected from the approved industrial-commercial development by the establishment of a buffer area (see Exhibit No. 9). The cited Commission and City permits previously issued in 1985 authorized the placement of 5,500 cubic yards and 50,000 cubic yards, respectively, over the parcels' combined

8.8-acre area. The Executive Director's Coastal Act consistency findings for CDP No. 1-85-089 stated:

Wetlands. The proposed fill will be placed in farmed wetlands, adjacent to the City of Eureka's wetland restoration program at Elk River. In establishing the restoration program, the City of Eureka and the Department of Fish and Game provided mitigation for applicants' project within the larger restoration program for the Greater Eureka Wastewater Treatment Facility. This was also discussed at public hearings on the Eureka LCP. Therefore, the mitigation for the subject fill has been provided, is presently in place, and the project is consistent with the wetland restoration policies of the Coastal Act.

Thus, according to the City, because previously proposed fill impacts to existing wetlands, though only partial undertaken, had previously been mitigated for, the City need not establish a protective buffer around the upland area surrounding these existing wetlands. Instead, in approving the subject permit, the City required the applicant to construct a six-foot-high solid wooden fence along the upland perimeter of these residual wetland areas, as proposed by the applicants.

With respect to the approved fenced-off 10-foot buffer from the northern wetlands, the City found this buffer width to be adequate based upon the conclusions stated within the wetlands delineation/ESHA buffer analysis report.⁴ This area was found to possess significant functional values that warrant the protection of a buffer, namely stormwater runoff bio-treatment and as habitat for wetland plant and wildlife species, especially foraging and roosting use by wading and passerine birds. However, "Wetland/ESHA A" was also observed to be significantly impacted by noise due to its close proximity to high volume traffic along Highway 101.

Furthermore, with respect to establishing a full 100-foot-wide buffer over the compacted gravel-filled portion of the site adjacent to "Wetland A" to the south currently used for parking trucks, the habitat analysis report observed that area would offer relatively little value as a buffer as it contains no vegetation and is only employed for an accessory parking use. The City findings dismissed the benefits that establishing such a spatial separation between the wetland and activities on the central portion of the site would afford, given the noise and lighting impacts experienced by this environmentally sensitive area from traffic along Highway 101. Thus, the applicant's agent concluded, the

⁴ The Commission notes that while the area of "Wetland/ESHA A" was authorized for filling under the preceding 1985 City coastal development permit, in response to objections over the lack of a comprehensive alternatives analysis made by the U.S. Fish and Wildlife Service in their Federal Endangered Species Act Section 7 consultation, the applicant amended the application to delete the proposed filling of this area. Consequently, the subsequent Clean Water Act Section 404 permit issued in 1987 by the U.S. Army Corps did not authorize filling this 0.5-acre area.

development of a wetland buffer associated with "Wetland A" would not improve the habitat of the wetland with respect to the adjacent highway.

Accordingly, based upon these site characteristics and assuming appropriate stormwater treatment and light/use shielding on the site, the City determined that a 10-foot buffer that is fenced on the side of the proposed development would likely be adequate to protect "Wetland/ESHA A" from impacts caused by the proposed development of the site. To ensure that these potential adverse impacts of lighting, human intrusion, and stormwater runoff are reduced to less than significant levels, the City imposed as permit conditions Mitigation Measure Nos. 1, 3, and 4 from the mitigated negative declaration which read, in applicable parts:

MITIGATION MEASURE NO. 1. No portion of the illuminated fixture or lens shall extend below or beyond the canister or light shield. The location of all exterior lights shall be shown on the site plan submitted to and approved by the Design Review Committee. In addition, the applicant shall submit to the Site Plan Review for review and approval the specifications for the exterior lights, including a picture or diagram showing the cross section of the light that illustrates that the illuminated portion of the fixture/lens does not extend beyond the shield.

MITIGATION MEASURE NO. 3. The wetland in the northern portion of the site shall be protected with a minimum 6-foot tall solid wood fence and 10-foot buffer area that will be allowed to revert to natural vegetation.

MITIGATION MEASURE NO. 4. Oil-water separators shall be installed at each stormwater outfall point to the satisfaction of the Building/Public Works Department.

Buffers to Offsite Wetlands

As regards the need for buffers to protect the offsite "Wetland/ESHA M" to the west of the project site within the ERWMA from the effects of the development within the portions of the property within the City's permitting jurisdiction, the development's environmental document concluded that activities associated with the proposed transshipping facility use had the potential to cumulatively impact the wetlands lying to the west of the project site. However, while the likely significance of the area for habitat was acknowledged, no analysis was conducted of the resources within "Wetland/ESHA M," particularly with respect to the presence of rare plants and/or utilization for wildlife habitat. The wetland delineation / ESHA buffer analysis report states:

Wetland M, to the west of the Site, appears to have significant habitat and other functional value and appears to warrant the protection of a buffer. Wetland M provides a high degree of water quality treatment, flood water detention, and wildlife habitat. However, the permitted fill of the western portion of the Site that would serve as buffer for Wetland M was entirely

mitigated through the construction of a portion of Wetland M. Because Wetland M was permitted immediately adjacent to the Site and was constructed to mitigate for the filling of the Site to the western border, it is not clear if a buffer can or will be required by the Coastal Commission and the City to re-mitigate for further impacts within the portion of the Site that has already been mitigated for total loss of habitat. Furthermore, the City of Eureka maintains a grassy and bushy dike and road between Wetland M and the western border of the Site. This area provides a vegetated buffer from approximately 30 to 50 feet between Wetland M and the Site.

Because the Site is physically separated from Wetland M by a vegetated dike, Site improvements will not impact the water quality or flood water retention capacity, and additional buffer for these purposes will not have any positive effect on Wetland M over current conditions on the Site. Wildlife habitat, therefore, is the predominant wetland value for which buffer may be provided...

Recently permitted development of a similar site at the northern end of Wetland M included construction immediately adjacent to a wetland ditch within approximately 20 feet of Wetland M, with no apparent negative impacts to the functional quality of the wetland. If the proposed development of the Site incorporates protective measures such as solid fencing at the western edge of the Site, a 10-foot buffer area for Wetland A, stormwater treatment, and shielding of light and traffic from the wetland areas, it is likely that no adverse impacts to any wetland or ESHA would occur. [Emphases added.]

Furthermore, with regard to the recognition of past replacement mitigation for previously proposed impacts to onsite wetlands as now providing adequate protection to environmentally sensitive areas from the potential impacts associated with the current contemplated development, the adequacy of the approved buffer widths, and the need for further investigating the resources within the adjoining western wetlands area, the City staff report prepared for the project states:

Direct impacts to wetlands and other habitat on the site were previously mitigated through the former owners' transfer of property and subsequent mitigation at the Elk River Wetland Mitigation Area. In order for the City of Eureka to maintain credibility in future compensatory mitigation efforts and to comply with the terms of the subject mitigation effort, the City has taken the position that because the portions of the site proposed for development have already been filled and all on-site habitat impacts have already been mitigated that there are no direct impacts to wetlands or other sensitive habitats on the site associated with the project...

Because of the history of compensatory mitigation on the site, in addition to project design/mitigation measures, existing on- and offsite buffers, and the existing low habitat quality of the maintained wetland ditch, the proposed buffers are sufficient to protect the adjacent biological resources from significant impact...

Typically, as appears to be the case here based upon City files a mitigation plan is required to be self contained with regard to the need for future buffers that may become required as the mitigation site develops into higher quality habitat. In other words, the plan must include buffers rather than impose them. If the mitigation site required that future buffers be established over time as the site became more successful and diversified, each subsequent discretionary permit process on adjacent land could push habitat buffers farther and farther into long-established developed areas that are near habitat. Hence the practice that mitigation plans are generally binding in perpetuity and include buffers...

If one looks closely at the site map submitted by the applicant and distributed with the Notice of Intent, the mitigation wetland buffer (in the form of a tree and shrub vegetated dike) varies in width from approximately 25 to 50 feet. This buffer is entirely off of the subject site to the west, within the mitigation site, and will not be physically altered as a result of the proposed project. It was deemed appropriate in the original mitigation plan, and, since construction of the mitigation site, has obviously provided sufficient buffer for the wildlife that currently occupy the area. The dike also hydrologically isolates, or buffers, the proposed construction site from the mitigation wetland such that no water quality impact to the mitigation wetland can occur...

There is no substantial evidence before the City that the project, with mitigations and revisions, may have a significant effect on the environment. With regard specifically to the SHN Wetland Report, the City has received no substantive evidence contrary to SHN's findings regarding the absence of wetland impacts on recently developed parcels to the north, and therefore has no basis to dispute the accuracy of SHN's findings...

Although the adjacent wetlands were not surveyed specifically for sensitive plants or animals, because of the separating dike/buffer and mitigation measures, including water runoff treatment, there does not appear to be any potential of significant threat to any offsite sensitive species...

With the exception of known anadromous fish populations in the Elk River Estuary, no listed species are known to exist in the immediate vicinity. [Emphases added]

The City findings indicate that while acknowledging the high ecological value of the western wetland areas for providing substantial fish and wildlife habitat, the reduced-width buffer would be sufficient because "Wetland/ESHA "M": (a) consists of an anthropogenic wetland authorized for development within 25 to 50 feet of the project site boundary purportedly with an adequately wide transitional buffer area included; (b) would not be impacted to a greater degree than that currently resulting from the existing developed uses at the project site; (c) has little hydrologic connectivity to the project site; (d) contains no known threatened or endangered species; (e) is located in a setting comparable to other development projects in the vicinity authorized with similar reduced-width buffers for which no evidence of significant degradation of their adjacent wetlands has been provided; (f) would be shielded by the presence of the low dike located along the western property line; (g) would be enhanced by the placement of solid barrier fencing along the common property line.

The factual basis used by the City's findings for conditional approval of the project was the biological assessment prepared for the development. This document contains the wetlands delineation report and related analysis regarding the rationale for the reduced wetlands buffers. However, it is not apparent that this analysis inventoried the wildlife species that use the portion of the ERWMA adjoining the project site, how the species utilize the habitat (i.e., feeding, roosting, nesting, etc.) and how the particular disturbances that would result from the project would affect the functions provided by the sensitive habitat. While the biological report focuses on several generic categories of impacts to wildlife in general, the biological evaluation does not provide an overall assessment of the specific functions and resources of the "Wetland/ESHA M" area. The biological analysis failed to identify: (1) the various resident and migratory species that inhabit or utilize the ESHA; (2) the various resting, feeding, breeding, and nesting requirements of these species; (3) the relative susceptibility of the species engaging in these activities at the site to disturbance; and (4) the transitional habitat needs of these species between the ESHA and the development. For example, the biological report did not include any specific information regarding the current level of use of the ESHA by various species of wildlife and how these habitat uses of the ESHA would be expected to change as a result of the operation of the constructed development.

Furthermore, there is no quantification of what the anticipated noise and lighting levels and other human disturbance associated with the operation of the development would be and how the width of the buffer between the ESHA and the development would affect the habitat functions of the ESHA. However, the biological assessment also does not include a quantification of noise and light impacts associated with the operation of the project and an analysis of an adequate buffer width based on such quantification. For example, with regard to noise and lighting impacts associated the loading, unloading, and idling of transport trucks at the site, the location of truck loading areas have been restricted to areas on the site that do not encroach any closer to the western wetland areas than that of the most westerly building sites. The implication is that with such restrictions in place noise impacts associated with transport vehicular activities at the site would be reduced to less than significant levels. However, the habitat analysis contains no information as to

the intensity of noise and lighting that would typically be generated at the designated loading area locations and the degree of attenuation that would be afforded by the imposed loading area setbacks. The biological assessment instead emphasizes the degraded nature of the project site from past development activities, notes the history and presence of wetland mitigation facilities near the site, and concludes that with the addition of certain specified mitigation measures (i.e., fencing, drainage improvements, loading area restrictions), additional impacts associated with the project would not result in adverse impacts to wildlife resources.

Additionally, while the approved project with the installation of some of the identified mitigation measures would be an improvement relative to existing site conditions, the information in the record does not demonstrate how the fencing, drainage improvements, and other site restrictions would achieve the purpose(s) of the buffer to effectively protect the resources of the habitat area as required by LUP Policy 6.A.7. Until this information is known, it cannot be demonstrated that a buffer width less than the 100 feet identified in LUP Natural Resources Policy 6.A.19 and CZC Section 156.052(O) would be adequate to protect the various species and habitat values of "Wetland/ESHA M."

Moreover, with respect to the need for buffers around the onsite wetlands that were previously authorized for specified filling but nonetheless left intact, as discussed above, the City summarily dismissed the need for protective buffers from the subject project by citing the acknowledgements of the Commission and the U.S. Army Corps of Engineers that these areas had already been mitigated for offsite at an approximately 1:6 ratio by the creation of the 52-acre ERWMA. Based on that reasoning, and regardless of the current existence of wetlands at the site as demonstrated by the wetlands delineation and habitat analysis having designated major portions of these areas as Wetland/ESHA "A" and "B," scant justification was provided as to the adequacy of the authorized 0- to 10-foot reduced-width buffers around the onsite wetlands. The Commission notes that while coastal development permits were issued many years ago authorizing specified filling of the 8.8-acre area of the project site and acknowledging that the filling authorized by those permits had been mitigated for through the establishment of the ERWMA, the wetland areas existing on the northern and western sides of the project site were not filled and must now be adequately protected from impacts of any currently approved permit for the development. Accordingly, a substantial issue is raised with respect to what protection should be afforded to the existing onsite wetlands in the form of buffers, screening, or other mitigation measures.

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 and wetland protections policies of the LCP. Furthermore, as Sections 30233 and 30240 of the Coastal Act require that wetlands of the coastal zone be protected from the impacts of development and the cumulative impact of the loss of wetlands and wetland habitat over time throughout the coastal zone has been significant, the appeal raises issues of statewide significance rather than just a local issue. Therefore, the Commission finds that the approved project raises a substantial issue of conformance with the ESHA provisions of the certified LCP, including the provisions of Natural Resources Policy 6.A.19 and CZC

Section 156.052(O) that a buffer with less than the default 100-foot-width be adequate to protect the various species and habitat values of the ESHA at the site.

Furthermore, the Commission finds that the project as approved by the City raises a substantial issue of conformance with LUP Policy 6.A.7 regarding the establishment of an adequate buffer for development adjacent to environmentally sensitive habitat areas to protect the resources of the habitat area and prevent impacts that would significantly degrade environmentally sensitive habitat areas from development adjacent to the habitat area.

2. Allegations Raising No Substantial Issue.

As discussed below, the Commission finds that with respect to the appellant's allegations regarding 1) protection of water quality, and 2) consistency with LUP wetland restoration program policies, the project as approved by the County raises no substantial issue with the certified LCP or the access provisions of the Coastal Act.

a. Protection of Coastal Water Quality.

Appellant EPIC contends that the project as approved is inconsistent with LUP policies regarding protection of water quality. The appellant contends that the development would result in water pollutants entering Elk River and, in turn, Humboldt Bay. The appellant contends that impacts resulting from stormwater runoff have not been adequately addressed and that there is no maintenance program for the proposed oil/water separator.

Applicable LCP Policies and Standards:

LUP Natural Resources Policy 6.A.3 states:

The City shall maintain and, where feasible, restore biological productivity and the quality of coastal waters, streams, and estuaries appropriate to maintain optimum populations of aquatic organisms and for the protection of human health through, among other means, minimizing adverse effects of wastewater and stormwater discharges and entrainment, controlling the quantity and quality of runoff, preventing depletion of groundwater supplies and substantial interference with surface water flow, encouraging wastewater reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams. [Emphasis added.]

LUP Stormwater Drainage Policy 4.D.5 states:

The City shall promote sound soil conservation practices and carefully examine the impact of proposed urban developments with regard to water quality and effects on drainage courses.

LUP Stormwater Drainage Policy 4.D.6 states:

The City shall improve the quality of runoff from urban and suburban development through use of appropriate and feasible mitigation measures including, but not limited to, artificial wetlands, grassy swales, infiltration / sedimentation basins, riparian setbacks, oil/grit separators, and other best management practices (BMPs).

LUP Stormwater Drainage Policy 4.D.9 states:

The City shall require new projects that affect the quantity or quality of surface water runoff to allocate land necessary for the purpose of detaining post-project flows and/or for the incorporation of mitigation measures for water quality impacts related to urban runoff. To the maximum extent feasible, new development shall not produce a net increase in peak stormwater runoff.

Discussion

The City's LCP sets forth several policies regarding the protection of water quality. LUP Policy 6.A.3 requires, in part, that the City minimize adverse effects of stormwater discharges and entrainment, and control the quantity and quality of runoff. LUP Policy 4.D.6 requires the City to improve the quality of runoff from development through the use of mitigation measures such as artificial wetlands, grassy swales, infiltration/sedimentation basins, riparian setbacks, oil/grit separators, and other best management practices (BMPs). LUP Policy 4.D.9 requires, in part, that to the maximum extent feasible, new development shall not produce a net increase in peak stormwater runoff.

The appellant contends that the project as approved is inconsistent with LUP policies regarding protection of water quality in that the development would result in water pollutants entering Elk River and Humboldt Bay and that impacts resulting from stormwater runoff have not been adequately addressed. The appellant suggests that a constructed bio-treatment wetland facility would likely be more economical and efficient than the installation of oil-water separator vaults.

Under current conditions, the majority of project site is covered with paved impervious or semi-impervious compacted surfaces, and stormwater runoff is directed to several different discharge points around the perimeter of the site, all of which ultimately drain untreated into Elk River or discharge into onsite wetlands and/or the ERWMA. As approved by the City, the project incorporates several measures to minimize adverse effects of stormwater discharge, improve and control the quantity and quality of runoff, and reduce peak stormwater runoff consistent with the City's LUP policies outlined above. Specifically, the project as approved requires that: (1) an oil-water separator/clarifier stormwater treatment unit to treat all parking lot and building runoff be

included; (2) the permittee enter into an agreement with the City regarding routine preventative and corrective maintenance of the separator units to assure their proper functioning; and (3) because more than one acre of area would be disturbed during construction of the development, the project be subject to the best management practices as contained within a stormwater pollution prevention plan (SWPPP) developed pursuant to Regional Water Quality Control Board requirements.

First, as approved by the City, all of the parking lot and roof drainage from the project site would be collected in a new storm drain system and conveyed to two underground stormwater treatment facilities located along the western side of the property prior to being discharged into the drainage ditch that flows southerly into the tidal marsh situated across Pound Road from the development. The site currently contains no facilities for filtering stormwater prior to being discharged into Elk River. All of the parking area and roof runoff from the site would be directed through an oil-water separator which provides sediment removal, oil and grease removal, and trash control.

Presently, 100 percent of the Total Suspended Solids (TSS) contained in the runoff from the site enters the tidal marsh and Elk River untreated. Following installation of the proposed stormwater treatment unit, the TSS in the site runoff would be significantly reduced prior to entering the City's storm drain system. Thus, installation of the underground stormwater treatment unit to treat runoff from the parking area and the buildings would improve the quality of runoff from the site consistent with LUP Policy 4.D.6 and would minimize adverse effects of stormwater discharge and control the quantity and quality of runoff consistent with LUP Policy 6.A.3.

The efficacy of structural water quality Best Management Practices is dependent upon on-going, regular maintenance of the facility to ensure proper functioning. The appellant contends that there is no maintenance program for the proposed stormwater treatment unit. However, the City staff report prepared for the project indicates that the separator units would be maintained by the applicant pursuant to a maintenance agreement with the City of Eureka. The findings prepared for the approved project and certified by the City further addresses the issue regarding ensuring proper water quality treatment facility maintenance and other incidental bio-treatment opportunities, stating:

The proposed inlet protection oil/water clarifiers are subject to design and construction inspection by the City and are further subject to a City-required Maintenance Agreement. The City's design standards for such clarifiers are intended to reduce pollutant runoff to an insignificant level and clarifiers are commonly installed in parking lots, trucking facilities, and vehicle storage yards. The site currently does not treat runoff in any way, but instead allows any pollutants to infiltrate or flow through ditches to the ditch at the western edge of the site. The proposed water treatment is expected to reduce the potential impacts associated with pollutant runoff to a less than significant level. The proposed outfalls will empty to the existing maintained ditch at the west edge of the site, which may provide some increased treatment as water flows south toward pound road.

The maintenance agreement required by the City would provide the City with the ability to enforce the specified maintenance of the oil-water separator units. Thus, the appellant's contention regarding maintenance requirements for the stormwater treatment unit has been addressed in the City's approval of the project.

Secondly, because the project would entail greater than one acre of ground disturbance, the applicant is required to prepare a Storm Water Pollution Prevention Plan (SWPPP) addressing water quality mitigation for construction and post-construction activities. Standard SWPPP measures include, but are not limited to: confining earthwork activities to the non-rainy season; use of temporary siltation basins; protection of storm drain inlets; stabilization and containment of stockpiles; sweeping paved surfaces with a wet sweeper; washing and maintaining equipment and vehicles in a bermed area; and surrounding construction storage and maintenance areas with berms or dikes. In addition, the project is subject to the NPDES General Permit for Storm Water Discharges Associated with Construction Activity, and is therefore required to file a Notice of Intent to Comply with the General Storm Water Permit with the Regional Water Quality Control Board prior to commencing construction. The required SWPPP and construction activities discharge permit would further ensure that potential adverse impacts to water quality are minimized consistent with LUP Policy 6.A.3.

Therefore, given the water quality protection measures required by the City in its approval of the project and discussed above, the Commission finds that there is sufficient factual and legal support for the City's decision that the development is consistent with the water quality protection policies of the certified LCP. Therefore, no substantial issue is raised of the conformance of the project as approved with LCP policies regarding water quality.

b. Project inconsistency with wetland restoration program policies.

Appellant EPIC contends that a wetland program should be in place as required by the City's LCP. The appellant contends that because the City has not developed a wetland program, the relative impact of development at the subject site in relation to the wetland and estuarine habitats of the Elk River area are unknown and therefore, the impacts cannot be adequately assessed.

Applicable LCP Policies and Standards:

LUP Natural Resources Policy 6.A.23 states:

The City, in consultation with the Department of Fish and Game, Coastal Conservancy, Coastal Commission, Humboldt County, Humboldt Bay Harbor, Recreation, and Conservation District, affected landowners, and other interested parties shall prepare a detailed, implementable wetlands management, restoration and enhancement program consistent with the provisions of this General Plan. The

objectives of the program shall be to enhance the biological productivity of wetlands; to minimize or eliminate conflicts between wetlands and adjacent urban uses; to provide stable boundaries and buffers between urban and habitat areas; to provide restoration areas, including the City-owned lands on the Elk River Spit that may benefit from restoration and enhancement, to serve as mitigation in conjunction with future projects that may include wetland areas. Upon completion, the wetlands management and the restoration program created by this policy shall be submitted to the Coastal Commission for review and approval.

Discussion

LUP Policy 6.A.23 requires the City to prepare, in conjunction with other agencies, a wetland management, restoration, and enhancement program to, in part, enhance the biological productivity of wetlands, minimize or eliminate conflicts between wetlands and adjacent urban uses, and provide stable boundaries and buffers between urban and habitat areas. Although the City's LCP calls for such a wetland program to be developed, such a program has not yet been prepared by the City. Appellant EPIC asserts that because the City has not prepared the wetland program called for in the City's LCP, the relative impacts of development on the subject site in relation to Elk River and the Elk River Wetland Mitigation Area, both environmentally sensitive habitat areas, are unknown and therefore, the impacts cannot be adequately assessed. The appellant does not specify what impacts they believe have not been adequately assessed.

LUP Policy 6.A.23 does not require that the wetland management, restoration, and enhancement program be prepared prior to the City approving coastal development permits within its jurisdiction. Furthermore, the policy does not specify timing requirements for preparation of the wetland program relative to the timing and implementation of coastal development within the City.

As noted above, LUP Policy 6.A.23 outlines the intended objectives of the wetland program called for by the policy. These objectives include enhancing the biological productivity of wetlands, minimizing or eliminating conflicts between wetlands and adjacent urban uses, providing stable boundaries and buffers between urban and habitat areas, and providing restoration areas. The City prepared a mitigated negative declaration (MND) for the project during the CDP and CEQA review process which addresses project-specific issues regarding wetlands and environmentally sensitive habitat areas at the subject site. These issues would otherwise be only programmatically addressed in the wetland program called for by LUP Policy 6.A.23 and would not provide information specific to the impacts of the proposed project at the site. Even if the wetland program called for by the LCP had been prepared, the specific project impacts would still need to be addressed through the CEQA and CDP process and the project reviewed against other LCP policies that require the project to meet similar objectives as those intended to be addressed by the wetland program required by LUP Policy 6.A.23.

Therefore, the City's action to approve the subject development prior to preparation of the wetland program raises no substantial issue of conformance with LUP Policy 6.A.23 of the City's LCP. There is a high degree of factual support for the City's decision that the development is consistent with LUP Policy 6.A.23. The Commission therefore concludes that the appeal raises no substantial issue with respect to conformance of the local approval with LCP provision pertaining to the preparation of a wetland program.

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 protection of environmentally sensitive habitat areas.

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.

Wildlife Habitat Utilization and Impact Assessment

As discussed above, because the proposed use would not provide the 100-foot buffer width around the wetlands in the vicinity of the project site, the development must conform to the certified LCP provisions that require determination of the adequacy of any reduced-width buffers to protect the ESHA resources within the wetlands. Because an insufficient analysis of the wetland ESHA within the adjoining wetlands within the Elk River Wetland Mitigation Area and the wetlands onsite was performed to determine appropriate buffers, a determination of an adequate buffer is needed as prescribed in LUP Natural Resources Policy 6.A.19 and Coastal Zoning Code Section 156.052(O).

LUP Natural Resources Policy 6.A.7 and Coastal Zoning Code Sections 156.052(D) and (E) 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 wetlands and ESHA issues and the associated policies and standards of the certified LCP.

The habitat and wetland assessment by SHN Consulting Engineers and Geologists does not fully analyze the impacts of the shipping terminal, warehousing, and office uses on the wetland habitat onsite and in the vicinity of the site and the adequacy of the reduced-width buffers. The presence or absence of utilization of the site by wildlife was not comprehensively determined, especially the locations in close proximity to planned truck loading activity areas where such wildlife utilization may be disrupted due to development noise, light, and human presence. To properly determine the adequacy of the proposed reduce-width wetland buffers, the applicant must submit a biological evaluation addressing: (1) the various resident and migratory species that inhabit or utilize the various affected wetlands; (2) the various resting, feeding, breeding, and nesting requirements 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 wetlands and the development; (5) a qualitative and quantitative analysis of what the anticipated noise and lighting levels and other human disturbances associated with the operation of the development would be and how the width of the buffer between the ESHA and the development would affect the habitat functions of the ESHA.

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.

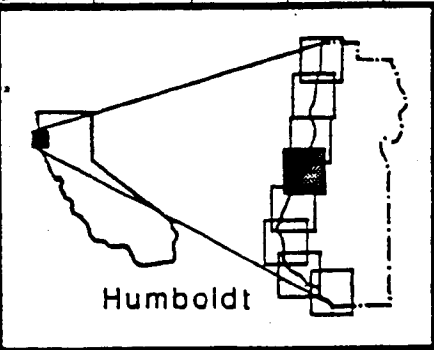
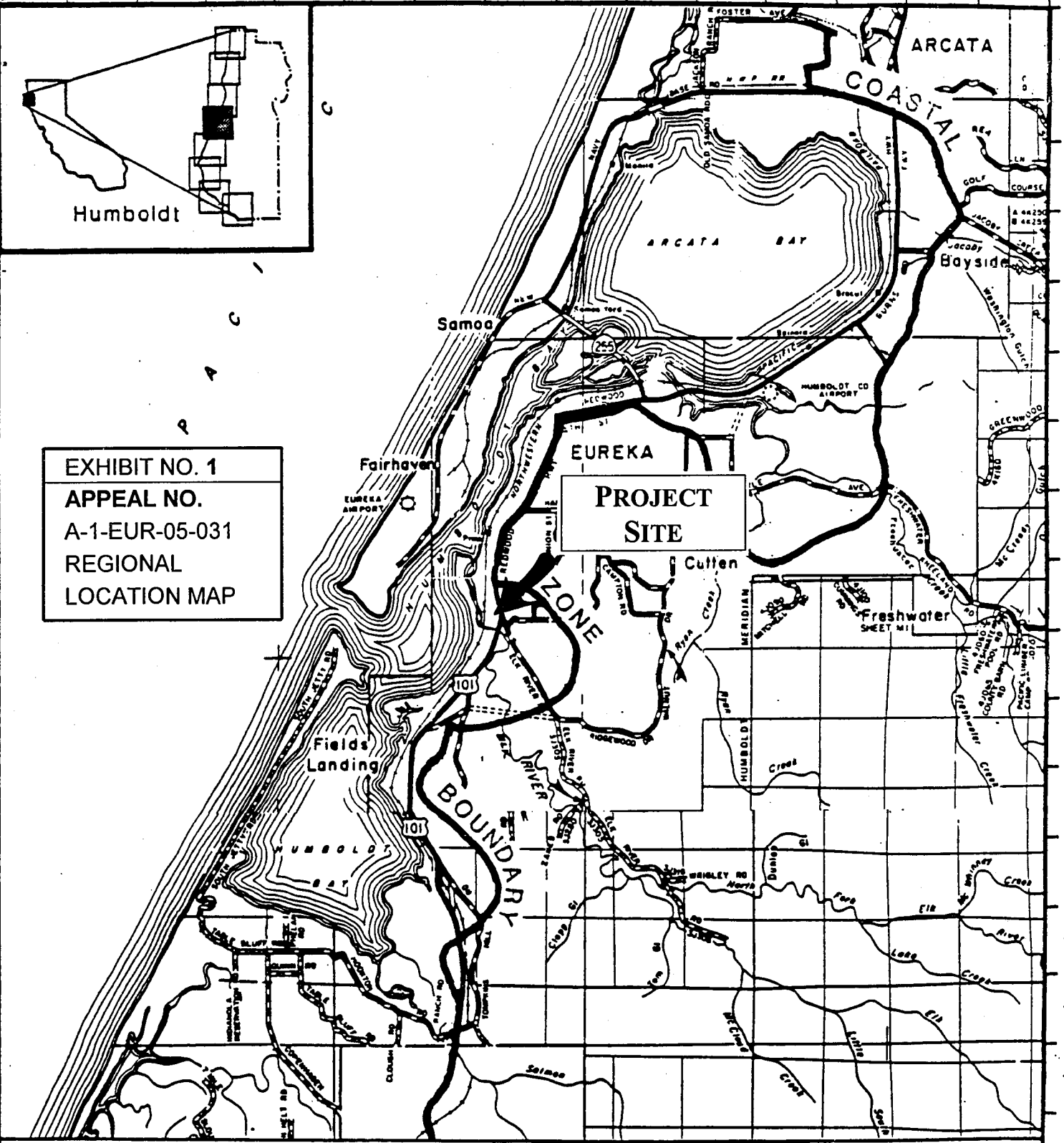
III. EXHIBITS:

1. Regional Location Map
2. Vicinity Map
3. Site Plan
4. Notice of Final Local Action
5. Appeal, filed July 11, 2005 (Environmental Protection Information Center – EPIC)
6. Appeal, filed July 11, 2005 (Humboldt Baykeeper and Ecological Rights Foundation)
7. Appeal, filed July 11, 2005 (Kruer & Caldwell)
8. Wetlands Delineation and ESHA Buffers Analysis Report

9. Commission and Local Agency Coastal Development Permits for Past Wetland Filling – CDP No. 1-85-089 (CCC) & CDP-1-85 (EUR)
10. General Correspondence

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18



Humboldt

EXHIBIT NO. 1
 APPEAL NO.
 A-1-EUR-05-031
 REGIONAL
 LOCATION MAP

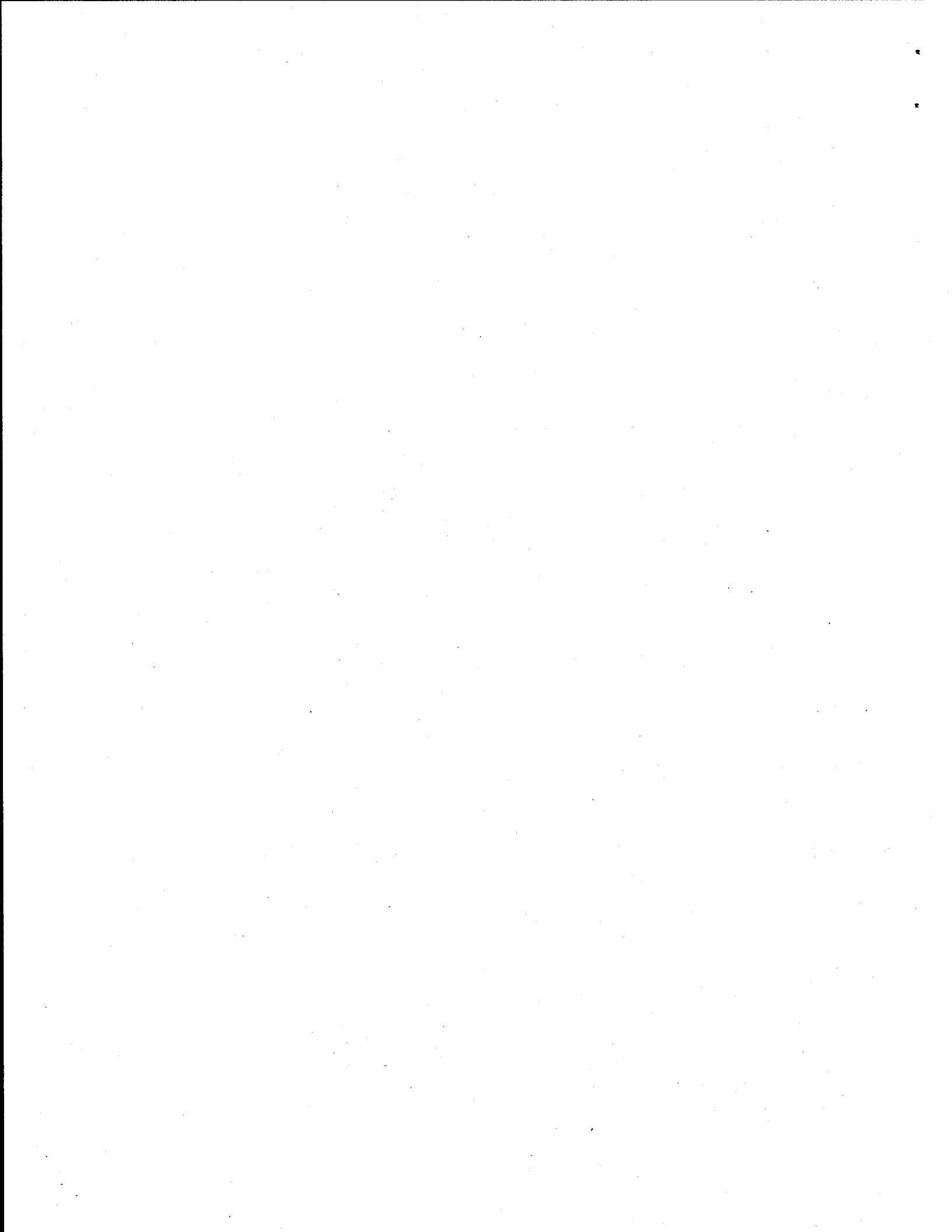
PROJECT
 SITE

BOUNDARY
 ZONE



LOCATION MAP





topozone
Copyright 1999-2003 Maps & to cart, Inc.

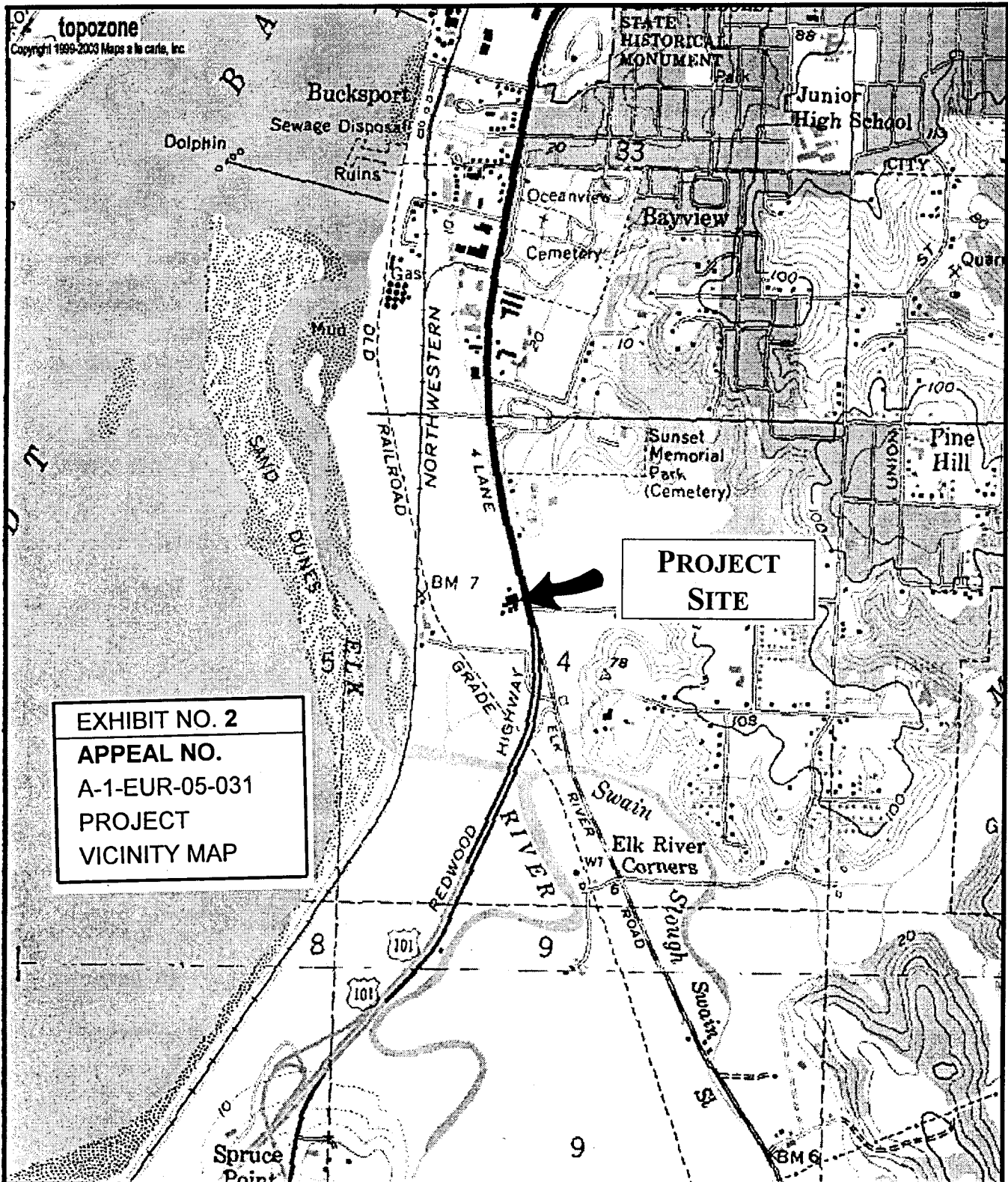
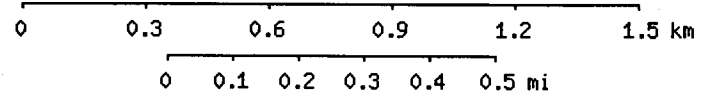
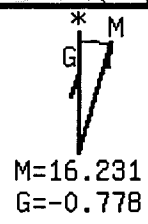


EXHIBIT NO. 2
APPEAL NO.
A-1-EUR-05-031
PROJECT
VICINITY MAP

PROJECT
SITE



Map center is UTM 10 399492E 4512876N (WGS84/NAD83)
EUREKA quadrangle
Projection is UTM Zone 10 NAD83 Datum





CITY OF EUREKA

COMMUNITY
DEVELOPMENT DEPARTMENT

531 K Street • Eureka, California 95501-1146
(707) 441-4160 • Fax (707) 441-4202

NOTICE OF FINAL CITY ACTION ON A COASTAL DEVELOPMENT PERMIT CDP-03-007 – Eureka South Gate Industrial Park June 22, 2005

The following project is located within the Coastal Zone of the City of Eureka. On June 21, 2005, action was taken by the City on CDP-03-007 to adopt the Findings of Fact as described in Exhibit "A" and approve the Coastal Development Permit subject to the modified conditions of approval described in Exhibit "B". The applicant proposes to adjust an existing lot line between two parcels and subsequently construct a total of approximately 92,500 square feet of warehouse and office space on the reconfigured parcels. With the exception of sensitive habitat areas and buffers, the site will be developed with buildings, parking areas, and traffic lanes. The project includes landscaping throughout the complex. Pro Pacific Fresh, a produce distribution company, will occupy approximately 27,900 square feet of the proposed building space. It is anticipated that the remaining space will be occupied by other local businesses looking to expand or relocate for business growth and development. The lot line adjustment is proposed in order to facilitate the demolition of the existing buildings and replacement of Pro Pacific's new facility. The project is located at Caltrans Post Mile ±074-910; APN: 302-171-034 & -037.

APPLICANT: Durham-Dayton Industrial Partners
P.O. Box 1069
Durham, CA 95938

RECEIVED

JUN 24 2005

CALIFORNIA
COASTAL COMMISSION

APPLICATION FILE NUMBERS: CDP-03-007 **FILED:** November 11, 2003

ACTION WAS TAKEN BY: Eureka City Council
April 19, 2005

CEQA STATUS: The project is subject to environmental review in accordance with the California Environmental Quality Act (CEQA). A draft Mitigated Negative Declaration and initial study were prepared and circulated for review as required by CEQA. The Mitigated Negative Declaration concludes that, with mitigation, no substantial adverse environmental impact will result from the proposed project.

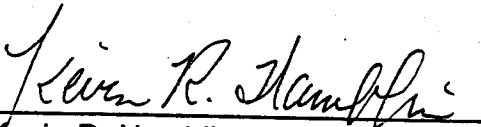
ACTION: Approved Denied Approved with
Conditions

The project was not appealable at the local level.

The project is: Not appealable to the Coastal Commission.

EXHIBIT NO. 4
APPEAL NO.
A-1-EUR-05-031
NOTICE OF FINAL LOCAL ACTION
(Page 1 of 28)

X Appealable to the Coastal Commission pursuant to Public Resources Code, Section 3063. An aggrieved person may appeal this decision to the Coastal Commission within 10 working days following Commission receipt of this notice. Appeals must be in writing to the appropriate Coastal Commission district office.


Kevin R. Hamblin, AICP
Director of Community Development

KRH:bc

cc: Building Department
 Engineering Department
 City Manager
 Engineering - Traffic
 California Coastal Commission
 Robert Wall, SHN

City of Eureka ~ City Council
AGENDA REVIEW

RE: Eureka South Gate Industrial Park APN
302-171-034 & -037; CDP-03-007

FOR AGENDA DATE: June 21, 2005

AGENDA ITEM NO.:

Exhibit "B"

**MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)
CONDITIONS OF APPROVAL**

Mitigation Measure No. 3 was modified by the City Council on June 21, 2005

Approval of the Coastal Development Permit for the construction of the Eureka South Gate Industrial Park is conditioned on the following terms and requirements. The violation of any term or requirement, Condition of Approval or Mitigation Measure may result in the revocation of the permit.

CONDITION OF APPROVAL NO. 1. The applicant shall hire a cultural monitor from the Table Bluff Reservation, Wiyot Tribe who shall be present during all excavation and ground disturbing activities. This condition shall be completed to the satisfaction of the Table Bluff Reservation, Wiyot Tribe.

CONDITION OF APPROVAL NO. 2. Air Quality Management District (AQMD) Regulations, including but not limited to Rule 400 – General Limitations, and Rule 430 – fugitive Dust Emission, and the National Emissions Standards for Hazardous Air Pollutants (NESHAP) shall apply to the satisfaction of the North Coast Unified Air Quality Management District (NCUAQMD).

CONDITION OF APPROVAL NO. 3. The proposed produce distribution facility does not appear to require AQMD Permits at this time based on the current project description. However, AQMD Permits to Operate and/or Authority to Construct permits may be required when specific proposals are put forward for the remaining building space following the initial project completion. This condition shall be completed to the satisfaction of the NCUAQMD.

CONDITION OF APPROVAL NO. 4. If asbestos-containing materials are present within the existing buildings that are proposed for demolition, NESHAP shall apply. It is the project applicant's responsibility to ensure that all NESHAP requirements, including but not limited to AQMD notification at least 10 business days prior to renovation or demolition are met. This condition shall be completed to the satisfaction of the NCUAQMD.

CONDITION OF APPROVAL NO. 5. If open burning is contemplated at the site, AQMD Regulation II shall apply. This condition shall be completed to the satisfaction of the NCUAQMD.

CONDITION OF APPROVAL NO. 6. If at any time soil contamination is discovered and remediation is required, AQMD permits may be required. This condition shall be completed to the

City of Eureka ~ City Council
AGENDA REVIEW

RE: Eureka South Gate Industrial Park APN
302-171-034 & -037; CDP-03-007

FOR AGENDA DATE: June 21, 2005

AGENDA ITEM NO.:

satisfaction of the NCUAQMD.

CONDITION OF APPROVAL NO. 7. All discharges of dredged or fill material into waters of the United States must be authorized by the Army Corps of Engineers pursuant to Section 404 of the Clean Water Act (CWA) (33 U.S.C. Section 1344). Waters of the United States generally include tidal waters, lakes, ponds, rivers, streams (including intermittent streams), and wetlands. This condition shall be completed to the satisfaction of the Army Corps of Engineers.

MITIGATION MEASURE NO. 1. No portion of the illuminated fixture or lens shall extend below or beyond the canister or light shield. The location of all exterior lights shall be shown on the site plan submitted to and approved by the Design Review Committee. In addition, the applicant shall submit to the Site Plan Review for review and approval the specifications for the exterior lights, including a picture or diagram showing the cross section of the light that illustrates that the illuminated portion of the fixture/lens does not extend beyond the shield.

Timing for Implementation/Compliance: The lighting plan shall be approved by the Design Review Committee prior to issuance of the building permit for the construction of each structure; the installation of the lights and determination that installation is in compliance with this requirement shall occur prior to issuance of the Certificate of Occupancy.

Person/Agency Responsible for Monitoring: Site Plan Review, Building/Public Works Department, and Community Development Department.

Monitoring Frequency: Once to review plans; once to assure compliance

Evidence of Compliance: No light or glare extends beyond the property boundary and the illuminated portion of the lens does not extend below the light case or shield.

MITIGATION MEASURE NO. 2. Building design and orientation shall direct traffic and activity away from identified wetland and sensitive habitat areas. There shall not be vehicular access or parking located between the westernmost buildings on the site and identified wetland and sensitive habitat areas. Westernmost buildings shall be designed and constructed such to minimize doors and windows facing wetlands and sensitive habitat areas.

Timing for Implementation/Compliance: The building design/placement and traffic routing shall be approved by the Site Plan Review prior to issuance of the building permit for the construction of each structure.

Person/Agency Responsible for Monitoring: Site Plan Review, Building/Public Works Department, and Community Development Department.

Monitoring Frequency: Once to review plans; once to assure compliance

Evidence of Compliance: Building placement/design and traffic patterns meet the condition.

City of Eureka ~ City Council
AGENDA REVIEW

RE: Eureka South Gate Industrial Park APN
302-171-034 & -037; CDP-03-007

FOR AGENDA DATE: June 21, 2005

AGENDA ITEM NO.:

MITIGATION MEASURE NO. 3. The wetland in the northern portion of the site shall be protected with a minimum 6-foot tall solid wood fence and 10-foot buffer area that will be allowed to revert to natural vegetation. Additionally, a minimum 6-foot tall solid wood fence shall be installed at the western parcel boundary, except in areas of wetland or protected buffer area, where fence will be located at the eastern (inward toward the site) edge of the feature.

Timing for Implementation/Compliance: Fence shall be placed concurrently with the first substantial construction on the site.

Person/Agency Responsible for Monitoring: Building/Public Works Department, and Community Development Department.

Monitoring Frequency: Once to assure compliance

Evidence of Compliance: Fence is constructed as specified concurrent with substantial construction on the site.

MITIGATION MEASURE NO. 4. Oil-water separators shall be installed at each stormwater outfall point to the satisfaction of the Building/Public Works Department.

Timing for Implementation/Compliance: Oil-water placement plan shall be approved by the Building/Public Works Department prior to issuance of the grading or building permit for the construction of paved areas. Building/Public Works Department may assure compliance of proper installation following construction.

Person/Agency Responsible for Monitoring: Building/Public Works Department.

Monitoring Frequency: Once to review plans; once to assure compliance

Evidence of Compliance: Oil-water separators are installed properly.

MITIGATION MEASURE NO. 5. If any cultural resources are discovered during construction or use of the proposed project, all work shall be halted until a qualified cultural resources specialist is contacted to analyze the significance of the find and, if necessary, recommend further resource protection measures. If human remains are found on the site, all work is to be stopped and the County Coroner shall be contacted.

Timing for Implementation/Compliance: All construction activities must be in compliance at all times.

Person/Agency Responsible for Monitoring: Operators whose work disturbs the ground.

Monitoring Frequency: During all ground disturbing activity.

Evidence of Compliance: Cultural resource specialist/coroner contacted in the event of discovery.

City of Eureka ~ City Council
AGENDA REVIEW

RE: Eureka South Gate Industrial Park APN
302-171-034 & -037; CDP-03-007

FOR AGENDA DATE: June 21, 2005

AGENDA ITEM NO.:

MITIGATION MEASURE NO. 6. The applicant shall demonstrate that the location and layout of all proposed development comply with the City of Eureka's Building/Public Works Department and Fire Department regulations for on-site emergency exiting, evacuation, and emergency access/utilities.

Timing for Implementation/Compliance: The site plans shall be approved by the City of Eureka's Building/Public Works Department and Fire Department prior to issuance of the building permit. Compliance with this requirement shall be inspected prior to issuance of the Certificate of Occupancy.

Person/Agency Responsible for Monitoring: City of Eureka's Building/Public Works Department and Fire Department.

Monitoring Frequency: Once to review plans; once to assure compliance

Evidence of Compliance: The location and layout of all constructed development complies with the City of Eureka's Building/Public Works Department and Fire Department regulations for on-site emergency exiting, evacuation, and emergency access/utilities.

HBO/cx

City of Eureka ~ City Council
AGENDA SUMMARY

old fence
in place of
cyclone fence
Rha

RE: <u>Eureka South Gate Industrial Park</u> APN 302-171-034 & -037; CDP-03-007	FOR AGENDA DATE: June 21, 2005 AGENDA ITEM No.:
------------------------------------------------------------------------------------	--------------------------------------------------------

RECOMMENDATION:

1. Hold a Public Hearing
2. Adopt the Mitigated Negative Declaration (SCH# 2005032101)
3. Adopt the Findings of Fact listed in Exhibit "A"
4. Approve the Coastal Development Permit subject to the Conditions of Approval and the Mitigation Measures listed in Mitigation Monitoring and Reporting Program (MMRP) contained in Exhibit "B"

SUMMARY OF THE ISSUE:

The South Gate Industrial Park plans to adjust an existing lot line between two parcels and subsequently construct a total of approximately 92,500 square feet of warehouse and office space on the reconfigured parcels. With the exception of sensitive habitat areas and buffers, the site will be developed with buildings, parking areas, and traffic lanes. The project includes landscaping throughout the complex. Pro Pacific Fresh, a produce distribution company, will occupy approximately 27,900 square feet of the proposed building space. It is anticipated that the remaining space will be occupied by other local businesses looking to expand or relocate for business growth and development. The lot line adjustment is proposed in order to facilitate the demolition of the existing buildings and the replacement of Pro Pacific's old distribution warehouse with a new facility.

FISCAL IMPACT: No impacts to the City General Fund have been identified as a result of this project application.

Signature: <u>Kevin R. Hamblin</u> Kevin R. Hamblin Director of Community Development	Signature: _____ David W. Tyson City Manager
---------------------------------------------------------------------------------------------	----------------------------------------------------

REVIEWED BY:	DATE:	INITIALS:
City Attorney	<u>6-15-05</u>	<u>D.T.</u>
Public Works/Bldg	<u>6-16-05</u>	<u>MK</u>
Engineering	<u>6-15-05</u>	<u>BS</u>
Fire Department	<u>6-16-05</u>	<u>RB by phone call</u>

COUNCIL ACTION:	
Ordinance No. _____	Resolution No. _____

City of Eureka ~ City Council
AGENDA REVIEW

RE: Eureka South Gate Industrial Park APN
302-171-034 & -037; CDP-03-007

FOR AGENDA DATE: June 21, 2005

AGENDA ITEM NO.:

ENVIRONMENTAL DISCUSSION

Pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15072 & 15105, the City of Eureka Community Development Department being the Lead Agency under CEQA provided public notice of an "Intent to Adopt a Mitigated Negative Declaration of Environmental Impact" for the Eureka South Gate Industrial Park by posting a legal notice in the Times Standard. All interested persons were invited to comment on the draft mitigated negative declaration (MND) pursuant to the provisions of CEQA. Written comments on the draft MND were required to be submitted to the Community Development Department no later than April 22, 2005. A total of two public comment letters were submitted on the draft MND; they were both received on April 22, 2005. The comment letters are from Humboldt Baykeeper and EPIC (Environmental Protection Information Center).

CEQA does not require the Lead Agency to prepare a formal response to comments submitted during the public review process on the draft MND; however, prior to approval of the project the City must consider the comments. Because of the seriousness of the allegations in the two comment letters alleging that the City has failed to comply with CEQA, the Coastal Act, and our own adopted Local Coastal Program, Staff has prepared a formal point-by-point response to the issues raised in the letters. A copy of the City's response along with copies of the Humboldt Baykeeper and EPIC letters are included herein as Attachment 1. The draft MND and Initial Study upon which the comments were made is included as Attachment 2.

The applicant has provided the City with sufficient information regarding the proposed project to accurately assess the environmental impacts of the project. As stated in the Mitigated Negative Declaration (MND) for the project, the City believes that the project as designed, mitigated and conditioned will not cause significant detrimental impacts on the environment.

The project is situated on historically-diked former tidelands and, like much of Eureka and the coastal Humboldt Bay region, is within relatively close proximity to wetlands, drainage ditches, tidally influenced areas, and the biological resources that accompany these features. The site has been subject to a series of pre- and post-permit era wetland fill – the most recent of which was fully permitted by the United States Army Corps of Engineers (USACE; Permit No. 16235N21), the California Coastal Commission (CDP-85-89), and the City of Eureka (CDP-1-85).

The subject site has a complex history of permitting and development that includes legal wetland fill and compensatory mitigation. For example, in exchange for the historical development of the subject property, the property owner at the time agreed to create the adjacent approximately 52-acre Elk River Wetland and Habitat Mitigation area and subsequently transfer

City of Eureka ~ City Council
AGENDA REVIEW

RE: Eureka South Gate Industrial Park APN
302-171-034 & -037; CDP-03-007

FOR AGENDA DATE: June 21, 2005

AGENDA ITEM NO.:

the mitigation site to the City of Eureka. In understanding the history of the site one must recognize the difference between mitigation to reduce or eliminate an impact (as recognized by CEQA) compared to mitigation to exchange the legal existence of habitat from one location to another (usually for the purpose of obtaining development rights on the impacted site). In this case, mitigation was used to shift, in perpetuity, the location of wetland and habitat from the subject property to the adjacent 52-acre wetland and habitat mitigation site.

Based upon permitting history, the clear intent of the creation of the 52-acre mitigation wetland to the west of the subject site was, as stated in the adopted Local Coastal Program to establish a stable boundary and buffer between urban and habitat uses; between the City owned habitat area to the west of the dike/buffer, and a developable light industrial parcel on the other side (the subject property).

Because of this complex history of mitigation that created an off-site habitat and wetland area so that the subject site could be filled and developed, the permitting agencies, including the City of Eureka, have a responsibility to uphold the mitigation agreement by recognizing that the site is no longer subject to the usually-applicable requirements for impacts to habitat; this is because the habitat has already been 100% replaced by successful mitigation – so successful in fact that the mitigation wetland itself is now acknowledged to be relatively high quality habitat.

Direct impacts to wetlands and other habitat on the site were previously mitigated through the former owners' transfer of property and subsequent mitigation at the Elk River Wetland Mitigation Area. In order for the City of Eureka to maintain credibility in future compensatory mitigation efforts and to comply with the terms of the subject mitigation effort, the City has taken the position that because the portions of the site proposed for development have already been filled and all on-site habitat impacts have already been mitigated that there are no direct impacts to wetlands or other sensitive habitats on the site associated with the project.

BUFFER

The City General Plan requires a 100-foot buffer for Environmentally Sensitive Habitat Areas, including coastal wetlands, unless the applicant demonstrates on the basis of site-specific information that a reduced buffer will protect the existing resource. In this rather complex case, the City believes reduced buffers have been justified.

Because of the history of compensatory mitigation for development of the project site, in addition to project design/mitigation measures, existing on- and offsite buffers, and the existing low habitat quality of the maintained wetland ditch, the proposed buffers are sufficient to protect the adjacent biological resources from significant impact.

City of Eureka ~ City Council
AGENDA REVIEW

RE: Eureka South Gate Industrial Park APN
302-171-034 & -037; CDP-03-007

FOR AGENDA DATE: June 21, 2005

AGENDA ITEM NO.:

GENERAL DISCUSSION

The project is at the extreme southern end of the Broadway commercial corridor, adjacent to open space and Highway 101. The property is currently zoned Heavy Industrial (MG) which also allows for Limited Industrial (ML) uses as principally permitted uses. Numerous studies over the years, including the Westside Industrial Study, have indicated the need for industrial site development in and around Eureka. This project will serve the needs of industrial users, light manufacturing, and transportation based businesses with its easy access to Highway 101.

The property lies at the southern edge of Eureka on the west side of Highway 101 and is within the Coastal Zone jurisdiction of both the City of Eureka and California Coastal Commission. The property has very little topographical relief, but generally drains to the west where a small drainage ditch conveys runoff to the north and south. The ditch drains to a forested wetland on the northern portion of the site, and to a larger gravel-paved drainage ditch off-site to the southwest. The property has a Broadway address but is accessed by Herrick Avenue overpass and Pound Road. There is no direct access onto or off of Broadway (U.S. Highway 101), although the site is visible from the highway. The Herrick Road overpass and diamond interchange make easy access for vehicular and truck access onto and off of Highway 101 to the site.

Several somewhat dilapidated buildings dating to approximately the middle of the 1900s are located in the central portion of the site. The buildings were home to the Rockin' R meat packing and distribution facility until the property changed ownership in 2002. The buildings continue to be used for a variety of trucking interests, including the Pro Pacific Fresh produce trucking firm. A report on the historical value of the existing buildings found by Leslie S. Heald in January 2003 that the buildings were not of significant historical value and did not warrant preservation measures.

The immediate surrounding land uses include the Lithia Auto Dealership to the north; the Elk River Mitigation Area to the west; open space to the south; and K-Mart, warehouses, businesses, and pasture land to the east across Highway 101. Other land use within one mile of the project site include low density residential, commercial retail/wholesale properties, motels, a sewer treatment plant, cemeteries, state highway land, and open space.

The subject property is currently predominantly gravel and dirt parking areas with areas of sparse weedy vegetation. A large aging painted wood building, the former Rockin' R meat packing warehouse, and associated structures are located in the central portion of the site. Currently, there are typically tractor-trailers parked on the site near the buildings. The site has virtually no landscaping in any portion.

City of Eureka ~ City Council
AGENDA REVIEW

RE: Eureka South Gate Industrial Park APN
302-171-034 & -037; CDP-03-007

FOR AGENDA DATE: June 21, 2005

AGENDA ITEM NO.:

The proposed project will increase the amount of building façade visible from publicly-accessible areas in the vicinity; however buildings will not obscure any known scenic view. The proposal includes appropriate buffer landscaping and additional landscaping throughout the site, which should enhance the overall appearance of the development.

Humboldt Bay and the surrounding tidelands are the ancestral home to the Wiyot tribe of Native Americans. Paleontological, archaeological, historical, and other unique ethnic and sacred resources are common around the Bay. As is the case on the subject site, much of the formerly tidally influenced areas have been filled and developed. Because the site has been filled since any historic resource would have been deposited, only ground-disturbing activities related to the project have the potential to impact the resource. As a condition of approval, the applicant will be required to hire a cultural monitor from the Table Bluff Reservation, Wiyot Tribe who will be present during all excavation and ground disturbing activities.

As previously discussed, the project site is on relatively level ground that is predominantly compacted gravel and dirt. There are no existing water quality treatment facilities on the site; all water runoff from the existing site gathers in dirt or gravel ditches and flows untreated into the adjacent ditches. All water runoff is currently channeled from highly compacted substrate and roofs into free-flowing ditches. The project will create additional impervious surface area on the site due to increased non-pervious surfaces; however, the increase will not be substantial because the site is already highly compacted. The proposal includes the installation of oil-water separators at all points of stormwater discharge from the property for the treatment of runoff. The separators will have the added benefit of slowing the rate of stormwater discharge.

The project is one of four facilities located on a short stretch of road just west of the Herrick Road diamond and highway overpass – the other facilities are the abandoned tallow works; a small gravel parking area for up to 5 cars tightly parked which is used as access for a coastal trail; and, a Caltrans park and ride facility.

The site has historically and is currently used by truck traffic; the proposed project will result in increased traffic – both trucks and other vehicles - primarily on Herrick Road and the associated overpass. According to the Traffic Study completed by SHN in October 2003, the increase in traffic resulting from the proposed project will not exceed the traffic or road design standards for Herrick Road or the highway overpass.

ANALYSIS

Eureka Municipal Code, Section 156.107, specifies that a coastal development permit shall only be approved upon making the finding that the proposed development conforms to the policies of the adopted and certified Local Coastal Program (LCP).

City of Eureka ~ City Council
AGENDA REVIEW

RE: Eureka South Gate Industrial Park APN
302-171-034 & -037; CDP-03-007

FOR AGENDA DATE: June 21, 2005

AGENDA ITEM NO.:

The following list of goals and policies found in the certified LCP support the required finding that the Eureka South Gate Industrial Park does, in fact, conform to the goals and policies of the adopted and certified LCP.

Goal 1.M *To ensure an adequate supply of industrial land for and promote the development of industrial uses to meet the present and future needs of Eureka and to maintain economic vitality.*

Policy 1.M.1 *The City shall protect industrially-designated land from pre-emption by residential, commercial, and other unrelated and incompatible uses.*

Policy 1.M.8 *The City shall require that new industrial and heavy commercial development projects have convenient and safe access to major transportation facilities (highways, railroads, waterfront facilities) to minimize unnecessary and disruptive traffic through residential and other sensitive sections of the city.*

Policy 1.M.10 *The City shall permit mixed industrial and commercial uses only when such uses are determined to be compatible or necessary for operations.*

Policy 1.M.11 *The City shall require that industrial development avoids or minimizes creating substantial pollution, noise, glare, odor, or other significant offensive activity that would contribute negatively to adjacent uses and other areas of the city.*

Policy 1.M.12 *The City shall ensure that areas designated for industrial development be adequately served by utilities and facilities so as to promote consolidated development and reduce energy consumption.*

Policy 1.M.13 *The City shall ensure that the streets and corners in industrial areas are sufficiently wide to easily accommodate truck traffic.*

Policy 1.M.14 *The City shall require that industrial development projects provide ample space for truck loading, parking, and maneuvering.*

Goal 3.A *To provide for the planning and development of the city's roadway system, ensure safe and efficient movement of people and goods, and provide sufficient access to new development.*

Policy 3.A.1 *The City shall expand and maintain its streets and highway system according to*

City of Eureka ~ City Council
AGENDA REVIEW

RE: Eureka South Gate Industrial Park APN
302-171-034 & -037; CDP-03-007

FOR AGENDA DATE: June 21, 2005

AGENDA ITEM NO.:

the classifications shown in Table 3-1 and depicted in Figure 3-1.

Policy 3.A.2 *The City shall endeavor to manage its street and highway system so as to maintain Level of Service C operation on all roadway segments, except for any portion of U.S. 101, where Level of Service D shall be acceptable. For evaluation purposes, service levels shall be determined on the basis of midblock roadway planning capacities shown in Table 3-3 and the definitions of service levels shown in Table 3-4.*

Policy 3.A.13 *The City shall require that all new structures constructed adjacent to expressways, arterial streets, and collector streets in the city be situated so as to conform with the sight distance requirements defined in the California Department of Transportation (Caltrans) Highway Design Manual. The City shall also ensure that new roadways are designed conform with the sight distance requirements in the Highway Design Manual.*

Policy 3.A.14 *The City shall require all new or intensified development projects to provide sufficient off-street parking supply so as to conserve the existing on-street supply, particularly in the commercial, medical services commercial, industrial, and higher density residential areas, except in the Core Area as specified under Goal 3.H in this document. In cases where off-street parking is required, the City will encourage joint-use parking arrangements.*

Policy Goal 3.E *To ensure that goods can be moved to and from industrial and commercial sites in Eureka in a safe and efficient manner while ensuring that heavy trucks remain on freeways and major arterial streets except when accessing sites within the city.*

Policy Goal 4.A *To ensure the effective and efficient provision of public facilities and services for existing and new development.*

Policy 4.A.1 *The City shall provide high quality public facilities, utilities, and services throughout the urbanized area of Eureka and shall ensure that such facilities, utilities, and services are compatible with surrounding development.*

Policy 4.A.2 *The City shall direct growth to those areas already served by public infrastructure and utilities.*

Goal 4.B *To ensure the availability of an adequate and safe water supply and the maintenance of high quality water for residents of and visitors to Eureka.*

Policy 4.B.2 *The City shall require proponents of new development to demonstrate the availability of a long-term, reliable water supply and adequate water supply infrastructure. The*

City of Eureka ~ City Council
AGENDA REVIEW

RE: Eureka South Gate Industrial Park APN
302-171-034 & -037; CDP-03-007

FOR AGENDA DATE: June 21, 2005

AGENDA ITEM NO.:

City shall require all new development within the city to connect to the City's water system. New development shall be responsible for constructing or financing any water system upgrades necessary to serve the development.

Goal 4.C *To ensure adequate wastewater collection, treatment, and disposal.*

Policy 4.C.3 *The City shall require pretreatment of commercial and industrial wastes prior to their entering the city collection and treatment system.*

Policy 4.C.5 *The City shall require all new development within the city limits to connect to the City wastewater treatment system.*

Goal 4.D *To collect and convey stormwater in a manner that least inconveniences the public, reduces or prevents potential water-related damage, and protects the environment.*

Policy 4.D.2 *The City shall encourage the use of natural stormwater drainage systems in a manner that preserves and enhances natural features.*

Policy 4.D.6 *The City shall improve the quality of runoff from urban and suburban development through use of appropriate and feasible mitigation measures including, but not limited to, artificial wetlands,, grassy swales, infiltration/sedimentation basins, riparian setbacks, oil/grit separators, and other best management practices (BMPs).*

Policy 4.D.8 *The City shall encourage new project designs that minimize drainage concentrations and impervious coverage and maintain, to the extent feasible, natural site drainage conditions.*

Goal 4.G *To protect residents of and visitors to Eureka from injury and loss of life and to protect property from fires.*

Policy 4.G.1 *The City shall ensure that water main size, water flow, fire hydrant spacing, and other fire facilities meet City standards.*

Policy 4.G.3 *The City Fire Department shall attempt to maintain an average response time of three (3) minutes for all service calls, including emergency medical service (EMS) calls.*

Policy 4.G.6 *The City shall implement ordinances to control fire losses and fire protection costs through continued use of automatic fire detection, control, and suppression systems.*

City of Eureka ~ City Council
AGENDA REVIEW

RE: Eureka South Gate Industrial Park APN
302-171-034. & -037; CDP-03-007

FOR AGENDA DATE: June 21, 2005

AGENDA ITEM NO.:

Policy 4.G.7 *The City shall cooperate with Humboldt Fire District No. 1 and the California Department of Forestry and Fire Protection (CDF) in providing adequate levels of fire protection services in the Planning Area.*

SUMMARY

Over the last several years, Staff from the City of Eureka (and the California Coastal Commission) have worked closely with the applicant to design and develop a project that satisfies the needs of the applicant and which results in the least environmental impact. The City fulfilled its requirements as a Lead Agency under CEQA by preparing, circulating and providing a Notice of Intent to adopt a draft Mitigated Negative Declaration and Initial Study. Staff circulated the Mitigated Negative Declaration and Initial Study through the State Clearinghouse as required by CEQA, and in addition, Staff sent copies of the documents to the local offices of a number of state and federal agencies. All comments from the agencies have been evaluated and where appropriate included in either Conditions of Approval or Mitigation Measures.

Therefore, Staff recommends that the City Council adopt the Findings of Fact listed in Exhibit "A" and approve the Coastal Development Permit subject to the Conditions of Approval and Mitigation Measures listed in Exhibit "B".

ATTACHMENTS

Exhibit "A"	Findings of Fact.....	pages 10-18
Exhibit "B"	MMRP and Conditions of Approval	pages 19-22
Attachment 1	Response to Comments; Humboldt Baykeeper and EPIC.....	pages 23-43
Attachment 2	Initial Study and draft MND.....	pages 44-207
Attachment 3	Reduced Maps and Site Renderings	pages 208-212

City of Eureka ~ City Council
AGENDA REVIEW

RE: Eureka South Gate Industrial Park APN
302-171-034 & -037; CDP-03-007

FOR AGENDA DATE: June 21, 2005

AGENDA ITEM NO.:

Exhibit "A"
FINDINGS OF FACT

The decision of the City Council to approve the Coastal Development Permit for the construction of the Eureka South Gate Industrial Park, subject to the Conditions of Approval and Mitigation Measures listed in Exhibit "B", was made after careful, reasoned and equitable consideration of the evidence in the record, including, but not be limited to: written and oral testimony submitted at or before the public hearing; the staff report; site investigation(s); agency comments; project file; mitigated negative declaration and initial study, and the evidence submitted with the permit application.

The findings of fact listed below "bridge the analytical gap" between the raw evidence in the record and the City Council's decision.

1. The proposal is a "project" as defined by the California Environmental Quality Act (CEQA), and is subject to the provisions of the Act. A draft Mitigated Negative Declaration (MND) and initial study were prepared and circulated for review as required by CEQA, including circulation through the State Clearinghouse (SCH# 2005032101). The mitigated negative declaration concludes that, with mitigation, no substantial adverse environmental impact or hazard to public safety will result from the proposed project.

2. The City fulfilled its requirements as a Lead Agency under CEQA by preparing, circulating and providing a Notice of Intent to adopt a draft Mitigated Negative Declaration and Initial Study. Staff circulated the Mitigated Negative Declaration and Initial Study through the State Clearinghouse as required by CEQA, and in addition, Staff sent copies of the documents to the local offices of a number of state and federal agencies. All comments from the agencies have been evaluated and where appropriate included in either Conditions of Approval or Mitigation Measures.

3. In response to the circulated draft MND, the City received comments from three public agencies: US Army Corps of Engineers (USACOE); North Coast Unified Air Quality Management District (NCUAQMD); and, the Table Bluff Reservation, Wiyot Tribe. Conditions of approval have been added to Exhibit "B" to address all comments from these three agencies.

4. Pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15072 & 15105, the City of Eureka being the Lead Agency under CEQA provided public notice of an "Intent to Adopt a Mitigated Negative Declaration of Environmental Impact" for the Eureka South Gate Industrial Park by posting a legal notice in the Times Standard and by mailing notices to property owners and residents of property within 300 feet of the subject property.

City of Eureka ~ City Council
AGENDA REVIEW

RE: Eureka South Gate Industrial Park APN
302-171-034 & -037; CDP-03-007

FOR AGENDA DATE: June 21, 2005

AGENDA ITEM NO.:

5. All interested persons were invited to comment on the draft MND pursuant to the provisions of CEQA. A total of two public comment letters were submitted on the draft MND, they were from the Humboldt Baykeeper and from EPIC.

6. The City prepared a point-by-point response to the comments from Humboldt Baykeeper and EPIC. The responses address the environmental issues raised in the comment letters, and validate that the City properly followed the requirements of CEQA in processing the project and the MND.

7. CEQA does not require that Mitigated Negative Declarations include an alternatives analysis because the Initial Study concludes that, with mitigation, there are no significant impacts resulting from the proposed project. Because the project has no significant impacts to the environment, there is no need to investigate alternatives that may reduce impacts.

8. The City Council has considered the proposed mitigated negative declaration together with all comments received during the public review process before approving the project.

9. The City Council adopted the mitigated negative declaration based on the whole record before the Council, including the initial study and all comments received.

10. The City Council finds that there is no substantial evidence that the project will have a significant effect on the environment.

11. The City Council finds that the mitigated negative declaration reflects the lead agency's independent judgment and analysis.

12. The City Council declares that the location and custodian of the documents or other material which constitute the record of proceedings upon which the Council's decision is based is the City Clerk, 2nd Floor, City Hall, 531 "K" Street, Eureka, CA.

13. The City Council adopts Exhibit "B" which is a program for reporting on or monitoring the changes which the Council has either required in the project or made a condition of approval to mitigate or avoid significant environmental effects.

14. In order to approve the Coastal Development Permit, the City Council must find that the project is in conformance with the adopted and certified Local Coastal Program.

15. The information and analysis in the Initial Study and the staff report substantiate that a

City of Eureka ~ City Council
AGENDA REVIEW

RE: Eureka South Gate Industrial Park APN
302-171-034 & -037; CDP-03-007

FOR AGENDA DATE: June 21, 2005

AGENDA ITEM NO.:

finding of conformance with the adopted and certified Local Coastal Program can be made.

16. The Mitigated Negative Declaration and Initial Study considered whether the project would result in a safety hazard or noise problem for persons using a public airport or public use airport or for persons residing or working in the project area.

17. The applicant has provided the City with sufficient information regarding the proposed project to accurately assess the environmental impacts of the project. The City determined that the application was complete for the purposes of City review and approval.

18. Although reduced from its original size, so that it could be easily reproduced, the plot plan provided with the Notice of Intent provides an adequate representation of the project for the purpose of public review required by CEQA.

19. The property lies at the southern edge of Eureka on the west side of Highway 101 and is within the Coastal Zone jurisdiction of both the City of Eureka and California Coastal Commission.

20. Over the last several years, Staff from the City of Eureka (and the California Coastal Commission) have worked closely with the applicant to design and develop a project that satisfies the needs of the applicant and which results in the least environmental impact.

21. The subject property is currently zoned Heavy Industrial (MG) which also allows for Limited Industrial (ML) uses as principally permitted uses. Numerous studies over the years, including the Westside Industrial Study, have indicated the need for industrial site development in and around Eureka. This project will serve the needs of industrial users, light manufacturing, transportation based businesses with its easy access to Highway 101.

22. The approximately 8.8 acre site is proposed for approximately 92,500 square feet of buildings. The resulting area covered by buildings will be approximately 2.12 acres, or, approximately 24% of the total site.

23. The proposed project will increase the amount of building façade visible from publicly-accessible areas in the vicinity; however buildings will not obscure any known scenic view.

24. The immediate surrounding land uses include the Lithia Auto Dealership to the north; the Elk River Mitigation Area to the west; open space to the south; and K-Mart, warehouses, businesses, and pasture land to the east across Highway 101. Other land use within one mile of the project site include low density residential, commercial retail/wholesale properties, motels, a

City of Eureka ~ City Council
AGENDA REVIEW

RE: Eureka South Gate Industrial Park APN
302-171-034 & -037; CDP-03-007

FOR AGENDA DATE: June 21, 2005

AGENDA ITEM NO.:

sewer treatment plant, cemeteries, state highway land, and open space.

25. The proposed project does not propose development within environmentally sensitive habitat areas or vegetated buffers, as stated in the comment.

26. The property has a Broadway address but is accessed by Herrick Avenue overpass and Pound Road. There is no direct access onto or off of Broadway (U.S. Highway 101), although the site is visible from the highway.

27. The site has historically and is currently used by truck traffic; the proposed project will result in increased traffic – both trucks and other vehicles; primarily on Herrick Road and the associated overpass. According to the Traffic Study completed by SHN in October 2003, the increase in traffic resulting from the proposed project will not exceed the traffic or road design standards for Herrick Road or the highway overpass.

28. The Herrick Road overpass and cloverleaf interchange make easy access for vehicular and truck access onto and off of Highway 101 to the site.

29. Although the subject site requires the use of and has frontage on a public road with a public access point to the coast, it does not necessitate any improvements to the public access point.

30. The project is one of four facilities located on a short stretch of road just west of the Herrick Road clover-leaf and highway overpass – the other facilities are the abandoned tallow works; a small gravel parking area for up to 5 cars tightly parked which is used as access for a coastal trail; and, a Caltrans park and ride facility.

31. The proposed project will not impact the accessibility or availability of parking at the coastal public access point at the end of Pound Road.

32. The loading zones are located in such a way that, considering distances and existing buffers, there will not be significant impacts to wetland areas with significant habitat value.

33. The positioning of buildings may obscure the existing limited view of the vegetated dike to the west of the site, however, an overall advantage is that it offers a significant increase in noise attenuation between the highway and the wetlands.

34. The buildings and native landscaping proposed may serve to further reduce the existing light from the highway and surrounding developments that were constructed mostly without light-

City of Eureka ~ City Council
AGENDA REVIEW

RE: Eureka South Gate Industrial Park APN
302-171-034 & -037; CDP-03-007

FOR AGENDA DATE: June 21, 2005

AGENDA ITEM NO.:

shielding devices. The applicant proposes to place only native plant species on the site.

35. The lighting design, positioning of buildings between the lighted areas and habitat, vegetated buffer/dike to the west, and the buffer to the north of the site are expected to reduce light-related impacts to insignificance.

36. Regarding PM-10 emissions from idling trucks, the use of the site itself may increase as a result of the project, but the project is not expected to significantly increase the cumulative idling of trucks in the air basin. The proposed project will provide a convenient location for truck based shipping that is already occurring within the air basin but will not create the need for increased shipping, and is therefore not expected to add significantly to the cumulative PM-10 emissions.

37. Several somewhat dilapidated buildings dating to approximately the middle of the 1900s are located in the central portion of the site. The buildings were home to the Rockin' R meat packing and distribution facility until the property changed ownership in 2002. The buildings continue to be used for a variety of trucking interests, including the Pro Pacific Fresh produce trucking firm. A report on the historical value of the existing buildings found that the buildings were not of significant historical value and did not warrant preservation measures (Leslie S. Heald January 2003).

38. Humboldt Bay and the surrounding tidelands are the ancestral home to the Wiyot tribe of Native Americans. The subject site has been filled and developed, therefore, any historic resources would be below the fill layer and only ground-disturbing activities have the potential to impact the resource. As a condition of approval, the applicant will be required to hire a cultural monitor from the Table Bluff Reservation, Wiyot Tribe who will be present during all excavation and ground disturbing activities.

39. The property has very little topographical relief, but generally drains to the west where a small drainage ditch conveys runoff to the north and south. The ditch drains to a forested wetland on the northern portion of the site, and to a larger gravel-paved drainage ditch off site to the southwest.

40. The hydrology of the forested wetland in the northern portion of the site is not expected to be changed by the proposed project, since the existing and proposed drainage direct flow away from the wetland.

41. The project site is on relatively level ground that is predominantly compacted gravel and dirt. There are no existing water quality treatment facilities on the site; all water runoff from the existing site gathers in dirt or gravel ditches and flows untreated into the adjacent ditches. All

City of Eureka ~ City Council
AGENDA REVIEW

RE: Eureka South Gate Industrial Park APN
302-171-034 & -037; CDP-03-007

FOR AGENDA DATE: June 21, 2005

AGENDA ITEM NO.:

water runoff is currently channeled from highly compacted substrate and roofs into free-flowing ditches.

42. The subject site currently functions as a trucking facility for several food distribution interests and other related trucking and storage uses. There is currently no paving to prevent infiltration of incidental or accidental equipment spills and no water treatment provided for the ditched storm water runoff from the site. The proposed paving of the site and treatment of all storm water runoff through appropriately-sized oil-water separators will significantly reduce the amount of hydrocarbons and other pollutants that are currently allowed to infiltrate or runoff into the adjacent ditch and, eventually, the Elk River Estuary. In this way, the project is expected to increase water quality and prevent infiltration of contaminants to the groundwater.

43. The proposed inlet protection oil/water clarifiers are subject to design and construction inspection by the City and are further subject to a City-required Maintenance Agreement. The City's design standards for such clarifiers are intended to reduce pollutant runoff to an insignificant level and clarifiers are commonly installed in parking lots, trucking facilities, and vehicle storage yards. The site currently does not treat runoff in any way, but instead allows any pollutants to infiltrate or flow through ditches to the ditch at the western edge of the site. The proposed water treatment is expected to reduce the potential impacts associated with pollutant runoff to a less than significant level. The proposed outfalls will empty to the existing maintained ditch at the west edge of the site, which may provide some increased treatment as water flows south toward pound road.

44. With respect to any interference to surface water flow, the portion of the site proposed for development has no remaining natural drainage; throughout the filled site, water either ponds and evaporates in compacted gravel or weedy vegetated areas, infiltrates to groundwater without treatment, or is conveyed via maintained ditches off of the site.

45. The site is hydrologically connected to the Elk River through a partially rip-rapped ditch at the western boundary of the site. The ditch flows to a culvert under Pound Road and is fitted with a tide-excluding flapper gate at the outfall. Beyond the outfall, water is conveyed through ditched and straightened channels through Elk River-associated, tidally-influenced salt marsh to the Elk River, approximately 1,500 feet from the nearest proposed storm water outfall. The project, as designed and conditioned, will not have any adverse impact on water quality in the Elk River, and, therefore, is not expected to have a significant impact or cumulatively significant impact on listed anadromous species.

46. The subject property has a complex history of permitting and development that includes legal wetland fill and compensatory mitigation. In order to fill the subject property for

City of Eureka ~ City Council
AGENDA REVIEW

RE: Eureka South Gate Industrial Park APN
302-171-034 & -037; CDP-03-007

FOR AGENDA DATE: June 21, 2005

AGENDA ITEM NO.:

development, a prior property owner agreed to compensatory mitigation that involved creating the adjacent approximately 52-acre wetland and habitat mitigation site. In so doing the location of wetland and habitat from the subject property was shifted in perpetuity to the adjacent Elk River Wetland and Habitat Mitigation area; which was subsequently transferred to the City of Eureka.

47. The City of Eureka, the California Coastal Commission, and the US Army Corps of Engineers formally approved the compensatory off-site mitigation, or "habitat exchange", through their respective permitting processes and approval of the mitigation plan. The City further formally acknowledged that as a condition of the land transfer the subject site's prior owner had met the wetland and habitat mitigation obligations for development of the site.

48. The City LCP in effect following the compensatory mitigation states, "In the case of the "Rockin' R" meat plant adjacent to Highway 101, a site totaling +/- 8 acres is designated for industrial use to reflect the previous agreements by which the City obtained a substantially larger adjacent acreage from the same property owner as a wetlands restoration/buffer area for the new sewage treatment facility located further to the north."

49. The regulatory agency permit process was part of the permanent compensatory mitigation agreement between the site's prior owner and the referenced agencies. While the environmental review conducted at the time may be "outdated" by today's standards, the habitat exchange, that is part of the baseline environmental condition of the subject site, is complete and remains valid.

50. The wetland fill to create developable land and the creation of a compensatory mitigation site was subject to CEQA review when local and State agencies issued discretionary approvals. The currently-proposed project, as described in the Notice of Intent, is subject to ongoing CEQA review with consideration of background and baseline conditions – including past development and compensatory mitigation.

51. Because of the previous compensatory mitigation that created the Elk River Wetland and Habitat Mitigation area, the permitting agencies have a responsibility to uphold the mitigation agreement by recognizing that the project site is no longer subject to the usually-applicable requirements for impacts to habitat; basically because the habitat has already been 100% replaced by successful mitigation.

52. In order for the City of Eureka to maintain credibility in future compensatory mitigation efforts and to comply with the terms of the subject mitigation effort, the City has taken the position that because the portions of the site proposed for development have already been filled and all on-site habitat impacts have already been mitigated that there are no direct impacts to wetlands or other sensitive habitats on the site associated with the project.

City of Eureka ~ City Council
AGENDA REVIEW

RE: Eureka South Gate Industrial Park APN
302-171-034 & -037; CDP-03-007

FOR AGENDA DATE: June 21, 2005

AGENDA ITEM NO.:

53. The City General Plan requires a 100-foot buffer for Environmentally Sensitive Habitat Areas, including coastal wetlands, unless the applicant demonstrates on the basis of site-specific information that a reduced buffer will protect the existing resource.

54. Because of the history of compensatory mitigation on the site, in addition to project design/mitigation measures, existing on- and offsite buffers, and the existing low habitat quality of the maintained wetland ditch, the proposed buffers are sufficient to protect the adjacent biological resources from significant impact.

55. Typically, as appears to be the case here based upon City files a mitigation plan is required to be self contained with regard to the need for future buffers that may become required as the mitigation site develops into higher quality habitat. In other words, the plan must include buffers rather than impose them. If the mitigation site required that future buffers be established over time as the site became more successful and diversified, each subsequent discretionary permit process on adjacent land could push habitat buffers farther and farther into long-established developed areas that are near habitat. Hence the practice that mitigation plans are generally binding in perpetuity and include buffers.

56. If one looks closely at the site map submitted by the applicant and distributed with the Notice of Intent, the mitigation wetland buffer (in the form of a tree and shrub vegetated dike) varies in width from approximately 25 to 50 feet. This buffer is entirely off of the subject site to the west, within the mitigation site, and will not be physically altered as a result of the proposed project. It was deemed appropriate in the original mitigation plan, and, since construction of the mitigation site, has obviously provided sufficient buffer for the wildlife that currently occupy the area. The dike also hydrologically isolates, or buffers, the proposed construction site from the mitigation wetland such that no water quality impact to the mitigation wetland can occur.

57. There is no substantial evidence before the City that the project, with mitigations and revisions, may have a significant effect on the environment. With regard specifically to the SHN Wetland Report, the City has received no substantive evidence contrary to SHN's findings regarding the absence of wetland impacts on recently developed parcels to the north, and therefore has no basis to dispute the accuracy of SHN's findings.

58. The Plot Plan submitted with the Notice of Intent shows all USACOE-verified wetlands and ESHA with the potential for impact as a result of the project. The wetlands and ESHA are further described in the SHN Wetland Delineation Report.

59. The USACOE has been appropriately noticed and has submitted comments on the subject

City of Eureka ~ City Council
AGENDA REVIEW

RE: Eureka South Gate Industrial Park APN
302-171-034 & -037; CDP-03-007

FOR AGENDA DATE: June 21, 2005

AGENDA ITEM NO.:

project which are part of the administrative record. In summary, the USACOE: verified the SHN-determined wetland boundaries to be accurate; confirmed that any structures placed within wetlands will require a UACOE permit; informed applicant of the availability of Nationwide Permits for projects.

60. Although the adjacent wetlands were not surveyed specifically for sensitive plants or animals, because of the separating dike/buffer and mitigation measures, including water runoff treatment, there does not appear to be any potential of significant threat to any offsite sensitive species.

61. The applicant has demonstrated that the portions of the site subject to direct impact as a result of the project are either developed areas or compacted fill with ruderal vegetation. These areas do not meet the habitat descriptions of any threatened, endangered, or sensitive species listed for the area, and therefore do not warrant further study by the applicant.

62. Wildlife is expected to use the adjacent habitat throughout the day and night. Because many common wetland bird and mammal species are active nocturnally, the light and noise mitigation measures have been designed to protect the adjacent habitat around-the-clock.

63. There does not appear to be any benefit in allowing for the passage of wildlife into the filled portion of the site or the highway beyond. A fence in the proposed location will functionally separate existing buffers and natural areas from the proposed development. The area to be fenced within the proposed development is currently composed of compacted gravel and other fill material with ruderal or depauperate vegetation. The habitat quality of the filled portion of the site proposed for development is exceptionally low and wildlife exclusion by fencing will not cause a significant impact – particularly in light of the fact that an existing chain-link fence is located at the edge of the highway on the eastern side of the site on State property.

64. With the exception of known anadromous fish populations in the Elk River Estuary, no listed species are known to exist in the immediate vicinity.

65. Regarding sensitive terrestrial and aquatic/marine wildlife species, the project has been designed and conditioned through mitigation measures to protect all sensitive habitat and wildlife species such that no significant detrimental impacts will occur. These mitigation measures are included in the Biological Resources section of the MND for the project.

City of Eureka ~ City Council
AGENDA REVIEW

RE: Eureka South Gate Industrial Park APN
302-171-034 & -037; CDP-03-007

FOR AGENDA DATE: June 21, 2005

AGENDA ITEM NO.:

Exhibit "B"

**MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)
CONDITIONS OF APPROVAL**

Approval of the Coastal Development Permit for the construction of the Eureka South Gate Industrial Park is conditioned on the following terms and requirements. The violation of any term or requirement, Condition of Approval or Mitigation Measure may result in the revocation of the permit.

CONDITION OF APPROVAL NO. 1. The applicant shall hire a cultural monitor from the Table Bluff Reservation, Wiyot Tribe who shall be present during all excavation and ground disturbing activities. This condition shall be completed to the satisfaction of the Table Bluff Reservation, Wiyot Tribe.

CONDITION OF APPROVAL NO. 2. Air Quality Management District (AQMD) Regulations, including but not limited to Rule 400 – General Limitations, and Rule 430 – fugitive Dust Emission, and the National Emissions Standards for Hazardous Air Pollutants (NESHAP) shall apply to the satisfaction of the North Coast Unified Air Quality Management District (NCUAQMD).

CONDITION OF APPROVAL NO. 3. The proposed produce distribution facility does not appear to require AQMD Permits at this time based on the current project description. However, AQMD Permits to Operate and/or Authority to Construct permits may be required when specific proposals are put forward for the remaining building space following the initial project completion. This condition shall be completed to the satisfaction of the NCUAQMD.

CONDITION OF APPROVAL NO. 4. If asbestos-containing materials are present within the existing buildings that are proposed for demolition, NESHAP shall apply. It is the project applicant's responsibility to ensure that all NESHAP requirements, including but not limited to AQMD notification at least 10 business days prior to renovation or demolition are met. This condition shall be completed to the satisfaction of the NCUAQMD.

CONDITION OF APPROVAL NO. 5. If open burning is contemplated at the site, AQMD Regulation II shall apply. This condition shall be completed to the satisfaction of the NCUAQMD.

CONDITION OF APPROVAL NO. 6. If at any time soil contamination is discovered and remediation is required, AQMD permits may be required. This condition shall be completed to the satisfaction of the NCUAQMD.

City of Eureka ~ City Council
AGENDA REVIEW

RE: Eureka South Gate Industrial Park APN
302-171-034 & -037; CDP-03-007

FOR AGENDA DATE: June 21, 2005

AGENDA ITEM NO.:

CONDITION OF APPROVAL NO. 7. All discharges of dredged or fill material into waters of the United States must be authorized by the Army Corps of Engineers pursuant to Section 404 of the Clean Water Act (CWA) (33 U.S.C. Section 1344). Waters of the United States generally include tidal waters, lakes, ponds, rivers, streams (including intermittent streams), and wetlands. This condition shall be completed to the satisfaction of the Army Corps of Engineers.

MITIGATION MEASURE NO. 1. No portion of the illuminated fixture or lens shall extend below or beyond the canister or light shield. The location of all exterior lights shall be shown on the site plan submitted to and approved by the Design Review Committee. In addition, the applicant shall submit to the Site Plan Review for review and approval the specifications for the exterior lights, including a picture or diagram showing the cross section of the light that illustrates that the illuminated portion of the fixture/lens does not extend beyond the shield.

Timing for Implementation/Compliance: The lighting plan shall be approved by the Design Review Committee prior to issuance of the building permit for the construction of each structure; the installation of the lights and determination that installation is in compliance with this requirement shall occur prior to issuance of the Certificate of Occupancy.

Person/Agency Responsible for Monitoring: Site Plan Review, Building/Public Works Department, and Community Development Department.

Monitoring Frequency: Once to review plans; once to assure compliance

Evidence of Compliance: No light or glare extends beyond the property boundary and the illuminated portion of the lens does not extend below the light case or shield.

MITIGATION MEASURE NO. 2. Building design and orientation shall direct traffic and activity away from identified wetland and sensitive habitat areas. There shall not be vehicular access or parking located between the westernmost buildings on the site and identified wetland and sensitive habitat areas. Westernmost buildings shall be designed and constructed such to minimize doors and windows facing wetlands and sensitive habitat areas.

Timing for Implementation/Compliance: The building design/placement and traffic routing shall be approved by the Site Plan Review prior to issuance of the building permit for the construction of each structure.

Person/Agency Responsible for Monitoring: Site Plan Review, Building/Public Works Department, and Community Development Department.

Monitoring Frequency: Once to review plans; once to assure compliance

Evidence of Compliance: Building placement/design and traffic patterns meet the condition.

City of Eureka ~ City Council
AGENDA REVIEW

RE: Eureka South Gate Industrial Park APN
302-171-034 & -037; CDP-03-007

FOR AGENDA DATE: June 21, 2005

AGENDA ITEM NO.:

MITIGATION MEASURE NO. 3. The wetland in the northern portion of the site shall be protected with a minimum 6-foot tall fence and 10-foot buffer area that will be allowed to revert to natural vegetation. Additionally, a minimum 6-foot tall fence shall be installed at the western parcel boundary, except in areas of wetland or protected buffer area, where fence will be located at the eastern (inward toward the site) edge of the feature.

Timing for Implementation/Compliance: Fence shall be placed concurrently with the first substantial construction on the site.

Person/Agency Responsible for Monitoring: Building/Public Works Department, and Community Development Department.

Monitoring Frequency: Once to assure compliance

Evidence of Compliance: Fence is constructed as specified concurrent with substantial construction on the site.

MITIGATION MEASURE NO. 4. Oil-water separators shall be installed at each stormwater outfall point to the satisfaction of the Building/Public Works Department.

Timing for Implementation/Compliance: Oil-water placement plan shall be approved by the Building/Public Works Department prior to issuance of the grading or building permit for the construction of paved areas. Building/Public Works Department may assure compliance of proper installation following construction.

Person/Agency Responsible for Monitoring: Building/Public Works Department.

Monitoring Frequency: Once to review plans; once to assure compliance

Evidence of Compliance: Oil-water separators are installed properly.

MITIGATION MEASURE NO. 5. If any cultural resources are discovered during construction or use of the proposed project, all work shall be halted until a qualified cultural resources specialist is contacted to analyze the significance of the find and, if necessary, recommend further resource protection measures. If human remains are found on the site, all work is to be stopped and the County Coroner shall be contacted.

Timing for Implementation/Compliance: All construction activities must be in compliance at all times.

Person/Agency Responsible for Monitoring: Operators whose work disturbs the ground.

Monitoring Frequency: During all ground disturbing activity.

Evidence of Compliance: Cultural resource specialist/coroner contacted in the event of discovery.

City of Eureka ~ City Council
AGENDA REVIEW

RE: Eureka South Gate Industrial Park APN
302-171-034 & -037; CDP-03-007

FOR AGENDA DATE: June 21, 2005

AGENDA ITEM NO.:

MITIGATION MEASURE NO. 6. The applicant shall demonstrate that the location and layout of all proposed development comply with the City of Eureka's Building/Public Works Department and Fire Department regulations for on-site emergency exiting, evacuation, and emergency access/utilities.

Timing for Implementation/Compliance: The site plans shall be approved by the City of Eureka's Building/Public Works Department and Fire Department prior to issuance of the building permit. Compliance with this requirement shall be inspected prior to issuance of the Certificate of Occupancy.

Person/Agency Responsible for Monitoring: City of Eureka's Building/Public Works Department and Fire Department.

Monitoring Frequency: Once to review plans; once to assure compliance

Evidence of Compliance: The location and layout of all constructed development complies with the City of Eureka's Building/Public Works Department and Fire Department regulations for on-site emergency exiting, evacuation, and emergency access/utilities.

RECEIVED

STATE OF CALIFORNIA - THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, Governor

CALIFORNIA COASTAL COMMISSION

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

JUL 11 2005



CALIFORNIA
COASTAL COMMISSION

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name: Environmental Protection Information Center

Mailing Address: P.O. Box 397

City: Garberville, CA

Zip Code: 95542

Phone: 707-923-2931/510-271-0825

SECTION II. Decision Being Appealed

1. Name of local/port government: City of Eureka

2. Brief description of development being appealed:

SEE ATTACHED LETTER OF APPEAL

3. Development's location (street address, assessor's parcel no., cross street, etc.):

South end of Eureka, at the Caltrans Post Mile ± 074.910, APN 302-171-034 & -037.

4. Description of decision being appealed (check one.):

Approval; no special conditions

Approval with special conditions: SEE ATTACHED LETTER OF APPEAL

Denial

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

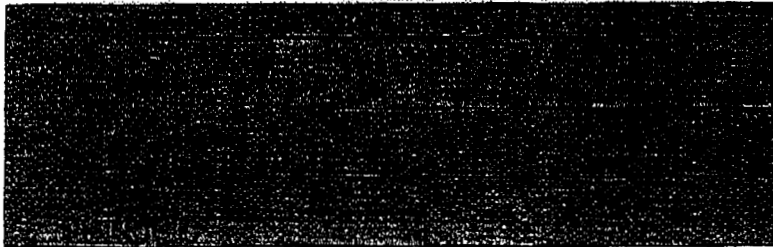


EXHIBIT NO. 5

APPEAL NO.

A-1-EUR-05-031

Appeal, filed July 11, 2005

(EPIC)

(Page 1 of 12)

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- Planning Director/Zoning Administrator
 City Council/Board of Supervisors
 Planning Commission
 Other

6. Date of local government's decision:

JUNE 21, 2005

7. Local government's file number (if any):

CDP 03-007

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

Durham- Dayton Industrial Partners
P.O. Box 1069
Durham, CA 95938

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) Environmental Protection Information Center
P.O. Box 397
Garberville, CA 95542.

(2) Humboldt Baykeeper
424 First Street
Eureka, California 95501.

(3) Melvin McKinney
P.O. Box 78
Cuttan, CA 95534

(4)

2 of 12

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

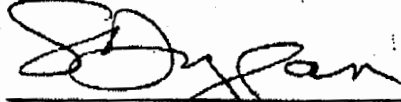
- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SEE ATTACHED LETTER OF APPEAL

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.



Signature of Appellant(s) or Authorized Agent

Date: July 11, 2005

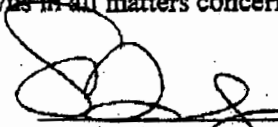
Note: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby
authorize

SHARON E. DUGGAN, Staff Attorney

to act as my/our representative and to bind me/us in all matters concerning this appeal.



Signature of Appellant(s)

Date: July 11, 2005

LAW OFFICES OF SHARON E. DUGGAN

370 Gand Avenue Suite 5
Oakland, CA 94610
(510) 271-0825

Facsimile: (510) 271-0829

July 11, 2005

VIA FACSIMILE 707-445-7877

California Coastal Commission
North Coast District Office
710 E Street Suite 200
Eureka, CA 95501

RE: Appeal of Coastal Development Permit (CDP 03-007) by the City of Eureka
Eureka South Gate Industrial Park

Dear Coastal Commission:

The Environmental Protection Information Center (EPIC), a non-profit organization headquartered in Garberville California which works to ensure protection of the Humboldt Bay and its resources, hereby appeals the decision by the City of Eureka to approve with a Mitigated Negative Declaration a Coastal Development Permit, CDP 03-007, for the Eureka South Gate Industrial Park.

EPIC is an aggrieved person which appeared before the City of Eureka and presented its concerns about this development, in an effort to prevent harm to the coastal resources affected by the development. The City of Eureka approved the project on June 21, 2005, and issued its notice of final action to the Coastal Commission on June 24, 2005. All possible appeals to local appellate bodies have been made and exhausted. This appeal is timely filed.

EPIC appeals the South Gate Industrial Park project because the development does not conform to the standards set forth in the City of Eureka's local coastal program (LCP).

Section I. Appellant.

Environmental Protection Information Center
P.O. Box 397
Garberville, CA 95542
707-923-2931

5 of 12

California Coastal Commission
July 11, 2005
page 2

Appeal submitted by EPIC staff counsel, whose address is:

Sharon E. Duggan
EPIC Staff Attorney
370 Grand Avenue Suite 5
Oakland, CA 94610
510-271-0825

All correspondence related to this appeal should be sent to the undersigned, Sharon E. Duggan, at the address provided.

Section II. Decision Being Appealed.

Name of local government: City of Eureka, action by City Council.

Brief description of development being appealed: EPIC appeals the City of Eureka's approval of the Eureka South Gate Industrial Park project (South Gate). The South Gate project approval allows a lot line adjustment between two parcels to develop 92,500 square feet of warehouse and office space on a newly configured parcel, with related parking areas and traffic lanes. The approval authorizes demolition of existing buildings. A produce distribution company, Pro Pacific Fresh, will occupy 27,900 square feet of the new building.

Development's location: South Gate is to be located on the south end of Eureka, at the Caltrans Post Mile \pm 074.910, APN 302-171-034 & -037.

Description of decision being appealed: The City of Eureka approved a coastal development permit with conditions based upon a mitigated negative declaration with a Mitigation Monitoring and Reporting Program which included conditions intended to protect on-site wetland (Mitigation Measure No. 3) and to prevent pollution from oil-water (Mitigation Measure No. 4).

Decision being appealed was made by: The South Gate approval was made by the Eureka City Council.

Date of local government's decision: The date of the project application was November 13, 2003. The project was finally approved by the Eureka City Council on June 21, 2005 with required mitigation measures. The City of Eureka submitted its notice of final action to the Coastal Commission on June 24, 2005, commencing an appeal period on June 27, 2005.

6 of 12

California Coastal Commission
July 11, 2005
page 3

Local government' file number: CDP 03-007.

Section III. Identification of Other Interested Persons.

Name and mailing address of permit applicant: The project applicant is listed on the Mitigated Negative Declaration as the South Gate Industrial Partners. The transmittal notice to the Coastal Commission lists the applicant as:

Durham- Dayton Industrial Partners
P.O. Box 1069
Durham, CA 95938

A copy of this appeal is being sent to the applicant and the City of Eureka, Community Development Department, 531 K Street, Eureka, California 95501-1146, ATTN: Sidnie L. Olson.

Names and mailing addresses of those who testified:

EPIC and the Humboldt Baykeeper testified against the project.

EPIC address is: Environmental Protection Information Center
P.O. Box 397
Garberville, CA 95542.

Humboldt Baykeeper address is: Humboldt Baykeeper
424 First Street
Eureka, California 95501.

Other interested persons: Melvin McKinney
P.O. Box 78
Cuttan, CA 95534

Section IV. Reasons Supporting This Appeal.

This project, given its location and intended use, should not proceed in the approved design and siting as it violates the City of Eureka's Local Coastal Plan as provided in the City's General Plan and its Coastal Zoning Regulations. Permitting for this site was previously authorized

7 of 12

California Coastal Commission

July 11, 2005

page 4

through issuance of a coastal development permit for filling of wetlands from both Army Corps of Engineers (Permit No. 16235N21), Coastal Commission (CDP-85-89) and City of Eureka (CDP-1-85). No additional development should be allowed, as it will not protect the wetland and natural resources on and adjacent to the site.

South Gate will cause significant impacts to wetlands. The wetland that will be impacted is the Elk River Mitigation Bank area. This wetland has been recognized to be a significant wetland of importance by the California Department of Fish and Game, the U.S. Army Corps of Engineers, the California Coastal Commission, and the City of Eureka. The wetlands adjacent to the site are considered mitigation for the destruction of wetlands associated with development and cannot be impacted and must be securely protected. The development will not provide this protection.

Additionally, these wetlands are hydrologically connected with the Elk River, and therefore an important part of the Elk River estuary. The Elk River is a major salmon and steelhead spawning tributary of Humboldt Bay (CDFG, 1973). Any project that degrades water quality within the Elk River could have a cumulative adverse impact on steelhead and Federally listed salmon. South Gate has the potential to significantly degrade water quality within the Elk River estuary,

The City of Eureka General Plan and Zoning Regulations for development within the Coastal Zone contain several goals, policies, and programs to ensure the protection of the valuable natural resources of the Eureka area. Many of these apply to South Gate, and are not satisfied at this time.

Section 6.A.3: "The City shall maintain and where feasible, restore biological productivity and the quality of coastal waters, streams, wetlands, and estuaries appropriate to maintain optimum populations of aquatic organisms and for the protection of human health through, among other means, minimizing adverse effects of wastewater and stormwater discharges and entrainment, controlling the quantity and quality of runoff, preventing depletion of groundwater supplies and substantial interference with surface water flow, encouraging wastewater reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams."

South Gate conflicts with this policy because it does not maintain or restore the quality of coastal waters, streams, wetlands and estuaries of Humboldt Bay. South Gate will degrade water quality, increase runoff, interfere with surface water flow, and disturb natural vegetation buffers by constructing a 92,500 square foot warehouse and office space with an undisclosed amount of paving and traffic lanes in and adjacent to environmentally sensitive habitat areas. Any activities

8 of 12

California Coastal Commission
July 11, 2005
page 5

that compromise these wetlands are negating the mitigation these wetlands are supposed to provide.

Section 6.A.6 declares the following to be environmentally sensitive habitat areas within the Coastal Zone:

a. Rivers, creeks, sloughs, gulches, associated riparian habitats, including but not limited to Eureka Slough, Fay Slough, Cut-off Slough, Freshwater Slough, Cooper Slough, Second Slough, Third Slough, Martin Slough, Ryan Slough, Swain Slough, and Elk River. (Emphasis added).

b. Wetlands and estuaries, including that portion of Humboldt Bay within the City's jurisdiction, riparian areas, and vegetated dunes.

d. Other unique habitat areas, such as waterbird rookeries, and habitat for all rare or endangered species on state or federal lists.

e. Grazed or farmed wetlands (i.e., diked former tidelands). (See also Zoning Regulation §156.020 (C).)

Elk River, with its wetlands, grazed or farmed wetlands, and habitat for all rare and endangered species is considered environmentally sensitive habitat area. South Gate has a wetland on site and is adjacent to wetlands, grazed or farmed wetlands, and habitat for rare and endangered species. This is significant because of other policies which require that such areas be protected, as outlined below.

Section 6.A.7: *"Within the Coastal Zone, the City shall ensure that environmentally sensitive habitat areas are protected against significant disruption of habitat values, and that only uses dependent on such resources shall be allowed within such areas. The City shall require that development in areas adjacent to environmentally sensitive habitat areas be sited and designed to prevent impacts which could significantly degrade such areas, and be compatible with the continuance of such habitat areas." (See also Zoning Regulation §156.020 (D).)*

The proposed buildings will be sited within ten feet of environmentally sensitive habitat areas, an insufficient buffer for protecting habitat values. South Gate will cause significant disruption of habitat values within environmentally sensitive habitat areas because the project has not been sited and designed to prevent impacts that will significantly degrade those areas.

California Coastal Commission
July 11, 2005
page 6

Section 6.A.8: *"Within the Coastal Zone, prior to approval of a development, the City shall require that all development on lots or parcels designated NR (Natural Resources) on the Land Use Diagram or within 250 feet of such designation, or development potentially affecting an environmentally sensitive habitat area, shall be found to be in conformity with the applicable habitat protection policies of the General Plan. All development plans, drainage plans, and grading plans submitted as part of an application shall show the precise location of the habitat (s) potentially affected by the proposed project and the manner in which they will be protected, enhanced, or restored." (See also Zoning Regulation §156.020 (E).)*

South Gate is within 250 feet of parcels designated NR within the Humboldt County General Plan and the City of Eureka General Plan. The approval does not comply with these requirements. The City of Eureka did not require or produce information or maps that describe the precise location of the habitat potentially affected by South Gate, or establish how the proposed 10-foot buffer will protect the habitat.

Section 6.A.19: *"The City shall require establishment of a buffer for permitted development adjacent to all environmentally sensitive habitat areas. The minimum width of a buffer shall be 100 feet, unless the applicant for the development demonstrates on the basis of site specific information, the type and size of the development, and/or proposed mitigation (such as planting of vegetation) that will achieve the purposes(s) of the buffer, that a smaller buffer will protect the resources of the habitat area. As necessary to protect the environmentally sensitive area, the City may require a buffer greater than 100 feet. The buffer shall be measured horizontally from the edge of the environmental sensitive area nearest the proposed development to the edge of the development nearest the environmentally sensitive area. Maps and supplemental information submitted as part of the application shall be used to specifically define these boundaries." (See also Zoning Regulation §156.020 (O).)*

South Gate does not comply with the above policy because the structures will be located within 10 feet of environmentally sensitive habitat areas rather than providing the required 100 foot buffer. The existing building is at least 100 - 150 feet from the wetland area as currently configured, and significantly smaller than what the City of Eureka has now approved. The approval authorizes construction of buildings 100% closer to wetlands, with only a 10-foot buffer rather than the 100-foot buffer as required. Increasing the size of the building footprints and moving them much closer to the wetlands with only a ten foot buffer fails to protect environmentally sensitive habitat against significant disruption, and fails to design and site

California Coastal Commission

July 11, 2005

page 7

development to prevent impacts that could significantly degrade the environmentally sensitive habitat.

The City approved South Gate with the following mitigation:

"The wetland in the northern portion of the site shall be protected with a minimum 6-foot high tall fence and 10-foot buffer area that will be allowed to revert to natural vegetation. Additionally, a minimum 6-foot fence shall be installed at the western parcel boundary, except in areas of wetland or protected buffer area, where fence will be located at the eastern (inward toward the site) edge of the feature." (Mitigation Monitoring and Reporting Program, Mitigation No. 3.)

This "mitigation" measure reduces the required buffer width from a minimum of 100 feet to 10 feet, a 90% reduction in buffer width. A ten-foot buffer width is insufficient to protect wildlife and habitat values in wetlands. The fence may serve to further impact the area by reducing the ability of wildlife to move through the area. Any fence that may be constructed should allow passage of wildlife into and out of the area. on measures. A smaller buffer will not protect the resources of the habitat area, and a reduction in buffer width is not necessary for the project. The building footprints could easily be reduced and subsequently moved back outside of the required 100-foot buffer in order to be consistent with the Eureka General Plan policies and zoning regulation and the Coastal Act.

Additionally, the City required mitigation for oil-water separators. "Oil-water separators shall be installed at each stormwater outfall point to the satisfaction of the Building/Public Works Department." (Mitigation Monitoring and Reporting Program, Mitigation Measure No. 4.) The oil water separators are subject to failure unless properly installed and maintained. These devices will provide insufficient water quality protection for environmentally sensitive habitat areas and Federally listed species immediately adjacent to the site, particularly given the amount of impervious surface proposed, and the likelihood of oil, grease, and other water pollutants entering the waters of Elk River and Humboldt Bay from normal trucking operations. Given the abundance of wetland in the area, a treatment wetland for treating water from the site could have been more economical, and provided more effective treatment in the long term for South Gate.

Section 6.A.23: "The City, in consultation with the Department of Fish and Game Coastal Conservancy Coastal Commission, Humboldt County, Humboldt Bay Harbor, Recreation, and Conservation District, affected landowners, and other interested parties shall prepare a detailed, implementable wetlands management, restoration, and

California Coastal Commission

July 11, 2005

page 8

enhancement program consistent with the provisions of this General Plan. The objectives of the program shall be to enhance the biological productivity of wetlands; to minimize or eliminate conflicts between wetlands and adjacent urban uses; to provide stable boundaries and buffers between urban and habitat areas; to provide restoration areas, including the City-owned lands on the Elk River Spit that may benefit from restoration and enhancement, to serve as mitigation in conjunction with future projects that may include wetland areas."

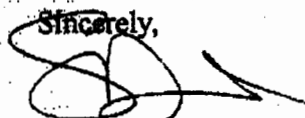
The City of Eureka has not prepared a detailed, and effective wetlands management, restoration, and enhancement program consistent with the provisions of the General Plan. As a result, conflicts between wetlands and adjacent urban uses continue to occur, and boundaries and buffers between urban and habitat areas continue to be compromised and eroded. Restoration areas such as City owned lands on the Elk River Spit will be compromised by the development of South Gate, as a result of increased noise, light, runoff, degraded water quality. The combined adverse cumulative effects from the City of Eureka continuing to plan and implement projects that impacts wetlands have become cumulatively significant, considering that less than 10% of the historical wetlands now remain in Humboldt Bay.

The approval violates the above-identified policies and regulations, constituting development that does not conform to the standards of the City of Eureka's Local Coastal Plan as provided in the City's General Plan and Zoning Regulations.

Conclusion

EPIC respectfully requests that the Coastal Commission accept this appeal, find that it raises substantial issues as to the City's compliance with its Local Coastal Program, and set the matter for a public hearing and de novo review of the South Gate application.

Sincerely,



Sharon E. Duggan

sed:fw

cc: EPIC
Humboldt Baykeeper
City of Eureka
Durham-Dayton Industrial Partners

Melvin McKinney

12 of 12

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE

710 E STREET, SUITE 200

EUREKA, CA 95501

VOICE (707) 445-7833 FAX (707) 445-7877

RECEIVED

JUL 11 2005



CALIFORNIA COASTAL COMMISSION

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name: Humboldt Baykeeper

Mailing Address: 422 First Street, Ste. 'G'

City: Eureka

Zip Code: 95501

Phone: (707) 268-0664

SECTION II. Decision Being Appealed

1. Name of local/port government:

City of Eureka

2. Brief description of development being appealed:

Lot line adjustment, demolition of existing buildings and construction of approximately 92,500 square feet of warehouse/commercial distribution center and office space on reconfigured parcels

3. Development's location (street address, assessor's parcel no., cross street, etc.):

APN 302-171-034 and 302-171-037; 4640 Broadway, Eureka, California; accessed off of Pound Road, off of highway 101, Elk River Road/Herrick Road exit.

4. Description of decision being appealed (check one.):

- Approval; no special conditions
Approval with special conditions:
Denial

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO:
DATE FILED:
DISTRICT:

EXHIBIT NO. 6
APPEAL NO.
A-1-EUR-05-031
Appeal, filed July 11, 2005
(Humboldt Baykeeper)
(Page 1 of 8)

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- Planning Director/Zoning Administrator
- City Council/Board of Supervisors
- Planning Commission
- Other

6. Date of local government's decision: 6/21/05

7. Local government's file number (if any): CDP-03-007

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

Durham Dayton Industrial Partners
P.O. Box 1069
Durham, CA 95938

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) Environmental Protection and Information Center
370 Grand Street, Ste. 5
Oakland, CA 946102

(2) Sidnie Olson, Senior Planner
City of Eureka
Community Development Department
531 K Street
Eureka, CA 95501-1146

(3)

(4)

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly **your reasons for this appeal**. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

See Attached

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Michelle D. Smith

Staff Attorney Humboldt Bay keeper

Signature of Appellant(s) or Authorized Agent

Date: July 11, 2005

Note: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby authorize _____
to act as my/our representative and to bind me/us in all matters concerning this appeal.

Signature of Appellant(s)

Date: _____

HUMBOLDT



BAYKEEPER®

To: California Coastal Commission
From: Humboldt Baykeeper
Date: July 8, 2005
Re: Appeal of City of Eureka's Approval of Eureka South Gate Industrial Park

Commissioners,

On behalf of the board, staff, and supporting members of Humboldt Baykeeper and Ecological Rights Foundation (hereinafter "Humboldt Baykeeper"), I am writing to appeal the decision by the Eureka City Council to approve the Coastal Development Permit, CDP-03-007, submitted by Durham-Dayton Industrial Partners for the proposed lot line adjustment and subsequent development of the property at 4640 Broadway, Eureka California; APN's 302-171-034 and 302-171-037.

According to the California Coastal Act (hereinafter "the Act" or "the Coastal Act"), appeals may be taken regarding developments approved by the local government within 300 feet of the high tide line; between the first public road and the sea; and those 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. Cal. Pub. Res. § 30603(a)(2). The development in question is located within 100 feet of: the Elk River Mitigation Area, a wetland area created as mitigation for the development of the City of Eureka's wastewater treatment plant and as mitigation for the fill of the subject parcel that was conducted and approved in or around 1989 (Coastal Commission Permit 1-85-89); the Elk River estuary; onsite wetlands located along the western portion of the site; onsite wetlands located on the northern portion of the site.

Proper grounds for an appeal under the Coastal Act are 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 the Act. Cal. Pub. Res. § 30603(a)(2). Humboldt Baykeeper herein alleges, explained more fully below, that the Coastal Development Permit approved by the Eureka City Council does not conform to the standards set forth in the certified local coastal program due to the insufficient analysis of the proposed projects impacts on the neighboring and on-site wetlands and inadequate mitigation for impacts to neighboring and onsite wetlands.

5 of 8



The Eureka Municipal Code states that Environmentally Sensitive Habitat Areas within the city's coastal zone include, among other things: rivers, creeks, sloughs, gulches and associated riparian habitats, including Eureka Slough, Fay Slough, Cut-Off Slough, Freshwater Slough, Cooper Slough, Second Sloughs, Third Slough, and Elk River; wetlands and estuaries, including that portion of Humboldt Bay within the city's jurisdiction, riparian areas, and vegetated dunes. Eureka Municipal Code §156.052(C). The City of Eureka General Plan additionally states that *any* wetland area within the City is considered an Environmentally Sensitive Habitat Area. Eureka General Plan, February 23, 1999, (as amended) at 6.A.6. For purposes of permit approval by the City of Eureka, the Elk River Slough, the Elk River Mitigation Area, the onsite and neighboring wetlands all qualify as Environmentally Sensitive Habitat Areas.

The qualification of these areas as Environmentally Sensitive Habitat Areas provides them protections not granted to other areas and also imposes additional requirements that must be met prior to any type of development in, or in the vicinity of, those areas.

The Eureka General plan states that a minimum 100 foot buffer is required for any development that occurs adjacent to an Environmentally Sensitive Habitat Area. Eureka General Plan, February 23, 1999, (as amended) at 6.A.19. The project as currently proposed and approved by the City of Eureka does not incorporate these minimum buffer requirements. The buffers that are provided within the proposed development amount to a 6 foot solid wood fence between the subject site and the Elk River Mitigation Area, 6 foot solid wood fence for the onsite wetlands located on the western portion of the site, and an approximately 10' vegetated buffer and a 6' solid wood fence between the site development and the wetland found on the northern portion of the site.

The General Plan allows for smaller buffers if the applicant for the development demonstrates based upon site specific information, the type and size of the proposed development, and/or proposed mitigation that will achieve the purposes of the proposed buffer, that a smaller buffer will protect the resources of the habitat area. *Id.* The project applicant has not provided sufficient information to demonstrate that reduced buffers are appropriate to this location. The only mitigation measures included in the plan that address the proposed developments proximity to the neighboring wetlands are the 6 foot fence, lighting restrictions, and the requirement that all buildings be designed and oriented to direct traffic and activity away from the identified wetlands. Mitigated Negative Declaration, Mitigation Measures 1, 2, 3. These mitigation measures are insufficient in both design and implementation to meet the purposes of the required buffer. For example, the project as proposed would result in the construction of one building along the south-western corner of the site, within approximately 21' of the property line and in close proximity to the neighboring Elk River Mitigation area and the on-site wetlands. The only protection afforded to the wetlands by the impacts of this location are that provided by the fence: a weak sound and visual barrier.

The Eureka Municipal Code states that Environmentally Sensitive Habitat Areas shall be protected against any significant disruption of habitat values, and that 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. Eureka Municipal Code §156.052(D). The project as proposed does not protect the adjacent Environmentally Sensitive Habitat Areas from disruption of habitat values, is not consistent with the continuation of the habitat values provided by the Areas, and is not designed nor sited to prevent impacts to the Areas. As noted above, the project as proposed would result in the construction of one building along the south-western corner of the site, within approximately 21' of the property line and in close proximity to the neighboring Elk River Mitigation area and the on-site wetlands. This building alone has two loading zones, where large trucks would be parked for extended periods of time, along the northern and southern sides of the building. The proposed construction amounts to approximately 92,000 square feet of warehouse, an amount that would result in almost complete lot coverage and accompanying high intensity use. There are insufficient analysis and mitigation of the impacts from the proposed construction and future use of the site to the neighboring and on-site wetland areas to compensate for noise, lighting, air quality and other impacts.

The wetland areas to the north and west of the site have already been impacted by the development of the automobile dealership on their northern boundary. Additionally, directly to the west of the Elk River Mitigation Area is another parcel zoned General Industrial which may, though it is not currently, be developed or planned for development in the near future. The proposed project, when considered in combination with the potential development of the neighboring parcel, mandates the need for complete analysis prior to project approval. The additional development along the southern and eastern boundary of the neighboring wetlands needs to be completely analyzed in relation to the previous and potential future development in the area. The wetland delineation report prepared for this project states that recently permitted development of a similar site at the northern end of the Elk River Mitigation Area included development within approximately 20' of the mitigation area, no apparent negative impact to the functional quality of the wetland has been observed. Wetland Delineation Report, SHN at 10 (2003). This statement standing alone does not provide any support for the idea that the proposed development is consistent with the continuation of the habitat values provided by the neighboring sites, nor does it support the provision of reduced or non-existent buffers for the site. This is, however, the extent of the analysis of the impacts of the proposed project on these areas. There is no discussion in the project regarding potential endangered, threatened, or species of special concern that may be found either on or neighboring the site. Without this information it is impossible to determine what the potential impacts would be to these species or this area. The wetland delineation report cites no studies or reports that have been conducted to assess the impact of the construction of the facility to the north on the wetland, let alone specific impacts from the proposed project, merely stating that observation showed no significant difference in the functional qualities of the wetland. *Id.*

Though the initial fill of this property was mitigated through the transfer of the property to the west of the site to the City of Eureka to use as mitigation for the construction of the Elk River Waste Water Treatment Plant, it does not provide the property owner with carte blanche as to its future uses of the property. The mitigation that was required was for the impacts caused by the activities that took place *at that time*, i.e. the permitted fill of on-site wetlands. The use of past mitigation for activities that were not even contemplated at the time that the mitigation measures were approved is contrary to the requirements of the City's LCP for the inclusion of buffers in current development projects and the analysis and protection of habitat values

provided by wetlands and other Environmentally Sensitive Habitat Areas for current, proposed developments. Proper mitigation needs to be included for the impacts that will be produced by the project as proposed today, without considering past mitigation for past site activities.

Both the Eureka General Plan and the Eureka Municipal Code require that prior to the approval of development within 250' of an area designated as a Natural Resources area, or any development that may potentially affect an environmentally sensitive habitat area, a finding of conformity with the applicable habitat protection policies needs to be made. Eureka Municipal Code §156.052(E); Eureka General Plan, February 23, 1999, (as amended) at 6.A.9. For a proposed project, all development plans, drainage plans, and grading plans submitted as part of an application must show the precise location of the habitats potentially affected by the proposed project and the manner in which they will be protected, enhanced, or restored. *Id.* The submitted plans do not show the manner in which the affected areas will protected, enhanced or restored. Without these elements, a finding of conformity with the applicable habitat protection policies cannot be made.

The Eureka General Plan states that within the Coastal Zone where there is a question regarding the boundary, buffer requirements, location, or current status of an Environmentally Sensitive Habitat Area, the City shall require the applicant to provide the city with: a base map delineating topographic lines, adjacent roads, location of dikes, levees, or flood control channels and tide gates, as applicable; a vegetation map, including species that may indicate the existence or non-existence of the sensitive environmental habitat area; a soils map delineating hydric and non-hydric soils; and, a census of animal species that may indicate the existence or non-existence of the sensitive environmental habitat area. Eureka General Plan, February 23, 1999, (as amended) at 6.A.24. The city is required to transmit the information provided by the applicant to the Department of Fish and Game for review and comment. Any comments and recommendations provided by the Department shall be immediately sent to the applicant for his or her response. The city shall make its decision concerning the boundary, location, or current status of the environmentally sensitive habitat area in question based on the substantial evidence in the record and shall adopt findings to support its actions. *Id.* Based upon the information above, there is a clear disagreement regarding the buffer requirements for the neighboring Environmentally Sensitive Habitat Areas. Due to this fact, the requirements of the General Plan must be met, and the information must be collected and analyzed prior to a final determination regarding the proposed project.

Thank you,



Michelle D. Smith
Staff Attorney
Humboldt Baykeeper
(707) 268-0665
michelle@humboldtbykeeper.org

8 of 8

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE

710 E STREET, SUITE 200

EUREKA, CA 95501

VOICE (707) 445-7833 FAX (707) 445-7877

JUL 11 2005

CALIFORNIA
COASTAL COMMISSION

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name: Commissioners Pat Kruer and Meg Caldwell

Mailing Address: 45 Fremont Street, Suite 2000

City: San Francisco

Zip Code: 94105-2219

Phone: 415-904-5200

SECTION II. Decision Being Appealed

1. Name of local/port government:

City of Eureka

2. Brief description of development being appealed:

Eureka South Gate Industrial Park - Construction of approximate 92,500 square-feet of warehousing and office space on two boundary-adjusted parcels comprising a combined area of approximately 8.8 acres situated between Highway 101 and the Elk River Wetlands Mitigation Area.

3. Development's location (street address, assessor's parcel no., cross street, etc.):

4640 Broadway, Eureka; APNs 302-171-034 & -037; At the northwest corner of the intersection of Pound Road and the Herrick Avenue offramp western frontage road.

4. Description of decision being appealed (check one.):

- Approval; no special conditions
 Approval with special conditions:
 Denial

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-1-EUR-05-031

DATE FILED: July 11, 2005

DISTRICT: North Coast

EXHIBIT NO. 7

APPEAL NO.

A-1-EUR-05-031

Appeal, filed July 11, 2005

(Kruer & Caldwell)

(Page 1 of 10)

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- Planning Director/Zoning Administrator
- City Council/Board of Supervisors
- Planning Commission
- Other

6. Date of local government's decision: June 21, 2005

7. Local government's file number (if any): CDP-03-007

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

Durham-Dayton Industrial Partners LLC
P.O. Box 1069
Durham, CA 95938

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) Humboldt Baykeepers, 424 First Street, Eureka, CA 95501

(2) Environmental Protection Information Center, P.O. Box 397, Garberville, CA 95542

(3)

(4)

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly **your reasons for this appeal**. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

1. The approved development is inconsistent with the certified LCP, including but not limited to Section 6 "Natural Resources" of the Land Use Plan and Chapter 156 of the Zoning Regulations of the City for the Coastal Zone.

2. The approved development is located adjacent to the Elk River Wetlands Mitigation Area (ERMA). ERMA is a wetland and therefore an environmentally sensitive habitat area (ESHA) as defined by Land Use Plan Policy 6.A.6.b and Section 156.052(C)(1)(b) of the Coastal Zoning Regulations. In conditionally approving the subject development project, the City did not: (a) fully investigate and assess the precise location of habitats potentially affected by the proposed project within the environmentally sensitive habitat areas (ESHAs) in the vicinity of the project site (i.e., "Wetland/ESHA M" per the "Wetland Delineation Report and Habitat Assessment - Former Rockin' R Site, Eureka California, APN 302-171-34 -37," prepared by SHN Consulting Engineers and Geologists, Inc., dated September 2003); or (b) detail the manner in which such habitats would be protected, enhanced, or restored, inconsistent with Land Use Plan Policy 6.A.8 and Section 156.052(E) of the Zoning Regulations of the City for the Coastal Zone (Title XV, Chapter 156, Eureka Municipal Code). In addition, no surveys for the presence of rare plants or sensitive species were conducted for the adjoining "Wetland/ESHA M." Instead, as discussed within staff report, the mitigated negative declaration checklist responses, and the wetland delineation / habitat assessment report, the unquantified impacts of the approved development project to the undisclosed habitat resources were either summarily concluded to be adequately mitigated by the presence of a low dike and proposed drainage and water quality treatment improvements, or uncertainty was expressed as to the likely requirements for or feasibility of establishing a buffer along the western side of the project site given that the neighboring ESHA had been previously established as a wetlands mitigation banking site.

3. As the City did not require biological analyses to be conducted for all wetland ESHA areas adjoining or in close vicinity of the project site, the City does not possess factual information as to the utilization and sensitivity of the habitat of these areas. Without a full assessment of the plant and animal species of the area that can be affected by the approved development, the adequacy of any given mitigation measure to reduce any project impacts or degradation to less than significant levels cannot be substantiated. Accordingly, the project as approved by the City is inconsistent with Land Use Plan Policy 6.A.7 and Section 156.052(D) of the Zoning Regulations of the City for the Coastal Zone which requires that "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."

4. Without a factual assessment of the biological resources within the westerly wetlands, demonstration that the 25- to 50-foot-wide spatial separation between the approved site improvements and "Wetland/ESHA M" would achieve the purposes of a full 100-foot-wide buffer has not been made

inconsistent with Land Use Plan Policy 6.A.19 and Coastal Zoning Section 156.052(O).

5. Without a factual basis upon which to base the findings of the adequacy of the approved buffers, the project as approved is inconsistent with the certified LCP, including but not limited to Section 156.056(E) and 156.107 of the City's certified Coastal Zoning Code and the ESHA policies of the certified Land Use Plan. See attachment for text of cited zoning provisions.

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Signed: 
Appellant or Agent

Date: 7/11/05

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: _____

Date: _____

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Signed: Mig Caldwell
Appellant or Agent

Date: 6/11/05

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: _____

Date: _____

Land Use Plan Policies:

- 6.A.7 Within the Coastal Zone, the City shall ensure that environmentally sensitive habitat areas are protected against any significant disruption of their habitat values, and that only uses dependent on such resources be allowed within such areas. The City shall require that development in areas adjacent to environmentally sensitive habitat areas be sited and designed to prevent impacts which would significantly degrade such areas, and be compatible with the continuance of such habitat areas.
- 6.A.8 Within the Coastal Zone, prior to the approval of a development, the City shall require that all development on lots or parcels designated NR (Natural Resources) on the *Land Use Diagram* or within 250 feet of such designation, or development potentially affecting an environmentally sensitive habitat area, shall be found to be in conformity with the applicable habitat protection policies of the General Plan. All development plans, drainage plans, and grading plans submitted as part of an application shall show the precise location of the habitat(s) potentially affected by the proposed project and the manner in which they will be protected, enhanced, or restored.
- 6.A.19 The City shall require establishment of a buffer for permitted development adjacent to all environmentally sensitive areas. The minimum width of a buffer shall be 100 feet, unless the applicant for the development demonstrates on the basis of site specific information, the type and size of the proposed development, and/or proposed mitigation (such as the planting of vegetation) that will achieve the purpose(s) of the buffer, that a smaller buffer will protect the resources of the habitat area. As necessary to protect the environmentally sensitive area, the City may require a buffer greater than 100 feet. The buffer shall be measured from the edge of the environmentally sensitive area nearest the proposed development to the edge of the development nearest to the environmentally sensitive area. Maps and supplemental information submitted as part of the application shall be used to specifically define these boundaries.

Coastal Zoning Code Regulations:

§ 156.052 ENVIRONMENTAL RESOURCE STANDARDS.

...

(C) *Environmentally sensitive habitat areas.*

(1) Environmentally sensitive habitat areas within the city's coastal zone shall include:

- (a) Rivers, creeks, sloughs, gulches and associated riparian habitats, including Eureka Slough, Fay Slough, Cut-Off Slough, Freshwater Slough, Cooper Slough, Second Sloughs, Third Slough, and Elk River.
- (b) Wetlands and estuaries, including that portion of Humboldt Bay within the city's jurisdiction, riparian areas, and vegetated dunes.**
- (c) Indian Island, Daby Island, and Woodley Island wildlife area.
- (d) Other habitat areas, such as rookeries, and rare or endangered species on state or federal lists.
- (e) Grazed or farmed wetlands.

(2) These areas are generally portrayed on the resources maps, where they are designated as wetlands or other natural resources.

(D) *Protection of environmentally sensitive habitat areas.* Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources, including restoration and enhancement projects, 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.**

(E) **Development in or near natural resource areas. Prior to the approval of a development permit, all developments on lots or parcels shown on the land use plan and/or resource maps with a natural resource designation or within 250 feet of such designation, or development affecting an environmentally sensitive habitat area, shall be found to be in conformity with the applicable habitat protection policies of the Local Coastal Program. All development plans and grading plans shall show the precise location of the habitat(s) potentially affected by the proposed project and the manner in which they will be protected, enhanced, or restored.** Projects which could adversely impact an environmentally sensitive habitat area may be subject to a site inspection by a qualified biologist to be selected jointly by the city and the applicant. Where mitigation, restoration, or enhancement activities are required to be performed pursuant to other applicable portions of this Local Coastal Program, they shall be required to be performed on city-owned lands on the Elk River Spit or on other available and suitable mitigation, restoration, or enhancement sites.

...

(O) *Buffers.* A buffer shall be established for permitted development adjacent to all environmentally sensitive areas. **The width of a buffer shall be 100 feet, unless the applicant for the development demonstrates on the basis of information, the type and size of the proposed development, and/or proposed mitigation (such as planting of vegetation) that will achieve the purposes of the buffer, that a smaller buffer will protect the resources of the habitat area.** For a wetland, the buffer should be measured from the landward edge of the wetland. For a stream or river, the buffer should be measured landward from the landward edge of riparian vegetation or from the top edge of

the bank (such as, in channelized streams). Maps and supplemental information submitted as part of the application should be used to specifically determine these boundaries.

(P) *Barriers.* To protect wetlands against physical intrusion, wetland buffer areas shall incorporate attractively designed and strategically located barriers and informational signs.

...

(R) *Disagreement over boundary.*

(1) Where there is a disagreement over the boundary, location, or current status of an environmentally sensitive area identified in Local Coastal Program, Policy 5.5 or which is designated on the resources maps, the applicant shall be required to provide the city with:

- (a) A base map delineating topographic lines, adjacent roads, location of dikes, levees, or flood control channels and tide gates, as applicable;
- (b) A vegetation map, including species that may indicate the existence or non-existence of the sensitive environmental habitat area;
- (c) A soils map delineating hydric and non-hydric soils; and,
- (d) A census of animal species that may indicate the existence or non-existence of the sensitive environmental habitat area.

(2) The city shall transmit the information provided by the applicant to the Department of Fish and Game for review and comment. Any comments and recommendations provided by the Department shall be immediately sent to the applicant for his or her response. The city shall make its decision concerning the boundary, location, or current status of the environmentally sensitive habitat area in question based on the substantial evidence in the record and shall adopt findings to support its actions.

§ 156.056 DEVELOPMENT STANDARDS.

...

(E) *Precedence of natural resources.* Development type and density shall be that specified by the land use categories and designations in the land use plan map. However, natural resource designations and policies shall take precedence in all cases, except as otherwise provided in this Local Coastal Program, consistent with applicable policies of the Coastal Act...

§ 156.107 REQUIRED FINDINGS.

A coastal development permit shall be approved only upon making the finding that the proposed development conforms to the policies of the certified local coastal program.

10 of 10

Wetland Delineation Report and Habitat Assessment

Former Rockin' R Site
Eureka, California
APN 302-171-34 & -37

EXHIBIT NO. 8
APPEAL NO.
A-1-EUR-05-031
Wetlands Delineation & ESHA Buffers Analysis Report
(Page 1 of 17)

Prepared for:

Durham Dayton Industrial Partners

SN Consulting Engineers & Geologists, Inc.

812 W. Wabash Ave.
Eureka, CA 95501-2138
707/44108855

73

September 2003
003052.100

Wetland Delineation Report and Environmentally Sensitive Habitat Assessment

Former Rockin' R Site
Eureka, California
APN: 302-171-34 & -37

Prepared for:

Durham Dayton Industrial Partners
c/o Bruce Parks
70 Pepsi Way
Durham, CA 95938
(530) 893-0596

Prepared by:



Consulting Engineers & Geologists, Inc.
812 W Wabash
Eureka, CA 95501
(707) 441-8855

September 2003

QA/QC:LDH 

2 of 17

Table of Contents

	Page
Site Summary.....	1
Introduction.....	2
Background.....	2
Regulatory Environment.....	2
California Coastal Commission Jurisdiction.....	2
The City of Eureka.....	3
US Army Corps of Engineers.....	4
Wetland Delineation Methodology.....	4
Wetland Delineation Results and Discussion.....	6
Environmentally Sensitive Habitat Assessment.....	8
Conclusion.....	10
References.....	10
Appendix A. Wetland Delineation Map	

3 of 17

Acronyms and Abbreviations

CCR	California Code of Regulations
CWA	Clean Water Act
DFG	California Department of Fish and Game
ESHA	Environmentally Sensitive Habitat Areas
FAC	Facultative Plants
FACU	Facultative Upland Plants
FACW	Facultative Wetland Plants
MG	General Industrial zone
MHT	Mean High Tide
NWI	National Wetland Inventory
OBL	Obligate Wetland Plants
PEM/FO6/UB-3/4 Kh	Palustrine Emergent -Persistent /Forested- Deciduous/Unconsolidated Bottom -Mud/Organic Artificially Flooded Diked/Impounded
PEM1C	Palustrine Emergent Persistent Seasonally Flooded wetland
PEM1Cd	Palustrine Emergent Persistent Flooded Partially Drained/Ditched wetland
PFO6H/Kh	Palustrine Forested-Deciduous Permanently/Artificially Flooded Diked/Impounded wetland
SD	Sand Dunes soil type
SHN	SHN Consulting Engineers & Geologists, Inc.
UI	Residential, Business, and Industrial Area soil type
USGS	US Geologic Service

4 of 17

Site Summary

Site Location: 4640 Broadway; West of Broadway (Highway 101) and north of Pound Road; near Herrick Avenue Overpass.

Applicant/Owner: Durham Dayton Industrial Partners

County: Humboldt County

Legal Description: SE ¼ of NW ¼ of Section 4, T4N, R1W HM

UTM: 4512500N/399000E

Zoning: MG- General Industrial

Total Lot Size: 8.8 acres

USGS Topographic Map: Eureka Quadrangle, Humboldt County, California, 7.5 Minute (1958, photo revised 1972)

Topography: Level / Gentle slopes 0 - 5%

Elevation: Approx. Avg.: 10 Feet

Drainage Basin: Elk River Slough/Humboldt Bay

Nearest Water: Mitigation wetland to north and east of site.

Soil Map Unit(s): Sand Dunes; Residential, business, and industrial sites

NWI Maps: Eureka, California Quadrangle, 7.5 Minute (1987)

NWI Classification: Upland/PEM1Cd (Palustrine, Emergent, Persistent, Seasonally Flooded, Partially Drained/Ditched)

Proposed Land Use: Regional trucking transportation facility

Current Land Use: Regional trucking transportation facility

Adjacent Land Use: Natural resource (wetland mitigation), highway, agriculture, municipal sewer facility

5 of 17

Introduction

SHN Consulting Engineers & Geologists, Inc. (SHN) completed this wetland delineation (see Appendix A: Wetland Delineation Map) on behalf of Durham-Dayton Industrial Partners, Inc. (Applicant). The Applicant is the owner of the subject property (Site) formerly known as the Rockin' R Meat Company, which is located at 4640 Broadway in Eureka, California. The Applicant proposes to subdivide the Site for future development of a regional trucking transportation facility or other general industrial use.

The approximately 8.8-acre Site is bound by Highway 101 to the east, Pound Road and a tidal salt marsh to the south, and a freshwater wetland mitigation site to the north and west. The Site is within the California Coastal Zone; the northern portion is within the City of Eureka Coastal Zone Jurisdiction, and the southern portion is within the California Coastal Commission jurisdiction (Appendix A: Wetland Delineation Map).

Background

According to the Historic Resources Review of the Rockin' R Property the Site has been in operation as a market or meat packing facility since some time around the early 1880s (Heald, 2003). More recently, the site has operated as a meat and produce distribution facility with tractor-trailer parking to the north and south of the buildings on the Site. On-site buildings include a large central building constructed as the main meat processing facility, a modular office building to the north, and to the south a small abandoned house/office, and two barns.

The central portion of the Site, in the location of the existing buildings and parking areas, was legally filled prior to regulatory oversight of fill within wetlands and sensitive habitat. The Soil Survey of Western Humboldt County California, published in 1965, shows approximately 3 acres of Residential, Business, and Industrial Area (UI) on the site, suggesting that this area had already been filled at the time of the soil survey. Approximately 2.8 acres of the Site, beginning at the area southwest of the existing buildings and extending approximately to the western property boundary, was filled from 1987 to 1993 pursuant to US Army Corps of Engineers Permit # 1623N21 and California Coastal Commission permit 1-85-89. The permitted placement of fill within the Site was mitigated through the creation/enhancement of wetland at the City of Eureka's (the City) wetland restoration program developed immediately west of the Site as part of the City's wastewater treatment program. Permit 1-85-89 authorized the fill of all wetland areas within the southwest portion of the parcel.

Regulatory Environment

California Coastal Commission Jurisdiction

The Coastal Commission requires protection of wetlands within the California Coastal Zone. The Coastal Commission does not specifically have jurisdiction over wetland buffers, those areas adjacent to wetlands. The Coastal Commission has primary permit jurisdiction over wetlands on the southern portion of the Site, and appeal jurisdiction over the northern portion of the site. Section 30121 of the California Coastal Act defines wetland as lands within the coastal zone which may be covered periodically or permanently with shallow water including saltwater marshes,

freshwater marshes, open or closed brackish water marshes, swamps, mudflats, and fens. The California Code of Regulations (CCR) Section 13577(b) of Title 14 further defines¹ wetlands to include:

...lands where the water table is at, near, or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes, and shall also include those types of wetlands where vegetation is lacking and soil is poorly developed or absent as a result of frequent or drastic fluctuations of surface water levels, wave action, water flow, turbidity or high concentrations of salt or other substances in the substrate. (CCR Section 13577(b) of Title 14)

Under the above definitions, a coastal wetland is any location that meets any one of the three standard wetland criteria: the presence of a predominance of hydrophytic plants, evidence of hydric soils, or wetland hydrology; or any area which would, under normal circumstances, exhibit any of these qualities. Some wet areas, such as seasonally inundated paved or rip-rapped drainage ways, may be excluded; although technically, they meet the Coastal Commission's wetland definition. The Coastal Commission does not have additional written standards, guidance, or requirements for the above wetland criteria or for wetland delineation and reporting methodology.

The Coastal Commission has jurisdiction over Environmentally Sensitive Habitat Areas (ESHA)² and requires that any development within or adjacent to such areas be appropriate. Section 30107.5 of the Coastal Act defines ESHA as any areas 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 could be easily disturbed or degraded by human activities and developments. Under Section 30240 of the Coastal Act, the Coastal Commission requires that: (a) environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas, and that (b) development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

The City of Eureka

The City has jurisdiction over any wetlands on the northern portion of the site. The Eureka General Plan defines wetlands as lands within the coastal zone, which may be covered periodically or permanently with shallow water. The Eureka General Plan defines wetland boundary as: (1) the boundary between land with predominantly hydrophytic cover and land with predominantly mesophytic or xerophytic cover; (2) the boundary between soil that is predominantly hydric and soil that is predominantly nonhydric; or (3) in the case of wetlands without vegetation or soils, the boundary between land that is flooded or saturated at some time during years of normal

¹ The stated purpose of this definition is for establishing the edge of wetlands from which to measure wetland buffers in determining Permit and Appeal jurisdictional boundaries, and not expressly for determining the extent of Coastal Zone wetlands.

² It should be noted that neither the Coastal Act nor the California Code of Regulations states any relationship between ESHA and wetlands. Within the Commission's jurisdiction wetlands that are neither rare nor especially valuable as described in Coastal Act Section 30107.5 do not meet the definition of ESHA.

precipitation and land that is not. Areas with drained hydric soils that are no longer capable of supporting hydrophytes are not considered wetlands. The Eureka General Plan Section 6.A.6. defines all wetlands within the Coastal Zone as ESHA regardless of wetland quality or function. The Eureka General Plan Section 6.A.19 states that the City shall require establishment of a buffer for permitted development adjacent to all ESHA. A 100-foot buffer width from the adjacent ESHA is required unless the project applicant demonstrates on the basis of site specific information that a smaller buffer will protect the resources of the habitat area.

US Army Corps of Engineers

Pursuant to Section 404 of the Clean Water Act (CWA), the US Army Corps of Engineers (the Corps) requires a Section 404 Permit for any fill or dredging within jurisdictional wetlands. The Corps has jurisdiction over wetlands which meet each of the three wetland criteria (hydrology, soils, and vegetation) defined in the *U.S. Army Corps of Engineers Wetlands Delineation Manual* (Environmental Laboratory 1987). The Corps does not regulate and has no jurisdiction over wetland buffers, development adjacent to wetlands, or ESHA.

In addition to the Corps' jurisdiction under the CWA, Section 10 of the Rivers and Harbors Act of 1899 places navigable waters under Corps jurisdiction, in this case defined as waters below the Mean High Tide (MHT) Line. The elevation of MHT in Humboldt Bay is defined as 2.48 feet NGVD 1929 datum (6.01 feet City of Eureka datum). The MHT does not extend onto any portion of the Site. A one-way flapper gate at the southern end of the culvert under Pound Road prevents tidal influence within the southern portion of the ditch at the west edge of the site.

Wetland Delineation Methodology

On June 23, 24, and 25, 2003, SHN conducted a delineation of the Site based on the regulatory requirements of the Corps, the Commission, and the City of Eureka. The Commission and the City, under guidance from the Department of Fish and Game, have jurisdiction over any area in which at least one of the three standard wetland criteria is met. The Corps has jurisdiction over areas that meet all three criteria. The standard wetland criteria are:

1. the presence of a predominance of hydrophytic vegetation,
2. predominately hydric soils, or
3. flooding or saturation during years with normal precipitation.

Although no standards for evaluating the above criteria are included in the Coastal Act or the City General Plan, each of the three criteria were evaluated on the site based the commonly used Routine Determination Method described in the *U.S. Army Corps of Engineers Wetlands Delineation Manual* (Environmental Laboratory 1987). The Routine Determination Method uses each of the above three criteria to determine if wetlands exist in a given area. Evidence of a minimum of one positive wetland indicator from one of the three parameters (hydrology, soil, and vegetation) was used to make a positive wetland determination.

Prior to conducting a site visit on December 16, 2002, SHN reviewed existing information to assist with the determination of wetland boundaries on the project site. This review included the *Soils of Western Humboldt County California*; Hydric Soils List; National Wetland Inventory (NWI) maps; US Geologic Service (USGS) Topographic Quadrangle maps; and aerial photographs.

To conduct the wetland delineation, SHN established several data observation points within the project area that corresponded with the terrain features, vegetation patterns, and hydrologic indicators. SHN characterized the vegetation, soils, and hydrology at each of the observation points and used the information gathered as a basis for making the wetland determinations. Based on indicators observed at these points, the wetland boundaries were extrapolated to other similar habitat.

For the purpose of the wetland delineation, presence of man-made drainage improvements (ditches along the western border of the Site) and fill over most or the entire site qualifies the majority of habitat as an atypical (disturbed) situation.

Vegetation on the site was compared to the *National List of Plant Species that Occur in Wetlands: 1988 - California (Region 0)* (Reed 1988) to determine plant wetland indicator status. This list places plants into four categories:

1. *Obligate Wetland Plants (OBL)*--plants likely to occur in wetlands greater than 99 percent of the time.
2. *Facultative Wetland Plants (FACW)*--plants likely to occur in wetlands 67 to 99 percent of the time.
3. *Facultative Plants (FAC)*--plants equally likely to occur in wetland and non-wetland areas (34-66 percent of the time).
4. *Facultative Upland Plants (FACU)*--plants that only occur in wetlands 1 to 33 percent of the time.

Hydrophytic vegetation is comprised of macrophytic plants that occur in areas where the frequency and duration of inundation or soil saturation produce permanently or periodically saturated soils of sufficient duration to exert a controlling influence on the plant species present. The vegetation occurring in a wetland may consist of more than one plant community. Hydrophytic vegetation is present when more than 50 percent of the dominant species have an indicator status of OBL, FACW, and/or FAC.

Hydric soils are classified into two broad categories: organic and mineral. Organic soils (histosols) develop under conditions of nearly continuous saturation and/or inundation. Organic hydric soils are commonly known as peats and mucks. All other hydric soils are mineral soils. Mineral soils have a wide range of textures (sandy to clayey) and colors (red to gray). Mineral hydric soils are those periodically saturated for sufficient duration to produce chemical and physical soil properties associated with a reducing environment. They are usually gray and/or mottled immediately below the surface horizon, or they have thick, dark-colored surface layers overlying gray or mottled subsurface horizons.

The project site was examined for areas of evident wetland hydrology characteristics. These include areas where the presence of water has an overriding influence on characteristics of vegetation and soils due to anaerobic and reducing conditions, respectively. Such characteristics are usually present in areas that are inundated or have soils that are saturated to the surface for sufficient duration to develop hydric soils and support vegetation typically adapted for life in periodically anaerobic soil conditions.

9 of 17

Wetland boundaries delineated by SHN are subject to verification and approval by the US Army Corps, California Department of Fish and Game (DFG), the Coastal Commission, and the City. The Corps regulates fill within all jurisdictional wetlands. The Commission and the City regulate impacts to wetlands and wetland buffers.

Wetland Delineation Results and Discussion

Site conditions generally confirmed the soil mapping conditions mapped in the Soil Survey of Western Humboldt County California, published in 1965. The Soil Survey mapped the developed portion of Site, surrounding the existing buildings, as the UI soil type. The soil samples from within all filled portions of the Site were consistent with the mapped soil type. This soil type is not listed in the Hydric Soils List, but is generally considered to be an upland soil type. The Soil Survey mapped the remainder of the site as Sand Dunes (SD) soil type. The disturbed profile of the portions of the Site mapped SD does not allow for accurate identification of soils, but there is a significant sand component to the unfilled portions of the Site. The Site conditions have been altered due to the placement of fill to the west and south of the existing buildings since the 1960s.

The NWI map, prepared in 1987 from aerial photographs taken in 1983, classifies the developed areas surrounding the existing buildings as Upland. The remainder of the Site is mapped as Palustrine Emergent Persistent Seasonally Flooded Partially Ditched/Drained wetland. This mapping occurred prior to the permitted fill of the southern and western portions of the site and the raising of the level of water in the mitigation area to the west. With the exception of areas that have been recently filled, the Site characteristics are generally consistent with the NWI mapping. Upland areas now extend to the north, west, and south of the existing buildings. Currently, nearly all of the Site, with the exception of the wet ditch at the western border and the forested wetland at the north end of the site, would likely be categorized as Upland by the NWI.

Most of the Site is urban/developed upland created by the placement of fill, dating from the late 1800s to the early 1990s, within in diked, formerly tidally-influenced wetlands adjacent to Humboldt Bay. Most of the upland areas, including Highway 101/Broadway and other nearby developed areas, within the diked former tidelands, have a similar history of fill. The soils of the Site consist predominantly of compacted gravel/dirt/debris fill with sparse mesic ruderal vegetation. The predominant source of hydrology on the Site is from precipitation that falls on the Site. The Site is higher than all of the surrounding terrain generally does not receive water from adjacent land (run-on). Site runoff from the building roofs and from the compacted gravel/fill areas collects in shallow hand maintained drainage ditches and eventually reaches the wetland ditch at the west edge of the Site. Some percolation of stormwater occurs into the gravel and dirt surfaces of the site.

Four distinct wetland areas were delineated on and adjacent to the Site (Appendix A). To the south of the Site, beginning at the base of the fill slope of the south side of Pound Road, is an estuarine/palustrine scrub-shrub wetland (Appendix A, Wetland T). To the west of the site, beginning at the base of the fill slope of the west side of the dike-road, is a palustrine emergent wetland created/enhanced as a mitigation area in the 1980s (Appendix A, Wetland M). In the northern portion of the site is a palustrine forested/emergent wetland and associated wetland ditch (Appendix A, Wetland A). In the central portion of the western border of the Site a wetland ditch with emergent vegetation in portions lies at the approximate property line between the Site and City property to the west (Appendix A, Wetland B).

Wetland T is mapped on the NWI Eureka 7.5-minute Quadrangle as a Palustrine Emergent Persistent Seasonally Flooded (PEM1C) wetland. Wetland T currently meets each of the three standard wetland criteria. The formerly palustrine wetland appears to have been connected to the Elk River estuary by a trench and is now tidally influenced. Under the NWI classification system, Wetland T appears to be an Estuarine Intertidal Emergent Persistent Mixohaline (Brackish; E2EM13) wetland. The vegetation is predominantly hydrophytic including *Salicornia virginica* (pickleweed, OBL), and *Triglochin maritime* (seaside arrowgrass, OBL). The hydric mineral soils exhibit a very dark grey (Munsell 5Y 3/1 to 2.5/1-2) chroma matrix with areas of gleyed mineral soil (Munsell Gley 2 3/5BG). The hydrology of Wetland T contributes to saturated and inundated soils throughout the year.

Wetland M is mapped on the NWI map as a Palustrine Emergent Persistent Flooded Partially Drained/Ditched (PEM1Cd) wetland. Wetland M currently meets each of the three standard wetland criteria. For the purpose of wetland mitigation, Wetland M was converted to a Palustrine Emergent -Persistent / Forested-Deciduous/Unconsolidated Bottom -Mud/Organic Artificially Flooded Diked/Impounded (PEM/FO6/UB-3/4 Kh) wetland in the late 1980s. The mitigation appears to have included raising the water level by installing a floodgate, containing the wetland area through the placement of fill to create the dike/road at the eastern boundary of the wetland, and introduction of cattails and possibly other wetland species. The permitted mitigation was intended to compensate for the loss of wetland associated with the construction of public sewer facilities to the north and wetland fill of the western portion of the Site. The vegetation is predominantly obligate wetland species, including *Potentilla anserina* (Pacific silverweed, OBL) and *Typhus latifolia* (common cattail, OBL). The sandy clay soils are hydric and have a dark bluish gray (Munsell 3/5B-5PB) chroma matrix. Thick organic deposits are evident in areas of heavy vegetative cover. Several inches to several feet of standing freshwater occupy the northern portion of Wetland M throughout the year.

Wetland A at the north end of the Site is mapped as a PEM1Cd wetland that is shown to be contiguous with Wetland M. Wetland A currently meets each of the three standard wetland criteria. The separation of Wetland A from Wetland M likely occurred as a result of the placement of fill associated with the mitigation project that formed the road/dike at the west side of the Site. Wetland A is currently a Palustrine Forested-Deciduous Permanently/Artificially Flooded Diked/Impounded (PFO6H/Kh) wetland under the NWI classification system. The southwestern portion of Wetland A is a channelized wet ditch running at the western edge of the Site, immediately west of the northernmost truck parking area. Soils within Wetland A are very dark gray to black (Munsell 3-2.5/1) with organic streaking in sandy clay soils. The vegetation includes a canopy of *Alnus rubra* (red alder, FAC) and *Salix scouleriana* (Scouler willow, FAC), with an understory of emergent wetland species including *Typhus latifolia* (common cattail, OBL), *Carex obnupta* (slough sedge, OBL), *Potentilla anserina* (Pacific silverweed, OBL), and *Juncus effusus* (soft rush, FACW). Several inches to approximately 3 feet of standing freshwater exist at Wetland A throughout the year.

Wetland B in the southwestern and western portion of the Site is mapped as a PEM1Cd wetland that is shown to be contiguous with Wetland M. Wetland B currently meets each of the three standard wetland criteria. As with Wetland A, the separation of Wetland B from Wetland M likely occurred as a result of the placement of fill associated with the mitigation project that formed the road/dike at the west side of the Site. Wetland B is currently a wetland ditch constructed through upland fill. The ditch appears to have been regularly maintained to remove large vegetation and blockages. It is currently vegetated in the wider portions to the south with hydrophytic species

including *Potentilla anserina* (Pacific silverweed, OBL), *Salicornia virginica* (pickleweed, OBL), *Ranunculus repens* (creeping buttercup, FACW), *Triglochin maritima* (seaside arrowgrass, OBL), *Cotula coronopifolia* (brassbuttons, FACW+), and *Juncus effusus* (soft rush, FACW). The hydric soils within Wetland B have a black (10YR 2/1) matrix chroma in the upper 6 to 8 inches, and bluish gray (Gley 2.5/1) mottled with olive yellow (2.5Y6/8) below 8 inches. Site water runoff causes seasonal inundation and saturation in the northern portion of Wetland B. The southern portion of the wetland holds standing water into the late summer and is saturated year-round.

Water from Wetland B flows to the south into a section of constructed ditch that is paved with gravel. This portion of the ditch does not contain a wetland plant, hydric soil, or wetland hydrology. Sparse hydrophytic plants grow in limited sections of the gravel paved ditch, but can not be considered the predominant vegetation in this environment. Due to the placement of rock, there are no soils within the ditch and hydric soils do not appear to develop there. Although this portion of the ditch conveys water, and may technically meet the definition of wetland hydrology, paved and heavily rip-rapped areas are not conventionally considered wetlands.

Each of the wetlands described above are likely Corps and Coastal Commission jurisdictional wetlands. Due to the incised nature of the wetland ditches on the Site, there are no areas that meet one standard wetland criteria that do not also meet the other two standard wetland criteria. Therefore, Corps jurisdictional wetland areas and Coastal Commission jurisdictional wetlands were mapped at the same locations.

Again, wetland boundaries delineated by SHN are subject to verification and approval by the US Army Corps, DFG, the Coastal Commission, and the City. It is strongly recommended that this delineation be verified by all local, state, and federal agencies with jurisdiction over wetlands and buffers prior to the commencement of work on the Site.

Environmentally Sensitive Habitat Assessment

Due to the City of Eureka's broad ESHA definition (see page 3), all delineated coastal wetland areas within the City's Coastal Zone jurisdiction (Wetland A and northern portion of Wetland M) are ESHA. Within the Coastal Commission's jurisdiction, the Site generally does not meet the Coastal Commission's definition of ESHA (see page 3). Wetland B, the wetland ditch within the Coastal Commission's jurisdiction, is neither rare nor especially valuable in the role it plays in the ecosystem, and does not appear to meet the Coastal Commission's definition of ESHA. Wetland M and Wetland T, both off-site, are likely to be considered ESHA by the City and the Coastal Commission and may require buffers.

The hydrologic regime of the Elk River estuary and urbanized eastern Humboldt Bay dunes and former tidal mudflats has been dramatically altered by human development over the past 150 years. Dikes and fills have altered drainage, soil types, and wildlife habitat throughout the areas of the historic eastern extent of Humboldt Bay. The Site lies predominantly on filled, diked, former tidelands approximately 1,000 feet east of the eastern edge of Humboldt Bay. Historic diking, filling, and associated development have reduced the natural functional value of the Site and surrounding areas. The Elk River estuary, a tidally influenced tributary to the bay, lies approximately 100 feet to the south of the Site. Highway 101 lies at the eastern boundary of the Site. The western boundary of the Site is roughly at the eastern toe-of-slope of a dike/road that separates the Site from a relatively large and contiguous emergent and open water wetland mitigation area (Wetland M) to the west.

Recent permitted fill has altered the southern and western portions of the Site such that the habitat value of the Site is minimal. The compacted gravel portions of the Site currently perform virtually none of the functions typically associated with habitat or habitat buffer. The filled portion of the Site only minimally improves Stormwater quality. Stormwater retention of the Site is also minimal. The primary function the wetland ditch on the western edge of the site is conveyance of stormwater from the Site. Overall, the central, southern, and western portions of the Site have relatively little habitat value or other functional value. The northern portion of the Site, however, contains a forested wetland (Wetland A) of relatively high functional value.

Wetland A, is a natural feature that has significant functional values that warrant the protection of a buffer. Wetland A receives water from the northernmost filled portion of the Site. Wetland A has relatively high value for the treatment of stormwater runoff from the Site and surrounding terrain. Wetland A also serves as habitat for wetland plant and wildlife species. Although Wetland A currently suffers from relatively loud and constant traffic noise from Highway 101, wading birds and passerine birds were observed foraging and roosting. Forested wetland habitat is uncommon habitat in most landscapes and is typically considered valuable and offered protection in land use decisions. The filled portion of the Site adjacent to Wetland A currently offers relatively little value as a buffer; it contains no vegetation and is used for parking trucks. The compacted gravel area of the Site adjacent to Wetland A only functions as a buffer for the wetland in that it provides distance between the wetland and activities in the central portion of the Site and the highway. Wetland A would not likely be negatively impacted by Site development designed to shield the wetland from the proposed use. The development of a wetland buffer associated with Wetland A would not improve the habitat of the wetland with respect to the adjacent highway noise. Based on Site characteristics and assuming appropriate stormwater treatment and light/use shielding on the Site, a 10-foot buffer that is fenced on the side of the proposed development would likely be adequate to protect Wetland A from impacts caused by development of the Site.

Wetland B, in the southwestern portion of the Site provides relatively little functional value. Wetland B is an excavated ditch through upland fill on either side of the ditch. The ditch has been historically maintained, but meets wetland criteria due to the low slope and slow drainage. It functions to convey Site runoff from the compacted gravel parking and other filled areas to the rip-rapped lower portion of the ditch and, ultimately, to tidally-influenced Wetland T, to the south. A flapper valve at the southern end of the culvert under Pound Road prevents tidal influence within the ditch. The vegetated ditch provides a degree of water quality treatment when the ditch is flowing. The ditch is not rare or valuable habitat and no wildlife or sensitive species were observed in it. Because Wetland B is not likely considered ESHA, it neither requires nor warrants the protection of a wetland buffer. The wetland itself should, however, be protected from direct impacts during Site development and should be appropriately shielded from the proposed uses on the Site.

Wetland M, to the west of the Site, appears to have significant habitat and other functional value and appears to warrant the protection of a buffer. Wetland M provides a high degree of water quality treatment, flood water detention, and wildlife habitat. However, the permitted fill of the western portion of the Site that would serve as buffer for Wetland M was entirely mitigated through the construction of a portion of Wetland M. Because Wetland M was permitted immediately adjacent to the Site and was constructed to mitigate for the filling of the Site to the western border, it is not clear if a buffer can or will be required by the Coastal Commission and the City to re-mitigate for further impacts within the portion of the Site that has already been mitigated

for total loss of habitat. Furthermore, the City of Eureka maintains a grassy and bushy dike and road between Wetland M and the western border of the Site. This area provides a vegetated buffer from approximately 30 to 50 feet between Wetland M and the Site.

Because the Site is physically separated from Wetland M by a vegetated dike, Site improvements will not impact the water quality or flood water retention capacity, and additional buffer for these purposes will not have any positive effect on Wetland M over current conditions on the Site. Wildlife habitat, therefore, is the predominant wetland value for which buffer may be provided.

Wetland B, the ditch at the western edge of the site, and the ditch portion of Wetland A in the northern portion of the Site are essentially part of the functional habitat buffer for Wetland M in that they are at they provide additional vegetated area between Wetland M and the Site. If Wetland A and Wetland B remain in their current state and the development of the Site includes appropriate fencing, light shielding, and noise shielding, and activity shielding, there will be no significant reduction of the present habitat quality or quantity of the off-site Wetland M.

Observation of environmentally sensitive habitat adjacent to a recent development (automobile dealership) at the northern end of Wetland M showed no significant difference in the functional qualities of the wetland despite development to within several feet of the northern end of the dike. The dealership is similar in size and likely experiences relatively similar noise levels, lighting intensity, percent impervious surface coverage to the proposed transportation facility at the Site. Under nearly identical circumstances as exist on the Site (including Wetland M, the dike, and a drainage ditch at the edge of the dike closest to the development) the automobile dealership was permitted to place a solid wood fence within several feet of the ditch to protect Wetland M from degradation. There is no indication that any functional quality of the northern portion of Wetland M has been degraded in any way by the siting of the automobile dealership.

Conclusion

Currently, environmentally sensitive resources within and outside of the Site exist despite the negative impacts of Highway 101, truck traffic to the existing facility, and degraded nature of the filled Site. The sensitive areas are wetlands and, to a varying degree, provide natural water treatment, stormwater detention, and wildlife habitat. Appropriate development of the Site, with on-site stormwater treatment, shielding of light and noise, and modest wetland buffers for Wetland A to the north, will not only protect the existing environmentally sensitive habitat, but will likely functionally improve the habitat. Recently permitted development of a similar site at the northern end of Wetland M included construction immediately adjacent to a wetland ditch within approximately 20 feet of Wetland M, with no apparent negative impacts to the functional quality of the wetland. If the proposed development of the Site incorporates protective measures such as solid fencing at the western edge of the Site, a 10-foot buffer area for Wetland A, stormwater treatment, and shielding of light and traffic from the wetland areas, it is likely that no adverse impacts to any wetland or ESHA would occur.

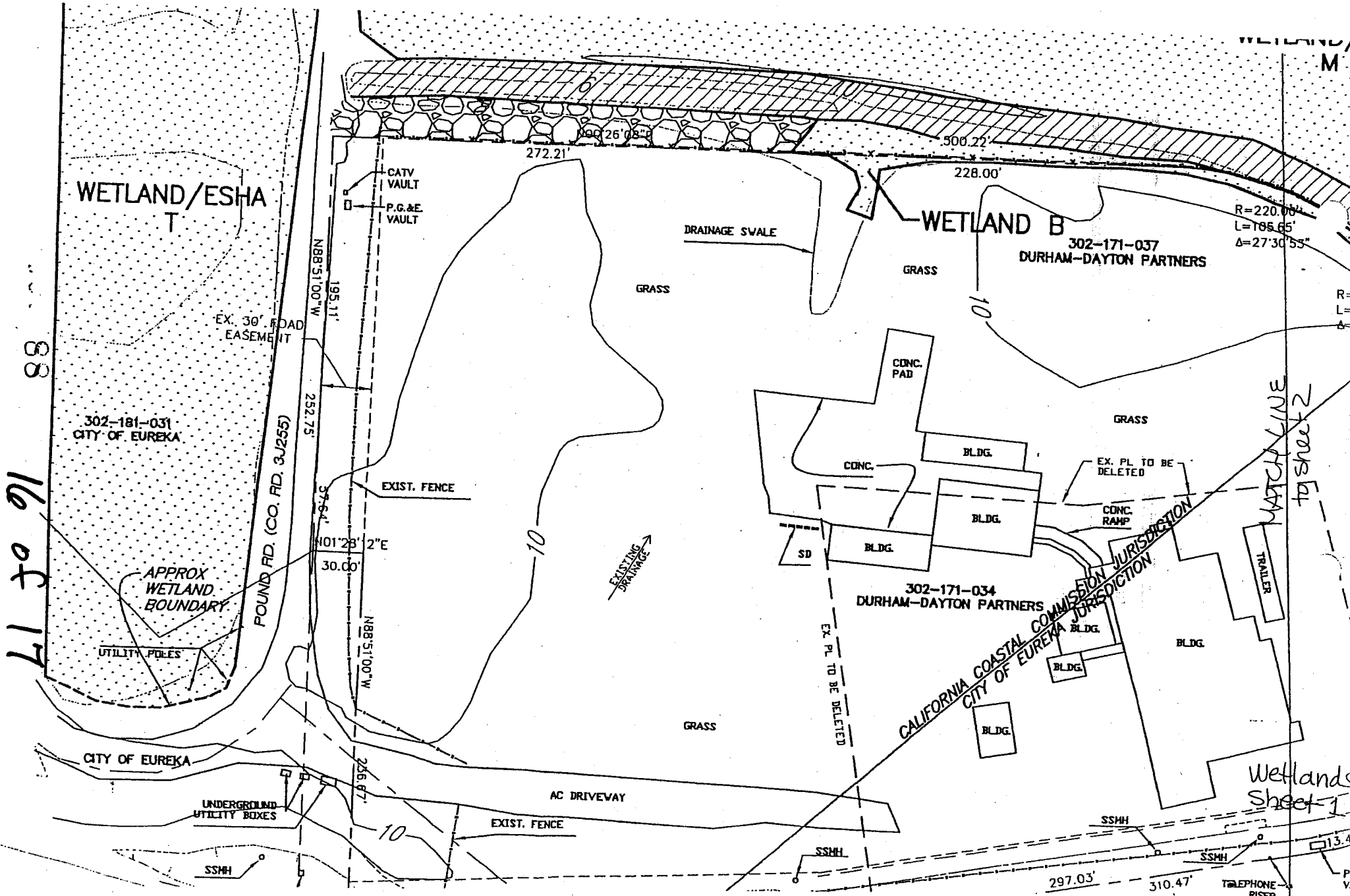
References

- Heald, Leslie S. (2003). *Historic Resources Review of the Rockin' R Property, APN #302-171-034 and 302-171-037, Humboldt County, CA*. NR:Heald.
- Kollmorgen Instruments Corporation. (1990). *Munsell Soil Color Charts*. Baltimore: Macbeth Division of Kollmorgen Instruments Corporation.

- Reed, P.B., Jr. (1988). *National List of Plant Species that Occur in Wetlands: California (Region 0)*. NR: U.S. Department of Commerce, National Ecology Research Center. 136 pp.
- University of California, Davis: Department of Soils and Plant Nutrition. (1965). *Soils of Western Humboldt County California*. 84 pp. plus maps. Davis: UC, Davis.
- U.S. Department of Defense, Department of the Army. (1987). *Corps of Engineers Wetlands Delineation Manual*. Technical Report Y-87-1. Vicksburg: U.S. Army Engineer Waterways Experiment Station.
- US Department of the Interior Fish and Wildlife Service. (1987) *National Wetland Inventory Map*. Eureka, California Quadrangle.

15 of 17

16 of 17



WETLAND/ESHA T

302-181-031 CITY OF EUREKA

APPROX WETLAND BOUNDARY

UTILITY POLES

CITY OF EUREKA

UNDERGROUND UTILITY BOXES

SSMH

FOUND RD. (CO. RD. 3J255)

N88°51'00"W

195.11'

EX. 30' ROAD EASEMENT

252.75'

37°54'

N01°28'12"E

30.00'

N88°51'00"W

256.67'

10

272.21'

99°26'08"E

500.22'

228.00'

R=220.00'
L=105.65'
Δ=27°30'55"

WETLAND B

302-171-037 DURHAM-DAYTON PARTNERS

GRASS

GRASS

DRAINAGE SWALE

EXIST. FENCE

EXISTING DRAINAGE

GRASS

GRASS

CONC. PAD

BLDG.

CONC.

BLDG.

BLDG.

302-171-034 DURHAM-DAYTON PARTNERS

CALIFORNIA COASTAL COMMISSION JURISDICTION
CITY OF EUREKA JURISDICTION

EX. PL. TO BE DELETED

CONC. RAMP

EX. PL. TO BE DELETED

BLDG.

BLDG.

BLDG.

TRAILER

Wetlands Sheet 1

MATCHLINE to sheet 2

SSMH

SSMH

SSMH

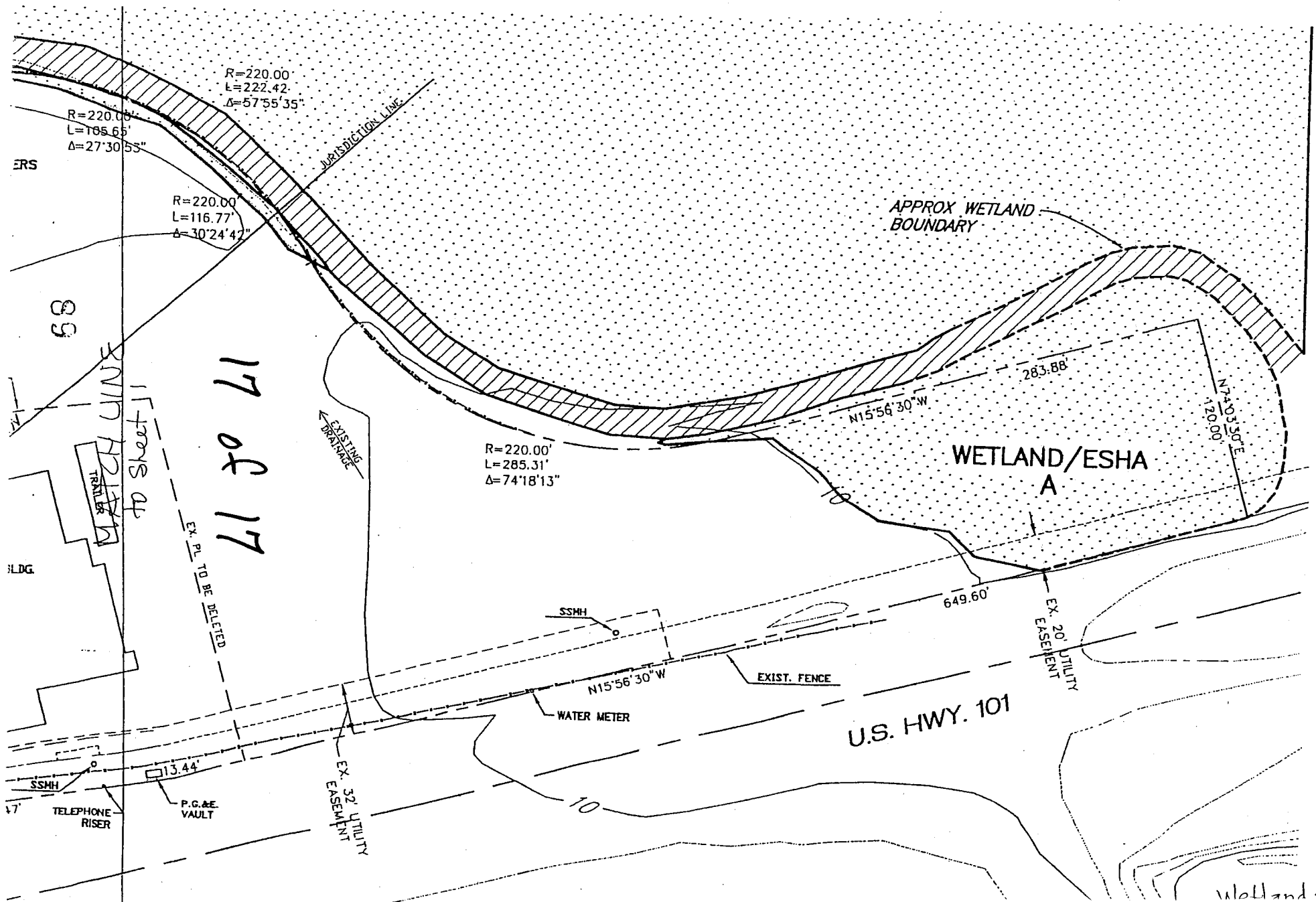
297.03'

310.47'

TELEPHONE Poles

13.4'

P.V.



R=220.00
L=222.42
Δ=57°55'35"

R=220.00'
L=105.65'
Δ=27°30'55"

R=220.00
L=116.77'
Δ=30°24'42"

R=220.00'
L=285.31'
Δ=74°18'13"

APPROX WETLAND
BOUNDARY

WETLAND/ESHA
A

N15°56'30"W

283.88'

N74°03'30"E
120.00'

649.60'

N15°56'30"W

U.S. HWY. 101

ERS
88
17 of 17
TO Sheet 11

BLDG.

47'

13.44'
P.C. & E. VAULT

EX. 32' UTILITY
EASEMENT

EX. 20' UTILITY
EASEMENT

EXIST. FENCE

WATER METER

SSMH

TELEPHONE
RISER

Wetlands

California Coastal Commission
NORTH COAST DISTRICT
350 'E' Street, Fourth Floor,
P.O. Box 4946
Eureka, CA 95501
(707) 443-1623

Permit 1-85-89

AP# 302-171-34

PERMIT AUTHORIZATION

EXHIBIT NO. 9

APPEAL NO.

A-1-EUR-05-031

CCC & EUR Coastal Developmt.

Permits for Past Wetland Filling

(Page 1 of 9)

June G. Hartman
P.O. Box 3515
Eureka, CA 95501

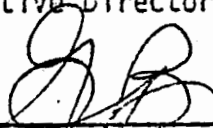
Dear Ms. Hartman:

Please be advised that you are hereby authorized to proceed with development of your project, permit number 1-85-89, which was reported to the Commission on July 9, 1985. Development of your project is subject to compliance with all terms and conditions specified in the Administrative Permit which was sent to you on June 28, 1985.

Should you have any questions please contact our office.

MICHAEL L. FISCHER
Executive Director

by:



Gary L. Berrigan
Coastal Planner

STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgement. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

EXECUTIVE DIRECTOR'S DETERMINATION (continued):

Wetlands. The proposed fill will be placed in farmed wetlands, adjacent to the City of Eureka's wetland restoration program at Elk River. In establishing the restoration program, the City of Eureka and the Department of Fish and Game provided mitigation for the applicants' project within the larger restoration program for the Greater Eureka Wastewater Treatment Facility. This was also discussed at public hearings on the Eureka LCP. Therefore, the mitigation for the subject fill has been provided, is presently in place, and the project is consistent with the wetland restoration policies of the Coastal Act.

SPECIAL CONDITIONS: NONE

ACKNOWLEDGEMENT OF PERMIT RECEIPT/ACCEPTANCE OF CONTENTS:

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

3 of 9

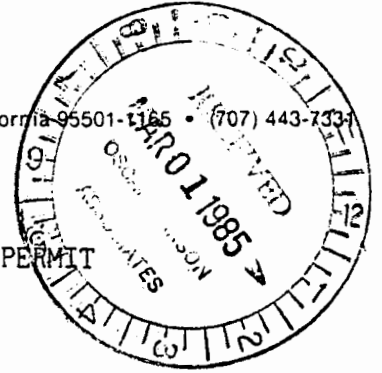
Applicant's Signature

Date of Signing

CITY OF EUREKA



531 K Street • Eureka, California 95501-1165 • (707) 443-7331



NOTICE OF FINAL CITY ACTION ON COASTAL DEVELOPMENT PERMIT
CDP-1-85

DATE: 2/15/85

The following project is located within the Coastal Zone of the City of Eureka. On February 5, 1985, final action was taken by the City on the placement and grading of 50,000 cubic yards of fill at 4640 Broadway Coastal Development Permit. Assessor's Parcel No. 302-171-34.

APPLICANT:	June G. Hartman	AGENT (if any):	Oscar Larson & Assoc.
ADDRESS:	P.O. Box 3515	Address:	317 Third Street
	Eureka, CA 95501		Eureka, CA 95501
PHONE:	(707) 442-4505	Phone:	(707) 445-2043

Application File Number:	CDP-1-85	Filed:	January 1985
Action was taken by:	City Council	CEQA Status:	Negative Declaration
Action:	<input checked="" type="checkbox"/> Approved	<input type="checkbox"/> Denied	<input type="checkbox"/> Approved with Conditions

The development permit for the proposed project will be issued subject to the fulfillment of all conditions, if any, listed on the attached Minute Order of the Eureka City Council, which is hereby made a part of this Notice. This action is based on the findings of the City Council that this development, along with any required conditions, is in full compliance and conformity with the Eureka Local Coastal Program.

The project was not appealed at the local level.

The project is: Not applicable to the Coastal Commission.
 Appealable to the Coastal Commission pursuant to Public Resources Code, Section 30603. An aggrieved person may appeal this decision to the Coastal Commission within 10 working days following Commission receipt of this notice. Appeals must be in writing to the appropriate Coastal Commission district office.

Karen Hamilton
Director of Community Development

*Final City action is at the end of the appeal process for Planning Director/ Zoning Administrator (TAC) approved projects or immediately upon City Council action. The Notice is to be filed with the Coastal Commission and any persons specifically requesting such notice; the applicant should be sent one.

CITY COUNCIL, CITY OF EUREKA
COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

MINUTE ORDER

Certified copy of portion of proceedings.

Meeting of Feb. 5, 198

SUBJECT: CDP-1-85 COASTAL DEVELOPMENT PERMIT, JUNE G. HARTMAN, FOR THE PLACEMENT AND GRADING OF 50,000 CUBIC YARDS OF FILL AT 4640 BROADWAY.

ACTION: Following the Public Hearing, Council adopted the Notice of Intent to Issue a Coastal Permit.

Adopted on motion by Councilmember HOWARD, seconded by Councilmember WORTHEN, and the following vote:

AYES:	Councilmembers	Howard, Worthen, Gool, Hannah, McMurray
NOES:	Councilmembers	None
ABSENT:	Councilmembers	None
ABSTAIN:	Councilmembers	None

STATE OF CALIFORNIA)
) ss.
 City of Eureka)

I, ROBERT STOCKWELL, City Clerk of the City of Eureka, do hereby certify the foregoing to be a true and correct copy of the original made in the above entitled matter by said City Council as the same now appears of record in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the City of Eureka on Feb. 7, 1985.

5 of 9

Robert Stockwell

City Clerk

By

Deputy

Originating Dept.:
cc:

AG. DA BILL BUSINESS OF THE EUREKA COUNCIL

For Agenda Of 2/5/85 Closing Date 1/29/85 Date Submitted 1/29/85 Item No. _____

Originating Department Community Development by Kevin Hamblin

TITLE: CDP-1-33, Coastal Development Permit, June G. Hartman, for the placement and grading of 30,000 cubic yards of fill at 4640 Broadway.

RECOMMENDATION: Unless removed from the Consent Calendar, open public hearing, close public hearing and adopt Notice of Intent to Issue a Coastal Permit.

Attach additional sheets if necessary

BACKGROUND: This proposed fill area contains 8 acres of which only approximately 2/3rds of which is located within the City's original jurisdiction area. Any action on this request would involve only that area over which the City has permitting jurisdiction. The south-western portion of the Hartman property is within the area designated by the Coastal Commission as area on which the Commission has retained original permitting authority. The L.C.P. zoning designation on this property is "MG" which allows as permitted uses a number of processing, industrial and manufacturing uses. Mrs. Hartman's request is to fill this area to put it in a developable condition for such uses.

CONTINUED ON SECOND SHEET

Attach additional sheets if necessary

Clearance by Impacted Departments (send copies to each impacted department):

<input type="checkbox"/> AS	Date _____	By _____	<input type="checkbox"/> PS	Date _____	By _____	<input type="checkbox"/> CC	Date _____	By _____
<input type="checkbox"/> CD	Date _____	By _____	<input type="checkbox"/> RA	Date _____	By _____	<input checked="" type="checkbox"/> CA	Date _____	By _____
<input type="checkbox"/> PR	Date _____	By _____	<input type="checkbox"/> PW	Date _____	By _____	<input type="checkbox"/> Other	Date _____	By _____

Fiscal Impact: Expenditure (\$) _____ Budget Amount (\$) _____
 New Appropriation (\$) _____ Account # _____

Supporting Documentation:	Needed	Attached	Needed	Attached
Agreement	_____	_____	City Attorney Opinion	_____
Resolution	_____	_____	Board/Commission Report	_____
Ordinance	_____	_____	Budget Supplemental	_____
Policy Memo: Letter Coastal Commission	_____	X	Other: Vicinity Map	X

Copies of Item should be mailed to: Prior to meeting After meeting
June G. Hartman
P.O. Box 3515
Eureka, CA 95501

Approved for Agenda: _____ City Manager _____ Date _____

List Under: Consent Calendar Reports Oral/Written Communications Public Hearings Study Session

Council Action: _____ 6 of 9 _____

Date _____ Ordinance No. _____ Resolution No. _____ Executed by Mayor _____

FINDINGS:

1. That the proposed filling of this area is consistent with L.C.P. zoning and land use designations.
2. The development does involve environmentally sensitive habitat area as defined by the L.C.P. resources map, however, mitigation for the proposed fill area was accomplished under the Coastal development permit that was issued in conjunction with the Eureka Sewage Treatment Plant.
3. That this area does not involve any access to or along the coastline based on the fact that there are other privately owned properties between the area in question and the coast.
4. This area does qualify as wetlands which are neither farmed or grazed which would restrict as per Policy 5.12 of the L.C.P. This specific development, however, was preempted from falling into this category by specific findings for the "Rockin 'R' Meat Plant: designating 8± acres for industrial development in Chapter 11, page 7, of the Eureka L.C.P. dealing with existing industrial areas.
5. This proposed development or fill is consistent with all applicable policies of the Eureka Local Coastal Program.



NEGATIVE DECLARATION

PROJECT TITLE: Hartman Grading Plan

PROJECT LOCATION: 4640 Broadway, Eureka, CA 95501

APPLICANT: Bob Hartman
P.O. Box 3515
Eureka, CA 95501

CONSULTANT/AUTHORIZED

AGENT : Oscar Larson & Associates
P.O. Box 3806
Eureka, CA 95501

GENERAL PLAN DESIGNATION: Industrial General

ZONING DESIGNATION: "MG"

PROJECT DESCRIPTION: The proposed project involves the impact and grading of 50,000 cubic yards of soil to bring the surface of the parcel up to the elevation of the existing structures. A paved road would be placed on the dikes surrounding the property. Several storage buildings located on this area to be filled will be demolished.

FINDINGS OF NO SIGNIFICANT EFFECT:

It has been determined that the proposed project is consistent with the City of Eureka LCP, the planning document for the project vicinity, and that mitigation for this project has already taken place. With this mitigation through the City's Wetland Restoration Program, it is determined that the project will not have a significant effect on the environment.

The material supporting the above findings is contained in the Initial Study and Evaluation conducted by the Department of Community Development, Implementation Planning Division, Room 207, second floor, Eureka City Hall, 531 "K" Street, Eureka, California, telephone 443-7331, extension 278. Copies of documents related to the evaluation of this project are available for review upon request.

The date of this declaration is January 8, 1985. Further processing of applicable project permits will not begin prior to February 12, 1985.

Date 1/9/85

8 of 9

Kevin Hamblin
Kevin Hamblin, Director
Department of Community Development

CITY OF EUREKA
SEASONAL
FRESHWATER
MARSH

PORTION OF PROPERTY
UNDER CALIFORNIA
COASTAL COMMISSION
JURISDICTION

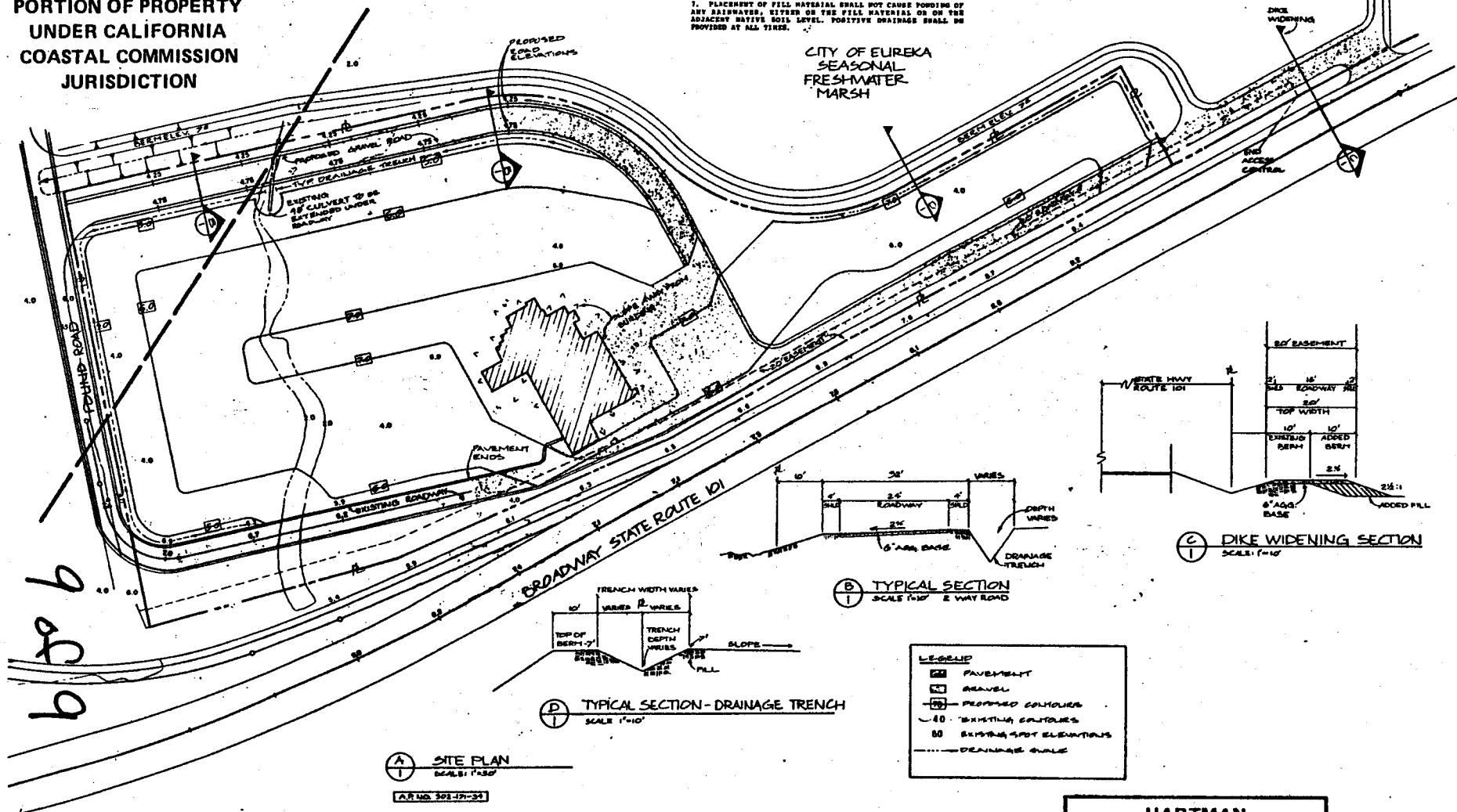
CONSTRUCTION NOTES

FILL MATERIALS:

1. FILL MATERIALS SHALL BE CLEAN, GRANULAR SOIL AND ROCK MATERIALS FREE FROM ORGANIC AND OTHER DELETERIOUS MATERIALS.
2. DEBRIS, TEAR, WOODY MATERIALS AND RUBBLE SUCH AS ASPHALT PAVING WILL NOT BE PERMISSIBLE FOR FILL MATERIAL.
3. THE FILL MATERIALS SHALL BE CAPABLE OF BEING PLACED AND COMPACTED AS SPECIFIED IN THESE CONSTRUCTION NOTES.
4. ROCKS, STONES OR CONCRETE RUBBLE WILL BE ALLOWED PROVIDED THE PIECES ARE APPROXIMATELY SQUARED OR CUBIC (NOT LONG OR EXTREMELY ANGULAR) AND ARE NO LARGER THAN EIGHT(8) INCHES IN ANY DIMENSION.
5. THE SOURCE OF ALL THE FILL MATERIALS IS NOT SHOWN AT THIS TIME. THE INITIAL SOURCE OF MATERIAL IS EXPECTED TO BE FROM READY DUMP AND OTHER HAUL CONSTRUCTION IN SOFTS BROADWAY.

METHOD OF PLACEMENT:

1. EXISTING VEGETATION, SHRUBS AND LARGE ORGANIC MATERIALS TO A DEPTH OF 12" SHALL BE REMOVED PRIOR TO FILL MATERIAL PLACEMENT. GRASS MATERIAL NEED NOT BE REMOVED.
2. ALL MATERIAL SHALL BE PLACED IN LAYERS OF MAXIMUM UNIFORM THICKNESS OF TWENTY(20) INCHES.
3. ALL FILL MATERIALS SHALL BE COMPACTED TO A RELATIVE DENSITY OF 95 PERCENT.
4. FILL MATERIALS WHICH CONTAIN OR WHICH, PRIOR TO COMPACTION, ABSORB EXCESSIVE WATER SHALL BE DRIED TO NEAR OPTIMUM MOISTURE CONTENT PRIOR TO COMPACTION.
5. THE INTENT OF FILL MATERIAL PLACEMENT IS TO PROVIDE SUFFICIENT PAVING LOT OR SITE FILLING LOCATIONS OF FUTURE BUILDINGS WILL REQUIRE DEEP FOUNDATIONS TO ADEQUATE SOIL SUPPORT LAYERS BELOW THE PROPOSED FILL MATERIAL PLACEMENT.
6. ALL AREAS TO BE PAVED SHALL BE ALLOWED TO SETTLE FOR A PERIOD OF ONE YEAR PRIOR TO PAVEMENT. SETTLEMENT OF THE FILL MATERIALS CAN BE EXPECTED.
7. PLACEMENT OF FILL MATERIAL SHALL NOT CAUSE PONDING OF ANY RAINWATER, EITHER ON THE FILL MATERIAL OR ON THE ADJACENT NATIVE SOIL LEVEL. POSITIVE DRAINAGE SHALL BE PROVIDED AT ALL TIMES.



(B) TYPICAL SECTION
SCALE 1"=10' 2 WAY ROAD

(D) TYPICAL SECTION - DRAINAGE TRENCH
SCALE 1"=10'

(C) DIKE WIDENING SECTION
SCALE 1"=10'

(A) SITE PLAN
SCALE 1"=30'

LEGEND

▨	PAVEMENT
▨	GRAVEL
▨	PROPOSED CONTOUR
-40-	EXISTING CONTOUR
80	EXISTING SPOT ELEVATIONS
---	DRAINAGE GULCH

HARTMAN
SITE GRADING PLAN