

**CALIFORNIA COASTAL COMMISSION**

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

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



# F7a

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49 <sup>th</sup> Day:	December 15, 2005
Hearing Opened:	December 14, 2005
Staff:	Jim Baskin
Staff Report:	April 27, 2006
Hearing Date:	May 12, 2006
Commission Action:	

**REVISED STAFF REPORT: APPEAL****DE NOVO HEARING**

APPEAL NO.:	<b>A-1-FTB -05-053</b>
APPLICANT:	<b>Georgia-Pacific Corporation</b>
LOCAL GOVERNMENT:	City of Fort Bragg
DECISION:	Approval with Conditions
PROJECT LOCATION:	At the former Georgia-Pacific California Wood Products Manufacturing Facility, 90 West Redwood Avenue, Fort Bragg; APNs 008-010-26, 008-020-09, 008-151-22, 008-053-34, 008-161-08, 018-010-67, 018-020-01, 018-030-42, 018-040-52, 018-120-43, 018-120-44, 018-430-01, 018-430-02, 018-430-07, 018-430-08.
PROJECT DESCRIPTION:	<i>Georgia-Pacific Mill Site Foundation Removal, Additional Investigation and Interim Remedial Measures Project</i> – Entailing: (1) removal of building foundations, additional investigation, and if necessary, interim remedial measures (IRMs) at the following areas: (a) Compressor House, (b) Former Sawmill #1, (c) Powerhouse and associated

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

APPELLANTS:

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

SUBSTANTIVE FILE DOCUMENTS:

- (1) Staff Report and Environmental Review Documentation for City of Fort Bragg *Coastal Development Permit CDP 3-05* and Local Appeal;
- (2) *Work Plan for Foundation Removal, Additional Investigation, and Interim Remedial Measures*; including appendices (Acton-Mickelson Environmental, Inc., March 21, 2005 with subsequent revisions and addenda);
- (3) *Excavation and Stockpile Quantification Estimation and Site Plan Map* (Acton-Mickelson Environmental, Inc., February 2006);
- (4) *Hazardous Materials Assessment Logistics Analysis* (Acton-Mickelson Environmental, Inc., March 2006);
- (5) *Stormwater Pollution Prevention Plan for Foundation Removal, Additional Investigation, and Interim Remedial Measures* (Acton-Mickelson Environmental, Inc., September 28, 2005);
- (6) *Jurisdiction Determination and Habitat Assessment* (TRC Companies, Inc., August 2003);
- (7) *Botanical Field Study of Some of the Bluff Areas at the GP Mills Site* (Teresa Scholars, Biological Consultant, undated);
- (8) *Late Season Botanical Survey for the GP Mill Site Bluffs* (Teresa Scholars, Biological Consultant, August 16, 2005);
- (9) *Avian Habitat Utilization and Impact Assessment* (WRA Environmental Consultants, January 2006);
- (10) *Rocky Intertidal Environmentally Sensitive Habitat Area Engineering and Biological Assessment* (Acton-Mickelson Environmental, Inc.

and WRA Environmental Consultants, February 2006);

(11) *Conceptual Glass Beach 3 Mitigation and Monitoring Plan* (Teresa Scholars, Biological Consultant, September 22, 2005);

(12) *Conceptual Revegetation Plan Former Georgia-Pacific California Wood Products Manufacturing Facility* (Circuit Rider Productions, Inc., September 22, 2005);

(13) *Engineering Geologic Reconnaissance Report – Planned Blufftop Access Trail Georgia-Pacific Property Fort Bragg, California* (Brunsing Associates, Inc., September 29, 2004);

(14) *Geotechnical Evaluation – Bearing Support for Heavy Equipment Loads*, Blackburn Consulting, Inc., February 2006);

(15) *Assessment Alternatives Analysis – Removal vs. Retention of Industrial Building Foundations*, Acton-Mickelson Environmental, Inc., (February 2006);

(16) *Clarification and Modification to the Work Plan for Foundation Removal, Additional Investigation, and Interim Remedial Measures*, Acton Mickelson Environmental, Inc. (March 28 2006);

(17) Draft, *Site Specific Treatment Plan for Cultural Resources Georgia-Pacific Lumber Mill Fort Bragg, California* (TRC Companies, Inc., undated);

(18) *Archaeological Survey of the Georgia-Pacific Lumber Mill Fort Bragg, California* (TRC Companies, Inc., March 2003); and

(19) City of Fort Bragg Local Coastal Program.

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**SUMMARY OF STAFF RECOMMENDATION DE NOVO:**  
**APPROVAL WITH CONDITIONS**

Staff recommends that the Commission approve with conditions the coastal development permit for the proposed project. Staff believes that, as conditioned, the development as amended for purposes of the Commission's *de novo* hearing is consistent with the City of Fort Bragg Local Coastal Program (LCP) and the public access policies of the Coastal Act.

At its meeting of December 14, 2005, the Commission found that the appeal raised a substantial issue of conformance of the project as approved with the certified LCP. The major contentions of the appeal related to the City's action to conditionally approve the second phase of hazardous materials remediation in a manner that would result in successful site clean-up and restoration while affording adequate protections to the coastal resources adjacent to the areas undergoing the approved interim remediation measures. Among the project's primary objectives is the intent to remove and/or stabilize the site to a degree where contaminants associated with past industrial uses at the site would not impair or adversely impact the environmentally sensitive resources on and adjoining the site. The Commission found a substantial issue had been raised in part on the fact that, although a host of mitigation measures had been identified purportedly to avoid or lessen the impacts associated with the excavation and solid waste material removal activities on and adjoining the bluff face to the coastal bluff and rocky intertidal areas along the property's open ocean shoreline, no detailed assessments of the avian and marine life utilizing these areas for habitat and the relative sensitivity of these biological resources to the disturbances associated with the clean-up work had been performed. Accordingly, the appeal raised a substantial issue of conformity with the certified LCP because the efficacy of the identified mitigation measures had not been established as required by the LCP. In addition, the Commission similarly found that the approval raised a substantial issue of conformance of the project as approved with LCP policies and standards relating to geologic stability in that no project-specific evaluation of the effects of the proposed use of heavy equipment on the blufftop margins.

The Commission continued the project and directed staff to further analyze the project's potential impacts to coastal bluff and rocky intertidal habitat areas, water quality and to ascertain whether the project would be consistent with other LCP policies and standards not the subject of the filed appeal. Since the December 2005 hearing on the Substantial Issue determination, the applicant has also provided considerable additional information on the effects of the proposed project on these coastal resources. Biological assessments of the coastal bluff and rocky intertidal areas were prepared addressing the sensitivity of these habitats to potential impacts associated with the materials removal from and above the bluff face. Analysis was also provided regarding the geologic stability of the site relative to the proposed use of heavy mechanized equipment for debris removal. In addition, the applicant has provided preliminary information as to the estimated maximum quantities of concrete foundation debris and soil materials to be excavated, and the location of onsite storage areas for these materials. Finally, an alternatives analysis was submitted addressing the relative risks to environmental resources associated with various methods for further assessing the presence and extent of "constituents of potential concern" (COPCs) beneath the former industrial structures proposed for removal.

Based upon these investigations, Commission staff has had the opportunity to more fully analyze the proposed scope of work's potential impacts on coastal resources. In addition, Commission staff has met with the staff of the North Coast Regional Water Quality Control Board, the applicant, and their consultants regarding various coastal resource issues of concern. As a result of these meetings and consultations, the project as

originally approved by the City of Fort Bragg in October 2005 has been subsequently amended for purposes of the Commission's hearing *de novo* to address the concerns raised by Commission staff. The project as amended includes provisions for collecting soil samples from select areas adjacent to the foundation perimeters (outside the foundation footprint) prior to removal of the foundations; however, removal of the foundations is not conditioned on whether these samples are collected or the analytical results of the samples. In the event physical constraints preclude collection of specific perimeter samples prior to foundation removal (e.g., personnel or equipment access is impeded by foundation layout), these samples will be collected following removal of the foundations. Based on the results of the analysis of the perimeter samples, additional pre- or post-foundation removal perimeter samples may be collected as specified in the Work Plan. The results of this analysis would provide useful information for ensuring that the nature and extent of contamination is adequately characterized so that necessary immediate excavation and removal or capping of soils containing COPC can be performed during the proposed project and so that the site may be appropriately managed through subsequent remedial actions. If substantial contamination or remedial work is necessitated beyond the contingencies incorporated within the revised work plan, as determined by the Executive Director, a permit amendment is first required to be secured before any expanded scope of clean-up could be commenced.

With respect to the proposed interim cover for areas where foundations and/or soil have been removed and where COPC concentrations in remaining soil exceed cleanup levels, the revised work plan modifies the previous proposal for using backfilled clean gravel material and instead identifies a variety of low-permeable materials, including fine-grained materials such as clay or silt, asphalt, concrete, geo-textile fabric for capping the building foundation and soil removal locations. The proposed project changes to: (1) conduct supplemental perimeter testing of soils around the perimeter of the building foundations, and then either promptly excavate and remove for stockpiling or disposal subsurface contaminants or cap them; and (2) to use more impervious capping materials alleviates concerns raised during the Substantial Issue review of the appeal that removing the building foundation materials would expose contaminants that might not be appropriately removed or capped and allow such contaminants to migrate into environmentally sensitive habitat before full remediation of the COPCs occurs at a later date. With these revised measures in place, the potential significant adverse impacts to coastal resources associated with the removal of the building foundations have been mitigated to less than significant levels.

In addition, to minimize the amount of landform alteration, the revised work plan further details the amount of debris removal to be undertaken at the bluff face and along blufftop margins of the project site, essentially scaling-back the scope of the work to visible debris and also soil with COPC concentrations exceeding cleanup levels, with provisions for leaving such materials in place if their removal would result in significant impacts to coastal resources from increased erosion, mass-wasting, or sedimentation. Confirmation soil sampling for specified COPCs would also be undertaken.

Staff recommends that the Commission approve the development with special conditions that would ensure that the project is conducted in a manner fully in compliance with the policies and standards of the City's LCP regarding the protection of environmentally sensitive resources and coastal water quality, and the avoidance of geologic instability.

Accordingly, staff recommends the Commission impose Special Condition No. 1 that requires the applicant to conduct the project consistent with the proposed foundation removal, additional investigation, and interim remediation measures work plans, as subsequently revised, and incorporating all recommended water quality best management practices as set forth in the stormwater pollution prevention plan prepared for the project.

In conjunction with requiring that the scope of work be performed pursuant to the revised work plans and related mitigation measures such that significant impacts to water quality are avoided, staff is recommending other special conditions to ensure the project's consistency with applicable policies of the City's certified LCP and the access policies of the Coastal Act regarding the protection of environmentally sensitive resources, the avoidance of geologic instability, and the protection of archaeological resources:

Special Condition No. 2 establishes specific operational performance standards and mitigation measures to be employed in and around the areas adjoining the wetlands on the project site where building foundation removal activities are to be conducted.

Special Condition No. 3 requires that the project be conducted pursuant to the conclusions and recommendation of the various biological resource assessments prepared for the project, including mitigation measures to ensure that significant adverse impacts to environmentally sensitive coastal bluff, rocky intertidal, and offshore sea stack plant and animal habitat areas are avoided or reduced to less than significant levels.

Special Condition No. 4 requires that the project be conducted pursuant to the conclusions and recommendation of the geo-technical evaluation prepared for the project, including mitigation measures to ensure that significant exposure to or instigation of geologic instability is avoided in the staging and operation of heavy mechanized equipment on the bluff face and blufftop margins.

Special Condition No. 5 requires the applicant to comply with the recommendations of the archaeological report prepared for the project that if an area of cultural deposits is discovered during the course of the project, all development must cease and a qualified cultural resource specialist must analyze the significance of the find. To recommence development following discovery of cultural deposits, the applicant is required to submit a supplementary archaeological plan for the review and approval of the Executive Director to determine whether the changes are *de minimis* in nature and scope, or whether an amendment to this permit is required.

Special Condition No. 6 requires that the applicant, prior to commencement of the proposed development on the coastal bluff face and blufftop portions of the site obtain all

requisite permits and authorizations from the National Marine Fisheries Service (NMFS) regarding any fish, migratory birds, marine mammals, or other flora and fauna subject to that agency's authority.

Special Condition No. 7 requires that the applicant, prior to commencement of the proposed remediation work on all portions of the site, provide evidence to the Executive Director that all necessary permits and authorizations have been obtained from the U.S. Fish and Wildlife Service (USFWS) regarding any fish, migratory birds, marine mammals, or other flora and fauna subject to that agency's authority.

Special Condition No. 8 similarly requires that the applicant obtain all requisite permits and grants of approval for the project from the Mendocino County Air Quality Management District prior to initiation of the proposed development.

Staff recommends that the Commission find the project, as conditioned, is consistent with the policies contained in the City's certified LCP and the Coastal Act public access and recreation policies.

The motion to adopt the staff recommendation is found on page 11 of the report.

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### **STAFF NOTES:**

#### **1. Procedure.**

On December 14, 2005, the Coastal Commission found that the appeal of the City of Fort Bragg's conditional approval of a coastal development permit for the subject development raised a substantial issue with respect to the grounds on which the appeal had been filed, pursuant to Section 30625 of the Coastal Act and Section 13115 of Title 14 of the California Code of Regulations. As a result, the City's approval is no longer effective, and the Commission must consider the project *de novo*. The Commission may approve, approve with conditions (including conditions different than those imposed by the City), or deny the application. Since the proposed project is within an area for which the Commission has certified a Local Coastal Program (LCP) and is within the area between the first public road and the sea, the applicable standard of review for the Commission to consider is whether the development is consistent with the City's certified LCP and the public access and recreation policies of Chapter 3 of the Coastal Act. Testimony may be taken from all interested persons at the *de novo* hearing.

#### **2. Submittal of Additional Information by the Applicant / Project Revisions.**

For the purposes of *de novo* review by the Commission, the applicant has provided Commission staff with supplemental information consisting of: 1) biological assessments of the rocky intertidal and coastal bluff environmentally sensitive habitat areas (ESHAs)

on the project site; 2) a geotechnical analysis of the blufftop margins as to their stability and bearing strength to support heavy equipment operations associated with the work activities in those locales; 3) an estimate of excavation and stockpiling quantities of building foundation debris and underlying soil and the location of these storage areas relative to environmentally sensitive areas; 4) an alternatives analysis addressing the relative benefits and risks associated with retention versus removal of the building foundations in conducting further assessments of the scope and extent of constituents of potential concern (COPCs) beneath these sites; and (5) estimation of the quantities of building foundation and soil materials to be stockpiled and the location of the stockpile areas. The supplemental information addresses issues raised by the appeal and provides additional information that was not a part of the record when the County originally acted to approve the coastal development permit.

As a result of the review of these and other application materials, Commission staff identified aspects of the project where consistency with the policies and standards of the LCP, especially those regarding the protection of coastal water quality and biological resources, were found to be deficient. Specific project modifications were in turn identified that would bring the project into conformance with these LCP provisions. In coordination with the staff of the North Coast Regional Water Quality Control Board, Commission staff discussed these concerns and suggested project changes with the applicant, who subsequently amended the project application for purposes of the Commission's hearing *de novo* (see Exhibit No. 6, pages 1 through 13). These project changes entail: (1) provisions for pre-demolition testing of perimeter areas around select building foundations with known or suspected hazardous materials contamination; (2) identification of low-permeable interim capping materials for foundation and soil removal areas where COPCs exceed cleanup levels; and (3) further specification of the scope of the debris removal activities from the coastal bluff areas.

### **3. Continued Hearing *De Novo*.**

The *de novo* hearing on the subject development had previously been scheduled for the Commission's April 12-14, 2006 meeting in Santa Barbara. However, after publication of the staff report on March 30, 2006, the applicants exercised their automatic right for one postponement and the hearing was continued. The applicant indicated they were requesting the postponement to allow more time to respond to the staff recommendation as set forth in the March 30, 2006 staff report. This revised staff report is similar to the report prepared for the previously scheduled April 14, 2006 hearing, but has been modified in the following ways:

- Explanation has been included in the staff summary as to why prior concerns regarding the removal of the building foundations and the potential release and mobilization of contaminants have been addressed;
- Clarification has been made in Special Condition No. 1 that the proposed additional testing around the perimeter of select building foundations is not discretionary and must be performed;



- Former Special Condition No. 6, requiring demonstrated conformance with the requirements of the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS) for activities over the entire project site, has been restructured into Special Condition No. 6 and 7, whereby demonstrated conformance with NMFS requirements for activities on the bluff face and blufftop portions of the site is addressed in Special Condition No. 6 and demonstrated compliance with requirements of the USFWS for project activities on all portions of the site is addressed under Special Condition No. 7;
- New Findings Section IV.B has been inserted explaining the relative roles of the Commission and the Regional Water Quality Control Board with respect to their permitting and oversight authorities and interagency coordination;
- New Findings Sections IV.J and IV.K have been inserted explaining how the project is subject to the review and/or permitting authority of the NMFS and USFWS, respectively; and
- All sequential special conditions and findings sections affected by the above-listed insertions have been renumbered.

#### **4. Review of Project Changes for Requisite Permit Amendments.**

The Commission has received written and oral communications from the applicant conveying its concerns over project delays that might result from the need to secure permit amendments for changes to the project due to unexpected field conditions at the project site that might be encountered after commencement of work activities. The applicant indicates that as immediate review and approval of any needed changes to the work plan may be authorized on an ad hoc basis in the field by the staff of the North Coast Regional Water Quality Control Board, the delays associated with the Commission's issuance of permit amendments through a potentially lengthy formal public hearing process could frustrate their efforts for timely completion of the project. To prevent such an occurrence, the applicant has requested that the wording of Special Condition Nos. 1.B, 3.B, 4.B, and 5 be altered to remove the requirement that the Executive Director review proposed project changes in order to determine the need for a permit amendment.

While staff can appreciate that Commission review of any needed permit amendment would affect the applicant's compressed timeline for completion of assessment and remediation of the site, staff nonetheless observes that: (1) the need to change a project, though uncommon, sometimes does occur; (2) the Regional Board does not implement the Coastal Act and, as directed by Section 13166 of the Commission's administrative regulations (14CCR §13001 *et seq.*), the Commission must review changes to the project to ensure that they are consistent with the Coastal Act and grant any necessary authorization pursuant to specified public hearing standards; (3) the submitted work plan/project description already has numerous contingencies built in that identify different courses of action depending on what the field situation encountered is and thus the need for a permit amendment would likely be avoided in many instances; (4) provisions exist within the Coastal Act for issuance of emergency permits in cases where

unexpected project changes need to be expeditiously performed to avoid risks to public safety or health; and (5) any proposed changes to the project that are not of an emergency nature and were not contemplated in the work plan rightfully should require a permit amendment so the Commission has the opportunity to determine if the proposed changes are consistent with the Coastal Act. Therefore, staff has not incorporated the applicant's proposed changes that would eliminate the requirement that the Executive Director review proposed project changes in order to determine the need for a permit amendment.

**5. Limitations on Commission's Actions Regarding Water Quality.**

Article Two, Chapter Five of the Coastal Act (California Public Resources Code Sections 30410-30420) establishes specific limitations on the actions of the Commission in relation to the authority of other state regulatory agencies. With respect to the administration of water quality, Section 30412(b) directs that the Commission shall not "...modify, adopt conditions, or take any action in conflict with any determination by the State Water Resources Control Board or any California regional water quality control board in matters relating to water quality or the administration of water rights." Exceptions to these limitations are provided to permit the Commission to exercise its authority to regulate development as granted by the Coastal Act, and certain aspects of publicly owned wastewater treatment works located within the coastal zone. As to the former exception, under Sections 30230 and 30231 of the Coastal Act, the Commission is charged with assuring that marine resources, with particular emphasis on the productivity, health, and population levels of its biological components, are maintained, enhanced, and where feasible restored. Commission staff notes that to date the subject site investigation project has been undertaken voluntarily by the applicants with the proposed investigation activities having been reviewed and consented to at the Regional Water Quality Control Board staff level. Consequently, no formal determination has specifically been made by a regional water quality control board or state water resources board proper for which the Commission's actions on the related coastal development permit might conflict.

The state and regional water control boards have direct and/or delegated authority to regulate the chemical and thermal characteristics of surface and groundwater resources, specifically in controlling the presence and concentrations of chemical constituents within the aqueous environment, in the interest of protecting human health, biological resources, and other "beneficial uses" of the waters of the state and the nation. The Commission acknowledges the distinctions in these responsibilities and limits its actions accordingly to preclude conflicts in instances where a water board has made determinations on a development project that is also subject to the Commission's authority, particularly with regard to the setting of quantitative limitations on point and non-point source pollutants through the issuance of National Pollution Discharge Elimination Permits, waste discharge requirements, cease and desist directives, and cleanup and abatement orders.

The Commission's hearing *de novo* of the development is undertaken pursuant solely to the authority duly granted to the Commission by the Coastal Act, is limited to ensuring the approved development's conformance with the standards of the certified Local Coastal Program of the City of Fort Bragg (including those related to the qualitative protection of coastal waters) and the access policies of the Coastal Act, and in no way represent actions which modify, supplant, condition, or otherwise conflict with a determination of either the state or any regional water quality control board in matters relating to water quality or the administration of water rights. Staff also notes that staff members of the Commission and the North Coast Regional Water Quality Control Board have consulted with one another and developed coordinated and mutually agreed upon measures for ensuring that both agencies concerns are met in the review and administration of the subject project.

**6. Availability of Additional Development and Local Agency Action Details.**

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

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

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

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

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**I. MOTION, STAFF RECOMMENDATION DE NOVO, AND RESOLUTION:**

**Motion:**

I move that the Commission approve Coastal Development Permit No. A-1-FTB-05-053 pursuant to the staff recommendation.

**Staff Recommendation of Approval:**

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings.

The motion passes only by affirmative vote of a majority of the Commissioners present.

**Resolution to Approve Permit:**

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development, as conditioned will be in conformity with the certified City of Fort Bragg LCP, is located between the sea and the nearest public road to the sea and is in conformance with the public access and public recreation policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

**II. STANDARD CONDITIONS:** See attached.

**III. SPECIAL CONDITIONS:**

**1. Scope of Approved Development**

- A. This Coastal Development Permit authorizes: (a) the removal and stockpiling of concrete and reinforcement steel building foundation materials from a 26 structure complex of former industrial buildings; (b) the excavation, stockpiling, and/or disposal of underlying soil with COPC concentrations exceeding cleanup levels; (c) the excavation and extraction of buried “geophysical anomalies” from Parcels 3 and 10; and the extrication of visible debris and excavation and removal for stockpiling and/or disposal of any underlying, near-surface soil with COPC concentrations exceeding cleanup levels from Glass Beaches 1, 2 and 3 at Georgia-Pacific Corporation’s former California Wood Products Manufacturing Facility, situated at 90 West Redwood Avenue, Fort Bragg, as further detailed and conditioned, in the following documents:

- *Workplan for Foundation Removal, Additional Investigation, and Interim Remedial Measures*, Acton Mickelson Environmental, Inc., March 21, 2005;
- *Addendum #1 to Workplan for Foundation Removal, Additional Investigation, and Interim Remedial Measures*, Acton Mickelson Environmental, Inc., May 6, 2005;
- *Addendum #2 to Work Plan for Foundation Removal, Additional Investigation, and Interim Remedial Measures*, Acton Mickelson Environmental, Inc., August 19, 2005;

- *Response to RWQCB Comments on Work Plan for Foundation Removal, Additional Investigation, and Interim Remedial Measures*, Acton Mickelson Environmental, Inc., September 22, 2005;
  - *Revised Appendix D for Work Plan for Foundation Removal, Additional Investigation, and Interim Remedial Measures*, Acton Mickelson Environmental, Inc., September 28, 2005;
  - *Clarification and Modification to Work Plan for Foundation Removal, Additional Investigation, and Interim Remedial Measures Dated March 21, 2005, Addenda #1 and #2 to the Work Plan for Foundation Removal, Additional Investigation, and Interim Remedial Measures Dated May 6 and August 19, 2005, Respectively, and Response to RWQCB Comments Dated July 18, 2005 Former Georgia Pacific California Wood Products Manufacturing Facility Fort Bragg, California*, Acton Mickelson Environmental, Inc., March 28, 2006; and
  - *Stormwater Pollution Prevention Plan for Foundation Removal, Additional Investigation, and Interim Remedial Measures*, Acton Mickelson Environmental, Inc., September 28, 2005.
- B. The permittee shall undertake the removal, excavation, stockpiling, and disposal activities as proposed in accordance with the above-listed plans and shall implement all collection and testing of soil samples for COPCs and all mitigation measures contained and described therein. Any proposed changes to the work plans shall be reported to the Executive Director. No changes to the work plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

**2. Performance Standards for Development Adjacent to Wetlands**

The permittee shall undertake the remediation development proposed for areas adjacent to the wetlands on the project site as delineated in *Jurisdictional Waters and Wetlands Delineation* (TRC Companies, Inc., August 2004) and shall implement all mitigation measures contained therein including but not limited to the following measures as modified below:

- a. Solid board-on-board fencing shall be erected to protect the Log Pond from erosion and siltation at all locations less than 50 feet from the Powerhouse or any other location where subsurface disturbance is to occur;
- b. Temporary fencing shall be erected around the two industrial processing ponds located west and southwest of the Fuel Barn to prevent the encroachment of heavy equipment into the environmentally sensitive habitat areas;
- c. No equipment, materials or stockpiles shall be located within 50 feet of the ponds;

- d. To the maximum extent feasible, foundation removal and IRM activities in the vicinity of the Fuel Barn and Powerhouse structures shall be staged from the north side of the structures. No materials may be stockpiled on the berm/roadway that is located between these structures and the Mill Pond;
- e. All stockpiles areas, including hazardous waste storage areas and non-hazardous soil, debris and concrete storage areas shall be located a minimum of 50 feet from delineated wetlands and other Environmentally Sensitive Habitat Areas; and
- f. Prior to initiation of removal and excavation activities in the vicinity of the Boiler Fuel Building foundation, the permittee shall have the boundary of the wetland staked by a qualified wetlands biologist. If the removal/excavation activities would occur within 50 feet of the wetland, the boundary shall be fenced with temporary construction fencing. The operation of construction equipment and storage of materials and equipment shall be prohibited within the wetland area.

### **3. Protection of Marine and Coastal Biological Resources**

- A. All removal, excavation, stockpiling, and disposal activities authorized by this Coastal Development Permit shall be performed consistent with the conclusions and recommendations contained in: (1) *Jurisdiction Determination and Habitat Assessment* (TRC Companies, Inc., August 2003); (2) *Botanical Field Study of Some of the Bluff Areas at the GP Mills Site* (Teresa Scholars, Biological Consultant, undated); (3) *Late Season Botanical Survey for the GP Mill Site Bluffs* (Teresa Scholars, Biological Consultant, August 16, 2005); (4) *Avian Habitat Utilization and Impact Assessment* (WRA Environmental Consultants, January 2006); (5) *Rocky Intertidal Environmentally Sensitive Habitat Area Engineering and Biological Assessment* (Acton-Mickelson Environmental, Inc. and WRA Environmental Consultants, February 2006); (6) *Conceptual Glass Beach 3 Mitigation and Monitoring Plan* (Teresa Scholars, Biological Consultant, September 22, 2005); and (7) *Conceptual Revegetation Plan Former Georgia-Pacific California Wood Products Manufacturing Facility* (Circuit Rider Productions, Inc., September 22, 2005), and shall implement all mitigation measures contained therein including but not limited to the following measures as modified below:

#### **For the Protection of Coastal Bluff Avian Resources:**

- **Sensitive Avian Species Nesting Survey** - **PRIOR TO COMMENCEMENT OF DEBRIS EXTRICATION ACTIVITIES AT GLASS BEACHES 1-3 AND ON PARCELS 3 AND 10**, and consistent with the applicant's proposed project description, the permittee shall submit for review and approval of the Executive Director, a survey of the associated coastal bluff face and blufftop margin areas, conducted by a

qualified biologist or resource ecologist with specific knowledge of threatened, endangered, species of special concern, or treaty-protected migratory birds ("sensitive avian species") which fully evaluates any and all indications of the presence or absence of these species, and which demonstrates compliance with all of the following:

1. No less than 14 days and no more than 30 days prior to the beginning of construction, a qualified biologist or resource ecologist shall conduct a non-invasive survey for any sensitive avian species nesting in the coastal bluff face and blufftop margin areas. If the survey finds any indication that nesting sensitive avian species with unfledged young are present on the bluff face and blufftop margins, project work shall be limited consistent with the mitigation measures identified in the *Avian Habitat Utilization and Impact Assessment* (WRA Environmental Consultants, January 2006), including the imposition of exclusionary buffer areas identified therein, however, in no case shall the exclusionary buffer be less than 100 horizontal feet from the affected nesting site. Work within the exclusionary buffers shall not proceed until a subsequent bird survey has been conducted by a qualified biologist or resource ecologist that demonstrates that the young have fledged and are not nesting in the for thirty (30) continuous days, and such surveys have been submitted for the review and approval of the Executive Director.
2. If no indications of nesting sensitive avian species are found during the initial survey, no additional surveys or mitigation is required, provided the project commences within 30 days of completion of the survey, and provided the project does not extend into the commencement of the nesting season of the sensitive avian species.
3. If more than 30 days have passed since completion of the initial survey and work has not commenced, or if it is determined that work will extend past the commencement of the nesting seasons of the various sensitive avian species (see *Avian Habitat Utilization and Impact Assessment*, Tables A1, A2, and A3) a new survey shall be conducted and submitted for the review to the Executive Director, no more than 30 days and no less than 14 days prior to the start of the nesting-season or the start of work, and submit a report to the Executive Director for review and approval. If any survey discovers indications of sensitive avian species nesting in the coastal bluff face and blufftop margin areas, human activity in the affected area(s) shall be minimized and construction shall cease until a sensitive avian species survey has been conducted by a qualified biologist or resource ecologist that demonstrates that all young have fledged and are not nesting in the coastal bluff face and blufftop margins for thirty (30) continuous days, and such

surveys have been submitted for the review and approval of the Executive Director;

- Following completion of the excavation, all areas that are excavated or otherwise left with exposed soils shall be revegetated with native plant species. Revegetation of disturbed areas in Glass Beaches 1 through 3 and in the geophysical survey areas of Parcels 3 and 10 shall be performed in accordance with the Conceptual Revegetation Plan. The permittee shall provide irrigation, maintenance and replacement of revegetated areas, as needed, to ensure the long-term viability of the plants;

For the Protection of Rare Plant Biological Resources:

- **Final Plant Restoration Monitoring Program - PRIOR TO COMMENCEMENT OF DEBRIS EXTRICATION ACTIVITIES AT GLASS BEACHES 1-3 AND ON PARCELS 3 AND 10**, the applicant shall submit for review and written approval of the Executive Director, a final detailed restoration monitoring program designed by a qualified wetland biologist for monitoring of the plant restoration site. The monitoring program shall at a minimum include the following:
  1. Performance standards that will assure achievement of rare plant species replacement at coverages, densities, and associative compositions, as applicable, that existed in the areas prior to development.
  2. Provisions for surveying the relative cover and density of each plant species of special concern found in the proposed development area prior to the commencement of construction.
  3. Provisions for monitoring and restoration of the affected areas in accordance with the approved final monitoring program for a period of five years.
  4. Provisions for submission of annual reports of monitoring results to the Executive Director by November 1 each year for the duration of the required monitoring period, beginning the first year after completion of the project. Each report shall include copies of all previous reports as appendices. Each report shall also include a "Performance Evaluation" section where information and results from the monitoring program are used to evaluate the status of recolonization of the affected plant species in relation to the performance standards.
  5. Provisions for submission of a final monitoring report to the Executive Director at the end of the five-year reporting period. The final report must be prepared in conjunction with a qualified botanist or wetlands biologist. The report must evaluate whether the restoration sites conform with the goals, objectives, and performance standards set forth above. The report must address all of the monitoring data collected over the five-year period.



If the final report indicates that the success standards have not been achieved, the applicant shall submit a revised or supplemental restoration program to compensate for those portions of the original program which did not meet the approved success standards. The revised enhancement program shall be processed as an amendment to this coastal development permit.

The permittee shall monitor and restore the plan restoration sites in accordance with the approved monitoring program. Any proposed changes from the approved monitoring program shall be reported to the Executive Director. No changes to the approved monitoring program shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines no amendment is legally required;

- The locations of the rare plant species shall be flagged by a qualified botanist prior to commencement of the grading in bluff face and blufftop areas. Work shall only be permitted to occur within 100 feet of the outer perimeter of the rare plant populations if such work is necessary to perform the required environmental remediation activities on the property;
- No storage of equipment or stockpiling of materials shall be permitted within 100 feet of the outer perimeter of the rare plant populations;
- If debris or soil removal is necessary within the rare plant sites and/or the 100-foot buffer zones, the following measures shall be required:
  - a. If a rare species cannot be avoided, the botanist shall make a determination as to the feasibility of whether the species can be removed for the affected area prior to waste removal activities within the area and transplanted back to the affected area after work activities are completed.
  - b. If possible, work shall be conducted after seed set at locations where rare species are identified.
  - c. The botanist shall make a determination at each work location as to whether removal of the surface soil (containing the seed bank) for stockpiling is warranted. If warranted, and contingent upon analytical test results for the presence of chemicals of potential concern, stockpiled soil containing the seed bank shall be placed at the location (laterally and vertically) from which it was removed following completion of work activities. The permittee shall follow the recommendations for increasing the likelihood for survival of transplanted rare species as made by the botanist.
  - d. Following completion of restoration activities and revegetation, the botanist shall prepare a follow-up report that identifies all measures taken to protect rare plant species in each location and that evaluates the success of the mitigations in protecting and/or re-establishing the rare plant populations. The report shall be submitted to the Executive Director.

For the Protection of Rocky Intertidal Marine Biological Resources:

- Bluff face and blufftop margin grading activities shall only be conducted during the dry season, from April 15 through October 15;
- Excavation activities shall be initiated leaving a 4-foot-thick strip of fill/topsoil at the sea cliff to prohibit any sediment or water falling onto the rocky intertidal area. Upon completion of excavation activities to the east, the remaining 4-foot-thick strip shall be excavated in a manner to minimize soil or debris dropping onto the rocky intertidal area;
- Manual methods shall be used to remove any material that falls onto the rocky intertidal area;
- Excavated soil and debris shall be segregated and stockpiled on heavy-duty plastic at designated locations to the east of the work areas. These storage locations are paved with asphalt and are greater than 300 feet from the sea cliff;
- Holes and imperfections in the asphalt surface cover of the proposed stockpile areas shall be repaired prior to stockpile placement to prevent surface water infiltration;
- If necessary, both storage areas can be expanded onto existing paved surface to accommodate any additional storage requirements. Alternatively, excavated soil and debris may be transported to the central debris and soil stockpile areas as specified in the Excavation and Stockpile Quantification Estimate and Site Plan Map;
- Berms or ditches shall be constructed upslope of the work areas to intercept surface water runoff and redirect it to engineered locations away from the work areas; and
- Test pits will be backfilled with acceptable soil material, compacted, and covered to minimize rainfall or runoff infiltration.

For the Protection of Offshore Rocky Marine Biological Resources:

- Baseline observations of pinnipeds in the project area shall be conducted prior to initiating project activities. The baseline study shall be submitted to the Executive Director prior to commencement of development in coastal bluff face and blufftop margin areas. A morning and afternoon count shall be conducted the day prior to work activities are scheduled to commence. Observations shall also be made every morning work is scheduled to occur;
- Surveying and monitoring shall be conducted by a qualified biologist using minimum 8x42 magnification power binoculars or a spotting scope;
- Survey data shall include type of marine mammals present, numbers, age class, sex (if possible), location, time, tide, type of development activity being conducted, and whether animals respond to the activity. Rates of departure and arrival of animals to and from the haul-out shall be noted;

- If seals flush for a work-related reason, the portion of the project that caused the seals to flush shall be delayed until the animals leave the area;
  - As harbor seals are more likely to use haul-outs at low tide, work in areas in proximity to sensitive haul-out areas shall only be performed during the time period beginning and ending one and one-half hours before and following high tides to lessen the chance of harassment;
  - If a Steller sea lion is observed, work activities within the immediate blufftop edge area shall be postponed until the animal(s) leaves the project area;
  - Additional counts shall be conducted every two days for one week after all work is terminated to compare the use of haul-out sites without work-related disturbances pursuant to the pre- and post-activity behavior-specific monitoring recommendations of the National Marine Fisheries Service (NMFS); and
  - All surveying data shall be compiled and submitted to the Executive Director at the end of the construction season.
- B. The permittee shall undertake the removal, excavation, stockpiling, and disposal activities in accordance with the above-listed biological mitigation measures. Any proposed changes to the work plans shall be reported to the Executive Director. No changes to the work plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

**4. Avoidance of and Minimization of Exposure to Geological Instability**

- A. All removal, excavation, stockpiling, and disposal activities authorized by this Coastal Development Permit shall be performed consistent with the conclusions and recommendations contained in *Geotechnical Evaluation – Bearing Support for Heavy Equipment Loads*, Blackburn Consulting, Inc., February 2006), and all mitigation measures contained therein shall be implemented, including but not limited to the following:
- Heavy mechanized equipment operations shall be staged at locations a minimum of 20 feet landward from the blufftop edge;
  - Pickup trucks, rubber-tired backhoes may be operated within the 20-foot setback provided the ground in such locations is firm and non-yielding; and
  - Conditions along the base of the bluffs shall be inspected by a California Certified Engineering Geologist (CEG) prior to mobilizing all heavy mechanized equipment conducting work at bluff face and blufftop margin locations. If recent sea cave formation or other significant slope undercutting is observed, the light and heavy mechanized equipment operational and staging setbacks shall be adjusted accordingly

- B. The permittee shall undertake the removal, excavation, stockpiling, and disposal activities in accordance with the above-listed geotechnical evaluations. Any proposed changes to the work plans shall be reported to the Executive Director. No changes to the work plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

**5. Protection of Archaeological Resources**

- A. All removal, excavation, stockpiling, and disposal activities authorized by this Coastal Development Permit shall be performed consistent with the conclusions and recommendations contained in: (1) *Draft Site Specific Treatment Plan for Cultural Resources Georgia-Pacific Lumber Mill Fort Bragg, California* (TRC Companies, Inc., undated); and (2) *Archaeological Survey of the Georgia-Pacific Lumber Mill Fort Bragg, California* (TRC Companies, Inc., March 2003), and all mitigation measures contained therein shall be implemented, including but not limited to the following mitigation measures as modified below:

- Pre-construction surficial and shallow subsurface testing and evaluations shall be conducted in all areas proposed for excavation ~~shall~~ and the outer extent of known cultural resource areas shall be delineated by survey staking;
- In the event prehistoric archaeological resources (marked by shellfish remains, flaked and ground stone tools, fire affected rock, human bone, or other related materials) are unearthed during site excavation and grading activities, all work in the vicinity of the site shall cease immediately, the Executive Director shall be notified, and the proper disposition of resources shall be accomplished as required by City of Fort Bragg Land Use Development Code Section 18.50.030.D;
- If cultural resource artifacts or human remains are incidentally discovered within designated low site potential rated areas, all project work shall be halted in the affected area until an archaeologist and/or coroner has assessed the significance of the discovered materials; and
- Subsurface disturbances at the Former Sawmill #1, the Powerhouse, Glass Beaches 1 and 2 and on Parcel 10 shall be monitored by an archaeologist and Native American representative.

- B. If an area of cultural deposits is discovered during the course of the project:
- 1) All construction shall cease and shall not recommence except as provided in subsection 2) hereof; and
  - 2) Within 90 days after the date of discovery of such deposits, the permittee shall submit for the review and approval of the Executive Director, an Archaeological Plan, prepared by a qualified professional, that describes

the extent of such resources present and the actions necessary to protect any onsite Archaeological resources.

- 3) If the Executive Director approves the Archaeological Plan and determines that the Archaeological Plan's recommended changes to the proposed development or mitigation measures are *de minimis* in nature and scope, construction may recommence after the Executive Director receives evidence of recordation of the deed restriction required below
- 4) If the Executive Director approves the Supplementary Archaeological Plan but determines that the changes therein are not *de minimis*, construction may not recommence until after an amendment to this permit is approved by the Commission and the Executive Director receives evidence of recordation of the deed restriction required below.
- 5) Within 90 days after the date of discovery of such deposits, the permittee shall provide evidence to the Executive Director of an execution and recordation of a deed restriction, in a form and content acceptable to the Executive Director, stating that, in order to protect archaeological resources, development can only be undertaken consistent with the provisions of the Archaeological Plan approved by the Executive Director.

The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit approved by the Coastal Commission.

- C. An applicant seeking to recommence construction following discovery of the cultural deposits shall submit a supplementary archaeological plan for the review and approval of the Executive Director.

- 1) If the Executive Director approves the Supplementary Archaeological Plan and determines that the Supplementary Archaeological Plan's recommended changes to the proposed development or mitigation measures are *de minimis* in nature and scope, construction may recommence after this determination is made by the Executive Director.
- 2) If the Executive Director approves the Supplementary Archaeological Plan but determines that the changes therein are not *de minimis*, construction may not recommence until after an amendment to this permit is approved by the Commission.

- D. The permittee shall undertake the demolition, excavation, stockpiling, and

disposal activities in accordance with the above-listed archaeological resource evaluations. Any proposed changes to the work plans shall be reported to the Executive Director. No changes to the work plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

**6. National Marine Fisheries Service Approvals**

**PRIOR TO COMMENCEMENT OF DEBRIS EXTRICATION ACTIVITIES AT GLASS BEACHES 1-3 AND ON PARCELS 3 AND 10**, permittee shall provide to the Executive Director a copy of all permits, letters of permission, and/or authorizations to proceed as issued by the National Marine Fisheries Service (NMFS), or evidence that no permits or permissions are required. The applicant shall inform the Executive Director of any changes to the project required by the NMFS. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

**7. U.S. Fish and Wildlife Service Approvals**

**PRIOR TO COMMENCEMENT OF CONSTRUCTION**, permittee shall provide to the Executive Director a copy of all informal technical assistance consultations, permits, letters of permission, and/or authorizations to proceed as issued by the U.S. Fish and Wildlife Service (USFWS), or evidence that no permits or permissions are required. The applicant shall inform the Executive Director of any changes to the project required by the USFWS. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

**8. Conformance with Mendocino County Air Quality Management District Requirements**

**PRIOR TO COMMENCEMENT OF OPERATIONS AUTHORIZED UNDER THIS COASTAL DEVELOPMENT PERMIT**, the permittee shall submit to the Executive Director for review, a copy of all permits, licenses, grants of authority as required to be secured from the Mendocino County Air Quality Management District (MCAQMD), or evidence that no MCAQMD permit or authorization is necessary. The applicant shall inform the Executive Director of any changes to the project required by the MCAQMD. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

**9. Conditions Imposed By Local Government.**

This action has no effect on conditions imposed by a local government pursuant to an authority other than the Coastal Act.

#### **IV. FINDINGS AND DECLARATIONS:**

The Commission hereby finds and declares as follows:

##### **A. Incorporation of Substantial Issue Findings.**

The Commission hereby incorporates by reference the Substantial Issue Findings contained in the Commission staff report dated December 14, 2005.

##### **B. Limitations on Commission's Actions Regarding Water Quality.**

Article Two, Chapter Five of the Coastal Act (California Public Resources Code Sections 30410-30420) establishes specific limitations on the actions of the Commission in relation to the authority of other state regulatory agencies. With respect to the administration of water quality, Section 30412(b) directs that the Commission shall not "...modify, adopt conditions, or take any action in conflict with any determination by the State Water Resources Control Board or any California regional water quality control board in matters relating to water quality or the administration of water rights." Exceptions to these limitations are provided to permit the Commission to exercise its authority to regulate development as granted by the Coastal Act, and certain aspects of publicly owned wastewater treatment works located within the coastal zone. As to the former exception, under Section 30230 and 30231 of the Coastal Act, the Commission is charged with assuring that marine resources, with particular emphasis on the productivity, health, and population levels of its biological components, are maintained, enhanced, and where feasible restored. The Commission notes that to date the subject site investigation project has been undertaken voluntarily by the applicants with the proposed investigation activities having been reviewed and consented to at the Regional Water Quality Control Board staff level. Consequently, no formal determination has specifically been made by a regional water quality control board or state water resources board proper for which the Commission's actions on the related coastal development permit might conflict.

The state and regional water control boards have direct and/or delegated authority to regulate the chemical and thermal characteristics of surface and groundwater resources, specifically in controlling the presence and concentrations of chemical constituents within the aqueous environment, in the interest of protecting human health, biological resources, and other "beneficial uses" of the waters of the state and the nation. The Commission acknowledges the distinctions in these responsibilities and limits its actions accordingly to preclude conflicts in instances where a water board has made determinations on a development project that is also subject to the Commission's authority, particularly with regard to the setting of quantitative limitations on point and

non-point source pollutants through the issuance of National Pollution Discharge Elimination Permits, waste discharge requirements, cease and desist directives, and cleanup and abatement orders.

The Commission's hearing *de novo* of the proposed development is undertaken pursuant solely to the authority duly granted to the Commission by the Coastal Act, is limited to ensuring the approved development's conformance with the standards of the certified Local Coastal Program of the City of Fort Bragg (including those related to the qualitative protection of coastal waters) and the access policies of the Coastal Act, and in no way represent actions which modify, supplant, condition, or otherwise conflict with a determination of either the state or any regional water quality control board in matters relating to water quality or the administration of water rights. The Commission notes that staff members of the Commission and the North Coast Regional Water Quality Control Board have consulted with one another and developed coordinated and mutually agreed upon measures for ensuring that both agencies concerns are met in the review and administration of the subject remediation project.

### **C. Project History / Background.**

On February 11, 2005, the City of Fort Bragg Community Development Department filed a coastal development permit application from the Georgia-Pacific Corporation for the removal of concrete foundation materials, additional investigation, and if warranted, interim remedial measures to remove underlying soil with COPC concentrations exceeding cleanup levels at eleven building site locations within the 435-acre property of the applicant's former lumber mill complex located between Highway One the Pacific Ocean, and Noyo Bay, on the western shoreline of the City of Fort Bragg in west-central Mendocino County. The application also sought authorization to excavate and remove debris from three coastal bluff areas above so-called "Glass Beaches Nos.1-3." In addition, the applicants requested permission to excavate numerous locations on two of the mill site bluff top parcels to ascertain the composition of various metallic "geophysical anomalies" discovered in the area and to similar remove the materials if COPC concentrations exceed cleanup levels.

The purpose of the project is to provide further information regarding the extent of COPCs in soil and groundwater and allow areas on the mill site where initial soil borings have indicated the presence of COPCs to be uncovered so that they may be further assessed to provide data for a risk assessment and comprehensive remediation plan. Interim remediation measures, including the excavation of exposed soil with COPC concentrations exceeding cleanup levels, and temporary stockpiling for future *in-situ* treatment or removal to a appropriate disposal facility, and back-filling the excavations, would be implemented depending upon the presence, composition, and concentrations of any COPCs encountered. In addition, the applicants requested authorizations to remove refuse and debris materials at the coastal bluff sites to reduce the liability associated with possible injuries to humans and wildlife from the presence of these materials, especially



with regard to the on-going efforts by the Coastal Conservancy and the City to acquire and develop a public blufftop trail in these areas.

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

The decision of the planning commission was locally appealed to the Fort Bragg City Council. On October 11, 2005, the Council upheld its planning commission's conditional approval of the development, affecting no changes to the permit scope or conditions, and denied the appeal. The City then issued a Notice of Final Local Action that was received by Commission staff on October 17, 2005. The appellants filed their appeals to the Commission on October 27, 2005, within 10 working days after receipt by the Commission of the Notice of Final Local Action (see Exhibit No. 5).

At its meeting of December 14, 2005, the Commission found that the appeal raised a substantial issue of conformance of the project as approved with the certified LCP regarding protection of marine biological resources, protection of environmentally sensitive habitat areas, namely rocky intertidal areas and coastal bluffs, and the avoidance and minimization of geologic instability. The Commission also found that additional information was required to allow for a full analysis of the proposed development's consistent with the policies and standards of the City's LCP. These requisite informational items entailed: (1) an assessment of potential avian habitat utilization of the project site's coastal bluff areas; (2) engineering and biological analyses of the project's potential effects on rocky intertidal areas; (3) a geo-technical evaluation of the coastal bluff face and blufftop margins; (4) an estimation of foundation material and soil removal volumes and stockpile quantities; and (5) an alternatives analysis of other

characterization and assessment logistics, including sampling via the use of low-angle horizontal directional drilling with the foundation materials retained in place.

During the period from January through early March 2006, the requested supplemental information items were prepared by the applicant's consultants and forwarded to the Commission staff for review. Throughout March 2006, both Commission and Regional Water Quality Control Board staff members conferred over the various concerns relating to coastal resources and identified a set of project changes that if accepted by the applicant and incorporated into the project description would resolve many of the identified concerns. The suggested project modifications included: (1) provisions for pre-demolition testing for COPCs at perimeter areas around select building foundations; (2) requirements for the use of appropriately low-permeable capping back-fill in the areas where materials would be excavated and it is determined that soil with COPC concentrations exceeding cleanup levels would have to remain until full remediation of the site at a later date; and (3) further specification to the scope of the debris removal and confirmation testing to be performed on the site's coastal bluff face and blufftop margins to minimize disruption of bluff stability and bluff face and intertidal habitat.

On March 28, 2006, the applicant amended the project description for purposes of the Commission's *de novo* review of the appeal to incorporate the suggested changes (see Exhibit No. 6, pages 1 through 13).

**D. Project and Site Description.**

**1. Project Setting**

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

The project site properties are situated within the incorporated boundaries and the coastal development permit jurisdiction of the City of Fort Bragg. The site is designated in the City's Land Use Plan as "Heavy Industrial" (HI), implemented through a Heavy Industrial with Coastal Zone combining zoning designation (HI-CZ). The property is not situated within any viewpoint, view corridor, or highly scenic area as designated in the visual resources inventory of the LCP's Land Use Plan. Due to the elevation of the project site relative to the beach and ocean, and, until recently, the presence of intervening industrial structures and timber products processing and storage areas, no public views of blue water across the property from Highway One to and along blue-

water areas of the ocean and designated scenic areas exist. The views that are afforded across the property are limited to either glimpses of distant horizon vistas from Highway One, or lateral views of the coastal bluff areas as viewed from the public-accessible areas at Glass Beach to the north and from the beach areas to the west of Ocean Front Park at the mouth of the Noyo River.

## 2. Project Description

The development consists of foundation and debris removal, additional site investigation, and interim remedial measures, if necessary associated with the voluntary site assessment of the former Georgia-Pacific Corporation sawmill complex. Since October 2002, when the mill ceased production and closed, the site has undergone a series of assessments for reuse of the site. Preliminary evaluations as part of the Georgia-Pacific Mill Site Reuse Study and Specific Plan projects have been performed to assess the presence of COPCs resulting from past operations on the mill properties, including numerous soils and groundwater samples taken from the network of surface-grab, auger-bored and trench-excavated and monitoring well sample points on the site. In addition, to eliminate the source of any identified COPCs, much of the industrial machinery has been removed from the site and many of the former industrial buildings have been demolished (see City of Fort Bragg Coastal Development Permit Nos. CDP 1-03 and 2-04).

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

The current round of assessments authorized by the City's coastal development permit approval entail the removal of concrete building foundations from the 26 structure complex of former industrial buildings clustered on the central portion of the mill site inland of Soldier's Bay / Fort Bragg Landing and at the site of the mobile equipment shops to the northeast of the sawmill complex. The work to be performed at Glass Beaches 1-3 is located along the northwestern bluff face of the mill property, while the exploratory and material removal activities slated to be conducted on Parcels "3" and "10" are situated on the upper bluffs flanking the north and south sides of the Soldier Bay / Fort Bragg Landing inlet (see Exhibit Nos. 1-3). Heavy tractored and rubber-tired construction equipment including excavators, backhoes, dump trucks, and hand and power tools would be utilized to perform the concrete break-out, material excavation/extrication, and transportation to stockpile areas located along the eastern side of the sawmill / powerhouse / water treatment complex and equipment shop buildings, and inland of the Glass Beach and Parcel 3/10 sites (see Exhibit Nos. 6 and 8).

Once the concrete foundation rubble and refuse materials are removed from the building sites and bluff areas and secured at the designated storage locations, the exposed areas would be examined for the presence and extent of any underlying COPCs. A soils

sampling grid would be established over and around the exposed foundation areas. An adaptive management approach would be taken with respect to the specific spacing and number of sampling points. Soil samples would then be collected and analyzed for a variety of chemical constituents, including Total Petroleum Hydrocarbons as gasoline, diesel, diesel with silica gel cleanup, and motor oil (TPHg, TPHd, TPHdsgc, TPHo), solvents in the form of Volatile and Semi-Volatile Organic Compounds (VOCs), Polynuclear Aromatic Hydrocarbons (PAH), Polychlorinated biphenyls (PCBs), Organochlorine pesticides, Dioxins and furans, site-specific pesticides/herbicides, certain heavy metals subject to California water quality regulations, Hexavalent chromium, and tannins and lignin compounds.

The project as amended includes provisions for collecting soil samples from select areas adjacent to the foundation perimeters (outside the foundation footprint) prior to removal of the foundations; however, removal of the foundations is not conditioned on whether these samples are collected or the analytical results of the samples. In the event physical constraints preclude collection of specific perimeter samples prior to foundation removal (e.g., personnel or equipment access is impeded by foundation layout), these samples will be collected following removal of the foundations. Based on the results of the analysis of the perimeter samples, additional pre- or post-foundation removal perimeter samples may be collected as specified in the Work Plan.

As warranted by field conditions to be determined by the work site supervisor subject to criteria enumerated within the work plan, "interim remedial measures," including the further excavation of soils containing COPC concentrations exceeding cleanup levels to unspecified depths for either direct removal from the sites to an appropriate disposal facility or stockpiling of the materials on the mill property for in-place treatment or eventual transport and disposal would be implemented. Additional soil column testing for COPCs would be performed as warranted by site conditions and the determination of the site supervisor and/or regional water board staff.

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

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

**E. Protection of Coastal Water Quality and Marine Resources.**

**1. LCP Provisions**

Policy VI-3 of the City's LUP states:

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

Policy VI-4 of the City's LUP states:

*Changes in Runoff Patterns. Changes in runoff patterns which result from new development, either by virtue of changes in land forms or from increases in impervious surfaces, shall not cause increases in soil erosion or stream sedimentation, nor shall they disturb environmentally sensitive riparian or wetland habitats. Such changes may be allowed only if mitigation measures sufficient to allow for the interception of any material eroded as a result of the proposed development have been provided.*

LUP Policy VI-5/XI-2 further provides:

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

Section 18.61.022 of the City of Fort Bragg Zoning Code states, in applicable part:

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

**B. Runoff and soil erosion.**

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

*1. Runoff shall be controlled in new developments such that biological productivity and quality of coastal waters, marine resources*

*and riparian habitats is protected, maintained and where appropriate restored. New development shall not cause increases in soil erosion nor disturb wetland or riparian habitats.*

2. *Where there is the threat of such harm associated with new development, report or reports shall be prepared by a soils engineer, biologist and/or other qualified professionals to assess such threats and to recommend measures to eliminate or minimize harm.*

3. *The approving authority shall require that appropriate mitigation measures be adopted prior to project approval. Mitigation measures must be sufficient to intercept any eroded material and provide for disposal.*

4. *Among specific mechanisms or measures which shall be utilized where appropriate to minimize harm are the following:*

- a. *Stripping of vegetation, grading or other soil disturbance shall be done in a manner which will minimize soil erosion.*
- b. *Whenever feasible, natural vegetation shall be retained and protected.*
- c. *The extent of the disturbed area and the duration of its exposure shall be kept within practical limits.*
- d. *Either temporary seeding, mulching or other suitable stabilization measures shall be used to protect exposed critical areas during construction or other land disturbance.*
- e. *Drainage provisions shall accommodate increased runoff resulting from modified soil and surface conditions during and after development or disturbance. Such provisions shall be in addition to all existing requirements.*
- f. *Water runoff shall be minimized and retained on site whenever possible to facilitate water recharge.*
- g. *Sediment should be contained on site when feasible.*
- h. *Diversions, sediment basins and similar required structures shall be installed prior to any on site grading or disturbance.*
- i. *Any drainage systems required shall be completed and made operational at the earliest possible time during construction.*
- j. *Interceptor ditches shall be established above all cut and fill slopes and the intercepted water conveyed to a stable channel or drainageway with adequate capacity.*
- k. *Soil erosion and sediment control measures installed under this chapter shall be adequately maintained for one year after completion of the approved plan, or until such time as the soil is permanently stabilized to the satisfaction of the municipal engineer.*
- l. *Runoff from areas of concentrated impervious cover (e.g., roofs, driveways, roads) shall be collected and transported*

*to natural drainage channels with sufficient capacity to accept the discharge without undue erosion.*

5. *New development shall minimize the alteration of cliffs, bluff tops, faces or bases and other natural landforms. Such changes may be permitted by the approving authority only if mitigation measures sufficient to allow for the interception of any material eroded as a result of the proposed development have been provided.*

2. Discussion

The City's LCP sets forth criteria for the review of development projects proposed for areas delineated as being prone to impacts from stormwater runoff, sedimentation, and siltation from associated ground disturbances, natural landform alterations, or changes to site drainage. In general, the land use policies direct that the development be designed to protect and maintain the biological productivity and quality of coastal waters, marine resources, and riparian habitats, that optimum populations of marine organisms be maintained, that no increases in soil erosion or stream sedimentation result, nor disturbances environmentally sensitive riparian or wetland habitats occur, and that such changes be allowed only if mitigation measures sufficient to allow for the interception of any material eroded as a result of the proposed development have been provided. Furthermore, the alteration of cliffs, bluff tops, faces or bases, and other natural land forms are to be minimized and any such changes be allowed only if mitigation measures sufficient to allow for the interception of any material eroded as a result of the proposed development have been provided.

To implement these policies, the City's Zoning Code at Section 18.62.022.B.4 enumerates a variety of water quality best management practices and mitigation measures to be incorporated into the design of any development being proposed in a run-off impact prone area. These practices and measures include the temporal and spatial minimization of vegetation removal and ground disturbances, retention of the greatest amount of native vegetative cover practicable, use of various barriers and impoundments to control stormwater entry into or discharges from denuded/disturbed sites, and the mulching and revegetation of disturbed areas following completion of construction activities.

As detailed in the building foundation removal additional investigation, interim remediation measures, and stormwater pollution prevention plans, the project has incorporated a suite of the water quality best management practices and mitigation measures identified in Zoning Code Section 18.62.022.B.4 (see Exhibits 6 and 7). To ensure that significant impacts to water quality and sensitive coastal resources do not result from the development, the Commission attaches Special Condition No. 1. Special Condition No. 1 requires the applicant to implement the various proposed water quality control measures identified in the work plans. Therefore, as conditioned, the Commission finds the development to be consistent with the Water and Marine Resources policies and standards of the LCP.

**F. Development within and Adjacent to Environmentally Sensitive Habitat Areas (ESHAs).**

**1. LCP Provisions**

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

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

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

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

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

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

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

*The rocky intertidal areas along the coast south of Glass Beach to Noyo Bay contain extremely biologically rich tide pools, rocks, nesting grounds, bluffs and kelp beds. The bluffs and adjacent industrial activity form an effective buffer protecting these habitats from human disruption. They are presently in a relatively pristine condition and biologically quite*



*productive. In addition to limiting public access, the adjacent industrial land use should be closely monitored to assure these areas are not impacted, e.g., via water runoff. Rocky intertidal areas exist south of Noyo Bay which also must be protected, e.g., via setbacks for development on bluffs and close monitoring and mitigations to assure no significant increase in water runoff to these areas...*

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

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

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

B. *Specific Criteria.*

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

1. Sensitive habitat areas. Environmentally sensitive habitat areas shall include, but not be limited to the following:
  - a. Intertidal and marine areas.
  - b. Coastal bluffs
  - c. Wetlands...
- 3. Buffer areas. A buffer area shall be established for permitted development adjacent to environmentally sensitive habitat areas based on the standards enumerated in Appendix D of the Coastal Land Use Plan. The width of a buffer area may vary depending upon specific conditions. The buffer area should be a minimum of fifty (50) feet unless it is demonstrated that fifty (50) feet is unnecessary to protect the resources of the habitat area. Where substantial improvements or increased human impacts are involved, a much wider buffer area should be required. For a wetland, the buffer area should be measured from the landward edge of the wetland. For a stream or river, the buffer area should be measured landward from the landward edge of riparian vegetation or from the top edge of the bank (e.g., in channelized streams). Maps and supplemental information should be used to determine these boundaries. Standards for determining the appropriate width of the buffer area are contained in Chapter XVIII of the Coastal Land Use Plan.*
- 4. Bluff/riparian vegetation (BRV) areas. Developments proposed within the area designated bluff/riparian vegetation (BRV) on the Coastal Environmental Map shall be reviewed pursuant to the special review process set out in*

*Section XVII (E) of the Land Use Plan and the provisions of this section.*

- a. Prior to the issuance of a coastal development permit in BRV areas, the approving authority shall require an assessment of the impact on bluff and riparian vegetation, to be undertaken by a qualified biologist.*
- b. Where the assessment reveals the existence of an environmentally sensitive habitat area pursuant to the definitions contained in Chapter IX of the Coastal Land Use Plan, the necessary buffers and/or mitigation measures shall be imposed to assure habitat protection or restoration.*
- c. Standards for determining the appropriate width of required buffer zones are contained in this section and Section XVIII of the Coastal Land Use Plan... [Emphasis added.]*

## 2. Discussion

Although extensively modified since the late 1800s when the property was first cleared and graded for use as a shipping and rail terminus and for related forest products processing, the project site still contains a variety of environmentally sensitive habitat areas of varying biological integrity. These areas include impounded aquatic and emergent wetlands in the form of a series of lumber storage and fire suppression “log ponds,” riparian corridor remnants along original or re-aligned watercourses, uplifted marine terrace blufftop margins populated with rare plants, coastal bluff face areas containing potential nesting sites to a variety of shoreline avian species, and intertidal rocky habitat providing substrate for intermittently exposed tidepool and persistently submerged littoral flora and fauna. In addition, adjoining the site are offshore sea stack areas used as nesting, holding, and foraging habitat for a variety of marine mammals and waterfowl.

### Wetlands

A wetlands delineation and habitat assessment was prepared for the project site pursuant to Coastal Act definitions (see Exhibit Nos. 10 and 11). Although currently in a highly degraded state, the impounded areas on the terrace portions of the project site are recognized as ESHA under the City’s LCP and are subject to the policies and standards therein for protecting and restoring these areas in association with any development occurring within or adjacent to these areas.

### Coastal Bluffs

As observed in the foregoing quoted LUP sections and documented in recent studies,<sup>1</sup> the offshore rocks, rocky intertidal area and their immediate landward coastal bluff environs where the Glass Beach and Parcel 3/10 clean-up and investigations would be performed are coastal marine resources of particularly high ecological value. Adjacent to these areas are the various vegetation communities and component species on the coastal bluffs in proximity to the sawmill complex, Glass Beaches 1-3 and the headland areas flanking Soldier's Bay where the exaction work on Parcels 3 and 10 would be performed. Several listed rare and sensitive plant species, including Mendocino coast Indian paintbrush (*Castilleja mendocinensis*), Blasdale's bent-grass (*Agrostis blasdalei*), and short-eared evax (*Hesperovax sparsifolia* var. *brevifolia*) were found in this area during botanical surveys conducted in March and May 2005 (see Exhibit No. 12). From these data, recommendations were developed in subsequently prepared mitigation and monitoring programs and conceptual revegetation plans to reduce the potential significant adverse impacts of the proposed work activities to less-than-significant levels through a combination of impact avoidance strategies restoration actions (see Exhibit Nos. 13 and 14). These actions included the performance of follow-up botanical surveys for certain rare plant species which were not in bloom at the time the majority of the botanical assessment work was conducted.<sup>2</sup>

With regard to potential bird nesting uses in the coastal bluff and rocky intertidal areas where the work activities would be performed, the habitat assessment prepared for the terrestrial portions of the project site (see Exhibit No. 10) noted:

Potential nesting for migratory bird species including passerines, waterfowl, and raptors exists in a variety of habitats within the project area including industrial ponds, non-native grasslands, the nursery, and riparian areas to the north, Fort Bragg Landing Beach and the cliffs along the coast...

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

The federally threatened western snowy plover (*Charadrius alexandrinus novosus*) inhabits sandy beaches, salt pond levees, and shores of large alkali lakes and requires sandy, gravelly or friable soils for nesting.

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<sup>1</sup> "Field Report for A Marine Biological Survey of the Proposed Pacific Marine Farms Mariculture Facility at Fort Bragg, California," Applied Marine Sciences, Inc., September 2001

<sup>2</sup> A late-season botanical survey conducted in August 2005 subsequently found no late-blooming rare plants of concern, including supple fleabane (*Erigeron supplex*).

Potential nesting habitat, although degraded, exists for these species on the beach at Fort Bragg Landing...

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

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

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

A supplemental Avian Habitat Utilization and Impact Assessment was also prepared for the bluff face, intertidal, and offshore areas on and adjoining the project property (see Exhibit No. 15). This document reiterated many of the findings of the earlier habitat assessment and included recommendations that specific measures be taken in the interest of avoiding and minimizing significant impacts to bird nesting and marine mammal haul-out habitat use in these areas. These measures include the conducting of pre-construction breeding bird surveys, provisions for establishing fifty-foot-wide buffer areas around any such nests discovered during the surveys, and that clean-up and remedial work be postponed until all young in the nest(s) have fledged.

#### Rocky Intertidal and Offshore Rocks

An analysis of the rocky intertidal and offshore rock habitat areas was also prepared for the project (see Exhibit No. 16). Particular focus was made on identifying mitigation measures for avoiding and minimizing potential impacts to sensitive coastal resources in these areas, especially as relates to the sediment entrained in stormwater runoff

associated with the debris and soil removal activities, and the potential disturbance of marine mammals utilizing offshore rocky areas as pupping and haul-out habitat. This assessment document reiterated and identified a variety of mitigation measures to be employed to reduce potential water quality and human disturbance related impacts to these habitat areas, including the use of the various water quality best management practices identified in the work and stormwater pollution prevention plans, and specific survey, response, and monitoring actions to be taken to minimize potential disturbances to marine mammals.

#### Development in or Adjacent to ESHAs

Due to their susceptibility to disturbance and degradation from human activities and development, and because they provide habitat to especially rare or especially valuable plant and animal life, the LCP sets forth review standards for use in approving development in and in proximity to such designated sensitive areas. Most notably, the effects on the biological resources that are contained within or utilizes the ESHAs are to be considered, restrictions placed on the permissible uses within ESHAs, limiting them to those dependent upon and compatible with the resources therein, and requiring that the design and siting of the development or activity be appropriate for preventing impacts that would significantly degrade such areas.

The coastal bluff areas on the project site in which the proposed debris removal would be performed are identified as ESHA within the City's LCP. The LCP specifically identifies the coastal bluff ESHA as a significant resource, whose relatively pristine condition is due in part to the bluff area having been relatively undisturbed by human activity because of being closed off to the public for industrial use. The area has significant ecological value, especially in terms of the rare plants growing therein, its potential for seabird habitat, its largely undamaged adjoining tide pools and offshore rocks, and the fact that its four-mile length spans a relatively long distance along the shoreline. Pursuant to the LUP Policy IX-1, only uses dependent upon and compatible with the habitat resources therein may be permitted. The Commission finds that the project work proposed to be conducted within the coastal bluff ESHA is being conducted with the intention of restoring and improving these degraded areas to greater levels of biological productivity and habitat sustainability. Thus, as the removal of debris and soil with COPC concentrations exceeding cleanup levels requires entry into these areas to conduct the intended restoration, the use is dependent upon and compatible with the habitat resources within the coastal bluff areas.

Moreover, the adjoining rocky intertidal marine resources that flank the western side of the mill near where debris extrication is proposed and the wetlands on the terrace portions of the site in the vicinity of the proposed building foundation and soil removal areas are both specifically identified as ESHA in the City's LCP. As set forth in LUP Policy IX-1 and Zoning Code Section 18.61.025.A.1 any approved development adjacent to the wetlands and rocky intertidal ESHAs must be designed and sited so as not to degrade and be compatible with the continuance of those adjacent ESHAs.

Removal of the building foundations and excavation work to implement the interim remediation measures will entail work in proximity to the delineated wetlands on the terrace portions of the site. Moreover, the proposed work on and along the relatively remote coastal bluff areas above Glass Beaches 2 and 3 and above Soldier's Bay/Fort Bragg Landing Beach on Parcels 3 and 10 will entail the operation of heavy motorized construction equipment and the presence of human hand labor crews to remove debris and soil with COPC concentrations exceeding cleanup levels. To avoid potential water quality impacts associated with conducting this work during the wet season, these activities would be performed during the drier mid-April to mid-October timeframe, partially coinciding with the nesting season of several of the sensitive bird species who may be utilizing this portion of the project site for habitat.

Given the potential for impacts to sensitive habitat areas as disclosed in the various habitat assessments and botanical surveys prepared for the project and the specific mitigation measures to prevent noise and human activity impacts to species cited above, the Commission attaches Special Condition Nos. 2 and 3. Special Condition No. 2 sets specific operational performance standards for building foundation removal and excavation activities slated for areas in the vicinity of the wetlands on the project site. Special Condition No. 3 requires the applicant to implement the mitigation measures recommended in the various habitat assessments, botanical surveys, and conceptual restoration and revegetation plans prepared for the coastal bluff, rocky intertidal and offshore rock areas on or adjoining the project site. The mitigation measures identified in the rare plant surveys have been further modified to include a five-year monitoring program for ensuring that these species are reestablished to pre-project coverage, densities, and associative compositions, as applicable.

Therefore, the Commission finds that the project with the attachment of Special Condition Nos. 2 and 3 requiring the use of various operational performance standards for work conducted in the proximity of wetlands and implementing the mitigation measures identified in the various habitat assessments, botanical surveys, and restoration and revegetation plans conforms with the provisions of the certified LCP for the protection of environmentally sensitive coastal bluff and rocky intertidal marine areas, including Land Use Plan Policy IX-1 and Section 18.61.025 of the City of Fort Bragg Zoning Code.

**G. Avoidance of and Minimizing Exposure to Geologic Instability.**

**1. LCP Provisions**

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

*Alteration of Landforms. The alteration of cliffs, bluff tops, faces or bases, of other natural land forms shall be minimized in the Coastal Zone and especially in runoff ("RO") special review areas. Such changes may be allowed only if mitigation measures sufficient to allow for the*

*interception of any material eroded as a result of the proposed development have been provided.*

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

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

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

1. *A demonstration area of stability shall include the base, face and top of all bluffs and cliffs. The extent of the bluff top includes the area between the face of the bluff and a line described on the bluff top by the intersection of a plane inclined at a twenty (20) degree angle from a horizontal plane passing through the toe of the bluff or cliff, or fifty (50) feet inland from the edge of the bluff or cliff, whichever is greater.*

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

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

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

E. *Special Review Areas*

*Special review areas are designated on the map with abbreviations. Any proposed development on parcels which are located in whole or in part within the special review areas will require a report by a qualified professional as well as review of that report by the approving agency to ensure that Coastal Act and Local Coastal Program policies concerning*

*the sensitive resource or feature are properly treated in the specific proposed development. These review requirements are in addition to the bluff hazard review noted in Chapter XI. The types of special review areas and required reports are as follows: ...*

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

## 2. Discussion

Section 18.61.026 of the City of Fort Bragg's Zoning Ordinance requires that: (1) the approving authority review all applications for coastal development permits to determine threats from and impacts on geologic hazards, and in areas of known or potential geologic hazards such as shoreline and bluff top lots and areas; (2) a geologic investigation and report be prepared prior to development approval; and (3) any authorized alteration of cliffs, bluff tops, faces or bases and other natural landforms be minimized. As incorporated by reference within Section 18.61.026, Zoning Ordinance Section 18.61.022(B) further requires that for development occurring in runoff special review areas, as mapped on the Land Use Plan's Coastal Environment Map: (1) any material eroded as a result of development must be intercepted; (2) the impacts of runoff erosion, and natural landform modification be evaluated by a civil engineer; (3) the biological effects of runoff be reviewed by a biologist; and (4) the evaluation identify mitigation measures necessary to minimize the adverse effects of runoff.

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

Given the scope of the subject development (i.e., no proposed structural improvements), the geotechnical information submitted with the project application was prepared primarily for the staging and operation on the bluff face and along the blufftop edges of the mill property (see Exhibit No. 17). The report specifically addresses the subject debris removal work to be conducted within the coastal bluff areas, with the principal purpose



of the report being to determine how far back from the bluff edge heavy mechanized equipment can be safely stationed and operated given the potentially compromised structural competency and stability of this area (i.e., underlying fractured lithology with numerous underlying sea caves and groundwater seeps). In addition, as required under Zoning Code Section 18.61.022.B, an engineering and biological assessment of the project's potential effects on rocky intertidal habitat areas from erosion and sediment related impacts was also prepared (see Exhibit No. 16).

Based on the information in these reports, potential impacts from geologic instability related erosion, sedimentation, and slope failures could result if the proposed grading on the bluff face and blufftop margins did not employ appropriate water quality best management practices to avoid, contain and impound stormwater-entrained sediment or soil materials dislodged during excavation and debris extrication activities. Furthermore, given the friable character of the natural ground and fill at the immediate blufftop margins and the undercut conditions along some of the shoreline, the staging of heavy mechanized equipment in such areas could instigate slope failures in the form of slumping or mass wasting if positioned within 20 feet of the bluff edge.

To prevent the identified impacts to coastal resources, the Commission attaches Special Condition Nos. 1 and 4. Special Condition No. 1 requires that the sediment and erosion control measures identified in the various excavation, interim remediation measures, and stormwater pollution prevention plans be implemented as proposed by the applicants. Furthermore, Special Condition No. 4 requires that the constraints on the staging and operation of light and heavy mechanized equipment on coastal blufftop margin areas be followed during the performance of refuse and waste debris clean-up activities in that locale.

Therefore, the Commission finds that the proposed development as conditioned by the attachment of Special Condition Nos. 1 and 4 conforms with the provisions of the certified LCP for the avoidance and minimization of exposure to geologic instability, including LUP Policies IX-1 and XI-5/XI-2, and Section 18.61.026 of the City of Fort Bragg's Zoning Ordinance.

## **H. Archaeological Resources.**

### **1. LCP Provisions**

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

*Archaeological Discoveries During Construction. When in the course of grading, digging or any other development process, evidence of archaeological artifacts is discovered, all work which would damage such resources shall cease and city planning staff shall be notified immediately of the discovery. City planning staff shall notify the State Historical Preservation Officer and the Sonoma State University Cultural Resources*

*Facility of the find. At the request of the State Historical Preservation Officer, development at the site may be halted until an archaeological assessment of the site can be made and mitigation measures developed.*

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

*E.      Special Review Areas*

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

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

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

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

*a.      Archaeology Review (AR). A report must be prepared by a qualified archaeologist or anthropologist. The report shall identify and*

*evaluate all archaeological and paleontological resources, assess the effects of the proposed development on those resources and recommend resource preservation and mitigation measures. A copy of the report shall be submitted to the State Historical Preservation Officer and the Cultural Resource Facility at Sonoma State University for their review and comment. They shall be requested to comment on all aspects of the report, including the recommended preservation and/or mitigation measures.*

2. Discussion.

The City's LCP sets forth several policies regarding the protection of archaeological resources. LUP Policy XIII-2 requires that, when in the course of grading, digging or any other development process, evidence of archaeological artifacts is discovered, all work which would damage such resources be ceased and city planning staff be notified immediately of the discovery. The permitting authority is directed to notify the State Historical Preservation Officer (SHPO) and the Sonoma State University Cultural Resources Facility of the find. At the request of the State Historical Preservation Officer, development at the site may be halted until an archaeological assessment of the site can be made and mitigation measures developed. In addition, due to the designation on the Coastal Environment Map of portions of the project site as being situated within an archaeology special review area, Sections E and F.20 of LUP Chapter XVII reiterate the requirements that an archaeological investigation be prepared, mitigation and conservation measures be identified, and the report transmitted to the SHPO and Sonoma State University for further consultation.

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

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

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

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

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

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

The Commission finds that the requisite archaeological investigation was performed and identified mitigation measures for the protection of such resources. The report was transmitted to the SHPO and Sonoma State University as directed in LUP Policy XIII-2 and Sections E and F.20 of LUP Chapter XVII.

To assure that the mitigation measures identified in the archaeological investigation and proposed to be implemented by the applicant are carried out, the Commission attaches Special Condition No. 5. Special Condition No. 5 requires that all excavations in areas of

moderate and high cultural resource sensitivity be monitored by a qualified Native American observer. In addition, Special Condition No. 5 contains specific contingencies for the incidental discovery of any cultural resource artifacts or human remains whereby all project work in the affected area would be halted and a qualified archaeologist brought in to assess the significance of the materials and the coroner, respectively.

Therefore, the Commission finds that, as conditioned, the proposed project will protect archaeological resources and is consistent with the archaeological resources protection policies of the certified LCP.

**I. Public Access.**

**1. Coastal Act Provisions**

Projects located between the first public road and the sea and within the coastal development permit jurisdiction of a local government are subject to the coastal access policies of both the Coastal Act and the LCP. Coastal Act Sections 30210, 30211, and 30212 require the provision of maximum public access opportunities, with limited exceptions. Section 30210 states that maximum access and recreational opportunities shall be provided consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse. Section 30211 states that development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation. Section 30212 states that public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, adequate access exists nearby, or agriculture would be adversely affected.

**2. LCP Provisions**

Section III.F of the City of Fort Bragg's LUP describes public access conditions through the project site as follows:

*This area presently supports very limited public access. A few people go south from Glass Beach along the bluff faces and beaches to the more rugged beaches and rocky intertidal areas. While the area has attractive beaches, tide pools, and nesting grounds, all in a relatively pristine state, access from one beach to the next along the rugged bluff faces is both dangerous and damaging to the habitats. Thus, either vertical or lateral access in these areas would have to be provided on top of the bluffs, in what is now Georgia-Pacific's lumber storage and working areas. This would call for extensive fencing and security measures in order to avoid serious threats to public safety and private property. Access to the coastline at the sewage treatment plant should not be permitted.*

*This area presents an opportunity to preserve relatively pristine, sensitive and biologically rich sections of coastline. To do so would avoid at best costly and worst ineffective measures to protect public safety and private property. Given these considerations and the nearby presence of other locations where demand for coastal access can probably be met better, access in this area should be limited to controlled scientific and educational uses. However, if use of the mill land were to change substantially on the bluff top area, the possibility of access corridors should be reevaluated in light of these changes as well as the biological and safety considerations discussed above. [Emphasis added.]*

Policy III-8 of the City's LUP states:

*Access south of Glass Beach to the city limits shall be limited to educational and scientific uses.*

3. Discussion

In its application of the above policies, the Commission is limited by the need to show that any denial of a permit application based on this section, or any decision to grant a permit subject to special conditions requiring public access is necessary to avoid or offset a project's adverse impact on existing or potential access.

Although the subject property is situated on a portion of an uplifted coastal terrace that is between the first through public road (Highway One) and the sea, the property is surrounded on its eastern sides by a combination of general commercial, visitor-serving commercial, and medium- to high-density residential development (see Exhibit No. 3). The northern side of the project site abuts the coastal access and recreational facility known as "Glass Beach," a former municipal solid waste dump where beachcombing through the surf-polished glass and ceramic waste remnants are a popular attraction.

The City's land use plan does not designate the subject parcel for public access, and there does not appear to be any safe vertical access to the rocky shoreline down through the steep bluffs along the site's western and southern ocean and river shorelines that would avoid trespassing through the work areas on the property.

Public access and coastal recreational facilities are located within a ¼-mile radius of the project site, including the aforementioned Glass Beach and the parklands and beach access at the terminus of North Harbor Drive in Ocean Front Park on the northern shoreline of the Noyo River. Additional boat launching and public access facilities to the river and ocean are also available at various locations within Noyo Harbor.

The proposed development would not significantly increase the demand for public access to the shoreline and would have no other significant adverse impacts on existing or

potential public access. In addition, a variety of access facilities are located within a convenient proximity from the project site. Moreover, a major impetus for the coastal bluff debris removal portions of the project is to ameliorate the degraded conditions on the property's shoreline through elimination of debris and soil potentially containing COPCs exceeding cleanup levels for the eventual development of a blufftop coastal trail and parkland areas on the site as currently funded by the Coastal Conservancy.<sup>3</sup> Therefore, the Commission finds that the development, which does not include provision of public access, is consistent with the public access policies of the Coastal Act and the City's LCP.

**J. Visual Resources.**

**1. LCP Provisions**

Policy XIV-1 of the City of Fort Bragg's LUP states:

*New development within the city's Coastal Zone shall be sited and designated to protect views to and along the ocean, be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.*

Zoning Code Section 18.61.028 establishes the following standards with regard to the protection of coastal visual resources and special communities within the City of Fort Bragg:

- A. *The following shall be considered Coastal scenic corridors:*
  - 1. *Along the west side of Highway One.*
  - 2. *Along the bluff of the Noyo River including any area within viewing distance from the bluff, and the bluffs at the mouth of Pudding Creek within the Coastal Zone (CZ).*
  - 3. *The area along Highway 20, with views to the ocean and Hare Creek Cove within the Coastal Zone (CZ).*
- B. *Permitted development within the Coastal scenic corridors, where otherwise consistent with the Coastal Land Use Plan, shall, as determined by the approving authority:*
  - 1. *Minimize the alteration of natural landforms.*
  - 2. *Be visually compatible with the character of the surrounding area.*
  - 3. *Be sited and designed to protect views to and along the ocean and scenic coastal areas.*

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<sup>3</sup> See [http://www.coastalconservancy.ca.gov/sccbb/0505bb/0505Board04\\_Fort\\_Bragg\\_Waterfront.pdf](http://www.coastalconservancy.ca.gov/sccbb/0505bb/0505Board04_Fort_Bragg_Waterfront.pdf) for additional information regarding the Conservancy's Fort Bragg Waterfront Acquisition project.

4. *Wherever feasible, restore and enhance visual quality in visually degraded areas.*

C. *All new industrial development sited next to visitor serving land uses and facilities including public accessways shall be designed so as to minimize the visual impact on adjacent visitor serving land uses and facilities.*

2. Discussion.

The 435-acre project site is situated between Highway One, the Noyo River, and the Pacific Ocean (see Exhibit Nos. 2 and 3). The property is not situated within a designated highly scenic area as enumerated within the LUP. Thus, the majority of the LCP's policies and standards regarding visual resource protection are not applicable to the project site and its surroundings. The closest designated coastal scenic corridors are located at the public access facility at the mouth of Pudding Creek approximately ½ mile to the north of the project site and along the base of the bluffs along the lower Noyo River at the end of North Harbor Drive, to the south of the site. Both of these vista points have their ocean and coastline views oriented away from the subject property. Due to the property's location on private roads, the surrounding private land development pattern, and the elevation of the uplifted marine terrace on which the project is situated, public views to and along the ocean across the property from a third scenic corridor identified in the LCP as, "along the west side of Highway One," are limited.

Additionally, given the presence of mature vegetation and intervening structures between the highway and project parcel, views of the site from Highway One vantage points are limited to a relatively brief gap in the roadside industrial, commercial, and residential development along this route as it passes the property's highway frontage. Similarly because of the site's elevated terrace topography relative to the shoreline, views across the project property from along the West Elm Street public accessway to Glass Beach are limited to distant horizon views of the ocean and/or are oriented westward towards the shoreline and ocean areas directly offshore of Glass Beach.

The proposed stockpiling of concrete foundation demolition materials and soils at designated sites on the project parcels will inevitably cause some blockage of the limited coastal views through the site that do exist from public vantage points surrounding the property. However, as the stockpiling is a temporary use to be in place only until the subject materials are reused on site and/or disposed of at appropriate offsite facilities, will partially entail storage within existing vacated industrial buildings, and given the general industrial character of the site, the Commission finds that the proposed development will not result in significant long-term impacts to the visual resources of the project area.

Furthermore, as subsequent development is undertaken at the mill site pursuant to an reuse plan currently in development, the City and the Commission through review of any related LCP amendments and/or in consideration of any associated subsequent coastal



development permit actions, will have opportunities to assess the effects such structural redevelopment would have on visual resources of the area. These LCP amendment and permit reviews will also provide an occasion for ensuring that all related grading and utility extensions are similarly performed consistent with the LCP.

Therefore, the Commission finds that the proposed foundation removal, additional investigation, and interim remediation development as proposed and conditioned is consistent with the visual resource protection provisions of the certified LCP.

**K. National Marine Fisheries Service Review.**

Based on discussions with and correspondence received from the staff of the National Oceanic and Atmospheric Administration's (NOAA) Coastal Protection and Restoration Division (see Exhibit No. 18, pages 2-5), the portions of the project to be conducted on and near the coastal bluff are subject to the Marine Mammals Protection Act, as these activities have the potential to adversely affect harbor seals (*Phoca vitulina richardsi*) that utilize the adjoining offshore rocky areas as habitat. Accordingly, a "harassment permit" may be required to be obtained from NOAA's National Marine Fisheries Service (NMFS) prior to initiation of work in these areas. The applicant has not as yet either secured a harassment permit or received a determination from NMFS that such a permit would not be required. Therefore, to ensure that the project as may be conditionally authorized under any harassment permit is consistent with the project approval granted under Special Condition No. 1, the Commission attaches Special Condition No. 6. Special Condition No. 6 requires that prior to commencing clean-up and interim remediation measures on Glass Beaches 1-3 and/or Parcels 3 and 10, the applicant submit a copy of the harassment permit issued by the NMFS or evidence that no such permit is required. The applicant must also report to the Executive Director any proposed changes to the project required by the harassment permit and apply for any needed amendment to the coastal development permit to authorize such changes.

**L. U.S. Fish and Wildlife Service Review.**

As discussed within the biological assessments prepared for the development, the water surface and wetlands in and adjoining the lumber storage and fire suppression ponds, open grassland, and coastal bluffs in the vicinity of the proposed work sites represent areas where either observed or potential habitat utilization by several environmentally sensitive wildlife species subject to protections afforded by the Federal Endangered Species Act and/or the Migratory Bird Act, as administered by the U.S. Fish and Wildlife Service (USFWS), has been documented. These species include, but are not limited to brown pelican (*Pelecanus occidentalis californicus*), snowy egret (*Egretta thula*), white tailed kite (*Elanus leucurus*), bald eagle (*Haliaeetus leucocephalus*), and western snowy plover (*Charadrius alexandrinus nivosus*). In addition, as stated in correspondence received from the USFWS (see Exhibit No. 18, page 1), the project site also is considered as containing habitat conditions suitable for the endangered Howell's spineflower (*Chorizanthe howellii*) and Menzies' wallflower (*Elysium menziesii*). In addition, the

larval host plant Early Blue Violet (*Viola adunca*) for the endangered Behren's silverspot butterfly (*Speyeria zerene behrensii*) may also occur on portions of the former mill site.

The comment letter does not state that these species are actually present at the project site, but that conditions suitable to their growth on the subject property exist in the locality. The USFWS recommend that the Commission not approve the permit application until a complete and seasonally appropriate botanical survey of all areas affected by the project have been provided to the agency and an opportunity is afforded the USFWS to review site-specific information so that a determination could be made as to whether the proposed work would pose a risk to these listed species.

The botanical studies performed for the project specifically do not report that any of these species are found at the site. The studies surveyed for Howell's spineflower and Menzies' wallflower with negative results. However, the biological habitat assessment does not state whether Behren's silverspot butterfly or Early Blue Violet were specifically looked for during the site evaluation. The applicant has forwarded copies of the biological habitat assessments and botanical surveys to the USFWS for its review.

Therefore, the proposed project is being reviewed by the USFWS to ensure that the project as may be conditionally authorized by USFWS under any technical assistance consultation, incidental take statement, or harassment permit is consistent with the project approval granted under Special Condition No. 1, the Commission attaches Special Condition No. 7. Special Condition No. 7 requires that prior to commencing clean-up and interim remediation measures on the project site, the applicant submit a copy of all such consultations, permits and authorizations issued by the USFWS, or indication from that agency that no such permits or authorizations are required. The applicant must also report to the Executive Director any proposed changes to the project required by the harassment permit and apply for any needed amendment to the coastal development permit to authorize such changes.

**M. California Environmental Quality Act (CEQA).**

Section 13096 of the Commission's administrative regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as modified by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The Commission incorporates its findings on conformity with LCP policies at this point as if set forth in full. These findings address and respond to all public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the staff report. As discussed herein, in the findings

addressing the consistency of the proposed project with the certified LCP, the proposed project has been conditioned to be found consistent with the City of Fort Bragg LCP and the access and recreation policies of the Coastal Act. Mitigation measures which will minimize all adverse environmental impacts have been made requirements of project approval. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact that the activity may have on the environment. Therefore, the Commission finds that the proposed project can be found to be consistent with the requirements of the Coastal Act to conform to CEQA.

**V. EXHIBITS:**

Click on the link at left to go to the exhibits.

1. Regional Location Map
2. Vicinity Maps
3. Site Plans
4. Notice of Final Local Action
5. Appeal, filed October 27, 2005 (North Coast Action; Sierra Club – Redwood Chapter-Mendocino Group)
6. Excerpts, *Work Plan for Foundation Removal, Additional Investigation, and Interim Remedial Measures, Appendix D – Excavation and Soil Management Plan* and subsequent revisions (Acton-Mickelson Environmental, Inc., 2005-2006)
7. Excerpt, *Stormwater Pollution Prevention Plan for Foundation Removal, Additional Investigation, and Interim Remedial Measures* (Acton-Mickelson Environmental, Inc., September 2005)
8. Excerpt, *Excavation and Stockpile Quantification Estimation and Site Plan Map* (Acton-Mickelson Environmental, Inc., February 2006)
9. Excerpt, *Hazardous Materials Assessment Logistics Analysis* (Acton-Mickelson Environmental, Inc., March 2006)
10. Excerpt, *Jurisdiction Determination and Habitat Assessment* (TRC Companies, Inc., August 2003)
11. Excerpt, *Jurisdictional Waters and Wetlands Delineation* (TRC Companies, Inc., August 2004)
12. Excerpt, *Botanical Field Study of Some of the Bluff Areas at the GP Mills Site* (Teresa Scholars, Biological Consultant, undated)
13. *Conceptual Glass Beach 3 Mitigation and Monitoring Plan* (Teresa Scholars, Biological Consultant, September 2005)
14. *Conceptual Revegetation Plan* (Circuit Rider Productions, September 2005)
15. Excerpt, *Avian Habitat Utilization and Impact Assessment* (WRA Environmental Consultants, January 2006)
16. *Rocky Intertidal Environmentally Sensitive Habitat Engineering and Biological Assessment* (Acton-Mickelson Environmental, Inc., February 2006)
17. Excerpt, *Geotechnical Evaluation – Bearing Support for Heavy Equipment Loads* (Blackburn Consulting, Inc., February 2006)

18. Review Agency Correspondence
19. General Correspondence
20. Applicant's Correspondence

**ATTACHMENT A:**  
**STANDARD CONDITIONS**

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. 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. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director of the Commission.
4. 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.
5. 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.