

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE

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STAFF REPORT: REGULAR CALENDAR

Application No.: 1-11-018

Applicant: Mary O'Reilly

Agents: Bill Taylor
Keith Stearns

Location: 3110 Patricks Point Drive, approximately 5 miles north of the City of Trinidad, Humboldt County (APN 517-051-003).

Project Description: (1) Construct a detached approximately 750-square-foot 2-car garage and paved driveway extension; (2) remove a 20-inch-diameter 35-foot-long culvert and associated concrete abutment installed in an unnamed watercourse on the property without the benefit of a CDP and restore the impacted watercourse area to its natural configuration and vegetation; (3) install a new 13-ft-long by 15-ft-wide concrete bridge over the watercourse to access the new detached garage; (4) remove two approximately 16-inch-diameter redwood trees to facilitate the proposed construction; and (5) authorize after-the-fact various driveway and walkway improvements constructed without the benefit of a CDP.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The project site is located at 3110 Patricks Point Drive (APN 517-051-03), approximately 5 miles north of Trinidad in Humboldt County (**Exhibits 1-3**). The approximately 2.8-acre subject property is a bluff-top lot at an elevation of approximately 250 feet above mean sea level.

The Commission has issued at least three other permits and permit amendments for development on the subject property, including an administrative permit issued in 1994 for the demolition of an existing single-family residence on the property and the construction of a new 3,044-square-foot, 2-bedroom, 32-foot-high single family residence and associated gravel driveway (**Exhibit 5**). The applicant constructed the existing residence on the property in 1995.

Currently, the applicant is proposing (**Exhibit 4**) to (1) construct a detached approximately 750-square-foot 2-car garage (maximum 18 feet high) with covered entry porch, 4-foot-wide concrete walk, 4-foot-high concrete block retaining wall, and paved driveway extension; (2) remove a 20-inch-diameter 35-foot-long plastic culvert and associated concrete abutment installed in an unnamed seasonal watercourse on the property without the benefit of a CDP and restore the affected watercourse area to its natural configuration and vegetation; (3) install a new 13-ft-long by 15-ft-wide concrete bridge over the watercourse to access the new detached garage; (4) remove two approximately 16-inch-diameter redwood trees to facilitate the proposed construction; and (5) authorize after-the-fact various development on the property constructed without the benefit of a CDP including (a) reconfiguring and paving the driveway approved under CDP 1-94-033; (b) reorienting the garage approved under CDP 1-94-033; (c) constructing a new covered porch along the perimeter of a portion of the house and garage; (d) installing a wooden footbridge across the watercourse near the existing pond on the property; and (e) constructing a concrete-paved extension of the driveway to a new paved ~300-square-foot dog kennel area. The standard of review for the proposed CDP application is the Coastal Act.

Staff believes the alteration of the watercourse to remove the unpermitted culvert and associated concrete abutments and the subsequent restoration of the watercourse constitutes a development where the primary function is the improvement of wildlife habitat consistent with Section 30236 of the Coastal Act. The development will be setback an adequate distance from the bluff edge to ensure safety from bluff retreat and erosion and staff is recommending special conditions prohibiting the future construction of bluff or shoreline protective devices to protect the development. To ensure consistency with Section 30230 and 30240, staff recommends [Special Conditions 4 through 13](#), requiring that the culvert removal work area is appropriately restored, only native plants are planted on the property in habitat improvement areas, the protection of water quality during and post construction, the proper disposal of construction debris, and minimization of geologic hazards.

Commission staff recommends **approval** of CDP application 1-11-018, as conditioned.

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APPENDICES

[Appendix A – Substantive File Documents](#)

EXHIBITS

- Exhibit 1 – Regional location map
- Exhibit 2 – Project vicinity map
- Exhibit 3 – Aerial photo
- Exhibit 4 – Proposed project plans
- Exhibit 5 – 1994 approved site plan
- Exhibit 6 – Site photos
- Exhibit 7 – Biological assessment

I. MOTION AND RESOLUTION

The staff recommends that the Commission adopt the following resolution:

Motion:

I move that the Commission approve coastal development permit 1-11-018 pursuant to the staff recommendation.

Staff recommends a **YES** vote on the foregoing motion. 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:

The Commission hereby approves coastal development permit 1-11-018 and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) 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

This permit is granted subject to the following standard conditions:

1. **Notice of Receipt and Acknowledgment:** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Interpretation:** Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
3. **Assignment:** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
4. **Terms and Conditions Run with the Land:** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. **California Department of Fish and Game Approval.** WITHIN NINETY (90) DAYS OF ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall provide, for the review and written approval of the Executive Director, a copy of a permit or other approval issued by the Department of Fish and Game for the proposed project, or evidence that no permit or other approval is required. The applicant shall inform the Executive Director of any changes to the project required by the DFG. 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.
2. **North Coast Regional Water Quality Control Board Approval.** WITHIN NINETY (90) DAYS OF ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall provide, for the review and written approval of the Executive Director, a copy of a permit or other approval issued by the Regional Water Quality Control Board for the proposed project, or evidence that no permit or other approval is required. The applicant shall inform the Executive Director of any changes to the project required by the RWQCB. 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.
3. **U.S. Army Corps of Engineers Approval.** WITHIN NINETY (90) DAYS OF ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall provide, for the review and written approval of the Executive Director, a copy of a permit or other approval issued by the Army Corps of Engineers for the proposed project, or evidence that no permit or other approval is required. The applicant shall inform the Executive Director of any changes to the project required by the Corps. 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.
4. **Habitat Improvement and Monitoring Plan.** WITHIN NINETY (90) DAYS OF ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT AND PRIOR TO COMMENCEMENT OF THE AUTHORIZED CULVERT REMOVAL AND BRIDGE CONSTRUCTION, the applicant shall submit, for the review and written approval of the Executive Director, a final plan, prepared by a qualified biologist, for habitat improvement, monitoring, and reporting for the culvert removal area to ensure that the affected area is restored as proposed.
 - A. The plan shall include, at a minimum, the following:

- (i) A planting component which narratively describes and graphically illustrates the types, numbers, and sizes of plants to be planted along the length of the restoration area and a schedule for the proposed planting;
 - (ii) A monitoring component, which includes, at a minimum, the following:
 - a. Performance standards for achieving the habitat improvement goals of ensuring that (1) the watercourse channel is restored to the approximately same width, depth, and alignment as the channel width, depth, and alignment immediately upstream and downstream of the restoration area; and (2) the length of the restored watercourse along both banks is sufficiently revegetated with native species of ferns, herbaceous flowering plants, and/or shrubs native to redwood forest creek habitats of Humboldt County such that there are no gaps greater than 5 feet between native plants;
 - b. Provisions for monitoring the habitat improvement area at least once annually for, at a minimum, the following attributes: (1) vegetation reestablishment and planting success along the length of the culvert removal area; and (2) channel bank stability; and
 - c. Provisions for monitoring the habitat improvement area in accordance with the approved final restoration monitoring plan for a minimum period of three (3) years; and
 - (iii) A reporting component, which includes, at a minimum, the following:
 - a. Provisions for submittal of an "as-built" report within 60 days of completion of the authorized habitat improvement work and initial planting;
 - b. Provisions for submittal of annual monitoring reports to the Executive Director by December 31 of each year for the duration of the required monitoring period beginning the first year immediately following culvert removal and restoration of the area; and
 - c. Provisions for submittal of a final monitoring report to the Executive Director at the end of the 3-year monitoring and reporting period. The final report must be prepared in conjunction with a qualified biologist. The report must evaluate whether the restoration site conforms to the goals, objectives, and performance standards set forth in the approved final habitat improvement plan.
- B. If the final monitoring report indicates that the habitat improvement project has been unsuccessful, in part or in whole, based on the approved performance standards, the permittee shall submit to the Executive Director, within 90 days, a revised or supplemental habitat improvement program to compensate for those portions of the original program which did not meet the approved performance standards. The revised habitat improvement program shall be processed as an amendment to this coastal development permit, unless the Executive Director determines that an amendment is not legally required.
- C. The permittee shall undertake development and monitor the habitat improvement site in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved

final plans shall occur without a Commission amendment to this coastal development permit, unless the Executive Director determines no amendment is legally required.

5. **Revegetation Standards and Restrictions**

- A. Only native plant species shall be used on the property. All proposed plantings shall be obtained from local genetic stocks within Humboldt County. If documentation is provided to the Executive Director that demonstrates that native vegetation from local genetic stock is not available, native vegetation obtained from genetic stock outside of the local area may be used. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be identified from time to time by the State of California, shall be employed or allowed to naturalize or persist on the site. No plant species listed as a "noxious weed" by the State of California or the federal government shall be utilized within the property; and
- B. Rodenticides containing any anticoagulant compounds, including but not limited to, Bromadiolone, Brodifacoum, or Diphacinone, shall not be used on the property.

6. **Construction Responsibilities**

The applicant shall comply with the following construction-related requirements:

- A. No construction materials, debris, or waste shall be placed or stored where it may be subject to entering coastal waters or wetlands;
- B. Any and all debris resulting from construction activities shall be removed from the project site and disposed of at an authorized disposal location within 10 days of project completion;
- C. If rainfall is forecast during the time construction activities are being performed, any exposed soil areas shall be promptly mulched or covered with plastic sheeting and secured with sand bagging or other appropriate materials before the onset of precipitation;
- D. Silt screens, straw bales, and/or other appropriate erosion and runoff control devices shall be installed as appropriate in construction areas prior to the initiation of construction activities and shall be maintained throughout project construction; and
- E. No drainage features shall be routed directly into the watercourse or associated riparian habitat but instead shall be routed into vegetated uplands and landscaping on the property for infiltration and water quality protection purposes.

7. **Debris Disposal**

- A. WITHIN NINETY (90) DAYS OF ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, a plan for the disposal of excess construction-related debris, including broken concrete, old culvert material, soil and vegetative spoils, and potentially other construction-related waste. The plan shall describe the manner by which the material will be removed from the construction site and identify a disposal site that is in an upland area where materials may be lawfully disposed.
- B. The permittee shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission

amendment to this coastal development permit, unless the Executive Director determines no amendment is legally required.

8. **No Future Bluff or Shoreline Protective Device**

- A. By acceptance of this permit, the applicant agrees, on behalf of herself and all successors and assigns, that no bluff or shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit 1-11-018, including, but not limited to, the detached garage, driveway extension, or other development authorized under this coastal development permit, in the event that the authorized development is threatened with damage or destruction from waves, erosion, storm conditions, bluff retreat, landslides, ground subsidence or other natural hazards in the future. By acceptance of this permit, the applicant hereby waives, on behalf of herself and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.
 - B. By acceptance of this Permit, the applicant further agrees, on behalf of herself and all successors and assigns, that the landowner(s) shall remove the development authorized by this permit, including, but not limited to, the detached garages, driveway extension, or other residential development authorized under this coastal development permit, if any government agency has ordered that the structures are not to be occupied due to any of the hazards identified above. In the event that portions of the development fall to the beach before they are removed, the landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.
 - C. In the event the edge of the bluff recedes to within 10 feet of the authorized development but no government agency has ordered that the structures not be occupied, a geotechnical investigation shall be prepared by a licensed geologist or civil engineer with coastal experience retained by the applicant, that addresses whether any portions of the structures are threatened by wave, erosion, storm conditions, or other natural hazards. The report shall identify all those immediate or potential future measures that could stabilize the structures without shore or bluff protection, including but not limited to removal or relocation of the structures. The report shall be submitted to the Executive Director and the appropriate local government official. If the geotechnical report concludes that the structures are unsafe for occupancy, the permittee shall, within ninety (90) days of submitting the report, apply for a coastal development permit amendment to remedy the hazard which shall include removal of the threatened portion of the structure.
9. **Assumption of Risk, Waiver of Liability, and Indemnity Agreement.** By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from earthquakes, erosion, landslides, bluff failure, and other geologic hazards; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims,

demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

10. **Deed Restriction Recordation of Permit Conditions.** WITHIN NINETY (90) DAYS OF ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.
11. **Future Development Restrictions:** This permit is only for the development described in Coastal Development Permit 1-11-018. Pursuant to Title 14 California Code of Regulations section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply to the development governed by the CDP 1-11-018. Accordingly, any future improvements to the structure(s) authorized by this permit shall require an amendment to CDP 1-11-018 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government. In addition thereto, an amendment to CDP 1-11-018 from the Commission or an additional coastal development permit from the Commission or from the applicable certified local government shall be required for any repair or maintenance identified as requiring a permit in Public Resources Code Section 30610(d) and Title 14, California Code of Regulations Sections 13252(a)-(b).
12. **Lighting Limitations.** All exterior lighting attached to the authorized structures shall be low-wattage and downcast shielded such that no glare will be directed beyond the bounds of the property or into adjoining coastal waters.
13. **Restriction on Future Vegetation Removal.** Any future major vegetation removal on the east side of the property along Patricks Point Drive shall require an amendment to this coastal development permit or shall require an additional coastal development permit from the Commission or from the applicable certified local government.
14. **Permit Expiration and Condition Compliance.** Because some of the proposed development has already commenced, this coastal development permit shall be deemed issued upon the Commission's approval and will not expire. Failure to comply with the

special conditions of this permit may result in the institution of an action to enforce those conditions under the provisions of Chapter 9 of the Coastal Act.

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares as follows:

A. PROPOSED PROJECT DESCRIPTION & BACKGROUND

The applicant proposes to (1) construct a detached approximately 750-square-foot 2-car garage (maximum 18 feet high) with covered entry porch, 4-foot-wide concrete walk, 4-foot-high concrete block retaining wall, and paved driveway extension; (2) remove a 20-inch-diameter 35-foot-long plastic culvert and associated concrete abutment installed in an unnamed seasonal watercourse on the property without the benefit of a CDP and restore the affected watercourse area to its natural configuration and vegetation; (3) install a new 13-ft-long by 15-ft-wide concrete bridge over the watercourse to access the new detached garage; (4) remove two approximately 16-inch-diameter redwood trees to facilitate the proposed construction; and (5) authorize after-the-fact various development on the property constructed without the benefit of a CDP including (a) reconfiguring and paving the driveway approved under CDP 1-94-033; (b) reorienting the garage approved under CDP 1-94-033; (c) constructing a new covered porch along the perimeter of a portion of the house and garage; (d) installing a wooden footbridge across the watercourse near the existing pond on the property; and (e) constructing a concrete-paved extension of the driveway to a new paved ~300-square-foot dog kennel area. Project plans are attached as **Exhibit 4**. For reference, the 1994 approved site plan is **Exhibit 5**.

On August 14, 1992 the Commission approved CDP 1-92-096 for the applicant to remodel and expand an existing 2,248-square-foot single family residence with an additional 1,649 square feet of new floor space, to construct a new 120-square-foot deck, and to construct a new 360-square-foot water storage and pump building containing a 10,000 gallon water storage tank. Certain aspects of the approved project were never implemented, including the addition of 1,649 square feet of new floor space to the existing residence and the new deck. Instead, the applicant applied for a new CDP in 1994, which the Executive Director processed as Administrative Permit 1-94-033 and reported to the Commission on October 11, 1994. CDP 1-94-033 authorized the demolition of the existing 2,248-square-foot single family residence and the construction of a new 3,044-square-foot, 2-bedroom, 32-foot-high single family residence and associated new gravel driveway (**Exhibit 5**). On March 9, 1995, the Executive Director approved an immaterial amendment to CDP 1-94-033 authorizing a minor relocation of the house approved under CDP 1-94-033.

The applicant constructed the approved new residence in 1995. In addition to the development approved under CDP 1-94-033 and 1-94-033-A1, the applicant also undertook certain development at the subject site without the benefit of a coastal development permit. This unpermitted development includes the following:

- Constructing the driveway in a slightly different configuration than approved and using pavement rather than gravel as approved;

- Reorienting the approved 2-car garage to provide for access from the south rather than from the east side of the structure as approved;
- Constructing a new covered porch along the perimeter of a portion of the house and garage;
- Installing a culvert in the unnamed watercourse that flows across the property and extending a paved driveway spur across the watercourse to a relocated dog kennel, which had been located on the north end of the property; and
- Constructing a wooden footbridge across the watercourse near the existing pond on the property.

B. ENVIRONMENTAL SETTING

The project site is located at 3110 Patricks Point Drive (APN 517-051-03) in the Trinidad area of Humboldt County (**Exhibits 1-2**). The approximately 2.8-acre subject property is a bluff-top lot at an elevation of approximately 250 feet above mean sea level (**Exhibit 3**). The existing house is approximately 100 feet from the bluff edge, and the proposed new development would be over 200 feet from the bluff edge.

The property is developed with a ~3,000-square-foot, two-bedroom single family residence with an attached two-car garage, associated driveway, and landscaping, an on-site septic system, an on-site well with associated water storage tanks in a ~500-square-foot pump house, various fences and gates, and a small man-made pond. As mentioned above, the property also is developed with certain development for which the applicant is now seeking after-the-fact authorization including a covered porch along the perimeter of a portion of the house and garage, a wooden footbridge across the watercourse near the existing pond, and a concrete-paved extension of the driveway. Furthermore, the property also is developed with a 20-inch-diameter 35-foot-long culvert and associated concrete abutment that was constructed without benefit of a coastal development permit. The project description includes removing the culvert and abutment and restoring the watercourse habitat where it is located.

The eastern edge of the property fronts Patricks Point Drive, a public roadway considered the first public through road paralleling the sea in this location. Patricks Point Drive and the other roads in the area are narrow rural roads lined with mature, dense, forested vegetation. As a result, virtually no views to the ocean are available from public vantage points in this particular area.

Although Humboldt County has a certified local coastal program (LCP), the property is located in a non-certified area that includes all of the area to the west of Patricks Point Drive and Stagecoach Road between the City of Trinidad and Patricks Point State Park. As a consequence, the Commission retains coastal development permit jurisdiction over the site, and the standard of review for issuance of a coastal development permit is whether the development is consistent with the Chapter 3 policies of the Coastal Act. Nevertheless, the site lies within an area locally designated as "Coastal Scenic." For this reason, the County processed a special permit for the proposed development for design review purposes (SP-63-93M approved April 13, 2012).

The subject lot is located in a primarily wooded rural residential area with most residential lots at least 2 acres in size. There also are properties nearby to the south planned and zoned for

Commercial Recreational uses (e.g., lodging accommodations) and to the east planned and zoned for timberland uses (Commercial Timberland and Timber Production Zone properties).

A Class II seasonal watercourse¹ bisects the property from Patricks Point Drive generally westward to the bluff edge. According to a biological assessment completed for the property in 2011 (**Exhibit 7**) and the Commission's ecologist, John Dixon, who visited the site in June of 2012, the watercourse is fed by both groundwater and runoff associated with Patricks Point Drive. The watercourse is seasonal in nature and appears to originate from a seep above an inside ditch on the eastern side of the road. The watercourse is channelized throughout most of its reach, including parallel to the Patricks Point Drive for approximately 40 feet, before it passes through existing culverts underneath Patricks Point Drive. The watercourse also is channelized along the edge of the applicant's shared driveway with a neighboring property for approximately 40 feet before it passes through approximately 50 feet of culverts (shown as existing on the approved site plan for CDP 1-94-033) beneath the applicant's existing driveway. The watercourse then is daylighted for approximately 50 feet before being routed through the unpermitted 20-inch-diameter 35-foot-long culvert that is proposed for removal under the subject CDP application. On the downstream side of the unpermitted culvert the watercourse is daylighted for another approximately 130 feet of channelized reach where it then enters an existing roughly 35-foot-by-40-foot man-made, lined, ornamental pond. The pond also is shown as "existing" on the approved site plan for CDP 1-94-033 (**Exhibit 5**). A standpipe in the pond collects water from the pond when the water level reaches a certain height, at which point it then is discharged through a culvert over the bluff to the ocean.

The watercourse supports a narrow corridor of native, nonnative, and ornamental landscaped vegetation including various ferns and conifers typical of redwood forest habitats, mowed lawn, and ornamental trees and shrubs (see photos, **Exhibit 6**). The biological assessment provides the following description in part of the watercourse and pond (**Exhibit 7**):

The stream has a defined channel that is generally 2-3' wide and 1-3' deep...The stream transition line was only 6-12" above the wetted width and though it is likely that precipitation and surface runoff occasionally cause heavy flows in the channel, the vegetation established near the wetted width indicated that high flows were not common...

The pond is partially vegetated along the perimeter with primarily native species...Numerous invertebrate species occupy the habitat including damselflies, dragonflies, waterskippers. Northern red-legged frogs were observed in the pond and various avian species utilize the area as well...

According to the opinions of the Commission's ecologist, John Dixon, and Department of Fish and Game staff familiar with the site, those portions of the existing watercourse not confined to

¹ Class II waters are defined under California Forest Practice Rules Section 936.4 as 1) fish always or seasonally present off-site within 1000 feet downstream and/or 2) aquatic habitat for non-fish aquatic species. Aquatic habitat indicators for Class II watercourses include free water, aquatic plants, water-dependent stages of aquatic insects and the physical condition of the channel and its position in the landscape. See <https://r1.dfg.ca.gov/portal/tabid/631/Default.aspx> for more information.

culverts likely provide habitat for various types of amphibians, including Northern red-legged frog, which was documented near the man-made pond on the property by the applicant's biologist.

In its previous actions on CDPs 1-92-096 and 1-94-033, the Commission did not determine the watercourse or its narrow band of associated riparian habitat to be environmentally sensitive (ESHA), nor did it include any conditions restricting the watercourse area to open space/habitat uses. The Commission did not require the establishment of a buffer between development and the watercourse or pond, though for each of the permits it acknowledged that the new development would be ~40 feet from the existing man-made pond.

The existing residence is located approximately 30-40 feet from the pond and watercourse. The proposed new concrete-paved driveway extension for which the applicant is seeking after-the-fact authorization crosses directly over the watercourse via a culvert that is proposed for removal to a paved dog-kennel area that is about 25 feet from the watercourse. The proposed new detached garage would be approximately 45 feet from the watercourse.

Due to the channelized, altered nature of the watercourse along much of its length, its narrow width and ephemeral nature, its use and function as a drainage ditch for Patricks Point Drive, the absence of riparian vegetation, and the fact that it runs through a landscaped, residential yard surrounding by mowed lawn and a considerable amount of development, the watercourse is not considered to be ESHA. Likewise, the man-made pond that is landscaped with mostly exotic aquatic plants and is surrounded by manicured lawn and a considerable amount of residential development also is not considered to be ESHA.

C. OTHER AGENCY APPROVALS

Humboldt County

The proposed project requires a special permit from Humboldt County for the design review and major vegetation removal aspects of the proposed project. The County approved SP-63-93M on April 13, 2012.

Department of Fish and Game

The proposed project requires the applicant to notify and obtain a Streambed Alteration Agreement from the DFG pursuant to Section 1602 of the Fish and Game Code. To ensure that the project ultimately approved by the DFG is the same as the project authorized herein, the Commission attaches [Special Condition 1](#), which requires the applicant, within 90 days of CDP issuance, to demonstrate that all necessary approvals from the DFG for the proposed project have been obtained.

North Coast Regional Water Quality Control Board

It is unclear whether or not the proposed project requires a Water Quality Certification from the RWQCB pursuant to Section 401 of the federal Clean Water Act and/or Porter-Cologne Water Quality Control Act authority. To ensure that the project ultimately approved by the RWQCB is the same as the project authorized herein, the Commission attaches [Special Condition 2](#), which

requires the applicant, within 90 days of CDP issuance, to demonstrate that all necessary approvals from the RWQCB for the proposed project have been obtained.

U.S. Army Corps of Engineers

The Corps has regulatory authority over projects involving diking, filling, and placement of structures in navigable waterways under Section 10 of the Rivers and Harbors Act (RHA) of 1899 (33 U.S.C. 1344) and projects involving filling or discharging of materials into waters and ocean waters under Section 404 of the Clean Water Act (CWA).

Commission staff consulted with Corps staff regarding the project and at the time of this staff report, the Corps was uncertain whether or not the project would be regulated under the CWA. If it were to be regulated, Corps staff believed that the proposed project would be eligible for coverage under the Corps' Nationwide Permit (NWP) Program.

Pursuant to Section 307(c)(3)(A) of the Coastal Zone Management Act (CZMA), any applicant for a required federal permit to conduct an activity affecting any land or water use or natural resource in the coastal zone must obtain the Coastal Commission's concurrence in a certification to the permitting agency that the project will be conducted consistent with California's approved coastal management program. The Commission's review of the subject CDP application 1-11-018 serves as Commission review of the project under the CZMA.

To ensure that the project ultimately approved by the Corps is the same as the project authorized herein, the Commission attaches [Special Condition 3](#), which requires the applicant, within 90 days of CDP issuance, to demonstrate that all necessary approvals from the Corps for the proposed project have been obtained.

D. SUBSTANTIAL ALTERATION OF RIVERS AND STREAMS

Section 30236 of the Coastal Act states as follows (emphasis added):

Channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (1) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat.

The project involves, among other components, removing an existing 20-inch-diameter 35-foot-long plastic culvert and associated concrete abutment installed in an unnamed seasonal watercourse on the property without the benefit of a CDP and restoring the affected watercourse area to its natural configuration and vegetation. As discussed in more detail below, the unpermitted culvert is presumed to have been installed in the mid-1990s to serve an unpermitted extension of the main driveway that serves the residence that the Commission permitted under CDP 1-94-033. The applicant is seeking authorization to replace the culvert with a new 13-foot-long by 15-foot-wide concrete bridge that would completely span the watercourse without abutments or other wetland fill within the watercourse and is requesting after-the-fact

authorization for the unpermitted driveway extension under CDP application 1-11-018 to provide access to the proposed new detached garage.

In general, the Commission considers the placement or removal of a culvert or other water-control structure in a river or stream to constitute “substantial alteration” of the watercourse, because this type of development alters the natural channel bed and banks in a manner that affects flow rates, fluvial processes, and habitat values. Thus, any project involving culvert installation and/or removal work is subject to the restrictions and requirements of Section 30236 of the Coastal Act. Section 30236 allows for substantial alterations of rivers and streams only in cases involving (1) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat. Since the purpose of the culvert that was installed without the benefit of a CDP is not for any of the purposes specified in Section 30236 (but rather for a residential purpose, to facilitate the construction of a driveway extension to the proposed new detached garage), the applicant agreed to consider project alternatives that would not involve reliance on the culvert needed to serve the proposed driveway extension to the new detached garage. The applicant explored project alternatives and subsequently proposed to remove the unpermitted culvert and restore the affected watercourse area to its natural configuration and vegetation. As noted above, after completing the proposed culvert removal work, the applicant proposes to construct a bridge across the watercourse, which will not involve substantial alteration of the watercourse or placement of fill in wetland habitat.

The primary function of the proposed culvert removal work is habitat improvement. The primary function of the proposed removal of the unpermitted culvert and concrete abutment from the watercourse is improvement of wildlife habitat consistent with Section 30236, as the applicant is proposing to restore the affected area to natural channel habitat and vegetation and to re-establish habitat conditions that were present prior to installation of the unpermitted culvert fill material. The watercourse on the subject property does not support fish habitat due to its seasonal nature and its terminus off the edge of a 200-foot-high coastal bluff. It does however provide habitat for certain types of amphibians and other wildlife species.

Currently, an approximately 35-foot-long reach of the seasonal watercourse is routed through a 20-inch-diameter, 35-foot-long plastic culvert that is anchored by concrete buttresses at each end. The culvert is not shown on the approved site plan for CDP 1-94-033, which the Commission approved in October of 1994. On the 1994 site plan (**Exhibit 5**), the watercourse appears undisturbed except for existing culverts beneath the existing driveway near the pump house that was approved under CDP 1-94-033. Although the applicant believes that the subject culvert was installed at the time that the development authorized under CDP 1-94-033 was constructed in approximately 1995 and that it replaced an existing culvert, no new culvert or replacement culvert was permitted under CDP 1-94-033 or any other coastal development permit, and no evidence has been presented to support the notion that a culvert historically existed in this location. Thus, it is presumed that this portion of the watercourse on the subject property was of a more natural configuration not constrained by a culvert or associated fill material. Under the proposed project, the applicant will remove the unpermitted culvert and associated concrete buttresses and restore the ~35-foot-long affected reach of the watercourse to the same bank and

bed configuration as the adjacent watercourse areas upstream and downstream of the culvert site. As proposed, the project will daylight an approximately 35-foot-long section of watercourse that has been confined to an unnatural channel (plastic culvert surrounded by concrete) for (presumably) at least 17 years. In addition, the applicant proposes to revegetate the affected watercourse areas with native plant species as shown in **Exhibit 4**. The restored channel and vegetation will result in improved habitat value for amphibians and other wildlife.

This finding that the primary function of the proposed project is for wildlife habitat improvement is based in part on the assumption that the proposed project indeed will be successful in restoring the watercourse habitat as proposed and increasing habitat values. Should the project be unsuccessful at increasing and/or enhancing habitat values, or worse, if the proposed impacts of the project actually result in long term degradation of the watercourse habitat, the proposed activities could not be found to be for the primary function of wildlife habitat improvement. Thus, to ensure that the affected watercourse area is successful at improving wildlife habitat values as proposed, the Commission attaches [Special Condition 4](#). This condition requires that the applicant provide to the Executive Director, within 60 days of issuance of this permit, a final plan, prepared by a qualified biologist, for habitat restoration, monitoring, and reporting for the culvert removal area to ensure that the affected area is restored as proposed. The plan must include a planting component, demonstrating that native plants will be planted along both banks along the length of the restored watercourse channel, a monitoring component, requiring documentation of vegetation reestablishment and planting success along the length of the culvert removal area, and a reporting component, requiring submittal of annual monitoring reports to the Executive Director for a three-year period. Furthermore, the condition requires the plan to include provisions for remediation to ensure that the goals and objectives of the restoration project are met.

Therefore, the Commission finds that the proposed substantial alteration of the river and creek channels is indeed for the necessary improvement of wildlife habitat, consistent with Section 30236 of the Coastal Act.

The “best mitigation measures feasible” to minimize adverse environmental effects. Section 30236 of the Coastal Act requires that the “best mitigation measures feasible” be provided to minimize adverse environmental effects. The proposed culvert removal work could have potential adverse impacts as follows: (1) to surrounding natural habitats and species if nonnative invasive plant species are introduced to the restored area for revegetation or erosion control purposes or if anti-coagulant rodenticides are used, (2) to the water quality of coastal waters if erosion control and best management practices are not used during construction, and (3) impacts associated with improper debris disposal. Thus, the Commission recommends the various conditions discussed below.

1. Use of Native Plant Species: If nonnative, invasive plant species were to be used on the site for erosion control and/or revegetation purposes, and if the nonnative plants then colonized or dispersed to sensitive habitats offsite in nearby environmentally sensitive habitat areas (ESHA) such as wetlands or rare species habitats, the ESHA could be adversely affected. Introduced invasive exotic plant species could colonize nearby ESHA and displace native vegetation, thereby disrupting the functions and values of the sensitive habitat areas.

The applicant has not proposed to use nonnative plants on the site for erosion control or revegetation purposes. Instead, the applicant's plans show "native plants" along both banks of the restored area, but no further details are provided. As discussed above, [Special Condition 4](#) requires submittal of a planting plan demonstrating that native plants will be planted along both banks along the length of the restored watercourse channel as proposed. The plan must identify the types, numbers, and sizes of plants to be planted along the length of the restoration area. In addition, the Commission includes [Special Condition 5-A](#) to prohibit the use of any plant species listed as problematic, invasive, or a "noxious weed" by the California Native Plant Society, the California Invasive Plant Council, and/or by the State of California.

To help in the establishment of vegetation, rodenticides are sometimes used to prevent rats, moles, voles, gophers, and other similar small animals from eating the newly planted saplings. Certain rodenticides, particularly those utilizing blood anticoagulant compounds such as brodifacoum, bromadiolone and diphacinone, have been found to poses significant primary and secondary risks to non-target wildlife present in urban and urban/wildland areas. As the target species are preyed upon by raptors or other environmentally sensitive predators and scavengers, these compounds can bio-accumulate in the animals that have consumed the rodents to concentrations toxic to the ingesting non-target species. Therefore, to minimize this potential significant adverse cumulative impact to environmentally sensitive wildlife species, the Commission attaches [Special Condition 5-B](#) prohibiting the use of specified rodenticides on the property governed by this CDP.

2. Use of erosion control measures and "Best Management Practices":

Implementation of the proposed project could have impacts on water quality. For example, the development will disturb soil in and adjacent to the watercourse, which could entrain sediment in stormwater, wash downstream to the applicant's existing lined pond, and ultimately drain to the ocean. The water quality of coastal waters also could be adversely affected by the discharge or release of construction-related debris and waste, if proper protocols are not followed. [Special Condition 6](#) lists various construction-related requirements that must be complied with, which will protect water quality during construction.

3. Debris disposal: The project will generate debris and construction-related waste in the form of broken concrete, old culvert material, soil and vegetative spoils, and potentially other waste. [Special Condition 7](#) requires submittal of a debris disposal plan to ensure that all construction-related debris and waste is appropriately disposed.

In conclusion, as the primary function of the proposed culvert removal and restoration work is the improvement of wildlife habitat, the proposed substantial streambed alteration of the watercourse is allowable under Coastal Act Section 30236. Further, the proposed project, as conditioned, incorporates the best mitigation measures feasible to minimize or avoid significant adverse environmental effects. Therefore, the Commission finds that as conditioned herein, the proposed project is consistent with the requirements of Section 30236 of the Coastal Act.

E. PROTECTION OF WATER QUALITY

Section 30230 of the Coastal Act states as follows:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 of the Coastal Act states as follows:

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

As cited above, Coastal Act Sections 30230 and 30231 require, in part, that marine resources and coastal wetlands and waters be maintained, enhanced, and where feasible restored. These policies specifically call for the maintenance of the biological productivity and quality of marine resources, coastal waters, streams, wetlands, and estuaries necessary to maintain optimum populations of all species of marine organisms and for the protection of human health.

The proposed project involves in part constructing a new detached garage and paved driveway extension, installing a new concrete bridge over the watercourse to access the new detached garage; major vegetation removal; and the authorization of various after-the-fact development including a wooden footbridge across the watercourse near the existing pond and a ~300-square-foot concrete pad for a dog kennel near the watercourse. All of these proposed project components have the potential to impact the water quality of coastal waters, specifically the seasonal watercourse on the property that flows into a man-made pond and eventually to the Pacific Ocean.

Sediment and other pollutants entrained in runoff from the driveway extension and new impermeable areas that reach the watercourse on the property would contribute to degradation of the quality of coastal waters and any intervening sensitive habitat. Site runoff that is infiltrated through vegetation areas reduces water quality impacts. Therefore, the Commission attaches [Special Condition 6-E](#), which prohibits drainage features associated with the proposed driveway extension and other new development from being routed directly into the watercourse or associated riparian habitat. Instead the condition requires that drainage features be routed into vegetated uplands and landscaping on the property.

To address potential runoff impacts associated with proposed construction and vegetation removal, the Commission attaches [Special Condition 6-A and 6-C](#), which (respectively) prohibit construction materials or debris from being placed or stored where they may be subject

to entering coastal waters and require the implementation of erosion control best management practices in the event of rainfall during construction.

Finally, as discussed in Finding IV-D above, [Special Condition 4](#) also will help improve water quality by requiring implementation of a watercourse habitat improvement plan that provides for restoration of native vegetation along the length of the culvert removal area. Such revegetation will result in additional vegetation along an approximately 35-foot-long reach of the seasonal watercourse that will help buffer the watercourse from upslope stormwater runoff.

Therefore, the Commission finds that the proposed project, as conditioned, will maintain, enhance, and restore coastal waters consistent with Sections 30230 and 30231.

F. GEOLOGIC HAZARDS

Section 30253 of the Coastal Act states, in applicable part, as follows:

New development shall do all of the following:

- (a) *Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
- (b) *Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs...*

The subject property is located on a bluff-top lot at an elevation of approximately 250 feet above mean sea level. The lot gently slopes westward before dropping off more steeply, at a slope of about 50%, to the ocean. According to County seismic safety maps, the site of the proposed new garage is located in an area mapped as “low instability.” The property does not contain any mapped historic landslides or earthquake faults

A series of geologic investigations of the subject property was completed by LACO Associates in the 1990s for the developments approved under the previous Commission permits. At that time the geologic investigations determined the average rate of coastal bluff retreat for the property to be about 1 foot per year. The existing house was constructed over 100 feet from the bluff edge, and the geologic report determined that the residence would not be adversely affected by coastal bluff erosion and retreat during its 75-year anticipated economic lifespan. The proposed new garage will be located approximately 250 feet back from the bluff edge, landward of the existing residence, and setback approximately 85 feet from Patricks Point Drive.

Although the proposed new development will be setback an adequate distance from the bluff edge to ensure safety from bluff erosion and retreat during its economic life, there is no guarantee that unexpected bluff retreat episodes that threaten development during the life of the garage structure will not occur. It has been the experience of the Commission that in some instances, even when a thorough professional geotechnical analysis of a site has concluded that a proposed development will be safe from bluff retreat hazards, episodes of unexpected bluff

retreat prompting the relocations of residences back from bluff failure areas sometimes still do occur. Examples include, but are not limited to, the following:

- The Kavich Home at 176 Roundhouse Creek Road in the Big Lagoon Area north of Trinidad (Humboldt County). In 1989, the Commission approved the construction of a new house on a vacant bluff top parcel (Permit 1-87-230). Based on the geotechnical report prepared for the project it was estimated that bluff retreat would jeopardize the approved structure in about 40 to 50 years. In 1999 the owners applied for a coastal development permit to move the approved house from the bluff top parcel to a landward parcel because the house was threatened by 40 to 60 feet of unexpected bluff retreat that occurred during a 1998 El Niño storm event. The Executive Director issued a waiver of coastal development permit (1-99-066-W) to authorize moving the house in September of 1999.
- The Denver/Canter home at 164/172 Neptune Avenue in Encinitas (San Diego County). In 1984, the Commission approved construction of a new house on a vacant bluff top lot (Permit 6-84-461) based on a positive geotechnical report. In 1993, the owners applied for a seawall to protect the home (Permit Application 6-93-135). The Commission denied the request. In 1996 (Permit Application 6-96-138), and again in 1997 (Permit Application 6-97-90) the owners again applied for a seawall to protect the home. The Commission denied the requests. In 1998, the owners again requested a seawall (Permit Application 6-98-39) and submitted a geotechnical report that documented the extent of the threat to the home. The Commission approved the request on November 5, 1998.
- The Arnold project at 3820 Vista Blanca in San Clemente (Orange County). Coastal development permit (Permit 5-88-177) for a bluff top project required protection from bluff top erosion, despite geotechnical information submitted with the permit application that suggested no such protection would be required if the project conformed to 25-foot bluff top setback. An emergency coastal development permit (Permit 5-93-254-G) was later issued to authorize bluff top protective works.

The Commission notes that the examples above are not intended to be absolute indicators of bluff erosion on the subject parcel, as coastal geology can vary significantly from location to location. However, these examples do illustrate that site-specific geotechnical evaluations cannot always accurately account for the spatial and temporal variability associated with coastal processes and therefore cannot always absolutely predict bluff erosion rates. Collectively, these examples have helped the Commission form its opinion on the vagaries of geotechnical evaluations with regard to predicting bluff erosion rates. Geologic hazards are episodic, and bluffs that may seem stable now may not be so in the future. Therefore, the Commission finds that the subject lot is an inherently hazardous piece of property, that the coastal bluff located approximately 250 feet west of the proposed new development is mapped as highly unstable and erosive, and that the proposed new development could be subject to geologic hazard and potentially someday require a bluff protective device, inconsistent with Section 30253 of the Coastal Act. The Commission finds that the proposed development could not be approved as being consistent with Section 30253 of the Coastal Act if projected bluff retreat would affect the proposed development and necessitate construction of a seawall to protect it.

Based upon the geologic reports prepared for the site in the past, the Commission finds that the risks of geologic hazard are minimized if development is sited and designed according to the setback and construction recommendations and conditions of this permit. However, given that the risk cannot be eliminated and the geologic report cannot assure that shoreline protection will never be needed to protect the detached garage, the Commission finds that the proposed development is consistent with the Coastal Act only if it is conditioned to provide that shoreline protection will not be constructed. Thus, the Commission further finds that due to the inherently hazardous nature of this lot, the fact that no geology report can conclude with certainty that a geologic hazard does not exist, the fact that the approved development and its maintenance may cause future problems that were not anticipated, and because new development shall not engender the need for shoreline protective devices, it is necessary to attach Special Condition No. 8. [Special Condition 8](#) prohibits the construction of shoreline protective devices on the parcel, requires that the landowner provide a geotechnical investigation and remove the detached garage and its foundation if bluff retreat reaches the point where the structure is threatened, and requires that the landowners accept sole responsibility for the removal of any structural debris resulting from landslides, slope failures, or erosion of the site. These requirements are consistent with Section 30253 of the Coastal Act, which states that new development shall minimize risk to life and property in areas of high geologic, flood, and fire hazard, assure structural integrity and stability, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding areas, nor in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

The Commission also attaches [Special Condition No. 9](#), which requires the landowner to assume the risks of extraordinary erosion and geologic hazards of the property and waive any claim of liability on the part of the Commission. Given that the applicant has chosen to implement the project despite these risks, the applicant must assume the risks. In this way, the applicant is notified that the Commission is not liable for damage as a result of approving the permit for development. The condition also requires the applicant to indemnify the Commission in the event that third parties bring an action against the Commission as a result of the failure of the development to withstand hazards.

Furthermore, [Special Condition 10](#) requires the applicant to record a deed restriction to impose the special conditions of the permit as covenants, conditions and restrictions on the use and enjoyment of the property. This special condition is required, in part, to ensure that the development is consistent with the Coastal Act and to provide notice of potential hazards of the property and help eliminate false expectations on the part of potential buyers of the property, lending institutions, and insurance agencies that the property is safe for an indefinite period of time and for further development indefinitely into the future, or that a protective device could be constructed to protect the approved development and will ensure that future owners of the property will be informed of the Commission's immunity from liability, and the indemnity afforded the Commission.

As noted above, some risks of an unforeseen natural disaster, such as an unexpected landslide, catastrophic slope failure, significant erosion, etc. could result in destruction or partial destruction of the new detached garage or other development approved by the Commission. In addition, the development itself and its maintenance may cause future problems that were not

anticipated. When such an event takes place, public funds are often sought for the clean-up of structural debris that winds up on the beach or on an adjacent property. As a precaution, in case such an unexpected event occurs on the subject property, [Special Condition 8](#), described above, also requires the landowner to accept sole responsibility for the removal of any structural debris resulting from landslides, slope failures, or erosion on the site and agree to remove the authorized development should the bluff retreat reach the point where a government agency has ordered that these facilities not be used.

As conditioned, the proposed development will not contribute significantly to the creation of any geologic hazards and will not have adverse impacts on slope stability or cause erosion. However, the Commission notes that Section 30610(a) of the Coastal Act exempts certain additions to existing single-family residential structures from coastal development permit requirements. Pursuant to this exemption, once a house has been constructed, certain additions and accessory buildings that the applicant might propose in the future are normally exempt from the need for a permit or permit amendment. Depending on its nature, extent, and location, such an addition or accessory structure could contribute to geologic hazards at the site. For example, installing a landscape irrigation system on the property in a manner that leads to saturation of the bluff could increase the potential for landslides or catastrophic bluff failure. Another example would be installing a sizable accessory structure for additional parking, storage, or other uses normally associated with a single family home in a manner that does not provide for an adequate geologic setback from the bluff edge.

However, Section 30610(a) requires the Commission to specify by regulation those classes of development which involve a risk of adverse environmental effects and require that a permit be obtained for such improvements. Pursuant to Section 30610(a) of the Coastal Act, the Commission adopted Section 13250 of Title 14 of the California Code of Regulations (CCR). Section 13250(b)(6) specifically authorizes the Commission to require a permit for additions to existing single-family residences that could involve a risk of adverse environmental effect by indicating in the development permit issued for the original structure that any future improvements would require a development permit. As noted above, certain additions or improvements to the approved structure could involve a risk of creating geologic hazards at the site. Therefore, pursuant to Section 13250 (b)(6) of Title 14 of the CCR, the Commission attaches [Special Condition 11](#), which requires that all future development on the subject parcel that might otherwise be exempt from coastal permit requirements requires an amendment or coastal development permit. This condition will allow future development to be reviewed by the Commission to ensure that future improvements will not be sited or designed in a manner that would result in a geologic hazard. As previously discussed, [Special Condition 10](#) requires that the applicant record and execute a deed restriction approved by the Executive Director against the property that imposes the special conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the property. Special Condition 10 will also help assure that future owners are aware of these CDP requirements applicable to all future development.

In conclusion the Commission finds that the proposed development, as conditioned, is consistent Section 30253 of the Coastal Act, since the development as conditioned (1) will not contribute significantly to the creation of any geologic hazards, (2) will not have adverse impacts on the

stability of the coastal bluff or on erosion, and (3) will not require the construction of shoreline protective works.

G. VISUAL RESOURCES

Section 30251 of the Coastal Act states, in applicable part, as follows:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas...

The subject site lies within an area locally designated as “Coastal Scenic” (though as mentioned above in Finding IV-B (Environmental Setting), the County LCP has not been certified for this particular area). For this reason, the County processed a special permit for the proposed new garage for design review purposes (approved on April 13, 2012). The County found the proposed project to be consistent with the visual resource protection policies of the (uncertified) Trinidad Area Plan, which includes Section 30251 of the Coastal Act, in part because (1) the proposed siding and roofing will not be reflective and will match those of the residence on the parcel; (2) the new detached garage is proposed to be sited on the most level portion of the parcel and thus the development as proposed minimizes the alteration of natural landforms; (3) the proposed new structure maintains an adequate setback from public roads and property lines; and (4) the proposed structure will be low profile (a maximum of 16 feet tall) consistent with the maximum structure height limitations prescribed by the zoning regulations. The County’s special permit included a condition requiring that “All new and existing outdoor lighting shall be compatible with the existing setting and directed within the property boundaries.” Likewise, the Commission imposes exterior lighting limitations as [Special Condition 12](#) for the proposed new development in this rural area.

No public views to the ocean or scenic coastal areas are available through the site from public roadways or other public areas. Although portions of the property are visible from Patricks Point Drive, public views of the property are limited by the presence of extensive evergreen woody vegetation along the road and property edge. Nevertheless, if the property owner were in the future to remove the vegetation that serves to shield the residential development on the property from public view, the proposed new development could affect coastal visual resources in this coastal scenic area. Therefore, the Commission attaches [Special Condition 13](#), which states that any future major vegetation removal on the east side of the property along Patricks Point Drive shall require an amendment to this coastal development permit.

Therefore, the Commission finds that the proposed project, as conditioned, will protect public views to the ocean, minimize the alteration of natural land forms, and be visually compatible with the character of surrounding area, consistent with Section 30251 of the Coastal Act.

H. PUBLIC ACCESS

Coastal Act Sections 30210, 30211, and 30212 require the provision of maximum public access opportunities, with limited exceptions. Coastal Act Section 30210 requires in applicable part that maximum public access and recreational opportunities be provided when consistent with public safety, private property rights, and natural resource protection. Section 30211 requires in applicable part that development not interfere with the public's right of access to the sea where acquired through use (i.e., potential prescriptive rights or rights of implied dedication). Section 30212 requires in applicable part that public access from the nearest public roadway to the shoreline and along the coast be provided in new development projects, except in certain instances, such as when adequate access exists nearby or when the provision of public access would be inconsistent with public safety. In applying Sections 30211 and 30212, the Commission is limited by the need to show that any denial of a permit application based on these sections 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 public access.

The subject property is located on a bluff-top lot between the first through public road (Patrick's Point Drive) and the sea. There is no existing public access on the applicant's property. The proposed project does not involve any changes or restrictions to existing public access that would interfere with or reduce the amount of area public access and recreational opportunities. In addition, the development does not create any additional demand for public access. Therefore, the Commission finds that the proposed project would not have an adverse effect on public access and that the project as proposed is consistent with the requirements of Coastal Act Sections 30210, 30211, and 30212.

I. ALLEGED VIOLATION

Although certain development has taken place at the project site without the benefit of a coastal development permit (including reorientation and extension of the driveway, addition of a covered porch on the existing single family residence, relocation of a dog kennel, and the installation of a culvert over an unnamed watercourse on the property), consideration of the application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Approval of this permit does not constitute a waiver of any legal action with regard to the alleged violations nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal development permit. [Special Condition 14](#) ensures that this permit is deemed issued upon Commission approval and that it will not expire, as some of the development has already commenced and been (in part) completed.

J. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Humboldt County served as the lead agency for the project for CEQA purposes. The County determined that the project qualified for CEQA categorical exemptions under Section 15303 Class 3(e) [New Construction or Conversion of Small Structures] and Class 4(i) [Minor Alterations to Land].

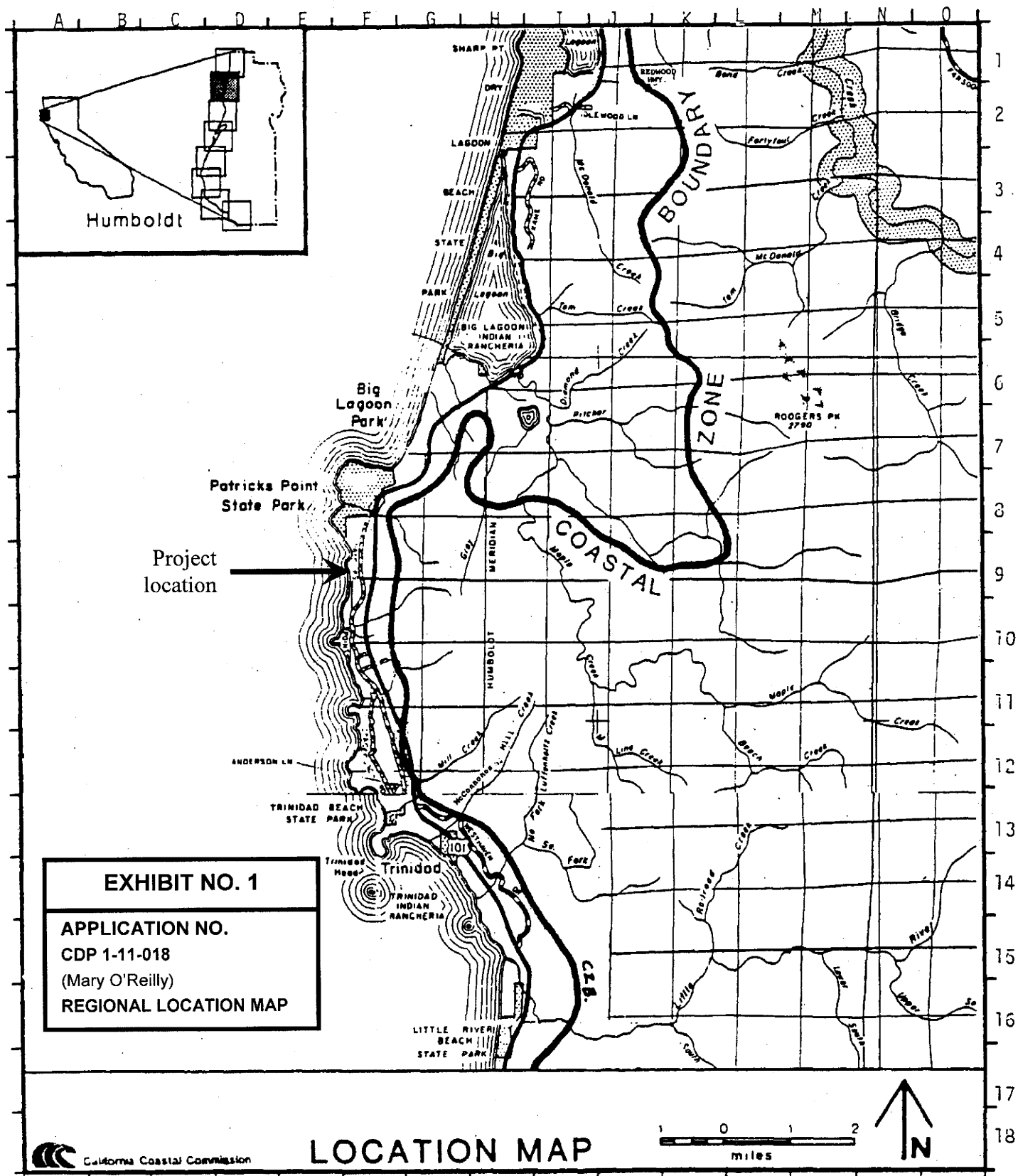
Section 13906 of the Commission's administrative regulation requires Coastal Commission approval of coastal development permit applications to be supported by a finding showing the application, as modified by any conditions of approval, is consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are any feasible

alternatives or feasible mitigation measures available, which would substantially lessen any significant adverse effect the proposed development may have on the environment.

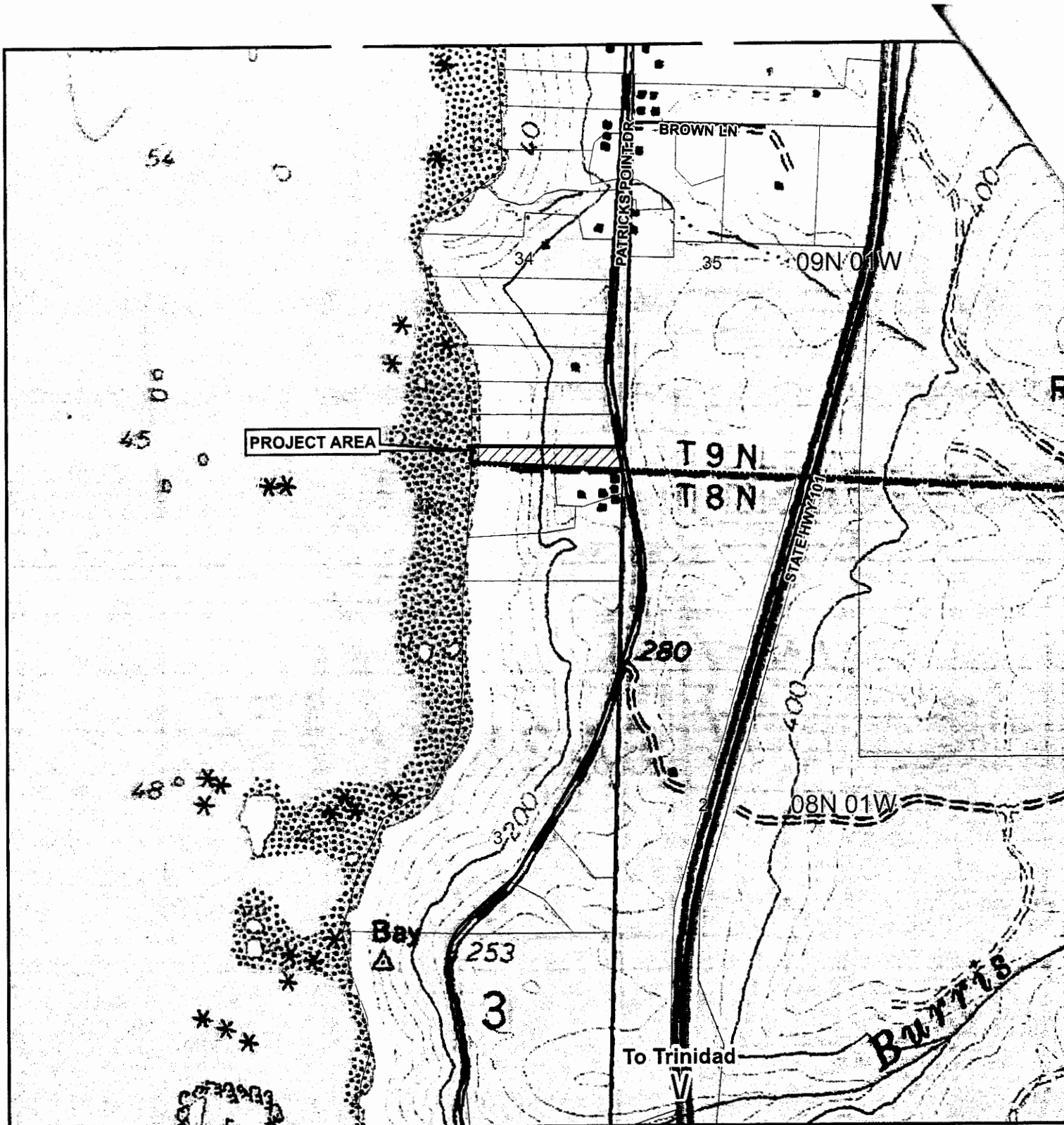
The Commission incorporates its findings on Coastal Act consistency at this point as if set forth in full. As discussed above, the proposed project has been conditioned to be consistent with the policies of the Coastal Act. The findings address and respond to all public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the staff report. As specifically discussed in these above findings, which are hereby incorporated by reference, mitigation measures that will minimize or avoid all significant adverse environmental impacts have been required. As conditioned, there are no other feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impacts which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, can be found consistent with the requirements of the Coastal Act to conform to CEQA.

APPENDIX A: SUBSTANTIVE FILE DOCUMENTS

- Application File for CDP 1-11-018, received April 27, 2011
- Staff report for CDP 1-92-096, approved with conditions August 14, 1992
- Administrative Permit 1-94-033, approved with conditions October 11, 1994
- Humboldt County Special Permit 63-93-M approved on April 13, 2012
- County of Humboldt Local Coastal Program



County of Humboldt



Project Area = 

MOD

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EXHIBIT NO. 2

APPLICATION NO.

1-11-018

O'REILLY, MARY

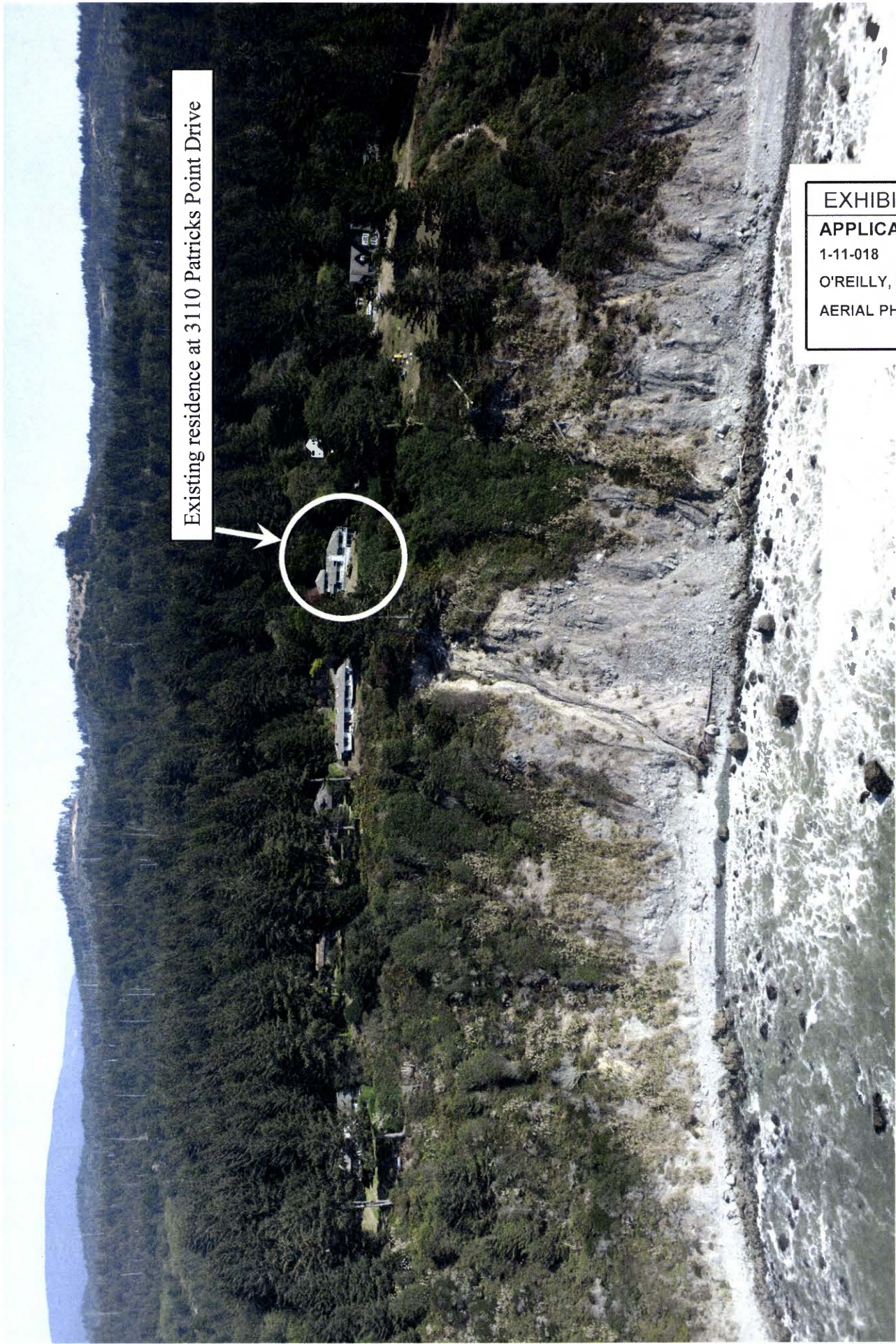
VICINITY MAP

MIT

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This map is intended for display purposes and should not be used for precise measurement or navigation. Data has not been completely checked for accuracy.

0 250 500 750 1,000 Feet

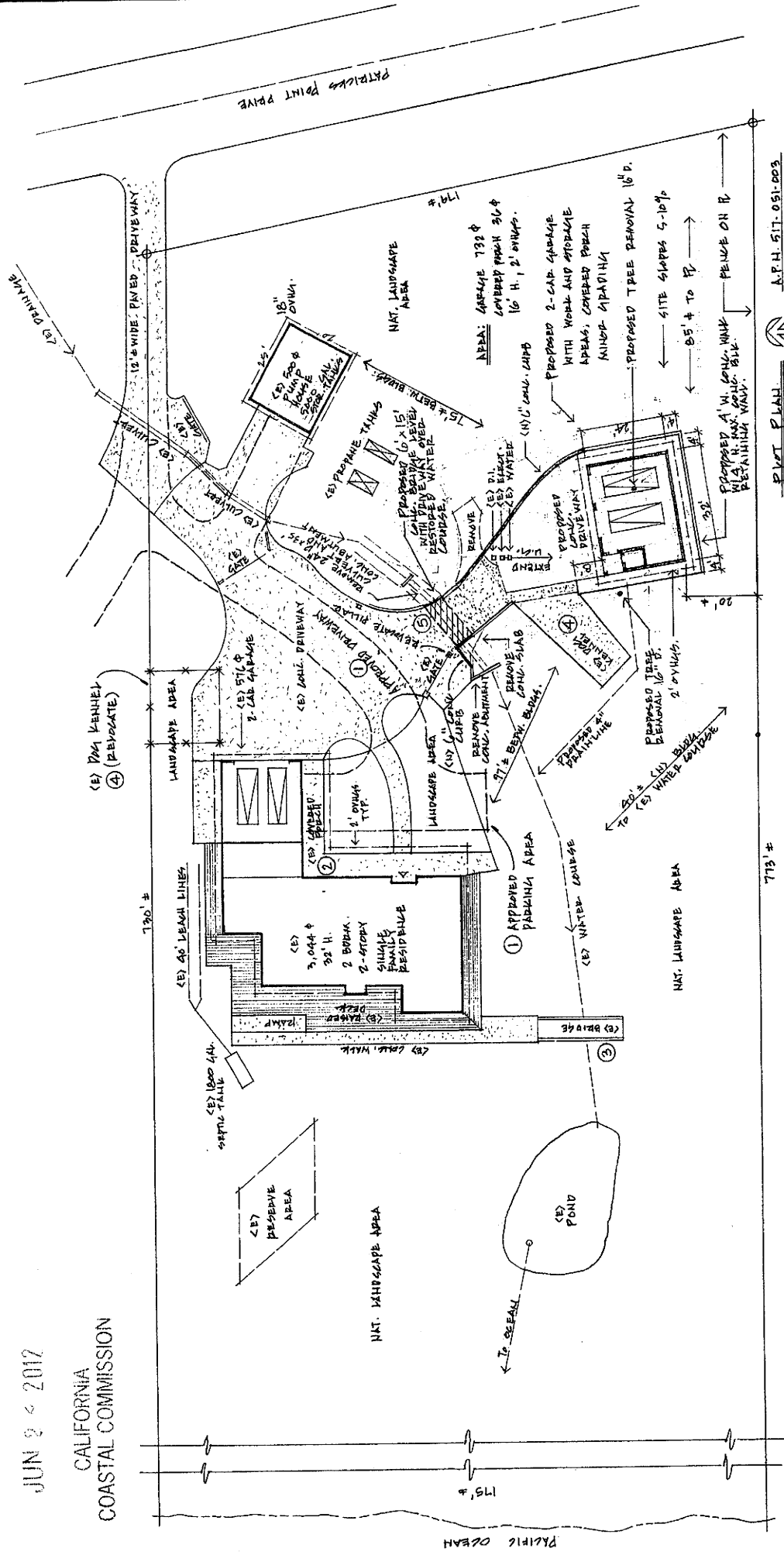


Existing residence at 3110 Patricks Point Drive


EXHIBIT NO. 3
APPLICATION NO.
1-11-018
O'REILLY, MARY
AERIAL PHOTO

Photography Copyright © 2009 Kenneth & Gabrielle Adelman

JUN 2 2012

CALIFORNIA
COASTAL COMMISSION

A.P.N. 517-051-003
APPLICANT: MARY O'REILLY
SITE ADDRESS: 3110 PATRICKS POINT
DRIVE, TRAILHEAD, CA. 95570
LOT AREA = 3.0 ± ACRES.



 PLOT PLAN.

 1"=20'

 10-25-11

 6-22-12

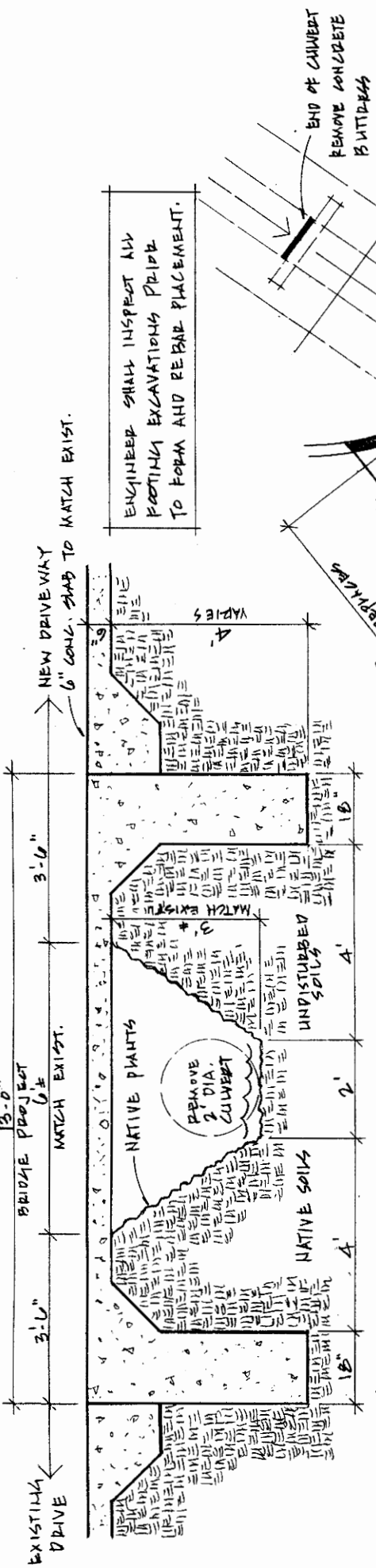
ADDITIONAL NOTES:
4' HIGH RETAINING
DRAINAGE AND DE
CUT (28 YDS.) NE
CUT MAT'L. TO B
OFF SITE LOCAT

- ① ORIGINAL DRIVEWAY AND PARKING AREA CHANGED BY REORIENTATION OF GARAGE DOOR.
- ② COVERED PORCH WAS ADDED TO PROJECT.
- ③ BRIDGE WAS ADDED OVER WATER COURSE.
- ④ NEW LOCATION FOR DOG KENNEL.
- ⑤ PAVED DRIVEWAY W/ CURBENT WAS ADDED.

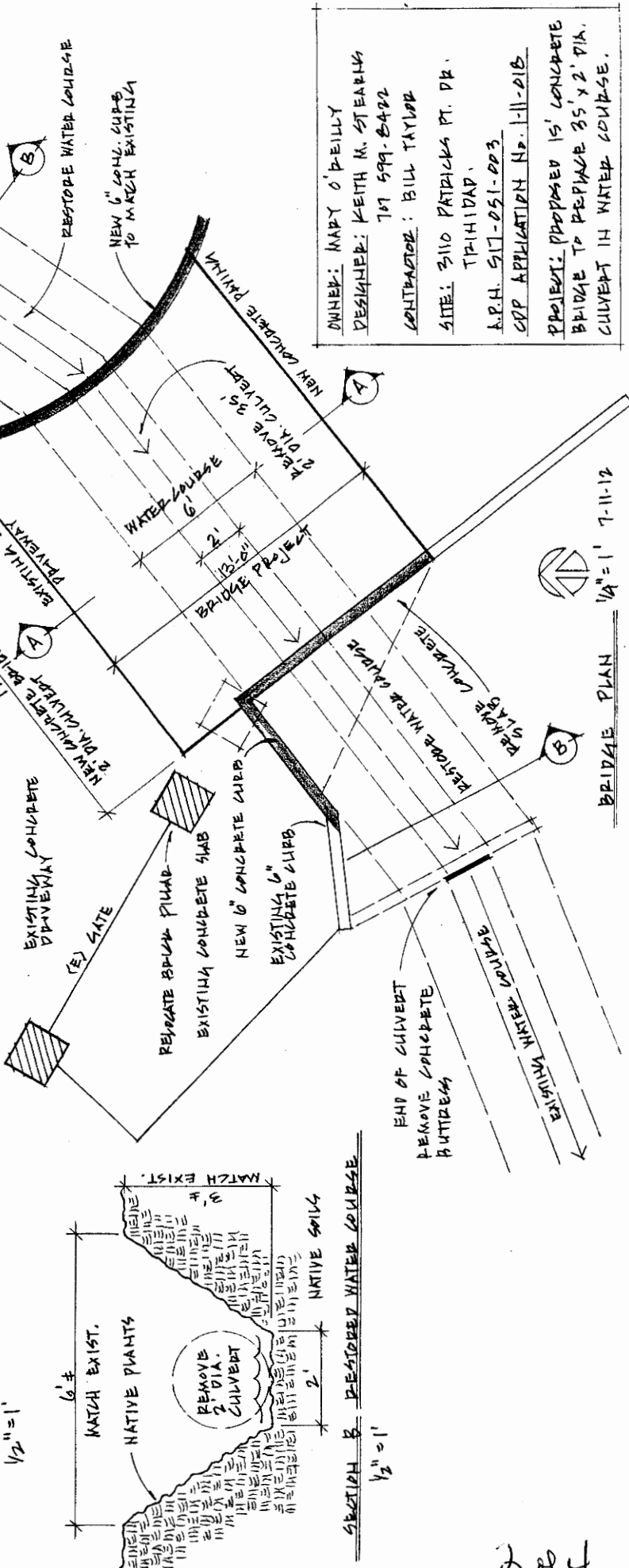
PROJECT.
NOTE: NO RECORD OF PREVIOUS CURVEPT
AT THIS LOCATION. EXISTING CURVEPT
SEEMS TO HAVE BEEN INSTALLED AT
TIME OF EXISTING DRIVEWAY.

PHASE: PROPOSED PREPARED 2-CAD. SHEET 3110 PATRICKS POINT DRIVE, THIRHURST, GA. 30690		DRAWN BY 10-25-11	
SCALE:		REVISED 9-19-11	
DATE: 4-27-11	APPROVED BY:	10-25-11	
DESIGNED: KATHY M. STEADMAN		10-25-11	
1025 I ST. SEATTLE, GA. 30624		10-25-11	
DRAFTER: KATHY M. STEADMAN		10-25-11	
P.O. BOX 11234		10-25-11	
THIRHURST, GA. 30690		10-25-11	

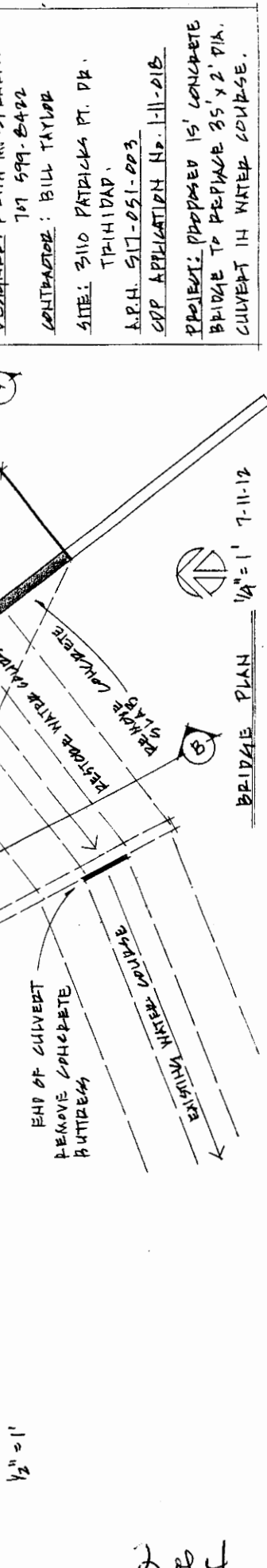
EXHIBIT NO. 4
APPLICATION NO. 1-11-018 O'REILLY, MARY PROPOSED PROJECT PLANS (1 of 4)



SECTION A NEW CONCRETE BRIDGE OVER RESTORED WATER COURSE

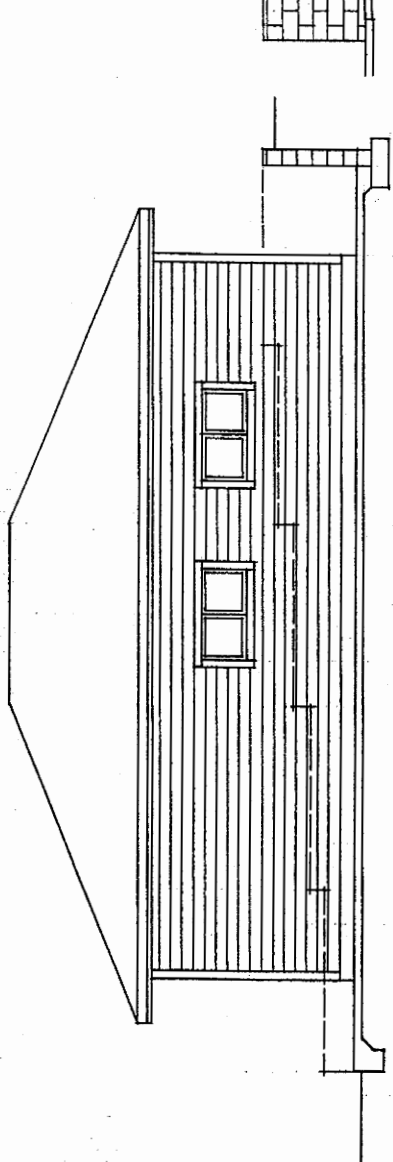


SECTION B RESTORED WATER COURSE

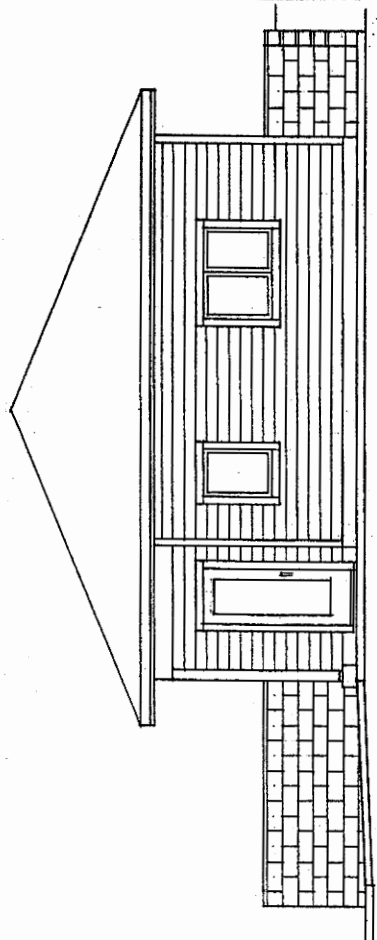


OWNER: MARY O'PEILLY
 DESIGNER: KEITH M. STEARNS
 701 599-8422
 CONTRACTOR: BILL TAYLOR
 SITE: 3110 PATRICKS PT. DR.
 TRIMMADAP.
 A.P.H. 517-051-003
 COP APPLICATION NO. 1-11-018
 PROJECT: PROPOSED 15' CONCRETE BRIDGE TO REPLACE 35' x 2' DIA. CULVERT IN WATER COURSE.

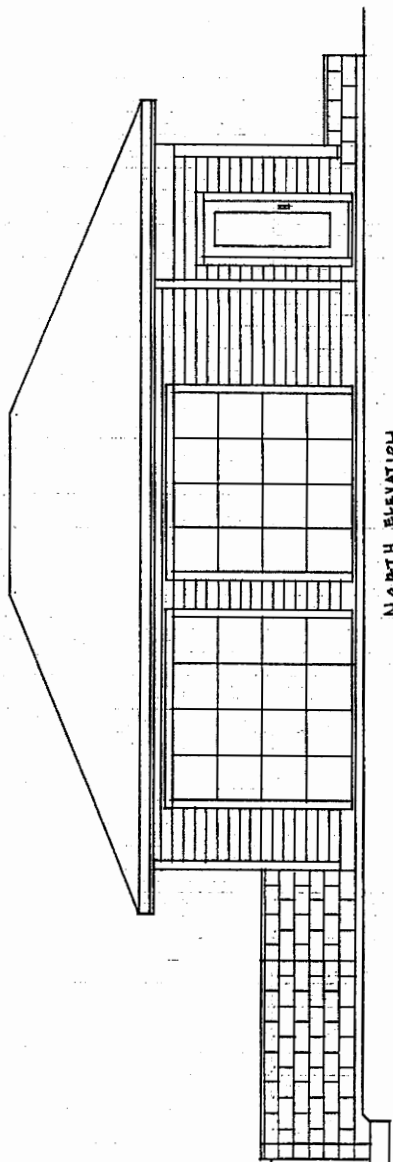
BRIDGE PLAN 1/4" = 1' 7-11-12



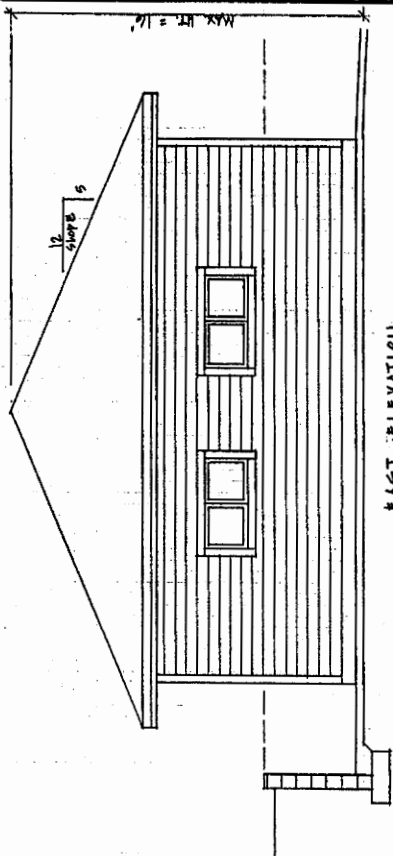
SOUTH ELEVATION



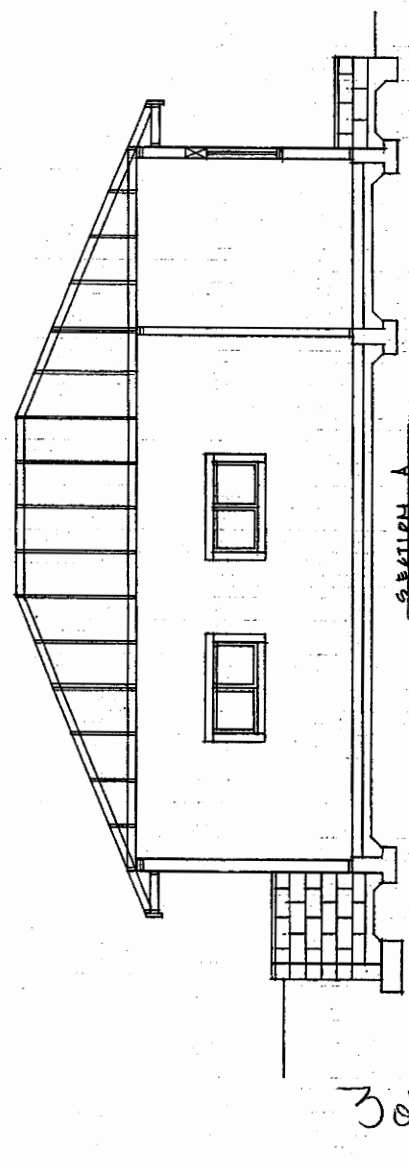
WEST ELEVATION



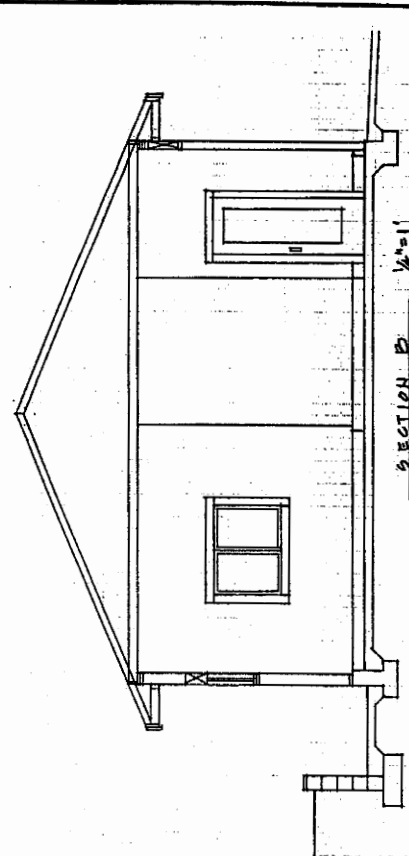
NORTH ELEVATION



EAST ELEVATION



SOUTH ELEVATION



EAST ELEVATION

SECTION B 1/4" = 1'

PROJECT: PROPOSED DETACHED 2-CAR GARAGE
 210 PARKERS POINT DRIVE, THIRHAR, CA. 95570

SCALE: 1/4" = 1'

DATE: 4-27-11

APPROVED BY: [Signature]

DRAWN BY: [Signature]

REVIEWED: 10-25-11

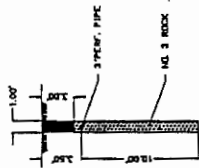
DESIGNER: KEITH M. STEARNS ©2011
 1085 S. ST. SUITE 210, ARIZONA, CA. 95521

OWNER: MARY STEARNS
 P.O. BOX 1284, THIRHAR, CA. 95570

DRAWING NUMBER: 3

A.P.N. 571-091-003

304



EXISTING LEACH LINE
NTS

LEGEND

- RAW WATER FROM NEIGHBOR
- TREATED WATER FROM PUMP HOUSE
- SUBSURFACE DRAIN
- STORM DRAIN
- DROP INLET
- ELECTRICAL
- TELEVISION
- PROPANE GAS
- IRRIGATION
- VALVE
- FIRE HYDRANT

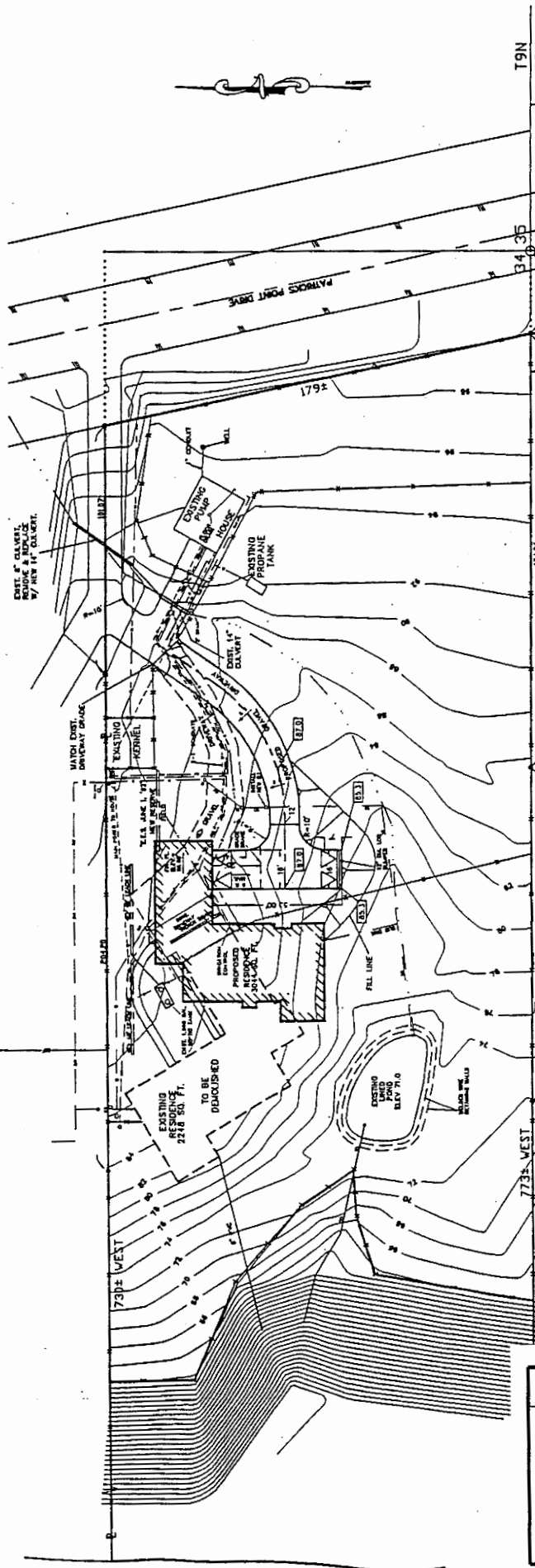


EXHIBIT NO. 5
APPLICATION NO.
 1-11-018
 O'REILLY, MARY
 1994 APPROVED SITE PLAN

SCALE 1"=20'		DRAWN A.R.T.		DATE 4/94	
CHECKED J.H.C.		DATE 4/94		SHEET 1 OF 4	
NO.		REVISION		BY CHK DATE	
LACO ASSOCIATES		216 J ST. LUREA, CA 93501 (907)413-5254		SITE PLAN	
APN: 517-051-03		RESIDENCE FOR		MR. & MRS. FRANCIS O'REILLY	
3110 PATRICKS POINT DRIVE, NIMROD COUNTY, CA		DATE NO. 1002.03		SHEET 1 OF 4	

Location of proposed new detached garage. Two ~16-inch diameter redwood trees are proposed for removal. The applicant's existing dog kennels are visible adjacent to the proposed new driveway extension that will serve the new garage.



EXHIBIT NO. 6

APPLICATION NO.

1-11-018

O'REILLY, MARY

SITE PHOTOS (1 of 5)



Proposed new garage to be located in this area.

Existing unpermitted brick pillar and gate proposed to be removed and rebuilt adjacent (dashed).

Approximate location of inlet of unpermitted culvert proposed for removal.

Proposed new driveway extension (to follow direction of dashed line) and location of proposed new concrete bridge over watercourse.



Footbridge that spans watercourse is proposed for after-the-fact authorization.

Existing residence approved under CDP 1-94-033.

Narrow riparian corridor is a mix of native, nonnative, and ornamental landscaped plants.

Lawn is maintained nearly to the watercourse edge.

View of watercourse downstream
of the footbridge proposed for
after-the-fact authorization.



405

View of existing, man-made, lined,
ornamental pond from the footbridge.





• PLANNING

EXHIBIT NO. 7

APPLICATION NO.

1-11-018

O'REILLY, MARY

BIOLOGICAL ASSESSMENT
(1 of 8)

INSULTING

RECEIVED

SEP 20 2011

CALIFORNIA
COASTAL COMMISSION

Mary O'Reilly
PO Box 1234
Trinidad, CA 95570

September 6, 2011

RE: 3110 Patrick's Point Drive, Trinidad, Ca 95570 biological assessment and impact assessment

Dear Mary,

I am submitting my results from a biological assessment and impact assessment for your project located at 3110 Patrick's Point Drive (APN 517-051-003) in Trinidad, CA. This assessment was performed as a requirement for a Coastal Development Permit (CDP) Application 1-11-018 for the construction of a detached 1-story, 2-car, approximately 750 square-foot garage with covered porch and concrete pad (1,400 square feet) and retaining wall. The proposed development will involve approximately 28 cubic yards of grading and removal of one 16" diameter redwood tree. On May 27, 2011, the California Coastal Commission (CCC) requested additional information to process the application including an explanation for a culvert and driveway extension that is not shown on approved coastal development permit maps for the property. The property is within the coastal zone and is governed by the CCC and the Coastal Act. The Coastal Act sets standards for the protection of Environmentally Sensitive Habitat Areas (ESHA): wetlands, riparian areas, and other natural resources in the coastal zone. ESHAs are defined by the Coastal Act §30107.5

The current site plan submitted with the application shows an existing watercourse through the property which qualifies as an ESHA. The CCC requested a narrative description of the feature with more detail including the extent of any wetland or riparian features associated with the watercourse on a revised site plan. In addition, the CCC requested clarification as to whether any of the proposed activities would occur within any ESHAs.

Stream Description

I visited the site with Contractor Bill Taylor on July 29, 2011 and August 25, 2011 to address the concerns of the CCC. I was given the plot map, CCC letter, and a verbal history of the project. Bill Taylor explained that the culvert existed at the time he constructed the residence, but there were no maps or photographs to demonstrate that the culvert was in place prior to the CCC's no-fill policy on wetlands. The concrete driveway extension and dog kennels were not included in the original permit and were constructed after-the-fact.

The watercourse is a perennial stream fed by both groundwater and runoff associated with Patrick's Point Drive. The watercourse appears to originate at an inside ditch on the eastern side of Patrick's Point Drive. It flows through approximately 60' of existing culverts under Patrick's Point Drive and then south of the driveway to the residence, under the concrete driveway extension through another culvert which is approximately 30' long. The watercourse is daylighted for approximately 50' between these culverts and another 130' feet between the culvert and a pond located on the property. The pond is roughly 35' x 40'. There is a footbridge located 25' to 30' upslope from the pond. The stream has a defined channel that is generally 2-3' wide and 1-3' deep. The wetted width at the time of the survey was 4-8" and the flow was .25-.5" deep. The stream transition line was only 6-12" above the wetted width and though it is likely that precipitation and surface runoff occasionally cause heavy flows in the channel, the vegetation established near the wetted width indicated that high flows were not common.

The southern portion of the stream had a dense strip or riparian vegetation that was primarily native. Species included *Sambucus racemosa* (blue elderberry), *Pseudotsuga menziesii* var. *menziesii* (Douglas fir), *Sequoia sempervirens* (coast redwood), *Rubus parvifolia* (thimbleberry), *R. spectabilis* (salmonberry), *R. ursinus* (California

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blackberry), *Lysichiton americanum* (skunk cabbage), *Acer circinatum* (vine maple), *Thuja plicata* (hemlock), *Polystichum munitum* (sword fern), *Athyrium filix-femina* (lady fern), *Prosartes smithii* (fairly bells), *Stachys ajugoides* (hedge nettle), *Salix sitchensis* (sitka willow), *Marah oreganum* (wild cucumber). There are also ornamental and/or invasive plants including *Digitalis purpurea* (foxglove), *Crocosmia* x (*Crocosmia*), and *Pittosporum tenuifolium* (silverleaf). The northern bank of the stream is predominately manicured grass/turf all the way to the water's edge. The upper portion of the stream (above the driveway extension) is a roughly even mixture of ornamental and native plants. Additional species here include heather, hydrangea, lavender, bottlebrush, fuchsia, boxwood, azalea, and ox-eye daisy, as well as *Hedera helix* (English Ivy), butterfly bush (*Buddleja* sp) and holly (*Ilex aquifolium*). There is shredded redwood bark surrounding the plants.

The pond is partially vegetated along the perimeter with primarily native species including *Vaccinium ovatum* (evergreen huckleberry), *Salix sitchensis* (Sitka willow), *Ribes sanguineum* var. *glutinosum* (pink flowering current), *Scirpus microcarpus* (small-fruited bulrush), and *Typha latifolia* (cattail) *Hippuris vulgaris* (mare's tail), and *Callitriche* sp.(starwort). The pond empties into a below-grade drain at the western end of the pond and flows to the Pacific ocean. Numerous invertebrate species occupy the habitat including damselflies, dragonflies, waterskippers. Northern red-legged frogs were observed in the pond and various avian species utilize the area as well. The proposed project (garage construction and additional cement) will remove approximately 2300 square feet of vegetation that currently functions as riparian vegetation for the watercourse, but is dominated by ornamental, non-native plants.

Table 1.) Wetland types and square footage

Wetland Type	Square Footage
Freshwater Pond	891.6
Perennial Stream	1039.5
Grass	1601.4
Ornamental Dominant-Riparian	2091.1
Proposed Development	2362.3
Ornamental Dominant-Riparian	18466.4
Native Dominant-Riparian	10277.5

Potential Impacts

The proposed project (garage construction and additional cement) will remove approximately 2300 square feet of vegetation that currently functions as riparian vegetation for the watercourse, but is dominated by ornamental, non-native plants. The excavation will disturb maintained turf grass as well as landscaped areas dominated primarily by false lily of the valley (*Maianthemum dilatatum*) as well as the coast redwood tree mentioned above. The overhead canopy cover in the area will be decreased and the potential changes in sunlight, hydrology and soil conditions will likely alter the vegetation adjacent to the garage. Some direct mortality or disturbance of vertebrate and/or invertebrate species is likely during construction.

If the removal of the existing culvert is required in order for the project to conform to current regulations, additional fill dirt will be removed and the vegetation and soils will be disturbed. An alternative access for the garage or the placement of a bridge to replace the culvert, may result in additional impacts from the road or bridge construction including additional grading and/or fill. The exact impacts of these potential structures is difficult to determine without a project description, however the removal of the existing culvert along with the construction of an additional road and/or bridge would likely be more detrimental to the area than using the existing access and culvert. If there is a feasible option for preserving the culvert, the disturbance to vegetation and soils in the drainage would be minimized. In addition, the culvert and drainage were specifically designed to keep slow water flow rates and

enhance wildlife value. If the drainage is realigned in a way that increases flow, the area may be destabilized during high flows. Possible options for protecting the existing watercourse include replacing existing non-native species with native species. Replacing the manicured turf grass along the northern bank with native shrubs or forbs would also be beneficial. A list of plants that are suitable for this area and habitat type are available in Appendix B.

Avoidance of direct impacts to ESHAs is always preferred and recommended when feasible. The CCC and the Trinidad Area LCP generally recommends 100-200' buffers for watercourses and ESHAs; however the existing permitted structures are already within this recommended buffer and buffer widths are smaller in surrounding area due to the narrow lot sizes.

The following measures are expected to reduce or eliminate any potential significant adverse affects to the ESHA:

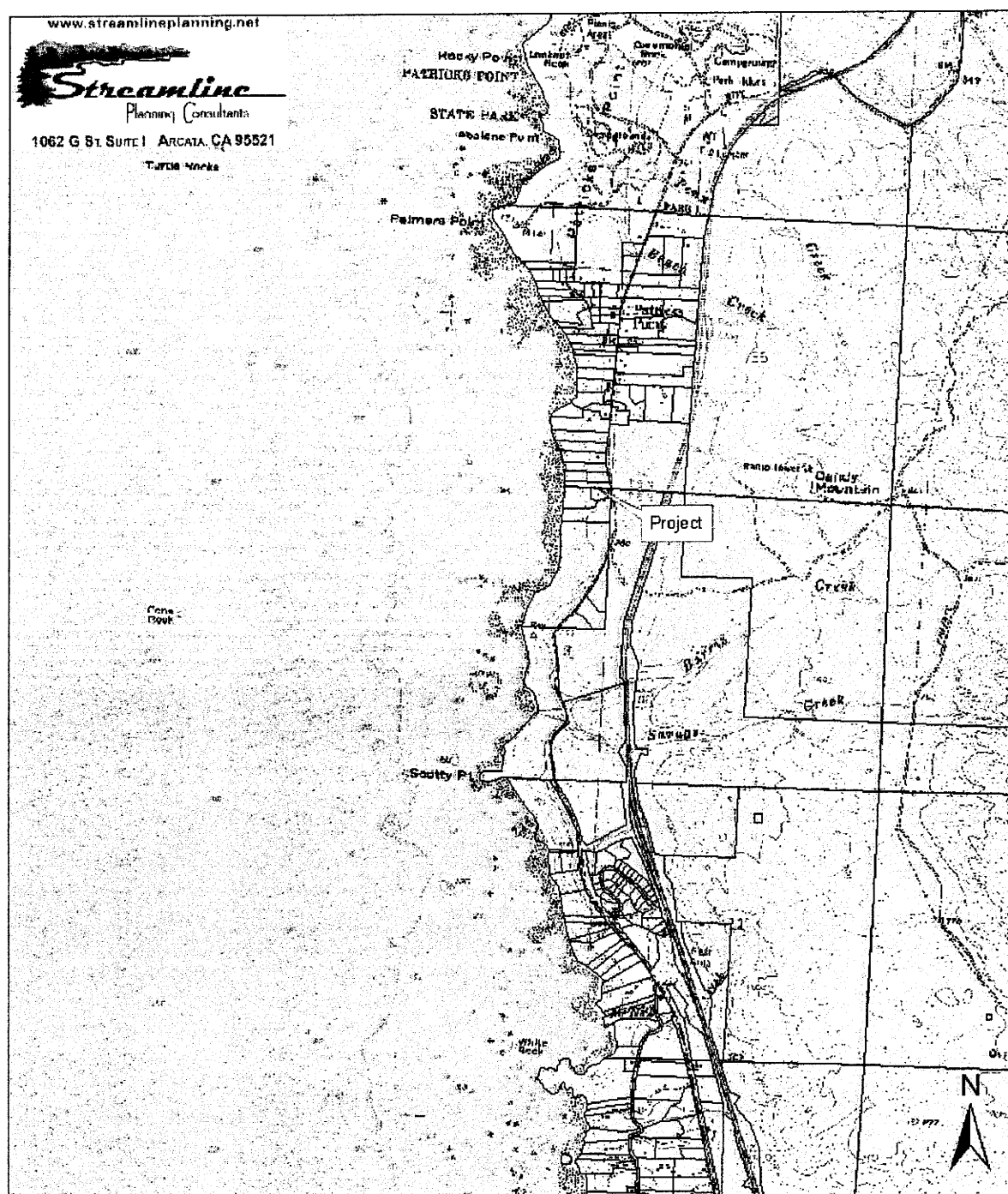
- When feasible, install pervious surfaces for driveways, walkways and access roads thereby reducing surface water and pollutant runoff by enabling water to infiltrate into the soil and groundwater.
- Design structures to direct stormwater runoff away from wetlands. Stormwater runoff from rooftops, driveways, decks and other structures should also be directed away from wetland areas. Rain gutters can be directed to drain into storm drains, cisterns or rock gabions to collect water and diffuse it or direct it to landscape plantings.
- When feasible, remove invasive vegetation, and plant suitable native vegetation. Mechanical removal (hand, tractor or grazing) of invasive plants is preferred to herbicides use to limit chemical pollution into groundwater and wetlands. Wash heavy equipment prior to and following use in the project area when feasible to avoid introducing additional invasive species into or out of this site.

Please contact me with any further questions regarding the description of or potential impacts to the ESHA.

Warmly,
Streamline Planning

Tami Camper (Biologist)

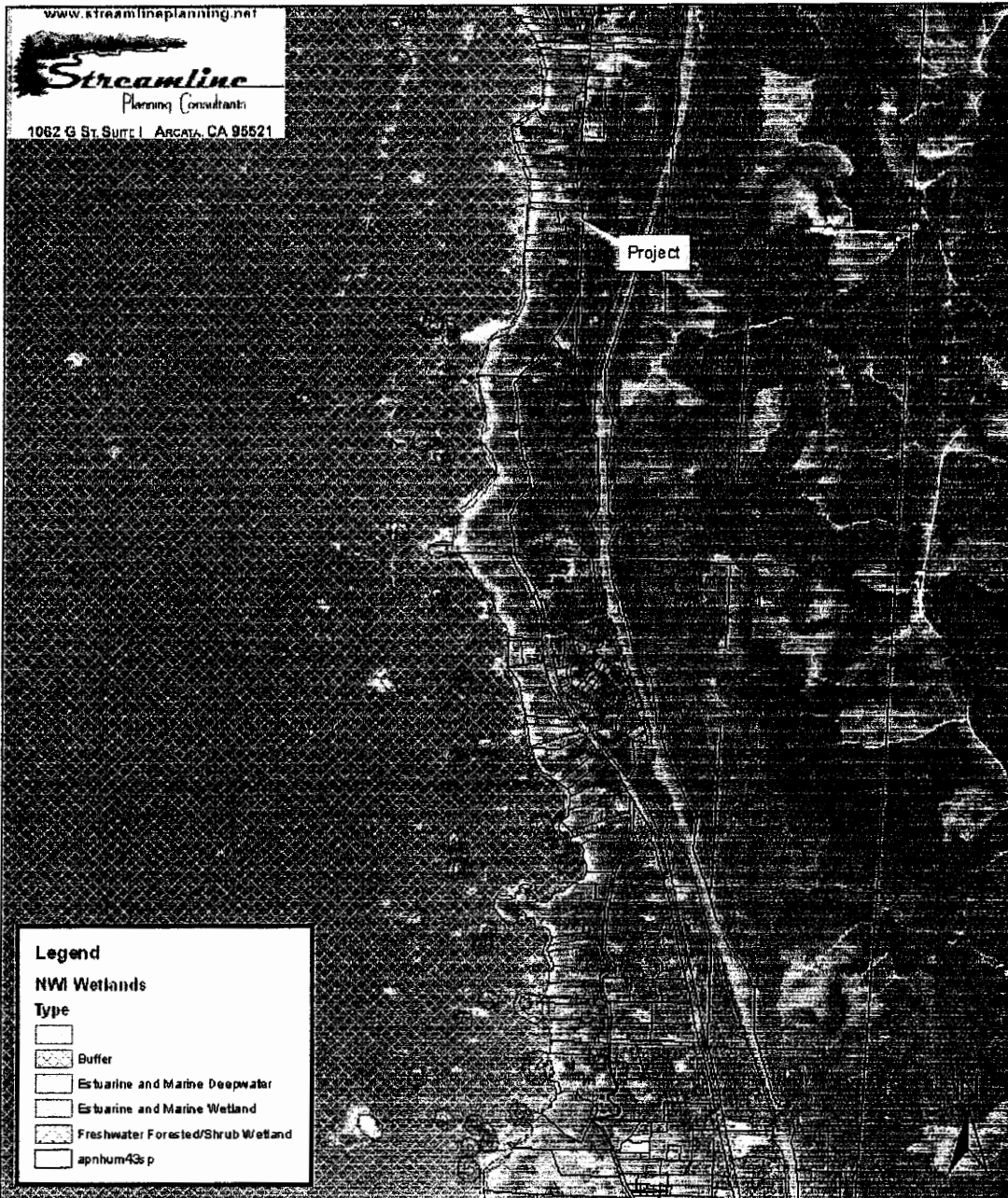
Appendix A) Maps



Project Area Map and Environmental Setting



4 of 8



Mapped NWI Wetlands Near the Project Area

0 0.25 0.5 1 1.5 2 Miles



Stream, Wetland and Riparian Areas with Trinidad NAIP

6 of 8

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Appendix B) Suitable Native Shrubs

- *Cornus sericea* - redosier dogwood
- *Holodiscus discolor* - oceanspray
- *Lonicera involucrata* - twinberry
- *Morella californica* - California wax myrtle
- *Physocarpus capitatus* Pacific ninebark
- *Ribes divaricatum* - spreading gooseberry
- *Rosa californica* - California wildrose
 - *Rosa nutkana* - Nootka rose
- *Rubus spectabilis* - salmon berry
- *Spiraea douglasii* - rose spirea
- *Acer circinatum* - vinemaple
 - *Alnus rubra* - red alder
- *Cornus glabrata* - brown dogwood
- *Malus fusca* - Oregon crabapple
- *Prunus virginiana* - chokecherry
- *Rhododendron occidentale* - western azalea
 - *Salix hookeriana* - dune willow
 - *Salix lasiolepis* - arroyo willow
 - *Salix lucida* - shining willow
 - *Salix scouleriana* - Scouler's willow
 - *Salix sitchensis* - Sitka willow
 - *Rubus parviflorus* - thimbleberry
 - *Rubus ursinus* - California blackberry
 - *Vitis californica* - California wild grape

7 of 8

Appendix C) Site Photographs



Area proposed for excavation and garage construction



Pond facing northwest towards house.



Watercourse with native and non-native banks



Paved area and unpermitted culvert area.

8 of 8

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