
North Coast Regional Water Quality Control Board

July 19, 2018

Mr. Richard Davis-Lowell
2125 Bryant Street, #103
San Francisco, CA 94110

Dear Mr. Davis-Lowell:

Subject: Site Visit Memo, Notice of Violation, and Request for Technical Information for Davis Property-King Ridge Road Bank Stabilization Project

File: Davis Property-King Ridge Road Bank Stabilization; ECM PIN CW-817451; WDID 1B15110WNSO

On May 10, 2018, North Coast Regional Water Quality Control Board (Regional Water Board) staff person, Kaete King, attended a site visit at 19779 & 20675 King Ridge Road, Cazadero. The site currently has an active Clean Water Act Section 401 Water Quality Certification (401 certification) – Davis Property-King Ridge Road Bank Stabilization; ECM PIN CW-817451; WDID 1B15110WNSO. The purpose of this letter is to detail observations from the site visit, identify violations of the 401 certification, and formally request technical documents.

Timeline

- August 17, 2015, we received a 401 certification application from Richard Davis Lowell (applicant) for a bank stabilization project at 19779 & 20675 King Ridge Road, Cazadero.
- September 24, 2015, Kaete King attended a pre-certification site visit attended by the consultant, the landowner, a representative from the California Department of Fish and Wildlife (CDFW), and others. CDFW and Regional Water Board staff made recommendations to change the design to a self-mitigating bioengineered design so that it could be permitted.
- Between April and August of 2016, the design was revised following Regional Water Board and CDFW staff review.

- September 22, 2016, staff issued a 401 Certification (Attachment 1).
- October 14, 2016, the applicant replied to an email from CDFW and stated that operations had not commenced.
- January 5, 2018, staff received a voicemail from the applicant requesting termination of the 401 certification.
- January 8, 2018, staff emailed the applicant with instructions for termination.
- March 15, 2018, staff received an email requesting withdrawal of the 401 application and termination of annual billing, but no report or site photos demonstrating the project had not occurred.
- April 2, 2018, staff requested photos of the site in order to terminate the project.
- April 9, 2018, staff emailed the applicant requesting a site visit as an aerial photo analysis showed possible activity on the stream bank.
- May 3, 2018, the landowner's consultant, Lucy McMillan, contacted staff to meet about the project.
- May 10, 2018, staff conducted a site visit, observations are documented below.
- May 11, 2018, Lucy McMillan provided staff with a site visit summary email.

Permitted Design

The project was permitted within the 401 certification to occur along two reaches on the east side of Austin Creek. One reach would be 60 feet long and the other would be 14 feet long. There would be an approximately 50-foot section of stream bank between the two treatment areas that would not be altered. Bank stabilization work would include excavation of the existing stream bank, placement of rock rip rap, installation of live willow poles, installation of plantings in tubes throughout the rip rap, and installation of top of bank plantings (See figures 1-3, below).

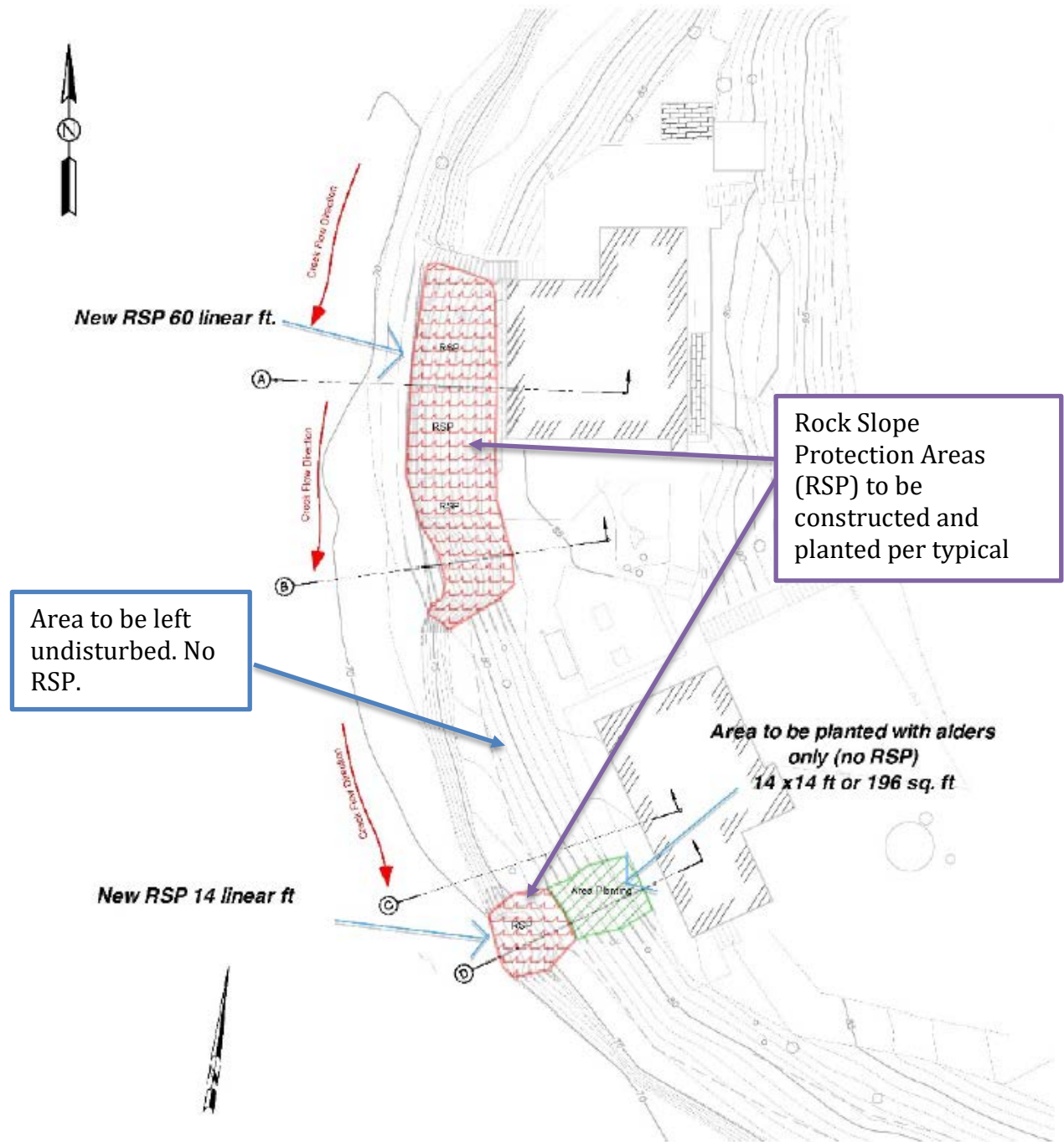


Figure 1: Approved site plan.

Site Visit Observations

On May 10, 2018, I visited the site with applicant Richard Davis Lowell, consultant Lucy McMillan, applicant's legal counsel Dorothy Dickey, and CDFW representative James Hansen.

We observed the following activities that were not consistent with the original project application and authorized through the 401 certification (see photos below):

1. A large volume of rock was used, including smaller-diameter fill material that appears to be discharging to the creek.
2. A long stretch of Austin Creek bank was filled. A total of 74 linear feet of stabilization was permitted in two locations separated by an undisturbed area.
3. An access route with permanent impacts was developed in an unpermitted location.
4. The construction is devoid of vegetation while the permitted design was to be heavily planted.
5. Planting tubes were incorrectly installed and embedded in rock where plants will not thrive. There appear to be too few planting tubes compared to the approved design.
6. The toe of the rip rap appears to have been placed 3-6 feet into the channel. The permitted design did not allow encroachment into the channel and instead required excavation into the slope.

We discussed the possibility of modifying the existing work to achieve compliance by sprigging with willows. However, Regional Water Board and CDFW experience with similar projects has shown an extremely low success rate for planting rip rap after construction, leading to excessive temporal impacts. Further, we discussed how the structural elements of the bank stabilization may need to be modified or reconstructed to achieve compliance. Before/after photos are included below that illustrate the site conditions.

It is unknown at this time how deep the fill is. If the rip rap and fill was placed on top of the existing slope without keying it in, it is likely to fail and discharge to Austin Creek. If it is deep, there is little possibility of establishing thriving vegetation to mitigate for permanent fill impacts. Bioengineered bank stabilization projects tend to be self-mitigating and are more successful because the rooted vegetation deeply stabilizes the bank as it grows.

Notice of Violation

We find that the applicant's implementation of the Davis Property-King Ridge Road Bank Stabilization Project has resulted in violations of conditions 1, 4, 5, 6, 16, 21, 22, and 30 of the September 22, 2016, Clean Water Act Section 401 Water Quality Certification (401 certification), issued by the Regional Water Board. This notice of violation is supported by the May 10, 2018, site inspection conducted by Regional Water Board staff.

Pursuant to Water Code Section 13267, you are required to submit technical reports containing the information listed below (see Information Required), no later than 45

days from the date of this letter (13267 Order). Please direct the reports and any related correspondence to the attention of Regional Water Board staff Kaete King (contact information below).

Alleged Violations

Condition 1 of the 401 certification requires:

The Applicant shall implement the Revegetation Plan v2, submitted on August 17, 2016.

Condition 4 of the 401 certification requires:

The Applicant shall comply with the Site Equipment and Staging letter dated July 26, 2016, and the corresponding Staging Diagram submitted on August 25, 2016.

Condition 5 of the 401 certification requires:

Mitigation and monitoring reports shall be submitted annually beginning the year of issuance of the certification and continuing no fewer than five years following mitigation implementation. Reports shall be submitted to the Regional Water Board by January 31 and detail the monitoring results from the prior calendar year. The year 1 report shall be due January 31, 2017.

Condition 6 of the 401 certification requires:

Regional Water Board staff shall be notified in writing at least five working days prior to the commencement of ground disturbing activities, with details regarding the construction schedule, in order to allow staff to be present onsite during construction, and to answer any public inquiries that may arise regarding the project.

Condition 16 of the 401 certification requires:

The applicant is prohibited from discharging waste to waters of the state, unless explicitly authorized by this certification. For example, no debris, soil, silt, sand, bark, slash, sawdust, cement or concrete washings, oil or petroleum products, or other organic or earthen material from any construction or associated activity of whatever nature, other than that authorized by this Certification, shall be allowed to enter into or be placed where it may be washed by rainfall into waters of the state. When operations are completed, any excess material or debris shall be removed from the work area.

Condition 21 of the 401 certification requires:

All project activities shall be implemented as described in the submitted certification application package and the findings and conditions of this certification. Subsequent project changes that could significantly impact water quality shall first be submitted to Regional Water Board staff for prior review, consideration, and written concurrence. If the Regional Water Board is not notified of a significant alteration to the project, it will be considered a violation of this certification, and the applicant may be subject to Regional Water Board enforcement actions.

Condition 22 of the 401 certification requires:

Prior to implementing any change to the project that may be a material change as defined in California Water Code section 13260(c) as a proposed change in character, location, or volume of the discharge, the applicant shall obtain prior written approval of the Regional Water Board Executive Officer. If the Regional Water Board is not notified of the material change to the discharge, it will be considered a violation of this

certification, and the applicant may be subject to Regional Water Board enforcement action(s).

Condition 30 of the 401 certification requires:

Except as may be modified by any preceding conditions, all certification actions are contingent on:

- i) the discharge being limited to and all proposed mitigation being completed in strict compliance with the Applicant's Project description, and*
- ii) compliance with all applicable requirements of the Water Quality Control Plan for the North Coast Region (Basin Plan).*

The applicant violated these conditions by performing a project different than the approved project description, not notifying the Regional Water Board of a change to the project description, not notifying of project commencement, and not submitting annual reports.¹ Modifying the project resulted in unauthorized fill of waters of the United States and state, continuing discharge of inappropriately sized and placed fill material, and unmitigated hardening of the stream bank.

Information Required

No later than 45 days from the date of this 13267 Order, technical reports containing the information listed below shall be submitted to Regional Water Board staff:

1. A narrative description of the built project and construction methods including a timeline of project actions.
2. A report, prepared and stamped by an engineer, including:
 - a) a survey of pre-project conditions in relation to the specifications of the approved project plans,
 - b) an estimate of the volume, length, and area of project components, and
 - c) an assessment of the stability of the constructed project.The purpose of the evaluation is to determine how much and in what ways the project differed from what was permitted by the Regional Water Board, CDFW, and Army Corps of Engineers and to determine the risk of further discharge.
3. A discussion of proposed concepts for mitigating impacts associated with project construction. This may include recommendations for modifying certain aspects of the built project as well as mitigation plantings. A meeting shall be arranged with representatives from the Regional Water Board, CDFW, and Army Corps of Engineers to discuss the recommendations.

The burdens, including cost, of the report required in this 13267 Order bear a reasonable relationship to the need for the report and the benefits to be obtained from the report. The report is required to obtain information that is necessary to: determine the extent and duration of actual and potential adverse impacts to water quality and beneficial uses caused by the unauthorized activity; determine the extent of non-compliance with the 401 certification, water quality objectives, and prohibitions in the Water Quality Control Plan

¹ In addition, the Regional Water Board Basin Plan prohibits the placing or disposal of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature at locations where such material could pass into any stream or watercourse in the basin in quantities which could be deleterious to fish, wildlife, or other beneficial uses. (See Water Quality Control Plan for the North Coast Region p. 4-29; available at: https://www.waterboards.ca.gov/northcoast/water_issues/programs/basin_plan/)

for the North Coast Basin (Basin Plan); and identify corrective actions, including the scope of restoration. The cost bears a reasonable relationship to the benefits because of the active and potential discharge to Austin Creek from unauthorized activity.

Pursuant to Water Code section 13385, any person who violates Water Code section 13376 can be liable for up to \$10,000 for each day in which the violation occurs. Where there is a discharge, an additional liability may be assessed up to \$10 per gallon of waste discharged.

Pursuant to Water Code section 13268, any person failing or refusing to furnish technical reports required under Water Code section 13267, or falsifying any information provided therein, is guilty of a misdemeanor and subject to an administrative civil liability of up to one thousand dollars (\$1,000) for each day in which the violation occurs.

Submit the required information to Kaete King, Regional Water Board staff, at Kaete.King@waterboards.ca.gov. If you have questions regarding this Notice of Violation, you may contact Kaete King by email or by telephone, at (707) 576-2848.

Sincerely,

Joshua Curtis
Assistant Executive Officer

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Certified Mail – Return Receipt Required

Attachment 1: Davis Property King Ridge Road Bank Stabilization Project 401 Certification. https://www.waterboards.ca.gov/northcoast/board_decisions/water_quality_certification/pdf/2016/160922_King_Ridge_Rd_401.pdf

cc: Richard Davis Lowell, applicant, richard.davis17@comcast.net
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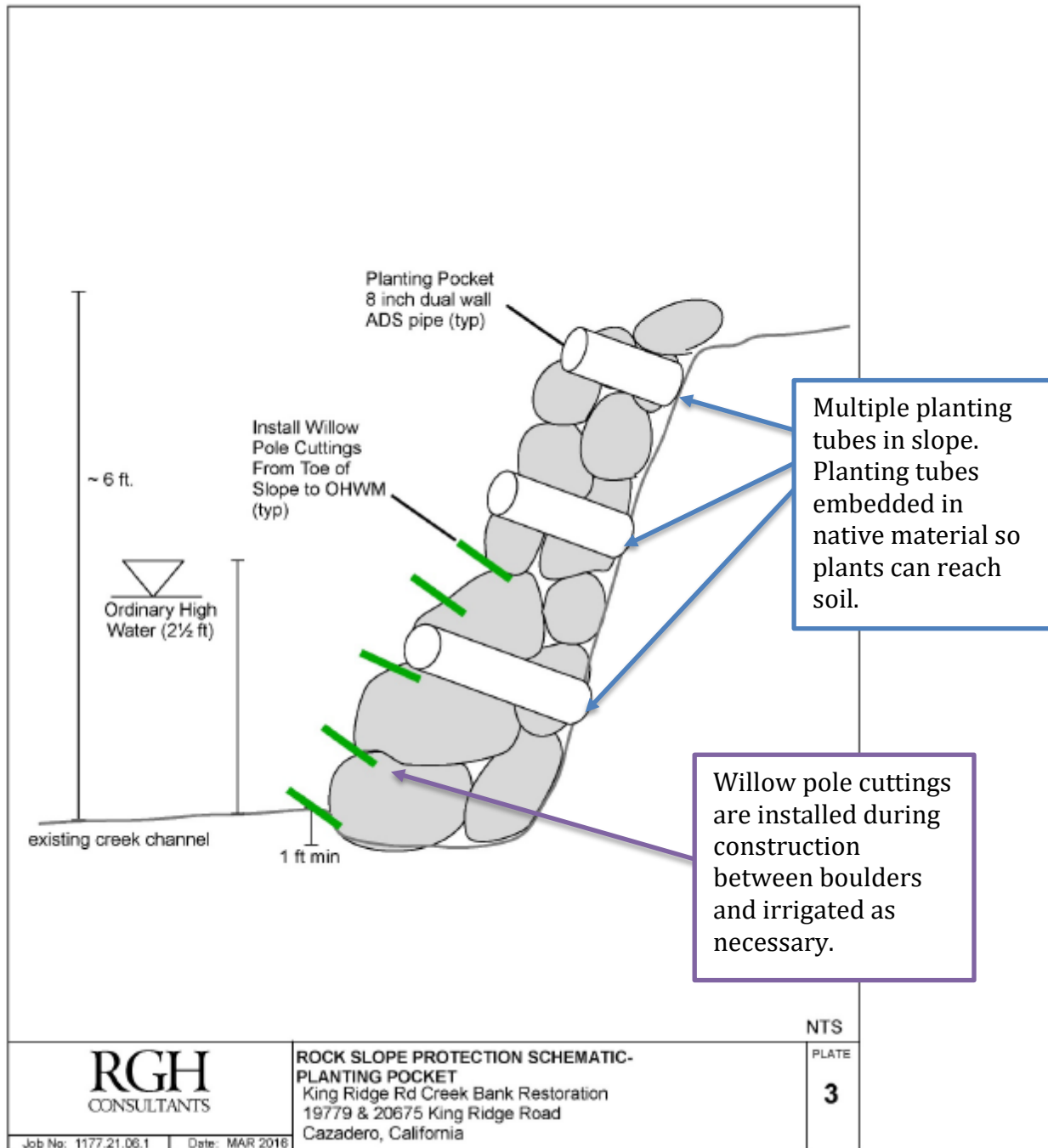


Figure 2: Approved RSP and planting schematic

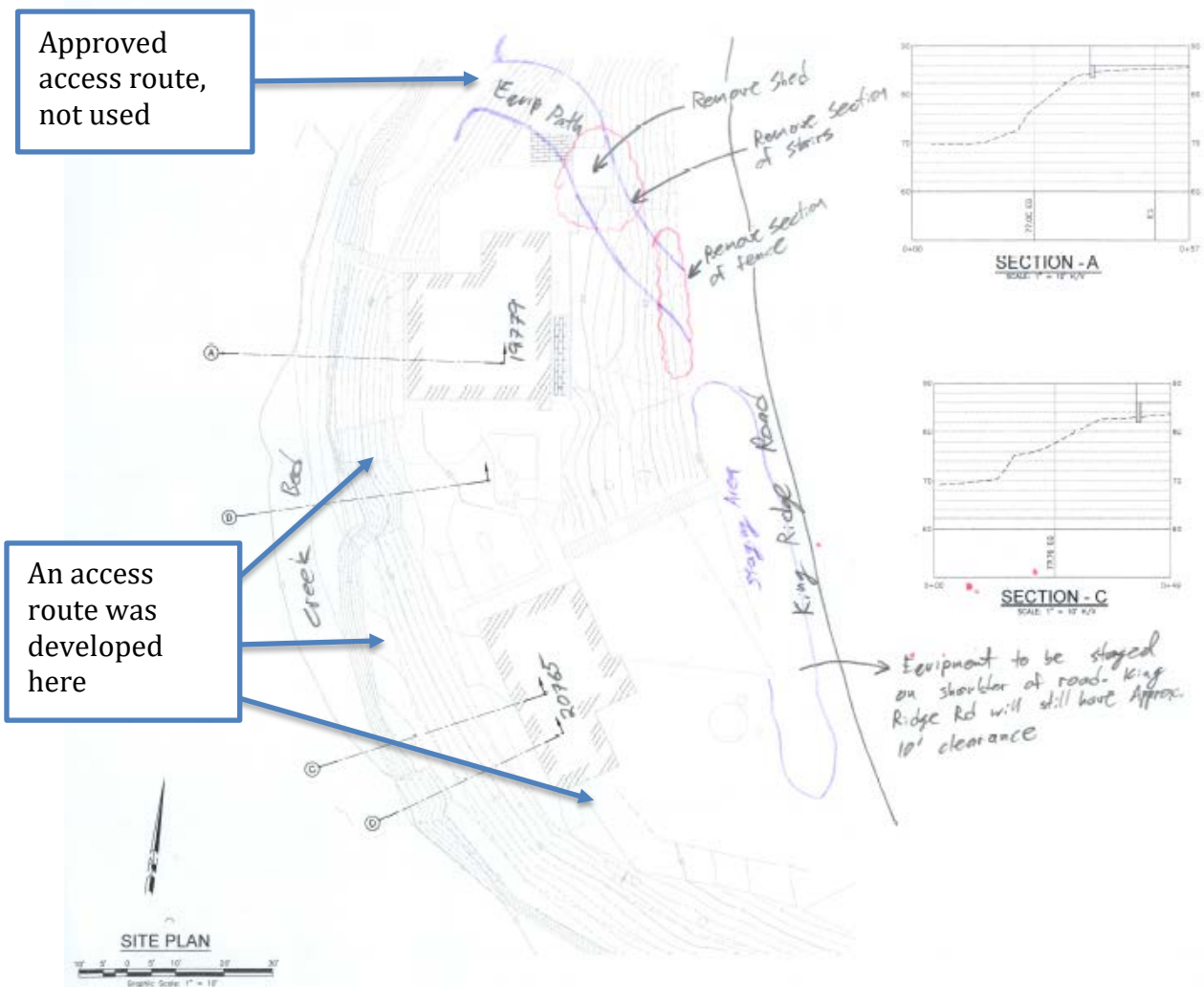


Figure 3: Approved site access plan



Figure 4: Site overview original condition. Photo taken by Kaete King 9/24/2015.



Figure 5: Site overview post-construction. Rip rap visible at toe of slope. Additional fill material behind/upslope from rip rap. Photo taken by Kaete King 5/10/2018.



Figure 6: Original condition of northern part of site. Photo taken by Kaete King 9/24/2015



Figure 7: Rip rap, fill, and planting tubes, post-construction. Photo taken by Kaete King 5/10/2018.



Figure 8: View of area between two RSP zones that was to be left undisturbed. Photo taken by Kaete King 9/24/2015.



Figure 9: Post-construction rip rap and fill in area that was to be left undisturbed. Smaller fill material is spilling down between rip rap. Notice poorly installed planting tubes. Photo taken by Kaete King 5/10/2018.



Figure 10: Existing rip rap below southern structure. Just 14 linear feet of RSP was proposed in this area, with additional planting-only at the top of the slope. Photo taken by Kaete King 9/24/2015.



Figure 11: Small-diameter fill material has been placed above the existing rip-rap and it is falling down into the channel. Photo taken by Kaete King 5/10/2018.



Figure 12: View of channel looking upstream, original condition. Photo taken by Kaete King 9/24/2015.



Figure 13: View of channel looking upstream, post-construction. The rip rap seems to have been placed 3-6 feet into the channel. The permitted design did not allow encroachment into the channel and instead required excavation to place rip rap back into the slope. CDFW representative is examining improperly placed planting tube. Photo taken by Kaete King 5/10/2018.



Figure 14: Same location as Figure 15 but looking upstream. An access route was developed here, going around the structure and across the slope in front of the structure, on the bank of Austin Creek. Photo taken by Kaete King 9/24/2015.



Figure 15: Photo angle reversed from Figure 14. This photo is looking downstream. View of access route that was developed for construction. Small-diameter fill material has been left on slope above existing rip rap. Photo taken by Kaete King 5/10/2018.



Figure 16: View of access route from the deck of the structure. Photo taken by Kaete King 5/10/2018.



Figure 17: Inside of planting tube. Planting tube appears to have been installed up against rock fill. No plants will grow here. Photo taken by Kaete King 5/10/2018.