

CALIFORNIA COASTAL COMMISSION

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

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

RECORD PACKET COPY

W16a

Date Filed:	August 12, 2003
49th Day:	Sept. 30, 2003
180 th Day:	February 8, 2004
90-Day Extension Submitted:	December 19, 2003
Final Date for Commission Action:	March 18, 2004
Staff:	Robert S. Merrill
Staff Report:	March 4, 2004
Hearing Date:	March 17, 2004
Commission Action:	

STAFF REPORT: PERMIT AMENDMENT

APPLICATION NO.: **1-00-025-A1**

APPLICANT: **CALIFORNIA DEPARTMENT OF FISH AND GAME**

PROJECT LOCATION: At the Fay Slough Wildlife Area located between Eureka and Arcata adjacent to northbound Highway 101 at the northern limits of the City of Eureka, Humboldt County (APNs 402-161-07, -08; 402-171-08; 501-241-09).

DESCRIPTION OF PROJECT PREVIOUSLY APPROVED: Enhance existing wetlands by: (1) repairing 5,142 linear feet of existing dike, (2) removing 1,400 linear feet of dike, (3) constructing 630 linear feet of new dike, (4) excavating 7 shallow ponds, (5) installing 4 water control structures, (6) raising 2,182 linear feet of access road by two feet, and (7) creating approximately 0.52 acres of wetland at the Eel River Wildlife Area to mitigate for wetland fill from dike improvements.

CALIFORNIA DEPARTMENT OF FISH AND GAME

Fay Slough Wildlife Area (1-00-025-A1)

Page 2

DESCRIPTION OF

AMENDMENT REQUEST:

Further enhance existing seasonal wetland habitat by excavating a three-acre basin within and next to existing seasonally inundated sloughs, installing a new water control structure, and placing 11,400 cubic yards of spoil material atop 8,435 linear feet of existing road prism ranging from one to two feet in depth.

GENERAL PLAN DESIGNATION:

Agriculture Exclusive

ZONING DESIGNATION:

Agriculture Exclusive 60-acre-minimum

LOCAL APPROVALS RECEIVED:

None Required

OTHER APPROVALS REQUIRED:

Army Corps of Engineers

SUBSTANTIVE FILE DOCUMENTS:

(1) Humboldt County LCP, (2) Coastal Development Permit No. 1-00-025

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission approve with conditions, the requested amendment to the coastal development permit, granted originally to the Department of Fish & Game in July, 2001 for Phase I of the Fay Slough Wildlife Area Wetland Enhancement Program. The project site is located at the northern end of the City of Eureka, between Eureka and Arcata and adjacent to northbound Highway 101 in Humboldt County. The FSWA comprises approximately 500 acres of former ranch lands that was purchased by the state in 1987 for wildlife habitat enhancement purposes. The amendment request seeks authorization for construction of Phase II of the enhancement project. The proposed improvements for the second phase primarily involve the creation of a 3-acre basin to retain water over a longer period of the winter and spring within and next to seasonally inundated sloughs by the excavation of 11,400 cubic yards of material. The proposed improvements also include the installation of a water control structure within a slough to manage water levels in shallow channels elsewhere in the wildlife area.

Staff is recommending six new special conditions (in addition to the four special condition still in full force and effect from the original permit) to ensure that the project is consistent with the Chapter 3 policies of the Coastal Act. To ensure that Phase II of the wetland enhancement project will achieve the wetland enhancement objectives for which the project is intended, staff recommends that the Commission attached Special

CALIFORNIA DEPARTMENT OF FISH AND GAME

Fay Slough Wildlife Area (1-00-025-A1)

Page 3

Condition No. 7 to the amended permit. Special Condition No. 7 would require that the applicant submit for the review and written approval of the Executive Director prior to issuance of the amended permit a final revised monitoring program that substantially conforms with the monitoring plan approved pursuant to the original permit and provides for remediation should the goals and objectives of the wetland enhancement project not be achieved. The Phase II improvements would result in a total of 600 square feet of wetland fill. The original permit required that the applicant create a half-acre of freshwater wetlands at an off-site location at another wildlife area to mitigate for the wetland fill that had been authorized. The applicant indicates that approximately one-quarter of an acre of the wetland fill that was authorized was not placed and is no longer needed, although the entire wetland area that was required has been created. Therefore, as mitigation for the 0.013 acres of wetland fill associated with Phase II, staff is recommending special conditions (Special Conditions 8 and 9) that would allow the mitigation that is being provided for Phase I pursuant to the original permit to also serve as mitigation for the additional fill that is proposed under the permit amendment request. Staff is recommending that a condition be imposed that clarifies the total amount of fill authorized by the permit as amended and requires the applicant to apply for additional authorization for any additional amount of fill that might be proposed in the future (Special Condition No. 10). Staff is also recommending a sedimentation and erosion control condition to avoid impacts to water quality from construction activities (Special Condition No. 11). Finally, staff is recommending a condition that would require the applicant to secure any necessary approvals from the Army Corps of Engineers prior to the commencement of construction.

As conditioned, staff has determined that the development as amended would be consistent with Chapter 3 policies of the Coastal Act.

STAFF NOTES:

1. Procedure and Background:

Section 13166 of the California Code of Regulations states that the Executive Director shall reject an amendment request if it lessens or avoids the intent of the approved permit unless the applicant presents newly discovered material information, which he or she could not, with reasonable diligence, have discovered and procured before the permit was granted.

Coastal Development Permit (CDP) No. 1-00-025 (California Department of Fish & Game) was approved by the Commission in July, 2001 for Phase I of the Fay Slough Wildlife Area Wetland Enhancement Program. The wetland habitat enhancement project approved under the original permit was designed to increase the diversity of wetland types within the wildlife area by creating additional seasonal and semi-permanent freshwater ponds. Specific enhancement activities authorized under the original permit

CALIFORNIA DEPARTMENT OF FISH AND GAME

Fay Slough Wildlife Area (1-00-025-A1)

Page 4

included: (1) repairing 5,142 linear feet of an existing dike along Fay Slough, (2) removing 1,400 linear feet of dike, (3) constructing 630 linear feet of new dike, (4) excavating 7 shallow ponds, (5) installing 4 water control structures, (6) raising 2,182 linear feet of access road by two feet, and (7) creating approximately 0.52 acres of wetland at the Department of Fish and Game's Eel River Wildlife Area to mitigate for wetland fill from dike construction.

The Commission approved the original permit with six special conditions. These conditions required that: (1) a final revised restoration monitoring plan incorporating certain performance standards and monitoring and reporting procedures be submitted for review and approval by the Executive Director to ensure that the goals and objectives of the restoration project would be met, (2) a monitoring plan for the mitigation site be submitted for the review and approval by the Executive Director to ensure that the goals and objectives of the mitigation site would be met, (3) mitigation at the Eel River Wildlife Area be constructed as proposed, (4) no excavated material or other construction related debris be placed in coastal waters or wetlands and that all excess material and temporary fill be removed and disposed of in an approved location, (5) construction activities occur only between July 15th and November 15th to prevent conflicts with the primary wildlife breeding season at the site, and (6) the applicant obtain appropriate project approval from the U.S. Army Corps of Engineers.

The amendment request seeks authorization for construction of Phase II of the Fay Slough Wildlife Area Wetland Enhancement Project. The proposed improvements for the second phase primarily involve the creation of a 3-acre basin to retain water over a longer period of the winter and spring within and next to seasonally inundated sloughs by the excavation of 11,400 cubic yards of material. The proposed improvements also include the installation of a water control structure within a slough to manage water levels in shallow channels elsewhere in the wildlife area. Phase II is complementary to the enhancements performed under Phase I and would entail similar improvements. As a result, they are consistent with the Chapter 3 policies of the Coastal Act in a similar manner as the Phase I improvements. The project as proposed would not conflict with the intent of any of the conditions imposed by the Commission in the original permit for Phase I. The applicant has proposed to expand the monitoring program required by the Commission for Phase I to provide additional monitoring for Phase II. Mitigation for the wetland fill impacts of the Phase II improvements can be provided consistent with the mitigation requirements imposed in the original permit. In addition, the applicant proposes certain best management practices to control sedimentation and protect water quality consistent with the water quality conditions of the original permit.

Therefore, as this amendment request would not result in a lessening or avoidance of the intent of the originally approved permit, the Executive Director accepted the amendment request for processing.

2. Standard of Review

The proposed project is located in the Commission's retained jurisdiction. Humboldt County has a certified LCP, but the site is within an area shown on State Lands Commission maps over which the state retains a public trust interest. Therefore, the standard of review that the Commission must apply to the project is the Chapter 3 policies of the Coastal Act.

3. Commission Action Necessary

The Commission must act on the application at the March 17, 2004 meeting to meet the requirements of the Permit Streamlining Act.

I. MOTION, STAFF RECOMMENDATION AND RESOLUTION:

The staff recommends that the Commission adopt the following resolution:

Motion:

I move that the Commission approve the proposed amendment to Coastal Development Permit No. 1-00-025 pursuant to the staff recommendation.

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a YES vote. Passage of this motion will result in approval of the amendment as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO APPROVE THE PERMIT AMENDMENT:

The Commission hereby approves the coastal development permit amendment on the ground that the development as amended and subject to conditions, 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 amendment 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 amended development on the environment, or 2) there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the amended development on the environment.

CALIFORNIA DEPARTMENT OF FISH AND GAME

Fay Slough Wildlife Area (1-00-025-A1)

Page 6

II. STANDARD CONDITIONS: (See attached)

III. SPECIAL CONDITIONS:

Special Condition Nos. 1 and 3 of the original permit (CDP No. 1-00-025) are replaced by Special Condition Nos. 7 and 8 respectively, attached to the permit amendment. Special Condition Nos. 2, 4, 5, and 6 remain in full force and effect (see Exhibit No. 6). Special Conditions Nos. 9-12 are additional new conditions attached to the permit amendment.

7. Revised Restoration Monitoring Program

A. PRIOR TO ISSUANCE OF THE AMENDED COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for review and written approval of the Executive Director, a final revised monitoring program that substantially conforms with (1) the monitoring plan prepared by the Department of Fish and Game entitled "Final Fay Slough Wildlife Area Monitoring Plan" dated June 2002, that was submitted to and approved by the Executive Director of the Coastal Commission on July 8, 2002 pursuant to Special Condition No. 1 of the original permit to the Commission, and (2) the amendment to the above referenced plan prepared by the Department of Fish and Game entitled, "Fay Slough Wildlife Area Phase II Monitoring Plan Amendment," dated August 2003, that was received by the Commission on August 12, 2003 except that the plan shall be revised to include the following:

1. Provisions for monitoring and remediation of the entire restoration site including Phase 1 and Phase II in accordance with the approved final restoration program and the approved final monitoring program for a period of five years after approval of the Amended Coastal Development Permit.
2. Provisions for submission of a final monitoring report to the Executive Director at the end of the five-year reporting period. The final report must be prepared in conjunction with a qualified wetlands biologist. The report must evaluate whether the enhancement site conforms with the goals, objectives, and performance standards set forth in the approved final enhancement program. The report must address all of the monitoring data collected over the five-year period.

B. If the final report indicates that the enhancement project has been unsuccessful, in part, or in whole, based on the approved performance standards, the applicant shall submit a revised or supplemental enhancement program to compensate for those portions of the original program which did not meet the approved performance standards. The revised enhancement program shall be processed as an amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

CALIFORNIA DEPARTMENT OF FISH AND GAME

Fay Slough Wildlife Area (1-00-025-A1)

Page 7

- C. The permittee shall monitor and remediate the wetland enhancement site in accordance with the approved monitoring program. Any proposed changes from the approved monitoring program shall be reported to the Executive Director. No changes to the approved monitoring program shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines no amendment is legally required.

8. Off-Site Wetland Mitigation

The permittee shall create and maintain 0.52 acres of freshwater wetland at the Eel River Wildlife Area to mitigate for the filling of freshwater wetland at the Fay Slough Wildlife Area for both Phase I and Phase II of the Fay Slough Wildlife Area Enhancement Project as proposed and approved by Coastal Development Permit No. 1-00-025 as amended

9. Evidence of Amount of Fill Placed Under Phase I

PRIOR TO ISSUANCE OF THE AMENDED COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for review and written approval of the Executive Director, evidence of the total amount of fill placed under Phase I of the enhancement project and evidence that the wetland fill placed was at least 600 square feet (0.013 acres) less than the amount of wetland fill authorized by the original permit.

10. Total Amount of Wetland Fill Authorized

The total amount of wetland fill authorized by Coastal Development Permit No. 1-00-025 as amended is the amount of wetland fill placed under Phase 1 of the enhancement project in 2002 as documented pursuant to Special Condition 9 of this amendment plus the 600 square feet of additional fill for the new water control structure authorized by this amendment. The placement of any other additional fill requires another Commission approved amendment of this permit or a new coastal development permit approved by the Commission.

11. Sedimentation and Erosion Control

All excavated materials authorized to be placed on existing roads shall be placed on road surfaces only and not extend to adjacent areas, including wetland areas. The roads to be covered with excavated material shall be seeded with native grasses of local stock or rocked upon

completion of the wetland enhancement activities and prior to November 15 of the fall occurring during or after placement of the excavated materials.

12. Army Corps of Engineers Approval

PRIOR TO COMMENCEMENT OF CONSTRUCTION OF PHASE II OF THE FAY SLOUGH WILDLIFE AREA ENHANCEMENT PROJECT, the permittee shall provide to the Executive Director a copy of a permit issued by the Army Corps of Engineers, or letter of permission, or evidence that no permit or permission is required for the Phase II wetland enhancement activities. The applicant shall inform the Executive Director of any changes to the project required by the Army Corps of Engineers. 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.

IV. FINDINGS AND DECLARATIONS FOR APPROVAL

The Commission hereby finds and declares:

1. SITE DESCRIPTION, BACKGROUND, AND PROJECT DESCRIPTION

The Department of Fish and Game proposes under the permit amendment request to perform the second phase of a project to enhance existing wetlands to provide increased habitat value and diversity for water-associated wildlife at the Fay Slough Wildlife Area (FSWA). (See Exhibits 1-2.) The proposed improvements for the second phase primarily involve the creation of a 3-acre basin to retain water over a longer period of the winter and spring within and next to seasonally inundated sloughs by the excavation of 11,400 cubic yards of material. The proposed improvements also include the installation of a water control structure to manage water levels within shallow channels elsewhere within the wildlife area. The first phase of the project was approved by the Commission in July, 2001 and was the subject of the original permit.

The project site is located at the northern end of the City of Eureka, between Eureka and Arcata and adjacent to northbound Highway 101 in Humboldt County. The FSWA comprises approximately 500 acres of former ranch lands that was purchased by the state in 1987. The site is bordered by Fay Slough on the southern edge and is bisected by multiple slough channels, an existing unimproved access road, and several interior levees. With the exception of the road and levees, the entire site is considered seasonal wetland. Murray Field, a county airport, is located adjacent to the site on the south and access to the FSWA from Highway 101 is shared with an automobile dealership north of Murray Road. Highway 101 forms the northwestern boundary of the FSWA and separates it from the intertidal salt marshes and mudflats of Humboldt Bay. Lands adjacent to the north, south and east of Fay Slough are in agricultural use. (See Exhibits Nos. 1 & 2.)

CALIFORNIA DEPARTMENT OF FISH AND GAME

Fay Slough Wildlife Area (1-00-025-A1)

Page 9

Most of the site is relatively flat, rather monotypic pasture lands composed of a variety of grasses, sedges, rushes and forbs, many of which are exotic species introduced through historic agricultural uses. The area contains seasonal wetlands, short and tall grass pasture, and seasonal sloughs and ponds, with only the borrow ditch from the perimeter dike holding water year-round. Salt marshes remain only as a fringe along the tidal side of the Fay Slough levee. The first phase of the enhancement project created additional seasonal and semi-permanent freshwater ponds by modifying interior levees to increase the size of an existing freshwater pond by nearly 6 acres and excavating seven shallow depressions in the landscape, and installing water control structures to manipulate water levels in the ponds and sloughs for wildlife management purposes. (See Exhibit 3.)

The FSWA provides habitat for a diversity of water-associated wildlife including waterfowl, wading birds, rails, shorebirds, coot, gulls, otter, mink, amphibians, and reptiles. Raptors including red-tailed hawk, red-shouldered hawk, northern harrier, barn owl, and screech owl inhabit the area. After construction of the first phase improvements, an adult bald eagle has been seen making use of the area for hunting water birds during the winter. Other species that inhabit the FSWA include black bear, black-tailed deer, fox, raccoon, skunk, and weasel. The Pacific tree frog and yellow-legged frog are also known to inhabit the FSWA. Other amphibians in the area include the clouded salamander, black salamander, ensatina, northwest salamander, and rough-legged newt.

The 3-acre seasonal basin proposed under the second phase of the wetland enhancement project would be located near the northeast corner of the FSWA, east of Highway 101. The basin site is several hundred yards north of an existing farm house and barn that are part of a "life estate" held by the previous owners of the subject property before the sale of the land to the Department of Fish & Game.

Background

The FSWA site was historically part of the extensive tidal marshes of Humboldt Bay, but was converted to agricultural use following the construction of a levee around this portion of Humboldt Bay around the turn of the 20th century. The site was farmed and grazed until 1987 when the area was acquired by the California Department of Fish and Game (DFG) with Proposition 19 Bond funds intended specifically for the acquisition, restoration, and management of coastal wetlands.

Diking and filling in the early part of the last century to promote agricultural, industrial, and urban land uses has resulted in substantial degradation of northern California coastal wetlands, including those around Humboldt Bay. This degradation has resulted in a significant reduction in wetland function and wildlife values. Historically, Humboldt Bay extended from the sand spits that separate it from the Pacific Ocean to the base of the inland foothills. The bay was first diked in the late 19th century by the railroad crossing the marshes between Eureka and Arcata. Subsequent dike construction further isolated former tidelands from the bay and the area was converted to agricultural uses. Like many of the historic tidelands around Humboldt Bay, the

CALIFORNIA DEPARTMENT OF FISH AND GAME

Fay Slough Wildlife Area (1-00-025-A1)

Page 10

project area was never fully drained following the construction of the Bay levee and therefore, the vast majority of the project site remains seasonal wetland. Although the land is now a state wildlife area, only a portion of the site had been enhanced to improve wetland habitat values prior to the development of the first phase of the enhancement project approved by the original permit.

The specific activities authorized in 2001 pursuant to Permit No. 1-00-025 under the first phase of the wetland enhancement project are described below in the following section. In 1989, the Commission had previously approved another wetland enhancement project at the Fay Slough Wildlife Area. Coastal Development Permit No. 1-89-31 authorized activities involving the creation of over 11 acres of wetland by removing fill and improving freshwater wetlands on about 120 acres. The fill removed included buildings, concrete pads and earthen fills present at the site when it was acquired. The project also included placing fill on interior roads to form low dikes and constructing 550 feet of additional dike. The dike involved filling .13 acres of wetland and was constructed to hold runoff water in two shallow freshwater ponds totaling about 120 acres.

Description of Original Project Approved Under CDP 1-00-025

The wetland habitat enhancement project approved under the original permit was designed to increase the diversity of wetland types within the wildlife area by creating additional seasonal and semi-permanent freshwater ponds. A primary goal of the project was to retain water on the surface of the project area longer each year as a result of the construction of the shallow ponds and water control facilities. The seasonal wetlands were designed to (1) provide enhanced feeding and resting habitat for migrating and wintering waterfowl, wading birds, and shorebirds, (2) provide brood water for local nesting ducks and geese, (3) increase the prey base for raptors and other predators, and to benefit other wildlife species including rails, gulls, songbirds, river otters, mink, reptiles, and amphibians.

Specific enhancement activities authorized under the original permit included: (1) repairing 5,142 linear feet of an existing dike along Fay Slough, (2) removing 1,400 linear feet of dike, (3) constructing 630 linear feet of new dike, (4) excavating 7 shallow ponds, (5) installing 4 water control structures, (6) raising 2,182 linear feet of access road by two feet, and (7) creating approximately 0.52 acres of wetland at the Department of Fish and Game's Eel River Wildlife Area to mitigate for wetland fill from dike construction. The mitigation work was to be performed in coordination with a separate enhancement project at the Eel River Wildlife Area pursuant to Coastal Commission approved CDP No. 1-99-075, also approved in July of 2001. The Eel River Wildlife Area is located about 13 miles to the southwest of the FSWA. An existing freshwater pond on the Eel River Wildlife Area was proposed to be expanded by excavating the adjacent uplands. The uplands were to be excavated on a shallow gradient to a level that would allow water to flow from the pond into the newly excavated site and would also act as a catchment basin to collect winter runoff from the adjacent hillside.

CALIFORNIA DEPARTMENT OF FISH AND GAME

Fay Slough Wildlife Area (1-00-025-A1)

Page 11

The Commission approved the original permit with six special conditions. These conditions required that: (1) a final revised restoration monitoring plan incorporating certain performance standards and monitoring and reporting procedures be submitted for review and approval by the Executive Director to ensure that the goals and objectives of the restoration project would be met, (2) a monitoring plan for the mitigation site be submitted for the review and approval by the Executive Director to ensure that the goals and objectives of the mitigation site would be met, (3) the mitigation at the Eel River Wildlife Area be constructed as proposed, (4) no excavated material or other construction related debris be placed in coastal waters or wetlands and that all excess material and temporary fill be removed and disposed of in an approved location, (5) construction activities occur only between July 15th and November 15th to prevent conflicts with the primary wildlife breeding season at the site, and (6) the applicant obtain appropriate project approval from the U.S. Army Corps of Engineers.

The Commission approved the project in July, 2001. The Department of Fish & Game satisfied all of the prior to issuance conditions and the permit was issued on July 8, 2002. Both the FSWA improvements and the mitigation site improvements were completed during the summer and early fall of 2002.

According to the Department of Fish & Game staff, not all of the wetland fill that was authorized was actually placed during the construction of the project. The permit authorized repairing the Fay Slough dike using approximately 7,159 cubic yards of native soil excavated on-site. The soil was approved to be placed along 5,142 linear feet of the top and inboard side of the dike, increasing the width of the dike by six feet at the base and the height by three feet at the top. The fill material placed along the inboard side of the dike, if completed as approved, would have resulted in the filling of approximately 0.72 acres of wetlands, approximately one-third of which would have been within a permanently ponded borrow ditch that runs parallel to the inboard side of the levee and half on seasonal wetland habitat on a bench area between the base of the levee and the borrow ditch. During construction, the permittee determined that the fill to be placed along the inboard side of the levee could be compacted in a manner that would provide a similar or better degree of strengthening of the levee and not require the filling of as large an area. As a result, the wetland fill placed for levee repair along the inboard side of the levee only covered the bench area between the levee and the borrow ditch and did not extend into the borrow ditch, Thus only about two-thirds, or 0.48 acres of the 0.72 acres of wetland fill that was originally authorized for Fay Slough dike repair purposes was reportedly placed for this purpose.

Amendment Description

The amendment request seeks approval for certain additional wetland enhancement activities primarily involving (1) the creation of a 3-acre basin near the northern corner of the FSWA within and next to seasonally-inundated sloughs to retain water over a longer period of the winter and spring, and (2) the installation of a separate water control

CALIFORNIA DEPARTMENT OF FISH AND GAME

Fay Slough Wildlife Area (1-00-025-A1)

Page 12

structure along a different freshwater runoff channel within the wildlife area to allow for water levels within the channel to remain high for a longer period of the season.

a. **3-Acre Basin**

The basin would be created by excavating a total of approximately 11,400 cubic yards of material from existing seasonal palustrine agricultural wetland habitat over the 3-acre site. (See Exhibit 4.) The basin would be excavated to a depth of about 12 inches with side slopes of 10:1. An existing water control structure with a flashboard riser would be utilized to manage water levels in the pond. The 11,400 cubic yards of excavated material would be placed atop 8,345 linear feet of existing road to a depth of one to two feet. The existing roads are one of the few places in the FSWA that are not currently wetland where the material can be placed without resulting in wetland fill.

b. **New Water Control Structure**

The new water control structure would consist of an earthen dam-like feature placed across one of the drainage channels. The structure would include a pipeline and riser to allow for the discharge or retention of water behind the structure. The earthen fill material to create the structure would come from the excavation of the 3-acre basin discussed above. The total amount of fill proposed for the water control structure is 600 square feet or 0.013 acres.

c. **Amended Monitoring Program**

The permit amendment request includes an amendment to the approved monitoring program that was established pursuant to the original permit to determine whether the goals and objectives of the original restoration project would be met. The amendment would expand the monitoring program to include additional monitoring aimed at determining whether the goals and objectives of Phase II would be met. According to the applicant, monitoring for vegetation and increased bird use would be consistent with the earlier monitoring plan approved pursuant to Special Condition No. 1 of the original permit. Bird survey routes were established previously and would be adequate to capture bird usage changes for both Phase 1 and Phase II. The only addition to the actual monitoring plan would be to establish a vegetation transect for the new three-acre basin that would be created under Phase II. Vegetation data for Phase II would be collected consistent with the methodology for Phase 1. Monitoring is proposed over a five-year period with annual reports to be submitted December 1 of each year.

2. PROTECTION OF THE WETLAND ENVIRONMENT

Section 30233 of the Coastal Act states that the diking, filling, or dredging of wetlands shall be permitted only when there is no feasible less environmentally damaging alternative, and only

CALIFORNIA DEPARTMENT OF FISH AND GAME

Fay Slough Wildlife Area (1-00-025-A1)

Page 13

when feasible mitigation measures have been provided to minimize adverse environmental effects. Section 30233 also specifies that diking, filling, or dredging are allowed in wetlands only for limited uses.

The Phase II wetland enhancement activities authorized by this permit amendment involve filling approximately 600 square feet or 0.013 acres of wetland channel to construct a new water control structure for purposes of managing water levels within the channel. The project also involves dredging in the form of excavating approximately 11,400 cubic yards of material from approximately 3-acres of seasonal wetland area within and around existing water channels

Section 30233(a) provides as follows, in applicable part:

- (a) *The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:*
 - (1) *New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.*
 - (2) *Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*
 - (3) *In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities, shall not exceed 25 percent of the degraded wetland.*
 - (4) *In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.*
 - (5) *Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*

CALIFORNIA DEPARTMENT OF FISH AND GAME

Fay Slough Wildlife Area (1-00-025-A1)

Page 14

(6) *Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*

(7) *Restoration purposes.*

(8) *Nature study, aquaculture, or similar resource dependent activities.*

(C) In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary...[emphasis added]

The above policies set forth a number of different limitations on what types of projects may be allowed in coastal wetlands. For analysis purposes, the limitations applicable to the subject project can be grouped into four general categories or tests. These tests are:

1. The purpose of the filling, diking, or dredging is for one of the eight uses allowed under Section 30233;
2. that feasible mitigation measures have been provided to minimize adverse environmental effects;
3. that the project has no feasible less environmentally damaging alternative; and
4. that the biological productivity and functional capacity of the habitat shall be maintained and enhanced where feasible.

a. Allowable Use for Dredging and Filling of Coastal Waters

The first test set forth above is that any proposed filling, diking or dredging must be for an allowable purpose as specified under Section 30233 of the Coastal Act. One of the allowable purposes for diking, filling, or dredging, under Section 30233(a)(7) is "restoration purposes." As discussed in detail above, the proposed wetland enhancement project requires dredging of wetlands to create ponds and the placement of fill for a water control structures. The project is designed to increase the diversity of wetland types within the wildlife area and enhance habitat values for water associated wildlife. The proposed excavation of the three-acre basin near the northern corner of the FSWA would create a seasonal freshwater pond. This pond and the new water control structure to be built on a separate water channel would hold water for a longer period of the year. The seasonal ponding would provide enhanced habitat for feeding and resting habitat for migrating and wintering waterfowl and shorebirds and provide brood water for local nesting ducks and geese. The Commission finds wetland enhancement projects, where the sole purpose of the project is to improve wetland habitat values, to constitute "restoration purposes" pursuant to Section 30233(a)(7). In its findings for approval of the original permit, the Commission found that the fill placed for dikes and the material excavated to create shall basins

CALIFORNIA DEPARTMENT OF FISH AND GAME

Fay Slough Wildlife Area (1-00-025-A1)

Page 15

constituted a "restoration purpose." The Commission similarly concurred with a consistency determination for a wetland enhancement project proposed by the U.S. Fish and Wildlife Service at the Humboldt Bay National Wildlife Refuge (CD-33-92). This project also involved dredging, diking, and filling of wetlands to create and enlarge shallow ponds and sloughs and replace water control structures and was approved as a "restoration purpose" under Section 30233(a)(7). Another similar wetland enhancement project approved by the Commission as a "restoration purpose" under Section 30233(a)(7) involved the excavation of six acres of Doran Park Marsh to create a new tidal pond wildfowl foraging area at the southeast end of Bodega Harbor, Sonoma County (CDP #1-93-04). More recently, the Commission approved a similar wetland enhancement project proposed by the Department of Fish and Game involving excavation of slough channels to create freshwater ponds at the Mad River Slough Wildlife Area adjacent to Humboldt Bay to the north of the subject site (CDP #1-99-063). Consistent with these Commission actions, the proposed project, solely intended to enhance wetland habitat values on the Fay Slough Wildlife Area, is considered a "restoration purpose" and is allowable under Section 30233.

This finding that the proposed diking, filling, and dredging constitutes "restoration purposes" is based, in part, on the assumption that the proposed project will be successful in increasing wetland habitat values. Should the project be unsuccessful at increasing wetland habitat values, or worse, if the proposed diking, filling, and dredging impacts of the project actually result in long term degradation of the habitat, the proposed diking, filling, and dredging would not actually be for "restoration purposes."

To ensure that Phase I of the wetland enhancement project approved under the original permit will achieve the wetland enhancement objectives for which the project is intended, the Commission attached Special Condition No. 1 to the original permit. This condition required the applicant to submit a final revised monitoring plan for the review and approval by the Executive Director that outlined a method for measuring and documenting the improvements in habitat value and diversity at the site, including wildlife and plant species and abundance, over the course of five years following project completion. Furthermore, Special Condition No. 1 of the original permit required the monitoring plan to include provisions for remediation to ensure that the goals and objectives of the wetland enhancement project are met.

The applicant proposes to amend the monitoring plan that had been approved pursuant to Special Condition No. 1 of the original permit to provide for additional monitoring of the area affected by the proposed Phase II improvements to ensure that the goals and objectives of Phase II will also be met. The monitoring program would be expanded to establish an additional vegetation transect for the new three-acre basin that would be created under Phase II. Monitoring for vegetation and increased bird use would be consistent with the earlier monitoring plan. The applicant believes the bird survey routes established previously would be adequate to capture bird usage changes for both Phase I and Phase II. The Commission finds that with this additional monitoring, the expanded monitoring program with the provision of the original monitoring program for

CALIFORNIA DEPARTMENT OF FISH AND GAME

Fay Slough Wildlife Area (1-00-025-A1)

Page 16

remediation would ensure that the goals and objectives of the wetland enhancement project would be met. Therefore, the Commission attaches Special Condition No. 7 to this amended permit to require that the applicant submit for the review and written approval of the Executive Director prior to issuance of the amended permit a final revised monitoring program that substantially conforms with (1) the monitoring plan approved pursuant to Special Condition No. 1 of the original permit to the Commission, and (2) the amendment to the monitoring plan submitted as part of the amendment request and provides for remediation should the goals and objectives of the wetland enhancement project not be achieved. The 5-year monitoring begun under the original permit has already been underway for more than a year. As the monitoring of the Phase II improvements would incorporate and rely on the bird monitoring being performed for Phase I, it is necessary that the bird monitoring being performed under Phase I continue throughout the entire time period that monitoring is necessary for Phase II. Therefore, Special Condition No. 7 requires that the monitoring program be revised to provide that the monitoring and remediation of the entire restoration site including Phase I and Phase II be conducted for five more years after construction of the Phase II improvements.

The Commission finds that as conditioned, the dredging and filling in coastal wetlands approved under the permit as amended for the proposed wetland enhancement project is fill for "restoration purposes," and therefore is an allowable use pursuant to Section 30233(a)(7) of the Coastal Act.

b. Adequate Mitigation Measures

The second test set forth by Section 30233 is that adequate mitigation must be provided for the adverse environmental impacts of an allowable filling and dredging project. Potential significant adverse impacts often associated with dredging or filling projects of this kind in coastal wetlands include: (1) the loss of wetland habitat area, (2) impacts to sensitive vegetation, (3) conversion of one type of wetland to another, (4) impacts to fish and wildlife habitat, and (5) water pollution in the form of sedimentation or debris entering coastal waters. Overall, the proposed Phase II improvements would enhance wetland habitat values and would produce generally only beneficial environmental effects. However, the proposed project must be conditioned to ensure that potential significant adverse impacts are minimized.

i) Loss of Wetland Area

A significant adverse impact which can result from dredging and filling in wetlands is the net loss of wetland surface area and volume. As discussed above, the Phase II improvements include 600 square feet of wetland fill for installation of another water control structure within one of the water channels at the FSWA.

Phase I of the FSWA wetland enhancement project involved the placement of 0.92 acres of fill in seasonal freshwater wetlands to repair the Fay Slough dike and construct a new interior dike. The

CALIFORNIA DEPARTMENT OF FISH AND GAME

Fay Slough Wildlife Area (1-00-025-A1)

Page 17

wetland impacts of this fill were mitigated partially on-site by the removal of an existing 1,400-foot-long levee to create 0.40 acres of new wetland area. The remainder of the mitigation could not be provided by wetland creation on site because virtually the entire FSWA is already wetland, except for the dikes that are needed for flood protection or for separating different wetland types and essential maintenance and access roads. Therefore, the applicant provided the remainder of the mitigation for the wetland fill impacts by creating similar freshwater wetlands off-site. Pursuant to the terms and conditions of the original permit, approximately 0.52 acres of similar seasonal freshwater wetland was created in 2002 (in coordination with a separate enhancement project at the Eel River Wildlife Area, 1-99-075) on the Department of Fish and Game's Eel River Wildlife Area located about 13 miles to the southwest of the FSWA. A freshwater pond on the Eel River Wildlife Area was expanded by excavating a portion of the adjacent uplands. The project resulted in an increase of approximately 16.5 acres of surface water to provide increased habitat for water-associated wildlife including shorebirds and wading birds.

The Commission required mitigation for fill of wetlands by creating the same type of wetlands at a 1:1 ratio. The Commission has required a variety of mitigation ratios for developments that include wetland fill. Sometimes the ratios have been 4:1 or higher. The determination of what is an appropriate ratio is dependent on many factors, including such factors as the habitat values of the area filled, the relative difficulty in establishing the new habitat area, and the time lag between when the impacts to the existing habitat are sustained and when habitat values have been fully realized at the mitigation site. In its action on the original permit authorizing Phase I of the FSWA wetland enhancement project, the Commission found that the project would not result in a net loss of wetland habitat. Unlike development projects which involve the fill of wetlands for non-wetland uses, the objective of this proposed project is to restore freshwater wetland habitat and habitat diversity at the site, thereby enhancing the habitat values for wildlife utilizing the wildlife area. Accordingly, given the (1) the high likelihood of success associated with the mitigation project because of its location within an existing wildlife area, the abundance of rainfall and moisture to help promote the growth of wetland plants, and the presence of existing habitat adjacent to the proposed mitigation site; (2) the lack of significant temporal losses associated with the proposed project; and (3) the fact that the wetland fill is occurring for wetland restoration rather than for non-wetland uses, the Commission found that the proposed project involving mitigation at a 1:1 ratio would not result in a net loss of wetlands and in addition, would enhance existing wetlands consistent with the wetland provisions of the Coastal Act.

The applicant does not propose to establish any new wetland habitat to mitigate for the 600 square feet of wetland fill that would result from the Phase II improvements now proposed. Department of Fish & Game staff believe that the increased habitat values that would result from the Phase II wetland enhancements should be sufficient to offset the adverse impacts of the proposed 600 square feet of wetland fill and that therefore, no additional wetland creation should be required. In addition, the Department of Fish & Game staff point out that although the entire mitigation improvements for Phase I improvements required by the original permit were completed in 2002, not all of the fill authorized to be placed under the original permit was in fact placed on wetlands at the

CALIFORNIA DEPARTMENT OF FISH AND GAME

Fay Slough Wildlife Area (1-00-025-A1)

Page 18

site. The permit authorized repairing the Fay Slough dike using approximately 7,159 cubic yards of native soil excavated on-site. The soil was approved to be placed along 5,142 linear feet of the top and inboard side of the dike, increasing the width of the dike by six feet at the base and the height by three feet at the top. The fill material placed along the inboard side of the dike, if completed as approved, would have resulted in the filling of approximately 0.72 acres of wetlands, approximately one-third of which would have been within a permanently ponded borrow ditch that runs parallel to the inboard side of the levee and half on seasonal wetland habitat on a bench area between the base of the levee and the borrow ditch. During construction, the permittee determined that the fill to be placed along the inboard side of the levee could be compacted in a manner that would provide a similar or better degree of strengthening of the levee and not require the filling of as large an area. As a result, the wetland fill placed for levee repair along the inboard side of the levee only covered the bench area between the levee and the borrow ditch and did not extend into the borrow ditch. Thus only about two-thirds, or 0.48 acres of the 0.72 acres of wetland fill that was originally authorized for Fay Slough dike repair purposes was reportedly placed for this purpose. The Department of Fish & Game staff suggests that to the extent the Commission determines that mitigation in the form of wetland creation is needed to offset the adverse impacts of the proposed 600 square feet of fill under Phase II, the Commission should consider the fact that wetland creation in an amount larger than the 1:1 ratio required by the original permit was provided for Phase I. As the mitigation that was provided for Phase I was determined by the Commission to be sufficient to mitigate for the fill that was placed and an additional approximately 0.24 acres of wetland fill that ultimately was not placed, the Department believes the Commission should credit the Department as having already provided any mitigation deemed necessary by the Commission to offset the loss of 0.013 acres of wetland fill associated with the Phase II improvements.

Section 30233 of the Coastal Act requires that feasible mitigation be provided to minimize the adverse environmental effects of any proposed filling of wetlands. This requirement applies whether or not the project is for wetland restoration or any of the other seven enumerated allowable uses for fill under Section 30233(a). Regardless of the fact that the improvements proposed under Phase II would have benefits in enhancing wetland habitat values, the proposed water control structure would still eliminate 600 square feet of existing wetland area. The Commission finds that if feasible mitigation can be provided to further reduce the adverse environmental effects of the loss of 600 square feet of wetlands, such mitigation must be provided consistent with the requirements of Section 30233 that feasible mitigation be provided to minimize the adverse environmental effects of the proposed fill.

The Commission finds that in this case, such feasible mitigation to minimize the adverse environmental effects of the proposed fill can be provided in the form of crediting the applicant for a portion of the amount of new wetland area created at the Eel River Wildlife Area pursuant to the requirements of CDP 1-00-025 that exceeded the amount necessary to provide the required 1:1 ratio of wetland creation to wetland fill required by

CALIFORNIA DEPARTMENT OF FISH AND GAME

Fay Slough Wildlife Area (1-00-025-A1)

Page 19

that permit to mitigate for the impacts of the Phase 1 wetland fill. It is feasible for the applicant to provide this mitigation as it has already largely been implemented. As the mitigation provided was designed to establish freshwater pond habitat, this mitigation provides in-kind replacement for the loss of freshwater channel that seasonally ponds that would serve to minimize the adverse effects of the wetland fill.

As the Commission found in approving the mitigation for the wetland fill impacts associated with the Phase I improvements, the Commission finds that it would be appropriate to mitigate for the wetland fill impacts associated with Phase II at a mitigation ratio as low as 1:1. This ratio is appropriate given the (1) the high likelihood of success associated with the mitigation project because of its location within an existing wildlife area, the abundance of rainfall and moisture to help promote the growth of wetland plants, and the presence of existing habitat adjacent to the proposed mitigation site; (3) the lack of significant temporal losses associated with the proposed project; and (4) the fact that the wetland fill is occurring for wetland restoration rather than for non-wetland uses. According to the staff of the Department of Fish & Game, the amount of new wetland area created at the Eel River Wildlife Area that exceeded the amount necessary to provide the required 1:1 ratio of mitigation required for the Phase 1 wetland fill is approximately one-quarter acre, more than sufficient to mitigate for the Phase II wetland fill at a ratio of 1:1 or greater. Therefore, the Commission attaches Special Condition No. 8 to the amended permit, which requires that the applicant create and maintain 0.52 acres of freshwater wetland at the Eel River Wildlife Area to mitigate for the filling of freshwater wetland at the Fay Slough Wildlife Area for both Phase I and Phase II of the Fay Slough Wildlife Area Enhancement Project. This condition replaces Special Condition No. 3 of the original permit which established the off-site mitigation requirement for the Phase 1 improvements

Although the Department of Fish & Game staff has indicated in consultations with staff that the total amount of fill actually placed as part of the Phase I improvements was less than the Commission originally authorized, the Commission has not yet received documentation that the amount of fill placed was less by an amount equal to or exceeding the 600 square feet of fill proposed under Phase II. Therefore, the Commission attaches Special Condition No. 9 to the amended permit which requires the applicant to provide prior to issuance of the amended coastal development permit evidence of the total amount of fill placed under Phase I of the enhancement project and evidence that the wetland fill placed was at least 600 square feet (0.013 acres) less than the original amount of wetland fill authorized by the original permit. This requirement will ensure that the off-site mitigation at the Eel River Wildlife Area is in fact sufficient to mitigate for the wetland fill impacts associated with the Phase II improvements.

ii) Vegetation

The project would remove some wetland vegetation in the area to be excavated and converted to a shallow water pond. The DFG Natural Diversity Data Base identifies sensitive species including Humboldt Bay owl's clover and Point Reyes bird's beak as being located within the

CALIFORNIA DEPARTMENT OF FISH AND GAME

Fay Slough Wildlife Area (1-00-025-A1)

Page 20

project vicinity. However, a recent plant survey conducted at the site did not find either of these sensitive species. Therefore, the excavation of the pond would not adversely affect rare plants and an increase in the quantity and diversity of wetland-associated plant species within the affected areas would naturally occur as the area becomes wet for longer periods each year. Therefore, the proposed excavation work would enhance wetland vegetation.

iii) Fish and Wildlife

The project would increase the quantity, depth, and duration of water on the FSWA and would promote an increase in diversity of wildlife habitat and abundance of water-associated wildlife. Increased annual duration of shallow water and low gradient pond edges would attract shorebirds and foraging Canada geese. The increase in open water and marsh habitat is also expected to draw herons, egrets, and American coot. Emergent vegetation within ponds would provide cover for rails and nest structure for red-winged blackbirds and marsh wrens. Although increases in bird species would be the most notable in the area, post-project conditions would also favor increases in mammals, reptiles, amphibians, and invertebrates. Predators such as river otter, mink, peregrine falcon, and merlin would benefit indirectly by an increase in food sources.

While the intended purpose of the proposed project is to enhance habitat values of the existing wetlands, the project would result in short-term impacts to existing wetland vegetation and seasonal wetland habitat. The project involves excavating approximately 11,400 cubic yards of material within seasonal wetlands to create a 3-acre shallow pond. The excavation would temporarily eliminate some wetland vegetation and seasonal wetland habitat from the areas to be excavated. However, if the project achieves its enhancement goals, wetland habitat values would be greatly expanded and the short-term impacts of the excavation would be fully mitigated.

To ensure that the project achieves the wetland enhancement objectives for which the project is intended and thereby mitigates for the short-term loss of wetland habitat resulting from the proposed excavation work, the Commission attaches Special Condition No. 7 to this amended permit. The special condition requires that the applicant submit for the review and written approval of the Executive Director prior to issuance of the amended permit a final revised monitoring program for monitoring the success of Phase II of the wetland enhancement project and provides for remediation should the goals and objectives of the wetland enhancement project not be achieved.

In addition, to ensure that project construction activities do not interfere with the breeding season for some species present at the site, the Phase II improvement authorized by the amended permit are subject to the requirements of Special Condition No. 5 of the original permit which remains in effect and limits construction activities to occur only between July 15th and November 15th.

iv) Water Quality

Potential adverse impacts to coastal waters could occur in the form of sedimentation or debris from project excavation and fill being allowed to enter coastal waters. The requirements of Special Condition No. 4 of the original permit which remains in effect, will help ensure that adverse impacts to water quality do not occur. The special condition requires that no construction materials, debris, or waste be placed or stored where it could be subject to entering the waters of Fay Slough or slough channels. In addition, Special Condition No. 4 requires all spoil material to be deposited in approved upland locations including the existing road, but not outside of the road prism. The Phase II project includes placement of the 1,400 cubic yards of material excavated to create the 3-acre pond on top of existing roads within the FSWA. The placement of this material along the roads next to wetland habitat increases the risk of sedimentation of the wetlands. Therefore, the Commission attaches to the amended permit Special Condition No. 11 which requires that (1) all excavated materials to be placed on existing roads shall be placed on the road surfaces only and not extend to adjacent wetland areas, and (2) the roads covered with excavated material be seeded or rocked during or after placement of the excavated materials and prior to the rainy season.

The Commission finds that the proposed wetland enhancement project is a permitted use under Section 30233 of the Coastal Act, and that as conditioned, all potential adverse impacts have been minimized to the maximum extent feasible.

c. Alternatives Analysis

The third test set forth by Section 30233 is that the proposed dredge or fill project must have no feasible less environmentally damaging alternative. In this case, the Commission has considered four possible alternatives to the proposed project including: (1) restoring tidal action, (2) creating a narrower water control structure that would require less fill, and (4) the no project alternative.

Breaching the Humboldt Bay Dike

As discussed previously, the subject site, and much of the bottomlands surrounding Humboldt Bay, were cut off from tidal action over 100 years ago by the construction of levees to drain the land for agricultural uses. Breaching the levees would restore tidal action to the area and would allow for the reestablishment of salt marsh habitat. While this alternative would more effectively restore historic environmental conditions at the site, breaching the levee would also flood adjacent private lands and public roads. The project site is separated from Humboldt Bay and direct tidal action by Highway 101 and is located adjacent to private agricultural land to the north and commercial development directly to the south. Restoring this portion of the FSWA to tidal action would be especially difficult given that at its closest point, Fay Slough is about 0.7 miles away and the only other source of saltwater from Fay Slough along U.S. Highway 101 is about two miles away. In addition, restoring the site to tidal action would require the construction of a substantial perimeter levee to contain tidal waters and prevent flooding of adjacent private lands,

CALIFORNIA DEPARTMENT OF FISH AND GAME

Fay Slough Wildlife Area (1-00-025-A1)

Page 22

the residence on-site for which a life estate is in effect, Highway 101, and agricultural lands. Moreover, as Highway 101 and the adjacent railroad prevents the site from being open to the bay, returning tidal action on the entire site would require the installation of numerous culverts and a system of water passageways below these facilities which are not under the ownership of the applicant. This perimeter levee would require extensive wetland fill and would be extremely costly. Therefore, breaching existing levees to restore tidal action is not a feasible less environmentally damaging alternative.

Creating Narrower Water Control Structure

The new wetland fill proposed by the permit amendment request consists of the water control structure to be installed within a channel as part of the project. The earthen water control structure would be 10 feet wide at the top and 26 feet wide at its base along the channel bottom, and would require 600 square feet of wetland fill. If a narrower water control structure could be installed, the total amount of wetland fill impact would be reduced. According the Department of Fish & Game staff, however, the width of the water control structure cannot be reduced. Construction of the facility will require the use of heavy equipment for compacting the material to be placed to create the water control structure. To compact the material, the equipment must have access to the top of the water control structure as it is being constructed. The very top of the earthen structure must be at least 10 feet wide to provide sufficient room for the heavy equipment to be placed on top and maneuver. To ensure the stability of the earthen control structure, the sides of the structure must slope outward at an angle that is not too steep. As proposed, the sides of the structure would be constructed at approximately a 2:1 slope, which is about the steepest slope that can be used from a stability and engineering standpoint. Therefore, creating a narrower earthen water control structure is not a feasible less environmentally damaging alternative.

No Project

The "no project" alternative would leave the FSWA in its current monotypic condition with limited areas of standing water throughout the year. The "no project" alternative would eliminate the opportunity for increased habitat diversity and increased species abundance at the Wildlife Area. Therefore, the no project alternative is not a less environmentally damaging feasible alternative as it would not accomplish the project objectives of enhancing wetland habitat values at the FSWA.

d. Maintenance and Enhancement of Marine Habitat Values

The fourth general limitation set forth by Section 30233 is that any proposed dredging or filling in coastal wetlands must maintain and enhance the biological productivity and functional capacity of the habitat, where feasible.

The amended project is proposed as a restoration project that would enhance the biological productivity and functional capacity of the wetland habitat at the Fay Slough Wildlife Area. The proposed project would enhance the habitat value of the existing seasonal wetlands by increasing the duration and availability of water at the site. Additionally, the proposed project would create a greater diversity of wetland habitats. To ensure that the habitat enhancement objectives are realized, Special Condition No. 7 requires the applicant to submit a revised monitoring program to monitor how habitat values change as a result of the project. The condition further requires the applicant to submit plans for remediation of the site within one year if monitoring determines that the project has not been successful in achieving the goals, objectives, and performance standards identified in the approved monitoring program. In addition, the amended project would not result in a decrease in wetland area, as the proposed fill for the combined Phase I and Phase II wetland enhancement activities at the FSWA site would be mitigated by creating an equal or larger area of similar wetland habitat out of uplands at the Eel River Wildlife Area (ERWA). Special Condition No. 8 requires the applicant to create and maintain the wetland at the ERWA mitigation site as proposed. Furthermore, as discussed above in the section of this finding on mitigation, the conditions of the permit would ensure that the project would not have significant adverse impacts on the existing freshwater wetlands or on the water quality of the water channels within the FSWA.

Therefore, for all of the above reasons, the Commission finds that the amended development would maintain and enhance the biological productivity and functional capacity of the wetlands consistent with the requirements of Section 30233 of the Coastal Act.

Conclusion

The Commission thus finds that the project is an allowable use, that there is no feasible less environmentally damaging alternative, that feasible mitigation is required for potential impacts associated with the dredging and filling of coastal wetlands, and that habitat values will be maintained and enhanced. Therefore, the Commission finds that the proposed development, as conditioned, is consistent with Section 30233 of the Coastal Act.

3. PUBLIC ACCESS

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 30212 of the Coastal Act requires that access from the nearest public roadway to the shoreline be provided in new development projects except where it is inconsistent with public safety, military security, or protection of fragile coastal resources, or adequate access exists nearby. Section 30211 requires that development not interfere with the public's right to access gained by use or legislative authorization. In applying these sections of the Coastal Act, the Commission is also 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

CALIFORNIA DEPARTMENT OF FISH AND GAME

Fay Slough Wildlife Area (1-00-025-A1)

Page 24

special conditions requiring public access, is necessary to avoid or offset a project's adverse impact on existing or potential access.

The Fay Slough Wildlife Area is open to the public year-round for wildlife-related activities such as bird watching, kayaking, hunting (pursuant to applicable seasons and regulations), research, and education. Activities that are not compatible with wildlife, such as off-road vehicle riding, are not allowed at the site. The proposed project does not involve any changes or additional restrictions to existing public access including during project construction. In fact, public use of the site is expected to increase after the project as a result of increased wildlife abundance and diversity and as a result of improved levees that act as designated public trails. Sufficient parking exists to accommodate the current level of public use as well as the anticipated increase in use following project completion.

Therefore, the Commission finds that the proposed project would not have an adverse effect on public access, and that the project as proposed without new public access is consistent with the requirements of Coastal Act Sections 30210, 30211, and 30212.

4. U.S. ARMY CORPS OF ENGINEERS APPROVAL

The proposed Phase II improvements require review and approval by the U.S. Army Corps of Engineers. Pursuant to the Federal Coastal Zone Management Act, any permit issued by a federal agency for activities that affect the coastal zone must be consistent with the coastal zone management program for that state. Under agreements between the Coastal Commission and the U.S. Army Corps of Engineers, the Corps will not issue a permit until the Coastal Commission approves a federal consistency certification for the project or approves a permit. To ensure that the project ultimately approved by the Corps is the same as the project authorized herein, the Commission attaches Special Condition No. 12, which requires the permittee to submit to the Executive Director evidence of U.S. Army Corps of Engineers approval of the Phase II wetland enhancement activities prior to the commencement of work.

5. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

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

The Commission incorporates its findings on Coastal Act consistency at this point as if set forth in full. As discussed above, the development as amended has been conditioned to be found 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

CALIFORNIA DEPARTMENT OF FISH AND GAME

Fay Slough Wildlife Area (1-00-025-A1)

Page 25

received prior to preparation of the staff report. 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, beyond those required, which would substantially lessen any significant adverse impacts that the activity may have on the environment. Therefore, the Commission finds that the development as amended and conditioned to mitigate the identified impacts, can be found to be consistent with the requirements of the Coastal Act to conform to CEQA.

Exhibits:

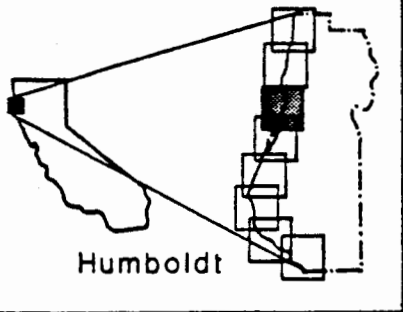
1. Regional Location Map
2. Site Location Map
3. Original Project
4. Proposed Amendment Plans
5. Mitigation Site
6. Original Permit Findings

ATTACHMENT

Standard Conditions:

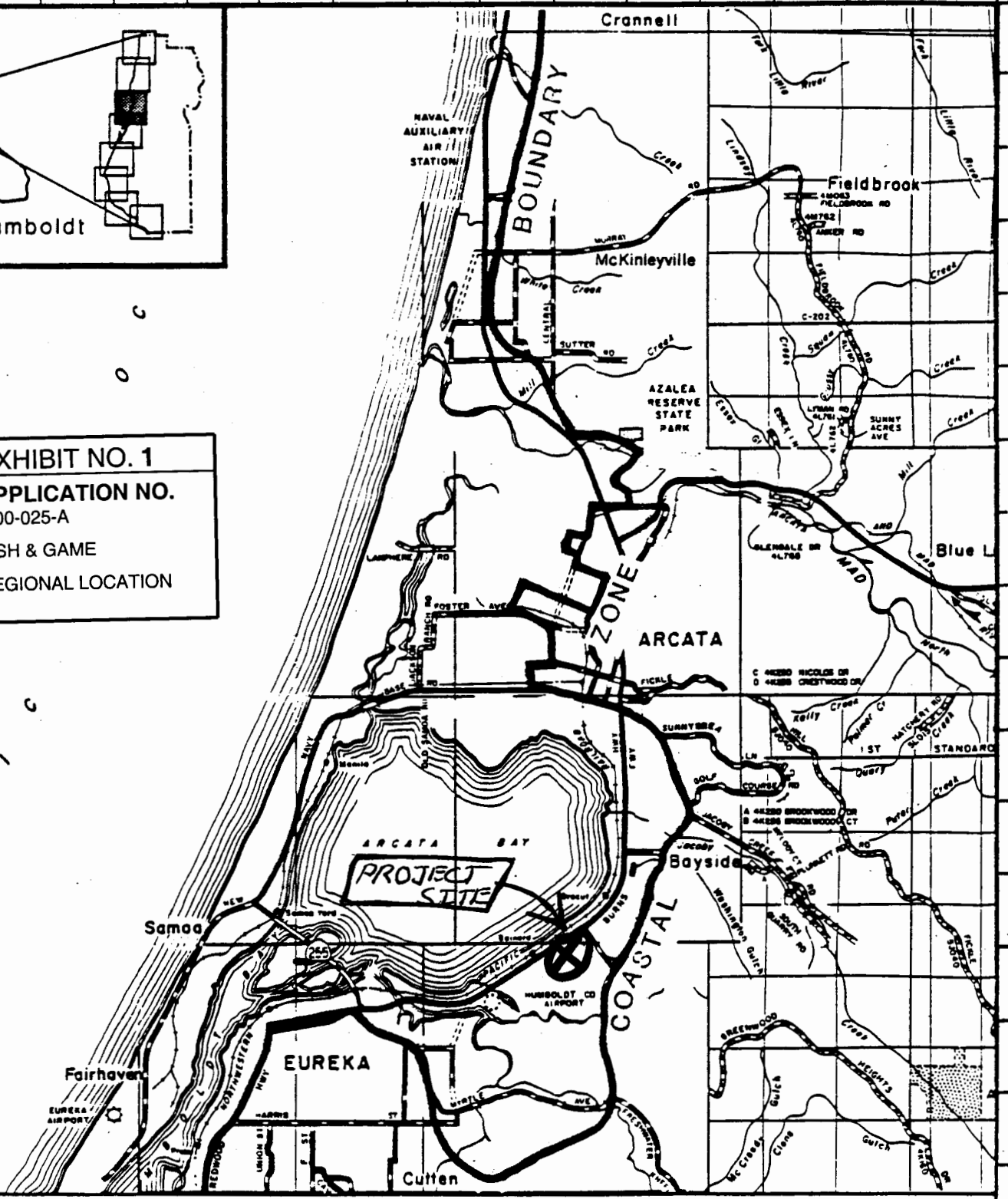
1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Interpretation. Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject

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



Humboldt

EXHIBIT NO. 1
APPLICATION NO.
1-00-025-A
FISH & GAME
REGIONAL LOCATION



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



LOCATION MAP



CALIFORNIA DEPARTMENT OF FISH AND GAME FAY SLOUGH WILDLIFE AREA ENHANCEMENT PROJECT - PHASE II

Project Location Map

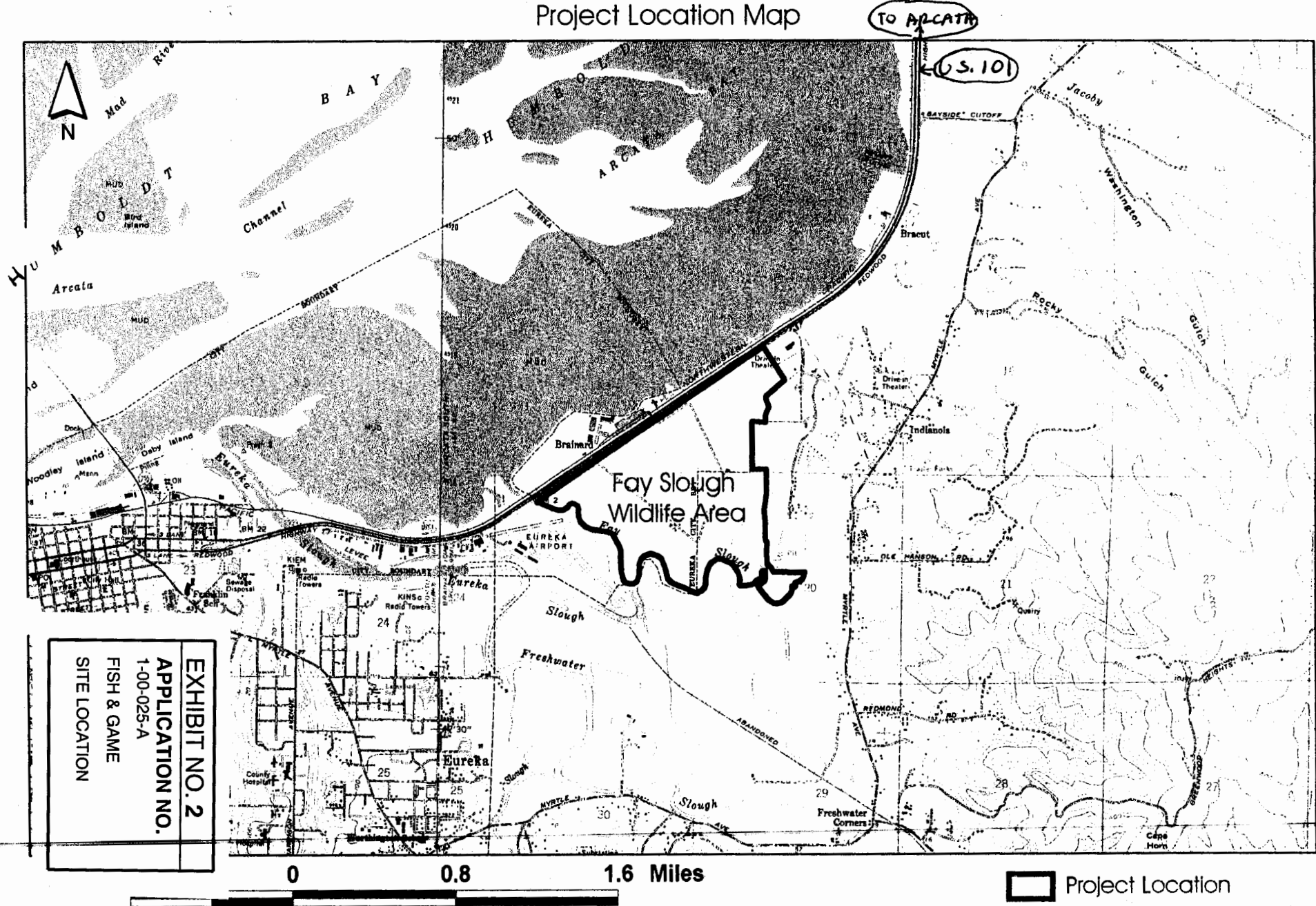
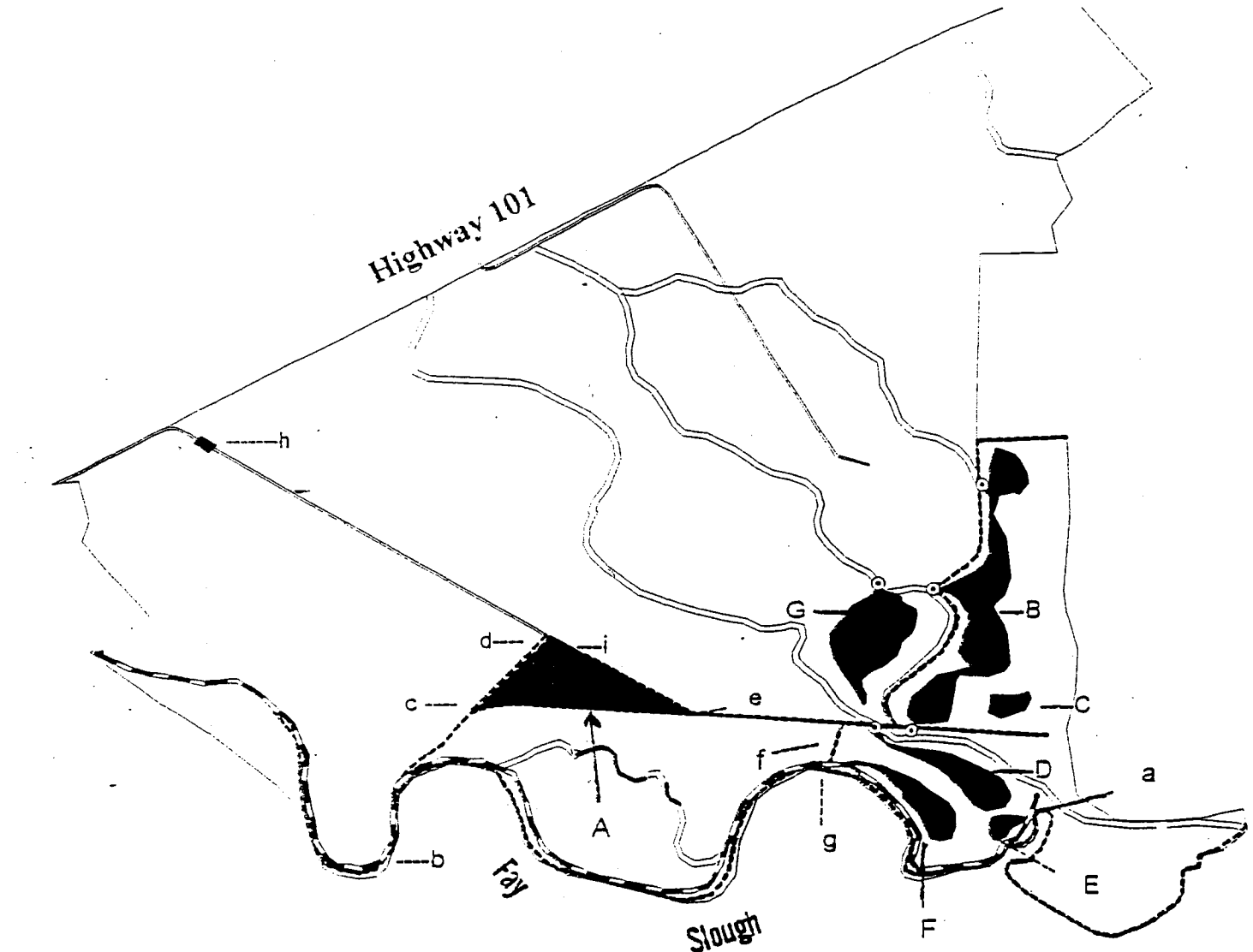


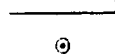


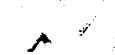





Figure 1 Fay Slough Wildlife Area Wetland Enhancement Project



-  Parking lot
-  FSWA Boundary
-  New water structure /culvert
-  Channel
-  Access road
-  Borrow ditch
-  Dike
-  Slough
-  Pond enhancement

- a-b raise and widen existing levee
decrease width and depth of borrow ditch
- c-d construct new levee
- c-e remove existing levee
- f-g remove existing levee
- h-i increase height of existing access road
- A existing pond
- B-G excavate shallow ponds

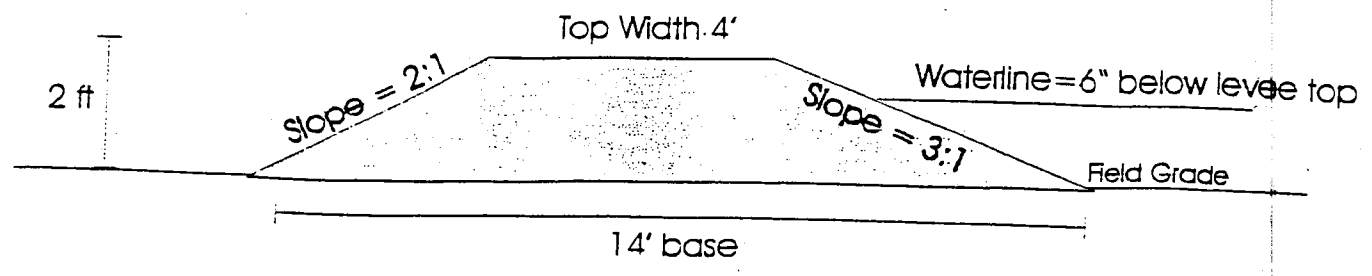


SCALE: 1" = 360'

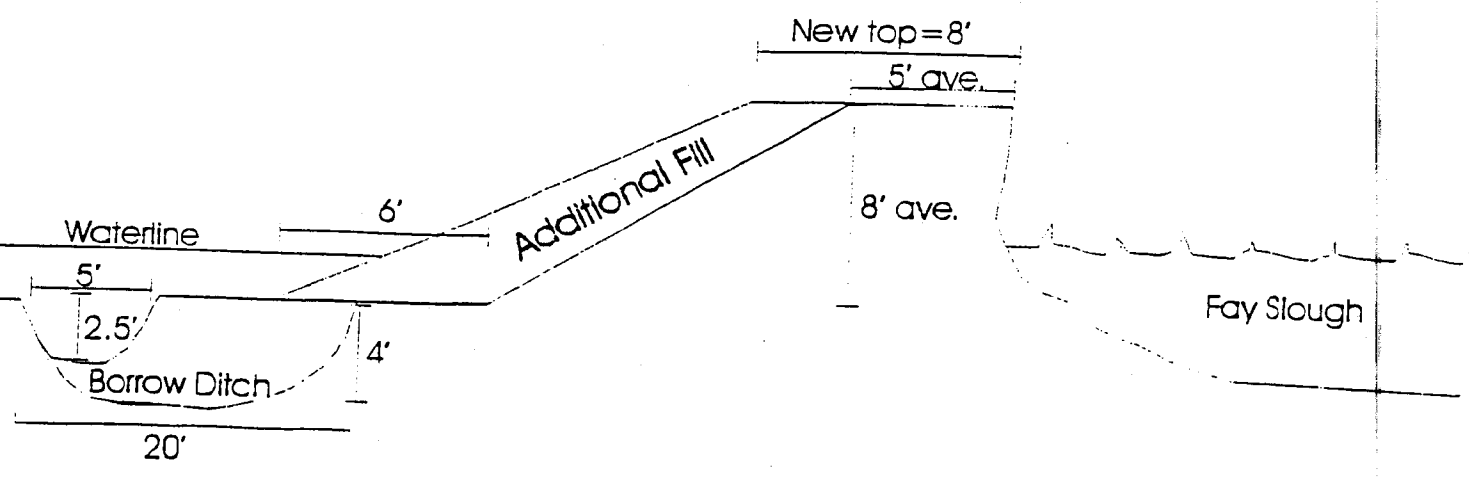
EXHIBIT NO. 3
APPLICATION NO. 1-00-025-A
FISH & GAME
ORIGINAL PROJECT (1 of 2)

FAY SLOUGH WILDLIFE AREA WETLAND ENHANCEMENT

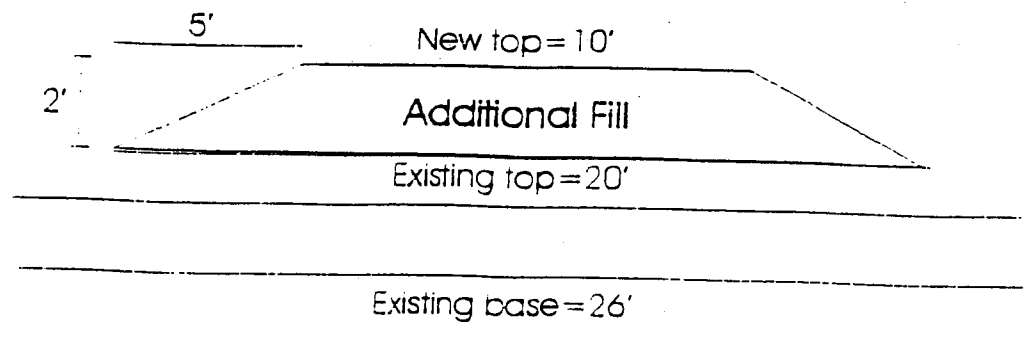
Typical Interior Dike Cross Section



Fay Slough Dike Typical Cross Section



Access Road Typical Cross Section



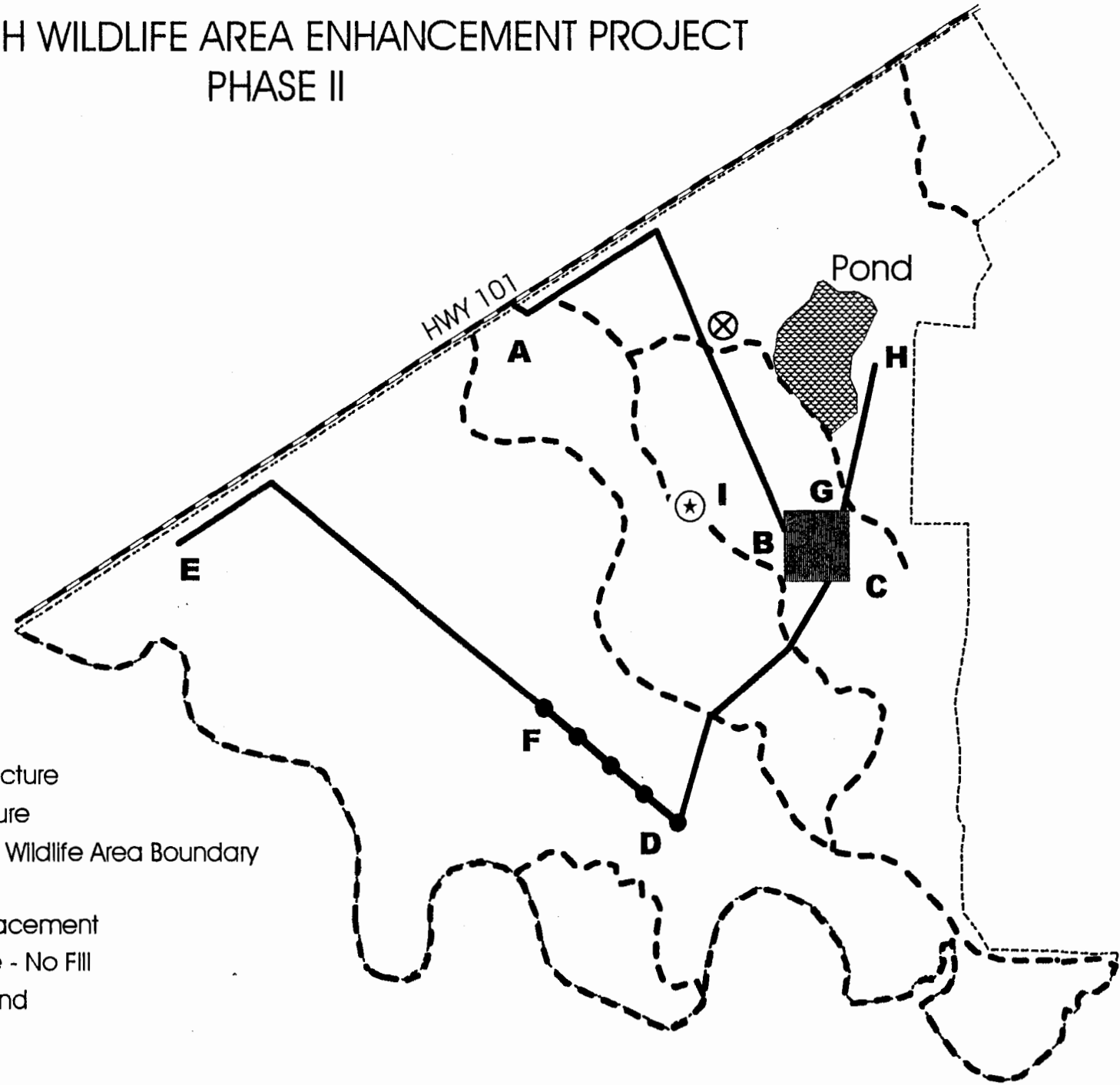
2 of 2

FAY SLOUGH WILDLIFE AREA ENHANCEMENT PROJECT PHASE II

EXHIBIT NO. 4
APPLICATION NO. 1-00-025-A
FISH & GAME PROPOSED AMENDMENT PLANS (1 of 4)



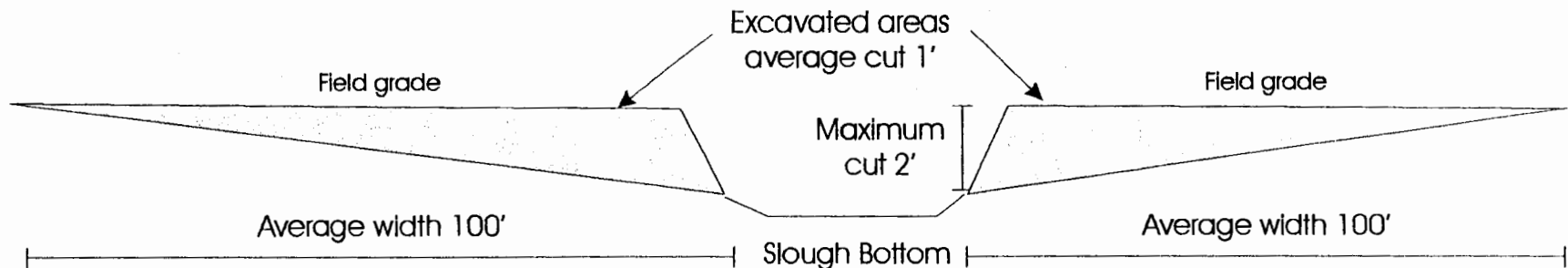
- ⊗ Existing Structure
- ⊛ New Structure
- - - Fay Slough Wildlife Area Boundary
- · - Sloughs
- ~ Material Placement
- ~ New Levee - No Fill
- ▨ Phase II Pond
- Life Estate



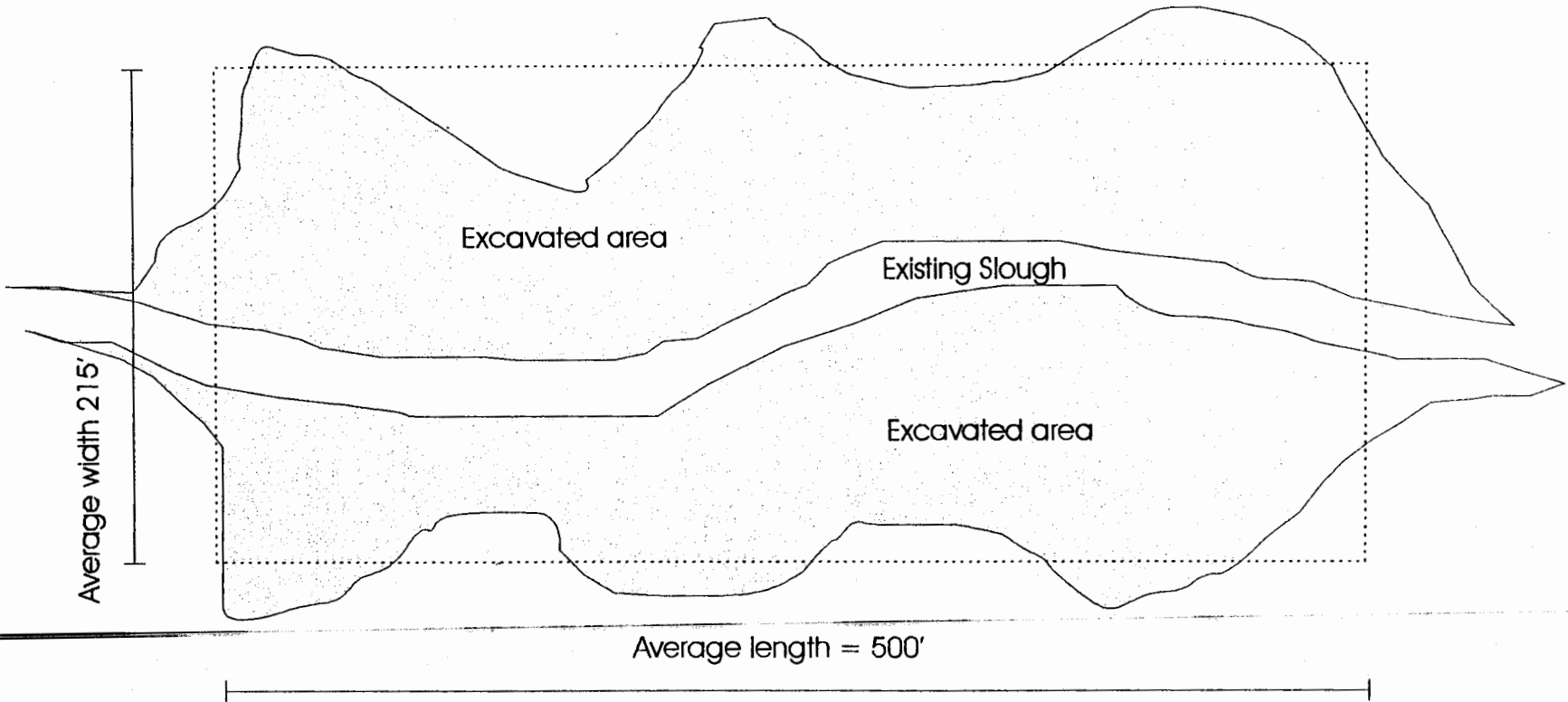
For general reference purposes only. Data: California Department of Fish and Game (2003). Map: California Department of Fish and Game (2003).

FAY SLOUGH WILDLIFE AREA ENHANCEMENT PROJECT - PHASE II

Typical Pond Cross-Section



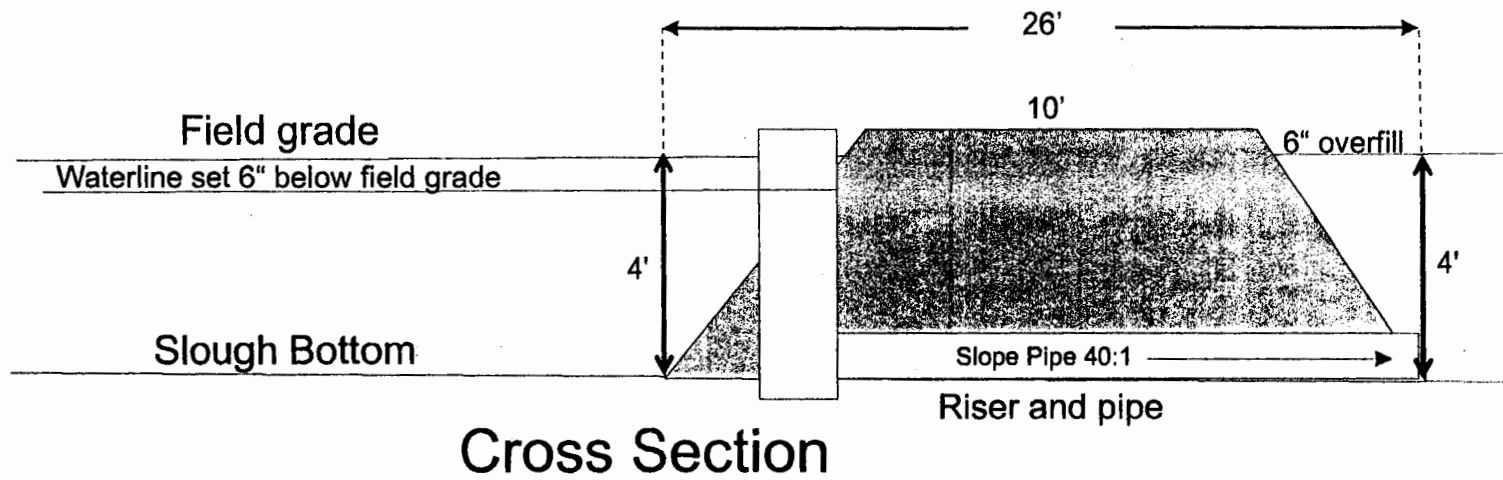
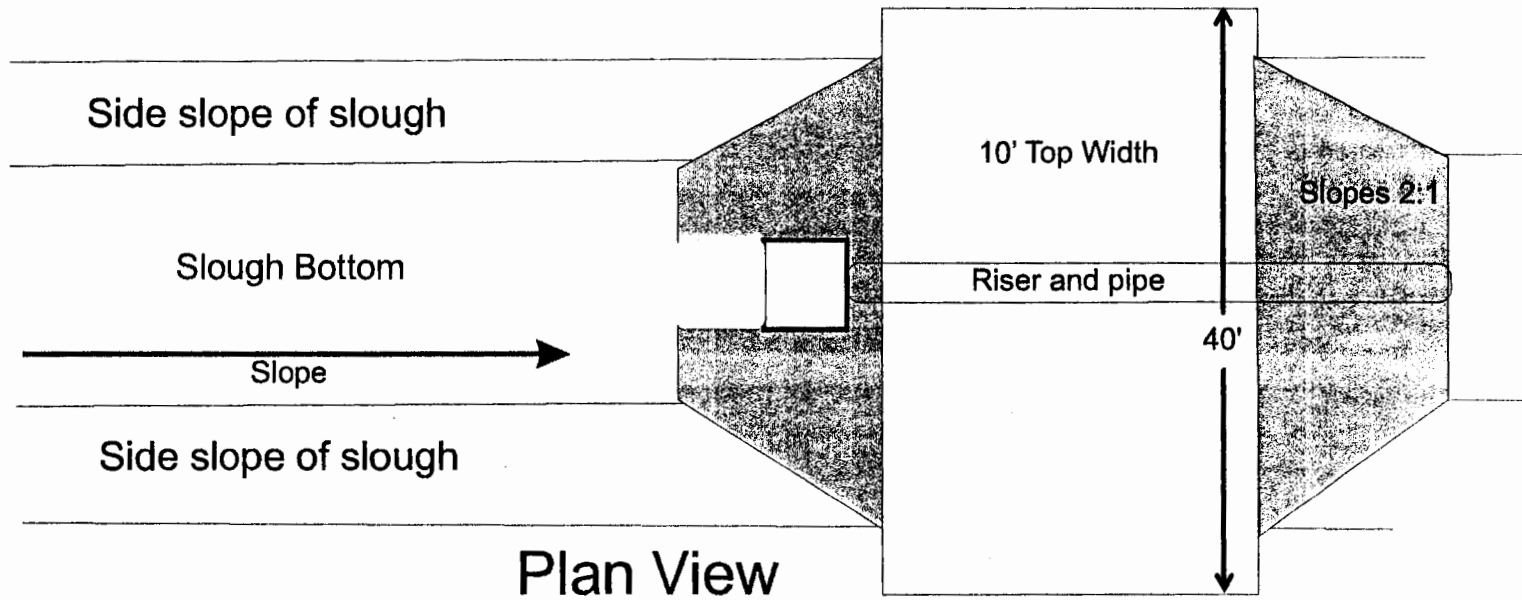
Typical Plan View



Fay

FAY SLOUGH WILDLIFE AREA WETLAND ENHANCEMENT PROJECT - PHASE II

Typical Water Control Structure



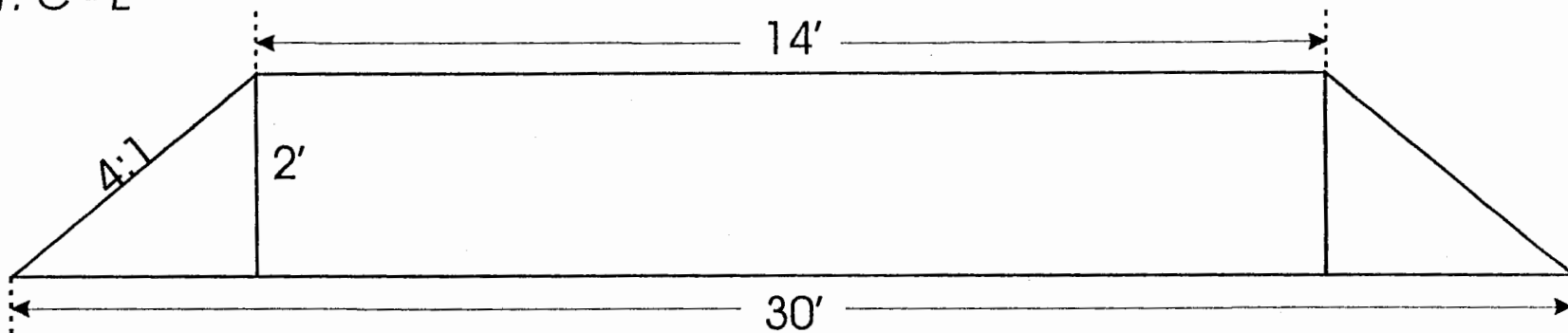
NOTE: Drawings Not To Scale

402

FAY SLOUGH WILDLIFE AREA ENHANCEMENT PROJECT - PHASE II

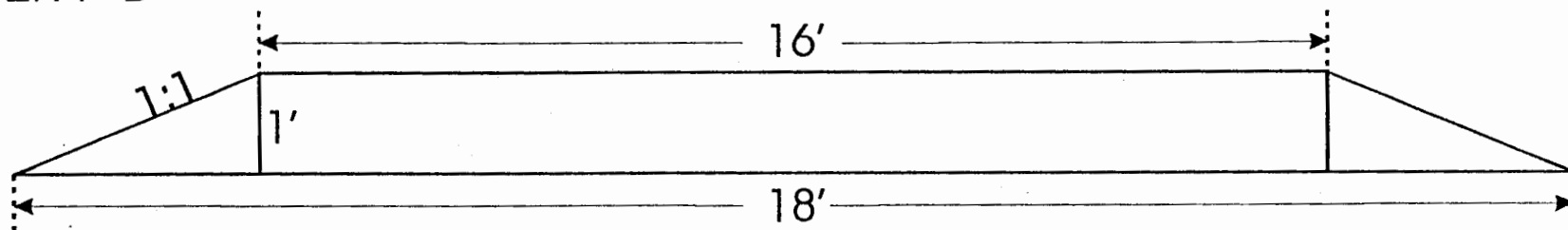
Typical Road Cross-Section

1: C - E



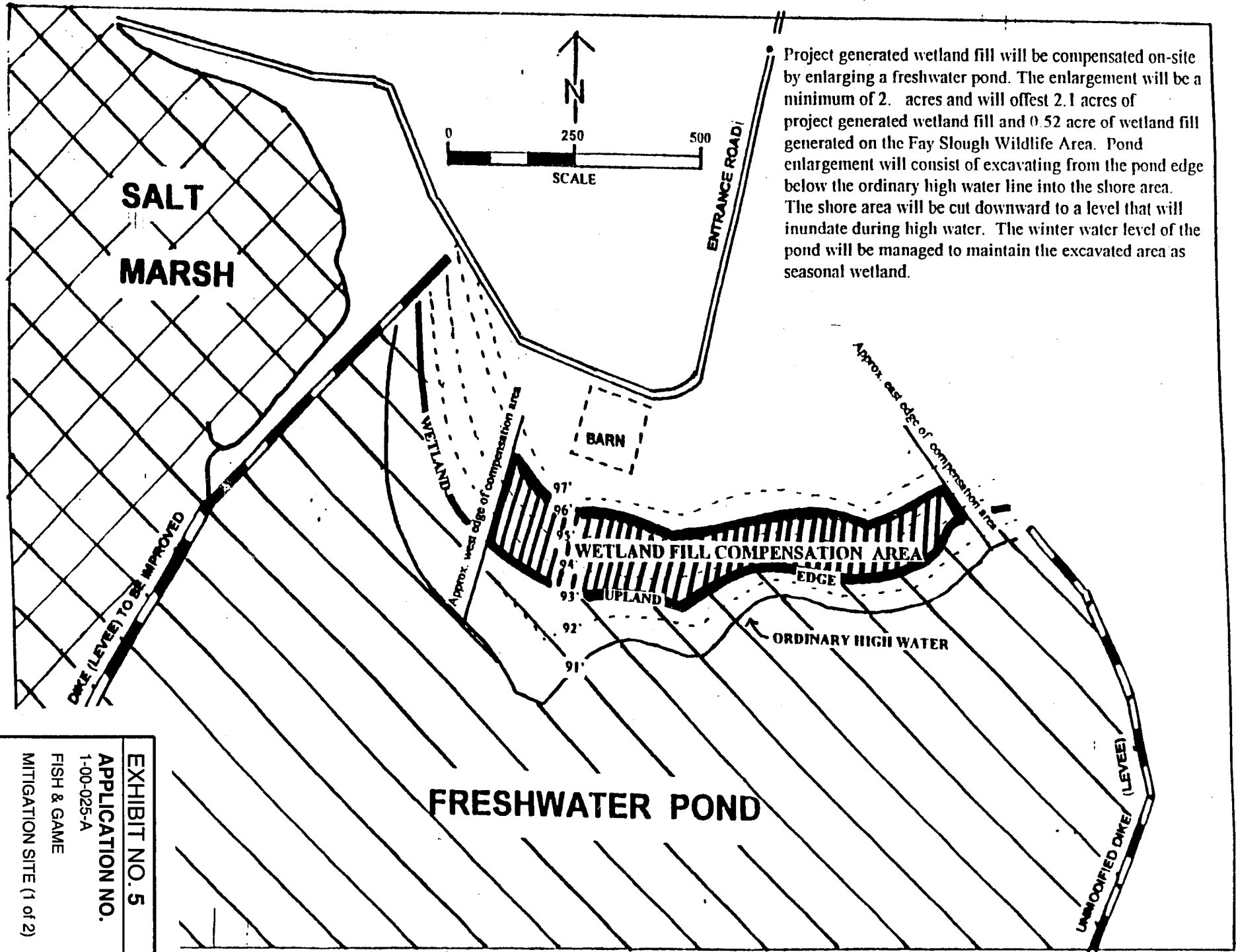
Left

2: A - B



Note: Not drawn to scale

WETLAND FILL COMPENSATION PLAN



Project generated wetland fill will be compensated on-site by enlarging a freshwater pond. The enlargement will be a minimum of 2. acres and will offset 2.1 acres of project generated wetland fill and 0.52 acre of wetland fill generated on the Fay Slough Wildlife Area. Pond enlargement will consist of excavating from the pond edge below the ordinary high water line into the shore area. The shore area will be cut downward to a level that will inundate during high water. The winter water level of the pond will be managed to maintain the excavated area as seasonal wetland.

EXHIBIT NO. 5
 APPLICATION NO.
 1-00-025-A
 FISH & GAME
 MITIGATION SITE (1 of 2)

PORTION OF THE EEL RIVER WILDLIFE AREA

CALIFORNIA COASTAL COMMISSION

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

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



Hearing Date: July 11, 2001
Commission Action: **Approved with
Conditions, 11-0,
July 11, 2001**

ADOPTED FINDINGS**REVISED STAFF REPORT**

APPLICATION NO.: **1-00-025**

APPLICANT: **California Department of Fish and Game**

PROJECT LOCATION: At the Fay Slough Wildlife Area located between Eureka and Arcata adjacent to northbound Highway 101 at the northern limits of the City of Eureka, Humboldt County (APNs 402-161-07, -08; 402-171-08; 501-241-09).

PROJECT DESCRIPTION: Enhance existing wetlands by: (1) repairing 5,142 linear feet of existing dike, (2) removing 1,400 linear feet of dike, (3) constructing 630 linear feet of new dike, (4) excavating 7 shallow ponds, (5) installing 4 water control structures, (6) raising 2,182 linear feet of access road by two feet, and (7) creating approximately 0.52 acres of wetland at the Eel River Wildlife Area to mitigate for wetland fill from dike improvements.

GENERAL PLAN DESIGNATION: Agriculture Exclusive

ZONING DESIGNATION: Agriculture Exclusive 60-acre-minimum

LOCAL APPROVALS RECEIVED: None Required

OTHER APPROVALS REQUIRED: Army Corps of Engineers

SUBSTANTIVE FILE DOCUMENTS: (1) Humboldt County LCP, (2) Coastal Development Permit No. 1-89-31

EXHIBIT NO. 6**APPLICATION NO.**

1-00-025-A

FISH & GAME

ORIGINAL PERMIT
FINDINGS (1 of 29)

STAFF NOTES:

1. Adopted Findings

The Commission held a public hearing and approved the permit at the meeting of July 11, 2001. The adopted conditions differ slightly from those contained in the written staff recommendation dated June 29, 2001. At the public hearing, the staff revised its recommendation to make changes to Special Conditions No. 1 and No. 2 to clarify the project and mitigation sites that are referenced in the monitoring conditions. Special Condition No. 1(A)(1) was revised by inserting "Fay Slough Wildlife Area" to clarify the project site referenced in the condition. Special Condition No. 2(A)(1) was revised to insert "Eel River Wildlife Area" to clarify the mitigation and project site being referenced in the condition and revised to clarify that the performance standards at the Eel River Wildlife Area mitigation site must be equivalent to successfully achieved performance levels of bird usage and wetland vegetation cover at the freshwater wetland restoration portion of the Eel River Wildlife Area project site. These clarifications did not result in any changes to the findings. The Commission adopted the staff recommendation as modified.

The following resolution, conditions, and findings were adopted by the Commission on July 11, 2001 upon conclusion of the public hearing.

2. Standard of Review

The proposed project is located in the Commission's retained jurisdiction. Humboldt County has a certified LCP, but the site is within an area shown on State Lands Commission maps over which the state retains a public trust interest. Therefore, the standard of review that the Commission must apply to the project is the Chapter 3 policies of the Coastal Act.

I. ADOPTED RESOLUTION:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development, as conditioned, will be in conformity with the policies of Chapter 3 of the Coastal Act. 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:** See Attachment A.

III. **SPECIAL CONDITIONS:**

1. **Restoration Monitoring Program**

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for review and written approval of the Executive Director, a final revised monitoring program that substantially conforms with the monitoring program submitted to the Commission entitled “Fay Slough Wildlife Area Monitoring Plan” prepared by Terri Weist of the Department of Fish and Game and attached as Exhibit No. 8, except that it shall be revised to include the following:

1. Performance standards that will assure achievement of levels of bird usage and wetland vegetation cover at the Fay Slough Wildlife Area project site to levels that are greater than pre-project levels of bird usage and wetland vegetation cover at the Fay Slough Wildlife Area project site. The monitoring goals and objectives shall include but not be limited to the following standards: (a) increases in waterfowl use, (b) increases in shorebird use, (c) increases in wading bird use, and (d) increases in emergent wetland vegetation cover.
2. Provisions for monitoring at least the following attributes: (a) waterfowl use of the wildlife area, (b) shorebird feeding and resting use, (c) wading bird use, and (d) emergent wetland vegetation around the perimeter of the freshwater pond for five years using methods such as: transects, photo plots, and bird counts.
3. Ecological performance criteria shall relate logically to the restoration goals enumerated in (a) above. Where there is sufficient information to provide a strong scientific rationale, the performance criteria may be absolute (e.g., specified number of bird-hours of use per unit time or specified vegetative cover). Where absolute performance criteria cannot reasonably be formulated, clear relative performance criteria shall be specified. Relative criteria are those that require a comparison of the restoration site with reference sites. In the case of relative performance criteria, the rationale for the selection of reference sites, the comparison procedure, and the basis for judging differences to be significant shall be specified. If a comparison (e.g., restoration variate's value to an absolute standard or to a reference value) requires a statistical test, the test shall be described, including the desired magnitude of difference to be detected, the desired statistical power of the test, and the alpha level at which the test will be conducted. The design of the sampling program shall relate logically to the performance criteria and chosen methods of comparison. The sampling program shall be described in sufficient detail to enable an independent scientist to duplicate it. Frequency of monitoring and sampling shall be specified for each variable to be monitored. Sample sizes shall be specified and their rationale explained. Based on the magnitude of difference to be detected, the desired statistical power, the chosen alpha

level, and an estimate of the appropriate sampling variability, the necessary sample size will be estimated.

4. Provisions for submittal within 30 days of completion of the initial enhancement work of (1) “as built” plans demonstrating that the initial enhancement work has been completed in accordance with the approved enhancement program, and (2) an assessment of the initial biological and ecological status of the “as built” enhancements. The assessment shall include an analysis of the attributes that will be monitored pursuant to the program, with a description of the methods for making that evaluation.
 5. Provisions for monitoring and remediation of the restoration site in accordance with the approved final restoration program and the approved final monitoring program for a period of five years.
 6. Provisions for submission of annual reports of monitoring results to the Executive Director by a particular date each year for the duration of the required monitoring period, beginning the first year after submission of the “as-built” assessment. Each report shall include copies of all previous reports as appendices. Each report shall also include a “Performance Evaluation” section where information and results from the monitoring program are used to evaluate the status of the wetland enhancement project in relation to the performance standards.
 7. Provisions for submission of a final monitoring report to the Executive Director at the end of the five-year reporting period. The final report must be prepared in conjunction with a qualified wetlands biologist. The report must evaluate whether the enhancement site conforms with the goals, objectives, and performance standards set forth in the approved final enhancement program. The report must address all of the monitoring data collected over the five-year period.
- B. If the final report indicates that the enhancement project has been unsuccessful, in part, or in whole, based on the approved performance standards, the applicant shall submit a revised or supplemental enhancement program to compensate for those portions of the original program which did not meet the approved performance standards. The revised enhancement program shall be processed as an amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.
- C. The permittee shall monitor and remediate the wetland enhancement site in accordance with the approved monitoring program. Any proposed changes from the approved monitoring program shall be reported to the Executive Director. No changes to the approved monitoring program shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines no amendment is legally required.

2. Mitigation Monitoring Program

A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit for review and written approval of the Executive Director, a final detailed monitoring program designed by a qualified wetland biologist for monitoring of the wetland mitigation site. The monitoring program shall at a minimum include the following:

1. Performance standards for the Eel River Wildlife Area mitigation site that are equivalent to successfully achieved performance levels of bird usage and wetland vegetation cover at the freshwater wetland restoration portion of the Eel River Wildlife Area project site. The mitigation monitoring goals and objectives shall include but not be limited to the following standards: (a) increases in waterfowl use, (b) increases in shorebird use, (c) increases in wading bird use, and (d) increases in emergent wetland vegetation cover.
2. Provisions for monitoring at least the following attributes: (a) waterfowl use of the wildlife area, (b) shorebird feeding and resting use, (c) wading bird use, and (d) increases in emergent wetland vegetation around the perimeter of the mitigation site for five years using methods such as: transects, photo plots, and bird counts.
3. Ecological performance criteria shall relate logically to the mitigation goals enumerated in (a) above. Where there is sufficient information to provide a strong scientific rationale, the performance criteria may be absolute (e.g., specified number of bird-hours of use per unit time or specified vegetative cover). Where absolute performance criteria cannot reasonably be formulated, clear relative performance criteria shall be specified. Relative criteria are those that require a comparison of the restoration site with reference sites. In the case of relative performance criteria, the rationale for the selection of reference sites, the comparison procedure, and the basis for judging differences to be significant shall be specified. If a comparison (e.g., mitigation variate's value to an absolute standard or to a reference value) requires a statistical test, the test shall be described, including the desired magnitude of difference to be detected, the desired statistical power of the test, and the alpha level at which the test will be conducted. The design of the sampling program shall relate logically to the performance criteria and chosen methods of comparison. The sampling program shall be described in sufficient detail to enable an independent scientist to duplicate it. Frequency of monitoring and sampling shall be specified for each variable to be monitored. Sample sizes shall be specified and their rationale explained. Based on the magnitude of difference to be detected, the desired statistical power, the chosen alpha level, and an estimate of the appropriate sampling variability, the necessary sample size will be estimated.
4. Provisions for submittal within 30 days of completion of the initial mitigation work of (1) "as built" plans demonstrating that the initial enhancement work has been

completed in accordance with the approved enhancement program, and (2) an assessment of the initial biological and ecological status of the “as built” enhancements. The assessment shall include an analysis of the attributes that will be monitored pursuant to the program, with a description of the methods for making that evaluation.

5. Provisions for monitoring and remediation of the mitigation site in accordance with the approved final mitigation program and the approved final monitoring program for a period of five years.
 6. Provisions for submission of annual reports of monitoring results to the Executive Director by a particular date each year for the duration of the required monitoring period, beginning the first year after submission of the “as-built” assessment. Each report shall include copies of all previous reports as appendices. Each report shall also include a “Performance Evaluation” section where information and results from the monitoring program are used to evaluate the status of the wetland mitigation site in relation to the performance standards.
 7. Provisions for submission of a final monitoring report to the Executive Director at the end of the five-year reporting period. The final report must be prepared in conjunction with a qualified wetlands biologist. The report must evaluate whether the enhancement site conforms with the goals, objectives, and performance standards set forth in the approved final mitigation program. The report must address all of the monitoring data collected over the five-year period.
- B. If the final report indicates that the mitigation project has been unsuccessful, in part, or in whole, based on the approved performance standards, the applicant shall submit a revised or supplemental enhancement program to compensate for those portions of the original program which did not meet the approved performance standards. The revised enhancement program shall be processed as an amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.
- C. The permittee shall monitor and remediate the wetland mitigation site in accordance with the approved monitoring program. Any proposed changes from the approved monitoring program shall be reported to the Executive Director. No changes to the approved monitoring program shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines no amendment is legally required.
3. Off-Site Wetland Mitigation

The permittee shall create 0.52 acres of freshwater wetland at the Eel River Wildlife Area to mitigate for the filling of 0.52 acres of freshwater wetland at the Fay Slough Wildlife Area as proposed and approved by Coastal Development Permit No. 1-00-025.

4. Construction Responsibilities and Debris Removal

The permittee 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 waters of Fay Slough or slough channels;
- (b) Any and all excess excavated material resulting from construction activities that is not utilized for the approved levee repair or other development approved pursuant to this authorization shall be removed and disposed of at a disposal site outside the coastal zone or placed within the coastal zone pursuant to a valid coastal development permit.
- (c) Any and all temporary fill associated with the ditch crossing used to access the Fay Slough levee shall be removed within 30 days of project completion and the ditch shall be recontoured and revegetated to its condition that existed prior to the placement of the fill.

5. Timing of Construction

To avoid adverse impacts to wildlife during prime breeding season, all project construction shall occur between July 15th and November 15th.

6. Army Corps of Engineers Approval

PRIOR TO COMMENCEMENT OF CONSTRUCTION, the permittee shall provide to the Executive Director a copy of a permit issued by the Army Corps of Engineers, or letter of permission, or evidence that no permit or permission is required. The applicant shall inform the Executive Director of any changes to the project required by the Army Corps of Engineers. 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.

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

1. Site Description, Background & Project Description

The Department of Fish and Game proposes to enhance existing wetlands to provide increased habitat value and diversity for water-associated wildlife at the Fay Slough Wildlife Area (FSWA). The proposed site is located at the northern end of the City of Eureka, between Eureka and Arcata and adjacent to northbound Highway 101 in Humboldt County. The FSWA comprises

approximately 500 acres of former ranch lands that was purchased by the state in 1987. The site is bordered by Fay Slough on the southern edge and is bisected by multiple slough channels, an existing unimproved access road, and several interior levees. With the exception of the road and levees, the entire site is considered seasonal wetland. Murray Field, a county airport, is located adjacent to the site on the south and access to the FSWA from Highway 101 is shared with an automobile dealership north of Murray Road. Highway 101 forms the northwestern boundary of the FSWA and separates it from the intertidal salt marshes and mudflats of Humboldt Bay. Lands adjacent to the north, south and east of Fay Slough are in agricultural use. (Exhibit Nos. 1 & 2)

Most of the site is relatively flat, rather monotypic pasture lands composed of a variety of grasses, sedges, rushes and forbs, many of which are exotic species introduced through historic agricultural uses. Currently, the area contains seasonal wetlands, short and tall grass pasture, and seasonal sloughs, with only the borrow ditch from the perimeter dike holding water year-round. Salt marshes remain only as a fringe along the tidal side of the Fay Slough levee.

The FSWA provides habitat for a diversity of water associated wildlife including waterfowl, wading birds, rails, shorebirds, coot, gulls, otter, mink, amphibians, and reptiles. Raptors including red-tailed hawk, red-shouldered hawk, northern harrier, barn owl, and screech owl inhabit the area. Other species that inhabit the FSWA include black bear, black-tailed deer, fox, raccoon, skunk, and weasel. The Pacific tree frog and yellow-legged frog are also known to inhabit the FSWA. Other amphibians in the area include the clouded salamander, black salamander, ensatina, northwest salamander, and rough-legged newt.

Background

The FSWA site was historically part of the extensive tidal marshes of Humboldt Bay, but was converted to agricultural use following the construction of a levee around this portion of Humboldt Bay around the turn of the 20th century. The site was farmed and grazed until 1987 when the area was acquired by the California Department of Fish and Game (DFG) with Proposition 19 Bond funds intended specifically for the acquisition, restoration, and management of coastal wetlands.

Diking and filling in the early part of the last century to promote agricultural, industrial, and urban land uses has resulted in substantial degradation of northern California coastal wetlands, including those around Humboldt Bay. This degradation has resulted in a significant reduction in wetland function and wildlife values. Historically, Humboldt Bay extended from the sand spits that separate it from the Pacific Ocean to the base of the inland foothills. The bay was first diked in the late 19th century by the railroad crossing the marshes between Eureka and Arcata. Subsequent dike construction further isolated former tidelands from the bay and the area was converted to agricultural uses. Like many of the historic tidelands around Humboldt Bay, the project area was never fully drained following the construction of the Bay levee and therefore, the vast majority of the project site remains seasonal wetland. Although the land is now a state wildlife area, only a portion of the site has been enhanced to improve wetland habitat values.

The Commission has previously approved wetland enhancement activities at the Fay Slough Wildlife Area. In 1989, the Commission approved Coastal Development Permit No. 1-89-31 that involved creating over 11 acres of wetland by removing fill and improving freshwater wetlands on about 120 acres. The fill removed included buildings, concrete pads and earthen fills present at the site when it was acquired. The project also included placing fill on interior roads to form low dikes and constructing 550 feet of additional dike. The dike involved filling .13 acres of wetland and was constructed to hold runoff water in two shallow freshwater ponds totaling about 120 acres.

Project Description

The DFG proposes to enhance existing seasonal freshwater wetlands and improve habitat values for water associated wildlife at the Fay Slough Wildlife Area. The project involves repairing the Fay Slough dike that separates freshwater wetlands from saltwater, modifying internal dikes, and excavating shallow freshwater ponds. Most of this development would occur within existing grazed seasonal wetlands. The project is designed to increase the diversity of wetland types within the wildlife area by creating additional seasonal and semi-permanent freshwater ponds. The seasonal wetlands would provide enhanced feeding and resting habitat for migrating and wintering waterfowl and shorebirds and provide brood water for local nesting ducks and geese. Wildlife species that would benefit from the enhancement include shorebirds, waterfowl, wading birds, rails, gulls, songbirds, river otters, mink, reptiles, and amphibians. The DFG has determined that the proposed project would not impact any threatened or endangered plant or animal species.

The draft FSWA Management Plan identifies one of the management goals for FSWA is to enhance habitat for waterfowl. To meet this management goal, the Department of Fish and Game (DFG) proposes to perform activities that would enhance wetland habitat values and increase the biological diversity of the FSWA. Proposed enhancement activities include: (1) repairing 5,142 linear feet of existing dike, (2) removing 1,400 linear feet of dike, (3) constructing 630 linear feet of new dike, (4) excavating 7 shallow ponds, (5) installing 4 water control structures, (6) raising 2,182 linear feet of access road by two feet, and (7) creating approximately 0.52 acres of wetland at the Eel River Wildlife Area to mitigate for wetland fill from dike construction (Exhibit Nos. 3-7). As a result of the proposed enhancement project, water would remain on the surface of the project area longer each year as a result of constructing shallow ponds and water control facilities. The proposed wetland enhancement project is expected to attract increased numbers of shorebirds, wading birds, and waterfowl to the area. As waterfowl and shorebird numbers increase, the prey base for raptors and other predators would also increase.

All excavated material would be used on-site or removed to an authorized disposal site. Exposed dikes would be seeded with a compatible grass seed to prevent erosion. The project is proposed to be constructed between July 15 and November 15. Details of each of the project elements are described below.

Detailed Description of Project Components

a. Repair of Fay Slough Dike

The Fay Slough dike would be repaired using approximately 7,159 cubic yards of native soil excavated on-site. The soil would be placed along 5,142 linear feet of the inboard side of the dike and would result in an increased width of six feet at the base and three feet at the top, which would repair the dike to its approximate original dimensions (Exhibit No. 3 & 4). The proposed dike repair is needed to prevent saltwater intrusion into existing freshwater wetlands through the eroding dike.

This portion of the project would result in filling approximately 0.72 acres of seasonal wetland. As discussed below other project elements involve filling an additional 0.2 acres of seasonal wetland and removing 0.4 acres of fill in seasonal wetlands for a net fill of 0.52 acres. The wetland impacts associated with the dike repair cannot be mitigated by wetland creation on site because the entire FSWA is already seasonal wetland. Therefore, the applicant proposes to mitigate wetland impacts by creating similar habitat off-site. Approximately 0.52 acres of similar seasonal freshwater wetland would be created (in coordination with a separate enhancement project at the Eel River Wildlife Area, 1-99-075) on the Department of Fish and Game's Eel River Wildlife Area located about 13 miles to the southwest. Currently, there is an existing freshwater pond on the Eel River Wildlife Area which would be expanded by excavating the adjacent uplands. The uplands would be excavated on a shallow gradient to a level that would allow water to flow from the pond into the newly excavated site and would also act as a catchment basin to collect winter runoff from the adjacent hillside.

b. Modification of Interior Levees

Three segments of interior levees would be modified by the proposed project. Approximately 1,400 feet of dike would be removed resulting in the removal of 0.4 acres of wetland fill (Exhibit Nos. 3 & 4). Portions of this material would be used to repair the Fay Slough dike discussed in section (a) above. Other portions would be used to construct approximately 630 feet of new dike that would increase the size of an existing freshwater pond by nearly 6 acres. This new dike would result in filling approximately 0.2 acres of seasonal wetlands. The proposed mitigation for this fill is included in the off-site wetland creation discussed in (a) above.

c. Excavation of Shallow Ponds

The project also proposes to excavate 7 shallow depressions in the landscape, thereby increasing the duration and availability of seasonal freshwater wetlands for wildlife and improving habitat diversity at the site (Exhibit Nos. 3-5). These excavations would remove approximately 12-24 inches of soil from 16.5 acres of ungrazed pasture and establish a 10 to 1 slope around the perimeter of the ponds. The excavated material would be used to repair the Fay Slough dike, decrease the size of the borrow ditch, and raise the existing access road.

d. Fay Slough Borrow Ditch

The applicant indicates that the Fay Slough borrow ditch, which runs along the inboard side of the Fay Slough levee and was the source of the material used to construct the dike, is wider and deeper than is optimal for wetland management purposes. The borrow ditch would be reduced from the current average width of 20 feet to five feet and from a current depth of four feet to 2.5 feet (Exhibit Nos. 3 & 4). The applicant indicates that the modified ditch would still provide the capacity necessary to adequately manage the FSWA. The wide, deep ditch does not drain entirely during the summer and as a result becomes stagnant and covered with algae and offers only minimal habitat value. This portion of the project would provide more shallow water habitat since the managed water level would be higher than the crest of the borrow ditch and would allow the ditch to drain more effectively, thereby creating more valuable habitat for wetland vegetation.

e. Water Control Structures and Road Improvement

Water control structures would be installed at four locations to manipulate water for wildlife management purposes. The water control structures consist of a flashboard/riser system and would be maintained regularly (Exhibit No. 3 & 4). These structures would be used to regulate water levels by removing or adding boards to maintain desirable wetland characteristics throughout the project area. The ability to manage the water levels at the site is important to ensure that water levels are adequate to provide optimal wetland habitat during varying times of the year. The water control structures allow water to be impounded in shallow ponds for a longer duration, thereby providing more valuable foraging areas for nesting waterfowl. The water control structures also allow the area to be drained if necessary such as for disease control (i.e. fowl cholera) and for soil management. The water control structures also allow the DFG to manage the property to prevent flooding of private lands adjacent to the FSWA. Approximately 2,182 linear feet of existing access road would be raised approximately two feet above grade with side slopes of approximately 2.5 to 1. The fill proposed to be placed on the existing roadway would not extend beyond the existing road prism and would not result in wetland fill.

f. Temporary Ditch Crossings

The applicant proposes up to four temporary crossings constructed in the Fay Slough borrow ditch for heavy equipment to access the outer dike. The crossings would consist of a culvert of sufficient width with earthen material placed around it to allow heavy equipment to cross safely. The temporary fill would result in the placement of approximately 18 cubic yards of fill and would be removed upon completion of the project.

g. Monitoring

The DFG has submitted a monitoring plan that sets forth performance standards and remedial measures to monitor the success of the proposed wetland enhancement project (Exhibit No. 8). The applicant proposes to monitor bird use, vegetation establishment, and pond development.

Avian monitoring began in October 2000 and monthly pre-project monitoring is being conducted to establish baseline data to compare with post-project surveys. Post-project bird surveys would take place at least biannually for five years and would be compared to the baseline data to detect changes in species occurrences. Wildlife species that area expected to increase in number and occurrence are waterfowl, coots, grebes, shorebirds, herons, and egrets. Four avian monitoring transects were established and the transects would be surveyed in the spring (April-May) and fall (October-November) to capture seasonal bird use of the area.

Once the project is completed, the applicant proposes to map the ponds and dikes using GPS system. Acreage would be determined for each pond developed and digital photographs would be taken biannually at fixed photoplot locations to monitor pond development and vegetation characteristics over five years.

Although the project does not propose active planting of vegetation, pre-project vegetation would be sampled to document change in vegetation type following project completion. The applicant anticipates that while some freshwater wetland vegetation currently exists on the project site, pond development would probably increase emergent wetland species. Since water would inundate portions of the project area, transects would be established along the perimeter of the ponds and throughout non-inundated slough channels to document wetland vegetation establishment. Each 30-meter transect would be comprised of 10, 1-square-meter quadrat plots. Two transects would be established between the two ponds if they are not inundated by water. Vegetation transects would be measured annually in August to document the establishment of wetland vegetation. The applicant proposes that the project goal of wetland enhancement would be considered successful when plot data show greater than 60% of wetland obligate/facultative or emergent wetland species are established. The applicant further indicates that water levels may have to be manipulated to ensure wetland emergent and obligate species are established following implementation of the project should performance standards not be met.

The applicant expects an increase in water-associated bird abundance on FSWA as a result of the wetland enhancement project. However, the applicant notes that wildlife populations are dynamic and are regulated by a variety of uncontrollable and extraneous factors (i.e. disease, weather, prey abundance). Therefore, the applicant has not proposed target levels at which to measure increases in avifauna abundance because a failure to detect statistically significant increases in bird use may not be a result of project failure.

The applicant proposes to submit annual monitoring reports to the Executive Director for five years beginning the December following project completion. The final monitoring report would be submitted to the Executive Director on the fifth year anniversary date after commencement of the monitoring effort and would contain all the data collected over the five-year monitoring period accompanied by appropriate statistical analyses. The format would include an introduction, site plans, and study area, methods used and analyses performed and an evaluation of project goals.

2. Protection of the Wetland Environment

Section 30233 of the Coastal Act states that the diking, filling, or dredging of wetlands shall be permitted only when there is no feasible less environmentally damaging alternative, and only when feasible mitigation measures have been provided to minimize adverse environmental effects. Section 30233 also specifies that diking, filling, or dredging are allowed in wetlands only for limited uses.

The project involves filling approximately 0.72 acres of seasonal wetland on the inboard side of the Fay Slough levee to repair the levee and filling approximately 0.2 acres of seasonal wetlands to construct a new 630-foot-long interior levee. The project also involves removing 0.4 acres of wetland fill by removing an existing 1,400-foot-long interior levee. Thus, the project would result in a total of 0.52 acres of wetland fill which would be offset by creating 0.52 acres of seasonal freshwater wetland at the Eel River Wildlife Area. The project also involves excavating 7 shallow ponds, 12-24 inches deep within 16.5 acres of seasonal wetlands.

Section 30233(a) provides as follows, in applicable part:

- (a) *The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:*
- (1) *New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.*
 - (2) *Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*
 - (3) *In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities, shall not exceed 25 percent of the degraded wetland.*
 - (4) *In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.*

- (5) *Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*
- (6) *Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*
- (7) Restoration purposes.
- (8) *Nature study, aquaculture, or similar resource dependent activities.*

(C) In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary...

The above policies set forth a number of different limitations on what types of projects may be allowed in coastal wetlands. For analysis purposes, the limitations applicable to the subject project can be grouped into four general categories or tests. These tests are:

1. The purpose of the filling, diking, or dredging is for one of the eight uses allowed under Section 30233;
2. that feasible mitigation measures have been provided to minimize adverse environmental effects;
3. that the project has no feasible less environmentally damaging alternative; and
4. that the biological productivity and functional capacity of the habitat shall be maintained and enhanced where feasible.

Allowable Use for Dredging and Filling of Coastal Waters

The first test set forth above is that any proposed filling, diking or dredging must be for an allowable purpose as specified under Section 30233 of the Coastal Act. One of the allowable purposes for diking, filling, or dredging, under Section 30233(a)(7) is “restoration purposes.” As discussed in detail above, the proposed wetland enhancement project requires dredging of wetlands to create ponds, placement of fill for dikes and water control structures, and placement of temporary fill to access the top of the levee. The project is designed to increase the diversity of wetland types within the wildlife area and enhance habitat values for water associated wildlife. Repairing the Fay Slough levee would provide separation between freshwater and saltwater habitats and prevent saltwater intrusion into freshwater wetlands adjacent to the levee. Excavating shallow depressions throughout the area would create seasonal and semi-permanent freshwater ponds that would hold water for a longer period of the year, thereby creating an

additional wetland habitat type at the site. The Commission finds wetland enhancement projects, where the sole purpose of the project is to improve wetland habitat values, to constitute “restoration purposes” pursuant to Section 30233(a)(7). For example, the Commission concurred with a consistency determination for a wetland enhancement project proposed by the U.S. Fish and Wildlife Service at the Humboldt Bay National Wildlife Refuge (CD-33-92). This project similarly involved dredging, diking, and filling of wetlands to create and enlarge shallow ponds and sloughs and replace water control structures and was approved as a “restoration purpose” under Section 30233(a)(7). Another similar wetland enhancement project approved by the Commission as a “restoration purpose” under Section 30233(a)(7) involved the excavation of six acres of Doran Park Marsh to create a new tidal pond wildfowl foraging area at the southeast end of Bodega Harbor, Sonoma County (CDP #1-93-04). More recently, the Commission approved a similar wetland enhancement project proposed by the Department of Fish and Game involving excavation of slough channels to create freshwater ponds at the Mad River Slough Wildlife Area adjacent to Humboldt Bay to the north of the subject site (CDP #1-99-063). Consistent with these Commission actions, the proposed project, solely intended to enhance wetland habitat values on the Fay Slough Wildlife Area, is considered a “restoration purpose” and is allowable under Section 30233.

This finding that the proposed diking, filling, and dredging constitutes “restoration purposes” is based, in part, on the assumption that the proposed project will be successful in increasing wetland habitat values. Should the project be unsuccessful at increasing wetland habitat values, or worse, if the proposed diking, filling, and dredging impacts of the project actually result in long term degradation of the habitat, the proposed diking, filling, and dredging would not actually be for “restoration purposes.” To ensure that the project achieves the wetland enhancement objectives for which the project is intended, the Commission attaches Special Condition No. 1. Special Condition No. 1 requires the applicant to submit a final revised monitoring plan for review and approval by the Executive Director prior to the issuance of the coastal development permit. The monitoring plan is required to outline a method for measuring and documenting the improvements in habitat value and diversity at the site, including wildlife and plant species and abundance, over the course of five years following project completion. Furthermore, Special Condition No. 1 requires the monitoring plan to include provisions for remediation to ensure that the goals and objectives of the wetland enhancement project are met.

The Commission finds that as conditioned, the proposed dredging and filling in coastal wetlands for the proposed wetland enhancement project is fill for “restoration purposes,” and therefore is an allowable use pursuant to Section 30233(a)(7) of the Coastal Act.

Adequate Mitigation Measures

The second test set forth by Section 30233 is that adequate mitigation must be provided for the adverse environmental impacts of an allowable filling and dredging project. Potential significant adverse impacts often associated with dredging or filling projects of this kind in coastal wetlands include: (1) the coverage of bottom habitat and the loss of wetland surface area and volume, (2) impacts to sensitive vegetation, (3) conversion of one type of wetland to another, (4) impacts to

fish and wildlife habitat, and (5) water pollution in the form of sedimentation or debris entering coastal waters. Overall, the project would enhance wetland habitat values and would produce generally only beneficial environmental effects. However, the proposed project must be conditioned to ensure that potential significant adverse impacts are minimized.

i) No Net Loss of Wetland Area

A potential significant adverse impact which can result from the proposed dredging and filling in wetlands is the net loss of wetland surface area and volume. As discussed in the Project Description Finding, the proposed wetland enhancement project would involve the placement of 0.52 acres of fill in seasonal freshwater wetlands to repair the Fay Slough dike and construct a new interior dike.

The wetland impacts associated with the dike repair and dike construction cannot be mitigated by wetland creation on site because the entire FSWA is already wetland or essential dike area needed for flood protection or for separating different wetland types. Therefore, the applicant proposes to mitigate wetland impacts by creating similar freshwater wetlands off-site. Approximately 0.52 acres of similar seasonal freshwater wetland would be created (in coordination with a separate enhancement project at the Eel River Wildlife Area, 1-99-075) on the Department of Fish and Game's Eel River Wildlife Area located about 13 miles to the southwest. Currently, there is an existing freshwater pond on the Eel River Wildlife Area which would be expanded by excavating a portion of the adjacent uplands. The uplands would be excavated on a shallow gradient to a level that would allow water to flow from the existing pond into the newly excavated site and would also act as a catchment basin to collect winter runoff from the adjacent hillside.

The project would result in an increase of approximately 16.5 acres of surface water to provide increased habitat for water-associated wildlife including shorebirds and wading birds. The excavated material would be deposited in upland locations and would not result in a loss of wetland surface area or volume. In addition, the temporary fill associated with constructing temporary crossings to access the outer levee would have only a minor short-term effect on wildlife values and would be removed following project completion.

The applicant is proposing to mitigate for fill of wetlands by creating the same type of wetlands at a 1:1 ratio. The project involves filling approximately 0.72 acres of seasonal wetland on the inboard side of the Fay Slough levee to repair the levee and filling approximately 0.2 acres of seasonal wetlands to construct a new 630-foot-long interior levee. The project also involves removing 0.4 acres of wetland fill by removing an existing 1,400-foot-long interior levee. Thus, the project would result in a total of 0.52 acres of wetland fill which would be offset by creating 0.52 acres of seasonal freshwater wetland at the Eel River Wildlife Area. This fill would be offset by expanding the pond on the northern edge by excavating upland pasture to an elevation contiguous with an existing managed freshwater pond.

The Commission has required a variety of mitigation ratios for developments that include wetland fill. Sometimes the ratios have been 4:1 or higher. The determination of what is an appropriate

ratio is dependent on many factors, including such factors as the habitat values of the area filled, the relative difficulty in establishing the new habitat area, and the time lag between when the impacts to the existing habitat are sustained and when habitat values have been fully realized at the mitigation site.

The DFG indicates that while converting some upland pasture to wetlands to create the mitigation site is desirable, converting all of the upland to wetland is not regardless of the feasibility of doing so. The upland area itself provides valuable transition habitat from the wetlands below and contributes to the overall management goal of achieving habitat diversity at the wildlife area. Thus, excavating more than the proposed 1:1 ratio of upland pasture would convert additional upland habitat to wetland habitat, which would result in an adverse impact to a habitat of another type and further loss of habitat diversity that is important to the wildlife at the site. Another option to increase the mitigation area would be to expand the edges of the existing freshwater pond to create more wetland area. However, the DFG indicates that the riparian habitat around the edges of the pond are well established and to excavate along the edges would result in the removal of this riparian area which itself also provides valuable habitat.

Another limitation to expanding the mitigation area is the existing barn located on the upland pasture at the northern end of the ERWA between the entrance road and the freshwater pond. The barn has existed at the site since the DFG acquired the property and converted it from a ranch to a wildlife area. The DFG indicates that there are no plans to remove the barn in the near future to make more area for wetland creation. Thus, the physical structure present in the upland area presents a limitation to the amount of area that can be excavated to create new wetlands.

As noted above, the determination of what is an appropriate ratio is dependent on many factors, including the relative difficulty in establishing the new habitat area, and the time lag between when the impacts to the existing habitat are sustained and when habitat values have been fully realized at the mitigation site. In the northern coastal counties where the climate is significantly wetter than southern coastal counties, wetland vegetation grows relatively quickly and successfully when placed in the right environment. The relative abundance of seasonal freshwater wetlands along the north coast is evidence of the viability of this kind of habitat. The establishment of seasonal freshwater wetlands is less complex than mitigation projects attempting to establish salt marsh, eelgrass beds, or other more complex and limited habitat types. The proposed mitigation site would be contiguous with an existing freshwater pond which would increase the likelihood that the created wetland area would become rapidly inundated and vegetated with similar wetland species. This type of mitigation, that expands an area of existing wetland habitat, results in more successful establishment of habitat area and values relative to mitigation that involves creating a habitat where similar habitat does not currently exist. In addition, the wetter climate and the existing adjacent wetland habitat decreases the threat of exotic vegetation invading the site and resulting in a failure to achieve intended habitat values at the created wetland. Therefore, a higher mitigation ratio, (i.e. 2:1 or 4:1) that would otherwise be required to accommodate for the potential failure of creating wetland habitat is not necessary in this case. Moreover, higher mitigation ratios are typically required to offset adverse wetland impacts that result from a time lag between the impact and the implementation of the mitigation.

The time between when an impact occurs (i.e. wetland fill) and when mitigation is established results in a temporary loss of habitat that generally requires a greater mitigation ratio. However, in this case, because the mitigation site is the borrow area for the material used for the wetland restoration project (i.e. repairing the levee) there will not be a time lag between when the impact occurs and when the mitigation is implemented. Thus, a greater mitigation ratio for this type of temporary habitat loss is not warranted.

The Commission further finds that the proposed project would not result in a net loss of wetland habitat. Unlike development projects which involve the fill of wetlands for non-wetland uses, the objective of this proposed project is to restore freshwater wetland habitat and habitat diversity at the site, thereby enhancing the habitat values for wildlife utilizing the wildlife area. Accordingly, given the (1) increased rainfall in northern coastal counties; (2) existing habitat adjacent to the proposed mitigation site; (3) the lack of temporal losses associated with the proposed project; and (4) the fact that the wetland fill is occurring for wetland restoration rather than for non-wetland uses, the Commission finds the proposed project involving mitigation at a 1:1 ratio would not result in a net loss of wetlands and in addition, would enhance existing wetlands consistent with the wetland provisions of the Coastal Act.

To ensure that the proposed project does not result in a net loss of wetland area, Special Condition No. 3 requires the applicant to create 0.52 acres of seasonal freshwater wetland at the Eel River Wildlife Area to offset filling 0.52 acres of seasonal freshwater wetland at the Fay Slough Wildlife Area as proposed. Special Condition No. 2 requires the applicant to submit a mitigation monitoring plan to ensure that the objectives of the proposed mitigation are met and that the off-site creation of freshwater wetlands is adequate to mitigate for the loss of freshwater wetlands at the site. To further ensure that the project does not result in the loss of wetland surface area or volume, the Commission attaches Special Condition No. 4 which requires all excavated material not utilized for project elements approved pursuant to CDP No. 1-00-025 to be disposed of to be placed on-site in upland locations including the existing road as proposed by the applicant, or at an approved upland location rather than in wetland locations. Special Condition No. 4 also requires the removal of the temporary fill associated with ditch crossings to access the levee following project completion.

ii) Vegetation

The project would remove some wetland vegetation in the areas to be excavated and converted to shallow water ponds. The DFG Natural Diversity Data Base identifies sensitive species including Humboldt Bay owl's clover and Point Reyes bird's beak as being located within the project vicinity. However, a recent plant survey conducted at the site did not find either of these sensitive species. Therefore, the excavation of the ponds would not adversely affect rare plants and an increase in the quantity and diversity of wetland-associated plant species within the affected areas would naturally occur as the area becomes wet for longer periods each year. Therefore, the proposed excavation work would enhance wetland vegetation.

iii) Fish and Wildlife

The project would increase the quantity, depth, and duration of water on the FSWA and would promote an increase in diversity of wildlife habitat and abundance of water-associated wildlife. Increased annual duration of shallow water and low gradient pond edges would attract shorebirds and foraging Canada geese. The increase in open water and marsh habitat is also expected to draw herons, egrets, and American coot. Emergent vegetation within ponds would provide cover for rails and nest structure for red-winged blackbirds and marsh wrens. Although increases in bird species would be the most notable in the area, post-project conditions would also favor increases in mammals, reptiles, amphibians, and invertebrates. Predators such as river otter, mink, peregrine falcon, and merlin would benefit indirectly by an increase in food sources.

While the intended purpose of the proposed project is to enhance habitat values of the existing wetlands, the project would result in short-term impacts to existing wetland vegetation and seasonal wetland habitat. The project involves excavating approximately 26,600 cubic yards of material within seasonal wetlands to create 16.5 acres of shallow ponds. The excavation would temporarily eliminate some wetland vegetation and seasonal wetland habitat from the areas to be excavated. However, if the project achieves its enhancement goals, wetland habitat values would be greatly expanded and the short-term impacts of the excavation would be fully mitigated.

To ensure that the project achieves the wetland enhancement objectives for which the project is intended and thereby mitigates for the short term loss of wetland habitat resulting from the proposed excavation work, the Commission attaches Special Condition No. 1. Special Condition No. 1 requires the applicant to submit a final monitoring plan for review and approval by the Executive Director prior to the issuance of the coastal development permit. The monitoring plan is required to outline a method for measuring and documenting the improvements in habitat value and diversity at the site, including wildlife and plant species and abundance, over the course of five years following project completion. Furthermore, Special Condition No. 1 requires the monitoring plan to include provisions for remediation to ensure that the goals and objectives of the wetland enhancement project are met.

In addition, to ensure that project construction activities do not interfere with the breeding season for some species present at the site, the Commission attaches Special Condition No. 5 to limit construction activities to occur only between July 15th and November 15th as proposed by the Department of Fish and Game.

iv) Conversion of Wetland Types

As discussed previously, the entire project site, with the exception of the road and levees, is grazed seasonal wetland. Most of the approximately 500 acre site is relatively flat, rather monotypic pasture lands composed of a variety of grasses, sedges, rushes and forbs, many of which are exotic species introduced through historic agricultural uses. Currently, the area contains seasonal wetlands, short and tall grass pasture, and seasonal sloughs, with only the borrow ditch from the perimeter dike holding water year-round. Salt marsh remains only as a

fringe along the tidal side of the Fay Slough levee. The proposed project involves excavating approximately 16.5 acres of shallow ponds throughout the project site, which would result in the conversion of seasonal wetland habitat to semi-permanent wetland habitat. The shallow ponds would hold water on the site for a longer period of time during wet months, thereby providing an additional wetland habitat type for water associated wildlife. Although a portion of the proposed project would result in a conversion of approximately 16.5 acres of seasonal wetland to ponded wetland, the conversion would enhance the habitat value of the site by increasing habitat diversity. The DFG anticipates that the semi-permanent wetland habitat created by the project would provide enhanced feeding and resting habitat for migrating and wintering waterfowl and shorebirds and provide brood water for local nesting ducks and geese. Therefore, the 16.5-acre conversion of seasonal wetlands to semi-permanent wetlands would result in an enhancement of habitat values by increasing the diversity of wetland types at the site and in this case, would not result in a significant adverse impact.

v) Water Quality

Potential adverse impacts to coastal waters could occur in the form of sedimentation or debris from project excavation and fill being allowed to enter coastal waters. To ensure that adverse impacts to water quality do not occur, the Commission attaches Special Condition No. 4. Special Condition No. 4 requires that no construction materials, debris, or waste be placed or stored where it could be subject to entering the waters of Fay Slough or slough channels. In addition, Special Condition No. 4 requires all spoil material to be deposited in approved upland locations including the existing road, but not outside of the road prism.

The Commission finds that the proposed wetland enhancement project is a permitted use under Section 30233 of the Coastal Act, and that as conditioned, all potential adverse impacts have been minimized to the maximum extent feasible.

Alternatives Analysis

The third test set forth by Section 30233 is that the proposed dredge or fill project must have no feasible less environmentally damaging alternative. In this case, the Commission has considered four possible alternatives to the proposed project including: (1) restoring tidal action, (2) sealing existing tidegates, (3) creating ponds above grade, and (4) the no project alternative.

Breaching the Humboldt Bay Dike

As discussed previously, the subject site, and much of the bottomlands surrounding Humboldt Bay, were cut off from tidal action over 100 years ago by the construction of levees to drain the land for agricultural uses. Breaching the levees would restore tidal action to the area and would allow for the reestablishment of salt marsh habitat. While this alternative would more effectively restore historic environmental conditions at the site, breaching the levee would also flood adjacent private lands and public roads. The project site is separated from Humboldt Bay and direct tidal action by Highway 101 and is located adjacent to private agricultural land to the north and commercial development directly to the south. Restoring the entire FSWA to tidal action would

require the construction of a substantial perimeter levee around the entire 500-acre site to contain the tidal action to the subject site and prevent flooding of adjacent private lands, including the automobile dealership to the south, residential areas to the east, Highway 101 to the west, and agricultural lands to the north. Moreover, as Highway 101 and the adjacent railroad prevents the site from being open to the bay, returning tidal action on the entire site would require the installation of numerous culverts and a system of water passageways below these facilities which are not under the ownership of the applicant. In its current condition, only muted tidal action is feasible on a limited portion of the site adjacent to Fay Slough. As mentioned previously, the applicant anticipates returning approximately 50 acres of seasonal freshwater wetland to muted tidal action in the future as Phase 2 of enhancement activities at the FSWA. Restoring the entire site to tidal action however, would require the construction of a new perimeter levee which would require extensive wetland fill and would be extremely costly. Therefore, breaching existing levees to restore tidal action is not a feasible less environmentally damaging alternative.

Sealing the Tide Gates to Expand Freshwater Ponding

A primary method of restoring and enhancing wetlands is to increase the water surface and holding capacity of the land. Sealing the existing tidegates at the subject site would prevent water from draining to Humboldt Bay. Retaining the rainwater and fresh water runoff that drains to the site would increase the size and duration of freshwater ponding on the site without the need for filling or dredging within wetlands. However, without the ability to manage water levels at the relatively flat site, rising water would eventually flood adjacent property owners and public roads. Similar to the option discussed above, new levees would need to be constructed to contain water on the FSWA and prevent flooding of adjacent lands and would require costly wetland fill. In addition, this alternative would not allow the depth of the freshwater ponds to be manipulated to optimal levels for maximizing wildlife habitat values. Therefore, sealing the tidegates to hold water on the site is not a feasible less environmentally damaging alternative.

Construction of New Dikes to Create Ponds Above Grade to Expand Freshwater Ponding

As noted above, a primary objective of the FSWA wetland enhancement project is to increase the water surface and holding capacity of the land. One method of accomplishing this objective would be to construct additional new levees on the site that would act as berms to hold water for longer periods of time. However, this alternative would require extensive placement of wetland fill to create the additional berms. Therefore, constructing new levees to create ponds above grade is not a less environmentally damaging alternative.

No Project

The “no project” alternative would leave the FSWA in its current monotypic condition with limited areas of standing water throughout the year. The “no project” alternative would eliminate the opportunity for increased habitat diversity and increased species abundance at the Wildlife Area. Therefore, the no project alternative is not a less environmentally damaging alternative.

alternative as it would not accomplish the project objectives of enhancing wetland habitat values at the FSWA.

(d) Maintenance and Enhancement of Marine Habitat Values

The fourth general limitation set forth by Section 30233 is that any proposed dredging or filling in coastal wetlands must maintain and enhance the biological productivity and functional capacity of the habitat, where feasible.

The project would not result in a net decrease in wetland area, as the proposed fill at the FSWA site would be mitigated by creating an equal area of similar wetland habitat out of uplands at the Eel River Wildlife Area (ERWA). Special Condition No. 3 requires the applicant to create the wetland at the ERWA mitigation site as proposed. To ensure that the habitat enhancement objectives are realized, Special Condition No. 1 requires the applicant to submit a revised monitoring program to monitor how habitat values change as a result of the project. The condition further requires the applicant to submit plans for remediation of the site within one year if monitoring determines that the project has not been successful in achieving the goals, objectives, and performance standards identified in the approved monitoring program. To ensure that the mitigation site at the ERWA is successful in providing habitat value greater than the wetlands proposed to be filled at the FSWA, the Commission attaches Special Condition No. 2. This condition requires the applicant to prepare and submit a monitoring plan for review and approval prior to issuance of the permit.

As discussed above in the section of this finding on mitigation, the conditions of the permit would ensure that the project would not have significant adverse impacts on the existing freshwater wetlands or on the water quality of Fay Slough and slough channels. The proposed project would enhance the habitat value of the existing seasonal wetlands by increasing the duration and availability of water at the site. Additionally, the proposed project would create a greater diversity of wetland habitats, thereby enhancing the biological productivity and functional capacity of the wetlands consistent with the requirements of Section 30233 of the Coastal Act.

Conclusion

The Commission thus finds that the project is an allowable use, that there is no feasible less environmentally damaging alternative, that feasible mitigation is required for potential impacts associated with the dredging and filling of coastal wetlands, and that marine habitat values will be maintained or enhanced. Therefore, the Commission finds that the proposed development, as conditioned, is consistent with Section 30233 of the Coastal Act.

3. Restoration of Marine Resources and Coastal Wetlands Where Feasible

Coastal Act Section 30230 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.

Coastal Act Section 30231 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.

Coastal Act sections 30230 and 30231 require in part, that marine resources and coastal wetlands be maintained, enhanced, and restored where feasible. These policies call for restoration of coastal wetlands and marine resources. Restoration in the strictest sense generally refers to the reestablishment of wetland functions and characteristics that existed prior to human disturbance. At the subject site, restoration would involve returning the site to tidal action and salt marsh as opposed to enhancing the current seasonal freshwater wetlands as proposed. As discussed in the background section, the subject site was historically part of Humboldt Bay until it was diked off in the late 19th century and reclaimed for agricultural use. The subject site now functions as seasonal freshwater wetlands with limited areas of salt marsh around the tidal fringe of Fay Slough.

According to information from the U.S. Fish and Wildlife Service (USFWS), in the Humboldt Bay region it is estimated that between 7,000 and 8,700 acres of salt marsh were present prior to human development. Since the mid-1800's, most of what was likely to have been historic salt marsh has been diked or filled and has been reduced to a total area of around 900 acres, a reduction of at least 87%. In general, restoring areas that have historically supported tidal salt marsh is preferable when the physical conditions of a site present such an opportunity. The USFWS for example, has indicated that restoration of salt marsh habitats around the Bay is a high priority, as salt marsh restoration is important for the protection, enhancement, and restoration of native fish, wildlife, and plant communities, some of which are dependent on salt marsh for their existence.

Coastal Act sections 30230 and 30231 call for the restoration of coastal wetlands and marine resources "where feasible." As discussed above in the Alternatives Analysis section under the Section 30233 analysis, while restoring the FSWA entirely to tidal salt marsh may be preferable in terms of restoring pre-disturbance ecological conditions, it is not feasible due to logistical constraints of the site and surrounding land uses. The DFG has indicated however, that plans for a

second phase of wetland enhancement at the FSWA would include the installation of water control structures near Fay Slough to allow for muted tidal flow to approximately 50 acres. The feasibility of salt marsh restoration at the entire FSWA is limited by its minimal tidal connection due to Highway 101 which separates the FSWA from Humboldt Bay. In addition, restoring the entire FSWA to tidal marsh would require breaching or removing existing dikes which would result in potential flooding of adjacent private development and Highway 101. Therefore, the Commission finds that the proposed wetland enhancement project that does not involve restoring the site to salt marsh is consistent with Coastal Act Sections 30231 and 30230 because complete salt marsh restoration is not feasible. Nonetheless, the proposed project would enhance coastal wetlands and maintain and increase the biological productivity of the coastal wetlands consistent with Section 30230.

There has been recent local debate among agency and public interests involved in wetland management and regulation in the Humboldt Bay area regarding the value of salt marsh versus freshwater wetland restoration and the best approach to managing and restoring wetlands around Humboldt Bay. The lands around the bay are frequently looked to for mitigation and restoration opportunities and several restoration projects have been proposed or are anticipated on these lands. These diked former tidelands are largely unimproved, low areas, with the ability to support a variety of wetland habitats including, in some areas, salt marsh. Many questions are raised when considering restoration opportunities of these lands including feasibility, compatibility with agriculture and other surrounding land uses, potential for invasion of exotic species, proper management of restored areas, and the value of different wetland habitats for fish and wildlife species in and around the bay.

Freshwater wetlands are often proposed on these grazed seasonal wetlands instead of tidal wetlands, even though other opportunities for freshwater habitat restoration or enhancement may exist in nearby areas and opportunities for salt marsh restoration are much more limited. Salt marsh creation is very difficult to accomplish in higher areas away from the bay that could not be subjected to tidal influence simply by opening a tide gate or removing a levee. Because of these questions, the Commission recognizes the increasing need for a coordinated approach to restoration opportunities around the bay. The Commission finds that the most effective approach to this question over the value and need for salt marsh and freshwater restoration around the bay would be to create a forum in which agency and public interests could work together to prepare a long-term, regional planning document that addresses the opportunities, choices, constraints, management challenges, and funding sources available for future restoration and enhancement of these coastal resources.

One example of the implementation of such a regional planning approach to wetland restoration is the San Francisco Bay Area Wetlands Ecosystem Goals Project (Project). The Project was created for agency and public interests involved in wetland management and regulation in the San Francisco Bay area to develop regional wetland goals that would represent a shared vision of what is needed to ensure the health of Bay area wetlands. The product of the Project is a document entitled "*Baylands Ecosystem Habitat Goals*" (Goals) that were developed by more than 100 scientists from local, state, and federal agencies, private consulting firms, and universities.

Development of the Goals was co-sponsored by nine state and federal agencies, including the National Marine Fisheries Service, San Francisco Bay Conservation and Development Commission, San Francisco Bay Regional Water Quality Control board, State Coastal Conservancy, State Department of Fish and Game, State Department of Water Resources, State Resources Agency, U.S. Environmental Protection Agency, and the U.S. Fish and Wildlife Service. Additional participants included the San Francisco Bay Joint Venture, the San Francisco Estuary Project, and the San Francisco Estuary Institute. The Goals prepared by Project efforts are used to identify needs for sustaining diverse and healthy communities of fish and wildlife resources in the San Francisco Bay area. The Project was started to provide a basis to guide a regional wetland planning process for public and private interests seeking to preserve, enhance, and restore the ecological integrity of wetland communities resulting in a regional wetland management plan based on wetland goals, and recommendations on how to coordinate such projects.

Project participants selected key species and habitats and then assembled qualitative and quantitative data to prepare habitat recommendations that were then incorporated into the Goals document. The Goals are presented at three levels of specificity including region, subregion, and segment. The Goals pertain primarily to the region's baylands, which include mudflats, existing tidal marsh, tidal marsh channels, and seasonal and other wetlands within diked historical tidal marshlands, similar to lands surrounding Humboldt Bay. Although there are many regional differences between San Francisco Bay and the Humboldt Bay area such as surrounding land uses and development pressures, the efforts for regional planning for wetland restoration around San Francisco Bay can be used as a model for planning efforts around the Humboldt Bay. The Commission supports the initiation of a similar regional planning process in coordination with other interested agencies involved in regulation and management of wetlands to address long-term restoration opportunities around Humboldt Bay.

4. Public Access

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 30212 of the Coastal Act requires that access from the nearest public roadway to the shoreline be provided in new development projects except where it is inconsistent with public safety, military security, or protection of fragile coastal resources, or adequate access exists nearby. Section 30211 requires that development not interfere with the public's right to access gained by use or legislative authorization. In applying these sections of the Coastal Act, the Commission is also 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 access.

The Fay Slough Wildlife Area is open to the public year-round for wildlife-related activities such as bird watching, kayaking, hunting (pursuant to applicable seasons and regulations), research, and education. Activities that are not compatible with wildlife, such as off-road vehicle riding,

are not allowed at the site. The proposed project does not involve any changes or additional restrictions to existing public access including during project construction. In fact, public use of the site is expected to increase after the project as a result of increased wildlife abundance and diversity and as a result of improved levees that act as designated public trails. Sufficient parking exists to accommodate the current level of public use as well as the anticipated increase in use following project completion.

Therefore, the Commission finds that the proposed project would not have an adverse effect on public access, and that the project as proposed without new public access is consistent with the requirements of Coastal Act Sections 30210, 30211, and 30212.

5. Agricultural Resources

The Coastal Act sets forth policies that relate to the protection of agricultural land and limit the conversion of agricultural lands to non-agricultural uses. Sections 30241 and 30242 address methods to be undertaken to maintain the maximum amount of prime agricultural land in production and to minimize conflicts between agricultural and urban land uses.

Prior to the DFG's acquisition of the site in 1987, the site was historically used for livestock grazing and dairy farming. The site is composed of Bayside soils which are heavy bay formed clays with extremely poor drainage and are identified as having some of the poorest drainage in the county. These soils are not identified as prime agricultural soils.

According to the Humboldt County certified LCP, the subject site is planned and zoned Agriculture Exclusive. However, the site is within the Commission's retained jurisdiction and therefore, the standard of review is the Coastal Act rather than the LCP. Because the site is already managed for fish and wildlife habitat rather than for agriculture, the proposed project does not constitute a conversion of agricultural land. In addition, the DFG currently leases a minimum of 200 acres for grazing which would not be affected by the proposed project. Furthermore, the restoration of wetland habitat values over portions of the site would be compatible with agricultural use of adjacent lands. The proposed levees and water control structures would allow the wildlife area to be managed in a manner that would not result in flooding of adjacent agricultural lands.

Therefore, the Commission finds that the proposed project does not constitute a conversion of agricultural lands and is consistent with Sections 30241 and 30242 of the Coastal Act.

6. U.S. Army Corps of Engineers Approval

The project requires review and approval by the U.S. Army Corps of Engineers. Pursuant to the Federal Coastal Zone Management Act, any permit issued by a federal agency for activities that affect the coastal zone must be consistent with the coastal zone management program for that state. Under agreements between the Coastal Commission and the U.S. Army Corps of Engineers, the Corps will not issue a permit until the Coastal Commission approves a federal consistency certification for the project or approves a permit. To ensure that the project

ultimately approved by the Corps is the same as the project authorized herein, the Commission attaches Special Condition No. 6 which requires the permittee to submit to the Executive Director evidence of U.S. Army Corps of Engineers approval of the project prior to the commencement of work.

7. California Environmental Quality Act

Section 13096 of the Commission's administrative regulations requires Commission approval of a coastal development permit application to be supported by findings showing that the application, as modified by any conditions of approval, is consistent with any applicable requirement of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available, which would substantially lessen any significant adverse effect 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 found consistent with the policies of the Coastal Act. Mitigation measures which will minimize or avoid all significant adverse environmental impact have been required. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact that the activity would 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 and to conform to CEQA.

Exhibits:

1. Regional Location
2. Site Location
3. Site Plan
4. Project Typical
5. Pond Typical
6. Mitigation Site
7. Mitigation Plan
8. Proposed Monitoring Plan

ATTACHMENT A

Standard Conditions:

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Interpretation. Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

