

CALIFORNIA COASTAL COMMISSION

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Staff Report: May 27, 2010
Hearing Date: June 9, 2010
Commission Action:

STAFF REPORT:

PERMIT AMENDMENT

APPLICATION NUMBER: **1-03-021-A1**

APPLICANT: **City of Arcata**

AGENT: **LACO Associates**

PROJECT LOCATION: **Arcata Marsh and Wildlife Sanctuary, Klopp Lake Dike and Islands, South I Street and City of Arcata Oxidation Pond Dikes, 600 G Street, City of Arcata, Humboldt County.**

DESCRIPTION OF PROJECT PREVIOUSLY APPROVED: (1) Repair of eroded dikes and islands as follows: placement of (a) 700 cubic yards of ¼-ton, ½ ton and 12- to 14-inch diameter riprap along 740 lineal feet of island shoreline within Klopp Lake, (b) 900 cubic yards of fill (rock slope protection and riprap) along 2,000 linear feet of the inboard area of the Klopp Lake dike, (c) 3,000 cubic yards of fill along 2,210 linear feet of the outboard side of the Klopp Lake dike; and (d) 1,250 cubic yards of concrete and riprap material along 1,050 linear feet of the outboard side of the oxidation pond dike; and (2) 10-year permit for routine repair and maintenance of the oxidation pond and Klopp Lake levees and islands margins.

DESCRIPTION OF

AMENDMENT REQUEST:

Amend the project description to include (1) after-the-fact approval of levee repair work performed in 2009 outside of the approved project area but still within the historic levee footprint, including along 700 feet of levee adjacent to South I Street and 2,000 feet of levee along the wastewater ponds; and (2) creation of 0.70-acre of new salt marsh and brackish marsh habitat within upland areas adjacent to the South I Street parking lot and Butcher Slough.

- OTHER APPROVALS RECEIVED:
- 1) U.S. Army Corps of Engineers Nationwide Permit #3 File No. 2009-00137 dated July 7, 2009 and amended November 5, 2009;
 - 2) North Coast Regional Water Quality Control Board Water Quality Certification No. 1B09042WNHU dated July 28, 2009;
 - 3) Humboldt Bay Harbor, Recreation, & Conservation District Permit No. 09-04 dated July 8, 2009; and
 - 4) California Department of Fish & Game Agreement Notification No. R1-09-0123 dated July 20, 2009.

SUBSTANTIVE FILE
DOCUMENTS:

- 1) Commission Emergency Permit No. 1-03-065-G;
- 2) Commission CDP File No. 1-03-021;
- 3) Commission Waiver File No. 1-09-043-W;
- 4) *Biological Assessment for the City of Arcata Klopp Lake and Oxidation Ponds Levee Repair Project*, prepared by NRM Corp., November 24, 2008); and
- 5) City of Arcata Local Coastal Program

SUMMARY OF STAFF RECOMMENDATION

The City of Arcata is responsible for maintaining the levees along Humboldt Bay (Arcata Bay) that align the Arcata Marsh and Wildlife Sanctuary and the oxidation ponds at the City's sewage treatment plant (Exhibit Nos. 1-3). The levees originally were constructed with bay mud prior to enactment of coastal development permit regulations. Over time the levees have become eroded in some areas, and severe storm events in the winters of 2002-2003 and 2005-2006 caused extensive damage to the levee system in some areas. The existing levees serve a dual purpose: (1) to protect Klopp Lake, South I Street, and the oxidation ponds at the sewage treatment plant from erosion, and (2) to provide a public, bay-front trail along the tops of the levees (except along South I Street) as part of the Arcata Marsh and Wildlife Sanctuary.

On July 14, 2005, the Commission approved Coastal Development Permit No. 1-03-021, which authorized (1) a follow up permit to an Emergency Permit (File No. 1-03-065-G) granted by the North Coast District Office in October 2003 for the repair of 1,050 linear feet of eroded dike at the oxidation pond involving the placement of 600 cubic yards of 6"-10" riprap overlain by 18"- to 24"-diameter rock along the outboard side of the levee; (2) the repair of eroded areas of the inboard and outboard sides of the Klopp Lake levee and around the eroded margins of the three small islands (East Island, West Island and Center Island) in the lake involving the placement of 900 cubic yards of rock slope protection (RSP) and cement riprap along 2,000 linear feet of the inboard side of the levee, 3,000 cubic yards along 2,210 linear feet of the outboard side of the levee, and 700 cubic yards of ¼- and ½-ton and 12" to 14" riprap along the margins of the three islands; and (3) a 10-year period of authorization to undertake routine repair and maintenance of the levee system at Klopp Lake and the oxidation ponds within the existing footprint of the levees.

The proposed permit amendment requests authorization for the following: (1) after-the-fact approval of levee repair work performed in 2009 outside of the approved project area, including along 700 feet of levee adjacent to South I Street and 2,000 feet of levee along the wastewater ponds; and (2) creation of 0.70-acre of new salt marsh and brackish marsh habitat (to satisfy conditions imposed by the U.S. Army Corps of Engineers NWP #3 File No. 2009-00137) within upland areas adjacent to the South I Street parking lot and Butcher Slough.

Section 30610(d) of the Coastal Act exempts from Coastal Act permitting requirements the repair and maintenance of structures that do not result in an addition to or enlargement or expansion of the structure being repaired or maintained. The Commission may only review whether the proposed method of repair is consistent with Chapter 3 policies and not the conformance of the underlying existing development with the Coastal Act. Therefore, the Commission cannot prevent the repair of the eroded sections of levees where salt marsh has encroached.

The after-the-fact levee repair work resulted in impacts to a total of 11,434 square feet (0.26-acre) of salt marsh habitat that had developed on eroded levee areas (Northern Coastal Salt Marsh, dominated by pickleweed, *Salicornia virginica*, according to information contained within the Biological Assessment completed for the project by NRM Corp. dated November 24, 2008) (Exhibit No. 5). The impacted salt marsh habitat consisted of a matrix of patchy native salt marsh vegetation (mostly pickleweed, *Salicornia virginica*) and invasive cordgrass (*Spartina densiflora*) intermixed with concrete riprap (as the salt marsh plants had over time encroached onto the levee toe and up the sides).

The City is proposing on-site, in-kind mitigation for impacts to salt marsh habitat at a ratio of slightly more than 2-to-1 (i.e., the proposed new salt marsh habitat would be two times as large in size as the area of salt marsh habitat impacted by the proposed after-the-fact levee repair work). In addition, the City is proposing to create an additional 0.15-acre of brackish marsh habitat (dominated by tufted hairgrass, *Deschampsia cespitosa*) along the margins of the proposed new salt marsh habitat (see Exhibit No. 6). Staff believes that the proposed mitigation ratio is appropriate in this particular case because the proposed habitat creation

work has a relatively high probability of successfully achieving the wetland functions and values for which the mitigation is intended to compensate since (1) the City is using salvaged salt marsh soils with a presumably robust seed bank obtained from spoils resulting from levee repair work implemented in 2009 and harbored, (2) this region supports abundant fog and rain and moist, water-retaining soils, which increases the chances of successfully creating new wetland areas, (3) the mitigation sites are located within an existing marsh and wildlife sanctuary already managed for habitat protection purposes by the City, and (4) the salt and brackish marsh habitat to be created are located in areas that historically supported salt and brackish marsh prior to alteration of the areas by the construction of levees and other man-made structures.

Staff believes that, with the attachment of various added conditions, the development authorized by the amended permit would be consistent with the Commission's intent in granting the original permit with conditions to avoid significant adverse impacts to public access, water quality, wetlands and other ESHA resources. Added special conditions would require 1) adherence to various construction responsibilities; 2) preparation and implementation of a final detailed mitigation and monitoring program to ensure success of the salt marsh mitigation areas; 3) preparation and implementation of a final ESHA protection plan to ensure that the amended development, as conditioned, would be sited and designed to prevent impacts which would significantly degrade the adjacent ESHA and be compatible with the continuance of the ESHA; and 4) protection of archaeological resources.

Therefore, staff believes that the proposed amended development, as conditioned, is consistent with all applicable Coastal Act policies, and **staff recommends adopting the staff recommendation of Approval with Special Conditions as shown on Pages 6-7.**

STAFF NOTES:

1. Procedural Note

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

On July 14, 2005, the Commission approved Coastal Development Permit No. 1-03-021, which authorized (1) a follow up permit to an Emergency Permit (File No. 1-03-065-G) granted by the North Coast District Office in October 2003 for the repair of 1,050 linear feet of eroded dike at the oxidation pond involving the placement of 600 cubic yards of 6"-10" riprap overlain by 18"- to 24"-diameter rock along the outboard side of the levee; (2) the repair of eroded areas of the inboard and outboard sides of the Klopp Lake levee and around the eroded margins of the three small islands (East Island, West Island and Center Island) in the lake involving the placement of 900 cubic yards of rock slope protection (RSP) and

cement riprap along 2,000 linear feet of the inboard side of the levee, 3,000 cubic yards along 2,210 linear feet of the outboard side of the levee, and 700 cubic yards of ¼- and ½-ton and 12” to 14” riprap along the margins of the three islands; and (3) a 10-year period of authorization to undertake routine repair and maintenance of the levee system at Klopp Lake and the oxidation ponds within the existing footprint of the levees. The existing permit authorizes routine levee repair and maintenance activities through 2010 (with an option to request additional authorization through 2015).

The Commission approved the project with three special conditions. Special Condition No. 1 addresses the length of development authorization (five years with the ability for the Executive Director to approve up to one request for an additional five-year period of development authorization). Special Condition No. 2 addresses standards for the repair and maintenance work, including specifications on armoring rock, fill material, placement of materials, revegetation of disturbed areas, spoils disposal, erosion control, spill prevention, no wet season work, no wetland fill, pre-contractor training, monitoring, annual reports, and annual inspections. Special Condition No. 3 limits temporary closure of public access trails during construction to no more than 30 days at a time during each period of repair and maintenance.

The proposed permit amendment requests authorization for the following: (1) after-the-fact approval of levee repair work performed in 2009 outside of the approved project area, including along 700 feet of levee adjacent to South I Street and 2,000 feet of levee along the wastewater ponds; and (2) creation of 0.70-acre of new salt marsh and brackish marsh habitat (to satisfy conditions imposed by the U.S. Army Corps of Engineers NWP #3 File No. 2009-00137) within upland areas adjacent to the South I Street parking lot and Butcher Slough.

The methods and protocols proposed for the proposed amended development for the most part do not differ significantly from those authorized under the existing permit in terms of erosion control measures, types of materials and equipment, etc. In addition, the footprint of the levees proposed for after-the-face repair and maintenance approval match the original levee footprints and do not extend into Arcata Bay further than their original configuration. However, the after-the-fact levee repairs were conducted outside of the project footprint approved under the existing permit. Furthermore, the City is proposing to create 0.70-acre of new salt marsh and brackish marsh mitigation areas, involving grading and filling in upland areas adjacent to environmentally sensitive habitat areas, which was not authorized under the original permit.

With the attachment of the conditions described below, the development authorized by the amended permit would be consistent with the Commission’s intent in granting the original permit with conditions to avoid significant adverse impacts to public access, water quality, marine resources, wetlands, and ESHA. The relevant new conditions attached to the permit amendment include the following:

- Special Condition No. 4 describes various standards for the salt marsh and brackish marsh habitat creation work that must be adhered to;

- Special Condition No. 5 requires submittal of a final detailed mitigation and monitoring program for the new habitat areas prior to commencement of construction;
- Special Condition No. 6 requires submittal of a final ESHA protection plan prior to commencement of construction that ensures that the proposed salt marsh and brackish marsh habitat creation work is compatible with and will prevent impacts to adjacent rare plant, salt marsh, and brackish marsh habitats, and will provide for the continuance of the adjacent sensitive habitat areas; and
- Special Condition No. 7 requires the protection of archaeological resources during construction activities.

Therefore, the Executive Director has determined that the proposed amended development, as conditioned, would not lessen or avoid the intent of the approved permit and has accepted the amendment request for processing.

2. **Standard of Review**

The proposed amended development will be performed on levees and at nearby mitigation sites located within state tidelands and within areas shown on State Lands Commission maps over which the state retains a public trust interest. Pursuant to Section 30519 of the Coastal Act, the Coastal Commission retains jurisdiction over the review and issuance of coastal development permits in these areas even though the City of Arcata has a certified Local Coastal Program (LCP). The standard of review for projects located in the Commission's original jurisdiction is Chapter 3 of the Coastal Act.

3. **Scope**

This staff report addresses only the coastal resource issues affected by the proposed permit amendment, provides recommended special conditions to reduce and mitigate significant impacts to coastal resources caused by the proposed amended development in order to achieve consistency with the Coastal Act, and provides findings for conditional approval of the amended development. All other analyses, findings, and conditions related to the originally permitted development, except as specifically affected by the proposed permit amendment and addressed herein, remain as stated within the original permit approval adopted by the Commission on July 14, 2005, attached as Exhibit No. 7.

I. **MOTION, STAFF RECOMMENDATION, & 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. 1-03-021 pursuant to the staff recommendation.

Staff Recommendation of Approval:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit 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 with Conditions:

The Commission hereby approves the proposed permit amendment and adopts the findings set forth below, subject to the conditions below, on the grounds that the development with the proposed amendment, as conditioned, will be in conformity with the Chapter 3 policies of the Coastal Act. Approval of the amended permit complies with the California Environmental Quality Act because all feasible mitigation measures and alternatives have been incorporated to substantially lessen any significant adverse impacts of the amended development on the environment.

II. STANDARD CONDITIONS: See Attachment A.

III. SPECIAL CONDITIONS:

Note: The original permit (Exhibit No. 7) includes three special conditions: (1) Special Condition No. 1 addresses the length of development authorization (five years with the ability for the Executive Director to approve up to one request for an additional five-year period of development authorization) (2) Special Condition No. 2 addresses standards for the repair and maintenance work; and (3) Special Condition No. 3 limits temporary closure of public access trails during construction to no more than 30 days at a time during each period of repair and maintenance. All three special conditions are reimposed as conditions of this permit amendment and remain in full force and effect. Special Condition Nos. 4 through 8 are added new conditions of CDP Amendment No. 1-03-021-A1. For comparison, the text of the original permit conditions is included in Exhibit No. 7.

Deleted wording within the modified special conditions is shown in ~~strikethrough~~ text, and new condition language appears as **bold double-underlined** text.

**4. Standards for the Salt Marsh and *Deschampsia* Habitat Creation Work
Authorized by CDP Amendment No. 1-03-021-A1**

(A) Upon completion of project activities in the area and prior to October 15, 2010, all disturbed soils shall be appropriately seeded and/or secured with erosion control techniques. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be identified from time to time by the State of California, shall be employed or allowed to naturalize or persist on the site. No plant species listed as a “noxious weed” by the governments of the State of California or the United States shall be planted within the property.

- (B) The use of rodenticides containing any anticoagulant compounds, including, but not limited to, Bromadiolone, Brodifacoum or Diphacinone shall be prohibited.
- (C) Heavy equipment shall not operate in the bay or wetted slough channel;
- (D) No construction materials, debris, or waste shall be placed or stored where it may be subject to entering waters of Arcata Bay, Butcher Slough, or any wetland habitats;
- (E) All construction debris shall be removed and disposed of in an upland location at an approved disposal facility within 10 days of project completion;
- (F) All construction activities for the proposed wetland mitigation work shall be conducted during the period of July 1 through October 15 only;
- (G) All construction activities shall be conducted during low tide only and limited to areas above mean high water;
- (H) During construction, all trash shall be properly contained, removed from the work site, and disposed of on a regular basis to avoid contamination of habitat. Following construction, all trash and construction debris shall be removed from work areas and disposed of properly;
- (I) Any debris discharged into coastal waters shall be recovered immediately and disposed of properly;
- (J) Any fueling and maintenance of construction equipment shall occur within upland areas outside of environmentally sensitive habitat areas or within designated staging areas;
- (K) Fuels, lubricants, and solvents shall not be allowed to enter the coastal waters or wetlands. Hazardous materials management equipment including oil containment booms and absorbent pads shall be available immediately on-hand at the project site, and a registered first-response, professional hazardous materials clean-up/remediation service shall be locally available on call;
- (L) All staging areas shall be limited to the locations specified in the permit amendment application; and
- (M) Best Management Practices (BMPs) for erosion and sediment control shall be implemented prior to commencement of construction and throughout the construction period. Erosion and sediment control devices used shall be removed from the project area following construction after disturbed areas have been stabilized and there is no longer the potential for erosion or sediment discharges to the bay, slough, or wetlands.

5. Final Wetland Mitigation & Monitoring Program

- (A) PRIOR TO COMMENCEMENT OF DEVELOPMENT OF THE SALT MARSH AND *DESCHAMPSIA* HABITAT CREATION WORK AUTHORIZED BY CDP AMENDMENT NO. 1-03-021-A1 AND WITHIN 180 DAYS OF COMMISSION APPROVAL OF THE AMENDED

DEVELOPMENT, the permittee shall submit, for the review and approval of the Executive Director, a final detailed mitigation and monitoring program that includes the following:

- (i) **Success criteria that will assure achievement of the mitigation goals and objectives, including, but not limited to, creation of 0.55-acre of new salt marsh habitat and creation of 0.15-acre of new *Deschampsia* habitat in the proposed locations;**
- (ii) **Provisions for completion of the grading and planting work necessary to establish the required habitat within one year of Commission approval of the permit amendment;**
- (iii) **Provisions for monitoring at least the following attributes at the mitigation sites during each monitoring year of a five-year monitoring period: (a) list of all vascular plant species present; (b) percent cover of native vegetation; (c) classification of natural community type (e.g., coastal salt marsh, brackish marsh, etc.); and (d) any notable disturbances or impacts (anthropogenic or natural) to the areas;**
- (iv) **Provisions for submittal within 30 days of completion of the initial mitigation work of (a) “as built” plans demonstrating that the initial mitigation work has been completed in accordance with the approved mitigation and monitoring program, and (b) an assessment of the initial biological and ecological status of the “as built” wetland mitigation area. 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;**
- (v) **Provisions for submittal of annual reports of monitoring results to the Executive Director by December 31 of each monitoring year for the duration of the required monitoring period, beginning the first year after submission of the “as-built” assessment. Each report shall include a “Performance Evaluation” section where information and results from the monitoring program are used to evaluate the status of the mitigation efforts in relation to the success criteria;**
- (vi) **Provisions for submittal 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 biologist or restoration ecologist. The final report must include a final wetland delineation of the mitigation areas. The report must evaluate whether the mitigation sites conform to the goals, objectives, and success criteria set forth in the approved final wetland mitigation and monitoring program;**
- (vii) **Provisions to ensure that the wetland mitigation sites will be remediated within one year of a determination by the permittee or the Executive Director that monitoring results indicate that the site(s) does not meet the**

goals, objectives, and success criteria identified in the approved final wetland mitigation and monitoring program.

- (B) If the final report indicates that the wetland mitigation program has been unsuccessful, in part or in whole, based on the approved goals and objectives set forth in the approved plan, the permittee shall submit a revised or supplemental wetland mitigation and monitoring program to compensate for those portions of the original program which did not meet the approved goals and objectives set forth in the approved plan. The revised wetland mitigation and monitoring 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 mitigate, monitor, and remediate the restoration site in accordance with the approved wetland mitigation and monitoring program. Any proposed changes to the approved mitigation and monitoring program shall be reported to the Executive Director. No changes to the approved mitigation and monitoring program shall occur without a Commission amendment to this coastal development permit, unless the Executive Director determines no amendment is legally required.

6. Final ESHA Protection Plan for the Salt Marsh and Brackish Marsh Habitat Creation Work Authorized by Amendment No. 1-03-021-A1

(A) PRIOR TO COMMENCEMENT OF DEVELOPMENT OF THE SALT MARSH AND *DESCHAMPSIA* HABITAT CREATION WORK AUTHORIZED BY CDP AMENDMENT NO. 1-03-021-A1 AND WITHIN 90 DAYS OF COMMISSION APPROVAL OF THE AMENDED DEVELOPMENT, the permittee shall submit, for the review and approval of the Executive Director, a final detailed ESHA Protection Plan that ensures that the proposed amended development is compatible with and will prevent impacts to adjacent rare plant, salt marsh, and brackish marsh habitats, and will provide for the continuance of the adjacent sensitive habitat areas.

- (i) The plan shall demonstrate the following:
- a. Construction activities shall avoid direct (e.g., grading, excavation, foot trampling, etc.) and indirect (e.g., erosion, spills, etc.) impacts to adjacent rare plant ESHA, salt marsh ESHA, and brackish marsh ESHA.
 - b. Construction of and plantings/seeds installed within the mitigation areas shall in no way degrade adjacent ESHA (e.g., through changes in site hydrology, erosion problems, introduction of invasive species, etc.).
- (ii) The plan shall include, at a minimum, the following:
- a. A detailed description of measures proposed to ensure the protection of adjacent ESHA, including measures to be implemented during both the construction phase (e.g., avoidance

flagging to protect adjacent sensitive areas) and post-construction monitoring (e.g., *Spartina* removal techniques)

- b. A site plan depicting the various measures proposed in the plan to protect adjacent ESHA; and
- c. A schedule for implementing the proposed plan and its various measures to protect adjacent ESHA.

(B) The permittee shall undertake the amended development in accordance with the approved final plan. Any proposed changes from the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit, unless the Executive Director determines no amendment is legally required.

7. Area of Archeological Significance for the Development Authorized by Amendment No. 1-03-021-A1

(A) If an area of historic or prehistoric cultural resources or human remains are discovered during the course of the amended development, all construction shall cease and shall not recommence except as provided in subsection (B) hereof, and a qualified cultural resource specialist shall analyze the significance of the find.

(B) A permittee seeking to recommence construction following discovery of the cultural deposits shall submit an archaeological plan for the review and approval of the Executive Director.

(i) If the Executive Director approves the Archaeological Plan and determines that the Archaeological Plan's recommended changes to the proposed development or mitigation measures are de minimis in nature and scope, construction may recommence after this determination is made by the Executive Director.

(ii) If the Executive Director approves the Archaeological Plan but determines that the changes therein are not de minimis, construction may not recommence until after an amendment to this permit is approved by the Commission.

8. Permit Expiration & Condition Compliance

Because the proposed amended development has already commenced, this coastal development permit amendment shall be deemed issued upon the Commission's approval and will not expire. Failure to comply with the special conditions of this permit may result in the institution of an action to enforce those conditions under the provisions of Chapter 9 of the Coastal Act.

IV. FINDINGS & DECLARATIONS

The Commission hereby finds and declares the following:

A. Background & Proposed Amended Development

The City of Arcata is responsible for maintaining the levees along Humboldt Bay (Arcata Bay) that align the Arcata Marsh and Wildlife Sanctuary and the oxidation ponds at the City's sewage treatment plant (Exhibit Nos. 1-3). The levees originally were constructed with bay mud prior to enactment of coastal development permit regulations. Over time the levees have become eroded in some areas, and severe storm events in the winters of 2002-2003 and 2005-2006 caused extensive damage to the levee system in some areas. The existing levees serve a dual purpose: (1) to protect Klopp Lake, South I Street, and the oxidation ponds at the sewage treatment plant from erosion, and (2) to provide a public, bay-front trail along the tops of the levees (except along South I Street) as part of the Arcata Marsh and Wildlife Sanctuary. A major breach of the levees would subject public infrastructure (including roads and the City's sewage treatment facility) and recreational resources (Klopp Lake, public trails, and other recreational areas within the Arcata Marsh and Wildlife Sanctuary) to flooding. A breach in the wastewater levee could potentially spill millions of gallons of primary treated sewage into Humboldt Bay.

The Commission has, in the past dozen or so years, issued at least 15 permits for repair and maintenance of the Humboldt Bay levee system (including the subject levee system managed by the City of Arcata and adjoining levees managed by Reclamation District #768), including at least eight emergency permits that were necessary to protect coastal agricultural lands and public infrastructure from flood damage following significant storm events.

On July 14, 2005, the Coastal Commission approved the following project (CDP No. 1-03-021; Exhibit No. 7), which consisted of three separate but related components:

- **Emergency Permit Follow-up Coastal Development Permit for Culvert Replacement:** Follow up permit to Emergency Permit No. 1-03-065-G granted by the North Coast District Office in October of 2003 for the repair of 1,050 linear feet of eroded dike around the oxidation ponds involving the placement of 600 cubic yards of 6"-10" riprap overlain by 18"- to 24"-diameter rock along the outboard side of the levee. All work was done within the original footprint of the levee. The erosion damage was repaired consistent with the conditions placed on the emergency permit regarding the type of materials to be used in the repair of this section of the levee.
- **Repair and Maintenance of Klopp Lake levee and islands.** Repair of eroded areas on the inboard and outboard sides of the Klopp Lake levee and around the eroded margins of the three small islands (East Island, West Island and Center Island) in the lake that provide resting areas for various shorebirds. The Klopp Lake levee work entailed the placement of 900 cubic yards of rock slope protection and cement riprap along 2,000 linear feet of the inboard side of the levee, 3,000 cubic yards along 2,210 linear feet of the outboard side of the levee, and 700 cubic yards of ¼- and ½-ton and 12" to 14" riprap along the island margins.
- **Ten Year Permit for Ongoing Repair and Maintenance Activities:** 10-year period

of authorization to undertake routine repair and maintenance of the levee system at Klopp Lake and the oxidation ponds within the existing footprint of the levees.

CDP No. 1-03-021 contains three special conditions: (1) Special Condition No. 1 addresses the length of development authorization (five years with the ability of the Executive Director to approve up to one request for an additional five-year period of development authorization) (2) Special Condition No. 2 addresses standards for the repair and maintenance work; and (3) Special Condition No. 3 limits temporary closure of public access trails during construction to no more than 30 days at a time during each period of repair and maintenance.

With funding from FEMA and the Office of Emergency Services, in the summer of 2009 the City undertook additional repair and maintenance of the levee system under the authorization of CDP No. 1-03-021. The City informed Commission staff of the proposed levee repairs, which were to be undertaken pursuant to the existing permit. However, after the 2009 levee repairs were completed, Commission staff discovered that some of the levee repairs, including 700 linear feet of repairs along South I Street north of the boat ramp and 2,000 linear feet of repairs along the western oxidation pond levee, had been conducted outside of the project footprint approved under the existing permit (though still within the original levee footprint). In addition, the City is required by the Nationwide Permit issued by the U.S. Army Corps of Engineers (File No. 2009-00137) to mitigate for impacts to a calculated 0.55-acre of salt marsh habitat that occurred within the original levee footprint and was filled (with rock and riprap) under the 2009 levee repairs. The salt marsh habitat for which the City is required to mitigate involves a matrix of patchy native (mostly pickleweed, *Salicornia virginica*) and invasive (dense-flowered cordgrass, *Spartina densiflora*) salt marsh vegetation intermixed with concrete riprap, as the salt marsh plants have over time encroached onto the levee toe and up the sides, as deposited sediments provided suitable substrate. The calculated 0.55-acre of salt marsh impacts includes fill impacts to salt marsh habitat that had encroached onto levees that were repaired and currently are proposed for after-the-fact authorization under this permit amendment (0.26-acre) as well as routine repair and maintenance activities permitted under CDP No. 1-03-021.

Thus, the subject permit amendment requests authorization for the following proposed amended development: (1) after-the-fact approval of levee repair work performed in 2009 outside of the approved project area but still within the historic levee footprint, including along 700 feet of levee adjacent to South I Street and 2,000 feet of levee along the wastewater ponds (Exhibit No. 4); and (2) creation of 0.70-acre of new salt marsh and brackish marsh mitigation areas within upland areas adjacent to the South I Street parking lot and Butcher Slough (Exhibit No. 6).

The proposed after-the-fact levee repair work along South I Street and the wastewater ponds consists of (1) removal of existing riprap, disposal of asphalt and other debris (e.g., junk tires, concrete with rebar, etc.) in the existing riprap material, and stockpiling (within the existing parking lot at the foot of South I Street) of the remaining riprap for reuse (2) excavation of a 3-foot wide and 3-foot deep toe trench along the base of the bay side of the levees; (3) grading of the levee face, building it up with engineered fill, and compacting it as necessary; (4)

installation of geotextile filter fabric over the bay side of the levee face and into the toe trench; and (5) placement of stockpiled reusable riprap and additional imported rock riprap over the filter fabric. All work was conducted within the original levee footprint, and no new fill was placed beyond the original levee footprint. The work was conducted according to the standards required by Special Condition No. 2 of CDP No. 1-03-021 (see Exhibit No. 7) for armoring rock, fill material, placement of materials, revegetation of disturbed areas, debris disposal, erosion control, spill prevention, pre-construction biological surveys, and other standards.

The after-the-fact levee repair work resulted in impacts to a total of 11,434 square feet (0.26-acre) of salt marsh habitat that had developed on eroded levee areas (Northern Coastal Salt Marsh, dominated by pickleweed, *Salicornia virginica*, according to information contained within the Biological Assessment completed for the project by NRM Corp. dated November 24, 2008) (Exhibit No. 5). The impacted salt marsh habitat consisted of a matrix of patchy native salt marsh vegetation (mostly pickleweed, *Salicornia virginica*) and invasive cordgrass (*Spartina densiflora*) intermixed with concrete riprap (as the salt marsh plants had over time encroached onto the levee toe and up the sides).

The creation of the proposed 0.70-acre of salt marsh and brackish marsh mitigation areas involves excavating existing upland areas at the foot of South I Street between the existing parking lot and the bay (“mitigation area 1”) and along Butcher Slough (“mitigation areas 2A and 2B”) to a depth of at least one foot below the upper limits of adjacent upper salt marsh habitat. The proposed new habitat areas to be created are summarized below:

	Proposed: Salt Marsh	Brackish Marsh
Mitigation Area 1 – Foot of South I Street:	0.15-ac.	--
Mitigation Area 2A – Along Butcher Slough:	0.25-ac.	0.05-ac.
Mitigation Area 2B – Along Butcher Slough:	0.15-ac	0.10-ac.
Totals (0.70-acre total new marsh habitat to be created)	0.55-ac.	0.15-ac.

Thus, the City is proposing on-site, in-kind mitigation for impacts to salt marsh habitat at a ratio of slightly more than 2-to-1 (i.e., the proposed new salt marsh habitat would be two times as large in size as the area of salt marsh habitat impacted by the proposed after-the-fact levee repair work). In addition, the City is proposing to create an additional 0.15-acre of brackish marsh habitat (dominated by tufted hairgrass, *Deschampsia cespitosa*) along the margins of the proposed new salt marsh habitat (see Exhibit No. 6).

Excavated spoils from the proposed mitigation areas would be taken either to the nearby McDaniel Slough project area for use in elevating the marsh plain pursuant to CDP No. 1-06-036 or to the Jacoby Creek quarry (outside of the coastal zone). The newly excavated area would then be backfilled with salt marsh soils that were salvaged during levee repair and maintenance work performed in the summer of 2009 (including work performed under the authorization of the existing permit as well as the after-the-fact work proposed for authorization under this permit amendment). Proposed “best management practices” include the use of silt fences, fiber rolls, floating filter fabric, orange construction fencing, jute mat or

equivalent, use of a designated staging area (South I Street parking lot and the parking lot adjacent to Butcher Slough) and conducting work during periods of low tide only. A small berm would be left between Butcher Slough and the rest of mitigation area #2 to prevent water intrusion during active grading and seed bank placement. Once the seed bank (i.e., salt marsh soil backfill) has been installed, the berm would be removed during low tide and stabilized with seed and jute mat. The area would be covered with jute to provide erosion control. The City expects that the area will revegetate naturally from the harbored seed bank but also proposes to plant pickleweed, salt grass (*Distichlis spicata*), tufted hairgrass, and other marsh species.

Construction of the new habitat areas along Butcher Slough would necessitate moving an approximate 200-foot-long portion of the adjacent public walking trail back (northwestward) slightly (approximately 10 feet) to accommodate the proposed amended development. The portion of the existing walking trail would be relocated onto an abandoned railroad spur, which already supports a portion of the City's trail network within the Arcata Marsh and Wildlife Sanctuary.

B. Permit Authority, Extraordinary Methods of Repair & Maintenance

Coastal Act Section 30610(d) generally exempts from Coastal Act permitting requirements the repair or maintenance of structures that does not result in an addition to, or enlargement or expansion of the structure being repaired or maintained. However, the Commission retains authority to review certain extraordinary methods of repair and maintenance of existing structures that involve a risk of substantial adverse environmental impact as enumerated in Section 13252 of the Commission regulations. Section 30610 of the Coastal Act provides, in relevant part, the following:

Notwithstanding any other provision of this division, no coastal development permit shall be required pursuant to this chapter for the following types of development and in the following areas: . . .

(d) Repair or maintenance activities that do not result in an addition to, or enlargement or expansion of, the object of those repair or maintenance activities; provided, however, that if the commission determines that certain extraordinary methods of repair and maintenance involve a risk of substantial adverse environmental impact, it shall, by regulation, require that a permit be obtained pursuant to this chapter. [Emphasis added]

Section 13252 of the Commission administrative regulations (14 CCR 13000 *et seq.*) provides, in relevant part, the following:

(a) For purposes of Public Resources Code section 30610(d), the following extraordinary methods of repair and maintenance shall require a coastal development permit because they involve a risk of substantial adverse environmental impact:...

(3) Any repair or maintenance to facilities or structures or work located in an environmentally sensitive habitat area, any sand area, within 50 feet of the edge of a coastal bluff or environmentally sensitive habitat area, or within 20 feet of coastal waters or streams that include:

(A) The placement or removal, whether temporary or permanent, of rip-rap, rocks, sand

or other beach materials or any other forms of solid materials;

(B) The presence, whether temporary or permanent, of mechanized equipment or construction materials.

All repair and maintenance activities governed by the above provisions shall be subject to the permit regulations promulgated pursuant to the Coastal Act, including but not limited to the regulations governing administrative and emergency permits. The provisions of this section shall not be applicable to methods of repair and maintenance undertaken by the ports listed in Public Resources Code section 30700 unless so provided elsewhere in these regulations. The provisions of this section shall not be applicable to those activities specifically described in the document entitled Repair, Maintenance and Utility Hookups, adopted by the Commission on September 5, 1978 unless a proposed activity will have a risk of substantial adverse impact on public access, environmentally sensitive habitat area, wetlands, or public views to the ocean.... [Emphasis added.]

The proposed amended development is a repair and maintenance project because it does not involve an addition to or enlargement of the affected portions of levee. Although certain types of repair projects are exempt from CDP requirements, Section 13252 of the regulations requires a coastal development permit for extraordinary methods of repair and maintenance enumerated in the regulation. The proposed amended development involves the placement of construction materials and removal and placement of solid materials within 20 feet of coastal waters. In some locations, the proposed work will occur directly adjacent to an environmentally sensitive habitat area (rare plant habitat within the salt marsh community). Therefore, the proposed project requires a coastal development permit under Sections 13252(a)(1) of the Commission regulations.

In considering a permit application for a repair or maintenance project pursuant to the above-cited authority, the Commission reviews whether the proposed *method* of repair or maintenance is consistent with the Chapter 3 policies of the Coastal Act. The Commission's evaluation of such repair and maintenance projects does not extend to an evaluation of the conformity with the Coastal Act of the underlying existing development.

The repair and maintenance of levees can have adverse impacts on coastal resources, in this case primarily bay waters and salt marsh habitat that had developed on eroded levee areas, if not properly undertaken with appropriate mitigation. At the proposed after-the-fact repair sites, the applicant, presuming the work was authorized pursuant to CDP No. 1-03-021, conducted the work in compliance with Special Condition No. 2 of that permit, which is reimposed as a condition of this amended permit and remains in full force and effect. Special Condition No. 2 includes various standards for levee repair work that must be adhered to, including standards on armoring rock, fill material, placement of materials, revegetation, debris disposal, erosion control, spill prevention, timing of construction, monitoring, pre-construction biological surveys, and more. More specific measures needed to avoid significant impacts on public access, water quality, marine resources, wetlands, and environmentally sensitive habitat areas are required in Special Condition Nos. 4-7, as discussed in the below Findings. Therefore, as conditioned, the Commission finds that the proposed amended development is consistent with the Chapter 3 policies of the Coastal Act.

C. Public Access & Recreation

The proposed amended development is located in part between the first public road and the sea. Section 30604(c) of the Coastal Act requires that every coastal development permit issued for development between the first public road and the sea “*shall include a specific finding that the development is in conformity with the public access and public recreation policies of Chapter 3 (commencing with Section 30200).*”

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

As stated above, the proposed amended development is for (1) after-the-fact repair and maintenance of pre-Coastal Act levee systems along South I Street and along the wastewater ponds, and (2) creation of 0.70-acre of new salt marsh and brackish marsh habitats within upland areas adjacent to the South I Street parking lot and Butcher Slough. The subject levee system has a dual purpose: one purpose is to protect Klopp Lake and the oxidation ponds from erosion, and the other is to provide a public trail along the tops of the levees (except along South I Street) as part of the Arcata Marsh and Wildlife Sanctuary.

Ordinarily, routine repair and maintenance is an exempt activity under Coastal Act Section 30610(d), and thus no CDP would be required. However, the proposed salt marsh creation at the foot of South I Street (which is located between the first public road and the sea) is a form of new development and not a repair and maintenance activity. Furthermore, a CDP is expressly required for certain repair and maintenance activities, because they may “*involve the risk of substantial adverse environmental impact.*” The Commission’s regulations identify repair and maintenance activities performed near the shoreline, as proposed by this application, must obtain coastal development permits and are not exempt under Section 30610 (d) [CCR Title 14, Section 13252 (a) (3)]. However, because repair and maintenance is not considered new development for purposes of Section 30212, Coastal Act Section 30212(b)(5) excludes these repair and maintenance activities from the access requirements of Section 30212 unless the Commission “*determines that the activity will have an adverse impact on lateral beach access.*”

The proposed after-the-fact levee repair work has no impact on lateral beach access because the proposed amended development can be accomplished within the existing footprint of the

levee along South I Street, and because there is no beach adjacent to this levee. In addition, Special Condition No. 3 of the original permit, which is reimposed as a condition of this permit amendment, requires that portions of the trail network at the Arcata Marsh & Wildlife Sanctuary be closed for no more than 30 days at a time during each episode of repair and maintenance activity to avoid significant impacts on public access use of the trail system. This will ensure that there will be no significant impacts on public access during construction of the proposed salt marsh and brackish marsh habitat areas.

During construction of the salt marsh habitat at the foot of South I Street, the City proposes to retain all of the existing 30-car parking lot, picnic tables, benches, and interpretive signage in their current locations and configuration. The construction of the proposed salt marsh habitat in this location will not impact current or future public access or use of the area. Furthermore, construction of the habitat areas along Butcher Slough will not interfere with existing public access, as the temporary closure of trails during construction will not result in a significant adverse impact on public access use. Creation of the salt marsh habitat at the foot of South I street will not adversely affect the existing public access in this area, as the viewing area and picnic area will not be diminished in size, and the creation of adjacent salt marsh may actually enhance the experience of the public access user by providing a more natural setting. Moreover, as discussed above, construction of the new habitat areas along Butcher Slough will necessitate moving an approximate 200-foot-long portion of the adjacent public walking trail back (northwestward) slightly (approximately 10 feet) to accommodate the proposed amended development. The portion of the existing walking trail will be relocated onto the abandoned railroad spur, which will provide equivalent or better access for the public that is in direct connection with the City's existing trail network within the Arcata Marsh and Wildlife Sanctuary.

Therefore, the proposed amended development, as conditioned to minimize significant impacts to public access, is consistent with the requirements of Sections 30210, 30211, and 30212 of the Coastal Act.

D. Protection of Water Quality & Wetlands

The Coastal Act contains policies requiring the protection of coastal waters and wetlands to ensure biological productivity and to protect public health and water quality. New development must not adversely affect these values and should help to restore them when possible.

Coastal Act Policies:

Section 30231 of the Coastal Act states the following:

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 Section 30233 states the following:

(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 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.*
 - (4) 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.*
 - (5) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*
 - (6) Restoration purposes.*
 - (7) Nature study, aquaculture, or similar resource dependent activities.*
- (b) Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation. Dredge spoils suitable for beach replenishment should be transported for such purposes to appropriate beaches or into suitable longshore current systems.*

(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...

(d) Erosion control and flood control facilities constructed on watercourses can impede the movement of sediment and nutrients which would otherwise be carried by storm runoff into coastal waters. To facilitate the continued delivery of these sediments to the littoral zone, whenever feasible, the material removed from these facilities may be placed at appropriate points on the shoreline in accordance with other applicable provisions of this division, where feasible mitigation measures have been provided to minimize adverse environmental effects. Aspects that shall be considered before issuing a coastal development permit for such purposes are the method of placement, time of year of placement, and sensitivity of the placement area.

The proposed amended development is located immediately adjacent to Arcata Bay and Butcher Slough and involves revetment repairs that could adversely affect wetlands and soil disturbance, which could increase sedimentation in the bay, slough, and wetlands. Coastal Act Section 30233 requires that fill placed in wetlands only be permitted where there is no feasible less environmentally damaging alternative and where feasible mitigation measures

have been provided to minimize adverse environmental effects. Coastal Act Section 30231 protects the quality of coastal waters, streams, and wetlands through, among other means, controlling runoff. Grading and soil disturbance can result in the discharge of sediment into site runoff, which, upon entering coastal waters, increases turbidity and adversely affects fish and other sensitive aquatic species. Sediment is considered a pollutant that affects visibility through the water, and affects plant productivity, animal behavior (such as foraging) and reproduction, and the ability of animals to obtain adequate oxygen from the water. In addition, sediment is the medium by which many other pollutants are delivered to aquatic environments, as many pollutants are chemically or physically associated with the sediment particles. Therefore, the proposed amended development has the potential to adversely impact the water quality and biological productivity of coastal waters and wetlands.

Consistency Analysis:

Implementation of the proposed amended development will result in the transportation and placement of fill and armoring materials to the sites to be maintained and/or to the new habitat areas to be created, the use of staging areas for stockpiling of materials to be used for the project and other material to be disposed of (excess fill, etc.), and the removal of vegetation by mechanical equipment in the process of preparing levee sites for repair/maintenance and upland areas for salt marsh and brackish marsh habitat creation. Unless appropriate protocols are followed, these activities could result in various adverse impacts to water quality or sensitive wetland habitat from, for example, fuel or oil spills, improper storage of materials in or adjacent to sensitive areas, increased turbidity, and direct burial with revetment materials of salt marsh habitat that has grown in the eroded portions of the levees.

Therefore, the Commission adds **Special Condition No. 4**. This condition lists various construction standards for the proposed habitat creation work, including, in part, the following: (a) upon completion of project activities in the area and prior to October 15, 2010, all disturbed soils shall be appropriately seeded and/or secured with erosion control techniques; (b) the use of rodenticides containing any anticoagulant compounds is prohibited; (c) heavy equipment shall not operate in the bay or wetted slough channel; (d) no construction materials, debris, or waste shall be placed or stored where it may be subject to entering waters of Arcata Bay, Butcher Slough, or any wetland habitats; (e) all construction debris shall be removed and disposed of in an upland location at an approved disposal facility within 10 days of project completion; (f) all construction activities shall be conducted during the period of July 1 through October 15 only; (g) all construction activities shall be conducted during low tide only and limited to areas above mean high water; (h) during construction, all trash shall be properly contained, removed from the work site, and disposed of on a regular basis to avoid contamination of habitat; (i) any debris discharged into coastal waters shall be recovered immediately and disposed of properly; (j) any fueling and maintenance of construction equipment shall occur within upland areas outside of environmentally sensitive habitat areas or within designated staging areas; (k) fuels, lubricants, and solvents shall not be allowed to enter the coastal waters or wetlands; (l) all staging areas shall be limited to the locations specified in the permit amendment application; and (m) Best Management Practices (BMPs) for erosion and sediment control shall be implemented prior to commencement of construction and throughout the construction period.

As discussed above, the after-the-fact levee repair work resulted in impacts to a total of 11,434 square feet (0.26-acre) of salt marsh habitat that had developed on eroded levee areas. The impacted salt marsh habitat consisted of a matrix of patchy native salt marsh vegetation (mostly pickleweed, *Salicornia virginica*) and invasive cordgrass (*Spartina densiflora*) intermixed with concrete riprap (as the salt marsh plants had over time encroached onto the levee toe and up the sides). The City is proposing on-site, in-kind mitigation for impacts to salt marsh habitat at a ratio of slightly more than 2-to-1 (i.e., the proposed new salt marsh habitat would be two times as large in size as the area of salt marsh habitat impacted by the proposed after-the-fact levee repair work). In addition, the City is proposing to create an additional 0.15-acre of brackish marsh habitat (dominated by tufted hairgrass, *Deschampsia cespitosa*) along the margins of the proposed new salt marsh habitat.

The Commission finds that the proposed mitigation ratio is appropriate in this particular case because the proposed habitat creation work has a relatively high probability of successfully achieving the wetland functions and values for which the mitigation is intended to compensate since (1) the City is using salvaged salt marsh soils with a presumably robust seed bank obtained from spoils resulting from levee repair work implemented in 2009 and harbored, (2) this region supports abundant fog and rain and moist, water-retaining soils, which increases the chances of successfully creating new wetland areas, (3) the mitigation sites are located within an existing marsh and wildlife sanctuary already managed for habitat protection purposes by the City, and (4) the salt and brackish marsh habitat to be created are located in areas that historically supported salt and brackish marsh prior to alteration of the areas by the construction of levees and other man-made structures.

The City has not submitted a formal wetland mitigation plan for Commission review, but only a general description of proposed methods for grading the sites and establishing plants. No monitoring plans or criteria for monitoring the success of the mitigation areas have been provided. Thus, the Commission finds that the general description of methods and procedures proposed in the application does not go far enough and fails to adequately ensure that there will be no significant loss of wetland habitat as a result of the proposed amended development. Therefore, the Commission adds **Special Condition No. 5**. This condition requires that, prior to commencement of the habitat creation work and within 180 days of Commission approval of the permit amendment, the City must submit, for the Executive Director's review and approval, a final detailed mitigation and monitoring program that includes the following: (1) success criteria that will assure achievement of the mitigation goals and objectives, including, but not limited to, creation of 0.55-acre of new salt marsh habitat and creation of 0.15-acre of new *Deschampsia* habitat in the proposed locations, (2) provisions for completion of the grading and planting work necessary to establish the required habitat within one year of Commission approval of the permit amendment; (3) provisions for monitoring at least the following attributes at the mitigation sites during each monitoring year of a five-year monitoring period: (a) list of all vascular plant species present; (b) percent cover of native vegetation; (c) classification of natural community type (e.g., coastal salt marsh, brackish marsh, etc.); and (d) any notable disturbances or impacts (anthropogenic or natural) to the areas, (4) provisions for submittal within 30 days of completion of the initial mitigation

work of (a) “as built” plans demonstrating that the initial mitigation work has been completed in accordance with the approved mitigation and monitoring program, and (b) an assessment of the initial biological and ecological status of the “as built” wetland mitigation area; (5) provisions for submittal of annual reports of monitoring results to the Executive Director by December 31 of each monitoring year for the duration of the required monitoring period, beginning the first year after submission of the “as-built” assessment; (6) provisions for submittal 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 biologist or restoration ecologist and must include a final wetland delineation of the mitigation areas. The report must evaluate whether the mitigation sites conform to the goals, objectives, and success criteria set forth in the approved final wetland mitigation and monitoring program; and (7) provisions to ensure that the wetland mitigation sites will be remediated within one year of a determination by the permittee or the Executive Director that monitoring results indicate that the site(s) does not meet the goals, objectives, and success criteria identified in the approved final wetland mitigation and monitoring program. If the final report indicates that the wetland mitigation program has been unsuccessful, in part or in whole, based on the approved goals and objectives set forth in the approved plan, the permittee must submit a revised or supplemental wetland mitigation and monitoring program to compensate for those portions of the original program which did not meet the approved goals and objectives set forth in the approved plan. The revised wetland mitigation and monitoring program shall be processed as an amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

Thus, the Commission finds that the proposed amended development, as conditioned to require (1) adherence to various construction standards for the proposed habitat creation work; and (2) submittal and approval of a final detailed mitigation and monitoring program for the newly created mitigation areas, is consistent with the requirements of Coastal Act Sections 30231 and 30233 that the biological productivity and quality of coastal waters and wetlands be maintained and that feasible mitigation measures be provided to minimize adverse environmental effects. In addition, the Commission finds that, as conditioned, the amount of wetland fill resulting from the proposed after-the-fact levee repair work is the least environmentally damaging feasible alternative, as is required by Coastal Act Section 30233 since (1) the after-the-fact repair work does not extend beyond the footprint of the historic levee and only affects marginal salt marsh habitat that has grown in eroded sections of the levees; and (2) there is no feasible way to move the revetment inland from where the salt marsh has become established because, in the case of the 2,000 feet of revetment proposed along the levees protecting the wastewater ponds, the width of the levees must be maintained to ensure protection of the ponds, and in the case of the 700 feet of revetment proposed along South I Street, the revetment is already adjacent to the roadway that must be protected to ensure continued access to the southeastern portion of the Arcata Marsh and Wildlife Sanctuary. As discussed above in Finding B, Section 30610(d) of the Coastal Act exempts from Coastal Act permitting requirements the repair and maintenance of structures that do not result in an addition to or enlargement or expansion of the structure being repaired or maintained. The Commission may only review whether the proposed method of repair is consistent with Chapter 3 policies and not the conformance of the underlying existing

development with the Coastal Act. Therefore, the Commission cannot prevent the repair of the eroded sections of levees where salt marsh has encroached.

In conclusion, the Commission finds that as conditioned to require (1) adherence to various construction standards to protect water quality and wetland, and (2) preparation and implementation of a final detailed mitigation and monitoring program to ensure success of the salt marsh mitigation areas, the proposed amended development is consistent with Coastal Act Sections 30231 and 30233.

E. Marine Resources and ESHA

The proposed amended development is located adjacent to Arcata Bay and Butcher Slough, and therefore has the potential to adversely affect marine resources and marine environmentally sensitive habitat areas (ESHA). The following sections of the Coastal Act require that new development maintain, enhance, and, where feasible, restore damaged marine resources and protect ESHA.

Coastal Act Policies:

Section 30230 of the Coastal Act states the following:

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

Section 30107.5 of the Coastal Act defines “ESHA” as follows:

“Environmentally sensitive area” means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

Section 30240 of the Coastal Act states the following:

(a) *Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.*

(b) *Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

Consistency Analysis:

The proposed amended development will occur immediately adjacent to salt marsh and brackish marsh habitats, including salt marsh habitat that supports rare plant species. Humboldt Bay owl’s-clover (*Castilleja ambigua* ssp. *humboldtiensis*), Point Reyes’ bird’s-

beak (*Cordylanthus maritimus* ssp. *palustris*), and Western sand-spurrey (*Spergularia canadensis* var. *occidentalis*), all of which are considered “rare, threatened, or endangered in California” by the California Native Plant Society and the California Department of Fish and Game, are all known to occur in the immediate vicinity of the project area. The three rare plant taxa occur in coastal salt marsh habitats, generally with pickleweed, salt grass, and jaumea. Because each of these species is rare, their habitat meets the definition of ESHA found in Coastal Act Section 30107.5. Therefore, development adjacent to these habitats must also comply with the requirements of Section 30240(b) of the Coastal Act that development adjacent to ESHA be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat areas.

The City has not proposed any specific measures to avoid impacts to rare plant ESHA adjacent to the project area and to ensure the continuance of the rare plant ESHA. Furthermore, it is not clear that the proposed amended development (mitigation area creation) will be sited and designed to prevent impacts that would significantly degrade the adjacent rare plant ESHA. For example, although some measures have been proposed to control erosion and sediment resulting from construction activities, no specific measures have been proposed for ensuring that construction operations, including heavy equipment and crew foot traffic, do not directly impact adjacent rare plant ESHA and salt and brackish marsh habitats. Moreover, no remediation plan has been provided in the event that invasive dense-flowered cordgrass (*Spartina densiflora*) overtakes the newly created mitigation areas and expands into adjacent salt marsh habitats that do not currently contain the invasive weed. The rare plant species discussed above typically are unable to grow amongst pure stands of cordgrass, due to the dense nature of the cordgrass vegetation and growth habit.

Therefore, the Commission adds **Special Condition No. 6**. This condition requires submittal of a final ESHA protection plan, for the review and approval of the Executive Director prior to commencement of the habitat creation work and within 90 days of Commission approval of the permit amendment, that ensures that the proposed amended development is compatible with and will prevent impacts to adjacent rare plant, salt marsh, and brackish marsh habitats, and will provide for the continuance of the adjacent sensitive habitat areas. Specifically, the plan is required to demonstrate the following (a) construction activities shall avoid direct (e.g., grading, excavation, foot trampling, etc.) and indirect (e.g., erosion, spills, etc.) impacts to adjacent rare plant ESHA, salt marsh ESHA, and brackish marsh ESHA; and (b) construction of and plantings/seeds installed within the mitigation areas shall in no way degrade adjacent ESHA (e.g., through changes in site hydrology, erosion problems, introduction of invasive species, etc.).

Therefore, the Commission finds that the proposed amended development, as conditioned, is consistent with Coastal Act Sections 30230 and 30240, in that it maintains marine resources consistent with Section 30230 and is both sited and designed to prevent impacts which can significantly degrade the adjacent ESHA and is compatible with the continuance of the ESHA, consistent with Section 30240.

F. Archaeological Resources

Coastal Act Section 30244 provides protection of archaeological and paleontological resources and requires reasonable mitigation where development would adversely impact such resources. Because the levee system was originally constructed over 100 years ago from Humboldt Bay materials, it is possible that historic or prehistoric archaeological resources occur in the area. The proposed amended development (creation of new salt and brackish marsh habitats), although located in an area that has been disturbed and graded in the past, will use heavy equipment to excavate and remove fill material from the area, and archaeological resources embedded in the ground could be impacted through the course of construction activities.

The proposed project area is located within the ethnographic territory of the Wiyot Indians, who lived almost exclusively in villages along the protected shores of Humboldt Bay and near the mouths of the Eel and Mad Rivers. Several Wiyot villages are known to have occurred along the shores of Arcata Bay in the general vicinity of the project area. The relatively larger and sedentary populations of these villages engaged in an economy of salmon fishing, marine-mammal hunting, shellfish gathering, and seasonal excursions inland for acorns.

To ensure protection of any cultural resources that may be discovered during construction of the proposed amended development, staff recommends **Special Condition No. 7**, which requires that if an area of cultural deposits is discovered during the course of the amended development, all construction must cease and a qualified cultural resource specialist must analyze the significance of the find. To recommence construction following discovery of cultural deposits, the permittee is required to submit a supplementary archaeological plan for the review and approval of the Executive Director to determine whether the changes are *de minimis* in nature and scope, or whether an amendment Coastal Development Permit No. 1-03-021-A1 is required.

Therefore, the Commission finds that the proposed amended development, as conditioned, is consistent with Coastal Act Section 30244, as the amended development, as conditioned, will not adversely impact archaeological resources.

G. Alleged Violation

Although certain amended development has taken place at the project site without the benefit of a coastal development permit amendment (i.e., levee repair work performed in 2009 outside of the approved project area, including along 700 feet of levee adjacent to South I Street and 2,000 feet of levee along the wastewater ponds), consideration of the application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Approval of this permit amendment does not constitute a waiver of any legal action with regard to the alleged violations, nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal development permit.

H. California Environmental Quality Act (CEQA)

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be

consistent with any applicable requirements of 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, including all associated environmental review documentation and related technical evaluations incorporated-by-reference into this staff report. Those findings address and respond to all public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the staff report. As discussed above, the proposed amended development has been conditioned to be consistent with the policies of the Coastal Act. As specifically discussed in these above findings, which are hereby incorporated by reference, mitigation measures that will minimize or avoid all significant adverse environmental impacts have been required. As conditioned, there are no other feasible alternatives or feasible mitigation measures available that would substantially lessen any significant adverse impacts that the activity may have on the environment. Therefore, the Commission finds that the proposed amended development, as conditioned to mitigate the identified impacts, can be found consistent with the requirements of the Coastal Act and to conform to CEQA.

V. EXHIBITS

- 1) Regional Location Map
- 2) Vicinity Map
- 3) Aerial Photograph
- 4) Plans for Proposed After-the-Fact Levee Repair Work
- 5) Impacts to 0.26-Acre of Salt Marsh Habitat from Proposed After-the-Fact Levee Repair Work
- 6) Proposed Mitigation Area Plans
- 7) Staff Report for Commission CDP No. 1-03-021

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. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director of the Commission.
3. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
4. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

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

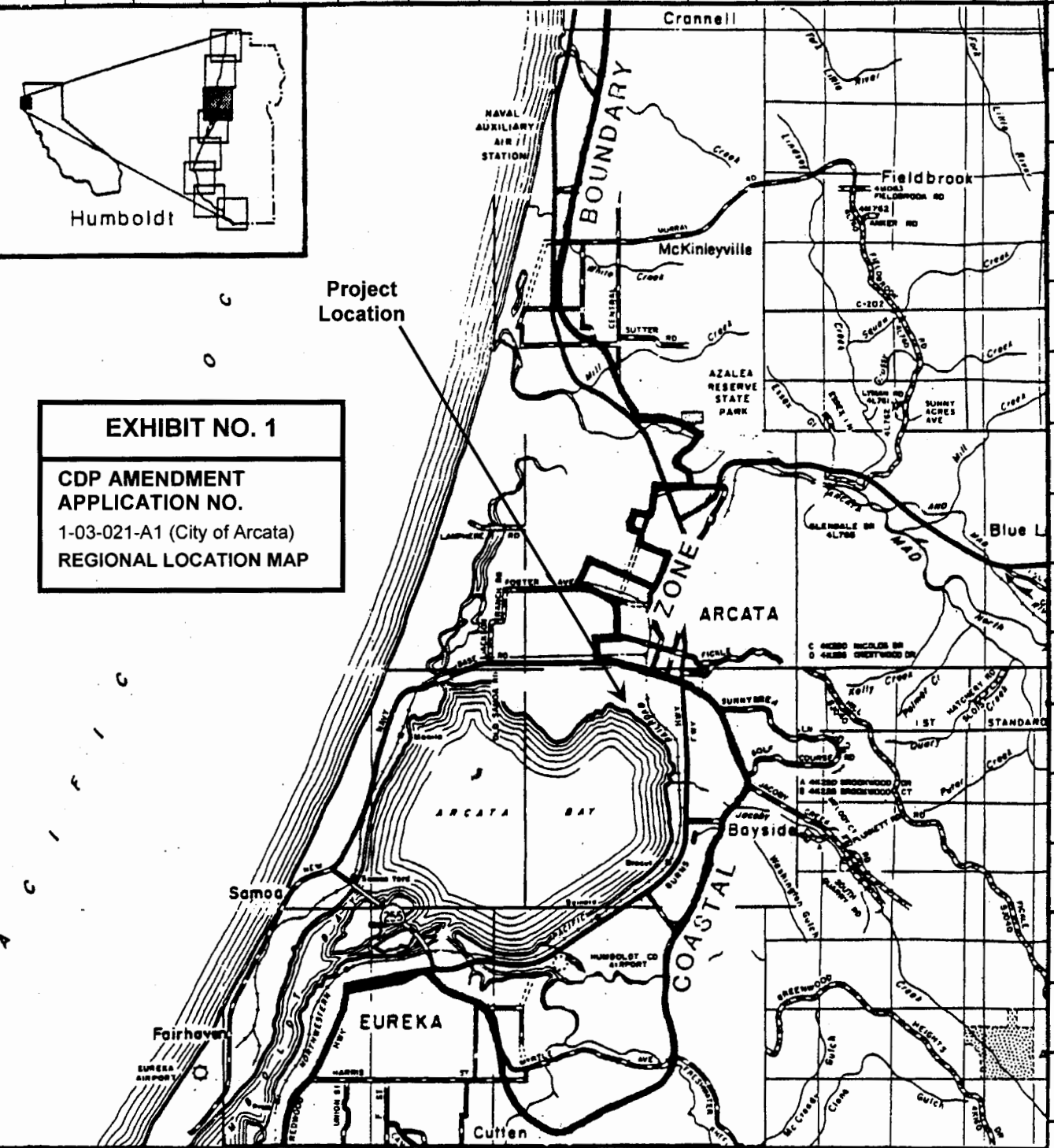


EXHIBIT NO. 1

CDP AMENDMENT APPLICATION NO.
 1-03-021-A1 (City of Arcata)
REGIONAL LOCATION MAP

Project Location

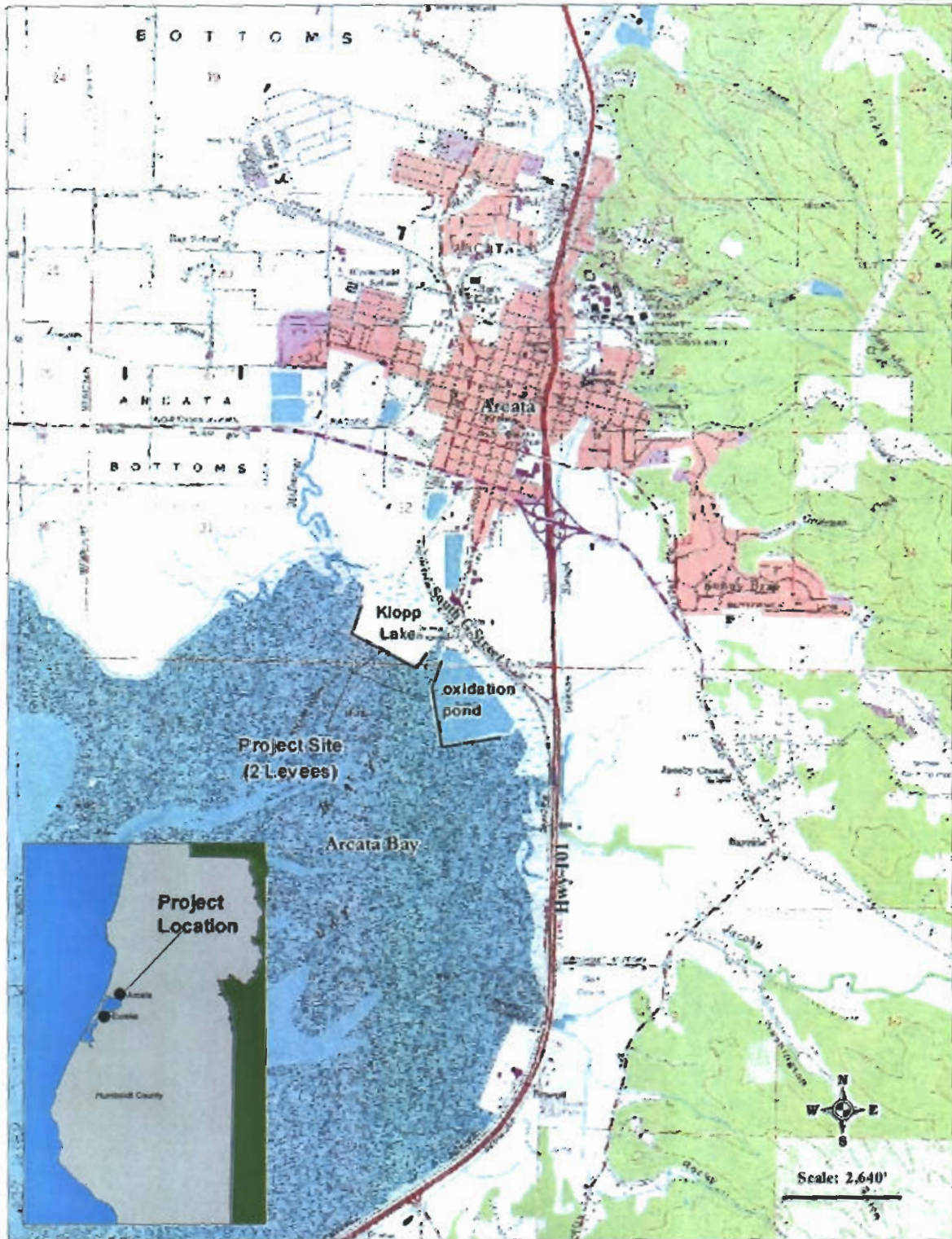
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EXHIBIT NO. 2

CDP AMENDMENT
APPLICATION NO.

1-03-021-A1 (City of Arcata)

VICINITY MAP



PROJECT	Habitat Mitigation Plan	BY	TKF	FIGURE	6
CLIENT	City of Arcata	DATE	03/13/09	PROJECT NO.	6939.01
LOCATION	Klopp Lake and Butcher Slough	CHECK			
	Mitigation Location Map	SCALE	1" = 500'		

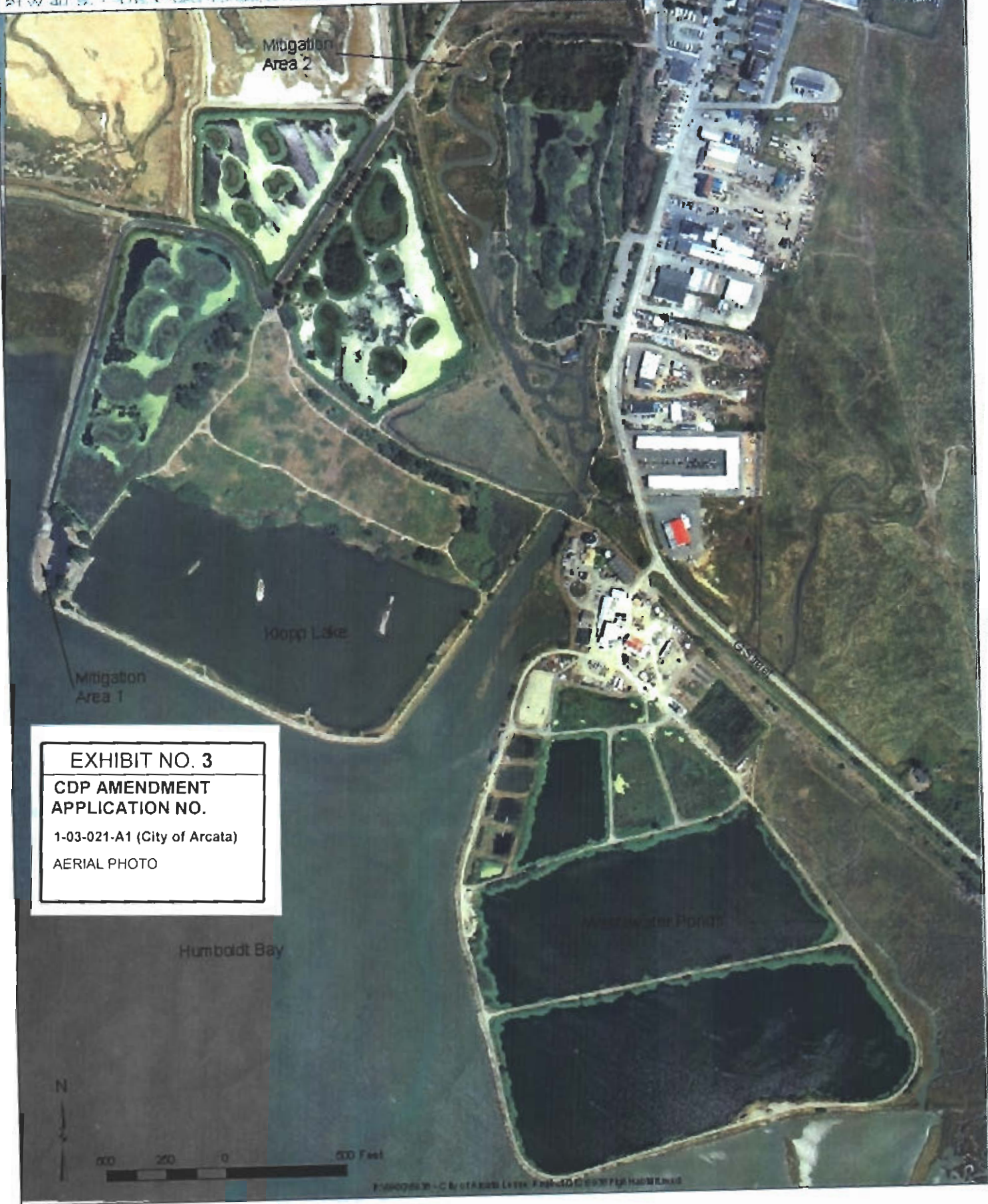


EXHIBIT NO. 3
CDP AMENDMENT
APPLICATION NO.
 1-03-021-A1 (City of Arcata)
 AERIAL PHOTO



LACO ASSOCIATES
 CONSULTING ENGINEERS
 21 W 4TH ST LINCOLN, CA 95901 (707)441-5004

NO.	DATE	DESCRIPTION
1	08/07/09	ISSUED FOR BID
2	09/07/09	REVISED PER NO. 1
3	09/07/09	REVISED PER NO. 1
4	09/07/09	REVISED PER NO. 1
5	09/07/09	REVISED PER NO. 1
6	09/07/09	REVISED PER NO. 1
7	09/07/09	REVISED PER NO. 1
8	09/07/09	REVISED PER NO. 1
9	09/07/09	REVISED PER NO. 1
10	09/07/09	REVISED PER NO. 1

CITY OF ARCATA
 WASTEWATER TREATMENT & RECREATION FACILITIES
 KLOPP LAKE SHEET INDEX & NOTES
ARCATA LEVEE REPAIR PROJECTS

PROJECT	A1
DATE	9/9/09
BY	AS/LO
CHECKED BY	AS/LO
DATE	9/9/09

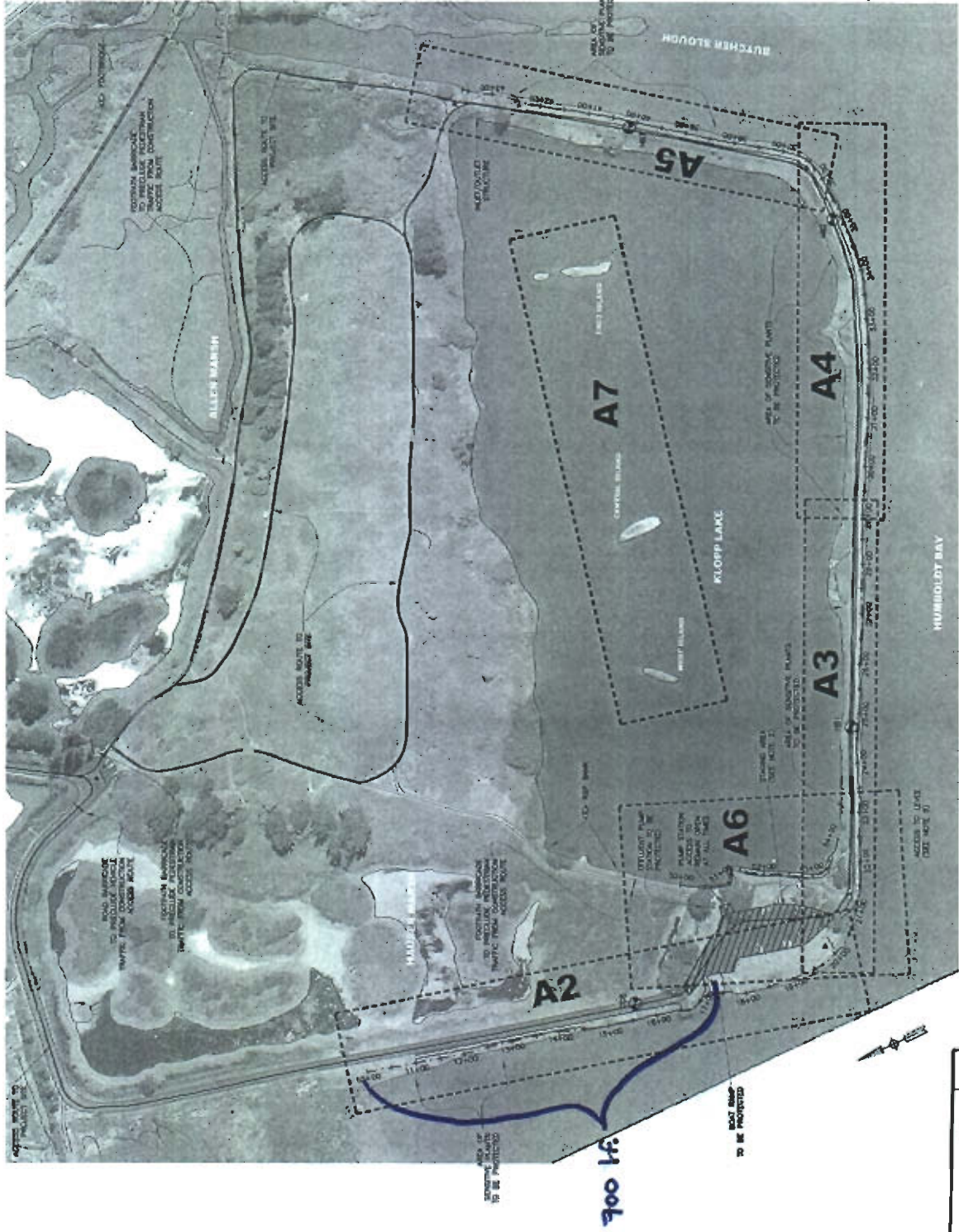
RECORD DRAWING
 THIS RECORD DRAWING HAS BEEN PREPARED
 UNDER A PORTION OF THE CONSTRUCTION
 CONTRACT. IT IS NOT TO BE USED FOR ANY
 OTHER PURPOSES WITHOUT THE WRITTEN
 PERMISSION OF LACO ASSOCIATES, INC. AND
 FOR THE PURPOSES ONLY.

GENERAL NOTES:

1. STRUCTURES ON EXISTING SITES OR LOTS
 SHALL BE REMOVED AND RECONSTRUCTED
 TO MEET THE REQUIREMENTS OF THE
 CONSTRUCTION CONTRACT. CONSIDER
 THE CONSTRUCTION CONTRACT, CONSTRUCTION
 USE AND SPECIFIC LOCATION OF STRUCTURE
 AS SHOWN ON THIS PLAN.
2. ALL WORK ON EXISTING SITES OR LOTS
 SHALL BE COMPLETED BY THE END OF THE
 CONSTRUCTION PERIOD. ALL EXISTING
 UTILITIES SHALL BE MAINTAINED AND
 PROTECTED THROUGHOUT THE CONSTRUCTION
 PERIOD.
3. ALL UTILITIES SHALL BE MAINTAINED AND
 PROTECTED THROUGHOUT THE CONSTRUCTION
 PERIOD. ALL EXISTING UTILITIES SHALL
 BE MAINTAINED AND PROTECTED THROUGHOUT
 THE CONSTRUCTION PERIOD.
4. ALL UTILITIES SHALL BE MAINTAINED AND
 PROTECTED THROUGHOUT THE CONSTRUCTION
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 PROTECTED THROUGHOUT THE CONSTRUCTION
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6. ALL UTILITIES SHALL BE MAINTAINED AND
 PROTECTED THROUGHOUT THE CONSTRUCTION
 PERIOD. ALL EXISTING UTILITIES SHALL
 BE MAINTAINED AND PROTECTED THROUGHOUT
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7. ALL UTILITIES SHALL BE MAINTAINED AND
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9. ALL UTILITIES SHALL BE MAINTAINED AND
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10. ALL UTILITIES SHALL BE MAINTAINED AND
 PROTECTED THROUGHOUT THE CONSTRUCTION
 PERIOD. ALL EXISTING UTILITIES SHALL
 BE MAINTAINED AND PROTECTED THROUGHOUT
 THE CONSTRUCTION PERIOD.

- LEGEND**
- BOUNCE PT. & DISCONTINUED
 - CONTIGUOUS ONE (OR MORE) DESIGNATION
 - PROPOSED STAGING AND
 - CONSTRUCTION ACCESS LOCATED TO
 - JOB WITHIN PROJECT SITE

CONSTRUCTION SHALL BE MAINTAINED 1 YEAR
 OR FULL-LEAVE PLAN.



PROJECT SITE PLAN - KLOPP LAKE, PW No. 3442
 SCALE: 1"=100'

EXHIBIT NO. 4
 CDP AMENDMENT
 APPLICATION NO.
 1-03-021-A1 (City of Arcata)
 PLANS FOR PROPOSED
 AFTER-THE-FACT LEVEE
 REPAIR WORK (1 of 6)

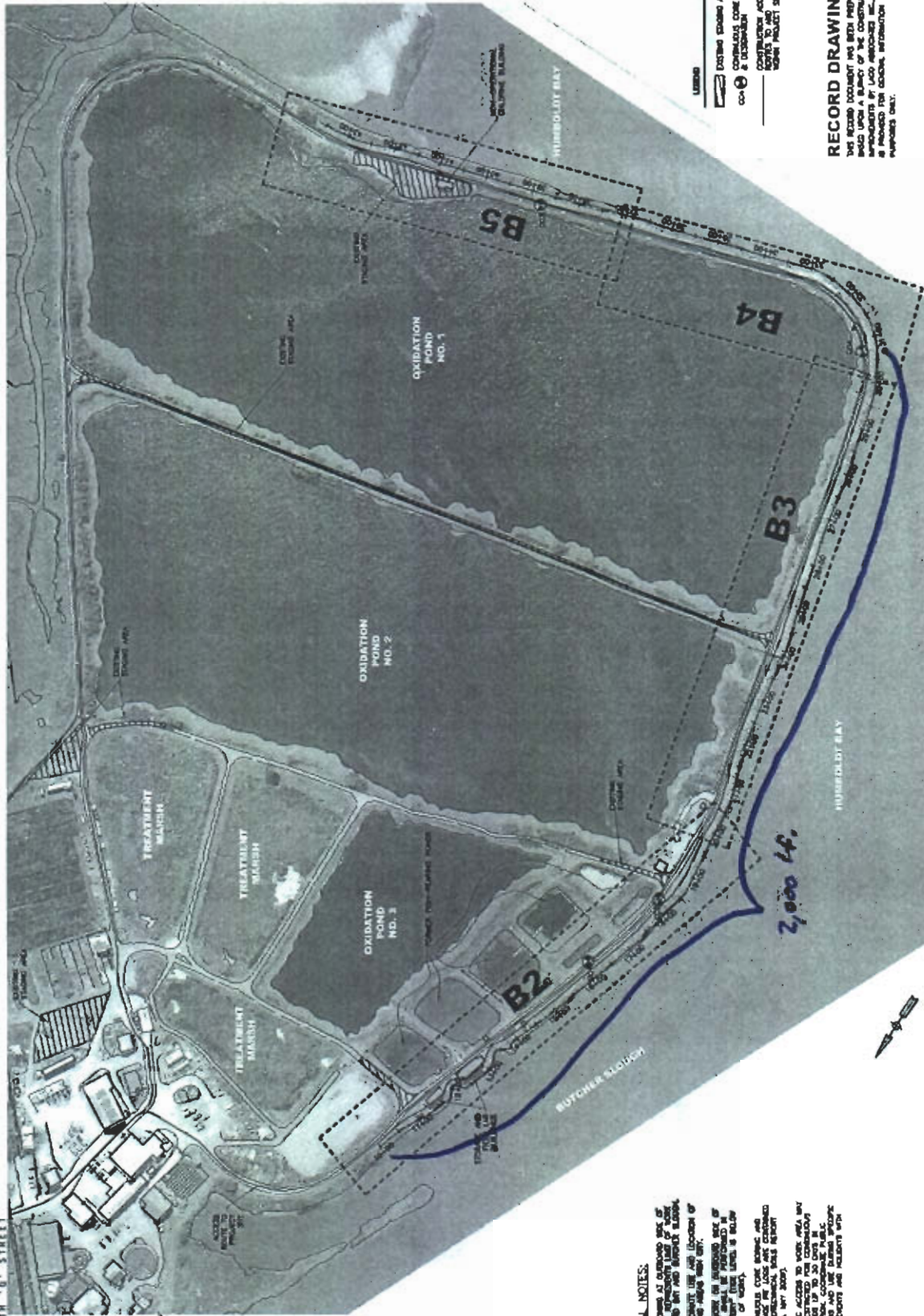


LACO ASSOCIATES
 CONSULTING ENGINEERS
 21 W 4TH ST. BERKELEY, CA 94704 (707)443-5054

NO.	REVISION	BY	CHK	DATE
3	RECORD DRAWING	ASB	CAB	06/28/09
2	DESIGN FOR BID	ASB	MT	06/28/09
1	PRELIMINARY	ASB	MT	06/28/09

CITY OF ARCATA
 WASTEWATER TREATMENT & RECREATION FACILITIES
 WASTEWATER POND'S SHEET WORK & NOTES
 ARCATTA LEVEL REPAIR PROJECTS

DATE	6/27/09
SCALE	AS SHOWN
PROJECT	ARCATTA LEVEL REPAIR PROJECTS
SHEET	B-1



GENERAL NOTES:

1. VERIFY ALL DIMENSIONS ARE AS SHOWN ON THIS PLAN. VERIFY ALL DIMENSIONS ARE AS SHOWN ON THIS PLAN. VERIFY ALL DIMENSIONS ARE AS SHOWN ON THIS PLAN.
2. CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CITY OF ARCATA SPECIFICATIONS AND STANDARDS.
3. ALL WORK SHALL BE DONE IN ACCORDANCE WITH THE CITY OF ARCATA SPECIFICATIONS AND STANDARDS.
4. CONTRACTOR SHALL MAINTAIN ACCESS TO ALL ADJACENT PROPERTIES AND UTILITIES AT ALL TIMES.
5. PUBLIC ACCESS TO WORK AREA SHALL BE MAINTAINED AT ALL TIMES.

- LEGEND**
- EXISTING EXPOSED AREA
 - CONTRACTOR TO BE BORING & EXCAVATION
 - CONTRACTOR ACCESS POINTS TO ADJACENT PROPERTIES
 - ADJACENT PROJECT SITE

RECORD DRAWING
 THIS DRAWING IS THE PROPERTY OF LACO ASSOCIATES. IT IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED THEREON. ANY REPRODUCTION OR TRANSMISSION OF THIS DRAWING WITHOUT THE WRITTEN PERMISSION OF LACO ASSOCIATES IS PROHIBITED.

GRAPHIC SCALE: 1" = 100'
 ON THIS SHEET ONLY

PROJECT SITE PLAN - WASTEWATER POND'S, PW No. 3472
 SCALE: 1"=100'

SOUTH 60° WEST

WASTEWATER TREATMENT PLANT

2096

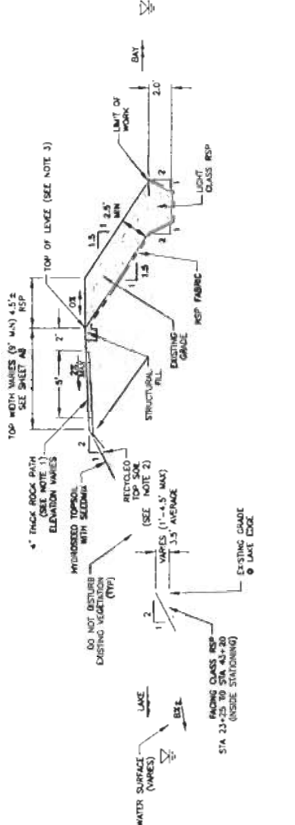


LACO ASSOCIATES
 CONSULTING ENGINEERS
 21 W 4TH ST. EUREKA, CA 95501 (707)443-5054

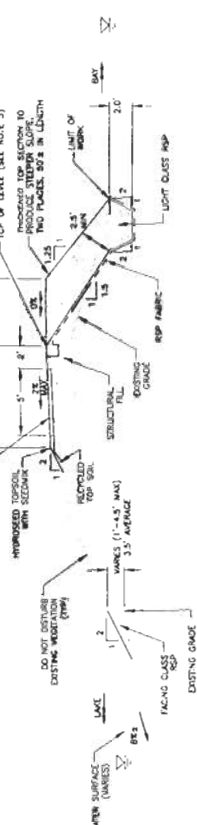
NO.	REVISION	DATE
3	RECORD DRAWINGS	DEC 2009
2	ISSUED FOR BIDDING	09/09/09
1	PRELIMINARY	08/09/09

ARCATA LEEVE REPAIR PROJECTS
 TYPICAL SECTIONS A, B, C & D
 CITY OF ARCATA
 WASTEWATER TREATMENT & RECREATION FACILITIES

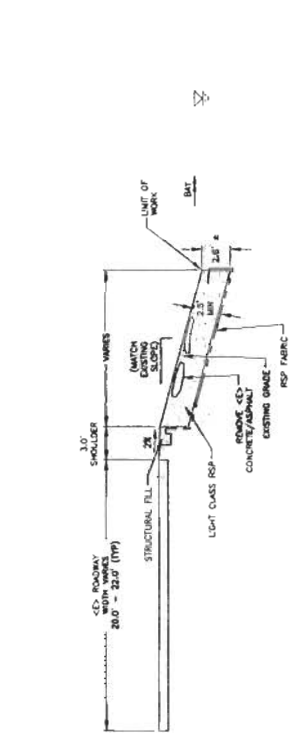
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 SHEET: A9



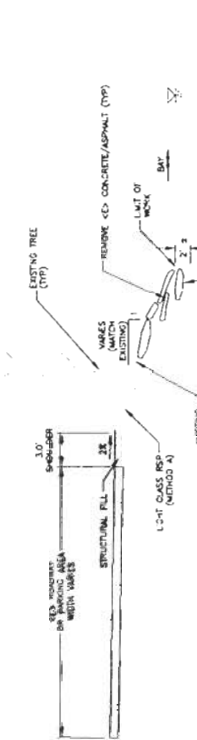
**'1' STREET TYPICAL SECTION
 ROCK SLOPE PROTECTION**
 SCALE: 1"=10' HORIZ. & VERT.
 STA 11+48 TO 14+80



**'1' PARKING LOT TYPICAL SECTION
 ROCK SLOPE PROTECTION**
 SCALE: 1"=10' HORIZ. & VERT.
 STA 10+80 TO 11+48



**'1' KLOPP LAKE TYPICAL SECTION
 ROCK SLOPE PROTECTION**
 SCALE: 1"=10' HORIZ. & VERT.
 STA 21+00 TO 24+00



**'1' KLOPP LAKE SECTION
 THICKENED RSP AREAS**
 SCALE: 1"=10' HORIZ. & VERT.
 STA 24+00 TO 27+00



NOTES:
 1. EXISTING RSP ROCK SHALL BE REMOVED, STOCKPILED AND REUSED ON THE PAVEMENT. RSP SHALL BE CONSTRUCTED WITH RSP ROCK. EXISTING RSP SHALL BE RECYCLED AND REUSED ON THE PAVEMENT.
 2. EXISTING TOPSOIL REMOVED DURING CONSTRUCTION SHALL BE STOCKPILED AND REUSED ON THE PAVEMENT.
 3. TOP OF LAKE RESTERS TO MATCH EXISTING GRADE @ LAKE EDGE.

RECORD DRAWING
 THIS RECORD DRAWING HAS BEEN PREPARED BY LACO ASSOCIATES, INC. AND IS PROVIDED FOR GENERAL INFORMATION PURPOSES ONLY.

GRAPHIC SCALE: 1"=10' HORIZ. & VERT.
 1" = 10'

496

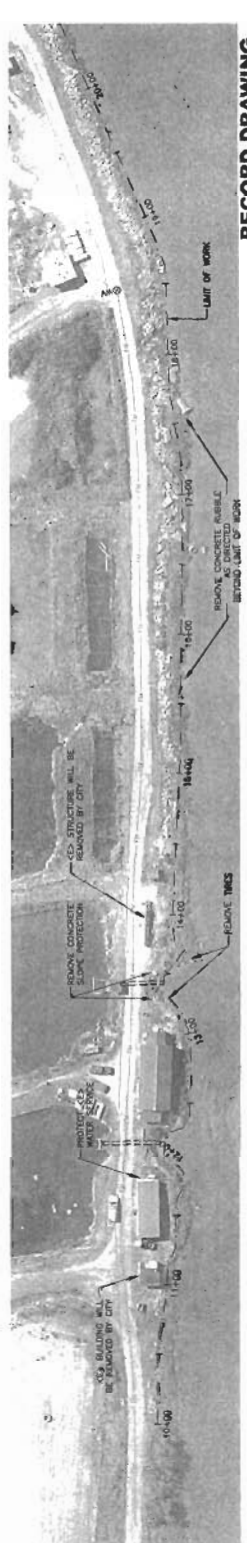


LACO ASSOCIATES
CONSULTING ENGINEERS
21 W 4TH ST. CORONA, CA 95001 (707)43-5054

NO.	REVISION	BY	CHK.	DATE
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2	ISSUED FOR BIDD	JOB	CTP	05/09/08

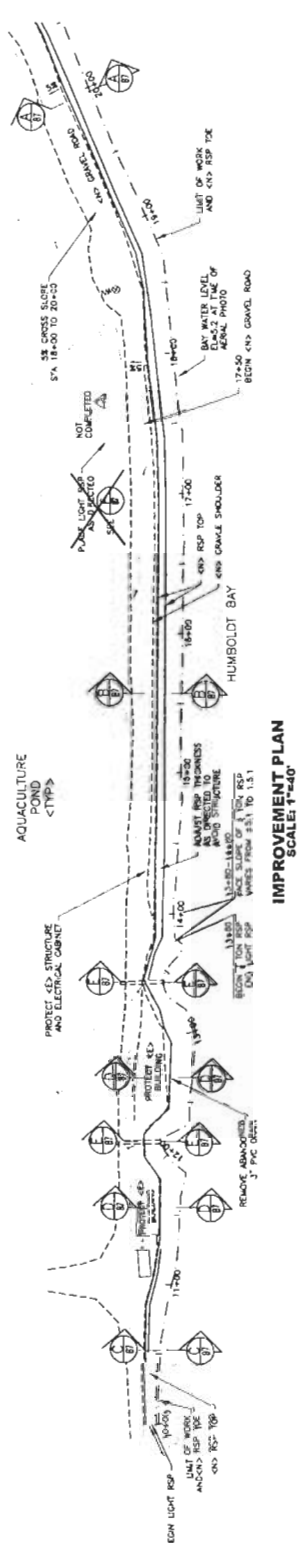
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WASTEWATER TREATMENT & RECREATION FACILITIES
CITY OF ARCATA
PLANS AND PROFILES - STA 10+00 TO 20+00
WASTEWATER PONDS LEVEL

SCALE	AS SHOWN
DRAWN	SAB/LEB
CHECK	CTP
APPRO'D	CTP
DATE	6/9/09
JOB NO.	5938.02
SHEET	B2

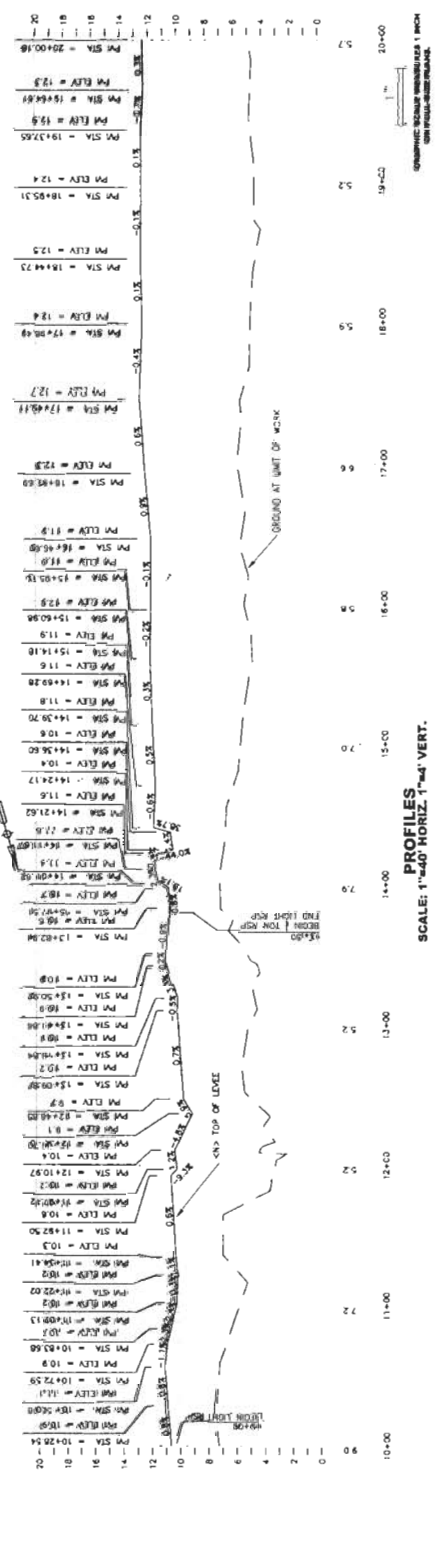


RECORD DRAWING
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BASED UPON A SURVEY OF THE CONSTRUCTED
IMPROVEMENTS BY LACO ASSOCIATES INC. AND
IS PROVIDED FOR GENERAL INFORMATION
IT IS NOT TO BE USED FOR
PURPOSES OTHER THAN

**PREVIOUSLY
EXISTING CONDITIONS PLAN**
SCALE: 1"=40'



IMPROVEMENT PLAN
SCALE: 1"=40'



5 of 6

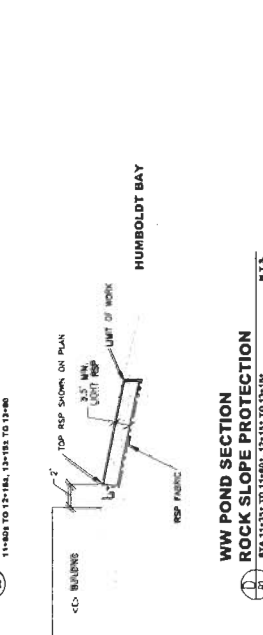
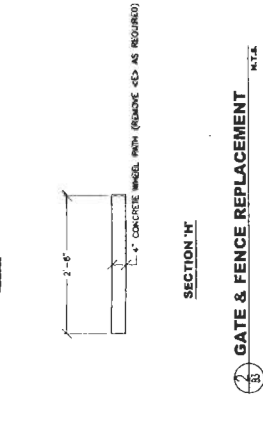
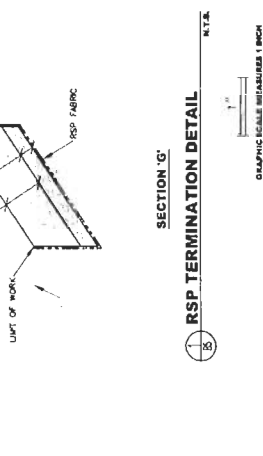
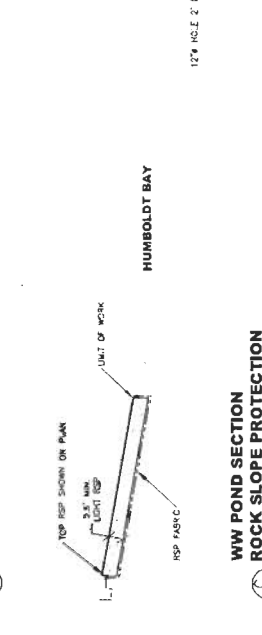
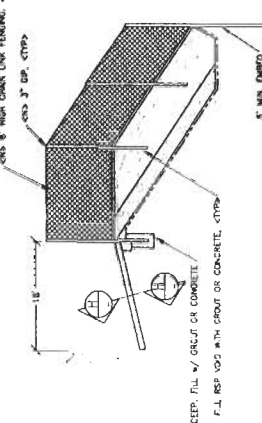
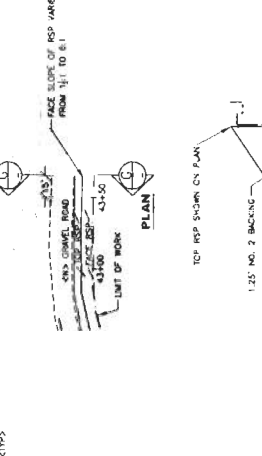
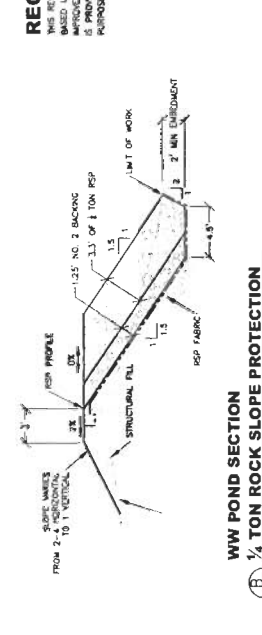
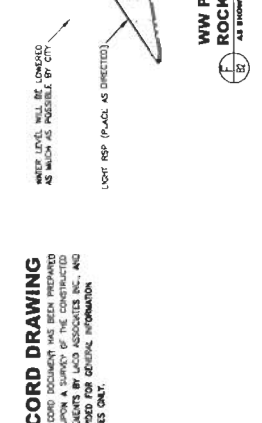
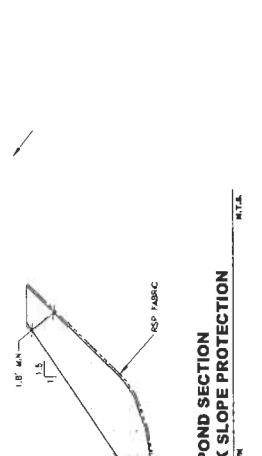
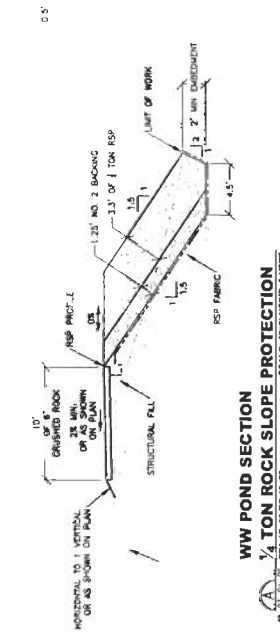
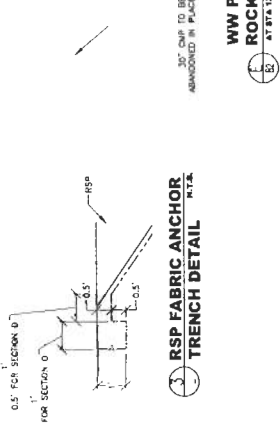
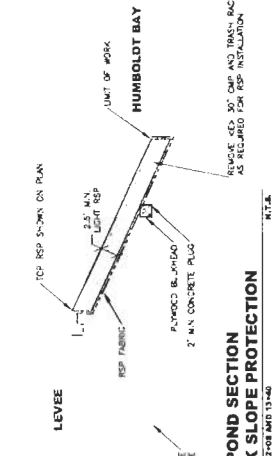


LACO ASSOCIATES
 CONSULTING ENGINEERS
 21 W 4TH ST. EUREKA, CA 95501 (707)443-5054

NO.	REVISION	BY	CHK	DATE
3	RECORD DRAWINGS	JOB	CJM	DEC. 2009
0	ISSUED FOR BIDDING	JOB	LJI	06/09/09

CITY OF ARCATA
 WASTEWATER TREATMENT & RECREATION FACILITIES
 TYPICAL SECTIONS & DETAILS
 WASTEWATER TREATMENT & RECREATION FACILITIES

SCALE: AS SHOWN
 DRAWN: JMM
 CHECKED: JMM
 DATE: 6/9/09
 JOB NO.: 69328.02
 SHEET: B7



RECORD DRAWING
 THIS RECORD DOCUMENT HAS BEEN PREPARED BASED UPON A SURVEY OF THE CONSTRUCTED IMPROVEMENTS BY LACO ASSOCIATES, INC. AND IS FOR GENERAL INFORMATION PURPOSES ONLY.

12" RISE 2' DEEP, FILL W/ GRAVEL OR CONCRETE.
 F.L. RSP 100'S WITH GROUT OR CONCRETE, CITY'S.

6 of 6

NO.	REVISION	BY	CHK	DATE

ARCATA LEVEE REPAIRS
 KLOPP LAKE LEVEE
 SALT MARSH HABITAT
 CITY OF ARCATA
 HUMBOLDT COUNTY, CALIFORNIA

SCALE AS SHOWN
 DRAWN AS SHOWN
 CHECKED
 DATE 4/8/10
 JOB NO. 092810
 SHEET 1 OF 2

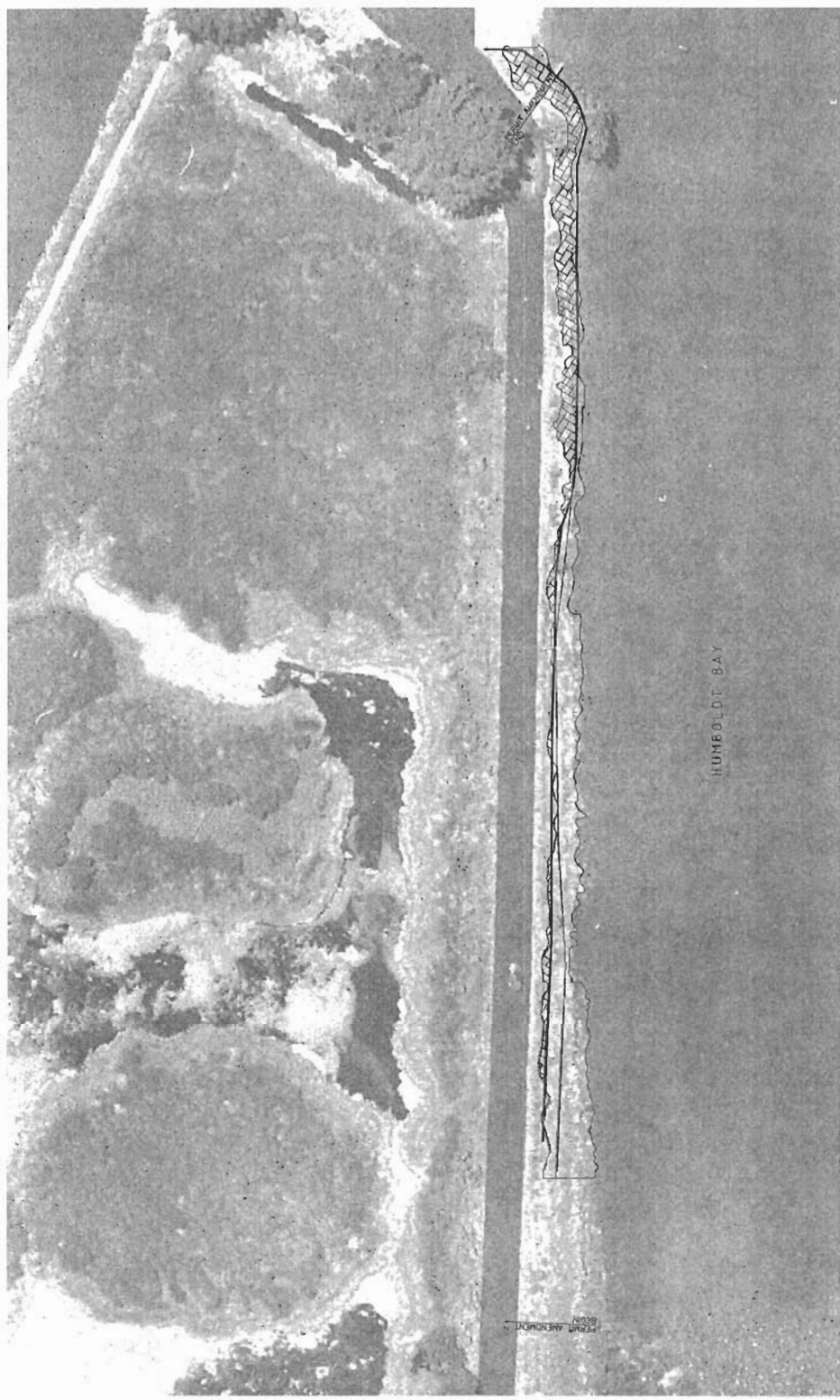
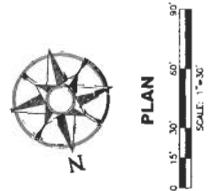





EXHIBIT NO. 5
 CDP AMENDMENT
 APPLICATION NO.
 1-03-021-A1 (City of Arcata)
 IMPACTS TO 0.26-ACRE OF
 SALT MARSH HABITAT FROM
 PROPOSED AFTER-THE-FACT
 LEVEE REPAIR WORK (1 of 2)



LEGEND
 SALT MARSH HABITAT (PROVIDED BY AERON WATER FROM AERON CORP. IN AUGUST 2009)
 RECORD PROJECT LIMITS OF DISTURBANCE
 PROJECT DISTURBANCE = 2,837 SF

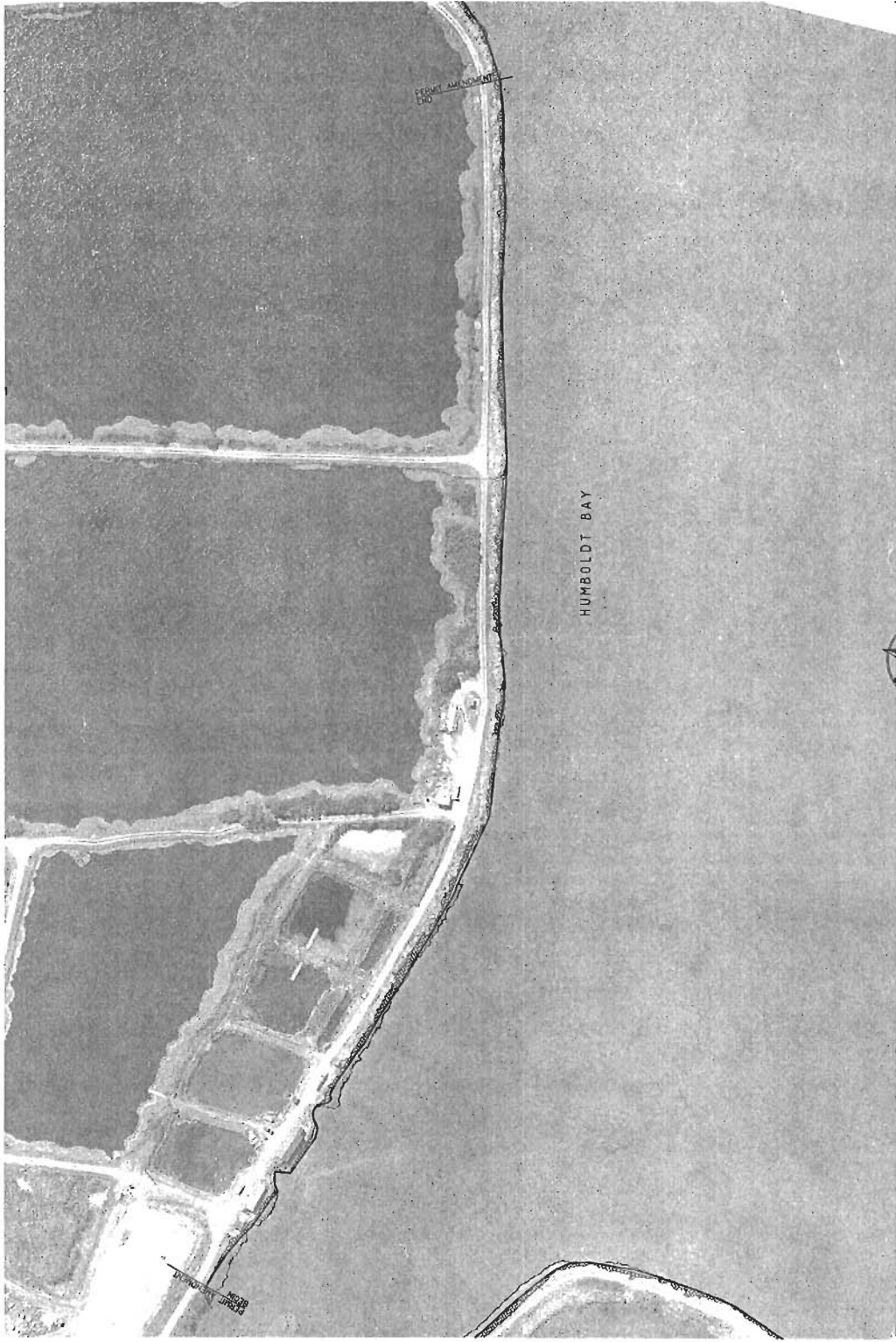
LACO ASSOCIATES
 CONSULTING ENGINEERS
 21 W 4TH ST EUREKA, CA 95501 (707)443-5054



NO.	REVISION	BY	CHK	DATE

ARCATA LEVEL REPAIRS
 WASTEWATER TREATMENT PONDS LEVEL
 SALT MARSH HABITAT
 CITY OF ARCATA
 HUMBOLDT COUNTY, CALIFORNIA

SCALE AS SHOWN
 DRAWN BY JB
 CHECKED
 DATE 4/8/10
 JOB NO. 0938.01
 SHEET 2 OF 2



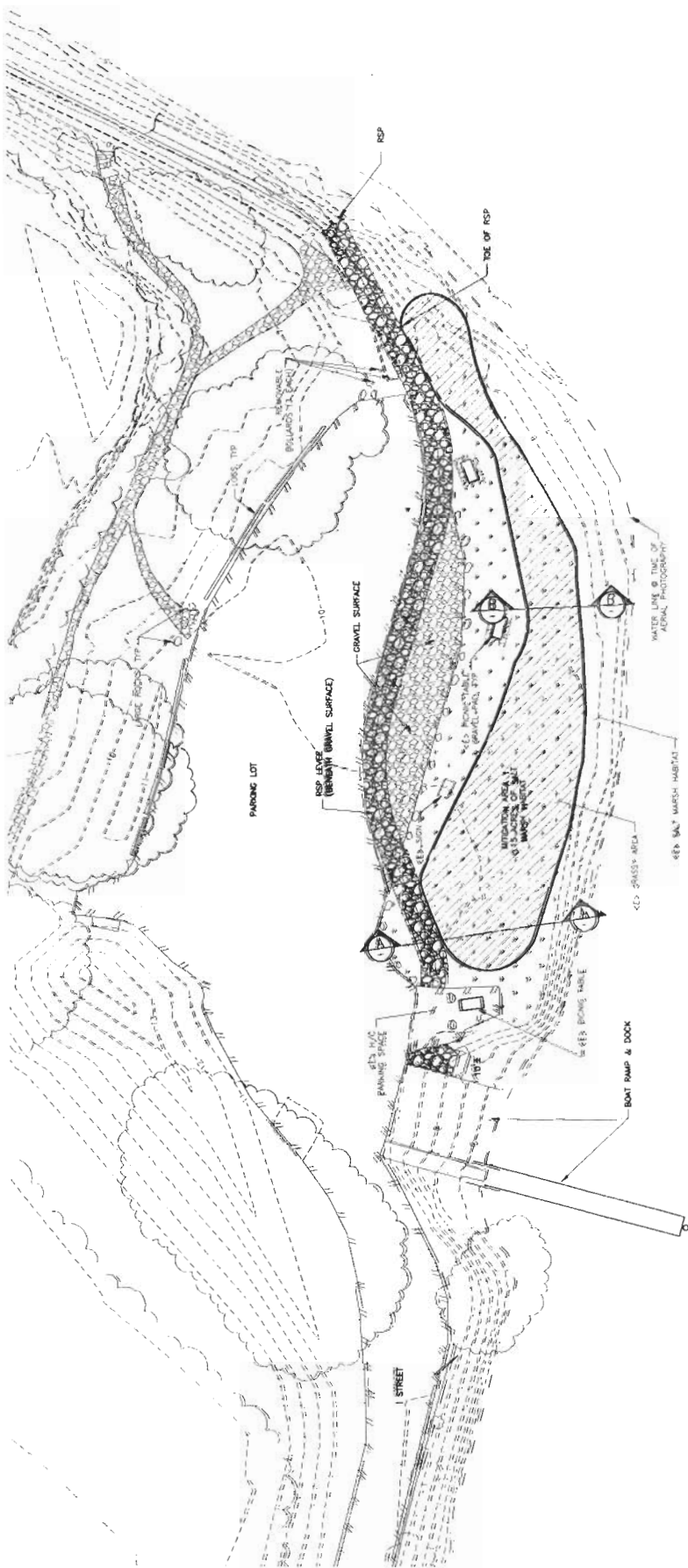
GRAPHIC SCALE MEASURES 1 INCH
 ON FULL-SIZE PLANS.

LEGEND
 SALT MARSH HABITAT (PROVIDED BY JASON MEYER FROM ARW CORP. IN AUGUST 2009)
 RECORD PROJECT LIMITS OF DISTURBANCE
 PROJECT DISTURBANCE = 8,177 SF

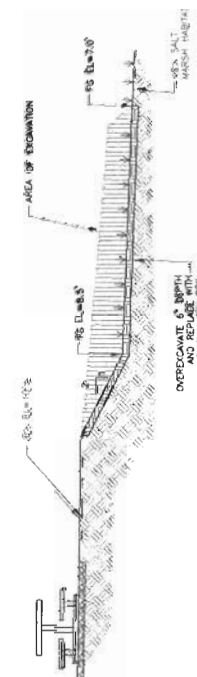
202

NO.	REVISION	BY	CHK	DATE

SCALE	AS SHOWN
DRAWN	DB
CHECKED	DB
APP'D	DB
DATE	2/15/10
JOB NO.	07000110
SHEET	3

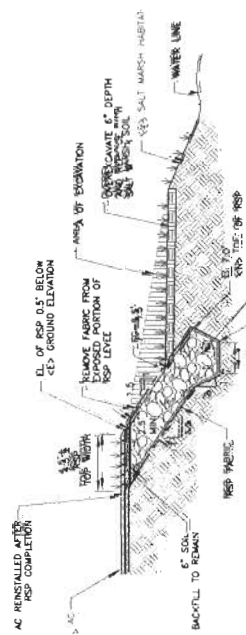


GRAPHIC SCALE MEASURES 1 INCH ON FULL-SIZE PLAN.



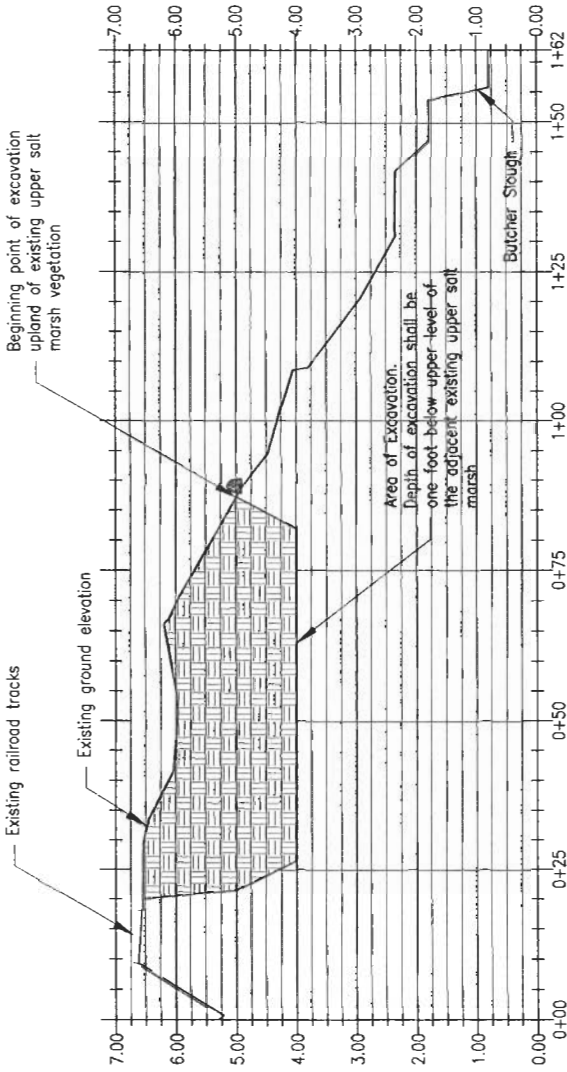
SECTION B-B

EXHIBIT NO. 6
CDP AMENDMENT APPLICATION NO.
 1-03-021-A1 (City of Arcata)
 PROPOSED MITIGATION AREA PLANS (1 of 3)



SECTION A-A @ RSP

BASE OF COORDINATES: 2005 NAD 83 COORDINATE SYSTEM, ZONE 1, NAD 83 NORTH UTM 10 Q 88



Cross Section Ten times vertical exaggeration

Notes:

1. Excavate areas one foot below upper limits of adjacent upper salt marsh.
2. Backfill with salvaged salt marsh soils to elevation between the upper and lower limits of the adjacent upper salt marsh (0.5'±).
3. Excavated materials will be taken to McDaniel slough project to raise marsh plain elevation as per CC permit # 1-06-036 or to Jacoby Creek Quarry
4. BMP's include: silt fences, work during low tide, jute mat or equivalent
5. Area to be re-vegetated with salvaged salt marsh plants/seed for *Deschampsia cespitosa*, *Salicornia virginica* and *Distichlis spicata*

REVISIONS

DATE	ITEM

South I Street Upper Salt Marsh Restoration

CITY OF ARCATA

DESIGNED BY:	APPROVED BY:	DATE:
DRAWN BY: TMB	X	
CHECKED BY:		
FILE: Topo of South I Mapleton Marsh_3.dwg		

SHEET
2 of 2

SCALE: 1"=20'

2 of 3



Area A:
 0.30 Acres Includes Deschampsia
 12936 Sq Ft
 1070 Cu Yd Cut

Area B:
 0.25 Acres Includes Deschampsia
 11145 Sq Ft
 1083 Cu Yd Cut

Deschampsia Area = 0.15 Acres

CITY OF ARCATA

South I Street
 Upper Salt Marsh
 Restoration

DATE	ITEM	DATE	ITEM
04-02-10	Area of Deschampsia Added		

REVISIONS

DESIGNED BY:	APPROVED BY:	DATE:	SHEET
DRAWN BY: TMB	X		1 of 2
CHECKED BY:	X		
TITLE: Type of South I Abandonment, Marine, Log	DATE:	SCALE: 1"=60'	

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE
710 E STREET • SUITE 200
EUREKA, CA 95501-1865
VOICE (707) 445-7833
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EXHIBIT NO. 7
CDP AMENDMENT APPLICATION NO.
1-03-021-A1 (City of Arcata)
STAFF REPORT FOR CDP NO. 1-03-021 (EXCERPT) (1 of 39)

Filed: July 14, 2003
49th Day: September 1, 2003
180th Day: January 10, 2004
Staff: Diane Landry
Staff Report: June 30, 2005
Hearing Date: July 14, 2005
Commission Action:

STAFF REPORT: REGULAR CALENDAR

APPLICATION NUMBER: **1-03-021**

APPLICANT: **City of Arcata, Julie Neander, Resource Specialist**

PROJECT LOCATION: **Arcata Marsh and Wildlife Sanctuary, Klopp Lake Dike and Islands, South I Street and City of Arcata Oxidation Pond Dikes, 600 G Street, City of Arcata, Humboldt County.**

PROJECT DESCRIPTION: **Repair of eroded dikes and islands as follows: placement of 700 cubic yards of 1/4th ton, 1/2 ton and 12 to 14 inch diameter rip rap along 740 lineal feet of island shoreline within Klopp Lake, placement of 900 cubic yards of fill (rock slope protection and rip rap) along 2000 linear feet of the inboard area of the Klopp Lake dike, 3000 Cubic yards of fill along 2210 linear feet of the outboard side of the Klopp Lake dike and 1250 cubic yards of concrete and rip rap material along 1050 linear feet of the outboard side of the Oxidation Pond dike. Ten year permit for routine repair and maintenance of the Oxidation Pond and Klopp Lake and islands.**

LOCAL APPROVALS: **City of Arcata Planning approval, April 4, 2003**

SUMMARY OF STAFF RECOMMENDATION:

The City of Arcata is proposing the project to repair and maintain the existing dikes around Klopp Lake and the Oxidation Ponds that are part of the City's wastewater Treatment System. The purpose of the project is to repair and maintain the dikes so that they will not fail and cause loss of public access to the trail network along the levees, inland flooding, loss of bird habitat and release of primary treated sewage effluent into Arcata Bay.

The proposed project includes the following three elements:

Emergency Permit Follow-up Coastal Development Permit for Culvert

Replacement: The first part of the project is a follow up permit to an Emergency Permit (E 1-03-065-G) granted by the North Coast District Office in October of 2003 for the repair of 1050 linear feet of eroded dike at the Oxidation Pond. The Emergency Permit allowed the placement of 600 cubic yards of rip rap (6" to 10" in size) overlain by 18" to 24" diameter rock along the outboard side of the levee. All work was done within the original footprint of the levee. The erosion damage was repaired consistent with the conditions placed on the Emergency Permit regarding the type of materials to be used in the repair of this section of the levee.

Repair and Maintenance of Klopp Lake levee and Islands. The second element of this project is the repair of eroded areas of the inboard and outboard sides of the Klopp Lake levee and around the eroded margins of the three small islands (East Island, West Island and Center Island) in the lake that provide resting areas for various shorebirds. The Klopp Lake levee work will be undertaken within the existing footprint of the levee and entails the placement of 900 cubic yards of rock slope protection and cement rip rap along 2000 linear feet of the inboard side of the levee and 3000 cubic yards along 2210 linear feet of the outboard side of the levee. The islands margins will be protected by 700 cubic yards of ¼ and ½ ton and 12" to 14" rip rap.

Ten Year Permit for Ongoing Repair and Maintenance Activities: The final element of the project is a proposal for a ten-year period of authorization to undertake routine repair and maintenance of the levee system at Klopp Lake and the Oxidation Ponds. All of the work is proposed within the existing footprint of the levee and will not result in any encroachment into Arcata Bay.

Although the City is seeking a long term permit for repair and maintenance activities, they have provided little detail as to the type of work to be covered under this permit or any protocols for undertaking the work in order to minimize impacts on wetland resources. Staff is therefore recommending conditions that limit the initial period of repair and maintenance authorization to five years, establish parameters for fill and armoring materials, provide for pre-construction training for the contractor, and limit

repair and maintenance activities to dry weather, avoid sensitive species, require the replanting of sensitive disturbed areas and require periodic monitoring.

As conditioned, Staff recommends approval. The motion to adopt the staff recommendation is on page 4.

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STAFF NOTES:

1. Standard of Review

The proposed development will be performed on levees located within state tidelands and public trust lands in the City of Arcata. Pursuant to Section 30519 of the Coastal Act, the Coastal Commission retains jurisdiction over the review and issuance of Coastal Development Permits in these areas even though the City of Arcata has a certified Local Coastal Plan. The standard of review for projects located in the Commission's original jurisdiction is Chapter 3 of the Coastal Act.

2. Commission Action Necessary

The Commission must act on the application at the July 14, 2005 meeting to meet the requirements of the Permit Streamlining Act.

I. MOTION, STAFF RECOMMENDATION, AND RESOLUTION OF APPROVAL:

The staff recommends that the Commission adopt the following resolution:

Motion:

I move that the Commission approve Coastal Development Permit Number 1-03-021 pursuant to the staff recommendation.

Staff Recommendation of Approval:

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

Resolution to Approve a Coastal Development Permit:

The Commission hereby approves the coastal development permit on the ground that the development as conditioned, will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the coastal development 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 amended development on the environment; or (2) there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse effects of the amended development on the environment.

II. STANDARD CONDITIONS See attached.

III. SPECIAL CONDITIONS

1. Length of Development Authorization

Repair and maintenance activities are only authorized by this permit for five (5) years from the date of Commission approval (until July 14, 2010). One request for an additional five-year period of repair and maintenance authorization may be accepted, reviewed and approved by the Executive Director for a maximum total of 10 years of

repair and maintenance authorization, provided the request would not substantively alter the project description, and/or require modifications of conditions due to new information or technology or other changed circumstances. The request for an additional five-year period of repair and maintenance authorization shall be made prior to July 14, 2010. If the request for an additional five-year period would substantively alter the project description, and/or require modifications of conditions due to new information or technology or other changed circumstances, an amendment to this permit will be necessary.

2. Standards for Repair and Maintenance Work

- a. Armoring Rock: All new revetment material to be used shall consist of either clean quarry rock or concrete rubble materials that are free of asphalt and waste materials. The revetment materials shall not be greater than three feet in any one direction or smaller than one cubic foot in size. All exposed reinforcement bar shall be removed prior to installation of any concrete rubble riprap. Armoring rock shall be stockpiled outside of Arcata Bay, Klopp Lake, and the oxidation ponds. No rock shall be placed outside of the existing footprint of the levee system as generally depicted on Exhibits C and D of the staff recommendation.
- b. Fill Material: Only dry, clean fill may be used for levee repairs and must be free of debris (vegetation, asphalt etc.). Fill material shall be stockpiled outside of Arcata Bay, Klopp Lake, and the oxidation ponds. No fill shall be placed outside of the existing footprint of the levee system as generally depicted on Exhibits C and D of the staff recommendation.
- c. Placement of Materials: Materials placed on the levees to be repaired, including all riprap, shall not extend into Arcata Bay, Klopp Lake or the oxidation ponds beyond the footprint of the levee as it existed before the repair. The determination of the location of the front of the levee shall be made through a 'string line' method, whereby the portions of the levee that are not in need of repair or restoration on each side of the areas that is in need of repair shall be used to determine the maximum extent of the repair. Revetment material shall not be end-dumped, but placed in an interlocking fashion along the levee face to avoid spreading beyond the former footprint of the levee and to provide a structurally integrated revetment.
- d. Revegetation Of Disturbed Areas: When repair and maintenance activities disturb more than 100 square feet of area within the existing footprint of the levee, the disturbed area shall, immediately upon completion of the repair and maintenance activity, be revegetated with appropriate native plants.

- e. Disposal of Excess Material and Vegetation: All construction debris and cut vegetation shall be removed from the site and disposed of only at an authorized disposal site. Side casting of such material or placement of any such material within Arcata Bay, Klopp Lake or the oxidation ponds is prohibited.
- f. Installation of Silt Fences: Silt fences or equivalent devices shall be installed along the perimeter of each repair site prior to the placement of any fill materials to reduce the discharge of fill materials and sediment laden runoff into Arcata Bay, Klopp Lake or the oxidation ponds. The installed silt fences or equivalent devices shall be maintained during project construction and removed upon completion of the project.
- g. Spill Prevention: To prevent and address spills of equipment fuels, lubricants, and similar materials, the repair work shall incorporate the following measures: (a) no equipment fueling shall occur on the site or elsewhere along the levees; (b) all equipment used during construction shall be free of oil and fuel leaks at all times; (c) oil absorbent booms and/or pads shall be on site at all times during project construction and deployed if necessary in the event of a spill; and (d) all spills shall be reported immediately to the appropriate public and emergency services response agencies.
- h. Wet Season Work Prohibited: Repair and maintenance activities authorized by this permit shall only be performed during the dry season (April 15 to October 15).
- i. Pre-construction Contractor Training: Prior to the commencement of any repair and maintenance activities authorized by this permit, the Applicant shall ensure that the Contractor understands and agrees to observe the standards for work outlined in this permit and in the detailed project description included as part of the Applicants submittal and as revised by these conditions.
- k. Monitoring: Repair and maintenance activities shall be monitored on a quarterly basis by a qualified Civil Engineer, or equivalent expert, to ensure that work performed under this permit is consistent with the terms of the permit. The Monitor shall have the authority to stop work and to recommend remediation of ongoing work in order to comply with the terms and conditions of this permit.
- l. Annual Reports: The Applicant shall submit an annual report to the Executive Director on the anniversary date of the approval of this permit

beginning in 2006. The report shall describe the repair and maintenance activities completed during the reporting period and identify potential activities for the coming year.

- m. Annual Inspection: The levee system shall be inspected by a qualified Civil Engineer or equivalent, to identify areas where repair and maintenance work will be needed within the coming year. The location and type of work needed shall be described in a written report. The Engineers report shall be submitted to the City Manager, the City Ecologist and to the Executive Director. The report is due on the anniversary date of approval of this permit, beginning in 2006.
- n. Biological Survey: Areas identified for repair and maintenance in the coming year pursuant to Condition 2m, shall be surveyed by a qualified biologist for rare or endangered plants or animals. If any are found, all construction shall cease and shall not recommence except as provided below, and the permittee shall submit a supplementary rare or endangered plants or animals avoidance and mitigation plan for the review and approval of the Executive Director. If the Executive Director approves the plan and determines that the plan's recommended changes to the proposed development or mitigation measures are de minimis in nature and scope, construction may recommence after this determination is made by the Executive Director. If the Executive Director approves the supplementary rare or endangered plants or animals avoidance and mitigation plan but determines that the changes therein are not de minimis, construction may not recommence until after an amendment to this permit is approved by the Commission.

3. Closure of Trails During Construction

Temporary closures of public access trails during construction shall be limited to no more than 30 days at a time during each period of repair and maintenance

IV. FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

A. Project Description.

The proposed project includes three separate, but related, elements as discussed below. All of the proposed work will be, or has already been, done by the City of Arcata. The city is responsible for maintaining the levees and appurtenant development around Klopp Lake and the oxidation ponds. (See Exhibit A, Location Map).

Project Components

Emergency Permit Follow-up Coastal Development Permit for Culvert

Replacement: The first part of the project is a follow up permit to an Emergency Permit (E 1-03-065-G) granted by the North Coast District Office in October of 2003 for the repair of 1050 linear feet of eroded dike at the Oxidation Pond. (Please see Exhibit B) The Emergency Permit allowed the placement of 600 cubic yards of rip rap (6" to 10" in size) overlain by 18" to 24" diameter rock along the outboard side of the levee. All work was done within the original footprint of the levee. The erosion damage was repaired consistent with the conditions placed on the Emergency Permit regarding the type of materials to be used in the repair of this section of the levee.

Repair and Maintenance of Klopp Lake levee and Islands. The second element of this project is the repair of eroded areas of the inboard and outboard sides of the Klopp Lake levee and around the eroded margins of the three small islands (East Island, West Island and Center Island) in the lake that provide resting areas for various shorebirds. The Klopp Lake levee work will be undertaken within the existing footprint of the levee and entails the placement of 900 cubic yards of rock slope protection and cement rip rap along 2000 linear feet of the inboard side of the levee and 3000 cubic yards along 2210 linear feet of the outboard side of the levee. The islands margins will be protected by 700 cubic yards of ¼ and ½ ton and 12" to 14" rip rap. (Please see Exhibit C; Project Plans)

Ten Year Permit for Ongoing Repair and Maintenance Activities: The final element of the project is a proposal for a ten-year period of authorization to undertake routine repair and maintenance of the levee system at Klopp Lake and the Oxidation Ponds. All of the work is proposed within the existing footprint of the levee and will not result in any encroachment into Arcata Bay.

Although the City is seeking a long term permit for repair and maintenance activities, they have provided little detail as to the type of work to be covered under this permit or any protocols for undertaking the work in order to minimize impacts on wetland resources. Staff is therefore recommending conditions that limit the initial period of repair and maintenance authorization to five years, establish parameters for fill and armoring materials, provide for pre-construction training for the contractor, and limit repair and maintenance activities to dry weather, avoid sensitive species, require the replanting of sensitive disturbed areas and require periodic monitoring.

B. Permit Authority, Extraordinary Methods of Repair and Maintenance.

Coastal Act Section 30610(d) generally exempts from Coastal Act permitting requirements the repair or maintenance of structures that do not result in an addition to, or enlargement or expansion of the structure being repaired or maintained. However, the

Commission retains authority to review certain extraordinary methods of repair and maintenance of existing structures that involve a risk of substantial adverse environmental impact as enumerated in Section 13252 of the Commission regulations. Section 30610 of the Coastal Act provides, in relevant part:

Notwithstanding any other provision of this division, no coastal development permit shall be required pursuant to this chapter for the following types of development and in the following areas: . . .

(d) Repair or maintenance activities that do not result in an addition to, or enlargement or expansion of, the object of those repair or maintenance activities; provided, however, that if the commission determines that certain extraordinary methods of repair and maintenance involve a risk of substantial adverse environmental impact, it shall, by regulation, require that a permit be obtained pursuant to this chapter. [Emphasis added]

Section 13252 of the Commission administrative regulations (14 CCR 13000 *et seq.*) provides, in relevant part:

(a) For purposes of Public Resources Code section 30610(d), the following extraordinary methods of repair and maintenance shall require a coastal development permit because they involve a risk of substantial adverse environmental impact: . . .

(3) Any repair or maintenance to facilities or structures or work located in an environmentally sensitive habitat area, any sand area, within 50 feet of the edge of a coastal bluff or environmentally sensitive habitat area, or within 20 feet of coastal waters or streams that include:

(A) The placement or removal, whether temporary or permanent, of rip-rap, rocks, sand or other beach materials or any other forms of solid materials;

(B) The presence, whether temporary or permanent, of mechanized equipment or construction materials.

All repair and maintenance activities governed by the above provisions shall be subject to the permit regulations promulgated pursuant to the Coastal Act, including but not limited to the regulations governing administrative and emergency permits. The provisions of this section shall not be applicable to methods of repair and maintenance undertaken by the ports listed in Public Resources Code section 30700 unless so provided elsewhere in these regulations. The provisions of this section shall not be applicable to those activities specifically described in the document

entitled Repair, Maintenance and Utility Hookups, adopted by the Commission on September 5, 1978 unless a proposed activity will have a risk of substantial adverse impact on public access, environmentally sensitive habitat area, wetlands, or public views to the ocean. ...
[Emphasis added.]

The proposed project is a repair and maintenance project because it does not involve an addition to or enlargement of the levee. Although certain types of repair projects are exempt from CDP requirements, Section 13252 of the regulations requires a coastal development permit for extraordinary methods of repair and maintenance enumerated in the regulation. The proposed levee repair involves the placement of construction materials and removal and placement of solid materials within 20 feet of coastal waters. The proposed repair project therefore requires a coastal development permit under Sections 13252(a)(1) of the Commission regulations.

In considering a permit application for a repair or maintenance project pursuant to the above-cited authority, the Commission reviews whether the proposed *method* of repair or maintenance is consistent with the Chapter 3 policies of the Coastal Act. The Commission's evaluation of such repair and maintenance projects does not extend to an evaluation of the conformity with the Coastal Act of the underlying existing development.

The repair and maintenance of levees can have adverse impacts on coastal resources, in this case primarily bay waters and Klopp Lake wetlands, if not properly undertaken with appropriate mitigation. The Applicant proposes to maintain the levees in their existing footprint by repairing eroded areas with clean rock material similar to existing protection, replacing inboard and outboard armoring as needed to avoid erosion and to keep access open along the top of the levees so that equipment and supplies can be brought in as needed. They have also identified a staging area at the existing parking lot located adjacent to Klopp Lake and Hauser Marsh. (Please see Exhibit D; Staging Area Location) The city has given little detail on the specific activities that would be included in the program nor have they provided any protocols for undertaking the work in order to avoid adverse impacts on marine and wetland resources.

More specific measures are therefore needed to avoid, or minimize impacts on water quality, marine resources, wetlands and Environmentally Sensitive Habitat (ESHA). The conditions required to ensure that these measures are part of the project are discussed in the following findings relevant to water quality and ESHA. The Commission has, on occasion granted special districts and cities multi-year periods of authorization for such activities (i.e. 3-04-72, Moss Landing Harbor District routine pier replacement; and 3-00-034, Santa Cruz Port District, routine maintenance dredging; 3-02-047, Monterey Harbor, routine operations and maintenance and 1-03-004, Reclamation District 768, routine repair and maintenance of levee system) in order to reduce both Commission and local staff workload associated with processing repetitive, routine coastal permits. However,

given the fact that circumstances can change over time and techniques for addressing maintenance needs can also evolve, the Commission chooses to grant an initial five year period of repair and maintenance authorization with a one-time ability to extend the period of repair and maintenance authorization for another five years for a maximum total of 10 years of repair and maintenance authorization if there are no changed circumstances that require review. This permit is conditioned accordingly. Therefore, as conditioned in these Findings, the Commission finds that the proposed project is consistent with PRC Section 30236.

C. Public Access.

This project is located between the first public road and the sea (Please see Exhibit A, Location Map). Section 30604 (c) of the Coastal Act requires that every Coastal Development Permit issued for development between the first public road and the sea “shall include a specific finding that the development is in conformity with the public access and public recreation policies of Chapter 3 (commencing with Section 30200).”

Coastal Act Policies

Section 30210 of the Coastal Act states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30211 of the Coastal Act states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30212 of the Coastal Act states:

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or (3) agriculture would be adversely affected. Dedicated access way shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the access way.

- (b) *For purposes of this section, "new development" does not include:*
- (1) *Replacement of any structure pursuant to the provisions of subdivision (g) of Section 30610.*
 - (2) *The demolition and reconstruction of a single-family residence; provided, that the reconstructed residence shall not exceed either the floor area, height or bulk of the former structure by more than 10 percent, and that the reconstructed residence shall be sited in the same location on the affected property as the former structure.*
 - (3) *Improvements to any structure which do not change the intensity of its use, which do not increase either the floor area, height, or bulk of the structure by more than 10 percent, which do not block or impede public access, and which do not result in a seaward encroachment by the structure.*
 - (4) *The reconstruction or repair of any seawall; provided, however, that the reconstructed or repaired seawall is not seaward of the location of the former structure.*
 - (5) *Any repair or maintenance activity for which the commission has determined, pursuant to Section 30610, that a coastal development permit will be required unless the commission determines that the activity will have an adverse impact on lateral public access along the beach.*

As used in this subdivision, "bulk" means total interior cubic volume as measured from the exterior surface of the structure.

(c) *Nothing in this division shall restrict public access nor shall it excuse the performance of duties and responsibilities of public agencies which are required by Sections 66478.1 to 66478.14, inclusive, of the Government Code and by Section 4 of Article X of the California Constitution. [Emphasis added.]*

The access policies cited above are those relevant to this project and direct the Commission to generally require maximum public access in new development unless the access would be inconsistent with public safety, resource protection, private property rights, or military security needs (§§30210 and 30212) or would be otherwise exempt from providing access by statute (§30212(b)(5)). Coastal Act Section 30211 requires that new development shall not interfere with existing public access that has been acquired either by use or through legislative authorization.

Analysis

As stated above, the proposed project is for the ongoing repair and maintenance of pre Coastal Act levee systems at Klopp Lake and the city's oxidation ponds. These levee systems have a dual purpose, one purpose is to protect Klopp Lake and the Oxidation Ponds from erosion and the other is to provide a public trail along the tops of the levees as part of the Arcata Marsh and Wildlife Sanctuary. Ordinarily, routine repair and maintenance is an exempt activity under Coastal Act Section 30610(d) and thus no coastal development permit would be required. Certain repair and maintenance activities are, however, excepted from this general exemption by regulation, as authorized by Section 30610(d), because they may "*involve the risk of substantial adverse environmental impact*". The Commission's regulations identify repair and maintenance activities performed near the shoreline, as proposed by this application, must obtain coastal development permits and are not exempt under Section 30610 (d) (California Code of Regulations, Title 14, Section 13252 (a) (3)). However, because repair and maintenance is not considered new development for purposes of Section 30212, Coastal Act Section 30212(b)(5) excludes these repair and maintenance activities from Coastal Act access requirements unless the Commission "*determines that the activity will have an adverse impact on lateral beach access.*"

The proposed repair and maintenance activities will have no impact on lateral beach access because the proposed work will be accomplished within the existing footprint of the levees, staging areas are located outside of any access or access points and because there is no beach adjacent to the levees. The project is, therefore consistent with the requirements of Sections 30210 and 30212.

Coastal Act Section 30211 also requires new development to not interfere with existing access. The Commission notes that a public trail network associated with the Arcata Marsh and Wildlife Sanctuary is located along the top of the levees and portions of this trail will be closed briefly to accommodate the installation of the levee protection materials. To ensure that the planned closures are actually brief, the Commission attaches Special Condition No. 3, which requires that portions of the trail be closed for no more than 30 days at a time during each episode of repair and maintenance activity. As conditioned, the temporary closures of trails will not result in a significant adverse impact on public access use.

In conclusion, the proposed project is not considered new development for the purposes of application of Section 30212 of the Coastal Act because it is a repair and maintenance activity that will not adversely affect lateral beach access and is therefore consistent with the policy direction found in Section 30212.

D. Water Quality.

The proposed repair and maintenance work will take place on levees located immediately adjacent to Arcata Bay on the outboard side and Klopp Lake and the Oxidation Ponds on the inboard side, thus there is a potential for adverse impacts to water quality of the bay and lake waters..

Coastal Act Policy

Section 30231 of the Coastal Act states:

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 Section 30233 states:

- (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.*

(b) Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation. Dredge spoils suitable for beach replenishment should be transported for such purposes to appropriate beaches or into suitable longshore current systems.

(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. Any alteration of coastal wetlands identified by the Department of Fish and Game, including, but not limited to, the 19 coastal wetlands identified in its report entitled, "Acquisition Priorities for the Coastal Wetlands of California", shall be limited to very minor incidental public facilities, restorative measures, nature study, commercial fishing facilities in Bodega Bay, and development in already developed parts of south San Diego Bay, if otherwise in accordance with this division.

For the purposes of this section, 'commercial fishing facilities in Bodega Bay' means that not less than 80 percent of all boating facilities proposed to be developed or improved, where such improvement would create additional berths in Bodega Bay, shall be designed and used for commercial fishing activities.

(d) Erosion control and flood control facilities constructed on watercourses can impede the movement of sediment and nutrients which would otherwise be carried by storm runoff into coastal waters. To facilitate the continued delivery of these sediments to the littoral zone, whenever feasible, the material removed from these facilities may be placed at appropriate points on the shoreline in accordance with other applicable provisions of this division, where feasible mitigation measures have been provided to minimize adverse environmental effects. Aspects that shall be considered before issuing a coastal development permit for such purposes are the method of placement, time of year of placement, and sensitivity of the placement area.

These policies require the protection of coastal waters to ensure biological productivity, protect public health and water quality. New development must not adversely affect these values and should help to restore them when possible.

Analysis

Implementation of the proposed repair and maintenance program will result in the transportation and placement of fill and armoring materials to the sites to be maintained, the use of staging areas for stockpiling of materials to be used for the project and other material to be disposed of and the removal of vegetation by mechanical mowing equipment. Unless appropriate protocols are followed, all of these activities could result in fuel or oil spills, improper storage of materials in or adjacent to sensitive areas, and increased turbidity that would have adverse impacts on water quality. The repair and maintenance program proposed by the City does not include protocols to protect water quality. Typical protocols would include the use of geo-textile fabric between fill and armoring to reduce migration of fill into bay or lake waters, the consistent use of siltation fences at work sites to reduce discharges, proper disposal of abandoned or excess materials and vegetation to appropriate off site disposal facilities, a prohibition on the storage of any excess materials within any wetland, spill prevention measures and the location of a staging area outside any sensitive lands. Appropriate protocols would also include limiting repair and maintenance activities to dry periods, providing specificity regarding the type of material and armoring that can be used and providing for monitoring, or pre-construction training for the contractor to ensure the proper protocols are understood and carried out.

As conditioned to provide specific protocols for the proposed repair and maintenance work, this project is consistent with the direction of Policy 30231 and 30233 to protect water quality.

E. Marine Resources.

The outboard side of the levee system is adjacent to Arcata Bay and the proposed repair and maintenance program has the potential to adversely affect marine resources. The following section of the Coastal Act requires that new development maintain, enhance and where feasible restore damaged marine resources.

Coastal Act Policy

Section 30230 of the Coastal Act states:

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.

Analysis

The waters of Arcata Bay provide habitat for a number of marine species. No endangered species have been identified in the vicinity of the project. As conditioned to train contractors prior to work, limit the placement of levee protection materials to the existing footprint and to require the use of siltation fences, the impact on the marine resources from the proposed repair and maintenance activities will be insignificant. Although no rare salt marsh plants have been identified in the vicinity of the project there is a potential for their presence. In order to avoid any impacts on these plants, should they colonize along the levee, Condition No. 2n requires an annual survey of sites chosen for repair and maintenance activities prior to the commencement of that year's work to determine if any rare plants or animals exist within the work areas. If such rare plants or animals are found, the permittee must halt construction and submit a supplementary rare or endangered plants or animals avoidance and mitigation plan for the review and approval of the Executive Director. If the Executive Director approves the plan and determines that the plan's recommended changes to the proposed development or mitigation measures are de minimis in nature and scope, construction may recommence after this determination is made by the Executive Director. If the Executive Director approves the supplementary rare or endangered plants or animals avoidance and mitigation plan but determines that the changes therein are not de minimis, construction may not recommence until after an amendment to this permit is approved by the Commission. As conditioned, the project can be found consistent with the Coastal Act Policy 30230.

G. California Environmental Quality Act (CEQA).

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of 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.

This staff report has discussed the relevant coastal resource issues with the proposal, and has recommended appropriate mitigations to address adverse impacts to said resources. Accordingly, the project is being approved subject to conditions which implement the mitigating actions required of the Applicant by the Commission (see Section III, "Special Conditions").

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 achieve consistency between the proposed project and the requirements of the applicable policies of the Coastal Act. These findings address and respond to all public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the staff report. Mitigation measures that 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. As such, the Commission finds that only as modified and conditioned by this permit will the proposed project not have any significant adverse effects on the environment within the meaning of CEQA.

V. EXHIBITS

- A. Location Map
- B. Emergency Permits
- C. Project Description
- D. Habitat Report

ATTACHMENT

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

APPENDIX A

STANDARD CONDITIONS

1. Notice of Receipt and Acknowledgement. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable amount 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 of the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE

MAILING ADDRESS:

710 E STREET • SUITE 200

P. O. BOX 4908

EUREKA, CA 95501-1865

EUREKA, CA 95502-4908

VOICE (707) 445-7833

FACSIMILE (707) 445-7877



EMERGENCY PERMIT

Date: October 24, 2003Emergency Permit No.: 1-03-065-G

Julie Neander, Resource Specialist
 City of Arcata
 736 F Street
 Arcata, CA 95521

LOCATION OF EMERGENCY WORK:

Along the southwest side of the City of Arcata's Wastewater Treatment Plant Oxidation Ponds, adjacent to Arcata Bay, Arcata, Humboldt County

WORK PROPOSED:

Repair 1,050-lineal-feet of the levee damaged by storm surf along the outer oxidation pond's dike by placing clay materials along eroded portions of the levee to restore a 1:1 slope and placing a total of approximately 600 cubic yards of riprap along the outboard side of the levee consisting of 6"- to 10"-diameter rock and overlain with armor 18"- to 24"-diameter rock.

PERMIT RATIONALE:

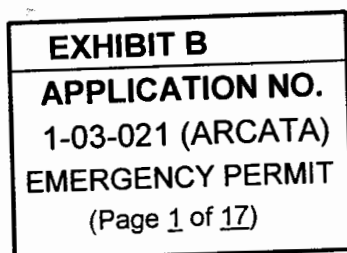
This letter constitutes approval of the emergency work you or your representative has requested to be done at the location listed above. I understand from your information and our site inspection that an unexpected occurrence in the form of excessive levee erosion caused by storm surge has greatly increased the risk of breaching of the levee which would disrupt the municipal sewage system and release millions of gallons of primary treated sewage into Humboldt Bay, causing a serious health, safety, and environmental danger. Therefore, the situation requires immediate action to prevent damage to life, property, or essential public services.

Pursuant to Title 14 of the California Code of Regulations, Section 13009, the Executive Director of the Coastal Commission hereby finds that:

- (a) An emergency exists which requires action more quickly than permitted by the procedures for administrative or ordinary permits and the development can and will be completed within 30 days unless otherwise specified by the terms of this permit; and
- (b) Public comment on the proposed emergency action has been reviewed as time allows; and
- (c) As conditioned, the work proposed would be consistent with the requirements of the California Coastal Act of 1976.

The work is hereby approved, subject to the conditions listed on the attached page.

If you have any questions about the provisions of this Emergency Permit, please contact the Commission's North Coast District Office.



Sincerely,

PETER M. DOUGLAS
 Executive Director

Robert S. Merrill
 By: Robert S. Merrill
 North Coast District Manager

CONDITIONS OF APPROVAL:

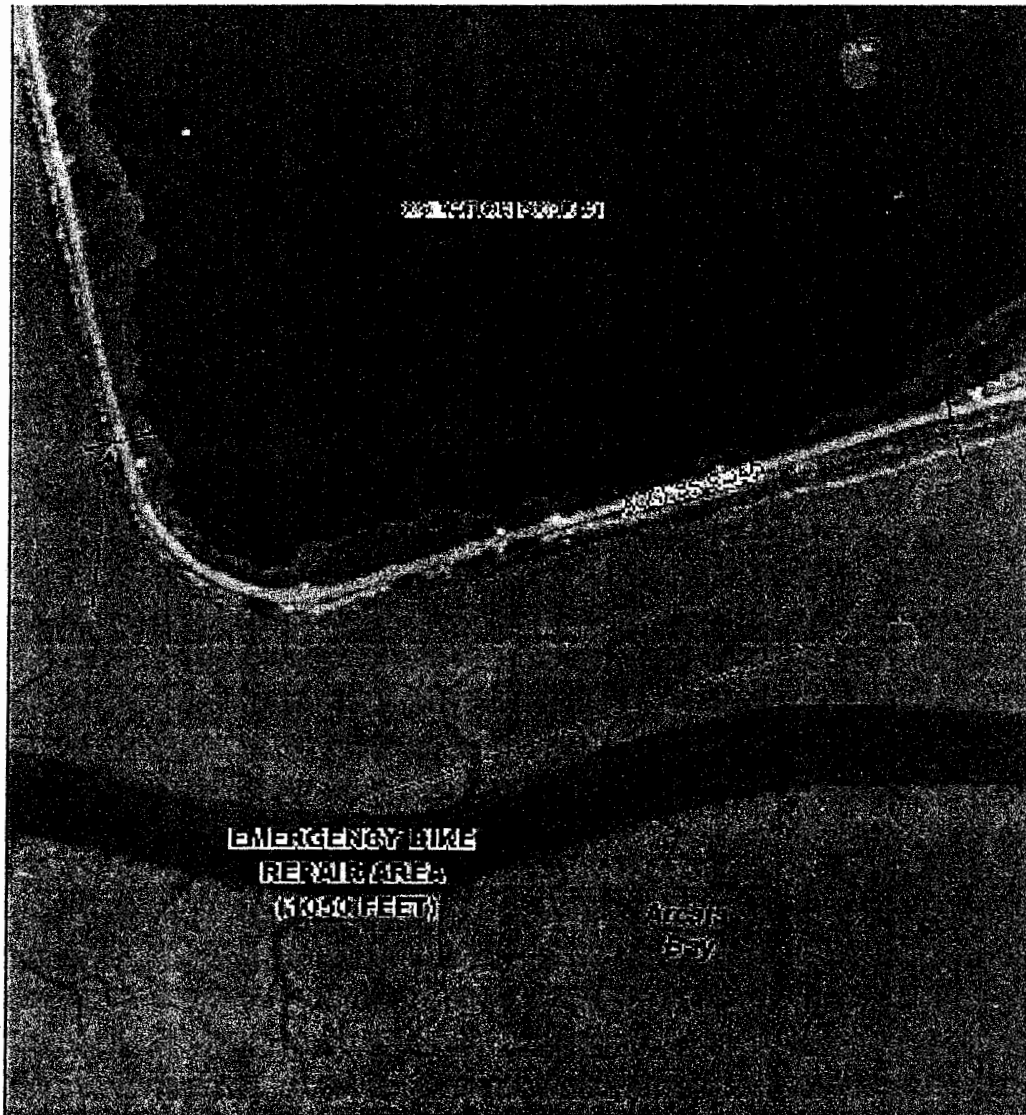
1. The enclosed Emergency Permit Acceptance form must be signed by the PROPERTY OWNER and returned within 5 days.
2. Only work specifically described in this permit and for the specific property listed above is authorized. The project shall be constructed in accordance with the plans and other information submitted to the Coastal Commission. Any additional work requires separate authorization from the Executive Director.
3. The work authorized by this permit must be completed within 30 days of the date of this permit (i.e., by November 23, 2003).
4. The permittee shall obtain a regular coastal development permit (CDP) to have the emergency work considered permanent. The applicant has previously submitted Coastal Development Permit Application No. 1-03-021 requesting authorization of the development that is the subject of this emergency permit, as well as additional development. If CDP Application No. 1-03-021 is denied by the Commission, the emergency work shall be removed in its entirety within 150 days of the date of this permit (i.e., by March 22, 2004), unless this requirement is waived in writing by the Executive Director.
5. Materials for the revetment repair shall match materials in place at the site to the extent that the rock revetment material to be used in the repair areas currently armored with broken concrete blocks and angular quarry rock shall consist of angular rock, and the rock material to be used in repair areas currently armored with rounded boulder materials shall consist of rounded quarry rock. Revetment material shall not be end-dumped, but placed in such a manner so as to interlock with the residual revetment materials still in place along the dike face to provide a structurally integrated revetment.
6. All protruding metal reinforcement bar, flanges, and other exposed metal within existing revetment materials to remain in the repair areas shall be torch-cut off flush with the concrete block in which they are encased or attached. Any other easily extricable debris materials (e.g., tires, wiring conduit, etc.) within the project area shall be removed prior to placement of the repair riprap.
7. The repair materials shall not be placed atop or otherwise bury any inappropriate revetment materials (e.g., asphaltic-concrete, metal or ceramic piping, large concrete thrust blocks or vaults) currently in place along the dike face so as to prevent their extraction at a later time.
8. **PRIOR TO COMMENCEMENT OF CONSTRUCTION**, the permittee shall map the extent of existing salt marsh vegetation that will be covered by the revetment material and submit the map to the Executive Director..
9. In exercising this permit, the applicant agrees to hold the California Coastal Commission harmless of any liabilities for damage to public or private properties or personal injury that may result from the project.
10. This permit does not obviate the need to obtain necessary authorizations and/or permits from other agencies.

The emergency work is considered to be TEMPORARY work done in an emergency situation. If the property owner wishes to have the emergency work become a permanent development, a Coastal Development Permit must be obtained. A regular permit would be subject to all of the provisions of the California Coastal Act and may be conditioned accordingly. These conditions may include provisions for public access (such as an offer to dedicate an easement) and/or a requirement that a deed restriction be placed on the property assuming liability for damages incurred from storm waves.

If you have any questions about the provisions of this emergency permit, please call the Commission's North Coast District Office at the address and telephone number list on the first page.

Encl: Emergency Permit Acceptance Form

City of Anacosta
**OXIDATION POND #1
EMERGENCY DIKE REPAIR AREA**



1" = 125 FEET

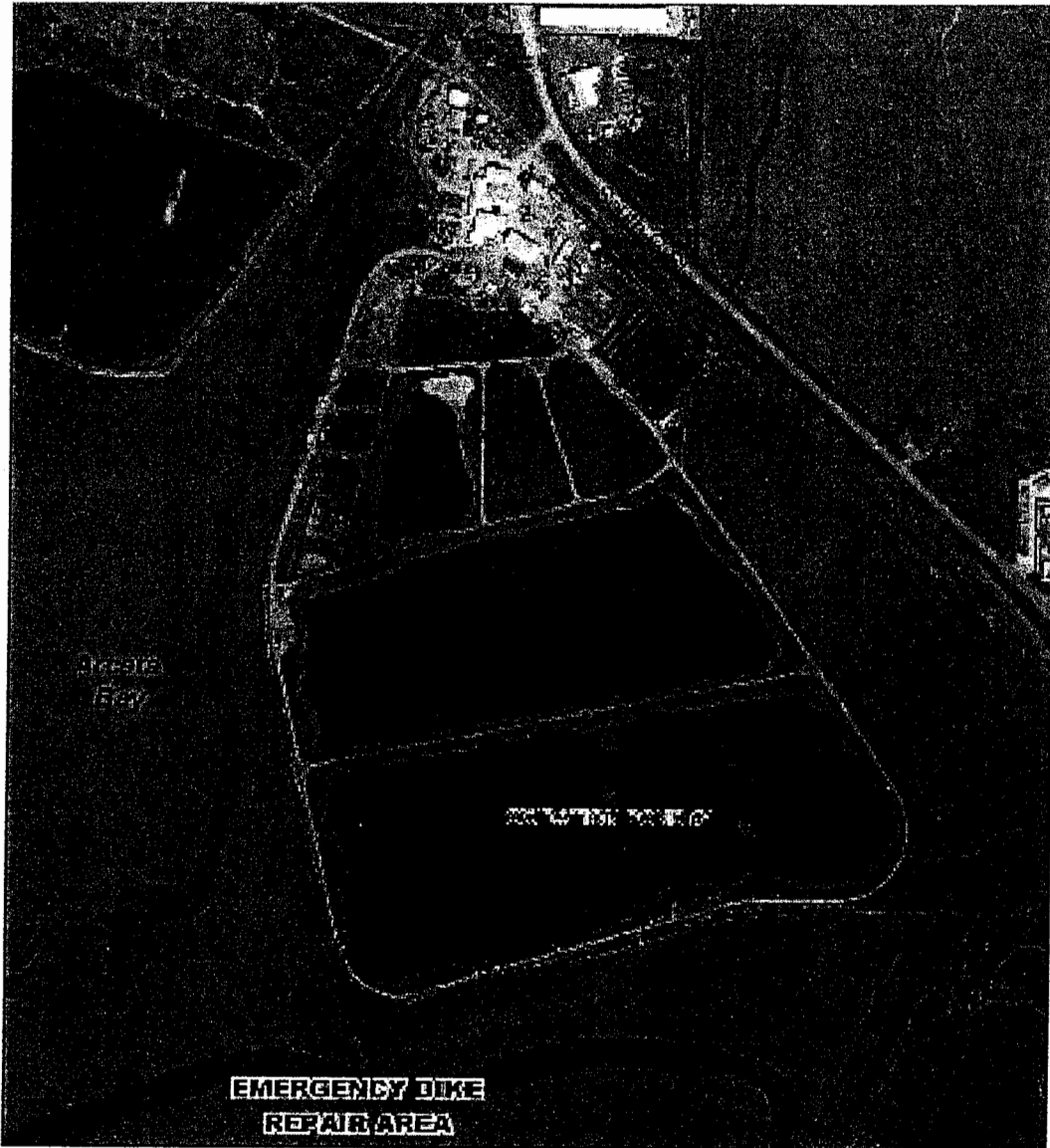


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THIS DOCUMENT IS THE PROPERTY OF THE CITY OF ANACOSTA. IT IS TO BE USED ONLY FOR THE PURPOSES FOR WHICH IT WAS ISSUED. IT IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF THE CITY OF ANACOSTA.

City of Arcata Wastewater Treatment Plant



THE CITY OF ARCATAS PUBLIC UTILITY DEPARTMENT HAS BEEN AWARDED A CONTRACT BY THE STATE OF CALIFORNIA TO PROVIDE DESIGN SERVICES FOR THE CITY OF ARCATAS WASTEWATER TREATMENT PLANT. THE CITY OF ARCATAS PUBLIC UTILITY DEPARTMENT IS NOT RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION SHOWN ON THIS MAP. THE CITY OF ARCATAS PUBLIC UTILITY DEPARTMENT IS NOT RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION SHOWN ON THIS MAP.



STATE OF CALIFORNIA - THE RESOURCES AGENCY

GRAY DAVIS, Governor

CALIFORNIA COASTAL COMMISSION
NORTH COAST DISTRICT OFFICE MAILING ADDRESS:
710 E STREET • SUITE 200 P. O. BOX 4806
EUREKA, CA 95501-1803 EUREKA, CA 95504-4806
VOICE (707) 445-7543
FAX (707) 445-7577

RECEIVED

OCT 22 2003



APPLICATION FOR EMERGENCY PERMIT CALIFORNIA COASTAL COMMISSION

PLEASE NOTE: The following information and attachments must be submitted in writing in order to receive an Emergency Permit pursuant to Public Resources Code Section 30824(a). If the emergency situation is such that a verbal authorization is given by the District Director to commence emergency work, the application for emergency permit must still be submitted by the property owner within 3 days of the disaster or discovery of the danger. 14 Cal. Admin. Code Section 13139.

- | | | |
|-----|--|---|
| | <input type="checkbox"/> <input checked="" type="checkbox"/> <input checked="" type="checkbox"/> | |
| 1. | <u>October 20, 2003; 1:00 p.m.</u>
Date/Time | Request: In person by telephone by mail |
| 2. | <u>City of Arcata</u>
Name(s) of Property Owner(s) | <u>Julie Neander, Resource Specialist</u>
Name(s) of Representative(s) |
| | Address: 736 F Street
Arcata, CA 95521 | Address: 736 F Street
Arcata, CA 95521 |
| | Phone Number: (707) 822-8184 | Phone Number: (707) 825-2153 |
| 3. | Location of Emergency Work: Oxidation pond dikes | |
| 4. | Evidence of applicant's interest in property on which emergency work is to be performed. City has operated oxidation ponds since 1955. | |
| 5. | Assessor's Parcel Number: N/A | |
| 6. | Contractor, or person(s) who will do emergency work/address/phone number (if different from representative): <u>William R. Gilmer, Water/Wastewater Superintendent and Environmental Services Department staff direct: (707) 825-2155 main: (707) 822-8184</u> | |
| 7. | Nature and cause of emergency (brief description): <u>Erosion of exterior of oxidation pond dikes</u> | |
| 8. | The circumstances during the emergency that appeared to justify the course(s) of action taken, including the probable consequences of failing to take action:
<u>See attached</u> | |
| 9. | Method and preventive work requested (e.g., rip-rap, bulkhead, etc.):
<u>See attached</u> | |
| 10. | Timing of emergency work (estimate as to when work will be performed -- generally a period of 24 to 72 hours after the emergency occurrence):
<u>City will undertake the work as soon as permit is granted.</u> | |

ATTACHMENTS - Please provide the following:

1. If time permits, evidence of approval by local planning department.
2. Site plan showing proposed and existing development on the subject parcel.
3. Vicinity map (road map) with location of project site marked. For rural areas, please also provide a parcel map.

(Page 9 of 17)

California Coastal Commission

45 Fremont, Suite 2000
San Francisco, CA 94105-2219
Voice and TDD (415) 904-5200 CALNET 539-5200

FAX COVER SHEET

Date: 10/22/03 Time: _____ Number of Pages (Including this cover sheet): _____

To: Bob Merrill From: J. Amello

Company: _____ Unit: _____

Address: _____ Telephone Number: _____

FAX Number: _____ Direct FAX = (415) 904-5400 CALNET = 539-5400

Remarks: Urgent For your review Reply ASAP Please comment Other

Here's the fax

1-03-065 - G



736 F Street
Arcata, CA 95521

City Manager (707) 822-5953	Environmental Services 822-8184	Police 822-2428	Recreation 822-7091
Community Development 822-5955	Finance 822-5951	Public Works 822-5957	Transportation 822-3775

October 21, 2003

RECEIVED

OCT 22 2003

CALIFORNIA
COASTAL COMMISSION

RECEIVED
OCT 21 2003

CALIFORNIA
COASTAL COMMISSION

Peter M. Douglas, Executive Director
California Coastal Commission
45 Fremont Street
San Francisco, CA 94105-2219

Re: City of Arcata Emergency Public Works Repair for Wastewater Oxidation
Pond Dike Repairs

Via Fax: 415-904-5200
Certified Mail

Dear Peter:

The problem of trying to quickly resolve the issue of a permit for the repair and maintenance of the dike system for the Arcata Marsh and Wildlife Refuge has ended up on my desk. I need your immediate assistance so that I can protect the oxidation pond portion from probable damage during the coming winter storms. I have attached the needed estimate of time and materials to protect the most vulnerable area with instructions that the cost is to remain under \$25,000. Please issue the emergency permit this week so that repairs can be made before November 1st and the start of the winter storm season.

The most frustrating part is that there would be no need for an emergency permit if the regular application had been processed in a timely manner. Application for the normal repair and maintenance permit was submitted to all of the regulatory agencies in early April of 2003. The Corps of Engineers, with concurrence of National Marine Fisheries, issued a five-year permit on August 6, 2003. The California Department of Fish & Game issued a five-year permit on September 10, 2003. The North Coast Regional Water Quality Control Board issued a five-year permit on September 9, 2003. There is nothing in the file to indicate that your office even responded or raised issues until earlier this month! That is totally irresponsible.

The City of Arcata has been and continues to be one of the most environmentally responsible agencies in California, yet when it comes to getting a permit from the Coastal Commission you would think we were the least responsible. The City has restored miles

had to determine how many cows might be effected by our fencing them out of a riparian zone! We also had to calculate the "footprint" of the fence posts to determine how much wetlands would be lost! Getting lost in some of these meaningless details loses sight of the bigger issues. The big issue is that we are taking a drainage ditch in a marginal pasture and returning it to productive fish and wildlife habitat. The Coastal Commission staff should be in the forefront of making this restoration happen throughout California. Instead, we worry about the footprint of fence posts?

If this bureaucratic nonsense existed back in the 1970's, I would not have been able to build the Arcata Marsh and Wildlife Refuge or return the needed freshwater habitat to Humboldt Bay. I've got major projects ahead in the next couple of years - building more freshwater marshes, creating saltwater marshes, removing dikes and restoring streams - all in the Coastal Zone. Please straighten out this process so that I can move quickly and creatively to enhance and improve the quality of the environment on the north end of Humboldt Bay.

In the meantime, please forward the emergency permit and make sure that the long-term permit is on an early agenda for the Commission. Thank you in advance for your understanding and expeditious handling of this problem. If there are any questions, please contact me direct.

Sincerely,



Dan Hauser
City Manager

Cc: Bob Merrill - California Coastal Commission, North Coast District Office
Steve Tyler - Director Environmental Services, City of Arcata

Attachments: Emergency Permit Application, Maps & Correspondence

(Page 7 of 17)

Attachment for California Coastal Commission Emergency Permit Application
Submitted October 21, 2003
City of Arcata Repairs to Existing Oxidation Pond Dikes

8. Circumstances during the emergency that appeared to justify the course of action taken, including the probably consequences of failing to take action.

Attached October 10, 2003 Memo from Steve Tyler- City of Arcata Environmental Services Director to Tom Conlon - City of Arcata Community Development Director outlines the circumstances surrounding the emergency action.

Attached October 13, 2003 letter from Tom Conlon to Peter Douglas- California Coastal Commission Executive Director provides documentation that the City, as of October 13, 2003 notified the Coastal Commission of the City's intent to repair the dikes as an emergency action.

Attached email, dated October 14, 2003 from Bob Merrill directs the City to obtain an emergency permit rather than utilize the emergency waiver process.

9. Method and preventive work requested (e. g. rip-rap, bulkhead, etc.)

After receiving the email from Bob Merrill, City staff reviewed the oxidation pond dike on Friday October 17, 2003 and agree with the Coastal Commission's determination that "levee repairs are only needed in some locations". The City is proposing to repair 1050 feet of the entire levee. In this area the levee is eroded to the point that additional erosion will compromise the integrity of the dike and road which is only about 10- 12 feet wide in the area where repairs are proposed.

In this 1050 foot area much of the original riprap on the bayside levee area is either completely gone or very limited. Vegetated areas along the dike contain very little or no riprap and the vegetation masks the steepness of those banks where the drop to the old railroad bed is two to three feet in places. Vegetation will be brushed and then new rip rap will be placed in those areas. New rip rap will also be placed on the areas where riprap is still present. The levee will be repaired by placing clay along the steep banks to create a 45 degree slope as opposed to the almost 90 degree angles that currently exist along much of the levee. Where needed concrete will be removed so that the clay and boulders can be anchored properly. The clay will be covered with 6-10" rock, which will be overlain with 18-24" rock. The toe of the new slope will be located on the existing abandoned railroad bed. The rip rap will not be placed beyond the old railroad bed area and will involve approximately 600 cubic yards of material. Cost for the clay and riprap materials comes to \$10,800.00. City staff time for completing the work will be \$1,200.00

Attachment for California Coastal Commission Emergency Permit Application Submitted October 21, 2003
City of Arcata Repairs to Existing Oxidation Pond Dikes - Page 2

City staff will remove exposed rebar and asphalt wherever possible. The attached representational cross section and site map provide additional information.

Existing vegetation in the area where work is proposed is dominated by the following species: *Salix sp.* (willow), *Rubus discolor* (himalaya berry), *Viola major* (periwinkle), *Dipsacus fullonum* (teasel), *Spartina densiflora* (Chilean cordgrass), *Salicornia virginica* (pickleweed), and *Distichlis spicata* (salt grass). Only the willow, salt grass and pickle weed are not invasives. One plant of *grindelia stricta* plant was identified. *Scirpus maritimus* is also present. None of the identified native plants are have protected status.

(Page 11 of 17)

MEMO

DATE: October 10, 2003

TO: Tom Conlon - Director Community Development

FROM: Steve Tyler - Director Environmental Services *st*

RE: Emergency Repair of the Oxidation Pond and Klopp Lake Dikes

The outer dikes of both the City's oxidations ponds and the City's Arcata Marsh and Wildlife Sanctuary - Klopp Lake have over time been eroded away by winter storms and associated wind and wave action on Humboldt Bay. The City work plan to repair these dikes to prevent their failure includes reinforcing the outer dikes with one ton and ½ ton boulders and concrete riprap.

At the beginning of April 2003 the City submitted applications for Permits and Certifications to repair and maintain these dikes. Applications were submitted to the California Coastal Commission, the Department of Fish and Game, the Regional Water Quality Control Board and the Army Corps of Engineers with the intent to complete these repairs before the onset of the winter season. The City defines the onset of the winter season as October 15 with the possibility of extending that to November 1, if no significant rains occur. As of today, permits and certifications have been received by all agencies except the Coastal Commission. Staff have been in contact with Coastal Commission staff and have been informed that a permit from the Commission can not be issued before the end of November. This would potentially be after the onset of winter storms.

Environmental Services staff have reviewed the condition of the oxidation pond dikes and determined that without reinforcement the oxidation pond dikes could potentially fail during a major winter storm. This would cause a serious public health, safety, and environmental danger as millions of gallons of primary treated sewage would flow into Humboldt Bay. Staff recommend, and I concur that, absent a permit, we must take emergency action to maintain and repair the oxidation pond dikes immediately. It is recommended that the City notify the executive director of the Coastal Commission that the City will be undertaking an emergency public works repair of the oxidation pond dikes to protect life and public property. If this notification can be made by the 13th of October the City will begin work as soon after that as possible and no later than October 15th.

We will continue to work with the Coastal Commission to obtain a permit for repair of the Klopp Lake dike and Islands so that work can be done next year.

(Page 12 of 17)



736 F Street
Arcata, CA 95521

City Manager
(707) 822-5953

Environmental Services
822-8184

Police
822-2428

Recreation
822-7091

Community Development
822-5955

Finance
822-5951

Public Works
822-5957

Transportation
822-3775

October 13, 2003

Peter M. Douglas
Executive Director
California Coastal Commission
45 Fremont Street, CA 9415-2219

RE: City of Arcata Emergency Public Works Repair Notification for Wastewater Oxidation Pond Dike Repairs

Dear Mr. Douglas,

Pursuant to the Coastal Act Sections 30611 the City of Arcata is providing notice that the City will be performing emergency repair work on the City's wastewater oxidation pond dikes to protect life and property from a failure of these dikes. I concur with Steve Tyler, the Environmental Services Director, and his staff that the outer dikes of the City's oxidations ponds have over time been eroded away by winter storms and associated wind and wave action on Humboldt Bay and that emergency action is required to avoid a potential catastrophic failure of the dikes (memo attached). Without reinforcement the oxidation pond dikes could potentially fail during a major winter storm. This would cause a serious public health, safety and environmental danger as forty millions gallons of primary treated sewage could flow into Humboldt Bay.

At the beginning of April 2003 the City submitted applications for Permits and Certifications to repair and maintain these dikes. Applications were submitted to the California Coastal Commission, the Department of Fish and Game, the Regional Water Quality Control Board and the Army Corps of Engineers with the intent to complete these repairs before the onset of the winter season. The City defines the onset of the winter season as October 15 with the possibility of extending that to November 1, if no significant rains occur. As of today, permits and certifications have been received by all agencies except the Coastal Commission. Staff have been in contact with Coastal Commission staff and have been informed that a permit from the Commission can not be issued before the end of November. This is well after the onset of the winter season and potential winter storms that could cause a failure.

The City has therefore determined that the work to be done as of this date, October 13, 2003, is an emergency repair action that the City must take, consistent with the terms and conditions of all the other agencies, to protect life and public property before the onset of the winter storm season which begins on October 15, 2003. The cost of this project will not exceed \$25,000.

Thank you in advance for your support of the Emergency Permit Waiver Notification.

Sincerely,


Tom Conlon

Director - Community Development

(Page 13 of 17)

Cc: Bob Merrill - California Coastal Commission
Jim Baskin - California Coastal Commission
Steve Tyler - Director Environmental Services, City of Arcata

Oxidation Pond Dike Repairs

Subject: Oxidation Pond Dike Repairs**Date: Tue, 14 Oct 2003 18:00:42 -0700****From: Bob Merrill <bmerrill@coastal.ca.gov>****To: "jneander@arcatacityhall.org" <jneander@arcatacityhall.org>****CC: "styler@arcatacityhall.org" <styler@arcatacityhall.org>**,**"tconlon@arcatacityhall.org" <tconlon@arcatacityhall.org>**,**"dhauser@arcatacityhall.org" <dhauser@arcatacityhall.org>**,**Jim Baskin <jbaskin@coastal.ca.gov>**

Hi Julie,

Jim forwarded your email of this afternoon indicating the City wants to go ahead tomorrow and do dike repairs on the oxidation pond and Klopp Lake without a coastal development permit. We also received your FAX today (State offices were closed Monday for Columbus Day) indicating the City believes certain unspecified repairs of the oxidation pond qualify for processing as an emergency permit waiver under Section 30611 of the Coastal Act. The letter notes that the City previously submitted a regular coastal development permit application to the Commission for dike repair work at Klopp Lake and the oxidation pond that is still being processed.

We appreciate the expressed desire in your email to confirm whether the work is consistent with our agency requirements before work proceeds. As I've indicated in my voice mail message to you, based on what little we have been told about the actual work the City wishes to perform under the emergency permit waiver process, we do not believe the project is consistent with Section 30611 of the Coastal Act and we urge the City to NOT GO FORWARD with the work that you indicate will start tomorrow. We performed a long-scheduled site visit of the project site today with our Coastal Engineer visiting from our San Francisco office. Based on our site visit, while levee repairs are clearly needed in some locations, it is not clear to us that "immediate action ... is required to protect life and public property from imminent danger." In addition, as no cost details were submitted with your FAXED letter, and as your letter contains no information about the scope of the repairs to be performed, it is also not clear that the total value of all permanent improvements that would be performed including all labor, equipment, materials, engineering, etc. would be less than \$25,000. Both of these criteria, and others, would have to be met for the project to qualify under the emergency permit waiver process set forth in Section 30611 of the Coastal Act.

Before the City performs any work on the dikes, we urge the City to obtain all legally required permits. Staff believes the emergency permit process (as opposed to an emergency waiver process) would be the appropriate means to secure authorization for any repairs that need to be performed to prevent imminent threats to protect life and public property before the regular coastal development permit application can be acted on by the Commission. An emergency permit can be issued by the Executive Director without having to go to the Commission for prior authorization and is not subject to the cost limitations that apply to projects performed under the emergency waiver process. We would appreciate the opportunity to discuss the emergency permit process with you and to see plans for what work the City wants to perform before the City moves forward to perform any work without a coastal development permit. As I indicated in my voice mail message, please call me at your earliest convenience.

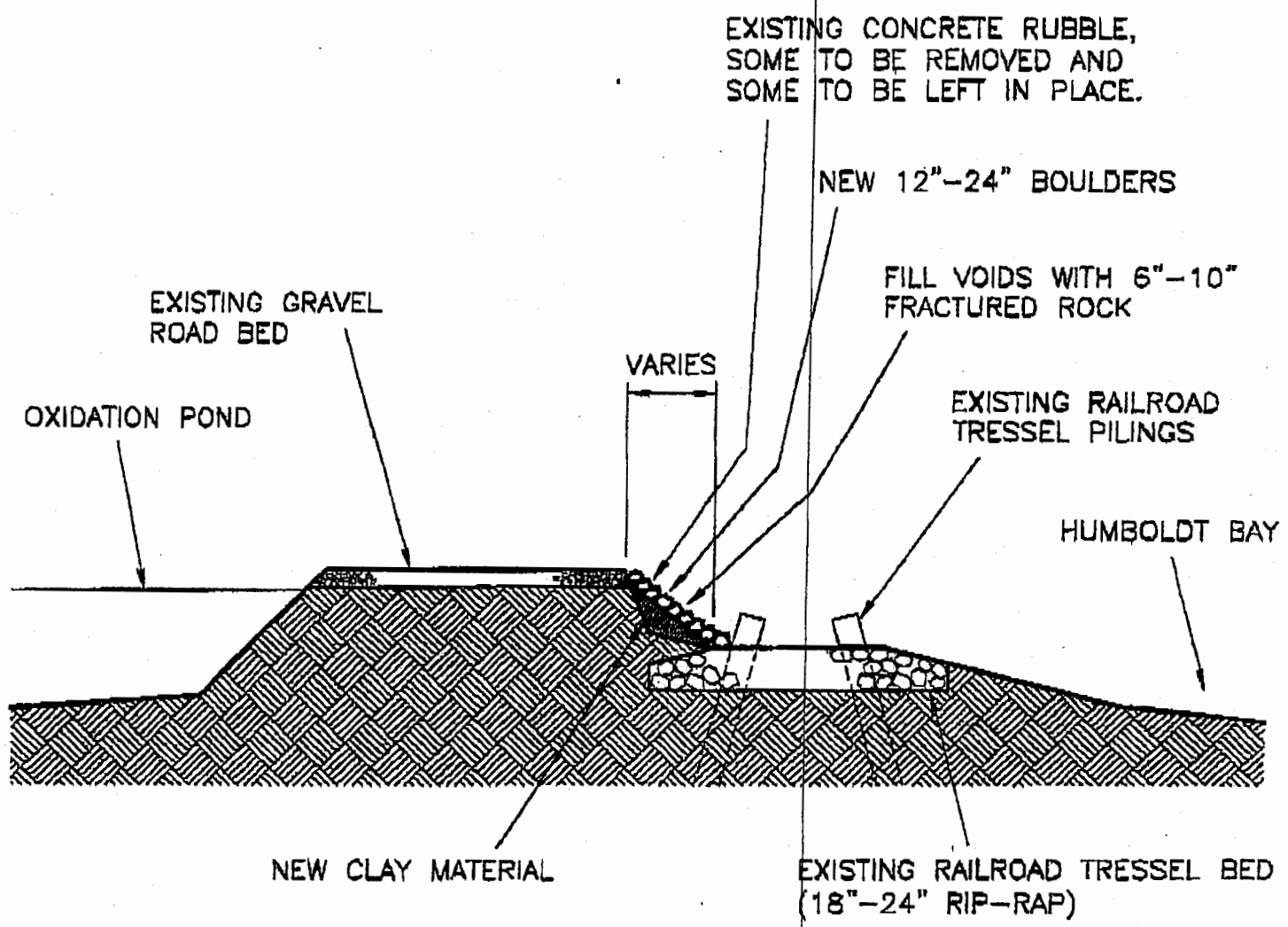
Thanks,

Bob Merrill

North Coast District Manager

Coastal Commission

(Page 14 of 17)



NOTE:

DISTANCES AND HEIGHTS VARY.

OXIDATION POND CROSS-SECTION AT THE SOUTH END

SCALE: N.T.S.

DATE: 10/21/2003

(Page 17 of 17)

KLOPP LAKE DIKE RIP RAP

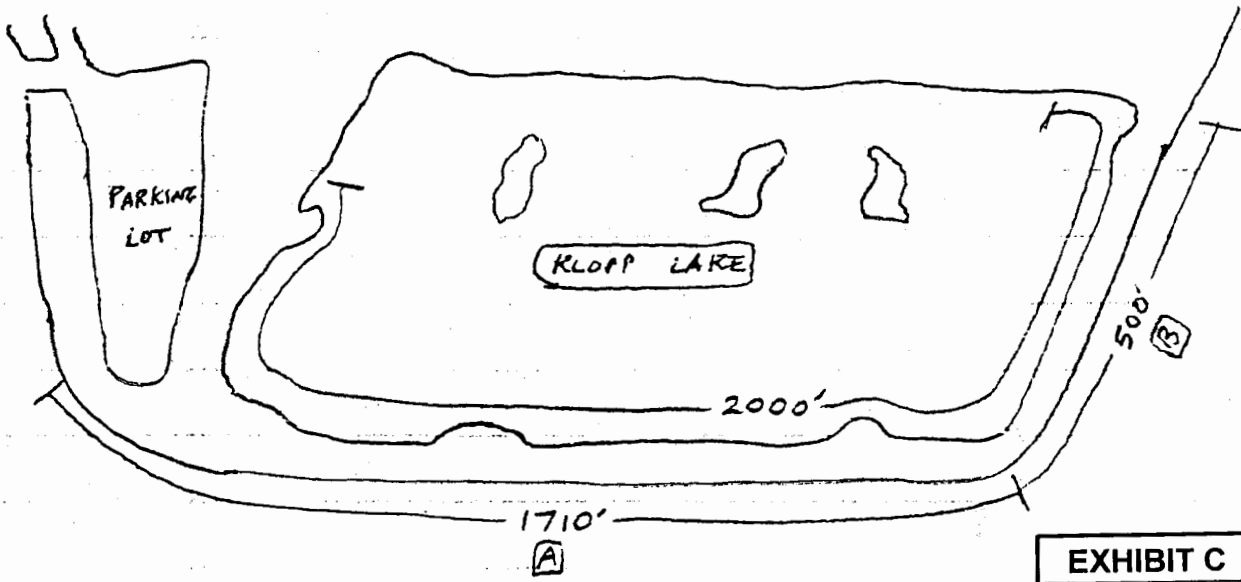
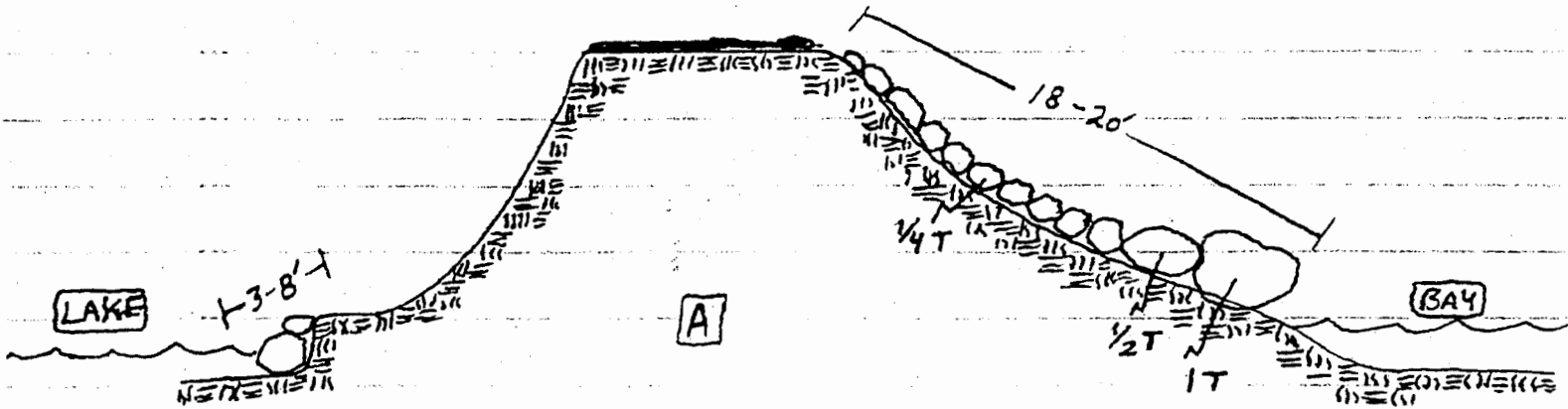
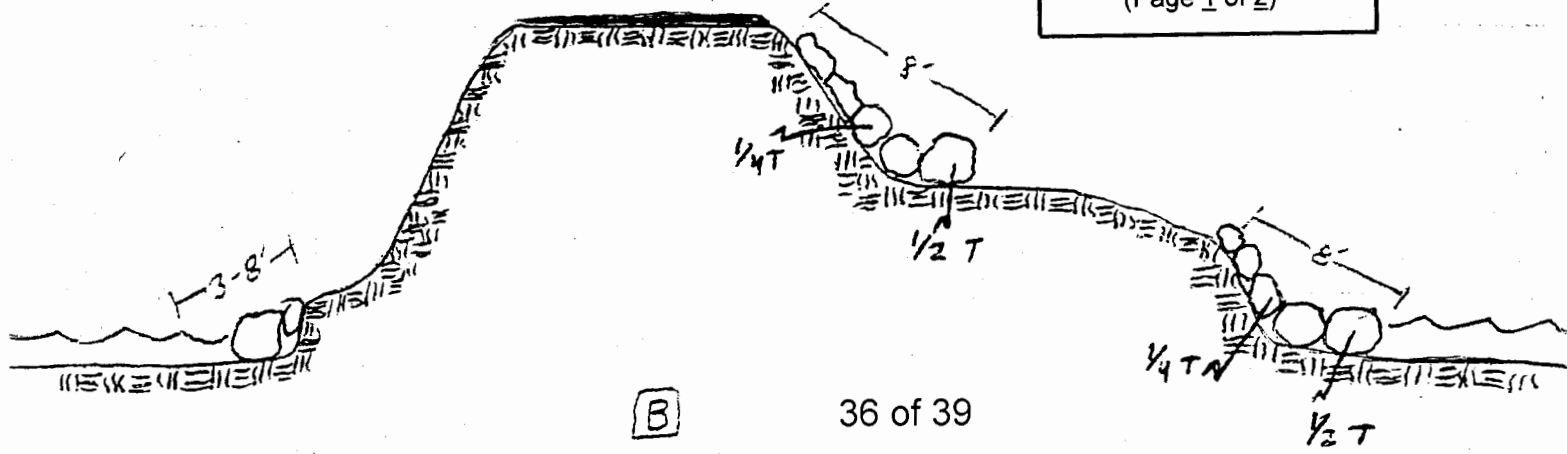


EXHIBIT C
APPLICATION NO.
1-03-021 (ARCATA)
PROJECT PLANS
(Page 1 of 2)



OX POND DIKE RIP RAP

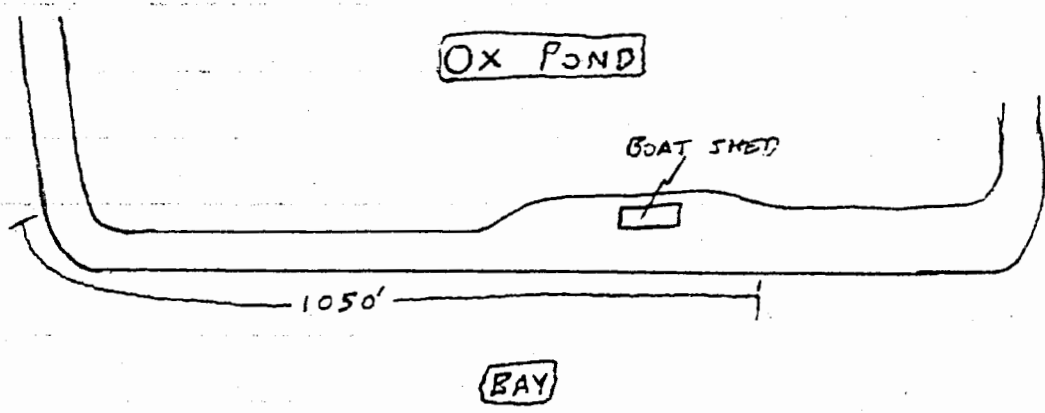
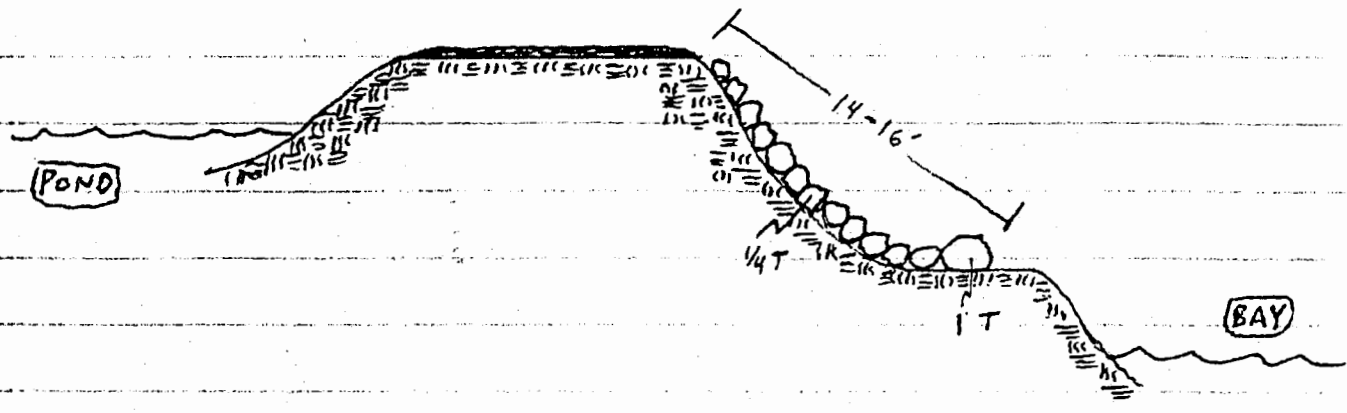
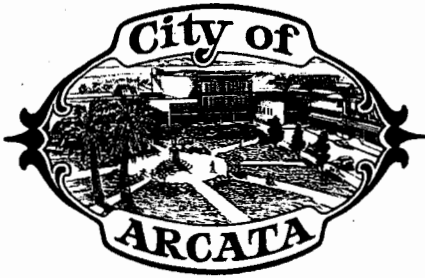


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PROJECT PLANS
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736 F Street
Arcata, CA 95521
May 16, 2005

City Manager
(707) 822-5953

Environmental Services
822-8184

Police
822-2428

Recreation
822-7091

Community Development
822-5955

Finance
822-5951

Public Works
822-5957

Transportation
822-3775

RECEIVED

MAY 20 2005

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Diane Landry
California Coastal Commission
725 Front Street, Suite 300
Santa Cruz, CA 95060

RE: Coastal Development Permit 1-03-021

Dear Ms. Landry:

Enclosed please find the map you requested showing the staging area for the proposed maintenance project for our wastewater treatment oxidation ponds and Klopp Lake.

The map also shows the trails and the impact that the project will have on those trails. The Arcata Marsh and Wildlife Sanctuary has 22,448 feet of trails. The maintenance work will close between 2,011 (Klopp Lake) and 5,305 (Oxidation Ponds) feet of trail at any given point in time. The work will occur at either the Oxidation Ponds or at Klopp Lake so that both trails will not be closed at the same time.

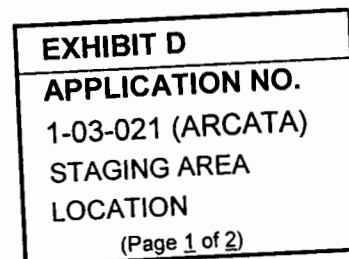
As per our conversation on April 28, 2005 the City is requesting that the permit be authorized for 10 years (Ten Year Programmatic Permit) for ongoing repair and maintenance activities that may be needed. Anticipated future work will be the same as that applied for in the permit. All the work is proposed within the existing footprint of the levee and will not result in any encroachment into Humboldt Bay.

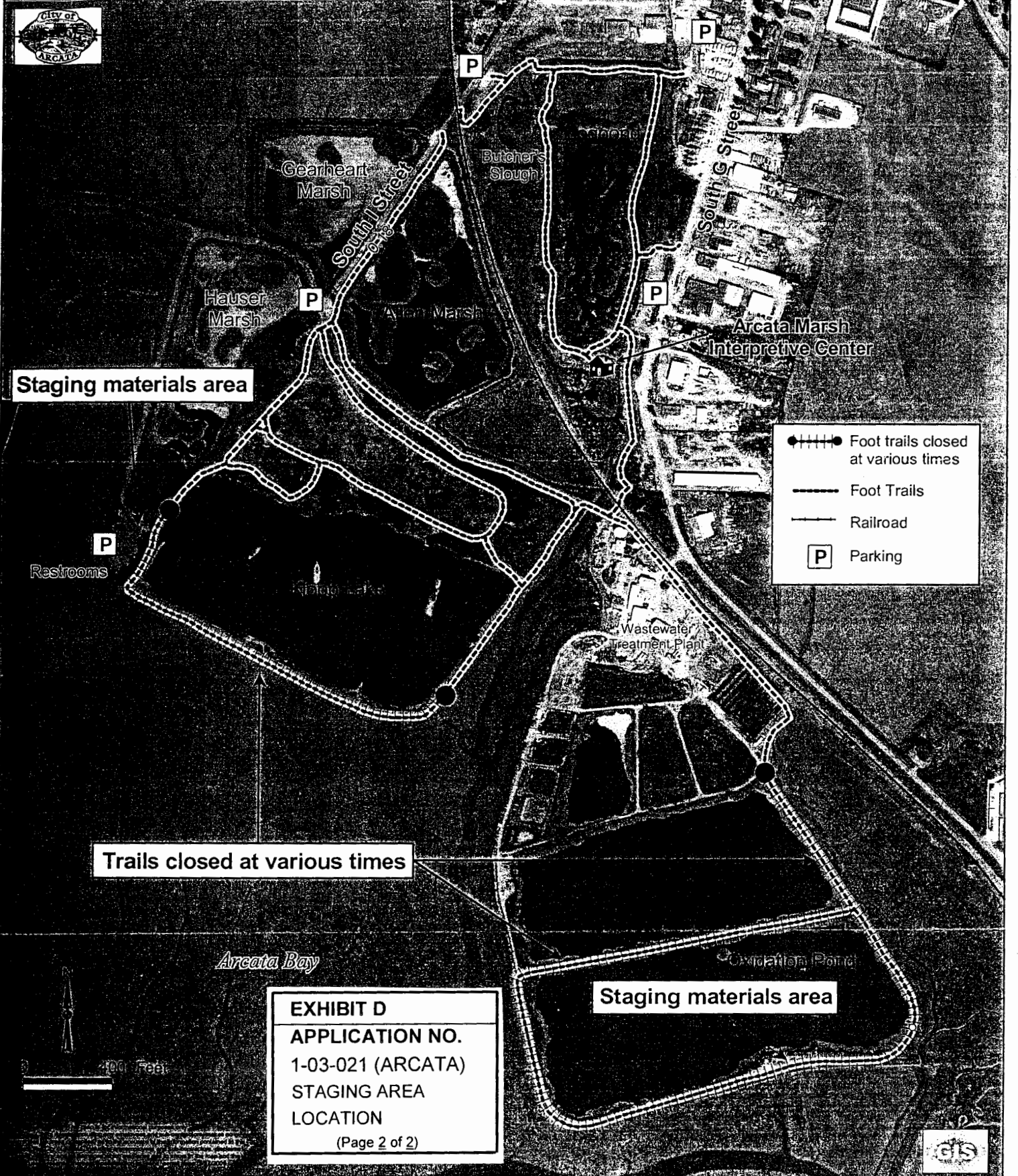
Please feel free to contact me at 707-825-2151 or jneander@arcatacityhall.org should you need additional information.

Sincerely,

Julie Neander
Resource Specialist

Enc.





Trails closed at various times

- Foot trails closed at various times
- Foot Trails
- Railroad
- Parking

EXHIBIT D
APPLICATION NO.
 1-03-021 (ARCATA)
STAGING AREA
LOCATION
 (Page 2 of 2)

Staging materials area

NO.	REVISION	BY	DATE	CITY OF ARCATA <i>Environmental Services Department</i>
				DESIGNED BY: M. ANDRE
				DRAWN BY: B.KANG
				CHECKED BY:
				EXPIRES:

**OXIDATION POND & KLOPP LAKE
DIKE REPAIR & ISLAND MAINTENANCE**

SCALE: 1:7,000	DATE: 5/17/2005
JOB NO. OX_POND_PERMIT_MAP	
SHEET	
OF:	

