

CALIFORNIA COASTAL COMMISSION

NORTH COAST AREA

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Filed:	December 26, 1996
180th Day:	June 24, 1997
Staff:	S.F. Scholl-E
Staff Report:	January 17, 1997
Hearing Date:	February 5, 1997
Commission Action:	

STAFF REPORT: PERMIT AMENDMENT

APPLICATION NO.: **1-90-109-A5**

APPLICANT: **California Department of Transportation**

PROJECT LOCATION: Ocean floor adjacent to the shoreline near Steep Ravine, between Muir Beach and Stinson Beach, Marin County

SUMMARY DESCRIPTION OF PREVIOUSLY APPROVED PROJECT (THROUGH AMENDMENT #A4):

Place 201,000 cubic yards of earth fill on a 3.74-acre area of ocean floor, with subsequent impacts to 5.61 acres of ocean floor, as part of a project to repair a slide-damaged portion of Highway One, with mitigation to occur at two sites: (1) Bolinas Lagoon, providing 2.01 acres of mitigation (project now complete) and (2) Big Lagoon Restoration project (on Redwood Creek near Muir Beach). The Big Lagoon Restoration project shall be implemented by January, 1999.

DESCRIPTION OF
PROPOSED

AMENDMENT #A5:

Allow Caltrans to (1) mitigate for 3.6 acres of fill by either creating subtidal and intertidal habitat comparable to the area filled, restoring previously degraded or filled marine or wetland habitat in the southern end of Tomales Bay, Marin County, or contributing funds to another public entity to implement the restoration project; (2) extend completion deadline for mitigation from January, 1999 to December, 2000; and (3) consider findings to address potential for mitigation banking credit for habitat creation or restoration provided or funded by Caltrans that exceeds the 3.6-acre obligation.

STAFF NOTE:

Section 13166 of the California Code of Regulations states that the Executive Director shall reject an amendment request if the proposed amendment would lessen or avoid the intent of the approved permit unless the applicant presents newly discovered material information, which he or she could not, with reasonable diligence, have discovered and produced before the permit was granted. The applicant has submitted information, as described below, which qualifies as newly discovered material information, thus allowing the Executive Director to accept this amendment request for processing.

Pursuant to Section 13166 of the Regulations, the Executive Director has also determined that this amendment is material and therefore is bringing it to the Commission for review.

Condition #1 of Coastal Development Permit #1-90-109, as originally approved by the Commission in 1991, required implementation of a marine mitigation plan to offset the impacts of placement of fill on several acres of ocean floor. Because the coastal permit was approved prior to preparation of the mitigation plan, the precise location where the mitigation was to occur was not specified in Condition #1.

Through a series of later permit amendments and other actions, the Commission credited the applicant with a portion of the required mitigation at Bolinas Lagoon. At that location, a project involving removal of old fill from the Lagoon by the Department of Transportation satisfied 2.01 acres of the total required.

To fulfill the remaining mitigation obligation, the applicant proposed (and the Commission agreed to implementation of a wetlands mitigation plan for Big Lagoon/Redwood Creek near the community of Muir Beach. In particular, the Commission approved one mitigation alternative (Modified Alternative B) as defined in an Environmental Assessment prepared by Philip Williams & Associates (April, 1994).

The Commission required that the wetlands mitigation plan based on Modified Alternative B be implemented by or in cooperation with the National Park Service, which manages the property at Big Lagoon/Redwood Creek, with construction to occur by January, 1999.

The applicant has now submitted information which indicates that a new alternative to the Big Lagoon/Redwood Creek mitigation program is likely to be available. This new alternative, which consists of restoration of hundreds of acres of farmed wetland on the Giacomini Ranch at the south end of Tomales Bay, would be more than sufficient to satisfy the remaining requirements of Permit #1-90-109-A4 and would offer various other advantages, as compared to the Big Lagoon/Redwood Creek mitigation program. Because the information submitted regarding this alternative is preliminary, the applicant has requested that the Commission amend the condition so as to allow construction of the Giacomini Ranch alternative, while continuing to allow the Big Lagoon/Redwood Creek mitigation project in the event the other alternative is not achievable. This amendment request was initially scheduled for Commission consideration at the meeting of January 1997. At the request of the applicant, the hearing was postponed.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution and findings:

I. APPROVAL WITH CONDITIONS:

The Commission hereby approves the amendment to the coastal development permit, subject to the conditions below, on the grounds that the development with the proposed amendment is consistent with the requirements of Chapter 3 of the California Coastal Act of 1976, is located between the sea and the first public road nearest the shoreline and is in conformance with the public access and public recreation policies of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. STANDARD CONDITIONS: See attached.

III. SPECIAL CONDITIONS:

1. The applicant shall mitigate for the placement of fill in ocean waters by providing a total of 5.61 acres of mitigation and completing the mitigation by January, 1997 or December, 2000 (see below). The 5.61 acres of mitigation shall be composed of a combination of Proposal A and Proposal B of this condition. The mitigation proposals are as follows:

- A. Implementation of the Bolinas Lagoon Restoration Project, as modified and approved by the Commission on January 12, 1993; [and as subsequently carried out by the applicant, satisfying 2.01 acres of the total 5.61-acre mitigation requirement.] and

- B. The preparation, submittal for review and approval by the Commission, and subsequent implementation of a marine mitigation plan satisfying 3.6 acres of the total 5.61-acre mitigation requirement. The plan shall be for either Big Lagoon/Redwood Creek or Giacomini Ranch, shall be prepared by a qualified biologist, and shall include:

- plans of the mitigation site drawn to scale which fully depict both existing conditions and proposed improvements;
- an implementation schedule which indicates when necessary permits would be secured, when contracts for construction would be let, when construction would commence, and when various stages of the work would be completed;
- a five-year monitoring program designed to measure the success of the mitigation plan;
- a definition of "success" such that the density of flora and fauna is comparable with that in surrounding or nearby habitat areas of the same type, and;
- a provision that within the five-year monitoring period the applicant shall take additional steps as may be appropriate to ensure the success of the mitigation plan.

Furthermore, any mitigation plan prepared pursuant to Proposal B shall include one of the following alternatives:

- a. Creation of subtidal and intertidal habitat comparable in character to the area being filled through this permit, or;
- b. Restoration of previously degraded or filled marine or the removal of historic fill, improvement of water circulation, and such other steps as will create or improve habitat for fish, water birds, and other marine or marine-related species.

The applicant shall provide a written statement to the Executive Director by June 1, 1997 indicating how the applicant intends to provide the remaining 3.6 acres of mitigation required by this condition. If the Big Lagoon/Redwood Creek project is implemented to satisfy the permit requirements, the environmental document for the project shall be approved by December, 1998, construction documents shall be completed by December 1999, and mitigation project construction shall be completed, excluding plant establishment and monitoring activities, by December, 2000. If the Giacomini Ranch project is implemented to satisfy the permit requirements, mitigation project construction shall be completed by January, 1999.

- C. Rather than implement the mitigation plan as described in B above, the applicant may contribute sufficient funds to another public entity to accomplish all requirements of the mitigation plan as described above. The applicant may take advantage of this option only upon approval by the Commission of an agreement between the Commission, the applicant, and another public entity, in which agreement the other public entity indicates the legal and financial ability and willingness to assume from the applicant the legally enforceable obligation to fully satisfy the requirements of this condition.

This condition substitutes for and supersedes the language of Special Condition No. 1 of Permit No. 1-90-109, as previously amended through Amendment #A4.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares as follows:

A. Background: Lone Tree Slide repair.

On January 11, 1991 the Commission approved Coastal Development Permit No. 1-90-109 authorizing repair of a damaged portion of Highway One in Marin County, at a site called the Lone Tree Slide, between Muir Beach and Stinson Beach (see Exhibit 1). The project involved excavating the uphill portion of the slide and moving the material seaward to allow placement of the roadway on a more stable alignment. During the spring of 1991, some 201,000 cubic yards of fill were placed within the Coastal Commission's jurisdiction area on state tidelands; due to subsequent sloughing, the coverage of ocean floor reached 5.61 acres by September, 1991.

The construction work to repair Highway One took place relatively rapidly, and the highway was reopened to traffic in June of 1991. Mitigation work required by Condition No. 1 of the coastal permit has proceeded more slowly, for a number of reasons. Among them is that no approved mitigation plan was in existence at the time the Highway One repair project commenced. In the interests of time, the repair work started first, and mitigation planning followed. The Commission recognized the urgency of re-opening Highway One and allowed what amounted to a reversal of the ordinary course of events (i.e., mitigation planning first, construction following).

Another reason for delay was that the mitigation necessarily had to occur off-site. There was no way to create open ocean at or near the site where fill was placed in the tidelands. Instead, the Commission required that mitigation occur elsewhere in the Marin County coastal zone, and the Commission gave the applicant latitude to select a program involving either in-kind mitigation or out-of-kind wetland mitigation. The applicant also had the latitude to implement a mitigation project directly or to do so in cooperation with another public entity, such as the National Park Service.

In commencing to design a mitigation program, the Department of Transportation formed a Technical Advisory Committee to help review mitigation proposals. This Committee, which consists of representatives of various agencies with regulatory authority over potential mitigation sites as well as other interested parties, proceeded to sift through various alternatives. The definition of mitigation alternatives required that existing conditions at various sites be monitored over one or more seasons, thus resulting in more time elapsing.

The Commission's role in the mitigation process has been two-fold. The Commission staff has participated in the Technical Advisory Committee, and the Commission itself has participated through a series of actions on permit amendment requests and condition compliance reviews. The effect of those actions and reviews has been to reflect both changing conditions and new information and to approve partial fulfillment of the original marine mitigation requirement of Condition No. 1 through implementation of a project to remove old fill including a toxic waste dump from Bolinas Lagoon. (The fill removal project was authorized by a separate permit, No. 1-93-07, as amended.) That project was completed in a timely fashion according to the original Commission-required deadline of January, 1994.

B. Previous Commission review of compliance with Condition No. 1/
Amendment #A4

The Commission staff reported on the applicant's progress in developing a mitigation plan at the Commission meeting of March 16, 1994 (staff report dated March 4, 1994). The applicant had submitted information on a number of potential wetland restoration alternatives at Big Lagoon near Muir Beach in Marin County. These alternatives were also described in a preliminary environmental assessment prepared by Philip Williams & Associates (dated April, 1994). Previous to the Commission meeting of March, 1994, the Technical Advisory Committee convened by Caltrans for this project had reviewed the alternatives presented in the assessment and recommended "Modified Alternative B" for implementation.

Modified Alternative B would restore or enhance 16.2 acres of wetlands at Big Lagoon, including a freshwater pond, freshwater wetlands, and bordering riparian areas. About 5 acres of permanent open water and 7 acres of shallow wetlands would result, along with additional areas of seasonal inundation, together making up a total of over 16 acres of wetlands. This alternative would provide a net increase of 2.3 acres of wetland area over what exists now. Alternative B, as modified to reduce the removal of existing riparian vegetation, would provide the largest area of enhanced and/or restored wetlands of the alternatives studied.

The general goal of Alternative B is to reproduce the ecological functions of the historic pre-1850's wetland system. This goal would be achieved by routing Redwood Creek into its historic alignment and removing levees and water control structures, including a total of some 120,000 cubic yards of fill. A freshwater pond with perimeter wetlands would discharge into

the existing brackish tidal lagoon. Freshwater pond and fringe wetland areas would be created by removing over 6 feet of fill material from existing pastures.

At the meeting of March 16, 1994 the Commission endorsed the continuing preparation of a specific wetland restoration plan consistent with Modified Alternative B. Because the alternative was only conceptual and lacked the detailed plans necessary to actually implement it, it would have been premature at that meeting to either approve or disapprove the alternative as meeting the requirements of Condition No. 1 of Permit 1-90-109 as amended. Furthermore, environmental review in compliance with the California Environmental Quality Act and National Environmental Policy Act had not yet occurred. The Commission found therefore that continued preparation of a mitigation plan based on Modified Alternative B was appropriate, while expressing concern over the proposed removal of existing riparian forest.

On June 7, 1994, the Commission approved the most recent in a series of amendments to this coastal permit. This amendment (#A4) allowed the Big Lagoon project to satisfy the remaining requirements of Special Condition No. 1. Attached as Exhibit #2 is the language of Condition No. 1 as it stood following approval of Amendment #A4.

C. Present amendment request (#A5)

The Department of Transportation has submitted this amendment request, and the National Park Service has submitted additional information, together indicating that a new alternative site for wetland mitigation to satisfy Condition No. 1 of the permit exists. This alternative would involve restoring as tidal wetlands up to 500 or more acres of presently diked farmlands (the Giacomini Ranch) at the south end of Tomales Bay. (The language of Condition No. 1, as proposed to be amended by the applicant is attached as Exhibit #3.)

This Tomales Bay alternative appears to offer several advantages, one of which is that it is a much larger site than the Big Lagoon/Redwood Creek alternative. "An Evaluation of the Feasibility of Wetland Restoration on the Giacomini Ranch, Marin County" prepared by Philip Williams & Associates, Ltd. (October 1993) indicates that restoration of the Giacomini Ranch would have a significant beneficial influence on the recovery of fish and wildlife resources of Tomales Bay. The evaluation indicates that restoration of tidal habitat will not only provide significant benefits for estuarine species, but also for anadromous fish that use tidal wetland channels in their life cycle. Restoration would also assist in protecting populations of endangered species of birds such as the black rail. Furthermore, restoration of the Giacomini Ranch is physically feasible, and existing topography favors the rapid establishment of wetland vegetation without the need for extensive grading, filling, or excavating.

The evaluation prepared by Philip Williams & Associates identifies several feasible restoration alternatives. All but the "no project" alternative would result in the restoration as wetland habitat of at least 140 acres of pasture land (which was originally a tidal marsh), thus

more than satisfying the remaining requirement for enhancement or restoration of 3.6 acres of habitat. Because of the apparent advantages of the Giacomini Ranch alternative, the Department of Transportation has requested that the Commission amend this coastal permit to allow the applicant to pursue this alternative, rather than to proceed solely with planning for the Big Lagoon/Redwood Creek alternative.

(This amendment request indicates that the applicant seeks approval to redirect funds to the Giacomini Ranch site, and yet at the same time the text of Condition No. 1 as proposed by the applicant to be amended makes clear that the applicant seeks to maintain the option of using Big Lagoon/Redwood Creek as a mitigation site. Consequently, the Commission has reviewed this amendment request with the goal of allowing either site to satisfy Condition No. 1.)

D. Fill in Coastal Waters

Section 30233(a) of the Coastal Act states as follows:

- (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.

The above policy sets forth a three-part test for all projects involving the filling of coastal waters, as did the Lone Tree Slide repair project. These tests are:

1. The project is limited to one of the eight stated uses;
2. The project has no feasible less environmentally damaging alternatives;
3. Feasible mitigation measures have been provided to minimize adverse environmental effects.

A proposed project must satisfy each of the three parts of the test to be consistent with Section 30233(a). In its action approving coastal permit #1-90-109 for the placement of fill in coastal waters, the Commission found that the fill was an allowable use under Section 30233(a)(5) and that no feasible less environmentally damaging alternatives existed. Therefore, the first two tests cited above were met, and no change to this conclusion is proposed.

Concerning the third test, that involving feasible mitigation, the applicant suggests changing the language of Condition No. 1 to allow an alternative mitigation measure. Therefore, in order to approve this amendment, the Commission must determine that this proposed change would remain consistent with the third test of Section 30233(a).

The Commission previously found that wetland restoration at the specific site of Big Lagoon/Redwood Creek would fulfill the remaining mitigation requirement of Condition No. 1. The environmental assessment prepared for the project and comments of the Technical Advisory Committee provided the Commission with a basis to conclude that the Big Lagoon project was feasible and was likely to be implemented, thus resulting in expanded and enhanced wetlands.

The applicant has not requested substitution of an alternative mitigation program at this time, but has asked only that Condition No. 1 be reworded to allow mitigation to occur at Giacomini Ranch and to allow the applicant to satisfy the remaining mitigation obligation by contributing sufficient funds to another public entity to accomplish all requirements of the mitigation plan. As requested by the applicant, the condition would also continue to allow completion of the Big Lagoon/Redwood Creek mitigation program, in the event that Giacomini Ranch project somehow fails to be implemented.

The Commission finds that approval of this amendment is consistent with the third test of Section 30233(a), because the change does not lessen the feasibility or likelihood of mitigation occurring, as required by Condition No. 1. If amended as proposed by the applicant, the condition still requires that a mitigation plan be submitted for review and approval of the Commission, and subsequently implemented. The plan must include plans, a schedule, a monitoring program, a definition of "success" for the mitigation, and a provision that additional steps may be necessary to ensure the success of the mitigation plan. The Commission finds that here, as in other permit actions such contents are necessary in order to ensure a high likelihood of success for the mitigation effort.

The applicant has requested a time extension for implementation of the required mitigation from January, 1999 to December, 2000. The applicant has also submitted information indicating the basis for the additional time requirement, in the event the Big Lagoon/Redwood Creek alternative is ultimately selected. That is, the applicant indicates that a year of progress was lost while Caltrans negotiated with the Golden Gate National Park Association to implement the Big Lagoon/Redwood Creek project and ultimately learned that such an agreement was not possible, for legal reasons. The applicant has also submitted a schedule for completion of the Big Lagoon/Redwood Creek alternative, should it be selected, and this schedule indicates that completion of the project by December, 2000 is reasonable, and that earlier completion is not feasible. Therefore, the Commission finds that the portion of the amendment request relating to a time extension for the Big Lagoon/Redwood Creek alternative is consistent with the requirements of Section 30233(a). The information submitted to date, however, does not support extension of the existing deadline of January, 1999 if another alternative, such as the Giacomini Ranch project, is ultimately selected. Therefore, the Commission finds that the existing deadline of January, 1999 remains in place, unless the applicant elects to implement the Big Lagoon/Redwood Creek alternative.

Finally, the Commission notes that not only will the mitigation program be submitted to the Commission for review and approval, but a separate coastal development permit will be required for the physical construction involved in restoring wetlands pursuant to the plan. Thus, the Commission will have the opportunity to assure that the details of the mitigation program are consistent with the requirements of Chapter 3 of the Coastal Act. Furthermore, the Commission notes that what is required to satisfy Condition No. 1 is physical mitigation in the form of actual wetlands. For the reasons cited above, the Commission finds that the amendment request, as modified, is consistent with the requirements of Section 30233(a) of the Coastal Act.

E. Impacts on Coastal Agriculture

The following excerpts from the Coastal Act are applicable:

Section 30241. The maximum amount of prime agricultural land shall be maintained in agricultural production to assure the protection of the areas agricultural economy, and conflicts shall be minimized between agricultural and urban land uses through all of the following:...

Section 30242. All other lands suitable for agricultural use shall not be converted to nonagricultural uses unless (1) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land or concentrate development consistent with Section 30250. Any such permitted conversion shall be compatible with continued agricultural use on surrounding lands.

Section 30001.5 The Legislature further finds and declares that the basic goals of the state for the coastal zone are to:

(a) Protect, maintain, and where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and artificial resources...

Section 30007.5. The Legislature further finds and recognizes that conflicts may occur between one or more policies of the division. The Legislature therefore declares that in carrying out the provisions of this division such conflicts be resolved in a manner which on balance is the most protective of significant coastal resources...

Section 30200(b). Where the commission or any local government in implementing the provisions of this division identifies a conflict between the policies of this chapter, Section 30007.5 shall be utilized to resolve the conflict and the resolution of such conflicts shall be supported by appropriate findings setting forth the basis for the resolution of identified policy conflicts.

The Giacomini Ranch contains pasture lands which are classed as wetlands due to seasonal ponding and long periods of soil saturation, but are used for active agricultural purposes. Restoration of some or all of these pastures to create saltmarsh, riparian, or other wetland habitat types would enhance the value of the property to fish and wildlife, but would remove them from the agricultural economy of the area.

Both wetlands and agricultural lands are considered significant coastal resources under the Coastal Act. In this case, the proposed wetland restoration project would be most protective of coastal resources, and can be distinguished from other agricultural conversion situations, because:

- the Giacomini Ranch historically comprised saltmarsh, mudflat and riparian areas;
- a higher percentage of coastal wetlands than of coastal agricultural lands have historically been lost;

- at present, the Giacomini Ranch is a profitable, efficiently run dairy. However, its long-term viability is threatened by gradual and episodic physical changes such as earthquakes, floods, subsidence and sea level rise, all of which could make the ranch operation uneconomic unless public subsidies were provided.

In sum, although restoration of wetlands at Giacomini Ranch would remove land in current agricultural use from production and thus be inconsistent potentially with the policies of Section 30241 and/or 30242, such restoration can be found consistent with the Coastal Act through the balancing provision of Section 30007.5. The Commission finds that a wetland restoration project of this magnitude and characteristics is, on balance, most protective of significant coastal resources.

F. Delegation of Mitigation to Another Public Entity

The Big Lagoon/Redwood Creek mitigation site is owned by the National Park Service, and the Giacomini Ranch site is on a potential acquisition list by the Park Service. The Park Service has indicated in the past its willingness to cooperate with Caltrans in carrying out the mitigation requirement of this permit.

As property owner, or potential owner, the National Park Service would be in perhaps better position to implement a wetlands mitigation program than Caltrans which is, after all, a transportation agency. The Commission finds therefore, that it is appropriate to allow Caltrans the option to provide only financial support for a wetland mitigation program, while allowing the National Park Service to undertake the planning and implementation roles.

If an agreement is submitted to the Commission for its review and approval indicating that the Park Service (or other entity) is willing to accept responsibility for these aspects of the mitigation program and that Caltrans is willing to provide the required financial support, then Caltrans may take advantage of this option. In so doing, the applicant would satisfy its obligation to meet the condition of this permit, and the implementing entity would assume all future responsibility to assure full compliance with the conditions of the permit.

The Technical Advisory Committee (TAC) consisting of regulatory agencies and interested groups met on January 9, 1997 to discuss alternate mitigation strategies to satisfy Condition No. 1. The TAC had previously indicated its support for a mitigation program at either Big Lagoon or Tomales Bay, in addition to Bolinas Lagoon where part of the condition has already been fulfilled.

On January 9, the TAC indicated its support of the concept of Caltrans providing only financial support, while the National Park Service undertakes the actual mitigation program at Giacomini Ranch. The Committee also indicated that Caltrans' responsibility for mitigation could be ended, once an appropriate agreement were reached for Caltrans to provide necessary financial support. Finally, the TAC indicated its support for mitigation at both sites, although

funding of work at Big Lagoon/Redwood Creek may end up being the sole responsibility of the National Park Service.

G. Wetland Mitigation Bank Concept

The applicant has requested that the Commission's findings on this amendment request address mitigation banking credit. In the past, Commission staff has indicated to the applicant that a wetland mitigation bank might be favorably considered by the Commission through future amendments to the underlying Coastal Development Permit #1-90-109 or the permit actually authorizing the required mitigation. The concept of a bank in this instance was prompted by the fact that the Big Lagoon/Redwood Creek alternative is likely to result in considerably more wetland restoration or than the 3.6 acres "owed" by the applicant. For instance, the Big Lagoon/Redwood Creek project might result in over 16 acres of restored or enhanced wetlands. Although the net increase in total acreage of wetlands at the site might be relatively small, perhaps only about 2 acres, the increase in restored wetlands could greatly exceed this figure. According to Condition No. 1 of this coastal permit, restored wetlands would satisfy the mitigation requirement. Thus, the "excess" in restored wetlands over 3.6 acres could be considered by the Commission to be a bank, for use in mitigating the impacts of future wetland fill projects undertaken by Caltrans in Marin County to maintain Highway One.

The concept of a bank would become somewhat more complex if the applicant pursues the Giacomini Ranch alternative, since other agencies are expected to contribute funds to that effort, and it would be inappropriate to consider the applicant as the sole beneficiary of any wetland mitigation bank to be established there. In contrast, the Big Lagoon/Redwood Creek alternative was to be funded more or less completely by Caltrans, and thus that agency would be the appropriate user of a bank established there.

In any event, the applicant has not submitted a formal proposal for a wetland mitigation bank. At this time, therefore, it is appropriate only for the Commission to indicate its willingness to consider a future wetland mitigation bank which would provide appropriate "credit" to Caltrans for wetland mitigation above and beyond the 3.6 acres required by Condition No. 1.

The Commission has previously found that a wetland mitigation bank can be consistent with the policies of Chapter 3 of the Coastal Act. For instance, on June 13, 1996, the Commission considered the application of Caltrans (permit #3-96-033) to restore some 43 acres of wetland and riparian habitat near the mouth of the Carmel River and to establish a wetland mitigation bank. The Commission approved the restoration work but determined that a separate future action would be required to authorize use of the Carmel River site as a bank. A future request for Commission approval of a bank would need to be accompanied, the Commission found, by a mitigation agreement embodying "the concepts of conformance with Coastal Act Section 30233a and avoidance of wetland impacts, like-for-like mitigation, no credits for existing

wetlands, and no double counting of credits; and, which also specifies permanent maintenance responsibilities.”

The Commission finds that the concept of a wetland mitigation bank may be appropriate in connection with Permit #1-90-109 and that the Commission will review a specific proposal for a mitigation bank at such time as the applicant presents it. The appropriate time for such a proposal would be at such time as successful wetland creation or restoration is demonstrated through after-the-fact monitoring and the achievement of success criteria. A proposal for a mitigation bank should include a justification of the amount of mitigation to be “banked” and a formal agreement into which the Commission, applicant, and (potentially) other regulatory agencies would be expected to enter and the ultimate amount of “credit” to be banked.

The Technical Advisory Committee discussed the concept of a mitigation bank at its meeting on January. While not adopting any recommendation to the Commission regarding a bank, the TAC made it clear that numerous questions exist about the manner in which a bank might be established, given the particular circumstances of mitigation plans for Giacomini Ranch or Big Lagoon/Redwood Creek.

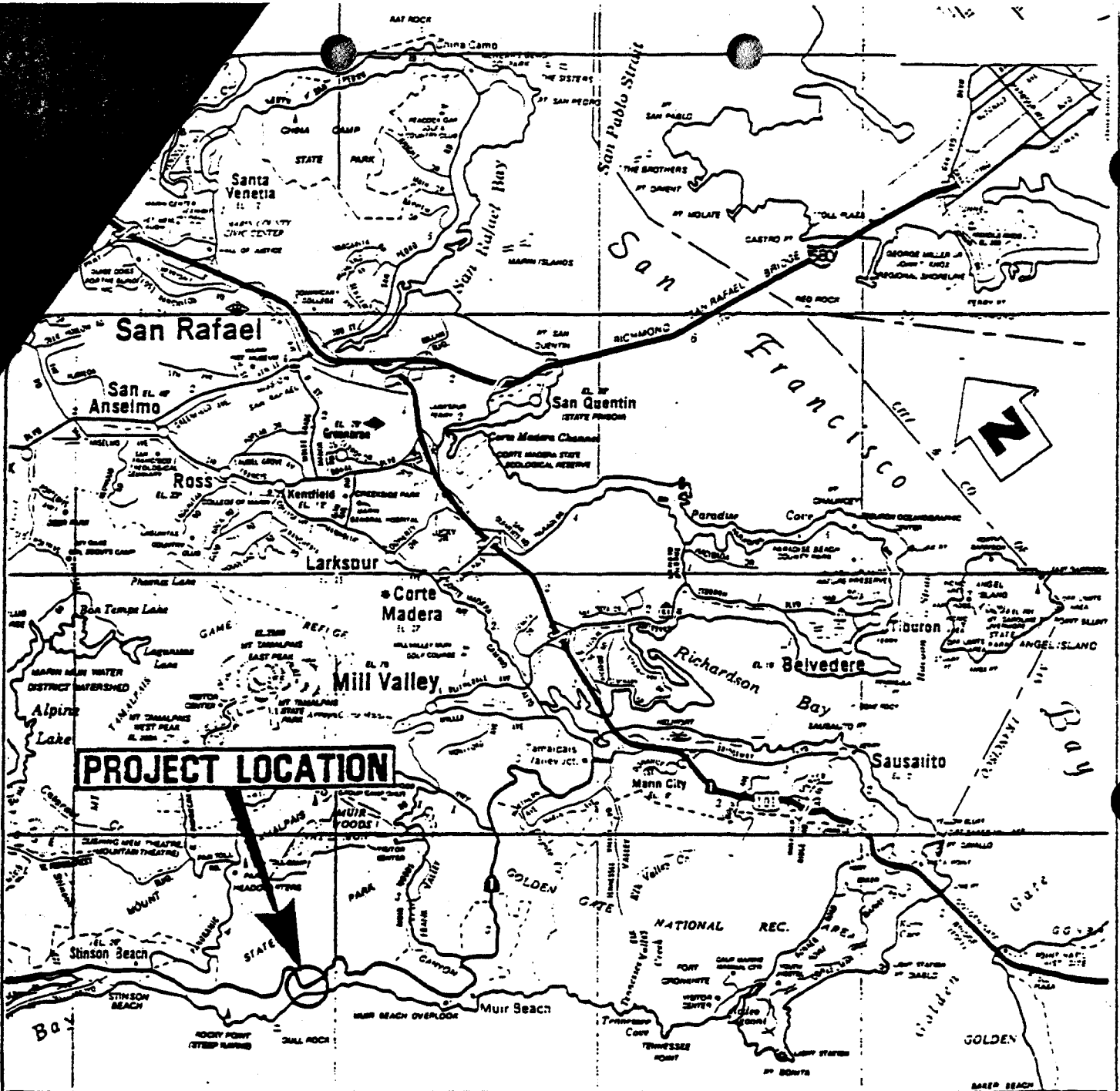
H. California Environmental Quality Act

The proposed amendment allows study of more than one alternative mitigation program. The amendment does not commit the applicant to implementing any particular mitigation program. Further, Commission action will be required before a mitigation project can be constructed. Therefore, the amendment does not have a significant impact on the environment within the meaning of CEQA.

ATTACHMENT A

Standard Conditions

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. 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.
7. 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.



PROJECT LOCATION

EXHIBIT NO. 1
APPLICATION NO.
1-90-109-A5
California Coastal Commission

Pacific Ocean

San Francisco
 NATIONAL RECREATION AREA
 JONES END
 RECREATION POINT BOS
 SEAL ROCKS AREA



LOCATION MAP

SLIDE REPAIR
MARIN COUNTY 3.3 Miles NORTH
Of MUIR WOODS ROAD

4-Mrn-1
 4334-191380

PM 9.2/9.3
 August 1990

BASE MAP REPRODUCED BY COURTESY OF THE CALIFORNIA STATE AUTOMOBILE ASSOCIATION, COPYRIGHT OWNER

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

Commission action on previous amendment requests affecting this permit has resulted in crediting the applicant with a portion of the required mitigation at Bolinas Lagoon (satisfying 2.01 acres of the total required) and requiring submittal of a plan for the remaining 3.6 acres of mitigation by March 1, 1994. The Commission has not amended the required completion date for all mitigation work which was set when the Highway One repair project was approved originally in 1991. That required completion date remains January 1994.

Although it has become obvious that this required completion date could not be met for the portion of the mitigation work which is still in planning, the Commission has waited to formally extend the deadline until a realistic completion date could be provided by the applicant. The applicant has now provided an estimated completion date of January 2001, and requested that Special Condition No. 1 of permit No. 1-90-109-A3 be amended accordingly. Information developed by the applicant in continuing to prepare a mitigation plan for Big Lagoon qualifies as newly discovered material information which allowed the Executive Director to accept this amendment request for processing.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution and findings:

I. APPROVAL WITH CONDITIONS:

The Commission hereby approves the amendment to the coastal development permit, subject to the conditions below, on the grounds that the development with the proposed amendment is consistent with the requirements of Chapter 3 of the California Coastal Act of 1976, is located between the sea and the first public road nearest the shoreline and is in conformance with the public access and public recreation policies of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. STANDARD CONDITIONS: See attached.

III. SPECIAL CONDITIONS:

1. The applicant shall mitigate for the placement of fill in ocean waters by providing a total of 5.61 acres of mitigation and completing the mitigation by January of ~~1994~~ 1999. The 5.61 acres of mitigation shall be composed of a combination of Proposal A and Proposal B of this condition. The mitigation proposals are as follows:

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Condition No. 1	as amended through
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EXHIBIT NO.	2
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- A. Implementation of the Bolinas Lagoon Restoration Project, as modified and approved by the Commission on January 12, 1993; and
- B. The/submit/and Implementation of a marine wetlands mitigation plan for Redwood Creek near Muir Beach, prepared by a qualified biologist or hydrologist, reviewed and approved by the Commission, and including:

- plans of the mitigation site drawn to scale which fully depict both existing conditions and proposed improvements;
- an implementation schedule which indicates when necessary permits would be secured, when contracts for construction would be let, when construction would commence, and when various stages of the work would be completed;
- a five-year monitoring program designed to measure the success of the mitigation plan;
- a definition of "success" such that the density of flora and fauna is comparable with that in surrounding or nearby habitat areas of the same type, and;
- a provision that within the five-year monitoring period the applicant shall take additional steps as may be appropriate to ensure the success of the mitigation plan.

Furthermore, any mitigation plan prepared pursuant to Proposal B shall include one of the following alternatives:

- a. Creation of subtidal and intertidal habitat comparable in character to the area being filled through this permit, or;
- b. Restoration of previously degraded or filled marine or wetland habitat in the Marin County coastal zone. Restoration shall be accomplished through the removal of historic fill, improvement of water circulation, and such other steps as will create or improve habitat for fish, water birds, and other marine or marine-related species.

The mitigation plan shall be based on Modified Alternative B as defined in the Environmental Assessment prepared by Philip Williams & Associates (April, 1994) and as endorsed by the Highway One Technical Advisory Committee in March 1994. The mitigation plan may be further modified through the environmental review process but shall in no event result in enhanced or restored wetlands with a total area of less than 3.6 acres.

The applicant shall implement the marine mitigation plan, or alternatively, the applicant shall contribute sufficient funds to another public entity to implement the marine mitigation plan. If the applicant chooses to contribute funds to a public entity,

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THE APPLICANT SHALL SUBMIT FOR THE REVIEW AND APPROVAL OF THE COMMISSION EVIDENCE IN WRITING FROM THE PUBLIC ENTITY INDICATING APPROVAL OF IMPLEMENTATION OF THE MITIGATION PLAN ON PROPERTY CONTROLLED BY SUCH ENTITY AND A COMMITMENT TO MAINTAIN THE MITIGATION SITE IN OPEN SPACE INDEFINITELY.

The applicant shall ensure that the mitigation plan is implemented by or in cooperation with the National Park Service, Golden Gate National Recreation Area, as described in the Letter of Intent dated February 28, 1994 from the applicants, with the exception that implementation of the plan shall occur by January, 1999. The applicant shall notify the Executive Director in writing when each phase of implementation has been completed (i.e. upon completion of environmental review, right-of-way acquisition, completion of plans, awarding of construction contract, commencement of construction, and completion of construction.)

THE APPLICANT SHALL PROVIDE WRITTEN CORRESPONDENCE TO THE EXECUTIVE DIRECTOR BY FEBRUARY 11, 1993 STATING THAT THE APPLICANT IS COMMITTED TO IMPLEMENTING THE BOLINAS LAGOON RESTORATION PROJECT AND INDICATING HOW THE APPLICANT EXPECTS TO PROVIDE THE REMAINING 3.6 ACRES OF MITIGATION REQUIRED BY THIS CONDITION. A PLAN PREPARED PURSUANT TO PART B OF THIS CONDITION SHALL BE SUBMITTED BY MARCH 11, 1994.

IN THE EVENT THAT THE BOLINAS LAGOON RESTORATION PLAN IS NOT IMPLEMENTED BY JANUARY 11, 1994, THE TOTAL MITIGATION REQUIREMENT OF 3.6 ACRES SHALL INCREASE BY 1/8 ACRE AND SHALL CONTINUE TO INCREASE IN 1/8 ACRE INCREMENTS AT THE END OF EACH 6-MONTH PERIOD FOLLOWING JANUARY 11, 1994 IF THE BOLINAS LAGOON RESTORATION PLAN IS NOT IMPLEMENTED.

This condition substitutes for and supercedes Special Condition No. 1 of Permit No. 1-90-109 as previously amended. (The language of the old condition being deleted is struck through /// and the new language is underlined.)

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares as follows:

A. Background.

On January 11, 1991 the Commission approved Coastal Development Permit No. 1-90-109 authorizing repair of a slide-damaged portion of Highway One in Marin County, at a site called the Lone Tree Slide, between Muir Beach and Stinson Beach (see Exhibit 1). The project involved excavating the uphill portion of the slide and moving the material seaward to allow placement of the roadway on a more stable alignment. Some 201,000 cubic yards of fill were placed within the Coastal Commission's jurisdiction area on state tidelands, and due to subsequent sloughing, the coverage of ocean floor reached 5.61 acres by September, 1991.

1. The applicant shall mitigate for the placement of fill in ocean waters by providing a total of 5.61 acres of mitigation and completing the mitigation by January of 1994. The 5.61 acres of mitigation shall be composed of a combination of Proposal A and Proposal B of this condition. The mitigation proposals are as follows:

A. Implementation of the Bolinas Lagoon Restoration Project, as modified and approved by the Commission on January 12, 1993; [and as subsequently carried out by the applicant, satisfying 2.01 acres of the total 5.61-acre mitigation requirement.] and

B. The submittal and implementation of a marine mitigation plan, prepared by a qualified biologist, and including:

- plans of the mitigation site drawn to scale which fully depict both existing conditions and proposed improvements;
- an implementation schedule which indicates when necessary permits would be secured, when contracts for construction would be let, when construction would commence, and when various stages of the work would be completed;
- a five-year monitoring program designed to measure the success of the mitigation plan;
- a definition of "success" such that the density of flora and fauna is comparable with that in surrounding or nearby habitat areas of the same type, and;
- a provision that within the five-year monitoring period the applicant shall take additional steps as may be appropriate to ensure the success of the mitigation plan.

Furthermore, any mitigation plan prepared pursuant to Proposal B shall include one of the following alternatives:

- a. Creation of subtidal and intertidal habitat comparable in character to the area being filled through this permit, or;
- b. Restoration of previously degraded or filled marine or wetland habitat in the Marin County coastal zone. Restoration shall be accomplished through the removal of historic fill, improvement of water circulation, and such other steps as will create or improve habitat for fish, water birds, and other marine or marine-related species.

The applicant shall implement the marine mitigation plan, or, alternatively, the applicant shall contribute sufficient funds to another public entity to implement the marine mitigation plan. If the applicant chooses to contribute funds to a public entity, the applicant shall submit for the review and approval of the Commission evidence in writing from the public entity indicating approval of implementation of the mitigation plan on property controlled by such entity and a commitment to maintain the mitigation site in open space indefinitely.

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APPLICATION NO.	1-90-109-A5
Proposed condition No. 1 as proposed by the applicant (page 1 of 2)	

The applicant shall provide a written statement to the Executive Director by June 1, 1997 indicating how the applicant intends to provide the remaining 3.6 acres of mitigation required by this condition. If the Redwood Creek/Big Lagoon project is implemented to satisfy the permit requirements, the environmental document for the project shall be approved by December, 1998 and construction documents shall be completed by December 1999. Regardless of which mitigation site is selected, the mitigation project construction shall be completed, excluding plant establishment and monitoring activities, by December, 2000.

This condition substitutes for and supersedes the language of Special Condition No. 1 of Permit No. 1-90-109, as previously amended.

~~The applicant shall provide written correspondence to the Executive Director by February 1, 1993 stating that the applicant is committed to implementing the Bolinas Lagoon Restoration Project and indicating how the applicant expects to provide the remaining 3.6 acres of mitigation required by this condition. A plan prepared pursuant to Part B of this condition shall be submitted by March 1, 1994.~~

~~In the event that the Bolinas Lagoon Restoration Plan is not implemented by January 11, 1994, the total mitigation requirement of 5.61 acres shall increase by .5 acre and shall continue to increase in .5 acre increments at the end of each 6 month period following January 11, 1994 if the Bolinas Lagoon Restoration Plan is not implemented.~~

~~This condition substitutes for and supersedes Special Condition No. 1 of Permit No. 1-90-109 as previously amended. (The language of the old condition being deleted is struck through /// and the new language is underlined.)~~

EXHIBIT NO.	3
APPLICATION NO.	1-90-109-A5
Proposed condition No. 1 as proposed by the applicant (page 2 of 2)	

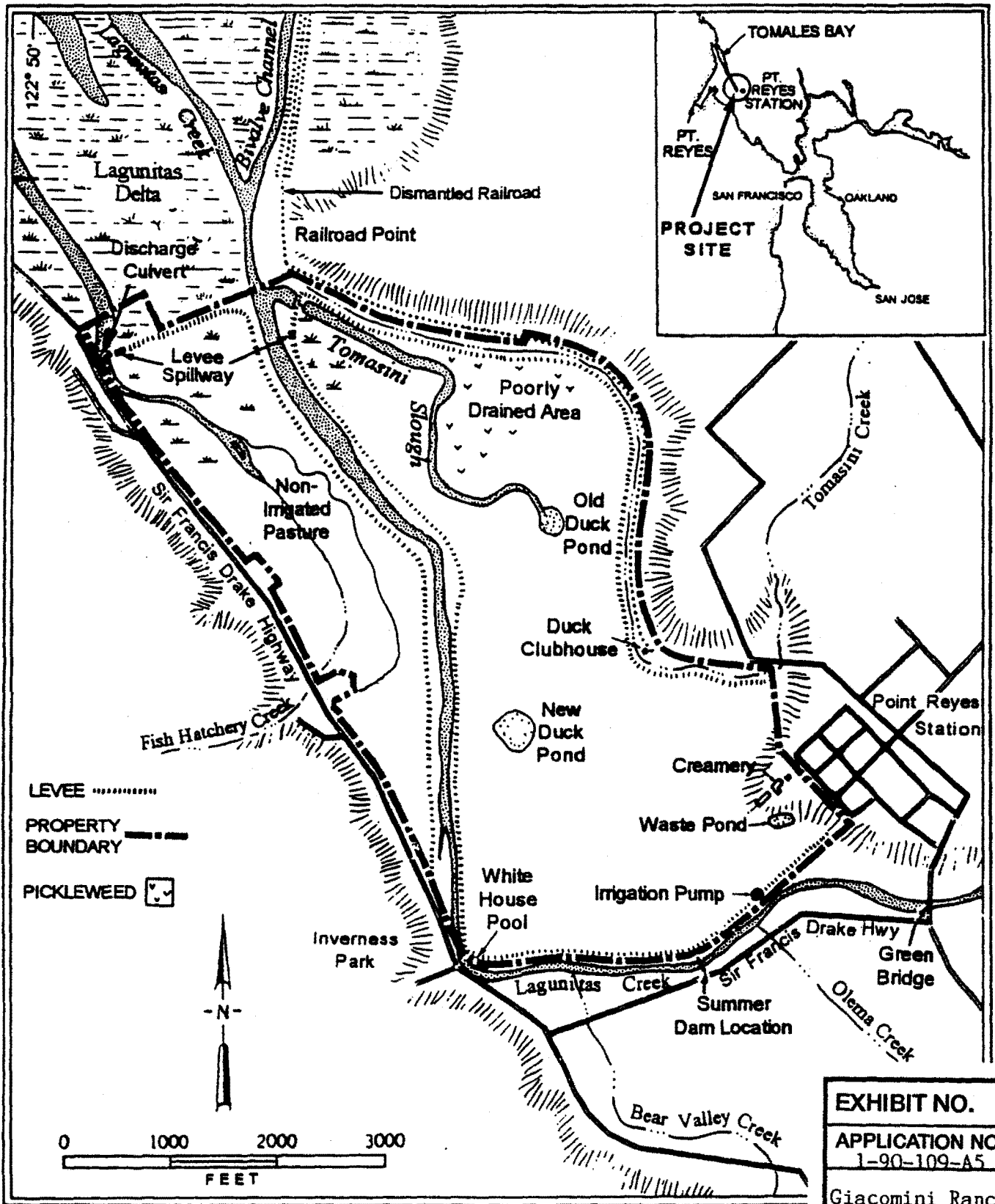


EXHIBIT NO.	4
APPLICATION NO.	1-90-109-A5
Giacomini Ranch location	