

CALIFORNIA COASTAL COMMISSION

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Date Filed: December 01, 1998
 49th Day: January 19, 1999
 180th Day: May 30, 1999
 Staff: Robert Merrill - E
 Staff Report: April 28, 1999
 Hearing Date: May 14, 1999
 Commission Action:

STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 1-98-103

APPLICANT: JAMES & LESLIE O'NEIL

PROJECT LOCATION: Along the Eel River delta, at 1875 Cannibal Island Road, approximately two miles west of Loleta, Humboldt County APN 309-181-04F

PROJECT DESCRIPTION: Construct a 20,000-square-foot free stall barn for dairy cows by placing 4,000 cubic yards of earthen fill and constructing an open sided 100-foot by 200-foot structure over the filled area.

Lot Area: 80 acres

Plan Designations: Agricultural Exclusive (AE)

Zoning: Agriculture Exclusive 60-acre minimum parcel size with Coastal Wetland, Flood Hazard Area, Streams and Riparian Corridor Protection, and Transitional Agricultural Lands combining zones (AE-60/W, F, R, T)

LOCAL APPROVALS RECEIVED: None required.

OTHER APPROVALS REQUIRED: U.S. Army Corps of Engineers and State Lands Commission approvals may be required.

SUBSTANTIVE FILE DOCUMENTS: Coastal Commission Permit No. 1-83-74, Coastal Commission Categorical Exclusion Order No. E-86-4, and Humboldt County Local Coastal Program.

SUMMARY OF STAFF RECOMMENDATION

The major issue raised by the proposed project is the fill of wetlands. Staff recommends DENIAL of the project because the project is inconsistent with the strict fill limitations of Section 30233 of the Coastal Act, which only allow the placement of fill in wetlands for eight specified allowable uses. The proposed free stall barn is not one of the allowable uses under Section 30233(a). The project is also not consistent with Section 30233 requirements that no fill project be approved if there is a feasible, less environmentally damaging alternative. In this case, the applicants have not demonstrated that at least two possible alternatives are not feasible. Finally, the applicants have not provided sufficient detail about their wetland enhancement proposal to demonstrate that the proposal would adequately mitigate the impacts of the proposed fill for the barn, and be consistent with the requirements of Section 30233 that adequate mitigation be provided.

STAFF NOTES:

1. Staff Consideration of Permit Waiver

Application No. 1-98-103 appeared in the North Coast District Director's Report in January of 1999 as an application that Commission staff had originally intended to waive. Staff had considered waiving the application as the application proposes to develop a structure that is part of a priority use (a barn as part of a coastal agricultural use) in an area where farm structures are common and because the submitted application indicated that there were no wetlands at the project site. However, prior to the January Commission meeting, staff learned that the soil type at the project site is of a kind that is associated with seasonal wetlands, and that the development had commenced prior to submittal of the permit application. Therefore, prior to the Commission meeting, staff withdrew its recommendation that the application be waived to allow time for the staff to further investigate whether the proposed project would adversely affect coastal wetlands and conflict with Coastal Act wetland policies.

2. After the Fact Development

Development of the proposed barn commenced prior to submittal of the permit application. The applicants have indicated to Commission staff that they commenced development relying on information the applicants say they obtained from the Humboldt County Planning Department that the project site is within the County's coastal permit jurisdiction and covered by Categorical Exclusion Order No. E-86-4, approved by the Commission in 1986, which exempts from coastal permit requirements agricultural accessory buildings in certain situations. The applicants state that it was not until they were directed by the Natural Resources Conservation Service (NRCS) in conjunction with an application they had made for a grant from the NRCS to contact the Coastal Commission and other state and federal agencies to determine what other permits might

be needed for the project that they learned that the project was within the Commission's jurisdiction. Commission staff has confirmed with the County that the project site is within the Commission's jurisdiction. Even if the site were within County jurisdiction, the development would not be exempt pursuant to Categorical Exemption No E-86-4 as the site is not within the mapped area covered by the exemption and conditions of that order provide that the categorical exclusion order does not apply to proposed agricultural accessory structures within 200 feet of wetlands.

Should the Commission adopt the staff recommendation to deny the permit application, additional Commission action in the future may be needed to enforce resolution of the violation.

3. Previous Coastal Development Permits.

The Commission has issued a previous coastal development permit for development on the site. Coastal Development Permit No. 1-83-74 was granted in 1984 for development of a barn on the same parcel as the proposed free stall barn. Wetlands information submitted as part of the current permit application suggests that virtually all of the applicant's property that has not been developed is a seasonal wetland and that virtually all portions of the property that was previously built upon were likely wetlands also. An examination of the permit file for Coastal Development Permit No. 1-83-74 indicates that the development was approved by the Commission without knowledge of the existence of wetlands at that site.

4. Jurisdiction and Standard of Review.

The proposed project is located in the bottom lands of the Eel River delta, off of Cannibal Island Road, approximately two miles west of Loleta, in Humboldt County. Humboldt County has a certified LCP, but the project site is subject to a public trust easement. Although much of the Eel River delta area was diked off from tidal action on the lower Eel River approximately 100 years ago, the site is within an area shown on State Lands Commission maps over which the state retains a public trust interest. Therefore, the standard of review that the Commission must apply to the project is the Coastal Act.

I. **MOTION, STAFF RECOMMENDATION AND RESOLUTION**

The staff recommends that the Commission adopt the following resolution:

Motion.

I move that the Commission approve Coastal Development Permit No. 1-98-103 subject to conditions.

Staff Recommendation of Denial.

Staff recommends a **NO** vote and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution to Deny Permit:

The Commission hereby denies a coastal development permit for the proposed project on the grounds that the project, located between the sea and the first public road nearest the shoreline, is not in conformance with the provisions of Chapter 3 of the California Coastal Act of 1976. Granting of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

II. FINDINGS AND DECLARATIONS.

The Commission hereby finds and declares as follows:

1. Site Description.

The project site is located along the Eel River delta, at 1875 Cannibal Island Road, approximately two and a half miles east of the ocean, two miles west of Loleta, and approximately 25 miles south of Eureka in Humboldt County (see Exhibits 1 and 2). The approximately 80-acre agricultural property has approximately 1,320 feet of frontage along Cannibal Island Road and extends approximately 2,640 feet northward.

The flat parcel slopes gently to the north with slopes of less than two percent, at elevations less than 10 feet above mean sea level. The north-south flowing Quill Slough and two minor tributaries of Quill Slough bisect portions of the property. The tidal waters of Quill Slough connect to the ocean via Hawk Slough, North Bay Slough, and finally, the mouth of the Eel River. The land is within the flood plain of the Eel River Delta and will occasionally flood for brief periods of time. The land has a high water table (0-12 inches January-March most years) and the entire parcel consists of grazed seasonal wetlands or other kinds of wetlands except for the portions that have been developed with structures (see finding 4 below for more information about wetlands).

The subject property has been used as a dairy ranch for many years and is developed with the applicant's residence (east of Quill Slough) and a complex of ranch facilities immediately adjacent to the site of the proposed barn (see Exhibit 3). These facilities include a 4,200-square-foot milking barn, a 2,280-square-foot calf barn, a 4,650-square-foot feed barn, a 1,080-square-foot equipment shed, and an approximately ½ -acre waste treatment pond for treating agricultural waste. Undeveloped lands are devoted to pasture

for dairy cows except for the slough areas. The land is non-prime agricultural land. According to the staff of the Natural Resource Conservation Service (NRCS), the soil type is Bayside silty clay loam which is considered to be Grade 4 and 5 on a scale from 1 to six, with Grade 1 being the soil grade best suited to general intensive agriculture (Personal communication with James Komar). Grades 4 and 5 are poorly suited to crops.

The subject property is surrounded by other agricultural lands devoted to dairy farming, with pastures, farm buildings, and ranch homes.

2. Previous Commission Permit

The Commission has issued a previous coastal development permit for development on the site. Coastal Development Permit No. 1-83-74 was granted in 1984 for development of a barn on the same parcel as the proposed free stall barn. Wetlands information submitted as part of the current permit application suggests that virtually all of the applicant's property that has not been developed is a seasonal wetland and that virtually all portions of the property that was previously built upon were likely wetlands also. An examination of the permit file for Coastal Development Permit No. 1-83-74 indicate that the development was approved by the Commission without knowledge of the existence of wetlands at that site.

3. Project Description

As originally submitted, the proposed project consists of the construction of a 20,000-square-foot free stall barn immediately adjacent to the existing feed barn. By letter dated April 12, 1999, the applicants amended their application to also include as part of the proposed project (1) upgrading of the existing waste pond, and (2) a wetlands enhancement proposal involving the planting of willows along the west side of Quill Slough. The three project elements are described more specifically below.

Free Stall Barn

The proposed 200-foot-long by 100-foot-wide free stall barn would consist of a structure with low concrete and open side walls built over a concrete floor. The structure would be constructed on top of approximately 4,000 cubic yards of earthen fill material placed to a depth of approximately six feet. Construction of the barn commenced prior to submittal of a coastal development permit application. The earthen fill has been placed and the concrete floor and low side-walls have been constructed. The roof has not yet been constructed (see Exhibit 3).

The applicants indicate the barn is needed to provide a place for their cows to bed during the rainy season when the pasture lands are often saturated and the cows need a drier place to stand or lay down to reduce the chances of the cows contracting diseases. The barn creates a refuge for the cows from floods and winter storms. In the past, the

applicants have spread a thick layer of wood chips over an area of ground to provide a place for the cows to stand or lay down in the winter. As discussed in the finding below on project alternatives, the applicants indicate that wood chips are generally not available any more for this purpose. In addition, the barn allows the animal waste to be more efficiently removed with a tractor and scraper. The animal waste is managed pursuant to a conservation plan recently developed with the assistance of the National Resource Conservation Service (NRCS). The manure is ultimately spread over the pasturelands.

Waste Pond Improvements.

The proposed upgrading of the existing waste pond consists of raising the perimeter dike of the pond from four feet high to six feet high and adding a picket dam in the middle (see Exhibit 4). The dam would be made of concrete and pressure treated wood. The upgrades to the waste treatment pond have already been completed without benefit of a coastal development permit.

The ponds were constructed originally to control cow waste. Manure is collected and deposited in the ponds, where the solids are allowed to settle out. After a sufficient period of time and during good weather when no storm water runoff is expected, the liquids are typically pumped and sprinkled onto the fields as irrigation water. The solids are later collected and typically set out to dry. The manure is then often spread out on the field as fertilizer or sold for fertilizer. According to NRCS staff, the recent upgrades to the O'Neil waste pond have greatly improved the ranch's waste management system. The upgrades have created greater storage capacity and made the pond a double pond system. The greater storage capacity means the pond's capacity will not be exceeded as often as it was in the past, when excess waste had to be spread directly on the fields during periods of high storm water runoff and/or kept for a shorter period of time in the ponds. Ideally, waste should be stored in the ponds for at least 60 days to allow for sufficient natural breakdown of contaminants to allow the waste to be spread safely out onto the fields. The double pond system provides for a better means of separating solids from liquids and provides for easier pumping of the liquids for irrigation.

Wetland Enhancement Proposal.

As described in the applicants' April 12, 1999 letter, the wetland enhancement proposal, the applicants intend to:

“...create a riparian habitat along the Quill Slough, that is considered to be quality wetland, this would include planting of willows along the entire length of our property. See attached map.”

The map included with the letter (see Exhibit 5) indicates that the wetland enhancement area extends along the west side of Quill Slough as it extends northward through the

property for approximately 2,500 lineal feet (as scaled from the map). No further details of the proposal have been submitted.

4. Wetlands

The project site consists of a seasonal wetland. The definition of wetlands contained in Section 30121 of the Coastal Act defines "wetland" as follows:

'Wetland' means lands within the coastal zone which may be covered periodically or permanently with shallow water and include saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, and fens.

A more explicit definition is found in the Commission regulations. Section 13577(b) of Title 14 of the California Code of Regulations defines wetlands as follows:

Wetlands are lands where the water table is at, near, or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes, and shall also include those types of wetlands where vegetation is lacking and soil is poorly developed or absent as a result of frequent or drastic fluctuations of surface water levels, wave action, water flow, turbidity or high concentrations of salt or other substances in the substrate. Such wetlands can be recognized by the presence of surface water or saturated substrate at some time during each year and their location within, or adjacent to. Vegetated wetlands or deep water habitats."

The above definition requires the presence of one of three common wetland attributes of hydrology, hydrophytic vegetation, and hydric soils. It should be noted that this definition is more inclusive than definitions used by other agencies such as the U.S. Army Corps of Engineers which requires a site to exhibit all three of these attributes to be considered a wetland.

The applicants hired a wetland biologist to determine whether the project site contains wetlands. Clare T. Golec, a staff botanist with Natural Resources Management Corporation, prepared a draft wetland assessment of the project site that was submitted to Commission staff. A copy of the assessment is included as Exhibit 5. The assessment involved an evaluation of the vegetation for a prevalence of wetland indicator plant species, a brief examination of the soils for indications of reduction, and an appraisal of wetland hydrology indicators. The assessment concludes that the proposed barn site supported a seasonal wetland before the site was filled, based on the two wetland attributes of hydric soils and hydrology and to a lesser extent the vegetation of the adjacent field area. This determination was made based specifically based on the Coastal Act definition of wetlands.

In approving the Eel River plan segment of the Humboldt County LCP, the Commission found that farmed wetlands qualify as wetlands under the Coastal Act and also provide valuable habitat. They found that:

“The area also holds approximately 5,500 acres of farmed habitats. These farmed wetlands include diked former tidal marshes, sloughs, and old meander scars of the Eel River and its tributaries which flood during rainy winter periods or which have soils saturated with water during portions of their growing season. Hydrophytic (water-loving) vegetation is frequently common in these areas. Common native hydrophytic plants of these pastures include sedge, vinegrass, buttercups, and silverweed. In addition, many of the introduced grasses which have been planted in these pastures are hydrophytic plants. Bentgrass, red fescue, and Timothy are examples of common hydrophytic grasses planted in these pastures, bullrush, cattails, and reed canary grass grow in shall water or along the water's edge. Water-oriented shorebirds and gulls forage for the insects and other invertebrates which are common in these wet farmlands. Shorebird use of pasture areas is common, particularly when high tides cover other foraging areas, such as mudflats on the river's estuary. In addition, waterfowl, such as mallards and cinnamon teal, rest and nest among the lush emergent vegetation within or adjacent to old tidal channels. Widgeon and whistling swans feed on the pastures' grasses. Wading birds, such as egrets and great blue herons, are also common in these farmlands, where they hunt for insects and small rodents in pastures or sloughs. Raptors, such as marsh hawks and shorteared owls, are typical predators in these areas. Peregrine and prairie falcons, which sometime winter in the Eel River delta are occasionally seen hunting over these fields. In addition to these habitat values, these wet pasturelands perform important flood control functions during heavy rains by holding surface water run-off from adjacent uplands.”

5. Jurisdiction

The proposed project is located in the bottom lands of the Eel River delta in Humboldt County in an area that is entirely within the coastal zone. Humboldt County has a certified LCP. In areas within the coastal zone where an LCP has been certified, the Commission retains jurisdiction over tidelands, submerged lands and lands subject to the public trust. Much of the Eel River delta area was diked off from tidal action on the lower Eel River approximately 100 years ago. The project site is in such an area, and is shown on State Lands Commission maps as being entirely within an area over which the state retains a public trust interest. Therefore, as the project site is subject to a public trust easement, the site is within the Commission's retained jurisdiction and the standard of review that the Commission must apply to the project is the Coastal Act. The County agrees with the Commission's assertion of jurisdiction on this basis.

6. Fill in Coastal Waters and Wetlands.

The Coastal Act defines fill as including "earth or any other substance or material ... placed in a submerged area." The proposed project includes the placement of fill in open coastal waters or wetlands in the form of previously placed rock, dirt and concrete rubble and proposed additional rock.

Several sections of the Coastal Act address the placement of fill within wetlands. Section 30231 of the Coastal Act provides as follows, in applicable part:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes...shall be maintained and, where feasible, restored...

Section 30233 of the Coastal Act addresses the placement of fill within open coastal waters and wetlands. Section 30233(a) provides as follows, in applicable part:

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

- (1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.*
- (2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*
- (3) In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities, shall not exceed 25 percent of the degraded wetland.*
- (4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.*

(5) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.

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

(7) Restoration purposes.

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

The above policies set forth a number of different limitations on what fill projects may be allowed in coastal waters and environmentally sensitive habitat areas. For analysis purposes, the limitations can be grouped into three general categories or tests. These tests are:

- a. that the purpose of the project is limited to one of eight allowable uses.
- b. that the project has no feasible less environmentally damaging alternative; and
- c. that adequate mitigation measures to minimize the adverse impacts of the proposed project on habitat values have been provided.

A. Permissible Use for Fill

The first general limitation set forth by the above referenced Chapter 3 policies is that any proposed fill can only be allowed for certain limited uses. The proposed project is not consistent with Section 30233, as an agricultural barn is not one of the eight uses allowable use under Section 30233(a). Therefore, the Commission finds that the project does not meet the requirement of the Coastal Act Sections 30233 for permissible uses for fill of wetlands, and is therefore inconsistent with the Chapter 3 policies of the Coastal Act and accordingly must be denied.

No further analysis of the proposed project is required to find the development inconsistent with Sections 30233 of the Coastal Act. However, the Commission notes that based on information provided, even if the proposed project met the test for permissible uses for fill set out above, it has not been adequately demonstrated that other tests for compliance with the fill policies of the Coastal Act have been met, as discussed below.

B. No Feasible Less Environmentally Damaging Alternatives.

Coastal Act Section 30233 does not allow fill of wetlands if there is a feasible, less environmentally damaging alternative to the project. Alternatives to the project as proposed must be considered before a finding can be made that a project satisfies this provision of Section 30233. Possible project alternatives to consider include (1) the no project alternative, (2) continuing the use of wood chips for cow bedding, (3) building the barn elsewhere on the property, (4) utilizing existing building or their sites, (5) relocating the herd off-site for wintering generally, and (6) utilizing the family member's property across Cannibal Island Road for wintering. Of the six alternatives, the Commission finds that the applicants have only demonstrated that building the barn elsewhere on the property should be rejected as an alternative that is not environmentally less damaging. With regard to the other five alternatives, the Commission finds that the applicants have not demonstrated in the information submitted to date that any of these alternatives must be rejected because they are either infeasible or more environmentally damaging.

Building the Barn Elsewhere on the Property

The applicants considered building the barn elsewhere on the property to avoid the seasonal wetland area that has now been affected by the commencement of construction of the barn. However, the wetlands assessment prepared by the applicants biologist indicates that except for the area of the already developed complex of buildings at the southern end of the property, the entire property consists of seasonal wetlands or higher quality wetlands associated with the sloughs and ponding depressions that support aquatic wildlife and marsh vegetation. The site chosen by the applicants may have the least effect on wetland habitat values as the site's proximity to the milking barn entrance caused the area to already be impacted by cows waiting to be milked. As there is no other location on the property where the proposed free stall barn could be built that would not require the filling of wetlands, the Commission finds that building the barn elsewhere on undeveloped portions of the property would not be an environmentally less damaging alternative.

No Project Alternative

The no project alternative would mean not providing any specific facility or place for the cows to rest off of the saturated soil and out of the weather during the rainy season. This alternative would result in no wetland fill. The applicants indicate that this alternative is not feasible as the cows would be more susceptible to contracting certain diseases, including mastitis (an infection in the udder). According to the staff of the NRCS, cows that are lactating or pregnant would be particularly vulnerable. In addition, besides endangering the health of the cows, this alternative would result in reduced milk production. When cows are in poor health, their milk production is reduced. Reduced milk production can obviously affect the viability of the dairy operation.

Although the above information indicates that not providing any facility or place for wintering the cows would make the dairy operation less efficient and more difficult to manage, the information does not demonstrate conclusively that this alternative would be infeasible. According to the staff of the NRCS, some dairy farmers in the area have no facility or strategy at all for wintering their cows and simply leave them in the field (personal communication, James Komar). These dairy farmers endure a much greater risk of business failure because of the greater health threat to the cows and the resulting loss in milk production. However, some dairy farmers operate in this manner. The particular circumstances surrounding the applicants' dairy operation may make the no project alternative infeasible in their case. However, the applicants have not demonstrated why their dairy operation cannot be conducted without providing a specific facility or place for wintering the cows when other dairy operations can. For example, no projections have been provided of how much greater incidence of disease among the cows can be expected, how much milk production would fall, and how these amounts relate to the viability of the operation. Therefore, the Commission finds that the applicants have not demonstrated that the no project alternative is infeasible.

Continuing Use of Wood Chips for Cow Bedding

Until now, the applicants have utilized wood chips to create temporary cow bedding areas. Wood chips were purchased from local lumber mills and spread in a thick layer over the ground to provide a place for the cows to stand or lay down in the winter. Although the wood shavings lot was not covered, the shavings lot provided a relatively high and dry place off the saturated ground for the cows to rest. To control the build up of manure, the chips needed to be periodically removed and replenished with new chips.

According to the applicants, however, this alternative is no longer feasible as wood chips are generally not available any more for dairymen to purchase from local lumber mills for this purpose. In increasing amounts, the mills are using wood chips to create wood products such as pressed board. In addition, the applicants indicate that their herd has grown in size to a point where the wood chip method is impractical, because of the labor necessary to manage removal of the chips to control the build up of manure. The applicants state,

“Our current bedding pile is depleted, it would cost at least \$15,000 to rebuild it, and the material is simply not available....We increased our herd size in April of 1998, primarily to offset the increased cost to produce milk. With additional cows we have over-crowded our shavings lot. In addition, this is not an efficient way to run a dairy operation. The cows stand for too long a period of time, because it takes a long time to clean the manure. With the over-crowding we have had several stepped on teat ends (and) lame cows from standing (for) too long a period of at a time. We have had an excess amount of mastitis (an infection in the udder) because we have had so much rain this season... The cows

stand for too long a period of time, because it takes a long time to clean the manure..."

The information above indicates that reliance on a wood shaving lot for wintering cows would be problematic. However, the information does not conclusively prove that this alternative is infeasible. It is not clear from the statement made whether wood chips are not available at all or just not available at a price that the applicant's believe they can afford. In addition, the applicants have not indicated how the \$15,000 or greater cost of rebuilding the bedding pile relates to the dairy operation's overall costs and why that amount makes the dairy operation infeasible to continue. Therefore, the Commission finds that the applicants have not demonstrated that this alternative is infeasible.

Relocating the Herd Off-Site For Wintering Generally

A possible alternative to consider is wintering the cows at an off-site location. A factor that makes such an alternative problematic however, is that wherever the cows are taken, the cows must have ready access to a milking facility as cows generally must be milked twice daily. In addition, to avoid water quality problems, the wintering site must have waste ponds or other facilities for handling the cow manure. Furthermore, trucking cows adds a significant expense to the operation. Although such factors make this alternative problematic, the applicants have not yet demonstrated that no suitable off-site wintering location exists or that the cost of transporting the cows would make the operation infeasible. Therefore, the Commission finds that the applicants have not demonstrated that this alternative is infeasible.

Utilizing Family Member's Property Across Cannibal Island Road For Wintering

A close family member of the applicants owns a large agricultural property across Cannibal Island Road from the applicants' property. It may be possible to winter the cows on this approximately 85-acre parcel. Again, the cows would need to have access to a milking facility and facilities would have to be available for handling the cow waste. It is not clear whether the family member's property is equipped with such facilities with capacity to handle the applicants herd. Whether or not such facilities exist, it may be possible to utilize the applicants milking barn and waste ponds for this purpose. The cows would have to be moved across Cannibal Island Road and back twice daily. No information has been provided about the facilities that exist on the family members ranch, and the applicants have not demonstrated whether the applicant's milking barn and waste pond facility could be utilized in combination with sheltering the cows on the property across the road. Therefore, the Commission finds that the applicants have not demonstrated that this alternative is infeasible

Utilizing Existing Building or Their Sites

Another possible alternative to consider is utilizing existing structures on the property to house the cows in the winter or relocating the current uses made of those structures to an offsite location and using these sites for a free stall barn. The property is currently developed with a milk barn, equipment shed, calf barn, feed barn, and house. The applicants have not demonstrated that some of these structures could not be used for sheltering the cows in addition to their current uses. In addition, the applicants have not demonstrated that some combination of the uses of these structures could not be relocated off-site to enable the structures or their building sites to be used for a free stall barn facility. Therefore, the Commission finds that the applicants have not demonstrated that this alternative is infeasible.

Conclusion

As discussed above, the applicants have not demonstrated that alternatives to the proposed project, including (1) the no project alternative, (2) continuing the use of wood chips for cow bedding, (3) utilizing existing buildings or their sites, (4) relocating the herd off-site for cow bedding generally, and (6) utilizing the family member's property across Cannibal Island Road for cow bedding would be infeasible or would be more environmentally damaging. Without such a demonstration, the Commission finds that the proposed development is not consistent with the requirement of Section 30233 of the Coastal Act that no fill project be approved if there is a feasible, less environmentally damaging alternative.

C. Mitigation.

The third general limitation set forth by the above referenced Chapter 3 policies is that adequate mitigation measures to minimize the adverse impacts of the proposed project on habitat values have been provided. The proposed barn would cover approximately 20,000 square feet of seasonal wetland, thereby eliminating the habitat value of this seasonal wetland. The applicants amended their application to include a wetland restoration or enhancement proposal. The applicants intend to:

“...create a riparian habitat along the Quill Slough, that is considered to be quality wetland, this would include planting of willows along the entire length of our property. See attached map.”

The map included with the letter amending their application (see Exhibit 2) indicates that the wetland enhancement area would extend along the west side of Quill Slough as it extends northward through the property for approximately 2,500 lineal feet (as scaled from the map). No further details of the proposal have been submitted.

Such a wetland enhancement proposal could have value in mitigating the damage to the seasonal wetland affected by the proposed 20,000 square feet of fill associated with the barn. However, without specific details about the wetland enhancement proposal, the Commission cannot determine that the habitat values that might be created by the proposal would be adequate to mitigate for the loss of 20,000 square feet of seasonal wetland. Important details necessary to evaluate whether the mitigation proposal would be adequate include such information as the specific enhancement objectives, the size of the mitigation area, the manner in which planting would be performed, plant species to be utilized, the success standards to be employed, and how the success of the enhancement effort would be monitored and remedied if difficulties are encountered. Therefore, the Commission finds that the applicants have not demonstrated that the impacts associated with proposed fill project would be adequately mitigated.

7. Coastal Agriculture

The proposed project consists of various improvements to a dairy farm, a kind of coastal agricultural use. The Coastal Act affords certain priority to coastal agriculture over other kinds of uses that might be proposed within the coastal zone.

Section 30241 of the Coastal Act states as follows:

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:

(a) By establishing stable boundaries separating urban and rural areas, including, where necessary, clearly defined buffer areas to minimize conflicts between agricultural and urban land uses.

(b) By limiting conversions of agricultural lands around the periphery of urban areas to the lands where the viability of existing agricultural use is already severely limited by conflicts with urban uses or where the conversion of the lands would complete a logical and viable neighborhood and contribute to the establishment of a stable limit to urban development.

(c) By permitting the conversion of agricultural land surrounded by urban uses where the conversion of the land would be consistent with Section 30250.

(d) By developing available lands not suited for agriculture prior to the conversion of agricultural lands.

(e) By assuring that public service and facility expansions and nonagricultural development do not impair agricultural viability, either through increased assessment costs or degraded air and water quality.

(f) By assuring that all divisions of prime agricultural lands, except those conversions approved pursuant to subdivision (b), and all development adjacent to prime agricultural lands shall not diminish the productivity of such prime agricultural lands.

Section 30242 of the Coastal Act states as follows:

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.

The certified LCP for Humboldt County also recognizes the importance of coastal agriculture and the beneficial relationship between coastal agriculture and maintaining farmed wetlands. The Eel River Area Plan segment of the Humboldt County Land Use Plan (LUP) provides a detailed description of the agricultural value of the Eel River Delta area. The plan states:

Virtually all the upland portions of the [Eel River] delta are in agricultural production with dairies, stock pasturage, and some row crops. ... This area accounts for over half the cultivated agricultural land in Humboldt County's coastal zone, and is the heart of the County's dairy industry.

The agricultural use of this area is unique to Humboldt County's coastal zone because of the relationship between seasonally inundated pastures and upland areas. During the wet season, the upland areas provide grazing areas free from both inundation and irrigation requirements. During the dry season, when the uplands would require extensive irrigation for pasturage, the seasonal wetland areas, with their high freshwater table, provide prime grazing land with minimum or no irrigation requirements.

The above Coastal Act policies and language from the certified LCP afford a certain priority to coastal agriculture over other kinds of uses that might be proposed within the coastal zone. The proposed development is consistent with the intent of these policies to maintain coastal agriculture, as the proposed development would enhance the applicant's dairy farm operation and help make the operation more viable. However, the fact that the proposed development is for a coastal agricultural use and may be consistent with the Coastal Act policies on agriculture does not by itself overcome the inconsistencies of the

project as proposed with Section 30233 of the Coastal Act to enable the Commission to approve the project.

8. Coastal Act Violation

Development of the proposed project free stall barn and the upgrading of the waste pond commenced without benefit of a coastal development permit. The barn is partially completed. The earthen fill base for the barn has been placed and the concrete foundation, flooring, and low walls have been constructed. In addition, the upgrades to the waste pond have been completed, which consist of raising the perimeter dike of the pond from four feet high to six feet high and adding a picket dam in the middle of the pond. This development has been performed in violation of the Coastal Act permit requirements. As discussed in the above findings, the proposed development is inconsistent with the Section 30233 of the Coastal Act. The fill placed for the proposed barn covered over approximately 20,000 square feet of seasonal wetland, thereby eliminating the habitat value of this seasonal wetland. Each day that the earthen fill and the constructed portions of the barn remain in place causes on-going resource damage to this wetland area. Although unpermitted development may have taken place prior to submission of a coastal development permit application, the permit application, consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Action on the permit does not constitute a waiver of any legal action with regard to the alleged violation nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit.

9. California Environmental Quality Act (CEQA)

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

The proposed project is not consistent with the policies of the Coastal Act that restrict the filling of coastal waters and wetlands. There are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project cannot be found consistent with the requirements of the Coastal Act and to conform to CEQA.

EXHIBITS

1. Regional Location
2. Vicinity Map
3. Site Plan
4. Waste Pond Plan
5. Wetlands Assessment

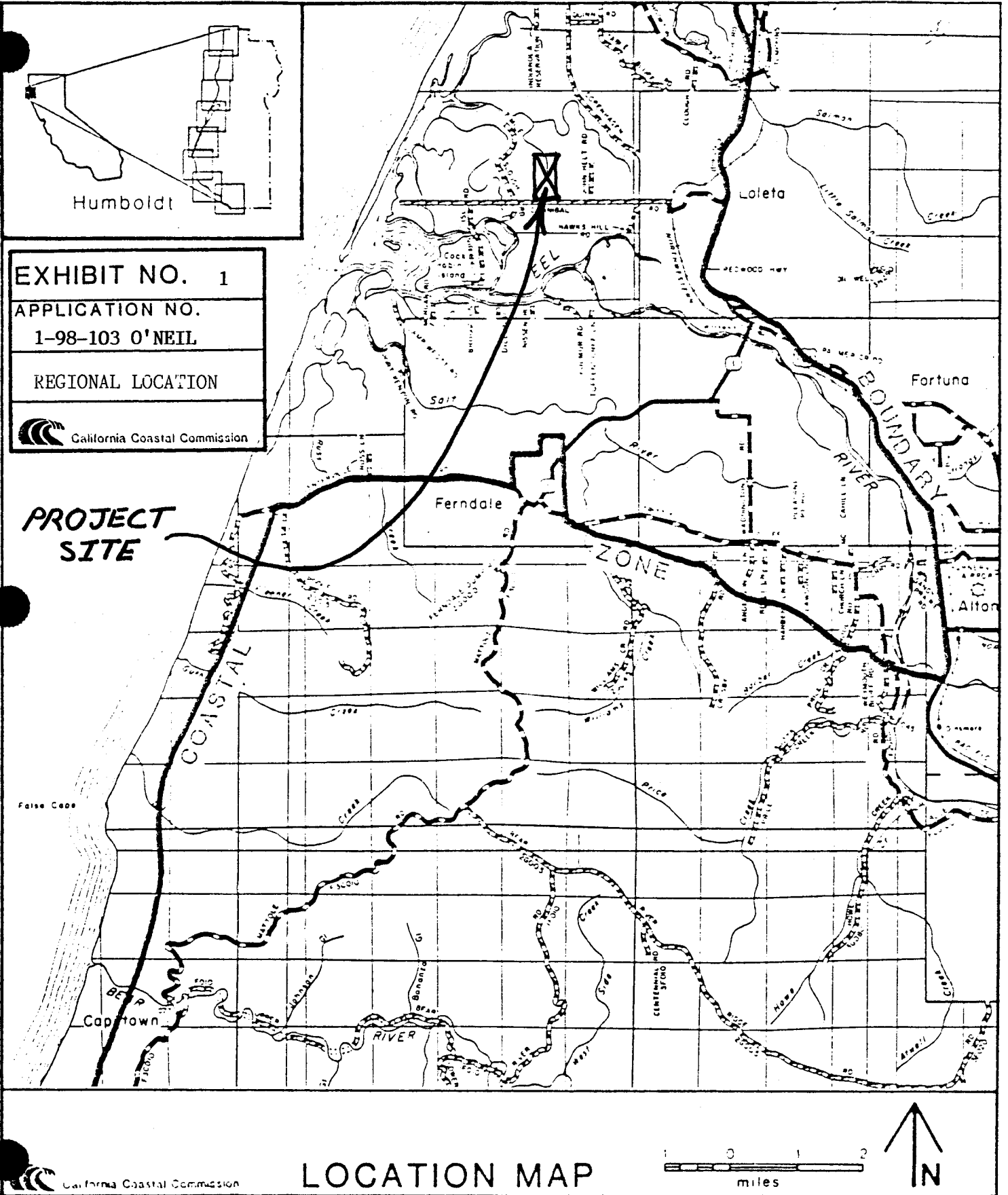



EXHIBIT NO. 1

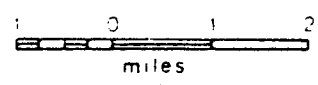
APPLICATION NO.
1-98-103 O'NEIL

REGIONAL LOCATION

 California Coastal Commission

PROJECT SITE

LOCATION MAP

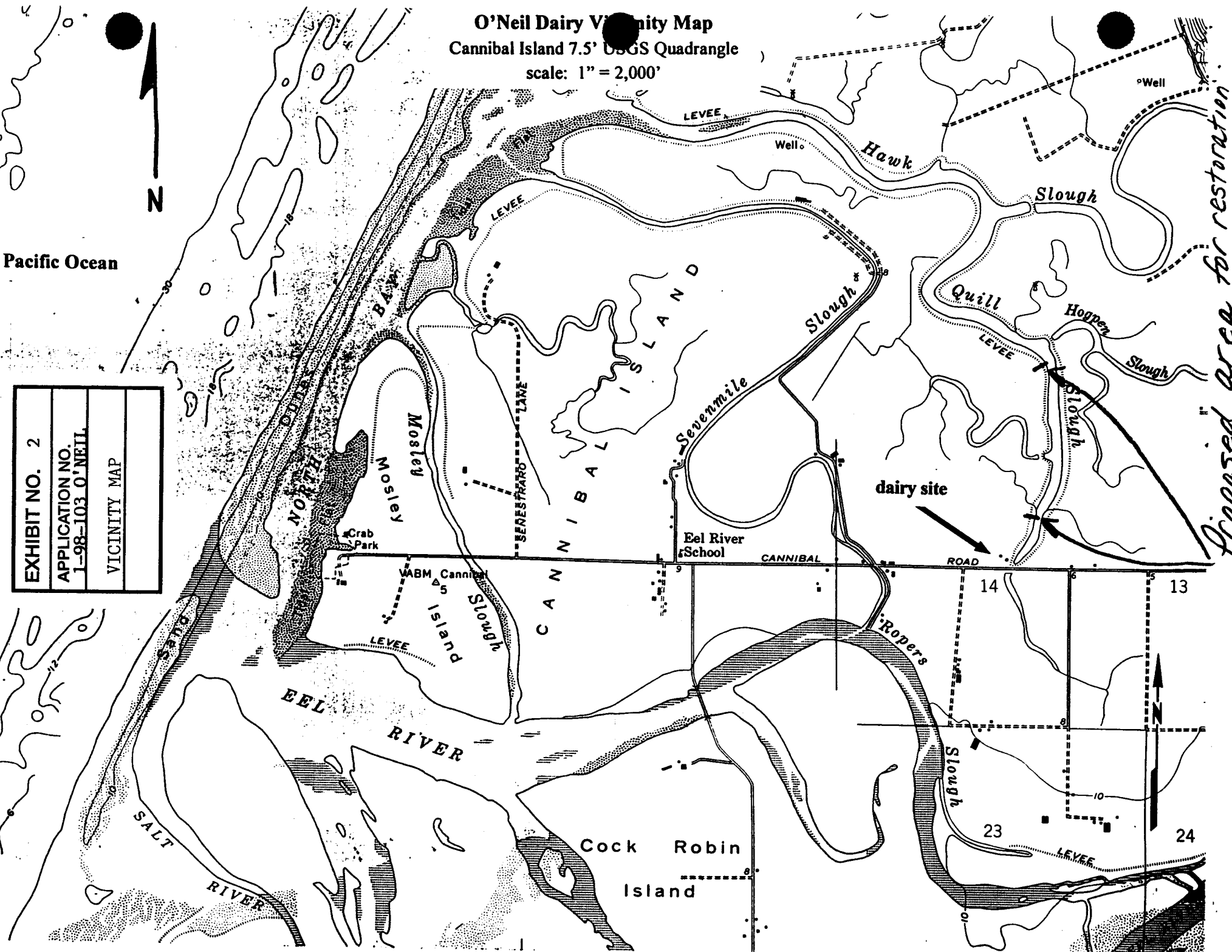


O'Neil Dairy Vicinity Map
 Cannibal Island 7.5' USGS Quadrangle
 scale: 1" = 2,000'



Pacific Ocean

EXHIBIT NO. 2
APPLICATION NO. 1-98-103 O'NEIL
VICINITY MAP



Proposed area for restoration.



AP# 309-181-04F
 James M. O'Neil
 1875 Cannibal Rd
 Loloeta, Ca. 95551
 707-35574

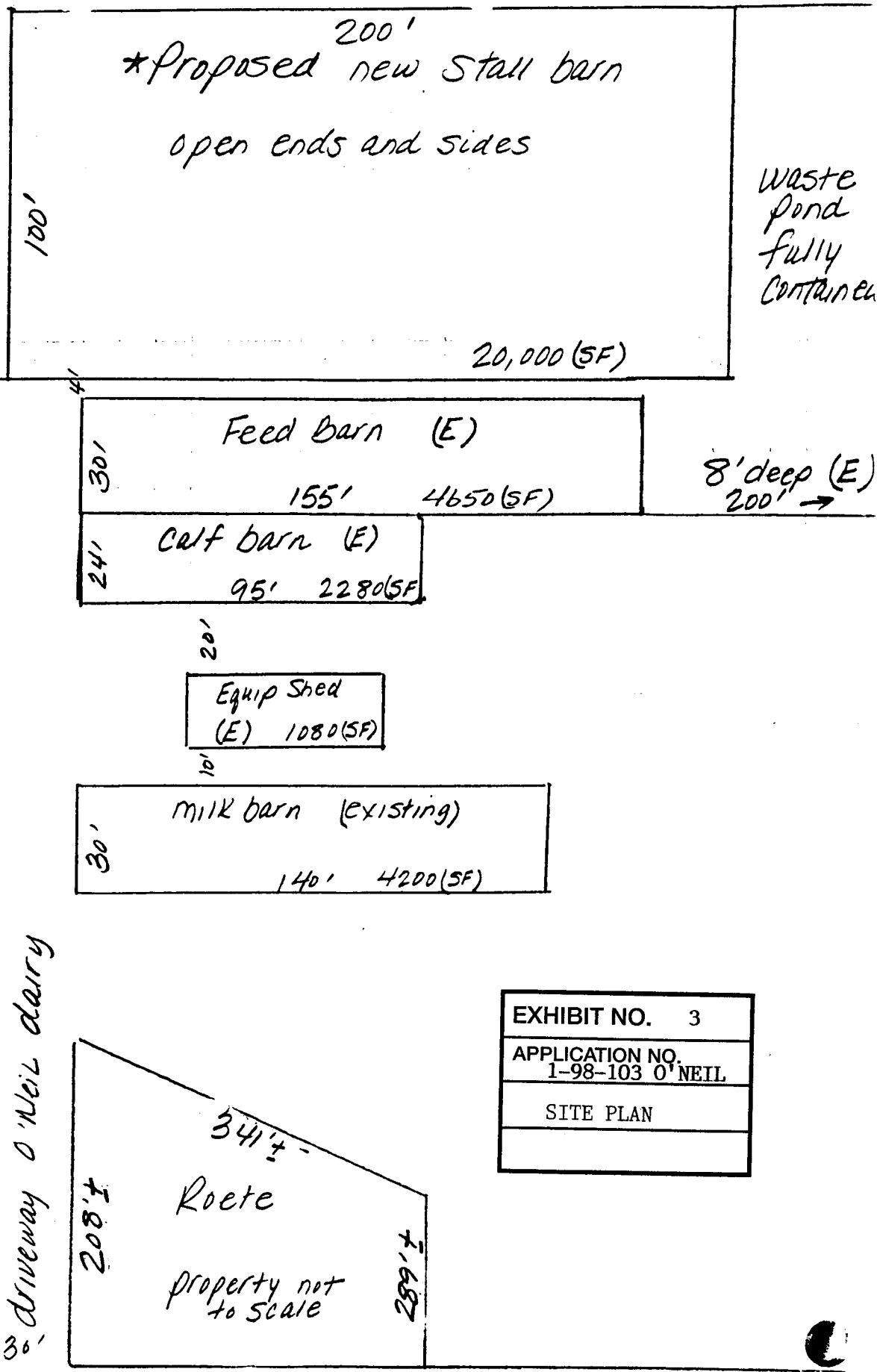


EXHIBIT NO.	3
APPLICATION NO.	1-98-103 O'NEIL
SITE PLAN	

Plot plan map



Cannibal Isl. Rd

Plan for waste Storage

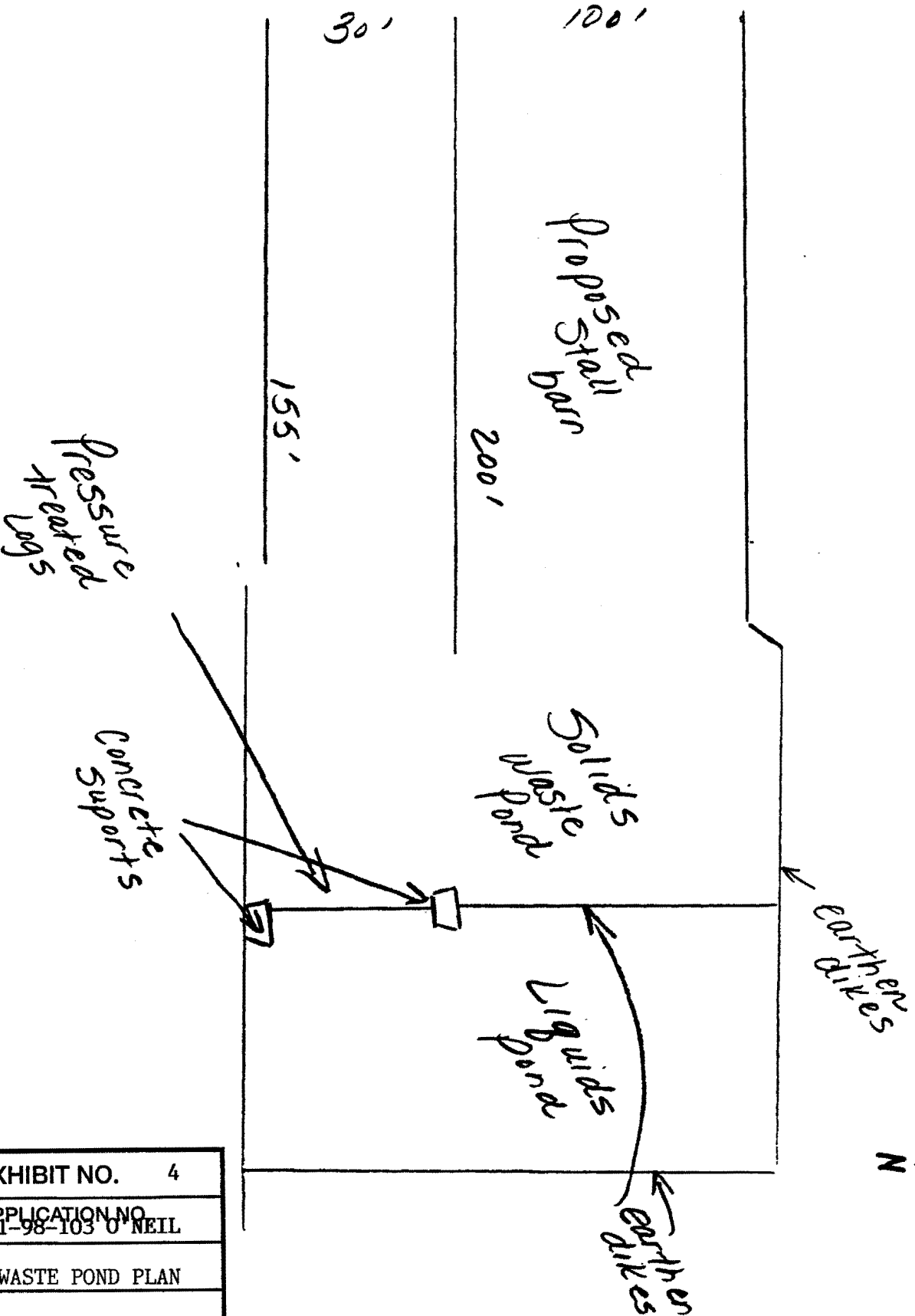


EXHIBIT NO.	4
APPLICATION NO.	1-98-103 O'NEIL
WASTE POND PLAN	

DRAFT

O'Neil Dairy Wetland Assessment

Prepared by: Clare T. Golec, staff botanist
Natural Resources Management Corporation
1434 Third Street, Eureka, CA 95501
(707) 442-1735

EXHIBIT NO. 5

APPLICATION NO.
1-98-103 O'NEIL

WETLANDS ASSESSMENT

(Page 1 of 4)

February 2, 1999

Introduction

A preliminary wetland assessment and field review was conducted January 26, 1999, for the O'Neil dairy at 1875 Cannibal Island Rd., Loleta, California. The dairy is situated just west of Loleta in portions of the Lower Eel River flood plain at elevations less than ten feet and with slopes less than two percent. The dairy is approximately 2.5 miles from the Pacific Ocean and is within the Coastal Zone (see attached vicinity map). The assessment was conducted to determine the presence and nature of wetlands at a proposed barn site on the dairy.

The proposed barn site located just east of the present milking barn, and recently has been filled with several feet of river run on which a cement foundation has been poured. The footprint of the proposed barn site is 20,000 square feet (100 feet by 200 feet), a little less than half an acre. The field review utilized an adjacent and similar field area (approximately 50 feet north from the proposed barn site) where comparable pre-fill conditions of the site could be assessed for wetland characteristics. The assessment involved an evaluation of the vegetation for a prevalence of wetland indicator plant species, a brief examination of the soils for indications of reduction, and an appraisal of wetland hydrology indicators.

Vegetation

The adjacent field area vegetation did not have a prevalence of hydrophytes (plants adapted to anaerobic conditions resulting from a prolonged inundation with water). The field area supports largely supports the non-wetland species perennial rye (*Lolium perenne*) mixed with white lawn clover (*Trifolium repens*). There are scattered occurrences throughout the field area of wetland and non-wetland species, such as wild radish (*Raphanus sativus*), poison hemlock (*Conium maculatum*), common plantain (*Plantain major*), common groundsel (*Senecio vulgaris*), bristly ox-tongue (*Picris echioides*), curly dock (*Rumex crispus*), creeping buttercup (*Ranunculus repens*), and English daisy (*Bellis perennis*).

Table 1 below catalogs the species composition of the surveyed adjacent field area. Each species has been assigned a wetland indicator status based on the U.S. Fish and Wildlife Service's *National List of Plant Species that Occur in Wetlands for California* (1988). A species' wetland indicator of OBL and FACW has been used to define a wetland species for this moist coastal location. The abbreviations and symbols utilized in these plant species lists are as follows:

- OBL**, obligate wetland plants with >99% occurrence in wetlands;
- FACW**, facultative wetland plants with 67-99% occurrence in wetlands
- FAC**, facultative plants with 34-66% occurrence in wetlands
- FACU**, facultative upland plants with 1-33% occurrence in wetlands
- UPL**, obligate upland plants with <1% occurrence in wetlands
- NI**, no indicator (insufficient information) for the region
- plus sign (+)**, frequency toward higher end of a category

minus sign (-), frequency toward lower end of a category
 asterisk (*), indicates tentative assignment based on limited

Table 1: Species of the Adjacent Field Area

Wetland Vegetation	Percent Cover	R-IND	Non-Wetland Vegetation	Percent Cover	R-IND
<i>Conium maculatum</i> poison hemlock	5%	FACW	<i>Bellis perennis</i> English daisy	<5%	NI
<i>Plantain major</i> common plantain	<5%	FACW-	<i>Lolium perenne</i> perennial ryegrass	60%	FAC*
<i>Ranunculus repens</i> creeping buttercup	5%	FACW	<i>Picris echioides</i> bristly ox-tongue	<5%	FAC*
<i>Rumex crispus</i> curly dock	5%	FACW-	<i>Raphanus sativus</i> wild radish	5%	NI
			<i>Senecio vulgaris</i> common groundsel	<5%	NI
			<i>Trifolium repens</i> white lawn clover	15%	FACU+

Soils

The USDA Natural Resources Conservation Service (NRCS) draft soils map (1995) tentatively identifies the soil at the site as Weott Loam. These are very deep and poorly drained loam soils with the water table at 0 to 12 inches during January through March.

During the field review a soil pit was dug in the field area adjacent to the barn site, and the soil was examined for indications of a reduced soil, such as low chroma (color) with mottling or no chroma. These are characteristic of a mineral hydric soil (wetland). The first ten inches of the soil was homogenous (no distinct layers) and saturated, indicating a high water table. Based on Munsell soil charts the soil had a low chroma matrix (3/2 7.5 YR) with many distinct and medium sized mottles of higher chroma (4/6 7.5 YR). These observations were consistent with the NRCS characterization of the soil as hydric, as well as the loamy texture, deep depth, and the seasonal high water table.

Hydrology

The site visit occurred after a heavy rain and the soils were saturated at the soil surface. There were other locales in the general vicinity (Lower Eel River flood plain) that demonstrated greater inundation with ponding of water; these areas appear to be slightly lower in elevation. However, the lack of slope, poor permeability, and high water table of the flood plain provide the hydrology necessary for the development of a wetland.

Discussion

The proposed barn site appears to have supported a seasonal wetland, based on the wetland attributes of the soils and hydrology, and to a lesser extent the vegetation, of the adjacent field area. The vegetation

does not have a distinct prevalence of hydrophytes (greater than 50 percent), and supports non-wetland vegetation even at times of seasonal inundation. Although based on the wetland definition used by the California Coastal Commission, which requires the presence of only one of these wetland attributes (unlike the US Army Corps of Engineers which requires the presence of all three criteria), this site is clearly a seasonal wetland.

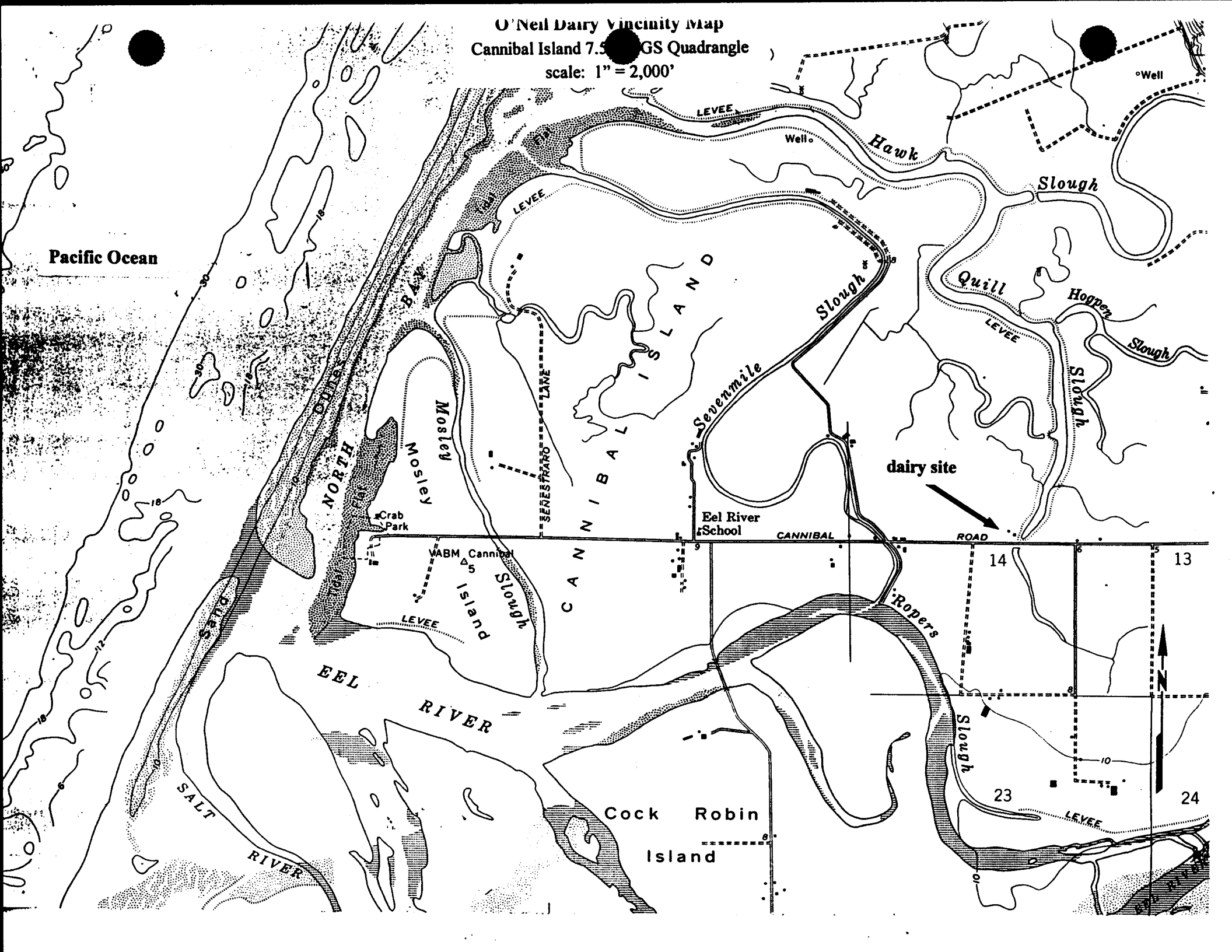
However, the quality of this seasonal wetland site is low and impacts to the seasonal wetland from fill for the barn are minimal based on the following considerations.

- The filled site is small (less than half an acre).
- The proposed barn's proximity to the milking barn entrance was an area already impacted by cows waiting to be milked.
- The vicinity has a long historical agricultural use for livestock pasture and growing fodder (over a hundred years).
- The vegetation is non-native without well-developed wetland elements, such as obligate wetland plants.
- Inundation associated with the site is a short seasonal rise in the water table.
- Higher quality wetlands occur elsewhere in the vicinity of the site. These higher quality sites are associated with the sloughs and ponding depressions that support aquatic wildlife and marsh vegetation.

Other Considerations/Mitigations

- The O'Neils have fenced the slough from cattle impacts, which is an important measure for protecting and maintaining this higher quality wetland in the coastal zone. This represents 17 acres of their 90-acre landbase.
- The proposed barn would not create significant impacts to the wetland qualities within the coastal zone and the present unfinished state creates undue economic and animal hardship for the O'Neils.
- The proposed barn is important to the health of the dairy cows (refuge from floods and shelter from exposure), and hence the economic viability of this agricultural operation.
- Mature holding ponds with native vegetation enhancement would offer habitat, filter, and stabilization qualities.

O'Neil Dairy Vicinity Map
Cannibal Island 7.5° GS Quadrangle
scale: 1" = 2,000'



CALIFORNIA COASTAL COMMISSION

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F 6b

ADDENDUM

May 13, 1999

TO: COASTAL COMMISSION AND INTERESTED PARTIES

FROM: Peter M. Douglas, Executive Director
Steven F. Scholl, Deputy Director
Robert Merrill, District Manager

SUBJECT: Addendum to Item **F 6b**
Application No. 1-98-103(**O'Neil, Humboldt County**),
(For the Commission meeting of March 14, 1999)

This addendum provides three kinds of additional information relating to Permit Application No. 1-98-103. First, the addendum includes as Attachment No. 1, additional correspondence submitted by the applicants since mailing of the staff recommendation. The submitted correspondence provides more information about the proposed wetland enhancement proposal. Second, the addendum discusses the applicability of Section 30007.5 of the Coastal Act to the proposed project. Under certain circumstances, the provision allows the Commission to approve a project that is inconsistent with a policy of Chapter 3 of the Coastal Act if denial under that policy would conflict with another policy of the Act and to approve the project would on balance be more protective of significant coastal resources. Finally, the addendum includes as an attachment additional correspondence received from interested parties other than the applicants. As discussed below, the staff continues to recommend denial of the proposed project.

A. APPLICANT'S ADDITIONAL INFORMATION

Since the mailing of the staff recommendation on April 28, 1999, the applicants have provided additional information about the project for the Commission's consideration. The information consists of a wetlands enhancement plan that provides further detail concerning the applicants' proposal to create a riparian habitat along Quill Slough as it traverses northward through their property. The information is attached as Exhibit 1 to this addendum. Staff believes the wetland enhancement plan provides sufficient detail to demonstrate that the project could provide adequate mitigation for the wetland fill impacts of the proposed barn. Therefore, staff changes its recommendation to eliminate lack of adequate mitigation as a basis for denial of the project. However, staff continues to recommend denial of the proposed project because the applicants have not demonstrated that less environmentally damaging alternatives are infeasible as required by Section 30233 of the Coastal Act. Finally, regardless of the applicant's ability to demonstrate the infeasibility of other less environmentally damaging alternatives, as discussed further below, staff also continues to recommend denial of the proposed project because it would fill wetlands for a barn use that is not allowable under Section 30233 of the Coastal Act.

B. APPLICATION OF COASTAL ACT SECTION 30007.5 TO THE PROPOSED PROJECT

The staff recommendation mailed April 28, 1999 recommends denial of the proposed project because the proposed fill of wetlands to accommodate a free stall barn would conflict with Section 30233 of the Coastal Act. The proposed free stall barn is not one of the allowable uses for fill of wetlands under Section 30233(a). In addition, the project is not consistent with Section 30233 requirements that no fill project be approved if there is a feasible, less environmentally damaging alternative.

The project includes the upgrading of agricultural waste ponds and the construction of a free stall barn with a concrete floor, both of which will facilitate and improve the collection and treatment of animal waste from the dairy operation. If denial of the proposed project would result in conversion of land suitable for continued agricultural production, denial of the project could be viewed as inconsistent with Sections 30242 of the Coastal Act which limits conversion of lands suitable for agriculture to nonagricultural uses. In addition, if improvements to water quality could not be attained without the proposed wetland fill, denial of the project could be viewed as conflicting with Section 30231 of the Coastal Act, which requires the maintenance and, where feasible, the restoration of water quality.

Section 30007.5 of the Coastal Act provides direction for resolving conflicts between Chapter 3 policies. That section provides, in part, that:

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. In this context, the Legislature declares that broader policies which, for example, serve to concentrate development in close proximity to urban and employment centers may be more protective, overall, than specific wildlife habitat and other similar resource policies.

In order to apply the balancing provisions of Section 30007.5 of the Coastal Act in this manner and approve the project on that basis, the Commission would have to find that: (1) the balancing provision of 30007.5 applies to the limitations on the use of fill established by Section 30233(a); (2) there are no feasible less environmentally damaging alternatives that achieve the objectives of the proposed project without requiring filling of the seasonal wetland; (3) there is a conflict between Section 30233 of the Coastal Act on the one hand and Sections 30242 or 30231 on the other; and (4) approval of the project as proposed resolves the conflict between policies in the manner that is most protective of coastal resources. Each of these necessary findings is analyzed further below.

1. Use of Balancing Provision Not Appropriate for Section 30233(a) Limitations on the Use of Fill

A question exists as to whether or not the balancing provision of Section 30007.5 can be applied to allow wetland fill for uses that are not specifically enumerated in Section 30233(a) of the Coastal Act. The activities for which wetland fill is allowed pursuant to 30233(a) are set forth with specificity and detail in Section 30233(a). (See page 9 and 10 of the staff report for the complete language of Section 30233(a).) Such specificity and detail is not found in most other Coastal Act policies, such as in Section 30240, the policy concerning the protection of environmentally sensitive habitat areas. This policy says very generally in applicable part that only uses dependent on the resource can be allowed within environmentally sensitive habitat areas. Given the much more specific and detailed list of allowable uses for fill in Section 30233(a), the Commission finds that in adopting the language of Section 30233(a), the Legislature has already balanced the need to protect wetlands against the need to accommodate certain kinds of uses that require fill, and has already included in the statute specific uses where the need to accommodate the use outweighs the need to protect the wetland from development. Further balancing of uses would render the limitations on allowable use contained in Section 30233 meaningless. Therefore, on this basis alone, the Commission finds that Section 30007.5 of the Coastal Act shall not be utilized to balance the inconsistency of the project with the use limitations of Section 30233 against other Chapter 3 Coastal Act policies.

2. No Feasible Less Environmentally Damaging Alternatives That Would Avoid the Conflict Between Policies.

If there are feasible less environmentally damaging alternatives that do not require filling the wetland but would still accomplish the project objectives of providing a place where cows can rest off the wet ground and out of the wet weather during the winter rainy season and providing better control of cow waste to maintain and enhance water quality, then no true conflict exists between the application to the project of the wetland fill

policies of Section 30233 of the Coastal Act and any other policy of the Coastal Act. The staff recommendation of April 28, 1999 recommends denial of the proposed project in part on the basis that the applicants have not demonstrated that less environmentally damaging alternatives that would not require wetland fill are infeasible. Therefore, even if the Commission could utilize Section 30007.5 to allow fill inconsistent with Section 30233, the Commission finds that Section 30007.5 of the Coastal Act can not here be utilized to balance the inconsistency of the project with the use limitations of Section 30233 against other Chapter 3 Coastal Act policies because the applicant has not demonstrated the infeasibility of less environmentally damaging alternatives that would not require fill.

3. No Conflict between Chapter 3 Policies

In order to utilize the conflict resolution provision of Section 30007.5, the Commission must determine that a substantial conflict between 2 statutory directives contained in Chapter 3 of the Coastal Act in fact exists. As stated above, the project includes the upgrading of agricultural waste ponds and the construction of a free stall barn with a concrete floor. If denial of the proposed project would result in conversion of land suitable for continued agricultural production, denial of the project could be viewed as inconsistent with Section 30242 of the Coastal Act which limits the conversion of lands suitable for agriculture to nonagricultural uses. In addition, if improvements to water quality could not be attained without the proposed wetland fill, denial of the project could be viewed as conflicting with Section 30231 of the Coastal Act, which requires the maintenance and, where feasible, the restoration of water quality.

However, there is no evidence that the denial of the proposed wetland fill would actually result in the conversion of agricultural land. The site has successfully been utilized for agriculture for many years without the requested barn. In addition, there is no evidence to suggest that denial of the proposed fill would eliminate the ability to maintain, and where feasible, restore water quality. The maintenance, and where feasible, restoration of water quality can also be achieved without the requested barn. For example, although not as convenient, cow waste can still be physically collected and removed even if there is no barn. Such physical collection is necessary in any event because the cows will continue to graze in the fields.

Therefore, the Commission finds that denial of the proposed wetland fill consistent with Section 30233 will not result in a conflict with either Section 30231 or 30242 because as discussed above, (1) the applicant has not demonstrated the infeasibility of other less environmentally damaging alternatives that could avoid wetland fill; (2) it has not been demonstrated that denial of the proposed wetland fill would result in the conversion of land suitable for agriculture to nonagricultural uses and (3) maintenance, and where feasible, restoration of water quality can be attained without the proposed wetland fill.

Therefore, even if the Commission could utilize Section 30007.5 to allow fill inconsistent with Section 30233, the Commission finds that Section 30007.5 of the Coastal Act can

not here be utilized because there has been no showing of a conflict between two or more Chapter 3 policies.

4. Balancing in the Manner Most Protective of Coastal Resources.

The last major consideration in determining whether it would be appropriate to use the balancing provision to approve the project is whether or not approval of the project as proposed resolves a conflict between policies in the manner that is most protective of coastal resources. Thus, even if the Commission could utilize Section 30007.5 to allow fill inconsistent with Section 30233, the proposed project presented a conflict between two Chapter 3 policies, and no other less environmentally damaging alternative was feasible, the Commission would have to find that approval of the project resolves the conflict in a manner most protective of coastal resources. Therefore, the Commission must evaluate the impacts that approving the project as proposed would have on wetlands relative to the impacts that denial of the project would have on coastal agriculture and/or water quality.

As noted above, approval of the project would eliminate 20,000 square feet of grazed seasonal wetland, although the applicants are proposing mitigation in the form of creating a certain amount of new riparian habitat along the banks of Quill Slough on their property.

One might view that approval of the project and maintaining the site in coastal agriculture and/or attaining the improvements to water quality that would result from the project would be more protective of significant coastal resources than denying the project to protect the grazed seasonal wetland area where the free stall barn is proposed. This viewpoint may be further supported by the fact that the applicants' biologist considers the habitat values associated with the grazed seasonal wetland area that was filled for the proposed free stall barn to be relatively low and that the applicants proposal to enhance wetland habitat by creating a riparian habitat along Quill Slough would provide habitat values that are superior to the habitat values of the grazed seasonal wetland to be eliminated by the barn.

The impacts that denial of the project would have on coastal agriculture are less clear. A house already exists on the property. The possibility exists that the property may be taken out of agricultural production entirely and simply used for residential purposes. According to the applicants, denial of the project would create a substantial financial hardship for the dairy operation that threatens to drive the dairy out of business. The applicants have also indicated that they could not overcome the loss of the dairy and convert their ranch to some other form of agriculture. In that event, the ranch might need to be sold and it is unclear how future owners might use the project. If prospective buyers view the development and use of a free stall barn to be an essential component to using the property as a dairy ranch as the applicants have indicated it is, the property would not be used for dairy ranching, given that with denial of the applicants' project, the Commission would have indicated that a free stall barn will not be approved on the property. Whether prospective buyers might try to use the ranch to raise other

agricultural products is also unclear. Dairy ranching is the dominant form of agriculture in the Eel River delta, with only approximately ten percent of the land used for other agricultural products such as truck farming (personal communication with James Komar, Natural Resource Conservation Service). Whether it would be economic for a prospective buyer to convert the applicants ranch to truck farming or some other form of agriculture is unknown. It is also not clear whether an adjoining rancher would be interested in acquiring or leasing the ranch to supplement the rancher's own agricultural operation. Therefore, it is unknown whether denial of the proposed project would result in removal of the approximately 80-acres of ranchland from the inventory of coastal agriculture in the coastal zone.

The impacts that denial of the project would have on water quality depend on whether the property would continue to be used for dairy ranching or not. If dairy ranching would continue on the property, the proposed project would better control water quality impacts associated with cow waste by (1) upgrading the waste pond to better treat the waste and expand its capacity, and (2) providing a concrete floor under the winter resting area for the cows which would facilitate more efficient collection of cow waste for treatment. Without these improvements, waste could continue to be discharged to the fields before being fully treated and at times during rainy weather when the volume of surface runoff is greatest and the resulting impacts to water quality more severe.

On the other hand, if denial of the project resulted in no further use of the property for dairy ranching, water quality would likely improve as the cow waste that creates the water quality impacts would be eliminated. In addition, as stated above, the maintenance and, where feasible, restoration of water quality can be achieved without the requested barn.

Thus, it is not clear that approval of fill inconsistent with 30233 would result in benefits to agriculture and water quality that could not otherwise be achieved. Therefore, the Commission finds that, even if the Commission could utilize Section 30007.5 to allow fill inconsistent with Section 30233 and a conflict did exist between Coastal Act policies, the benefits of approving the wetland fill inconsistent with Section 30233 do not outweigh the benefits of protecting the wetland resource.

C. STAFF RECOMMENDATION

Staff continues to recommend denial of the proposed project. The new information submitted by the applicants eliminates some of the inconsistencies of the project with Coastal Act policies but in staff's view does not eliminate all of the inconsistencies that cause the staff to recommend denial. The submitted wetlands enhancement plan contains sufficient detail that the staff believes the Commission can make the necessary finding that the project would provide adequate mitigation, consistent with one of the three main requirements of Section 30233 of the Coastal Act. However, staff continues to believe the applicants have not demonstrated that less environmentally damaging alternatives are infeasible. Therefore, staff believes the project continues to be inconsistent with the provision of Section 30233 requiring that no fill project be approved if there is a feasible,

less environmentally damaging alternative. Furthermore, the primary inconsistency of the project with the Coastal Act is that the project proposes wetland fill for a use that is not allowed under the use limitations of Section 30233(a) of the Coastal Act. Finally, as discussed above, staff does not believe Section 30007.5 of the Coastal Act can be utilized to balance the inconsistency of the project with the use limitations of Section 30233(a) against other Chapter 3 Coastal Act policies.

D. ADDITIONAL CORRESPONDENCE

Attached as Exhibit 2 of this addendum are several items of additional correspondence from other interested parties that the Commission has received since the mailing of the written staff recommendation on April 28, 1999.

O'Neil Dairy Mitigation Plan

Prepared by: Clare T. Golec, staff botanist
Natural Resources Management Corporation
1434 Third Street, Eureka, CA 95501
(707) 442-1735

May 7, 1999

Introduction

The following mitigation plan is for the O'Neil dairy located at 1875 Cannibal Island Rd., Loleta, California. The mitigation proposed is to compensate for loss of approximately half an acre of seasonal wetland due to placement of fill for a proposed free stall barn to house the dairy cows.

Setting

The dairy is situated on an 80 acre parcel (APN 309-181-04F) just west of Loleta in portions of the Lower Eel River flood plain approximately 2.5 miles from the Pacific Ocean. It is within the Coastal Zone. The property supports the O'Neil's residence, dairy related structures (barns, shed, and waste treatment pond), pasture lands, and portions of a slough system (west side of Quill Slough and a minor slough associated with Quill Slough). The property's surrounding land use is predominately agricultural, and supports many other dairies.

The proposed free stall barn site is located to the north and adjacent to several existing barn structures. The elevation of the site is less than 10 feet, and has a slope of less than two percent. The associated soils are Weott Loam, based on the recent (1995) draft soils map of Natural Resources Conservation Service (NRCS). These soils are very deep and poorly drained loam soils with the water table at 0 to 12 inches depth during January through March. The lack of slope, poor permeability of the soils, average rainfall of 39 inches, and seasonally high water table of the flood plain provide the hydrology necessary for the development of a seasonal wetland. The vegetation of the adjacent field area is characterized by the cultivated non-wetland species, perennial rye (*Lolium perenne*) and white lawn clover (*Trifolium repens*), and has scattered occurrences throughout of wetland and non-wetland species. The vegetation does not have a prevalence of hydrophytes (plants adapted to anaerobic conditions resulting from a prolonged inundation with water), and supports non-wetland vegetation even at times of seasonal inundation.

Although the vegetation is not conspicuously wetland in nature, the soils and hydrology do indicate that these lowland pasturelands are seasonal wetlands. The placement of fill was on grazed seasonal wetlands, and has impacted 20,000 square feet of seasonal wetland (a little less than half an acre).

Mitigation Plan

A one-to-one mitigation ratio is recommended, due to the low quality of wetland habitat impacted and the higher quality wetland habitat to be protected and enhanced. The higher quality wetland/riparian habitat proposed to be protected and enhanced is 2,500 feet along the west bank of Quill Slough near the eastern property line of the O'Neil dairy (see attached map). Two

O'Neil Wetland Mitigation Plan

May 7, 1999

mitigation measures are proposed for this area to compensate for the loss of seasonal wetland at the free stall barn site.

- Enhancement of Quill Slough bank with regional native willows and shrubs.
- Maintenance of livestock exclusion fence.

Enhancement will consist of planting regionally appropriate native plants along portions of the fenced slough bank. The area to be planted will total at least 20,000 square feet. The intent is to enhance the structure and diversity of the species composition along this bank, which currently has limited vertical structure and native shrub components due to past human and livestock impacts. The native plants utilized will be trees and shrubs adapted to coastal, windy, exposed, and flood conditions common to the mouth of the Eel River. The planting will be done with some or all of the species listed below, and final species composition will be dependent on availability of appropriate plants.

1. *Baccharis pilularis* coyote brush
2. *Garrya elliptica* coast silk-tassle
3. *Myrica californica* wax myrtle
4. *Populus balsamifera* spp. *trichocarpa* black cottonwood
5. *Populus fremontii* ssp. *fremontii* Fremont cottonwood
6. *Rhododendron occidentale* western azalea
7. *Ribes sanguineum* var. *glutinosum* red flowering currant
8. *Rosa gymnocarpa* wood rose
9. *Rubus parviflorus* thimbleberry
10. *Rubus spectabilis* salmonberry
11. *Salix exigua* narrow-leaved willow
12. *Salix hookeriana* Hooker's willow
13. *Salix lucida* ssp. *lasiandra* Pacific willow
14. *Salix sitchensis* Sitka willow
15. *Spiraea douglasii* Douglas spiraea

Sources for material will include a mix of cuttings and some container stock, which is available at local nurseries specializing in regional native plants. The actual planting will be done in the fall to avoid the need for irrigation by capitalizing on seasonal rains.

The planting will be monitored after the first year to assess the degree of success of the initial planting and areas where revegetation was not achieved will be replanted. The first year monitoring will be overseen by a wetland biologist. If the survival rate of the plants is greater than 75%, no further planting or monitoring will be done, as this would indicate the majority of the vegetation has become established and survived the dry summer. If the planting success is lower than 75%, further monitoring or replanting will be arranged. Should any unforeseen future events such as a unusual flood event that could destroy even the best revegetation efforts, the replanting will be a decision of the land owner.

O'Neil Wetland Mitigation PlanMay 7, 1999

The second mitigation measure is to maintain the current livestock exclusion fence along Quill Slough to avoid livestock impacts such as physical bank and water quality degradation, and the trampling and grazing of all vegetation to the ground.

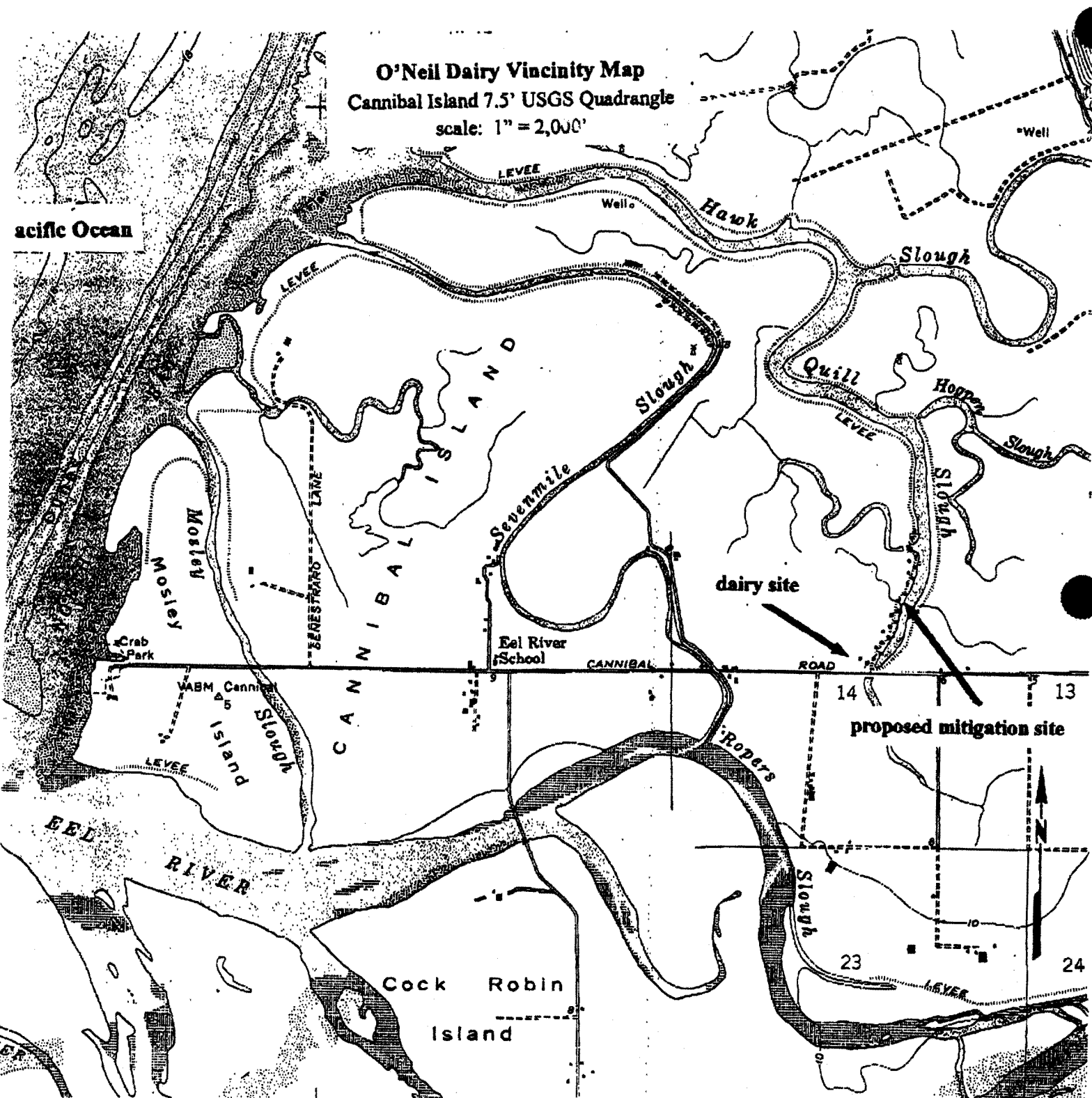
Summary

As the seasonal wetland associated with the free stall barn site was not a natural or non-impacted area, the mitigations proposed will adequately mitigate the loss of wetland due to the placement of fill. These measures will focus protection and native plant enhancement to the higher quality wetland area present along Quill Slough. This will benefit the environment as well as reduce economic and livestock hardship for the O'Neil dairy.

O'Neil Wetland Mitigation Plan

May 7, 1999

O'Neil Dairy Vicinity Map
Cannibal Island 7.5' USGS Quadrangle
scale: 1" = 2,000'



O'Neil Dairy Wetland Considerations

- The free stall barn site is not a natural or non-impacted seasonal wetland. The site has a long historical use as livestock pasture, and had been receiving heavy cattle grazing and traffic due to the proximity to existing barn structures.
- The wetland quality and habitat function is low. The introduced perennial grassland nature of the site does not provide substantial native or diverse vegetation components, and the low herbaceous structure of the vegetation provides limited foraging and habitat for wildlife. Also inundation with water only exists for the length of the seasonal rainfall and high water table (January through March).
- At this site the wetland nature of the vegetation is not apparent, only the seasonal inundation is apparent. However, seasonal inundation is prevalent throughout the lowlands of coastal Humboldt County. This is not a clear and discernable wetland to an average person.
- In considering the livestock impacts and vegetation qualities of the site, the site has impacted the lesser quality habitat associated with the property's seasonal wetlands. The habitat qualities for plants and animals (open space, forage, and seasonal flooding) in these pasture lands increase substantially as one moves away from the concentration of existing structures. Therefore, the proposed free stall barn site's proximity to the existing barn structures offered a lesser quality habitat than the outlying pasture areas, due to this site's receiving heavier livestock grazing and traffic.
- This project does not adversely affect coastal wetlands.
 1. The seasonal wetland associated with the site was previously impacted with pasture tillage and livestock (due to the proximity to existing barn structures).
 2. The adjacent vegetation to the site is largely ruderal (weedy and non-native) in nature.
 3. The overall low habitat quality in and around the site for aquatic and terrestrial wildlife.
- Important ecological steps have been taken by the O'Neil's to lessen impacts to their higher quality wetlands, fencing of the west bank of Quill slough and the minor slough, and better containment of the cow manure. These steps help to ensure slough bank stability as well as development of better vegetation structure and species composition along the bank, and improves water quality.
- This project does not essentially conflict with the Coastal Act goals and policies

"Protect, maintain and, where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and manmade resources."

"Assure orderly, balanced utilization and conservation of coastal zone resources, taking into account the social and economic needs of the people of the state."
- Coastal wetlands are important ecological components and should be protected. However, coastal wetland issues in this area should focus on the high quality wetlands or areas with the potential to be high quality, such as the slough system and marshes, not borderline seasonal wetlands that are so common along the moist coastline of Humboldt County.



BOARD OF SUPERVISORS
C O U N T Y O F H U M B O L D T

825 5TH STREET
EUREKA, CALIFORNIA 95501-1153 PHONE [707] 445-7509 FAX [707] 445-7299

May 11, 1999

Bob
Mr. Robert Merrill
California Coastal Commission
North Coast Area
45 Fremont, Suite 2000
San Francisco, CA 94105-2219

Dear Mr. Merrill:

This letter is in response to the staff report on permit application 1-98-103 for Jim & Leslie O'Neill dated April 28, 1999. As a county supervisors for 10 years, I have seen the Coastal Act provisions work concurrently with the Humboldt County Local Coastal Program. Since my district encompasses the Eel River Delta, I have gained a tremendous amount of respect for the efforts of our local dairymen and women who have been on the leading edge of voluntary programs to improve surface and groundwater quality as well as wetland habitats of the Eel River Delta.

Jim & Leslie O'Neil have been at the forefront of these programs. Their efforts will allow for continued agricultural use of this fertile valley as well as preserving and enhancing wetland habitats. The Coastal Commission staff has recommended denial of the O'Neils permit application to the Commission based on the project being inconsistent with Section 30233 of the Coastal Act.

The O'Neils project should fall under Section 30241 of the Coastal Act which states "that the maximum amount of prime agricultural land shall be maintained in agricultural production to assure the protection of the areas agricultural economy". This section is consistent with our Humboldt County Local Coastal Plan and County Ordinance which prohibits the taking of any agricultural land in our county.

The O'Neils have proposed a mitigation plan which would actually enhance wetland habitat on their dairy. Keep in mind that the land area where they have applied for a use permit is currently a pasture used for the animals to graze on which does not support wetland vegetation and animal habitat. Being the stewards of this valley for over 100 years, these dairymen have proposed mitigation, which is of higher quality than what currently exists!

As to alternative locations of their Loafing Shed, it is apparent that the proposed location makes the most sense from an environmental and economic standpoint for the O'Neils. As far as the possible alternatives listed in the staff report, all feasible locations listed would have the same environmental impact, if not a greater impact, since all the adjoining property is of the same soil and vegetation found in pasture land of the entire Eel River Delta. Relocating the cows off-site is not

ATTACHMENT NO. 2

Mr. Robert Merrill

May 11, 1999

Page Two

feasible for dairy herd health and economics. If this alternative were applied it would be devastating economically to every constituent in my district and constitute an unconstitutional taking of this land.

I would strongly recommend that Staff reverse their position and recommend to the Coastal Commission members that permit application 1-98-103 for Jim & Leslie O'Neil be granted. Due to the facts that the alternatives are not feasible and less environmentally damaging, the O'Neils have submitted a mitigation plan which enhances coastal wetlands and the balancing provisions of section 30007.5 and the Agricultural provision of section 30241 of the Coastal Act, the permit application for Jim & Leslie O'Neil should be granted. All the supervisors of Humboldt County will be awaiting your decision since this will have a great impact on our local Dairy Industry.

Sincerely,



STAN DIXON

First District Supervisor



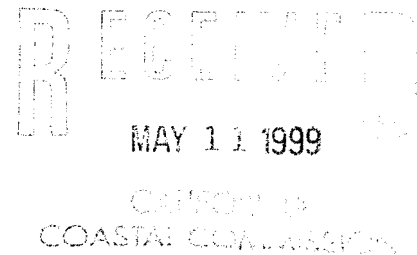
United States
Department of
Agriculture

Natural
Resources
Conservation
Service

5630 S. Broadway
Eureka, CA 95503
(707) 444-9708

May 8, 1999

Mr. Robert Merrill
California Coastal Commission
North Coast Office
45 Fremont, Suite 2000
San Francisco, CA 94105-2219



Dear Mr. Merrill,

Thank you for the courtesy of your office forwarding the public notice and accompanying staff report for permit number 1-98-103. I have reviewed this report and note the references to our two conversations of April 27, 1999. I appreciate your effort to forthrightly and fairly interpret my comments referenced in this report.

The purpose of this letter is expand on our communications by outlining for you and the Commission our water quality program for the Eel River delta and to contribute additional technical information the Commission may consider as it proceeds with its duties.

My comments should only be viewed in a broader, program-level context, rather than simply as an advocate for any specific application that may now be before the Coastal Commission.

OVERVIEW OF WATER QUALITY PROGRAM ASSISTANCE, EEL RIVER DELTA, 1996-1999

The dairy community of the Eel River delta prides itself on implementing common-sense solutions to resource problems. Tangible progress is favored over abstract resource benefits, and our goal has been to demonstrate those tangible values in a manner that builds the trust necessary to make water quality improvements on private land.

Under the leadership of the Humboldt County Resource Conservation District (RCD), *outstanding progress* has been made since 1996 assisting the Eel River Delta dairy community in carrying out a voluntary program to improve surface and groundwater quality and wetland habitats of the Eel River delta.

Over \$365,000 in common-sense water quality and habitat improvements are underway, with an expectation that an additional \$75,000 in improvements will be planned by the fall, 1999. The RCD/NRCS Team has cooperated with approximately 33% of the dairies of the delta

region to plan and install manure management practices that would bring dairies into compliance with California state water quality guidelines outlined in CCR Title 27, Chapter 7, Subchapter 2. Another 10% of the total client base in the Eel River delta region has requested and awaits our services.

What this means is the annual control and management of over 125 million pounds of manure. Moreover, thousands of acres of pastureland, much of which is seasonal wetland, have enhanced functions and values as a result of this work.

Our actions alone are not the reason for our success. Patience pays off when working with family farms that carry inherently high risk and are marginally economical to operate. A change in farm management must make sense and be tangible. The environment of the Eel River delta has benefitted from a recognition of these social and economic factors by regulatory authorities such as the North Coast Regional Water Quality Control Board, United States Environmental Protection Agency, and California Department of Fish and Game. Long-term good has been achieved by phased improvements in the presence of consistent regulatory encouragement.

And yet, much more work, the hard work, remains to be done. Approximately 34 dairies await our services. The earlier participants in a program are usually those most willing to cooperate.

There are many reasons why the operators of those 34 dairies have yet to participate, but one thing is clear - they are watching. Regulatory actions that don't make sense, or conflict with an overall intent to do good, can have the unintended consequence of harming our efforts to work with the remaining clients.

STRUCTURES VITAL FOR A COMPLETE MANURE MANAGEMENT SYSTEM

A complete manure management system entails the following components: 1) a strategy for containment of manure; 2) water runoff control that prevents the mixing of clean and manured water); 3) nutrient management; and 4) proper agronomic utilization of manure on pasturelands.

A freestall barn is a vital member in the family of structures necessary for implementation of a complete manure management system. This structure serves as a manure-containment device during periods of livestock confinement, most commonly in the wet winter months.

While it is true that many dairy operations can and do operate without these structures, dairy operations without the benefit of these or similar structures are much less likely to meet CCR Title 27, Chapter 7, Subchapter 2 guidelines.

Some numbers illustrate my point. An average dairy cow confined in a freestall barn 18 hours a day from November 15 through March 15 will produce about 8,640 pounds of manure. For a typical dairy operation with 200 cows, a freestall structure enables the proper control and management of 1.73 million pounds of manure through the wet winter confinement period.

In contrast, shaving pile lots used for overwintering of cows are not recognized as a best management practice by the North Coast Regional Water Quality Control Board (Personal Communication, Mr. Manuel Baldenegro, May 6, 1999). Here, there is no means to control

the mixing of clean and manured waters, often no practical runoff control, and no mechanism to control leaching of harmful pollutants from the area.

Regional Water Quality Boards across California, along with the U.S. EPA and NRCS, have targeted shavings lots as a primary pollutant source under an Animal Feeding Operation cleanup strategy currently underway across the nation. Notwithstanding the significant economic and animal health impacts associated with holding cattle in this manner, shavings lots often cannot readily control the 1.73 million pounds of manure produced during typical herd confinement periods and thus can represent a significant water quality hazard.

Freestall facilities are a vital part of a complete manure management system. The USDA provides low-interest loans to farmers as an incentive to constructing these facilities, and cost-share funds to improve other aspects of these structures. Promoting coastal agriculture without supporting the appropriate infrastructure consistent with best management practices for pollution control and improved coastal ag-land habitats is, at best, a mixed message.

USDA LEADERSHIP IN WETLANDS PROTECTION

USDA, since the passage of the 1985 Farm Bill, has been and remains at the core of federal efforts to cooperatively work with farmers and ranchers to protect, maintain, and enhance wetlands on our nations agricultural lands.

The federal Clean Water Act, Endangered Species Act, and other applicable guidelines set down principles and goals by which agencies proceed with their responsibilities. Often, as appears to be the case with the California Coastal Commission, state agencies can exercise their right to expand restrictions on wetlands beyond that outlined under federal law.

Violations of state and federal law must be dealt with appropriately. Unfortunately, inconsistencies between agencies in the carrying out of wetland and water quality protections leave private landholders caught in the middle and not knowing how to proceed. USDA would wish to begin a dialogue with the California Coastal Commission to explore ways we can close the gap and avoid embarrassing and costly situations in the future.

SEASONAL WETLAND HABITAT IN NEAR-FARM AND HEADQUARTERS AREAS

USDA recognizes wetland functions and values to include providing fish and wildlife habitat, improving water quality by filtering sediments and chemicals, reducing flooding, recharging groundwater, protecting biological diversity, and furnishing educational, scientific, recreational, and esthetic benefits.

USDA is required to evaluate all federally-funded projects following the National Environmental Policy Act. Federal projects can proceed only after it has reasonably been determined that the proposed action is environmentally sound and/or where the long-term benefits outweigh short-term adverse impacts.

Seasonal wetland habitats of the Eel River provide important wetland functions and values over vast acreages of the delta. These functions and values may be maintained or enhanced by sound pasture management practices. Interspersed amongst these seasonal wetland areas are, of course, agricultural facilities which support management of these wetland pastures, as well the infrastructure necessary to manage manure.

Livestock holding areas around a dairy headquarters tend not to, by their very nature, support broadly-recognized wetland habitat functions and values. Soil compaction, reductions in recharge potential, vegetation alteration or conversion, nutrient loading, and soil erosion are all impacts that reduce wetland functions and values. Nevertheless, this practice is not, in and of itself, illegal.

USDA works with our dairy clients to identify measures to lessen, prevent or mitigate resource damage to seasonal wetlands, through the development of comprehensive manure management and land stewardship plans. Our approach examines the net gains in resource attributes balanced against the losses in other areas, and a judgement is then made on the acceptability of the proposed action as compared with other feasible mitigated or unmitigated alternatives.

The abstract wetland functions and habitat values associated with protecting or maintaining seasonal wetland subject to intensive concentrated access of livestock over a wet winter period typically pale in comparison to the tangible, measurable benefits accrued by a long-term manure management strategy controlling the distribution of 1.73 million pounds of manure that might otherwise foul wetland and riparian habitats.

I hope I have been of service to you and the Commission. If I may assist you further, please contact me at (707) 444-9708, extension 3.

Sincerely yours,



James Komar
District Conservationist
Eureka USDA Service Center

cc: Mr. Bernard Bush, President, Humboldt County RCD
Mr. Lin Brooks, Area Conservationist, NRCS

Loleta, 5-5-1999

RECEIVED
MAY 07 1999

CALIFORNIA
COASTAL COMMISSION

To whom it may concern,

It has come to my attention that there may be some objections to the free stall structure that James O'Neil wants to build on his dairy at Comital Island Road.

I think that structure would be a big improvement over the present situation. The clean up of the manure would be greatly improved and the cows would be more comfortable, how they lay around on a pile of bark in all kinds of weather.

Our house is situated in front of the dairy so we are affected by this project and my wife and I think it should be approved.

Sincerely

Hubert Roete

HUBERT ROETE
P. O. BOX 104
LOLETA, CALIF.
95551-0104