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Staff:	Robert Merrill - E
Staff Report:	July 6, 1999
Hearing Date:	July 16, 1999
Commission Action:	

REVISED 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, upgrade the existing waste pond, install associated water pollution control facilities, and establish a riparian habitat mitigation 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

Staff recommends that the Commission approve with conditions the coastal development permit application submitted by the applicants for the construction of a free stall barn, upgrading an existing waste pond and installing associated water pollution control facilities, and enhancing wetlands by planting riparian vegetation along the west side of Quill Slough. Staff recommends that the Commission approve the proposed project with conditions utilizing the balancing provisions of Section 30007.5 of the Coastal Act because the proposed project will greatly enhance water quality by providing facilities necessary to better manage and control waste discharges from the existing dairy. Specifically, the proposed project will (1) allow for the treatment of approximately 838 tons or 1.68 million pounds of waste per year that otherwise would contaminate surface and groundwaters, (2) will improve existing treatment facilities to further reduce the contamination of the seasonal wetlands on the pasture lands where the treated waste is discharged, and (3) will result in less contaminants being carried by stormwater runoff to the Eel River and other watercourses where they can adversely affect the endangered coho salmon and other aquatic wildlife and human recreation. The proposed facilities are recognized by the Natural Resources Conservation Service and the California Regional Water Control Board (RWQCB) as Best Management Practices for reducing waste discharges from dairies and the project has been partially funded by the NRCS, the RWQCB, and the State Coastal Conservancy because of its water quality benefits. As conditioned, the project is consistent with Section 30231 of the Coastal Act as the proposed project will restore the biological productivity and the quality of coastal waters and wetlands to maintain populations of marine organisms and protect human health by minimizing the adverse effects of waste water discharges and controlling runoff from the applicants' dairy.

The proposed project is inconsistent with the wetland protection policies of the Coastal Act. The project affects coastal wetland resources by placement of approximately 20,000 square feet of fill for a free stall barn on a grazed seasonal wetland. The project is not an allowable use for fill of wetland resources as identified by Section 30233(a)(1-8) of the Coastal Act. However, the project is the least damaging feasible alternative, and as conditioned, will provide adequate mitigation for the wetland fill impacts of the project.

The project creates a conflict between the water quality policies of Chapter 3 of the Coastal Act on the one hand and the wetland policies on the other. If the proposed project is denied based on its inconsistency with the wetland policy requirements, the existing and future water quality impacts from the dairy operation would not be reduced, resulting in continued degradation of coastal waters and wetland habitat. Therefore, the project results in a conflict among Coastal Act policies. The water quality benefits from this project are significant. The wetland impacts of the project are not as significant for two reasons. First, the habitat values lost as a result of filling a half acre of grazed seasonal wetland will be fully offset by the establishment of an equivalent amount of riparian habitat that will afford greater habitat values. Second, the project will increase the habitat values of the remaining 80-acres of seasonal wetlands by reducing contaminants in the waste from the dairy operation discharged to these areas.

Approval of the wetland fill would only be the most protective of coastal resources if the water quality benefits of the proposed project are maintained over time. Therefore, staff recommends a series of special conditions to ensure these benefits are maintained. These conditions require that (1) the collection of waste from the free stall barn, the operation and management of the waste pond, and the discharge of waste from the pond all occur in accordance with the Conservation Plan prepared for the dairy under the EQIP program to maximize the water quality benefits of the project, (2) a deed restriction be recorded against the property stating that in the event the proposed free stall barn is no longer being used for its intended purpose in a manner that protects and enhances water quality, the barn must be removed and the site restored as a wetland, (3) a revised wetland fill mitigation plan be prepared and implemented that will fully offset the loss of habitat values associated with the filling of 20,000 square feet of wetland by creating a 40,000-square-foot riparian habitat area, (4) an open space deed restriction be recorded that would restrict the future use and development of the mitigation site in a manner that would protect the habitat values to be created through the mitigation proposal, and (5) a future development deed restriction be recorded against the property providing that additional permit authorization must be obtained for future additions to the structures authorized to enable the Commission to ensure that the appropriate balance between the wetland fill impacts of the project as approved and the water quality benefits derived from the project are maintained. As conditioned, the proposed project would on balance, be the most protective of coastal resources.

With respect to other Coastal Act concerns, the proposed project is consistent with the intent of the agriculture policies of the Coastal Act as it will help an existing coastal agricultural facility remain in production. The Commission would not approve this project even using the balancing provisions of 30007.5 if this were not an existing agricultural facility, the operation of which will be substantially improved. The project does not adversely affect visual resources or other coastal resources not discussed above. Therefore, the project is consistent with the Coastal Act and staff recommends that the Commission adopt the resolution for approval of the project on pages 5-6 of this report.

STAFF NOTES:

1. Continued Public Hearing

The Commission opened the public hearing at the meeting of May 13, 1999 in Santa Rosa. Staff had prepared a written staff recommendation dated April 28, 1999 recommending denial of the application primarily 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 for fill under Section 30233(a). After taking testimony and discussing the project, the Commission continued the public hearing and directed staff to prepare a revised staff recommendation for the Commission's consideration recommending approval of the project. The Commission directed that findings for approval be prepared on the basis that denial of the project under Section 30233 of the Coastal Act would conflict with the application of the water quality protection provisions of Section 30231 of the Act, and that approval of the project would on balance be more protective of significant coastal resources pursuant to Section 30007.5 of the Coastal Act. This staff report reflects the Commission's direction and supercedes the staff's earlier recommendation

2. 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.

3. After the Fact Development

Development of the proposed barn, the waste pond upgrades, and the other associated water pollution control facilities 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.

4. 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.

5. 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. Although much of the Eel River delta area was diked off from tidal action 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.

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 Approval:

Staff recommends a **YES** vote and adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of Commissioners present.

Resolution to Approve Permit:

The Commission hereby grants, subject to the condition below, a permit for the proposed development on the grounds that the development, as conditioned, will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, is located between the nearest public road and the sea or the shoreline of any body of water within the coastal zone and is in conformance with the pubic access and public recreation policies of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. Standard Conditions. See Attached.

III. Special Conditions.

1. **Revised Mitigation Plan.**

PRIOR TO ISSUANCE of the coastal development permit, the applicant shall submit for the review and approval of the Executive Director a revised habitat mitigation plan which incorporates the following changes to the mitigation plan dated May 7, 1999, prepared by Clare T. Golec and received at the Commission meeting of May 13, 1999:

A. The revised plan shall provide for the establishment of at least 40,000 square feet of continuous riparian habitat on the pasturelands of the applicants' ranch. None of the required riparian habitat area shall be located within Quill Slough or on dikes or levees. The revised mitigation plan shall include a site plan delineating the precise boundaries of the mitigation site.

B. The revised plan shall provide for the installation of a livestock exclusion fence around the riparian habitat mitigation site sufficient to keep livestock from trampling and grazing, or otherwise disturbing the vegetation to be planted.

C. The riparian vegetation to be planted shall include willow species planted on 10-foot centers throughout the riparian habitat area. Baccharis pilularis (coyote brush) and other non-wetland species shall be eliminated from the list of plants to be planted. The revised plan shall include a planting plan detailing the specific locations where individual trees and the plants would be planted

D. All of the vegetation planting shall occur in February, 2000

E. Monitoring to determine if the success standards of the mitigation plan have been achieved shall be conducted in the fall after the summer dry season. Monitoring shall continue each year until the success standards have been achieved. Monitoring reports shall be submitted to

the Commission December 1 of each year, and copies of the reports shall be submitted to the local office of the Department of Fish & Game at the same time. The monitoring reports shall contain accurate counts of the numbers of planted plants that survived or died, a plan showing the location of plants that did not survive, a narrative assessment of the general condition of the plants, an analysis of reasons for any failure of the vegetation planting, recommendations for any additional planting and other corrective measures needed to attain success, and photographs of the mitigation area.

The applicants shall undertake development in accordance with the approved final mitigation plan. Any proposed changes to the approved final plans, and any future corrective measures proposed to achieve the planting success standard of the mitigation plan in subsequent years shall be reported to the Executive Director. Proposed changes to the approved final plans and corrective measures proposed to achieve the planting success standard of the mitigation plan in subsequent years shall not occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

2. **Open Space Deed Restriction**

A. No development, as defined in section 30106 of the Coastal Act, or grazing, or other agricultural activities shall occur in the riparian habitat mitigation area on the applicants' property required to be established pursuant to Special Condition No. 1 of Coastal Development Permit No. 1-98-103 (the exact location of the area will be established through the Executive Director's approval of the revised habitat mitigation plan required by Special Condition No. 1) except for any necessary grading, planting, and installation of irrigation lines or fencing, or related activities necessary to establish and maintain the habitat area.

B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall execute and record a deed restriction in a form and content acceptable to the Executive Director, reflecting the above restriction on development in the designated open space. The deed restriction shall include legal descriptions of both the applicant's entire parcel and the open space area. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

3. **Future Development Deed Restriction**

A. This permit is only for the development described in coastal development permit No. 1-98-103. Pursuant to Title 14 California Code of Regulations section 13253(b)(6), the exemptions otherwise provided in Public Resources Code section 30610 (b) shall not

apply to the parcel. Accordingly, any future improvements to the permitted structures, including but not limited to repair and maintenance identified as requiring a permit in Title 14 California Code of Regulations sections 13252(a)-(b), which are proposed within the restricted area shall require an amendment to Permit No. 1-98-103 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall execute and record a deed restriction in a form and content acceptable to the Executive Director, reflecting the above restrictions on development in the restricted area. The deed restriction shall include legal descriptions of the applicant's entire parcel. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

4. **Free Stall Barn Deed Restriction**

A. The free stall barn authorized by Coastal Development Permit No. 1-98-103 shall only be used as the animal confinement facility proposed in the permit application and all animal waste from the facility shall be collected, treated, and discharged in accordance with the Conservation Plan approved by the U.S. Dept. of Agriculture Natural Resource Conservation Service dated September 10, 1998.

B. If use of the free stall barn changes, or if the free stall barn is abandoned, the free stall barn shall be removed in its entirety and the site restored to grazed seasonal wetland.

C. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall execute and record a deed restriction in a form and content acceptable to the Executive Director, reflecting the above restrictions on the use of the free stall barn. The deed restriction shall include legal descriptions of the applicant's entire parcel and the restricted barn area. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

5. **Procedure for Removal of Free Stall Barn.**

The landowners shall immediately notify the Commission or its successor agency in writing when the landowners cease to use the free stall barn for the purposes and in the manner authorized by Coastal Development Permit No. 1-98-103. Pursuant to Special Condition No. 1, within 45-days of such notification, the applicant shall submit a complete coastal development

permit application to (a) remove the free stall barn in its entirety, including its foundation and all earthen fill placed to construct the barn, and (b) restore the site to a seasonal wetland.

6. **Waste Management**

During the life of the facilities authorized by Coastal Development Permit No. 1-98-103, the applicants shall manage cow manure from the dairy in accordance with the best management practices specified in the Conservation Plan approved by the U.S. Dept. of Agriculture Natural Resource Conservation Service dated September 10, 1998, attached as Exhibit 6 of the staff recommendation

7. **Maintenance of Fencing**

The livestock exclusion fence along Quill Slough shall be maintained to keep livestock from gaining access to the slough bank and the slough itself.

8. **Condition Compliance**

Within 90 days of Commission action on this CDP application, or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all requiremens specified in the conditions hereto that the applicant is required to satisfy prior to issuance of this permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

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 were 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.

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 (see Exhibit 3). 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. On May 13, 1999, the applicants further amended their application to substitute a revised wetland mitigation plan for the previously submitted plan. The revised plan provides additional detail concerning the proposal to create a riparian habitat along Quill Slough.

There are three major objectives of the proposed project. First, the proposed free stall barn would create a more protective refuge for the cows during the rainy season, other storm events, and periods of flooding. In addition to sheltering the cows from the rain, the barn would provide

a place for the cows to bed in a dry place during the rainy season when the pasturelands are saturated, whether because of rain or the high winter ground water table. The raised floor of the barn would provide a high and dry place for the cows during floods. The dry environment of the free stall barn would reduce the chances of the cows contracting diseases. The well being of the cows has a direct relationship to milk production levels, with healthier cows generally producing more milk than cows that are sick or under stress. In the past, the applicants utilized a shavings lot to provide a place for the cows to stand or lay down in the winter. The shavings lot consisted of a thick layer of wood chips spread over an area of ground.. As discussed in the finding below on project alternatives, the applicants indicate that wood chips are generally not available any more for this purpose, and the use of shavings lots is discouraged by the Regional Water Quality Control Board.

The second major objective of the proposed project is to improve water quality. As discussed more fully in Finding 5 below, animal waste confinement facilities and waste ponds such as the free stall barn and waste pond upgrades proposed by the applicants are recognized by state and federal agencies involved in the protection of water quality as Best Management Practices (BMPs) for controlling animal waste discharges from dairy ranches. The applicants received grants from the Natural Resources Conservation Service and the State Coastal Conservancy in cooperation with the Regional Water Quality Control Board and the Humboldt Resource Conservation District to partially fund the barn and waste pond upgrades. The grants were made from funds provided pursuant to the 1996 Farm Bill and the federal Clean Water Act to reduce non-point source pollution from dairies and other agricultural facilities.

The third major objective of the project is to provide mitigation for the wetland fill impacts of constructing the proposed barn within a seasonal wetland. By creating a riparian habitat community along the slough bank, the applicants intend to provide comparable or superior wetland habitat values to those lost due to displacement of 20,000 square feet of seasonal wetland with the proposed free stall barn.

The three major 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 (see Exhibit 3). 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. In addition to providing refuge for cows, the free stall barn is an essential part of the manure management program. The concrete floor of the barn would allow the manure from the cows using the facility to be scraped and collected for disposal in the waste pond. As a result, the NRCS staff estimates that over the course of an average winter, approximately 838 tons of manure that would otherwise be discharged to the ground where it could contaminate surface or groundwater would be collected for treatment in the waste pond. 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). As noted above, the site of the barn was formerly used as pasture land.

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 Exhibits 4 and 5). 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. After a sufficient period of time and during good weather when no storm water runoff is expected, the liquids are typically pumped and sprayed 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. The upgrades have created greater storage capacity and made the pond a double pond system. This system provides for a better means of separating solids from liquids and provides for easier pumping of the liquids for irrigation. The proposal includes a pump agitator for the lagoon's liquid chamber and a pumping plant to transfer waste to the irrigation system. The 2,438-cubic-yard capacity of the upgraded waste pond provides storage for all manure waste collected during a 60-day period from the building complex, including waste from the barns, washwater, and rainwater runoff. The solids chamber has been designed to hold an entire year's production of solids, or 403 cubic yards. The greater storage capacity means the pond's capacity will not be exceeded as often as it was in the past, when excess waste often had to be discharged to the fields even during storms when runoff would spread contaminants throughout the area. Waste liquid from the farm complex can now be stored long enough that discharges from the pond through the irrigation system to the fields can occur during dry weather intervals between storms. The longer storage period also allows for the natural biological breakdown of the organic waste to occur to a much greater extent before liquids are discharged to the fields.

Irrigation Lines

The water pollution control facilities proposed as part of the project include extensions of the irrigation lines that are used to discharge waste from the waste pond to the pasture lands. The lines consist of 4-inch-in diameter high-pressure PVC pipe that would be buried at least 24 inches deep. The expanded irrigation system would allow the treated liquid waste to be discharged over an 80-acre area instead of just the 29.5 acres previously used. Discharging over an expanded area would reduce the amount of discharge in any one area, ensuring the absorptive capacity of the lands receiving the discharge are not exceeded.

Wetland Enhancement Proposal.

As described in the applicants' May 7, 1999 Wetland Mitigation Plan, the intent of the wetland enhancement proposal is to compensate for the loss of approximately half an acre of seasonal wetland due to the placement of fill for the proposed free stall barn (See Exhibit 7). The proposed mitigation involves the enhancement of at least 20,000 square feet of existing seasonal wetlands along approximately 2,500 lineal feet of the west bank of Quill Slough by planting regional native willows and other trees and shrubs to create high quality riparian habitat.

Enhancement would consist of planting native plants along portions of the fenced slough bank. 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 would be trees and shrubs adapted to coastal, windy, exposed, and flood conditions common to the mouth of the Eel River. The planting would be done with some or all of the species listed below, and final species composition would be dependent on the availability of appropriate plants.

1.	*Baccharis pilularis*	coyote brush
2.	*Garrya elliptica*	coast silk-tassle
3.	*Myrica californica*	wax myrtle
4.	*Populus ballsmifera* 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 gymmocarpa*	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 sachensis*	Sitka willow
15.	*Spiraea douglasii*	Douglas spiraea

Sources for the vegetation to be planted would include a mix of cuttings and some container stock from local nurseries specializing in regional native plants. The actual planting would be done in the fall to take advantage of the better growing conditions afforded by seasonal rains.

The planting would be monitored after the first year by a wetland biologist to assess the degree of success of the initial planting. Areas where revegetation is not successful would be replanted unless the lack of success is the result of unforeseen events such as unusual flooding that could destroy even the best revegetation efforts.

In addition to planting and establishing the riparian habitat, the applicants are proposing to mitigate the wetland fill impacts of the project by maintaining the current livestock exclusion fence along Quill Slough. Maintaining the fence would keep cows from trampling and grazing on planted vegetation and destabilizing the bank with their hooves. The fence would also keep the cows out of the slough itself, which would help prevent further water quality degradation.

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, or 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. 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 hyrology 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 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. The Commission 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 shallow 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 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, 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 (see Exhibit 8).

6. **Enhancement of Water Quality.**

The project has been proposed, in part, to better manage the discharge of cow waste associated with the dairy operation and thereby protect and enhance water quality.

Section 30231 of the Coastal Act states:

> *The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

Cow waste from a dairy can be a significant nonpoint source of water pollution. The manure contaminants can directly pollute the seasonal wetland or other waters where the manure is initially deposited. Storm water runoff can greatly magnify the deleterious effects by carrying contaminants from the point of deposit to adjacent lands over which it flows and eventually into streams and sloughs that are downhill from the source. Manure can be the source of a variety of contaminants. Such contaminants include various kinds of Bacteria such as e coli bacteria, ammonia, other nutrients, and parasitic diseases. These contaminants can foul receiving waters and make them unsafe for human contact and can also be deleterious to fish and other wildlife. For example, ammonia can be toxic to fish and other forms of aquatic life. Nutrients can cause an over abundance of algae to develop in receiving waters, resulting in turn in reductions of dissolved oxygen levels which can lead to fish kills.

During the rainy season, dairy cows in the Eel River delta are typically kept in a confined space in a barn or on a shavings lot for 18 hours a day where they can rest off the wet ground and sometimes under cover from the rain. During the remaining six hours, the cows are generally being milked or using the feed barn. According to the staff of the Natural Resources Conservation Service (letter from James Komar, dated May 8, 1999), an average dairy cow confined in a free stall barn 18 hours a day from November 15 through March 15 will produce about 8,640 pounds of manure. Based on this figure, a typical dairy operation in the Eel River delta with 200 cows will generate a total of approximately 1.73 million pounds of manure during the wet weather season within the confinement area. Given that there are approximately 60 dairy ranches in the Eel River delta, the total amount of manure generated during the wet weather period in the area by the dairy industry is enormous. If not managed appropriately, this waste can create a very large pollution problem.

The proposed project is located within the Eel River watershed. This watershed encompasses roughly 3,684 square miles. The Eel River is the third largest producer of salmon and steelhead in the State of California. Coho salmon were listed as endangered under the federal Endangered Species Act in 1997. The section of the North Coast Regional Water Quality Control Board's

draft 'chapter" for the Watershed Management Initiative Plan (WMI) (May 15, 1998 revision) concerning the Eel River watershed indicates that "concern has been raised regarding dairy industry impacts to the watershed, even though potential impacts from dairies to the watershed have not been fully evaluated. TheWMI calls for implementation and enforcement of Best Management Practices to control nonpoint source pollution, such as that generated by dairy ranches.

In California, the Regional Water Quality Control Boards are generally responsible for administering the water pollution control permit programs set up under the state Porter-Cologne Water Quality Act and the federal Clean Water Act. With regard to the regulation of dairies in California, the staff of the North Coast Regional Water Quality Control Board indicates that to date, only dairies with 700 cows or more have been required to obtain Waste Discharge Requirements (permits), from the Board for their operations. The Waste Discharge Requirements specify certain water quality standards that the dairies must satisfy. Smaller dairies have not been subject to this permit program. However, The Environmental Protection Agency has recently notified the states that the states must take the necessary steps to extend permit regulation to smaller dairies and other small livestock operations. In California, the Regional Boards may require that Waste Discharge Requirements be obtained by any new small dairy and by any existing small dairy that is known to have discharges that reduce the water quality of receiving waters below certain threshold levels. As a preliminary step in the implementation of the EPA mandate, the Regional Boards will be conducting an inventory of dairies to determine which dairies are out of compliance with water quality standards.

Prior to the new EPA directive, instead of actively regulating small dairies through permit programs, state and federal agencies have been relying on incentive programs to encouraging small dairies to voluntarily comply with water quality standards. Various government programs have been offering technical and financial assistance to small dairies to address their waste discharges.

State and federal agencies have developed a series of Best Management Practices (BMPs) to manage the potential water pollution problems associated with dairy operations. As defined under the Federal Clean Water Act of 1977, a BMP is the following:

> "...a practice or combination of practices that is determined by a state to be the most effective means of preventing or reducing the amount of pollution generated by nonpoint sources to a level compatible with water quality goals."

The federal Natural Resource Conservation Service has been providing assistance for soil and water conservation planning with private landowners and resource managers for over 50 years. The NRCS has developed a National Planning Manual as a guide for technical assistance. In addition, each geographic area of an NRCS field office relies upon a Technical Guide, localized to the office's area. Among other things, the Technical Guides contain descriptions of BMPs that are applicable to different nonpoint sources of pollution.

The Environmental Protection Agency (EPA) delegates water quality regulations, including management measures and practices to the State Water Resources Control Board (SWRCB). The SWRCB must certify Best Management Practices for use in the state. The SWRCB may in turn delegate this authority to the Regional Water Quality Control Boards (RWQCB). The RWQCB may accept the BMPS in the NRCS Field Office Technical Guides or they may require management practices unique to the situation.

The NRCS Field Office Technical Guides contain a number of BMPs for managing manure waste from dairies. The series of BMPs that form a complete manure management system entail four basic components. First, the manure management system contains a strategy for containment of manure. A free stall barn serves as a manure-containment device during periods of livestock confinement, most commonly in the wet winter months. Second, the manure management system contains a strategy for controlling water runoff that prevents the mixing of clean and manured water. Third, the system includes a method of nutrient management. Such a system most commonly involves a waste pond where liquids from the waste can be separated from solids, waste can be held for a period of time to allow biological breakdown of pollutants, and waste can be stored for later discharge to agricultural fields at times when surface runoff is not a problem and at rates and locations where the waste can be absorbed into the ground. Finally, the waste management system contains a strategy for the proper agronomic utilization of treated solid manure waste from the waste ponds on pasturelands. The spreading of treated waste on the pasturelands can both provide a place for disposal of the waste and provide useful fertilizer for growing feed for the cows.

To promote the use of such BMPs by farmers and ranchers who face serious threats to soil, water, and related natural resources, the 1996 federal Farm Bill established the Environmental Quality Incentives Program (EQIP). This voluntary national program provides technical, financial, and educational assistance through the NRCS primarily in designated priority areas to install or implement structural, vegetative, and management practices. All EQIP activities must be carried out according to a conservation plan that is site-specific for each farm or ranch and can be developed by producers with help from NRCS or other service providers. All plans are subject to NRCS technical standards and must be approved by the local resource conservation district. EQIP offers 5-10 year contracts to landowners and resource managers that provide incentive payments and cost sharing for conservation practices called for in the site specific conservation plan. Cost sharing may pay up to 75 percent of the costs of certain conservation practices. Total cost-share and incentive payments are limited to $10,000 per person per year, and $50,000 for the life of the contract. The program's authorized budget of $1.3 billion is prorated at $200 million per year through the year 2002. Funding comes from the Federal Government's Commodity Credit Corporation.

To reduce water quality impacts associated with dairy ranching in the Eel River delta, the National Resources Conservation Service (NRCS) has promoted use of the EQIP program through its partnership with the Humboldt County Resource Conservation District (RCD).

According to NRCS staff, about 33% of the approximately 60 dairies of the Eel River delta region have already been participating in the program (May 8, 1999 Letter from NRCS staff). Another 10% have requested the assistance of the program. A total of 34 dairies have yet to participate in the program. Altogether, the program has resulted in the development of over $365,000 in water quality improvements with the expectation that an additional $75,000 in improvements will be planned by the fall of 1999 (see Exhibit 9, the May 8, 1999 Letter from NRCS staff).

Other funds to encourage the use of BMPs to control dairy wastes in the Eel River Delta have been made available pursuant to Section 319h of the federal Clean Water Act. Section 319h provides money to the states to addresses the control of non-point source pollution. In California, the grant program is administered by the State Water Resources Control Board and the Regional Water Quality Control Boards. The California Coastal Conservancy obtained a 319h grant from the North Coast Regional Water Quality Control Board for the purpose of providing additional financial assistance to those dairies participating in the Eel River Delta EQIP program. Through the Humboldt County Resource Conservation District, the Conservancy has provided grants to many of the Eel River Delta dairies to make up part of the difference between the $10,000 maximum that the EQIP program provides to any one dairy operation and the actual cost of the project.

The applicants are participating in the local EQIP program to partially finance the proposed waste pond upgrades, and other waste management facilities that are part of the project. Section 319h grant funds from the Coastal Conservancy are helping to finance the proposed free stall barn.

An EQIP Conservation Plan was prepared for the applicants' dairy in 1998. A copy of the Conservation Plan is attached as Exhibit 6. The plan utilizes the basic approach to control manure waste that is advocated by the NRCS of (1) containing the manure, (2) controlling water runoff that prevents the mixing of clean and manured water, (3) managing the nutrients, and (4) utilizing the of treated manure waste from the waste ponds on pasturelands in an agronomic manner. The specific BMPS incorporated into the O'Neil Dairy Conservation Plan plan are discussed in Table 1 below:

Table 1. Types of Polluted-Runoff-Control Management Practices at O'Neil site (number in parentheses refers to practice number in the NRCS Field Office Technical Guide)[1]

Practice	Summary	Benefits
Waste Storage Structure (313). A fabricated structure for temporary storage of animal wastes or other organic agricultural wastes.	Construction of 20,000 square foot free stall barn with concrete floor for dairy cows to bed during the rainy season when pasture lands are often saturated. Replaces current practice of spreading wood shavings (wood chips) over an area of ground to provide a place for the cows to stand or lay down in the winter.	• The North Coast RWQCB has targeted shavings lots as a primary pollutant source. • Concrete floor allows for more efficient removal of animal wastes (using a tractor and scraper) than does collecting wood chips. • May reduce nutrient, pathogen, and organic loadings to surface waters by intercepting and storing polluted runoff from manure stacking areas, barnyards and feedlots. • Will not eliminate, but greatly reduces, possibility of contaminating surface and ground water.
Roof Runoff Management (558). A facility for controlling and disposing of runoff water from roofs.	Installation of a roof runoff management system on the half of the waste storage structure that would otherwise drain into the manure lagoon.	• May reduce erosion and the delivery of sediment and related substances (e.g., loadings of organic waste, nutrients, bacteria, and salts) to surface waters. • Reduces volume of water polluted by animal wastes. • Flooding may be prevented. • Drainage may improve.

[1] The Natural Resources Conservation Service (NRCS) has conducted a program of voluntary soil and water conservation planning with private landowners and resource managers for over 50 years. The NRCS relies upon a Technical Guide, localized to the geographic area of a field office, and a National Planning Manual as guides for technical assistance. The Field Office Technical Guides may be revised as needs and techniques change.

Practice	Summary	Benefits
Waste Storage Pond (425). An impoundment made by excavation or earth fill for temporary storage of animal or other agricultural wastes.	Installation and maintenance of a two-stage (solid/waste separation) waste storage pond for temporary storage of liquid and solid waste, wastewater and polluted runoff. Specifics of the pond include: 2,438 cubic yards of storage, 60-day capacity for liquids, and 365-day capacity for solids based on animal confinement and the historic rainfall average during December and January. Capacity will be achieved by excavation and berming. This pond will be properly maintained for a period of at least 10 years.	• Reduces direct delivery of polluted runoff from the manure stacking areas, feedlots and barnyards to surface waters and other sensitive areas. May reduce the organic, pathogen and nutrient loading to surface waters. • 6-foot-high berm will be high enough to prevent inundation of the pond by a 20-year flood (January 1995 level). • Solids chamber will have concrete floor and will be designed to hold the entire year's production of about 403 cubic yards.
Waste Utilization (633). Using agricultural wastes or other wastes on land in an environmentally acceptable manner while maintaining or improving soil and plant resources.	Agricultural waste or other waste is safely applied on land to provide fertility for crop, forage or fiber production in an environmentally acceptable manner that maintains or improves soil and plant resources and maintains water quality. Via a waste transfer mainline, liquids will be applied on 80 acres each year. With a manure spreader, solids will be applied in the fall to rotated acres. To the extent possible, care will be taken to apply this material as uniformly as possible during the most favorable weather and soil moisture conditions.	• Water utilization helps reduce the transport of sediment and related pollutants to the surface water. • Proper site selection, timing of application and rate of application may reduce the potential for degradation of surface and ground water. • This practice may increase microbial action in the surface layers of the soil, causing a reaction which assists in controlling pesticides and other pollutants by keeping them in place in the field.
Fencing (382). Enclosing or dividing an area of land with a suitable permanent structure that acts as a barrier to livestock, big game, or people (does not include temporary fences).	Installation of fencing on the west bank of Quill slough and the minor slough.	• Fencing may protect riparian areas which act as sediment traps and filters along water channels and impoundments. (NOTE: Livestock have a tendency to walk along fences. The paths become bare channels which concentrate and accelerate runoff causing a greater amount of erosion within the path and where the path/channel outlets into another channel. This can deliver sediment and associated pollutants to surface waters.) • Helps to ensure slough bank stability as well as development of better vegetation structure and species composition along the bank.

Water quality data specific to groundwaters and surface waters in and around the O'Neil Ranch is not available to allow for an accurate projection of exactly how much levels of certain water quality parameters such as dissolved oxygen, e coli bacteria, and ammonia might be affected by the proposed project. However, when fully implemented, the Conservation Plan will greatly reduce the amount of untreated and partially-treated waste (manure and urine) that is discharged at the ranch both in the confinement areas and on the pasture lands. For example, the staff of the NRCS have estimated that the total amount of waste that the approximately 200 cows at the O'Neil Ranch would generate within a confinement area during an average winter, either using the existing shavings lot or the proposed free stall barn, is approximately 838 tons. Using the shavings lot, approximately 628 tons of the total would leach onto the ground surface and either infiltrate into the soil and groundwater or run off into a nearby low spot adjacent to the dike on the west side of Quill Slough. Only about 25% of the total waste is retained in the shavings. In contrast, virtually all of the approximately 1.68 million pounds of waste generated during an average winter's use of the proposed free stall barn would be collected and passed on to the manure retention pond for treatment (Memo to Komar from Meissner of NRCS dated June 1, 1999).

In addition to ensuring that more of the cow waste enters the treatment process, the treatment process itself would be improved to make it much more effective at eliminating contaminants. The retention pond would store the waste for up to 60 days, a much longer period than the period that waste could previously be stored due to its much larger capacity. The longer storage period allows for a significant amount of natural biological break down of the organic matter in the waste. The more extensive piping and pump system proposed would also allow the liquid waste from the pond to be applied onto a much larger pasture area ensuring better absorption of the nutrients than previously. The application would also occur during times of good weather when stormwater runoff would not carry the applied material away to nearby water courses. On a cumulative basis, the NRCS staff estimates that a total of approximately 125 million pounds of manure in the Eel River Delta that was not previously treated is being controlled and managed through the EQIP and 319h programs (Letter to Commission Staff from Komar, NRCS, dated May 8, 1999)

The benefits of the proposed water quality improvements at the O'Neil Ranch will be substantial. The waste material that is applied to the pasture lands will not contain as many contaminants as in the past because the material will be more likely to have been treated as well as treated more thoroughly than in the past. The reduction in contaminants will enhance use of the seasonal wetlands by birds. Second, much less untreated cow waste will be carried by stormwater runoff into adjacent sloughs and other watercourses. With similar water pollution control facilities being built at other dairies in the Eel River delta as part of the EQIP and 319h programs, the cumulative improvement to water quality of the proposed project will be substantial. The resulting reductions in water pollution will improve the waters for coho salmon, other endangered or threatened anadromous fish species, and other aquatic life. The improvement in water quality of the sloughs and watercourses will enhance other beneficial uses of these waters such as human recreation.

Therefore, as the proposed project will restore the biological productivity and the quality of coastal waters and wetlands to maintain populations of marine organisms and protect human health of recreational users of these waters by minimizing the adverse effects of waste water discharges and controlling runoff from the applicants' dairy, the Commission finds that the proposed project is consistent with Section 30231 of the Coastal Act.

7. Fill in Wetlands.

The proposed project includes the placement of approximately 20,000 square feet of fill in seasonal grazed wetlands at the applicants' dairy. This fill consists of the previously placed earthen fill and concrete to form the base and foundation of the proposed free stall barn.

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 enumerated uses allowable under Section 30233(a). Therefore, the Commission finds that the project does not meet the requirement of Coastal Act Section 30233 for permissible uses for fill of wetlands.

B. No Feasible Less Environmentally Damaging Alternative.

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 the shavings lot for animal confinement during the winter, (3) building the barn elsewhere on the property, (4) utilizing existing building or their sites, (5) relocating the herd off-site for animal confinement during the winter. For the reasons discussed below, the Commission finds that there is no identified alternative that is both feasible and less damaging than the project.

i. 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 or other storm periods. 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, the cows would be more susceptible to lameness. The cows tend to stand for longer periods of time in the wet weather rather than lay as much in the cold wet pastureland The greater amount of standing contributes to a greater incidence of lameness. 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 cannot reach a definitive conclusion as to whether or not the no project alternative is feasible.

However, the Commission finds that whether or not the no project alternative is feasible, this alternative would not be environmentally less damaging than the proposed project which includes constructing the free stall barn. The fill proposed for the free stall barn would eliminate approximately 20,000 square feet of grazed seasonal wetland. However, as discussed in Finding 6 above, "Enhancement of Water Quality," the no project alternative would allow significant degradation of water quality to continue from the existing dairy operation over a much larger area. The free stall barn makes it possible to confine the animals during the winter rainy period or other periods of storm and collect a total of approximately 838 tons, or 1.68 million pounds of manure waste generated each winter for treatment that under the no project alternative would be left in the field to contaminate the seasonal wetlands. The pastureland affected include approximately 80 acres of seasonal wetlands that primarily have habitat value for bird life. In addition, under the no project alternative, the cow waste left in the fields in the winter would be

readily transported by storm water runoff into the adjoining sloughs and waterways, where the water quality impacts are even more severe. As discussed previously, these waterways are used by threatened and endangered anadromous fish, among other species. The contaminants in the cow waste can contribute to fish mortality. Among other contaminants, cow waste can generate ammonia and nutrients. Ammonia can be toxic to fish and other forms of aquatic life. Nutrients can cause an over abundance of algae to develop in receiving waters, resulting in turn in reductions of dissolved oxygen levels which can lead to fish kills. Therefore, the Commission finds that the no project alternative is not a less environmentally damaging alternative than the proposed project.

ii. Continued Use of the Shavings Lot

Until now, the applicants have utilized a wood chips shavings lot to create temporary cow bedding areas. Wood chips have been 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 during the winter and other periods of storm. 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 shavings lot method for annual confinement 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 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 applicants 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 cannot reach a definitive conclusion as to whether or not the project alternative of continuing to use the shavings lot is feasible.

However, the Commission finds that whether or not continued use of the shavings lot is feasible, this alternative would not be environmentally less damaging than the proposed project. As discussed in Finding 6 above, "Enhancement of Water Quality," continued use of a shavings lot for animal confinement would allow significant degradation of water quality to continue from the existing dairy operation over a much larger area than the approximately 20,000 square foot area of wetlands that would be eliminated by the proposed free stall barn. With a shavings lot, there is no means to control the mixing of clean and manured waters, no practical runoff control, and no mechanism to control leaching of harmful pollutants from the area. Because of such water quality impacts associated with shavings lots, the North Coast Regional Water Quality Control Board does not recognize shaving lots as a best management practice for controlling non-point source pollution. The Board's Water Quality Control Plan (Basin Plan) for the North Coat Region calls for dairies with 700 cows or more to obtain a permit from the Board (waste discharge requirements) that sets certain water quality performance standards. Installation of a free stall barn confinement facility and associated waste control facilities such as proposed by the applicants are generally the only practical means available to these larger dairies to attain compliance with the waste discharge requirements of the permit.

The applicants' proposed free stall barn would make it possible to collect virtually all of the approximately 838 tons, or 1.68 million pounds of cow waste the approximately 200 cows at the O'Neil Ranch generate at the confinement facility during an average winter. Using the shavings lot, approximately 628 tons of the total would leach onto the ground surface and either infiltrate into the soil and groundwater or run off into a nearby low spot adjacent to the dike on the west side of Quill Slough. Only about 25% of the total waste is retained in the shavings. Therefore, the Commission finds that continued use of a shavings lot is not a less environmentally damaging alternative than the proposed project.

iii. 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 a feasible less environmentally damaging alternative.

iv. Utilizing Existing Buildings 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. Use of these structures or their building sites would not provide the needed space for wintering the cows. Most of these structures are already densely packed with milking and other agricultural equipment leaving little, if any room to be used also as a free stall barn for wintering cows. Most of the structures could not feasibly be relocated offsite to make their building sites available for cow wintering. The second largest of these structures, the milking barn must be located in close proximity to where the cows graze and rest as cows are generally milked twice a day and transporting cows offsite, even if feasible, would lower milk production as the extra strain on the cows would affect lactating. Similarly, the calf barn and feed barn need to be close to where the cows are located to be of practical use. Furthermore, even if all of these structures could be feasibly relocated and operated off-site, the space made available simply would not be sufficient to meet the need for space for cow bedding. In total, the 4,200-sqaure-foot milking barn, the 2,280-square-foot calf barn, the 4,650-square-foot feed barn, the 1,080 square-foot equipment shed, and the less than 2,000 square-foot footprint of the house occupy no more than 14,210 square feet of area, less than the 20,000 square feet needed for the free stall barn.

Therefore, the Commission finds that utilizing existing structures or their sites on the property is not a feasible less environmentally damaging alternative.

v. Wintering the Herd Off-Site

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. According to the applicants, the daily milking schedule involves milking cows between the hours of 1:30 a.m. and 6:30 a.m., and again between 1:30 p.m. and 6:30 p.m. Although it does not take five hours to milk a cow, the five-hour milking period is necessary to provide enough time to milk all the cows in the herd. A feed barn or some other facility would be needed to contain those cows that are milked first while the remaining cows are milked. 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. The combination of the frequency and duration of milking cycles, the need for various kinds of supporting facilities, and the high cost of transporting the cows make finding and operating a

suitable off-site wintering location infeasible. Therefore, the Commission finds that wintering the cows at an off-site location is not a feasible less environmentally damaging alternative.

vi. Conclusion

As discussed above, none of the five identified alternatives to the proposed project would be both feasible and less environmentally damaging, including (1) the no project alternative, (2) continuing the use of the shavings lot for animal confinement during the winter, (3) building the barn elsewhere on the property, (4) utilizing existing building or their sites, and (5) relocating the herd off-site for animal confinement during the winter. Therefore, the Commission finds that the proposed project is the least environmentally damaging feasible alternative, and therefore, is consistent with the alternatives test of Section 30233(a) of the Coastal Act.

C. Mitigation.

The third general limitation on fill projects set forth by Section 30233 of the Coastal Act is that adequate mitigation measures to minimize the adverse impacts of the proposed project on habitat values would be provided.

As noted above, the proposed project would involve approximately 20,000 square feet of fill in a seasonal wetland for the proposed free stall barn, thereby eliminating the habitat value of this seasonal wetland. The applicants amended their application to include a wetland mitigation 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). The proposal would provide mitigation at a one-to-one ratio. The loss of 20,000 square feet of seasonal wetland would be compensated for by planting riparian vegetation and other plants along at least 20,000 square feet of portions of the fenced slough bank. As stated in the plan:

> "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."

A list of plants to be planted can be found in Finding 3 of this report. As proposed, the planting would be done in the fall to avoid the need for irrigation. The success standard for the plan

would be survival of 75% of the plants planted. Monitoring would be performed after the first year by a wetland biologist. If the success standard is not achieved, further monitoring or replanting would be arranged. The plan also proposes as a mitigation measure that the current livestock exclusion fence along Quill Slough be maintained to keep livestock from damaging the bank of the slough, degrading water quality in the slough and trampling and grazing all of the vegetation to be planted.

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. Because the entire dairy ranch, other than the developed complex of farm buildings, consists of seasonal grazed wetland, it is not possible to create more grazed seasonal wetland at the site. However, planting riparian vegetation would provide valuable habitat for birds. Birds are the primary users of the grazed seasonal wetlands, as a place to feed during the winter months. In addition to providing bird habitat, the riparian area to be created would provide habitat for other kinds of animals as well, including small mammals. This riparian habitat is in much less abundant supply in this part of the Eel River Delta than the grazed seasonal wetlands. For that reason, the Department of Fish & Game has included a similar proposal to establish a riparian habitat area as part of its nearby Cock Robin Island wetland restoration project that was approved by the Commission last year. The Cock Robin Island project, a couple miles west of the applicants' property, involved converting former ranchland into various kinds of wetland habitats to increase habitat diversity.

However, the applicants' mitigation proposal is deficient in several respects in fully mitigating the wetland fill impacts of the project. First, the vegetation would be planted along the levee that separates the pasturelands of the applicants' ranch from Quill Slough. The staff of the Department of Fish & Game has raised concerns that the wetland plants to be planted along the levee would not survive because the roots would not draw life-sustaining fresh water. Those plants planted on the slough side of the levee would likely draw salt water from Quill Slough. Those plants planted higher up on the levee may not draw any water at all, whether salt or fresh water, as the elevation of the levee is well above the groundwater table. Without a source of freshwater, the wetland plants would not survive.

A second concern with the proposed mitigation plan is that the amount of mitigation provided is not sufficient to offset the impacts to the wetland fill. The mitigation proposal would plant 20,000 square feet of riparian habitat to compensate for the loss of 20,000 square feet of grazed seasonal wetland that would be filled with the free stall barn. Under the circumstances, additional mitigation is needed to ensure that the overall habitat values of the mitigation to be provided fully offset the habitat values lost.

A third concern with the proposed mitigation plan is that one of the plant species proposed to be planted, coyote brush, is not a wetland plant species that provides wetland habitat values. According to staff of the Department of Fish & Game, Bacharis pilularis does not provide either feeding or roosting habitat for wildlife that would use wetlands.

A fourth concern is that the mitigation plan does not specify a planting density. The plan calls for planting 20,000 square feet of area, but the plan neither provides a landscaping plan detailing where specific plants would be planted nor include any narrative discussion of how close or far apart plants would be planted. To maximize habitat values, plants should be planted relatively close together.

A fifth concern is that planting would not occur at the optimal time. Although planting during the rainy season as noted in the plan is preferred because irrigation would not be necessary, according to the staff of the Department of Fish & Game, many of the willow and other species proposed to be planted are dormant until February. Planting when the plants are leaving dormancy and beginning to sprout in the late winter would ensure that the plants would have a better chance of surviving.

Finally, the monitoring proposal in the plan is not specific enough. As proposed, monitoring would be performed after the first year, and if the planting success is lower than the proposed success standard of 75%, "further monitoring or replanting would be arranged." To be most effective, monitoring should be performed after the dry season to determine if the wetland plants can survive that period when conditions are the most difficult for the plants. Thus, monitoring in September or October would be the most effective. However, the mitigation plan does not indicate whether the monitoring would be performed in those two months or at some other time. In addition, the vagueness of the proposal for dealing with any future monitoring that would become necessary if the success standard is not achieved does not ensure that successful enhancement of habitat values would ever be achieved under those circumstances. The mitigation plan needs a more specific procedure for future monitoring and remediation if the vegetation planting is not successful in the first year

Therefore, the Commission finds that the applicants mitigation proposal as submitted would not adequately mitigate the wetland fill impacts of the proposed project and does not met the mitigation requirements of Section 30233(a) of the Coastal Act. However, with certain changes, the mitigation proposal could be found to be adequate and consistent with the mitigation requirements of Section 30233(a). These necessary changes are as follows:

First, planting the wetland vegetation in the low pasture lands adjacent to the Quill Slough levee instead of on the levee or on the slough side of the levee would enable the plants to draw fresh water from the high groundwater table and thus have a reasonable chance of survival. By planting near the levee, the vegetation would still grow close enough to the slough that the many species of birds or other wildlife species that would use both the waters of the slough and the riparian vegetation would still benefit from the plan. To ensure that the vegetation to be planted in the pasture lands is not trampled or eaten by livestock, this modification would also require that fencing be installed and maintained along the length of the planting area.

Second, incorporating a 2:1 ratio of area of vegetation planted to seasonal wetland area filled would provide adequate compensation for the wetland habitat values lost. The Commission has required a variety of mitigation ratios for developments that include wetland fill. Sometimes these ratios have been 6:1, or higher. The determination of what is an appropriate ratio is dependent on many factors, including such factors as the habitat values of the area filled, the relative difficulty in establishing the new habitat area, and the time lag between when the impacts to the existing habitat are sustained and when habitat values have been fully realized at the mitigation site. In the northern coastal counties with their relatively wet climate, willows and other riparian species grow very fast and very successfully when placed in the right environment. The relative abundance of riparian vegetation along the north coast is evidence of the viability of this kind of habitat. Mitigation projects involving the establishment of riparian habitat have generally been far more successful than mitigation projects attempting to establish salt marsh, eel grass beds, or other more complex and limited habitat types. Because of the greater chances for riparian mitigation to be successful than other kinds of habitat mitigation, the Commission has often imposed a 1:1 mitigation ratio for developments approved in the North Coast where the affected habitat is riparian vegetation. A 1:1 ratio would not be adequate for the proposed project, however, because the riparian habitat to be established will need to be established in areas that are already wetlands. As noted above, the riparian vegetation needs to be planted where it can draw sufficient freshwater to survive, and the only locations on the applicants' 85 acre property where this need can be met are on the pasturelands. As noted previously, these pasturelands are themselves considered to be grazed seasonal wetlands. Although the riparian habitat to be established would have superior habitat value to the habitat value of the grazed seasonal wetland where it would be established, the mitigation proposal would be wetland enhancement instead of wetland creation. As no additional wetland area would be created under the mitigation, a higher ratio would be appropriate to ensure that overall habitat values are increased or at least maintained by the mitigation. Therefore, the Commission finds that a 2:1 ratio would be appropriate for the mitigation to be provided for the proposed project.

Third, by eliminating coyote brush from the plant list for the mitigation proposal, the Commission would ensure that only wetland plants that provide wetland habitat values for wildlife would be established. In so doing, the overall wetland habitat value of the mitigation proposal would be made greater.

Fourth, by specifying a planting density for the willow trees to be planted, the Commission could ensure that the most valuable wetland plants proposed to be planted would be planted in sufficient numbers to maximize the overall value of the mitigation plan. A commonly accepted spacing for planting willow trees is 10 feet apart. This spacing allows many trees to be planted but keeps the individual specimens far enough apart that they do not crowd and compete against each other for survival.

Fifth, by specifying that the riparian vegetation be planted in February, the plan would ensure that the vegetation would be planted at the optimal time when the vegetation is about to sprout and when sufficient rainfall would be available to naturally irrigate the plantings.

Finally, by specifying that monitoring would occur in the fall, the plan would ensure that the monitoring would establish that the vegetation had survived the dry season. In addition, by specifying that monitoring would continue each year until the success standards have been achieved, the plan would ensure the ultimate success of the mitigation.

The Commission finds that if the above-described changes were made to the mitigation proposal, the proposal could be found to be consistent with the mitigation requirements of Section 30233(a). Such changes could be accomplished through special conditions of approval if the project were found to be otherwise consistent with Chapter 3 policies of the Coastal Act.

8. **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 (l) 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 higher priority to coastal agriculture over other kinds of uses that might be proposed within the coastal zone. The proposed development is consistent with the purpose 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. Therefore, the Commission finds that the proposed project is consistent with Sections 30241 and 30242 of the Coastal Act.

9. Visual Resources.

Section 30251 of the Coastal Act provides for the protection of visual resources of the coastal zone. That section provides that:

> *The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas... shall be subordinate to the character of its setting.*

The proposed project involves the development of farm structures at an existing dairy ranch. The only totally new structure proposed is the free stall barn. The upgrades to the waste pond and the pumping and irrigation improvements proposed would all modify or expand existing facilities. The free stall barn and the waste pond improvements are proposed immediately adjacent to the other structures in the existing complex of farm buildings at the southwest corner of the property. In addition, the proposed height of the free stall barn is generally consistent with the height of the other structures. Therefore, the proposed free stall barn would not appear out of character with its setting. The free stall barn and waste pond would be located behind the other buildings in the complex as viewed from Cannibal Island Road, and thus would be largely hidden from public view from the road and would not block coastal views not already blocked by the existing development at the dairy.

The proposed riparian habitat to be created as mitigation for the wetland fill impacts of the free stall barn would also be consistent with the visual character of the area. Although there are very few trees on the applicants' parcel, there are other locations along the waterways that comprise the Eel River Delta where pockets of riparian vegetation exist. When viewed from afar, the proposed willow trees and other riparian vegetation proposed to be planted would appear to be yet another pocket of riparian vegetation similar to the others seen across the landscape.

Therefore, the Commission finds that the proposed project is visually compatible with the character of the area and will not interfere with coastal views. Therefore, the Commission finds that the proposed project is consistent with Section 30251 of the Coastal Act.

10. Conflict between Coastal Act Policies.

Section 30007.5 of the Coastal Act provides the Commission with the ability to resolve conflicts between Coastal Act policies. This section provides 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*

that 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.

A. **Conflict**. In order for the Commission to utilize the conflict resolution provision of Section 30007.5, the Commission must first establish that there is a substantial conflict between two statutory directives contained in Chapter 3 of the Coastal Act exists. The fact that a project is consistent with one policy of Chapter 3 and inconsistent with another policy does not necessarily result in a conflict. Rather, the Commission must find that to deny the project based on the inconsistency with one policy will result in coastal zone effects that are inconsistent with another policy.

In this case, as described above, the proposed project is inconsistent with the wetland protection policies of the Coastal Act because it is not an allowable wetland fill activity as identified by Section 30233(a)(1-8). However, to deny the project based on this inconsistency with Section 30233(a)(1-8) would result in significant adverse impacts inconsistent with the water quality provisions of Section 30231. A major objective of the proposed project is to improve water quality by reducing waste discharges from the applicants' dairy. The proposed project is receiving significant funding from state and federal agencies to improve the management of cow waste from the existing dairy operation as part of a coordinated program to reduce the water quality impacts of waste discharges from dairies throughout the Eel River Delta on seasonal wetlands, groundwater, and adjacent sloughs and watercourses. These watercourses provide significant habitat for wildlife including the endangered coho salmon and other threatened fish species. Improvement of the water quality of these receiving waters by reducing dairy waste discharges would also help protect human health as the waterways can be used for kayaking and other recreational pursuits. As the proposed project will restore the biological productivity and the quality of coastal waters and wetlands to maintain populations of marine organisms and protect human health of recreational users of these waters by minimizing the adverse effects of waste water discharges from the applicants' dairy, the proposed project is consistent with Section 30231 of the Coastal Act.

If the Commission were to deny the project based on the project's inconsistencies with the wetland fill provisions of Section 30233(a)(1-8), the water quality impacts from waste discharges at the dairy would not be reduced. As discussed in the section of this report describing alternatives to the proposed free stall barn, Finding 7B, all identified alternatives to the free stall barn are either infeasible or more environmentally damaging. Based on the existing information before the Commission, only two possible alternatives may be feasible, the no project alternative and continued reliance on the use of a wood chip shavings lot for cow bedding. The Commission notes that some doubt exists as to whether or not these alternatives are actually feasible. Even assuming however that these alternatives are feasible, these alternatives are not less environmentally damaging. Neither one would avoid the conflict with Section 30231 of the

Coastal Act, as neither one would reduce the water quality impacts from waste discharges at the dairy.

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 or other storm periods. Instead, the cows would remain in the fields. As discussed in Finding 7B, the no project alternative would allow significant degradation of water quality to continue from the existing dairy operation over a much larger area. A total of approximately 838 tons, or 1.68 million pounds of manure waste generated each winter for treatment would be left in the field to contaminate the seasonal wetlands and be carried by stormwater runoff to nearby water courses where water quality and habitat would be further compromised.

The alternative of continued reliance on use of a wood chip shavings lot for cow bedding would also not reduce the water quality impacts of the existing dairy operation. As discussed in Finding 7B, continued use of a shavings lot for animal confinement would allow significant degradation of water quality to continue from the existing dairy operation over a much larger area than the approximately 20,000 square foot area of wetlands that would be eliminated by the proposed free stall barn. With a shavings lot, there is no means to control the mixing of clean and manured waters, no practical runoff control, and no mechanism to control leaching of harmful pollutants from the area. Because of such water quality impacts associated with shavings lots, the North Coast Regional Water Quality Control Board does not recognize shavings lots as a best management practice for controlling non-point source pollution. Installation of a free stall barn confinement facility and associated waste control facilities such as proposed by the applicants are generally the only practical means available to these larger dairies to attain compliance with the waste discharge requirements of the permit. Using the shavings lot, approximately 628 tons of animal waste that otherwise would be contained by the applicants' proposed free stall barn would leach onto the ground surface and either infiltrate into the soil and groundwater or run off into a nearby low spot adjacent to the dike on the west side of Quill Slough. In addition, under the no project alternative, the cow waste left in the fields in the winter would be readily transported by storm water runoff into the adjoining sloughs and waterways, where the water quality impacts are even more severe. These effects would be inconsistent with the directives of Section 30231 of the Coastal Act that the biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes be maintained and where feasible restored to maintain populations of marine organisms and protect human health by minimizing the adverse effects of waste water discharges and controlling runoff.

The proposed project includes wetland fill that is inconsistent with the wetland policies of the Coastal Act. However, this project will provide water quality benefits that are necessary to maintain and improve the biological productivity and the quality of coastal waters. Without the project, the continued waste discharges from the existing dairy operation will degrade access and water quality resources in a manner inconsistent with the Coastal Act. Therefore, the Commission finds that the proposed project creates a conflict among Coastal Act policies.

B. Conflict Resolution. After establishing a conflict among Coastal Act policies, Section 30007.5 requires the Commission to resolve the conflict in a manner that is on balance most protective of coastal resources. In this case, the proposed project would result in the fill of 20,000 square feet, or approximately half an acre of grazed seasonal wetlands.

The important factor in the Commission's use of the conflict resolution provisions of Section 30007.5 in this case is that the dairy operation is an existing and ongoing use of the property. It is the existence of this ongoing operation that causes the water quality impacts that will be substantially and positively modified by the proposed project. If this project was not being proposed as an ongoing agricultural operation, the Commission could not permit the wetland fill through the use of Section 30007.5, because there would not be any water quality improvement.

On the other hand, the proposed project will improve water quality as it will make it possible to greatly reduce the amount of untreated and partially-treated waste (manure and urine) that is discharged at the ranch both in the confinement areas and on the pasture lands. Virtually all of the approximately 838 tons or 1.68 million pounds of waste generated during an average winter's use of the proposed free stall barn would be collected and passed on to the manure retention pond for treatment. In addition, the treatment process itself would be improved to make it much more effective at eliminating contaminants. The more extensive piping and pump system proposed would also allow the liquid waste from the pond to eventually be applied onto a much larger pasture area, ensuring better absorption of the nutrients than previously. The application would also occur during times of good weather when stormwater runoff would not carry the applied material away to nearby watercourses. The benefits of these water quality improvements would be substantial. The reduction in contaminants will enhance use of the entire 80 acres of seasonal wetlands at the dairy by birds. Second, much less untreated cow waste will be carried by stormwater runoff into adjacent sloughs and other watercourses. Third, the reduction in contaminants in the waste applied to the fields will reduce pollution of groundwater by contaminants leaching into the groundwater table. With similar water pollution control facilities being built at other dairies in the Eel River delta as part of the EQIP and 319h programs, the cumulative improvement to water quality of the proposed project will be substantial. The resulting reductions in water pollution will make the waters less harmful to coho salmon, other endangered or threatened anadromous fish species, and other aquatic life. The improvement in water quality of the sloughs and watercourses will enhance other beneficial uses of these waters such as human recreation.

In addition, the proposed project includes the creation of riparian habitat as mitigation for the 20,000-square-foot seasonal wetland area to be filled by the proposed free stall barn. If modified as discussed in Finding 7C to increase the amount of mitigation, its effectiveness and the chance of success in creating new habitat values, the mitigation proposal would fully offset the loss of habitat value associated with the filling of the seasonal wetland. The mitigation proposal would provide habitat for a large number of species and provide habitat that is not as plentiful at the applicants' ranch as the seasonal wetlands that would be replaced or filled. Thus, the Commission finds that the proposed project would have significant resource benefits.

In resolving this conflict, the Commission finds that the impacts on coastal resources from not constructing the project will be more significant than the project's wetland habitat impacts. Therefore, the Commission finds that approving the project is, on balance, most protective of coastal resources.

This finding that approving the project is most protective of coastal resources is based, in part, on the assumption that the water pollution control facilities to be constructed will be continually managed and maintained in the designed manner in the future, and that the wetland fill mitigation will be modified as discussed in Finding 7C and maintained in perpetuity. Should either the constructed water pollution control facilities not be managed and maintained as designed, or the mitigation proposal not be modified and implemented as discussed in Finding 7C, the benefits of the water quality improvement project would not be realized to an extent that would outweigh the loss of half of an acre of wetland habitat. Therefore, the Commission attaches several special conditions to ensure that the desired result is achieved.

Special Conditions Nos. 4-7 address management of the facilities for water pollution control. Special Condition No. 6 requires that the collection of waste from the free stall barn, the operation and management of the waste pond, and the discharge of waste from the pond all occur in accordance with the Conservation Plan prepared for the dairy under the EQIP program. Special Condition No. 7 requires that the existing livestock exclusion fencing along Quill Slough be maintained to keep livestock from entering the slough. Special Condition No. 4 requires that a deed restriction be recorded against the property stating that in the event the proposed free stall barn is no longer being used for its intended purpose, the barn must be removed and the site restored as a wetland. Special Condition No. 5 require the landowners to notify the Commission if they cease to use the free stall barn for its intended purpose and apply for a permit for removal of the barn within 45 days of notification. These conditions will ensure that if the water quality benefits of the project that enable the Commission to use the balancing provisions of Section 30007.5 to approve the project can no longer be derived by virtue of the applicants or future purchasers of the property ceasing to use the barn for its intended purpose, then the habitat values lost due to construction of the barn can be restored and the public and the environment will not suffer a permanent loss of half an acre of wetland.

Special Conditions Nos. 1-3 address the implementation and maintenance of the wetland fill mitigation work. Special Condition No. 1 requires that a revised wetland fill mitigation plan be prepared and implemented that will include the modifications discussed in Finding 7C. To ensure that the mitigation site is not developed for other purposes in the future, the Commission attaches Special Condition No. 2 which requires that an open space deed restriction be recorded that would restrict the future use and development of the mitigation site in a manner that would protect the habitat values to be created through the mitigation proposal. To ensure that any future additions to the structures authorized by Coastal Development Permit No. 1-98-103 that might further encroach into the seasonal wetlands of the site and might otherwise be exempt from the need for a permit pursuant to Section 30610(b) of the Coastal Act can be reviewed by the Commission, the Commission attaches Special Condition No. 3. This condition requires that

a future development deed restriction be recorded against the property providing that additional permit authorization must be obtained for such development. Review of such future additions will enable the Commission to ensure that the appropriate balance between the wetland fill impacts of the project as approved and the water quality benefits derived from the project are maintained.

The Commission finds that without Special Conditions Nos.1-5, the proposed project could not be approved pursuant to Section 30007.5 of the Coastal Act.

11. 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 and Section 3007.5 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.

12. 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 effect which the activity may have on the environment.

The proposed project has been conditioned in order to be found consistent with the Coastal Act. Mitigation measures have been attached, including requirements that (1) the collection of waste from the free stall barn, the operation and management of the waste pond, and the discharge of waste from the pond all occur in accordance with the Conservation Plan prepared for the dairy

under the EQIP program to maximize the water quality benefits of the project, (2) a deed restriction be recorded against the property stating that in the event the proposed free stall barn is no longer being used to protect and enhance water quality, the barn must be removed and the site restored as a wetland, (3) a revised wetland fill mitigation plan be prepared and implemented that will fully offset the loss of habitat values associated with the filling of 20,000 square feet of wetland, (4) an open space deed restriction be recorded that would restrict the future use and development of the mitigation site in a manner that would protect the habitat values to be created through the mitigation proposal, and (5) a future development deed restriction be recorded against the property providing that additional permit authorization must be obtained for future additions to the structures authorized to enable the Commission to ensure that the appropriate balance between the wetland fill impacts of the project as approved and the water quality benefits derived from the project are maintained.

As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, can be found consistent with the requirements of the Coastal Act and to conform to CEQA.

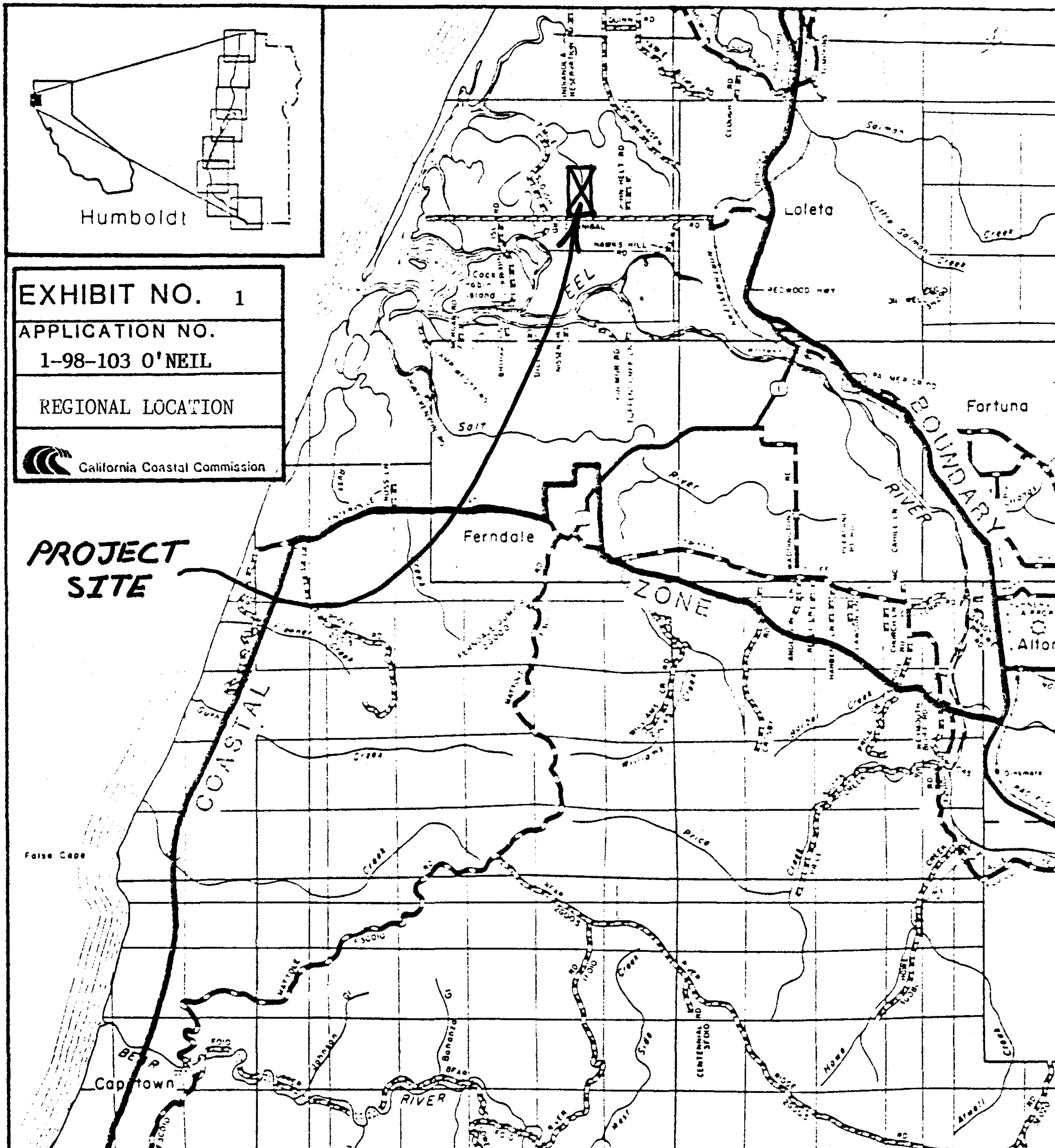

EXHIBIT NO. 1

APPLICATION NO.
1-98-103 O'NEIL

REGIONAL LOCATION

California Coastal Commission

California Coastal Commission

LOCATION MAP

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miles

N

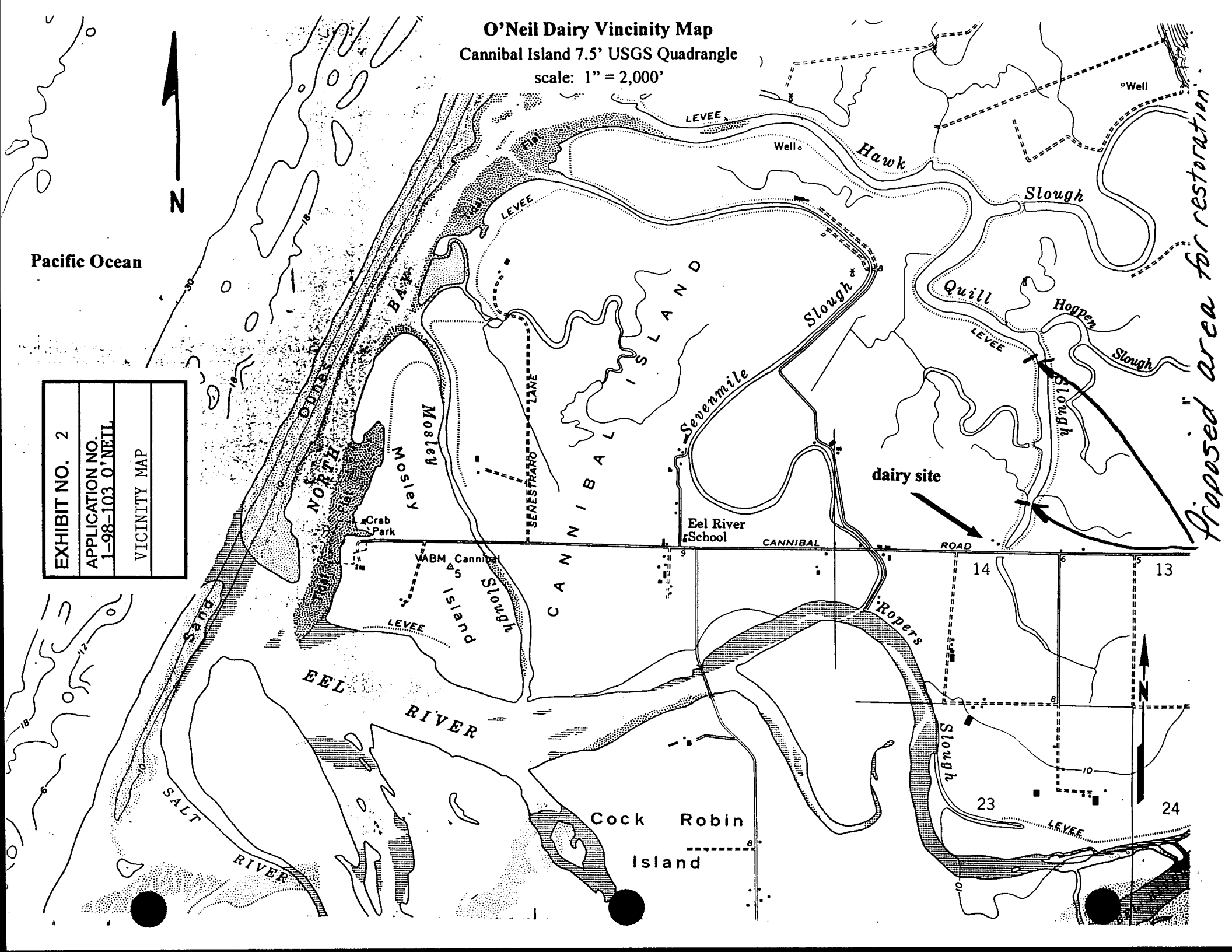
County of Humboldt

Sheet 5 of 8

O'Neil Dairy Vincinity Map

Cannibal Island 7.5' USGS Quadrangle

scale: 1" = 2,000'



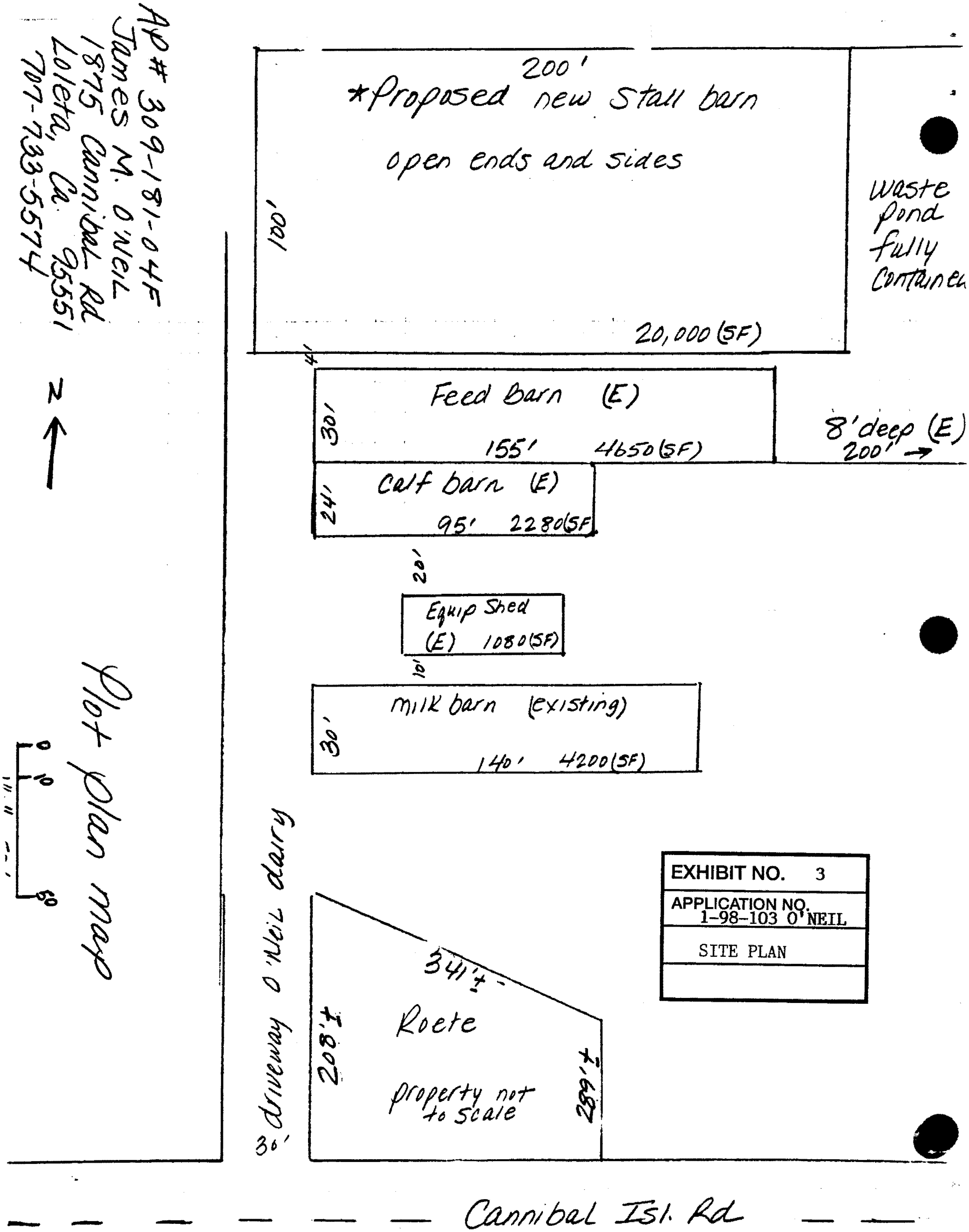


EXHIBIT NO. 3

APPLICATION NO.
1-98-103 O'NEIL

SITE PLAN

Plot Plan for waste Storage

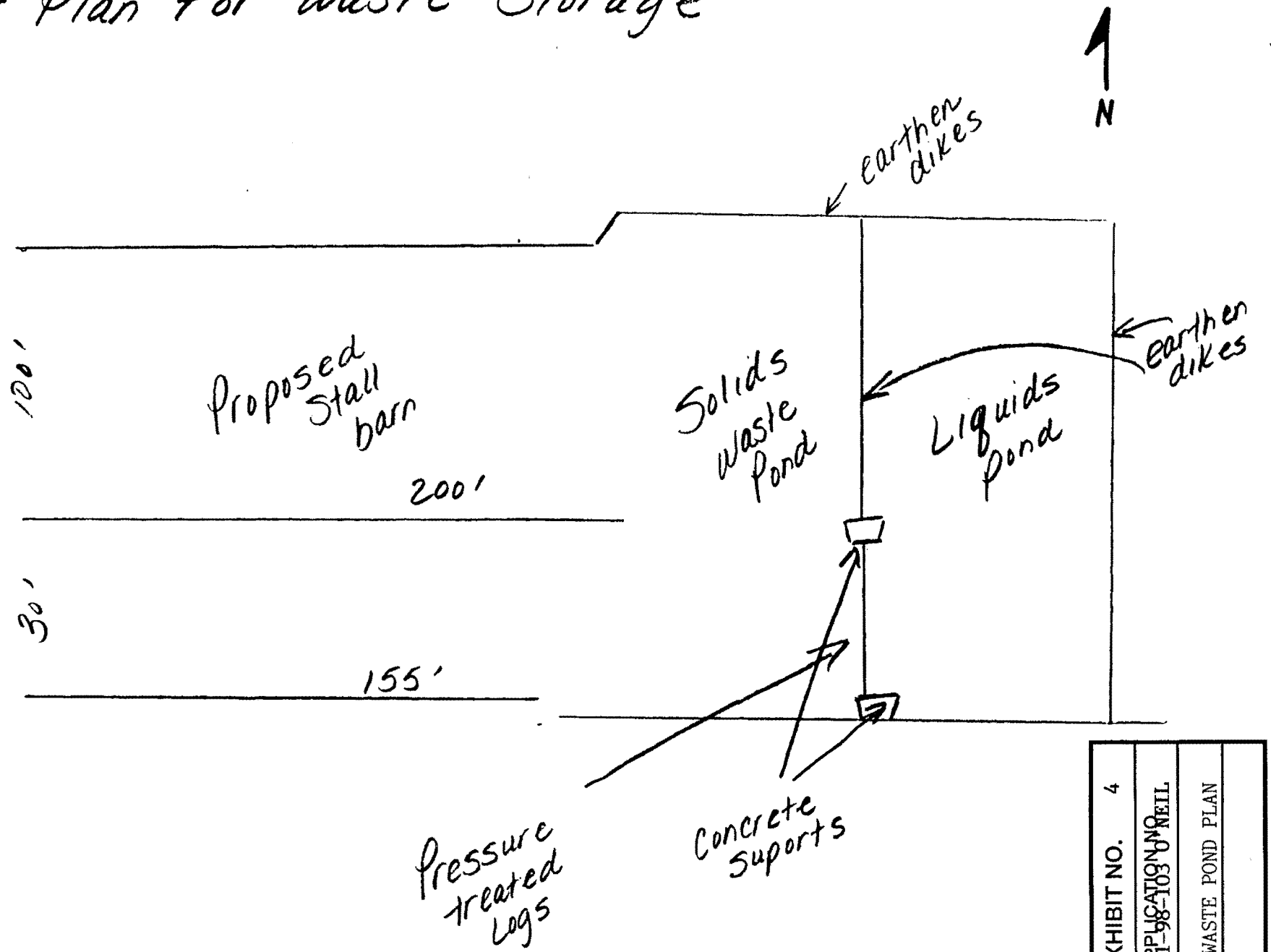
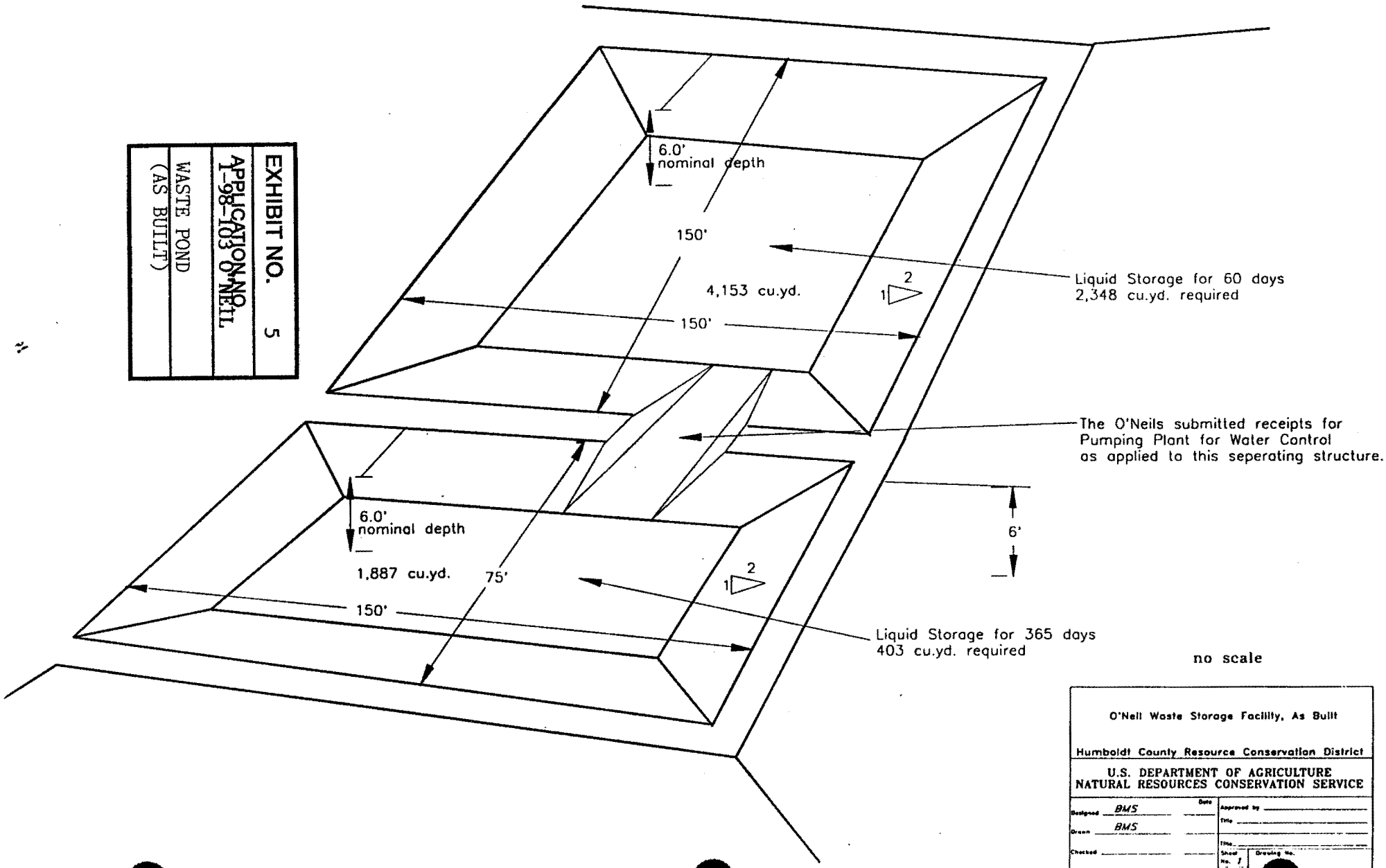


EXHIBIT NO. 4	APPLICATION NO. 1-98-103 O'NEIL	WASTE POND PLAN	

DEC 14TH

EXHIBIT NO. 5
APPLICATION NO. 1-98-103 O'NEIL
WASTE POND
(AS BUILT)



no scale

O'Neil Waste Storage Facility, As Built

Humboldt County Resource Conservation District

U.S. DEPARTMENT OF AGRICULTURE
NATURAL RESOURCES CONSERVATION SERVICE

Designed BMS
Drawn BMS
Checked
Checked
Date
Approved by
Title
Title
Sheet No. 1 of 1
Drawing No.

CONSERVATION PLAN COVER PAGE

Client: O'Neil, James M. O'Neil James
Assisted By: NRCS

Farm	Tract	ACRES	LAND UNIT NAME	OWNER NAME
oneilja	6154	55.0	FSA Tract No. 6154	
	6158	100.0	FSA Tract No. 6158	
	TOTAL	155.0 ACRES		

BUSINESS OBJECTIVES

05/26/98

Jim's goals: (1) To manage manure in compliance with California State water quality regulations, and (2) To use manure as efficiently as possible for forage production and nutrient uptake.

EXHIBIT NO. 6
APPLICATION NO. 1-98-103 O'NEIL
CONSERVATION PLAN
(Page 1 of 4)

CONSERVATION PLAN

Client: O'Neil, James M. O'Neil James
Assisted By: NRCS

LAND UNITS		PLANNED			APPLIED		
TRACT	FIELD	AMOUNT	MONTH	YEAR	AMOUNT	DATE	PLANNED CONSERVATION TREATMENT
							Dairy with non-irrig. pasture
6154	1, 2, 3, 4, 5	44.8Ac					As detailed in the conservation practice descriptions, a complete manure management system will be accomplished by installing the following components to complement the existing manure management practices: (1) A 60 day storage manure lagoon designed to contain the combined confinement area volume of manure, washwater, and unroofed rain accumulation; (2) A pump/agitator for the lagoon's liquid chamber; (3) A waste transfer mainline to supply liquified manure to: FSA Tract No. 6154, fields 1-5 (about 44 acres); FSA Tract 6158, Field 1; (4) A roof runoff system on half of a freestall barn planned for construction in August, 1998 (not cost-shared) ... Jim has been approved for cost-share funding through the 319(h) grant program ... During the next 6 months, Jim's herd size might increase to 200. The manure lagoon will be designed on the basis of 200 milk cows.
6158	1, 2, HQ	67.6Ac					
6154	1	412.0ft	11	1998			IRRIGATION WATER CONVEYANCE, PIPELINE, HIGH-PRESSURE, UNDERGROUND, PLASTIC
	2	742.0ft	11	1998			A high-pressure, underground plastic pipeline and appurtenances will be installed and maintained to support an efficient irrigation system. The pipeline prevents soil erosion, degradation of water quality and irrigation water losses. It improves water use efficiency. Installation will be according to approved plans and Specification No. 430-DD for this practice.
	3	825.0ft	11	1998			
	4	371.0ft	11	1998			
	5	165.0ft	11	1998			
6158	1	330.0ft	11	1998			This waste transfer mainline will be an extension of existing mainline. It will transfer liquified onto pastures through a sprinkler system. Pipe will be 4" diameter, Class 160 PVC. The top of the pipe will be buried at least 24" deep. Refer to the design for information on risers, thrust blocks, check valve, pressure relief valve, and air relief valve. This waste transfer mainline will be maintained in proper working order for at least 10 years.
	2	82.0ft	11	1998			
6158	HQ	1.0no	11	1998			PUMPING PLANT FOR WATER CONTROL
							A pumping plant will be installed and maintained to transfer water for a conservation need or to maintain critical water levels. A dependable water source or disposal facility for water management will be provided. Installation will be according to approved plans and Specification No. 533 for this practice.
							A 30 horsepower, electric pump/agitator will be mounted on a platform and used to draw down the liquid content of the waste storage pond. This will be maintained in proper working order for a period of at least 10 years.

CONSERVATION PLAN

Client: O'Neil, James M. O'Neil James
Assisted By: NRCS

LAND UNITS		PLANNED			APPLIED		
TRACT	FIELD	AMOUNT	MONTH	YEAR	AMOUNT	DATE	PLANNED CONSERVATION TREATMENT
6154	1	9.1Ac	01	1999			Pasture and Hayland Management
	2	12.7Ac	01	1999			Treatment and use of pasture is adjusted to prolong life of
	3	14.0Ac	01	1999			desirable species, maintain or improve forage quality and
	4	6.2Ac	01	1999			quantity, protect and maintain soil quality, prevent soil
	5	2.8Ac	01	1999			erosion and improve water use efficiency.
6158	1	28.1Ac	01	1999			Current management will continue. On an average cycle of 25
	2	29.5Ac	01	1999			days, pastures are strip grazed and chopped for silage.
6158	HQ	1.0no	11	1998			ROOF RUNOFF MANAGEMENT
							Structures are installed and maintained for collecting and
							disposing of runoff water from roofs to control roof runoff
							water, reduce water pollution and soil erosion, prevent
							flooding, improve drainage and otherwise protect the
							environment.
							A freestall barn is planned for installation as early as
							August, 1998. Jim plans to install a roof runoff management
							system on the half of the building that would otherwise
							drain into the manure lagoon. The overall dimensions of
							this planned freestall barn are 200' by 80'. This project
							will not be cost-shared through EQIP.
6158	HQ	1.0No	11	1998			WASTE TRANSFER
							Transfer structures and equipment will be installed and
							maintained for the movement of animal waste to storage,
							treatment, or disposal facilities. Water quality is improved
							and harmful effects of sediment, pathogens, organic material
							and other materials carried by runoff are reduced.
							Installation will be according to approved plans and
							Specification No. 193 for this practice.
							The waste transfer system will consist of a waste storage
							pond with solid/liquid separation, a pump/agitator, and
							buried, high-pressure PVC pipeline. All components of this
							system will be properly maintained for at least 10 years.
6154	1	9.1ac	11	1998			WASTE UTILIZATION
	2	12.7ac	11	1998			Agricultural waste or other waste is safely applied on land
	3	14.0ac	11	1998			to provide fertility for crop, forage or fiber production in
	4	6.2ac	11	1998			an environmentally acceptable manner that maintains or
	5	2.8ac	11	1998			improves soil and plant resources and maintains water
6158	1	28.1ac	11	1998			quality.
	2	29.5ac	11	1998			Via waste transfer mainline, liquids will be applied on 80
							acres each year. With a manure spreader, solids will be
							applied in the fall to rotated acres covering all 102 acres
							of pasture included in this plan. To the extent possible,
							care will be taken to apply this material as uniformly as

CONSERVATION PLAN

Client: O'Neil, James M. O'Neil James
Assisted By: NRCS

LAND UNITS		PLANNED			APPLIED		
TRACT	FIELD	AMOUNT	MONTH	YEAR	AMOUNT	DATE	PLANNED CONSERVATION TREATMENT
							possible during the most favorable weather and soil moisture conditions.
6158	HQ	1.0No	11	1998			Waste Storage Pond An impoundment will be installed and maintained by excavation or earthfill for temporary storage of animal or other agricultural waste. The impoundment stores liquid and solid waste, waste water and polluted runoff to reduce pollution to adjacent water bodies and other sensitive areas. Installation will be according to approved plans and Specification No. 425 for this practice. A manure storage pond (2,438 cubic yards of storage) will be constructed with a 60 day capacity for liquids and 365 day capacity for solids based on animal confinement and the historic rainfall average during December and January. The pond will be a two-stage type that separates liquids from solids, and capacity will be achieved by excavation and berming. Excavated material will be used to construct the berm. The berm will be high enough to prevent inundation of the pond by a 20 year flood (January, 1995 level). A concrete floor will be poured in the solids chamber. The solids chamber will be designed to hold the entire year's production of about 403 cubic yards. This pond will be properly maintained for a period of at least 10 years.

Cam Received 5/13/99
CCC
AT commission meeting

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

EXHIBIT NO. 7
APPLICATION NO. 1-98-103 O'NEIL
MITIGATION PLAN
(Page 1 of 5)

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 ofseasonal 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 attched map). Two

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 balsmifera* 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

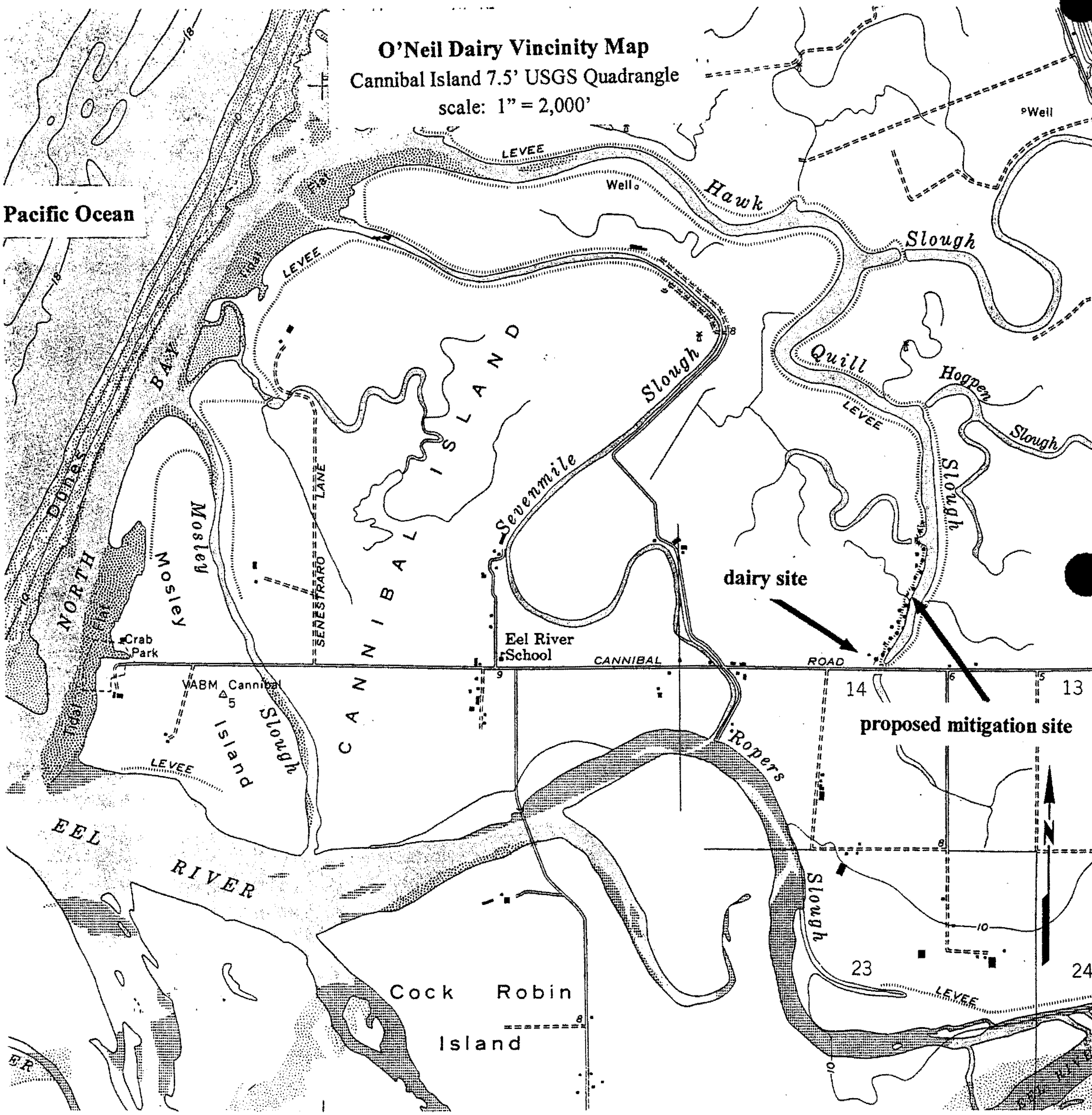
Sources for material will include a mix of cuttings and some container stock, which is available at local nurseries specializing in regional native plants. The actual planting will be done in the fall to avoid the need for irrigation by capitalizing on seasonal rains.

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 revegeatation efforts, the replanting will be a decision of the land owner.

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 Dairy Vincinity Map
Cannibal Island 7.5' USGS Quadrangle
scale: 1" = 2,000'
Pacific Ocean
dairy site
proposed mitigation site
Hawk Slough
Quill Slough
Hogpen Slough
Sevenmile Slough
Mosley Slough
Mosley Island
Ropers Slough
CANNIBAL ISLAND
CANNIBAL ROAD
SENESTRARO LANE
Eel River School
Crab Park
NORTH BAY
EEL RIVER
Cock Robin Island
LEVEE
Well
14
13
23
24

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 then 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 mature. 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.

County of Humboldt
MEMORANDUM

DATE: May 3, 1999

TO: Robert Merrill, California Coastal Commission

FROM: Kirk A. Girard, Director of Planning and Building
Prepared by: Steve Werner, Supervising Planner

SUBJECT: James and Leslie O'Neil Coastal Development Permit
Application No. 1-98-103

I have reviewed the Post LCP Certification Maps and concur with your determination that the O'Neil ranch property at 1875 Cannibal Island Road (APN 309-181-04F) is clearly located within the State's Coastal Development Permit jurisdiction.

The Department also concurs that the County's Categorical Exclusion Order #E-86-4, which permits agricultural accessory buildings and uses as "exempt" development, would not apply to the O'Neil project because it is sited in the area of State-retained CDP jurisdiction. The maps of the area covered by Exclusion Order #E-86-4 show this exclusion not to be applicable to the O'Neil case.

If information to the contrary was given by our Department to the O'Neils or others, it was incorrect. We endeavor to provide accurate and timely information to requests made of the Department, if we erred in this instance I sincerely apologize.

EXHIBIT NO. 8
APPLICATION NO. 1-98-103 O'NEIL
JURISDICTION MEMO

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USDA United States Department of Agriculture

Natural Resources Conservation Service

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

EXHIBIT NO. 9
APPLICATION NO. 1-98-103 O'NEIL
LETTER FROM NRCS STAFF (Page 1 of 4)

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

STANDING COMMITTEES:
REVENUE AND TAXATION CHAIR
[illegible] & FISCAL POLICY
[illegible]ATION
[illegible]ONMENTAL QUALITY
GOVERNMENTAL ORGANIZATION
VETERANS AFFAIRS

California State Senate

SENATOR
WESLEY CHESBRO
SECOND SENATORIAL DISTRICT

SELECT COMMITTEE ON CALIFORNIA'S WINE INDUSTRY, CHAIR

SELECT COMMITTEE ON DEVELOPMENTAL DISABILITIES AND MENTAL HEALTH, CHAIR

F66

MAY 13 1999

May 10, 1999

EXHIBIT NO. 10
APPLICATION NO. 1-98-103 O'NEIL
CORRESPONDENCE

Ms. Sara Wan
Chairperson
California Coastal Commission
45 Freemont Street, Suite 2000
San Francisco, CA 94105-2219

RE: Application #1-98-103/James and Leslie O'Neil

Dear Sara,

I am writing on behalf of James and Leslie O'Neil (Application #1-98-103) who are scheduled for a hearing before the Commission on the 14th of May.

The project proposes improvements to the O'Neil's dairy farm in Loleta, California. I am generally aware of the circumstances involving this case and believe that the O'Neil's are committed to resolving the issues in a manner that will accommodate the Coastal Act requirements and enable them to proceed with completion of their project.

The proposed improvements to the O'Neil's Dairy operation conform to the special priority for agricultural use under the Coastal Act. This factor, combined with compliance under Section 30233 of the Coastal Act constitutes a strong argument in support of approval of the application for a permit.

The economic viability of the O'Neil dairy operation would be severely hampered if this project were to be denied by the Commission. James and Leslie O'Neil have consistently maintained a high commitment to the environmental integrity of their dairy operation for many years. This project also impacts future improvement applications for permits that other north coast dairy operators may bring before the Coastal Commission for consideration.

3070 STATE CAPITOL, SACRAMENTO, CA 95814 (916) 445-0375
50 D STREET, SUITE 120A, SANTA ROSA, CA 95404 (707) 576-2771
710 E STREET, SUITE 150, EUREKA, CA 95501 (707) 445-7508
1040 MAIN STREET, SUITE 205, NAPA, CA 94559 (707) 224-1990 (707) 224-1992 FAX
P.O. BOX 785, UKIAH, CA 95482 (707) 468-8914 (707) 468-8931 FAX

I respectfully request that the Commission find in favor of the O'Neil permit application and allow them to proceed with development of their project.

Thank you for your consideration of this request.

Sincerely

WESLEY CHESBRO
Senator, Second District

WC/zg

BOARD OF SUPERVISORS

COUNTY OF HUMBOLDT

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

feasible for dairy heard 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

BOARD OF SUPERVISORS

COUNTY OF HUMBOLDT

825 5TH STREET

EUREKA, CALIFORNIA 95501-1153 PHONE [707] 445-7509 FAX [707] 445-7299

May 13, 1999

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

Dear Mr. Merrill:

I am writing in support of the permit application (1-98-103) for Jim and Leslie O'Neil, owners and operators of the O'Neil Dairy in Humboldt County. The Coastal Commission staff report (dated April 28, 1999) recommended that the O'Neil application be denied because it is inconsistent with Section 30233 of the Coastal Act. I am requesting reconsideration of this permit application.

The dairy operators in the Eel River Delta area are well known for their respect of the land. This is their livelihood. As a group they share concerns for the quality of the surface and groundwater as well as the wetland habitats. The O'Neils Dairy has been in operation for over a century. They are good stewards of the land. It is my feeling that the O'Neil project should be considered under Section 30241 of the Coastal Act which states, "the maximum amount of prime agricultural land shall be maintained in agricultural production to assure the protection of the areas agricultural economy". This is more consistent with the Humboldt County Local Coastal Plan and the Ordinance prohibiting the taking of agricultural lands.

In a good faith effort to resolve this matter the O'Neils have proposed a mitigation plan to enhance the wetland habitat on their dairy. Their plan, if agreed to, would actually **raise** the quality of the habitat from its current condition. That shows their true commitment and stewardship of the land.

The alternatives as suggested by the Coastal Commission staff are not feasible and would most likely have a devastating effect on the dairy herd. The damaging economic impact would be unavoidable.

I urge your reversal in the denial of the O'Neils permit. The result of your action is going to have an impact on the entire dairy industry of Humboldt County. We await your decision.

Sincerely,

Roger Rodoni

ROGER RODONI
Second District Supervisor

RR/mb
f:oneil

Eureka, 5-5-1999

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 Samoa Peninsula 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. Now they lay around on a pile of muck 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

McCUTCHEN
McCutchen, Doyle, Brown & Enersen, LLP

Received at Commission Meeting
MAY 14 1998
From: Dennis Leonardi

Privileged and Confidential:
Attorney/Client Communication

VIA FACSIMILE

Date: May 13, 1999 mbielak@mdbe.com

To: Dennis Leonardi
Humboldt Creamery Association

From: Margaret Bielak

Re: Hearing Before Coastal Commission

The following are our preliminary thoughts on the filling of wetlands in order to build a free stall barn. These are based on a brief review of the law and the staff reports we have seen. There may be many issues relevant to the hearing before the Coastal Commission that we have not been able to analyze. Therefore, we strongly recommend that you seek a continuance, in order to give us a chance to make a more thorough review of the matter.

The Coastal Commission staff takes the position in the addendum to its report that Coastal Act section 30007.5, which permits the Commission to resolve conflicts between the Act's provisions in the manner most protective of significant coastal resources, cannot be applied here. The staff's theory is that section 30233 of the Coastal Act, which enumerates the situations in which wetlands can be filled, is specific enough that the Legislature has in effect already done the balancing contemplated by section 30007.5. Therefore, in the staff's opinion, the Commission may not balance the Act's policy of protecting wetlands against any other policies in the act. Based on what we have been told, the staff apparently bases this theory on the recent appellate case of *Bolsa Chica Land Trust v. Superior Court.*

Bolsa Chica does not seem to lead to that result. *Bolsa Chica* considers whether the Commission properly balanced section 30233's wetland provisions against another section's provisions regarding protection of environmentally sensitive habitat areas (ESHAs), which were more restrictive than the wetlands provisions. The area considered in *Bolsa Chica* was both a wetland and an ESHA. The court concluded that, based in part on the specificity of section

30233's listing of permissible wetlands uses, the Coastal Act's wetland provision was more specific than the ESHA provision. Therefore, based on the legal principle that the more specific statute controls over a more specific, the court ruled that section 30233 should govern when the project site fell under both the wetland provision and the ESHA provision and there was a conflict between the two.

Bolsa Chica makes clear that most wetlands are environmentally sensitive habitat area. The court reasons that if all such areas were subject to section 30007.5's balancing test, case by case balancing would be "repeatedly required." Therefore, practicality, as well as the need to maintain a consistent level of wetland protection, suggested to the court that wetland ESHAs should be governed by the specific rules regarding wetlands, rather than being subject to a balancing test every time the issue arose.

Bolsa Chica does not establish a general rule that the Commission may not balance the provisions of section 30233 against any other provision of the Coastal Act. It says that when a wetland is also an ESHA, as is usually the case, the more specific provisions governing wetlands govern, rather than the less specific ESHA provisions. – were not ESHA property

In light of the lack of a legal prohibition on balancing Coastal Act policies, this becomes a matter for the Commission to decide on a policy basis. The Commission is faced with two questions:

1. Which policy is more protective of coastal resources: protecting 20,000 square feet of seasonal wetlands of no biological value, which will be fully mitigated elsewhere, or furthering the Coastal Act's policy that lands suitable for agricultural use not be converted to nonagricultural uses. Coastal Act § 30242. [1]

2. Which policy is more protective of coastal resources: protecting the same wetlands, or furthering the Coastal Act's policy of maintaining and restoring water quality. Coastal Act § 30231.

We should be prepared to demonstrate how the project would improve water quality by making it easier to collect cow waste. The staff report takes the position that waste

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[1] Another Coastal Act provision, section 30241, establishes a policy of maintaining prime agricultural land in production. The staff report indicates that the property is not prime agricultural land. If it in fact is prime agricultural land, then the Commission could also balance the wetland provision against section 30241's policy of maintaining such land in production.

The Coastal Commission can balance against other coastal Act ~~land~~ policies.

1. maintaining Ag land – against wetland resource.

2. protect water resources balance against wetland resource

can still be physically collected in the absence of the project. If we can show that waste collection will not only be more efficient but more *effective* if we can build the project, we will be more likely to persuade the Commission that there is a conflict between the Coastal Act's wetland policy and its policy of preventing water pollution.

The staff report addendum presents something of a dilemma in approaching the issue of converting agricultural land. The report first contends that there is no evidence that denial of the proposed wetland fill would result in the conversion of agricultural land, and concludes that there is no conflict between the Coastal Act's policies of wetland preservation and of preventing conversion of agricultural land. It later suggests that even if denial of the project were to result in the conversion of agricultural land, the environment might still benefit, since water quality impacts as a result of cows on the property would be eliminated. If this matter is continued, we will want to discuss in more detail how to approach this issue.

Finally, in order to address the points made in the Commission staff report and addendum, it will also be necessary to address the staff position that there has been no showing that there are no feasible less environmentally damaging alternatives. The staff report lists five alternatives that it contends have not been shown to be either infeasible or less damaging. We will want to address the feasibility and environmental damage of each of those proposed alternatives.

FERNDALE VETERINARY

F6b

May 7, 1999

MAY 13 1999

California Coastal Commission
North Coast Area
45 Fremont, Suite 2000
San Francisco, CA 94105-2219

SUBJECT: Coastal Development Permit Application NO. 1-98-103: Installation of Free Stall Barn at 1875 Cannibal Island Road, Humboldt County

Dear Commissioners,

I have served as Jim and Leslie O'Neil's herd veterinarian since 1984 and have been involved in management decisions concerning health and production. The O'Neils have worked hard to build a dairy by paying attention to sound husbandry practices. The O'Neil dairy is one of the most progressive and well-managed dairies in Humboldt County.

One of the most important issues facing dairy farmers today is that of cow comfort and providing a clean, dry environment for cows to lie down. By far the most widely adopted housing design in use today is the free stall barn in which cows can lie down at will in an individual stall, where they are protected from the elements, are bedded with materials that do not support the growth of bacteria, and where waste can be easily and economically removed. In addition, the incidence of mastitis and lameness is lowered while the digestion and consequent milk production is improved. Next to the milking parlor, the free stall barn is the most important structure on a dairy and successful dairymen find them indispensable.

I would urge the Commission to acknowledge that modern dairy practices require proper facilities and a denial of this application would result in excess health stress on the cows.

Sincerely,

C E Ozanian D.V.M.

Charles E. Ozanian, D.V.M.
Ferndale Veterinary
Member, American Veterinary Medical Association
Member, California Veterinary Medical Association
Governor, District VII, CVMA Board of Governors
Member, National Mastitis Council
Member, American Association of Bovine Practitioners

Charles E. Ozanian, D.V.M.
1140 Van Ness • P.O. Box 1032 • Ferndale, CA 95536 • Phone (707) 786-4200

F6b

May 9, 1999

California Coastal Commission
North Coast Area
45 Fremont, Suite 2000
San Francisco, CA 94105-2219

Dear Commissioners,

The Coastal Commission issued a permit to Jim and Leslie in 1983 to build their milk barn and facilities. They are asking to upgrade and improve their facility to care for their cattle during the winter months. To change your policy after granting them a permit to dairy is not conducive to planning and operating a progressive business.

Why can a dairymen on the Ferndale side of the Eel River build free stall barns, with no questions asked, and the O'Neils' have to run into so many problems? Do you think that is fair?

In 1962 we bought our ranch on John Helt Lane across the Quill Slough from the O'Neil Dairy, one of our first projects was to build a high corral to protect our cows from floods, which we have quite often on the Loleta bottom. Everyone laughed at us, but in 1964 we had a flood. We only lost 5 cows, where most dairymen in the Eel River Delta lost their entire herds. 8 to 10 inches of mud covered our ranch, not a blade of grass in site and not a fence on the ranch; our hay barn was destroyed. The cows were confined we had no facility to feed them or to store hay. Later that year Cal Vet built us a new hay-feed barn. No one at that time said we could not build a barn and our ranch is much lower and wetter than O'Neil's land.

As for a wetland habitat, floods destroy everything! After 1964 we didn't hear a frog croak for years.

This young couple is hard working, diligent dairy operators, which our community is very proud to have as neighbors. We would like to see them maintain and operate their business successfully. You Commissioners need to educate yourselves, so you will have the insight into what really goes on at our dairies. Especially in the wintertime when the rain keeps coming down and the cows are up to their bellies in mud. If you have any concern for animals, which I know your do, you will give this your utmost consideration.

Thanking you so much in advance, we are,

Very truly yours,

Bob & Louise Lougher.

Bob and Louise Lougher

F6b

May 5, 1999

California Coastal Commission
RE: Application No. 1-98-103

Dear Commissioner:

This letter is to support the approval of the above application.

The purpose of a free stall barn is to provide a dry and sheltered place for the cows in adverse weather. The barn is the only humane and feasible way to protect the health and well being of the cows.

The free stall barn must be in close proximity to the other necessary facilities for milking and waste management. The 1/2 acre designated barn site is the most environmentally sound location. The entire ranch is of the same basic soil composition with the site being an already impacted area by the cows.

All existing buildings are in use and at full capacity. There are no other feasible locations or solutions or alternatives.

The ranch presently has 17 preserved and protected wetland acres, which is about 20% of the entire ranch. That is a considerable amount in relationship to the useable acres.

We must help preserve our food producing acres and support our farmers, dairymen, and ranchers. If we look only to save the native grass and wetlands, we may someday have to learn to eat that "precious blade of grass."

Please approve Application No. 1-98-103.

Sincerely,
Jim & Carole O'Neil
The proud parents of:
California Farmers

F6b

May 12, 1999

572 Hwy 1, Fortuna, CA 95540 • (707) 725-6182 / 442-7520

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

Dear Bob,

Humboldt Creamery Association is a Dairy Cooperative, which is owned by Dairymen and Women in the Eel River Delta and Mad River Delta areas. Our Member/Owners have been stewards of these fertile pasturelands since "1929". Our Member/Owners pride themselves on being leaders in the development of long-term land use programs, which promote the co-existence of agricultural use and environmentally sound practices in these sensitive areas.

Jim & Leslie O'Neil, who are Member/Owners of our cooperative, have applied for a land use Permit #1-98-103. The staff report is recommending denial of their permit based on section 30233 of the Coastal Act, a lack of descriptive alternatives, which are **NOT** feasible, and the lack of a mitigation plan.

In 1988 Humboldt Creamery Association worked jointly with the Coastal Commission, and the Humboldt County Planning Department on a project similar to the O'Neil's project. The balancing provision of the Coastal Act Section 30007.5 was applied to the project. This application is consistent with the intent of the California Legislature to allow Prime Coastal Agriculture land to be maintained in agricultural production.

The staff recommended denial of this application would be devastating to the Member/Owners of our Cooperative. It is imperative that the Coastal Commission understands that if the Commission supports this denial, all the efforts of the Dairymen and Women in Humboldt County to sustain their Dairy operations in the most environmental manner will be taken away. The O'Neil's project is just one example of our Member/Owners being progressive in their actions to be excellent environmental caretakers of these fertile valleys.

Again, I would recommend that the Coastal Commission approve their permit based on the O'Neil's meeting the requirements of the Coastal Act. There are **NO** other viable alternatives and they have submitted an adequate mitigation plan. Our industry will be awaiting your decision.

Sincerely,

Rich Ghilarducci
CEO/President
Humboldt Creamery Association