

CALIFORNIA COASTAL COMMISSION

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Date Filed: January 27, 2004
Hearing Date: November 19, 2004
49th Day: March 16, 2004
180th Day: July 25, 2004
Staff Report: October 29, 2004
Staff: Robert S. Merrill
Commission Action:

STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: **1-04-004**

APPLICANT: **RDHC, LLC**

AGENT: Martin G. McClelland, Oscar Larson Assoc.

PROJECT LOCATION: 532 Hookton Rd., Loleta, Humboldt Co.

PROJECT DESCRIPTION: (1) After-the-fact approval for removal of approximately 150 -200 cubic yards of material; (2) followup permit for repair of earthen levee break along Salmon Creek undertaken pursuant to emergency permit, including placement of approximately 70 cubic yards of fill previously stockpiled on site without benefit of permit; and (3) removal and disposal of approximately 20 cubic yards of concrete and asphalt debris previously dumped on site without benefit of permit.

RECOMMENDATION: Approval with Conditions.

LOCAL APPROVALS: None required.

SUBSTANTIVE FILE DOCUMENTS: Humboldt County Local Coastal Pro

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends that the Commission approve with conditions the coastal development permit for the proposed project.

The project in part authorizes remediation of after-the-fact dumping in pasturelands that occurred during the previous ownership of the property, and revegetation of the affected areas without any permanent loss of pasturelands. In addition, the project includes the repair of an earthen levee along Salmon Creek, which has already been performed under an emergency permit. The repair of the earthen levee benefits salmonids utilizing Salmon Creek by stopping the loss of water to agricultural lands through the broken section of the levee, thereby keeping the stream waters and fish species within the main stream banks and preventing stranding of the salmonids on the agricultural fields.

Staff is recommending five special conditions. The primary purpose of the recommended special conditions is to ensure that the remaining unauthorized debris is properly disposed of, that the levee repairs authorized under the emergency coastal development permit are finalized, and that necessary revegetation and erosion control measures are implemented. The present property owners have completed most of these requirements, and no permanent, significant adverse impacts to coastal resources will result provided the special conditions are fully implemented.

Staff believes that the project, as conditioned, will protect the adjoining environmentally sensitive stream habitat along Salmon Creek from impacts of the project consistent with Section 30240 of the Coastal Act, and will protect the biological productivity and the quality of coastal waters consistent with Section 30231. As conditioned, staff believes that the proposed project is fully consistent with the Coastal Act.

The Motion to adopt the Staff Recommendation of Approval with Conditions is found on page 3.

STAFF NOTES:

1. Standard of Review

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

2. Commission Action Required at November, 2004 Meeting.

Due to Permit Streamlining Act considerations, the Commission must act at the November hearing.

I. MOTION and RESOLUTION

The staff recommends that the Commission adopt the following resolution:

Motion: I move that the Commission approve Coastal Development Permit 1-04-004, with conditions, pursuant to the staff recommendation.

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

RESOLUTION TO APPROVE THE PERMIT

The Commission hereby approves the Coastal Development Permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
3. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
4. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

1. Permit Expiration and Condition Compliance

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

2. Debris Disposal

Within thirty (30) days of Commission approval of Coastal Development Permit 1-04-04, or within such additional time as the Executive Director may deem appropriate, the permittee shall submit evidence that the fill previously removed and disposed, and any portion of the additional approximately 20 cubic yards of concrete debris originally placed on the subject property to the west of Salmon Creek that remains on the site, have been removed and disposed of in accordance with the following requirements: If the disposal location is within the coastal zone, that the material was disposed of in a location properly permitted for this purpose, or if the disposal location is outside of the Coastal Zone, that the material was disposed of in a facility properly licensed to accept such materials.

3. Revegetation and Erosion Control

Within thirty (30) days of Commission approval of Coastal Development Permit 1-04-04, or within such additional time as the Executive Director may deem appropriate, the permittee shall submit evidence that (1) all unauthorized fill or other debris on the subject site has been removed and disposed of in accordance with the requirements of Special Condition 2; (2) all areas disturbed by the removal of fill and concrete debris, or construction of the levee repair, including any additional areas of compaction or vegetation damage caused by operation of equipment necessary to perform these tasks, has been restored to natural contours, and (3) all disturbed areas, including the repaired levee, have been reseeded with locally available commercial seed mix composed of the same species that dominate the adjoining perennial grasslands, and that temporary erosion control measures, such as silt fences, fiber rolls, and weed free rice straw barriers have been placed to stabilize these locations until at least ninety (90) percent new growth coverage is achieved. The permittee shall include dated photographs of the affected areas of the subject site and a site map indicating the location and direction of each photograph, documenting the completion of items 1 – 3 set forth in this condition.

4. Grazed Seasonal Wetland Vegetation Monitoring

The permittee shall submit a vegetation monitoring report for the review and approval of the Executive Director within one (1) year after completion of re-seeding required pursuant to Special Condition 3. The report shall include current photographs of the previously disturbed areas of the subject site, taken from the same locations shown on the site map submitted pursuant to Special Condition 4 above. The monitoring report shall document whether the required vegetation coverage (at least 90 percent) of the previously disturbed areas of the site has been achieved. If the report indicates that the revegetation of any of the subject disturbed areas has not been successful, in part, or in whole, the permittee shall submit a revised revegetation and erosion control plan to achieve the objective. The revised revegetation program shall require an amendment to this coastal development permit.

5. Permission to Inspect

The applicant hereby grants permission to the Coastal Commission staff to enter and inspect the premises for the purpose of determining compliance with Coastal Development Permit No. 1-04-04.

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. Background; Setting; Project Description

The subject site is located near the banks of Salmon Creek, south of the Humboldt Bay Wildlife Refuge, at 532 Hookton Road, in the Loleta area of Humboldt County (Exhibits 1, 2, and 3).

The affected area of the subject site, also known as the former Vance Dairy, is comprised primarily of grazed annual grass pasturelands, separated from Salmon Creek by a series of earthen levees.

The current proposal will remediate after-the-fact dumping that occurred during the previous ownership, and revegetate affected areas, but will not result in any permanent loss of pasturelands. Repair of the earthen levee benefits salmonids utilizing Salmon Creek by stopping the loss of water to agricultural lands through the broken section of the levee, thereby keeping the stream waters and fish species within the main stream banks and preventing stranding of the salmonids on the agricultural fields. The primary purpose of the recommended special conditions is to ensure that the remaining unauthorized debris is properly disposed of, that the levee repairs authorized under an emergency coastal development permit are finalized under the required follow-up regular coastal development permit, and that necessary revegetation and erosion control measures are implemented. The present property owners have completed most of these requirements, and no permanent, significant adverse impacts to coastal resources will result provided the special conditions are fully implemented.

The subject development includes three components:

- (1) After-the-fact authorization for the previous removal of approximately 150 - 200 cubic yards of fill (though present owner indicates that the final destination of the removed material was never disclosed by the former owner) placed without benefit of necessary permits, near the west bank of Salmon Creek;
- (2) Placement of approximately 70 cubic yards of previously placed, unauthorized fill from a debris pile in the southeastern corner of the site, deemed suitable for such use, to repair an approximately 25 linear-foot levee break – all within the same footprint as previous undamaged levee structure (the emergency repair was undertaken pursuant to Emergency Coastal Development Permit No. 1-04-065-G) – thereby reducing flooding and erosion from Salmon Creek and reducing stranding of adult and juvenile salmonids by maintaining the flow of Salmon Creek within its main channel (Exhibits 3, 4, and 5);
- (3) Removal and disposal of the approximately 20 cubic yards of remaining concrete and asphalt rubble from the same southeastern corner debris pile placed by previous owner without benefit of necessary permits (this component has not been completed) (Exhibit 3).

The project includes re-seeding of the disturbed grazed pasturelands with appropriate locally-compatible seed mix.

The applicant, RDHC, LLC, purchased the subject property in 2003 and subsequently discovered that unauthorized placement and removal of most of the fill (approximately 150 – 200 cubic yards) had occurred. According to the applicant's agent, the previous owner did not disclose the location where the recovered fill was placed for final disposal.

The disposal of the 150 – 200 cubic yards was undertaken by the previous owner, according to the applicant's agent, under an emergency permit issued in error by Humboldt County. Coastal zone maps indicate that the subject area is within the retained jurisdiction area of the Coastal Commission and therefore is not subject to County permit authority under the certified Local Coastal Program. The applicant's agent determined the proper permit jurisdiction and submitted the pending application to the Commission, which includes removal of the residual debris and revegetation of the disturbed areas.

Before the Commission staff finalized review of Coastal Development Permit Application No. 1-04-004, the applicant applied for and received Emergency Coastal Development Permit (No. 1-04-065-G for the repair of the 25-linear-foot levee breach along the west side of Salmon Creek. The levee repairs had been proposed as part of the project description of the original permit application. NOAA Fisheries reviewed the proposed levee repairs and determined that the repairs needed to be performed prior to the onset of the rainy season to prevent threatened salmon species protected under the federal and state Endangered Species Act from flowing through the breach during high water flows and becoming stranded and killed on the adjoining agricultural field. The repairs needed to be performed before the rainy season to minimize sedimentation of Salmon Creek and downstream waters from stormwater runoff flowing through the repair site where earthen materials were being utilized to fill the breach. The Executive Director determined that the situation required immediate action to prevent the loss of the threatened species and granted the emergency permit (Exhibit 5). The applicant used approximately 70 cubic yards of the remaining debris that was deemed suitable for such repair (soils with high clay content), and separated out unsuitable debris. The unsuitable debris was comprised of approximately 20 cubic yards of concrete and asphalt debris. Most of this material has been removed, but a small portion awaits authorized disposal.

As stated above, the applicant's agent has notified staff that only the disposal of a portion of the residual 20 cubic yards of debris remains to be completed, and that most restorative grading (to remove ruts, tire tracks, etc.) and reseedling of disturbed areas has been completed. Restorative grading ensures adequate site preparation for revegetation, and improves erosion control by reducing unevenness that leads to gullyng, washout, and sediment loss during winter rains. Temporary erosion control measures have already been deployed, and are additionally required by Special

Condition 3. Special Condition 2 requires proper disposal of the remaining wastes, Special Condition 4 requires monitoring of the reseeded area, and reseeded if necessary to achieve coverage goals, and Special Condition 5 requires authorization of staff access to the site for condition compliance assurance.

B. Permit Authority, Extraordinary Methods of Repair and Maintenance, Shoreline Protection Structures

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

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

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

Section 13252 of the Commission regulations provides, in relevant part:

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

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

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

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

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

[Emphasis added]

The levee repair portion of the proposed project is a repair and maintenance project because it does not involve an addition to or enlargement of the levee. The approximately 25-foot linear portion of the levee to be repaired is only a small portion of the levee that extends for more than a quarter mile through the property along the west side of Salmon Creek. Although certain types of repair projects are exempt from CDP requirements, Section 13252 of the regulations requires a coastal development permit for extraordinary methods of repair and maintenance enumerated in the regulation. The proposed levee repair involves the placement of construction materials and removal and placement of solid materials within 20 feet of the coastal waters of adjacent Salmon Creek. The proposed repair project therefore requires a coastal development permit under Sections 13252(a)(1) of the Commission regulations.

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

C. Water Quality

The Coastal Act protects the quality of coastal streams through, among other means, preventing sediment-contaminated runoff that may result from unauthorized grading (which includes placement of unauthorized fill material), and through the maintenance of vegetation that reduces the loss of topsoil from wind and rain. Unauthorized grading, soil disturbance, and vegetation removal may result in the discharge of sediment pollution into site runoff, which upon entering coastal waters, adversely affects fish and other sensitive aquatic species. Section 30231 of the Coastal Act provides:

Section 30231 Biological productivity; water quality

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.

As noted previously, the subject proposal includes after-the-fact authorization for disposal of 150 – 200 cubic yards of fill material previously placed without a permit on grazing lands adjacent to Salmon Creek, near Loleta, Humboldt County. (See Exhibit 1 et. seq.) The proposal also includes repair of a levee break that was draining water from Salmon Creek onto pasturelands, thereby causing flooding, erosion, and loss of water supplies within the main channel that supports salmonids. A third component of the project is the cleanup and disposal of approximately 20 cubic yards of concrete rubble and broken asphalt disposed on site by a previous landowner. The levee repair was undertaken pursuant to Emergency Coastal Development Permit No. 1-04-065-G, issued October 7, 2004. The repairs used approximately 70 cubic yards of clay-rich soils that were previously placed on site without benefit of permits, and only a portion of the remaining 20 cubic yards of debris must still be removed. The soils were evaluated for use by Oscar Larson & Associates, consulting engineers/agent.

Special Condition 2 requires the applicant to submit evidence to the Executive Director that the concrete rubble has been properly disposed, within thirty days of Commission approval of the subject coastal development permit. Properly implemented, Special Condition 2 ensures that no further water quality impacts result from disposal of the materials in an authorized unprotected location where rainwater may contact the debris and carry contaminants into coastal waters. Special Condition 3 requires the applicant to ensure that restorative grading is complete and that the pasturelands and the levee repair area are revegetated to ensure that the disturbed areas of the site are stabilized and do not discharge sediment into Salmon Creek during the rainy season. Fully implemented, the revegetation and temporary erosion control measures required by Special Condition 3 will protect the quality of coastal waters. Special Condition 4 requires monitoring and further reseeding of pasturelands as necessary, to ensure that the requirements of Special Condition 3 are successfully implemented. Similarly, Special Condition 5 ensures the ability of Commission staff to verify condition compliance and thereby ensure that the mitigation measures imposed by the applicable special conditions are fully implemented.

Therefore, for all of the reasons set forth above, the Commission finds the proposed project, as conditioned by Special Conditions 1 – 5, consistent with Section 30231 of the Coastal Act.

D. Protection of Environmentally Sensitive Habitat Area (ESHA)

Section 30240 of the Coastal Act states in applicable part:

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

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

Section 30240(b) requires that environmentally sensitive habitat areas (ESHAs) be protected against any significant disruption of habitat values potentially resulting from adjacent development.

As described in the site description finding, a portion of the proposed project involves repairing a breach in the levee that adjoins the west side of Salmon Creek. As a fish-bearing stream supporting threatened salmonid species protected under the federal and state Endangered Species Acts, and as a stream supporting a well-developed riparian corridor, the stream is considered to be an environmentally sensitive habitat area (ESHA).

The levee repair is supported by the staff of NOAA Fisheries as important to prevent the take of the threatened salmonid species that use the Salmon Creek ESHA. As noted previously, the repair benefits salmonids by stopping the loss of water to agricultural lands through the broken section of the levee, thereby keeping the stream waters and fish species within the main stream banks and preventing stranding of the salmonids on the agricultural fields.

The levee repair project has been conducted to date in a manner that has protected the Salmon Creek ESHA against any significant disruption of habitat values. Emergency Permit No. 1-04-065-G granted for the project included conditions which required among other things, that (a) the materials placed on the levee to be repaired not extend into Salmon Creek beyond the footprint of the levee as it existed before the damage occurred, (b) the material to be used be screened or otherwise sorted to remove all concrete, old fence materials, rebar, pieces of asphalt pavement, and other debris not suitable for levee breach repair, (c) silt fences or equivalent devices be installed between the levee and the creek prior to the placement of any fill materials to reduce the discharge of fill materials and sediment laden runoff into Salmon Creek, (d) the mature riparian vegetation located within the stream channel be avoided, (e) the work be completed by October 16, 2004, to avoid construction during the rainy season and minimize sedimentation, (f) operations cease if a 60% chance of a one half inch of rain or more within a 24-hour period is forecast to further minimize sedimentation, and (g) no

equipment fueling occur on the site or elsewhere along the levee to avoid the accidental discharge of fuel into the stream. Based on photographs submitted by the applicant taken during and after construction, these conditions appear to have been met. In addition, to ensure that reconstructed portion of the levee is revegetated to minimize erosion from wind and stormwater runoff and subsequent sedimentation of Salmon Creek, the Commission attaches Special Condition Nos. 3, 4, and 5. Special Condition 3 requires the applicant to ensure that the levee repair area is revegetated. Special Condition 4 requires monitoring and further reseeding as necessary, to ensure that the requirements of Special Condition 3 are successfully implemented. Similarly, Special Condition 5 ensures the ability of Commission staff to verify condition compliance and thereby ensure that the mitigation measures imposed by the applicable special conditions are fully implemented.

The Commission finds that (1) as the levee repair will serve to protect threatened salmonid species, and (2) with the mitigation measures discussed above, which are designed to minimize any potential impacts to the adjacent environmentally sensitive habitat area from encroachment into the habitat and erosion and sedimentation, the project as conditioned will not significantly degrade adjacent ESHA and will be compatible with the continuance of the habitat area. Therefore, the Commission further finds that the project as conditioned is consistent with Section 30240(b) of the Coastal Act.

E. Public Access

Section 30210 of the Coastal Act requires that maximum public access shall be provided consistent with public safety needs and the need to protect natural resource areas from over use. Section 30212 of the Coastal Act requires that access from the nearest public roadway to the shoreline be provided in new development projects except where it is inconsistent with public safety, military security, or protection of fragile coastal resources, or adequate access exists nearby. Section 30211 requires that development not interfere with the public's right to access gained by use or legislative authorization. Section 30214 of the Coastal Act provides that the public access policies of the Coastal Act shall be implemented in a manner that takes into account the capacity of the site and the fragility of natural resources in the area. In applying Sections 30210, 30211, 30212, and 30214 of the Coastal Act, the Commission is also limited by the need to show that any denial of a permit application based on these sections, or any decision to grant a permit subject to special conditions requiring public access, is necessary to avoid or offset a project's adverse impact on public access.

Although the project is located between the first public road and Humboldt Bay, an inlet of the sea, the project would not adversely affect public access. The project site is within a rural, agricultural area used primarily for cattle grazing. There are no trails or other public roads that provide shoreline access within the vicinity of the project that would be affected by the project. Furthermore, the proposed project would not create

any new demand for public access or otherwise create any additional burdens on public access.

Therefore, the Commission finds that the proposed project does not have any significant adverse effect on public access, and that the project as proposed without new public access is consistent with the requirements of Coastal Act Sections 30210, 30211, 30212, and 30214.

F. Violation

Although construction has taken place prior to submission of the subject permit application, consideration of the application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Approval of this permit does not constitute a waiver of any legal action with regard to the alleged violations nor does it constitute an admission as to the legality of any development undertaken on the subject sites without a coastal development permit.

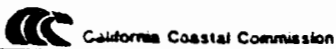
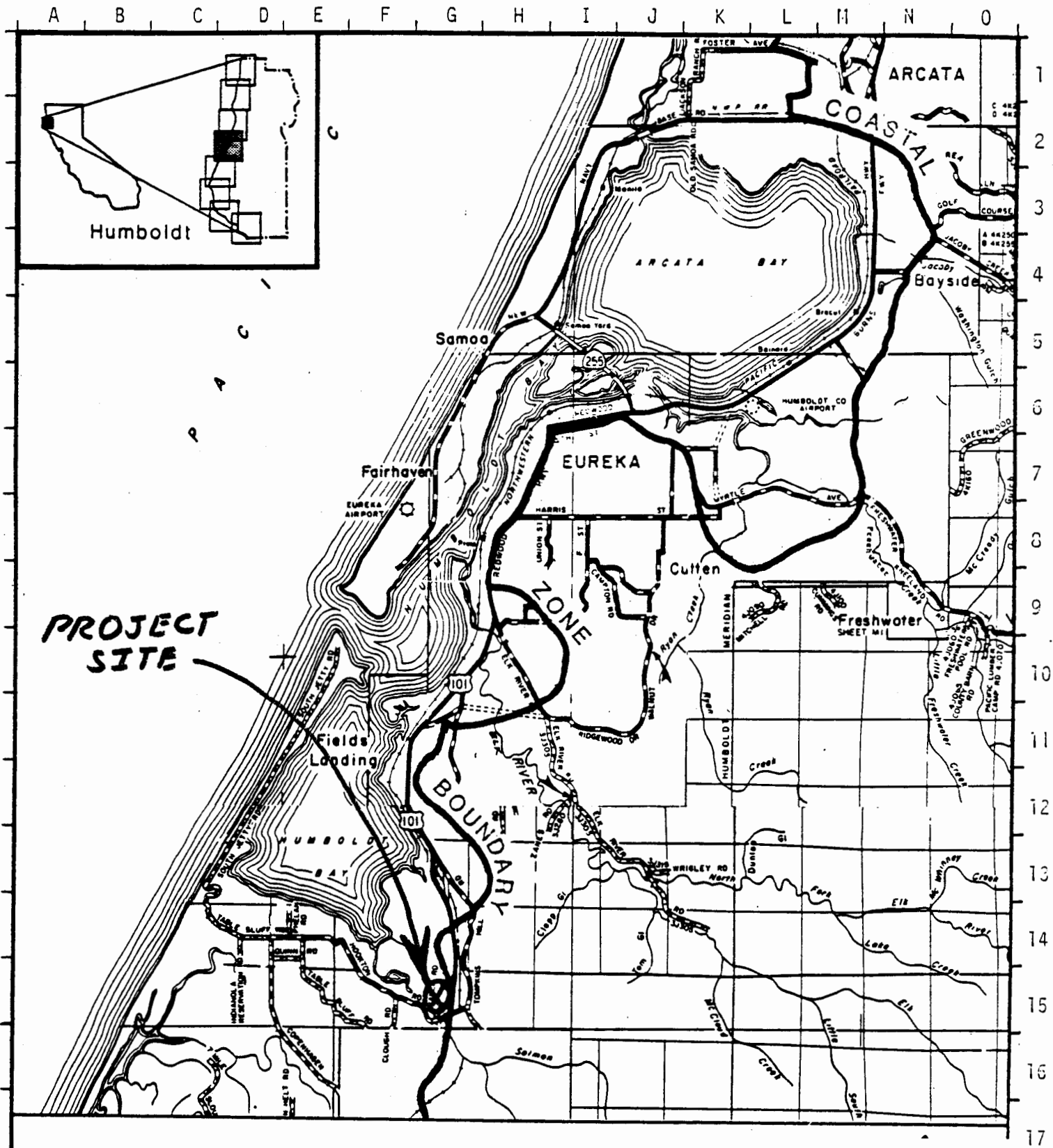
G. California Environmental Quality Act

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

The Commission incorporates its findings on Coastal Act consistency at this point as if set forth in full. As discussed above, the proposed project has been conditioned to achieve consistency between the proposed project and the requirements of the applicable policies of the Coastal Act. These findings address and respond to all public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the staff report. Mitigation measures that will minimize or avoid all significant adverse environmental impact have been required. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact that the activity would have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, can be found consistent with the requirements of the Coastal Act and to conform to CEQA.

EXHIBITS:

1. Regional Location
2. Vicinity Map
3. Site Plan
4. Levee Repair Detail
5. Emergency Permit
6. NOAA Fisheries Letter



LOCATION MAP



County of Humboldt

EXHIBIT NO. 1
APPLICATION NO.
 1-04-004
 RDHC, LLP
 REGIONAL LOCATION

VICINITY MAP

SCALE: 1" = 500' ±



LANDS OF CASERZA
APN: 311-191-07

LANDS OF RDHC,
LLC
APN: 311-191-01

5

APPROXIMATE
LOCATION OF DIKE
TO BE RESTORED

Beatrice

LANDS OF
RDHC, LLC
APN:
311-181-01

EUREKA
8 MI
BM

3

U.S. HWY 101

BANNER ROAD

ROAD

TABLE BLUFF

HOOKTON ROAD

HOOKTON RD. EXIT

OLD U.S. 101

FORTUNA, CA
APPROX. 4 MI

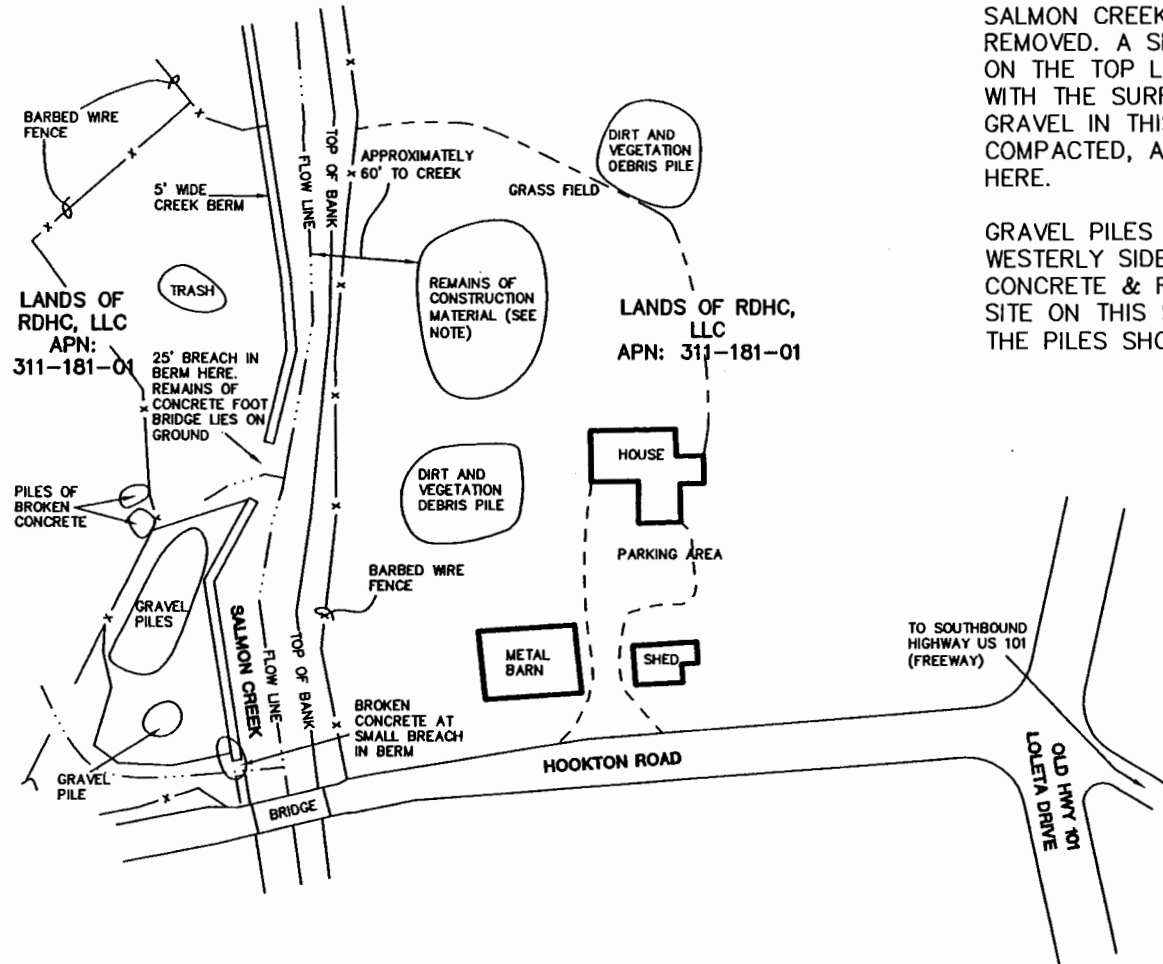
EXHIBIT NO. 2
APPLICATION NO. 1-04-004
RDHC, LLP
VICINITY MAP

OSCAR LARSON & ASSOCIATES





SCALE: 1" = 100'



NOTES:

FEATURES SHOWN HEREON ARE BASED ON A FIELD SURVEY BY OSCAR LARSON & ASSOCIATES IN JANUARY 2004. FOR PARCEL BOUNDARY LINES, SEE ASSESSOR'S PARCEL MAPS (ATTACHED).

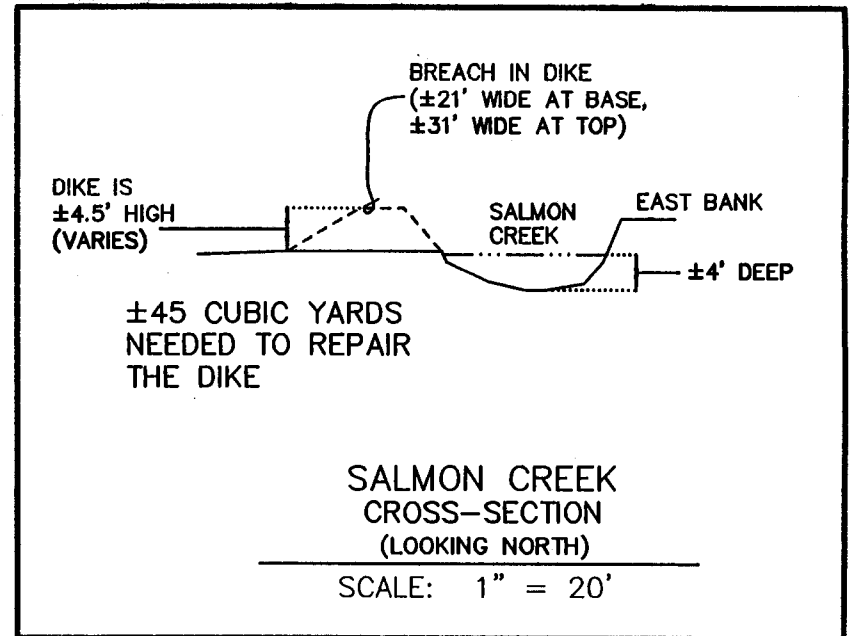
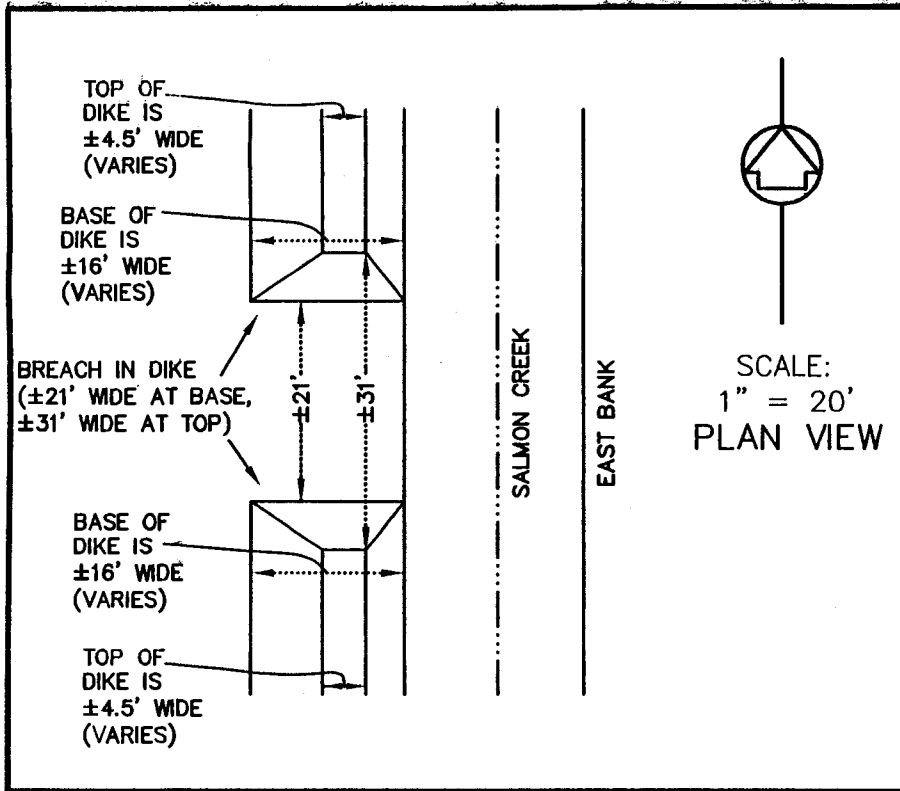
CONSTRUCTION MATERIAL FILL PILE EASTERLY OF SALMON CREEK, AS SHOWN HEREON, HAS BEEN REMOVED. A SMALL AMOUNT OF GRAVEL REMAINS ON THE TOP LAYER OF SOIL, AT AN EVEN LEVEL WITH THE SURROUNDING GROUND. THE REMAINING GRAVEL IN THIS AREA IS NOT SIGNIFICANTLY COMPACTED, AND GRASS HAS BEGUN TO GROW HERE.

GRAVEL PILES REMAIN AS SHOWN ON THE WESTERLY SIDE OF SALMON CREEK. BROKEN CONCRETE & REBAR IS SCATTERED AROUND THE SITE ON THIS SIDE OF THE CREEK, IN ADDITION TO THE PILES SHOWN.

EXHIBIT NO. 3
 APPLICATION NO.
 1-04-004
 RDHC, LLP
 SITE PLAN

SITE MAP
 LANDS OF RDHC, LLC
 APN: 311-181-01





NOTES:

FEATURES SHOWN HEREON ARE BASED ON A FIELD SURVEY BY OSCAR LARSON & ASSOCIATES IN JANUARY 2004. FOR PARCEL BOUNDARY LINES, SEE ASSESSOR'S PARCEL MAPS (ATTACHED).

THE DIKE BREACH SHOWN LIES ABOUT 170' NORTH OF THE BRIDGE ACROSS SALMON CREEK AT HOOKTON ROAD.

EXHIBIT NO. 4
 APPLICATION NO.
 1-04-004
 RDHC, LLP
 LEVEE REPAIR DETAIL

**BREACH OF
 SALMON CREEK
 CROSS-SECTION
 LANDS OF RDHC, LLC
 APN: 311-181-01**

OSCAR LARSON & ASSOCIATES



FIGURE 3

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE

710 E STREET, SUITE 200

EUREKA, CA 95501

www.coastal.ca.gov

(707) 445-7833

EMERGENCY PERMIT

RDHC, LLC
323 Fifth Street
Eureka, CA 95501

Date: October 7, 2004
Emergency Permit No.: 1-04-065-G

LOCATION OF EMERGENCY WORK:

Along a levee on the west bank of Salmon Creek, south of the Humboldt Bay Wildlife Refuge, at 532 Hookton Road, in the Loleta area of Humboldt County (APN 311-181-01)

WORK PROPOSED:

Repair an approximately 25-foot-long breach in the 4.5-foot-high earthen levee by placing and contouring approximately 70 cubic yards of earthen fill material within the breach, grading and compacting the fill to restore the original form of the levee, and reseeding the affected portion of the levee.

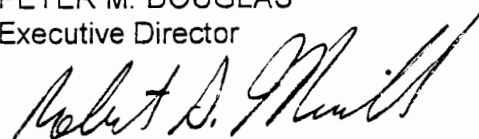
This letter constitutes approval of the emergency work your or your representative has requested to be done at the location listed above. I understand from your information and our site visit that an unexpected occurrence in the form of a breach of a levee along Salmon Creek threatens to cause salmon to become stranded by flood waters flowing through the breach during winter high water flows and result in the death of salmon species protected under the federal and state Endangered Species Acts. Therefore, the situation requires immediate action to prevent or mitigate loss or damage to life, health, property or essential public services. 14 Cal. Admin. Code Section 13009. The Executive Director of the Coastal Commission hereby finds that:

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

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

Sincerely,

PETER M. DOUGLAS
Executive Director



By: ROBERT MERRILL
District Manager

EXHIBIT NO. 5
APPLICATION NO. 1-04-004
RDHC, LLP
EMERGENCY PERMIT (1 of 3)

CONDITIONS OF APPROVAL:

1. The enclosed Emergency Permit Acceptance form must be signed by the PROPERTY OWNER and returned to our office within 15 days.
2. Only that work specifically described in this permit and for the specific property listed above is authorized. Any additional work requires separate authorization from the Executive Director.
3. The work authorized by this permit must be completed by October 16, 2004.
4. The permittee shall obtain a regular Coastal Permit to have the emergency work be considered permanent. If no such application is received, the emergency work shall be removed in its entirety within 180 days of the date of this permit, unless this requirement is waived in writing by the Executive Director.
5. In exercising this permit, the applicant agrees to hold the California Coastal Commission harmless from any liabilities for damage to public or private properties or personal injury that may result from the project.
6. This permit does not obviate the need to obtain necessary authorizations and/or permits from other agencies (i.e. Humboldt County, Humboldt Bay Harbor District, Dept. of Fish & Game, U.S. Fish & Wildlife, U.S. Army Corps of Engineers, State Lands Commission).
7. To minimize the placement of fill in coastal waters, the materials placed on the levee to be repaired, shall not extend into Salmon Creek beyond the footprint of the levee as it existed before the damage occurred. The determination of the location of the front of the levee shall be made through a 'string line' method, whereby the portions of the levee that are not in need of repair or restoration on each side of the areas that is in need of repair shall be used to determine the maximum extent of the repair.
8. The material to be used to repair the breach shall be screened or otherwise sorted to remove all concrete, old fence materials, rebar, pieces of asphalt pavement, and other debris not suitable for levee breach repair. None of the removed materials or other debris shall be disposed of in the coastal zone.
9. No invasive exotic plant species shall be used in revegetating the areas covered with topsoil.
10. Silt fences or equivalent devices shall be installed between the levee and the creek prior to the placement of any fill materials to reduce the discharge of fill materials and sediment laden runoff into Salmon Creek. The installed silt fences or equivalent devices shall be maintained during project construction and removed upon completion of the project.
11. To prevent and address spills of equipment fuels, lubricants, and similar materials, the repair work shall incorporate the following measures: (a) no equipment fueling shall occur on the site or elsewhere along the levee; (b) all equipment used during construction shall be free of oil and fuel leaks at all times; (c) oil absorbent booms and/or pads shall be on site at all times during project construction and deployed if necessary in the event of a spill; and (d) all spills shall be reported immediately to the appropriate public and emergency services response agencies.
12. None of the mature riparian vegetation located within the stream channel shall be removed as part of the project.
13. If a 60% chance of a one half inch of rain or more within a 24-hour period is forecast, than operations shall cease until fair weather is forecasted.

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Emergency Permit No. 1-04-065-G

Date: 10/7/2004

Page 3 of 3

As noted in Condition #4, the emergency work carried out under this permit is considered to be TEMPORARY work done in an emergency situation. If the property owner wishes to have the emergency work become a permanent development, a Coastal Permit must be obtained. A regular permit would be subject to all of the provisions of the California Coastal Act and may be conditioned accordingly. These conditions may include provisions for public access (such as an offer to dedicate and easement) and/or a requirement that a deed restriction be placed on the property assuming liability for damages incurred from storm waves.

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

cc: Marty McClelland, Oscar Larson & Associates
Keytra Meyer, NOAA Fisheries
David Ammerman, Corps of Engineers

Enclosure: Acceptance Form

3 of 3

6914.1



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Southwest Region
501 West Ocean Boulevard, Suite 4200
Long Beach, California 90802-4213

RECEIVED

SEP 28 2004

CALIFORNIA
COASTAL COMMISSION

SEP 23 2004



Mr. Calvin Fong
Chief, Regulatory Branch
U.S. Army Corps of Engineers
333 Market Street
San Francisco, CA 94105-2197

In response refer to:
151422SWR04AR9166:KM

Bob Merrill
Per your request
RDHC - Vance
Marty

6914.1 9/28/04

RE: Informal Consultation on the Issuance of a Clean Water Act Section 404 Permit for the
Vance Dairy Levee Repair, along the West Bank of Salmon Creek, in Humboldt County,
California.

Dear Mr. Fong:

On July 23, 2004, the National Marine Fisheries Service (NOAA Fisheries) received your July 2, 2004, letter initiating informal consultation, pursuant to section 7(a)(2) of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*) and its implementing regulations, 50 CFR § 402, for the issuance of a Clean Water Act (33 U.S.C. 1344) section 404 permit. The permit would allow the applicant to repair and close a 25-foot long breach in the earthen dike located on the Vance Property along the west bank of Salmon Creek (Project) in Humboldt County, California. The United States Army Corps of Engineers (Corps) determined that the Project will not adversely affect Essential Fish Habitat (EFH), and therefore, EFH consultation is not required. This letter constitutes informal consultation for the following threatened species and designated critical habitat under the ESA: (1) Southern Oregon/Northern California Coast (SONCC) coho salmon (*Oncorhynchus kisutch*) Evolutionarily Significant Unit (ESU), listed on May 6, 1997 (62 FR 24588); (2) California Coastal (CC) Chinook salmon (*O. tshawytscha*) ESU, listed on September 16, 1999 (64 FR 50394); (3) Northern California (NC) steelhead (*O. mykiss*) ESU, listed on June 7, 2000 (65 FR 36074); and (4) critical habitat for SONCC coho salmon, designated on May 5, 1999 (64 FR 24049).

In addition to the Project description contained within your July 2, 2004, letter, NOAA Fisheries received the following supplemental and revised Project information from the Corps via facsimile on September 22, 2004: (1) a September 21, 2004 Application for Department of the Army Permit (33 CFR 325) from the applicant (RDHC, LLC) and Agent (Marty McClelland, Oscar Larson & Associates); and (2) a revised Vance Dairy Levee Repair Project Description. The complete Project description is contained within the aforementioned documents. A summary of the Project description is described below.

EXHIBIT NO. 6
APPLICATION NO.
1-04-004
RDHC, LLP
NOAA FISHERIES LETTER
(1 of 3)



Proposed Action

The applicant proposes to repair and close a 25-foot long breach in the earthen dike located along the west bank of Salmon Creek, a tributary to Humboldt Bay. Fill will consist of 45 cubic yards of soil and concrete rubble that is currently stockpiled on site. All rebar within the concrete rubble will be removed or cut away flush with the surface of the concrete rubble.

The Project will be implemented between June 15 and October 15, during dry weather and low flows. If a 60% chance of a one half inch of rain or more within a 24-hour period is predicted, then operations will cease until fair weather is forecasted. Silt fences and sand bags will line the creek between the proposed repair and the water line. If flows rise to a level that surpasses the silt fences, operations will cease until flows lower. Following Project implementation, the newly repaired portion of the dike will be mulched and seeded.

Project Effects

Coho salmon, Chinook salmon, and steelhead migrate, spawn, and rear within the Salmon Creek watershed. Salmon Creek, adjacent to and downstream of the Project site, provides rearing habitat for salmonids during the summer and winter months. In addition, this area of the stream is a migration corridor for salmonids and is designated critical habitat for SONCC coho salmon.

No heavy equipment will operate in or drive through the wetted channel. Therefore, the project is not expected to result in direct effects to SONCC coho salmon, CC Chinook salmon, or steelhead.

Silt fences and sandbags will be installed between the dike and Salmon Creek to intercept sediment before it reaches the waterway. In addition, Project activities will only be implemented during dry weather and low flows. Therefore, NOAA Fisheries expects sediment delivery to Salmon Creek, as a result of Project activities, to be insignificant and discountable.

Conclusion

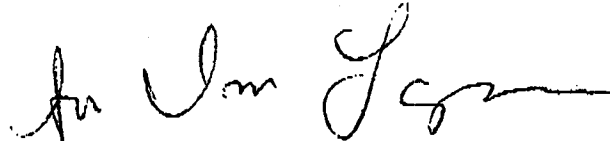
Based on our review of information that the Corps provided, NOAA Fisheries concurs with the Corps' determination that the repair and close of a 25-foot long breach in the earthen dike located on the Vance Property along the west bank of Salmon Creek is not likely to adversely affect NC steelhead, CC Chinook salmon, SONCC coho salmon, or SONCC coho salmon designated critical habitat. These determinations are based on the best available scientific and commercial information.

This concludes informal consultation on the Vance Dairy Levee Repair in accordance with 50 CFR § 402.14(b)(1). However, further consultation may be required if: (1) new information reveals effects of the action that may affect NC steelhead, CC Chinook salmon, SONCC coho salmon, or SONCC coho salmon critical habitat in a manner or to an extent not previously

considered; (2) the Project is subsequently modified in a manner that causes an effect to NC steelhead, CC Chinook salmon, SONCC coho salmon, or SONCC coho salmon critical habitat not previously considered; or (3) a new species is listed or critical habitat designated that may be affected by Project activities.

If you have any questions about this consultation, please contact Ms. Keytra Meyer at (707) 825-5168.

Sincerely,



Rodney R. McInnis
Regional Administrator

cc: David Ammerman- US Army Corps of Engineers
Marty McLelland- Oscar Larson & Associates