

**CALIFORNIA COASTAL COMMISSION**

NORTH COAST DISTRICT OFFICE  
710 E STREET • SUITE 200  
EUREKA, CA 95501-1865  
VOICE (707) 445-7833  
FACSIMILE (707) 445-7877

MAILING ADDRESS:  
P. O. BOX 4908  
EUREKA, CA 95502-4908



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Staff: Tiffany S. Tauber  
Staff Report: December 29, 2005  
Hearing Date: January 12, 2005  
Commission Action:

## **STAFF REPORT: REGULAR CALENDAR**

**APPLICATION NO.:** 1-05-014

**APPLICANT:** RDHC, LLC

**PROJECT LOCATION:** On property known as the former Vance Dairy at 532 Hookton Road, Loleta, Humboldt County (APN 311-181-01).

**PROJECT DESCRIPTION:** (1) Excavate approximately 23,000 cubic yards of material in seasonal grazed wetlands to create two ponds of 2-acres and 5-acres to attract waterfowl to facilitate use as a private duck hunting club, (2) install two 30-square-foot water control structures, and (3) repair a portion of an existing levee.

**GENERAL PLAN DESIGNATION:** Agriculture Exclusive (Humboldt Bay Area Plan)

**ZONING DESIGNATION:** Agriculture Exclusive-60, with Archaeological (A), Design Review (D),

Flood Hazard (F), Streams and Riparian Corridors (R), and Transitional Agricultural Lands (T) combining zones.

LOCAL APPROVALS RECEIVED: Humboldt County Conditional Use Permit No. 04-09

OTHER APPROVALS REQUIRED: U.S. Army Corps of Engineers, RWQCB Section 401 Water Quality Certification

SUBSTANTIVE FILE DOCUMENTS: Humboldt County Local Coastal Program

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**SUMMARY OF STAFF RECOMMENDATION:**

Staff recommends that the Commission **DENY** the coastal development permit for the proposed excavation of seven acres of grazed seasonal wetland to create two shallow freshwater ponds, the installation of water control structures, and levee repairs at the former Vance Dairy at 532 Hookton Road in Loleta, Humboldt County. Staff believes that the project is not consistent with the Chapter 3 policies of the Coastal Act regarding the protection of coastal wetlands because it (1) involves a use that is not allowable under Section 30233, and (2) is not the least environmentally damaging feasible alternative as required by Section 30233.

The entire project site constitutes seasonal wetlands with the exception of the upland levee located in the southeast portion of the site. The proposed project involves excavating approximately 23,000 cubic yards of material from seven acres of grazed seasonal wetlands to create two freshwater ponds of 2 and 5 acres respectively, with an average depth of one-foot. The project also involves the installation of a water control structure at each pond resulting in a total of approximately 60 square feet of wetland fill. The project is characterized in the permit application as a wetland enhancement project and the stated project objective is to maintain traditional agricultural uses, including grazing, while enhancing the value of the property for wildlife and outdoor recreation.

In past permit actions, the Commission has found wetland enhancement projects where the primary purpose of the project is to improve wetland habitat values to constitute “restoration purposes” pursuant to Section 30233(a)(7). However, the proposed project differs significantly from other projects approved by the Commission in that the proposed project is not intended primarily for the purpose of wetland restoration. Rather, the applicant intends to use the site as a private duck hunting club and thus, the primary

purpose of the project is to create conditions that would attract waterfowl to the property to facilitate hunting for private recreation.

The biological report prepared for the project indicates that the proposed project may provide a net benefit for certain listed species as well as for other native flora and fauna and would increase the diversity of bird species at the site. However, for several reasons, the applicant has not demonstrated that the primary purpose of the project is for restoration.

First, the proposed project does not entail a return to, or re-establishment of, former habitat conditions in a manner that typically defines “restoration” as discussed above despite the potential feasibility of doing so. Rather, the project would convert one type of wetland (grazed seasonal wetland) to another (grazed and managed freshwater ponds) and create a habitat type that is not part of the historic landscape.

Second, the applicant does not demonstrate how the proposed project would result in the establishment of landscape ecological processes or abiotic/biotic linkages associated with wetland habitats consistent with the comprehensive restoration efforts occurring within the lower Salmon Creek watershed. The project has been designed and proposed as an independent and isolated project with no clear indication of its integration with recent planning efforts by public and private agencies to study, define, and implement projects for the benefit of the lower Salmon Creek watershed. As noted above, the stated project objective is to maintain traditional agricultural uses, including grazing, while enhancing the value of the property for wildlife and outdoor recreation. The applicant has submitted a monitoring proposal for the project in which the applicant proposes to monitor pond development and bird presence for five years with a goal of demonstrating an increase in the abundance and diversity of freshwater dependent bird species using the site. Other than an expectation of increased water-associated bird abundance and the natural colonization of greater than 60% cover of native wetland vegetation species, no further specific or quantifiable project goals or objectives are provided. Without comprehensive, specific, and quantifiable project goals, it is not possible to effectively demonstrate and monitor intended wetland restoration benefits.

Third, there is no indication that the ponds and water control structures have been sited and designed with regard to potential impacts to sensitive salmonid species that utilize Salmon Creek as a result of affecting hydrologic and drainage patterns at the site. While the proposed project may arguably have some potential habitat enhancement benefits that would result in increased diversity of bird species using the site, the siting and design of the project would have direct adverse impacts to federally listed salmonid species. NOAA Fisheries has expressed their concerns to Commission staff that the proposed project would in fact increase the risk of stranding of salmonids, specifically rearing juvenile coho salmon and steelhead, as a result of the excavated ponds and water control structures that would prevent the exchange of water between the subject property and

Hookton Slough, thereby eliminating an avenue for salmonids that enter the property from Salmon Creek to return to Salmon Creek or Hookton Slough.

Lastly, the proposed ponds would not be persistent or self-sustaining as they would depend on the annual manipulation of water control structures and the introduction of well water to create and drain the ponds and would be converted to grazing habitat each summer.

Therefore, for all the above reasons, staff concludes that the proposed dredging and filling in coastal wetlands to create shallow freshwater ponds has not been demonstrated to be for “restoration purposes” and thus, does not constitute an allowable use for filling and dredging of coastal waters under Section 30233(a)(7) of the Coastal Act.

Furthermore, even if the proposed project were for an allowable use pursuant to Coastal Act Section 30233(a)(7) discussed above, the project would still be inconsistent with the wetland protection policies of Section 30233 that further requires any project involving dredging and filling in wetlands to be the least environmentally damaging feasible alternative.

Salmon Creek supports populations of the Southern Oregon/Northern California Coast coho salmon, California Coastal Chinook salmon, and Northern California Steelhead, which are listed as threatened species pursuant to the Endangered Species Act. As noted above, NOAA Fisheries has indicated that to eliminate the potential take of listed salmonid species, the agency has urged the applicant to make various design modifications to the proposed project. The applicant has not yet modified the proposed project consistent with recommendations from NOAA Fisheries in a manner that would eliminate the potential for take of listed salmonids species and thus, a Biological Opinion has not yet been finalized or issued by NOAA Fisheries. The agency has indicated that if the project is not modified as suggested, the agency is likely to issue a jeopardy opinion. Therefore, the project as proposed is not the least environmentally damaging feasible alternative as required by Coastal Act Section 30233, as it would have adverse impacts to federally listed salmonid species.

Therefore, staff believes the proposed development is not consistent with the wetland protection policies of Chapter 3 of the Coastal Act and must be denied.

**The Motion to adopt the Staff Recommendation of Denial is found on page 5.**

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**STAFF NOTES:**

**1. Standard of Review**

The proposed project is located in Humboldt County 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 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 Necessary**

Unless the applicant extends the time for Commission review, the Commission must act on the application at the December 12, 2005 meeting to meet the requirements of the Permit Streamlining Act.

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

As discussed below, the staff recommends that the Commission determine that the development does not conform to the policies of the Coastal Act and **deny** the permit. The proper motion is:

**Motion:**

I move that the Commission approve Coastal Development Permit No. 1-05-014 for the development proposed by the applicant.

**STAFF RECOMMENDATION OF DENIAL:**

Staff recommends a **NO** vote. Failure of this motion will result in denial of the permit amendment and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

**RESOLUTION TO DENY THE PERMIT:**

The Commission hereby **denies** a coastal development permit for proposed development on the grounds that the development will not conform with the policies of Chapter 3 of the Coastal Act. Approval of the permit would not comply with the California

Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the amended development on the environment.

## **II. FINDINGS AND DECLARATIONS**

The Commission hereby finds and declares:

### **1. Site Description**

The proposed project site consists of approximately 90 acres of grazed seasonal wetlands located approximately eight miles south of Eureka, on the west side of Highway 101, off of Hookton Road, in the unincorporated area of Loleta, Humboldt County. The site is located within the Salmon Creek watershed and is adjacent to the Humboldt Bay National Wildlife Refuge, which is located to the north (Salmon Creek Unit) and west (Hookton Slough Unit) of the project site.

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 property can be described as an agricultural wetland with the majority of the project area characterized as a Palustrine (freshwater) Emergent wetland that is seasonally flooded or saturated. Tidewater reaches a small portion of the northwest corner of the project site from a small channel connected to a tidegate on Hookton Slough with the upper extent of tidewater influence extending to the 4-foot elevation level. Fill associated with the existing levee located in the southeast corner of the property represents the only upland area at the project site.

The elevation of the project site ranges between 4 and 16 feet with the lowest area in the northwest corner and highest along the east side adjacent to Salmon Creek. The topography is gradual (less than 3% slope) with shallow drainages that border parts of the north, west, and south boundaries of the project areas, and two small channels, one originating from the northwest corner of the site that is caused by a leaky tidegate on Hookton Slough, and the other from the southeast corner of the project site where water flows through a breach in the Salmon Creek levee during periods of high flow. Salmon Creek, like most streams in coastal Northern California, experiences its peak flow events from November to March.

The current primary land use is for cattle grazing, which has significantly influenced the vegetation characteristics of the site. Hydrophytic vegetation is predominant in all areas except the far southeast corner where fill material exists. Obligate wetland plant species are abundant below the 10-foot elevation level. Above this elevation, the dominant plant community is more facultative in regard to wetland preferences, but remains

predominantly hydrophytic (i.e., 50% or more of the dominant species are facultative or wetter according to their National Wetland Indicator rating).

According to the biological report prepared for the project, the prevailing features of the project site were shaped by several hydrological alterations implemented over the past century. Approximately 45-acres of the 90-acre project site represents diked former tidelands that were at one time part of the historic Salmon Creek Delta. Channeling, diking, and the construction of the railroad and U.S. Route 101 allowed for the conversion of these former tidelands to pasture for cattle grazing. The remainder of the property is considered above the range of normal tide cycles in South Humboldt Bay, but falls within the floodplain of the lower Salmon Creek watershed. Agricultural use of the land is seasonally limited due to flooding and low productivity of forage grasses. A large portion of the property is dominated by obligate wetland species that are ill suited as fodder for cattle. Currently, the property is still used to graze cattle during the dry summer months prior to the onset of the rainy season when the cattle are moved to higher ground.

Botanical surveys were conducted at the project site between June 20<sup>th</sup> and July 20<sup>th</sup> of 2004. No special status plant species were found. Formal wildlife surveys were not conducted; however, based on existing conditions, it has been determined that a total of twenty-six special status animals have moderate to high potential for occurrence at the project site.

Salmon Creek supports populations of the Southern Oregon/Northern California Coast (SONCC) coho salmon (*Oncorhynchus kisutch*) Evolutionarily Significant Unit (ESU), California Coastal (CC) Chinook salmon (*O. tshawytscha*) ESU, and Northern California (NC) Steelhead (*O. mykiss*) ESU. SONCC coho, CC Chinook, and NC steelhead were listed as threatened species, pursuant to the Endangered Species Act on May 6, 1997 (62 FR 24588), September 16, 1999 (64 FR 50393), and June 7, 2000 (65 FR 50393), respectively.

The adjacent parcel to the south and east of the project site (APN No. 311-181-01) is also owned by the applicant and is developed with an existing residence, cottage, and shop building located north of Hookton Road. The adjacent parcel is also developed with agricultural facilities that were part of the former Vance Dairy located south of Hookton Road.

## **2. Project Description**

The proposed project involves the excavation of two shallow water ponds in the area of seasonal wetlands and the installation of water control structures to encourage use of the area by waterfowl for private recreational hunting. The project also involves proposed repairs to an existing levee that was the subject of an emergency permit in October 2004

(1-04-065G) and Coastal Development Permit No. 1-04-004. These project elements are further described below.

#### Excavation of Freshwater Ponds and Installation of Water Control Structures

The project proposes to excavate approximately seven acres of grazed seasonal wetland to create two freshwater ponds of five acres and two acres in size, with an average depth of one foot. Following excavation, topsoil would be pushed back into the pond slopes and bottoms to restore soil fertility and the seed bank. Construction would require the use of bulldozers to strip and stockpile topsoil and sod, scrapers to excavate and compact subsoil, and front-end loaders and dump trucks to haul excess soil from the site. Construction of two ponds would involve excavating approximately 23,000 cubic yards of soil. Material not retained onsite would be disposed of off site. The ponds have been designed to avoid prime agricultural soils on the property.

A water control structure (i.e., stoplog riser) constructed of concrete and wood would be installed at each of the ponds. Each structure would involve approximately 30 square feet of wetland fill. The structures would be installed using excavators and compactors and would allow management of water levels for seasonal effect and to draw down water levels for summer grazing. Due to the high variable nature of rainfall and flood flows, water would be supplied to the ponds as needed during the period between October 1 and April 30 of each year to maintain levels and to provide circulation for water quality. The existing deep well would be used to supply water when runoff is insufficient to maintain flow through the ponds. After April 30, draw down of the water level would begin and would be completed by June 1.

If cattails, rushes, or other undesirable vegetation comprise more than 25% of the ponded areas by the end of water level drawdown, they would be controlled by disking, grazing, or burning during August and September of each year. Nuisance weed species such as thistle, Himalayan blackberry, and Queen Anne's lace would be controlled by mechanical or chemical means.

The Commission notes that portions of the proposed project including the installation of two water control structures and excavation or grading of soil to create pond impoundments have been constructed without benefit of a coastal development permit.

#### Levee Repair

An emergency permit (1-04-065G) and a coastal development permit (1-04-004) were issued to conduct repairs of an existing levee at the site along Salmon Creek. The project involved placing approximately 70 cubic yards of 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 work was done to reduce flooding and erosion from Salmon Creek and reduce stranding of adult and juvenile salmonids by maintaining the flow of Salmon



Creek within its main channel. The proposed project description includes the need to do further repairs to this section of levee, including revegetation of the repaired area to minimize erosion. However, the description of this project element in the permit application is vague and does not include sufficient detail to fully understand the scope or extent of work proposed to further repair the levee.

### Agricultural Management

Grazing would be maintained on the project site in accordance with the historical agricultural management of the property at levels appropriate for soil class and hydrology. The application indicates that it would be advantageous to maintain intensive grazing through February and March in order to make the site attractive to Aleutian and Canada geese. The grazing would reduce vegetation height and increase forage quality. Irrigation of pastures in the late summer/early fall would increase productivity of these pastures. Exclusion of cattle from the dikes and levees would be required to reduce erosion from hoof action and to minimize their potential for failure during flood flows. Fencing along Hookton Road and along existing levees would keep cattle within the project area. Electric fences may be used to further concentrate cattle under an intensive stocking and rotation program to take full advantage of the growth characteristics of pasture on the parcel.

The Vance Dairy operation has been shut down for several years due to its antiquated milking facilities and its location in the Salmon Creek floodplain. Currently, the project area is only lightly grazed due to its frequency of flooding and the limited productivity of its pasture. Managed grazing would continue after the project is completed and contributes to the goals of the project by reducing vegetation cover height and increasing the quality of forage attractive to Aleutian and Canada geese.

### **3. Protection of Coastal Wetlands**

Section 30233 of the Coastal Act states that the diking, filling, or dredging of wetlands shall be permitted only when there is no feasible less environmentally damaging alternative, and only when feasible mitigation measures have been provided to minimize adverse environmental effects. Section 30233 also specifies that diking, filling, or dredging are allowed in wetlands only for limited uses.

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.*

*(C) In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary...*

The above policies set forth a number of different limitations on what types of projects may be allowed in coastal wetlands. For analysis purposes, the limitations on development in coastal wetlands can be grouped into four general categories or tests. These tests are:

1. The purpose of the filling, diking, or dredging is for one of the eight uses allowed under Section 30233;
2. that feasible mitigation measures have been provided to minimize adverse environmental effects;
3. that the project has no feasible less environmentally damaging alternative; and
4. that the biological productivity and functional capacity of the habitat shall be maintained and enhanced where feasible.

#### **Allowable Use for Dredging and Filling of Coastal Waters**

The first requirement set forth above is that any proposed filling, diking or dredging must be for an allowable purpose as specified under Section 30233 of the Coastal Act. One of the allowable purposes for diking, filling, or dredging in coastal wetlands under Section 30233(a)(7) is “restoration purposes.”

As discussed in the project site description, the entire project site constitutes seasonal wetlands with the exception of the upland levee located in the southeast portion of the site. The proposed project involves excavating approximately 23,000 cubic yards of material from seven acres of grazed seasonal wetlands to create two freshwater ponds of 2 and 5 acres respectively, with an average depth of one-foot. The project also involves the installation of a water control structure at each pond resulting in a total of approximately 60 square feet of wetland fill. The project is characterized in the permit application as a wetland enhancement project and the stated project objective is to maintain traditional agricultural uses, including grazing, while enhancing the value of the property for wildlife and outdoor recreation.

In past permit actions, the Commission has found wetland enhancement projects where the primary purpose of the project is to improve wetland habitat values to constitute “restoration purposes” pursuant to Section 30233(a)(7). For example, the Commission concurred with a consistency determination for a wetland enhancement project proposed by the U.S. Fish and Wildlife Service at the Humboldt Bay National Wildlife Refuge (CD-33-92). This project involved dredging, diking, and filling of wetlands to create and enlarge shallow ponds and sloughs and replace water control structures and was approved as a “restoration purpose” under Section 30233(a)(7). Similarly in 2000 and 2001, the Commission approved permits for the California Department of Fish and Game authorizing the excavation of shallow ponds within the Department’s Mad River Slough (1-99-063) and Fay Slough (CDP No. 1-00-025) Wildlife Areas for the exclusive purpose

of restoration. The Commission approved a permit amendment (CDP No. 1-00-025-A1) in March 2004 for additional restoration work at the Fay Slough Wildlife Area.

Neither the Coastal Act nor the Commission's administrative regulations contain a precise definition of "restoration." The dictionary defines "restoration" in terms of actions that result in returning an article "back to a former position or condition," especially to "an unimpaired or improved condition."<sup>1</sup> The particular restorative methods and outcomes vary depending upon the subject being restored. For example, the Society for Ecological Restoration defines "ecological restoration" as "the process of intentionally altering a site to establish a defined indigenous, historical ecosystem. The goal of the process is to emulate the structure, function, diversity, and dynamics of the specified ecosystem."<sup>2</sup> However, within the field of "wetland restoration," the term also applies to actions taken "in a converted or degraded natural wetland that result in the reestablishment of ecological processes, functions, and biotic/abiotic linkages and lead to a persistent, resilient system integrated within its landscape,"<sup>3</sup> that may not necessarily result in a return to historic locations or conditions within the subject wetland area.

Implicit in all of these varying definitions and distinctions is the understanding that the restoration entails returning something to a prior state. Wetlands are extremely dynamic systems in which specific physical functions such as nutrient cycles, succession, water levels and flow patterns directly affect biological composition and productivity. Consequently "restoration," as contrasted with "enhancement," encompasses not only reestablishing certain prior conditions but also reestablishing the processes that create those conditions. In addition, most of the varying definitions of restoration imply that the reestablished conditions will persist to some degree, reflecting the homeostatic natural forces that formed and sustained the original conditions before being artificially altered or degraded, and not promptly return to the pre-restored state.

Moreover, finding that proposed diking, filling, and dredging constitutes "restoration purposes" must be based, in part, on evidence that the proposed project will be successful in improving habitat values. Should the project be unsuccessful at increasing and/or enhancing habitat values, or worse, if the proposed diking, filling, and dredging impacts of the project actually result in long term degradation of the habitat, the proposed diking, filling, and dredging would not actually be for "restoration purposes." These two characteristics are particularly noteworthy to restoration grant program administrators in reviewing funding requests to ensure that the return on the funding investment is

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<sup>1</sup> Merriam-Webster's Collegiate Dictionary, Tenth Edition

<sup>2</sup> "Definitions," *Society of Ecological Restoration News*, Society for Ecological Restoration; Fall, 1994

<sup>3</sup> *Position Paper on the Definition of Wetland Restoration*, Society of Wetland Scientists, August 6, 2000

maximized and liabilities associated with unwanted side effects of the project are minimized.

Thus, to ensure that the project achieves its stated habitat enhancement objectives, and therefore be recognized as being for “restoration purposes,” the project must demonstrate that: (1) it either entails (a) a return to, or re-establishment of, former habitat conditions, or (b) entails actions taken in a converted or degraded natural wetland that will result in the reestablishment of landscape-integrated ecological processes, and/or abiotic/biotic linkages associated with wetland habitats; (2) there is a reasonable likelihood that the identified improvements in habitat value and diversity will result; and (3) once re-established, it has been designed to provide the desired habitat characteristics in a self-sustaining, persistent fashion independent of the need for repeated maintenance or manipulation to uphold the habitat function.

The proposed project differs significantly from other projects approved by the Commission for “restoration purposes” in that the proposed project is not intended primarily for the purpose of wetland restoration. Rather, the applicant intends to use the site as a private duck hunting club and thus, the primary purpose of the project is to create conditions that would attract specific species of waterfowl to the property to facilitate hunting for private recreation.

For the reasons discussed below, the Commission finds that the proposed filling and dredging activities do not qualify under Section 30233(a)(7) as an allowable use for filling and dredging of coastal wetlands.

#### Reestablishment of Habitat Conditions or Ecological Processes

The biological report prepared for the project indicates that the proposed project may provide a net benefit for certain listed species as well as for other native flora and fauna. The report states that an estimated forty-six species of water birds and raptors use the site in its present condition and that an estimated sixty-seven bird species could use the site after the implementation of the proposed project. The report also notes that existing native plant communities may benefit from active maintenance of weedy vegetation species and that enhanced wetlands may function better than the existing wetlands at trapping sediment and filtering pollutants, thereby increasing the water quality of nearby Salmon Creek.

As proposed, the project includes development that is intended by the applicant to bring about conditions conducive for specific species of wetland-associated waterfowl. However, for several reasons, the applicant has not demonstrated that the primary purpose of the project is for restoration. Specifically, the project does not demonstrate or involve a return to, or re-establishment of, former habitat conditions, or entail actions taken in a converted or degraded natural wetland that will result in the reestablishment of

landscape-integrated ecological processes, and/or abiotic/biotic linkages associated with wetland habitats.

First, the proposed project does not entail a return to, or re-establishment of, former habitat conditions in a manner that typically defines “restoration” as discussed above despite the potential feasibility of doing so. Rather, the project would convert one type of wetland (grazed seasonal wetland) to another (grazed and managed freshwater ponds) and create a habitat type that is not part of the historic landscape.

According to the 1870 United States Coastal Survey map of Humboldt Bay (see Exhibit No. 9), the Salmon Creek estuary historically consisted of a complex of slough channels and tidal wetlands that encompassed the entire southeastern portion of South Bay. During the early 1900’s much of the estuary was diked and drained for cattle grazing and the main channel of Salmon Creek was placed into a ditch that drained into Hookton Slough through a set of tidegates. Approximately 45 acres of the 90-acre property lie below the 8-foot elevation contour and represent former tidelands that were at one time part of the historic Salmon Creek delta. Channeling, diking, and the construction of the railroad and Highway 101 have caused the conversion of these former tidelands to pasture for cattle grazing. According to the application, the project site and adjoining lands are currently protected from saltwater intrusion by a dike around Hookton Slough and by established drainage ditches leading to one-way tidegates. These tidegates let floodwaters off the property and prevent saltwater intrusion onto the property from Hookton Slough, although tidewater does reach areas below the four-foot elevation contour in the northwest corner of the project site from a small channel connected to a tidegate on Hookton Slough.

At the subject site, restoration involving a return to, or re-establishment of, former habitat conditions would involve returning the site to tidal action and salt marsh as opposed to enhancing the current seasonal freshwater wetlands as proposed. According to information from the U.S. Fish and Wildlife Service (USFWS), in the Humboldt Bay region it is estimated that between 7,000 and 8,700 acres of salt marsh were present prior to human development. Since the mid-1800’s, most of what was likely to have been historic salt marsh has been diked or filled and has been reduced to a total area of around 900 acres, a reduction of at least 87%. The USFWS has indicated that restoration of salt marsh habitats around the Bay is a high priority, as salt marsh restoration is important for the protection, enhancement, and restoration of native fish, wildlife, and plant communities, some of which are dependent on salt marsh for their existence. In past permit actions on wetland restoration projects around Humboldt Bay, the Commission has acknowledged that in general, restoring areas that have historically supported tidal salt marsh is preferable when the physical conditions of a site present such an opportunity.

While restoring former tidelands around the bay to tidal salt marsh may be preferable in terms of restoring pre-disturbance ecological conditions, it is often not feasible due to logistical constraints of the site and surrounding land uses. For example, several sites around the bay that have been the subject of freshwater wetland restoration have been constrained by their location inland of Highway 101, limited access to tidal sources, nearby commercial and residential development, and/or adjacent areas of active agricultural use that limit the feasibility for tidal restoration. For example, the feasibility of salt marsh restoration at the Fay Slough Wildlife Area (FSWA) located north of the subject site between Eureka and Arcata was determined to be limited by its minimal tidal connection due to intervening Highway 101, which separates the FSWA from Humboldt Bay. In addition, restoring the entire FSWA to tidal marsh would require breaching or removing existing dikes which would result in potential flooding of adjacent private development and Highway 101.

At the subject site, however, the physical constraints for consideration of tidal restoration appear to be far less than other low-lying former tidelands around the bay. Most notably, unlike many other diked former tidelands that are actively used for agricultural purposes, the applicant indicates that the former Vance Dairy operation at the site has been shut down for several years due to its antiquated milking facilities and complications due to its location in the Salmon Creek floodplain. The permit application materials specifically outline factors contributing to the low agricultural value of the property and the applicant's determination that the property can no longer function as a fully operational dairy. Additionally, as noted previously, the project site is located directly adjacent to the Humboldt Bay National Wildlife Refuge, Hookton Slough, and Salmon Creek, all of which contribute to the high ecological value and restoration potential of the site. The 90-acre property is also of significant size and is well removed from rural residential and other forms of development. The nearest existing agricultural and residential structures on the adjacent parcel to the east owned by the applicant are all located above the 16-foot contour elevation and would be outside of the influence of tidal action, which is estimated to extend to the 8-foot elevation contour. Thus, these factors arguably suggest that this property may be well suited for more extensive restoration possibilities unlike other properties around the bay that afford higher functioning agricultural values, are adjacent to existing forms of development, or have limited access to the bay and tidal waters that make tidal wetland restoration unfeasible.

There is no indication that the applicant examined the potential for restoring the site in a manner that would return or reestablish former habitat conditions. The proposed creation of shallow freshwater ponds may attract an increased number and diversity of birds to the site, but it would introduce a feature that was not part of the historic landscape and would not maximize the habitat value of the site and surrounding area. Additionally, unlike the documented value of restoring salt marsh habitat around the bay, there is no demonstration of a compelling ecological need for creating freshwater wetland ponds at the site. To qualify as a "restoration purpose," the feasibility of reestablishing tidal action

and salt marsh habitat at the site in the context of the historic lower Salmon Creek watershed should be considered.

Second, the applicant does not demonstrate how the proposed project would result in the establishment of landscape ecological processes or abiotic/biotic linkages associated with wetland habitats consistent with the comprehensive restoration efforts occurring within the lower Salmon Creek watershed. The project has been designed and proposed as an independent and isolated project with no clear indication of its integration with recent planning efforts by public and private agencies to study, define, and implement projects for the benefit of the lower Salmon Creek watershed.

The application information notes that a detailed feasibility scoping report for restoration of the lower Salmon Creek Delta has recently been completed under a grant from the California Department of Fish and Game. Specifically, in 2001, the Pacific Coast Fish Wildlife and Wetlands Restoration Association (PCFWWRA), in partnership with the US Fish and Wildlife Service and several private consulting firms, received funding from California Department of Fish and Game (CDFG) to conduct a planning project to identify opportunities for enhancing habitats within the Salmon Creek estuary. The planning project consisted of topographic mapping of the entire area and monitoring of existing conditions including tidal flux upstream and downstream of the tide gates, water surface elevations throughout the system, and water quality. Using this data, a series of restoration alternatives were developed. The final report, completed in 2003, quantified existing physical conditions within the estuary and proposed a multiphase conceptual restoration plan. The proposed restoration activities aim to increase the tidal influence upstream of the existing levees, improve circulation and water quality, enlarge the salt-fresh water interface, reconnect existing off-channel wetlands to tidal waters to decrease stranding and create additional foraging grounds for rearing salmonids, and improve fish passage conditions and routing of sediment and flood waters. In 2004, the project team received funding from CDFG and the California Coastal Conservancy to implement Phase 1 of the plan, which consists of replacing the existing tide gates with two new structures designed to create a muted tidal cycle and improve fish passage at the Humboldt Bay National Wildlife Refuge property adjacent to the subject site. This phase of the planned restoration effort is currently in the permitting and agency review stage.

The biological report prepared for the project states that the proposed project contributes to these planned restoration objectives by improving water quality in Hookton Slough through the retention of sediments and nutrients in the proposed ponds, thereby having a "small benefit" to nearby aquatic habitats and native fisheries associated with Salmon Creek. However, the application does not discuss how the proposed project would be consistent with other objectives regarding the protection and restoration of sensitive salmonid habitat, restoration of tidal influence, and improved hydraulic conditions. There is no indication that the project has been designed or coordinated consistent with the planning efforts and goals for the lower Salmon Creek watershed and restoration



planned for the adjacent property, or that it utilized any of the data collected as part of the planning effort so as to ensure its integration with ecological processes and abiotic/biotic linkages of the surrounding landscape. For example, the biological report submitted by the applicant primarily addresses the use of the site by birds and the expected increase in the diversity of bird species that would potentially utilize the site following the project. The report does not adequately analyze the potential impact on sensitive fish species that utilize Salmon Creek, or hydrologic considerations of the water control structures and their relationship to the drainage and hydrology patterns of the site and surrounding area. To the contrary, the proposed project would be in direct conflict with one of the primary restoration objectives of the lower Salmon Creek watershed with regard to decreasing stranding and improving fish passage conditions. NOAA Fisheries has expressed their concerns to Commission staff that the proposed project would in fact increase the risk of stranding of salmonids, specifically rearing juvenile coho salmon and steelhead, as a result of the excavated ponds and water control structures that would prevent the exchange of water between the subject property and Hookton Slough, thereby eliminating an avenue for salmonids that enter the property from Salmon Creek to return to Salmon Creek or Hookton Slough.

The biological report further claims that in a regional context, the project is consistent with objectives of the adjacent Humboldt Bay National Wildlife Refuge in that shared objectives include: (1) providing additional feeding and resting areas for water birds, (2) managing cattle grazing to promote grasses suitable for geese and swans, (3) seasonal flooding to encourage invertebrates, thereby providing additional food source for bird species, and (4) preserving nesting sites for various waterfowl. Although the proposed project may have some similar objectives to those of the Refuge with regard to creating conditions that support waterfowl, the Refuge and the proposed project differ significantly in the level of protection afforded these habitats and the bird species that utilize them. Specifically, hunting is very tightly controlled at the Salmon Creek Unit of the Refuge directly adjacent to the project site and is limited to a 330-acre area of the Unit and is allowed only two days per week until 1 p.m., with 12 hunting blinds/sites, a lottery draw, and a paid permit process. The intent of these restrictions is to minimize the impact on the bird species that flock to the freshwater wetland areas of the Refuge to feed and roost, while still providing for occasional and limited public recreational hunting. In contrast, use of the project site directly adjacent to the Salmon Creek Unit of the Refuge as a private duck hunting club would not be subject to such tightly controlled hunting restrictions intended for the protection of the birds utilizing the site, thereby further demonstrating the difference in project objectives with regard to promoting the use of the site primarily for the benefit of wildlife.

The proposed project is limited in its scope of “enhancement” in that its focus is on encouraging use of the site by particular species of waterfowl preferred for recreational hunting, thereby neglecting consideration of other ecological processes and abiotic/biotic

linkages essential in designing a project with genuine and comprehensive wetland restoration benefits.

Had the wetland enhancement measures been structured as part of the existing series of coordinated actions developed by a constituency of governmental, academic, industry, and interested party stakeholders for regionally improving and restoring wetland habitat throughout the entire lower Salmon Creek watershed, not just as an independent and isolated proposal focused solely on the project site, then the primary purpose of the project would more reasonably be considered to be for restoration purposes, as required by Section 30233, rather than principally as a means to facilitate private recreational hunting.

Furthermore, wetland restoration projects intended to promote and support wildlife use typically include design features such as strategically placed islands for resting and refugia, varying depths of the ponds to promote greater diversity in plant coverage and forage, and varying elevations in and around the ponds to accommodate the increased diversity of species utilizing the area. In contrast, it is not clear that the proposed project has been designed with consideration of the quality of the habitat that it intends to create, or to the complexity of the greater wetland functions at the site. Rather, the design of the project is focused on the creation of conditions for particular species of waterfowl preferred for recreational hunting, thereby neglecting other ecological elements of which consideration is essential in siting and designing a project with genuine and comprehensive wetland restoration benefits.

Therefore, the Commission finds that the alleged benefits that would be derived from the proposed wetland enhancement work have not been adequately established, and the applicant has not demonstrated that the proposed project would reestablish former habitat conditions or entail actions that would result in the establishment of landscape-integrated ecological processes and/or abiotic/biotic linkages associated with wetland habitats.

#### Likelihood That Successful Restoration Would Result From the Proposed Project

A second factor that is considered in determining whether a proposed project constitutes restoration is whether the project has been designed and sited such that there is a reasonable likelihood that habitat improvement objectives would actually be achieved.

As discussed above, the proposed project has not been planned or coordinated in conjunction with adjacent restoration efforts and the permit application does not contain any specific information or employ a systematic planning process in its development so as to give reasonable assurance that the restoration would be successful, either in the immediate project vicinity or incrementally from a watershed-wide perspective.

As stated above, the stated project objective is to maintain traditional agricultural uses, including grazing, while enhancing the value of the property for wildlife and outdoor recreation. The habitat improvement part of the objective is to enhance the value of the property for wildlife. Other objectives stated in the application include: providing additional feeding and resting areas for water birds, (2) managing cattle grazing to promote grasses suitable for geese and swans, (3) seasonal flooding to encourage invertebrates, thereby providing additional food source for bird species, and (4) preserving nesting sites for various waterfowl. The applicant has submitted a monitoring proposal for the project in which the applicant proposes to monitor pond development and bird presence for five years with a goal of demonstrating an increase in the abundance and diversity of freshwater dependent bird species using the site. Other than an expectation of increased water-associated bird abundance and the natural colonization of greater than 60% cover of native wetland vegetation species, no further specific or quantifiable project goals or objectives are provided. Although the increased presence of birds at the site may indicate some improved habitat conditions for particular bird species, the lack of clear project goals or objectives with regard to other wetland functions and habitat components make it difficult to ascertain specifically what is desired to be accomplished from a greater wetland restoration perspective. For example, there are no stated goals and objectives, performance standards, or monitoring criteria for water quality, hydraulic conditions, aquatic species, and use of the site by other wildlife. Without such comprehensive, specific, and quantifiable project goals, it is not possible to effectively demonstrate and monitor intended wetland restoration benefits.

Wetland restoration projects, although intended to re-establish or improve habitat conditions for wetland species, can lead to disastrous results due to poor planning or execution, ironically leading to a loss of wetland habitat if not properly undertaken. Potential significant adverse impacts often associated with dredging or filling projects of this kind in coastal wetlands include: (1) the coverage of bottom habitat and the loss of wetland surface area and volume, (2) impacts to sensitive vegetation, (3) conversion of one type of wetland to another, (4) impacts to fish and wildlife habitat, and (5) water pollution in the form of sedimentation or debris entering coastal waters.

In this case, there is no indication that the ponds and water control structures have been sited and designed with regard to potential impacts to sensitive salmonid species that utilize Salmon Creek as a result of affecting hydrologic and drainage patterns at the site. While the proposed project may arguably have some potential habitat enhancement benefits that would result in increased diversity of bird species using the site, the siting and design of the project would have direct adverse impacts to federally listed salmonid species. As discussed above, NOAA Fisheries has expressed their concerns to Commission staff that the proposed project would in fact increase the risk of stranding of salmonids, specifically rearing juvenile coho salmon and steelhead, as a result of the excavated ponds and water control structures that would prevent the exchange of water between the subject property and Hookton Slough, thereby eliminating an avenue for

salmonids that enter the property from Salmon Creek to return to Salmon Creek or Hookton Slough.

Thus, the Commission finds that the alleged benefits that would be derived from the proposed restoration work have not been adequately assured, and there is a low likelihood that significant improvement would actually be achieved.

Persistent or Self-sustaining Nature of the Resulting Restored Habitat

Finally, for the development to be recognized as being truly for “restoration purposes,” the project should be designed with respect to its design life and maintenance requirements such that the restored habitat is persistent and self-sustaining.

The applicant proposes to actively manage the project site following construction of the shallow ponds and water control structures. The applicant proposes that due to the highly variable nature of rainfall and flood flows, an existing well would be used to supply water when runoff is insufficient to maintain flow through the ponds as needed between October 1 and April 30 of each year to maintain water levels and to provide circulation for water quality. After April 30, drawdown of the water would begin and would be completed by June 1. The applicant further proposes to manage vegetation in the ponds following construction. Specifically, if cattails, rushes, or other undesirable vegetation comprise more than 25% of the ponded areas by the end of drawdown, they will be controlled by disking, grazing, or burning during August and September of each year. Nuisance weed species such as thistle, Himalayan blackberry, and Queen Anne’s lace are proposed to be controlled by mechanical or chemical means. Additionally, grazing at the site would be maintained throughout the project area as a means of managing vegetation.

Active maintenance of wetland restoration projects is often necessary and essential to ensure the initial establishment of the habitat functions and values intended to be restored or established at a particular site until the site has reached a point where it is persistent and self-sustaining. However, in this case, the ponds to be created will not be persistent or self-sustaining as they will depend on the annual manipulation of water control structures and the introduction of well water to create and drain the ponds and would be converted to grazing habitat each summer.

Therefore, for all the above reasons, the Commission concludes that the proposed dredging and filling in coastal wetlands to create shallow freshwater ponds has not been demonstrated to be for “restoration purposes” and thus, does not constitute an allowable use for filling and dredging of coastal waters under Section 30233(a)(7) of the Coastal Act.

### **Least Environmentally Damaging Feasible Alternative**

A further requirement set forth by Section 30233 is that the proposed dredge or fill project must have no feasible less environmentally damaging alternative. In this case, even if the proposed project were for an allowable use pursuant to Coastal Act Section 30233(a)(7) discussed above, the project would still be inconsistent with the wetland protection policies of Section 30233 that further requires any project involving dredging and filling in wetlands to be the least environmentally damaging feasible alternative.

The biological report states that the proposed project “*is not expected to adversely affect any special status species, and it may provide a net benefit for certain listed species as well as other native flora and fauna.*” However, the biological report focuses on bird and plant species and does not adequately analyze potential impacts to sensitive salmonid species that utilize Salmon Creek and Hookton Slough at the subject site. According to NOAA Fisheries, Salmon Creek supports populations of the Southern Oregon/Northern California Coast (SONCC) coho salmon (*Oncorhynchus kisutch*) Evolutionarily Significant Unit (ESU), California Coastal (CC) Chinook salmon (*O. tshawytscha*) ESU, and Northern California (NC) Steelhead (*O. mykiss*) ESU. SONCC coho, CC Chinook, and NC steelhead were listed as threatened species, pursuant to the Endangered Species Act on May 6, 1997 (62 FR 24588), September 16, 1999 (64 FR 50393), and June 7, 2000 (65 FR 50393), respectively. The project implicates the need for review under Section 7 of the Endangered Species Act by NOAA Fisheries through the required Army Corps of Engineers permit.

As noted in the project description, site inspections by state and federal agencies determined that portions of the proposed project, including excavation, and installation of two water control structures have occurred without benefit of a coastal development permit, or other required regulatory approvals. In a letter to the applicant from NOAA Fisheries dated February 9, 2005, NOAA Fisheries states their concern that based on the on-site inspection, the project as proposed poses a threat to listed salmonid species and may be responsible for “taking”<sup>4</sup> these species in violation of the Endangered Species Act. The letter states, in part:

“NOAA Fisheries’ “taking” concerns are focused on the high likelihood that salmonids, specifically rearing juvenile SONCC coho salmon and NC steelhead, are diverted out of Salmon Creek onto your [the applicant’s] property from the breach overflow, and are subsequently stranded on your property as a result of the excavation work and installation of the water control structure. Once the water level reaches a certain height, the water control structure prevents the exchange of water between the Vance Dairy

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<sup>4</sup> The Endangered Species Act defines “take” as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.”

Property and Hookton Slough. Salmonids that have entered your property from Salmon Creek now do not have an avenue to return to Salmon Creek or Hookton Slough.”

In its letter, NOAA Fisheries further states that to eliminate the potential take of listed salmonid species, the agency recommends that the applicant make modifications to the proposed project including (1) altering the water control structure so that the structure does not impede the exchange of water, nor the passage of fish from the Vance Dairy Property to Hookton Slough, (2) allowing fish passage around the proposed ponds, (3) isolating the proposed ponds from Hookton Slough and the Salmon Creek overflow, and (4) minimizing disturbance from cattle and their associated waste. The applicant has not yet modified the proposed project consistent with recommendations from NOAA Fisheries in a manner that would eliminate the potential for take of listed salmonid species and thus, a Biological Opinion has not yet been finalized or issued by NOAA Fisheries. The agency has indicated that if the project is not modified as suggested, the agency is likely to issue a jeopardy opinion. Therefore, the project as proposed is not the least environmentally damaging feasible alternative as required by Coastal Act Section 30233, as it would have adverse impacts to federally listed salmonid species.

Furthermore, recent restoration planning efforts in the lower Salmon Creek watershed suggest that there are feasible less environmentally damaging alternatives to the proposed project. As discussed above, a detailed feasibility scoping report for restoration of the lower Salmon Creek Delta has recently been completed under a grant from the California Department of Fish and Game that involved identifying opportunities for enhancing habitats within the Salmon Creek estuary. The planning project consisted of topographic mapping of the entire area and monitoring of existing conditions including tidal flux upstream and downstream of the tide gates, water surface elevations throughout the system, and water quality. Using this data, a series of restoration alternatives were developed. The final report, completed in 2003, quantified existing physical conditions within the estuary and proposed a multiphase conceptual restoration plan. The proposed restoration activities aim to increase the tidal influence upstream of the existing levees, improve circulation and water quality, enlarge the salt-fresh water interface, reconnect existing off-channel wetlands to tidal waters to decrease stranding and create additional foraging grounds for rearing salmonids, and improve fish passage conditions and routing of sediment and flood waters.

There is no indication that the project has been designed or coordinated consistent with the planning efforts and goals for the lower Salmon Creek watershed and restoration planned for the adjacent property, or that it utilized any of the data collected as part of the planning effort so as to ensure its integration with ecological processes and abiotic/biotic linkages of the surrounding landscape. For example, the biological report submitted by the applicant primarily addresses the use of the site by birds and the expected increase in the diversity of bird species that would potentially utilize the site following the project.

The report does not adequately analyze the potential impact on sensitive fish species that utilize Salmon Creek, or hydrologic considerations of the water control structures and their relationship to the drainage and hydrology patterns of the site and surrounding area. Rather, the proposed project would be in direct conflict with the objectives for restoration in the lower Salmon Creek area in that the project would increase the potential for salmonid stranding as discussed above. Thus, the feasibility scoping report suggests that there may be other options for more appropriate wetland restoration efforts at the site that would more fully meet restoration objectives on a larger watershed scale and take into account ecological elements beyond bird use of freshwater wetlands for the purpose of private recreational hunting.

The Commission finds that even if the project were for an allowable use under Section 30233, the proposed dredging and filling in coastal wetlands is not the least environmentally damaging feasible alternative as further required under Section 30233 and therefore, the project as proposed is not consistent with Section 30233 of the Coastal Act.

#### **4. 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.

The project is located between the first public road and Humboldt Bay, an inlet of the sea, and is located adjacent to the Hookton Slough and Salmon Creek Units of the Humboldt Bay National Wildlife Refuge. The Refuge provides a multitude of public access and recreation opportunities including bird and wildlife viewing, hiking, boating, fishing, organized walks, and limited hunting. A visitor center is located at the Salmon Creek Unit approximately 0.5 miles north of the project site. Among the public access trails is the Hookton Slough trail that follows Hookton Slough approximately 1.5 miles along the south edge of Humboldt Bay and is open to the public seven days per week during daylight hours. There are no public trails located on the subject site.

Staff at the Refuge has indicated that the proposed project is not expected to pose a conflict with existing public access trails and recreation uses of the Refuge. According to Refuge staff, the main recreational infrastructure is located well to the west of the subject site and public use of the Refuge is concentrated toward Humboldt Bay to the west. 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. However, as discussed in Finding No. 3 above, the Commission finds that the proposed project is not consistent with other Coastal Act policies regarding protection of coastal wetlands including Section 30233 requiring that filling, diking, or dredging of wetlands is for one of the eight uses allowed under Section 30233, and that the project has no feasible less environmentally damaging alternative. Therefore, the proposed development must be denied.

## **5. Alternatives**

Denial of the proposed permit will not eliminate all economically beneficial or productive use of the applicant's property or unreasonably limit the owner's reasonable investment backed expectations of the subject property. Denial of this application to excavate freshwater wetland ponds and install water control structures would still leave the applicant available alternatives to use the property in a manner that would be consistent with the policies of the Coastal Act.

There are existing uses of the property that allow the applicant/owner to have economic uses of the property without performing the proposed wetland enhancement project. The subject property has been used historically for agricultural uses, including most recently as a dairy. Although information submitted by the applicant indicates that the viability of agricultural use of the site is compromised by the poor condition of existing agricultural facilities and complications associated with its location in the Salmon Creek floodplain, agricultural use of the site remains an allowable alternative.

Furthermore, the applicant owns the adjacent parcel (APN 311-181-01) which is developed with an existing residence, cottage, and shop building as well as several agricultural facilities. Although these existing structures are not located on the subject property, they are part of the combined holdings of the applicant and constitute existing economically beneficial or productive uses of the dairy complex purchased by the applicant.



Therefore, the Commission finds that feasible alternatives to the proposed project exist for the applicant to make economically beneficial or productive use of the property in a manner that would be consistent with the Chapter 3 policies of the Coastal Act.

**6. Violation**

As noted above, portions of the proposed project including the installation of two water control structures and the excavation or grading of soil to create pond impoundments have occurred at the site in an area of the Commission's retained jurisdiction without the benefit of a coastal development permit.

As discussed in Finding 3 above, the proposed project is inconsistent with the Chapter 3 policies of the Coastal Act regarding the protection of coastal wetlands. Specifically, the Commission finds that the proposed dredging and filling in coastal wetlands to create shallow freshwater ponds and install water control structures has not been demonstrated to be for "restoration purposes" and thus, does not constitute an allowable use for filling and dredging of coastal waters under Section 30233(a)(7) of the Coastal Act. The Commission further finds that even if the project were for an allowable use under Section 30233, the proposed dredging and filling in coastal wetlands is not the least environmentally damaging feasible alternative as further required under Section 30233 and therefore, the project as proposed is not consistent with Section 30233 of the Coastal Act.

Portions of the project have been constructed without benefit of a coastal development permit and in a manner inconsistent with the Chapter 3 policies of the Coastal Act regarding the protection of coastal wetlands.

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

**7. California Environmental Quality Act**

Section 13906 of the California Code of Regulation requires Coastal 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 requirements of the California Environmental Quality Act (CEQA). Public Resources Code 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 significantly lessen any significant effect that the activity may have on the environment.

The Commission incorporates its findings on Coastal Act consistency at this point as if set forth in full. 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.

As discussed herein, in the findings addressing the consistency of the proposed project with the Chapter 3 policies of the Coastal Act, the proposed project is not consistent with the policies of the Coastal Act that restrict the dredging and filling of coastal waters and wetlands.

As also discussed above in the findings addressing project alternatives, there are feasible alternatives available which would substantially lessen any significant adverse impact that the activity may have on the environment. Therefore, the Commission finds that the proposed project cannot be found consistent with the requirements of the Coastal Act to conform to CEQA.

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**EXHIBITS:**

1. Regional Location Map
2. Vicinity Location Map
3. Site Map
4. Wetland Map
5. Project Plan
6. Pond Excavation Cross-Section
7. Water Control Structure Detail
8. Excerpts of Biological Report
9. Historic Tidelands Map