

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



F5a

Application No.: 1-06-010

Date: June 23, 2006

ADMINISTRATIVE PERMIT

APPLICANT: **KUIPER MARICULTURE, INC., Ted Kuiper**

PROJECT DESCRIPTION: In-kind replacement of an existing culvert and tide gate with a new, 40-foot-long, 36-inch-wide culvert and tide gate.

PROJECT LOCATION: Adjacent to Mad River Slough at 6230 Lanphere Road, Arcata, Humboldt County (APN 506-291-13).

EXECUTIVE DIRECTOR'S DETERMINATION: The findings for this determination, and for any special conditions, appear on subsequent pages.

NOTE: P.R.C. Section 30624 provides that this permit shall not become effective until it is reported to the Commission at its next meeting. If one-third or more of the appointed membership of the Commission so request, the application will be removed from the administrative calendar and set for public hearing at a subsequent Commission meeting. Our office will notify you if such removal occurs.

This permit will be reported to the Commission at the following time and place:

JULY 14, 2006 9:00 a.m.
Catamaran Resort Hotel
3999 Mission Boulevard
San Diego, CA 92109

IMPORTANT - Before you may proceed with development, the following must occur:

Pursuant to 14 Cal. Admin. Code Sections 13150(b) and 13158, you must sign the enclosed duplicate copy acknowledging the permit's receipt and accepting its contents, including all conditions, and return it to our office. Following the Commission's meeting, and once we have received the signed acknowledgment and evidence of compliance with all special conditions, we will send you a Notice of Administrative Permit Effectiveness.

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BEFORE YOU CAN OBTAIN ANY LOCAL PERMITS AND PROCEED WITH DEVELOPMENT, YOU MUST HAVE RECEIVED BOTH YOUR ADMINISTRATIVE PERMIT AND THE NOTICE OF PERMIT EFFECTIVENESS FROM THIS OFFICE.

PETER DOUGLAS

Executive Director

By: Tiffany S. Tauber

Title: Coastal Planner

STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. 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.
5. 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.

EXECUTIVE DIRECTOR'S DETERMINATION (continued):

The Executive Director hereby determines that the proposed development is a category of development which, pursuant to PRC Section 30624, qualifies for approval by the Executive Director through the issuance of an administrative permit. Subject to Standard and Special Conditions as attached, said development is in conformity with the provisions of Chapter 3 of the Coastal Act of 1976, will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3, and will not have any significant impacts on the environment within the meaning of the California Environmental Quality Act. If located between the nearest public road and the sea, this development is in conformity with the public access and public recreation policies of Chapter 3.

FINDINGS FOR EXECUTIVE DIRECTOR'S DETERMINATION:

1. Project and Site Description

The proposed project involves removing an existing culvert and tide gate and installing a new culvert and tide gate of the same size and in the same location adjacent to Mad River Slough. The project site is located at the west end of Lanphere Road at the site of a mariculture facility known as Sea Horse Ranch at 6230 Lanphere Road, Arcata, Humboldt County. The subject

property is located behind a levee northwest of, and immediately adjacent to, the Mad River Slough, a tributary of Humboldt Bay. The levee was originally built sometime during the 1870's for agricultural purposes. Prior to its current use as a commercial mariculture facility, much of the property was used for horse pasture and hay cultivation. The site is developed with a residence and several outbuildings used for business operations in upland areas of the south and southwest sections of the property. An existing boat dock provides access to the slough and a floating platform within the slough channel is used to culture seed for oyster farming operations.

The proposed project involves the in-kind replacement of an existing culvert with a 40-foot-long, 36-inch-diameter culvert in the same location. The applicant has indicated that approximately every twenty years, the culvert that connects the subject property to the Mad River Slough needs to be replaced due to rust and corrosion. Approximately 40 cubic yards of fill material would be removed using a tractor excavator working from the levee. The existing culvert would be removed, and all material would be backfilled following placement of the new culvert. No additional fill material on the levee would be required. The work is proposed to be conducted at low tide and is expected to take less than six hours and would be completed before the flood tide. The old culvert would be cut into short lengths (6-10 feet) and recycled as scrap metal.

The applicant's biologist surveyed the project site and determined that the area affected by the culvert replacement project does not provide suitable habitat for any rare plant species. The upland portion of the levee in the project area is densely vegetated with California blackberry and coyote brush. The lower portion of the levee that is exposed to the slough is composed of riprap with little to no available substrate for vegetation to take root. The channel that runs parallel and interior to the levee has a deeply excised and unvegetated bank. Eelgrass inhabits some areas of the slough, but no eelgrass was observed in the vicinity of the culvert. The proposed project would not result in the introduction of any new wetland fill.

The applicant has obtained an Administrative Permit from the Humboldt Bay Harbor, Recreation, and Conservation District, and a Nationwide Permit 3 from the Army Corps of Engineers for the proposed culvert replacement project.

2. Permit Authority, Extraordinary Methods of Repair and Maintenance

As discussed in the project description finding, the proposed project involves the in-kind replacement of an existing culvert with a new 40-foot-long, 36-inch-wide culvert and tide gate.

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 administrative regulations (14 CCR 13000 *et seq.*) 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 proposed project involving the in-kind replacement of an existing culvert is considered repair and maintenance because the work does not involve an addition to or enlargement of the

levee or culvert. 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 culvert repair involves the placement of construction materials and removal and placement of solid materials within 20 feet of coastal waters. Therefore, the project requires a coastal development permit under Section 13252(a)(3) 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.

3. Water Quality

Section 30230 of the Coastal Act states, in applicable part:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 of the Coastal Act states:

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

The proposed repair and maintenance work would take place on an existing levee located immediately adjacent to Mad River Slough. The project would involve removing approximately 40 cubic yards of material to remove the existing culvert and backfilling the material in the same location following placement of the new culvert. The project would not introduce any new fill material or result in any new fill of wetlands or coastal waters. The project would, however involve soil disturbance and vegetation removal along the levee during the repair. Therefore, there is a potential for adverse impacts to the water quality and biological productivity of Mad River Slough through the release of sediment into the slough.

Coastal Act Sections 30230 and 30231 protect the biological productivity and quality of coastal waters, streams, and wetlands through, among other means, controlling runoff and maintaining natural vegetation. Soil disturbance and vegetation removal adjacent to the slough could result in the discharge of sediment into Mad River Slough causing increased turbidity and adversely affecting fish and other sensitive aquatic species. Sediment is considered a pollutant that affects visibility through the water, and affects plant productivity, animal behavior (such as foraging) and reproduction, and the ability of animals to obtain adequate oxygen from the water. Sediments may physically alter or reduce the amount of habitat available in a watercourse by replacing the pre-existing habitat structure with a stream-bottom habitat composed of substrate materials unsuitable for the pre-existing aquatic community. In addition, sediment is the medium by which many other pollutants are delivered to aquatic environments, as many pollutants are chemically or physically associated with the sediment particles.

The applicant proposes to conduct the culvert replacement work during low tide and has indicated that the work is expected to take less than six hours to complete, thereby minimizing the potential for release of sediment into the slough. The applicant has further proposed to place straw booms and hay bales in the work area to capture any loose sediment. Special Condition Nos. 1 and 2 would ensure implementation of these proposed measures to prevent sediment from entering slough waters, thereby maintaining the biological productivity and water quality of Mad River Slough.

Therefore, as conditioned, the Executive Director finds that the biological productivity and quality of coastal waters will be maintained and the project, as conditioned, is consistent with Sections 30230 and 30231 of the Coastal Act.

4. Protection of Environmentally Sensitive Habitat Areas (ESHA)

Section 30240 of the Coastal Act states:

(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 of the Coastal Act requires that environmentally sensitive habitat areas (ESHA) be protected against significant disruption of habitat values from adjacent development, and that only uses dependent on the resources of the ESHA be allowed within the ESHA.

The project involves replacing a culvert adjacent to Mad River Slough, a tributary of Humboldt Bay. Humboldt Bay and Mad River Slough are highly productive coastal habitats that provide essential breeding, rearing and feeding habitat for a variety of wildlife species as well as habitat for rare salt marsh plant species.

The area of the culvert work would be accessed by a tractor excavator from atop the levee crest and would remove approximately 40 cubic yards of material along the levee to access the existing culvert. Following removal of the old culvert, the new culvert and tidegate would be installed and the area would be backfilled. The project does not involve placing any new fill or permanent structures in the slough and would not introduce any new use within the adjacent ESHA (i.e., Mad River slough) consistent with Coastal Act Section 30240(a).

The applicant's biologist surveyed the project site and determined that the area affected by the culvert replacement project does not provide suitable habitat for any rare plant species. According to the biological survey, upland portions of the dike are densely vegetated with California blackberry (*Rubus ursinus*) and coyote brush (*Baccharis pilularis*) and the lower portion of the dike that is exposed to the slough is composed of riprap with little to no available substrate for vegetation to take root. The channel that runs parallel and interior to the dike has a deeply excised and unvegetated bank. Dense-flowered cordgrass (*Spartina densiflora*), an invasive, exotic species, occupies the lower bank above the channel, leaving little to no room for other species to colonize. The biologist concludes that replacement of the culvert is unlikely to impact any special status species provided that the work is done as proposed at low tide to limit sedimentation of adjacent salt marsh habitats. As discussed in the water quality findings above, Special Condition No. 1 requires all work to be performed and completed during periods of low tide. Additionally, Special Condition No. 2 requires installation of sediment control devices such as hay bales and straw booms around the work area to prevent sediment from entering Mad River Slough. Furthermore, to ensure that construction debris, including the old culvert and tide gate to be removed, is not disposed of in coastal waters in a manner that would result in wetland fill, or otherwise adversely impact environmentally sensitive habitat, Special Condition No. 3 requires construction debris to be lawfully disposed of in an upland location following project completion.

The Commission finds that with the mitigation measures discussed above, which are designed to minimize any potential impacts to the adjacent environmentally sensitive habitat area from erosion and sedimentation, the project as conditioned will (a) protect the ESHA from any significant disruption of habitat values, (b) not significantly degrade adjacent ESHA, and (c) be compatible with the continuance of the habitat area. Therefore, the Commission finds that the project as conditioned is consistent with Section 30240 of the Coastal Act.

5. 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 mariculture operations. 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.

6. 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 Executive Director 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 Executive Director 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.

SPECIAL CONDITIONS:

1. Timing of Construction

All work must be performed and completed during periods of low tide.

2. Erosion and Sedimentation Control Measures

Sediment control devices such as, but not limited to, hay bales and straw booms shall be installed around the work area to prevent sediment from entering Mad River Slough.

3. Debris Disposal

All construction debris, including the culvert and tide gate to be removed, shall be lawfully disposed of in an upland area following project completion.

ACKNOWLEDGMENT OF PERMIT RECEIPT/ACCEPTANCE OF CONTENTS:

I/We acknowledge that I/we have received a copy of this permit and have accepted its contents including all conditions.

Applicant's Signature

Date of Signing