MINUTE ITEM
This Calendar Item No. C41
was approved as Minute Item
No. 41 by the State Lands
Commission by a vote of 3
to 0 at its 10/28/96
meeting.

CALENDAR ITEM
C41

A 6

S 3

PRC7084

10/28/96
WP 7084
N. Smith

GENERAL LEASE - ANNUAL SEASONAL DAM

APPLICANT:

Rich Giacomini
P.O. Box 85
Point Reyes Station, California 94956

AREA, TYPE LAND AND LOCATION:

Tide and submerged land within the bed of Lagunitas Creek, near the community of Point Reyes Station, Marin County.

LAND USE:

Installation of a gravel dam annually during the summer months for the impoundment of fresh water, and prevention of salt water intrusion.

CURRENT LEASE TERMS:

Lease period:
One year, ten months beginning January 1, 1994.

Public liability insurance:
Combined single limit coverage of $100,000.

Consideration:
$150 per annum.

PROPOSED LEASE TERMS:

Lease period:
Two years, beginning November 1, 1995.

Public liability insurance:
Combined single limit coverage of $500,000.

REVISED 10/25/96

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Consideration:
$150 per annum.

BASIS FOR CONSIDERATION:
Pursuant to 2 Cal. Code Regs. 2003.

APPLICANT STATUS:
Applicant is owner of upland.

PREREQUISITE CONDITIONS, FEES AND EXPENSES:
Filing fee and processing costs have been received.

STATUTORY AND OTHER REFERENCES:

A. Public Resources Code: Div. 6, Parts 1 and 2; Div. 13.

B. Cal. Code Regs.: Title 2, Div. 3; Title 14, Div. 6.

AB 884:
12/21/96

OTHER PERTINENT INFORMATION:

1. The Applicant owns and operates a large scale dairy operation on the uplands adjacent to the proposed project site. Historically, the applicant has installed a temporary gravel dam annually across the bed of Lagunitas Creek, near his dairy operation during the summer months to provide a source of fresh water for irrigation and stock water purposes. The gravel dam impounds fresh water and reportedly prevents salt water intrusion up stream of the dam, thereby allowing the pumping of fresh water for irrigation purposes. The gravel material used to construct the dam is obtained from the creek bed at the dam site. The dam is annually washed out, due to heavy winter runoff from the Lagunitas Creek watershed, thereby returning the gravel to the creek.

2. A Finding Of No Significant Impact (FONSI) was prepared and adopted for this project by the U.S. Army Corps of Engineers, San Francisco District. The document was circulated for public review as broadly as State and local law may require and notice was given meeting the standards in 14 Cal. Code Regs. 15072(a). Therefore, pursuant to 14 Cal. Code Regs. 15225, the staff recommends the use of the federal FONSI in place of a Negative Declaration.

3. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code Section 6370, et seq. Based upon the staff's consultation with the persons nominating such lands and through the CEQA review process, it is the staff's opinion that the project, as proposed, is consistent with its use classification.

APPROVALS OBTAINED:

U.S. Army Corps of Engineers.

FURTHER APPROVALS REQUIRED:

California State Lands Commission.

EXHIBITS:

A-1. Land Description
A-2. Land Description
B. Location Map
C. Department of Army Permit Evaluation and Decision Document

IT IS RECOMMENDED THAT THE COMMISSION:

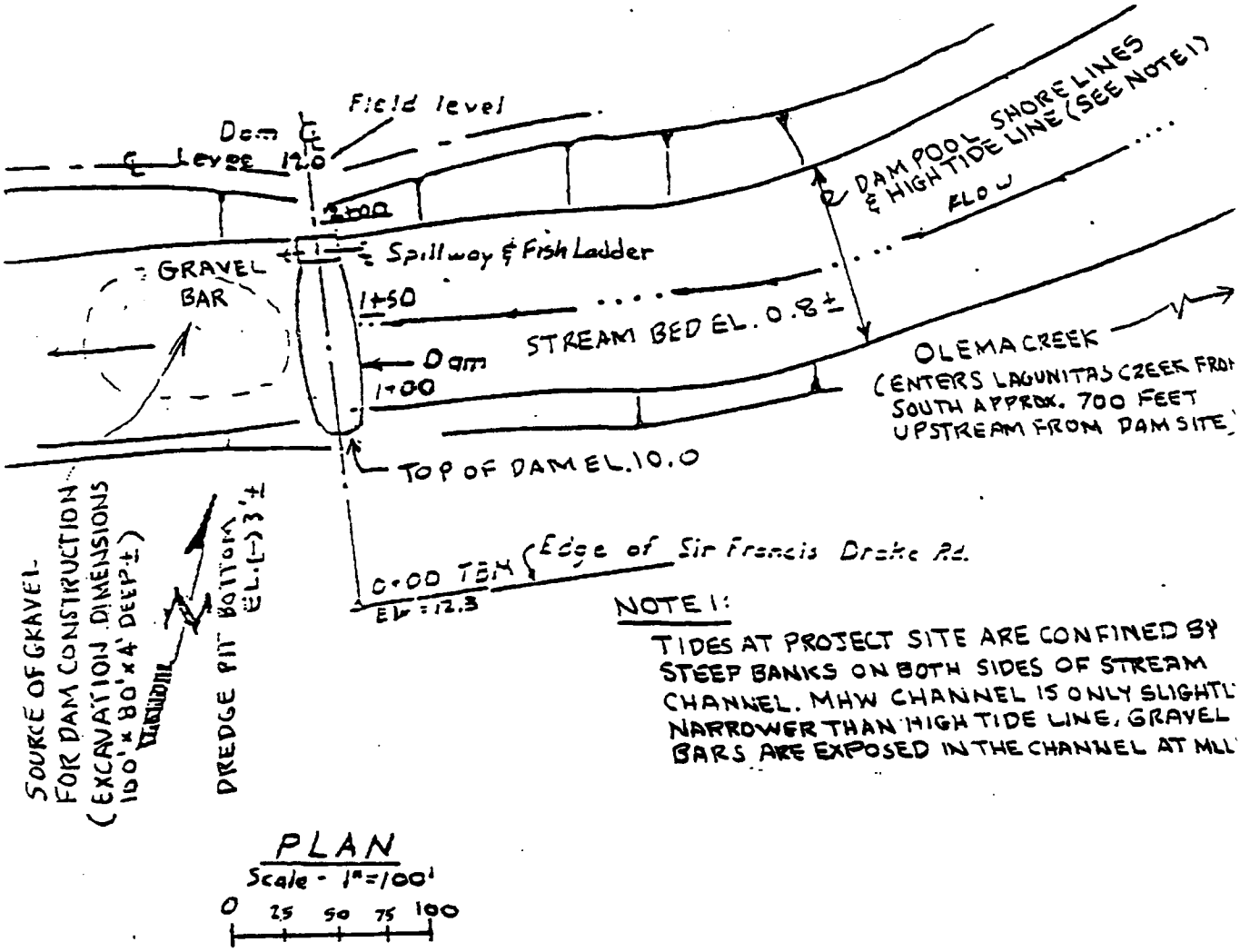
1. FIND THAT THE FINDING OF NO SIGNIFICANT IMPACT, PREPARED AND ADOPTED FOR THIS PROJECT BY U.S. ARMY CORPS OF ENGINEERS, MEETS THE REQUIREMENTS OF THE CEQA. THEREFORE, PURSUANT TO 14 CAL. CODE REGS. 15225, ADOPT SUCH FEDERAL DOCUMENT FOR USE IN PLACE OF A NEGATIVE DECLARATION.

2. FIND THAT THIS ACTIVITY IS CONSISTENT WITH THE USE CLASSIFICATION DESIGNATED FOR THE LAND PURSUANT TO PUBLIC RESOURCES CODE SECTIONS 6370, ET SEQ.

3. LEASE NO. PRC 7084 REMAINED IN FULL FORCE UNTIL IT EXPIRED ON OCTOBER 31, 1995.

4. AUTHORIZE ISSUANCE TO RICH GIACOMINI OF A TWO-YEAR GENERAL PERMIT-ANNUAL SEASONAL DAM BEGINNING NOVEMBER 1, 1995; IN CONSIDERATION OF ANNUAL RENT IN THE AMOUNT OF $150, PROVISION OF PUBLIC LIABILITY INSURANCE FOR COMBINED SINGLE LIMIT COVERAGE OF $500,000; FOR INSTALLATION OF AN ANNUAL SEASONAL DAM ON THE LAND DESCRIBED ON EXHIBIT "A" ATTACHED AND BY REFERENCE MADE A PART HEREOF.

EXHIBIT A-1
LAND DESCRIPTION



NOTE 1:

TIDES AT PROJECT SITE ARE CONFINED BY STEEP BANKS ON BOTH SIDES OF STREAM CHANNEL. MHW CHANNEL IS ONLY SLIGHTL NARROWER THAN HIGH TIDE LINE. GRAVEL BARS ARE EXPOSED IN THE CHANNEL AT MLL

PURPOSE: PREVENT SALINITY INTRUSION INTO PASTURE IRRIGATION WATER DATUM: MLLW ADJACENT PROPERTY OWNERS: 1. STATE OF CALIF. 2. 3.	PLAN VIEW WITH CURRENT PROJECT CONDITIONS RICH GIACOMINI P.O. BOX 85 PT. REYES STA., CA 94956	PROPOSED SUMMER DAM IN: LAGUNITAS CREEK AT: POINT REYES STATION COUNTY OF: MARIN STATE: C APPLICATION BY: RICH GIACOMI SHEET 2 OF 16 DATE 03/03/7

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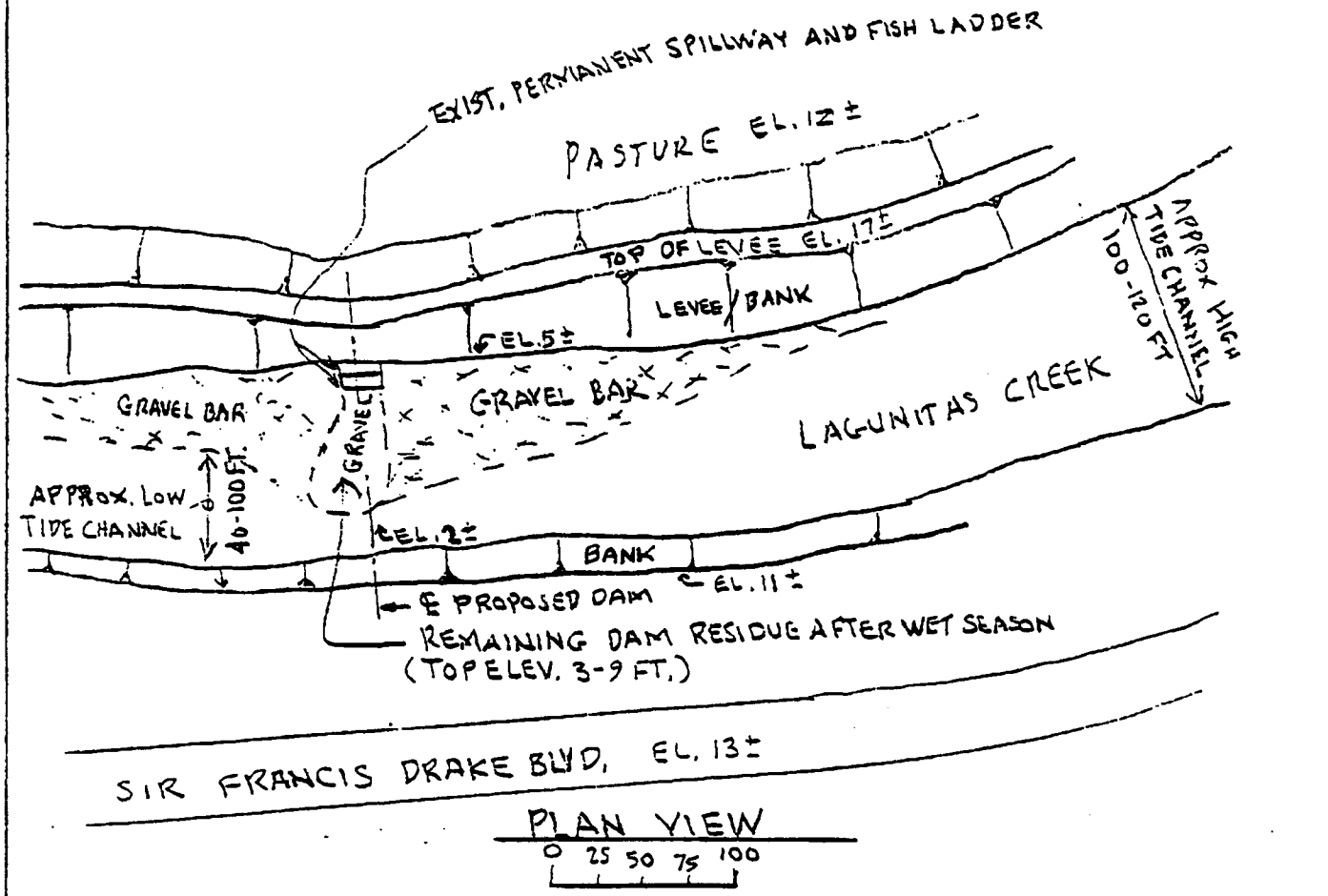
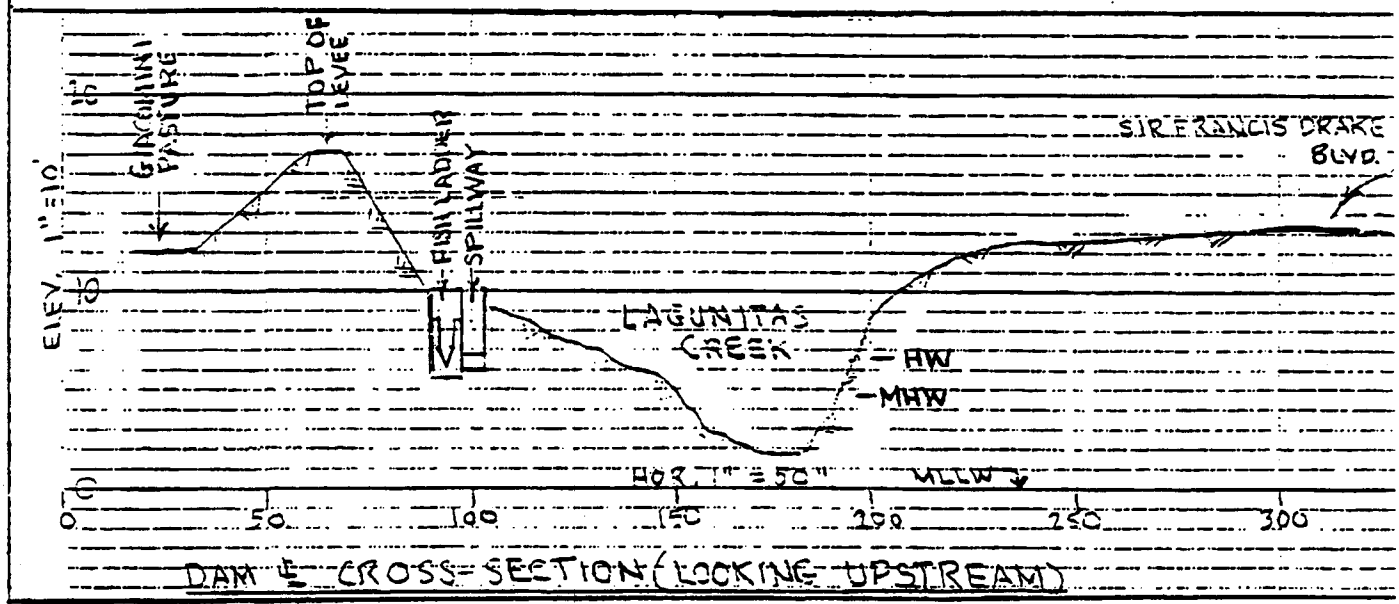
ATTACHMENT 2

LAND DESCRIPTION





NOTE: EXISTING SITE CONDITIONS SHOWN ARE AS THE SITE WAS PRIOR TO INSTALLATION OF THE DAM IN JUNE 1995

PURPOSE: PREVENT SALINITY INTRUSION INTO PASTURE IRRIGATION WATER DATUM: MLLW ADJACENT PROPERTY OWNERS: 1. STATE OF CALIF. 2. 3.	PLAN VIEW AND CROSS-SECTION "EXISTING" SITE CONDITIONS RICH GIACOMINI P.O. BOX 85 PT. REYES STA., CA 94956	PROPOSED SUMMER DAM IN: LAGUNITAS CREEK AT: POINT REYES STATION COUNTY OF: MARIN STATE: CA APPLICATION BY: RICH GIACOMINI SHEET 4 OF 6

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ATTACHMENT 2

EXHIBIT B

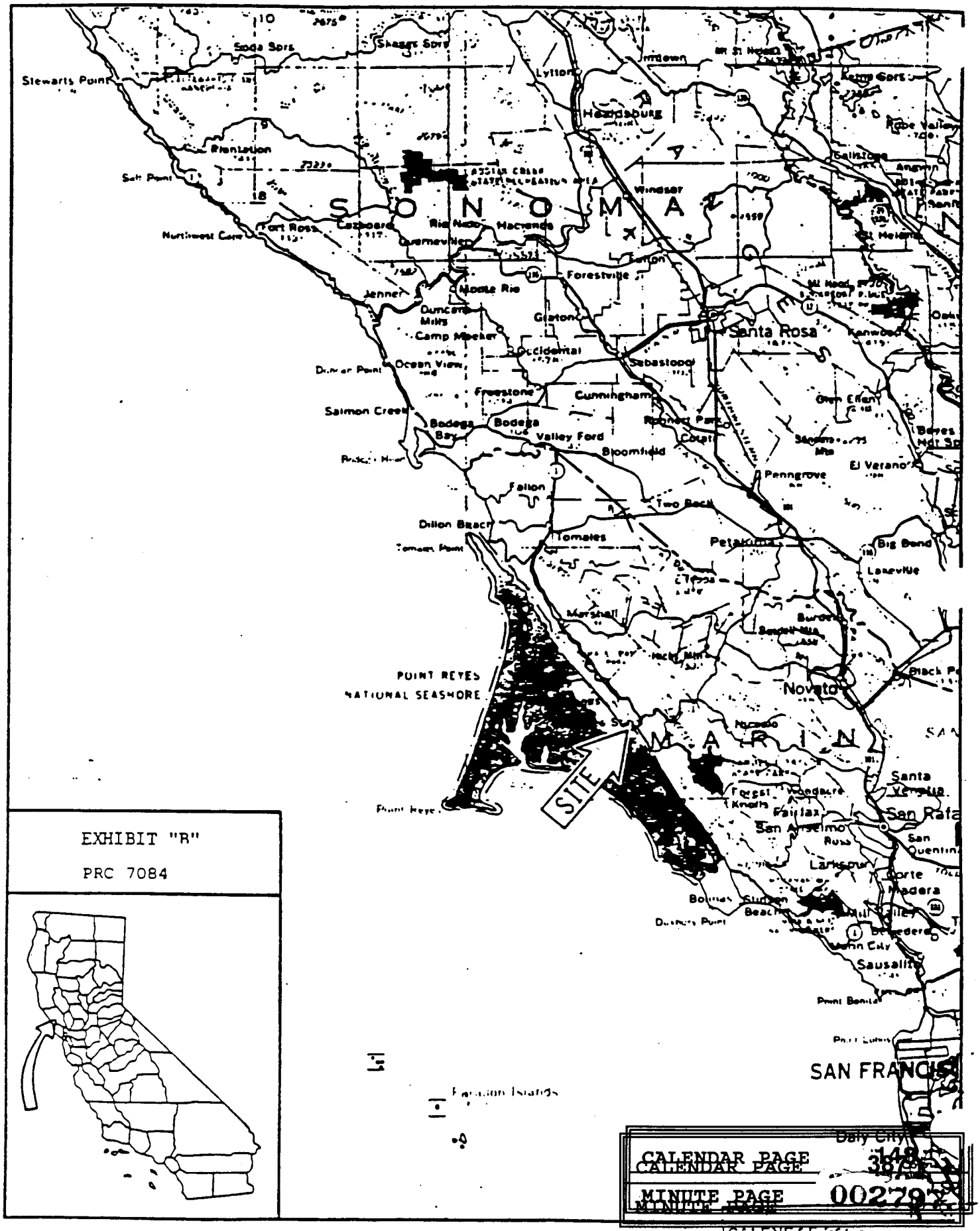

EXHIBIT "B"

PRC 7084

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EXHIBIT C

DEPARTMENT OF THE ARMY PERMIT EVALUATION AND DECISION DOCUMENT

APPLICANT: The Waldo Giacomini Dairy Ranch
APPLICATION NUMBER: 21921N83

This document constitutes my Environmental Assessment, Statement of Findings, and review and compliance determination according to the 404(b)(1) guidelines for the annual construction of a dam in Lagunitas Creek 2,500 feet downstream of the State Highway 1 Bridge near the Point Reyes Station in Marin County, California.

I. PROPOSED PROJECT: The applicant proposes to anually construct a summer dam across the tidal reach of Lagunitas Creek during the 1996 and 1997 irrigation seasons. The proposed site (the Giacomini Site) is located approximately 2,500 feet downstream of the State Highway 1 bridge. The summer dam would consist of approximately 1,300 cubic yards of gravel. The dimensions of the proposed dam are 10 feet high, 100 feet long, 8 feet wide at the top and 60 feet wide at the base. The proposed dam would be constructed with gravel obtained downstream of the proposed site.

The applicant (Giacomini) applied for authorization to install a dam at the proposed location for two years (the Giacomini Site) and then install a similiar dam at an upstream location (the Coast Guard/Genazzi Site) for the following three years. The feasibility of installing the dam at the upstream location was dependant an agreement being reached between North Marin Water District (NMWD), Giacomini and Genazzi (the property owner). Since an agreement was not reached, the proposed dam at the Coast Genazzi site is no longer under consideration.

The applicant has obtained several permits for the summer dam in the past and a similar dam has been installed in Lagunitas Creek for the past fifty two years. The latest permit (18843N83) was issued on 14 June 1994. A permanent fish passage was constructed 1984 (Sis Arndt's 31 May 1996 letter).

II. ENVIRONMENTAL AND PUBLIC INTEREST FACTORS CONSIDERED:

A. Purpose and Need: The applicant states the purpose of the proposed dam is to impound water upstream of the dam and raise the surface of the impoundment high enough to prevent salinity intrusion in Lagunitas Creek, and so the applicant can obtain enough fresh water to maintain his dairy. Although not specifically the applicant's purpose the dam also prevents salinity intrusion of the NMWD's wells which are relied on for drinking water. The Corps has determined that the project purpose for the this project is prevent salinity intrusion into

Giacomini's diversion structure which provides fresh water for the dairy and NMWD's wells.

B. Alternatives (33 CFR 320.4 (b)(4), 40 CFR 230.10):

1. No Action - If a dam is not installed Giacomini will be unable to irrigate the pastures necessary for the dairy operation. If the pastures are not irrigated the salt water underlying the ranch will be drawn up into the root zones of the pasture grasses and will kill the grasses.

It is also probable that North Marin Water District's wells would be contaminated with salt water for an extended period of time and render the well water non-potable.

2. Other Project Designs - The applicant has considered other alternative designs to the proposed project (The Summer Dam dated 1 December 1987) that could accomplish the same purpose of preventing upstream salinity and providing a reliable water supply. In addition to the gravel dam, the applicant considered dams constructed of other types of material including a pipe dam, a sandbag or flashboard dam. All these types of dams were compared on the Genazzi and Marshall Sites. Gravel dams were found to be the least costly and have the least maintenance requirements.

3. Other Project Sites - In compliance with Special Condition 1 of the Department of Army permit 18843N83 the Feasibility Study of Alternative Genazzi & Marshall Sites for Giacomini Ranch Lagunitas Creek Summer Dam was prepared by North Marin Water District to further evaluate the feasibility of constructing gravel dams at these sites.

C. Environmental Assessment:

ENVIRONMENTAL SETTING: The project is located in Lagunitas Creek. The project site is surrounded by diked baylands which were filled so they are now uplands. The headwaters of Lagunitas Creek are located on the northern slope of Mount Tamalpias. The creek flows approximately 25 miles northwest until it empties into Tomales Bay. The Lagunitas Creek watershed, which spans approximately 103 square miles, is the largest watershed in Marin County.

There are four reservoirs in the Lagunitas watershed. Lagunitas Reservoir and the Alpine Reservoir are located on the southern end of the creek. Two permanent dams, (Kent Reservoir) and Lagunitas Dam, have been constructed on the main stem of the creek.

Most of the land in the Lagunitas Watershed is publicly owned. The Marin Municipal Water District owns the land surrounding the reservoirs. Samual P. Taylor State Park and part of the Golden Gate Recreation Area are located in the Lagunitas watershed.

a. IMPACTS ON THE AQUATIC ECOSYSTEM

(1) Physical and Chemical Characteristics and Anticipated Changes:

SUBSTRATE - The applicant proposes to construct a seasonal gravel dam in Lagunitas Creek, located initially at the current Giacomini dam site during the 1996 and 1997 irrigation seasons (June 15 to November 1). The dam would require the placement of 1,300 cubic yards of gravel fill. The base of the proposed dam would measure 100 feet long and 60 feet wide, it would have a 6,000 square foot imprint. The dam would be 10 feet high. Gravel would be obtained by dragline excavation from immediately downstream of the dam. Gravel would be redeposited in the borrow area when the dam is washed out or breached.

STREAMFLOW - The State Water Resources Board has ordered that the flows in Lagunitas Creek be increased by additional releases of water from the reservoirs. These additional flows will limit tidal influence in Lagunitas Creek.

The flow of water impounded behind a temporary dam would be slowed. The proposed dam would also cause more consistent flows past the dam.

EROSION AND SEDIMENTATION RATE - It appears that logging, cattle grazing and the construction of dams within the Lagunitas watershed has resulted in a cycle of aggradation between floods followed by scour during high flows, with a long-term trend of aggradation. The channel has aggraded two to three feet over the last century (Philip Williams and Assoc., 1993).

The slowed water upstream of the dam at either location is expected to drop the sediment load it is carrying thus contributing to the aggradation of the creek bed. Since the dam would be removed by high flows or breached by November 1 of each year, prior to the period when most of the suspended sediment transport occurs, this impact is considered minor.

WATER SUPPLY (NATURAL) - The diversion of water enabled by the dam decreases the amount of freshwater available for local wildlife. However, the proposed dams would prevent salinity intrusion during the summer which would make the remaining freshwater more available for local wildlife over a longer extent of the creek. The net impact to natural water supply is considered minor and adverse.

WATER QUALITY (TEMPERATURE) - The water in the impoundment behind the proposed dams is expected to increase in temperature at least in the upper stratum because it has been slowed down and exposed to solar energy for a longer period of time. Warmed water stresses aquatic organisms adapted for life in cold flowing creeks including migrating salmon. If this water becomes too warm it would be lethal to some aquatic organisms. The limited evidence indicates that the water becomes warm enough to stress salmon. The magnitude of this impact is not predictable because we do not have long term studies.

(2) Biological Characteristics and Anticipated Changes:

POOL AND RIFFLE AREA (SPECIAL AQUATIC SITE) - Any pool and riffle habitat located upstream of the dam sites would be inundated if the proposed dam is constructed. The is at least one shallow pool upstream of the project site which would be inundated.

ENDANGERED SPECIES - The Corps has informally conferred with the United States Fish and Wildlife Service pursuant to Section 7 of the Endangered Species Act about the effects of the proposed project the endangered tide water goby (*Eucyclocobius newberryi*) and the threatened California Red legged frog (*Rana aurora draytonii*). The Corps has concluded that the proposed project is not likely to directly effect either species. The proposed project may indirectly effect the tide water goby by making it more difficult for this species to recolonize Lagunitas Creek where it has not been observed since 1953.

The Corps informally consulted with the US F&WS regarding potential effects of the project on the California red-legged frog and the tidewater goby. The Corps concluded that the proposed project is not likely to adversely affect either species.

The National Marine Fisheries Service has been petitioned to list Coho Salmon as a threatened or endangered species. The proposed dam may impact these salmon and other anadromous fish by inhibiting migration and trapping smolts. Trapped smolts stressed by warm water, might be more easily preyed in the impoundment then a creek or they might be entrained on the irrigation pump. The proposed dam creates a salinity barrier with upstream of the dam being fresh water and downstream being salt water. This salinity barrier would stress migrating fish. The proposed dam is also believed to have negative impact on Opossum shrimp (*Neomysis mercedis*) which is a major food source for the salmon.

The applicant has attempted to minimize the effect of the proposed dam by maintaining a Denil fish ladder to accomodate passage of adult fish and timing the installation and demolition of the dam to avoid the migration season. With the mitigation measures the proposed project is expected to have minor to moderate impact on the fish. This impact is given a [illegible]

weight, however, because of the rapidly declining fish populations in the area and because of the efforts to improve and maintain salmon habitat in Lagunitas Creek. If the Coho Salmon is listed during 1996 or 1997 the Corps must confer with the National Marine Fisheries Service to ensure this project will not jeopardize the continued existence of this species.

HABITAT FOR FISH AND OTHER AQUATIC ORGANISMS - As discussed under the heading "Streamflow" the dam is constructed in the estuarine portion of Lagunitas Creek and affects the estuary by reducing freshwater flows and precluding or reducing the mixing of fresh and saline waters. The elimination of this mixing, which alters the estuarine salinity distribution, likely eliminates or reduces brackish water species from the creek during the period when the dam is in place. Some species may be displaced permanently; however, this is difficult to assess because a dam has been installed at the site since 1943.

Surveys conducted in the impoundment behind the current dam identified the following: coho salmon, steelhead trout, Sacramento sucker, staghorn sculpin, prickly sculpin, prickly sculpin, surf smelt, green sunfish, three-spine stickleback and yellowfin goby (Cox, 1987; WESCO, 1993).

In addition, white sturgeon (*Acipenser transmontanus*) have been observed below the dam. Although sturgeon do not spawn in Lagunitas Creek, white sturgeon are believed to use it as a nursery. The proposed dam prevents the upstream migration of this species, thereby restricting habitat availability. The extent of habitat upstream of the dam (to which access is precluded) has not been measured of described. The Department of Fish and Game believes that a shallow riffle would prevent sturgeon from migrating upstream of the Highway 1 Bridge (Cox, B, California Department of Fish and Game).

b. IMPACTS ON RESOURCES OUTSIDE OF THE AQUATIC ECOSYSTEM

(1) Physical Characteristics and the Anticipated Changes:

AIR QUALITY - The construction of the dam would have minor, short term impacts on quality in the vicinity of the project site. Based on the relative minor size of the proposed project the Corps has determined that the total direct and non-direct project emissions would not exceed the de minimis thresholds levels of 40 CFR 93.153. Therefore, the proposed project would conform the State Air Quality Implementation Plan for California.

(2) Socioeconomic Characteristics and the Anticipated Changes:

AGRICULTURAL ACTIVITY - The proposed dam would enable the diversion of fresh water from Lagunitas Creek. This diverted water would be used to irrigate 325 acres of pasture used in the Giacomini Diary operations. Beside watering the pasture, this irrigation is necessary to prevent saline intrusion. If the

groundwater under the dairy were to become saline and reach the foot zone of the pasture grasses it would kill the grass and possibly make the entire dairy uneconomical.

COMMERCIAL FISHING - The Pacific Fisheries Management Council has determined that coho salmon cannot be commercially harvested. Therefore, the proposed dam would not impact commercial fishing. However, the negative impact of the dam on salmon migration might hinder the reestablishment of a commercial Coho Salmon fishery.

ECONOMICS - The Giacomini pastures are located on diked, formerly tidal lands of Tomales Bay. Due to their hydrologic condition and their low elevation, the soil and groundwater in these pastures exhibit extremely high salinity levels. In order to maintain the pastures, Giacomini must irrigate with sufficient freshwater during the dry season to keep the saline ground water beneath the plant's root zones or the plants will die.

The elimination of the diversion would force Giacomini to obtain another water supply or cease operation, either of which would cost Giacomini a lot of money.

In addition, in 1990, the Giacomini Ranch produced 4.4% of the milk in west Marin County and 3.6% of the California Cooperative Creamery's Marin County milk source (Philip Williams and Associates, 1993). Reduction in the ranch's productivity may economically impact these dairy markets.

PRIVATE WELLS - Many private wells exist in the Point Reyes Station area. It is possible that a large portion of these wells would experience salinity intrusion during dy years if the Giacomini dam was not installed. In addition, during the October 24,1995 North Marin Water District Board of Director's informational workshop, an individual who lives in Point Reyes community stated that when Giacomini's dam is not installed and the saltwater intrudes, there, is a horrible smell accompanied by sand flies.

EMPLOYMENT - The Giacomini Ranch currently employs eight people (Philip Williams and Associates, 1993). Reduction in ranch productivity may reduce or eliminate this employment.

RECREATIONAL OPPORTUNITIES - During the October 24,1995 North Marin Water District Board of Director' information workshop, individuals voiced concern on using the pond created behind the Giacomini dam for swimming. While some individuals alleged the pond was a heath risk others were concerned about losing a place to swim.

(3) Historic and Cultural Characteristics and Anticipated Changes -

The dam is not expected to effect any cultural resources.

c. SUMMARY OF CUMULATIVE IMPACTS

Logging, grazing, damming, water diversion, and diking of tidal lands have affected the Lagunitas Creek watershed. Taken together, these actions have degraded the water quality and wildlife habitat of the basin resulting in declining biological diversity. By incurring the impacts discussed in this assessment, the proposed summer dam would be a minor contribution to the cumulative degradation of the watershed.

d. CONCLUSIONS AND RECOMMENDATIONS

Based on an analysis of the above identified impacts, a determination has been made that it will not be necessary to prepare an Environmental Impact Statement (EIS) since the proposed dam will not have a significant impact on the quality of the human environment.

III. FINDINGS:

A. Other authorization:

1. Water Quality Certification: The San Francisco Region of the Regional Water Quality Control Board waived certification for the proposed project on condition that:

a. The permit for installation of the dam at the present location will be authorized for 1996 and 1997 only, with the provision that the applicant either develop an alternative source of irrigation water or determine an alternative, less damaging future site for the dam, acceptable to the Regional Board and other resource agencies, within that period. Their Regional Board will not reauthorize the present dam past the two years specified in this waiver.

b. This waiver is for construction of the dam at the current site; certification is not waived for dam construction at any further site along Lagunitas Creek.

c. The installation of the dam must be delayed each year as late as possible but at least until June 15th to minimize impacts to migrating juvenile coho salmon and steelhead trout.

d. The applicant shall include modifications to the dam as requested by the State Department of Fish and Game, to ensure safe passage of coho salmon and steelhead. Fish passage structures shall be maintained as required by Fish and Game.

2. Coastal Zone Management Consistency Determination: The California Coastal Commission (CCC) issued Permit No. 504 on 2 December 1974 with no expiration date. Since 1974, the CCC has not required renewal of the permit because the project has not substantially changed.

B. Public Interest Review:

A complete application was received on 27 Febuary 1996. A Public Notice describing the project was issued on 7 May 1996, and was sent to all interested parties including appropriate State and Federal agencies.

Most of the commentors stated opposition to the dam which was proposed at the Coast Guard/Genazzi Site for the 1998, 1999 and 2000 irrigation seasons. Many of these commentors felt that sufficient environmental evaluation has not been completed and some alleged that it was illegal for the Corps to review both dams as one project.

The Corps believes (and is supported by the California Department of Fish and Game) that a dam at the Coast Guard/Genazzi site is a less environmentally damaging alternative; however, according to the application material it would take two years to lay the necessary pipe to irrigate Giacomini's property and that the applicant cannot gain access to the site rendering this alternative not practicable because it is logistically infeasible.

The Corps believes that was proper to review both of the dams together because at the time of the application and the Public Notice it was unclear if the applicant could gain access to the Coast Guard/Genazzi site via an agreement between the applicant and North Marin Water District. This agreement was not reached because of a disagreement over water rights which North Marin Water District was attempting to obtain. Giacomini did want to sell their water rights because doing so might endanger the potential sale of their property to the National Park Service.

Since the second dam site has been dropped from the application via Giacomini's 17 June 1996 letter we will not further address any of the issues raised by the interested public and by the resource agencies.

1. Summary of comments received:

a. FEDERAL AGENCIES:

(1) U.S. Fish and Wildlife Service (US F&WS): Based on its review of the PN and available data, believes that the proposed project would continue to adversely affect fishery resources along Lagunitas Creek and does not appear to be the least environmentally damaging alternative. They stated, however, that they would not object to a to year authorization.

The Corps informally consulted with the US F&WS regarding potential effects of the project on the California red-legged frog and the tidewater goby. The Corps concluded that the proposed project is not likely to adversely affect either species.

(2) *U.S. National Marine Fisheries Service (NMFS):* In the 18th FONCONs between O'Leary and Maragni and O'Leary and Stern NMFS has no objection to a 2 year permit for the proposed dam on the Giacomini site to enable the consideration of other alternatives provided that Section 7 Consultation take place if the Coho Salmon (*Oncorhynchus mykiss*) is listed as a Threatened or Endangered Species.

(3) *National Park Service (NPS):* NPS is currently discussing potential purchase of the Giacomini property and currently has property and fee interest in lands above where the dam is proposed. NPS also exploring potential alternatives to construction of the summer dam which would protect NMWD's water supply and ways to irrigate the Giacomini property. They requested that the Corps expedite processing of the permit for the downstream site.

b. STATE AND LOCAL AGENCIES:

(1) *California Department of Fish and Game (CA F&G):* CA F&G recommended special conditions be added to the permit regarding the size of flashboards in the Denil fishway these conditions have been added.

(2) *North Marin Water District (NMWD):* NMWD informed us in their 8 May 1996 letter that they were unable to reach an agreement with Giacomini. In their 22 May 1996 letter they recommended several modifications in the PEA. The EA above has been modified to reflect only a dam at the Gaicomini site. NMWD's comments have been considered and our responses are below:

Erosion and Sediment Rate: this section recognizes that most of the sediment transport takes place during the winter months when the proposed dam would not be in place which is why this is considered a minor impact

Water Supply (Natural): the large amount of freshwater which is diverted from the creek is considered a moderate to major decrease in the water availability in the creek, the dam partially mitigates this by making freshwater available for a longer period of time over a longer stretch of creek so the net impact is considered minor.

Water Quality: This section has been modified to reflect the uncertainty about the uncertainty of the expected increased temperature.

Endangered Species: The EA reflects the US F&WS, who are the federal government's experts on endangered species, concerns that the dam makes it more unlikely that the tidewater goby would be able to recolonize Lagunitas Creek.

There are differences in opinion about the extent to which the dam blocks migration. The June 15th installation and November 1st demolition dates were recommended by the Department of Fish and Game and the National Marine Fisheries Service. Since we have not received reports of fish kills behind the dam we agree that the fish can find the way out of the impoundment, however we still believe that dam and fishway is more difficult for a fish to navigate than an open stream.

We have dropped the discussion of temperature ranges for salmon because of conflicting information.

Commercial Fishing: Since the dam is expected to have an adverse impact on the Coho Salmon it follows that the dam would hinder the reestablishment of a Coho Salmon fishery.

(3) North Marin Water District (Dennis Rodoni, Director): see discussion directly above this summary section

c. ORGANIZATIONS:

(1) Avocet Research Associates: see discussion directly above this section

(2) eac: see discussion directly above

(3) The Environmental Forum of Marin: see discussion directly above this section

(4) Marin Audubon Society: see discussion directly above this section

(5) Sierra Club, Marin Group: see discussion directly above this section

(6) Tomales Bay Association: see discussion directly above this section

d. INDIVIDUALS:

(1) Frank Eggen: see discussion directly above this section

(2) Anne West: see discussion directly above this section and discussion of the impacts to Coho Salmon in response to NMWD's comments.

(3) John F. West: see discussion directly above this section and discussion of the impacts to Coho Salmon in response to NMWD's comments. The Endangered Species, Coho Salmon section has been modified to reflect the communities efforts to restore Coho Salmon in Lagunitas Creek. We recognize that some impacts to Coho Salmon are not mitigated (i.e. the creation of a

salinity barrier).

(4) Kaynor J. Weishaupt: We acknowledge his opposition to the proposed project.

(5) Sis Arndt: We acknowledge Ms. Arndt's opposition to the proposed project. The potential acquisition of the Giacomini property is outside of the scope of this permit and this office. The history of the installation of the dam was based on the application of the applicant. If the dam is installed during regular working hours we will attempt to have a staff member on site. The Corps has requested that the NPS have a representative present during the installation to ensure the special conditions are followed. It is beyond the scope of the Corps to ensure the California Coastal Commission's permit is accurate. The Coastal Commission has received a copy of our public notice and not commented on any discrepancies. The smells of the dairy ranch are not germane to issuance of a Corps permit. Also see the discussion directly above this section.

2. Evaluation:

I have reviewed and evaluated, in light of the overall public interest, the documents and factors concerning this permit application and the stated views of other interested agencies and the concerned public. In doing so, I have considered the possible consequences of this proposed work in accordance with regulations published in 33 CFR Part 320 and 40 CFR Part 230. The following paragraphs include my evaluation of comments received and how the project complies with the above cited regulations.

a. CONSIDERATION OF COMMENTS:

The Corps has considered all of the comments recieved as discussed in the above section.

b. EVALUATION OF COMPLIANCE WITH 404(b)(1) GUIDELINES (restrictions on discharge, 40 CFR 230.10): Installation of the dam at the Coast Guard/Genazzi is a less environmentally damaging alternative but, it is not logistically possible. The Giacomini dam is determined to be the least damaging practicable alternative.

(1) Alternative Test:

The Marshall site was infeasible because it does not meet the minimum protection for salinity intrusion. For this alternative to be feasible an additional well would have to be established. NMWD identified a site on the Gallagher Ranch to be the most suitable upstream alternative for an additional well. An emergency well was located at this site in 199[illegible] and has yielded less water than expected. The Corps concludes, therefore, that

this alternative is not practicable because it is technically infeasible.

The Genazzi site (which was identified as the Coast Guard site in the Public Notice because Mr. Genazzi did not want to be publicly identified with the project) is not at this time a feasible alternative because Giacomini is unable to obtain use of the site. The Corps concludes, therefore, that this alternative is not practicable because it is logistically infeasible.

Construction of a sand bag, flashboard, or pipe dam would have impacts which are similiar or greater than the proposed gravel dam.

The Corps, therefore, determines that the proposed dam is the least environmentally damaging practicable alternative.

(2) Special restrictions: The proposed discharge will not: 1. Violate State water quality standards; 2. violate toxic effluent standards (under Section 307 of the Act); 3. jeopardize endangered or threatened species or their critical habitat; 4. violate standards set by the Department of Commerce to protect marine sanctuaries; 5. Evaluation of the information in II C and D above indicates that the proposed discharge material is not a carrier of contaminants.

(3) Other restrictions: The discharge will not contribute to significant degradation of waters of the United States.

(4) Actions to minimize potential adverse impacts: The operation of the fish ladder, the timing of installation and demolition should mitigate some of the impacts of the dam.

c. GENERAL EVALUATION (33 CFR 320.4(1)):

(1) Extent of the public and private need: The dam is necessary to prevent salinity intrusion into NMWD's wells which provide municipal drinking water.

(2) Alternative locations and methods: Alternative locations and methods have been evaluated on it has been determined that the proposed dam is the least environmentally damaging practicable alternative.

(3) Beneficial and detrimental effects: The benefical and detrimental effects are discussed in the above Environmental Assessment.

IV. DETERMINATIONS:

A. Finding of No Significant Impact (FONSI): I have considered aquatic ecosystems' special aquatic ~~sites, fish and~~ wildlife resources, threatened and endangered species, water quality, erosion and deposition, flood protection, economic

resources, cultural resources, navigation and other public interest factors. These were considered in terms of agency policy and guidance.

Based on information gathered during the preparation of the environmental assessment, including the views of cooperating Federal and State agencies having special expertise or having jurisdiction by law, and comments expressed by the public, the Corps has determined that the impacts associated with the project as proposed would not be significant pursuant to the National Environmental Policy Act of 1969; consequently, an Environmental Impact Statement will not be prepared.

A. 404(b)(1) Compliance/Non-compliance Review (40 CFR 230.12): The discharge complies with the guidelines.

B. Public interest determination: I find that issuance of a Department of the Army permit (with special conditions), as prescribed by regulations published in 33 CFR Parts 320 to 330, and 40 CFR Part 230 is not contrary to the public interest.

24 June 96
Date

Debra A O'Leary
Debra O'Leary
Regulatory Action ~~Officer~~

6-24-96
Date

Michael J. Walsh
Lieutenant Colonel, Corps of Engineers
District Engineer

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