US Army Corps of Engineers®

SAN FRANCISCO DISTRICT

PUBLIC NOTICE

Regulatory Branch
333 Market Street
San Francisco, CA 94105-2197

NUMBER: 291380N DATE: June 20, 2006
RESPONSE REQUIRED BY: July 10, 2006

PERMIT MANAGER: Elizabeth Dyer PHONE: 415-977-8451 Email: Elizabeth.Dyer@spd02.usace.army.mil

1. INTRODUCTION: RMB Land Company, Mr. Claude Grillo, President, 154 Saddle Oaks Court, Walnut Creek, California, 94596, through his agent Kinder Morgan Energy Partners, L.P.(KMEP), 1100 Town and Country Road, Orange California, 92868, has applied for a Department of the Army permit to implement the *Drake Sprig Duck Club Division A Brood Pond Restoration Plan.* The Restoration Plan encompasses the following elements: (1) To construct a new levee by placing 527 cubic yards of fill along 750 lineal feet (7,840 square feet) resulting in a permanent loss of 0.18 acre of jurisdictional waters of the United States; (2) to grade, contour, and create three refugia islands by discharging approximately 10,266 cubic yards of fill within the brood pond to create approximately 1.23 acres of wetland; (3) to excavate a 15- to 20-foot wide channel along 1,747 linear feet of the brood pond to provide for water conveyance; (4) to place 121 cubic yards (0.37-acre) of fill for installation of two water-control structures along the eastern perimeter levee to connect the brood pond with Old Roos Cut; and (5) to place approximately 140 cubic yards of material on top 1,275 liner feet of an existing perimeter levee (15,300 square feet) that would tie into the new levee.

This application is being processed pursuant to the provisions of Section 404 of the Clean Water Act (33 U.S.C. Section 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. Section 403).

2. BACKGROUND INFORMATION:

A pipeline owned by KMEP ruptured on April 27-28, 2004, releasing up to 2,454 barrels of diesel fuel into the marshes of the Drake Sprig Duck Club (#414), located 5 miles south of the City of Fairfield, in Solano County, California. The pipeline lies in a railroad right-of-way adjacent to a managed salt marsh used as a breeding area for ducks (Division A). The diesel fuel entered a ditch parallel to the railroad tracks and flowed through a dry ditch perpendicular to the railroad to a culvert where diesel fuel flowed onto the water surface of Old Roos Cut Slough (Division B). There was little or no surface water in Division A at the time of the release; however, in addition to surface migration, the spread of diesel fuel in Division A appeared to have been influenced by a network of desiccation cracks. The constant westerly winds pushed diesel fuel on the water surface in Division B from the west to the east of the Drake Sprig Duck Club (Figure 1-1).

The recovery of surface oil in Division B was conducted using absorbents and pumps as appropriate. A surface water management plan to allow water back into Division B to assist in recovery efforts included three inflow events to raise and lower the water levels and dry out the shorelines to aerate the soils. Oiled vegetation was removed.

Remediation activities for Division A (brood pond) included recovery of diesel fuel using vacuum trucks, pneumatic pumps, and absorbent boom and pads, and excavating trenches and pits to recover diesel fuel and contaminated soils. These remediation activities also included the removal of one water-control structure and an interior levee, and periodic

tilling/discing of contaminated soil for bioremediation purposes.

3. PROPOSED PROJECT:

Project Site: The Drake Sprig Duck Club property is approximately 224 acres in size, divided into Division A and Division B. Division A, the brood pond, is described as a 15-acre parcel, consisting of managed wetlands, with club buildings and a caretaker's residence located in the northwest corner of the property.

Flow of water into and out of the club property is controlled by the owners and occurs at five locations along Roos Cut (a navigable waterway) including one location on Old Roos Cut. In winter months, portions of the club are flooded to create duck rearing and feeding areas. The flooding also creates conditions suitable for marsh vegetation and related biota. In spring and summer months, the property is flushed with water from the delta to reduce soil salinity. After flushing, the marsh is drained and dried out to provide access for vegetation control and maintenance activities. The managed marsh operational activities are conducted in accordance with the Suisun Marsh Management Plan and the U.S. Army Corps of Engineers Regional General Permit (RGP#3).

The project area is comprised of an estimated 10.13-acres of jurisdictional waters of the United States and within this area there is an estimate of 4.28 acres of jurisdictional wetlands. In accordance with U.S. Army Corps of Engineer regulations, the site was delineated by ENTRIX Incorporated, and LFR Incorporated, in August and December 2005, utilizing the *Corps of Engineers Wetland Delineation Manual* (January 1987). To date, the Corps has not verified the applicant's delineation.

The salt marsh vegetation consists of pickleweed (*Salicornia virginica*), saltgrass (*Distichlis spicata*), brass-buttons (*Cotula coronopifolia*), western sea purslane (*Sesuvium verrucosum*).

Emergent brackish marsh vegetation consists of tule (*Scirpus americanus, Scirpus acutus*), bulrush, (*Scirpus maritimus*) cattails, (*Typha*) common reed (*Phragmites australis*) and broad-leaved pepperweed (*Lepidium latifolium*).

Seasonal wetland vegetation is found in recently disturbed areas and along the levee banks. Dominant seasonal wetland vegetation consists of rabbit's-foot grass (*Polypogon monspeliensis*) brass-buttons (*Cotula coronopifolia*), and Italian ryegrass (*Lolium*), and Spear scale (*Atriplex triangularis*).

The soils on the site are characterized by high levels of salt, specifically within the soil horizons of 4 to 6 inches, below ground surface, well within the root zone.

Project Description: The Restoration Project area is approximately 11.3 acres, and the proposed topography for the project area would vary from 0.5 feet to 4 feet above mean seal level (MSL).

The Restoration Plan includes the construction of a new levee to replace approximately 400 lineal feet of interior levee that was removed during the diesel spill clean-up work. The new levee would isolate the buildings and parking area from the remainder of the site and tie into the existing perimeter levee along Old Roos Cut. The new levee would be approximately 750 feet in length and utilize approximately 527 cubic yards (0.18 acre) of fill material obtained from Skip Chadbourn's duck club. Prior to construction, the new levee footprint would be cored by a low-ground pressure excavator to create a trench, 3-4 feet in width and 3 feet in depth. In turn, the trench would be backfilled with the same excavated material but compacted using the bucket of the excavator (Figure A).

The Restoration Plan calls for the discharge of approximately 1,188 cubic yards of dredged and fill material over 0.36 acre of other waters to create three refugia islands within the brood pond. The remaining area of the brood pond would undergo extensive grading and re-contouring, using a drag scraper pulled by a low ground pressure, rubber-tracked tractor (Figures: B, 6A, 6B, 6C).

The Restoration Plan calls for the excavation of 699 cubic yards of dredged material to create a channel, 15-20 feet in width and 1,747 feet in length, extending across the brood pond over an area of 0.48-acres (20,963 square feet). The channel would provide enhanced water circulation within the brood pond (Figure B).

The Restoration Plan calls for the installation of two water-control structures, necessitating the discharge of 121 cubic yards of dredged and fill material over 0.37 acre of jurisdictional waters. The two water-control structures would be installed along the eastern levee, connecting the brood pond with Old Roos Cut. Both structures would consist of a flashboard riser to control water depth in the brood pond and an HDPE extruded culvert pipe to convey water through the levee (Figure B and C).

Finally, the Restoration Plan provides for the maintenance of 1,275 feet of perimeter levee along Old Roos Cut, by placing up to 140 cubic yards of fill material (0.35 acre) on the crest of the levee structure (Figure D).

KMEP estimates 10,266 cubic yards of dredged and fill material would be placed/discharged onto the site to grade/create the features for the brood pond. The source of the fill material would be from existing on-site stockpiles and from other clubs located within the Suisun Marsh. On-site dredged and fill material would include 1,087 cubic yards of uncontaminated surface soil, seed bank material, and plant material that was isolated during the release response and remediation activities. The off-site material would include approximately 9,622 cubic yards of fill material imported from the Arnold Ranch and the Skip Chadbourne Property (Figure E).

The fill imported from the Arnold Ranch would be transported through Division B via existing vehicular pathways and into the brood pond from the north in the vicinity of the duck club buildings. Fill material imported from the Skip Chabourne Property would be transported south via Chadbourne Road to the junction of Chadbourne Road and the Union Pacific Railroad. The transportation route would then continue south on the UPRR access road and enter the brood pond from the north.

Purpose and Need: KMEP states that the basic purpose of the project is to restore "functionality" to the duck brood pond (Division A) that was adversely affected by the April 2004 pipeline release of diesel fuel and the subsequent remediation activities. KMEP further indicates the overall project purpose is to restore the site to attract ducks to the brood pond, while establishing a similar acreage of habitat for endangered species that existed prior to the initial clean-up and remediation work.

The project is a water dependent activity because the club controls the water levels in the managed wetland.

Impact: Implementation of the proposed restoration plan would result in a fill of 10.31 acres of jurisdictional waters. This fill would include a temporary fill of 2.29 acres of jurisdictional waters and a permanent fill of 8.02 acre of jurisdictional waters, of which 4.28 acres are wetlands. The overall project would result in a net loss of 0.18 acre of jurisdictional waters, since most of the current jurisdictional areas undergoing grading work would likely remain as jurisdictional other waters or wetlands after completion of the site restoration work.

The applicant proposes to complete construction before October 15, 2006.

4. COMPLIANCE WITH VARIOUS OTHER FEDERAL LAWS:

National Environmental Policy Act of 1969 (NEPA). The Corps will assess the environmental impacts of the proposed action in accordance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. Section 4371 et. Seq.), the Council on Environmental Quality's Regulations, 40 C.F.R. Part 1500-1508, and the Corps Regulations, 33 C.F.R. Part 230 and 325, Appendix B. Unless otherwise stated, the Environmental Assessment will describe only the impacts (direct, indirect, and cumulative) resulting from activities within the Corps jurisdiction. The documents used in the preparation of the Environmental Assessment will be on file with the U.S. Army Corps of Engineers, San Francisco District, Regulatory Branch, 333 Market Street, San Francisco, California 94105-2197.

Endangered Species Act of 1973 (ESA): Section 7 of the Endangered Species Act requires formal consultation with the United States Fish and Wildlife Service (FWS) and/or the National Marine Fisheries Service (NMFS), if a Corps permitted project may adversely affect any federally listed threatened or endangered species or its designated critical habitat.

The Corps will likely initiate consultation with the U.S. Fish and Wildlife Service on federally-listed threatened delta smelt, endangered salt marsh harvest mouse (*Reithrodontomys raviventris*), and endangered California clapper rail (*Rallus longirostris obsoletus*).

Old Roos Cut may be seasonally accessible to federally-listed threatened delta smelt (*Hypomesus transpacificus*), Central California Coast threatened steelhead (*Oncorhynchus mykiss*), Central Valley threatened steelhead, Central Valley Spring-Run threatened chinook salmon (*Oncorhynchus tshawytscha*), Sacramento River Winter-Run endangered chinook salmon, and the Southern Distinct Population of threatened green sturgeon (*Acipenser medirostris*). Since installation of the water-control structures would take place when no water was flowing in Old Roos Cut, the Restoration Project would likely have minimal effect on federally-listed fish species and their critical habitat. The Corps, however, has not made a definitive determination on the need to initiate consultation on these fish species and critical habitat.

To date, KMEP has not submitted a Biological Assessment to address project related impacts on federally listed species.

Magnuson-Stevens Fisheries Conservation and Management Act: NMFS and several interagency fisheries councils have designated specific water bodies as Essential Fish Habitat (EFH) in accordance with the Magnuson-Stevens Fisheries Conservation and Management Act. No specific EFH concerns associated with this proposal have been identified.

Clean Water Act of 1972 (CWA):

a. Water Quality: Under Section 401 of the Clean Water Act (33 U.S.C. Section 1341), an applicant for a Corps permit must first obtain a State water quality certification before a Corps permit may be issued. The applicant has advised the Corps that an application for water quality certification has been submitted to the San Francisco Bay Regional Water Quality Control Board. No Corps permit will be granted until the applicant obtains the required water quality certification. The Corps may assume a waiver of water quality certification within 60 days after the receipt of a valid request, unless the District Engineer determines a shorter or longer period is reasonable for the State to act.

Those parties concerned with any water quality issue

that may be associated with this project should write to the Executive Officer, California Regional Water Quality Control Board, San Francisco Bay Region, 1515 Clay Street, Suite 1400, Oakland, California 94612 by the close of the comment period of this Public Notice.

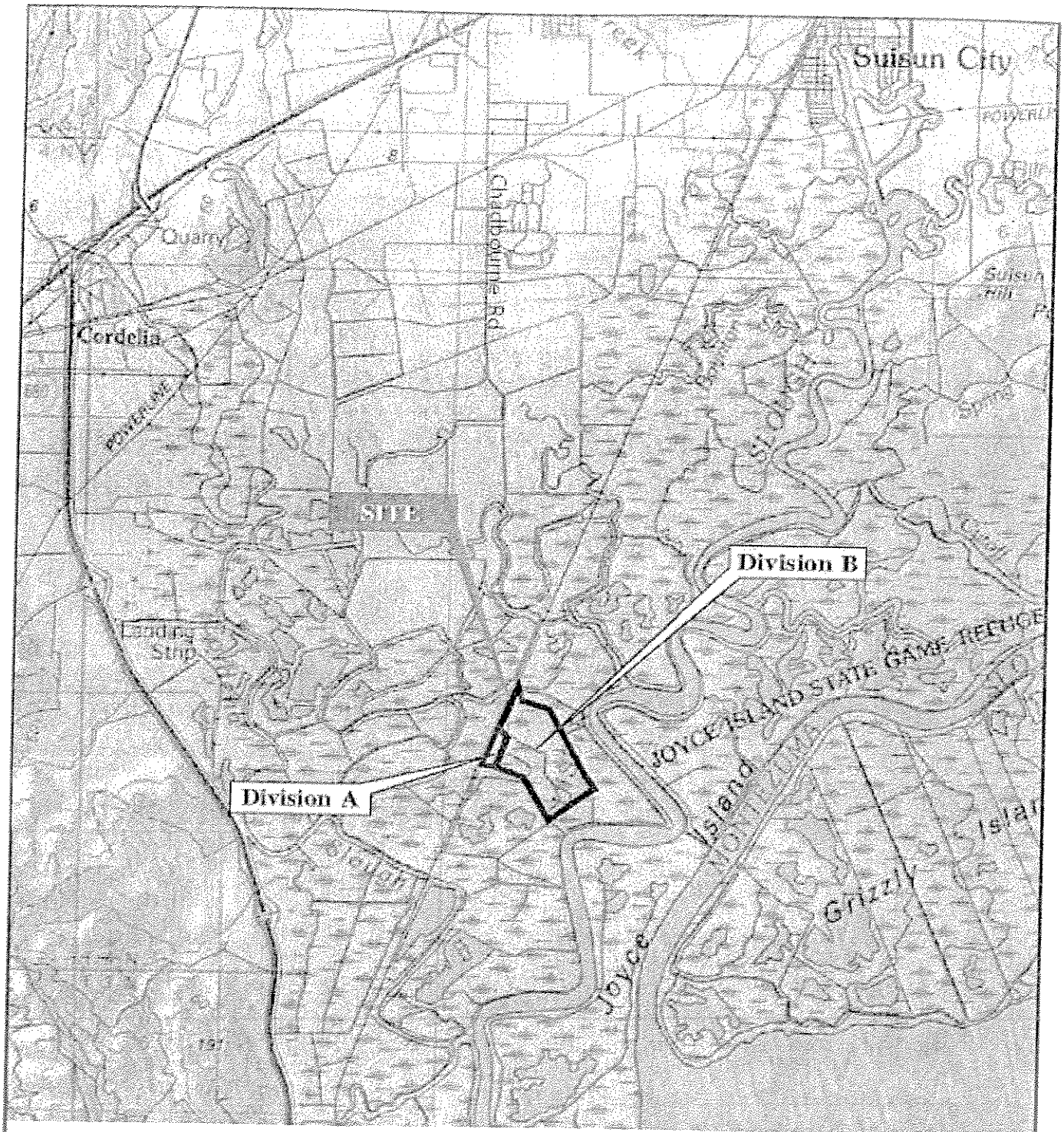
b. Alternatives: Evaluation of this proposed activity's impact includes application of the guidelines promulgated by the Administrator of the Environmental Protection Agency under Section 404(b)(1) of the Clean Water Act (33 U.S.C. Section 1344 (b)). While an evaluation has been made by this office under the guidelines and determined that the proposed project is wetland dependent, KMEP has not submitted an Analysis of Alternatives at this time.

National Historic Preservation Act of 1966 (NHPA): No surveys have been submitted to the Corps at this time.

5. PUBLIC INTEREST EVALUATION: The decision whether to issue a permit will be based on an evaluation of the probable impact, including cumulative impact, of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefits that reasonably may be expected to accrue from the proposed activity must be balanced against its reasonably foreseeable detriments. All factors that may be relevant to the proposal will be considered, including its cumulative effects. Among those factors are: conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people.

6. CONSIDERATION OF COMMENTS: The Corps of Engineers is soliciting comments from the public, Federal, State and local agencies and officials, Indian Tribes, and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps to determine whether to issue, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest in the proposed activity.

7. SUBMISSION OF COMMENTS: Interested parties may submit, in writing, any comments concerning this activity. Comments should include the applicant's name and the number and the date of this Public Notice, and should be forwarded so as to reach this office within the comment period specified on Page 1. Comments should be sent to the U.S. Army Corps of Engineers, San Francisco District, Regulatory Branch, 333 Market Street, San Francisco, California 94105-2197. It is the Corps' policy to forward any such comments that include objections to the applicant for resolution or rebuttal. Any person may also request, in writing, within the comment period of this Public Notice that a public hearing be held to consider this application. Requests for public hearings shall state, with particularity, the reasons for holding a public hearing. Additional details may be obtained by contacting the applicant whose name and address are indicated in the first paragraph of this Public Notice or by contacting Elizabeth Dyer at telephone 415-977-8451 or E-mail: Elizabeth.Dyer@spd02.usace.army.mil. Details on any changes of a minor nature that are made in the final permit action will be provided upon request.



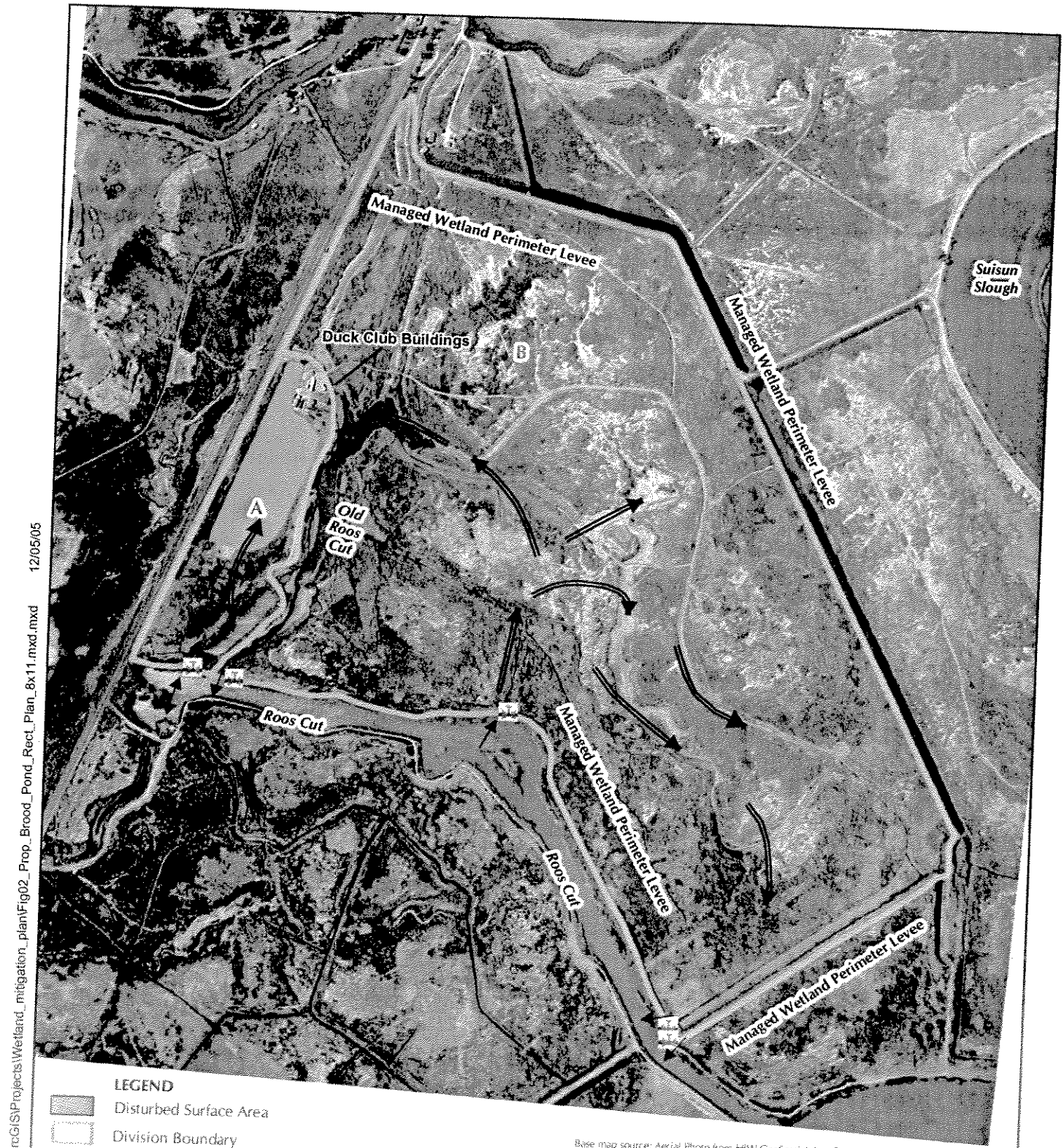
MAP SOURCE:
Printed from TOPO! ©2001 National Geographic Holdings (www.topo.com)

Site Vicinity Map
Drake Sprig Duck Club
(Division A) Restoration Project Site

Solano County, California

LFR LEVINE-FRICKE

Figure 1-1



LEGEND

- Disturbed Surface Area
- Division Boundary
- Water Control Structure
- Controlled Water Flow
- General Water Flow Direction

700 0 700 Feet

Base map source: Aerial Photo from HJW GeoSpatial, Inc. Source Image Date 07/15/2004

Drake Sprig Duck Club Existing Area Overview
KMEP Suisun Slough Release Site
Proposed Brood Pond Restoration Plan

Fairfield, California

LFR LEVINE-FRICKE

Figure 2

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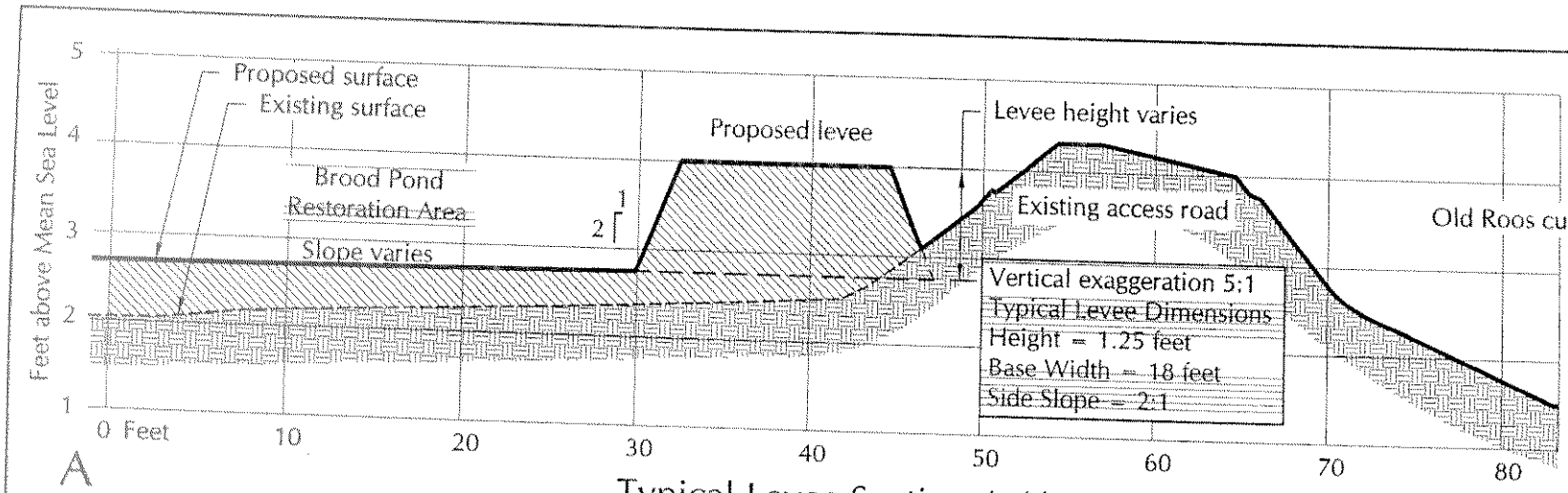
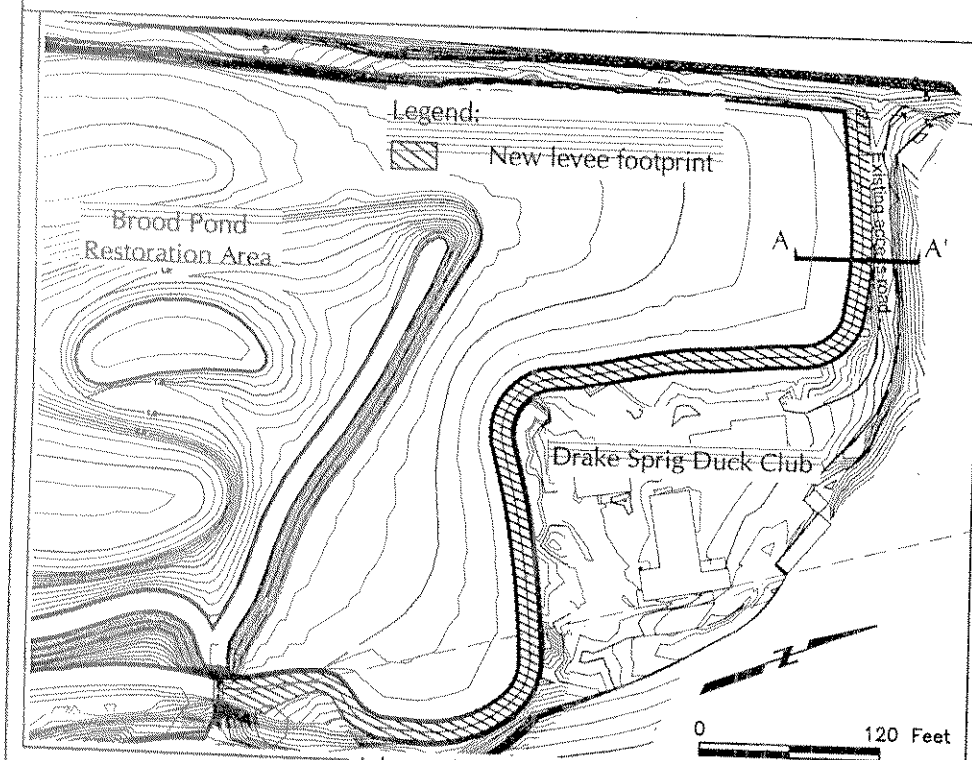


Typical Levee Section A-A'



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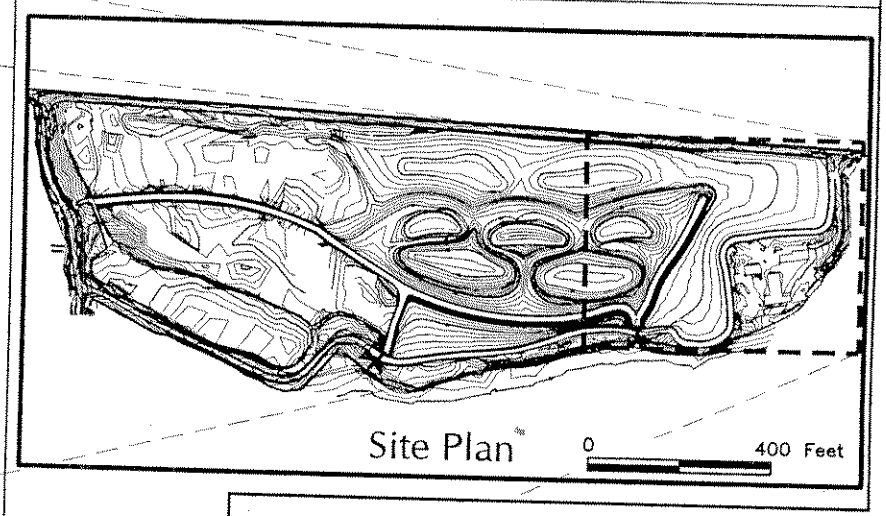
New Levee Segment Location



Cross Section and Alignment of Proposed Levee at Access Road

Drake Sprig Duck Club, Fairfield, California

LFR

Figure A

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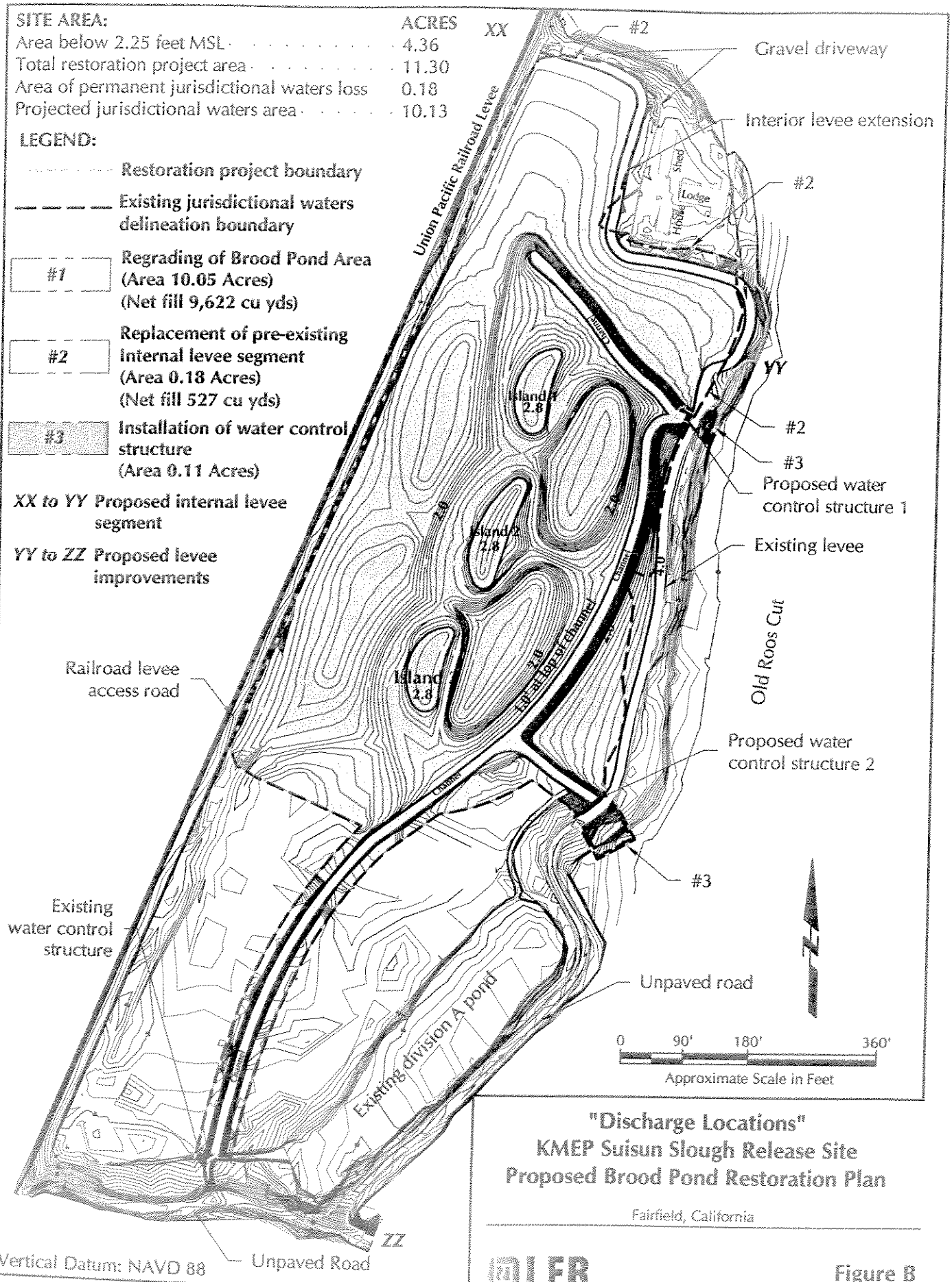

"Discharge Locations"
KMEP Suisun Slough Release Site
Proposed Brood Pond Restoration Plan

Fairfield, California

LFR

Figure B

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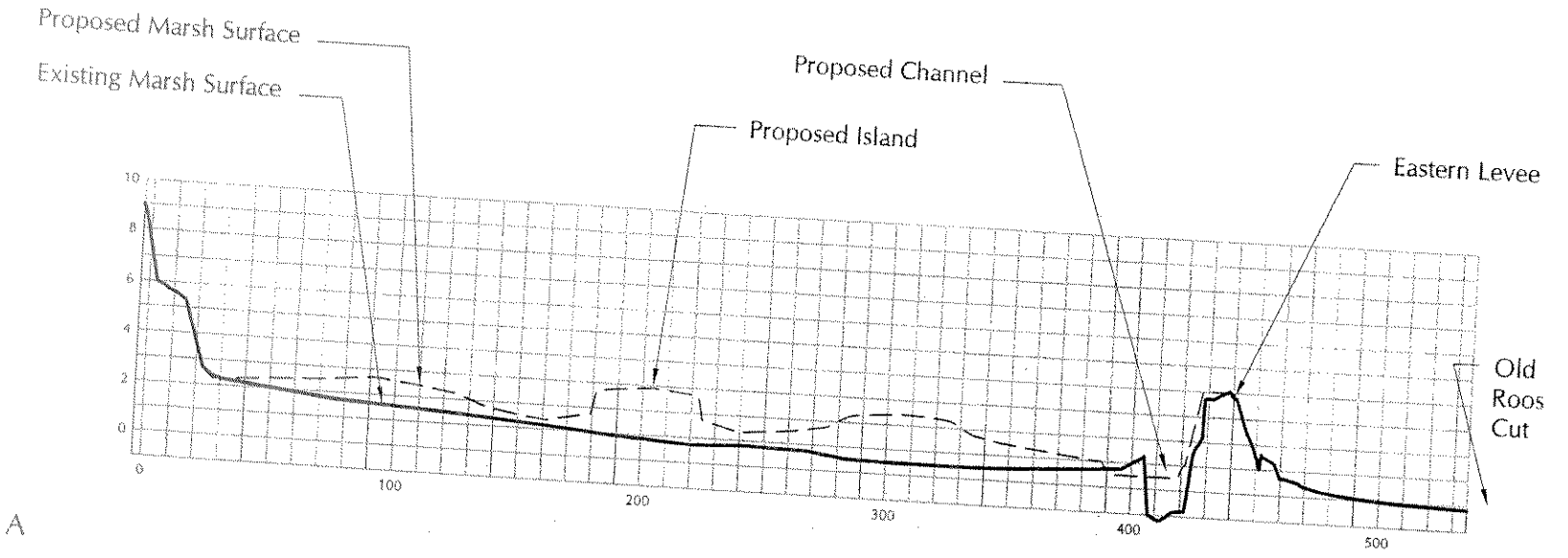
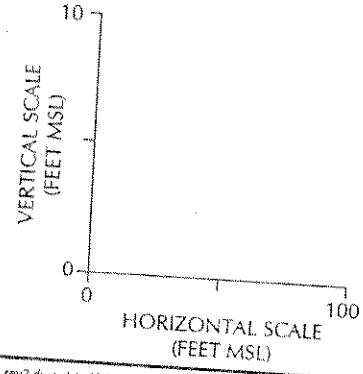


Section A-A'



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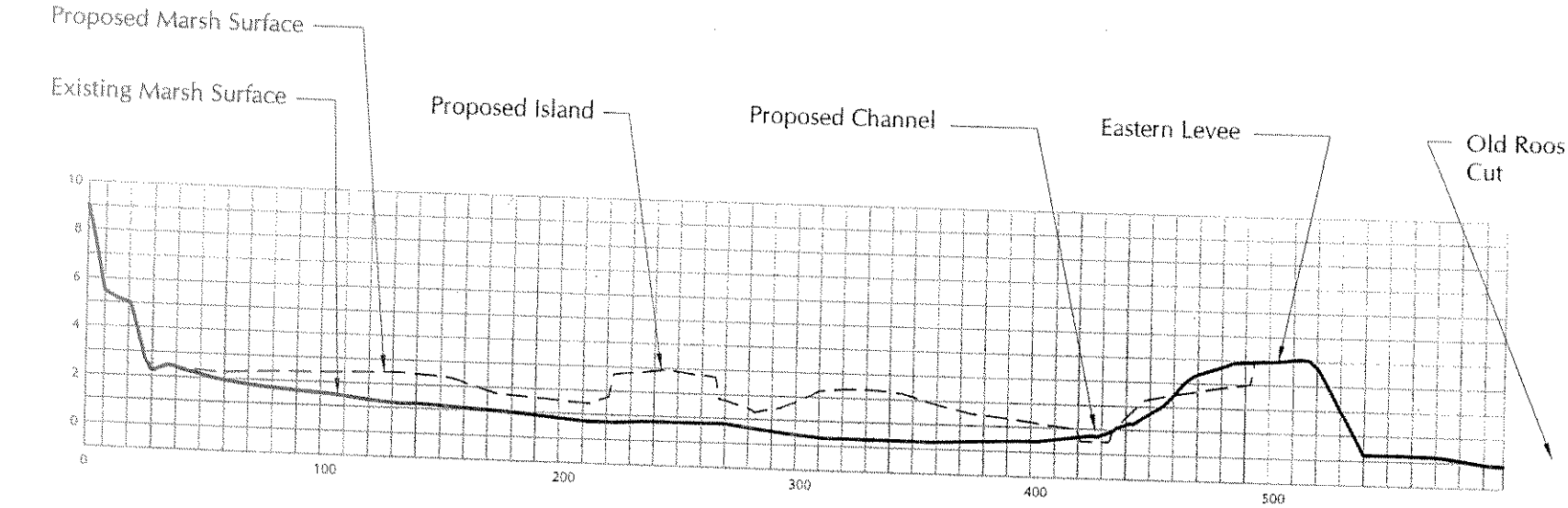
Cross Section A-A'
KMEP Suisun Slough Release Site
Proposed Brood Pond Restoration Plan

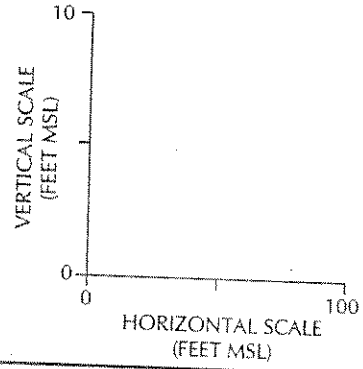
KMEP Suisun Release Site, Fairfield, California

LFR

Figure 6A



Section B-B'



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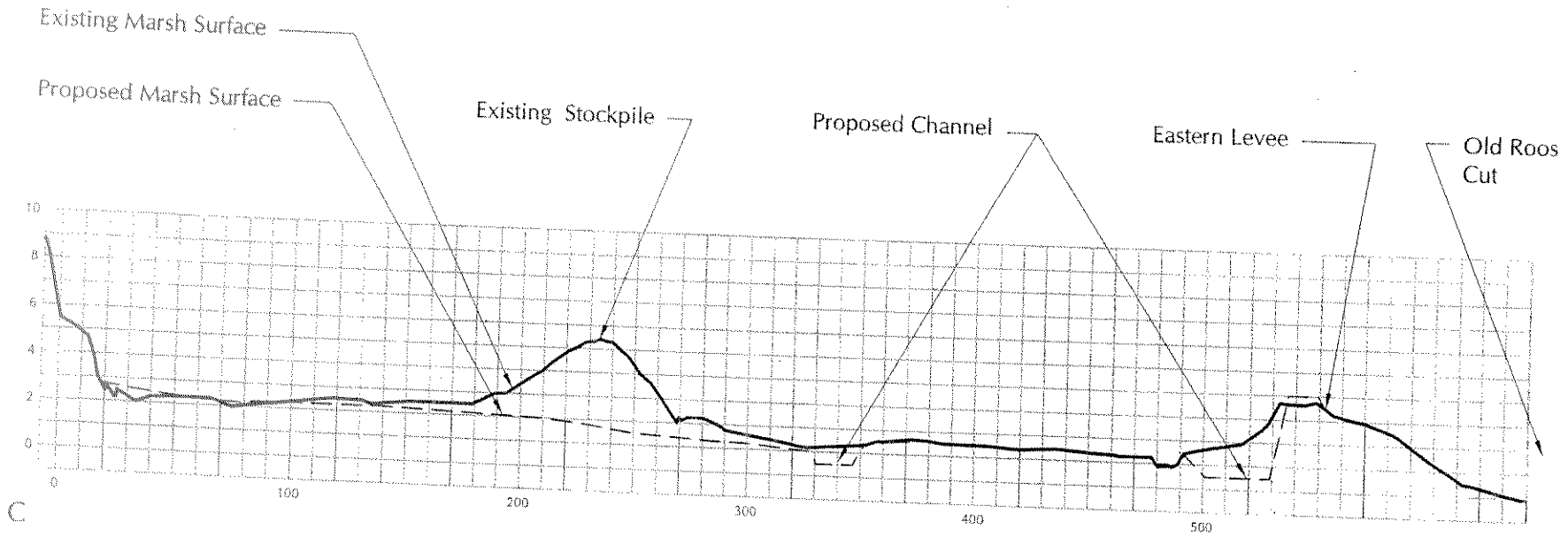
Cross Section B-B'
KMEP Suisun Slough Release Site
Proposed Brood Pond Restoration Plan

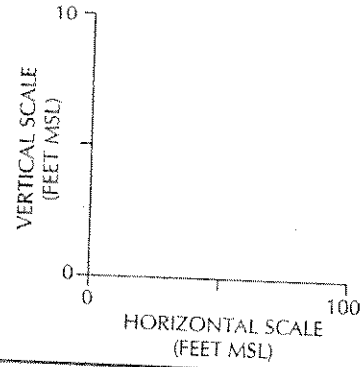
KMEP Suisun Release Site, Fairfield, California

LFR

Figure 6B



Section C-C'



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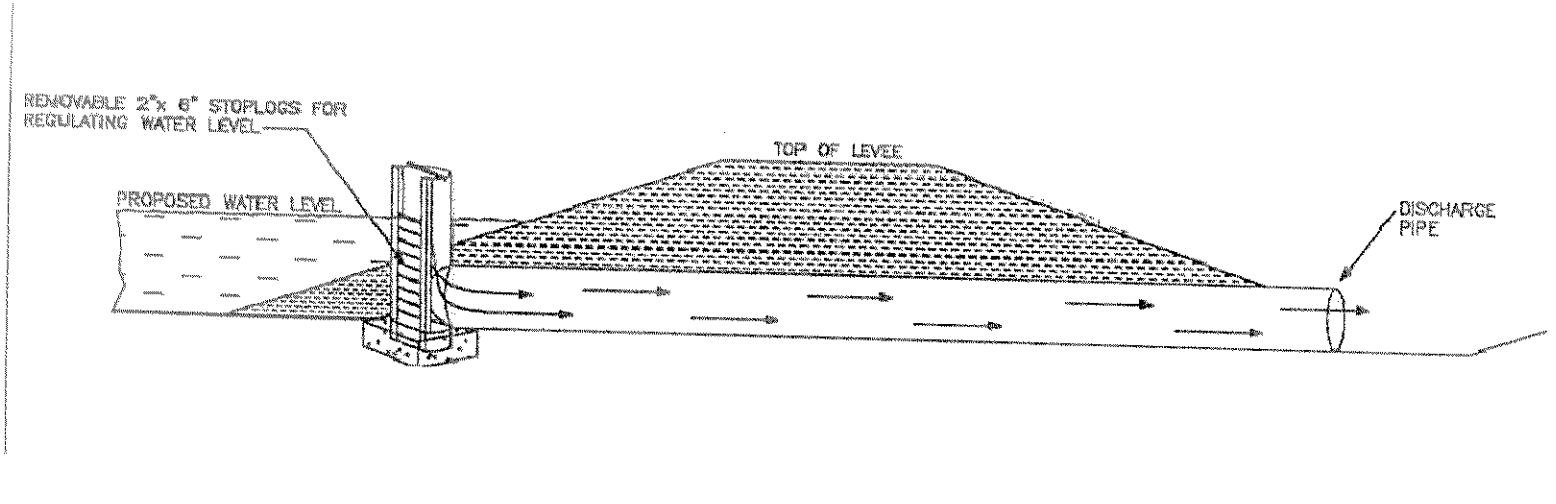
Cross Section C-C'
KMEP Suisun Slough Release Site
Proposed Brood Pond Restoration Plan

KMEP Suisun Release Site, Fairfield, California

LFR

Figure 6C



Proposed Water Control Structure
KMEP Suisun Slough Release Site
Proposed Brood Pond Restoration Plan

Fairfield, California

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Figure C

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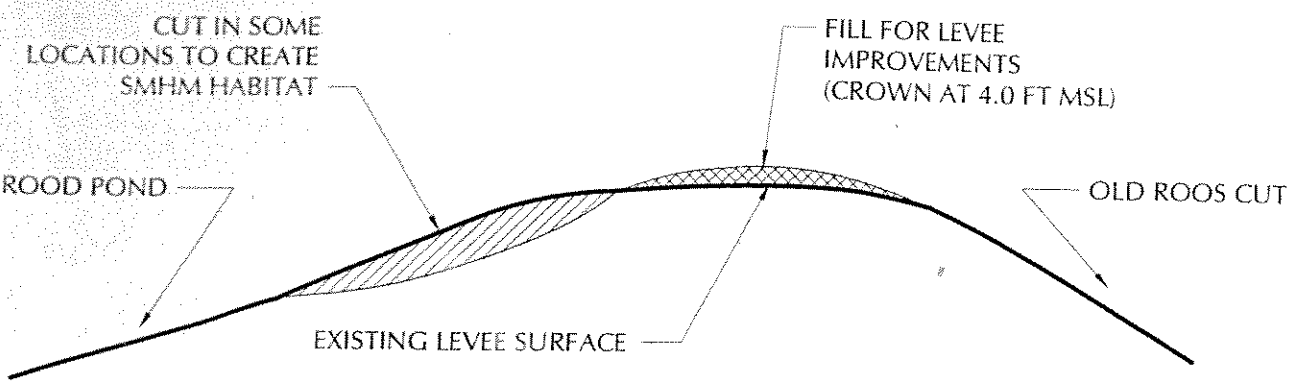

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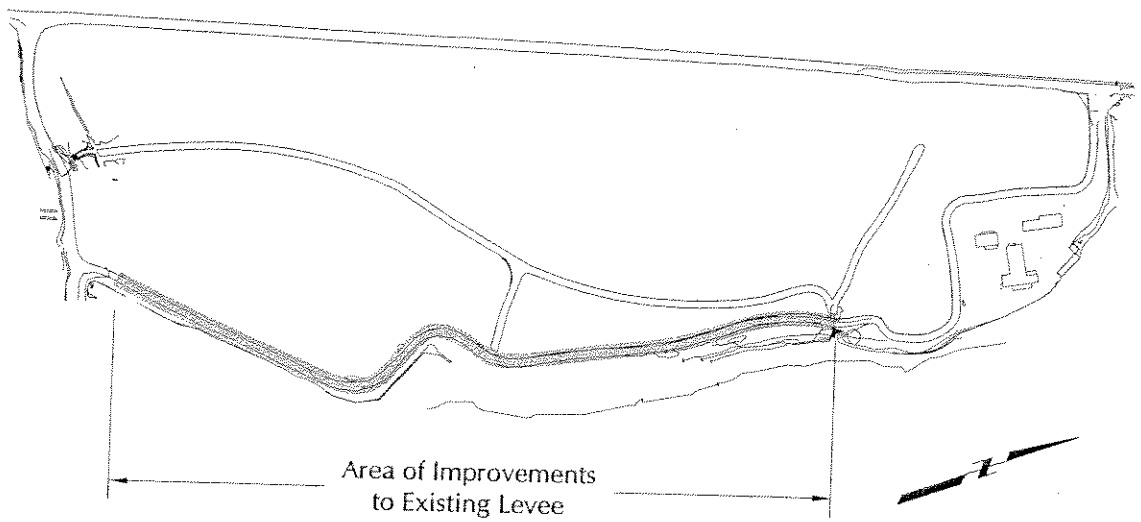

Site Plan

SCALE: 1" = 300'

Conceptual Schematic
Levee Improvements to Existing Levee
Proposed Prood Pond Restoration Plan

KMEP Suisun Release Site, Fairfield California

LFR

Figure D

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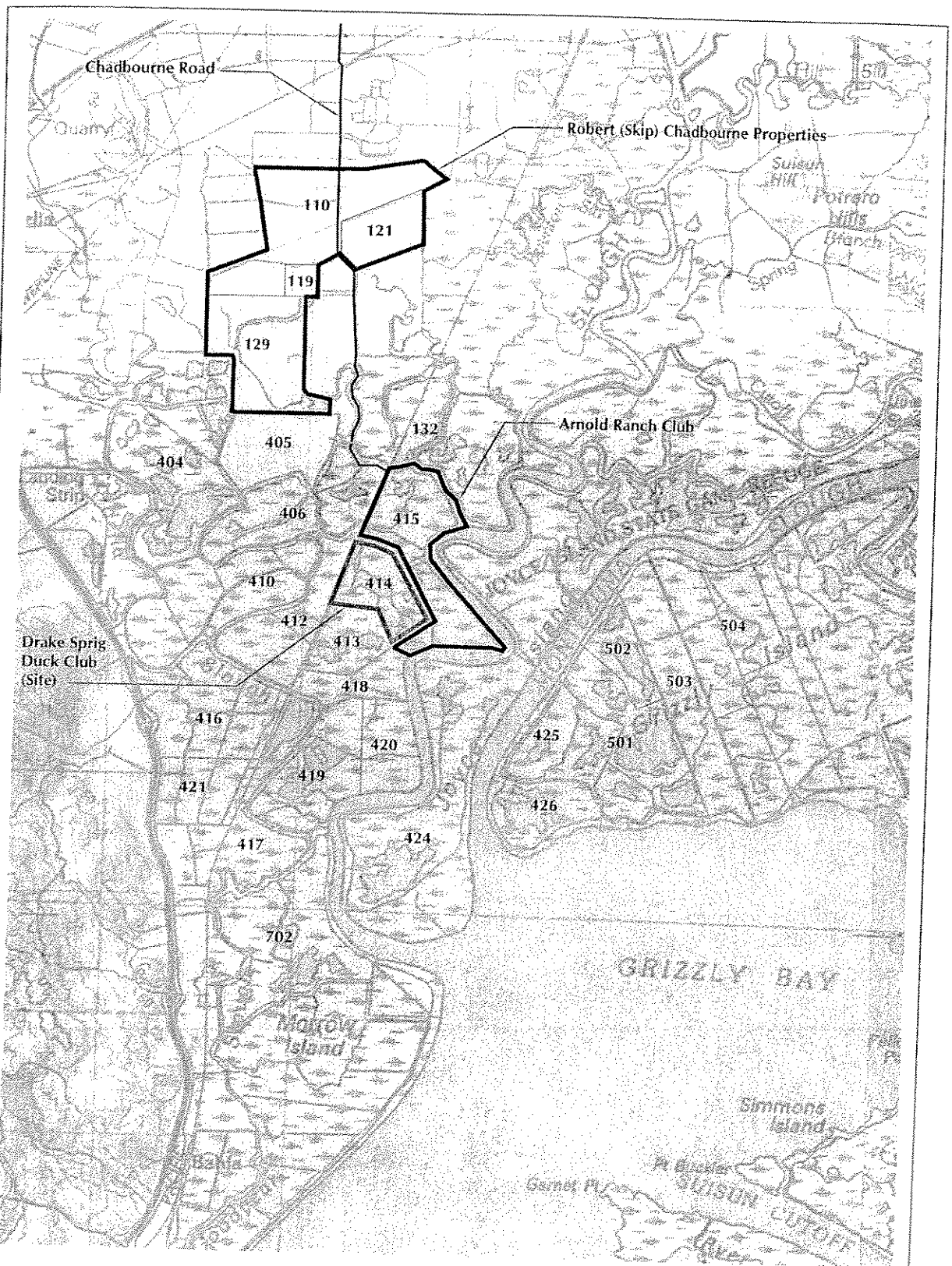

EXPLANATION

219 Suisun Resource Conservation District Ownership Numbers Written on Properties

N

0 4000'

Approximate Scale in Feet

SOURCE: NATIONAL GEOGRAPHIC TOPOMAPS

Proposed Sources of Offsite Fill Material
KMEP Suisun Slough Release Site
Proposed Brood Pond Restoration Plan

Fairfield, California

LFR

Figure E