

A-85-0883

**SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION**

30 VAN NESS AVENUE  
SAN FRANCISCO, CALIFORNIA 94102-6080  
PHONE: (415) 557-3686



February 9, 1984

Mr. Frank Boerger  
Harding-Lawson Associates  
P. O. Box 578  
Novato, California 94947

SUBJECT: BCDC Consistency Certification No. CN 9-83

Dear Mr. Boerger:

On February 2, 1984, the San Francisco Bay Conservation and Development Commission objected to the consistency certification by Acme Fill Corporation that the proposed 97-acre expansion of the existing 125-acre sanitary landfill was consistent with the Commission's federally-approved Management Program for San Francisco Bay. The vote was as follows: 5 Commissioners concurred that the project was consistent with the Commission's Management Program, 11 objected, and 5 abstained. In objecting to the consistency certification, the Commission adopted the following resolution:

I. Non-Concurrence

The Commission OBJECTS to the certification by the Acme Fill Corporation that the project is consistent with the federally-approved Management Program for San Francisco Bay.

II. Findings and Declarations

The Commission finds and declares as follows:

A. Water-Related Industrial Use. The Bay Plan defines water-related industry as those industries that use water for transportation, thereby gaining significant economic benefits by fronting on navigable water. It is clear that a sanitary landfill is not a water-related industry and the applicant has never made that contention. The Commission finds that a sanitary landfill is not a water-related industry as that term is defined in the San Francisco Bay Plan.

B. Interim Use. The Bay Plan recognizes that water-related industrial sites will be developed over a period of years and, therefore, states that designated sites can be developed with interim uses. Neither the Bay Plan nor the Commission's regulations define "interim use." However, in past

Mr. Frank Boerger  
February 9, 1983  
Page 2

decisions, the Commission has used two general criteria for determining whether a proposed use is interim: (1) the relative ease of displacing the interim use, usually measured by the value of the capital improvements placed on the site for the interim use; and (2) the length of time that the use is expected to occupy the site and render it unavailable for the preferred use. In this case, the Commission finds the appropriate standard to be whether the landfill makes the site significantly more difficult or costly to develop for water-related industry as well as the number of years the site will be unavailable for such use.

The Commission finds that the length of time that the landfill operation will exist, plus the time it will take the site to settle, will render it impractical to develop the site within a time period that can be considered interim. The site will be unavailable for use for the next six years while the landfill operation continues and is then closed. In addition, the site will be realistically rendered unavailable for a water-related industrial use for another 20 to 30 years while the landfill and underlying muds settle. For example, with 70 feet of landfill, the amount of settlement after 30 years will be between 6-1/2 and 10-1/2 feet with another 45 percent to take place thereafter. These figures do not take into account the additional settlement that will take place within the debris that makes up the landfill itself. Using settlement rates provided by the applicant, the landfill itself will settle an additional 7 to 10-1/2 feet in 30 years. Thus, the amount of settlement with the landfill could be as much as 21 feet in 30 years.

The Commission finds it is not realistic to expect anyone to develop the site for water-related industry before a substantial amount of the settlement has taken place. When settlement rates reach the amounts expected here and it is likely that differential settlement will also occur, the maintenance costs are simply too great and uncertain. Given that situation, the Commission finds it is unlikely that any water-related industrial development would take place within 25 to 35 years and that period cannot be considered "interim," as that term is used in the water-related industrial policies of the Bay Plan.

C. Condition of the Site After Closure. The Commission further finds that a sanitary landfill of the size proposed cannot be considered an interim use because the condition of the site after closure will make the site unlikely to be developed for water-related industry.

The applicant contends to the contrary that landfill will make the site more desirable and that placing landfill on the site should reduce development costs by eliminating the need to place fill. There is no question that the site in its present condition would be difficult and expensive to

00004

develop for water-related industry because it has a low elevation that creates drainage and flooding problems. The applicant estimates that it will cost approximately \$24 million to fill the existing site to a usable elevation and compact the underlying bay mud. Because the proposed landfill eliminates the need for some of that fill, the applicant estimates it would only cost about \$14 million to accomplish the same goals if the landfill is placed because it will reduce the need to import additional fill to the site.

However, it is likely that the cost of placing 12 feet of clean granular fill on the site will be largely offset by the additional engineering costs to develop on the landfill, the additional costs associated with maintenance, the cost of imported fill needed to create enough flat surfaces for development, and the lower return that can be expected because fewer number of acres of the site will be usable than if the entire 200 acres were level. Adding 70 feet of landfill on top of 80 feet of bay mud creates a number of problems that require costly engineering solutions. The increased costs and the additional constraints that the landfill poses to an industrial developer makes it significantly more unlikely that water-related industry would locate on the site than if landfill of the height proposed were not placed. The constraints and associated costs imposed by the landfill include:

1. Given the bay muds under the site, most heavy industrial structures would have to be supported by pilings. The additional 70 feet of landfill would introduce a significant additional cost to construct and drive those pilings. The subsiding landfill will also cause a downdrag on the pilings requiring an increase in the pilings' bearing capacity which would increase cost an additional 25 percent.
2. If heavy structures were placed on pilings, the structures would remain at a fixed elevation but all ancillary facilities, such as utilities, parking areas, roadways, etc., would settle continually for a long period, necessitating additional costs to design, construct, and maintain these facilities. These design restrictions would further limit the site's availability and attractiveness to many water-related industrial uses which need stable sites that can withstand heavy loading without differential settlement.
3. Due to the organic content of the landfill, methane gas will be manufactured as long as there is decomposition in the fill, adding additional cost to trap, contain, and/or dispose of the methane gas.

4. It is possible that a limited number of water-related industries might be able to withstand some of the adverse impacts of high settlement rates by using smaller, more flexible buildings on slab foundations rather than pile-supported structures. These buildings, however, would be limited in size as well as orientation and can be expected to settle differentially as would any other facility located on the landfill. Even smaller buildings will likely require special treatment to counter the effects of differential settlement. More importantly, however, the types of water-related industry that could make use of such structures would be much more limited than if the site was not subject to such high settlement rates.

Although most, if not all, the problems cited above can be relieved or solved with proper engineering, significant and uncertain additional costs will be introduced in doing so. In fact, neither the applicant nor the staff have been able to identify a case where a water-related industrial use has chosen to locate on a former landfill site. The applicant suggests that the office buildings on the former landfill at Sierra Point in Brisbane may be considered comparable. However, the Sierra Point project differs in two important respects from this project: (1) the height of the landfill at Sierra Point was significantly less (12 to 15 feet vs. 70 feet); and (2) the return on investment in the present market for heavy industry is considerably less than the expected return on light industrial parks and offices.

There is one instance where a sanitary landfill was intended for uses in some ways similar to water-related industry. Organic materials were used to fill behind dikes to create Pier 94 in San Francisco. Although the fill was only high enough to create the desired elevation, 12 years elapsed before settlement decreased to a point where buildings and the container crane could be constructed. Since that time, the site has continued to experience differential settlement which interferes with the use of the crane and part of the fill has failed completely. To further develop the site will undoubtedly require dewatering the site, the addition of new compacted fill, and possibly the removal of some of the old fill that was placed. Therefore, the Commission cannot find the Pier 94 experience to be a successful example of developing a landfill for industrial purposes. It must be noted that Pier 94 is not comparable to the project in that the landfill at Pier 94 was not placed in the manner recommended by the design engineers, but it does illustrate some of the problems that can occur. Also, Pier 94 is not strictly comparable in that it involves port rather than water-related industrial uses. However, Pier 94 is the only example of a use with an industrial character on landfill that the staff could identify in the Bay Area.

Mr. Frank Boerger  
February 9, 1983  
Page 5

Sanitary landfill sites around the Bay for the most part have been used for park purposes. Even then, installation of irrigated landscaping and parking lots has been delayed for several years because of anticipated differential settlement. Given the settlement rates estimated by the applicant, and the absence of any successful examples to the contrary, the Commission finds that it is not realistic to expect the site to be developed for water-related industry once the proposed landfill is in place. Although it is possible that small scale industrial uses may be accommodated at the site given enough time, the Commission finds the landfill will place such major limitations on the use of the site that it will significantly detract from its ability to support water-related industry and is therefore inconsistent with the Bay Plan priority use designation.

D. Coastal Zone Management Act. The Federal Coastal Zone Management Act requires an applicant for a federal permit for an activity "affecting land or water uses in the coastal zone" to file a certification with the federal agency issuing the permit that the project is consistent with the state's Management Program. The federal permit cannot be issued until the Commission has concurred that the project is consistent with the state's management program.

In this case, a Corps of Engineers permit is required and the approved Management Program consists of the McAteer-Petris Act and the Bay Plan. Although the proposed landfill is outside of the Commission's permit jurisdiction, the site is designated in the Bay Plan as a water-related industrial priority use area. The priority use areas were included in the Bay Plan because the Commission and the Legislature recognized the need to preserve land suitable for water-related industrial uses that were important to the economy of the entire region with the minimum amount of Bay fill. The site was included in the original Bay Plan as a water-related industrial priority use area and that designation was continued after the Commission's review of those designations in 1978. The Commission's forecasts, made during that 1978 review, also indicated a need for more water-related industrial land by the year 2020 than is now available. In addition, the applicant has not contested the appropriateness of the water-related industrial use designation.

Allowing a non water-related industrial use to preempt a priority use area obviously removes the site from the inventory of land available to the region for the priority use. To the extent the Commission's forecasts are reasonably correct, the elimination of a significant amount of acreage will increase the pressure for more Bay fill to make up for the lost area. As the Legislature has determined in adopting the McAteer-Petris Act, such uses are important to the economy of the entire region and fill can be authorized for them. Consequently, it is clear that the preemption of a significant acreage designated for water-related industrial purposes will affect the waters of the

coastal zone and the consistency provisions of the Federal Coastal Zone Management Act become operative. In this case, the project involves the expansion of the landfill on 97 acres designated for water-related industrial use. The Commission finds that this is a significant area and its use as proposed will affect the land and water uses of the coastal zone by increasing pressures for Bay fill at less suitable sites.

E. Alternatives. Under the regulations implementing the Federal Coastal Zone Management Act, the Commission is obligated to describe those alternatives to the project, if any, which would make the project consistent with the Management Program. Although it is obviously difficult to describe precisely without detailed engineering reports all suitable alternatives, the Commission finds that it is likely that the two modifications to the project listed below would allow the Commission to find the project to be an interim use and therefore consistent with the Management Program:

1. Uniform, Lower Height. Although any use of the site for a sanitary landfill will preempt the use of the site for water-related industrial use for some period, the Commission finds that fill to a relatively uniform height limited to perhaps 20 feet would both allow some temporary landfill capacity and not preclude water-related industrial development for such a period of time that it cannot be considered interim.
2. Restriction on Future Use. Once the landfill is in place, it is highly unlikely that any future Corps or other federal permits will be required for uses on the existing fill. Consequently, to make sure the site remains available for water-related industrial use in the future, it would be necessary for the applicant to subject the site to an enforceable restriction that would limit any future use of the site after the landfill is closed to water-related industrial uses for so long as that designation remains on the site in the Bay Plan. Such a restriction could take the form of a condition in the Corps permit, a deed restriction, or a binding agreement.

F. Notice of Appeal. The Coastal Zone Management Act requires applicants to be notified of their rights to appeal Commission objections to the Secretary of Commerce. Appeals must be filed with the Secretary within 30 days of notification of Commission objections and must include supporting

Mr. Frank Boerger  
February 9, 1983  
Page 7

arguments and data. The Secretary can approve a project despite a state objection if the Secretary finds that the project is either consistent with the objectives of the Coastal Zone Management Act or is necessary in the interests of national security.

### III. Conclusion

For all of the foregoing reasons, the Commission finds that the project as certified by the applicant is inconsistent with the San Francisco Bay Plan, the McAteer-Petris Act, and the Commission's Amended Management Program for San Francisco Bay, as approved by the Department of Commerce under the Federal Coastal Zone Management Act of 1972, as amended. The Commission further finds that all of the foregoing reasons are separate and independent grounds for objection to the certification of consistency provided by the applicant.

Executed at San Francisco, California, on behalf of the San Francisco Bay Conservation and Development Commission on the date first above written.

---

ALAN R. PENDLETON  
Executive Director

ARP/RJB/mm

cc: U. S. Army Corps of Engineers, Attn: Regulatory Functions Branch  
U. S. Army Corps of Engineers, Attn: Col. Edward M. Lee, Jr.  
State Solid Waste Management Board, Attn: David N. Kennedy, Director  
Contra Costa County Planning Department,  
Attn: Anthony A. Dehaesus, Director  
National Oceanic and Atmospheric Administration, Attn: John Byrne  
San Francisco Bay Regional Water Quality Control Board,  
Attn: Certification Section  
Acme Landfill Corporation



its position, along with supporting data and information, as required by 15 CFR 930.125, is further extended until after completion of the EIS.

**FOR FURTHER INFORMATION CONTACT:**  
David P. Driska, Attorney Advisor,  
Office of the Assistant General Counsel  
for Ocean Services, Room 370, Page 1  
Building, 2001 Wisconsin Avenue, NW.,  
Washington, D.C. 20235, (202) 634-4345.

**SUPPLEMENTARY INFORMATION:** For a detailed description of NWP's appeal and the criteria for sustaining an appeal, see the Notice of Appeal published at 49 FR 7268 (February 28, 1984).

(Federal Domestic Assistance Catalog No. 11-619, Coastal Zone Management Program Administration)

Dated: April 13, 1984.

Robert J. McMann,

General Counsel, National Oceanic and  
Atmospheric Administration.

FR Doc. 84-1002 Filed 4-19-84. 8:48 am

GILLING CODE 2510-02-01

**Coastal Zone Management; Federal  
Consistency Appeal by Acme Fill  
Corporation From Objection of the San  
Francisco Bay Conservation and  
Development Commission to  
Proposed Landfill**

**AGENCY:** National Oceanic and  
Atmospheric Administration,  
Commerce.

**ACTION:** Notice of appeal.

**SUMMARY:** On March 9, 1984, Acme Fill Corporation (Acme) appealed to the Secretary of Commerce (Secretary) an objection by the San Francisco Bay Conservation and Development Commission (BCDC) to Acme's certification that its proposal, requiring permits from the Army Corps of Engineers, to fill approximately 97 acres of land near the City of Martinez, Contra Costa County, California is consistent with the Management Program for the San Francisco Bay segment of the California Coastal Zone. Acme filed the appeal pursuant to subparagraph (A) of section 307(c)(3) of the Coastal Zone Management Act of 1972, as amended (CZMA), 16 U.S.C. 1456(c)(3)(A), and implementing regulations at 15 CFR Part 930 Subpart H, and based the appeal on the ground that its proposed activity is consistent with the objectives of the CZMA.

In accordance with 15 CFR 930.125, the appellant, Acme, has requested and has been granted an extension until April 30, 1984, to which BCDC has agreed, to submit the required statement

in support of its position, along with supporting data and information.

BCDC, the Army Corps of Engineers and interested persons have until May 30, 1984, to submit comments on Acme's appeal to the Secretary. Such comments should be sent to Robert J. McManus, General Counsel, National Oceanic and Atmospheric Administration, Room 5814, 14th Street and Constitution Avenue NW., Washington, D.C. 20230. Copies of comments should be sent to the following persons:

1. Mr. Stephen L. Kostka, Van Voorhis & Skaggs, 1855 Olympic Boulevard, 3rd Floor, Walnut Creek, CA 94596-1270
2. Jonathan T. Smith, San Francisco Bay Conservation and Development Commission, 30 Van Ness Avenue, Room 2011, San Francisco, CA 94102
3. Colonel Edward M. Lee, Jr., District Engineer, Attention: Regulatory Functions Branch, Department of the Army San Francisco District, Corps of Engineers, 211 Main Street, 8th Floor, San Francisco, CA 94105.

Comments should address whether Acme's proposed activity meets the regulatory criteria to be considered by the Secretary as set forth at 15 CFR 930.121, stated below. Access to Acme's notice of appeal and accompanying public information, and to the public information in comments by Federal and State agencies, will be available at the following locations:

1. San Francisco Bay Conservation and Development Commission, 30 Van Ness Avenue, Room 2011, San Francisco, CA 94102
2. Department of the Army, San Francisco District, Corps of Engineers, 211 Main Street, 8th Floor, San Francisco, CA 94105
3. Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, Room 276, Page 1 Building, 2001 Wisconsin Avenue NW., Washington, D.C. 20235.

**FOR FURTHER INFORMATION CONTACT:** David P. Drake, Attorney Advisor, Office of the Assistant General Counsel for Ocean Services, at the above address, (202) 634-4245.

**SUPPLEMENTARY INFORMATION:** Acme filed a consistency certification with BCDC in connection with Acme's applications for permits, under section 10 of the Rivers and Harbors Act of 1899 and section 404 of the Clean Water Act, to place fill and waste disposal on approximately 87 acres of property owned and operated by Acme near the City of Martinez, Contra Costa County, California. BCDC objected to the consistency certification on the grounds that the proposed landfill expansion is

inconsistent with the San Francisco Bay Plan because it would preclude the use of the project site for water-related industrial use. The objection by the BCDC to the consistency certification precludes the issuance of the required permits by the Army Corps of Engineers, unless the Secretary finds, in accordance with Section 307(c)(3)(A) and 15 CFR 930.121, that the proposed activity is consistent with the objectives of the CZMA, or in accordance with 15 CFR 930.122, that the activity is necessary in the interest of national security. Acme has pleaded the first ground only. To satisfy this ground for an appeal, four criteria must be met: (1) The activity furthers one or more of the competing national objectives or purposes contained in Sections 302 and 303 of the CZMA; (b) when performed separately or when its cumulative effects are considered, the activity will not cause adverse effects on the natural resources of the coastal zone substantial enough to outweigh its contribution to the national interest; (c) the activity will not violate any requirements of the Clean Air Act, as amended, or the Clean Water Act, as amended; and (d) there is no reasonable alternative available which would permit the activity to be conducted in a manner consistent with the state management program. (15 CFR 930.121) If the Secretary does not find that the activity meets the criteria, the Federal agency shall not approve the activity. (15 CFR 930.131)

(Federal Domestic Assistance Catalog No. 11 419 Coastal Zone Management Program Administration)

Dated: April 12, 1984.

Robert J. McManus,  
General Counsel, National Oceanic and Atmospheric Administration.

(FR Doc. 84-10435 Filed 4-18-84; 9:48 am)  
BILLING CODE 3510-05-01





UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
Washington, D.C. 20230

OFFICE OF THE ADMINISTRATOR

June 11, 1984

Colonel Edward M. Lee, Jr.  
District Engineer  
Department of the Army  
San Francisco District,  
Corps of Engineers  
211 Main Street  
San Francisco, CA 94105

Dear Colonel Lee:

This responds to your letter to me dated May 21, 1984, in which you commented on the notice of appeal filed by Acme Fill Corporation (Acme) with the Secretary of Commerce (Secretary) under the provisions of the Coastal Zone Management Act (CZMA) from the objection by the San Francisco Bay Conservation and Development Commission (BCDC) to Acme's proposed landfill expansion (49 Fed. Reg. 15597 (April 14, 1984)).

You have requested the Secretary not to decide the Acme appeal pending the completion of your public interest review pursuant to 33 CFR 320.4, and until the Corps of Engineers decides whether BCDC has the authority to determine that Acme's landfill proposal must be consistent with the coastal zone management program for San Francisco Bay. Although I have granted Acme's request for a stay on grounds independent of those set forth in your letter, I believe your comments misinterpret the consistency appeals process, which I explain further below to avoid future misunderstanding.

Section 307(c)(3)(A) of the CZMA provides that after a state coastal agency has objected to a consistency certification for an activity requiring a federal license or permit and affecting the land or water uses of the coastal zone, the federal agency regulating that activity cannot issue the license or permit unless the Secretary finds that the activity is "consistent with the objectives of the [CZMA]" or is "necessary in the interest of national security." The regulations implementing this statutory requirement are at 15 CFR 930.131(b). The CZMA and NOAA regulations require that the Secretary must make a finding on the appeal before the permitting agency can make a final permit decision.

BCDC has objected to Acme's consistency certification (which Acme submitted) for the proposed landfill expansion, and Acme has appealed the objection to the Secretary on the ground that the proposed activity is consistent with the



objectives of the CZMA, as elaborated at 15 CFR 930.121. These regulations assume that the state agency has jurisdiction to issue the consistency objection, and provide that the Secretary may find that the federal permits should issue for national interest or national security reasons, in spite of the state agency's objection. Thus, they require the Secretary to decide a completely different issue than that decided by the state agency. They are silent on the Secretary's authority to rule on the scope of a state agency's "jurisdiction", and, clearly, they do not contemplate substantive review by the Secretary of the state agency's decision to lodge an objection.

At the same time, neither the CZMA nor NOAA regulations preclude the Corps from continuing to assess the activity in accordance with other federal requirements, including the public interest review criteria under 33 CFR 320.4. Further, the criteria considered by the Secretary in deciding Acme's appeal (at 15 CFR 930.121) are different from the criteria considered by the Corps in its public interest review. Should the Secretary ultimately sustain Acme's appeal, the Corps may still deny or condition its permit based on the results of its public interest review.

Therefore, I don't agree that it would be premature or inappropriate for the Secretary to rule on Acme's appeal before you have completed your public interest review. I have granted Acme's request for the reason stated simply in the attached letter to Acme's lawyers.

I also disagree with your suggestion that the issue of BCDC's jurisdiction to review the consistency of Acme's proposal under Section 307(c)(3)(A) of the CZMA must be resolved by you, or through mediation, before we can process the consistency appeal.

In the first place, mediation under Section 307(h) of the CZMA and 15 CFR 930.55 is not a prerequisite to processing a consistency appeal. Mediation is a voluntary procedure which may be requested by either the federal permitting agency or the state coastal zone management agency should a disagreement arise over an interpretation of the CZMA or a state's program. Both agencies must agree to participate in the mediation process. To date no agency has requested mediation of this issue. Moreover, the existence of such disagreement does not preclude our processing of a consistency appeal which includes, as a related aspect, a disagreement over the state's jurisdiction.

Secondly, the Supreme Court case you cite, Secretary of the Interior v. California, \_\_\_ U.S. \_\_\_, 52 U.S.L.W. 4063 (1984), pertained to the application of Section 307(c)(1) of the CZMA to Federal activities, namely OCS lease sales, conducted outside the coastal zone on the outer continental shelf. It did not pertain to private activities which, under

Section 307(c)(3)(A) of the CZMA, must be consistent with approved coastal management programs if they affect land or water uses of the coastal zone. The Court's decision therefore has no bearing on Acme's appeal.

Please do not hesitate to contact me if you have further questions about the disposition of this, or any other, appeal to the Secretary under Section 307(c)(3)(A).

Sincerely yours,



Robert J. McManus  
General Counsel

Enclosure

cc: Stephen Kostka  
Acme Landfill

Jonathan Smith  
BCDC

Lester Edelman



Application No. 13881E59  
Name of Applicant Acme Fill Corporation  
Effective Date JUN 11 1984  
Expiration Date (if applicable) 15 June 1987

U. S. ARMY ENGR. BATT. SAN FRANCISCO  
CORPS OF ENGINEERS  
271 MAIN STREET  
SAN FRANCISCO, CALIFORNIA 94105

DEPARTMENT OF THE ARMY  
PERMIT

Referring to written request dated March 11, 1981\* for a permit to: April 24, 1984 \*revisions December 9, 1983 and  
(x) Perform work in or affecting navigable waters of the United States, upon the recommendation of the Chief of Engineers,  
pursuant to Section 10 of the Rivers and Harbors Act of March 3, 1899 (33 U.S.C. 403);

(x) Discharge dredged or fill material into waters of the United States upon the issuance of a permit from the Secretary of the  
Army acting through the Chief of Engineers pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344);

( ) Transport dredged material for the purpose of dumping it into ocean waters upon the issuance of a permit from the  
Secretary of the Army acting through the Chief of Engineers pursuant to Section 103 of the Marine Protection, Research and  
Sanctuaries Act of 1972 (86 Stat. 1052; P.L. 92-532);

Acme Fill Corporation  
P.O. Box 1108  
Martinez, California 94553

is hereby authorized by the Secretary of the Army:

to construct a sanitary waste landfill expansion accepting only Group 2 and 3  
wastes, covering a total of 97.6 acres, including perimeter levees and interior  
dikes; and within the 97.6 acre area, allow temporary disposal of dredged  
material from Walnut Creek (dredged material is to be used for cover material  
on the landfill)

in adjacent to Walnut/Pacheco Creek, tributary to Suisun Bay

at the expansion site, Acme Landfill, Waterbird Way at the end of Arthur  
Road, near Martinez, Contra Costa County, California

in accordance with the plans and drawings attached hereto which are incorporated in and made a part of this permit (on draw-  
ings, give file number or other definite identification marks.)

"PROPOSED LANDFILL EXPANSION, LEVEE CONSTRUCTION AT: ACME LANDFILL ADJACENT  
TO WALNUT/PACHECO CREEK NEAR MARTINEZ, CONTRA COSTA COUNTY, CALIFORNIA  
APPLICATION BY: ACME FILL CORPORATION" in three sheets dated May 1984

subject to the following conditions:

I. General Conditions:

a. That all activities identified and authorized herein shall be consistent with the terms and conditions of this permit; and  
that any activities not specifically identified and authorized herein shall constitute a violation of the terms and conditions of  
this permit which may result in the modification, suspension or revocation of this permit, in whole or in part, as set forth more  
specifically in General Conditions j or k hereto, and in the institution of such legal proceedings as the United States Govern-  
ment may consider appropriate, whether or not this permit has been previously modified, suspended or revoked in whole or in  
part.

b. That all activities authorized herein shall, if they involve, during their construction or operation, any discharge of pollutants into waters of the United States or ocean waters, be at all times consistent with applicable water quality standards, effluent limitations and standards of performance, prohibitions, pretreatment standards and management practices established pursuant to the Clean Water Act (33 U.S.C. 1344), the Marine Protection, Research and Sanctuaries Act of 1972 (P.L. 92-532, 86 Stat. 1062), or pursuant to applicable State and local law.

c. That when the activity authorized herein involves a discharge during its construction or operation, or any pollutant (including dredged or fill material), into waters of the United States, the authorized activity shall, if applicable water quality standards are revised or modified during the term of this permit, be modified, if necessary, to conform with such revised or modified water quality standards within 6 months of the effective date of any revision or modification of water quality standards, or as directed by an implementation plan contained in such revised or modified standards, or within such longer period of time as the District Engineer, in consultation with the Regional Administrator of the Environmental Protection Agency, may determine to be reasonable under the circumstances.

d. That the discharge will not destroy a threatened or endangered species as identified under the Endangered Species Act, or endanger the critical habitat of such species.

e. That the permittee agrees to make every reasonable effort to prosecute the construction or operation of the work authorized herein in a manner so as to minimize any adverse impact on fish, wildlife, and natural environmental values.

f. That the permittee agrees that he will prosecute the construction or work authorized herein in a manner so as to minimize any degradation of water quality.

g. That the permittee shall allow the District Engineer or his authorized representative(s) or designee(s) to make periodic inspections at any time deemed necessary in order to assure that the activity being performed under authority of this permit is in accordance with the terms and conditions prescribed herein.

h. That the permittee shall maintain the structure or work authorized herein in good condition and in reasonable accordance with the plans and drawings attached hereto.

i. That this permit does not convey any property rights, either in real estate or material, or any exclusive privileges; and that it does not authorize any injury to property or invasion of rights or any infringement of Federal, State, or local laws or regulations.

j. That this permit does not obviate the requirement to obtain state or local assent required by law for the activity authorized herein.

k. That this permit may be either modified, suspended or revoked in whole or in part pursuant to the policies and procedures of 33 CFR 325.7.

l. That in issuing this permit, the Government has relied on the information and data which the permittee has provided in connection with his permit application. If, subsequent to the issuance of this permit, such information and data prove to be materially false, materially incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Government may, in addition, institute appropriate legal proceedings.

m. That any modification, suspension, or revocation of this permit shall not be the basis for any claim for damages against the United States.

n. That the permittee shall notify the District Engineer at what time the activity authorized herein will be commenced, as far in advance of the time of commencement as the District Engineer may specify, and of any suspension of work, if for a period of more than one week, resumption of work and its completion.

o. That if the activity authorized herein is not completed on or before 15 day of June, 19 87, (three years from the date of issuance of this permit unless otherwise specified) this permit, if not previously revoked or specifically extended, shall automatically expire.

p. That this permit does not authorize or approve the construction of particular structures, the authorization or approval of which may require authorization by the Congress or other agencies of the Federal Government.

q. That if and when the permittee desires to abandon the activity authorized herein, unless such abandonment is part of a transfer procedure by which the permittee is transferring his interests herein to a third party pursuant to General Condition t hereof, he must restore the area to a condition satisfactory to the District Engineer.

r. That if the recording of this permit is possible under applicable State or local law, the permittee shall take such action as may be necessary to record this permit with the Register of Deeds or other appropriate official charged with the responsibility for maintaining records of title to and interests in real property.

The following Special Conditions will be applicable when appropriate:

**STRUCTURES IN OR AFFECTING NAVIGABLE WATERS OF THE UNITED STATES:**

a. That this permit does not authorize the interference with any existing or proposed Federal project and that the permittee shall not be entitled to compensation for damage or injury to the structures or work authorized herein which may be caused by or result from existing or future operations undertaken by the United States in the public interest.

b. That no attempt shall be made by the permittee to prevent the full and free use by the public of all navigable waters at or adjacent to the activity authorized by this permit.

c. That if the display of lights and signals on any structure or work authorized herein is not otherwise provided for by law, such lights and signals as may be prescribed by the United States Coast Guard shall be installed and maintained by and at the expense of the permittee.

d. That the permittee, upon receipt of a notice of revocation of this permit or upon its expiration before completion of the authorized structure or work, shall, without expense to the United States and in such time and manner as the Secretary of the Army or his authorized representative may direct, restore the waterway to its former conditions. If the permittee fails to comply with the direction of the Secretary of the Army or his authorized representative, the Secretary or his designee may restore the waterway to its former condition, by contract or otherwise, and recover the cost thereof from the permittee.

e. Structures for Small Boats: That permittee hereby recognizes the possibility that the structure permitted herein may be subject to damage by wave wash from passing vessels. The issuance of this permit does not relieve the permittee from taking all proper steps to insure the integrity of the structure permitted herein and the safety of boats moored thereto from damage by wave wash and the permittee shall not hold the United States liable for any such damage.

**MAINTENANCE DREDGING:**

a. That when the work authorized herein includes periodic maintenance dredging, it may be performed under this permit for N/A years from the date of issuance of this permit (ten years unless otherwise indicated);

b. That the permittee will advise the District Engineer in writing at least two weeks before he intends to undertake any maintenance dredging.

**DISCHARGES OF DREDGED OR FILL MATERIAL INTO WATERS OF THE UNITED STATES:**

a. That the discharge will be carried out in conformity with the goals and objectives of the EPA Guidelines established pursuant to Section 404(b) of the Clean Water Act and published in 40 CFR 230;

b. That the discharge will consist of suitable material free from toxic pollutants in toxic amounts.

c. That the fill created by the discharge will be properly maintained to prevent erosion and other non-point sources of pollution.

**DISPOSAL OF DREDGED MATERIAL INTO OCEAN WATERS:**

a. That the disposal will be carried out in conformity with the goals, objectives, and requirements of the EPA criteria established pursuant to Section 102 of the Marine Protection, Research and Sanctuaries Act of 1972, published in 40 CFR 220-228.

b. That the permittee shall place a copy of this permit in a conspicuous place in the vessel to be used for the transportation and/or disposal of the dredged material as authorized herein.

This permit shall become effective on the date of the District Engineer's signature.

Permittee hereby accepts and agrees to comply with the terms and conditions of this permit.

*Acme Fill Corporation*  
By *Raymond Olney Jr.*, President  
PERMITTEE

June 11, 1984  
DATE

BY AUTHORITY OF THE SECRETARY OF THE ARMY:

*Edward M. Lee, Jr.*  
EDWARD M. LEE, JR.  
Colonel, CE  
DISTRICT ENGINEER  
U.S. ARMY, CORPS OF ENGINEERS

June 11, 1984  
DATE

Transferee hereby agrees to comply with the terms and conditions of this permit.

\_\_\_\_\_  
TRANSFEEE

\_\_\_\_\_  
DATE

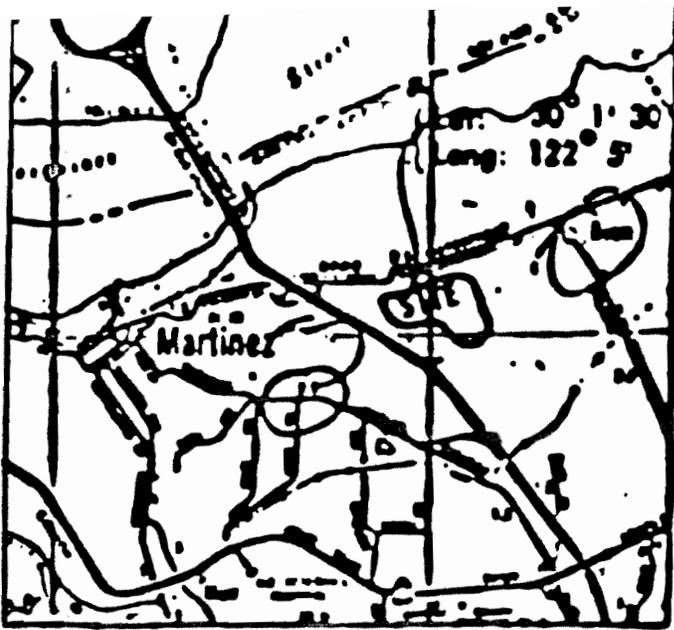
a. That there shall be no unreasonable interference with navigation by the existence or use of the activity authorized herein.

t. That this permit may not be transferred to a third party without prior written notice to the District Engineer, either by the transferee's written agreement to comply with all terms and conditions of this permit or by the transferee subscribing to this permit in the space provided below and thereby agreeing to comply with all terms and conditions of this permit. In addition, if the permittee transfers the interests authorized herein by conveyance of realty, the deed shall reference this permit and the terms and conditions specified herein and this permit shall be recorded along with the deed with the Register of Deeds or other appropriate official.

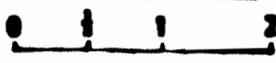
u. That if the permittee during prosecution of the work authorized herein, encounters a previously unidentified archeological or other cultural resource within the area subject to Department of the Army jurisdiction that might be eligible for listing in the National Register of Historic Places, he shall immediately notify the district engineer.

ii. Special Conditions: (Here list conditions relating specifically to the proposed structure or work authorized by this permit):

1. That the sanitary waste landfill expansion shall not exceed 40 feet in elevation from existing ground level or 42 feet MSL datum.
2. That the placement of waste in the landfill expansion shall cease within three years from the date of issuance of this permit; the placement of cover may continue beyond three years.
3. That the mitigation plan described in the letter dated 14 March 1984 from the California Department of Fish and Game (DFG) enclosed with your agent's letter to the District dated 24 April 1984 (Exhibit A of this permit) shall be implemented in accordance with special conditions 4, 5, 6.
4. That the permittee shall consummate a formal agreement with DFG to deed the 58 acre parcel, Club no. 401 adjacent to Cordelia Slough and the 60 acre parcel, Club no. 122, adjacent to Boynton Slough to DFG prior to placement of fill material in the expansion area and deed the parcels over to DFG within one year of permit issuance.
5. That the permittee shall accomplish the following within one year of permit issuance (a) install new inlet and outlet water control structures, (b) level the ponded area, (c) upgrade the levees, and (d) create three islands in Club no. 401; and (d) enlarge primary channel, (f) construct small ditches with a Spryte machine, and (g) disc designated areas in Club no. 122.
6. That the permittee shall construct the above in consultation with the DFG.
7. That compliance with 4, 5, and 6 above shall be determined by the District Engineer after consulting with DFG, the National Marine Fisheries Service, and the U.S. Fish and Wildlife Service.
8. That no Sediments from dredged material return flow will be deposited in the area designated as "Area not to be filled or used for disposal of dredged material" on Figure 1.

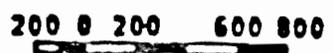


VICINITY MAP



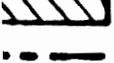
Scale In Miles

PLAN - ACME LANDFILL  
NORTH PARCEL



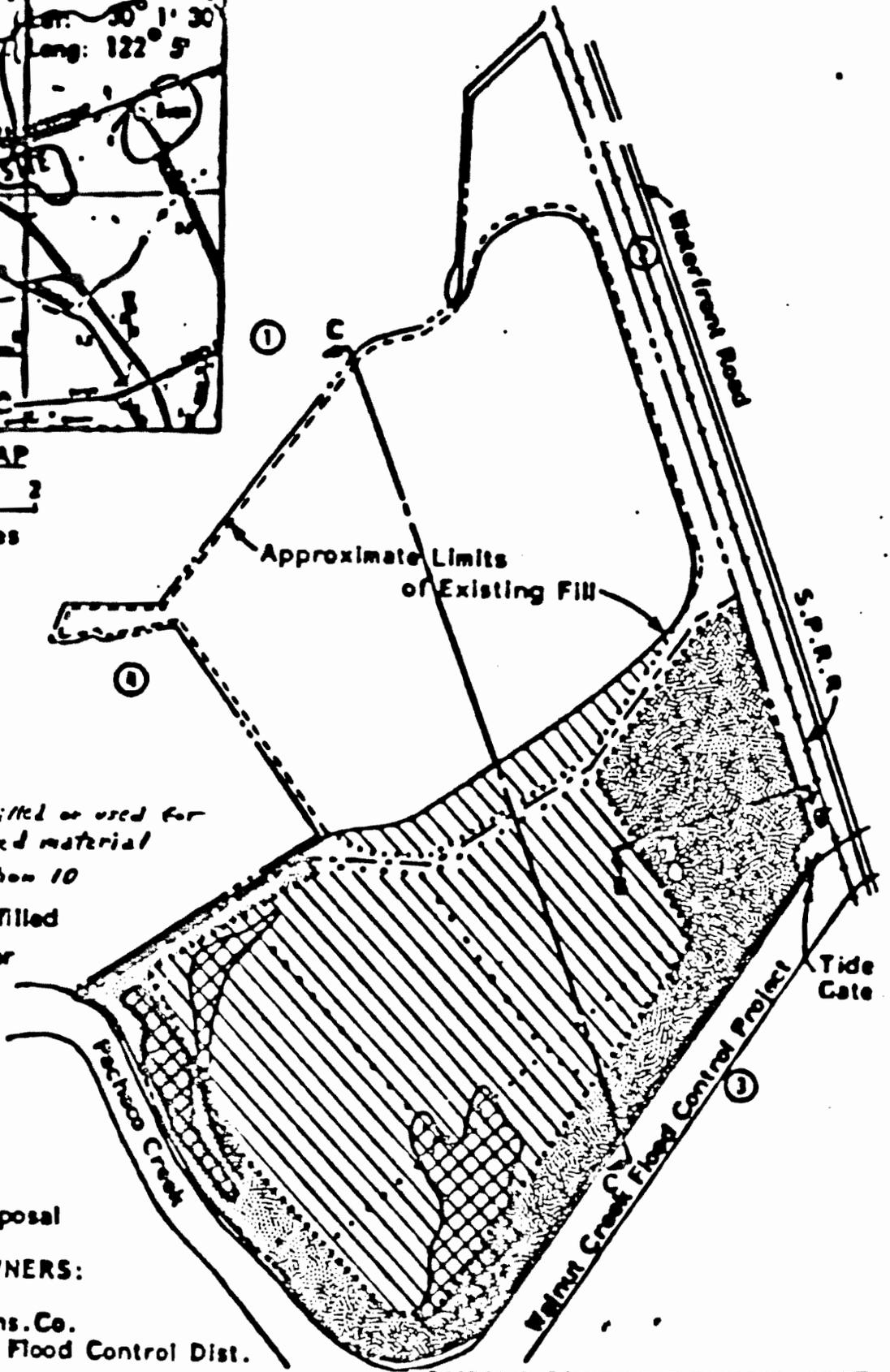
Scale In Feet

EXPLANATION

-  Area not to be filled or used for disposal of dredged material
-  Exempt from Section 10
-  Area to be Landfilled
-  CCCSD 72" Sewer
-  Plane of MHW
-  Property Line
-  Limits of Refuse Fill
-  Proposed Levee

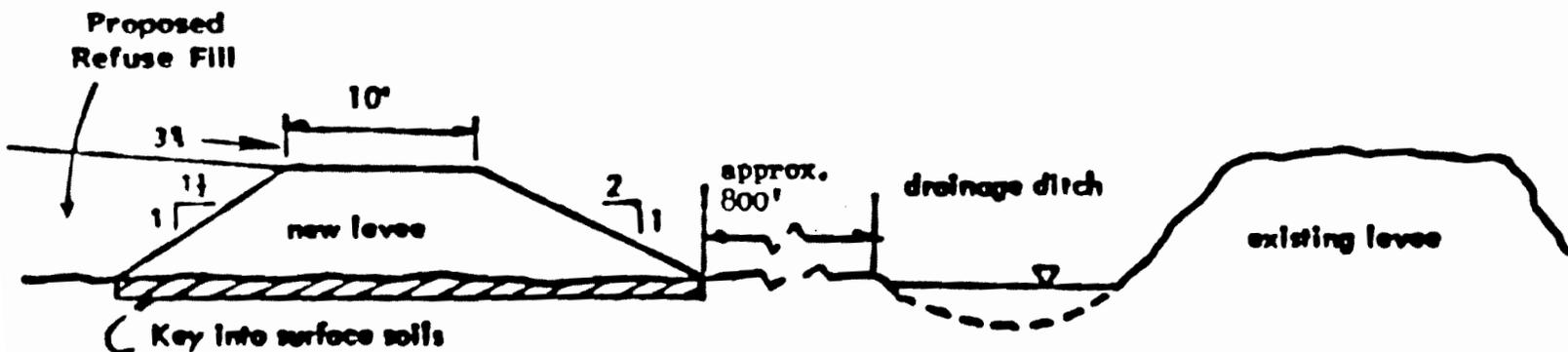
Purpose: Solid Waste Disposal  
Datum: MLLW

ADJACENT PROPERTY OWNERS:  
Shell Oil Company  
Southern Pacific Trans. Co.  
Contra Costa County Flood Control Dist.  
I. T. Corporation



PROPOSED LANDFILL EXPANSION, LEVEE CONSTRUCTION

AT: ACME LANDFILL  
ADJACENT TO WALNUT/PACHECO CREEK  
NEAR MARTINEZ, CONTRA COSTA COUNTY,  
CALIFORNIA  
APPLICATION BY: ACME FILL CORPORATION



**TYPICAL CROSS SECTION B-B**

Scale: 1" = 10' Horizontal & Vertical

Purpose: Solid Waste Disposal

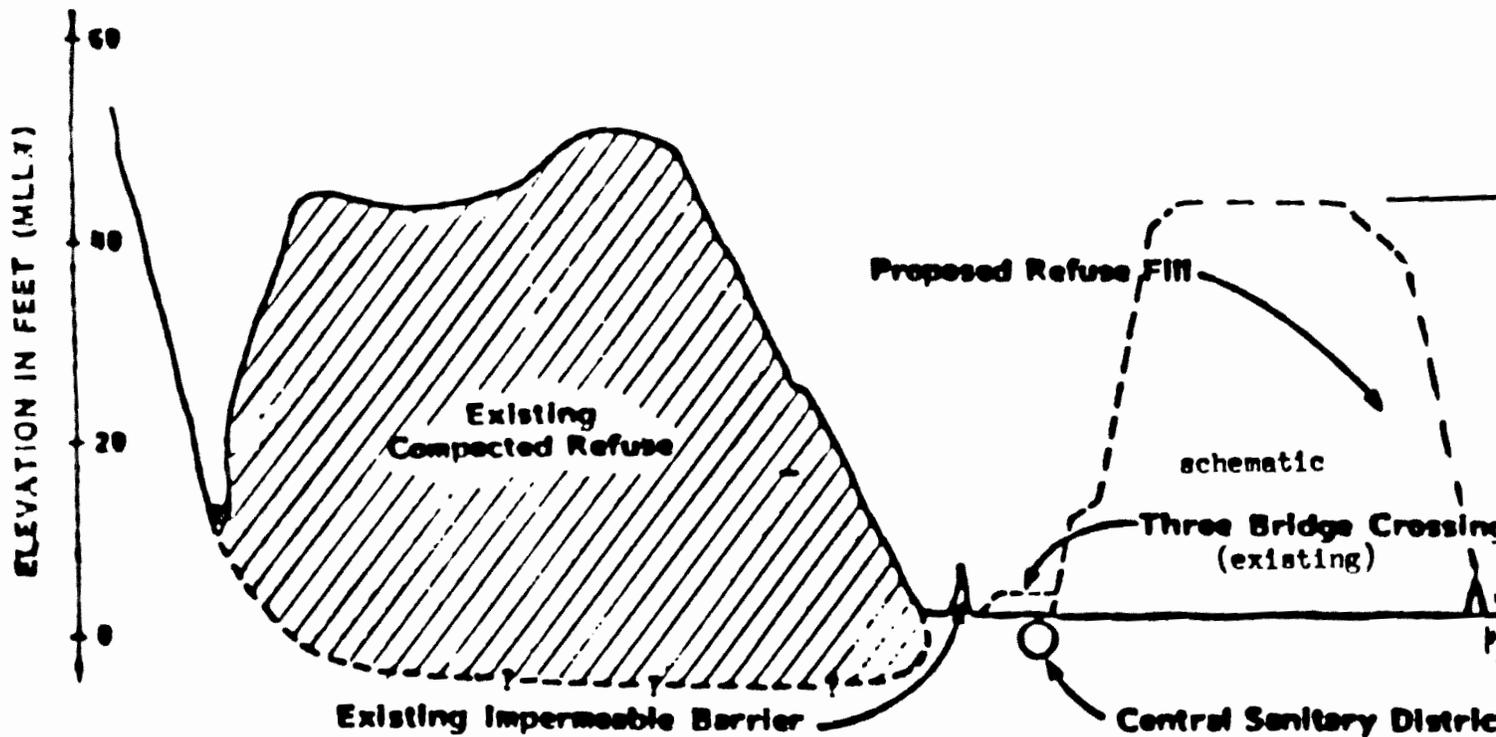
Datum: MLLW

ADJACENT PROPERTY OWNERS:

- (1) Shell Oil Company
- (2) Southern Pacific Trans. Co.
- (3) Contra Costa County Flood Control Dist.
- (4) I. T. Corporation

PROPOSED LANDFILL EX  
CONSTRUCTION

AT: ACME LANDFILL  
ADJACENT TO WALNUT/P  
NEAR MARTINEZ, CONTR  
CALIFORNIA  
APPLICATION BY: ACME  
Figure 2 of 3



### CROSS SECTION C-C

1" = 60' Horizontal  
1" = 20' Vertical

### NOTES:

1. Refuse Fill Slopes
2. Mean High Water =
3. Maximum Landfill

Purpose: Solid Waste Disposal

Datum: MLLW

#### ADJACENT PROPERTY OWNERS:

- (1) Shell Oil Company
- (2) Southern Pacific Trans. Co.
- (3) Contra Costa County Flood Control Dist.
- (4) I. T. Corporation

PROPOSED LANDFILL  
CONSTRUCTION, AND  
DISPOSAL  
AT: ACME LANDFILL  
ADJACENT TO WALNUT  
NEAR MARTINEZ, CON  
CALIFORNIA  
APPLICATION BY: AC  
Figure 3 of 3

Harding Lawson Associates



April 24, 1984

5829,001.01

Colonel Edward M. Lee, Jr., District Engineer  
U.S. Army Corps of Engineers  
211 Main Street  
San Francisco, California 94105

Attention: Regulatory Functions Branch

Gentlemen:

RE: PN No. 13881E59 (Revised)

Confirming statements made by representatives of Acme Fill Corporation at recent meetings, this letter notifies you officially that the request is modified by the deletion of the 76.1 acres previously planned for dredged material disposal (first paragraph under 3 in the Public Notice).

Although Acme Fill continues to maintain that the project as presented is more environmentally sound as well as a better economic proposal, the deletion is requested because of the positions of some of the commenting agencies and because of the essentiality of an early approval. The outline of the mitigation plan is shown in the letter dated March 14, 1984 from the State Department of Fish and Game (enclosed).

Copies are being furnished to the Federal commenting agencies so that they can comment directly to the San Francisco District, if they choose, in order to save time.

April 24, 1984  
5829,001.01  
Colonel Edward M. Lee, Jr.  
U.S. Army Corps of Engineers  
Page 2

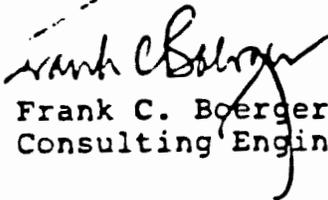
Harding Lawson Associates

As you already know, approval of this proposal is needed as soon as possible in order for Acme Fill to continue to function for the public benefit of the citizens of central Contra Costa County.

If there are any questions, please call.

Sincerely,

HARDING LAWSON ASSOCIATES

  
Frank C. Boerger,  
Consulting Engineer

FCB/td

Enclosure

Copies furnished: Lily Wong, EPA  
Paget Leh, NMFS  
Margaret Kohl, FWS

## DEPARTMENT OF FISH AND GAME

Post Office Box 47  
 Yuba City, CA 94599  
 (707) 944-4460



CALIFORNIA REGIONAL WATER  
 MAR 16 1984  
 QUALITY CONTROL BOARD

March 14, 1984

Mr. Roger B. James  
 Regional Water Quality  
 Control Board  
 San Francisco Bay Region  
 1111 Jackson St., Rm 6040  
 Oakland, CA 94607

Dear Mr. James:

This is in response to your letter of March 1, 1984 concerning Acme Fill Corporation's proposed NPDES permit application.

Acme Corporation is proposing to fill with solid waste approximately 97.6 acres as is shown in the U.S. Army Corps of Engineers Public Notice dated December 19, 1983. Within the 97.6 acres there are 88 acres which are within Corps' jurisdiction as determined by elevation and/or by wetland characteristics.

Within the 88 acres there are approximately 40 acres which are vegetated with wetland species such as pickleweed, brass buttons, fat hen, etc. (Exhibit K, Draft EIR/EIS for Acme Landfill Expansion, August 1982).

In general, the quality of the 88 acres in Corps' jurisdiction is fair. The major problem with the area is that it is well drained year-round. Its only source of water is rainfall and there are no sources of runoff from the surrounding area. As a result, there is little standing water on the site during the winter months to attract waterfowl and shorebirds. The site dries up in late spring and remains so through early winter.

The Department has been working with the project sponsor for a considerable period of time (since 1979) in order to assure there is no net loss of wetlands resulting from the discharge of solid waste into Acme's proposed area of expansion. The Company has purchased and is now proposing to improve and deed to the Department the following lands:

March 14, 1984

A total of 118 acres which consist of 58 acres of seasonally managed marsh located at the Gold Hill Road Interchange on Interstate 680 and 60 acres of poorly drained tidal wetlands located adjacent to Boynton Slough on Club #122, both areas in Solano County (Figures 1 and 2).

In order to replace the values lost at the Acme fill site the Company has agreed to improve the above properties as follows:

The 58 acres now contains a poorly managed seasonally flooded area to attract waterfowl. The depth of the flooded area is too deep and inconsistent in elevation. As a result it produces little food for waterfowl and shorebirds. Presently it produces mainly cockleburrs and some invertebrates. There is only one water control structure on the property leading to Cordelia Slough.

The Company has agreed to enlarge the ponded area and improve it for waterfowl and shorebirds by installing new inlet and outlet water control structures, upgrading the existing levees, land leveling the ponded area so it provides a consistent water depth of less than one foot, and providing three 20' by 20' islands in the flooded area to provide nesting area for waterfowl.

The 60 acres adjacent to Boynton Slough are now subject to tidal action. However, as a result of siltation and heavy tule growth, tidal circulation is poor. The Company has agreed to enlarge the primary channels and use a Spryte machine on the remainder of the property to improve circulation. In addition, specific areas will be disced to see whether the areas' value to wildlife can be additionally improved. If the discing is successful, the Company has agreed to disc whatever areas the Department specifies. A group of wooden structures will be installed adjacent to Boynton Slough to provide a potential rookery for egrets and night herons.

We believe the improvements on the 118 acres will result in no net loss of wetlands resulting from Acme's proposed area of expansion.

In response to your request for the cash value of the mitigation needed it is this Department's policy not to place a dollar figure on such mitigation. We believe the Company's mitigation package will ensure no net loss of wetlands and we recommend a NPDES permit application be approved subject to mitigation measures the Company and the Department have agreed to in this letter.

Mr. B. James

-2-

March 14, 1984

If you have any questions, please contact Mr. Theodore W. Wooster, Environmental Services Supervisor, Region 3, telephone (707) 944-4489.

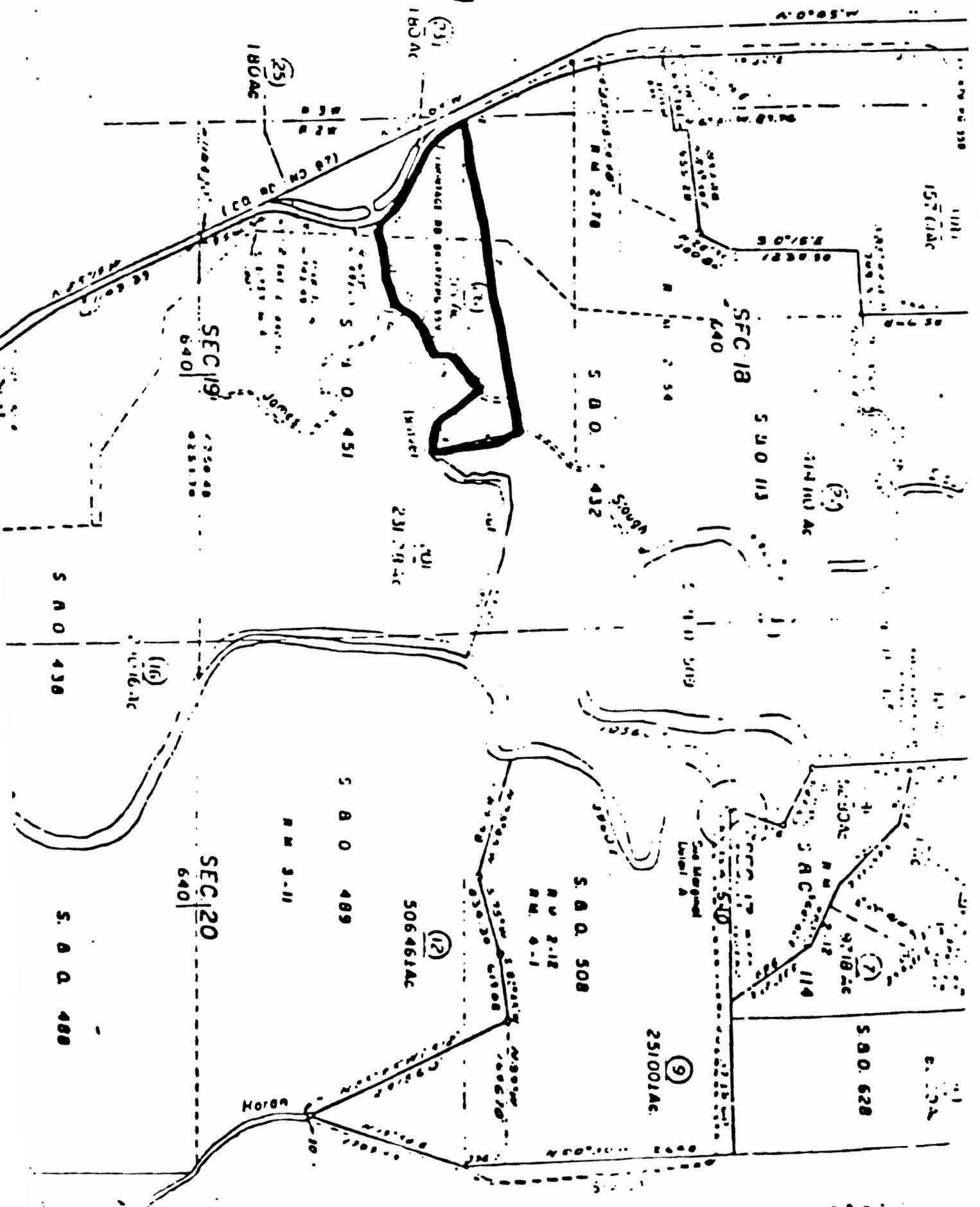
Sincerely,

A handwritten signature in cursive script, appearing to read "B. Hunter".

Brian Hunter  
Regional Manager  
Region 3

(2)

(14)



157.61 AC

SFC 18  
640

S. B. O. 113

SEC 19  
640

S. B. O. 451

231.79 AC

S. B. O. 430

(16)

SEC 20  
640

R. M. 3-11

S. B. O. 489

(12)  
506461 AC

S. B. O. 508

R. M. 2-12  
R. M. 4-1

S. B. O. 488

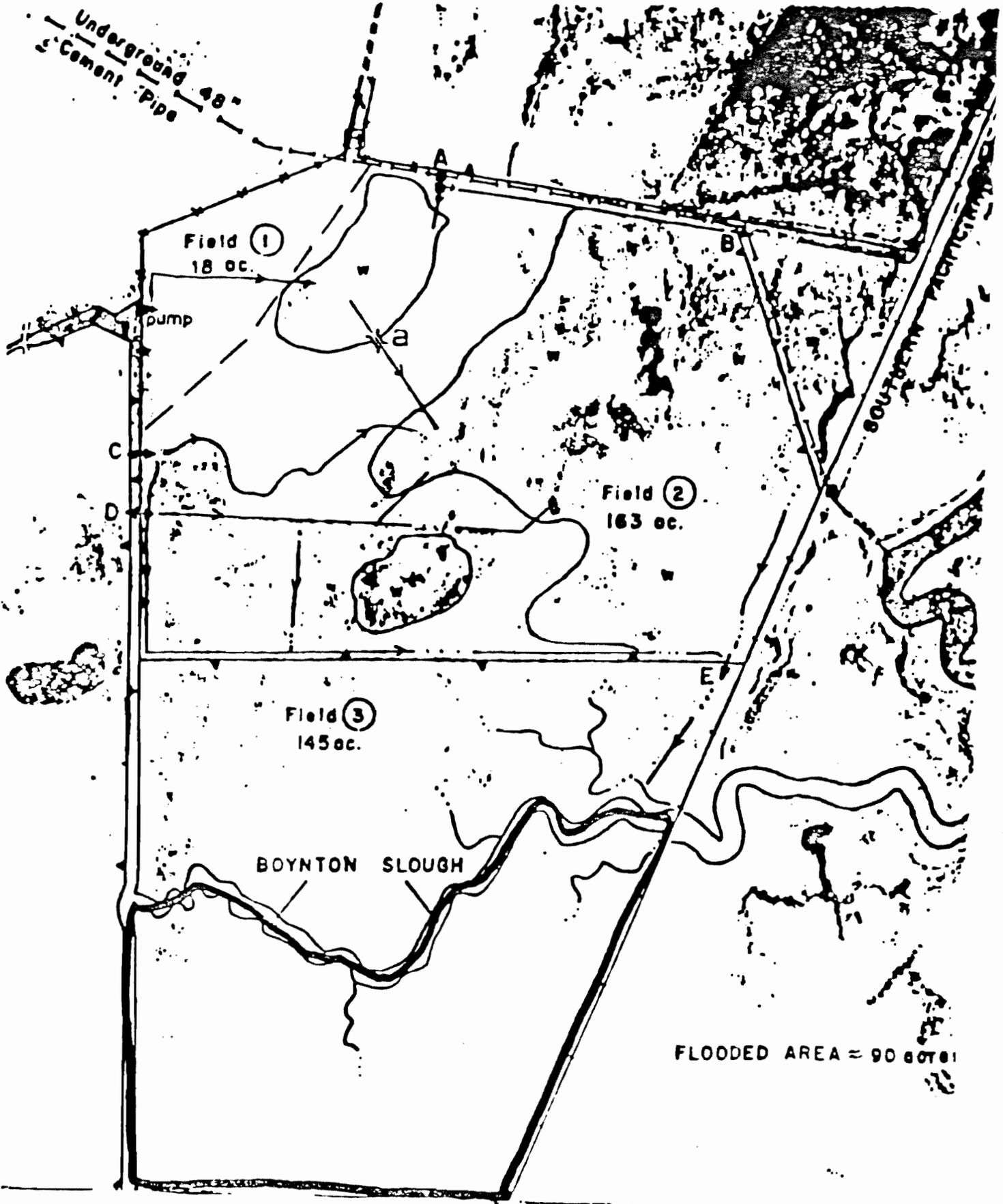
(9)  
251001 AC

S. B. O. 112

S. B. O. 628

6.73 AC

(01)



RECORD OF DECISION - PERMITPERMIT APPLICATION NO: 13881E59 and  
13881E59 (Revised)

1. Name of applicant: The Acme Fill Corporation, P.O. Box 1108, Martinez, California 94533.

2. Location, character and purpose of proposed activity:

Acme Landfill is located approximately two miles east of the city of Martinez, Contra Costa County, California. It serves approximately 400,000 people within the central Contra Costa County. The permit application, received 16 March 1981, was for a 200-acre expansion of the existing 125-acre landfill into an adjacent diked area that presently consists of approximately 100 acres of seasonal wetlands and 100 acres of upland grasses. The expansion area is adjacent to Walnut/Pacheco Creek, which flows northward approximately 7,000 feet into Suisun Bay. The area is bordered by a Corps constructed flood control levee built in the 1960's. Also involved in the application was the proposal to allow the Contra Costa County Flood Control District to dispose of dredged material from the maintenance of the Walnut Creek flood control channel in a part of the 200-acre area, later to be used for cover material. The levee and channel are Sacramento District projects which have been turned over to the Flood Control District for maintenance. Due to a Corps inter-district agreement, the area is within the San Francisco District for purposes of permit jurisdiction. Subsequent to the Environmental Impact Report/Environmental Impact Statement (EIR/EIS) comment period, and at the request of the District Engineer in response to numerous objections, the applicant revised the application (letter dated 9 December 1983) to a 97.6-acre landfill and a 76.1-acre "fringe" dredged material disposal site. Disposal of hazardous (Group 1) waste in the landfill expansion was deleted and the proposed landfill expansion was set back 300 feet from the Corps levee. The application was again revised in response to agency objections (letter dated 24 April 1984) to delete the disposal of dredge material in the 76.1-acre fringe area, but allow disposal within the 97.6-acre area later to be covered by the landfill.

The Acme Landfill accepts approximately 1,500 tons per day of wastes. Of this, approximately 100 tons consists of hazardous wastes. The revised application changed the nature of the proposed expansion from a Class II-1 site (which accepts hazardous wastes) to a Class II-2 site (which is limited to non-hazardous wastes). Acme's rationale for the selection of a 97.6-acre landfill is as follows: Acme estimates 5 years are needed to bring a new upland sanitary waste fill on line; the existing landfill has been growing at an average rate of approximately 100,000 cubic yards per month, or

approximately 6,000,000 cubic yards in 5 years; optimal geometry of the proposed fill and perimeter and interior containment dikes lead to a 97.6-acre footprint, a 75-foot peak and benched side slopes averaging 1 vertical to 13 horizontal (for stability).

The March 1981 application for a 200-acre landfill was similar to No. 12517-10, denied 12 December 1980 by the Corps because: it appeared that there was a feasible alternative upland site (178 acres owned by Acme immediately south of the existing landfill), the impacts of the landfill operation on the local community had not been adequately addressed and corrected, and the objections of three Federal agencies had not been resolved. Acme's second application of 16 March 1981 was accepted because the applicant and its consultants said that a landfill on the 178-acre site, due to constraints imposed by partially hilly topography, lack of continuity, and easements, would last only 15 months; also, an EIR, funded by Acme, was to be undertaken by the Contra Costa County Planning Department. Additionally, approximately 25-acres of the 178 acres is wetland. (During the interim, a 22-acre portion has been used for landfill).

On 4 April 1984, Acme commenced diverting residential solid waste collectors to other landfills in Contra Costa and Alameda Counties. Their engineering consultant had advised them that the present 125-acre site was full from a stability viewpoint. Private individuals' truck loads and hazardous waste would continue to be accepted. As a result, there have been concerns expressed regarding the accelerated filling of other landfills, specifically the West Contra Costa County landfill at Richmond. There have been warnings that the added costs of disposal other than at Acme would eventually be passed on to the residential consumer. The Vasco Road landfill in Alameda County has refused garbage from Acme.

a. Results of George Nolte Associates, consultant, review (landfill life, existing site; proposed expansion):

The existing site has a remaining useful life of 100,000 c.y. as of May 1984, or 29 days if all waste is accepted (two months with approximately 50% of waste being diverted to other landfills). Hazardous waste assimilation at the existing fill is not expected to be a problem. The proposed 97.6 acre expansion with a 75-foot maximum height would have a useful life of 4.45 years at the expected compaction and cover ratio and assuming 1,335 tons per day (TPD) of solid waste and 115 TPD of wastewater sludge. The proposed expansion with a 40-foot maximum height would have an expected life of 2.85 years. See Appendix A.

3. Applicable statutory authorities and administrative determinations conferring Corps of Engineers regulatory jurisdiction:

Corps permit jurisdiction derives from the provisions of Section 10 of the River and Harbor Act of 1899 (33 U.S.C. 403) and Section 404 of the Clean Water Act (CWA) (33 U.S.C. 1344).

4. Other Federal, State, and local authorizations:

(1) State of California Department of Health Services Interim Status Document No. CAD 041835-69, dated 23 October 1981.

(2) San Francisco Bay Regional Water Quality Control Board Order 76-37 dated 20 April 1976, and National Pollution Discharge Elimination System (NPDES) permit dated 18 April 1984 (Section 402 of CWA).

(3) Contra Costa County Health Services Department Solid Waste Facilities Permit No. 07-AA-002, dated 9 December 1981.

(4) Land use permit from Contra Costa County Board of Supervisors, dated 2 December 1958.

(5) RWQCB waiver of certification on disposal of fill in wetlands to construct the perimeter levee and the disposal of dredged material in wetlands (Section 401 of CWA). Bruce Wolfe, RWQCB, Oakland, waived, phonecon of 9 May 1984, letter to follow.

(6) Bay Area Air Quality Management District permit for the landfill expansion was issued 30 May 1984.

(7) San Francisco Bay Conservation and Development Commission objected to the consistency certification of Acme's proposed expansion on 2 February 1984. See paragraph 9 for details.

5. Public Notices, Public Hearings, and Community Meeting:

Public Notice No. 13881E59 was issued 13 August 1982. PN 13881E59 (Revised) was issued 19 December 1983 and 27 January 1984. A public hearing was held jointly with the San Francisco Bay Conservation and Development Commission on 19 January 1984 and continued on 2 February 1984. An informal public meeting was held in Martinez on 13 February 1984.

6. Environmental Impact Statement and associated reports:

An Environmental Impact Report/Environmental Impact Statement entitled "Acme Landfill Expansion" was prepared by Torrey and Torrey, Inc. for the Corps' San Francisco District and the Contra Costa County Planning Department. The draft was issued in August 1982, the final in June 1983. A "Summary of EIS Process" SPNPE-R DF dated March 1984, was prepared. This DF gives an overview of the proposal, issues, alternatives, and it recommends that the Corps issue a permit for 97.6 acres of landfill with a reduced maximum height and deleting the disposal of dredged material. On 16 January 1984, a Supplemental Information Report including an Environmental Evaluation of the revised application was filed with the Environmental Protection Agency and circulated to parties who had commented on the EIS.

7. Summary of objections, concerns, and issues and the District Engineer's comments thereon:

a. Seismicity:

(1) Discussion of issue: The Avon segment of the active Concord fault is inferred to pass through the expansion site. This has led to numerous objections citing the potential for pollution of the adjacent waterway and groundwater as a result of leakage from the proposed expansion fill following seismically induced surface creeps, displacement, or ground shaking. These concerns have been substantially reduced by re-design of the proposed fill from one that included hazardous substances and extended to the Corps flood control levee bordering Walnut Creek, to one that does not include hazardous wastes and is set back 300 feet from the levee.

(2) Applicant's report: The applicant's consultant, Harding Lawson Associates (HLA), issued a report entitled "Sanitary Landfill and Dredged Material Disposal Pond Development Acme Landfill Martinez, California," dated 12 January 1984, which was prepared to address the revised application (98-acre landfill). The report states that evidence for the fault at the site is inconclusive and that, if the fault is present at the site, it is unlikely that displacement would propagate upward through the 68 to 91 feet of silt and clay overburden to the surface. Concerning stability of the proposed landfill, the report concludes that the maximum credible earthquake, 7.0 Richter magnitude on the Green Valley-Concord fault or 8.3 magnitude on the San Andreas fault, would cause ground shaking that could cause a maximum permanent displacement of the fill of 4 feet immediately after completion of the fill. There is a potential for further displacement due to creep of the marsh soils. Due to compaction, the fill and marsh deposits become more stable with time. Thus, 20 years after completion of the fill the maximum fill displacement is computed to be one foot. Probabilities for a maximum seismic event zero years after completion of the fill are calculated to be less than 5%. It should be noted that, beyond 20 years the chances of a maximum seismic event increase, but displacement, according to the HLA report, would be one foot or less and decreasing.

(3) Results of District review: Kenneth Harrington, Corps San Francisco District Geologist, following a review of the HLA report, said that the question of seismicity had been addressed with the latest state of the art methods, and he has no concerns (Disposition Form (DF) dated 6 February 1984). Leon Holden, District Geotechnical Engineer, said, concerning the stability analysis of the original application, that no massive deformation would occur (DF dated 14 November 1983). However, recognizing the highly specialized nature of the issue, Mr. Harrington was in favor of further review by the Corps' Geophysical Laboratory at the Waterways Experiment Station.

(4) Results of Waterways Experiment Station (WES) review: WES concluded, "There is a slight risk of sliding of the fill under static conditions, with a 70-foot fill height, and a substantial risk of sliding in the event of the maximum credible earthquake. Such failures would be self-limiting, and their effects would be confined to the site." See Appendix B.

b. Water Quality:

(1) Discussion of issues: There is concern that leachate from the sanitary landfill could pollute the surface or ground water. This concern has been reduced substantially in the revised application by the 300-foot set back from the Corps levee and the change to non-acceptance of hazardous wastes.

(2) Applicants' report to RWQCB: The HLA report dated 12 January 1984, cited above, states that the ground water at the site is approximately at the elevation of the adjacent Bay water, i.e., mean sea level. Elevations on the expansion site are 0.5 to 1.5 feet above mean sea level. The water is presumed to be salt water invaded. Surface deposits are soft clay, silt, and peat. Vertical permeabilities are generally less than the required  $1.0 \times 10^{-6}$  cm/sec in the underlying bay mud. Exceptions to this RWQCB requirement are, according to the report, offset by the bay mud thickness overlying bedrock (68 to 91 feet) which will yield the equivalent of the required 5 feet of  $1.0 \times 10^{-6}$  cm/sec. Horizontal permeabilities were above RWQCB requirements as indicated by testing in peat layers. The peat layers are believed to be discontinuous and generally beneath 4 to 30 feet of surface, relatively impermeable, marsh deposits.

(3) RWQCB position: Section 402 NPDES permit 84-18 was approved 18 April 1984. Certification on containing levees (Section 401) was waived. Approval of the landfill development plan is also required by Order 76-37 and pending. The NPDES permit requires that containing levees be keyed a minimum of 5 feet into impermeable clays and that the waste fill be underlain by a minimum of 5 feet of impermeable clay. The monitoring of wells to detect any leachate leakage is required, and no pollution of ground or surface water is to be allowed. Remedial measures, if leakage occurs, would include drilling and pumping of wells to reverse the hydraulic gradient, construction of gravel filled drainage ditches, and injection of sealers into the perimeter levees (Knapp, RWQCB, Oakland, oral communication).

(4) Result of WES review: Although WES had a few questions in the area of hydrogeology, they concluded "After our review of the hydrogeological aspects of the report and supplemental data, our meeting with HLA personnel, and study of NPDES Permit 84-18, we feel that the hydrogeological issues will be adequately provided for by the California Regional Water Quality Control Board's permitting process. Therefore, no geotechnical requirements should prevent the Corps of Engineers from issuing a permit." See Appendix B.

(5) Result of District review: The landfill will compress the soft surface marsh deposits and sink below the level of the ground water table; therefore control of leachate migration is essential to prevent release of leachate pollution into the ground water and eventually into the neighboring Pacheco/Walnut Creek waterway. It appears that any potential leachate pollution should be minimal. The RWQCB will require further analysis, and a contingency plan to control pollution to the groundwater should there be a rupture of the seal below the expanded landfill. However, the present lack of complete data and a detailed contingency plan, coupled with slight uncertainty

over the seismicity issue, argue in favor of limiting the landfill height to 40 feet maximum. This will act as an additional measure to limit the production of leachate and provides further assurance against leachate contamination of surface or ground water in a significant earthquake.

c. Wetlands:

(1) Discussion of extent and character, habitat value: The seasonal wetlands were mapped by the EIR/EIS consultant and ground verified by Corps personnel.

According to information supplied by HLA and contained in the Corps' Supplemental Information Report, the 200-acre area contains approximately 100 acres of diked seasonal wetlands. Prior to the construction of the flood control levees the area was a tidal marsh. Elevations in the expansion area range from 0.5 to 1.5 feet above mean sea level. The revised application for a 97.6-acre landfill would cover 40 acres of seasonal wetland. Approximately 45 acres of seasonal wetland occur in the 76.1-acre "fringe" area that was proposed for a dredged material disposal site in a revision to the application but later deleted. An additional 12 acres of wetland occur at the northwest corner of the existing site and was included in the 200-acre expansion proposal but deleted in a revision.

(2) Position of agencies:

(a) Environmental Protection Agency (EPA): Letter dated 19 January 1984, addressing the revised application said EPA has consistently objected since 1980 to the expansion into wetlands. They would not object to 97.6 acre landfill expansion, since it appeared there was need for such to allow approximately 5 years to bring new upland site on line, if there was acceptable wetland mitigation. They objected to the disposal of dredged material in the fringe area because it is not water dependent, and there are practicable alternatives (40 CFR 230.10(a)). They would not object to dredged material disposal within the area to be covered by landfill.

(b) U.S. Fish and Wildlife Service (USFWS): Letter dated 17 February 1984 addressing the revised application said they had consistently objected since 1977 to expansion into wetlands. They said they would not object to the landfill expansion if an emergency existed provided there was adequate mitigation, but did object to disposal of dredged material in the fringe area. A letter dated 21 February 1984 from the Regional Director, Portland, said they would elevate the matter in accordance with the 1982 Memorandum of Agreement pursuant to Section 404(q) of the CWA if the recommendations of the Sacramento Field Office were not followed.

(c) The National Marine Fisheries Service (NMFS): Letter dated 11 January 1984, said that they would not object if the applicant develops an acceptable mitigation plan. The mitigation plan has been developed, and with added special conditions in the permit, NMFS no longer objects.

(d) The California Regional Water Quality Control Board (RWQCB): Mitigation for the loss of approximately 40 acres of seasonal wetland within the 97.6-acre proposed landfill expansion was required as a condition of the NPDES permit. RWQCB accepted the applicant's plan as put forward in a letter from the California Department of Fish and Game dated 14 March 1984.

(e) The California Department of Fish and Game (DFG): This agency supports the mitigation plan, letter from them to RWQCB dated 14 March 1984.

(3) District review: Corps policy concerning alteration of wetlands is given at 33 CFR 320.4(b) and (c), which in brief summary requires that the benefits of the proposal outweigh the wetland damage and great weight be given to the views of fish and wildlife agencies. Additionally, wetland site dependency and availability of practicable alternatives must be considered. Acme has deleted its request to dispose of dredged material into the 76.1 acre fringe area, which contains 45 acres of seasonal wetlands. Additionally, Acme has offered mitigation of 118 acres in Solano County to be improved for waterfowl value to compensate for 40 acres of wetlands and 88.4 acres of Section 10 jurisdiction that would be covered by the sanitary landfill. The wetlands have been diked off from tidal action for over 20 years and the wildlife values of these wetlands are limited. Alternatives to the proposed expansion were discussed in the EIR/EIS. As a result of on-going discussions with Acme, the applicant has revised its application such that it is now similar to Alternative B in the EIR/EIS.

d. Landfill Operations, issues, George Nolte Associates review:

(1) Public Health issues: At the community meeting held in Martinez on 13 February 1984, residents of Vine Hill, a county suburb bordering the Acme property, complained about noise, dust, odors, vectors, rats and droppings from gulls attracted by the landfill. Several petitions by residents opposed to expansion have been received in response to the public notice. Authority over these concerns falls within the purview of the Contra Costa County Board of Supervisors, the County Health Services Department, and the Bay Area Air Quality Management District. Although the Corps is concerned about these issues, it does not have the resources or adequate legal authority to control effectively these problems. Moreover, testimony from various sources (e.g. Nolte report, public hearing, Contra Costa Sanitation District) lead us to the conclusion that when proper mitigative measures are taken by Acme, these problems would be minimized.

(2) Hill: A series of hills extending over 3,800 feet in length separate Acme Landfill from the Vine Hill residential area. The hills are outside Corps jurisdiction. The east side of the most northerly hill has been mined for cover almost since the establishment of the landfill and is nearly depleted. Acme has the required local permits to remove the hill to the south for cover. According to Harding Lawson Associates (HLA), the hill is usable from an engineering viewpoint down to sea level elevation. An Acme spokesman said the ridgeline cannot be removed, according to the permits, until the

22-acre landfill portion that would then fall into view from the residential area is covered and closed. The effect would be to replace a near hill with a slightly more distant hill. However, noise and dust from borrowing from the hill would be a problem. Limiting the height of the expansion to 40 feet will substantially lessen the possibility that the near hill will be required for fill to such an extent that the noise and dust problems will worsen.

(3) Cover--Alternative Sources: It appears that dredged material previously disposed of on United Towing property north of Waterfront Road from the Acme Landfill could be a source of cover. Temporary disposal of dredged material from Walnut Creek into the 97.6-acre area that would be covered by the landfill expansion, for use as cover, appears feasible. A three-foot thick layer of dredged material placed over 34 acres may yield 80,000 c.y. of cover when dried. A 75 foot high landfill would require approximately 667,5000 c.y. of cover, while a 40 foot high landfill would require approximately 427,500 c.y. of cover (calculated at an 8:1 ratio of waste to cover). The latter amount of cover could be obtained from a side-fill cut approximately 25 yards high, 65 yards wide, and 525 yards long. If dried dredged material is utilized, reduction of the hill for cover material may not be required.

(4) Hazardous Waste: Approximately 100 tons of hazardous waste per day are disposed of at the existing 125-acre landfill. Acme intends to continue accepting hazardous wastes after the site is closed for non-hazardous waste. Hazardous waste will not be placed in the proposed expansion area.

(5) Results of George Nolte Associates, consultant review: According to George Nolte Associates, "Environmental problems typically associated with landfill operations are generally kept under control at the Acme landfill, and it is assumed that this will continue if similar operating procedures are followed at the proposed site. Air pollution in the form of dust, odor and landfill gas emissions is minimized by preventive measures and prevailing (westerly) winds. Vectors are kept under control by the application of daily cover material. The traffic problems on Arthur Road have been eliminated by the construction of Waterbird Way. Noise from the landfill is buffered at the Vine Hill neighborhood by ridges and large distances. Noise from excavation equipment at the proposed borrow site is a potential problem, but maintenance of a ridge line should prevent problems from occurring. Aesthetically, the only major drawback of the landfill is the view of the barren slopes from Waterfront Road. However, at landfill completion, grass will cover the landfill and allow it to blend in with the surrounding hills."

"Proposed borrow area has an adequate supply of cover material to achieve a solid waste to cover a ratio of 7:1 in the 75-foot landfill configuration. Additional cover material may also be available from dredging operations or from the hill to the southwest of the proposed borrow area. It appears that availability of cover will not limit the useful life of the Acme site." See Appendix A.

e. Dredged Material Disposal:

(1) Concept (first revised application): The Contra Costa County Flood Control District originally wanted to temporarily discharge 600,000 cubic yards of sediment from the maintenance of the Walnut Creek flood control channel on 110 acres of the expansion area. This consisted of 76.1 acres of fringe area adjacent to the flood control levee and 34 acres within the proposed 97.6 acre landfill. The dredged material would be dried and used for cover. The fringe area, according to the applicant, would then be restored to its original elevation; thus allowing wetland plants to revegetate.

(2) Benefits: Acme would have an economical source of cover and may not find it necessary to remove the hill buffering to the Vine Hill residential area. The Flood Control District would have a free disposal site for required channel maintenance pursuant to their flood control channel/levee maintenance agreement with the Corps' Sacramento District.

(3) Proximity to flood control channel: The Corps had reservations concerning using the flood control levee as a dredged material containment levee because the levee is designed to keep out flood waters; not contain dredged material. There was some question as to what 600,000 c.y. of dredged material might do to the integrity of the levee. Additionally, Acme did not develop a convincing case that the advantages of this scheme would outweigh its attendant effect on the 76.1 acres of seasonal wetlands.

(4) Agency positions (elevation potential): EPA and USFWS object to the fringe dredged disposal area. USFWS would elevate over the issue pursuant to Section 404(q) of the Clean Water Act (CWA). DFG said they would require mitigation for the fringe area if not cleared of dredged material within four years. Agencies indicated they would not object to disposal within the area to be later covered by landfill.

(5) Second revised application: In view of the Corps' concerns and the positions of USFWS and EPA, the Corps requested further revision of the application. The applicant complied by deleting disposal of dredged material in the fringe area, by letter dated 24 April 1984. Dredged material disposal on 34 acres within the proposed landfill expansion footprint is still a part of the application.

f. Mitigation:

(1) Need: The proposed 97.6-acre landfill expansion under the revised application would permanently cover 40 acres of seasonal wetland. Federal and state agencies and many environmental groups have requested mitigation for the loss.

(2) Proposed plan: By letter dated 24 April 1984, the applicant forwarded to the District (copies to EPA, USFWS, NMFS) a copy of a letter dated 14 March 1984 from the California Department of Fish and Game (DFG) to the Regional Water Quality Control Board. It described and supported the

mitigation plan that had been developed in consultation with DFG to assure that there would be no net loss of wetlands. The letter stated that the applicant has purchased and is proposing to improve and deed to DFG 118 acres, consisting of 58 acres of seasonally managed marsh and 60 acres of poorly drained tidal wetland. The former is located at the Gold Hill Road Interchange on Interstate 680; the latter is adjacent to Boynton Slough on Club no. 122; both areas in Solano County. In order to replace the values lost at the Acme fill site, the Company has agreed to improve the above properties as follows:

The 58 acres now contain a poorly managed, seasonally flooded area to attract waterfowl. The depth of the flooded area is too deep and inconsistent in elevation. As a result, it produces little food for waterfowl and shorebirds. Presently, it has mainly cockleburrs and some invertebrates. There is only one water control structure on the property leading to Cordelia Slough.

Acme has agreed to enlarge the ponded area and improve it for waterfowl and shorebirds by installing new inlet and outlet water control structures, upgrade the existing levees, and level the ponded area so it would provide a consistent water depth of less than one foot, and create three 20' by 20' islands in the flooded area to provide nesting area for waterfowl.

The 60 acres adjacent to Boynton Slough are now subject to tidal action. However, as a result of siltation and heavy tule growth, tidal circulation is poor. Acme has agreed to enlarge the primary channels and use a Spryte machine on the remainder of the property to improve circulation. In addition, specific areas will be disked to see whether the areas' value to wildlife can be additionally improved. If the disking is successful, Acme has agreed to disk whatever areas the DFG specifies. A group of wooden structures will be installed adjacent to Boynton Slough to provide a potential rookery for egrets and night herons.

DFG states that the improvements on the 118 acres will result in no net loss of wetland resulting from Acme's proposed area of expansion.

(3) Agency positions: DFG supports the plan. RWQCB accepted the plan when it issued the NPDES permit. A condition of that permit requires that the 58 acre parcel be irrevocably committed prior to any waste filling in the expansion area. USFWS and NMFS representatives have visited the mitigation sites. NMFS concurs with the plan if certain conditions are added to the permit.

g. Recycling:

(1) Present operation: According to the applicant, all recycling that is economically profitable is being performed at the site. Recycled items include some cardboard, paper, glass, iron and other metals.

(2) Potential methods: Additional recycling, curbside recycling, and composting are potential methods of reducing the volume of waste. Composting is a method of recycling organic material to a product that conceivably could be used for cover or fertilizer for agriculture. However, composted sewage sludge may contain disease organisms or chemical contaminants and, therefore, may be hazardous if used for food-chain crops.

(3) Results of George Nolte Associates, consultant, review: Substantial increases in recycling require a long term public awareness program that encourages source separation of recyclable wastes. "Recycling, waste-to-energy conversion systems and composting are not expected to significantly extend the useful life of the proposed landfill. Implementation of these resource recovery systems could result in a significant reduction in the quantity of solid waste generated, but little effect can be achieved within the short life expectancy of the proposed landfill." See Appendix A.

#### 8. Views of State and local authorities and environmental groups:

The County Board of Supervisors, the Mayor's Conference, individual mayors of numerous towns in the county, the County Planning Department, the Central Contra Costa Sanitary District, the Mountain View Sanitary District, the Flood Control District, the Solid Waste Commission, and California Assemblyman William P. Baker all support the project. At the community meeting held February 13, 1984, the mayor of Martinez spoke to the effect that Acme may be dragging its feet on locating an upland site and expressed concern for enforcement of health regulations. It was suggested by the Mayor and County Supervisor Fahden that a two year Corps permit would suffice.

Wildlife and environmental groups, such as the Sierra Club and Save San Francisco Bay Association, generally oppose the expansion. The League of Women Voters of Diablo Valley oppose any expansion beyond that needed until a new upland site is ready for use.

#### 9. Land use classification and coastal zone management plans, BCDC consistency question:

The County Board of Supervisors first permitted the site on December 2, 1958. The County Planning Commission and County Planning Department support the proposal.

The San Francisco Bay Conservation and Development Commission (BCDC) staff commented, in response to the EIS that the Commission's concurrence with a certification of consistency with the approved Coastal Zone Management Plan was required pursuant to the Coastal Zone Management Act.

Although the expansion site in question lies outside the official jurisdiction of the BCDC (outside the "coastal zone") BCDC staff opined that consistency with the coastal zone plan was required because the filling would occur in an area designated in the Bay Plan as a water related industrial site. The BCDC staff reasoned that, since a 75-foot high landfill would be

inconsistent with the future use of the site for water related industry, it would lead to increased pressure for filling the Bay as the future demand for water related industrial sites projected by the coastal plan materializes. This asserted "direct effect on land and water uses in the coastal zone," according to BCDC, allows them to require that the filling requested by Acme be consistent with the coastal zone plan. The District Engineer, who is also a BCDC Commissioner, disagreed with the BCDC staff, arguing primarily that the effect did not appear to be sufficiently direct to warrant this extraordinary extension of jurisdiction (letter dated 4 August 1983 to BCDC). The Corps' disagreement with BCDC is based on the fact that: (1) there is no present or foreseeable need to use the area for water-related industry, (2) there appears to be much available land adjacent to deep water in the Delta for water-related industry, (3) BCDC's projected demand for water-related industrial lands appears too high, and (4) the Acme site is at least a mile outside the coastal zone.

On November 9, 1983, the applicant requested a consistency concurrence from BCDC, nevertheless maintaining that BCDC had no jurisdiction in this matter. On February 2, 1984, the BCDC commissioners voted to support the BCDC staff position that a consistency certification was required. The commissioners then voted to object to Acme's request for the consistency certification.

The applicant has petitioned the Department of Commerce to override the BCDC objection, and has filed a lawsuit against BCDC in the State courts.

The District Counsel's opinion is that the proposed activity is not likely to directly affect the coastal zone and that the Corps may, therefore, issue a permit notwithstanding BCDC's objection. Counsel's opinion is based, in part, on the Supreme Court's recent decision in Secretary of the Interior v. California, \_\_\_\_\_ U.S. \_\_\_\_\_, 52 U.S.L.W. 4063 (1984).

The George Nolte Associates report concluded, "The development of water-related industry on the area along Walnut Creek not used for landfill is possible. Development on the landfill itself is not recommended due to settling and gas emission problems over the next 30 years." See Appendix A.

10. A discussion of conformity with the guidelines published for the discharge of dredged or fill material in waters of the United States (40 CFR part 230):

Issuance of the permit per the revised application must conform with Section 404(b)(1) Guidelines and Corps policies concerning the protection of wetlands. The guidelines state that "no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences" (40 CFR 230.10a).

The EPA has decided that use of the proposed 98-acre landfill expansion (revised downward from 200 acres) pending the development of a new upland site is preferable to the use of existing, but more distant, landfills. The fact that Acme has deleted the 76.1 acre fringe area for dredged material disposal and will not dispose hazardous waste in the expansion area has, in effect, eliminated EPA's objections to the project. Acme has essentially accepted Alternative B of the EIR/EIS. The project as proposed, with mitigation and special conditions added to the Corps permit, would make the project consistent with the 404(b)(1) guidelines.

11. Alternatives to project: Acme has already revised its project from 200 acres to 97.6 acres, by deleting the 76.1 acre fringe area for dredged material disposal and by proposing 118 acres of wetland mitigation for 40 acres of wetlands to be covered. This alternative is similar to Alternative B of the EIR/EIS. Additional alternatives considered were:

a. Issuance of a permit for a reduced project located on Acme's southern parcel (south of the proposed expansion area): Under this alternative Acme would revise their permit application to allow filling of the approximately 40 acres of the southern parcel which are suitable for landfill purposes. About 25 acres of that area are probably in Corps jurisdiction. Denial of Acme's first application for a 200 acre expansion was based, in part, on the availability of the southern parcel as an alternative to the filling of wetlands. Subsequent to that denial, it was determined that some of the portion of the southern parcel which is suitable for waste disposal also contains seasonal wetlands. This alternative would not avoid any of the impacts of the expansion proposed by Acme. Further, it would have greater impacts on the Vine Hill residential neighborhood and Buchanan Field (Airport) because the southern parcel is closer to those areas. Also, a 40-acre expansion area would not provide enough lead time to find and prepare a new site and to obtain all the necessary approvals before the present site would close.

b. The use of existing landfill sites other than Acme: This alternative would involve minimal time constraints. If the Acme site were closed, the collection companies which currently dump at Acme could use the two other existing landfill sites in Contra Costa County without further action by any government agency. The two sites would provide sufficient capacity for disposal of wastes from Acme Landfill's service area, in addition to wastes from their present service areas, for at least 7 years. Almost all of this capacity is at the West Contra Costa Sanitary Landfill (WCCSL), located 20 miles west of Acme in Richmond. The major disadvantages of using the two other existing sites in Contra Costa County are (1) a moderate to substantial short term (5 year) increase in disposal costs due to longer haul distances and higher tipping fees (estimated cost increase = 11-43%, depending upon assumptions), and (2) exhaustion of the capacity of the two landfills would be accelerated, resulting in a moderate increase in midterm disposal costs for some parts of Contra Costa County outside of the Acme service area (estimated County-wide cost increase in Years 5 - 15 = 9%).

In addition to the two landfills in Contra Costa County, there are two large landfills in northern Alameda County, the Altamont and Vasco Road landfills, which could accommodate all or part of the wastes from Acme's service area for well over 10 years. Exporting wastes from Contra Costa County to Alameda County would require amendment of the Alameda County Solid Waste Management Plan and the landfill's Solid Waste Facilities Permit. These and other regulatory actions could take a year or more to complete. The major disadvantage of using either of the existing landfills in northern Alameda County would be a substantial short term increase in haul and disposal costs (estimated cost increase = 24 - 38%).

If Acme Landfill is closed prior to the opening of a new landfill, it is likely that both of the other existing Contra Costa County landfills and at least one of the Alameda County landfills will be used to dispose of the wastes from Acme's service area (estimated short term cost increase for this scenario = 11 - 43%).

Partial closure to solid waste collectors was ordered by Acme on 4 April 1984. It is estimated that one third to one half of the approximate 1,500 tons per day Acme Landfill normally receives is being diverted to West Contra Costa County Landfill. The Vasco Landfill in Alameda County has refused to accept waste from Contra Costa County. Collectors have initiated action to increase rates.

The preceding discussion applies to the non-hazardous Group 2 and 3 wastes, which constitute 96% of the wastes disposed of at Acme. The remaining 4% of the wastes received at Acme are Group 1/hazardous wastes, which can be disposed of only at landfills specifically permitted to accept such wastes. Acme currently plans to continue to accept Group 1/hazardous wastes for disposal in the existing landfill if the proposed expansion is approved. If the existing Acme Landfill is closed completely, the West Contra Costa Sanitary Landfill and the IT Corporation landfill east of Benicia will likely receive most of these Group 1/hazardous wastes. The Altamont landfill also accepts Group 1/hazardous wastes.

c. Opening new landfill site: Another alternative which must be considered is the opening of one or more new landfill sites to replace Acme. The information available indicates that a new landfill accepting only non-hazardous wastes would take 2 to 7 years to open. Acme Fill Corporation has already purchased an option on a 640-acre parcel in southeastern Contra Costa County to use as a successor to Acme. The estimated cost increase associated with using a new landfill site is 10 - 30%, depending on its location and other assumptions. This cost increase will occur whenever the Acme site closes, assuming that a new site is available at that time.

Contra Costa County contains many large tracts of undeveloped land which are topographically suitable for landfill operations. Therefore, time and cost factors, rather than the physical availability of potential landfill sites, are the major constraints on the availability of practicable alternative sites. Acme Fill is investigating the potential for new, upland sites in eastern Contra Costa County.

A project application report for the proposed Kirker Pass waste landfill was submitted to the Contra Costa County Planning Department in May, 1984. This is a first phase investigation with considerable depth of information and planning in the geotechnical and hydrological areas. The proposal assumes an Acme closure of 1986 and a West Contra Costa County landfill closure of 1990. According to a time table prepared by engineering consultants that were part of the team that produced the report, the projected date for acquisition of required permits and commencement of site grading is January, 1986 (letter from Bissel and Kern to Sierra Club dated 2 May 1984).

d. Issuance of a permit for a landfill with reduced maximum height:

Under this alternative Acme would be required to limit the maximum height of the proposed landfill from 75 feet to some lower height. Acme's March 1981 application for the 200 acre expansion was for a 40-foot landfill and the recent 22-acre landfill on Acme's southern parcel is about 40 feet high. This alternative to limit the maximum height of the fill to 40 feet:

(i) would allow limited expansion of Acme Landfill at a higher unit disposal cost than other alternatives. The longevity of the landfill and cost increase associated with its use would depend on the maximum height allowed.

(ii) would limit the use of the site for solid waste disposal to about 3 years, versus the 5 years that Acme feels it needs.

(iii) would reduce the potential for sliding and sinking into the Bay mud foundation during seismic activity.

(iv) would reduce potential for cracking of perimeter seals and therefore leachate contamination of the groundwater.

(v) would reduce the problem of unequal settlement should future construction be undertaken on the landfill.

Any height lower than 32 feet would be impracticable, according to George Nolte Associates, because drainage requirements imposed by the RWQCB would not be met.

e. Denial: Under this alternative no expansion of Acme Landfill into areas subject to Corps jurisdiction would be allowed. The existing landfill is expected to be filled to its available capacity within a few months. Even after Acme Landfill is "filled to capacity", it would probably continue to receive some wastes. These would include Group 1/hazardous wastes, which are disposed of in trenches excavated into the landfill, and inert Group 3 construction and demolition wastes which could be disposed of in Acme's borrow pits. Because the surface of the existing landfill is very uneven and some subsidence is expected, it is likely that limited quantities of other wastes could also be disposed of at the Acme site at a reduced rate of fill without exceeding the safe capacity of the landfill. This alternative would require the use of existing landfill capacity in Contra Costa County and northern Alameda County until a new landfill site could be opened. It is estimated that short term central County disposal costs would be 11 - 43% higher under this alternative than with the proposed project.

g. Recycling, composting: See para. 7g.

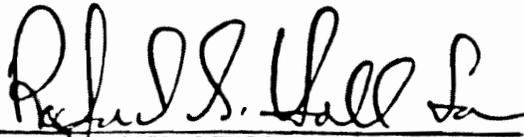
h. Alternative considered environmentally preferable: Denial of the proposed expansion is considered environmentally preferable since wetlands would remain unfilled and there would be no concern about the possibility of leachate polluting the waterway.

i. Preferred alternative: A limited expansion is the preferred alternative since a new upland site is not yet on line to replace the Acme Landfill. Responsible county authorities recommend expansion of the Acme Landfill rather than more expensive trucking to existing alternate landfills and their resultant premature filling.

12. Recommendations of the staff including special conditions: In view of all of the above, it appears that the public interest would best be served if this permit were issued as revised, with special conditions added. The deciding factors in favor of issuance are the public need, arrangement for satisfactory mitigation of wetland habitat loss, significant modification of the original application, minimal seismic hazard, and limited life for solid waste disposal at the expansion site; thus encouraging alternative sites/methods for waste disposal. Changes to the application include reduction from a 200 acre expansion, which included hazardous waste and bordered Walnut/Pacheco Creek, to a 97.6-acre expansion with no hazardous waste and set-back of a minimum of 300 feet from the waterway. The reduced proposed landfill was designed to accommodate waste over a five year period - the time the applicant estimated would be required to bring a new upland sanitary landfill on line - and had a maximum height of 75 feet. Critics of the proposed expansion have said that two years should be sufficient time to find and prepare a new site especially in view of a previous expansion allowed to Acme by the county, and that fact that a potential alternative site has already been found and a feasibility report has been prepared for it (i.e., Kirker Pass). The city of San Jose is following a 24-30 month timetable for development of the Kirby Canyon Landfill site, and a detailed project application report for the proposed Kirker Pass site in Contra Costa County was published in May 1984. Therefore, it is recommended that the permit be conditioned to allow waste deposition for a maximum period of three years and a maximum height of 40 feet. (George Nolte Associates, consultant, has calculated that a landfill with a maximum of 40 feet would last 2.85 years. See Appendix A.) Limiting the proposed fill height to 40 feet would also reduce the potential for sliding or sinking into the Bay mud foundation, and the potential for cracking of perimeter seals and

perimeter seals and resultant leachate leakage during a significant seismic activity. The problems that unequal settlement could cause for future construction would also be reduced.

Date: 11 July 1984

Signed:   
BERNARD LEWIS  
Geologist  
Regulatory Action Officer

14. Conclusions and decision of the District Engineer:

a. I have reviewed and evaluated the documents concerning the application of the above-named applicant from the standpoint of the overall public interest in accordance with 33 CFR Part 320.4. In evaluating this permit application, the guidelines published for the discharge of dredged or fill material in waters of the United States (40 CFR Part 230 et seq.) pursuant to 33 U.S.C. Section 1344(b) were applied.

b. I determined that the structure and fill described herein would significantly affect the quality of the human environment, and therefore, an Environmental Impact Statement was prepared. A joint County/Corps FEIR/EIS was filed with the Environmental Protection Agency and published in the Federal Register dated 17 June 1983. I find that the total public interest would best be served by issuance of this permit, limiting it to 3 years and limiting the maximum height of the expansion fill to 40 feet.

Date: 11 June 1984

Signed:   
EDWARD M. LEE, JR.  
COL, CE  
Commanding

Incorporated by reference in this report are:

Appendix A

"Evaluation of Useful Life and Operational Considerations at the Acme Landfill, Martinez, California," 10 May 1984, prepared for the District by George S. Nolte and Associates, engineering consultants.

Appendix B

Memorandum for Record, Subject: Review and Comment on "Sanitary Landfill and Dredged Material Disposal Pond Development, Acme Landfill, Martinez, California," 23 May 1984, prepared for the District by the Waterways Experiment Station (WES), Corps of Engineers.

Appendix C

Final Environmental Impact Report/Environmental Impact Statement, Acme Landfill Expansion, June 1983, U.S. Army Corps of Engineers, San Francisco, and Contra Costa County Planning Department, 2 volumes.

Appendix D

Supplemental Information Report, Acme Landfill Expansion, January 1984, San Francisco District, Corps of Engineers.

1 VAN VOORHIS & SKAGGS  
2 Stephen L. Kostka  
3 Ronald Scales  
4 Post Office Box V  
5 Walnut Creek, CA 94596-1270  
6 Telephone: (415) 937-8000  
7  
8 Attorneys for Defendant  
9 Acme Fill Corporation

10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA

12 STATE OF CALIFORNIA ex rel. )  
13 SAN FRANCISCO BAY CONSERVATION )  
14 AND DEVELOPMENT COMMISSION, ) NO. C85-1343-MHP  
15 Plaintiffs, ) ANSWER TO COMPLAINT  
16 v. )  
17 COLONEL EDWARD M. LEE, JR.; )  
18 LIEUTENANT COLONEL ANDREW M. )  
19 PERKINS, JR., District Engineer, )  
20 San Francisco District, U.S. )  
21 Army Corps of Engineers; )  
22 BRIGADIER GENERAL DONALD J. )  
23 PALDINO, South Pacific )  
24 Division, U.S. Army Corps of )  
25 Engineers; LIEUTENANT GENERAL )  
26 JOSPEH K. BRATTON, Commanding )  
General, U.S. Army Corps of )  
Engineers; JOHN O. MARSH, JR., )  
Secretary of the Army, and )  
ACME FILL CORPORATION, a )  
California Corporation, )  
Defendants. )

27 Defendant Acme Fill Corporation answers the complaint as  
28 follows:  
29

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

INTRODUCTORY ALLEGATIONS

1. Admits this action purports to seek a declaration that defendants violated the Coastal Zone Management Act, and with this exception, denies the allegations of paragraph 1.

JURISDICTION AND VENUE

2. Admits subject matter jurisdiction under 28 U.S.C. § 1331, and with this exception, denies the allegations of paragraph 2.

3. Admits the allegations of paragraph 3.

PARTIES

4. Admits the allegations of paragraphs 4 through 10.

FACTS

5. Admits the allegations of paragraph 11.

6. Answering paragraphs 12 and 13, defendant alleges that the contents of the statutes and regulations referred to provide as stated therein and not otherwise. Except as so expressly alleged, defendant denies the allegations of paragraphs 12 and 13.

7. Denies the allegations of paragraphs 14, 15 and 16.

8. Admits the allegations of paragraphs 17 and 18.

9. Admits the first sentence of paragraph 19, and with this exception, denies the allegations of paragraph 19.

10. Denies the allegations of paragraphs 20 and 21.

1           11. Admits the allegations of paragraph 22.

2           12. Answering paragraph 23, admits that Acme reapplied  
3 for a 200 acre landfill expansion in 1982, and with this  
4 exception, denies the allegations of paragraph 23.

5           13. Admits the allegations of paragraph 24.

6           14. Denies the allegations of paragraph 25.

7           15. Denies the allegations of paragraph 26.

8           16. Answering paragraph 27 and 28, defendant alleges  
9 that the copy of the document attached to the complaint as  
10 Exhibit 1 provides as stated therein and not otherwise.  
11 Except as so expressly alleged defendant denies the allega-  
12 tions of paragraph 27 and 28.

13           17. Admits the allegations of paragraph 29.

14           18. Answering paragraphs 30 and 31, defendant alleges  
15 that the copies of the documents attached to the complaint  
16 as exhibits 2 and 3 provide as stated therein and not other-  
17 wise. Except as so expressly alleged defendant denies the  
18 allegations of paragraphs 30 and 31.

19           19. Admits that on June 11, 1984, defendant Lee, on  
20 behalf of Corps of Engineers, approved a Corps permit for  
21 Acme's project, and that said permit did not include the  
22 conditions for a consistency concurrence identified by BCDC.  
23 Defendant is without knowledge or information sufficient to  
24 form a belief as to the truth of the remaining allegations  
25 of paragraph 32.

26

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

20. Admits the allegations of paragraph 33.

FIRST COUNT

21. Answering paragraph 34, defendant incorporates by reference its answers to the allegations of paragraphs 1 through 33, inclusive.

22. Denies the allegations of paragraph 35.

23. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 36.

24. Denies the allegations of paragraphs 37 and 38.

SECOND COUNT

25. Answering paragraph 39, defendant incorporates by reference its answers to the allegations of paragraphs 1 through 37, inclusive.

26. Admits the allegations of paragraph 40.

27. Denies the allegations of paragraphs 41, 42, 43, and 44.

THIRD COUNT

28. Answering paragraph 45, defendant incorporates by reference its answers to the allegations of paragraphs 1 through 37, inclusive.

29. Denies the allegations of paragraphs 46 and 47.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

ALL ALLEGATIONS OF THE COMPLAINT

30. Denies each and every allegation of the complaint not expressly admitted in this answer.

FIRST DEFENSE

31. The complaint and each purported count or claim for relief fails to state a claim upon which relief can be granted.

SECOND DEFENSE

32. The complaint and each purported claim for relief is barred by laches and excessive delay.

THIRD DEFENSE

33. Plaintiff waived its right to enforce against defendant the claims alleged in the complaint, if any such right it had.

FOURTH DEFENSE

34. Plaintiff by its conduct is estopped from enforcing against defendant the claims alleged in the complaint, or from maintaining this action against defendant Acme Fill Corporation.

FIFTH DEFENSE

35. The relief sought is contrary to public policy in that the decision plaintiff seeks to enforce conflicts with statutes and policies of the State of California governing solid waste management and landfill siting.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

SIXTH DEFENSE

36. The relief sought is contrary to the public interest in that the sanitary land fill operated by Acme Fill Corporation and permitted by the Corps of Engineers is the sole solid waste disposal site available to serve the waste disposal needs of Central Contra Costa County. An order restraining continued use of this landfill would endanger the health and safety of the residents of Contra Costa County.

SEVENTH DEFENSE

37. The claims set forth in the complaint are the subject of a pending state court action, Acme Fill Corporation v. San Francisco Bay Conservation and Development Commission et al., Contra Costa Superior Court Action No. 258242, filed April 10, 1984. This case should be stayed by the court pending resolution of the state court action.

EIGHTH DEFENSE

38. This case bears upon complex issues of state law and state policy relating to the administration of solid waste management systems and siting of landfills under the laws and regulations of the State of California, and the jurisdiction and authority of the Bay Conservation and Development Commission under the McAteer-Petris Act and the state-approved San Francisco Bay Plan. This court should

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

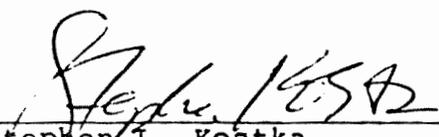
abstain from the exercise of jurisdiction over the matters  
alleged in the complaint.

WHEREFORE, defendant Acme Fill Corporation prays  
judgment as follows:

1. That the complaint and each claim for relief be  
dismissed with prejudice;
2. That defendant be awarded its costs of suit;
3. For an award of reasonable attorney's fees;
4. For such other and further relief as the Court may  
deem appropriate.

Dated: March 13, 1985

VAN VOORHIS & SKAGGS

By:   
Stephen L. Kostka  
Attorneys for Defendant  
Acme Fill Corporation

SLK:lj-7:3  
A.LEE1/3