

CALIFORNIA COASTAL COMMISSION

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**STAFF REPORT AND RECOMMENDATION****ON CONSISTENCY DETERMINATION**

Consistency Determination No. **CD-090-97**
Staff: JRR-SF
File Date: 7/1/1997
45th Day: 8/15/1997
60th Day extended to: 9/19/1997
Commission Meeting: 9/9-12/1997

FEDERAL AGENCY: **COAST GUARD**

DEVELOPMENT**LOCATION:**

Coast Guard Station, Bodega Bay (Exhibit 1)

DEVELOPMENT**DESCRIPTION:**

Bay Area communications system upgrade

SUBSTANTIVE FILE DOCUMENTS:

1. Environmental Assessment, Bay Area Communications System (BACS) Upgrade, June 1997.
2. ND-101-97, for Bay Area Communications Systems Upgrade, for Sonoma (excluding Coast Guard Station at Bodega Bay), Marin, and Monterey Counties

EXECUTIVE SUMMARY

The U.S. Coast Guard proposes to upgrade its Bay Area communications system. These improvements require modifications to existing communication towers and antennas at facilities from Mount Jenner, on the Sonoma County coast, to the City of Monterey. Additionally, the Coast Guard proposes to construct a new tower with one antenna and an

equipment shelter at the U.S. Coast Guard Station at Bodega Bay, Sonoma County. Except for the Bodega Bay project, the modifications proposed by the Coast Guard will not result in effects on coastal resources and the Commission staff reviewed them under a separate negative determination, ND-101-97.

The Bodega Bay modifications include the construction of a new 40-foot tower with one six-foot microwave dish and an equipment shelter. The project raises issues over impacts on sensitive habitat resources of the coastal zone. The Fish and Wildlife Service has raised concerns over impacts on several bird species, and the Coast Guard has not completed its coordination, adequately considered alternative designs and/or locations, or agreed to fully mitigate these impacts. The Commission has inadequate information with which to determine the project's consistency with the environmentally sensitive habitat policies of the California Coastal Management Program (CCMP) (Coastal Act Section 30240).

The tower is next to an existing facility and is taller than that development. However, the tower is consistent with the character of the area and will not block or degrade coastal views. Therefore, it is consistent with the visual policies (Section 30251) of the CCMP. The project will not affect public access and recreation and is consistent with the access and recreation policies of the CCMP (Sections 30210-30212).

STAFF SUMMARY AND RECOMMENDATION:

I. Project Description.

The Coast Guard proposes to upgrade its Bay Area communications system. The project includes modifications to sixteen communication facilities and construction of one new facility, which is the subject of this consistency determination. At the Coast Guard Station Bodega Bay, Exhibit 1, the Coast Guard proposes to install a new 40-foot tower with one six-foot microwave dish antenna, construct an eighty-square-foot equipment shelter, and excavate a 25-foot trench, Exhibit 2.

II. Status of Local Coastal Program.

The standard of review for federal consistency determinations is the policies of Chapter 3 of the Coastal Act, and not the Local Coastal Program (LCP) of the affected area. If the Commission certified the LCP and incorporated it into the CCMP, the LCP can provide guidance in applying Chapter 3 policies in light of local circumstances. If the Commission has not incorporated the LCP into the CCMP, it cannot guide the Commission's decision, but it can provide background information. The Commission has not incorporated the Sonoma County LCP into the CCMP.

III. Federal Agency's Consistency Determination.

The Coast Guard has determined the project to be consistent to the maximum extent practicable with the California Coastal Management Program.

IV. Applicable Legal Authorities:

Section 307 of the Coastal Zone Management Act provides in part:

(c)(1)(A) Each Federal agency activity within or outside the coastal zone that affects any land or water use or natural resource of the coastal zone shall be carried out in a manner which is consistent to the maximum extent practicable with the enforceable policies of approved State management programs.

The informational requirements of the federal consistency regulations (15 CFR Part 930) provide:

Section 930.39 Content of a consistency determination.

(a) The consistency determination shall include a brief statement indicating whether or not the proposed activity will be undertaken in a manner consistent to the maximum extent practicable with the management program. The statement must be based upon an evaluation of the relevant provisions of the management program. The consistency determination shall also include a detailed description of the activity, its associated facilities, and their coastal zone effects, and comprehensive data and information sufficient to support the Federal agency's consistency statement. The amount of detail in the statement evaluation, activity description and supporting information shall be commensurate with the expected effects of the activity on the coastal zone.

The federal consistency regulations also provide:

Section 930.42 State Agency disagreement.

(b) If the State agency's disagreement is based upon a finding that the Federal agency has failed to supply sufficient information (see Section 930.39(a)), the State agency's response must describe the nature of the information requested and the necessity of having such information to determine the consistency of the Federal activity with the management program.

V. Practicability:

The federal consistency regulations provide:

Section 930.32 Consistent to the maximum extent practicable.

(a) The term "consistent to the maximum extent practicable" describes the requirement for Federal activities including development projects directly affecting the coastal zone of States with approved management programs to be fully consistent with such programs unless compliance is prohibited based upon the requirements of existing law applicable to the Federal agency's operations. If a Federal agency asserts that compliance with the management program is prohibited, it must clearly describe to the State agency the statutory provisions, legislative history, or other legal authority which limits the Federal agency's discretion to comply with the provisions of the management program.

Since no issue of practicability has been raised by the Coast Guard, the standard before the Commission is full consistency with the CCMP. The Coast Guard has not attempted to assert in this case that compliance with the CCMP is prohibited based upon the requirements of existing law applicable to its operations.

VI. Staff Recommendation:

The staff recommends that the Commission adopt the following motion:

MOTION. I move that the Commission concur with the Coast Guard's consistency determination.

The staff recommends a **NO** vote on this motion. Failure to receive a majority vote in the affirmative will result in adoption of the following resolution:

Objection

The Commission hereby **objects** to the consistency determination made by the Coast Guard for the proposed project, finding that the consistency determination does not contain sufficient information to enable the Commission to determine whether the project is consistent to the maximum extent practicable with the enforceable policies of the California Coastal Management Program (CCMP).

VII. Findings and Declarations:

The Commission finds and declares as follows:

A. Habitat Resources. Section 30240 of the Coastal Act provides that:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

The proposed project is within a developed site that does not contain any environmentally sensitive habitat areas. However, the project is near habitat for the snowy plover, a federally listed threatened species, and Bodega Bay, which is a wintering area for migratory birds on the Pacific Flyway. Bird collisions with the new communications tower are a possible impact to these sensitive resources. Given the information currently provided, it is unclear the extent to which the project affect these nearby sensitive habitats, and whether the impacts can be mitigated based on the current design.

The Coast Guard proposes several measures that will minimize habitat effects. These measures include pre-construction monitoring and, if that monitoring indicates significant impacts, the Coast Guard states it will develop appropriate mitigation. Those mitigation measures could include installing sound or light warning systems or planting additional trees. Additionally, the Coast Guard proposes to conduct post-project monitoring and, if necessary, provide for additional mitigation. At the same time, the U. S. Fish and Wildlife Service has identified concerns over bird strikes and other impacts, and has requested that the Coast Guard consider alternative designs and locations. The Coast Guard is still in the process of providing additional information to the Fish and Wildlife Service, and it would be premature in the absence of conclusion of this coordination to determine that the project is consistent with the habitat policies of the CCMP. The Commission therefore believes it must object to the Coast Guard's consistency determination at this time, based on lack of information over the project's consistency with Section 30240 of the Coastal Act.

B. Visual Resources. Section 30251 of the Coastal Act provides that:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development

shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

The proposed project involves construction of a 40-foot tower next to the existing Coast Guard Station at Bodega Bay. The tower will be taller than the adjacent Coast Guard observation tower and may be visible from the nearby public road and beaches (Doran Beach Regional Park and South Sonoma Coast State Beach). However, the visual impact will not be significant. The Coast Guard will construct the tower within a developed site, and immediately adjacent to the Coast Guard Station is an existing 60-foot tower. Therefore, the tower is consistent with the character of the area. Additionally, the Coast Guard proposes to locate the tower next to existing trees, which will partially screen the tower from Doran Beach and the public road. Finally, the Coast Guard proposes to use "appropriate materials and colors for the new tower and shelter that blend into the surrounding landscapes." (EA, page 4-25.) Therefore, the Commission finds that the proposed project is consistent with the character of the area, will not block views to and along the coast, and will not otherwise significantly affect coastal views. In conclusion, the Commission finds that the proposed project is consistent with the visual policies of the CCMP.

C. Public Access and Recreational Resources. Section 30210 of the Coastal Act provides that:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Additionally, Sections 30211 and 30212 of the Coastal Act provide, in part, that:

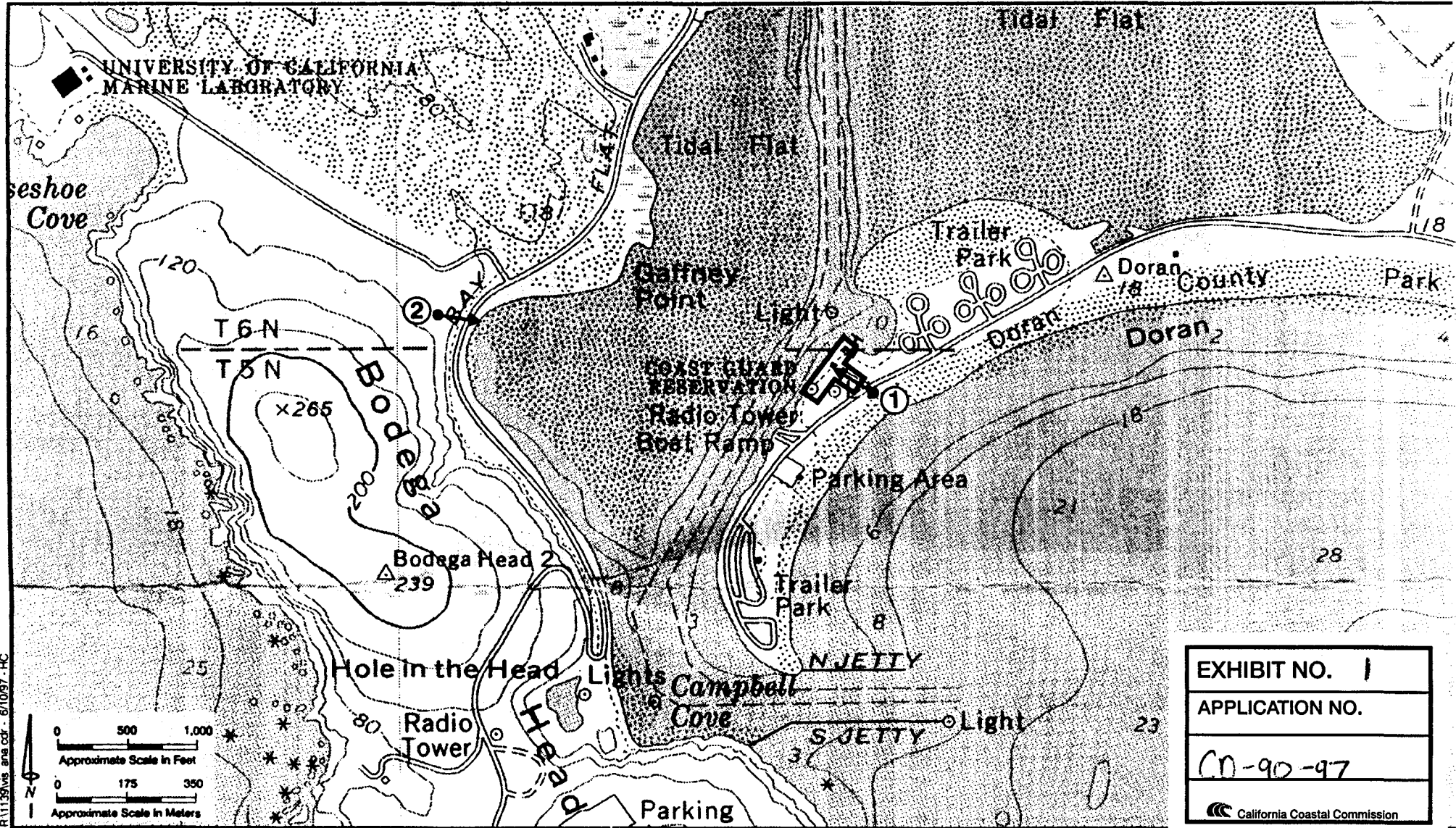
Sections 30211: Development shall not interfere with the public's right of access to the sea

Section 30212: (a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

(1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,


(2) adequate access exists nearby,

The proposed project is on the shore of Bodega Bay. The Coast Guard proposes to construct the tower on Coast Guard property immediately adjacent to an existing Coast Guard station. Coastal access and recreational opportunities are available at adjacent public beaches and limited access to the Coast Guard site is also available. The proposed project will not change or in any way affect existing access opportunities in the area. Therefore, the Commission finds that the proposed project is consistent with the access policies of the CCMP.



Station Bodega Bay was photographed November 12, 1996 from Doran Beach Regional Park at the station entrance and from Bay Flat Road, approximately 1.75 miles (2.8km) west of the station, across Bodega Harbor.

LEGEND:

- ① Doran Beach Regional Park (looking northwest)
- ② Bay Flat Road (looking east)
-  Station Bodega Bay

**Station Bodega Bay
Visual Analysis Viewpoint**

BACS E
Sonoma County, California

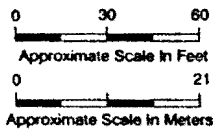
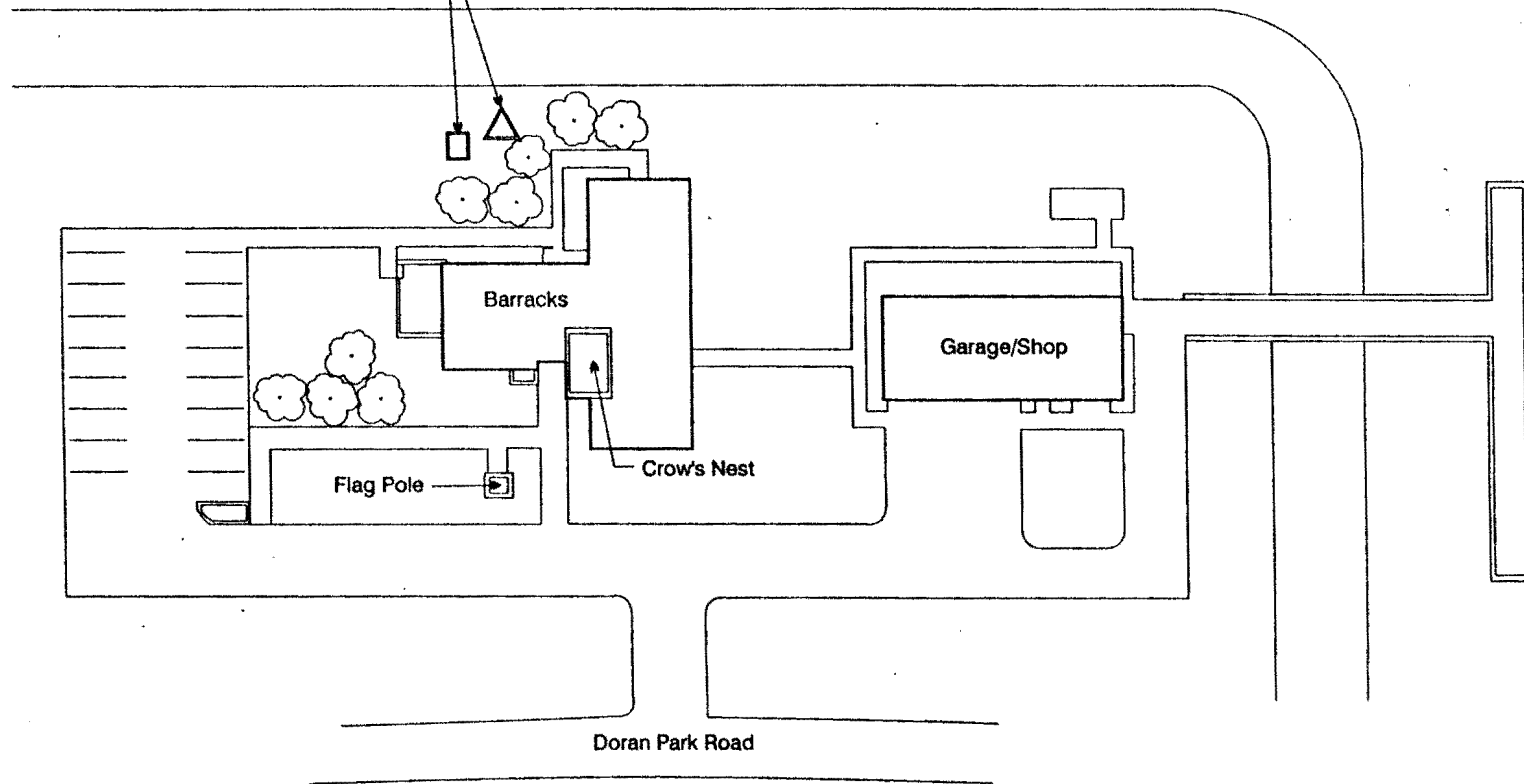
Figure 4-7



Source: USGS Bodega Head 7.5' quadrangle.

Approximate location of new
40-foot (12m) tower and equipment shelter

Bodega Harbor



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Station Bodega Bay is currently not part of the BACS EA. The proposed action would add a 40-foot (12m) tower with one dish antenna and an equipment shelter (2.5m) by 10-foot (3m) equipment

LEGEND:

- △ Proposed BACS Tower
- Proposed Equipment Shelter

EXHIBIT NO. 2
APPLICATION NO.
CD-90-97
California Coastal Commission

Station Bodega Bay Site Plan

BACS EA
Sonoma County, California



Source: US Coast Guard 1996b

Figure 4-5

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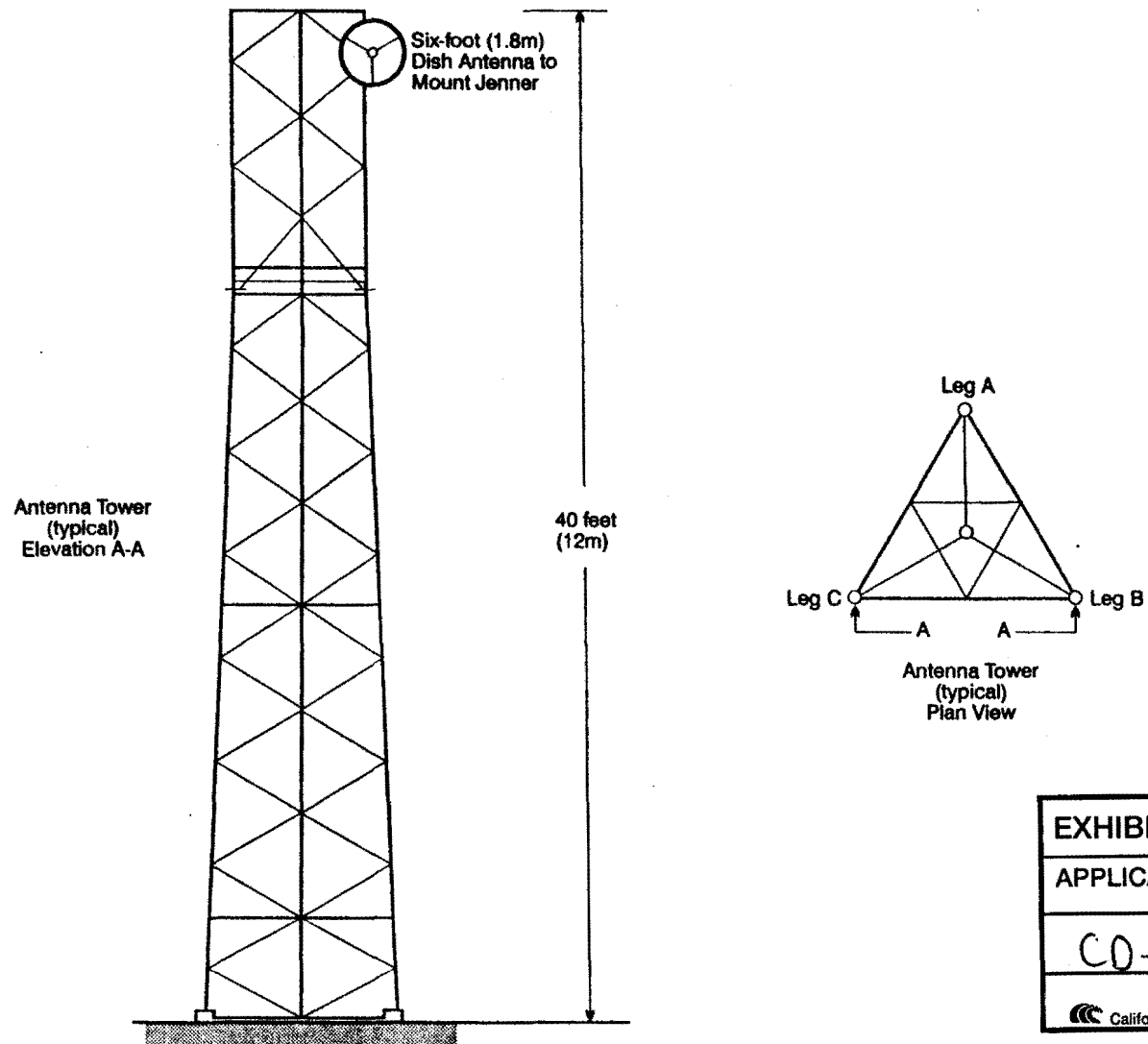


EXHIBIT NO.	3
APPLICATION NO.	
	CO-90-97
California Coastal Commission	

The proposed six-foot (1.8m) dish antenna would be near the summit of the new 40-foot (12m) tower. This antenna would be oriented north-northwest towards Mount Jenner.

Station Bodega Bay Proposed Microwave Antenna Tower

BACSE.
Sonoma County, California



Source: US Coast Guard 1996b

Figure 4-6