

CALIFORNIA COASTAL COMMISSION

NORTH COAST AREA

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Staff:	Bill Van Beckum
Staff Report:	October 25, 1996
Hearing Date:	November 12, 1996
Commission Action:	

STAFF REPORT: CONSENT CALENDAR

APPLICATION NO.: **1-96-38**

APPLICANTS: **JOHN VILICICH/DBA MARSHALL BOAT WORKS**

PROJECT LOCATION: Marshall Boat Works, 19225 State Route 1, Marshall, Marin County, APNs 106-050-01,-11

PROJECT DESCRIPTION: Repair 200 linear feet of wooden bulkheads by facing the lower portion of the bulkheads with plastic lumber cladding and backfilling behind the cladding with concrete, and install an 800 square-foot concrete slab for boat washing behind the bulkheads, with runoff drains, sump pump and 2 collection tanks.

PLAN/ZONING DESIGNATION: C-VCR (Coastal-Village, Commercial, Residential)

LOCAL APPROVALS RECEIVED: County of Marin Tidelands Permit Exemption

SUBSTANTIVE FILE DOCUMENTS: Marin County Local Coastal Program

STAFF NOTES:

Standard of Review. The proposed project is located on the east shore of Tomales Bay. Marin County has a certified LCP, but the project site is in tidal areas within the Commission's retained jurisdiction. Therefore, the standard of review that the Commission must apply to the project is the Coastal Act.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

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I. Approval with Conditions.

The Commission hereby grants a permit, subject to the conditions below, for the proposed development on the grounds that the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will be in conformity with the Marin County Local Coastal Program, is located between the sea and the first public road nearest the shoreline and is in conformance with the public access and public recreation policies of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. Standard Conditions. See Attachment A.

III. Special Conditions.

1. Construction Debris Removal.

All construction debris shall be removed from the site and disposed of at a lawful disposal site. Any floating debris allowed to enter the waters of Tomales Bay shall be retrieved and lawfully disposed of.

2. State Lands Commission Review.

PRIOR TO ISSUANCE of the coastal development permit, the applicant shall submit to the Executive Director a written determination from the State Lands Commission that:

- a. No State lands are involved in the development; or
- b. State lands are involved in the development and all permits required by the State Lands Commission have been obtained; or
- c. State lands may be involved in the development, but pending a final determination an agreement has been made with the State Lands Commission for the project to proceed without prejudice to that determination.

3. U.S. Army Corps of Engineers Review.

PRIOR TO THE COMMENCEMENT OF CONSTRUCTION, the applicants shall provide to the Executive Director a copy of a U.S. Army Corps of Engineers permit, letter of permission, or nationwide permit for the project.

IV. Findings and Declarations.

The Commission hereby finds and declares as follows:

1. Project and Site Description.

The proposed development site is the Marshall Boat Works, located on the east shore of Tomales Bay about one-half mile south of the town of Marshall. See Exhibits 1 and 2. The Marshall Boat Works has been in operation since 1947 as a commercial and recreational boatyard and commercial fishing facility, especially for herring offloading in the winter months, starting at the beginning of January. The proposed development is situated on portions of two parcels, totalling \pm 3.5 acres west of State Route 1, that contain most of the boat works facilities, including buildings and sheds for boat storage and repair and two boat docks.

Several sections of a 200-foot-long wooden bulkhead adjacent to the docks have begun to deteriorate as a result of boats hitting against the lower portions of the vertical planks that make up the bulkhead. In some areas, the wood has deteriorated to such an extent that openings in the wood have developed, allowing small sinkholes to form in the adjacent land.

The applicant proposes to repair the bulkhead, along the entire 200-foot length (Exhibit 3), by facing the lower half to two-thirds of the bulkhead with tongue and groove plastic lumber, installed horizontally (Exhibit 4). The 3"-thick impervious and non-leaching plastic lumber (a product called PlasTEAK) will be held in place by vertical 3 x 6 "H-beams" and 3/4" diameter galvanized steel rods as depicted in Exhibit 5. The rods will be embedded in the existing concrete pilings that hold the existing bulkhead in place. As also depicted in Exhibit 5, the 1.4-foot-deep space between the new facing and existing bulkhead will be backfilled with concrete.

The applicant also proposes to install an 800-square-foot concrete slab for boat washing four feet inland from the bulkhead, with runoff drains, a sump pump and two 250-gallon collection tanks to capture all washwater and any material washed from the boats. See Exhibit 3.

2. Fill in Coastal Waters and Protection of Marine Resources.

The Coastal Act defines fill as including "earth or any other substance or material ... placed in a submerged area." The proposed project includes placement of fill in coastal waters in the form of the plastic lumber facing and the concrete backfill between the facing and the bulkhead. The total encroachment of these materials into the bay, along the 200 linear feet of bulkhead to be repaired, is 280 square feet.

Section 30233 of the Coastal Act addresses the placement of fill within coastal waters. Section 30233(a) provides as follows, in applicable part:

- (a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation

measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

...

(1) New or expanded port, energy, and coastal-dependent facilities, including commercial fishing facilities.

...

(c) In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary

The above policies set forth a number of different limitations on what fill projects may be allowed in coastal waters and environmentally sensitive habitat areas. For analysis purposes, the limitations can be grouped into three general categories or tests. These tests are:

- a. that the purpose of the project is limited to one of eight uses;
- b. that the project has no feasible less environmentally damaging alternative; and
- c. that adequate mitigation measures to minimize the adverse impacts of the proposed project on habitat values have been provided.

The proposed project meets the criteria of Section 30233 of the Coastal Act, as the purpose of the project, repairing "commercial fishing facilities," is an allowable purpose for fill pursuant to Section 30233(a)(1).

No feasible alternatives to the proposed project resulting in less environmental damage have been identified. The "no project" alternative would eventually result in further deterioration of the bulkhead, thus increasing the likelihood that additional or larger sinkholes would appear as more of the bulkhead support fails. This situation would in turn lead to increased sedimentation of the bay, possibly with contaminated soils from the boat yard. The no project alternative would thus be counter-productive to cooperative efforts in recent years, between the applicant and the Marin County Office of Waste Management and the Regional Water Quality Control Board, to identify, excavate and remove from the boat yard soils that have become contaminated from boat maintenance operations over a period of almost fifty years. Thus, the no project alternative is not a less environmentally damaging alternative.

The alternative of removing the existing deteriorating bulkheads and wave breaks and installing the plastic boards, or some other material, in their place, instead of in front of them as proposed, similarly is not a less environmentally damaging alternative. Although this alternative would

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eliminate the need for the 280 square feet of fill described earlier, significant loss of contaminated sediments into the bay during demolition of the existing bulkhead would be likely.

No other alternatives for repairing the existing structures have been identified that would involve less fill.

No direct significant impacts of the project as proposed have been identified. The area to receive fill is generally mud, with no discernible vegetation. Although some benthic organisms and marine organisms such as barnacles that attach to the existing wood bulkhead and concrete piles, will be displaced by the fill, this loss will be mitigated by the creation of additional vertical habitat for barnacles and other species on the new facing for the bulkhead. Mr. Tom Moore of the Department of Fish and Game, in discussing the project with Commission staff (10/22/96), said that he would support the project as proposed not only because of the minimal shoreline disturbance involved in attaching the bulkhead facing and the habitat opportunities the facing will provide, but also for other reasons as well. These reasons include the desirability of using such facing materials that are non-toxic, non-leaching, and not susceptible to decomposition by benthic organism ingestion, and also the fact that the proposed cladding and concrete backfill will be strong and durable enough to hold back site soils, even though those soils will be subject to back-pressure from percolated groundwater movement below the hills just east of the project site and State Route 1.

The Commission therefore finds that no additional mitigation is required for the loss of habitat area to be covered by the proposed fill.

The Commission thus finds that the project is an allowable use for fill of coastal waters, that there is no feasible less environmentally damaging alternative, and that adequate mitigation for the minor impacts associated with the new fill will be provided by additional habitat opportunities on the bulkhead facing. In addition, the Commission finds that the project will maintain the functional capacity of the Tomales Bay estuary. Therefore, the Commission finds that the proposed development is consistent with Section 30233 of the Coastal Act.

3. Water Quality

Coastal Act Section 30231 provides in applicable part that the biological productivity and the quality of coastal waters be maintained by controlling runoff.

As previously indicated, the application includes plans to install an 800 square-foot concrete slab for boat washing four feet inland from the bulkhead, with runoff drains, a sump pump and two 250 gallon collection tanks to capture all washwater and any material washed from the boats.. See Exhibit 3. The site for the proposed slab is currently unpaved, and therefore porous.

Because wastewater from boat washings may contain contaminating substances such as toxic paint fragments, the pollution of soils and bay waters, from wastewater filtration and runoff, is likely to occur unless the wastewater is directed away from the bay and collected so as not to filter into the ground.

The design for the proposed boat washing facility has taken these considerations into account as follows. Boats will be washed directly over the slab which will slope slightly to a 2"-deep trench that will run along the slab's south and west edges. The washing waters and any materials washed from boats will flow into the trenches and from the trenches into an adjacent sump pump. From the sump pump the waste materials will be pumped to two on-site collector tanks 20 feet east of the washing slab (Exhibit 3). The first tank will separate out any particulates, and the second tank will receive the filtered washwater, which then will be recycled for use in subsequent boat washings. The collected particulates will periodically be emptied from the first collector tank and disposed of off-site at an authorized toxic waste disposal site, possibly a site the applicant has located in Bakersfield.

Besides these means to prevent runoff of substances potentially harmful to the bay, the project includes other features noted earlier that also will help maintain the quality of the bay's water. For example, because the plastic lumber proposed as the bulkhead's cladding is impervious, it will help contain any contaminated soils at the boatyard from entering the bay. Furthermore, using the non-leaching plastic lumber as the cladding not only avoids the contaminant migration hazards associated with more traditional bulkhead facing materials such as preservative-treated woods, but shields the bay from any toxic preservatives the existing wooden bulkhead might contain.

The project could have an adverse impact on the water quality of Tomales Bay if construction debris were allowed to enter the water. In addition, any floating debris that becomes loose on the water could pose a navigation hazard to boaters. Therefore, the Commission attaches Special Condition No. 1, which requires all construction debris to be removed from the site and lawfully disposed of, including any floating debris that enters the water.

Consequently the project is consistent with Section 30231 and will maintain the biological productivity and quality of coastal waters because the wastewater runoff from the proposed boat washing area will be treated, the proposed bulkhead cladding will not leach contaminants into the bay, the repaired bulkhead will better contain soil contaminants on site, and, as conditioned, any construction debris must be kept out of the bay and removed from the construction site.

4. Public Access.

Section 30212 of the Coastal Act requires that access from the nearest public roadway to the shoreline be provided in new development projects except where it is inconsistent with public safety, military security, or protection of fragile coastal resources, or adequate access exists nearby. Section 30211

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requires that development not interfere with the public's right to access gained by use or legislative authorization. In applying Section 30211 and 30212, the Commission is also limited by the need to show that any denial of a permit application based on these sections, or any decision to grant a permit subject to special conditions requiring public access, is necessary to avoid or offset a project's adverse impact on existing or potential access.

Although the project is located between the first public road, State Route 1, and the sea, it will not adversely affect public access. No public access exists on the site that could potentially be affected by the project. In addition, the proposed bulkhead repairs and boat washing slab will not change the nature or intensity of boat yard use, and thus will not create any new demand for public access or otherwise create any additional burdens on public access. Therefore, the Commission finds that the proposed project does not have any adverse effect on public access that warrants requiring public access, and that the project as proposed without provision for public access is consistent with the requirements of Coastal Act Sections 30210, 30211, and 30212.

5. Visual Resources.

Section 30251 of the Coastal Act states that the scenic and visual qualities of coastal areas be considered and protected as a resource of public importance, and requires in applicable part that permitted development be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, and to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.

The bulkhead repair project will not result in any blockage of public views to Tomales Bay as it is below the level of the land between State Route 1 and the bay. Also, since the proposed bulkhead facings will parallel the existing bulkhead, no part of the facings will protrude into bay waters in any way that would obstruct views along the waters' edge. The project will not require any land form alteration other than the repair of minor sink holes, which will be filled and graded to existing grade.

Although the bulkhead facing material is a hard plastic product that has not previously been utilized in the installation or repair of Tomales Bay bulkheads, which are typically of wood or concrete construction, it is similar in scale, general design and color, a faded green, to the more traditional materials. Furthermore, since the project will provide a new and uniform facing to the boatyard's deteriorating, wooden bulkheads, it will enhance the appearance of the boatyard.

The other project components, the proposed boat washing slab and wastewater collection tanks, also will not adversely affect coastal views. The slab will be flush with the ground, and it and the small-scale tanks (approximately 4

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feet high and 4 feet in diameter), will be concealed from State Route 1 view by existing intervening boatyard development and stored boats.

Therefore the project is consistent with Section 30251, as it is designed to protect views to and along Tomales Bay, does not alter natural land forms, is visually compatible with the character of surrounding areas, and enhances the visual quality of the shoreline.

6. Public Trust.

The project is subject to tidal action, and is therefore subject to State Lands Commission considerations. To ensure that the applicant has all the necessary property rights to carry out the project and to comply with the terms and conditions of this permit, the Commission attaches Special Condition No. 2 which requires that the applicants submit a final written determination from the State Lands Commission as to whether a permit from that Commission is needed.

7. U.S. Army Corps of Engineers Approval.

The project requires review and approval by the U.S. Army Corps of Engineers. Pursuant to the Federal Coastal Zone Management Act, any permit issued by a federal agency for activities that affect the coastal zone must be consistent with the coastal zone management program for that state. Under agreements between the Coastal Commission and the U.S. Army Corps of Engineers, the Corps will not issue a permit until the Coastal Commission approves a federal consistency certification for the project or approves a permit. To ensure that the project ultimately approved by the Corps is the same as the project authorized herein, the Commission attaches Special Condition No. 3 which requires the permittee to submit to the Executive Director evidence of U.S. Army Corps of Engineers approval of the project prior to the commencement of work.

8. Marin County LCP.

The proposed project is located within the Commission's retained coastal development permit jurisdiction. Therefore, the standard of review that the Commission is applying in its consideration of the application is the Coastal Act. Nonetheless, the project is also consistent with the Marin County LCP.

Marin County's LCP "Diking, Filling and Dredging" Policy 2 limits development within open coastal waters to specific uses, including uses related to "commercial fishing facilities" (Policy 2.a.) and "boating facilities" (Policy 2.g.). LCP "Diking, Filling and Dredging" Policy 3 states that filling may be allowed when there is no feasible less environmentally damaging alternative (Policy 3.a.) and, where feasible, mitigation measures have been provided to minimize adverse environmental effects (Policy 3.b.). As discussed in Finding 2. above, "Fill in Coastal Waters," the proposed fill qualifies, under Coastal Act Section 30233(a)(1), as fill for "commercial fishing facilities." In

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addition, no feasible, less environmentally damaging alternative has been identified, and the project will employ adequate mitigation measures to minimize the adverse environmental effects. Therefore, the Commission finds that the proposed project, as conditioned, is consistent with the fill of coastal waters policies of the Marin County LCP.

9. California Environmental Quality Act (CEQA).

Section 13096 of the Commission's administrative regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as modified by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(i) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. As discussed above, the project has been mitigated to prevent construction debris from polluting the waters of Tomales Bay. The project, as conditioned, therefore will not have a significant adverse effect on the environment within the meaning of CEQA.

EXHIBITS:

1. Regional Location Map
2. Site Location Map
3. Site Plan
4. Bulkhead Elevation
5. Bulkhead Top View

9064p/bvb/WANG

ATTACHMENT A

Standard Conditions

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

A B C D E F G H I O

SITE

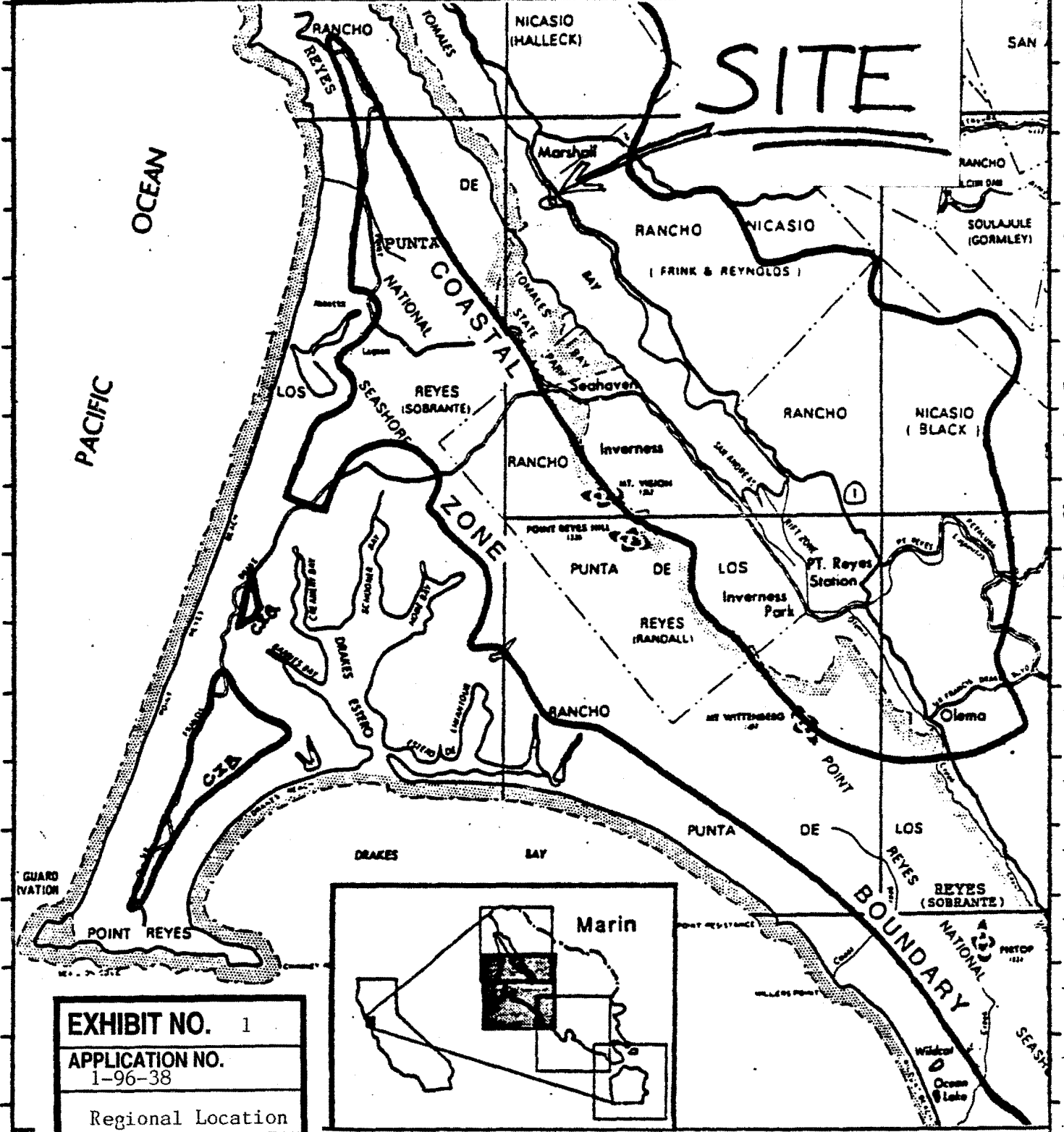
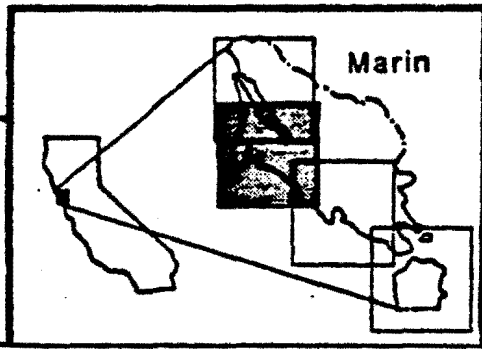


EXHIBIT NO. 1
APPLICATION NO. 1-96-38
Regional Location



 California Coastal Commission

LOCATION MAP

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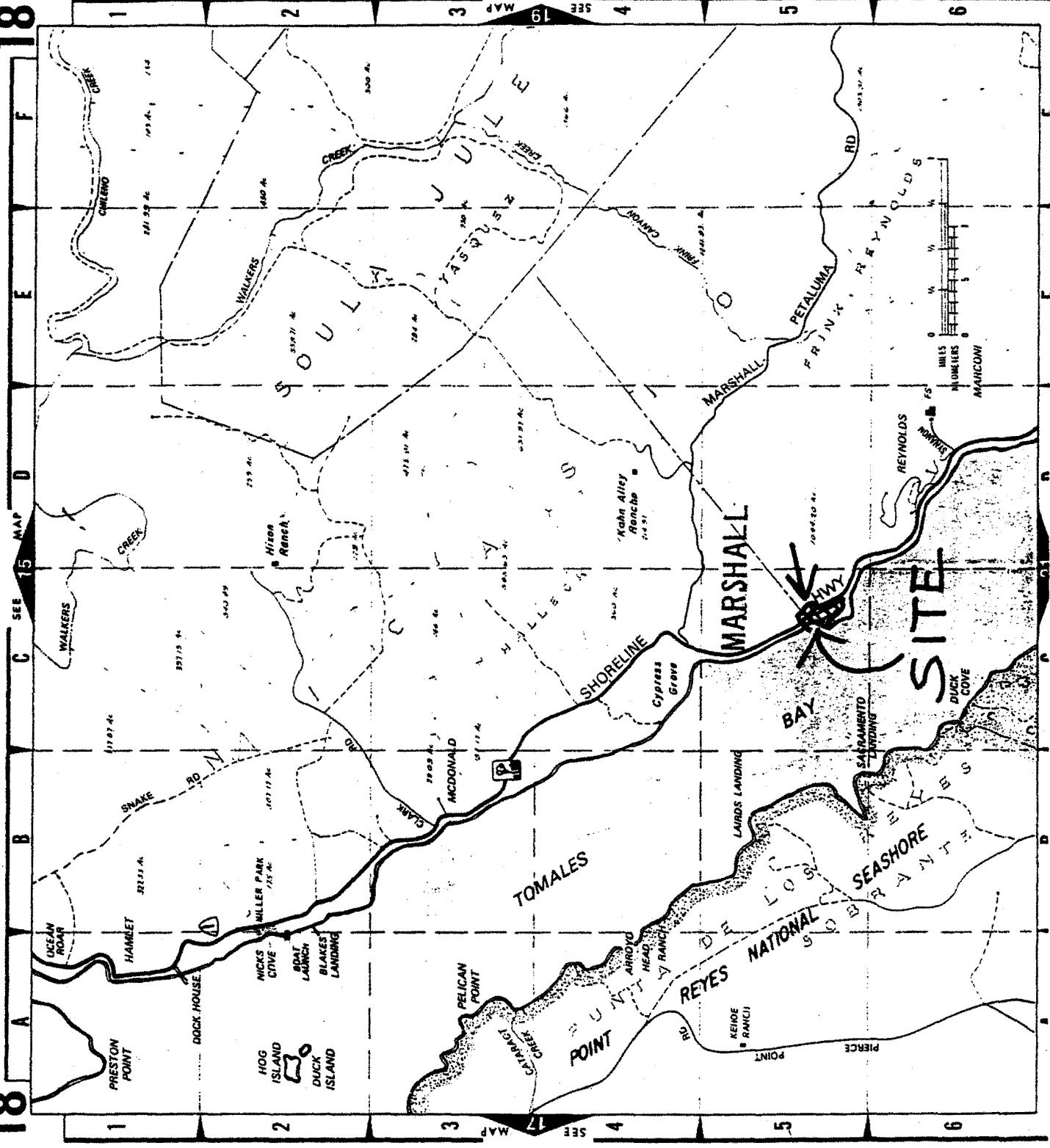
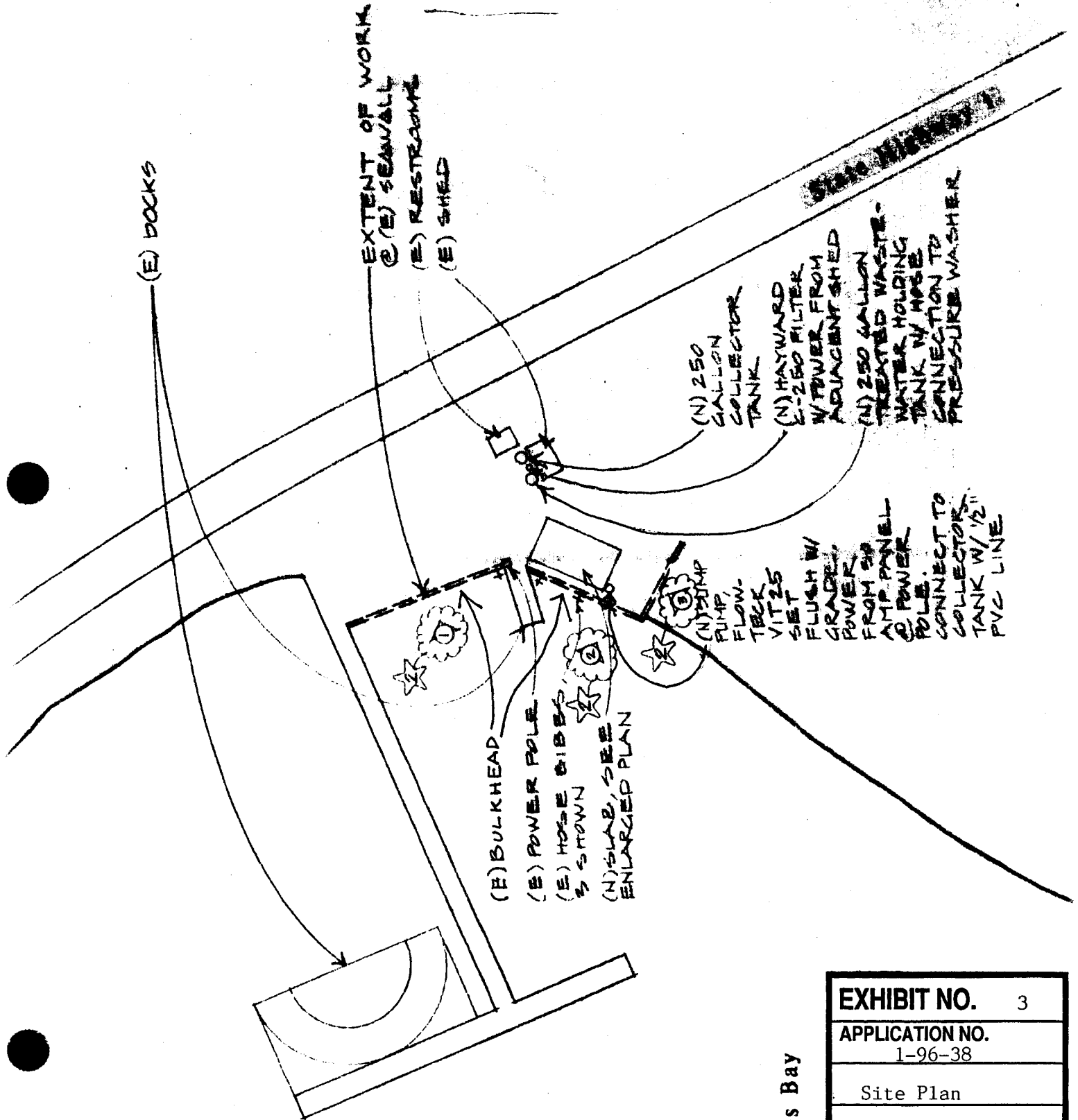


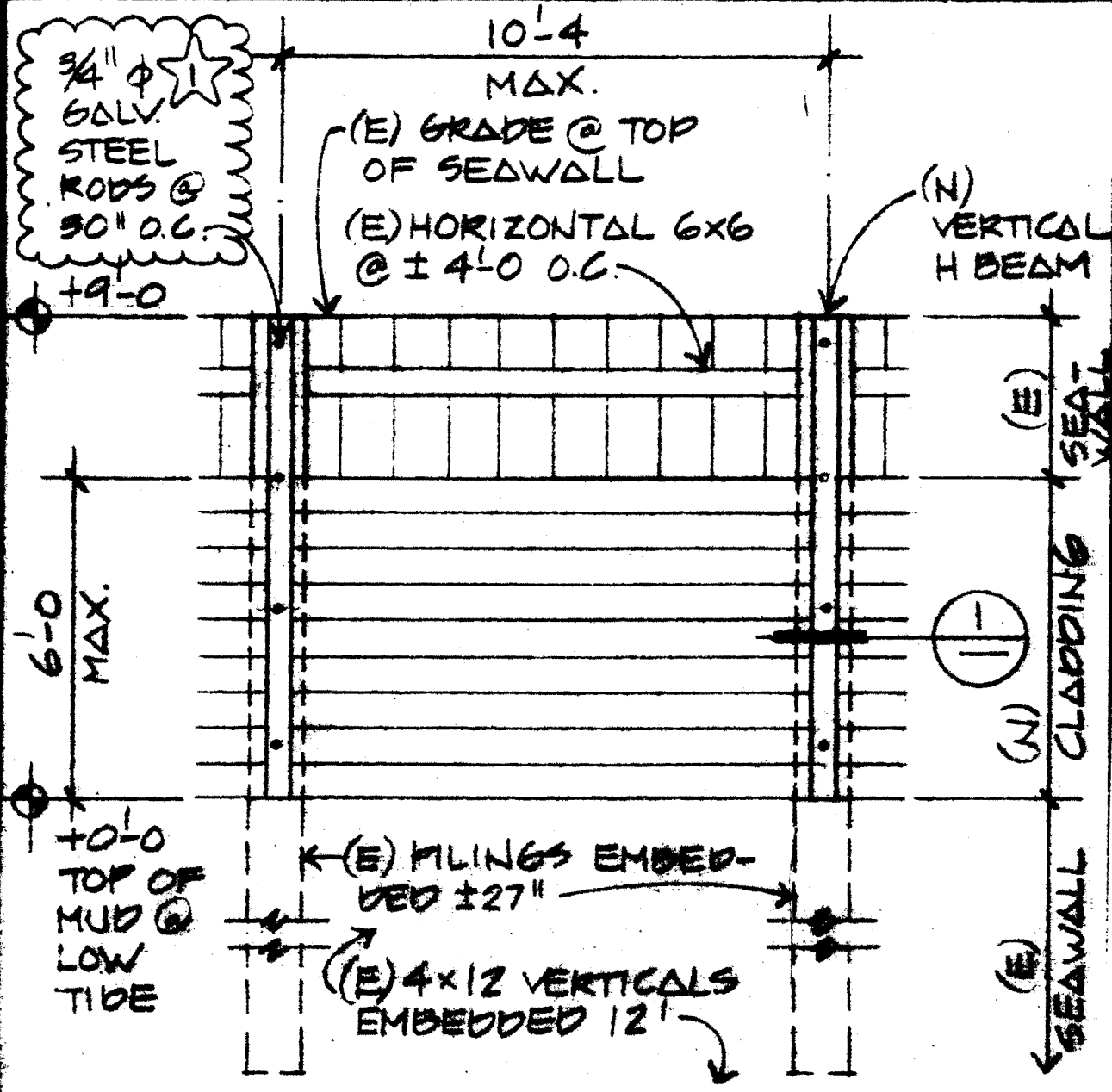
EXHIBIT NO. 2
APPLICATION NO. 1-96-38
Site Location



Tomales Bay

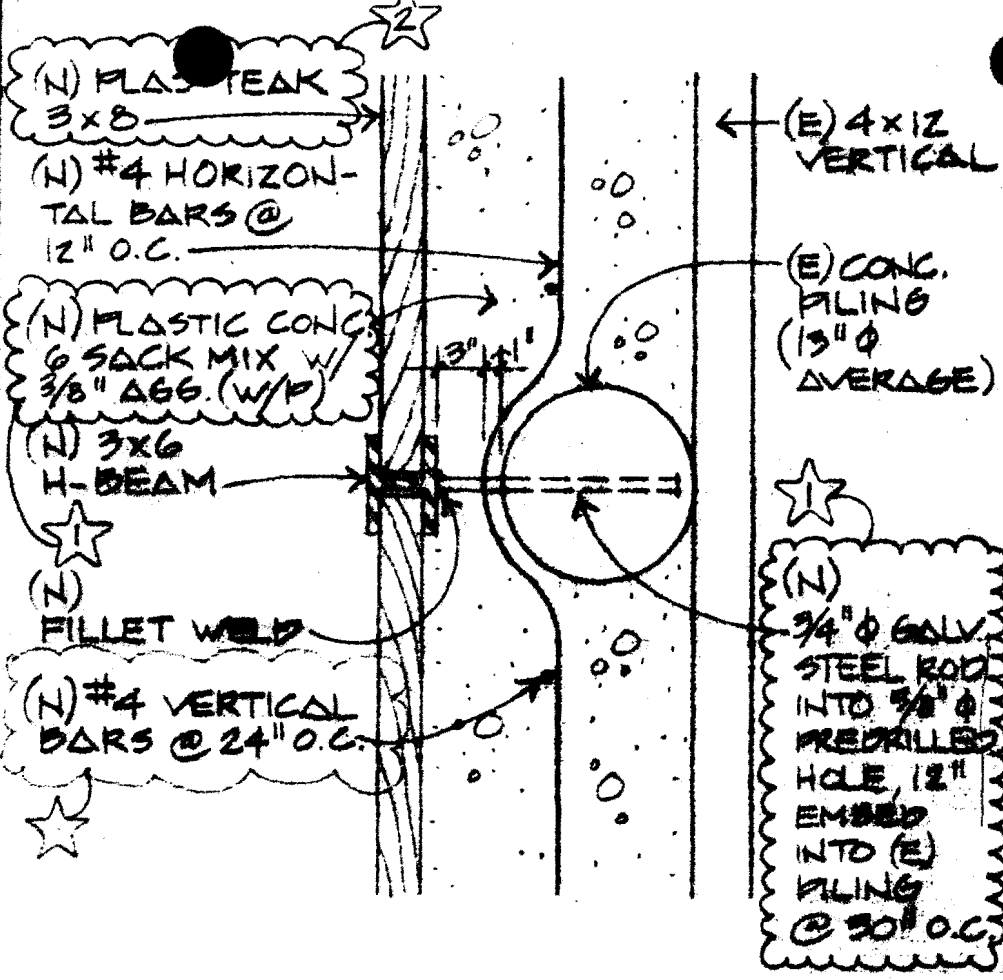
EXHIBIT NO.	3
APPLICATION NO.	1-96-38
Site Plan	

A-A



Typ. Elevation

EXHIBIT NO.	4
APPLICATION NO.	1-96-38
Bulkhead Elevation	



(N) FLAS TEAK
3x8

(N) #4 HORIZON-
TAL BARS @
12" O.C.

(N) PLASTIC CONC.
6 SACK MIX W/
3/8" AGG. (W/P)

(N) 3x6
H-BEAM

(N) FILLET WELD

(N) #4 VERTICAL
BARS @ 24" O.C.

(E) 4x12
VERTICAL

(E) CONC.
PILING
(19" Ø
AVERAGE)

(N) 3/4" Ø GALV.
STEEL ROD
INTO 3/4" Ø
PREDRILLED
HOLE, 12"
EMBED
INTO (E)
PILING
@ 30" O.C.

The existing seawall consists of vertical planks held in place by driven pilings. It has been in place for approximately twenty five years and is structurally sound. The proposed non-structural cladding is intended to protect it from the destructive effects of tidal action.

2. The proposed work involves no excavation, relocation or extension of the existing retaining seawalls.

3. All work shall be in conformance with the 1994 Uniform Building Code current Marin County regulations and Coastal Commission requirements.

1 Detail 1" : 1'-0"

General Notes

EXHIBIT NO.	5
APPLICATION NO.	1-96-38
Bulkhead Top View	