STATE OF CALIFORNIA—THE RESOURCES AGENCY

PETE WILSON, *Governor*

CALIFORNIA COASTAL COMMISSION
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49th Day:	Waived
180th Day:	June 16, 1996
Staff:	Robert Merrill
Staff Report:	March 1, 1996
Hearing Date:	March 14, 1996
Commission Action:	

STAFF REPORT: CONSENT CALENDAR

APPLICATION NO.: **1-95-39**

APPLICANT: **CHEVRON USA PRODUCTS COMPANY, INC.**

PROJECT LOCATION: Along the shoreline of Humboldt Bay, at the foot of Christie Street, Eureka, Humboldt County.

PROJECT DESCRIPTION: Improve an existing marine terminal docking facility by: (1) installing two 22-pile breasting dolphins off each end of the dock; (2) extending two 5-foot-wide catwalks 122 feet and 77 feet to the new mooring dolphins; (3) installing an additional 22-pile breasting dolphin along the southern catwalk extension; (4) developing a berthing area for oil spill response vessels adjacent to the existing dock by installing six additional wooden piles and a boat hoist.

LOCAL APPROVALS RECEIVED: Humboldt Bay Harbor, Recreation, and Conservation District Amended Permit approved February 22, 1996, and Negative Declaration, approved October 26, 1995.

OTHER APPROVALS RECEIVED: U.S. Army Corps of Engineers Letter of Permission granted September 22, 1995.

SUBSTANTIVE FILE DOCUMENTS: City of Eureka LCP.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

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 City of Eureka 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 attached

III. SPECIAL CONDITIONS:

1. Limits of Work Season.

All construction activities shall be limited to the period of the year between April 1 and November 30 to minimize adverse impacts to spawning herring.

2. Disposal of Excess Materials.

All surplus material, spoils, and debris shall be removed from the site upon completion of the project. Placement of any surplus material or debris in the coastal zone at a location other than in a licensed landfill will require a coastal development permit.

3. Pile Preservatives.

No creosote treated piles shall be used in the project. The wooden piles to be installed shall only be treated with "A.C.Z.A." (chemonite) or another wood preservative approved by the Department of Fish & Game that will provide equivalent or greater protection against water contamination.

IV. Findings and Declarations.

The Commission hereby finds and declares as follows:

1. Project and Site Description.

Chevron USA Products Company, Inc. proposes to expand an existing docking facility at the company's Eureka Marine Terminal along the shoreline of Humboldt Bay, at the foot of Christie Street in Eureka. The site is adjacent to the southeast corner of the Bayshore Mall (see Exhibits 1-3).

The Eureka Marine Terminal is a port facility used for off-loading petroleum products from ocean going barges to storage tanks on shore for later distribution by truck to customers throughout the north coast. Currently, the terminal primarily serves a barge that carries petroleum products from the

Chevron Refinery in Richmond California, on San Francisco Bay. Extension of the docking facility is needed to accommodate a larger barge that the applicant has recently transferred to this service, and to accommodate additional barge traffic that will be generated when another company begins sharing the facility later this year.

The existing docking facility consists of a 10,322-square-foot T-shaped wooden pier that extends 645 feet out from the shoreline (see Exhibit 4). The pier will be enlarged by extending both the north and south ends of the top of the "T." Two 22-pile breasting dolphins will be installed off each end and connected to the existing docks by 5-foot-wide catwalks (see Exhibits 4-7). A 22-pile breasting dolphin will also be installed along the southern extension. All of the new piles will be wooden, in keeping with the wooden pile construction of the existing dock. The proposed extension of the northern end of the dock by approximately 66 linear feet and the proposed extension of the southern end of the dock by approximately 110 linear feet will increase the total berthing area on the bay side of the dock to approximately 460 linear feet.

In addition to the pier extensions, a berthing area will be installed adjacent to the existing pier for use in mooring small craft used by Chevron for deployment of oil boom and other spill response equipment for the facility (see Exhibit 5). The berthing area will consist of an array of six wooden piles and a boat hoist.

The pier extends over intertidal and subtidal mud flat that supports a variety of benthic organisms and eelgrass beds. Eelgrass beds are considered to have high habitat value. The eelgrass beds are found in the intertidal area in areas around the stem of the T-shaped pier. All of the proposed new construction will occur in deeper subtidal areas, away from the eelgrass beds. No rare or endangered plant species have been identified anywhere at the site.

The subject property contains no known archaeological or paleontological sites or resources.

2. Fill in Coastal Waters and Environmentally Sensitive Habitat Areas.

The Coastal Act defines fill as including "earth or any other substance or material ... placed in a submerged area." The proposed project involves placing fill materials in coastal waters, as the proposed piles and the small craft dock floats will be installed within submerged areas of Humboldt Bay. The total area of fill proposed in coastal waters is approximately 72 square feet of pile fill.

The proposed project could have several potential adverse impacts on estuarine habitat. The piles will be installed within mud flat habitat that supports a variety of benthic organisms. The piles will displace 72 square feet of this

habitat. In addition, dock construction in the river during the period when certain fish species are spawning in the area could adversely affect fisheries. Furthermore, use of wooden piles treated with creosote as a preservative would cause the leaching of contaminants into the water column, where they can be absorbed by fish and other aquatic life with deadly consequences.

Several sections of the Coastal Act address the placement of fill within coastal waters and the protection of environmentally sensitive habitat. Section 30231 of the Coastal Act provides as follows, in applicable part:

> The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes...shall be maintained and, where feasible, restored...

Section 30233(a) of the Coastal Act 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 industrial facilities, including commercial fishing facilities.
>
> ...
>
> (8) Nature study, aquaculture, or similar resource dependent activities.
>
> ...
>
> (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. For analysis purposes, the limitations can be grouped into four 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;

c. that adequate mitigation measures to minimize the adverse impacts of the proposed project on habitat values have been provided.

d. that the biological productivity and functional capacity of the habitat shall be maintained and enhanced where feasible.

A. Permissible Use for Fill

The first general limitation set forth by the above referenced Chapter 3 policies is that any proposed fill can only be allowed for certain limited purposes. Under Section 30233(a), fill in coastal waters may only be performed for any of eight different uses, including under subsection (1), "new or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities."

The proposed project consists of a small enlargement of an existing port facility, the Chevron Eureka Marine Terminal. As the project is an "expanded port facility," the Commission finds that the purpose of the fill is consistent with subsection (1) of Section 30233(a).

B. No Feasible Less Environmentally Damaging Alternatives.

A second general limitation set forth by the above referenced Chapter 3 policies is that any proposed fill project must have no less environmentally damaging feasible alternative.

There are no apparent alternatives that would be less environmentally damaging. The use of narrow 5-foot-wide catwalks instead of wider pier decking for each of the extensions has minimized the total amount of new structure to be built over the water. In addition, no other feasible extension plan has been identified that would result in less than the 72 square feet of fill associated with the project. Furthermore, building a brand new docking facility elsewhere in the area would certainly result in far more impact than expanding the existing dock, as a much greater amount of fill would necessarily have to be placed in Bay waters. Moreover, the no project alternative would not accomplish the project objective of providing greater mooring space for barges.

Therefore, the Commission finds that the proposed berthing facility involves the least environmentally damaging alternative as required by Section 30233(a).

C. Mitigation for Adverse Impacts.

A third general limitation set forth by Sections 30231 and 30233(a) is that adequate mitigation to minimize the adverse impacts of the proposed project on habitat values must be provided.

Feasible mitigation measures are available to mitigate the potential adverse impacts of the project on fisheries and water contamination. No mitigation is necessary for the impacts of the project on the mud flat habitat at the project site.

Fisheries. As noted previously, eelgrass beds exist in areas under and around the dock landward of where the proposed construction will occur. Eelgrass beds provide important habitat to marine life, including providing a place for herring to spawn. Construction within the subtidal area during the period when herring are likely to be spawning in the eelgrass beds at the site could adversely affect fisheries. According to information Commission staff has obtained from the Department of Fish and Game in the past, herring are likely to be spawning in the area during the months of December through March. Therefore, to minimize the disturbance to spawning herring, the Commission attaches Special Condition No. 3, which limits construction to periods other than December through March.

Water Contamination. The use of certain kinds of wood preservatives on the piles such as creosote, can lead to water pollution. Contaminants in the wood preservative can sometimes leach out of the piles into the water column, where they are absorbed by fish and other aquatic life with deadly consequences. The applicant proposes to use a preservative on the piles known by the product name "A.C.Z.A." (Chemonite). Commission staff has consulted with the staff of the Department of Fish and Game in the past who indicated that although ACSA is far superior to creosote at minimizing the leaching of contaminants into the water column, the preservative still contains small quantities of arsenic and other contaminants that could potentially leach into the water column.

The applicant has looked into the use of other wood preservatives, but no other preservative with less impact on the marine environment and which would be feasible to use for this project has been identified. According to the manufacturer, a common wood preservative known as "A.C.Q." that does not contain arsenic can be effective for wood retaining walls and other wood structures built in the ground, but is not suitable for use in submerged areas.

The use of concrete piles as an alternative to treated wooden piles was considered, but concrete piles are much more expensive than wooden piles. Given the age and character of the existing wooden dock and the limited additional protection against contamination that the concrete piles would afford over ACZA treated wooden piles, the Commission finds that it is not reasonable to require the applicant to incur the much greater cost of concrete piles which would long outlive the rest of the existing dock.

The applicant also examined the feasibility of using composite piles for the project. Composite piles are constructed of recycled plastic which is strengthened with embedded fiberglass rebar, and they are extremely resistant to abrasion, corrosion, and infestation without requiring the use of preservatives. However, composite piles would be roughly four times as expensive to use in the proposed project than wooden piles. In addition, due to their flexibility, composite piles are primarily used for fendering uses and they are not designed or recommended for structural uses such as proposed in the applicant's project.

Thus, the Commission finds that for the proposed dock expansion project, there is no other feasible mitigation for minimizing the leaching of contaminants from the proposed piles than the use of wooden piles treated with ACZA. Therefore, to minimize contamination of the marine environment from the use of certain wood preservatives on the piles to be installed, the Executive Director attaches Special Condition No. 4, which bans the use of creosote and specifies that only ACZA or another preservative approved by the Department of Fish and Game providing equivalent or greater protection against water contamination may be used to treat the piles to be installed.

Mud Flat Habitat. The dock piles will be driven into unvegetated portions of tidal and submerged mud flat. Such mud flats support a variety of worms, mollusks, and other benthic organisms. The minor loss of mud flat area to be displaced by the piles required for the expanded dock and new small craft berthing area is not proposed to be mitigated.

The construction of dock piling in Humboldt Bay is known to have both adverse and beneficial effects on habitat values that offset each other. The primary adverse effect is the displacement of the soft bottom substrate, with the attendant loss of habitat area for invertebrates that dwell in or on the substrate within the intertidal area. In a study of Humboldt Bay conducted in 1986, Roberts and Bott conclude that the area of soft bottom habitat in Humboldt Bay is enormous, that the area of hard intertidal substrate is relatively limited, and that substitution of the latter for the former is an acceptable effect within Humboldt Bay. An additional benefit from the structures poised over the Bay waters is their function in providing hiding cover for fish within the water column.

In previous permit actions, the Commission has determined that piles often enhance habitat values in this manner, and the Commission has often not required mitigation for loss of mud flat habitat due to the installation of piles. In this case, the Commission similarly finds that the adverse impact of 72 square feet of pile fill associated with the project on benthic organisms will be offset by the new habitat that the surface area of the piles is expected to provide for such invertebrates as barnacles and mussels, and for isopods, algae, soft bodied worms and insect larvae, and that no mitigation is necessary for the loss of mud flat habitat.

D. Maintenance and Enhancement of Estuarine Habitat Values.

The fourth general limitation set by Sections 30231 and 30233(a) on fill project is that any proposed fill project shall maintain and enhance the biological productivity and functional capacity of the habitat, where feasible.

The proposed dock expansion project will maintain the biological productivity and capacity of the habitat of Humboldt Bay. None of the proposed construction work will displace or disturb any of the eelgrass beds growing at the project site as all the construction will occur bayward of where the beds exist. In addition, the proposed project, as conditioned, will ensure the

continued biological productivity and functional capacity of the estuary to support fisheries by limiting construction to only the period of the year when herring are not spawning in the area. Furthermore, the impact of contaminants from pile preservatives leaching into the water column and jeopardizing marine life will be minimized by Special Condition No. 3 of the permit, which prohibits the use of creosote and requires that only A.C.Z.A. (chemonite) or another preservative providing equivalent or better protection against water contamination be used for pile treatment. Moreover, the minor adverse impact of the piles on soft-bottom mudflat habitat will be offset by the new habitat that the surface area of the piles is expected to provide for such invertebrates as barnacles and mussels, and for isopods, algae, soft bodied worms and insect larvae.

Therefore, the Commission finds that the project, as conditioned, will maintain the biological productivity and quality of Humboldt Bay, consistent with Section 30231 of the Coastal Act. Similarly, as conditioned, the proposed project will maintain the functional capacity of the wetlands as required by Section 30233(c).

3. 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 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 this section, 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.

The proposed dock will not adversely affect public access. The dock will not displace any existing public access facilities, as the new construction will simply expand an existing docking facility that is located in a secured area where no public access currently exists. In addition, the proposed project will not increase the demand for public access facilities, as it involves no new change in use, does not increase population density in the area, and will not otherwise draw more people to the waterfront.

Therefore, the Commission finds that the proposed project will not adversely affect public access and further finds that the project is consistent with the public access and recreation policies of the Coastal Act.

4. State Waters.

The project site is located in areas that were formerly State-owned waters or were otherwise subject to the public trust. However, these State-owned waters were transferred to the City of Eureka through a legislative grant. The

applicant has an existing lease from the City for the waters in the vicinity of the Eureka Marine Terminal that allows for the project to occur. Therefore, the applicant has the necessary property rights to carry out the project on former State-owned waters.

5. City of Eureka LCP.

As the proposed project is located within the Commission's retained jurisdiction, the standard of review for the project is the Coastal Act and not the policies and requirements of the City of Eureka LCP. However, the LCP can provide guidance as to how Coastal Act policies might be applied to coastal development projects.

The Eureka LCP designates the property as Water Development (WD). The expanded port use proposed by the applicant is consistent with these designations.

As the proposed project involves the placement of fill within Humboldt Bay, which is a coastal waterway and an area recognized as an environmentally sensitive habitat area under Policy 5.5 of the City's LUP, the project is subject to the coastal resources and development policies of Chapter 5 of the LUP. The project, as conditioned is consistent with these policies as (1) the biological productivity and the quality of coastal waters will be maintained (Policy 5.2); (2) the proposed dock extension will serve a coastal dependent use (Policy 5.4); (3) the conditions of this permit that will limit the construction season to avoid adverse impacts on fisheries and will protect the estuarine habitat of Humboldt Bay against significant disruption (Policy 5.6); (4) the development to be allowed within Humboldt Bay is for uses dependent on the resource (Policy 5.6); and (5) the filling of coastal waters authorized herein is for a permitted use, there is no feasible less environmentally damaging alternative, feasible mitigation measures have been provided to minimize adverse effects, and the functional capacity of the resource area will be maintained, all as discussed in Finding 3 above (Policies 5.8, 5.10, 5.12, and 5.14).

Approval of the project, as conditioned to fully mitigate for the project's fill impacts on coastal waters, is consistent with the City's certified LCP.

Section 30604 of the Coastal Act authorizes permit issuance if the project is consistent with Chapter 3 of the Coastal Act. Approval of the project, as conditioned to fully mitigate for the project's fill impacts on coastal waters is consistent with Chapter 3 of the Coastal Act as discussed above.

6. 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 conditioned 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 many have on the environment. As discussed above, alternatives have been considered and the project has been mitigated to avoid or minimize impacts to coastal resources, specifically to prevent impacts on fisheries and water quality. The project, as conditioned, will not have a significant adverse effect on the environment, within the meaning of CEQA.

For purposes of CEQA, the lead agency for the project is the Humboldt Bay Harbor, Recreation & Conservation District. The District adopted a negative declaration for the project on October 26, 1995.

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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.

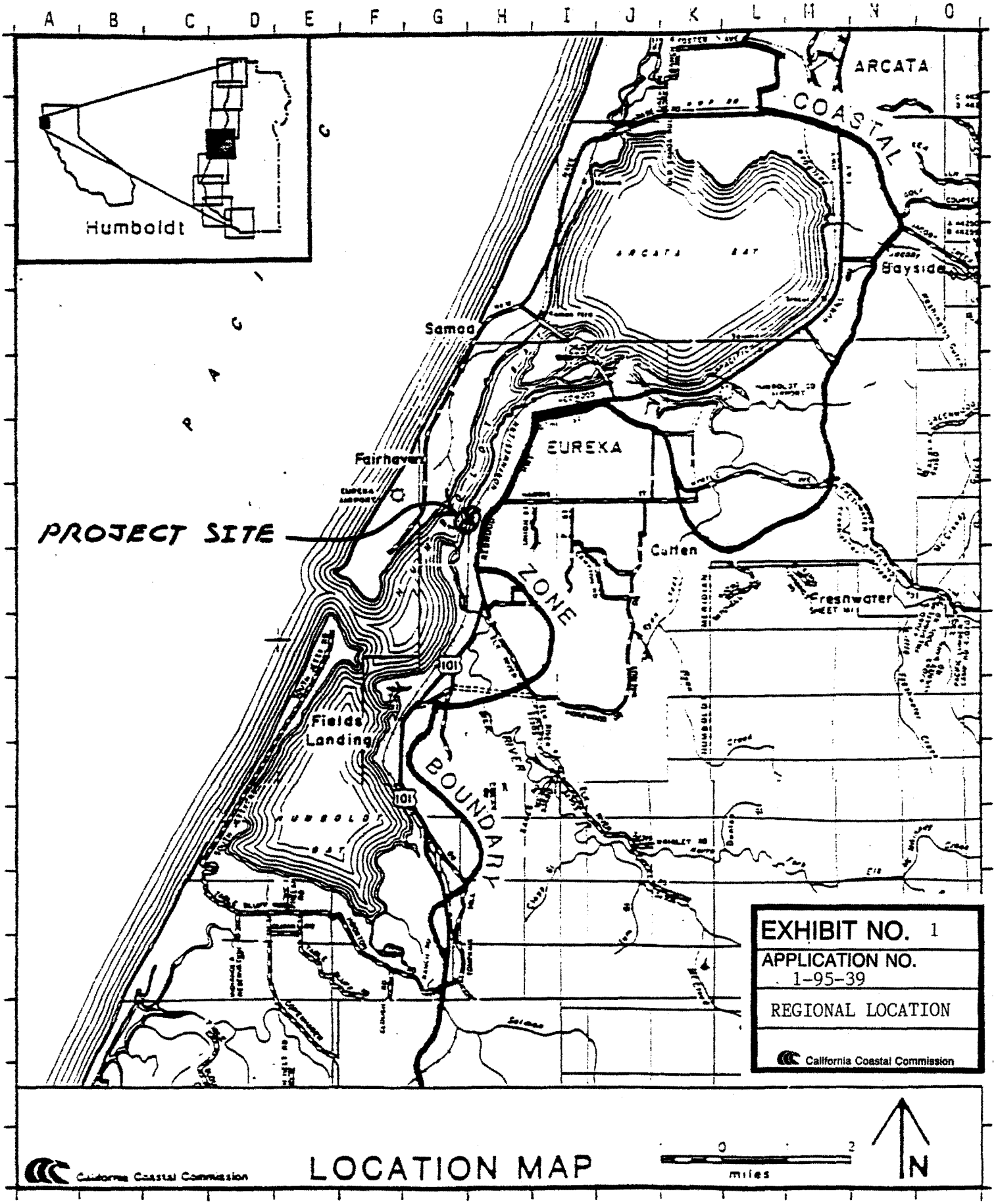
3. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.

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.



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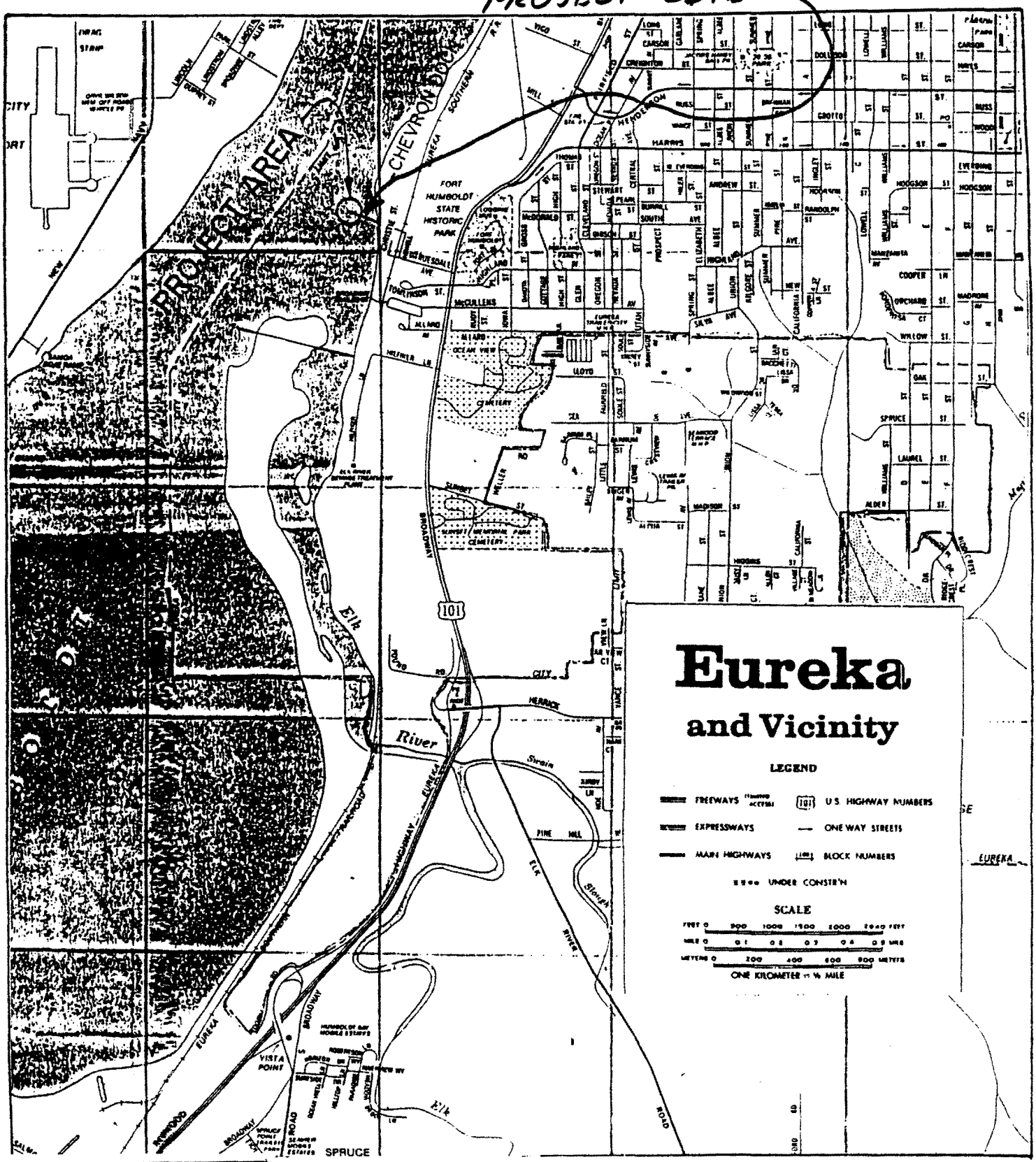
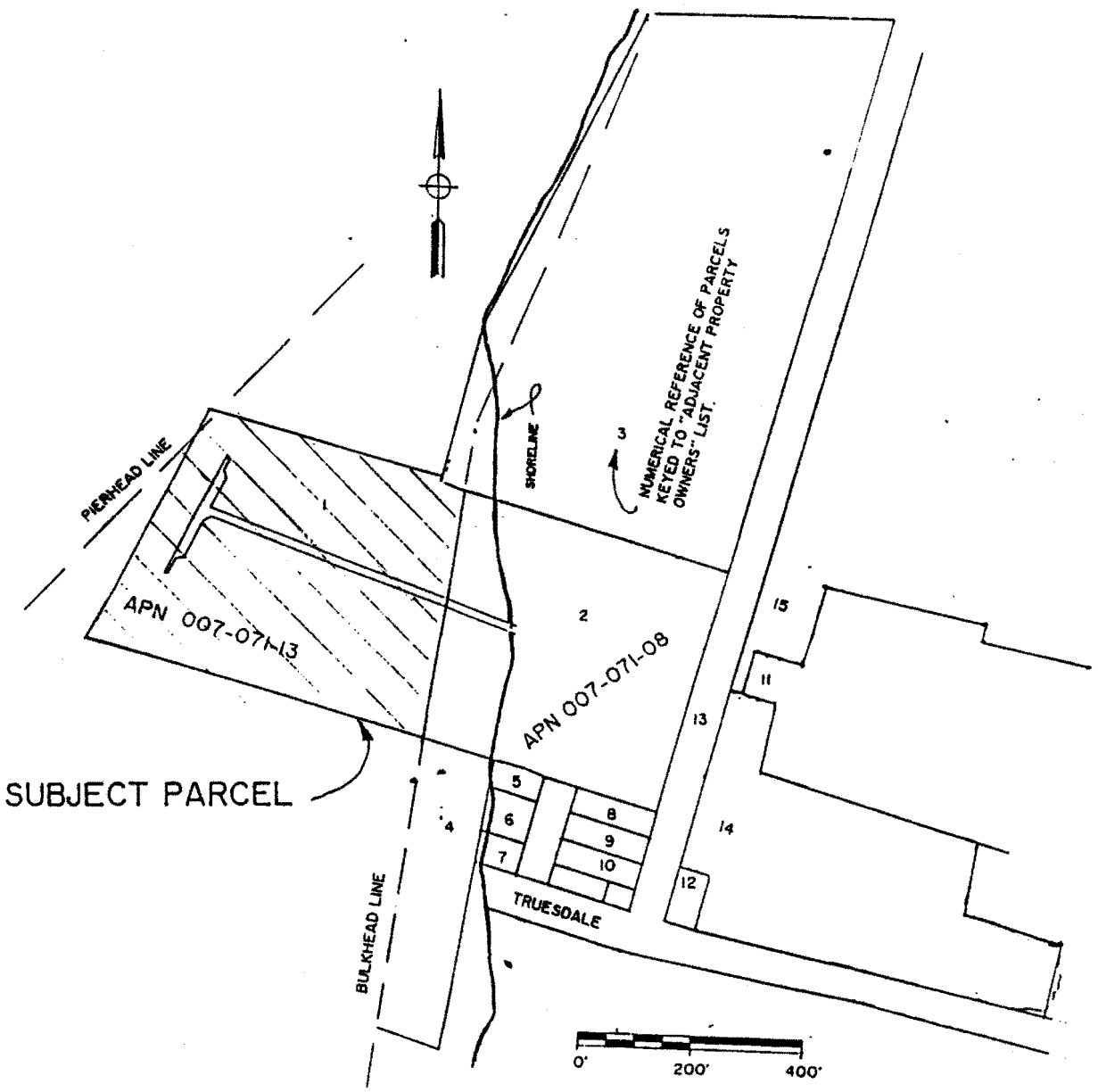


EXHIBIT NO. 2
APPLICATION NO. 1-95-39
VICINITY MAP
California Coastal Commission

IN: Humboldt Bay
AT: Chevron Eureka Terminal Dock
3400 Christie St.
Eureka, CA 95503

SHEET # 1 DATE: 7/1/95

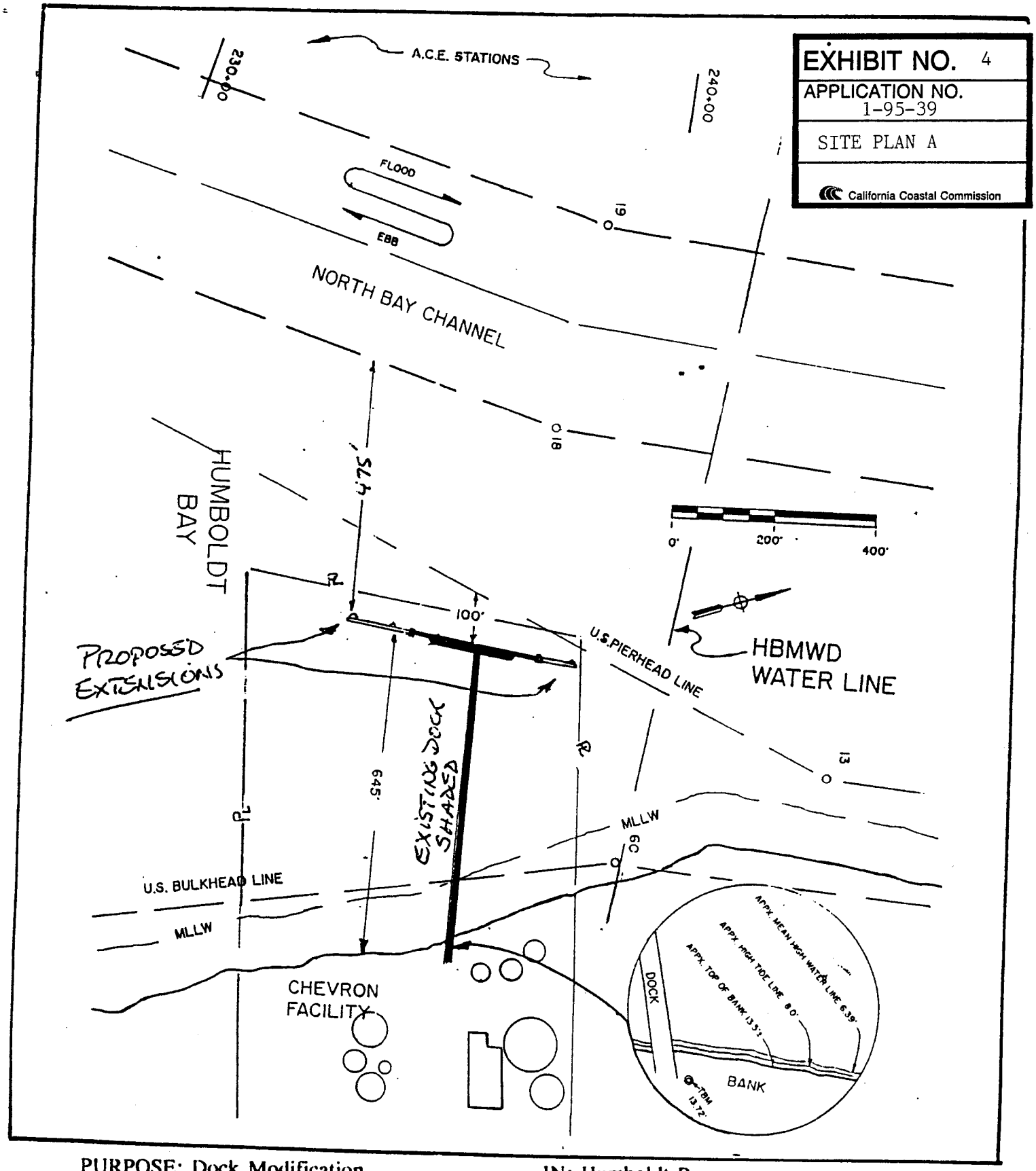
EXHIBIT NO. 3
APPLICATION NO. 1-95-39
SUBJECT PROPERTY
California Coastal Commission



PURPOSE: Dock Modification
DATUM: mllw
ADJ. PROP. OWNERS: See List
APPLICANT: Chevron Products Co.

IN: Humboldt Bay
AT: Chevron Eureka Terminal Dock
3400 Christie St.
Eureka, CA 95503

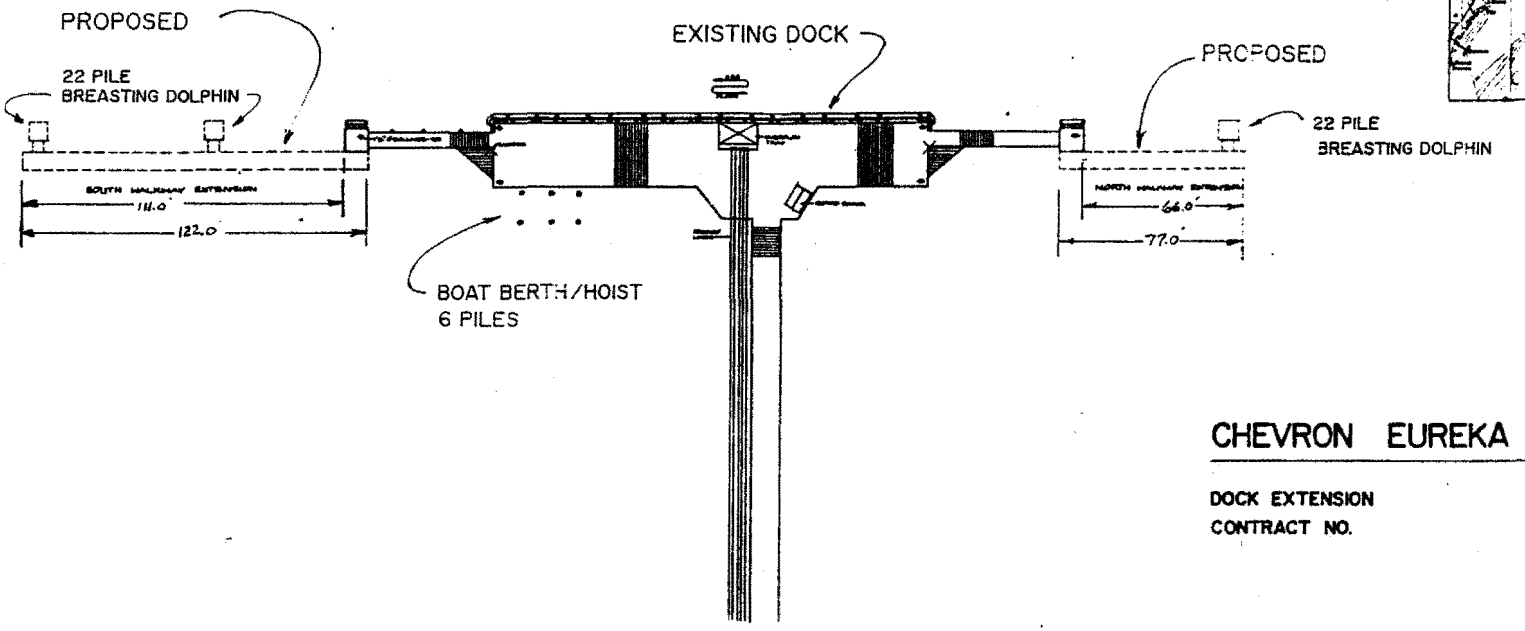
SHEET # 8 DATE: 7/1/95

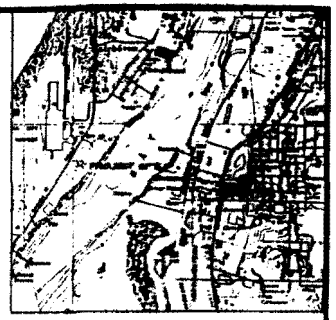


PURPOSE: Dock Modification
DATUM: mllw
ADJ. PROP. OWNERS: See List
APPLICANT: Chevron Products Co.

IN: Humboldt Bay
AT: Chevron Eureka Terminal Dock
3400 Christie St.
Eureka, CA 95503

SHEET # 2 DATE: 7/1/95





CHEVRON EUREKA TERMINAL

DOCK EXTENSION
CONTRACT NO.

EXHIBIT NO. 5
APPLICATION NO. 1-95-39
Site Plan B
California Coastal Commission

		DRAWN BY M.J.A.	CHECKED BY P.K.	DATE	JOB NO.	CHEVRON – EUREKA TERMINAL TERMINAL DOCK EXTENSION

APPROVED BY D.L. SCHREDER

PACIFIC AFFILIATES
A CONSULTING ENGINEERING GROUP
533 Third St. · Eureka · Calif. · 95501 · 707 445-9001

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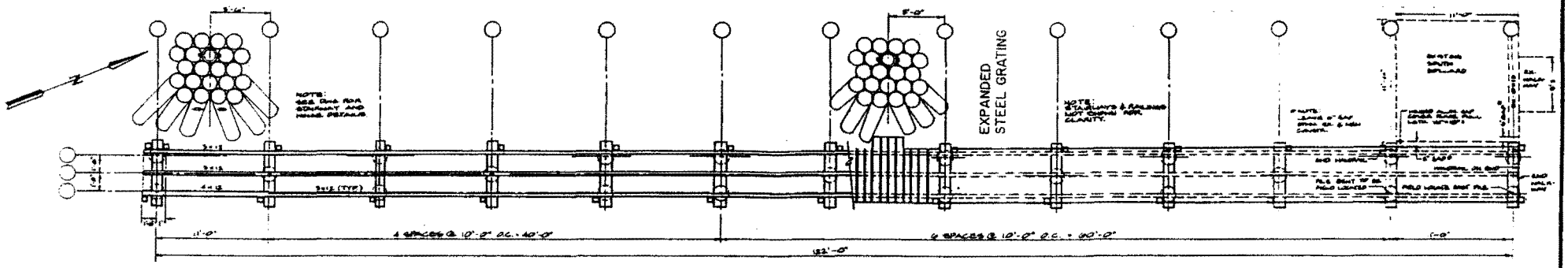
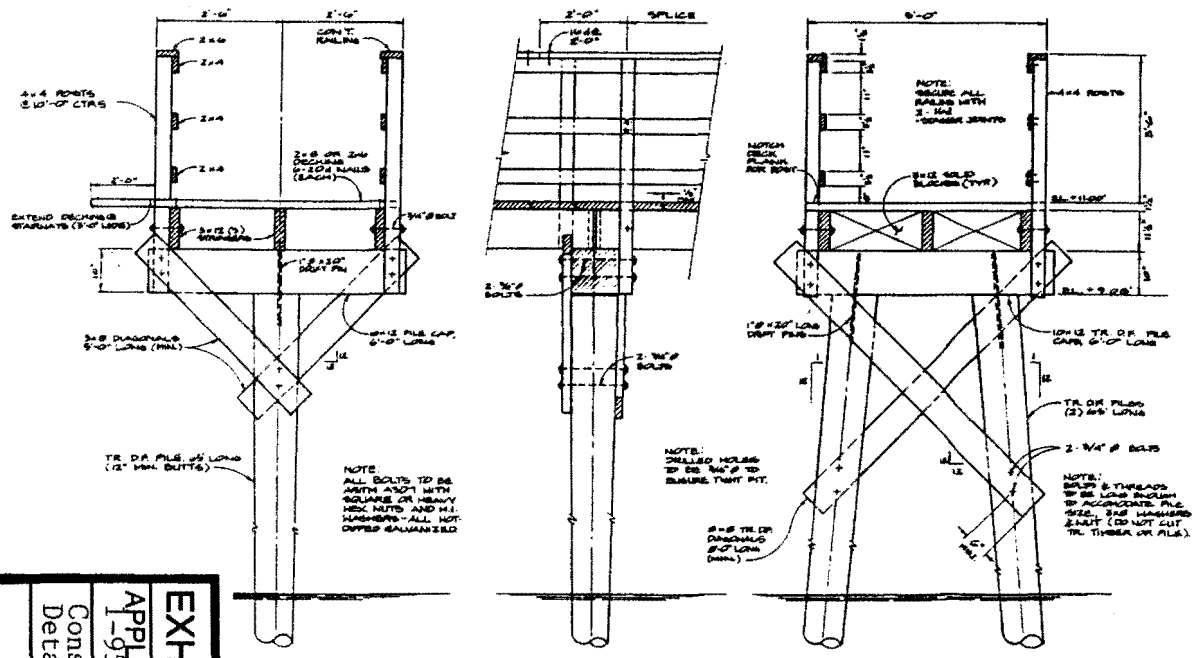
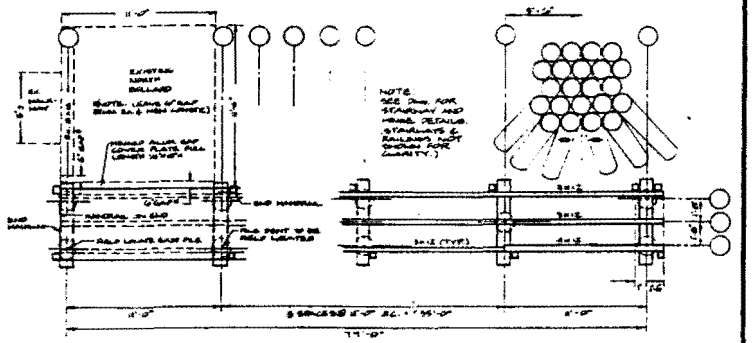


SOUTH WALKWAY & DOLPHIN PLAN



4-PILE BENT ELEVATION A-A TYPICAL 2-PILE BENT

TYPICAL DETAILS



NORTH WALKWAY & DOLPHIN PLAN

EXHIBIT NO. 6
APPLICATION NO. 1-95-39
Construction Details
California Coastal Commission

		Drawn BY M.J.A.	Checked BY P.K.	Date
		Approved BY O.L. SCHNEIDER		

CHEVRON – EUREKA TERMINAL
TERMINAL DOCK EXTENSION
CONSTRUCTION DETAILS

PACIFIC AFFILIATES
A CONSULTING ENGINEERING GROUP

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