

CALIFORNIA COASTAL COMMISSION
 NORTH COAST AREA
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Filed:	February 28, 1996
49th Day:	April 17, 1996
180th Day:	August 26, 1996
Staff:	Robert Merrill
Staff Report:	April 19, 1996
Hearing Date:	May 10, 1996
Commission Action:	

STAFF REPORT: PERMIT AMENDMENT

APPLICATION NO.: **1-93-50-A2**

APPLICANT: **ART NARVAEZ**

PROJECT LOCATION: Along the north side of the Albion River at Schooner's Landing, approximately three-fourths of a mile east of Highway One, at 33621 Albion River North Side Road, Albion, Mendocino County. (APNs 123-060-10, 14)

DESCRIPTION OF PROJECT PREVIOUSLY APPROVED: Improve an existing private campground and marina facility by: (1) constructing approximately 3,500 lineal feet of shoreline stabilization, (2) widening and repairing an existing boat ramp, (3) installing a 300-foot-long by 4.5-foot-wide floating dock connected to shore by a 60-foot-long by 21-foot-wide fixed pier, (4) widening the existing entrance road to 18 feet in width and providing three fire truck turnarounds and 11 new parking spaces, and (5) removing approximately 71 cubic yards of material along the river side of the proposed shoreline stabilization improvements.

DESCRIPTION OF AMENDMENT: Relocate and reconfigure the proposed dock to a location approximately 2,000 feet upstream on the applicant's property along the north side of the river.

OTHER APPROVALS REQUIRED: (1) State Lands Commission lease amendment; (2) Department of Fish and Game Streambed Alteration Agreement; (3) U.S. Army Corps of Engineers modification of permit

SUBSTANTIVE FILE DOCUMENTS: Mendocino County Local Coastal Program

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends that the Commission approve the amendment request which involves the relocation and reconstruction of an approved boat dock on the Albion River in Mendocino County. The dock will have no greater adverse impact on coastal resources than the originally approved dock and will require slightly less fill. All of the existing permit conditions designed to minimize possible adverse effects on eelgrass and migrating fish will remain in full force and effect, and the project is consistent with the Coastal Act.

STAFF NOTES:

1. Acceptance of Amendment Request for Filing.

Section 13166 of the Regulations states that the Executive Director shall reject an amendment request if it lessens or avoids the intent of the approved permit unless the applicant presents newly discovered material information which he or she could not with reasonable diligence, have discovered and produced before the permit was granted.

The Commission granted permit 1-93-50 on August 9, 1994, for improvements at the Schooner's Landing campground and marina facility involving the installation of approximately 3,500 lineal feet of seawall, the repair and widening of an existing boat ramp, roadway and parking improvements, and installing a 300-foot-long by 4.5-foot-wide floating dock connected to shore by a 60-foot-long by 21-foot-wide fixed pier. The permit was granted with a total of eleven special conditions, including (a) three conditions that required the submittal of other agency approvals, (b) three conditions regarding the positioning and construction of the seawall to minimize its fill impacts on the river, (c) one condition restricting the manner in which the proposed dock construction and boat ramp expansion work would be performed to minimize impacts on nearby eelgrass beds, (d) one condition limiting the construction season to avoid impacts on anadromous fish runs, (e) one condition addressing what must happen if hazardous materials are discovered on-site during construction, (f) one regarding the disposal of construction debris, and (g) one requiring the applicant to submit evidence that the applicant has the legal entitlement to develop the site as conditioned by the permit (Special Condition No. 1). The latter condition was imposed because portions of the proposed seawall and a portion of the proposed dock extended off of the applicant's fee title property into a right of way easement, the ownership and terms of which were the subject of a dispute between the applicant and his neighbor. The condition was necessary to ensure that the applicant had the necessary property interests to develop those portions of the project within the right of way in the manner required by the permit.

Since the Commission approved the project, the property dispute over the right of way has been resolved. A court judgment determined that the easement privileges are quieted in favor of the applicant, allowing the applicant to

perform the seawall work as approved by the Commission. However, the judgment determined that the terms of the right of way easement do not give the applicant the right to construct the proposed dock within the right of way. As the underlying fee owner of the subject right of way is unwilling to grant the necessary property rights to the applicant to construct the dock in the originally approved location, the applicant cannot satisfy the requirements of Special Condition No. 1 insofar as construction of the dock is concerned.

The proposed amendment is intended to solve this problem by moving the proposed dock to a location well away from the right of way to a portion of the shoreline where the applicant owns fee title. In addition to moving the proposed dock, the amendment would reconfigure the dock, reducing the total amount of fill in coastal waters by 250 square feet.

The proposed amendment would be consistent with the intent of the permit as conditioned in that (a) the amendment would reconfigure the project in a manner that would ensure the applicant has the necessary property rights to carry out the project, consistent with Special Condition No. 1, and (b) the new location for the proposed dock would not have any greater adverse impact on coastal resources than the currently approved location. The proposed new dock location avoids the extensive eelgrass beds within the river to an even greater degree than the originally approved location would. In addition, the proposed new dock will be smaller than the originally approved dock resulting in less structural fill in the river. Furthermore, none of the existing special conditions of the original permit would be changed, so all of the resource protection and mitigation requirements of the original permit will remain in place. Therefore, the Executive Director determined that the amendment would not result in a lessening or avoidance of the intent of the approved permit and accepted the amendment request for processing.

2. Commission Jurisdiction.

The project site is within the Commission's retained coastal development permit jurisdiction. Thus, the standard of review for the proposed amendment is the consistency of the project, as amended, with the Coastal Act.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions:

The Commission hereby approves the amendment to the coastal development permit, subject to the conditions below, on the grounds that the development with the proposed amendment is consistent with the requirements of Chapter 3 of the California Coastal Act of 1976, is consistent with the provisions of the Mendocino County Local Coastal Program, is located between the sea and first public road nearest the shoreline and is in conformance with the public

1-93-50-A2
ART NARVAEZ

Page 4

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: No additional special conditions beyond those included in the original permit are imposed. All of the original special conditions remain in full force and effect.

IV. Findings and Declarations:

The Commission hereby finds and declares:

1. Project History

The Commission granted permit No. 1-93-50 on August 9, 1994, for various improvements to be made to the existing Schooner's Landing campground and marina. The authorized improvements included shoreline stabilization work, various boat launching improvements, and shore-side parking and roadway improvements.

The principal development approved was the construction of approximately 3,500 lineal feet of sea wall to prevent erosion along the north bank of the Albion River which threatens the existing road (see Exhibits 3-7). The seawall will be constructed by driving either steel or vinyl sheet piling and back filling earthen material behind. If obstacles that prevent driving sheet piling are encountered during construction, the applicant will use an alternative wood wall design wherever necessary. Along most of the shoreline, the sheet piling will be driven at or just above the the mean high water line. Along two stretches of shoreline, the sheet piling would be driven out into the river from the shoreline a small distance to accommodate road widening mandated by the California Department of Forestry and Fire Protection to provide better access for fire fighting equipment. Approximately 71 cubic yards of river fill will be required in these areas. To compensate for the adverse impacts of this fill, the applicant will remove 71 cubic yards of existing bank material that lies riverward of the proposed wall. In addition, the development includes widening and repairing an existing 10-foot-wide one-lane concrete boat ramp. Along its upstream side, the ramp will be widened by six feet. The ramp will also be expanded by approximately 85 square feet into the corner formed by the ramp and the shoreline on the downstream side of the ramp to provide a better turning radius for boat trailers.

The approved shore-side improvements consisted of widening the existing entrance road to 18 feet in width and providing three fire truck turnarounds and 11 new parking spaces. The road widening and turnarounds are required to meet California Department of Forestry and Fire Protection standards for fire truck access.

1-93-50-A2
ART NARVAEZ
Page 5

Included among the approved boat launching improvements was a new dock (see Exhibits 3, 8, and 9). The approved dock consisted of a 300-foot-long by 4.5-foot-wide float connected to shore by a 60-foot-long by 21-foot-wide fixed pier.

The permit was granted with a total of eleven special conditions, including (a) three conditions that required the submittal of other agency approvals, (b) three conditions regarding the positioning and construction of the seawall to minimize its fill impacts on the river, (c) one condition restricting the manner in which the proposed dock construction and boat ramp expansion work would be performed to minimize impacts on nearby eelgrass beds, (d) one condition limiting the construction season to avoid impacts on anadromous fish runs, (e) one condition addressing what must happen if hazardous materials are discovered on-site during construction, (f) one regarding the disposal of construction debris, and (g) one requiring the applicant to submit evidence that the applicant has the legal entitlement to develop the site as conditioned by the permit (Special Condition No. 1). The latter condition was imposed because portions of the proposed seawall and a portion of the proposed dock extended off of the applicant's fee title property into a right of way easement, the ownership and terms of which were the subject of a dispute between the applicant and his neighbor. The condition was necessary to ensure that the applicant had the necessary property interests to develop those portions of the project within the right of way in the manner required by the permit.

In July of 1995, the applicant submitted Amendment Request No. 1-93-50-A which sought to amend the terms of Special Condition No. 1 in a manner that would have allowed the seawall work to proceed before the property entitlement issue for construction of the dock in the originally proposed location was fully resolved. By that time, a court hearing on the disputed right of way easement had been held and the judge presiding over the case had orally approved a stipulation between the parties that the applicant had the right to construct the seawall pursuant to the right of way easement. The applicant submitted a transcript of the hearing as an attachment to the amendment request. Although the stipulation appeared to resolve the dispute over construction of the wall, it did not address construction of the dock. The applicant and his neighbor remained at odds over whether the applicant had the right to build the dock in the location originally proposed. Special Condition No. 1 of the permit requires the applicant to submit evidence of the legal entitlement to construct all portions of the approved project prior to issuance of the permit. Section 13166 of Title 14 of the California Code of Regulations requires the Executive Director to reject an amendment request if it lessens or avoids the intent of the approved permit unless the applicant presents newly discovered material information which he or she could not with reasonable diligence, have discovered and produced before the permit was granted. Therefore, as the proposed amendment would have avoided the intent of the condition to resolve the entire property entitlement dispute before issuance of the permit, and as there was no newly discovered material information bearing on why the project should be allowed to proceed without

resolving the entire property dispute, the Executive Director rejected the amendment request.

2. Current Amendment Request

Since submittal of the first amendment request, the property dispute over the right of way has now finally been resolved. A court judgment determined that the easement privileges are quieted in favor of the applicant, allowing the applicant to perform the seawall work as approved by the Commission. However, the judgment determined that the terms of the right of way easement do not give the applicant the right to construct the proposed dock within the right of way. As the underlying fee owner of the subject right of way is unwilling to grant the necessary property rights to the applicant to construct the dock in the originally approved location, the applicant cannot satisfy the requirements of Special Condition No. 1 insofar as construction of the dock is concerned.

The proposed amendment is intended to solve this problem by moving the proposed dock to a location well away from the right of way to a portion of the shoreline where the applicant owns fee title. In addition to moving the proposed dock, the amendment would reconfigure the dock, reducing the total amount of fill in coastal waters by 250 square feet.

The new dock location is approximately 2,000 feet upstream of the originally approved location (see Exhibits 3 and 4), adjacent to an existing dock on the property and across the entry road from the campground bath house and several camp sites. The new dock, would consist of a fixed dock extending out from the shoreline, a floating dock extending in two arms oriented generally parallel to the shoreline, and a gangway connecting the fixed dock to the floating dock (see Exhibit 4). The fixed dock will consist of a 30-foot-square wooden platform and a 6-foot-wide by 30-foot-long extension (see Exhibit 5). The floating dock would be 5 feet wide with a 130-foot-long arm and a 90-foot-long arm. The fixed dock and floating dock would be supported by a total of approximately 34 6-inch-in-diameter pipe piles.

3. Site Description

Schooner's Landing is located along the north side of the Albion River off of Albion River North Side Road, approximately three-fourths of a mile east of Highway One (see Exhibits 1 and 2). The site is not readily visible from the highway. Schooner's Landing is a private campground and marina facility, developed with 41 camp sites (25 with full hookup, 16 tent only), two bath houses, five septic fields, nine wells, two permanent residences, an entrance road, and boat launching facilities including a narrow one lane boat ramp and a 400-foot-long wooden floating dock.

In the vicinity of the project site, the Albion river cuts through a deep canyon with steeply sloped walls. The campground facility is located on a narrow man-made terrace along the north side of the river, created many years

ago through a combination of cutting into the hillside and filling portions of the river. The shoreline edge of the terrace has been subject to a great deal of erosion, partly through tidal action but largely from the effects of boat wake. The erosion has contributed to sedimentation of the river and has adversely affected fisheries.

The canyon walls are heavily forested. However, most of the terrace is only minimally covered with vegetation, consisting mostly of a North Coast Scrub community. The depauperate remnants of a riparian community exists along the bank of the river.

In this location, the Albion River is a tidal estuary. The estuary provides important habitat for a variety of fresh water and marine species. The estuary supports various fisheries, including viable populations of coho and Chinook salmon, steelhead, and several non-game fish species. The estuary also supports a vigorous Eel Grass community that extends in patches along both sides of the river with the center channel remaining free of eelgrass. Eel grass beds provide valuable habitat for numerous species of wildlife including bottom dwelling organisms that hide within the foliage, numerous small organisms that live on eelgrass blades, and fish that use the beds for rearing, resting, and feeding.

No rare and endangered plant species have been identified anywhere at the site.

The project site is located on historic and existing tidelands and is thus totally within the Commission's retained jurisdictional area.

4. 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 original dock and the relocated and reconfigured dock proposed by the amendment request involve placing fill materials in coastal waters, as the proposed piles and dock floats will be installed within intertidal and submerged areas of the Albion River. The total area of fill proposed in coastal waters for the original dock was approximately 1,385 square feet, consisting of up to approximately 25 square feet of pile fill and 1,350 square feet of floating dock fill. The total fill proposed for the dock as reconfigured and relocated under the proposed amendment is 1,134 square feet, including 34 square feet of pile fill and approximately 1,100 square feet of floating dock fill. Therefore, the amendment results in a net decrease of one square foot of pile fill and 250 square feet of floating fill.

Several sections of the Coastal Act address the placement of fill within coastal waters and the protection of marine resources. 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...

In addition, 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.

...

(4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities, and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities...

...

(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 and environmentally sensitive habitat areas. 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.

In approving the original permit, the Commission found that the proposed dock met these criteria in that (a) the proposed purpose of the fill was for

1-93-50-A2
ART NARVAEZ

Page 9

"expanded boating facilities," an allowable purpose for fill pursuant to Section 30233(a)(4); (b) no other feasible less environmentally damaging alternative existed as the proposed dock was of reasonable size, did not require any solid fill in its construction, and avoided the placement of piles in any of the eelgrass beds in the river; (c) the adverse environmental effects of the project would be minimized by the conditions of the permit; and (d) the avoidance of impacts to eelgrass and fisheries resources together with enhancement of habitat values created by the introduction of pile surface area that is expected to provide habitat for various species will maintain and enhance the biological productivity and functional capacity of the habitat.

The Commission finds that the proposed changes to the project that would result from the proposed amendment also meet the criteria of Sections 30231 and 30233 of the Coastal Act. The purpose of the project is still to provide an "expanded boating facility," an allowable purpose for fill pursuant to Section 30233(a)(4).

No feasible alternatives to the proposed new dock have been identified that would be less environmentally damaging and still meet the objectives of the project.

The proposed 1,100 square feet floats and 1,080 square feet of fixed pier do not appear to be excessive in comparison with typical boat docks. In fact, as noted previously, the amended pier proposal will actually result in a net decrease in the square foot area of pile and floating fill in the water by 250 square feet from what fill would have resulted from the originally approved dock structure.

No other alternative location along the shoreline of the Schooner's Landing would be less environmentally damaging in terms of its impact on eelgrass beds. As shown in Exhibit 6, the proposed dock will be positioned to avoid the eelgrass beds. The amendment is a slight improvement on the location of the originally approved dock in that the proposed amended dock will not even have to bridge over an eelgrass bed as the originally approved dock would have. Furthermore, by locating the dock adjacent to the existing dock, the proposal will serve to concentrate the dock facilities in one area, thereby minimizing the sections of shoreline where boating activity that could disturb wildlife usage of the river habitat would occur.

No additional mitigation measures beyond those already required by the existing permit conditions are needed for the revised project as the new dock location and configuration will have no greater adverse impact than the originally approved dock.

The existing conditions of the permit that are particularly relevant to mitigating impacts of the construction and use of the reconfigured dock are Special Condition Nos. 5, and 9. Special Condition No. 5 limits all construction within the river to the period between June 15 and October 15 to avoid the time of year when migratory fish are using the river. Special

Condition No. 9 is intended to avoid damaging the eelgrass beds with construction equipment during project construction. The applicant proposes to drive piles and construct the dock from a barge at tides above +2' mean lower low water (MLLW). At these stages of the tide, the relatively shallow draft of a barge would not reach bottom where the eelgrass exists. To ensure that construction is carried out in this manner as proposed by the applicant, Special Condition No. 9 requires all dock construction work to be performed from a shallow draft barge at stages of the tide above +2 feet MLLW. The condition also requires the barge to be moved and kept away from all eelgrass beds during lower stages of the tide. Furthermore, as a precaution to avoid other potential construction related damage to nearby eelgrass beds, Special Condition No. 9 prohibits construction equipment, stockpiles of material, or any other debris from being allowed to enter into any eelgrass areas.

Therefore, the Commission finds that the proposed amendment is consistent with Sections 30233 and 30231 of the Coastal Act.

5. 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 may have on the environment. As discussed above, the proposed amendment will not have any significant adverse impact on coastal resources or on the environment in general, within the meaning of CEQA.

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.

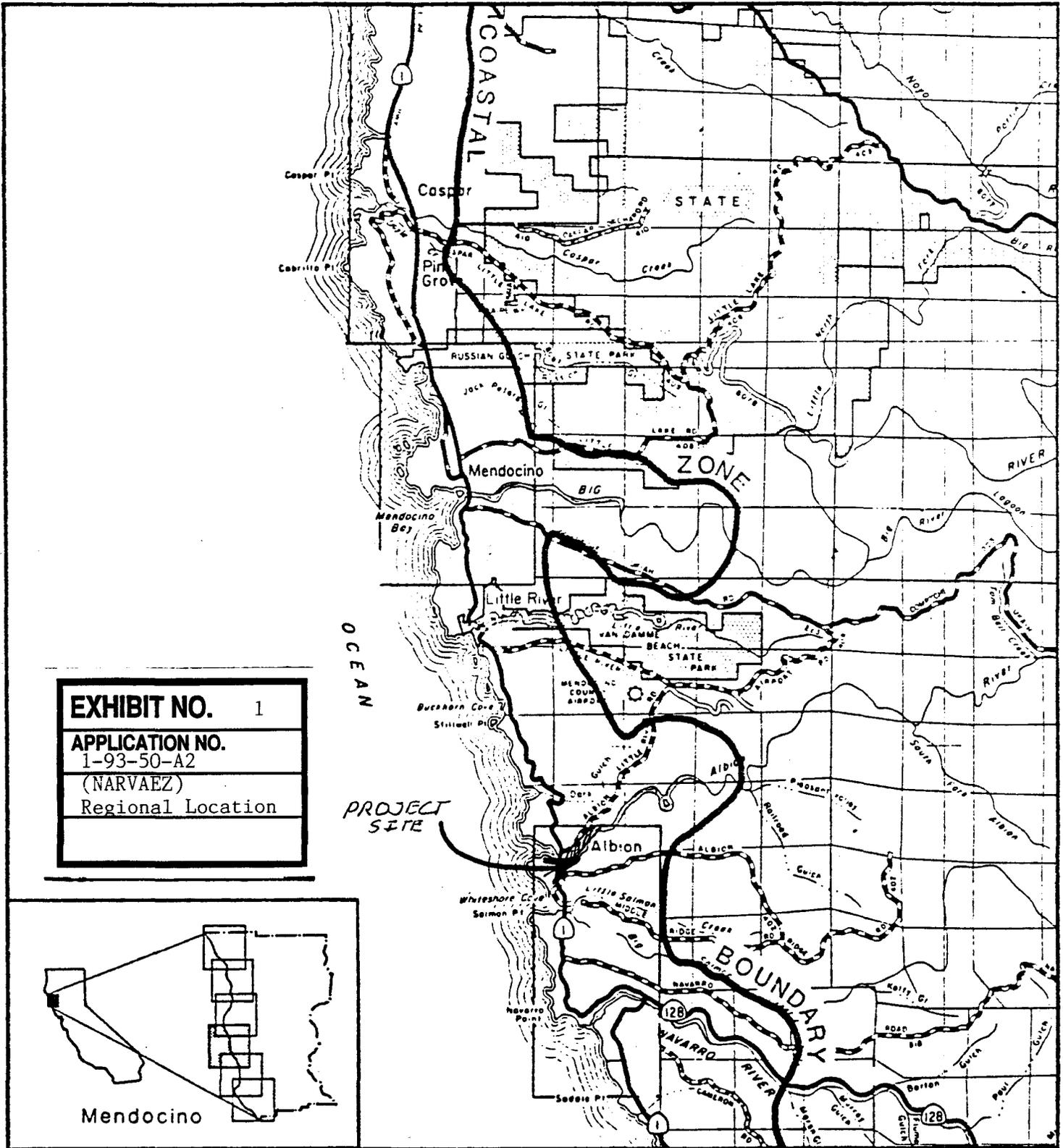
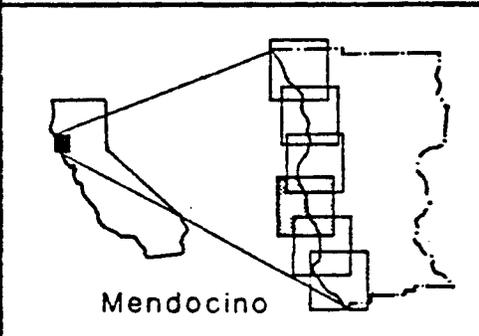


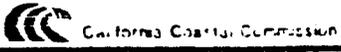
EXHIBIT NO.	1
APPLICATION NO.	1-93-50-A2
	(NARVAEZ)
	Regional Location



PROJECT SITE

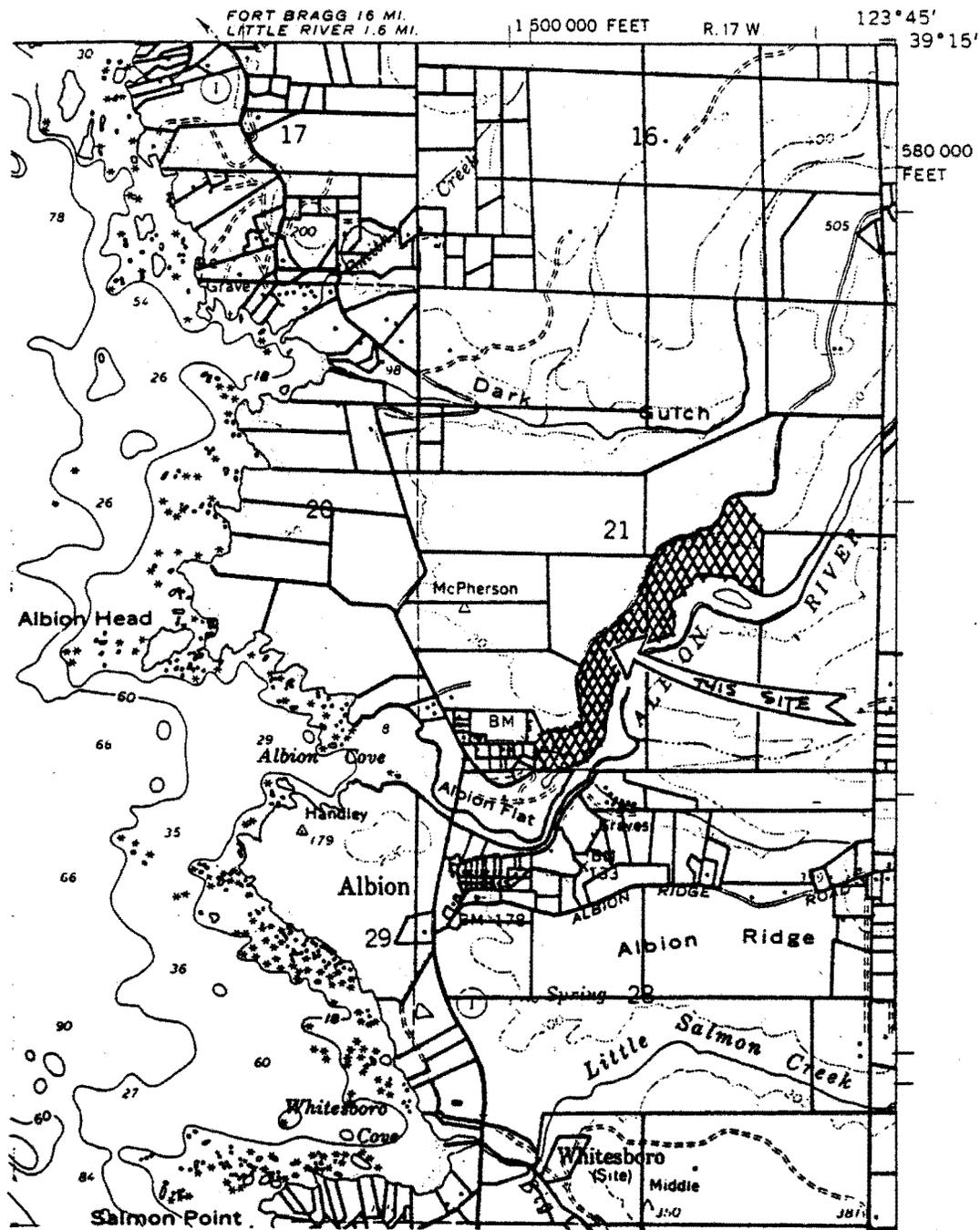


LOCATION MAP



ALBION QUADRANGLE

R 17 W



SCALE: 1" = 2000'

EXHIBIT NO.	2
APPLICATION NO.	1-93-50-A2
	(NARVAEZ)
	Vicinity Map

Dock Relocation

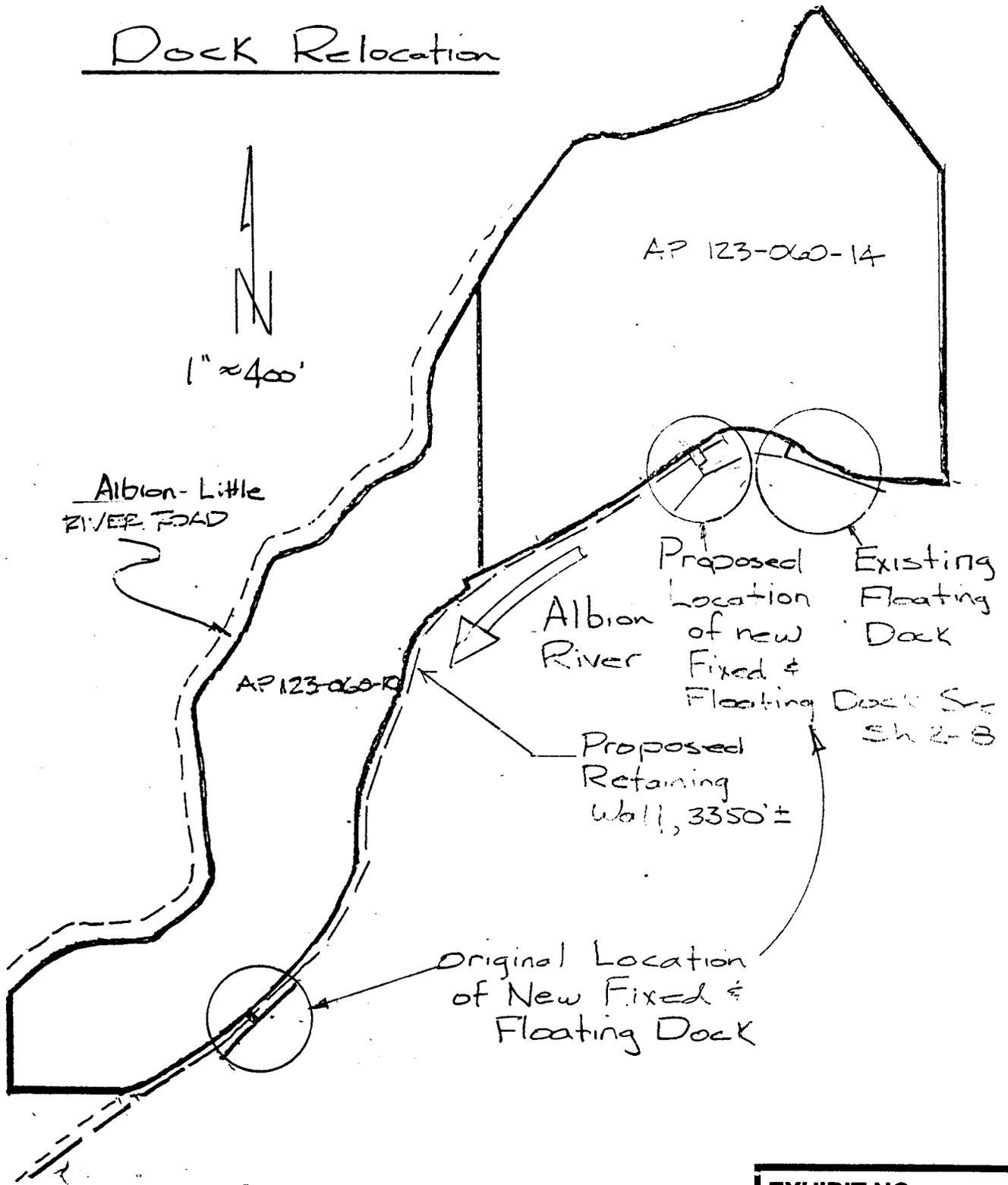


EXHIBIT NO.	3
APPLICATION NO.	1-93-50-A2
	(NARVAEZ)
	Site Plan

JOB# 96-106	MENDOCINO ENGINEERING - UKIAH
BY TCM	PROJECT Narvaez - Schooners Lc

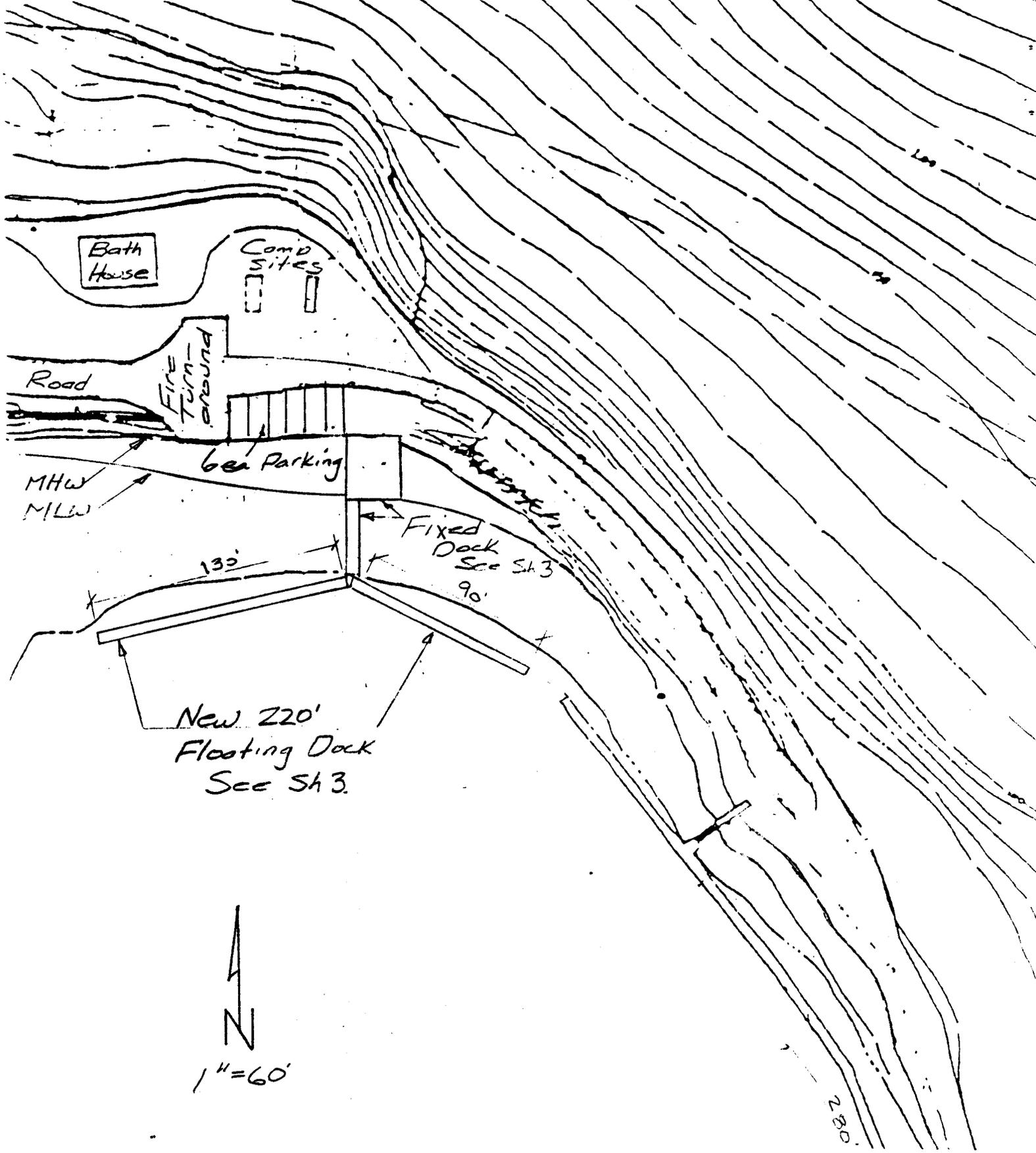
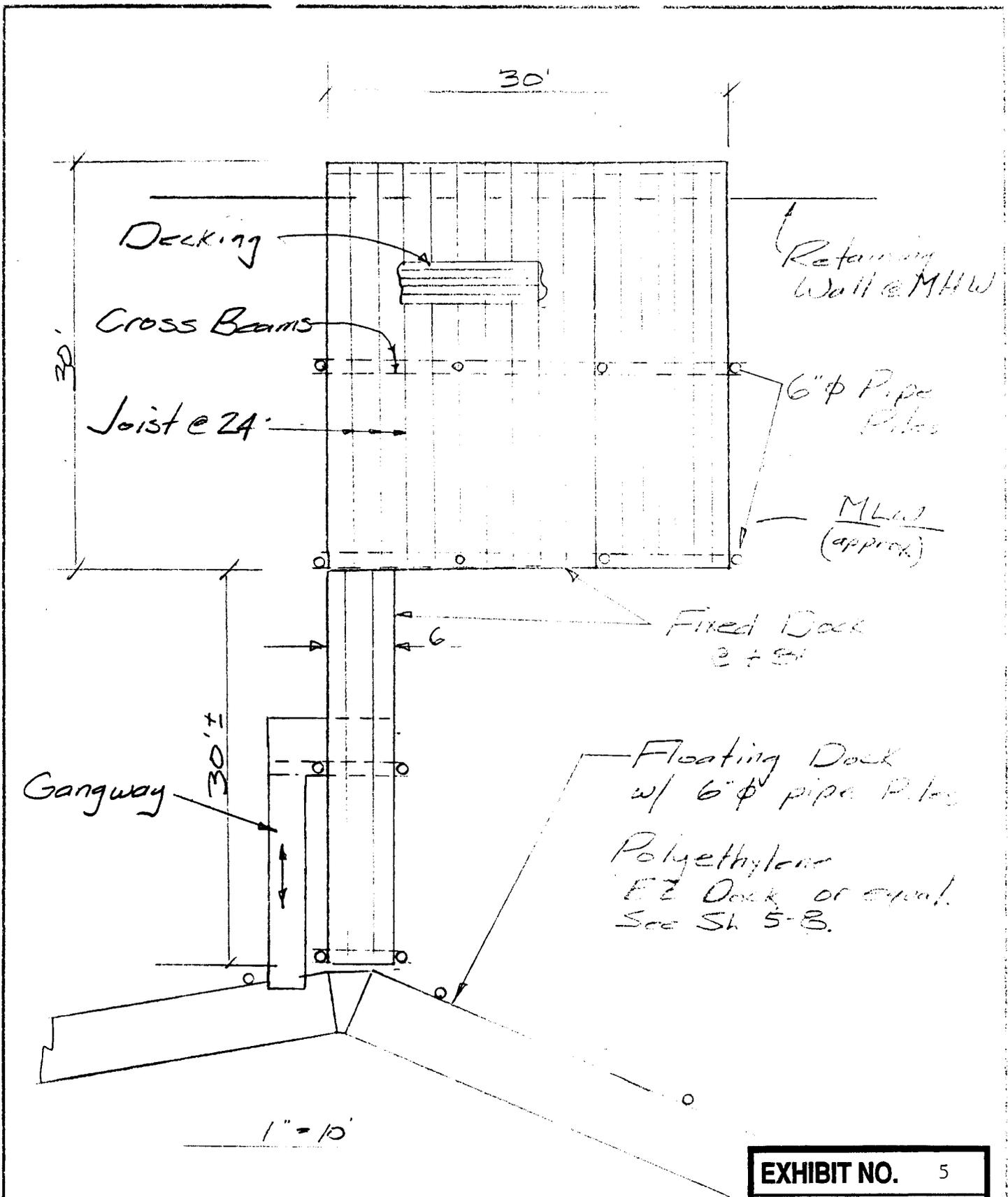
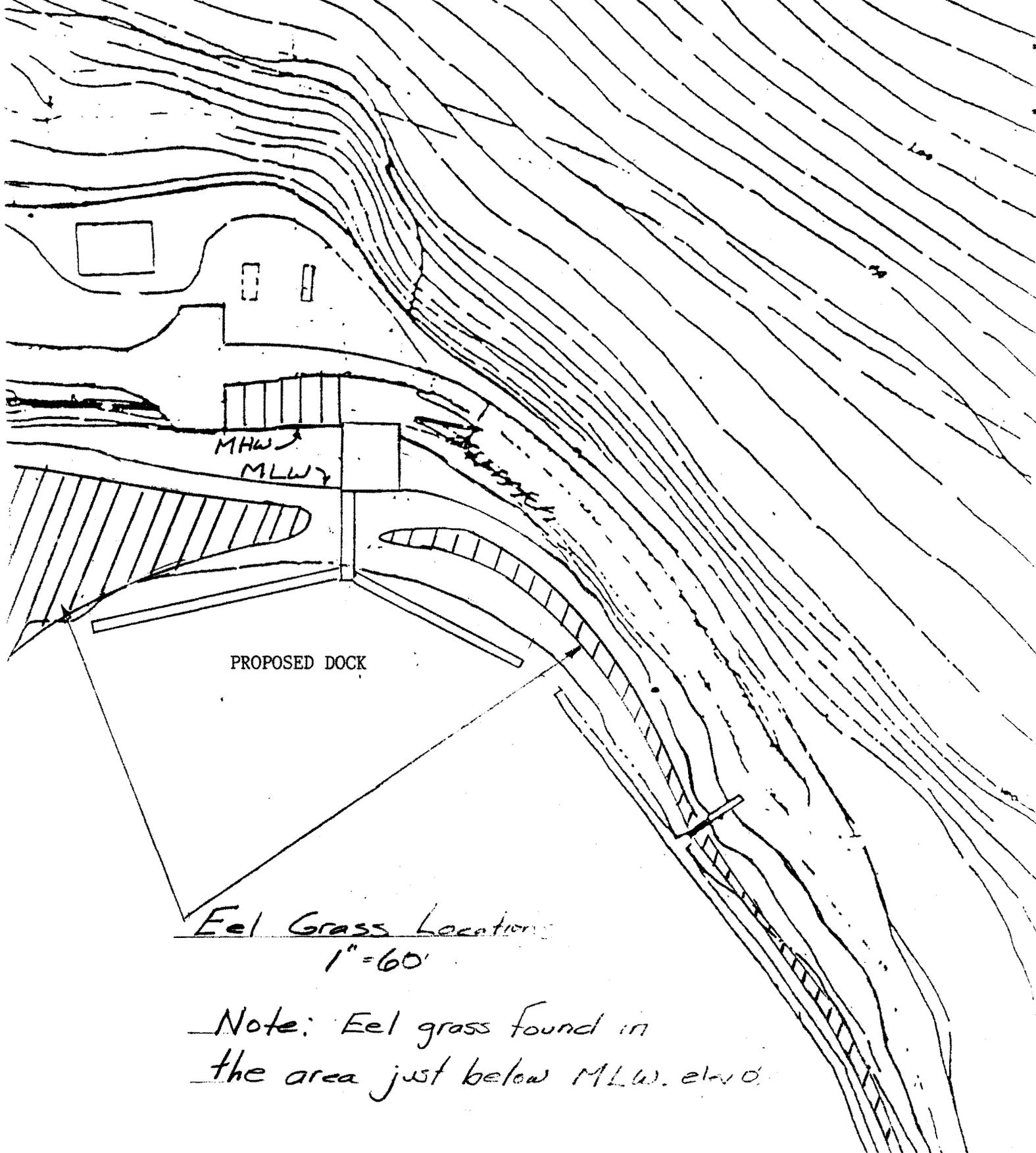


EXHIBIT NO.	4
APPLICATION NO.	1-93-50-A2
	(NARVAEZ)
	Dock Plan



JOB# 96-106	MENDOCINO ENGINEERING - UKIAH
BY TLM	PROJECT Fixed Dock

EXHIBIT NO.	5
APPLICATION NO.	1-93-50-A2
	(NARVAEZ)
	Dock Detail



PROPOSED DOCK

Eel Grass Locations
1" = 60'

Note: Eel grass found in
the area just below M.L.W. elvd.

EXHIBIT NO.	6
APPLICATION NO.	1-93-50-A2
(NARVAEZ)	
Eel Grass Near Dock	

L.F. 11

CALIFORNIA COASTAL COMMISSION

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(415) 904-5260

SFS



Julia

Filed:	Dec. 2, 1993
49th Day:	Waived
270th Day:	August 29, 1994
Staff:	Robert Merrill
Hearing Date:	August 9, 1994
Staff Report:	July 29, 1994
Commission Action:	

REVISED STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 1-93-50

APPLICANT: ART NARVAEZ

AGENT: Terry McGillivray, Rau and Associates, Inc.

PROJECT LOCATION: Along the north side of the Albion River at Schooner's Landing, approximately three-fourths of a mile east of Highway One, at 33621 Albion River North Side Road, Albion, Mendocino County. (APNs 123-060-10, 14)

PROJECT DESCRIPTION: Improve an existing private campground and marina facility by: (1) constructing approximately 3,500 lineal feet of shoreline stabilization, (2) widening and repairing an existing boat ramp, (3) installing a 300-foot-long by 4.5-foot-wide floating dock connected to shore by a 60-foot-long by 21-foot-wide fixed pier, (4) widening the existing entrance road to 18 feet in width and providing three fire truck turnarounds and 11 new parking spaces, and (5) removing approximately 71 cubic yards of material along the river side of the proposed shoreline stabilization improvements.

LOCAL APPROVALS RECEIVED: Mendocino County Use Permit #UM 8-87/92 and Negative Declaration

OTHER APPROVALS RECEIVED: California Regional Water Quality Control Board "Waiver of waste discharge requirements" and Section 401 Certification

OTHER APPROVALS REQUIRED: (1) State Lands Commission lease amendment; (2) U.S. Army Corps of Engineers Section 404 Permit; (3) California Department of Fish and Game 1601 streambed alteration agreement; and (4) California Department of Forestry "Final Clearance" and "Approval For Occupancy".

SUBSTANTIVE FILE DOCUMENTS: Mendocino County Local Coastal Program

STAFF NOTE:

This application was originally scheduled for Commission consideration at the January 11, 1994, Commission meeting in Santa Barbara. After preparation and mailing of the staff report, staff received correspondence from the owners of a portion of the project site objecting to the project on the grounds that the applicant did not have sufficient property interests to carry out the portion of the project on their property and had not sought the fee owners' permission. Staff brought the correspondence to the attention of the applicant, and although the applicant did not agree with the positions stated by the fee owners, the applicant agreed to postpone the public hearing pending resolution of the matter and waive and extend the Commission's deadlines for opening the public hearing and acting on the project.

Since that time, the Commission has requested and received information from both the applicant and the fee owners explaining the basis of each party's claim, and analyzing the merits of the other party's claim. Although the applicant has presented persuasive arguments as to how he has sufficient property rights to carry out the project, the issue still has not been fully resolved. The Commission's deadline for action on the project is August 29, 1994. Thus, the Commission must act on the project at the August 9, 1994 Commission meeting. Section 30601.5 of the Coastal Act places the burden of proof on the applicant to demonstrate that the applicant has the legal right to use the property for the purpose for which it is proposed. Therefore, to keep the property dispute from preventing the Commission from acting on the project by its required deadline, the staff recommends approval of the project with a condition (Special Condition No. 1) requiring the applicant to provide written evidence that either the fee owner has granted permission to the applicant or that a court judgement has been issued that affirms the right of the applicant to develop the disputed area as proposed by the applicant.

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, as conditioned, will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will be in conformity with the provisions of the Mendocino County Local Coastal Program, is 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.

1-93-50

ART NARVAEZ

Page 3

III. SPECIAL CONDITIONS:

1. Evidence of legal ability to use property.

PRIOR TO THE ISSUANCE of a coastal development permit, and subject to the review and approval of the Executive Director, the applicant shall provide written evidence that the fee interest owner of all portions of the subject site has given permission for the land to be developed as conditioned herein or that the applicant has the legal entitlement to use all portions of the property as conditioned herein.

2. State Lands Commission Review.

PRIOR TO ISSUANCE OF THE PERMIT, the applicant shall submit to the Executive Director written evidence that all approvals required by the State Lands Commission for the development, including an amended lease, have been obtained.

3. Dept. of Fish and Game Streambed Alteration Agreement.

PRIOR TO ISSUANCE OF THE PERMIT, the applicant shall submit to the Executive Director a copy of an approved streambed alteration agreement from the California Department of Fish and Game.

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

PRIOR TO THE COMMENCEMENT OF CONSTRUCTION, the applicant shall submit to the Executive Director a copy of a U.S. Army Corps of Engineers permit or letter of permission for the project authorized herein.

5. Limits of Construction Season.

All construction activities shall be performed only during the period of the year between between April 15 and October 15 to minimize erosion and sedimentation. In addition, all dock construction, widening and repair of the boat launching ramp, and all work on the portions of the seawall and road that will occur riverward of the mean high water line is further restricted to occur only after June 15 and October 15 to minimize adverse impacts on migratory fish.

6. Positioning of Seawall.

The proposed seawall shall be positioned along the shoreline embankment in the locations shown in the applicant's submittal dated December 2, 1993 and as shown in Exhibits 4 and 5 of the staff report. As depicted, the seawall will be located no further riverward than the existing Mean High Water line except at segments 1 and 6 of the proposed wall where the wall must be located further riverward to allow for widening of the entrance road to meet California Department of Forestry imposed fire truck access standards.

7. Compaction of Exposed Soil.

To reduce sedimentation of the river, all excavation and fill work to be performed below mean high water shall be performed only in the dry at lower stages of the tide. At any location where such work will not be completed before the next rise in the tide, the applicant shall recompact the disturbed soil using a Vibraplate compactor or similar piece of equipment prior to the area being retouched by the tides.

8. Fill Removal.

The applicant shall perform all of the 71 cubic yards of fill removal work proposed in the applicant's submittal dated December 2, 1993 and as shown in Exhibits 4 and 5 of the staff report prior to completion of the project.

9. Protection of Eelgrass

All construction shall be carried out in a manner that does not disturb the eelgrass in areas near proposed construction. Special attention shall be paid to the boat launch ramp and the proposed dock area where eelgrass is in close proximity to proposed development. All dock construction work, including pile driving, shall be performed from a shallow draft barge at stages of the tide above +2 feet MLLW. The barge shall be moved and kept away from all eelgrass beds during lower stages of the tide. No construction equipment, stockpiles of material, or any other materials or debris whatsoever shall be allowed to enter into any eelgrass areas.

10. Hazardous Materials

If hazardous materials are discovered within the existing shoreline embankment or elsewhere within the project site during construction authorized by this permit, all work shall be suspended. The applicant shall then have a qualified consultant inspect the project site, determine the nature of the materials discovered, and develop appropriate mitigation measures.

Should it be determined that mitigation measures are necessary, the applicant shall apply to the Commission for an amendment to permit 1-93-50, requesting that the permit be amended to include the mitigation plan proposed by the consultant. The plan shall provide for cleanup, monitoring, evaluation, protection, and mitigation on the project site. Should the consultant determine that no mitigation measures are necessary, then work on the project may be resumed.

11. Disposal of Construction Debris.

All construction 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.

IV. Findings and Declarations.

The Commission hereby finds and declares as follows:

1. Site Description.

Schooner's Landing is located along the north side of the Albion River off of Albion River North Side Road, approximately three-fourths of a mile east of Highway One (see Exhibits 1 and 2). The site is not readily visible from the highway. Schooner's Landing is a private campground and marina facility, developed with 41 camp sites (25 with full hookup, 16 tent only), two bath houses, five septic fields, nine wells, two permanent residences, an entrance road, and boat launching facilities including a narrow one lane boat ramp and a 400-foot-long wooden floating dock.

In the vicinity of the project site, the Albion river cuts through a deep canyon with steeply sloped walls. The campground facility is located on a narrow man-made terrace along the north side of the river, created many years ago through a combination of cutting into the hillside and filling portions of the river. The shoreline edge of the terrace has been subject to a great deal of erosion, partly through tidal action but largely from the effects of boat wake. The erosion has contributed to sedimentation of the river and has adversely affected fisheries.

The canyon walls are heavily forested. However, most of the terrace is only minimally covered with vegetation, consisting mostly of a North Coast Scrub community. The depauperate remnants of a riparian community exists along the bank of the river.

In this location, the Albion River is a tidal estuary. The estuary provides important habitat for a variety of fresh water and marine species. The estuary supports various fisheries, including viable populations of coho and Chinook salmon, steelhead, and several non-game fish species. The estuary also supports a vigorous Eel Grass community that extends in patches along both sides of the river with the center channel remaining free of eelgrass. Eel grass beds provide valuable habitat for numerous species of wildlife including bottom dwelling organisms that hide within the foliage, numerous small organisms that live on eelgrass blades, and fish that use the beds for rearing, resting, and feeding.

No rare and endangered plant species have been identified anywhere at the site.

The project site is located on historic and existing tidelands and is thus totally within the Commission's retained jurisdictional area.

2. Project Description.

The applicant proposes to construct a variety of improvements at the campground/marina facility, including shoreline stabilization work, various

1-93-50

ART NARVAEZ

Page 6

boat launching improvements, and shore-side parking and roadway improvements (see Exhibits 3-10).

The principal development proposed is the construction of approximately 3,500 lineal feet of sea wall to prevent erosion along the north bank of the Albion River which threatens the existing road (see Exhibits 3-7). The seawall would be constructed by driving either steel or vinyl sheet piling and back filling earthen material behind. If obstacles that prevent driving sheet piling are encountered during construction, the applicant would use an alternative wood wall design wherever necessary. Along most of the shoreline, the sheet piling would be driven at or just above the the mean high water line. Along two stretches of shoreline, the sheet piling would be driven out into the river from the shoreline a small distance to accommodate road widening mandated by the California Department of Forestry and Fire Protection to provide better access for fire fighting equipment. Approximately 71 cubic yards of river fill would be required in these areas. To compensate for the adverse impacts of this fill, the applicant proposes to remove 71 cubic yards of existing bank material that lies riverward of the proposed wall.

Included among the proposed boat launching improvements is a new dock (see Exhibits 3, 8, and 9). The dock would consist of a 300-foot-long by 4.5-foot-wide float connected to shore by a 60-foot-long by 21-foot-wide fixed pier. In addition, the applicant proposes to widen and repair an existing 10-foot-wide one-lane concrete boat ramp (see Exhibit 10). Along its upstream side, the ramp would be widened by six feet. The ramp would also be expanded by approximately 85 square feet into the corner formed by the ramp and the shoreline on the downstream side of the ramp to provide a better turning radius for boat trailers.

The proposed shore-side improvements consist of widening the existing entrance road to 18 feet in width and providing three fire truck turnarounds and 11 new parking spaces. The road widening and turnarounds are required to meet California Department of Forestry and Fire Protection standards for fire truck access.

3. Legal Entitlement to Use the Property for The Proposed Development.

Section 30601.5 of the Coastal Act states:

Where the applicant for a coastal development permit is not the owner of a fee interest in the property on which a proposed development is to be located, but can demonstrate a legal right, interest, or other entitlement to use the property for the proposed development, the Commission shall not require the holder or owner of any superior interest in the property to join the applicant as co-applicant. All holders or owners of any other interests of record in the affected property shall be notified in writing of the permit application and invited to join as co-applicant. In addition, prior to the issuance of a coastal development permit, the applicant shall demonstrate the authority to comply with all conditions of approval.

1-93-50

ART NARVAEZ

Page 7

Thus Section 30601.5 of the Coastal Act provides that if an applicant is not the owner of a fee interest in property, the applicant must demonstrate a legal right, interest, or entitlement to use the property in the manner proposed. Therefore, if there are any questions with regard to ownership of the property, the applicant is required to provide evidence that they have the legal right to use the property for the purpose for which it is proposed.

The applicant has submitted a right of way grant given to their predecessor in title which provides their predecessor in title with the right "to construct, maintain, and operate all means of communication and transportation of persons and property ..." (See Exhibit No. 13).

According to the applicant, this easement which ran to their land and burdened the fee owner's property includes a portion of a road along the edge of the Albion River which is subject to erosion due to the river waters working on the bank. The approximately 2,500-foot-long portion of the proposed retaining wall which is located within the easement area is seen by the applicant as necessary to maintain the integrity of the road and "is reasonable required to make the use of the easement safe and convenient." (See Exhibit 14 - Brigham letters). The applicant also seeks to build a new boating facility adjacent the north bank of the Albion River Channel northeast of the boating facilities owned and operated by the applicant's neighbor, the underlying fee owner of the subject right of way. The applicant does not identify if this portion of the proposed development is within or consistent with the subject easement.

The applicant's neighbor, Mr. Seto, the underlying fee owner of the subject right of way claims that some portions of the subject easement were extinguished almost immediately after they were created because those portions had been reconveyed back to the underlying fee owner. Mr. Seto, the underlying fee owner also claims that the proposed protective seawall may not be necessary for maintenance or preservation of the retained right of way privileges. Lastly, the underlying fee owner claims that the applicant has no right to access the river channel perpendicularly across that section of the strip of land along the north bank of the Albion River. (See Exhibit 15 - Newhouse letters).

Consistent with Section 30601.5 of the Coastal Act, staff solicited comment about the adequacy of the applicant's right of way property interests from both the applicant and the underlying fee owner. Since neither the applicant or the underlying fee owner have reached agreement on the extent and nature of the easement interests retained by the applicant, Special Condition No. 1 has been imposed to ensure that no development proceeds unless the applicant satisfies his burden to establish his legal ability to develop the site as conditioned herein or receives permission from the owner to develop the site as conditioned herein.

Both the underlying fee owner and the applicant have indicated their willingness to proceed if permission is granted from the owner. (See Exhibit 16). This permission would obviate any need to finally determine the

extent and nature of the easement interests retained by the applicant. In addition, if permission is not obtained by the applicant for all portions of the proposed development involving the fee owner's land, the applicant is free to seek a permit amendment to delete those portions of the proposed development, or in the case of the proposed dock, relocate the dock to a portion of the project site that is not in dispute.

4. Fill in Coastal Waters and Wetlands

The Coastal Act defines fill as including "earth or any other substance or material...placed in a submerged area." The proposed project includes placing fill in coastal waters, as portions of the proposed bank stabilization, boat ramp expansion, and new dock will extend below the ordinary high water line. The total volume of fill proposed includes approximately 71 cubic yards of structural and earthen fill for the proposed seawall, approximately five cubic yard of concrete bottom fill to expand the boat ramp, and approximately piling for the boat dock. In addition, the float for the new dock will cover approximately 1,350 square feet of river surface area.

Several sections of the Coastal Act address the dredging of 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 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 [eight purposes, including...]

(4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities, and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities...

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 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 (4), "in open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities, and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities..."

The proposed project satisfies the first test as the proposed fill is for "expanded boating facilities." A primary objective of the project is to preserve the existing boating facilities and access to them from dangers due to bank erosion. In addition, the applicant plans to expand the dock space and boat launching ramp, boating facilities that currently exist. Therefore, the Commission finds that the purpose of the fill is consistent with subsection (4) 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.

It appears that there are no other feasible less environmentally damaging alternatives to the proposed bank stabilization project, the boat ramp, or the expanded boating facilities.

As noted, the vast majority of the fill proposed for the project (71 cubic yards) is for the proposed bank stabilization work. The applicant identified four possible alternatives to the proposed bank stabilization in information submitted with the application (see Exhibit 11). The four applicant identified alternatives are as follows:

Alternative 1: Seawall at Toe of Bank. This alternative would involve constructing the seawall at the base (toe) of the existing river bank. The alternative would stop current bank erosion as well as stabilize and allow for widening of the roadway. However, it would require a considerable amount of back fill to be placed behind the wall. In total, this alternative would require approximately 500 cy of fill material to be placed in coastal waters. As compared to the 71 cubic yards of fill proposed under the current proposal, this alternative is not less environmentally damaging.

Alternative 2: Seawall Located in Upland Areas Only. This alternative would require the use of sheet piling driven into the river bank at the top (head) of the bank or at locations further inland. It would require placing no fill as the sheet piles would be driven vertically into the ground inland of the mean high water line. Eventually, continued erosion of the river bank would expose the sheet piling. Although this alternative would result in no fill for bank stabilization, the alternative has since proven to be infeasible because of the need to meet certain safety standards required by the California Department of Forestry and Fire Protection (CDF). The entrance road to the Schooner's Landing is the only vehicle access into and out of the approximately two-thirds of a mile long project site, as the adjoining steep canyon wall and the narrow terrace upon which Schooner's Landing is developed preclude locating any other access roads into the site. To allow for fire-fighting capability, it is essential that the road be wide enough to accommodate fire trucks. CDF standards call for an 18-foot-wide roadway in this case. In some locations, positioning the seawall at the top of the bank or in any location out of the river would preclude widening the road the necessary amount to meet CDF standards.

Alternative 3: Rip rap. This alternative involves excavating the bank back to a 2:1 slope and placing 1 ton rip rap boulders to stabilize the river bank. This alternative would immediately stop shoreline erosion, however it would not provide for road widening where necessary. It would also require placement of an amount of fill similar to alternative 1 (approximately 500 cubic yards), and thus would not be less environmentally damaging than the current proposal.

Alternative 4: The no project alternative. This alternative would permit current bank erosion to continue, further contributing to the siltation and channelization problem in the Albion River. It would also prevent the widening of the road where necessary to meet CDF standards. The no-project alternative is unacceptable because without bank stabilization, erosion would eventually undermine the roadway and the dock adjacent to it, causing their collapse, and the loss of access to this site.

No other alternatives have been identified that would be feasible and less environmentally damaging. Therefore, the Commission finds that the proposed method of bank stabilization involves the least environmentally damaging feasible alternative as required by Section 30233(a).

With regards to the widening and repair of the boat launch ramp, the only apparent alternatives are the no project alternative or replacing the boat launch ramp at another location. Neither of these alternatives are feasible or less environmentally damaging than the proposed project. The no project alternative is unacceptable because the existing condition of the ramp represents a safety hazard. The applicant has noted that in the past, some boats being launched have slipped off of the side of the ramp because of its narrow width and difficult turning access. Replacing the ramp elsewhere along the shoreline of Schooner's Landing would require far more than the

approximately five cubic yards of fill involved in the applicant's proposal as an entirely new ramp would have to be constructed. Thus, replacing the ramp elsewhere is not less environmentally damaging than the proposed project.

With regard to the piling fill required for the new dock, there are no apparent alternatives that would be less environmentally damaging. The 4.5-foot width of the float, the 21-foot width of the fixed pier deck, and the number of new piles to be driven do not appear to be excessive in comparison with typical boat docks. In addition, by using pile supported fill as opposed to placing earthen fill to create a solid wharf structure, the project has minimized the amount of fill required and resulting adverse environmental impacts. The no project alternative would not accomplish the project objective of providing more mooring space for recreational boating, a priority use under the Coastal Act.

In conclusion, the Commission finds that there are no feasible less environmentally damaging alternatives to the various components of the fill required for the proposed project.

C. Mitigation for Adverse Impacts.

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

The proposed fill work could potentially have several adverse environmental effects on the estuary environment, including (1) reducing the surface area and volume of the river, (2) disturbance of migratory fish, (3) disturbance of eelgrass habitat, (4) disturbance of mud flat habitat, and (5) degradation of water quality. Feasible mitigation measures can be employed to minimize these potential adverse environmental effects.

Water Surface Area and Volume. The bank stabilization work and the boat ramp work is self-mitigating with respect to impacts on water surface area and volume, in that these project elements will not result in an appreciable net change in the amount of material existing within the confines of the river. A total of approximately 76 cubic yards of material will be placed below mean high water for these developments and a corresponding amount of material will be removed from portions of the shoreline embankment riverward of the new seawall. The Commission attaches Special Condition No. 5 requiring that the seawall be constructed in the locations proposed in the application so that no additional fill would result by constructing the wall in more riverward locations. In addition, the Commission attaches Special Condition No. 7 requiring that the proposed fill removal work be carried out to ensure that the project will not result in any net change in the amount of material existing within the confines of the river.

Migratory Fish. Performing pile driving or other construction in the river during the period when anadromous fish are migrating up or down the

1-93-50

ART NARVAEZ

Page 12

river could adversely affect fisheries. To minimize disturbance of the migratory fish species that tend to use the river at that time of the year, the Commission attaches Special Condition No. 5. The condition limits all construction on the portions of the project that are proposed within the river itself to the period between June 15 and October 15. The affected work includes all dock construction, widening and repair of the boat launching ramp, and all work on the portions of the seawall and road that will occur riverward of the mean high water line. These limits to the construction season have been recommended by the Department of Fish and Game.

Eelgrass Habitat. Constructing docks, boat ramps, and shoreline stabilization along this section of the Albion River estuary could potentially disturb the rich eelgrass beds that exist along both sides of the channel. In addition to the direct damage development located within eelgrass beds would cause, development adjacent to or near eelgrass beds could adversely affect the habitat if construction equipment or debris were allowed to enter the live waters of the river and intrude into the eelgrass beds.

The proposed project has been designed to avoid direct intrusion into the eelgrass beds. None of the eelgrass beds come within 20 feet of the shoreline so none of the bank stabilization work will encroach into the beds. As shown in Exhibit 10, the boat ramp to be expanded extends out into the river to a point very close to but still shy of two eelgrass beds. The proposed dock will be constructed in an area where eelgrass beds are found. The fixed pier portion of the dock will cross over an eelgrass bed. However, the piling associated with the stationary dock will be positioned and driven in such a way that the existing Eel Grass beds will be avoided. The 300-foot-long floating dock, which will be oriented parallel to the shoreline, will be located outside of the eelgrass, farther out in the channel. Thus, no piles or other portions of the dock structure will touch any of the eelgrass beds.

The shading effect of the dock on the eelgrass is expected to be minimal. The botanical survey prepared for the project notes that healthy eelgrass beds are growing under and around the existing floating dock near the eastern end of the subject property. As the proposed floating dock is approximately the same width as the existing dock, it is expected the new dock would allow at least as much light to reach the eelgrass beds under it as reaches the eelgrass under the existing dock. As the fixed pier portion of the new dock will be positioned well above mean sea level, it is expected that an adequate amount of lateral incident light from morning and evening solar angles will be available to maintain the portion of the eelgrass beds directly under the fixed dock.

To avoid damaging the eelgrass beds with construction equipment during project construction, the applicant proposes to drive piles and construct the dock from a barge at tides above +2' mean lower low water (MLLW). At these stages of the tide, the relatively shallow draft of a barge would not reach bottom where the eelgrass exists. To ensure that construction is carried out in this manner as proposed by the applicant, the Commission attaches Special Condition

No. 9 which requires all dock construction work to be performed from a shallow draft barge at stages of the tide above +2 feet MLLW. The condition also requires the barge to be moved and kept away from all eelgrass beds during lower stages of the tide. Furthermore, as a precaution to avoid other potential construction related damage to nearby eelgrass beds, Special Condition No. 9 prohibits construction equipment, stockpiles of material, or any other debris from being allowed to enter into any eelgrass areas.

Mud flat Habitat. The dock piles, portions of the boat ramp expansion, and portions of the seawall will be located on unvegetated mud flat areas. Such mud flats support a variety of worms, mollusks, and other benthic organisms. The mud flat area to be covered by fill for the new seawall and the boat ramp expansion will be mitigated by the previously discussed removal of an equivalent amount of material from the shoreline embankment. The minor loss of mud flat area to be displaced by the piles required for the new dock is not proposed to be offset by the removal of other material. The botanical survey prepared for the project indicates that the impacts from the piles 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. In previous permit actions, the Commission has often determined that wooden 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 wooden piles.

Water Quality. Grading and construction work performed during either the rainy season or during stages of the tide when the disturbed areas would be exposed to tidal action could cause intensive erosion and lead to greater sedimentation within the river. Such sedimentation would adversely affect water quality, and according to staff of the U.S. Fish & Wildlife Service, could adversely affect the eelgrass by coating the leaves with sediment and inhibiting photosynthesis and growth of plants. In addition, there is a remote chance the sheetpile driving and excavation work could adversely affect water quality by uncovering and exposing to the river hazardous materials previously buried in the river terrace where Schooner's Landing is located. As noted previously, the man-made terrace was constructed decades ago ago through a cut and fill operation. Although there is no evidence that hazardous materials were actually included in the fill placed to create the terrace, given the lack of regulation of hazardous materials that existed at the time, it is not inconceivable that some hazardous materials could have been used.

To reduce the potential for sedimentation impacts, the Commission attaches Special Condition No. 5 which limits all construction activities to the dry period of the year, between April 15 and October 15. Avoiding the rainy season will reduce the exposure of the construction zone to runoff and resulting erosion and sedimentation. In addition, the Commission attaches Special Condition No. 7 which requires that all excavation and fill work to be performed below mean high tide be performed only in the dry at lower stages of

1-93-50

ART NARVAEZ

Page 14

the tide. Furthermore, the condition requires that soil disturbed by construction activities within the intertidal area be compacted prior to the next rise in tide. By compacting the soil through the use of a Vibraplate compactor or similar piece of equipment, the soil will be less susceptible to erosion.

To reduce the potential that any uncovered hazardous wastes might pollute the river, Special Condition No. 10 requires all work on the project to be suspended if hazardous materials are discovered during construction. Work can only resume after a qualified consultant has investigated the materials found and any necessary mitigation measures have been implemented.

The Commission finds, that as conditioned, the proposed project is consistent with the third test for approvable fill projects set forth in Section 30233 of the Coastal Act in that adequate mitigation for the adverse environmental effects of the proposed project will be provided.

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 project, as conditioned, will ensure the continued biological productivity and functional capacity of the Albion River Estuary to support fisheries by limiting dredging in the river to only the period of the year when anadromous fish are not migrating through the area.

The proposed project will also avoid significant disruption to the eelgrass habitat in the Lower Albion River Estuary and will maintain the biological productivity and capacity of the habitat. As noted previously, the proposed project has been designed to avoid direct intrusion into the eelgrass beds. The fixed pier portion of the proposed dock will cross over an eelgrass bed, but no piles will be located within the eelgrass. The shading effect of the dock on the eelgrass is expected to be minimal as evidenced by the luxuriant eelgrass growth underneath an existing dock at the site. To ensure that construction is carried out in a manner that will not damage the eelgrass beds, special conditions of the permit require that (1) all dock construction work be performed from a shallow draft barge at higher stages of the tide, (2) all barges must be moved and kept away from all eelgrass beds during lower stages of the tide, and (3) all construction equipment, stockpiles of material, or any other debris must be kept out of any eelgrass area.

With regard to mud flat habitat, the mud flat area to be covered by fill for the new seawall and the boat ramp expansion will be mitigated by the previously discussed removal of an equivalent amount of material from the shoreline embankment. The minor loss of mud flat area to be displaced by the piles required for the new dock will not result in any appreciable diminishment of the mud flat habitat within the estuary. Therefore, the

1-93-50

ART NARVAEZ

Page 15

project will not jeopardize the biological productivity and functional capacity of the Albion River estuary mud flat habitat.

The Commission finds that as the project will not have any significant adverse effects on the mud flat habitat in estuary, and the project has been conditioned to prevent significant impacts to eelgrass habitat, fisheries, and water quality, the project will maintain the biological productivity and quality of the Albion River Estuary, consistent with Section 30231 of the Coastal Act. Similarly, as conditioned, the proposed dredging will maintain the functional capacity of the estuary as required by Section 30233(c).

5. Allowable Shoreline Protection Device.

Section 30235 of the Coastal Act states, in part, that revetments, breakwaters, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply.

The proposed seawall will prevent continued bank erosion and prevent the access road into the project from washing away. The road is the only land-based means of access to the site and is essential to provide access to the existing campground and marina facility. The California Department of Forestry and Fire Protection has mandated that the road be widened as proposed by the applicant, to provide better access for fire fighting equipment. The marina and campground facilities are existing structures on the site, and the existing and proposed dock, and the existing boat launching ramp constitute coastal dependent uses as they must be located on or adjacent to the water to function at all.

The proposed seawall will not adversely affect local shoreline sand supply. The project site is along a river where there are no beaches, instead of along the open ocean. Thus, the wall will not alter littoral drift patterns or cause scouring of adjacent beaches as might result from the construction of seawalls along the ocean shoreline.

Therefore, the project is consistent with Section 30235 of the Coastal Act as the proposed seawall is required to protect existing structures and to serve coastal-dependent uses and has been designed to minimize adverse impacts on local shoreline sand supply.

6. 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

1-93-50

ART NARVAEZ

Page 16

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 project site is identified on the County's LUP maps as a location for proposed lateral access along the Albion River. Section 4.9 of the LUP states that the public has had traditional access to the river at Albion Flat, but access is presently a problem and is often blocked.

As proposed, this project would have no significant impact on public access use of the area. The entrance road to Schooner's Landing parallels the river and is located close to the top of the river bank. The road provides the sole route for walking or riding along the shoreline. The road is gated, however, and the property owner does not make Schooner's Landing available for free general public access use for those members of the public bringing vehicles to the site. Use of the site for vehicular access is available to those who pay a fee for camping or boat launching. In addition, as a condition of approval of Use Permit Modification No. UM 8-87/92 for the proposed project, Mendocino County required that non-fee pedestrian access to and along the shoreline shall be provided during business hours.

To the extent that the public does use the site, members of the public will have at least the same capability of using the shoreline for public access purposes after project construction as they do now. As proposed, the road will be retained and widened in some locations. Widening the road may actually facilitate public access use somewhat by providing more room for pedestrians to avoid vehicles. None of the proposed development, including the seawall, expanded boat ramp, new dock, and road improvements will physically block use of the roadway or the adjoining shoreline. The development of the additional boat launching facilities could potentially increase the demand for public access by bringing additional boat owners and their guests to the site. However, as the entire mile-long length of the site would be available to any boater who wished to walk along the shoreline, any additional demand for public access use brought about by the project would appear to be easily accommodated at the site.

Concerns have been raised by the Executive Director of the Pacific Land Trust that the applicant and the adjoining property owner have erected fences and barriers over the last ten years that bar pedestrian access that used to exist in the area for launching canoes, kayaks, and other small craft that can be walked into the site without need of a vehicle (see Exhibit 12). In her letter to Commission staff, the Executive Director also points out that the Mendocino County Land Use Plan Maps identify the project site as a location for proposed lateral access along the Albion River.

As noted previously, the County has imposed a condition in the use permit modification granted for the project that requires the applicant to provide

1-93-50

ART NARVAEZ

Page 17

non-fee pedestrian access to and along the shoreline during business hours. Thus, the stated concern about a bars to pedestrian access may be largely moot. However, the installation of a fence or barrier that would affect public access is a form of development that would require a coastal development permit under the Coastal Act. If sufficient evidence is gathered that the allegations are correct, the Commission would have the ability to pursue enforcement action. However, the Commission finds that allegations of unpermitted gates and barriers having been constructed on the site is a matter separate from the consideration of whether the development proposed under the current permit application is consistent with the Commission's public access policies. The permit application does not seek authorization for any existing or proposed gates or barriers.

Identification of the project site in the County LUP Maps as a proposed lateral accessway indicates that public access would be very desirable in this location. However, the fact that such an accessway would be very desirable does not by itself provide a basis for the Commission to require additional public access. As previously noted, the Commission must be able to find that any permit condition it imposes requiring public access is necessary to avoid or offset a project's adverse impact on existing or potential access. As no such adverse impact of the development proposed in the application has been identified, the Commission finds that it is not appropriate to require public access through a special condition of this permit.

The Commission finds that the proposed project is consistent with Sections 30211 and 30212 of the Coastal Act.

7. Public Trust

Portions of the project are in areas that are in State owned waters or are otherwise subject to the public trust. The applicant has applied for an amendment to an existing lease from the State Lands Commission to allow use of these lands for the proposed project. Special Condition No. 2 requires that, prior to issuance of the coastal development permit, the applicant must submit written evidence to the Executive Director that the lease amendment required by the State Lands Commission has been obtained. The Commission attaches this condition to ensure that the applicant has obtained all the necessary property rights to carry out the project.

8. Department of Fish and Game Review.

The project requires a streambed alteration agreement from the Department of Fish and Game. The applicant has not yet received the agreement. Therefore, to ensure that the project reviewed by the the Department of Fish and Game is the same project that was reviewed under this permit by the Commission, the Commission attaches Special Condition No. 3 which requires that the applicant submit to the Executive Director a copy of an approved streambed alteration agreement from the Department prior to issuance of the permit.

9. U.S. Army Corps of Engineers Review

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. 4 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 construction.

10. Mendocino County LCP

Policy 3.1-4 of the Mendocino County LUP limits development within wetland areas to the eight permissible uses allowed by Coastal Act Section 30233(a) and states that diking and filling shall only be allowed when there is no less environmentally damaging alternative and when mitigation measures will be used to minimize adverse environmental effects. As discussed in Finding 3, "Filling of Coastal Waters," the proposed fill qualifies under Section 30233(a)(4) of the Coastal Act as fill for "expanded boating facilities." In addition, no feasible less environmentally damaging alternative has been identified and as conditioned, the project will employ mitigation measures to minimize the adverse environmental effects. Therefore the project is consistent with Policy 3.1-4.

The Commission notes, that in its approval of the use permit for the project, Mendocino County made findings stating that the proposed project is consistent with the County'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 wetland fill impacts is consistent with Chapter 3 of the Coastal Act as discussed above.

11. 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 may have on the environment. As discussed above, the project has been mitigated to avoid or minimize

1-93-50

ART NARVAEZ

Page 19

impacts to coastal resources, specifically to prevent sedimentation and other impacts on the water quality of the Albion River, to protect the environmentally sensitive eelgrass habitat, and to maintain river surface area and volume. The project, as conditioned, will not have a significant adverse effect on the environment, within the meaning of CEQA.

For purposes of the California Environmental Quality Act's environmental review process, the lead agency for the project is Mendocino County. The County adopted a negative declaration for the project on July 15, 1993. The project, as conditioned, will not have a significant adverse effect on the environment, within the meaning of CEQA.

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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 or 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.