


CALIFORNIA COASTAL COMMISSION

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Staff:	Robert Merrill
Staff Report:	January 27, 1997
Hearing Date:	February 5, 1997
Commission Action:	

STAFF REPORT: PERMIT AMENDMENTAPPLICATION NO.: **1-93-36-A**APPLICANT: **SUM & JENNY SETO**

PROJECT LOCATION: Along the Albion River, at Albion Flat, immediately east of the Highway One bridge, within the unincorporated community of Albion, Mendocino County (APN 123-170-01).

DESCRIPTION OF PROJECT PREVIOUSLY APPROVED: Construct an approximately 2,500-foot-long concrete seawall positioned approximately two to three feet inshore of the existing riverbank to protect an existing private recreational marina, trailer park, and campground complex from bank erosion.

DESCRIPTION OF AMENDMENT: Allow for the installation of rock rip-rap revetment along the existing riverbank instead of constructing the concrete seawall two to three feet inshore of the existing riverbank

LOCAL APPROVALS RECEIVED: Mendocino County LCP Consistency Review (LCP# 96-05), Use Permit Modification #U 20-93/95, and Negative Declaration.

OTHER APPROVALS REQUIRED: U.S. Army Corps of Engineers 404 Permit; Department of Fish & Game Stream bed Alteration Agreement; State Lands Commission Review.

SUBSTANTIVE FILE DOCUMENTS: Mendocino County LCP

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends that the Commission approve the amendment request with the proposed special conditions. The staff believes that the proposed rock revetment, with conditions requiring the submittal of final plans, limiting the materials to be used, limiting the seasons of work and requiring preparation of an erosion control plan to avoid erosion and sedimentation, and requiring the applicant to follow through on a proposed riparian revegetation proposal involves the the least environmentally damaging feasible alternative to protect the shoreline, provides feasible mitigation for the adverse affects of the project, and will maintain and enhance the biological productivity and functional capacity of the lower Albion River estuary. As such, Staff believes the project is consistent with the Commission's fill policies and the other Chapter 3 policies of the Coastal Act.

STAFF NOTES:

1. Acceptance of Amendment Request for Filing.

Section 13166 of Title 14 of the California Code of Administrative 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 No. 1-93-36 on June 7, 1994, to Sum and Jenny Seto for the construction of an approximately 2,500-foot-long concrete seawall around the shoreline perimeter of their campground and marina property at Albion Flat, along the Albion River, immediately east of and below the Highway One bridge (see Exhibits 1-2). To avoid having to place structural fill within tidal areas, the wall was to be located approximately two feet inboard of the existing shoreline by excavating a trench parallel to the shoreline and constructing the wall within the trench (see Exhibit 5). It was expected that over time, continued erosion would eventually expose the three to five-foot-high wall.

The permit was granted with a total of three special conditions. Special Condition No. 1 required the submittal of a landscaping plan providing for the planting of native riparian trees, shrubs, and ground cover along the inboard side of the wall. The purpose of the condition was to provide for landscaping that would soften the appearance of the wall, once erosion had exposed its face, by creating both a backdrop of willows or alders and other riparian shrub and tree species and a drape of riparian plants that would hang over the face of the wall and partially cover it. The site is in a designated highly scenic area and the Commission found that it was necessary reduce the visual prominence of the stark wall to make it visually subordinate to the character of its setting, consistent with Coastal Act Section 30251.

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The two other special conditions were imposed to minimize construction impacts on the adjoining Albion River. To reduce the potential for sedimentation impacts, the Commission attached Special Condition No. 2 which limits all construction activities to the dry period of the year, April 15 to October 15. Avoiding the rainy season reduces the exposure of the construction zone to runoff and resulting erosion and sedimentation. To prevent other kinds of damage from construction activities, the Commission attached Special Condition No. 3, which required the applicants to keep construction equipment, stockpiles of material, or any other debris out of the river.

After the Commission approved the original project, and during the process of finalizing the design of the approved wall, the applicants determined that constructing the wall would not be feasible. The ground at Albion Flat consists of old fill material that was originally placed over tidal wetlands around the turn of the century when the site was developed for use as a lumber mill. The applicant discovered that the old fill material that was used contains numerous large and hard objects, including old piles, rocks, railroad car and engine parts, and other miscellaneous debris. The presence of these materials makes the excavation work needed to create the trench for the seawall very difficult. The applicants have indicated that the added cost of the more difficult excavation work combined with the already relatively high cost of building a vertical concrete seawall versus other forms of shoreline protective devices such as rock revetment, makes the original seawall proposal economically infeasible.

The amendment request seeks to substitute the installation of a rock revetment along the shoreline edge for the originally approved seawall. As the amendment request includes the information about the economic infeasibility of constructing the seawall within a trench as originally proposed, the Executive Director has determined that newly discovered material information consistent with the requirements of Section 13166 of the Commission's Regulations has been presented and the Executive Director has accepted the amendment request for processing.

2. Standard of Review.

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 located between the sea and 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. State Lands Commission Review.

PRIOR TO ISSUANCE OF THE AMENDED PERMIT, the applicant shall submit to the Executive Director a written determination from the State Lands Commission that:

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

2. Riparian Enhancement Plan

PRIOR TO ISSUANCE of the Amended Coastal Development Permit, the applicant, shall develop in consultation with the Department of Fish and Game and submit for the review and approval of the Executive Director a riparian enhancement plan for the planting and maintaining of a strip of riparian vegetation at least 1,000 feet long by at least 10 feet wide along the inboard side of the proposed shoreline revetment in the location generally shown in Exhibit 5, extending from the west end of the revetment to the existing wharf, with breaks to provide sufficient access to each of the existing dock gangways. The landscaped strip shall be planted with a mix of riparian tree, shrub, and ground cover species that grow along the Albion River in the vicinity of the project, and shall include at least 100 alder or willow trees. The landscaping program to be submitted shall include a planting plan diagram, a plant list, a narrative description of the planting techniques to be followed (e.g. size and depth of holes to be dug, soil amendments to be added, planting schedule, etc.), a narrative description of the landscape maintenance program (e.g. fertilizing, watering, etc.) for the riparian vegetation to be planted, and a commitment to replace planted vegetation on a one-to-one or greater ratio for the life of the project. The planting techniques and landscape maintenance program shall be designed to maximize the chances of survival of the riparian vegetation to be planted. The riparian vegetation shall be planted during the first full rainy season occurring after completion of the seawall. Any changes to the riparian enhancement plan after it has been

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reviewed and approved by the Executive Director shall require further amendment of the permit.

3. Final Construction Plans

PRIOR TO ISSUANCE of the Coastal Development Permit, the applicants shall submit for the review and approval of the Executive Director final construction plans that incorporate the recommendations of Noble Consultants, provided in the firm's letter of September 29, 1995, and locate the revetment along the shoreline in the manner specified in the November 4, 1996 letter of the applicants' agent to result in no more than approximately 6,000 square feet of net fill below the Mean High Water mark. Any changes to the approved final plans will require further amendment of the permit.

4. Erosion Control Plan

PRIOR TO ISSUANCE of the Coastal Development Permit, the applicant shall submit for the review and approval of the Executive Director an erosion-control plan developed in consultation with the Department of Fish & Game that provides for seeding and the placement of mulching or straw over the disturbed areas. The applicants shall implement the plan approved by the Executive Director.

5. Dept. of Fish and Game Stream bed Alteration Agreement.

PRIOR TO THE COMMENCEMENT OF CONSTRUCTION, the applicant shall submit to the Executive Director evidence of an approved stream bed alteration agreement from the California Department of Fish and Game.

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

PRIOR TO THE COMMENCEMENT OF CONSTRUCTION, the applicants shall submit to the Executive Director evidence that the U.S. Army Corps of Engineers has granted permission for the project authorized herein.

7. Revetment Material

The revetment material to be used shall consist of clean quarry rock and contain no concrete rubble, asphalt, or other waste materials.

8. Limits of Construction Season.

All construction activities shall be performed only during the period of the year between June 15 and October 15 to minimize erosion and sedimentation.

9. Work in Tidal Areas Limited to Lower Stages of Tide.

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, and revetment rock be placed in any new segment of the toe trench excavated each work period before higher stages of the tide return to cover the toe trench.

10. Disposal of Construction Debris.

All construction debris and excavated material not used as part of the approved project shall be removed from the site upon completion of the project and not allowed to enter the river. Placement of any surplus material or debris in the river or in the coastal zone at a location other than in a licensed landfill will require a coastal development permit.

The above special conditions replace all of the special conditions of the original permit, including Special Conditions 1, 2, and 3.

IV. Findings and Declarations:

The Commission hereby finds and declares:

1. Permit History

The Commission granted Coastal Development Permit No. 1-93-36 to Sum and Jenny Seto on June 7, 1994, for the construction of an approximately 2,500-foot-long concrete seawall. The wall was intended to protect Albion Flats from bank erosion. Albion Flat is an existing private recreational and commercial fishing marina, trailer park, and campground complex located near the mouth of the Albion River, just upstream of the Highway One bridge, in Mendocino County (See Exhibits 1-3). A copy of the staff recommendation for the original project is attached as Exhibit 7.

The approved wall was to begin 50 feet east of the footing of the Highway One Bridge over the Albion River, and continue along the shoreline of the property to the north side of the mooring basin. The wall was to be continuous except for an approximately 100-foot-long break at the existing wharf structure.

To avoid having to place structural fill along the margin of the estuary and displacing wetland habitat, the wall was to be located slightly inboard of the existing shoreline by excavating a trench parallel to the shoreline and constructing the wall within the trench. As depicted in Exhibit 5, the trench was to encroach no closer than two feet to the existing top of bank and the seawall was to be set back approximately 7 to 10 feet from the existing top of the riverbank. The top of the wall was to conform to the existing ground elevations. Thus, initially, all but the very top surface of the wall was to be shrouded from view by the surrounding ground. As the river bank continues to erode, however, all or portions of the face of the wall would have been exposed to view and to the river. The wall was to vary in height with variances in existing ground elevations. A total of approximately 2,000 lineal feet of the wall was to be 3 feet high, and approximately 500 feet was to be 5 feet high.

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The wall was to be constructed of reinforced concrete and was designed with a toe to enable the wall to resist overturning, once the face was fully exposed by erosion.

The permit was granted with a total of three special conditions. Special Condition No. 1 required the submittal of a landscaping plan providing for the planting of native riparian trees, shrubs, and ground cover along the inboard side of the wall. The purpose of the condition was to provide for landscaping that would soften the appearance of the wall, once erosion had exposed its face, by creating both a backdrop of vegetation. The site is in a designated highly scenic area and the Commission found that it was necessary reduce the visual prominence of the stark wall to make it visually subordinate to the character of its setting, consistent with Coastal Act Section 30251.

To comply with Special Condition No. 1 of the original permit, the applicants hired Bioengineering Associates to develop a revegetation plan for Albion Flat. In accordance with the condition, the plan provides for the planting of over 100 Red Alder and Willow trees and ground cover in a 10-foot-wide strip along the southern shoreline of Albion Flat. On December 27, 1994, the Executive Director approved the submitted plan as satisfying the requirements of Special Condition No. 1 of the original permit and issued the permit.

The two other special conditions of the original permit were imposed to minimize construction impacts on the adjoining Albion River. To reduce the potential for sedimentation impacts, the Commission attached Special Condition No. 2 which limits all construction activities to the dry period of the year, April 15 to October 15 to avoid sedimentation. To prevent other kinds of damage from construction activities, the Commission attached Special Condition No. 3, which required the applicants to keep construction equipment, stockpiles of material, or any other debris out of the river.

After the Commission approved the original project, and during the process of finalizing the design of the approved wall, the applicants determined that constructing the wall would not be feasible. The ground at Albion Flat consists of old fill material that was originally placed over tidal wetlands around the turn of the century when the site was developed for use as a lumber mill. The applicant discovered that the old fill material that was used contains numerous large and hard objects, including old piles, rocks, railroad car and engine parts, and other miscellaneous debris. The presence of these materials makes the excavation work needed to create the trench for the seawall very difficult. The applicants have indicated that the added cost of the more difficult excavation work combined with the already relatively high cost of building a vertical concrete seawall versus other forms of shoreline protective devices such as rock revetment, makes the original seawall proposal economically infeasible.

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2. Current Amendment Request.

The amendment request proposes to substitute the installation of a rock revetment along the shoreline edge for construction of the originally permitted seawall.

The proposed revetment would extend along approximately 2,500 feet of riverbank. The western end of the revetment would encroach no closer than 100 feet to the footings of the Albion River Bridge to avoid any impact on the bridge footings.

The shoreline to be treated has eroded rapidly over the years. A large amount of former land area has already been lost to erosion. The current shoreline configuration resembles a wave/cut terrace perched above and alongside the main channel at an elevation just a few feet below the high water mark.

The revetment is proposed to be built in accordance with the technical recommendations of the applicants' civil engineer. The revetment would be constructed at a slope of approximately 1.5:1 (horizontal: vertical) (see Exhibit 4). The slope would be established through a combination of grading back the top of the existing near vertical bank edge and placing earthen fill outboard of the base of the existing vertical bank edge to achieve the desired 1.5:1 slope. A toe for the revetment would be established by excavating a shallow trench at the base of the slope. A filter fabric is proposed to be placed between the slope of the bank and the revetment material. Quarry rock, ranging in size from 200 to 500 pounds would be used as the revetment material. The revetment material would be placed in two layers, with an approximately two-foot-thick armor layer containing the largest rocks overlaying a layer of smaller rock. In net, approximately 6,000 square feet of the fill material would extend riverward of the current mean high water line.

As discussed previously, prior to submittal of the amendment request, the applicants submitted a revegetation plan for planting alder and willow trees and other riparian vegetation in a 10-foot-wide strip adjacent to the originally approved seawall in compliance with Special Condition No. 1 of the original permit. Although, the purpose of the revegetation plan was to soften the visual appearance of the originally approved seawall, the applicants have indicated that they intend to perform such revegetation work anyway, as part of the amended project. The Department of Fish and Game recommended the preparation of such a plan at the time the proposed revetment project was being considered as a modified use permit request by Mendocino County, because of the habitat benefits the revegetation would provide, and the County made preparation of such a plan a condition of its approval of the project.

3. Site Description

Albion Flat is used as a private campground and marina facility that accommodates both commercial fishermen and recreational boaters.

Albion Flat is on the lower Albion River estuary flood plain. The site originally supported a lumber mill before being converted to the existing campground and marina complex. The flat encompasses an approximately 9.75-acre area in a boot-shaped configuration at a bend in the river and includes a narrow mooring basin that extends into and alongside the flat from the "toe" end of the boot.

The majority of the site is devoted to campground facilities. Existing buildings on the property include an office building and a guard building near the entrance to the property, a restroom and shower building, and a commercial fishing office on an existing wharf. In total, the buildings cover approximately 2,216 square feet of area. Existing marina facilities include an approximately 3,000-square-foot wharf, seven floating docks oriented parallel to the shoreline that provide a total of approximately 1,500 lineal feet of boat berthing space, and a one-lane concrete boat launching ramp.

The site is in an area designated as "highly scenic" by the Mendocino County Land Use Plan (LUP). The site is primarily visible from the Highway One Bridge and from public roads within the Albion community atop and along the bluff on the south side of the river.

Albion Flat is largely barren of vegetation except for a variety of weedy species such as perennial rye grass. The estuary itself provides important habitat for a variety of aquatic plant and animal 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 and within the river. 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 eel grass blades, and fish that use the beds for rearing, resting, and feeding. The largest populations of Eel grass are located upstream of the site, and a number of small populations of Eel grass are established in the area of the existing docks on the site.

The coho salmon has recently been designated by the federal government as a threatened species. The upland portions of Albion Flat contain no known rare or endangered species.

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 proposed project includes the placement of fill in coastal waters in the form of earthen material graded from the site, rock rip-rap, and filter fabric that will be placed in a submerged lagoon-edge area now occupied by protective sacked concrete. The placement of the fill material will result in a net increase of coverage of approximately 6,000 square feet of tidal area, virtually all of which consists of an erosion cut terrace where former uplands have eroded away.

Sections 30231, 30233, and 30235 of the Coastal Act address the placement of fill within coastal waters and the construction of seawall revetments, such as proposed by the applicants. 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) 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.

(2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.

(3) In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities, shall not exceed 25 percent of the degraded wetland.

(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.

(5) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.

(6) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.

(7) Restoration purposes.

(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....

Section 30235 provides, in applicable part:

Revetments, breakwaters, groins, harbor channels, 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 sand supply.

The above policies set forth a number of different limitations on what shoreline protective device fill projects may be allowed in coastal estuaries, such as the lower Albion River. For analysis purposes, the limitations can be grouped into five general categories or tests. These tests are:

- a. that the purpose of the fill is either for one of eight uses allowed under Section 30233, to serve coastal dependent uses, or to protect existing structures or public beaches in danger from erosion;
- b. that the project is designed to eliminate or mitigate adverse impacts on local sand supply;
- c. that the project has no feasible less environmentally damaging alternative;
- d. that adequate mitigation measures to minimize the adverse impacts of the proposed project on habitat values have been provided; and
- e. that the biological productivity and functional capacity of the habitat shall be maintained and enhanced where feasible.

Purpose of Seawall Fill

The first test set forth above is that any proposed fill must be for an allowable purpose. The purpose of the proposed fill is to protect the shoreline of an existing facility that supports a variety of uses, including a campground, trailer park, and marina for both recreational boating and commercial fishing operations. Although the proposed fill does not strictly meet any of the eight allowable uses for fill under Section 30233(a), the fill is allowable under Section 30235, both as (1) a revetment serving a coastal/dependent use, a marina, and (2) as a revetment that will protect existing structures. As noted previously, a commercial fishing office, wharf,

and a boat launching ramp exist along portions of the shoreline. All of these structures are threatened by the continuing shoreline erosion.

Protection of Sand Supply

The second test set forth above is that the project must be designed to eliminate or mitigate adverse impacts on local sand supply.

The proposed project satisfies this test as there is no evidence that the proposed revetment will have any adverse affect on existing local sand supplies. The project site is not along the open ocean shoreline where the construction of a revetment could interfere with the littoral drift and cause sand held in suspension to deposit either sooner or later than it otherwise would. Instead, the project site is located along a river in an area that contains no beach. In addition, the bank the revetment will protect, although rapidly eroding, does not contribute significantly to the portion of the local sand supply discharged to the ocean by the Albion River. The Albion drains a large area, and the total volume of material that enters the river from storm water runoff throughout the watershed and upstream erosion far surpasses the modest amount that enters the river from erosion of the bank at Albion Flats. Based on the botanical survey prepared by the applicants' consulting biologist, it appears that most of the material eroding from the bank remains in the estuary, adding to the bed load of silt and rock, but not contributing to the maintenance of any existing beach.

Alternatives

The third test set forth by the Commission's fill policies is that the proposed fill project must have no feasible less environmentally damaging alternative.

The proposed fill is for bank stabilization purposes. At least three possible alternatives to the proposed project have been identified including (a) the no project alternative, (b) constructing a seawall inboard of the existing shoreline as originally proposed, and (c) constructing a sheet pile bulkhead at the existing shoreline edge.

Alternative a: The No Project Alternative. This alternative would permit the current bank erosion problem to continue, further contributing to the siltation problem in the Albion River estuary. In addition, continued erosion would eventually undermine the several structures located along the shoreline, including the wharf, fishing office, and boat launching ramp, defeating the project objective of protecting these facilities and the rest of the Albion Flat from erosion. Therefore, the Commission finds that the no project alternative is neither less environmentally damaging nor feasible.

Alternative b: Constructing Seawall Inboard of Shoreline. The originally approved project would have avoided all the direct impacts associated with placing fill in coastal waters by providing for future

shoreline protection without fill. As approved, the project provided for the construction of a concrete seawall within a trench to be excavated in upland areas two to three feet inboard of the existing shoreline. It was expected that over time, continued erosion would eventually expose the three to five-foot-high wall.

As discussed previously, however, this alternative ultimately did not prove to be feasible. The applicants discovered that the old fill material that comprises Albion Flat contains so many large and hard objects, including old piles, rocks, railroad car and engine parts, and other miscellaneous debris, that the trenching work required for this alternative would be too difficult, and too expensive to keep the overall project economically feasible.

Besides not being economically feasible, the applicant has submitted a botanical survey that indicates the alternative would also not be environmentally less damaging than the revetment project currently proposed (see Exhibit 6B). The applicants' biologist states the following in the botanical survey:

One of the most compelling arguments for using rip rap is that the presently unstable and eroding riverbank would be stabilized in its present location instead of waiting, perhaps years, for the present bank to erode to the point where the seawall would provide protection. Such erosion would contribute to the degradation of the estuary by adding to the bed load of silt and rock. Since my initial survey the estuary has been dredged.

The proposed rip rap would begin to benefit the estuary the first season it was in place by minimizing stream bank erosion along 2500+/-feet of the Albion river estuary. Bed load from further up in the Albion watershed will continue to move down the river until that point where historical upstream impacts have healed and bed load recruitment reaches natural background levels, but at least erosion along 2,500+/- feet of the lower estuary would not be contributing to that recruitment.

Therefore, the Commission finds that the alternative of constructing a seawall inboard of the existing shoreline is neither feasible nor less environmentally damaging.

Alternative c: Constructing Sheet Pile Bulkhead. This alternative would involve constructing a sheet pile bulkhead along the edge of the existing bank. Driving vertical sheet piles would limit the amount of fill to the width of the sheet piles and the amount of space between the sheet pile wall and the existing bank. By requiring less coverage of tidal area than the currently proposed revetment, this alternative may be less environmentally damaging than the revetment. However, this alternative is not economically feasible. To create the bulkhead, sheet piles would have to be driven down into the substrate. The same difficulties that make excavation difficult to perform at Albion Flats also interfere with pile driving. The numerous large

and hard objects buried in the old fill could block piles from being driven down to a sufficient depth. Although the obstacles could be removed from the ground between dividing piles, the extra cost associated with performing this task makes the sheet pile bulkhead approach economically infeasible. Therefore, the Commission finds that the alternative of constructing a sheet pile bulkhead

Conclusion. No other feasible alternatives involving less environmental damage have been identified. Therefore, the Commission finds that there are no feasible less environmentally damaging alternatives to the proposed revetment fill project.

Feasible Mitigation Measures

The fourth test set forth by Sections 30231, 30233, and 30235 is that adequate mitigation for the adverse impacts of the proposed project on habitat values must be provided.

Significant adverse impacts often associated with the placement of fill including the coverage of bottom habitat and the loss of estuary surface area and volume such impacts will not result in this case. The area being filled is an area that has been rapidly eroding. The fill will occupy an area that had been an upland area until just very recently. Thus, the area to be filled is devoid of vegetation and contains little habitat value. Benthic organisms have had little time to colonize the fill site as it only recently became uncovered through erosion. In addition, the site is not within the portions of the channel that are used by fisheries. Furthermore, the fill will replace old fill that had been placed many decades ago to create a flat land area for a lumber mill. Finally, the 6,000-square-foot net area is relatively small, less than .14 of an acre.

Although preliminary plans for the proposed revetment have been prepared, no final construction plans have yet been submitted to the Commission. To ensure that the fill will be placed in the manner proposed by the applicants and will result in no greater impact to bottom habitat and loss of estuary surface area and volume than the net coverage of 6,000 square feet of tidal area proposed by the applicants, the Commission attaches Special Condition No. 3. The condition requires the applicants to submit for the review and approval of the Executive Director final construction plans prior to issuance of the permit that are consistent with the preliminary plans that have been submitted to date.

The proposed fill project could potentially have other adverse environmental effects on the estuary environment. First and foremost, the project could degrade the water quality of the river by releasing large quantities of sediment into the water column if grading and filling activities occurred during either the rainy season when stormwater runoff could wash sediment into the river or during stages of the tide when the disturbed areas would be exposed to tidal action. Besides discoloring the river and reducing its value

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for recreational pursuits, increased sedimentation of the river would result in certain habitat impacts. According to the Department of Fish and Game, the Albion River supports viable populations of coho and chinook salmon, steelhead, and several non-game fish species (see Fish & Game letter included as Exhibit 6). Increased sedimentation can interfere with fish passage, spawning, and other aspects of fish life cycles. In addition, the lower Albion River maintains significant stands of eel grass. Eel grass is considered especially valuable habitat as it provides surfaces for fish spawning, is a source of food, and provide cover for a variety of marine wildlife. Eel grass is protected under the Fish and Game Code. According to staff of the U.S. Fish & Wildlife Service, increased sedimentation in the Albion River could adversely affect the eelgrass by coating the leaves with sediment and inhibiting photosynthesis and growth of plants.

Feasible mitigation measures can be employed to minimize these sedimentation related adverse effects of the project. Both the applicants' biologist and the Department of Fish & Game have recommended a number of measures to mitigate these impacts on the Albion River (see Exhibits 6A and 6B).

First, the Dept. of Fish & Game has recommended that all work at or below the average high water mark of the Albion River, and all grading or other activities susceptible to causing erosion and sedimentation be confined to the period of June 15 through October 15. Therefore, the Commission attaches Special Condition No. 8, which limits construction activities to the June 15 through October 15 period.

Second, the Dept. of Fish & Game has recommended that an erosion-control plan be developed to alleviate sedimentation of the river. The Department recommends that the plan include erosion control measures for all exposed areas susceptible to erosion such as seeding, mulching, placement of straw, and slope contouring. Therefore, the Commission attaches Special Condition No. 4, which requires the submittal for the review and approval of the Executive Director of an erosion control plan developed in consultation with the Department of Fish & Game that provides for the erosion control measures recommended by the Department of Fish & Game.

Third, the Dept. of Fish & Game has recommended that major excavation activities shall be limited to low-tide periods. Similarly, the applicants' biologist has recommended that work associated with the toe trench for the revetment only be performed at low stages of the tide when the trench will not be exposed to flowing water. The biologist also recommends that revetment rock be placed in whatever length of the toe trench is dug each work period to cover the exposed soil and reduce the potential for rising tides to erode the exposed soil in the trench. Therefore, the Commission attaches Special Condition No. 9, which requires that all excavation and fill work below mean high water be performed only in the dry at lower stages of the tide and that revetment rock be placed in any new segment of the toe trench excavated each work period before higher stages of the tide return to cover the toe trench.

Fourth, the applicants' biologist has recommended that material removed during trench excavation should not be allowed to enter the river and should be removed to a suitable location away from the site if not used as backfill behind the revetment. Similarly, the Department of Fish & Game has recommended that no debris, soil, silt, cement, oil, or other such foreign substance shall be allowed to enter into or be placed where it may be washed by rainfall or runoff into the river. Therefore, the Commission attaches Special Condition No. 10, which requires all construction debris and excavated material not used as part of the approved project to be removed from the site upon completion of the project and not allowed to enter the river.

The Commission finds, that as conditioned, the proposed project is consistent with the fourth test set forth by Sections 30231, 30233, and 30235 of the Coastal Act for approvable fill projects in that adequate mitigation for the adverse environmental effects of the proposed project will be provided.

Maintenance and Enhancement of Estuarine Habitat Values.

The fifth general limitation set by Sections 30231, 30233, and 30235 for wetland fill projects is that any proposed fill project shall maintain and enhance the biological productivity and functional capacity of the habitat, where feasible.

The applicants' consultant indicates that the proposed revetment project sought by the amendment request would enhance habitat values in the estuary over both the existing condition of the estuary and the condition the estuary would be in if the original project were built. As noted previously, in his addendum to his botanical survey, Dr. McBride states that one of the most compelling arguments for using rip rap is that the eroding riverbank would be stabilized in its present location instead of eroding to the point where the seawall would provide protection, meanwhile contributing to the degradation of the estuary by adding to the bed load of silt and rock (see Exhibit 6B). Dr. McBride's botanical survey goes on to say the following:

Another benefit of the rock rip rap is that it would provide more habitat types (rock surface and rocky interstices) that represent additional habitat diversity in the Albion estuary. Such habitat diversity would provide additional niches for native flora and fauna of the estuary.

A proposed landscaping of the area adjacent to the rip rap by Bioengineering Associates, using native Willows (Salix) and Alder (Alnus) would further increase habitat diversity, provide shade to the Albion River, stabilize the rip rap, and contribute to the detritus food web of the estuary.

In summary, Dr. McBride concludes that the proposed project will enhance the biological productivity and functional capacity of the Albion River estuary by: (1) halting erosion along Albion Flats, thereby reducing detrimental

sedimentation of the estuary; (2) providing rocky surface and rocky interstices habitat that currently is in limited supply along the lower estuary; and (3) providing new riparian vegetation along the upland area adjacent to the revetment that will provide new habitat for birds and terrestrial wildlife, shade Albion River waters to the benefit of fish, and provide a new source of detritus to the food web of the estuary.

The Department of Fish & Game agrees with Dr. McBride's analysis that the riparian vegetation planting will enhance estuary values, by stating, "Creation of a riparian zone will offset short-term impacts associated with this project and serve to benefit a variety of fish and wildlife species."

Therefore, the Commission finds that the amended project, if successfully implemented to provide the habitat benefits outlined by applicants' biological consultant, would enhance the biological productivity and functional capacity of the Albion River estuary consistent with the Coastal Commission's wetland fill policies. However, only with the knowledge that all of the benefits outlined by the consultant would be successfully implemented can the Commission make this finding. To ensure that the riparian planting proposal of the applicants is carried out to provide all the habitat benefits outlined, the Commission attaches Special Condition No. 2, which requires the applicant to submit for the review and approval of the Executive Director a riparian enhancement plan that has been developed in consultation with the Department of Fish & Game and which provides for the planting of an approximately 10-foot-wide strip of riparian vegetation containing at least 100 alder and willow trees adjacent to the revetment along the southern shoreline of Albion Flats. As conditioned, the Commission finds that the proposed amendment will result in a project that will enhance the biological productivity and functional capacity of the Albion River estuary consistent with Sections 30231, 30233, and 30235 of the Coastal Act.

5. Visual Resources.

Section 30251 protects the scenic and visual qualities of coastal areas, requiring that permitted development be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas must be subordinate to the character of its setting.

As noted previously, the site is in an area designated as "highly scenic" by the Mendocino County Land Use Plan (LUP). The site is primarily visible from the Highway One Bridge and from public roads within the Albion community atop and along the bluff on the south side of the river.

As the project site is in a designated highly scenic area, new development must be visually subordinate to the character of its setting to be consistent with Section 30251.

As proposed, the amended project includes the placement of rock along the shoreline edge and the planting of riparian vegetation along an upland strip inboard of the rock revetment. The riparian strip would consist mainly of willow and alder trees with shrubs and ground covers. The Commission finds that the proposed rock revetment with the riparian vegetation strip behind would result in a shoreline edge that would be similar in appearance to the shoreline along other sections of the river. Riparian vegetation lines much of the river, and rocky outcroppings appear in various locations. The rock revetment would appear unmistakably man-made, but by limiting the material used to quarry rock and by planting the backdrop of alders and willows to soften its appearance, the proposed project would be designed to be subordinate to the character of its setting. Therefore, the Commission attaches Special Condition No. 7 which limits the revetment material to be used to clean quarry rock that contains no concrete rubble, asphalt, or other waste materials. In addition, the Commission attaches Special Condition No. 2, which requires the applicants to submit for the review and approval of the Executive Director a final riparian enhancement plan that provides for the planting of the proposed riparian landscaping.

As conditioned, the Commission finds that the proposed development is consistent with Section 30251 of the Coastal Act as the proposed revetment will be designed to be visually subordinate to the character of its setting and will avoid significant adverse impacts on visual resources.

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

The project requires review and approval by the U.S. Army Corps of Engineers. Pursuant to the Federal Coastal Zone Management Act, any permit issued by a federal agency for activities that affect the coastal zone must be consistent with the coastal zone management program for that state. Under agreements between the Coastal Commission and the U.S. Army Corps of Engineers, the Corps will not issue a permit until the Coastal Commission approves a federal consistency certification for the project or approves a permit. To ensure that the project ultimately approved by the Corps is the same as the project authorized herein, the Commission attaches Special Condition No. 6 which requires the applicants to submit evidence that the U.S. Army Corps of Engineers has granted permission for the project authorized herein.

7. State Lands Commission Approval

Portions of the project site are in areas that are State-owned waters or were otherwise subject to the public trust.

Therefore, to ensure that the applicant has the legal authority to undertake all aspects of the project, the Commission attaches Special Condition No. 1, which requires that the project be reviewed by the State Lands Commission.

8. Department of Fish and Game Review.

The project requires a stream bed 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. 5 which requires that the applicant submit to the Executive Director a copy of an approved stream bed alteration agreement from the Department prior to issuance of the permit.

9. California Environmental Quality Act (CEQA).

Section 13096 of the Commission's administrative regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as modified by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(i) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment.

As discussed above, the project has been mitigated to avoid significant impacts on water quality, anadromous fish, and eelgrass habitat. As conditioned, the proposed development with the proposed amendment will not have a significant adverse effect on the environment, 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 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.

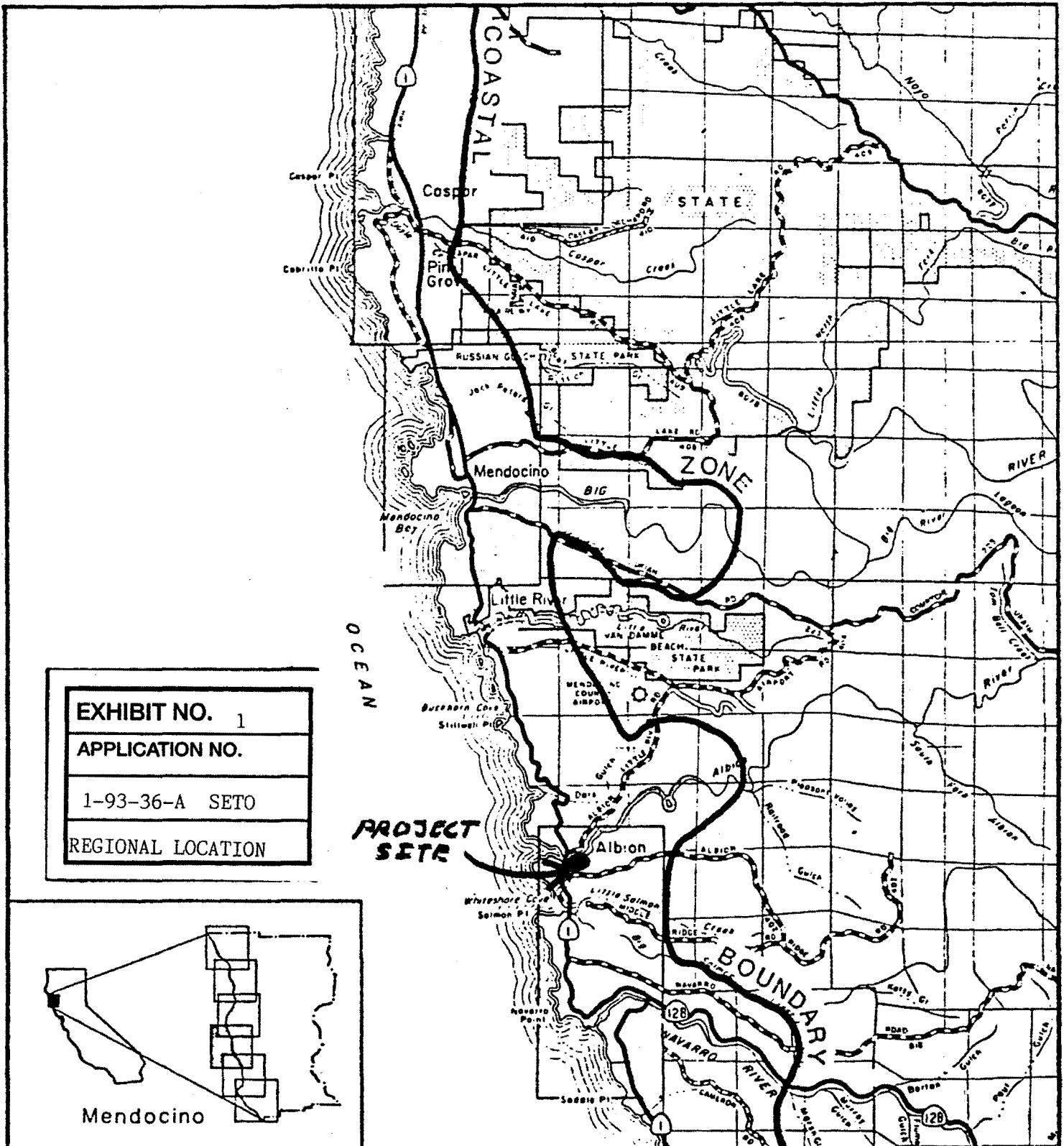
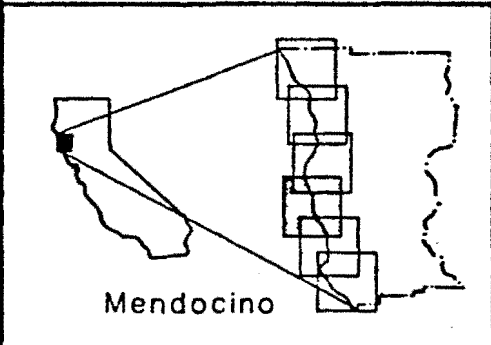
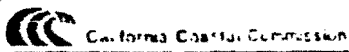


EXHIBIT NO. 1
APPLICATION NO.
1-93-36-A SETO
REGIONAL LOCATION



Mendocino



LOCATION MAP

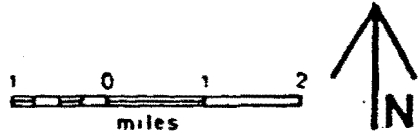
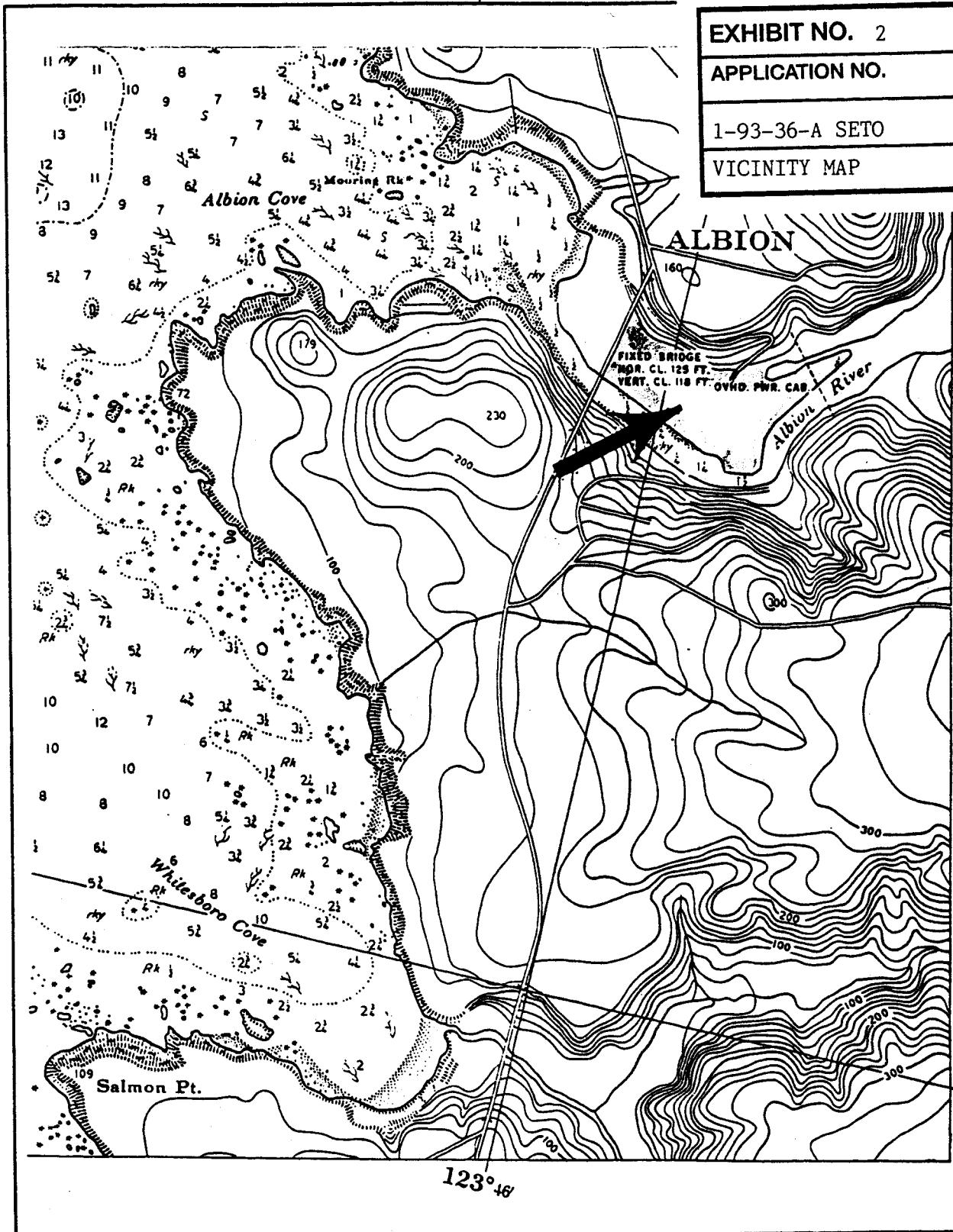


EXHIBIT NO. 2

APPLICATION NO.

1-93-36-A SETO

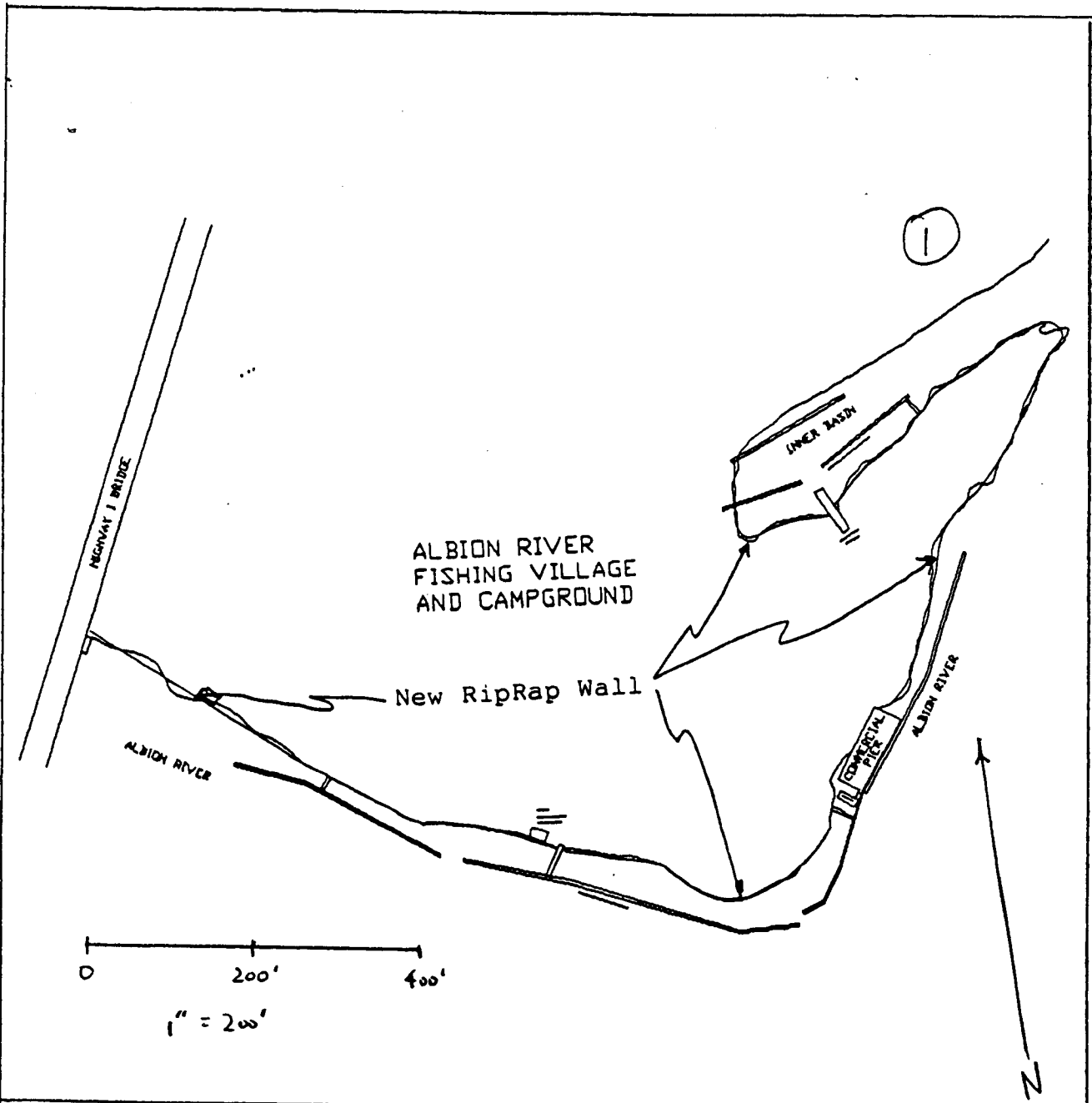
VICINITY MAP



DATE: MAY 21 93
SCALE: NTS
DRAWN BY: WLC

SNUG HARBOR
CONSULTANTS

ALBION
LOCATION



Purpose: Rip Rap Wall to Protect Existing Riverbank.

Datum: 0=MLLW

IN Albion

Adjacent Property owners:

AT Albion Flat

1. Art Narvaez

County of Mendocino, CA

10/25/95

EXHIBIT NO. 3

APPLICATION NO.

1-93-36-A SETO

SITE PLAN

TYPICAL CROSS SECTION WITH HEIGHT
VARIED DEPENDING ON LOCATION ON SITE.
*NOTE: TOE DISTANCE IS REDUCED AND FILL
IS USED FROM TOP SECTION WITH CENTER OF
THE BANK AS CENTER OF ROTATION OF ROCK WALL.

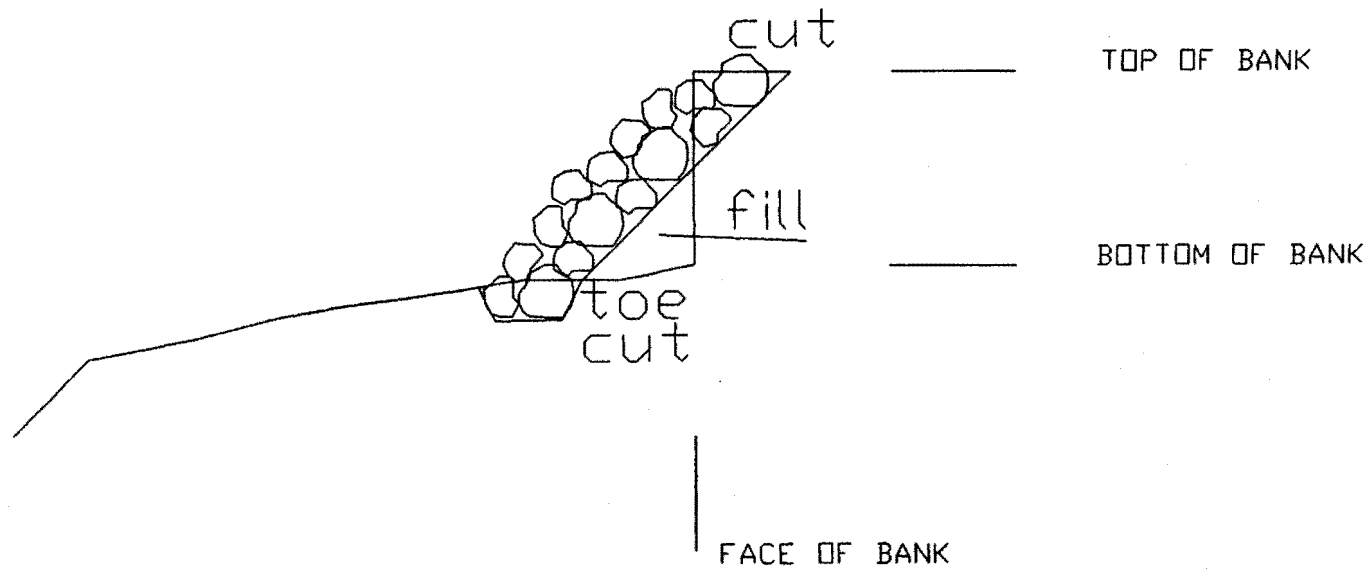
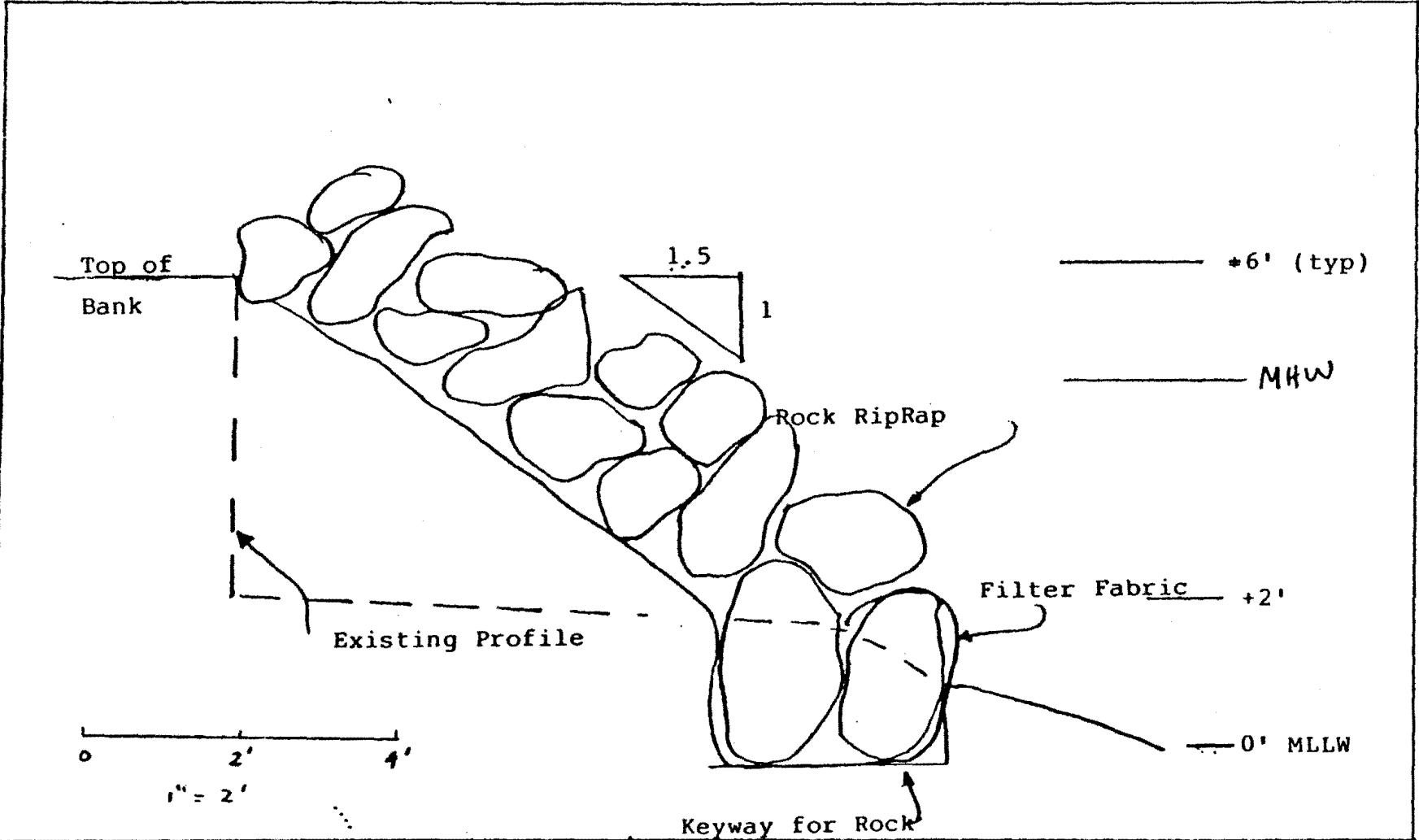


EXHIBIT NO. 4
APPLICATION NO. SETO 1-93-36-A
TYPICAL CROSS SECTIONS (1 OF 2)



PURPOSE: Bank stabilization

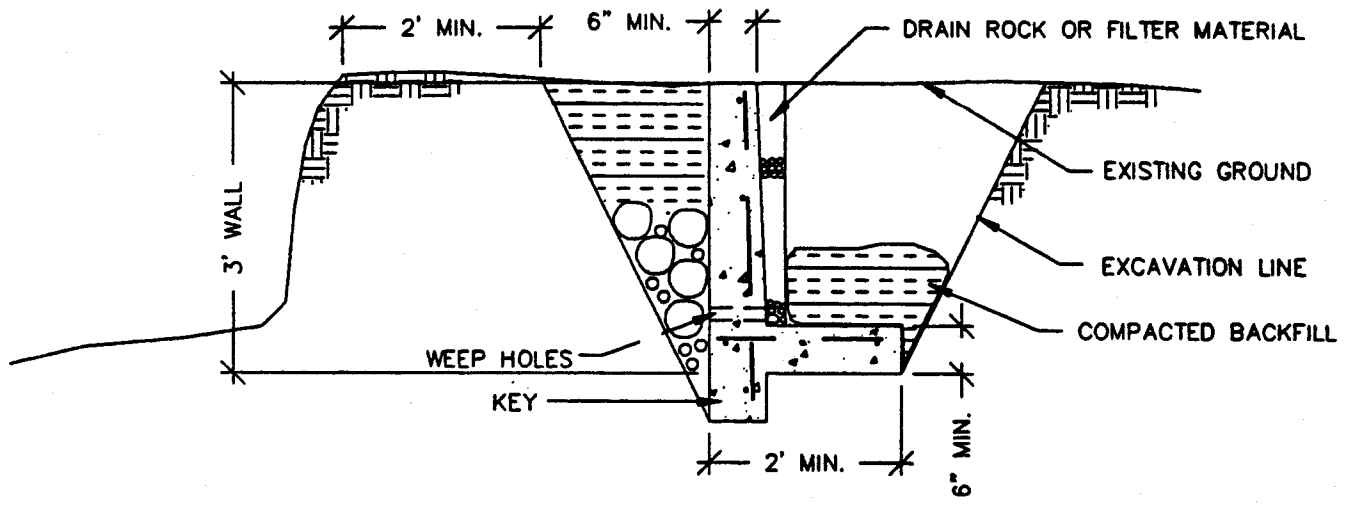
Datum: 0= MLLW

IN: albion

AT: Albion Flat Campground

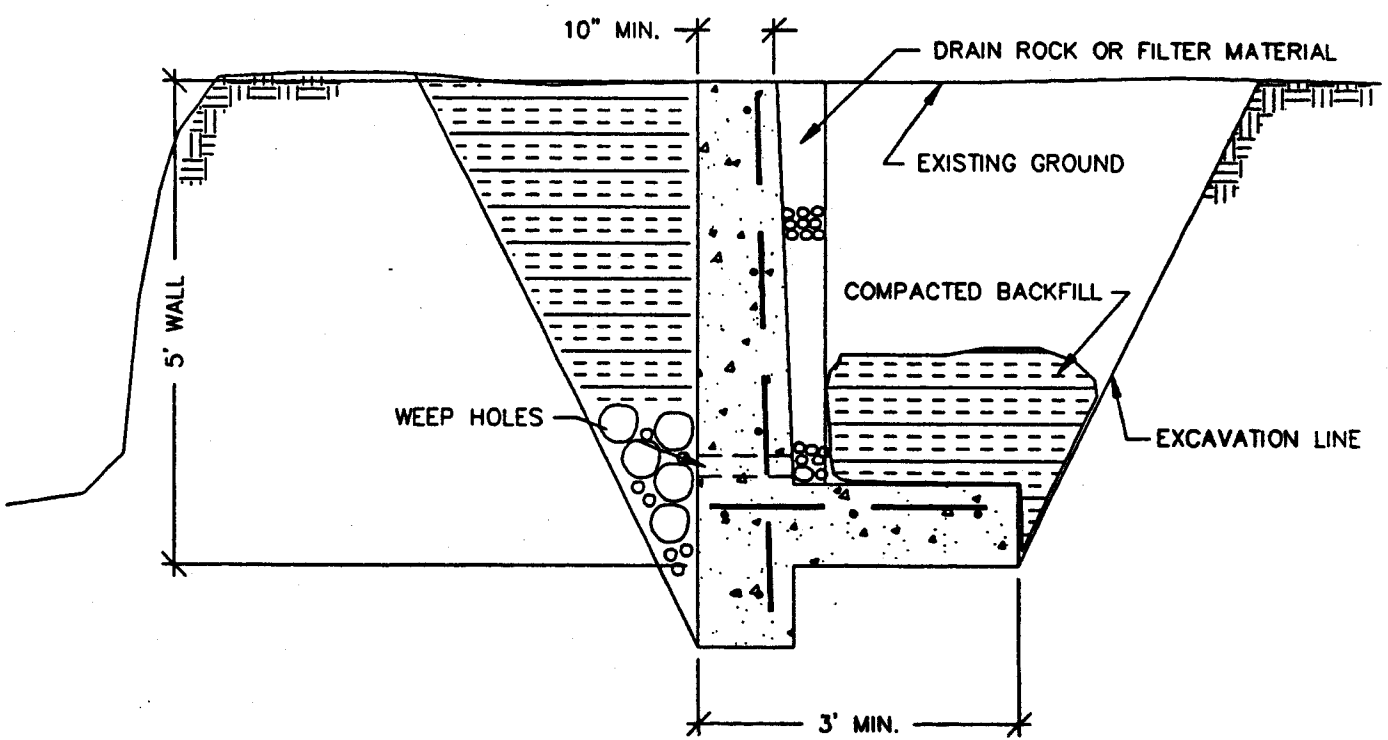
County of Mendocino, California

EXHIBIT NO. 4
 APPLICATION NO.
 1-93-36-A SETD
 TYPICAL CROSS SECTIONS
 (2 OF 2)



3 FOOT HIGH RETAINING WALL

NOT TO SCALE



5 FOOT HIGH RETAINING WALL

NOT TO SCALE

EXHIBIT NO. 5
APPLICATION NO.
1-93-36-A SETO
ORIGINALLY APPROVED SEAWALL SECTION



WALL ALTERNATIVES

ALBION FLATS BANK STABILIZATION

DEPARTMENT OF FISH AND GAME

POST OFFICE BOX 47
 YOUNTVILLE, CALIFORNIA 94599
 (707) 944-5500



March 11, 1996

RECEIVED
 MAR 15 1996
 CALIFORNIA
 COASTAL COMMISSION

Mr. Peter Straub
 U. S. Army Corps of Engineers
 San Francisco District
 Regulatory Branch, North Section
 211 Main Street
 San Francisco, California 94105-1905

EXHIBIT NO. 6A
APPLICATION NO.
1-93-36-A SETO
FISH & GAME COMMENTS (1 OF 2)

Dear Mr. Straub:

Sum Seto Rock Slope Protection Project
 Schooner's Landing Shoreline, Mendocino County
 Public Notice #21964N03

Department of Fish and Game personnel have reviewed the Public Notice (PN), project description, and location maps for the Sum Seto; Proposed Rock Slope Protection Project. The project involves 2,500 linear feet of shoreline requiring the discharge of approximately 1,500 yards³ of displaced earth backfill and concrete, and 200-500 pounds of imported quarry rock. In addition, Department staff have visited the site on several occasions.

The Albion River supports viable populations of coho and chinook salmon, steelhead, and several nongame fish species. The Albion River estuary is important habitat for a variety of freshwater and marine species. The Albion River also maintains a riparian corridor which is important to a variety of wildlife resources. The lower Albion River maintains significant stands of eel grass. Eel grass (*Zostera sp.*) is protected pursuant to Section 6750 of the Fish and Game Code and Section 30.10 (Title 14) of the California Code of Regulations.

For the protection of plant, fish, and wildlife resources, we ask that the following special conditions be included with any permit issued to the applicant:

1. All work at or below the average high-water mark of the Albion River shall be confined to the period June 15 through October 15. For purposes of minimizing impacts to water quality, major excavation activities shall be limited to low-tide periods.
2. Existing eel grass beds shall not be disturbed.
3. The applicant should be required to develop a riparian enhancement plan which uses plant species native to Mendocino County. Creation of a riparian zone will offset short-term impacts associated with this project and serve to benefit a variety of fish and wildlife species. The Department may be consulted as to the scope and content of this plan.

Mr. Peter Straub
March 11, 1996
Page Two

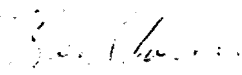
EXHIBIT NO. 6A
APPLICATION NO.
1-93-36-A SETO
FISH & GAME COMMENTS (2 OF 2)

4. If warranted, a positive barrier shall be used during periods of active dredging to prevent suspended sediments from contacting the main river. Confinement material shall be plastic or other such material that is capable of containing sediment-laden water.
5. An erosion-control plan shall be developed. This plan will outline measures aimed at alleviating sedimentation to affected water courses. This plan will include:
 - a. All grading or other activities susceptible to causing erosion and sedimentation to the Albion River shall be confined to the period June 15 through October 15.
 - b. Erosion control for all exposed areas susceptible to significant erosion. Seeding, mulching, straw, slope contouring, and other erosion protection measures shall be included in the plan.
 - c. Erosion control for access roads. Water bars, culverts, and other erosion control measures shall be identified for use on all access roads.
6. No debris, soil, silt, cement, oil, or other such foreign substance shall be allowed to enter into or be placed where it may be washed by rainfall or runoff into waters of the State. When construction operations are completed, any excess materials or debris shall be removed from the work area.

The applicant should be advised that a streambed alteration agreement pursuant to Fish and Game Code sections 1601/03 may be required prior to any work within the ordinary high-water mark of any stream affected by this project. Formal notification under Fish and Game Code sections 1601-03 should be made after all other permits and certifications have been obtained. Work cannot be initiated until a streambed alteration agreement is executed.

If you have any questions or concerns regarding these comments, contact Rick Macedo, Associate Biologist, (707) 928-4369; or Larry Week, Environmental Specialist, at (707) 944-5526.

Sincerely,


Ken Aasen
Acting Regional Manager
Region 3

cc: See attached list

GORDON E. McBRIDE, Ph.D.

DATE: February 22, 1966

To: Mendocino County
Department of Building and Planning Services
589 Low Gap Road
Ukiah, CA 95482

From: Gordon E. McBride, PhD
30301 Sherwood Road
Fort Bragg, CA 95437
707 964 2922

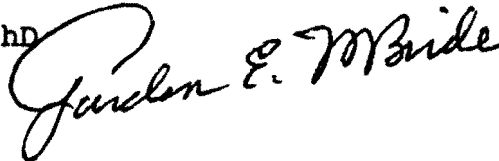


EXHIBIT NO. 6B
APPLICATION NO.
1-93-36-A SETO
BOTANICAL SURVEY (1 OF 5)

Re: ADDENDUM TO MY BOTANICAL SURVEY OF JULY 9, 1993 - IMPACT
OF PROPOSED RIP RAP BANK PROTECTION ON ALBION ESTUARY.
RESPONSE TO GONZALEZ LETTER TO CARP OF DECEMBER 29, 1995

1. PROJECT DESCRIPTION: The original Coastal Development Permit proposed the construction of a 2500+- foot long concrete sea wall constructed in a trench inland from the existing bank edge. Once bank instability and erosion removed the existing bank to the seawall, additional bank loss due to erosion would be prevented. The new proposal is to place 2500+- feet of rock rip rap along the existing bank instead of the concrete seawall. Technical specifications for the rip rap have been provided by Scott M. Noble, Registered Civil Engineer.
2. AREA DESCRIPTION: As per my original botanical survey.
3. SURVEY METHODOLOGY AND DATES: The site was revisited on February 22, 1996.
4. RESULTS AND DISCUSSION: The proposed concept of rock rip rap would be a far superior option compared to the original concrete wall.

One of the most compelling arguments for using rip rap is that the presently unstable and eroding riverbank would be stabilized in its present location instead of waiting, perhaps years, for the present bank to erode to the point where the seawall would provide protection. Such erosion would contribute to the degradation of the estuary by adding to the bedload of silt and rock. Since my initial survey the estuary has been dredged.

The proposed rip rap would begin to benefit the estuary the first season it was in place by minimizing streambank erosion along 2500+- feet of the Albion river estuary. Bedload from

further up in the Albion watershed will continue to move down the river until that point where historical upstream impacts have healed and bedload recruitment reaches natural background levels, but at least erosion along 2500+- feet of the lower estuary would not be contributing to that recruitment.

Another benefit of the rock rip rap is that it would provide more habitat types (rock surface and rocky interstices) that represent additional habitat diversity in the Albion estuary. Such habitat diversity would provide additional niches for native flora and fauna of the estuary.

A proposed landscaping of the area adjacent to the rip rap by Bioengineering Associates, using native Willows (Salix) and Alder (Alnus) would further increase habitat diversity, provide shade to the Albion River, stabilize the rip rap, and contribute to the detritus food web of the estuary.

The proposed rip rap complies with Coastal Zoning Section 20.496.025 (A) because it would provide additional boating facilities in the estuary. It complies with 20.496.025 (B) - 1 because it is the least environmentally damaging alternative for stabilizing the riverbank, preventing erosion and minimizing degradation of the estuary. It is, in my opinion, a clear enhancement of 2500 +- feet of Albion River estuary. Regarding 20.496.025 (B) - 3, dredging is no longer an issue - it has already taken place. The proposed rip rap complies with 20.496.025 (B) - 4a because long term stability will be enhanced by the rip rap, the bank stability and the habitat diversity it will provide. Natural species diversity should increase as a function of increased habitat diversity. It complies with 20.496.025 (B) - 4b because no rare or endangered plant or animal species are known from the immediate vicinity of the proposed rip rap. It complies with 20.496.025 (B) - 4c because it will not harm any species or habitat that is essential to the natural biological functioning of the estuary. Indeed it has the potential to produce additional habitat that will support additional estuary species, increasing biodiversity and estuary stability. It complies with 20.496.025 (B) - 4d because it will increase consumptive and non consumptive values of the estuary by enhancing estuary stability, habitat and biological diversity.

Sections 20.496.030 (A) and (B) do not appear to apply because they refer to open coastal waters and lakes.

The proposed rip rap complies with Section 20.496.030 (C) and (D) because it improves fish and wildlife habitat, provides expanded boating facilities and is the most feasible way to protect existing structures in the floodplain.

The proposed rip rap complies with Section 20.500.020 (E)

EXHIBIT NO. 6B
APPLICATION NO.
1-93-36-A SETO
BOTANICAL SURVEY (2 OF 5)

inasmuch as it would protect 2500+- feet of the existing bank of the Albion River estuary without altering natural shoreline processes. The rip rap will constitute estuary enhancement rather than environmental damage. Sand supply issues do not appear to apply in this case since no beach is involved along the proposed 2500+- foot long project.

The proposed rip rap does in all probability lie within a one hundred year flood zone boundary. It does not appear that the proposed rip rap could be interpreted as a flood control project, however the rip rap would certainly protect the existing bank line from accelerated erosion associated with 100 year floods. It appears from reading paragraph 2, page 2 of the Gonzalez letter this issue was meant to be dealt with by the requested flood hazards report rather than by this document.

The proposed rip rap does not appear to conflict with Section 20.532.060 because there is not even a rudimentary riparian plant community associated with the site (see my botanical survey of July 9, 1993). Historically the Albion flat associated with the estuary of the lower river must have been a well developed riparian community, probably not unlike which is now seen along Caspar Creek. It was, however, compromised more than 100 years ago by the construction of a mill and portions of a town on the site. Continuous use has prevented reestablishment of a riparian plant community. As stated above there is a proposed Willow and Alder landscape/ revegetation plan along the edge of the rip rap. Such a plant community would further enhance habitat biodiversity for birds and wildlife, provide shade for the river, lend strength to the rip rap structure and contribute to the detritus food web of the estuary.

Section 20.532.065 does not appear to apply to the proposed rip rap wall along the Albion estuary. The site is by definition an estuary as opposed to a wetland. Wetland habitat will not be compromised and a wetland restoration plan does not appear to be required.

5. IMPACT ASSESSMENT AND MITIGATION MEASURES:

A. Overall, the negative impact of the proposed 2500+- foot long rip rap wall in the Albion River estuary appears to be very insignificant. During construction a toe trench would be dug, presumably by a back hoe or an excavator. Some bank destabilization and erosion will inevitably be associated with the trench, but considering the watershed as a whole the impact would be orders of magnitude lower than the result of even a moderate rainfall event. In order to minimize this impact the equipment used to dig the trench and to place the rock should be coordinated to the point that rock is placed in whatever length of trench is dug each work period. In this way the diurnal tidal flushing of the river will not have

EXHIBIT NO. 6B
APPLICATION NO.
1-93-36-A SETO
BOTANICAL SURVEY (3 OF 5)

extended access to the newly destabilized soil. Work should take place when the tide is low enough that the trench will not be exposed to flowing water. If these measures are undertaken to minimize temporary soil destabilization and erosion, no other mitigation measures appear necessary.

B. Material removed during trench excavation should not be allowed to enter the river. It may be used to backfill the area behind the rip rap wall or transported to a suitable location away from the site.

C. In summary, this project appears to have the following positive implications for the general well being of 2500+- feet of the Albion River estuary: (1) It would minimize bank destabilization and erosion that is adding to the bed load of the estuary. (2) It would help the estuary, over time, to channelize and maintain depths and temperatures more compatible with salmonids and other vertebrate and invertebrate species that utilize estuary habitats for part or all of their life cycle. (3) By producing rock surfaces and interstices where none now exist, habitat diversity would be enhanced. (4) The proposed Willow - Alder plant community that would result from the landscaping/revegetation adjacent to the rip rap would enhance habitat diversity, river shading, provide additional bank stabilization and contribute to the detritus food web of the estuary. (5) Improved boat accommodations would mean better access for ocean recreation and provide more potential for storm refuge.

6. REFERENCES:

Anon. 1985. Mendocino County General Plan - Coastal Element Ukiah.

Anon. 1991. Mendocino County Zoning Code - Coastal Zone. Ukiah.

Hitchcock, A.S. 1950. Manual of the Grasses of the United States. U.S. Government Printing Office, Washington

Hickman, J. C. (ed). 1993. The Jepson Manual The Higher Plants of California Univ. of California Press, Berkeley

Holland, R.F. 1986. Preliminary Descriptions of the Terrestrial Plant Communities of California. California Department of Fish and Game, Sacramento

Mason, H.G. 1959. A Flora of the Marshes of California Univ. of California Press, Berkeley

Munz, P.A. and D. D. Keck. 1959. A California Flora Univ. of California Press, Berkeley.

EXHIBIT NO. 6B
APPLICATION NO.
1-93-36-A SETO
BOTANICAL SURVEY (4 OF 5)

Skinner, M. and B. Pavlik. 1994. Inventory of Rare and Endangered Vascular Plants of California.
California Native Plant Society, Sacramento.

Smith, J.P. & K. Berg. 1988. Inventory of Rare and Endangered Vascular Plants of California. Ed. 4
California Native Plant Society, Sacramento

EXHIBIT NO. 6B
APPLICATION NO.
1-93-36-A SETO
BOTANICAL SURVEY (5 OF 5)

CALIFORNIA COASTAL COMMISSION
 NORTH COAST AREA
 45 FREMONT, SUITE 2000
 SAN FRANCISCO, CA 94105-2219
 (415) 904-5260

Lu 10a



Filed: April 20, 1994
 49th Day June 8, 1994
 180th Day: October 17, 1994
 Staff: Robert Merrill
 Staff Report: May 27, 1994
 Hearing Date: June 7, 1994
 Commission Action:

STAFF REPORT: CONSENT CALENDAR

APPLICATION NO.: **1-93-36**

APPLICANT: **SUM & JENNY SETO**

AGENT: William Carp, Snug Harbor

PROJECT LOCATION: Adjacent to the Albion River, at Albion Flat, immediately east of the Highway One bridge, within the unincorporated community of Albion, Mendocino County. APN 123-170-01.

PROJECT DESCRIPTION: Construct an approximately 2,500-foot-long concrete seawall positioned approximately two to three feet inshore of the existing riverbank to protect an existing private recreational marina, trailer park, and campground complex from bank erosion.

Lot area: 9.75 acres
 Plan designation: Fishing Village (FV)
 Zoning: Fishing Village with a Flood Plain Combining District (FV:FP)

LOCAL APPROVALS RECEIVED: Mendocino County LCP Consistency Review, Use Permit #U 20-93, and Negative Declaration.

SUBSTANTIVE FILE DOCUMENTS: Mendocino County Local Coastal Program

STAFF NOTE:

The applicants for the proposed seawall have also submitted a related application (Coastal Development Permit Application No. 1-93-35) for dredging 3,600 cubic yards of material from boat berthing areas at the same site. The dredging application is also scheduled for the Commission's consideration on June 7, 1994, and a separate staff report has been prepared. Separate

EXHIBIT NO. 7

APPLICATION NO.

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ORIGINAL PERMIT
 STAFF REPORT

applications were submitted for the two projects even though they are at the same site because: (1) the seawall and dredging projects are independent of each other in that the two projects are not functionally related and the applicants would proceed with either project if approved, whether or not the other project were approved; and (2) at the time the applications were submitted in June of 1993, the applicants believed the application for the seawall project would be processed much sooner than the application for the dredging project. The seawall raises fewer issues and required less supplemental biological and other application information for the staff to file the application as complete. However, the applicants did not realize at the time that both projects required a use permit and LCP Consistency Review approval from Mendocino County, and by the time the County approvals had all been obtained in March of this year, the applicant had also managed to provide all of the other supplemental application information needed to file each application as complete. Thus, both applications became filable and ready for Commission consideration at the same time.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions

The Commission hereby grants, subject to the conditions below, a permit 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 located between the sea and 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. Landscaping:

PRIOR TO ISSUANCE of the Coastal Development Permit, the applicant shall submit for the review and approval of the Executive Director a landscaping program for the planting and maintaining of an approximately 1,000-foot-long by a 10-foot-wide strip of vegetation located along the inboard side of the proposed seawall in the location generally shown in Exhibit 5, extending from the west end of the seawall to the existing wharf, with breaks to provide sufficient access to each of the existing dock gangways. The landscaped strip shall be planted with a mix of riparian tree, shrub, and groundcover species that grow along the Albion River in the vicinity of the project, and shall include at least 100 alder or willow trees and shrubs or vines that can be

expected to grow over the face of the seawall once bank erosion has uncovered portions of the wall. The landscaping program to be submitted shall include a planting plan diagram, a plant list, a narrative description of the planting techniques to be followed (e.g. size and depth of holes to be dug, soil amendments to be added, planting schedule, etc.), a narrative description of the landscape maintenance program (e.g. fertilizing, watering, etc.) for the riparian vegetation to be planted, and a commitment to replace planted vegetation on a one-to-one or greater ratio for the life of the project. The planting techniques and landscape maintenance program shall be designed to maximize the chances of survival of the riparian vegetation to be planted. The riparian vegetation shall be planted during the first full rainy season occurring after completion of the seawall.

2. Limits of Construction Season.

All construction activities except for the landscaping work required by Special Condition No. 1 shall be performed only during the period of the year between April 15 and October 15 to minimize erosion and sedimentation.

3. Minimizing River Disturbance.

The adjoining estuary shall receive the least amount of disturbance possible. No construction equipment, stockpiles of material, or any other materials or debris whatsoever shall be allowed to enter the river. All construction debris and surplus excavated material shall be collected and disposed of in a lawful manner in an upland location or salvaged for some other permitted project. Surplus excavated earthen materials may be placed in the dredged material disposal pond to be created pursuant to Coastal Permit Application No. 1-93-35, if and when that application is approved and the permit issued.

IV. Findings and Declarations.

The Commission hereby finds and declares as follows:

1. Site Description.

The project site is located adjacent to the Albion River, at Albion Flat, immediately east of and below the Highway One bridge (see Exhibits 1 and 2). The site is used as a private campground and marina facility that accommodates both commercial fishermen and recreational boaters.

Albion Flat is on the lower Albion River estuary flood plain. The site originally supported a lumber mill before being converted to the existing campground and marina complex. The flat encompasses an approximately 9.75-acre area in a boot-shaped configuration at a bend in the river and includes a narrow mooring basin that extends into and alongside the flat from the "toe" end of the boot.

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The majority of the site is devoted to campground facilities. Existing buildings on the property include an office building and a guard building near the entrance to the property, a restroom and shower building, and a commercial fishing office on an existing wharf. In total, the buildings cover approximately 2,216 square feet of area. Existing marina facilities include an approximately 3,000-square-foot wharf, seven floating docks oriented parallel to the shoreline and providing a total of approximately 1,500 lineal feet of boat berthing space, and a one-lane concrete boat launching ramp.

The site is in an area designated as "highly scenic" by the Mendocino County Land Use Plan (LUP). The site is primarily visible from the Highway One Bridge and from public roads within the Albion community atop and along the bluff on the south side of the river.

Albion Flat is largely barren of vegetation except for a variety of weedy species such as perennial rye grass. The estuary itself provides important habitat for a variety of aquatic plant and animal 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 and within the river. 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 eel grass blades, and fish that use the beds for rearing, resting, and feeding. The largest populations of Eel Grass are located upstream of the site, and a number of small populations of Eel Grass are established in the area of the existing docks on the site.

No rare or endangered plant species have been identified anywhere at the site. However, due to the decline in coho salmon populations, the National Marine Fisheries Service has recently been petitioned to list all Pacific coastal coho salmon populations as either endangered or threatened under the federal Endangered Species Act.

2. Project Description.

The applicants propose to construct an approximately 2,500-foot-long concrete bulkhead along the existing riverbank to stabilize the shoreline from continued bank erosion (see Exhibits 3 and 4). The wall will begin 50 feet east of the footing of the Highway One Bridge over the Albion River, and continue along the shoreline of the property to the north side of the mooring basin. The wall will be continuous except for an approximately 100-foot-long break at the existing wharf structure.

To avoid having to place structural fill along the margin of the estuary and displacing wetland habitat, the wall will be located slightly inboard of the existing shoreline by excavating a trench parallel to the shoreline and constructing the wall within the trench. As depicted in Exhibits 3 and 4, the trench will encroach no closer than two feet to the existing top of bank and the seawall will be set back approximately 7 to 10 feet from the existing top

of the riverbank. The top of the wall will conform to the existing ground elevations. Thus, initially, all but the very top surface of the wall will be shrouded from view by the surrounding ground. As the river bank continues to erode, however, all or portions of the face of the wall will be exposed to view and to the river. The wall will vary in height with variances in existing ground elevations. A total of approximately 2,000 lineal feet of the wall will be 3 feet high, and approximately 500 feet will be 5 feet high.

The wall will be constructed of reinforced concrete and is designed with a toe to enable the wall to resist overturning once the face is fully exposed by erosion.

3. 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.

The proposed seawall will prevent continued bank erosion, which has caused the land area of Albion Flat to retreat as much as 40 feet in some places over the last twenty years. The seawall will protect the existing campground and marina facility from further erosion once the existing bank erodes back to the seawall. The marina and campground facilities are existing structures on the site, and the docks, wharf, and boat launching ramp constitute coastal dependent uses as they must be located on or adjacent to the water to function at all. 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.

4. Visual Resources.

Section 30251 protects the scenic and visual qualities of coastal areas, requiring that permitted development be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas must be subordinate to the character of its setting.

As noted previously, the site is in an area designated as "highly scenic" by the Mendocino County Land Use Plan (LUP). The site is primarily visible from the Highway One Bridge and from public roads within the Albion community atop and along the bluff on the south side of the river.

When the seawall is first constructed, it will have no effect on visual resources as the wall will be buried below the surface of Albion Flat. However, as the remaining land area riverward of the wall continues to erode,

all or portions of the wall will eventually be exposed to the river and to public view. The stark, concrete face of the wall, varying in height from three to five feet above the adjoining mudflat of the river and extending for approximately 2,500 feet around almost the entire shoreline, will be visually prominent from the Highway One Bridge and from locations within the community of Albion south of the river. The wall will be especially noticeable as no other concrete seawalls or riprap revetments currently exist along this stretch of the estuary.

As the project site is in a designated highly scenic area, the proposed seawall must be visually subordinate to the character of its setting to be consistent with Section 30251. Therefore to reduce the visual prominence of the wall, the Commission attaches Special Condition No. 1, which requires the submittal of a landscaping program for the review and approval of the Executive Director prior to issuance of the permit, calling for the planting of native riparian trees, shrubs, and groundcover along the inboard side of the wall. The intended effect of the landscaping is to soften the appearance of the wall by creating both a backdrop of willows or alders and other riparian shrub and tree species and by allowing riparian plants to drape over the face of the wall and partially cover it. Native riparian species are required to be used so that the vegetation that grows at the site will be appropriate to a river setting and be similar to the riparian vegetation that exists elsewhere along the banks of the estuary. The condition requires that the vegetation be planted in a 10-foot-wide strip extending from the west end of the wall to the vicinity of the existing wharf, with breaks to provide sufficient access to the existing dock gangways (see Exhibit 5). The landscaping is not needed along the eastern shoreline of the site and along the portion of the mooring basin to be protected by the wall, as these shoreline areas are not visible from most public vantage points, including Highway One and the majority of the public roads within the community of Albion. To ensure the continued survival and effectiveness of the riparian vegetation to be planted and its continued effectiveness at softening the appearance of the wall, the condition requires the submittal as part of the landscaping program of a maintenance and replacement plan.

As conditioned, the Commission finds that the proposed development is consistent with Section 30251 as the proposed seawall will be designed to be visually subordinate to the character of its setting and will avoid significant adverse impacts on visual resources.

4. Protection of Estuary and Environmentally Sensitive Habitat:

Section 30240 of the Coastal Act states, in applicable part:

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

Section 30231 of the Coastal Act states in relevant part that:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored...(Emphasis added)

The proposed seawall will not be constructed within any environmentally sensitive habitat area. As noted in the botanical survey prepared for the application, "the original riparian forest that once probably vegetated and stabilized the bank of the Albion River and provided shade canopy for the river has long since been obliterated and human intervention has prevented its reestablishment." Albion Flat is largely barren of vegetation except for ruderal weed species. However, the project site is immediately adjacent to an environmentally sensitive habitat area, the Albion River estuary and its eel grass beds, mud flats, and other submerged and intertidal habitats. As noted previously, the estuary supports various fisheries, including viable populations of coho and Chinook salmon, steelhead, and several non-game fish species. In addition, the 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 eel grass blades, and fish that use the beds for rearing, resting, and feeding. The mudflats provide important habitat for benthic organisms and the bird species that feed on them. To be consistent with Section 30240(b) and 30231, development adjacent to this environmentally sensitive habitat must be designed to avoid impacts on the biological productivity of the habitat or other impacts that would significantly degrade the habitat, and where feasible, restore biological productivity of the habitat.

Construction activities associated with the proposed seawall project could potentially adversely affect the adjacent estuarine habitat by degrading water quality. Grading and construction work performed during the rainy season would expose loosened earthen material to 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.

To reduce the potential for sedimentation impacts, the Commission attaches Special Condition No. 2 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.

Construction activities could also damage the adjacent environmentally sensitive habitat if construction equipment or debris were allowed to enter the live waters of the river and intrude into the habitat areas. To prevent such damage, the Commission attaches Special Condition No. 3, which requires the applicant to keep construction equipment, stockpiles of material, or any

other debris out of the river. In addition, the condition requires all construction debris and surplus excavated material to be disposed of in a lawful manner in an upland location or salvaged for some other permitted project.

The Commission notes that the riparian landscaping required to be planted along the inboard site of the seawall primarily for aesthetic purposes may also have benefit in enhancing habitat values in the estuary. If the vegetation grows into a well developed Willow-Alder riparian community, the riparian area would provide important wildlife habitat for species found at the estuary and would shade estuarine waters, helping to keep temperatures more favorable for anadromous salmonids.

According to the applicant's biologist, Albion Flat previously supported such a riparian forest before the site was developed as a lumber mill and later still as the existing marina/campground facility.

As conditioned, the Commission finds that the proposed project is sited and designed to prevent impacts which would significantly degrade the adjacent environmentally sensitive habitat of the Albion River estuary and will maintain and may even enhance the biological productivity and water quality of the estuary. Therefore, the Commission further finds that the project, as conditioned, is consistent with Sections 30240(b) and 30231 of the Coastal Act.

5. 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 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.

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. The proposed seawall will not physically block use of the shoreline. In addition, construction of a seawall will not generate any increased demand for public access by drawing more people to the site, as a new visitor serving use like a restaurant or hotel might. The project does not involve the establishment of new uses or the intensification of old uses at the site.

Concerns have been raised by 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. 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 proves the allegations that fences or barriers may have been installed on the property without the benefit of a necessary coastal development permit 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 Coastal Act's public access policies. The permit application does not seek authorization for any existing or proposed gates or barriers.

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, which does not include public access, is consistent with Sections 30211 and 30212 of the Coastal Act.

6. Protection of Fishing Facilities.

Section 30234 of the Coastal Act states, in part, that facilities serving the commercial fishing and recreational boating industries shall be protected and, where feasible, upgraded. Section 30234.5 of the Coastal Act, states, in part, that the economic, commercial, and recreational importance of fishing activities shall be recognized and protected.

The marina at the project site provides mooring space for both commercial fishing boats and recreational boats, many of which are used for recreational fishing. As the purpose of the project is, in part, to protect the marina from continued riverbank erosion that threatens the existing docking facilities, the project will serve to protect facilities that serve commercial and recreational fishing. Therefore, the Commission finds that the project is consistent with Sections 30234 and 30234.5 of the Coastal Act.

7. Mendocino County LCP.

LUP Policy 4.9-3 states, in part that any development in the Albion Flats fishing village shall be limited to uses which are directly related to the fishing, boating, boat building and diving occupations and the support systems required to maintain them. The Commission finds that as the proposed seawall

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is required to protect marina facilities that support commercial fishing and recreational boating from riverbank erosion, the development is for uses allowed by LUP Policy 4.9.3. Therefore, the Commission finds the proposed project to be consistent with LUP Policy 4.9-3.

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.

Therefore, the Commission finds that the proposed project, as conditioned, is consistent with the Mendocino County LCP.

8. California Environmental Quality Act (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 February 17, 1994. CEQA requires consideration of alternatives to a proposed project, including those less environmentally damaging, and the consideration of mitigation measures to minimize or lessen any significant environmental impacts. As discussed above, the project has been mitigated to avoid or minimize impacts to coastal resources, specifically to prevent sedimentation and other impacts on the water quality of the Albion River, and to protect visual resources. 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 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.