

CALIFORNIA COASTAL COMMISSIONCENTRAL COAST AREA OFFICE
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W14b



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Commission Action:

STAFF REPORT: PERMIT AMENDMENT

APPLICATION NO.: 3-97-024-A1

APPLICANT: **MOSS LANDING HARBOR DISTRICT (MLHD)**
Agents: James Stillwell, General Manager, MLHD
Fran Huston, Land Systems Group

PROJECT: Moss Landing North and South Harbors, Moss Landing,
LOCATION: North Monterey County

DESCRIPTION OF PROJECT: Install steel sheet pile bulkhead with concrete
PREVIOUSLY APPROVED: slab cap at K-dock

DESCRIPTION OF PROPOSED AMENDMENT: Relocate existing float at K-Dock south
next to PGE outfall; install 4 guide piles; install
7 fender piles at K Dock.

ZONING DESIGNATION: Light Industrial
LAND USE PLAN DESIGNATION: Coastal Dependent

APPROVALS RECEIVED: MLHD Construction Permit 9/18/97
CEQA; Categorically exempt, Class 15301 class 1,
existing facilities

SUBSTANTIVE FILE DOCUMENTS: Monterey County Local Coastal Program (North
County Segment), November 1980.

Exhibits: 1. Location Map; 2. Location in Harbor; 3. Site Plan

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SUMMARY OF STAFF RECOMMENDATION: The staff recommends that the Commission approve the proposed development, subject to the conditions below, which provide for protection of marine resources required by Coastal Act Sections 30230 and 30231. The maintenance of the Moss Landing Harbor marinas will enhance the resources available to commercial and recreational boaters consistent with Coastal Sections 30234 and 30234.5 of the Coastal Act.

I. STAFF RECOMMENDATION:

Staff recommends that the Commission adopt the following Resolution:

Approval

The Commission hereby grants an amendment to Coastal Development Permit 3-97-024 for the modified development on the grounds that the development as modified will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to carry out its Local Coastal Program in conformance with the provisions of Chapter 3 of the Coastal Act, is located between the sea and the first public road nearest the shoreline or is located in coastal waters, 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

1. Notice of Receipt and acknowledgement. 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 this permit is reported to the Commission. 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 the 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.

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4. Interpretation. Any questions of intent or interpretation of any conditions will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the project during its development, 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.

III. SPECIAL CONDITIONS

1. Final Project Plans. PRIOR TO TRANSMITTAL OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit for Executive Director review and approval the final project plans which shall consist of a written description and supporting graphics outlining phasing and construction sequence; seasonal considerations; and location of equipment staging areas, temporary security fencing, and any similar elements which would affect ocean water quality or public access to the shoreline. To the maximum extent feasible, maintenance phasing and activities shall maintain opportunities for maximum public parking and for shoreline access during construction.

2. Foreign Material Containment Requirements. Particular care shall be exercised to prevent foreign materials (e.g., construction scraps, wood preservatives, other chemicals, etc.) from entering state waters. Where additional wood preservatives must be applied to cut wood surfaces, the materials, wherever feasible, shall be treated at an onshore location to preclude the possibility of spills into state waters. UNLESS AN ALTERNATIVE CONTAINMENT PLAN IS APPROVED BY THE EXECUTIVE DIRECTOR, a floating containment boom shall be placed around all active portions of a construction site where wood scraps or other floatable debris could enter the water. Also, for any work on or beneath fixed wharf decks, heavy duty mesh containment netting shall be maintained below all work areas where construction discards or other material could fall into the water. The floating boom and net shall be cleared daily or as often as necessary to prevent accumulation of debris. Contractors shall insure that work crews are carefully briefed on the importance of observing the appropriate precautions and reporting any accidental spills. Construction contracts shall contain appropriate penalty provisions, sufficient to offset the cost of retrieving or clean up of foreign materials not properly contained.

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Piling installation shall be performed in accordance with Department of Fish and Game recommendations, and according to the method that results in the least disturbance of bottom sediments. When there is a significant risk of releasing toxic materials from bottom sediments, these recommendations may include a requirement that, where feasible, disturbed sediments must be contained with a flexible skirt surrounding the driven pile.

3. Department of Fish and Game. PRIOR TO TRANSMITTAL OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit to the Executive Director for review and approval evidence that the Department of Fish and Game has reviewed and approved the plans, operations and materials for the project.

4. Water Quality and Piling Material. To prevent the introduction of toxics into the marine environment, pilings shall be high density polyethylene, concrete, or inorganic arsenical pressure-treated wood (CCA, ACA, ACZA). The use of any other piling material or piling treatment, e.g., creosote treated wood, will require a coastal development permit amendment, in consultation with the California Department of Fish and Game and Regional Water Quality Control Board.

5. Regional Water Quality Control Board. PRIOR TO TRANSMITTAL OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit to the Executive Director for review and approval any necessary approvals from the Regional Water Quality Control Board including any Section 401 water quality certification or waiver which may be required.

6. U.S. Army Corps of Engineers. PRIOR TO COMMENCEMENT OF CONSTRUCTION, the permittee shall submit to the Executive Director for review a copy of the U. S. Army Corps of Engineers Permit, letter of permission, or evidence that no Corps permit is necessary.

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

1. Description of Area and Project

Project Area: Moss Landing Harbor is one of six developed harbors located along the Central Coast, four of which border the Monterey Bay National Marine Sanctuary. Moss Landing Harbor is sited near the center of Monterey Bay about 80 miles south of San Francisco. The harbor occupies a portion of the Old Salinas River channel paralleling the coast and separated from the ocean by sand dunes. Approximately 175 recreational boats and 200 commercial boats are berthed in the Harbor including the

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Monterey Bay Aquarium Research Institute's ocean-going research vessel. Upland uses include marine research facilities, commercial fishing and recreational boating operations, manufacturing and various visitor serving uses. Periodic winter flows continue to reach the harbor through the Old Salinas River channel from the south. Inland is the Elkhorn Slough National Estuarine Reserve whose tidal exchange flows through the Harbor.

Project Description: The proposed project is to relocate an existing float, including two clusters of three piles each from in front of a demolished timber bulkhead to in front of existing riprap adjacent to K-dock. The existing shore access walkway will be used for the relocated float. Additionally seven new fender piles will be installed on the inside of K-dock in order to prevent damage to boats at K-dock.

The pilings are a maximum of 45 feet in length, 14 inches in diameter, and "pressure treated to retard marine borers with a process approved by permitting agencies, specifically the California Department of Fish and Game."

The staging area will be from the area adjacent to K-Dock or if necessary from the Moss Landing North Harbor district parking lot. If necessary, piles will be loaded onto the self propelled marine vessel and taken to the dock area. Pilings will be driven with the District's own pile driver. According to the applicant, the work will be conducted during times that will not cause obstruction/disturbance to moving vessels, marine habitat or the public at large.

Other Agency Approvals: The State Lands Commission has reported that the project involves lands that have been granted to Moss Landing Harbor District and that no action is required on their part.

The U.S.Army Corps of Engineers has circulated a Letter of Permission soliciting comments on the proposed project. This coastal development permit amendment has been conditioned to require that the permittee submit to the Executive Director prior to commencement of construction evidence of the Corps review and approval or evidence that no approval is required.

The Regional Water Quality Control Board is currently reviewing the proposal. The permit has been conditioned to require submittal of any necessary approvals from the Regional Water Quality Control Board including any Section 401 water quality certification or waiver prior to transmittal of this coastal development permit amendment.

Pacific Gas and Electricity: The relocated dock will be adjacent to the Pacific Gas and Electric (PGE) outfall. The outfall discharges clean coolant water from the adjacent large-scale fossil

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fuel power plant. According to the applicant PGE has reported that they have no concern about the relocation of the dock adjacent to the outfall but they are not willing to put this in writing.

2. Marine Resources

The proposed development will be located in and over the coastal waters of Moss Landing Harbor, which opens onto and is part of the open coastal waters of Monterey Bay.

According to the USACOE Public Notice 22026S27 (February 19, 1996) for Moss Landing Harbor Dredging Project, federally listed animal species that may occur in the vicinity of the project area include the endangered tidewater goby (Eucyclogobius newberryi), the California brown pelican (Pelecanus occidentalis californicus), and the threatened southern sea otter (Enhydra lutris nereis). In addition, the endangered coho salmon have been identified off the entrance to Moss Landing Harbor.

The inner harbor area is also adjacent to the Monterey Bay National Marine Sanctuary (MBNMS) so designated because of its environmentally sensitive habitats, recreational values, and other special natural resource attributes (MBNMS Designation Document, Article II, 15 Code of Federal Regulation (CFR), Paragraph 944.2.)

To protect marine resources the Coastal Act strictly limits the type and extent of development in coastal waters. However, the Coastal Act also specifically calls for the protection and upgrading of boating facilities.

Section 30233 of the Coastal Act states in 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:...
- (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...

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Section 30234 of the Coastal Act states:

Facilities serving the commercial fishing and recreational boating industries shall be protected and, where feasible, upgraded. Existing commercial fishing and recreational boating harbor space shall not be reduced unless the demand for those facilities no longer exists or adequate substitute space has been provided. Proposed recreational boating facilities shall, where feasible, be designed and located in such a fashion as not to interfere with the needs of the commercial fishing industry.

Accordingly, maintenance and upgrading of existing boating facilities as proposed by MLHD is an allowable category of use under Coastal Act Sections 30233 and 30234.

However, permitted development must be the least environmentally damaging alternative and mitigation measures must be provided to minimize adverse environmental effects. Water quality and the biological productivity of the marine environment are specifically protected by the Act under policies 30230 and 30231. Section 30240 provides for protection of environmentally sensitive habitat and Section 30232 provides for protection against spillage of hazardous substances.

Section 30230 of the Coastal Act states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long term commercial, recreational, scientific, and educational purposes.

Section 30231 provides:

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 through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

In addition Section 30232 provides:

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Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials. Effective containment and cleanup facilities and procedures shall be provided for accidental spills that do occur.

Coastal Act Section 30240 (b) states:

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

In addition, since the project includes development activities adjacent to MBNMS, an environmentally sensitive habitat, National Marine Sanctuary Program Regulations, 15 CFR Paragraph 944.5(a)(3) are relevant for interpreting Coastal Act Sections 30230, 30231 and 30240(b). This section of Sanctuary Regulations prohibits:

Discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter that subsequently enters the Sanctuary and injures a Sanctuary resource or quality...

The proposed development will relocate and structurally improve a float and structurally reinforce K-Dock and is expected to use land based (the property adjacent to the dock) sites and facilities for staging, storing and transporting materials. If necessary, a Harbor District boat will be used to convey the pilings to the installation site.

The major potential environmental impact is water quality degradation. The proposed development has the potential to impact water quality through increased turbidity, the use of toxic materials, and spilling of hazardous substances.

Water Quality: Water quality in Moss Landing Harbor has been affected by agricultural runoff and the by-products of boating and industrial uses. Major concerns have been raised throughout the years regarding pesticides, heavy metal, and other toxic materials. DDT, toxaphene, dieldrin, endrin, aldrin, and endosulfan were found in sediment testing for the harbor's dredging projects. They are insoluble in water but highly soluble in lipids or animal fatty tissue where they tend to concentrate.

Because of the low water solubility of DDT (0.0012 ppm) and its strong adsorption to soil particles, contamination of the aquatic environment by DDT and its metabolites is primarily associated with aquatic sediments. In addition metals are insoluble in water. Hence, the contaminants of concern are not in the water column. Since the sediments carry these pollutants, turbidity is the major issue.

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Pile Driving and Removal: The installation of piles has the potential to stir up sediments on the ocean floor. This increase in turbidity adversely affects marine resources by reducing the amount of light penetration, diminishing water quality, and burying living organisms. In addition, any contaminants in harbor sediments become more bioavailable when suspended in the water column.

The applicant proposes to install pilings with the District's own pile driver. For similar work at Monterey Harbor, the California Department of Fish and Game recommended that, where feasible, disturbed sediments should be contained with a flexible skirt surrounding the driven pile. Accordingly, Special Condition 2 requires that turbidity impacts be mitigated by the use of a flexible skirt in Moss Landing Harbor consistent with California Department of Fish and Game recommendations.

Preservatives: Preservatives used to treat pilings can have deleterious effects on water quality. Cresote treated pilings leach into the surrounding waters and can be toxic to marine life. Department of Fish and Game marine biologists have, in the past, opposed use of creosote-treated wood products in State waters; however, recent correspondence from the Department indicates that this issue is still unsettled. The applicant proposes to use piles pressure treated to retard marine borers with a process approved by permitting agencies, specifically the California Department of Fish and Game. The Harbor has on hand a supply of arsenic treated piles. The Environmental Protection Agency has approved the use of arsenic-treated pilings and the Department of Fish and Game reports that this treatment is not as toxic to the environment as creosote. Recently, creosote treated pilings wrapped in a water tight plastic sleeve to prevent introduction of toxins into the marine environment have been developed. The use of plastic wrapped creosote pilings was approved by the Coastal Commission for Port San Luis in 3-97-078 subject to a piling inspection and reporting program. The Moss Landing Harbor District does not propose the use of creosote treated pilings at this time (personal communication, Fran Huston, 3/5/98). This permit amendment has been conditioned to allow the use of concrete, plastic and arsenic treated piles. The use of creosote treated pilings or other piling material will require a separate coastal development permit amendment.

Regional Water Quality Control Board: The applicant has applied to the Regional Water Quality Control Board for their review. This coastal development permit amendment has been conditioned to require submittal of any necessary approvals from the Regional Water Quality Control Board including any Section 401 water quality certification or waiver.

As conditioned this amended coastal development permit will provide for (1) Executive Director review and approval of final project plans including location of equipment staging areas and phasing of construction, (2) containment of construction debris and precautionary requirements for contractors regarding accidental spills, (3) review of

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piling material and plan by the Department of Fish and Game, (4) use of pilings that are non toxic and (5) review by the Regional Water Quality Control Board.

These measures will minimize the risk of water quality degradation and impacts on marine resources in the harbor and in the adjacent Monterey Bay National Marine Sanctuary. Therefore, as conditioned, the proposed development is consistent with the Marine Resource policies of Chapter 3 of the Coastal Act and Coastal Act Policy.30240 which protects environmentally sensitive habitat.

4. Public Access/Recreation

Sections 30210-14 of the Coastal Act provide for maximizing public access to the coast. The Harbor facilities provide both pedestrian and boating access. The Harbor District will stage the piling placement and dock relocation on the land adjacent to the site and/or from the District parking lots. The Harbor District indicates that the maintenance work will be conducted during times that will minimize obstruction/disturbance to moving vessels and to the public at large.

The proposed development is not expected to have any significant impacts on existing public pedestrian access and minimal impact on vehicular and boating access to the shoreline. Improvements to floats and docks secures and maximizes access for rthe the boating and fishing public. Section 30234 requires protection of commercial fishing and recreational boating facilities and Section 30224 encourages increased recreational boating use of coastal waters. The proposed improvements further these goals.

The permit has been conditioned to provide for the identification of the staging area for the project and the construction schedule for review and approval by the Executive Director.

Therefore, as conditioned, the proposed development will protect public pedestrian access and will enhance water-dependent access opportunities and is consistent with the Access policies of the Coastal Act.

5. Local Coastal Program/CEQA

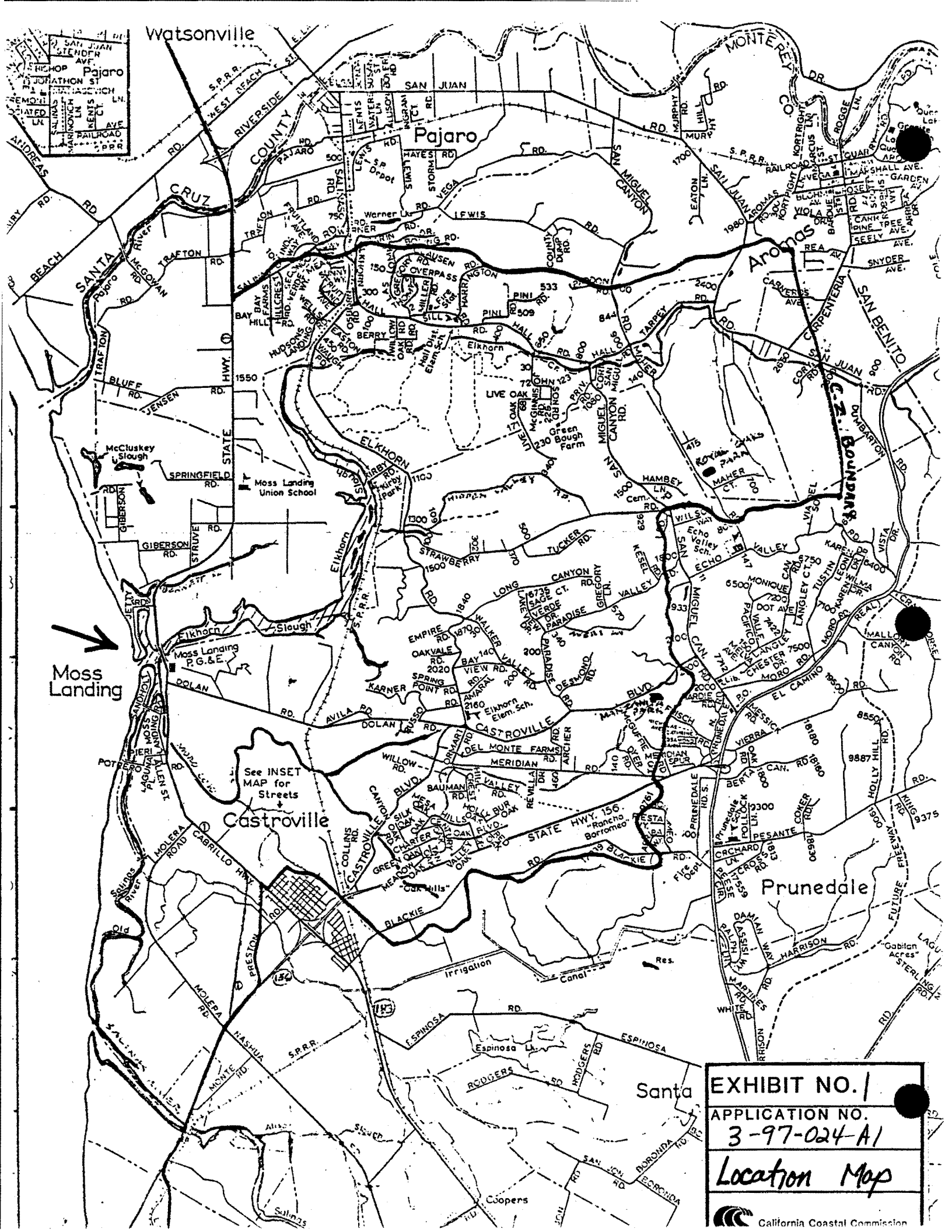
The lands around Moss Landing are covered by the certified Monterey County Local Coastal Program which includes the North County Land Use Plan. However, the piers and docks in the proposed piling program are located in State waters granted in trust to Moss Landing Harbor District. Therefore, the proposed project is within the Coastal Commission's original jurisdiction (Coastal Act Section 30519(b)) and the standard of review for the coastal development permit is the Coastal Act. However, the North Monterey County Land Use Plan certified by the Commission in June 1982 complements the Coastal Act by providing area-specific interpretive guidance. The

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Land Use Plan has numerous policies that provide for the maintenance and enhancement of the commercial, recreational, and research boating facilities that share the harbor marinas. The LUP presumes that the harbor will be maintained in good repair by the Moss Landing Harbor District. The proposed improvements further the intent of the Land Use Plan.

Moss Landing Harbor District as the lead agency for California Environmental Quality Act review determined that the proposed long term piling replacement and maintenance program is Categorically Exempt, under Paragraph 15301, Existing Facilities, Class 1.

As conditioned, the proposed development will be consistent with Chapter 3 of the California Coastal Act of 1976 and will not create any significant adverse impacts within the meaning of the California Environmental Quality Act.



Moss Landing

Castroville


Prunedale

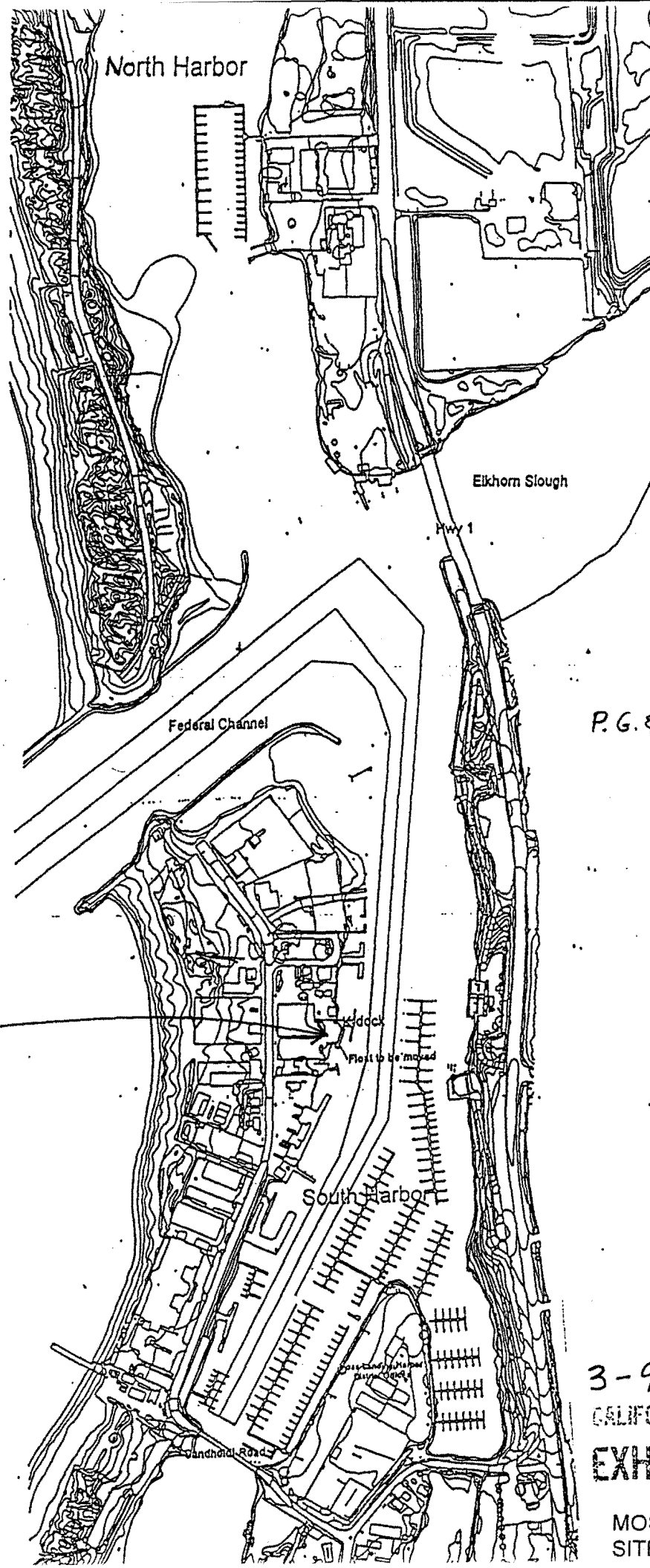
EXHIBIT NO. /

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Location Map

 California Coastal Commission



North Harbor

Elkhorn Slough

Hwy 1

MONTEREY BAY

Federal Channel

P.G. & E.

K-DOCK

LOCATION

K-dock

Flow to be maintained

South Harbor

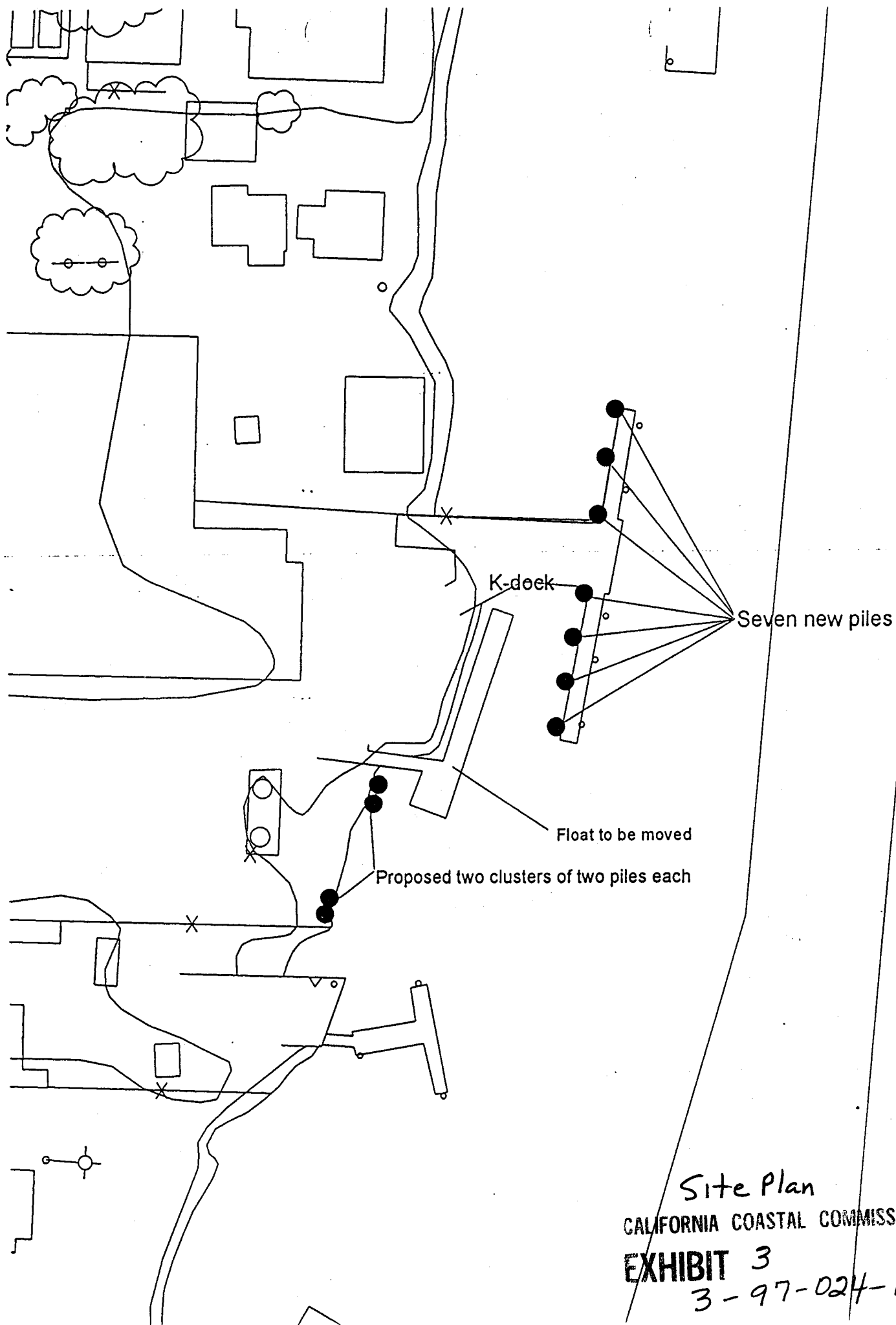
Vandenberg Road

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CALIFORNIA COASTAL COMMISS

EXHIBIT 2

MOSS LANDING HARBOR
SITE PLAN



Site Plan
CALIFORNIA COASTAL COMMISSION
EXHIBIT 3
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