

**CALIFORNIA COASTAL COMMISSION**

CENTRAL COAST AREA OFFICE

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HEARING IMPAIRED: (415) 904-5200

C.T.L.

6/17/98



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Staff: JC/SC  
Staff Report: 39834rep. 6/17/98  
Hearing Date: 7/9-10/98

**STAFF REPORT****CONSENT CALENDAR**

APPLICATION NO. 3-98-034

APPLICANT: MOSS LANDING HARBOR DISTRICT (MLHD)  
Agents: James Stilwell, General Manager, MLHD

PROJECT: Moss Landing South Harbor, Moss Landing,  
LOCATION: North Monterey County

PROJECT: Temporary Installation (three years) of kayak boarding floats  
DESCRIPTION: (5 each, 8' x 22') joined to form a single unit 40 x 22 feet;

LOCAL APPROVALS: MLHD 3/18/98  
RECEIVED:

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

**SUMMARY OF STAFF RECOMMENDATION**

The staff recommends that the Commission **approve** the proposed kayak float installation subject to the conditions below, which provide for protection of marine resources required by Coastal Act Sections 30230 and 30231. The proposed development will enhance the resources available to 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 a permit for the proposed development on the grounds that the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will 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.
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. **Piling Materials**. Pursuant to the coastal development permit application and to prevent the introduction of toxics into the marine environment, pilings shall be high density polyethylene, concrete, or cheminite 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.

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. Unless an alternative containment plan is approved by the Executive Director, a floating containment boom shall be placed around all active portions of any over-water construction site where wood scraps or other floatable debris could enter the water. The floating boom 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.

3. **California Department of Fish and Game**. Piling installation shall be performed in accordance with Department of Fish and Game (DFG) 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.

PRIOR TO COMMENCEMENT OF CONSTRUCTION, the permittee shall submit to the Executive Director for review and approval, evidence of DFG approval of the materials and construction methods proposed.

4. **Regional Water Quality Control Board**. PRIOR TO TRANSMITTAL OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit to the Executive Director for review evidence that the Regional Water Quality Control Board has reviewed and approved the float installation.

5. **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.

6. **U.S. Coast Guard.** PRIOR TO COMMENCEMENT OF CONSTRUCTION, the permittee shall submit to the Executive Director for review a copy of the U. S. Coast Guard approval of the float location or evidence that no U.S.Coast Guard approval 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 Monterey Bay Aquarium Research Institute's ocean-going research vessels. 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 Harbor District proposes to install 5 concrete floats (8 ft. x 22 ft. each) connected together to form a 40 by 22 foot dock for kayak loading and unloading. The dock will be held in place by two plastic piles on the seaward end and by two deadman piles on shore strung together with vinyl coated wire rope. The units will rise and fall with the tide and part of the unit will, at times, be on ground. The float is an interim use, three years, pending future development of a new launch ramp at the site. The float will be located adjacent to an existing parking area. Access is open to the public. The MLHD intends to institute a \$3.00 fee for use which will include day parking. Monterey County recently approved a kayak sales and rental facility nearby and it is expected that the facility will also use the float. The float will be located approximately 500 feet from the North Harbor launch ramp and berthing area. See Exhibit 2 attached.

**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 applicant has notified the U.S.Army Corps of Engineers (COE) and the U.S. Coast Guard (USCG) of the proposed project. The

coastal development permit has been conditioned to require submittal of evidence that the project is consistent with COE and USCG requirements.

The Regional Water Quality Control Board is reviewing the proposal. The permit has been conditioned to require submittal of Regional Board approval prior to transmittal of the coastal development permit.

## **2. Marine Resources**

The proposed development will be located in and over 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 placement of pilings for expanding boating facilities and recreational piers is specifically listed as an allowable use under Section 30233.

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:...

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

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

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:

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 float is a small expansion within an existing harbor. Field review (April 30, 1998) found that the site is adjacent to a gravel baserock parking lot. The shoreline has a band of iceplant transitioning into bare mud and imported brick and rock debris with no pickleweed (*Salicornia virginica*) or eelgrass in evidence. Because of the small scale and limited in-water work required, the proposed development has a limited potential to impact water quality. Nevertheless, increased turbidity, the potential for use of toxic materials, and spilling of hazardous substances are potential impacts. Permitted development must be the least environmentally damaging alternative and mitigation measures must be provided to minimize adverse environmental effects. Consistent with other current Moss Landing Harbor piling replacement and dock construction projects approved by the Commission (coastal development permits 3-97-088 and 3-97-024-A1), special conditions to protect the marine environment have been established and are recommended for the proposed project as discussed below.

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 bottom sediments carry these pollutants, turbidity is the major issue.

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.

Pilings will be installed with the District's own pile driver. Coastal development permit 3-97-088 for the MLHD five-year piling replacement project (approved by the Commission in March 1998) requires that, where feasible, disturbed sediments be contained within a flexible skirt surrounding the driven pile consistent with recommendations of the California Department of Fish and Game. Special Condition 3 applies this requirement to the proposed project to assure water quality protection consistent with 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 does not propose the use of creosote-treated piles but will use plastic and cheminite treated wooden piles. According to the Department of Fish and Game these piles do not significantly leach into the marine environment. The permit has been conditioned to require that only concrete, plastic and cheminite treated piles are allowed. As conditioned, any change in piling material or piling treatment, e.g., the use of creosote, will require a coastal development permit amendment.

Regional Water Quality Control Board: The applicant has applied to the Regional Water Quality Control Board for their review of potential impacts on water quality. The coastal development permit has been conditioned for submittal of the RWQCB approval or evidence that no approval is required prior to transmittal of the permit.

As conditioned the coastal development permit will provide for containment of construction debris and precautionary requirements for contractors regarding accidental spills, use of pilings that are non toxic and 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. In accordance with other Coastal Act policies, Section 30224 encourages increased recreational boating by increasing launching facilities and new boating facilities and Section 30234 provides for protection and upgrading of recreational boating facilities .

The Harbor facilities provide both pedestrian and boating access. The kayak boarding floats are a temporary facility for purposes of maximizing kayak boating use. The application is for a three year period after which the MLHD expects that planned North Harbor improvements will locate a new launch ramp at the kayak float site.

The Commission staff received a telephone communication regarding the potential for conflicts between boating uses that could be created by the kayak floats. However, the float will be located approximately 500 feet from the North Harbor launch ramp and berthing area and approximately 110 feet outside the federal channel. The Moss Landing Harbor District reports that they do not anticipate any adverse impacts on existing boating uses or conflicts with other harbor users.



The coastal development permit has been conditioned to require U.S. Coast Guard and U.S. Army Corps of Engineers approval of the project and its location prior to installation of the floats.

As conditioned, the proposed development will not have significant adverse impacts on pedestrian, vehicular, or boating access, will enhance water-dependent access opportunities and is, therefore, consistent with the Access and Recreation 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 proposed dock is 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 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 proposed float installation will further improve boating recreational opportunities and is consistent with the Local Coastal Program and the Coastal Act.

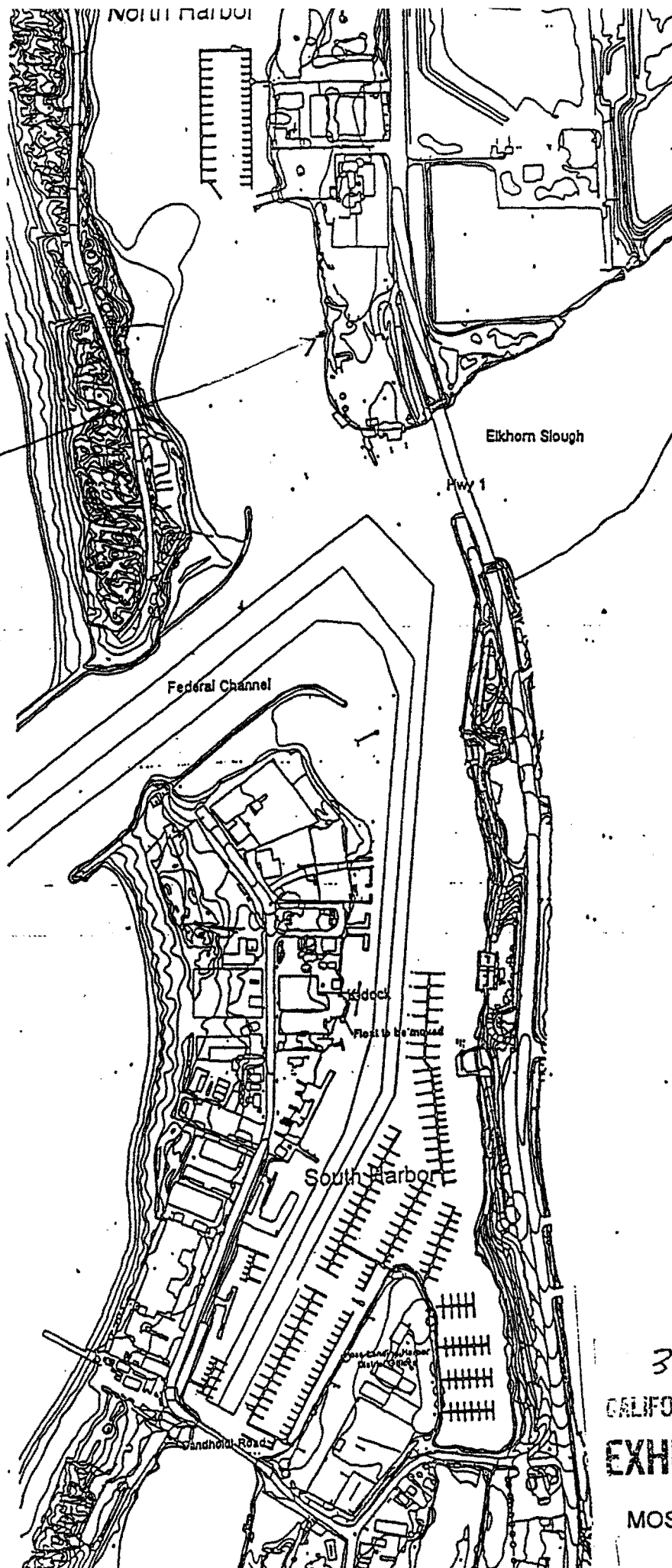
Moss Landing Harbor District as the lead agency for California Environmental Quality Act review determined that the proposed float dock installation is Categorically Exempt, under Class II.

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.

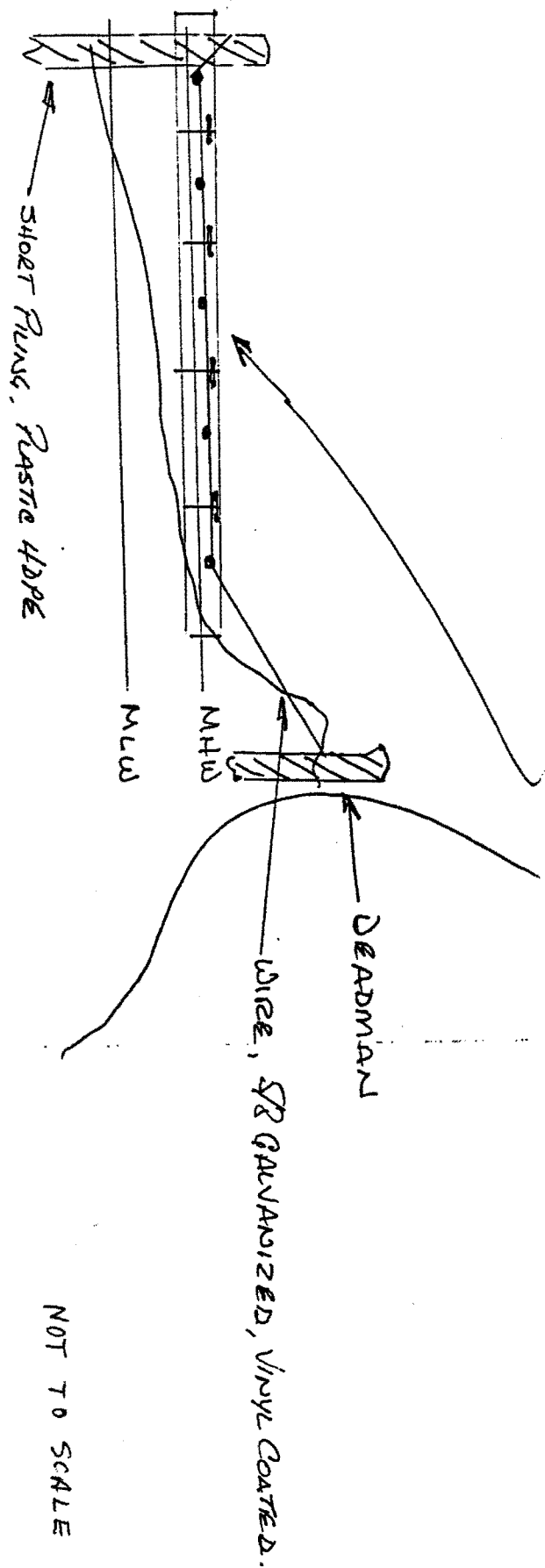


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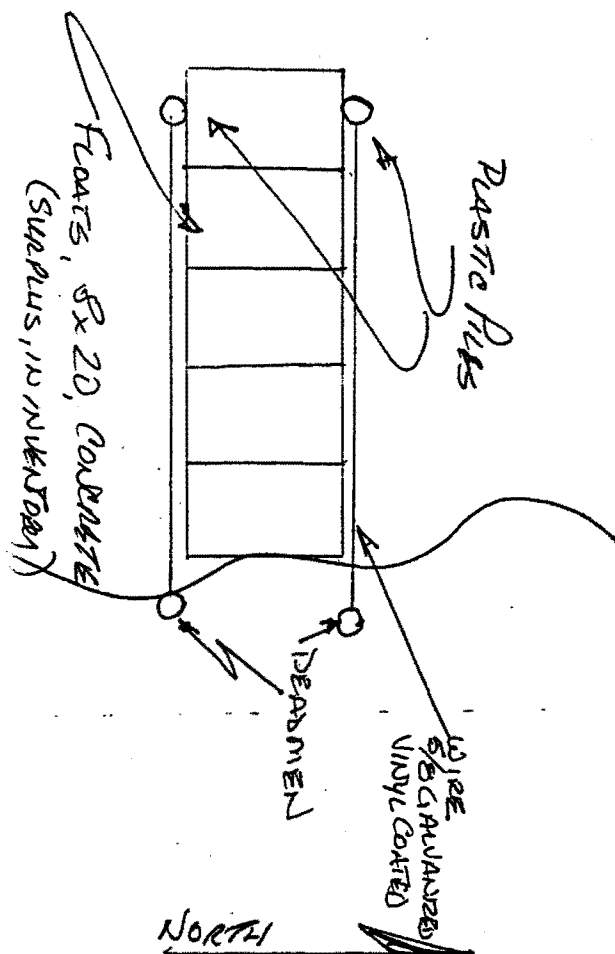
MONTEREY BAY



3-98-034  
CALIFORNIA COASTAL COMMIS  
**EXHIBIT 2**  
MOSS LANDING HARBOR  
PLAN



NOT TO SCALE



3-98-034

CALIFORNIA COASTAL COMMISSION

EXHIBIT 3  
ELEVATIONS