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Staff:	Jack Liebster
Staff Report:	May 26, 1999
Hearing Date:	June 7, 1999
Commission Action:	

REVISED STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.:	**1-98-58**
APPLICANTS:	**Stan Furmanski, Trianchor Marine, Pique Partners**
PROJECT LOCATION:	350 and 380 Princeton Avenue, Princeton, San Mateo County, APNs 047-024-150, 047-024-160 and 047-024-170
PROJECT DESCRIPTION:	Legalize prior fill, add rock riprap and an aquaculture tank in coastal waters all for use as aquaculture, aquaculture research, a commercial fishing facility, an aquarium, education, and other uses
LOCAL APPROVALS RECEIVED:	None received.
OTHER APPROVALS REQUIRED:	Either State Lands Commission or San Mateo County Harbor District, and Corps of Engineers review may be required for a portion of the project. In addition, the portion of the amended application concerning "commercial fishing, aquaculture, marine research, and other coastal dependent uses" requires a Use Permit from San Mateo County, Aquaculture Registration from the California Department of Fish and Game, and an NPDES permit from the Regional Water Quality Control Board.

SUBSTANTIVE FILE DOCUMENTS: Coastal Commission Emergency Permit number 1-98-044G; San Mateo County Local Coastal Program; San Mateo County Coastal Development Permit 90-82; Geotechnical Investigation, Proposed Warehouse, Princeton, Ca. for Mr.Stan Furmanski, Bay Area Geotechnical Group, Feb. 21, 1991; Revised Expanded Initial Study for Abalone Aquaculture Operations, Pillar Point Harbor, San Mateo County, Huffman &

Associates, Inc., June, 1996; Coastal Commission Staff Report for CDP Applications E-98-17; E-98-18; E-98-19; E-98-20 (Pillar Point Harbor Aquaculture projects)

SUMMARY OF STAFF RECOMMENDATION

The proposed project involves the placement of fill within Princeton Harbor in San Mateo County. The application seeks authorization for fill that has already been placed as well as proposed new fill.

The application has been amended three times prior to the Commission hearing. The project now includes (a) all fill performed by the applicant pursuant to Emergency Permit No. 1-98-44G; (b) all fill that had been placed prior to the February 1998 emergency permit (referred to by the applicant as "the original rockslope protection"); (c) additional work on the existing riprap the applicant shows as planned; and (d) the additional "commercial fishing, aquaculture, marine research, and other coastal dependent uses" listed by the applicant.

Major issues raised by the proposed project include fill in coastal waters or wetlands, marine resources and biological productivity, and visual resources. Staff recommends DENIAL of the project because the project is inconsistent with Coastal Act provisions regarding these issues.

This project is not consistent with Section 30222.5, as it is not a bona fide aquaculture project, nor is it located in an area designated for aquaculture. The project is not consistent with Sections 30230 and 30231 in that the applicant has not demonstrated that it will protect marine resources and sustain the biological productivity of coastal waters.

In addition, the project was originally proposed, and would continue to function, as a seawall. This use is not consistent with Section 30233, since a seawall is not one of the eight uses allowable use under Section 30233(a). The project is also not consistent with Section 30233 requirements that no fill project be approved if there is a feasible, less environmentally damaging alternative. In this case, less environmentally damaging alternatives exist, such as utilizing a location requiring less or no fill. The applicant has not demonstrated that such an alternative is not feasible.

Section 30235 of the Coastal Act provides that revetments and other such construction shall be permitted when required to serve coastal-dependent uses or to protect existing structures. The proposed fill is not required to be approved Section 30235 as fill necessary to protect existing structures as there is no existing structure in danger of erosion on the site. A chandlery building has been permitted on the site by the County of San Mateo, but has not been built. As a condition of approval, this building was to be set back from the edge of the bluff specifically to

avoid the need for shoreline protection as proposed in this application. The proposed riprap development is not required to be approved by Section 30235 as fill for coastal-dependent uses because it is not required to serve a bona fide aquaculture, commercial fishing, marine research or other coastal-dependent use. Even if it were, such uses could be served without as much of the fill as proposed. The proposed fill is also not required to be approved by Section 30235 because there is no substantive evidence that it is designed to eliminate or mitigate adverse impacts on local sand supply as required by Section 30235.

Finally, the project is also inconsistent with Section 30251 in that its size and location fail to protect views along the coast, do not minimize alteration of natural landforms, and are not visually compatible with the character of the surrounding area, as required by that section.

STAFF NOTES:

1. Revised Staff Report for Amended Application

A staff report on this project was initially published on April 23, 1999. Since that time, the applicant has amended the application three times. The first amendment, received April 26 and April 28, 1999, seeks to "legalize the original rock slope protection" (fill that had been placed prior to the February 1998 emergency permit) by "certificate of exemption and also by permit," and then to repair it. Additional correspondence with the applicant clarified that all fill that had been placed prior to the February 1998 emergency permit was also part of the permit application.

A second amendment to the application was received on May 11, 1999. This amendment added a request to authorize "commercial fishing, aquaculture, marine research, and other coastal dependent uses" to the current application.

A third amendment to the application was received on May 17, 1999, and further modified on May 18, 1999. This amendment "amends-out (deletes) the earlier submissions...and seeks a permit for aquaculture, aquaculture research, commercial fishing facility and marine research as set forth in book J, JR, JT, K and L." As of this writing "books K and L" have not yet been received.

Despite the fact that this third amendment deletes earlier submissions, the rock, dirt, concrete rubble and other material placed on the property to date still remain on site. Regardless of how it is characterized by the applicant, this material is fill development under the Coastal Act and requires a Coastal Development Permit. Moreover, the Emergency Permit already describes the material most recently placed as riprap fill. The current amended application 1-98-058 therefore includes (a) all development and fill performed by the applicant pursuant to the Emergency Permit No. 1-98-44G; (b) all development and fill that had been placed prior to the emergency

permit; (c) additional development and fill the applicant shows as planned for the site; and (d) the additional "commercial fishing, aquaculture, marine research, and other coastal dependent uses" listed by the applicant. This revised staff report addresses the project as amended.

2. Development Authorized Pursuant to Emergency Permit

Part of the development currently before the Commission was constructed pursuant to Emergency Permit 1-98-044G (Exhibit 6), which authorized "the placement of additional riprap and erosion control to prevent damage to the subject property." Condition 4 of the permit specifies that emergency work is temporary and that a regular coastal development permit must be obtained in order to permanently authorize the work. At the time the emergency permit was issued, staff was informed that the emergency permit was required to protect a chandlery building as well as to prevent damage to the portion of the seawall that currently existed at the site. The emergency permit was issued on this basis. Subsequent to the time that the emergency permit was issued, staff learned that (1) the chandlery building allegedly in need of protection had not yet been constructed and (2) there is no record of any coastal development for the fill that previously existed on the site.

3. Denial of Permit Exemption Request.

The recent history of Coastal Development Permit application #1-98-58 is detailed in the "Project Description" section below. As indicated there, the applicant was issued Emergency Permit number 1-98-044G in February 1998 authorizing the placement of additional riprap and erosion control to prevent damage to the subject property. Rather than apply for a follow-up permit to permanently authorize this development, the applicant contended in his permit application that development on the shoreline completed to date was exempt under Section 30610(g)(1) of the Coastal Act as the replacement of a structure destroyed by a disaster. The applicant's coastal development permit application additionally requested authorization to add "a revetment as a repair to the existing riprap wall." To evaluate the claim that the development is exempt from coastal permit requirements, the staff requested additional information from the applicant. After receiving additional information, on April 19, 1999, the Executive Director notified the applicant of the determination (Exhibit 9) that the repair work or additions done by the applicant do not qualify for an exemption, and that the development already completed pursuant to the emergency permit requires permanent authorization by the Coastal Commission if it is to remain in place.

Consequently, the development before the Commission in this application includes any and all fill completed pursuant to Emergency Permit 1-98-044G as well as the additional development proposed by the applicant, but not yet begun.

4. Incomplete Application

Staff does not view the application as complete, but has nevertheless filed the application to expedite Commission action on a coastal development permit application for development that (1) has already been constructed pursuant to an emergency permit but which has not been permanently authorized and (2) may have been undertaken without receiving a coastal development permit. Staff had asked in writing for information important to processing the application on July 10, 1998 and again on November 19, 1998 (Exhibit 12), as well as in phone conversations with the applicant. Much of that information was still not provided in the applicant's amendment submittal of April 26 and 28, 1999, the applicant's second amendment to the application, received May 11, 1999, or the applicant's third amendment to the application, received May 17 and 18, 1999. This information includes, but is not limited to, issues about what, if any, structure was destroyed; what development existed prior to the emergency permit, and how much new fill has subsequently been added; specific information about ownership and other interests in land involved in the project; evaluations of the effect on local sand supply; other approvals required; and alternatives that would reduce potential coastal resource impacts. Notwithstanding the missing information, however, the staff has sufficient information to determine that the proposed project is inconsistent with the use provisions of Section 30233(a) of the Coastal Act and the other grounds for denial discussed below. Therefore, rather than delaying action because the application is incomplete, the staff filed the application as amended, and scheduled it for a public hearing.

As stated above, the development before the Commission in this application includes any and all development completed pursuant to Emergency Permit No. 1-98-44G, development that may have been undertaken without receiving a coastal development permit as well as the additional development proposed by the applicant, but not yet begun.

In fact the Commission has no record of any coastal development permits for any portion of the development that exists on the subject site. Staff notes that Commission action on this coastal development application in no way authorizes any development undertaken on the site without a coastal development permit.

5. Jurisdiction and Standard of Review.

The proposed project is located on the northern end of the Pillar Point Harbor in the unincorporated Princeton area of San Mateo County. The County has a certified LCP, but the project site is in tidal areas within the Commission's retained jurisdiction. There has been a considerable amount of confusion over whether the currently proposed and previously constructed development is in the Commission's retained jurisdiction or in the County's certified area. On June 5, 1998, the Commission's mapping unit informed the applicant that the proposed

project's parcel boundaries did not appear to fall within the Commission's continuing permit jurisdiction area. (Exhibit 8). This letter, however, also cautioned the applicant that the boundary between the Commission's retained permit jurisdiction and the appeal jurisdiction (i.e. County coastal permit jurisdiction) may vary depending on the exact location of public trust lands. Contemporaneous site visits by North Coast staff have established that the development site is in an area subject to the daily wash of tides. The development site is now subject to the daily wash of tides because the shoreline appears to have eroded inland, creating a large tidal area between the previously surveyed Mean High Tide Line (See Exhibit 5, 10) and upland portions of the subject property. Therefore, the proposed development lies within the Commission's retained jurisdiction area, which includes tidelands, submerged lands and lands subject to the public trust. Accordingly, the standard of review that the Commission must apply to the project is the Chapter 3 policies of the Coastal Act. The County agrees with the Commission's assertion of jurisdiction. The Commission staff notes that even if the project had been in the County's certified area, this project would have been appealable to the Commission. The Commission staff also notes that the applicant declined Commission staff's invitation to submit evidence of the current Mean High Tide Line (Exhibit 12, p. 6)

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I. MOTION, STAFF RECOMMENDATION AND RESOLUTION

The staff recommends that the Commission adopt the following resolution:

Motion.

I move that the Commission approve Coastal Development Permit No. 1-98-58 subject to conditions.

Staff Recommendation of Denial.

Staff recommends a **NO** vote and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution to Deny Permit:

The Commission hereby denies a coastal development permit for the proposed project on the grounds that the project, located between the sea and the first public road nearest the shoreline, is not in conformance with the provisions of Chapter 3 of the California Coastal Act of 1976. Granting of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

II. FINDINGS AND DECLARATIONS.

The Commission hereby finds and declares as follows:

1. Site Description.

The subject property is located in the unincorporated community of Princeton, north of the city limits of Half Moon Bay, and lies on the northern shore of Pillar Point Harbor, west of Highway One (Exhibits 1, 2). The property consists of four individual assessor parcels on the south side of Princeton Boulevard with a total area of approximately 20,500 sq. ft. (Exhibit 3). The Commission notes that the applicant shows (see Exhibit 5) his parcel extending beyond the parcel boundaries shown on the Assessor Parcel map (the clarification of ownership boundaries was a question that remained unresolved at the time the project was filed (see 11/19/98 letter from Commission staff, Exhibit 12, item B2(e), and applicant's response by Mr. Robert Clark, Exhibit 13, item 2e).

The property includes a portion of a low terrace which fronts on approximately 135 feet of the shoreline of Princeton Harbor. The shoreline is currently lined with riprap and rubble rising approximately 15 to 20+ feet above the beach. A concrete slab covers the top of the riprap and the southern part of the blufftop. Otherwise the subject property is vacant. An approximately 60-foot-long row of full grown cypress trees bisects the southern part of the property (Exhibit 7). Across the street to the north is an existing two-story office building. A boat ramp and a two-story conference facility are between the property and Broadway Avenue to the east, and a "bed and breakfast" hotel/motel is to the west.

2. Project Description.

The applicant was verbally issued Emergency Permit number 1-98-044G in February 1998 authorizing the placement of riprap and erosion control to prevent damage to the subject property. The written emergency permit was transmitted to the applicant on May 15, 1998 (Exhibit 6). As discussed with the applicant at the time the emergency permit was granted in February 1998, Condition #4 of the permit specifies that the emergency work is considered to be temporary work done in an emergency situation, and that for the emergency work to become a permanent development, a regular Coastal Development Permit would need to be obtained for all development performed pursuant to the emergency permit. On June 12, 1998, the Commission received a Coastal Development Permit application (#1-98-58) from the applicant, contending that development done on the property pursuant to the emergency permit was exempt under section 30610(g)(1) of the Coastal Act. The applicant at the same time requested additional development to add "a revetment as a repair to the existing riprap wall." To evaluate the claim that the development is exempt from coastal permit requirements, the staff requested additional information from the applicant. After receiving additional information on March 22 and 23, 1999, the Executive Director notified the applicant on April 19, 1999 of the determination, (Exhibit 9, herein incorporated by reference) that the repair work or additions done by the applicant do not qualify for an exemption, and that the as-built configuration of the revetment requires a coastal development permit from the Coastal Commission if it is to remain in place.

On April 26, 1999 the Commission office received an amendment to the application including requests to legalize the "original rock slope protection" (all fill that had been placed prior to the February 1998 emergency permit) by "certificate of exemption and also by permit," and then to repair it. Additional correspondence with the applicant clarified that legalization of all fill that had been placed prior to the February 1998 emergency permit was part of the permit application. The applicant at that time included a modified request for a separate "certificate of exemption" for this fill, despite the fact that the Executive Director had determined on April 19, 1999 that the development is not exempt (Exhibit 9).

On May 11, 1999, the Commission office received a second amendment to the application. This amendment added a request to authorize "commercial fishing, aquaculture, marine research, and other coastal dependent uses" to the current application.

A third amendment to the application was received on May 17, 1999, and further modified on May 18, 1999. This amendment "amends-out (deletes) the earlier submissions...and seeks a permit for aquaculture, aquaculture research, commercial fishing facility and marine research as set forth in book J, JR, JT, K and L." As of this writing "books K and L" have not yet been received. The applicant's third amendment also deletes the request for a separate "certificate of exemption."

However, notwithstanding the above-identified amendments and based upon the information currently available as discussed in the "Unpermitted Development" section below, it does appear that significant development has occurred on the site without benefit of permits, and the applicant's recharacterization of the development that has already been done does not affect this situation.

Based upon the applicant's submissions, the current application 1-98-058 now includes: (a) "new" fill placed by the applicant pursuant to the emergency permit; (b) "old" fill (sometimes called "the original rock slope protection" by the applicant) that had been placed prior to the February 1998 emergency permit; (c) additional development (grouting of the riprap, development of surface drainage and provision of a toe trench to act as a key for the riprap) the applicant indicates as planned for the site in his most recent submittals and (d) the additional "commercial fishing, aquaculture, marine research, and other coastal dependent uses" listed by the applicant. Each of these elements is described below:

(a) "New" Fill Pursuant to Emergency Permit Permit 1-98-044G (February 1998)

The photo in Exhibit 25 shows the current condition of the site, also represented in the applicant's site plan, Exhibit 5. This current condition is a result of adding "new" fill seaward and on top of "old" fill that had been placed earlier (element "b"), as well as on to unrevetted shoreline. It appears that some of the "old" fill remains exposed at the east end of the revetment. As presently built, the revetment is approximately 139 feet long, and ranges from about 19 to 20 feet high.

As discussed further in the "Unpermitted Development" Section below, the applicant has not provided reliable information about how much new fill has been placed at the site. There is no record of any prior coastal development permit that would reveal the dimensions of the "old" fill as a basis for calculating the amount of "new" fill. There is, however, a reliable benchmark for this old fill in a topographic survey completed in February 1991 (Exhibit 6). Based upon

calculations comparing this diagram to the applicant's depiction of the riprap edge of the existing fill (Exhibit 5), at least 2,400 square feet of new fill has been placed over coastal waters or wetlands at the site since 1991.

The applicant's third amendment appears to recharacterize all existing development as part of a project for aquaculture, aquaculture research, commercial fishing, marine research, and other coastal dependent uses. This recharacterization does not change the fact that the new fill was approved on a temporary emergency basis as a seawall, would apparently continue to function as a seawall, and would have the impacts of a seawall. Therefore, for the purpose of analysis, this report addresses the proposed fill as fill for aquaculture, commercial fishing, research and other coastal dependent uses, as most recently characterized by the applicant, as well as independently addresses the consistency of the fill as a seawall with the Chapter 3 policies of the Coastal Act.

(b) "Old" Unpermitted Fill

The "old" fill includes all fill placed in open coastal waters or wetlands at the subject property prior to the authorization of Emergency Permit1-98-044G in February 1998. As discussed further in the "Unpermitted Development" Section below, there is no record of a coastal development permit for such fill, so it is difficult to delineate the dimensions of this "old" fill or the boundary between it and the "new" fill described above.

As staff understands it, the applicant's third application amendment deletes his first application amendment which sought an "after-the-fact" permit for this "old" fill as shoreline protection. This third amendment also drops the applicant's simultaneous claim that the "old" fill is exempt from Coastal Development Permit requirements.

(c) Additional Riprap Development

The unbuilt portion of the proposed development involves the addition of grout to the upper portion of the existing riprap, the addition of a gutter drain to the concrete slab resting atop the riprap, and the development of a "toe trench" to act as a key for the riprap, as shown in Exhibit 14. Prior to the applicant's second amendment to the application on May 11, 1999, the project included this addition of riprap extended over an area 3 feet seaward of the existing riprap, (Exhibit 5 "repair zone"). The design of this riprap toe has now been amended and enlarged as described below.

(d) "Commercial Fishing, Aquaculture, Marine Research, and Other Coastal Dependent Use"

The applicant's second amendment to the current application is reproduced in its entirety in Exhibits 31,32, and 33 ("Book J") received May 11, 1999. As stated in Exhibit 32:

"The Application is "Amended" to include development within an area shaded-yellow on Plan J-5, , which is to enable Forty (40) coastal dependent uses, including a commercial fishing facility and those listed in Exhibit 1 (summary J1). The permit is to make improvements shown on J-2, J-3, J-4, J-7, J-8, and J-9 which furthers the 40 coastal dependent uses as listed in Summary J-1 (Exhibit 1), two pages. This permit is only for the area shaded-yellow on Plan J5 (tab #5)."

In Exhibit 33, (pg. 4-5, item J1: "Permit Advances These Permit Activities") the applicant lists the following proposed developments the amended project would include:

COASTAL DEPENDENT ACTIVITIES:

COMMERCIAL FISHING FACILITIES

Commercial bait and live bait station
Comm boat loading, bait boat loading, boat landing
Comm boat drive-up smog check (electronic)
Fish and bait holding area for shipment
Comm boat vertical evacuation point, tsunami
Comm boat vertical evacuation point, Pacific storm
Boat vertical evacuation point, El Nino storms
Owner vertical evacuation point, Pacific Storms

AQUACULTURE

Commercial bait and live fish (captured)
Commercial gastropods, and live bait clams, etc.
Aeration station (oxygenation)
Commercial live bait, mollusks, & juvenile forms live/bait
Water quality monitoring station
Abalone research project
(monitor/reintroduction)
Public education (nature study project)
Oxygenation monitoring protect (electronic)
Vertical evacuation from storms; El Nino
(protects workers, visitors of aquaculture)
Comm landing for skiffs and maintenance skiff
Emergency land facility; evacuations

EDUCATION/NATURE STUDY: AQUARIUM

Aquarium to demonstrate native marine lift
Oxygen monitoring project
Water quality monitoring project
Red Abalone research project
Handicap access to education/nature/aquarium

COMM LOADING AREA, EQUIP FOR THE ABOVE

HANDICAP ACCESS TO ABOVE

COASTAL DEPENDENT MARINE RESEARCH (COMMER. RELATED)

Water quality monitoring of Half Moon Bay (fixed)
Oxygen monitoring station (electronic)
Aeration system (to oxygenate sea water)
Growth-rate research project: aquaculture
Project: test to detect sebellid free stock
Project: tide data from electronic recording
Project: tsunami/tide recording data
Vertical evacuation for research workers/visitor
Handicap access to comm research area

TSUNAMI PROTECTION FOR ABOVE COMM FISHING FACILITY/FUNCTIONS

PROTECTION OF ABOVE COMM FISHING FACILITIES FROM PACIFIC STORMS

BEACH NOURISHMENT PROJECT & LONG TERM EROSION CONTROL

MAINTENANCE ACCESS FOR ABOVE COMM FISHING FACILITY

LOADING AREA TO EXISTING STRUCTURE (parking area)

LANDING FOR COMM BOAT & MAINTENANCE SKIFF

EMERGENCY ACCESS TO EVACUATE MARINER IN DISTRESS

RECREATIONAL SKIFF LAUNCHING: RECRE. FISHING;
NATURE STUDY

The application was amended once again (third amendment) in additional submittals received on May 17 and 18, 1999. Exhibits 35 through 38 includes extensive excerpts of this third amendment. The amendment states in part (Exhibit 38, pg. 1):

> "The amendment adds Aquaculture & Aquaculture Research, Commercial Fishing Facility, and other items listed as insert J-1 in books "J", "JR", & "JT" which are amendments ADDED effective May 10, 1999. The amended application applies to those areas highlighted on attachment J-5 in books J, JR, JT, K and L. The uses include about 40 coastal-dependent uses listed in attachment "J-1" in booklets you received "J" & "JR".
>
> By a separate amendment effective 5/15/99, we are amending-out and DELETING from the application the original request, and requests in books B, C, D, E, F, G, H which are for certificate of exemption for original rockslope protection, repair of revetment, repair of rockslope protection, exemption for repair, etc. Instead, the following request is substituted by amendment as the present request: "coastal permit for aquaculture and aquaculture research, & commercial fishing facility, & aquarium, education site & other things listed in insert J-1 of book J, JR & JT."

As of this writing, the applicant has not yet clarified whether the uses and activities listed in insert J-1 (as reproduced above) would be developed only in the area at the toe of the existing riprap marked with asterisks and labeled "project area" in Exhibit 33- J5, or might also be located within the rectangle labeled "aquaculture," which is outlined in yellow in the original of the amendment submittal, and thus might be intended to be part of the "area shaded-yellow" described in the amendment.

It is also unclear whether Figures J2, J3, J4, J7, J8 and J9 (Exhibit 33) show different views and/or uses of a single tank-like structure, or are intended to show different designs at different sections along the length of the structure. Assuming this structure would run along the entire base of the existing riprap development, and based on the scale shown in the drawings, the structure would be approximately 139 feet long, extend more than 7 ½ feet from the toe of the revetment, and cover at least an additional 1050 square feet of shoreline.

The applicant has deleted all requests for authorization of the previously-placed fill as a seawall, by identifying the drawings that combine that fill with the aquaculture/commercial fishing/research structure as part of the current project proposal. The applicant thus takes the position that the pre-existing fill is now an integral part of the proposed aquaculture/commercial fishing/research use and thus presumably allowable since commercial fishing and aquaculture facilities are potentially-allowable uses under Section 30233(a) and 30235. As discussed below,

the Commission does not agree that the existing fill is an integral part of the proposed aquaculture/ commercial fishing/ research development.

3. **Unpermitted Fill**

As discussed below, it appears clear that riprap fill had been placed at the site prior to the issuance of Emergency Permit 1-98-044G in February 1998. Any such development or fill placed between February 1, 1973 and January 1, 1977 required a permit under the California Coastal Zone Conservation Act of 1972 (Proposition 20). After January 1, 1977, such development required a Coastal Development Permit (CDP) pursuant to the Coastal Act. Staff has twice previously requested the applicant to provide copies of any permits issued for such work on the property, as well as a delineation of any seawall development that existed prior to this date, (Exhibit 12, pgs. 5,6). This information has not yet been provided.

In fact, it appears there is no record of a coastal development permit being issued for a seawall or other fill of open coastal waters or wetlands at the subject property prior to the emergency permit in February 1998. In a letter of May 11, 1999, the Planning Administrator of the County states there is "no record of any permit substantiating the original placement of the riprap at the project site, nor of any CDPs that have been applied for or issued for repairs and alterations to the seawall." (Exhibit 34) Similarly, Commission staff has been unable to find any such prior CDP issued by the Commission.

The applicant has submitted copies of two letters asserting a seawall was present in December 1975 (Exhibit 30, pgs.14-15). However, aerial photos of the site taken in April 1975 appear to show there was no seawall at that time, that the bluff was significantly inland of the location of the present seawall, and that a substantial tidal and beach area existed at that time in the area now occupied by fill and riprap. If the statements submitted by the applicant are correct, they imply the seawall was built sometime between April and December 1975, without benefit of permits.

One benchmark of the pre-existing development is a topographic survey by a licensed surveyor showing the extent of riprap existing as of February 1991 (Exhibit 6). Exhibit 5 shows the current extent of riprap as indicated by the applicant.

Inspection of an April 19, 1993 aerial photo (Exhibit 24) indicates that the riprap on that date had a configuration similar to that shown by the 1991 topographic survey. A May 5, 19998 photo (Exhibit 25) shows development completed after the issuance of Emergency Permit number 1-98-044G. "Before" and "after" photos from the beach level are also included in Exhibit 26. Finally, the area between the 1991 extent of the riprap (Exhibit 10) and the current riprap (Exhibit 5) represents the already built portion of the proposed project. Exhibit 11 is a composite of Exhibits 10 and 5 which depicts the approximate extent of this development.

The lack of evidence substantiating the legality of the riprap development that occurred prior to the development authorized by the emergency permit raises issues of unpermitted development. These issues, however, are not before the Commission at this time. The Commission finds that its action on this coastal development permit application is not a waiver of any legal action with regard to any alleged violation and in no way authorizes any development undertaken on the site without a coastal development permit.

4. Jurisdiction

The proposed project is located on the northern end of the Pillar Point Harbor in the unincorporated Princeton area of San Mateo. San Mateo County has a certified LCP, but the project site is in tidal areas within the Commission's retained jurisdiction. There has been a considerable amount of confusion over whether the currently proposed and previously constructed development is in the Commission's retained jurisdiction or in the County's certified area. On June 5, 1998, the Commission's mapping unit informed the applicant that the proposed project's parcel boundaries did not appear to fall within the Commission's continuing permit jurisdiction area. (Exhibit 8). This letter also cautioned the applicant that the boundary between the Commission's retained permit jurisdiction and the appeal jurisdiction (i.e. County coastal permit jurisdiction) may vary depending on the exact location of public trust lands. Contemporaneous site visits by North Coast staff have established that the development site is in an area subject to the daily wash of tides. The development site is now subject to the daily wash of the tides because the shoreline appears to have eroded inland, creating a large tidal area between the previously surveyed Mean High Tide Line (Exhibits 5, 10) and upland portions of the subject property. Therefore, the proposed fill lies within the Commission's retained jurisdiction area, which includes tidelands, submerged lands and lands subject to the public trust. Accordingly, the standard of review that the Commission must apply to the project is the Chapter 3 policies of the Coastal Act. The County agrees with the Commission's assertion of jurisdiction on this basis. The Commission staff notes that even if the project had been in the County's certified area, this project would have been appealable to the Commission. The Commission staff also notes that the applicant declined Commission staff's invitation to submit evidence of the current Mean High Tide Line (Exhibit 12, p. 6).

5. Legal Entitlement to Use the Property for the Proposed Development

Section 30601.5 of the Coastal Act states in part:

> *Where the applicant for a coastal development permit is not the owner of a fee interest in the property on which a proposed development is to be located, but can demonstrate a*

> *legal right, interest, or other entitlement to use the property for the proposed development, the commission shall not require the holder or owner of any superior interest in the property to join the applicant as co-applicant.*

The applicant has not demonstrated fee interest, legal right, interest, or other entitlement to use all portions of the property for the proposed development. While not shown on the applicant's site plan (Exhibit 5), both the existing and as-yet-unbuilt portions of the proposed project encroach substantially on to a paper street, Ocean Blvd., that the County states has been dedicated and accepted in fee for public use by the County of San Mateo (see Exhibit 12, pgs. 8-11, Map of Survey). As amended to include the aquaculture/ commercial fishing/ research structure, the project would encroach even further on to Ocean Blvd. A copy of the original Map of Survey for the Princeton By The Sea subdivision of which the subject parcel is a part, states that:

> "Ocean Boulevard,...as designated and delineated on this map [is] hereby accepted by the Board of Supervisors of the County...on behalf of the public and dedicated to public use..."

A copy of this map was transmitted to the applicant as part of the request for additional information needed for permit filing (Exhibit 12, pages 8-11). The applicant states in his submittal received March 23, 1999 (page 3):

> ...the County has issued it (sic) own opinion letter, stating the County considers it has only an easement and no fee interest.

The applicant, however, did not submit a copy of this letter. Therefore, in view of the County's assertion of a fee interest in the affected area, the Commission finds that the applicant has not demonstrated sufficient right to use the property as proposed.

6. The "Aquaculture/Commercial Fishing/Research Structure" Cannot Be Found Consistent With the Coastal Act As Submitted

Coastal Act Section 30222.5 states:

> *Ocean front land that is suitable for coastal dependent aquaculture shall be protected for that use, and proposals for aquaculture facilities located on those sites shall be given priority, except over other coastal dependent developments or uses.*

Coastal Act Section 30233 states in applicable part:

> *(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:*
>
> *(1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities...*
>
> *(4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities...*
>
> *(8) Nature study, aquaculture, or similar resource dependent activities.*

Coastal Act 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...*

As provided in the above-referenced sections, aquaculture, commercial fishing, and marine research are indeed priority uses under the Coastal Act. However, as detailed below, the Commission finds that the project does not qualify as one of these priority uses because, as presently proposed, the project is only at an idea or concept level, and so incomplete that it is prematurely before the Commission. Moreover, the Commission finds that even at this incomplete concept level, it is nevertheless clear that the project does not comply with relevant policies of the Coastal Act, as detailed below, and must be denied.

The amendment letter received May 17, 1999 (Exhibit 35) states:

> "The amended application seeks a permit for aquaculture, aquaculture research, commercial fishing facility and marine research as set forth in book J, JR, JT, K and L."

However, as of this writing, no "books K and L" have yet been received, so it is unclear whether there will be further changes in the application. Moreover, the drawings and descriptions of the project provided in books J, JR, JT are in some cases different and possibly conflicting (compare for example Exhibit 33, pg. 11, to Exhibit 36, pg. 4, which shows a "pipe and utility raceway,"

and "Thurston profile" not previously shown). Since the application states it is for development "as set forth in book J, JR, JT, K and L," inconsistencies within these submitted materials make it difficult, if not impossible, to define what precisely the proposed project is. As evidenced by the continuing submittal of revisions to this application, it is clear that the application is prematurely before the Commission.

To approve a project, the Commission requires an adequate description including maps, plans, photographs, etc., of the proposed development, project site and vicinity **sufficient to determine whether the project complies** with all relevant policies of the Coastal Act. The description of the development must also include any feasible alternatives or any feasible mitigation measures available which would substantially lessen any significant adverse impact which the development may have on the environment (Administrative Regulations section 13053.5). The submitted description of the "commercial fishing, aquaculture, marine research, and other coastal dependent uses," reproduced in Exhibits 33and 36, is little more than a list of some forty uses accompanied by sketches and text minimally describing some of the proposed uses. This information fails to provide sufficient meaningful detail of the proposed development to allow the Commission to make the required findings that this proposal complies with the Coastal Act. The material provides a very limited description or discussion of where specific uses would be located, how they would be designed, what specific facilities and equipment are proposed, and how such uses and facilities would function. For example: what is a "commercial boat drive-up smog check" and how would it operate? How would "commercial boat loading, bait boat loading and boat landing" operate considering this project is in the intertidal zone where the mean sea level provides only a few feet of draft, and for parts of the day the location is entirely out of the water? What exactly is a "commercial boat or owner evacuation point", and does it involve hoists or haul-out rails not shown on the diagrams? Would the "fish and bait holding area," "Red abalone research project," and "aquarium to demonstrate native marine life" share the same tank or the same water circulation system? Where would the water be drawn from, how will its quality be maintained as it passes through the development, and how and where will it be discharged? These are but a few of the questions raised, but not answered, by the amendment submittal.

For these reasons, the Commission finds that the limited and sometimes conflicting information provided in the amendments to the application regarding "commercial fishing, aquaculture, marine research, and other coastal dependent uses," does not demonstrate, nor provide a sufficient basis for the Commission to determine, that the proposed project can be found consistent with the relevant policies of the Coastal Act, and that the application must therefore be denied.

In addition, the project raises issues of the validity of specific uses as proposed:

a. **Aquaculture and Aquaculture Research Proposals Are Not Bona-Fide Aquaculture Uses**

Aquaculture: The application fails to demonstrate that the proposed project represents a bona-fide aquaculture use. Aquaculture operations require a license from the California Department of Fish and Game (DFG), but the application does not show that the proposed project has been granted such a license. Discharge of waters from an aquaculture facility requires review by the Regional Water Quality Control Board (RWQCB), but the application does not indicate that such review has been completed.

Because even the most basic elements of the project design are presented at such a sketchy level of detail, the Commission must find that application does not represent a credible aquaculture project. For example, the "typical inside tank" design submitted (figure J14, Exhibit 36, pg. 8) appears to be nothing more than a photocopy of Exhibit 6 of the staff report for Pacific Offshore Farms application No. E-98-17 showing the submerged plastic cages that operator proposes to suspend from open water rafts. The applicant appears to have simply altered the dimensions but has not provided any information why such a cage, designed for open water, would work within the enclosed tank the applicant proposes. The applicant's figure J15 (Exhibit 36, pg. 9), also re-labeled "typical inside tank," likewise appears to be merely copied from Exhibit 15 of the Pacific Offshore Farms staff report.

The "filtration" discussion and accompanying "schematic" are similarly inadequate. Although the applicant proposes to filter the water before intake and outlet from the tanks, he does not provide information on the type of filters, how much they can reduce the estimated load of detritus/fecal material, and any proposed maintenance regime to keep them in good working order. No information is provided on the potential benthic effects of the project's discharge. This discharge could present a problem. While the applicant proposes to rear far fewer abalone, the project location is deep inside the harbor, distant from the breakwater and harbor entrance area that was designated for aquaculture in part because it is an area of active water circulation and mixing. The applicant has not provided information on the waste assimilation capacity of the waters that would be affected by the project as proposed.

The relatively small number of abalone proposed (4000) also raises questions about whether the proposed project is a serious commercial venture. Other proposed abalone operations in the area plan to culture from 200,000 to 800,000 abalone (Exhibit 37, pg. 10). It appears that the more elaborate facilities proposed by the applicant would mean that unit production costs would be higher for the proposed project, yet the applicant provides no indication that any kind of financial feasibility study was done to determine if the project would be economically viable.

Moreover, it is unclear what exactly will be raised in the proposed project. At one point the application states the request is "to construct improvements to allow aquaculture of 4000 sabellid-free abalone obtained from certified sabellid-free stocks, and **4000 bivalves and gastropods**." (Book "JT", Exhibit 37, pg. 4.). No further information about these 4000 bivalves and gastropods is provided, nor any mention of what species they would be, nor what potential impacts or diseases might be associated with them.

Coastal Act Section 30222.5 states that "ocean front land that is suitable for coastal dependent aquaculture shall be protected for that use, and proposals for aquaculture facilities located on those sites shall be given priority." In September, 1994, the San Mateo County Harbor District ("SMCHD") designated an area approximately 500 yards by 750 yards (77.5 acres) in the northwest corner of the outer harbor, adjacent to the outer breakwater, as appropriate for aquaculture facilities. The proposed aquaculture operations, as shown in Plan J5 are not located within the area designated by the SMCHD as appropriate for aquaculture.

Aquaculture Research: The application (Book "JT", Exhibit 37 pg. 4.) states:

> "Aquaculture research project is to promote sabellid-free stocks of abalone by research for a biomarker to be used to detect the sabellid. Method described below...
>
> The type of detection methods to be tried are 'fluorescent antibody' tests to sabellid, and other sensitive tests...
>
> One of the research methods to be investigated is called ELISA, known as Enzyme-Linked Immunosorbent Assay [ELISA]. It is described in concept below, and more completely in the attached summary in this application. (see page 22-29)"

The application goes on to include an abstract of the ELISA procedure (Book "JT", Exhibit 37 pg. 4.), and, in following sections, two separate, identical copies of detailed ELISA protocols. In reviewing these materials it strongly appears that these tests are designed to be carried out in a laboratory, as they call for using culture plates with very specific growth media, incubators, centrifuges, dialysis units, microtiter plate readers, spectrophotometers or spectrofluorometers, vacuum aspirators, and a large variety of reagent chemicals and other laboratory equipment. Yet the application makes no mention of a laboratory where this proposed research would take place. It does not appear that the proposed development can actually accommodate the aquaculture research use that the application claims it would provide, and thus does not qualify as a bona-fide aquaculture research use.

b. Commercial Fishing: The application lists the following under "Commercial Fishing Facilities" in item J1 (Exhibit 33, pg. 4-5), as shown in figures J2, J3, J4, and "Plan J6" (Exhibit 36, pgs. 6, 7, 8 and 10):

> Commercial bait and live bait station
> Comm boat loading, bait boat loading, boat landing
> Comm boat drive-up smog check (electronic)
> Fish and bait holding area for shipment
> Comm boat vertical evacuation point, tsunami
> Comm boat vertical evacuation point, Pacific storm
> Boat vertical evacuation point, El Nino storms
> Owner vertical evacuation point, Pacific Storms

The application does not demonstrate any current need for such facilities. More fundamentally, the project site is in an area where the broad intertidal zone has a relatively small gradient and extends far seaward. Consequently, at the higher tides, the water may rise to the +6.3-foot level indicated in the application's drawings, but for a substantial amount of the time, the area adjacent to the proposed "commercial fishing deck or ... landing or tie-down point" indicated in figure J3 (Exhibit 33, pg. 7) will be out of the water. One indication of this is provided in the applicant's "Lawn-Chair Exhibit" (Exhibit 38, pg. 11), where the applicant demonstrates that area is high and dry 250 feet south of the proposed commercial fishing deck and landing. The application does not demonstrate how such a development could be a viable commercial fishing facility with such limited draft at even the highest tides, and significant periods where commercial fishing vessels, even the illustrated "shallow draft skiffs," could not reach the facility at all. The fact that the Pillar Point Harbor facility, a fully functional commercial harbor, with adequate draft and a full complement of support facilities, is already available within the breakwater makes it extremely doubtful that the proposed facility is an economically realistic or viable commercial fishing use. No substantive evidence is provided in the application to demonstrate that the project as proposed is a bona-fide commercial fishing use.

c. Conclusion

The Commission therefore finds that for the reasons set out above, the proposed project cannot be considered a bona fide aquaculture, aquaculture research, or commercial fishing project that qualifies as an allowable use under Coastal Act sections 30222.5, 30233 and 30235, and must be denied.

7. Marine Resources

Coastal Act Section 30230 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.*

Coastal Act Section 30231 states:

> *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.*

The application (Exhibit 37 Book "JT", pg. 4) proposes:

> "aquaculture research… to find a biomarker which can be used for 'detection' of sabellid…

However, aside from including the ELISA laboratory protocols previously discussed, the application does not specify how this research will be carried out. The sabellid polychaete worm parasitizes abalone and other mollusks. The worm damages its host by interfering with natural growth. While infestations do not directly affect the quality of the abalone's meat, they can deform the shell to the point where the animal's growth slows or virtually ceases.

The sabellid was spread rapidly through transfer of infested stock to virtually all abalone mariculture facilities in California by the mid-1990's. The most promising eradication methods currently focus on controlling the spread of infestation. Larvae can spread by kelp, equipment, wet hands, and infested shells. Spread of the sabellid is of particular concern because it is an introduced species with a high potential for successful invasion in California. Sabellid worms are capable of infesting several native species of mollusks in addition to abalone, creating a threat of spread from infested aquaculture facilities into wild populations in state waters.

It appears it is the intent of the application to provide for work with sabellid worms or sabellid-infested abalone in the proposed "aquaculture tank" to determine if sabellid worms can be detected by the tests described. The application states (Exhibit 37, "Book JT", pg. 4):

> The sabellid-free abalone are required for normals and controls to verify sabellid-free stocks do not produce false-positive test results."

The statement that "sabellid-free abalone are required for normals and controls" implies that sabellid-infested abalone would be the principal subject of the research. However, introducing such a population to the area is inconsistent with protection of marine resources and biological productivity, and maintaining "healthy populations of all species of marine organisms" as required by Coastal Act sections 30230 and 30231.

The application also proposes "...tanks with sea water ports for incoming and outgoing seawater, which will be fixed to filters..." (Exhibit 37 Book "JT", pg. 7). It provides no demonstration of how these intakes and filters would be designed to minimize adverse effects of waste water discharges and entrainment as required by Coastal Act section 30231. Nor does the application show where these intakes and outlets would be located, whether they would require excavation in the intertidal or subtidal zone or lie above the surface, and how they would be designed to protect marine resources.

For the reasons discussed above, the Commission finds that the application does not demonstrate that the project will protect marine resources and sustain the biological productivity of coastal waters; therefore the project is not consistent with Sections 30230 and 30231 and must be denied.

8. Fill in Coastal Waters and Wetlands.

The Coastal Act defines fill as including *"earth or any other substance or material ... placed in a submerged area."* The proposed project includes the placement of fill in open coastal waters or wetlands in the form of previously placed rock, dirt and concrete rubble, and proposed construction of a tank-like structure to accommodate the approximately forty uses listed in the projects description section above (the aquaculture/commercial fishing/research proposal).

Section 30233 of the Coastal Act addresses the placement of fill within open coastal waters and wetlands. 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.

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 fill projects may be allowed in coastal waters or wetlands. For analysis purposes, the limitations can be grouped into four general categories or tests. These tests are:

a. that the purpose of the fill is for one of the eight uses allowed under Section 30233, to serve coastal-dependent uses, or to protect existing structures or public beaches in danger from erosion; and

b. that the project is designed to eliminate or mitigate adverse impacts on local sand supply; and

c. that the project has no feasible less environmentally damaging alternative; and

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

a. Non-Allowable Use

As noted above, the first test for a proposed fill to be approved under Chapter 3 of the Coastal Act is whether the fill is for one of the eight uses allowed under Section 30233, to serve coastal-dependent uses, or to protect existing structures or public beaches in danger from erosion.

The Commission has found above that the project as proposed does not represent a bona fide aquaculture, research or commercial fishing use as identified in Section 30233. Since the project is not for one of these uses, or the other uses listed in this section, it is not allowed under Section 30233, and must therefore be denied. The Commission notes that the present application treats all existing fill as an integral part of the aquaculture/ commercial fishing/ research structure. Therefore, the permit denial for the proposed project extends to include all previously placed fill.

As noted previously, the existing fill at the site for which the applicant is seeking authorization was originally proposed as fill for a seawall. The applicants subsequently amended the application to recharacterize the fill as part of an aquaculture/commercial/fishing/research facility. Even if the fill were analyzed as a seawall, however, the fill would not be for an allowable use under Sections 30233 and 30235.

Placement of the fill as a seawall is not consistent with Section 30233, as it is not one of the eight uses allowable uses for fill under Section 30233(a).

In addition, the placement of the fill as a seawall is not "required to protect an existing structure." Aside from the existing riprap, there is no existing structure on the site. The Commission notes that the Coastal Development Permit issued by San Mateo County on July 18, 1991 for the as-yet-unbuilt chandlery was conditioned upon moving the structure 30 feet north of the top of the bluff to avoid the need for a shoreline protection structure. The approval was based in part on the fact that the soils and geotechnical reports submitted by the applicants "determined that the engineering of the proposed building would ensure the building's stability for a minimum of 50 years on this site." In other words, even if there were a "existing structure" on the site, the applicant's own technical evaluations represented that there would be no need for a shoreline device to protect it.

The applicants' contention that the seawall was necessary to protect whatever riprap was previously located on the site is untenable for three reasons. Most importantly, there is no record that this pre-existing riprap ever received a permit; it is therefore not a legal structure necessitating protection. Secondly, under the Coastal Act, the purpose of such devices is to protect the structures behind them, not simply to exist independently on their own. There was no such structure being protected. Third, even if the riprap was validly protecting something, and began to fail, the appropriate action would be to evaluate rebuilding, re-engineering or re-inforcing it, rather than building something separate seaward of it to "protect" it.

With regard to whether the riprap fill is necessary to serve a coastal dependent use, the proposed chandlery building that is yet to be built on the subject parcel is not a coastal dependent use. Section 30101 defines "coastal-dependent uses" as follows:

> *"Coastal-dependent development or use" means any development or use which requires a site on, or adjacent to, the sea to be able to function at all.*

The as-yet-unconstructed building that would be located on the subject parcel is described in the conditions of approval of CDP 90-82 issued by the County of San Mateo as a building that is to "be used exclusively as a chandlery for the resale of nautical equipment." Although there may be certain advantages to locating a marine chandlery near an existing harbor, such as Pillar Point Harbor, such a commercial structure does not "requires a site on, or adjacent to, the sea to be able to function at all." Many businesses selling nautical or marine equipment do not have sites on or adjacent to the sea and function quite well. The highly successful West Marine chain of marine supply stores is but one example. In fact, the San Jose yellow pages show ten such businesses in inland locations. Therefore, the Commission also finds that the riprap fill does not serve a coastal dependent use.

Coastal Act section 30235, in pertinent part, requires the Commission to approve properly designed "revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and

other such construction ... when required to serve coastal-dependent uses..." However, in this case, the proposed fill is not necessary to serve coastal dependent development in this manner for several reasons.

First, as previously described, no bona-fide aquaculture, commercial fishing, research or other coastal dependent use is provided in the project as proposed. Where there are no such coastal dependent uses, fill cannot be required to "serve" them.

Secondly, even if the proposed "aquaculture/commercial fishing/research uses" were bona fide coastal dependent uses, the fill is neither proposed, nor required, to serve such coastal dependent uses. The fill for which authorization is being sought has no meaningful functional relationship to the "aquaculture/commercial fishing/research" structure. For example, the aquaculture and commercial storage aspects of the project are proposed to be carried out in a tank fed by a seawater supply delivered by pipe. Such an operation could be carried out on dry land (perhaps as an alternative to the proposed chandlery building the applicant proposes on the landward part of the site). It does not require fill at all.

The application does indicate that water is designed to flow over the existing riprap for aeration prior to entering the proposed tanks. However, this does not demonstrate the riprap is required to serve the proposed use. Other forms of aeration could achieve the same result without requiring the use of the riprap. Even if a system employing riprap were used, the existing fill could be reduced if the riprap wall were relocated closer to the original bluff edge line.

Finally, the proposed riprap fill is not proposed to protect a public beach in danger from erosion.

Therefore, the Commission finds that the project does not meet the requirement of the Coastal Act Sections 30233 and 30235 for permissible uses for fill of open coastal waters or wetlands, and is therefore inconsistent with the Chapter 3 policies of the Coastal Act and accordingly must be denied.

No further analysis of the project is required to find the development inconsistent with Sections 30233 and 30235 of the Coastal Act. However, the Commission notes that based on information provided, even if the proposed project met the test for permissible uses for fill set out above, it has not been adequately demonstrated that other tests for compliance with the fill policies of the Coastal Act have been met, as discussed below.

b. Protection of Sand Supply

In addition to the limitations on the use of the riprap fill discussed above, Section 30235 mandates that riprap revetment and similar fill shall only be approved if it is designed to

eliminate or mitigate adverse impacts on local sand supply. Similarly, where shoreline structures for commercial fishing and aquaculture are allowable, Section 30233(a) requires they be designed to be the least environmentally damaging feasible alternative, and provide feasible mitigation measures to minimize adverse environmental effects, including effects on sand supply.

There are a number of adverse impacts to public resources associated with the construction of shoreline structures. The natural shoreline processes referenced in Section 30235 of the Coastal Act, such as the formation and retention of sandy beaches, may be altered by construction of a riprap development, since bluff retreat is one of several ways that beach area and beach quality sand is added to the shoreline. This retreat is a natural process resulting from many different factors such as erosion by wave action causing cave formation, enlargement and eventual collapse, saturation to the bluff soil from ground water causing the bluff to slough off and natural bluff deterioration. When a riprap development is constructed on the beach at the toe of the bluff, it directly impedes these natural processes.

Many of the effects of development on a beach are temporary or difficult to distinguish from all the other actions which modify the shoreline. Nevertheless, some of the effects which shoreline development may have on natural shoreline processes can be quantified. Three of the effects from such development which can be quantified are: 1) loss of the beach area on which the fill is located; 2) the long-term loss of beach which will result when the back beach location is fixed on an eroding shoreline; and 3) the loss of material which would have been supplied to the beach if the shoreline continued to erode naturally.

The applicants were asked to provide information on the effects of the project on shoreline processes (Exhibit 12, item 5). The following response was provided:

> "Sand loss is not an issue within the general harbor area, since sand is delivered each year into the harbor and there is "sand excess", not sand loss. The rock slope protection helps to prevent worsening of this excess condition. If sand is available within the harbor, transporting it to the toe of the rock slope protection could be done as a way to do beach nourishment. This would not be required structurally. If it is contemplated, or desirable to the Commission, the transport of sand (beach nourishment) should be included as an optional permitted activity."

This information provides no substantive evidence that the proposed project is designed to eliminate or mitigate adverse impacts on local sand supply. Therefore, the Commission finds that the project does not meet the requirement of the Coastal Act Section 30253 with regard to impacts on sand supply. Therefore even if the proposed fill was required to protect an existing structure or serve a coastal dependent use, the proposed fill need not be approved under Section

the Coastal Act Section 30233 because it fails to provide feasible mitigation measures to minimize adverse environmental effects on sand supply

c. Alternatives

Coastal Act Section 30233 does not allow fill of coastal waters if there is a feasible, less environmentally damaging alternative to the project. Alternatives to the project as proposed must be considered before a finding can be made that a project satisfies this provision of Section 30233.

The application provides no evaluation of whether there are feasible, less environmentally damaging alternative to the project. The Commission has found above that the project cannot be approved as it does not provide for one of the uses allowable under Section 30233(a).

However, even if the proposed project were considered to provide the aquaculture, research, commercial fishing and educational uses specified in the application, under Section 30233(a), such uses are permitted only where there is no feasible less environmentally damaging alternative to fill of coastal waters or wetlands, and where feasible mitigation measures have been provided to minimize adverse environmental effects. In this case, there are such feasible, less environmentally damaging alternatives to the project as described in the following sections.

(1). Aquaculture

The project as proposed appears to provide for aquaculture to be carried out in a tank fed by a seawater supply presumably extracted by pump and pipeline system from somewhere in the Harbor or nearby ocean. Such an operation can be located on dry land, and does not require additional fill in the tidal portion of the site at all. The application indicates that water is designed to flow over the existing riprap to provide aeration. No information is provided about how much aeration needs to be achieved, and whether the proposed arrangement will provide that amount. In any case other forms of aeration could achieve the same result without requiring the use of the riprap. Even if a system employing riprap were used, the existing fill could be reduced if the riprap wall were relocated closer to the original bluff edge line.

The aquaculture projects currently under Commission consideration in the Harbor (E-98-17, through 20) also illustrate another alternative that would provide for abalone aquaculture with much less fill of coastal waters required per unit of abalone production. Pacific Offshore Farms, for example, proposes to raise 200,000 abalone from rafts in a total lease area of 14,880 sq. ft., or about 13.4 abalone per square foot of lease area. When calculated based upon the surface area of the rafts themselves, this ratio rises to 200,000 abalone per 2,948 sq. ft., or 67.8 abalone/sq. ft. The subject application states that "tanks will be constructed under a working deck as shown in

The subject application states that "tanks will be constructed under a working deck as shown in section J-10, and Plan J-6 and J-5." These figures show "aquaculture" extending the length of the proposed addition. The structure proposed in these drawings would cover about 1,050 sq. ft. of tidal area. The application proposes to raise 4,000 abalone in this structure, or about 3.8 abalone per sq. ft. of tidal area displaced, much more fill per unit of production than a typical proposal using rafts.

Moreover, the amendments to the application have withdrawn the description of the project as a seawall, and defined the entire project, including all previous fill, as part of the proposed "aquaculture/ commercial fishing/ research" project. If the fill placed pursuant to the Emergency Permit (derived by comparing the maps in Exhibits 5 and 10) is considered, that would add about 2400 sq. ft. to the proposed fill for the new "aquaculture" structure itself, for a total of 3,450 sq. ft. When this extent of fill is included, the ratio of abalone to fill falls to 4,000/3,450sq. ft., or about 1.16 abalone per sq. ft., a much less efficient use of fill.

Finally, these figures do not reflect any fill that may have been placed prior to 1991, or fill that would be required for laying intake or outfall pipes, which would could cause additional disturbance or displacement of intertidal and subtidal areas not specified in the application.

Considering that fill is not needed for the proposed type of operation at all, the proposed project can not be found to provide the least environmentally damaging feasible alternative.

(2). Research

The research proposed in the application could be carried out in existing lab without further fill.

(3). Commercial Fishing

The commercial fishing facilities proposed in the application are more efficiently and effectively provided in the existing Pillar Point Harbor facility. In contrast to the proposed site, Pillar Point Harbor has much more adequate draft to accommodate commercial fishing uses, and extensive existing infrastructure to support them. Therefore, the proposed project cannot be found to provide the least environmentally damaging feasible alternative for providing commercial fishing facilities.

(4). Education

Providing the proposed aquaria for visitor viewing does not require fill. As with the aquaculture tanks, the proposed aquarium tanks could similarly be installed onshore. As described these aquaria might even be integrated into the proposed commercial building the applicant plans to

build, thus avoiding the "security' problems he cites as a reason for limiting access to the project (Exhibit 37, Book "JT," pg. 18). Therefore, the proposed project cannot be found to provide the least environmentally damaging feasible alternative for providing aquaria.

(5). Seawall Alternatives

As noted previously, the existing fill at the site for which the applicants are seeking authorization was originally proposed as fill for a seawall. The applicants subsequently amended the application to recharacterize the fill as part of an aquaculture/commercial/fishing/research facility. Even if the fill were analyzed as a seawall, however, the fill would not be for an allowable use under Sections 30233 and 30235.

The applicants' proposed fill extends a great distance into the tidal area (see water line shown in Exhibit 26, Exhibit 25). As a seawall, the fill is not the least environmentally damaging alternative. A re-engineered riprap revetment and a vertical seawall, both placed against the natural bluff as it existed in 1991 are feasible alternatives that would involve less encroachment on to the beach. The applicants' geotechnical report for the San Mateo County-issued CDP for the chandlery explicitly lays out exactly how either of these alternatives could be accomplished (excerpted in Exhibit 25). It states in part that to upgrade the then-existing riprap to more permanent protection, the riprap should be removed from the existing slope and stockpiled to the side, any massive chunks of concrete should be broken up, the exposed slope should be cut back to a 2:1 gradient, any areas of soft or loose soil should be compacted, and specified erosion fabric, filter material and riprap material installed.

Because the alternatives of a re-engineered riprap revetment and a vertical seawall, both placed closer to the natural bluff, are all feasible, less environmentally damaging alternatives to placement of the proposed fill as a seawall, the Commission finds that placement of the proposed fill as a seawall is not consistent with the requirement of Section 30233 of the Coastal Act that no fill project be approved if there is a feasible, less environmentally damaging alternative.

7. Visual Resources.

Section 30251 of the Coastal Act states that the scenic and visual qualities of coastal areas be considered and protected as a resource of public importance, and requires in applicable part 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, and to be visually compatible with the character of surrounding areas.

The primary project impacts to coastal visual resources will result from the 15-20+ foot-high riprap wall, and the structure attached in front of it.

The proposed development fails to protect views to and along the coast, since it extends well on to the beach and cuts off views along this section of beach that would otherwise be available to beach users. The massive addition of rock and other fill materials creates a huge man-made structure that overwhelms the natural landforms. Other alternatives to the proposed aquaculture/ commercial fishing/ research use would not require any fill and would avoid the visual impacts of the project. Even if proposed as a seawall, there are other alternatives, such as a vertical seawall nearer the natural shoreline, or a smaller revetment, as discussed above, which are available to minimize the alteration of the landforms. Such a vertical seawall might also be designed to incorporate color and texture to be more compatible with natural landforms in the area. The proposed project is not visually compatible with the character of the surrounding area, which still contains large stretches of unreveted shoreline. Even compared to the other portions of the area that have shoreline protection, the proposed structure is much larger in mass, height and extension onto the beach than other nearby devices, and visually stands out.

The Commission therefore finds that the project as proposed is not consistent with Coastal Act Section 30251 requirements that development be designed to protect public coastal views and be visually compatible with the character of the surrounding area.

8. Alleged Violation.

According to the Commission's analysis of historical photographs and other documentation described in this staff report, as discussed in the "Unpermitted Fill" section above and incorporated by reference herein, substantial amounts of fill development has been placed at this site. Some of this development may have been performed in violation of the Coastal Act permit requirements. As discussed in the above findings, the proposed development is inconsistent with the Sections 30233 and 30235 of the Coastal Act. The fill covered an as-yet undetermined area of open coastal waters or wetland, thereby eliminating the habitat value of this area. Each day that the fill remains in place causes on-going resource damage to this area. Although unpermitted development may have taken place prior to submission of a coastal development permit application, the permit application, consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Action on the permit does not constitute a waiver of any legal action with regard to the alleged violation nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit.

9. California Environmental Quality Act (CEQA).

Section 13096 of the California Code of Regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as

conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) 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 effects which the activity may have on the environment.

The proposed project is not consistent with the policies of the Coastal Act that restrict the filling of coastal waters and wetlands, or the policies that require development to be designed to protect public views and be visually compatible with the character of the surrounding area. 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. Therefore, the Commission finds that the proposed project can not be found consistent with the requirements of the Coastal Act and to conform to CEQA.

EXHIBITS:

1. Regional Location Map
2. Site Location Map
3. Assessor Parcel Map
4. Site Parcel Map
5. Site Plan
6. Emergency Permit 1-98-044G
7. County staff report, CDP 90-82
8. Boundary Determination 24-98
9. Executive Director's Letter on Exemption Request, April 19, 1999
10. 1991 Location of Seawall.
11. Approximate Development Since 1991
12. Request for Information Needed for Filing Application, November 19, 1998
13. Applicant's Response to Commission Request of November 19, 1998
14. Proposed New Riprap, cross-section
15. Proposed New Riprap, gutter detail
16. Applicant's May 1995 Request for Waiver
17. Original Project Proposal
18. Alternative Variation, Proposed New Riprap, cross-section
19. Revetment Alternatives
20. Declaration of Thomas Steele
21. Declaration of Robert Johnson
22. Declaration of David Chen
23. Excerpt, Bay Area Geotechnical Group, Feb. 21, 1991
24. April 19, 1993 aerial photo
25. May 5, 1998 USGS photo
26. Site before and after recent development
27. USGS drawing of shoreline, riprap
28. County Building Permit and Chandlery Elevations
29. Noble Engineering Letter
30. April 26-28, 1999 Amendment to Application
31. May 11, 1999 49-day waiver and amendment statement
32. May 11, 1999Amendment to Application
33. "Book J"
34. May 11, 1999 Letter from Terry Burnes, County of San Mateo
35. May 17, 1999Amendment to Application
36. "Book JR" excerpts
37. "Book JT" excerpts
38. May 18, 1999 Applicant's Summary of Amendments

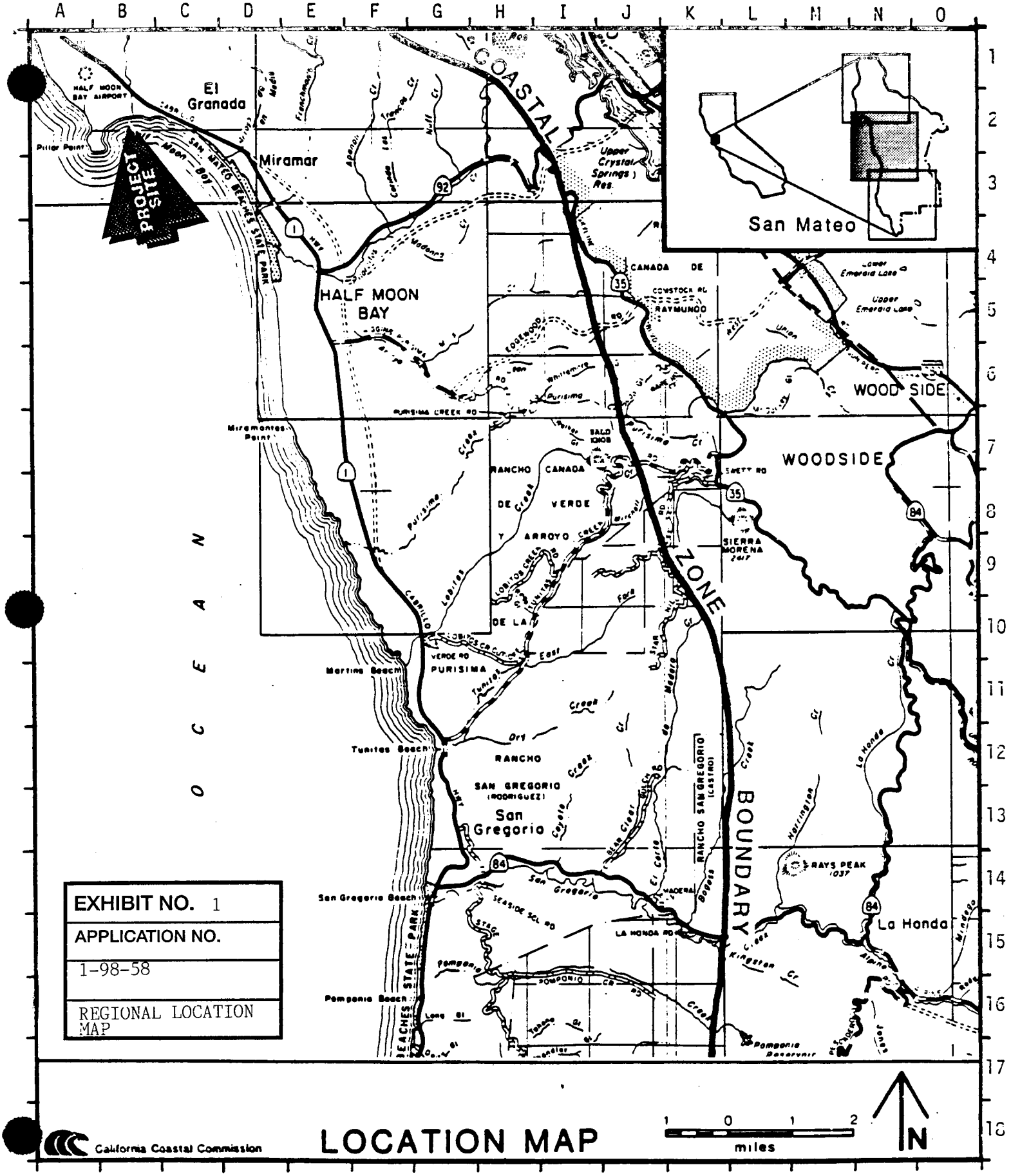


EXHIBIT NO. 1
APPLICATION NO.
1-98-58
REGIONAL LOCATION MAP

California Coastal Commission

LOCATION MAP

1 0 1 2 miles

N

County of San Mateo

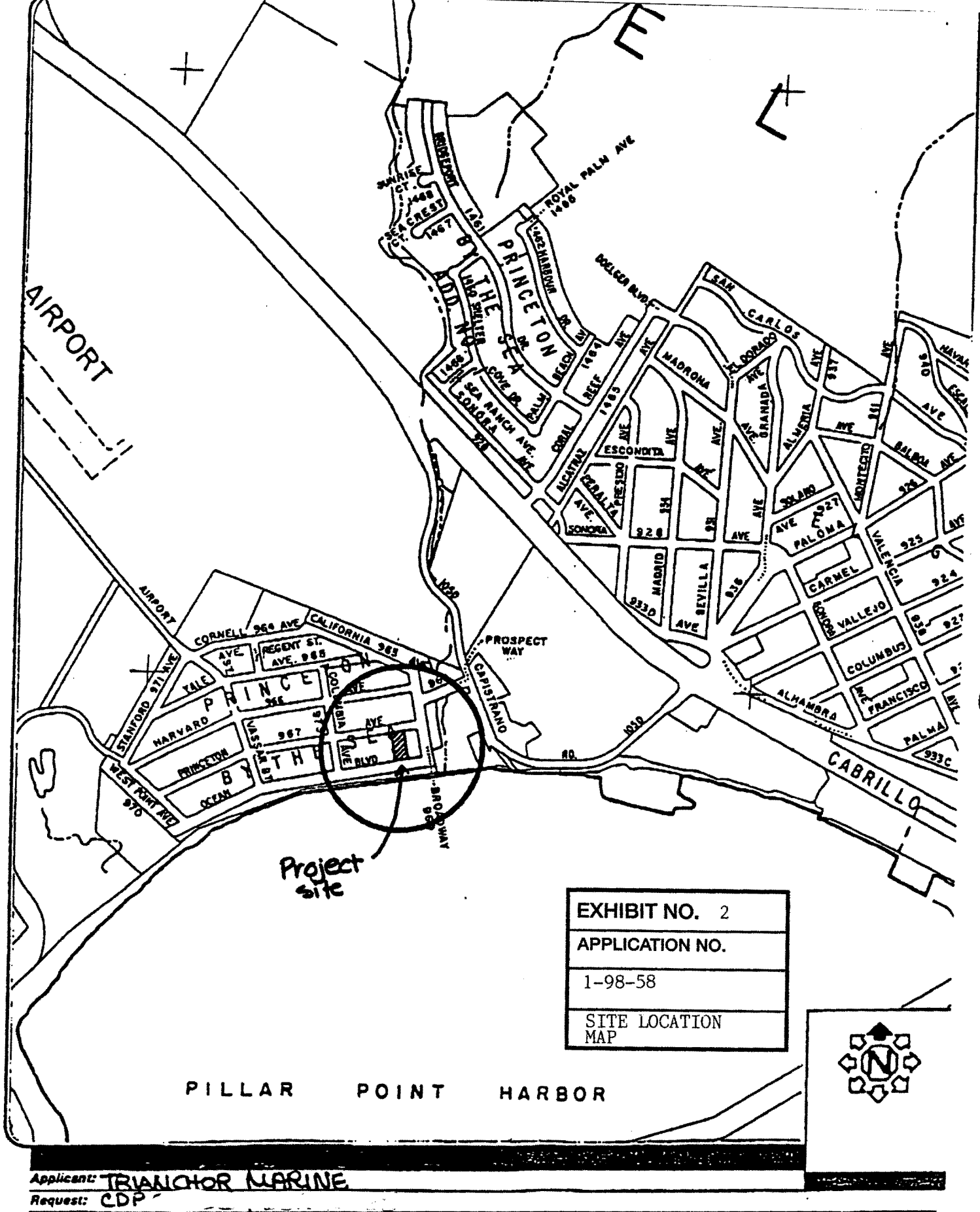
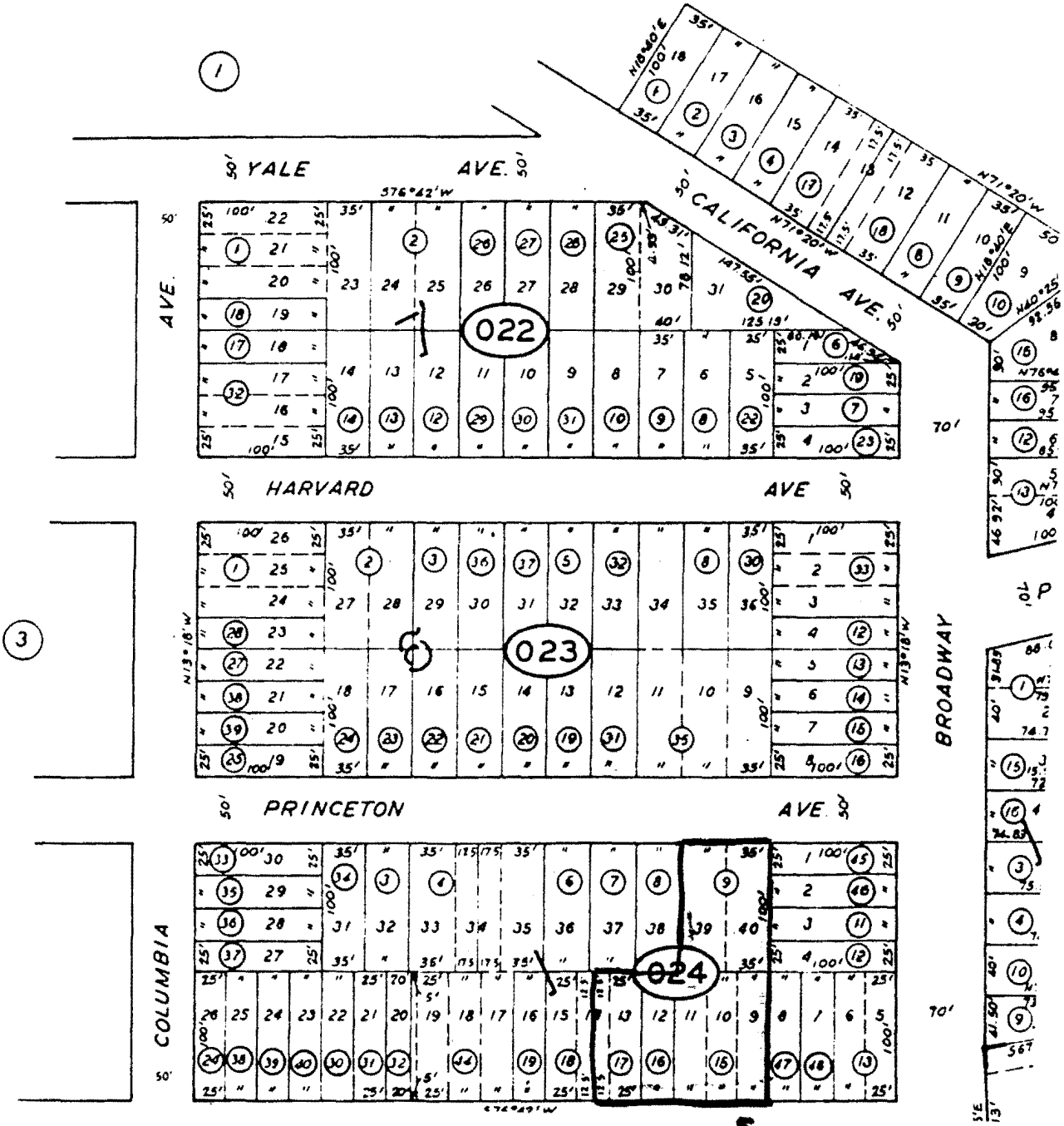


EXHIBIT NO. 2
APPLICATION NO.
1-98-58
SITE LOCATION MAP

Applicant: TRIANGLE MARINE

Request: CDP



Project Parcels

Assessors Parcel Map

ATTACHMENT #2B

EXHIBIT NO. 3
APPLICATION NO.
1-98-58
ASSESSOR PARCEL MAP

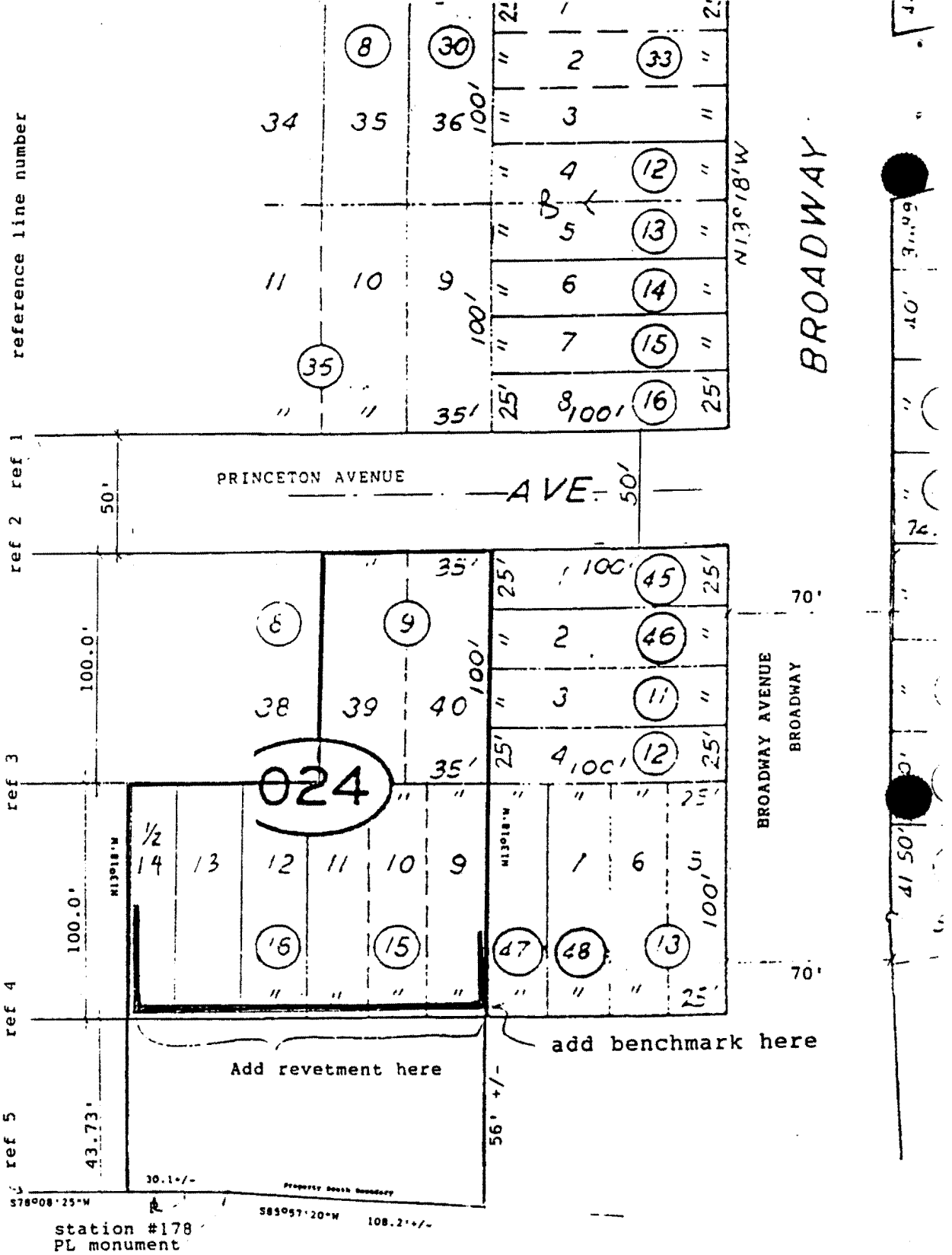


EXHIBIT NO. 4
APPLICATION NO.
1-98-58
SITE PARCEL MAP

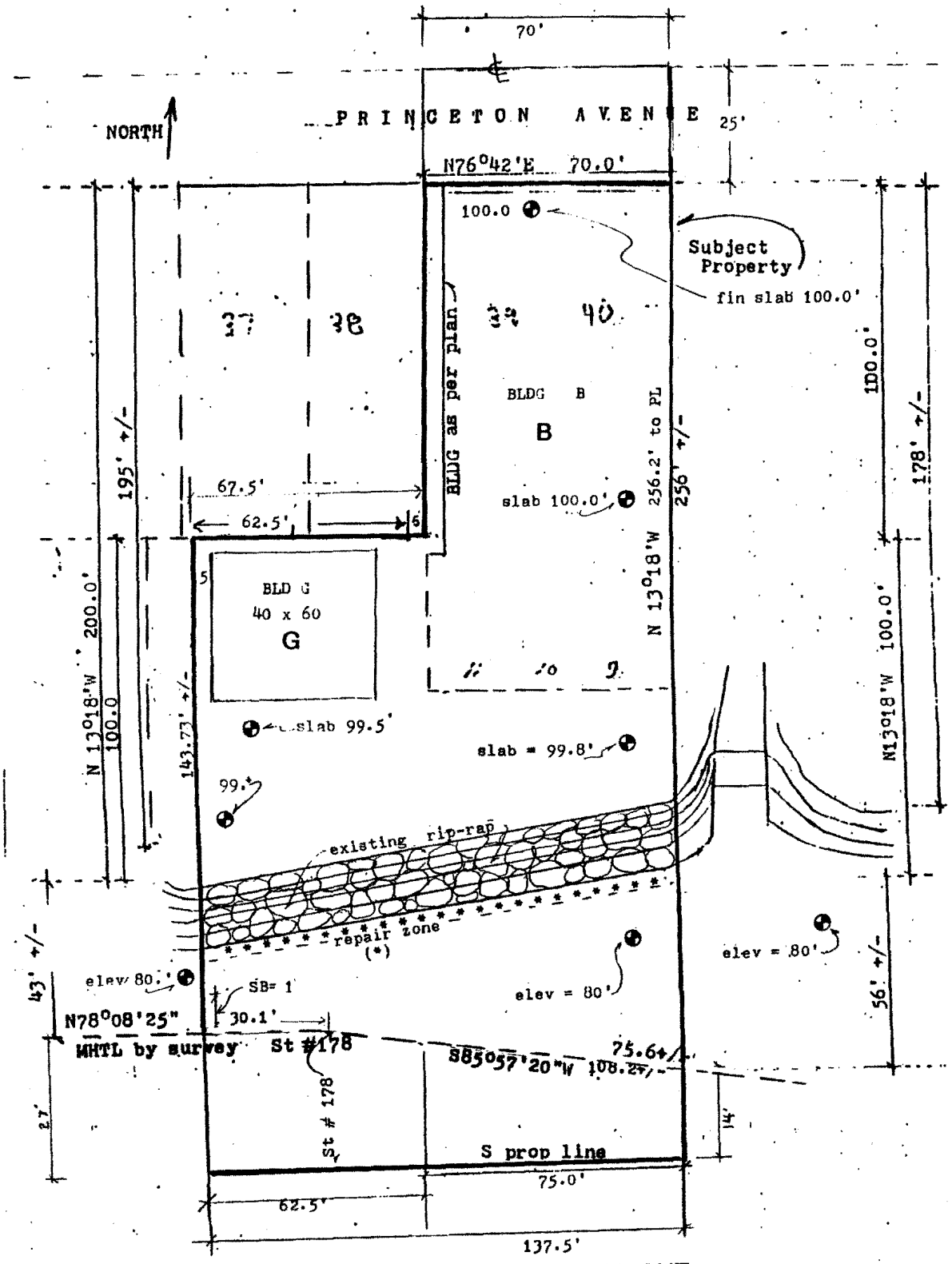


Exhibit 2 **REPAIR PLAN 380 PRINCETON AVE**

Repair/Grading Plan (no cutting involved)

TOPOGRAPHIC FEATURES (repair zone)

1. each contour line = 3'
2. repair zone for rip-rap marked (*)
3. repair zone set back from MHTL station # 178 by 1' min (SB)
4. est vol new rip-rap is 98 cu yds.
5. section is Exhibit #1

EXHIBIT 2

EXHIBIT NO. 5
APPLICATION NO.
1-98-58
SITE PLAN

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

EMERGENCY PERMIT

Stan Furmanski
Trianchor Marine
1015 Gayley Avenue, #256
Los Angeles, CA 90024

Date: May 15, 1998
Emergency Permit No. 1-98-044-G

LOCATION OF EMERGENCY WORK:

Bluff face at the south end of properties at 350 and 380 Princeton Avenue, Princeton, San Mateo County (APN(s) 047-024-150, 047-024-160, 047-024-170)

WORK PROPOSED:

Placement of additional rip-rap to add to existing rip-rap and erosion control to prevent severe damage and irreparable harm to the property

This letter constitutes approval of the emergency work you or your representative has requested to be done at the location listed above. I understand from your information and our site inspection that an unexpected occurrence in the form of **extreme ocean storms and rain storms associated with El Nino that are causing unusual erosion and threatening irreparable harm to the property,** requires immediate action to prevent or mitigate loss or damage to life, health, property or essential public services. 14 Cal. Admin. Code Section 13009. The Executive Director of the Coastal Commission hereby finds that:

(a) An emergency exists which requires action more quickly than permitted by the procedures for administrative or ordinary permits and the development can and will be completed within 30 days unless otherwise specified by the terms of this permit;

(b) Public comment on the proposed emergency action has been reviewed if time allows;

(c) As conditioned, the work proposed would be consistent with the requirements of the California Coastal Act of 1976.

The work is hereby approved, subject to the conditions listed on the attached page.

Sincerely,

PETER M. DOUGLAS
Executive Director

By: ROBERT S. MERRILL
District Manager

cc: Local Planning Department

Enclosures: 1) Acceptance Form; 2) Regular Permit Application Form

EXHIBIT NO. 6
APPLICATION NO.
1-98-58
EMERGENCY PERMIT 1-98-044G (1 Of 4)

1. The enclosed Emergency Permit Acceptance form must be signed by the PROPERTY OWNER and returned to our office within 15 days.

2. Only that work specifically described in this permit and for the specific property listed above is authorized. Any additional work requires separate authorization from the Executive Director.

3. The work authorized by this permit must be completed within 45 days of the date of this permit.

4. Within 30 days of the date of this permit (i.e., by June 14, 1998), the permittee shall apply for a regular Coastal Permit to have the emergency work be considered permanent. If no such application is received, the emergency work shall be removed in its entirety within 150 days of the date of this permit (i.e., by October 12, 1998), unless this requirement is waived in writing by the Executive Director.

5. In exercising this permit, the applicant agrees to hold the California Coastal Commission harmless from any liabilities for damage to public or private properties or personal injury that may result from the project.

6. This permit does not obviate the need to obtain necessary authorizations and/or permits from other agencies.

7. All construction debris and leftover construction materials shall be promptly removed upon the completion of emergency bluff stabilization work.

Condition #4 indicates that the emergency work is considered to be temporary work done in an emergency situation. If the property owner wishes to have the emergency work become a permanent development, a Coastal permit must be obtained. A regular permit would be subject to all of the provisions of the California Coastal Act and may be conditioned accordingly. These conditions may include provisions for public access (such as an offer to dedicate an easement) and/or a requirement that a deed restriction be placed on the property assuming liability for damages incurred from storm waves.

If you have any questions about the provisions of this emergency permit, please call the Commission Area Office.

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

May 15, 1998

Stan Furmanski
Trianchor Marine
1015 Gayley Avenue, #256
Los Angeles, CA 90024

PROPERTY LOCATION: 350 and 380 Princeton Avenue, Princeton, San Mateo County, APNs 047-024-150, 047-024-160 and 047-024-170

EMERGENCY PERMIT NO: 1-98-044-G

Dear Mr. Furmanski:

Enclosed is Emergency Permit No. 1-98-044-G authorizing the placement of rip-rap and erosion control to prevent severe damage and irreparable harm to the parcels at 350 and 380 Princeton Avenue, Princeton, San Mateo County (APNs 047-024-150, 047-024-160 and 047-024-170). As I informed you when I verbally issued the Emergency Permit in February, this permit is temporary and subject to conditions. Condition #4 specifies that the emergency work is considered to be temporary work done in an emergency situation. If you wish to have the emergency work become a permanent development, a regular Coastal Permit must be obtained. A regular permit would be subject to all of the provisions of the California Coastal Act and may be conditioned accordingly. These conditions may include provisions for public access (such as an offer to dedicate an easement), and/or requirements that a deed restriction be placed on the property assuming liability for damages incurred from storm waves, that the project be appropriately designed, and that the impacts on beach and tidelands be minimized.

For your convenience, a Coastal Development Permit application form is enclosed, along with a copy of a December 13, 1993 memorandum for applicants for shorefront development that details the more specific application information we require for shoreline protective works such as your project. In addition to the items specified in the application form, we will also need a site plan and any available photos clearly delineating where the bluff line existed prior to the erosion that prompted your Emergency Permit request, as well as where it existed at the time you began your emergency work.

As noted in Condition #4, these materials should be submitted to us by June 14, 1998. We also understand that work has recently been undertaken on a cement or concrete pad that reportedly extends over the newly placed fill. Such development is not part of the work authorized by Emergency Permit No. 1-98-044-G. Please provide us within the next 15 days a copy, including plans, of any Coastal Development permit authorizing this or other related work on the property. Please note that pursuant to Coastal Act Section 30600, any person wishing to perform or undertake any development in the coastal zone is required to obtain a coastal development permit authorizing such development. Development which exceeds that authorized in a coastal development permit is a violation of the Coastal Act (PRC §30000 et.seq.).

Development is defined under the Coastal Act (Section 30106) as:

> "Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density of intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511).
>
> As used in this section, "structure" includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line. (PRC §30106).

Coastal Act Section 30820(a) provides that any person who violates any provision of the Coastal Act may be subject to a penalty not to exceed $30,000. Section 30820(b) states that a person who intentionally and knowingly undertakes development that is in violation of the Coastal Act may be civilly liable in an amount which shall not be less than $1,000 and not more than $15,000 per day for each day in which the violation persists.

Please contact me or Jack Liebster, our analyst for the San Mateo County coastline, at our North Coast Area Office, (415) 904-5260, to discuss the next steps in this matter.

Sincerely,

Robert S. Merrill

ROBERT S. MERRILL
District Manager

Enclosures.

cc: Nancy Cave, Statewide Enforcement Supervisor
Gary Warren, San Mateo County Code Compliance Officer

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JL/ltc

COUNTY OF SAN MATEO

PLANNING AND BUILDING DIVISION

Date: July 18, 1991

To: Zoning Hearing Officer

From: Planning Staff

Subject: Consideration of a Coastal Development Permit and Design Review pursuant to Sections 6285 and 6565.4, respectively, of the Zoning Regulations to allow the construction of a marine-related chandlery in Princeton.

File Numbers: CDP 90-82; DSR 90-55 (Trianchor Marine)

PROPOSAL

The applicant proposes to construct a three-story, 21,000 sq. ft. marine chandlery warehouse with 24 covered parking spaces on a 14,500 sq. ft. ocean front parcel at 380 Princeton Avenue in Princeton.

RECOMMENDATION

That the Zoning Hearing Officer deny CDP 90-82 and DSR 90-55 by making the findings listed in Attachment A of this report.

BACKGROUND

Report Prepared By: Janice Jagelski

Applicant: Stanley Furmanski

Owner: Trianchor Marine

Location: 380 Princeton Avenue, Princeton-By-The-Sea

APNs: 047-024-090, 047-024-150

Existing Zoning: CCR (Coastside Commercial Recreation); but at time application was filed, the MAR/DR (Marine Related Industrial/Design Review) was in effect.

General Plan Designation: Marine Related Industrial

Sphere-of-Influence: Half Moon Bay

Existing Land Use: Vacant

Environmental Evaluation: Exempt, Class 3; Construction of Small Structures

EXHIBIT NO. 7
APPLICATION NO. 1-98-58
COUNTY STAFF REPORT, CDP 90-82
(Page 1 of 19)

Setting: The 14,500 sq. ft. parcel is located on the first block between the Princeton Harbor and Princeton Boulevard. Eight full grown cypress trees line the west property line, and dense shrubs and monterey pine trees exist on the fenced parcel to the east. Approximately 500 sq. ft. of the original parcel has eroded to beach level; a 10 to 14 ft. bluff lined with sandstone riprap supports the remaining 14,500 sq. ft. on the existing marine terrace. The 50-ft. wide street in front of the parcel is unimproved. Across the street to the north is an existing two-story office building, a private boat ramp and another marine chandlery are located on the adjacent parcel to the east; the parcel to the west is vacant.

Chronology:

Date		Action
1908	-	Princeton By-The-Sea Subdivision recorded.
1964	-	Existing residence on the parcel demolished.
1980	-	The Local Coastal Program identified Princeton as an industrial area and zoned it MAR/DR, Marine Related Industrial Use with Design Review.
December 1989	-	Seawall constructed.
November 9, 1990	-	CDP 90-82 Application submitted.
March 12, 1991	-	CDP 90-82 Geotechnical Report submitted to complete the application.

Design Review Chronology:

November 9, 1990	-	First Design Submitted.
March 12, 1991	-	Modified Design Submitted to Reflect New Setbacks and Parking Requirements.
June 20, 1991	-	Current Design Submitted.

DISCUSSION

A. KEY ISSUES

1. Visual Quality

The project site is on a bluff overlooking the Pillar Point Harbor and is visible from public viewing areas in and around the harbor. Because the visual quality of the proposed project is a primary concern, discussions of the design review issues with respect to the appropriate General Plan, Local Coastal Program (LCP) and Zoning components have been consolidated under one section and discussed as follows:

a. General Plan Visual Quality Component

The General Plan Visual Quality policies address the impacts that a building's location and aesthetic design can have on the surrounding area and requires the protection of noted scenic qualities. General Plan Policy 4.2 requires the visual protection of the shoreline in two ways:

(1) Protect and enhance the visual quality of and from shorelines of bodies of water including lakes, reservoirs, streams, bays, ocean, sloughs.

(2) Maximize the preservation of significant public ocean views.

General Plan Policy 4.16 requires new development to enhance natural landscape features and preserve the integrity of bluffs and beaches. Any tree with a trunk diameter greater than 6 inches measured at 4 1/2 ft. above the ground is considered a Significant Tree and should be given consideration when designing a site plan. Eight mature cypress trees line the western property boundary of the project site, and General Plan Policy 4.3 requires that Heritage trees be protected. The proposed project is designed and engineered to protect these trees and minimize trimming of branches.

Policy 4.3 encourages the placement of new and existing public utility lines underground. As designed, the proposed project incorporates the undergrounding of all utility lines.

b. LCP Visual Resources Component

The LCP Visual Resources Component regulates both the visual impacts of a development on the existing landform and the aesthetic compatibility of a development with the community. The location of the proposed chandlery is a highly visible ocean front bluff with heritage cypress trees. Recommendations have been included to bring the project into compliance with the objectives of the LCP Visual Quality component both physically and aesthetically.

(1) Vegetation and Significant Trees

Policy 8.9 of the LCP requires the protection of Heritage and Significant Trees by locating and designing development to compliment the scenic quality of an area. As discussed in the General Plan section on Visual Quality, the structural design of the proposed chandlery accommodates the root zone of the cypress trees and the building height would be reduced to 20 ft. along the western property line where the canopies hang over the property. It is recommended that the applicant adhere to the Significant Tree Ordinance if any trees or tree limbs with diameters greater than 6 inches require removal for construction. A recommendation has been included to revise the building's exterior design to reflect a more nautical character; if a new design is adopted, the setbacks

and structural design should also accommodate the cypress trees.

(2) Structural Design

Policies 8.4b., 8.12, and 8.15 of the LCP require that public view corridors be protected from new development. These policies require buildings, decks and patios to be set back far enough to ensure that they are not visible when viewed from the shoreline or other public viewing areas. As designed, the building is set back 20 ft. from the edge of the bluff and extends to the edge of all other property lines. Recommendations have been included to set the entire building back a minimum of 30 ft., from the bluff edge to preserve the view of the heritage trees and make the southern elevation of the building less prominent along the shoreline.

LCP Policy 8.13b requires commercial development in Princeton to reflect the nautical character of the harbor, utilize wood or shingled siding, employ natural or sea colors and use pitched roofs. The applicant has designed an intricate faux-victorian facade for the 70 ft. wide southern elevation; this design does not conform with the LCP Design Review requirements. The applicant has met three times with staff to discuss the design and compare potential exterior designs. The first proposal was a rectangular, corrugated metal building with little relief or inclusion of design features. The second proposal included a schematic for an elegant stucco facade on the southern elevation. The third design replicated an elaborate wooden Victorian facade. None of these proposed exteriors are in compliance with the LCP and General Plan Visual Quality components with respect to designing marine related uses in the Princeton area. Therefore, it is recommended that the applicant and staff convene again to evaluate other potential designs to reduce the intricacy of the southern elevation, incorporate more relief into the other elevations, and adapt a nautical appearance that is more complimentary to other commercial buildings in the area.

As designed, the proposed building would be a maximum of 36 ft. tall and 70 ft. wide and 200 ft. long. The second and third floors would cantilever over a small ground floor to accommodate 24 covered parking spaces. Setbacks for the ground floor and cantilevered stories would be as follows:

	Front North Setback	Rear South Setback	West Side	East Side
Floor				
Ground	112 ft.	20 ft.	5 ft.	0
Second	4 ft.	20 ft.	5 ft.	0
Third	4 ft.	20 ft.	20 ft.	0

It is recommended that the southern setback be increased by an additional 10 ft. so that the entire building would have a 30-ft. setback from the bluff.

c. Zoning Design Review

As discussed in General Plan and LCP sections above, the project site is a visually prominent parcel within the Design Review zoning district and is visible from several areas designated for public use. As discussed and conditioned in these previous sections on Visual Quality, the proposed structure has not fully accounted for the existing natural features which include the bluff and the large cypress trees that line the adjacent parcel. To come into compliance with the full intent of the LCP, General Plan and Design Review objectives, conditions have been recommended that the applicant meet with staff to consider revising the building design.

d. Design Review Summary

In order for the proposed project to come into compliance with the design review objectives of the General Plan, LCP and Zoning Regulations, it is recommended that the applicant incorporate the following design revisions into the proposed project:

(1) Alter the design of all four elevations to reflect a simple nautical character that is compatible with the Princeton area.

(2) Relocate the entire building to be a minimum of 30 ft. from the edge of the bluff.

(3) Set the building out of the drip line of the cypress trees.

(4) Submit a full landscape plan for review and approval.

(5) Utilize natural stained wood siding or another acceptable materials and colors for the exterior elevations.

2. Compliance with County General Plan

The proposed marine industrial use is in compliance with the San Mateo County General Plan sections which regulates land use and development in areas with natural hazards. The project site is on a bluff overlooking the Pillar Point Harbor and is visible from public viewing areas in and around the harbor. Therefore, it is recommended that the design be modified to be in compliance with the objectives of the General Plan Visual Quality element. The following General Plan policies specifically address the issues related to this proposal:

a. Land Use

The proposed marine related project is in compliance with the General Plan designation of this area for marine related industrial uses.

b. Natural Hazards

Applicable General Plan policies related to natural hazards in this area outline development standards to minimize risks resulting from unstable marine bluffs. When the Princeton-By-The-Sea Subdivision was approved in 1908, Ocean Boulevard was a through street; now it has eroded onto the beach and the southern end of parcels that were on the north side of Ocean Boulevard are exposed to the harbor. Aerial photographs indicate that beach lands subject to tidal action have encroached from 50 to 150 ft. over Ocean Boulevard and privately-owned parcels on the north side of Ocean Boulevard.

General Plan Policy 15.20 specifies the Review Criteria for Locating Development in Geotechnical Hazard Areas. It requires the following:

> Avoid the siting of structures in areas where they are jeopardized by geotechnical hazards, where their locations could potentially increase the geotechnical hazard, or where they could increase the geotechnical hazard to neighboring properties.

The geotechnical report submitted by the applicant discusses the relationship of the structural design with the physical characteristics of the building site and calculates that the proposed building would meet the stability requirements as outlined by the General Plan. The County's Geotechnical Division has reviewed and approved the report which considers the stability of the land where the building would be constructed.

The LCP section on Natural Hazards discusses more specific requirements with respect to development setbacks in areas with potential natural hazards.

3. Compliance with Local Coastal Program

This project has been reviewed with respect to and found to be in conformance with LCP policies relating to Location of New Development (LCP Policy 1.18) and Coastal Access (LCP Policies 10.9, 10.30). The proposed site plan is in compliance with LCP policies (8.9 (tree protection) and 8.18 (location of new development) however, as discussed above in the section on Visual Quality, recommendations have been included to address the exterior design to be in compliance with the objectives of the LCP Visual Resources element policies 8.13. The proposed project also meets the minimum requirements with respect to construction in a geotechnical hazards zone (LCP Policy 9.8, 9.10),

but an analysis of the shoreline protection has not yet been conducted. Although staff has recommended that this application be designed based on the proposed architecture, if the project is redesigned, it is recommended that conditions addressing each of these LCP elements be included where necessary:

a. Planning and Locating New Development

The proposed project would be located in a developed, urbanized area where marine related industrial uses are allowed (LCP Policy 8.18). As proposed, the chandlery would have a 20 ft. setback from the bluff. In order to protect scenic views of the heritage Cypress Trees on site and reduce the visibility of the proposed building from public viewing areas in and around Princeton Harbor, it is recommended that the building be setback a minimum distance of 30 ft. from the edge of the bluff (LCP Policy 8.15). The foundation of the building would be supported with a pier and beam system that would reduce potential impact to the root system of the adjacent cypress trees. The building height would be reduced to 20 ft. along the portion of the property line where the canopy of the cypress trees extend (LCP Policy 8.16).

b. Consideration of Geological Hazard

Because the subject site is a marine terrace elevated over 10 ft. above the beach, it is subject to the regulations for bluff top development. LCP Policies 9.7 and 9.8 define and regulate development along coastal bluffs. This criteria requires that any development be stable for a minimum time span of 50 years, and that the development itself not contribute to further bluff erosion. Because the bluff is no greater than 14 ft. in height, the first 60 ft. of land must be extensively examined in the geotechnical report. The County's Geotechnical Division reviewed the soils and geotechnical report submitted by the applicant and determined that the engineering of the proposed building would ensure the building's stability for a minimum of 50 years on this site.

As demonstrated by the request for an emergency sea wall permit in December of 1989, the face of the bluff in this area is unstable. At that time, the property owners intended to protect a mature Monterey Cypress tree located were the bluff was eroding. This project was referred to the Coastal Commission, but because the seawall is located above mean high tide line no permits were applied for or approved and the property owners repaired the site on their own. It is recommended that a condition be included to require a geotechnical report that analyzes the placement and affect of the seawall on the bluff and beach in this vicinity (LCP Policy 9.16). If the report requires repair of the sea wall, an additional Coastal Development Permit would be required. It is recommended that this CDP be applied for prior to the granting of a building permit.

c. Shoreline Access

The existing vacant parcel provides undeveloped vertical (across the parcel) and lateral (down the rip rap to the beach) access to the beach from Princeton Avenue. Public views would also be blocked if the project were constructed as proposed. The project would meet the necessary parameters of the LCP Shoreline Access Component to provide improved vertical and lateral access (LCP Policy 10.17), however, beach access at this location would not be considered safe because water reaches the seawall at high tide. LCP Table 10.1 lists the location at the end of Broadway Avenue 100 ft. to the east of the project site a designated public viewing and beach access point. Therefore, it is recommended that the applicant pay an appropriate in-lieu fee rather than provide or dedicate access from this site.

4. Compliance with Zoning Regulations

On March 12, 1991, new zoning regulations were adopted for the Princeton area. Visitor serving commercial uses displaced industrial uses within the first two blocks from the harbor. Because the subject application was submitted in November, 1990, it was granted an exception to be analyzed under the previous Marine Related Industrial (MAR) Zoning standards.

a. Use

The project site is located in the Marine Related Industrial District (MAR) between the first public road and the sea, and is therefore limited to the following uses in accordance with Section 6285(a) of the Zoning Ordinance:

(1) Boat chandlery (retail sales) for supplies and equipment within a building.

(2) Boat building, repair, storage and sales subject to securing a Use Permit, as specified in Chapter 24 of the Zoning Regulations.

The proposal for a boat chandlery is consistent with the Zoning Requirements. The site development standards for this area limit the height to 36 ft. and require that each building site have a minimum of 5,000 sq. ft. of area and a width of not less than 50 ft. The project is subject to coastal Design Review as other site design requirements as defined by other Zoning Requirements, the LCP and General Plan. Staff recommends that conditions be adopted to ensure that the only commercial use allowed on site is a marine sales chandlery.

b. Parking Requirements

The County Zoning Ordinance requires one parking space for each 160 sq. ft. of customer sales area and one parking space for each 2,000 sq. ft. of shop area. The proposed allocation of floor

space and the required parking spaces for each use would be as follows:

Floor	Chandlery Area	Warehouse Area
Ground	500 sq. ft.	4,200 sq. ft.
2nd Floor	700 sq. ft.	13,300 sq. ft.
3rd Floor	240 sq. ft.	12,460 sq. ft.
TOTAL	1,440 sq. ft.	29,960 sq. ft.
Parking Allocation:	@ 160 sq. ft./space	@ 2,000 sq. ft./space
TOTAL	9 spaces	15 spaces

A total of 24 on-site standard parking spaces would be provided. The total amount of parking spaces is in compliance with the zoning standards which consider the division of floor area per each use within the building.

Per the regulations of the Parking Ordinance, any parking area with more than 10 parking spaces must be set behind a minimum 4 ft. wide planted area. Upon approval of this project, it is recommended that a specific landscape plan and performance bond for the buffer strip area should accompany the redesigned building.

B. ALTERNATIVES

If the applicant chooses to redesign the building to be in compliance with the objectives of the LCP and recommendations outlined in the Visual Quality section of this report, the application shall be continued and then shall return to the Zoning Hearing Officer. If the applicant chooses to appeal the decision and present the proposal to the Planning Commission, a written letter of appeal accompanied by a $90.00 fee must be presented to the Planning Division within 10 days of this decision.

C. ENVIRONMENTAL REVIEW

The proposed project is exempt from environmental review under the California Environmental Quality Act under Class 3, construction of small structures.

D. REVIEWING AGENCIES

Department of Public Works
Environmental Health Section
Building Inspection Section
Point Montara Fire District

ATTACHMENTS

A. Recommended Findings and Conditions of Approval
B. Vicinity Map
C. Site Plan
D. Elevations

JEJ:kcd - JEJB1402.AKU

Attachment A

County of San Mateo
Planning and Building Division

RECOMMENDED FINDINGS

Permit or Project File Numbers: CDP 90-82; DSR 90-55

Hearing Date: July 18, 1991

Prepared By: Janice Jagelski

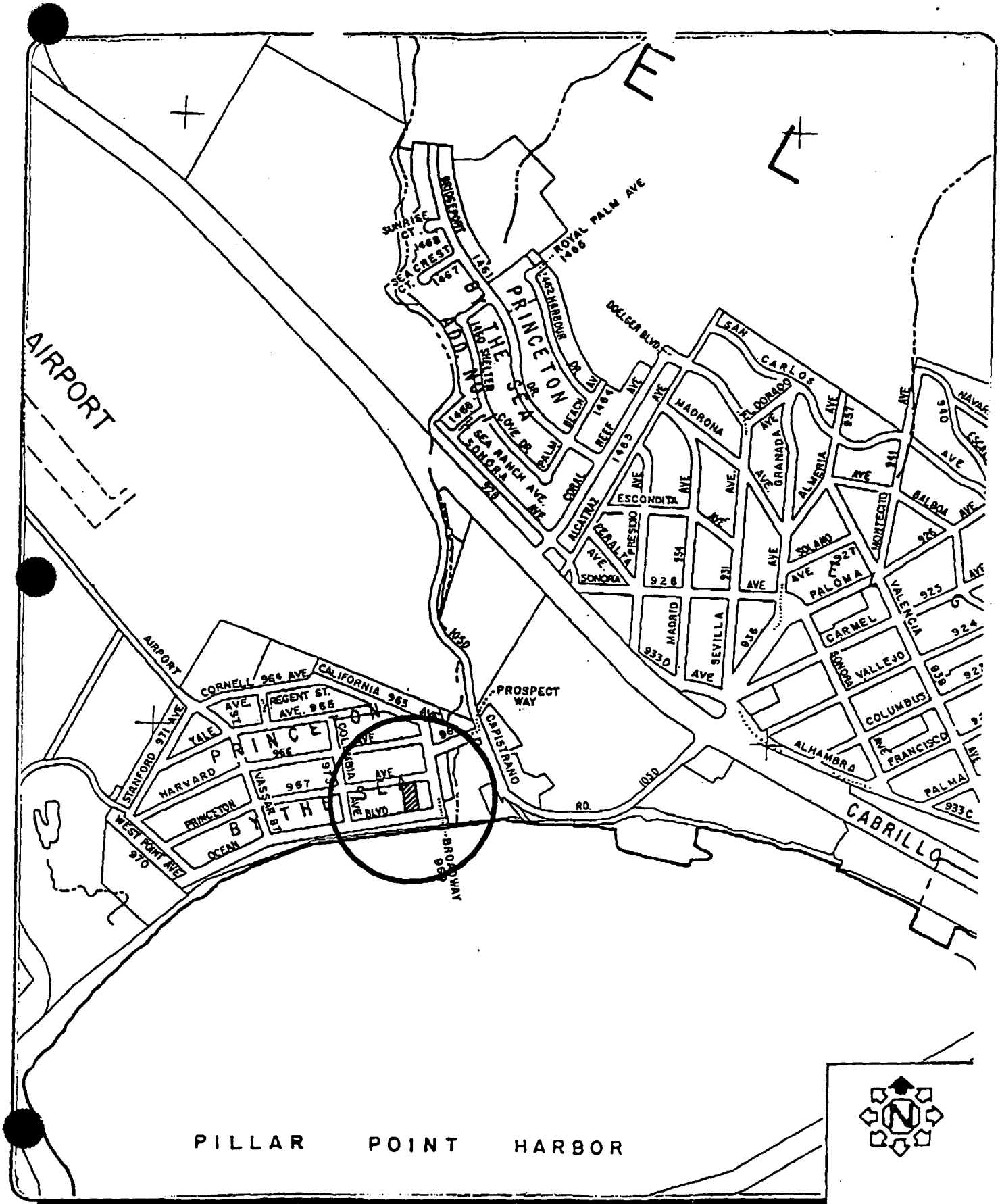
For Adoption By: Zoning Hearing Officer

RECOMMENDED FINDINGS

1. Find that the project, as described in the application and accompanying materials required by Section 6328.7 and Section 6238.14, does not fully conform with the plans, policies, requirements and standards of the San Mateo County Local Coastal Program.

2. Find that the project does not conform with the appropriate guidelines and standards for design review applicable to the Coastal Zone.

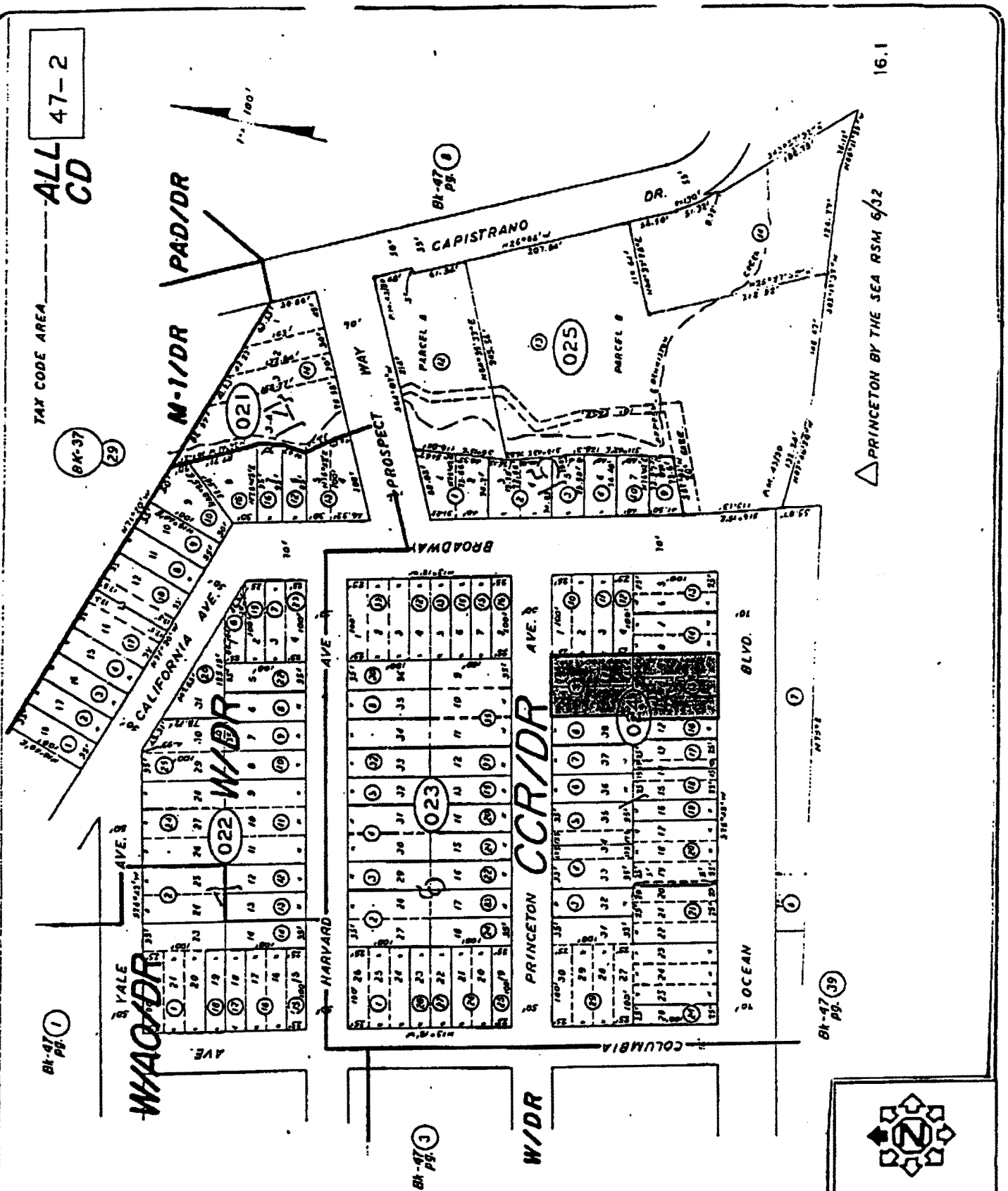
JEJ:kcd - JEJB1402.AKU



San Mateo County Zoning Hearing Officer Meeting

Applicant: TRIANCHOR MARINE

Request: CDP 90-82; DSR 90-55



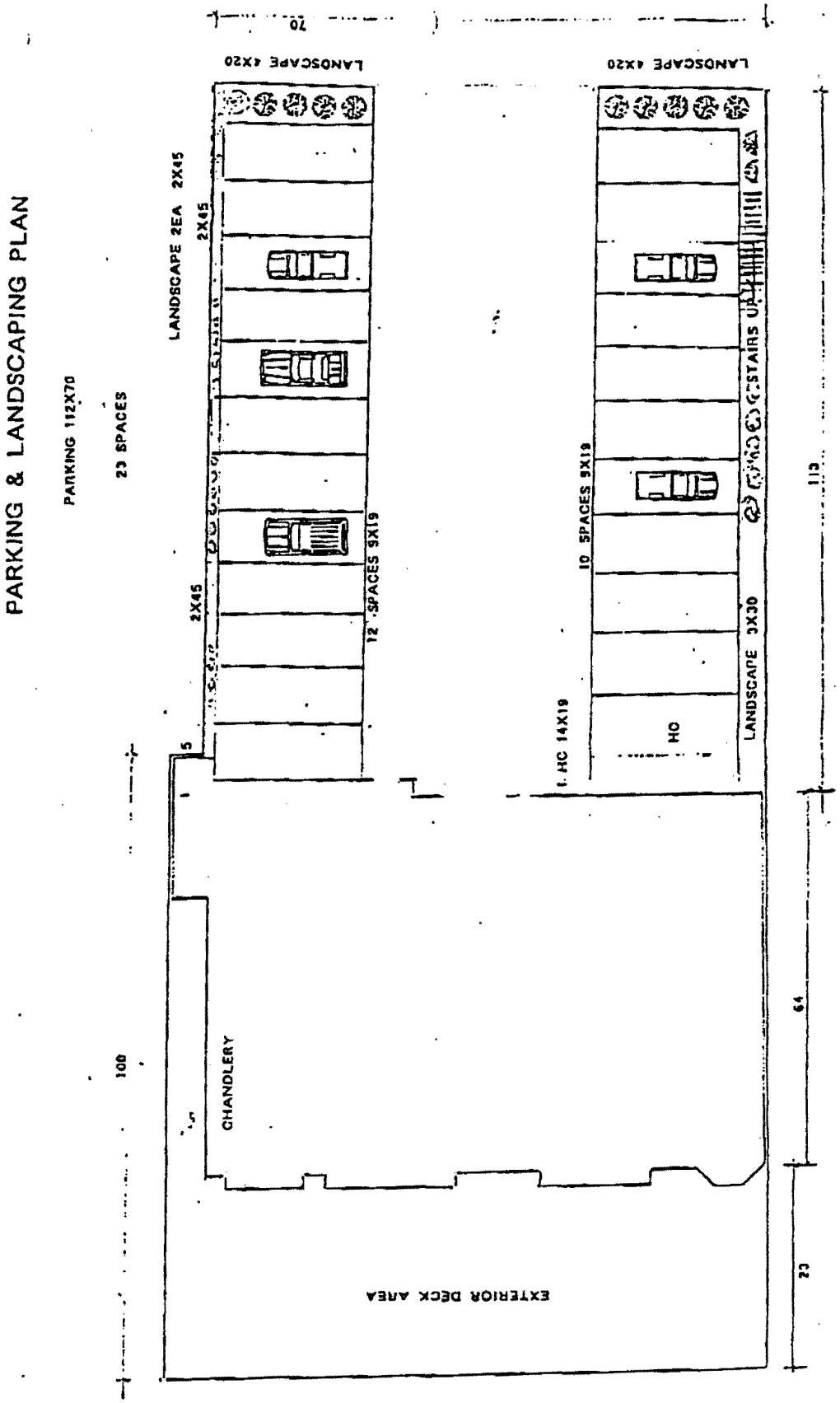
San Mateo County Zoning Hearing Officer Meeting

Applicant: Triancher Marine

Request: CDP 90-82; DSR 90-55

Location: 047-024-090, -150

PARKING & LANDSCAPING PLAN



Department of Environmental Management
Planning and Building Division

Planning Division • 415/363-4161
Mail Drop 5500 • 590 Hamilton Street • Redwood City • California 94063

Building Inspection Section • 415/363-4601
Mail Drop 5514 • 590 Hamilton Street • Redwood City • California 94063

COUNTY OF SAN MATEO

Board of Supervisors
Anna G. Eshoo
Mary Griffin
Tom Huening
Tom Nolan
William J. Schumacher

Director of Environmental Management
Paul M. Koenig

Planning Administrator
Terry L. Burnes

July 18, 1991

Stanley Furmanski
1015 Gayley #256
Los Angeles, CA 90024

Dear Mr. Furmanski:

SUBJECT: Coastal Development Permit, CDP 90-82
Design Review, DSR 90-55

On July 18, 1991, the Zoning Hearing Officer considered your application for: a Coastal Development Permit and Design Review, pursuant to Section 6285 and 6565.4, respectively, of the Zoning Regulations to allow the construction of a marine related chandlery in Princeton, at 380 Princeton Avenue, Princeton. This project is appealable to the California Coastal Commission.

Based on the information provided by staff and evidence presented at this hearing, the Zoning Hearing Officer:

A. Found:

1. That the project, as described in the application and accompanying materials required by Section 6328.7 and as conditioned in accordance with Section 6238.14, conforms with the plans, policies, requirements and standards of the San Mateo County Local Coastal Program.

2. That the project conforms with the appropriate guidelines and standards for design review applicable to the Coastal Zone.

B. Approved Coastal Development Permit, CDP 90-82 and Design Review, DSR 90-55 Subject to the following conditions:

Building Inspection

1. The applicant shall obtain a building permit prior to the commencement of any construction.

Planning Division

2. The applicant shall have a formal survey conducted by a licensed engineer to verify the actual dimensions of the subject parcel. All site plans shall be drawn to scale on this surveyed parcel map and shall adhere to the setbacks recommended by these Conditions of Approval.

3. The applicant shall submit a Tree Removal or Tree Trimming Permit for review and approval prior to the trimming or removal of any tree with a branch or trunk diameter greater than or equal to 6 inches. If the tree is on the neighbor's property, signed authorization shall accompany the tree removal or tree trimming permit.

4. The applicant shall incorporate design features and exterior colors on all elevations of the proposed building to meet the criteria of the LCP Visual Resources Component which requires development to reflect a nautical character and utilize pitched roofs. The revised design shall meet the approval of the Planning Director.

5. The applicant shall construct the building utilizing a wood siding or shingled exterior to reflect a nautical character. The colors of these materials shall be approved by the Design review Officer prior to construction of the building.

6. The applicant shall locate the structure 30 ft. north of the top edge of the bluff. indicate on survey

7. The applicant shall design a landscape plan to screen the parking area on the north property line from the right-of-way along Princeton Avenue. This planted or landscaped area shall be no less than four (4) feet wide, and 55 ft. wide, and not more than thirty (30) percent of the planter or landscaped area may be covered with hard surfaces such as gravel, landscaping rock, concrete, or other impervious materials. The landscaping plan shall be approved by the Planning Director prior to issuance of a building permit. A performance bond of $5,000 shall be collected at the time the Certificate of Occupancy is issued for the building permit and shall be held for three years or until the planted vegetation is stabilized to the satisfaction of the Planning Director.

8. The applicant shall submit a letter from the California Coastal Commission that the existing seawall meets the structural specifications of the Coastal Commission and that any necessary permits required by the Coastal Commission for legalization of the existing seawall have been approved.

9. The applicant shall not conduct any repair or alteration of the existing seawall without authorization from the Planning Director; a Coastal Development Permit may be required upon review of the

repair proposal.

10. The applicant shall install all utilities serving the project underground.

11. The building constructed on this site shall be used exclusively as a chandlery for the resale of nautical equipment. The only goods allowed in storage on this site shall be stock of the items sold in the customer sales area or goods used to operate the business. No additional items shall be stored without the intention of resale. No fees shall be exchanged for the storage of goods not intended for resale. All storage and sales shall occur within the building. Any change in use of this building may be subject to approval of other necessary permits.

12. The applicant shall obtain approval from the Planning Director for any exterior sign used on site to advertise the business at this location.

Environmental Health Section

13. The applicant shall supply evidence of sanitary connection and water connection to the Building Division and Planning Division at the time of application for a building permit.

Geotechnical Section

14. The applicant shall provide a geotechnical report to the Geotechnical Section. All required geotechnical conditions shall be met prior to issuance of a building permit.

Department of Public Works

15. The applicant shall provide payment to the Public Works Department of "Roadway Mitigation Fees" prior to the issuance of the Building Permit.

16. The applicant shall submit a driveway plan and profile, with his Building Plans, for review by the Public Works Department. Said plan shall also show the existing drainage and drainage patterns and should show any proposed changes or additions to the drainage patterns.

17. No work shall take place in the right-of-way of either Princeton Avenue or Ocean Boulevard until an Encroachment Permit has been issued by the Public Works Department to do the work.

Fire Marshal

18. The applicant shall install an automatic sprinkler system as per the specifications of the N.F.P.A. (National Fire Protection Association) and Half Moon Bay Fire District Ordinance.

19. The applicant shall install a monitoring alarm for the automatic sprinkler system, as per Sate Fire Marshal and Half Moon Bay Fire District Ordinance, and National Electrical Code.

20. The design and construction of the chandlery shall meet all building and fire codes regarding corridors, exist doors, type of construction, per the requirements of the San Mateo County Building Division and the Half Moon Bay Fire District.

21. Other specific code requirements for fire protection may be included upon review of plans approved by the San Mateo County Building Division.

Any interested party aggrieved by the determination of the Zoning Hearing Officer may appeal this decision to the Planning Commission within ten (10) days from such date of determination. The appeal period for this project will end on August 1, 1991, at 5:00 p.m.

Very truly yours,

S. G. Dalton
Zoning Hearing Officer

SGD:mml - zhd718b.7ml

cc: Department of Public Works
County Geologist
Department of Environmental Health
Building Inspection Section
California Coastal Commission
County Fire Marshal
Citizens' Utilities Company
Marilyn Wright
Assessor's Office

STATE OF CALIFORNIA—THE RESOURCES AGENCY PETE WILSON, Gove

CALIFORNIA COASTAL COMMISSION
45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200

June 5, 1998

Mr. Stan Furmanski
1015 Gayley Avenue #256
Los Angeles, CA 90024
Fax (310) 546-7403

SUBJECT: **Boundary Determination 24-98**
Princeton-by-the-Sea

Dear Mr. Furmanski:

Enclosed is a copy of a portion of the adopted post-LCP certification map no. 61 (Montara Mountain Quadrangle) for San Mateo County with the approximate location of San Mateo County Assessor Parcel Numbers 047-024-090, 150, 160, and 170 highlighted.

Based on the information provided, the parcels in question are entirely landward of the Coastal Commission's permit jurisdiction boundary. In this area, the permit jurisdiction boundary follows the Mean High Tide Line. The parcels are, however, in the Commission's appeal jurisdiction; development on these parcels would require a Coastal Development Permit from the County of San Mateo, which if approved, would be appealable to the Commission.

The boundary between the Commission's retained permit and appeal jurisdictions is based on the State Lands Commission staff delineation of potential public trust lands, and its exact location may vary depending on what lands are actually subject to the public trust. Questions regarding the exact location and extent of public trust lands should be referred to the State Lands Commission for determination. Their status determination procedure may or may not result in a different boundary.

Please call me at (415) 904-5467 if you have any questions regarding this determination.

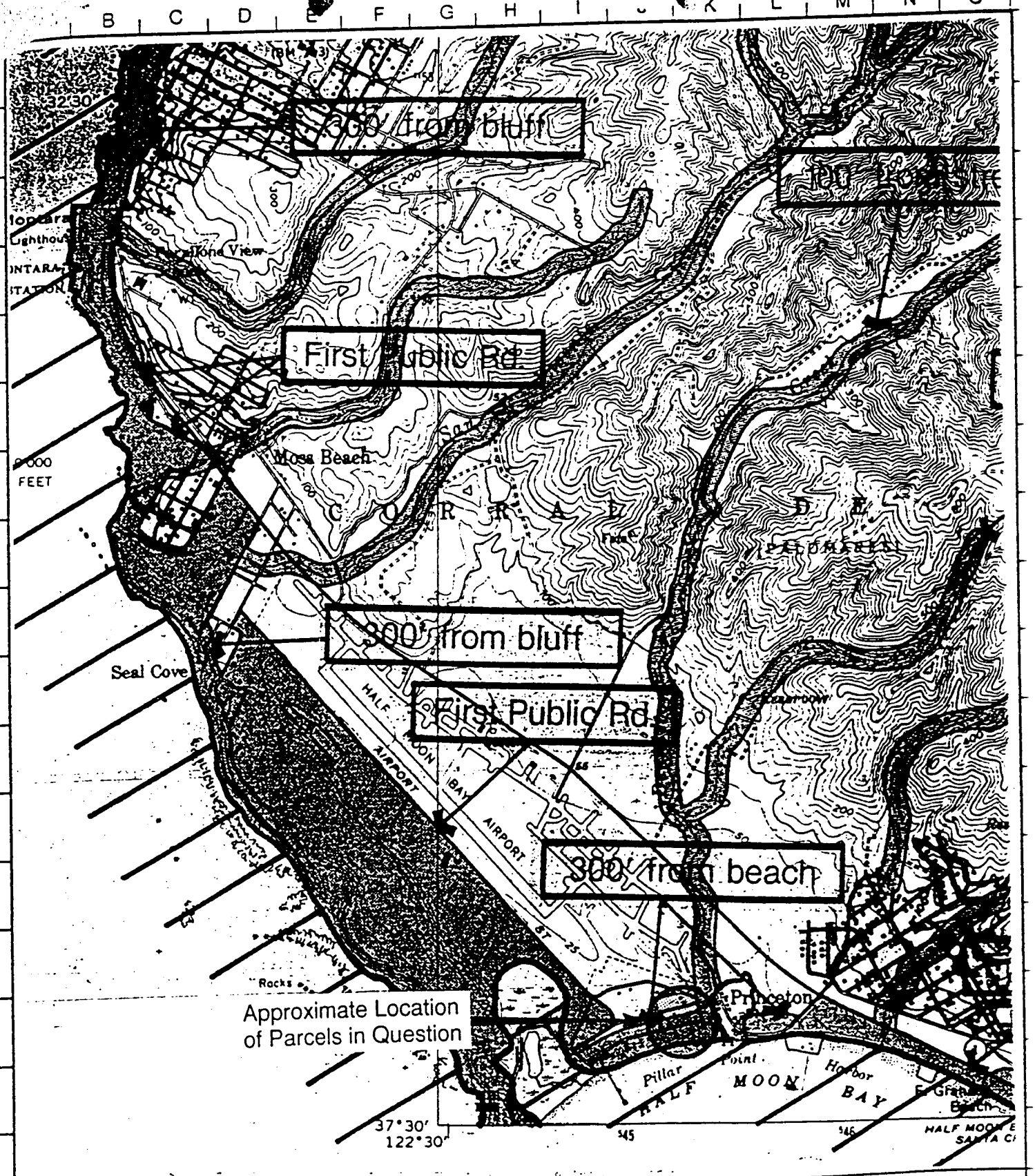
Sincerely,

Allyson C. Hitt
GIS/Mapping Unit

cc: J. Liebster, CCC-NC

enclosure

EXHIBIT NO. 8
APPLICATION NO. 1-98-58
BOUNDARY DETERMINATION
(Page 1 of 2)



BD 24-98
APNs 047-024-090, 150, 160, 170

Portion of adopted post-LCP Certification Map No. 61 (Montara Mountain)

1000 0 2000
feet

N

California Coastal Commission

County of San Mateo

CALIFORNIA COASTAL COMMISSION
45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200
FAX (415) 904-5400

EXHIBIT NO. 9
APPLICATION NO. 1-98-58
Exec.Dir.'s Letter on Exemption Request
April 19, 1999 (Page 1 of 5)

April 19, 1999

Stan Furmanski
1015 Gayley Avenue #256
Los Angeles, CA 90024

Re: Coastal Development Permit Application #1-98-58

Dear Mr. Furmanski:

This letter is to let you know the status of the permit application that you submitted for work on a revetment at 380 Princeton Avenue in Pillar Point Harbor, San Mateo County. You have submitted a number of materials and asked a number of questions, and I will respond to them below.

1. Exemption request

In your application and in subsequent materials, you have asserted that you are entitled to an exemption from a coastal development permit for work on the revetment under Section 30610(g) of the Coastal Act for "repairs following a disaster". After reviewing the materials that you have submitted on this point, we do not agree that the repair work or additions to the revetment that you have undertaken are subject to an exemption. In other words, the as-built configuration of the revetment requires approval by the Coastal Commission, if it is to remain in place.

Section 30610 of the Coastal Act provides, in part, that no coastal development shall be required for the following:

(g) (1) The replacement of any structure, other than a public works facility, destroyed by a disaster. The replacement structure shall conform to applicable existing zoning requirements, shall be for the same use as the destroyed structure, shall not exceed either the floor area, height, or bulk of the destroyed structure by more than 10 percent, and shall be sited in the same location on the affected property as the destroyed structure.

(2) As used in this subdivision:

(A) "Disaster" means any situation in which the force or forces which destroyed the structure to be replaced were beyond the control of its owner.

(B) "Bulk" means total interior cubic volume as measured from the exterior surface of the structure.

(C) "Structure" includes landscaping and any erosion control structure or device which is similar to that which existed prior to the occurrence of the disaster.

You have stated in your application materials that you repaired the wall following El Niño storms in 1998. It is clear from photos of the site and other information that the revetment was larger following the work you undertook on it than it was prior to the work. You have asserted that following repair, the bulk of the revetment was "less than 3.5% larger than previously," in other words, less than the 10% limit mentioned in Section 30610(g).

The information you have submitted does not, however, substantiate the conclusions that must be reached in order to conclude that your project is exempt under Section 30610(g). First, to conclude that replacement of the revetment is exempt one must conclude that the revetment was destroyed by the storms. You have submitted various statements to the effect that in February 1998 the seawall was damaged and "nearly destroyed," but you have also submitted information that indicates that rocks at the base of the seawall are unmoved from their previous position in 1995. Our conclusion, based on a review of all the information, is that some damage apparently occurred to the revetment, but that the facts before us do not support the conclusion that it was "destroyed," as the dictionary defines destroy to mean "to ruin utterly" or "to do away with."

Even if we were to conclude that the revetment had been destroyed, your replacement of it would not be exempt from a coastal permit. In order to be exempt, a replacement structure shall conform to applicable existing zoning requirements. The Commission has interpreted this requirement to include the issuance of all necessary land use entitlements. In other words, if a revetment or other structure lacks necessary authorization in the first place, then Section 30610(g) cannot be interpreted to authorize its replacement following a disaster. There is no indication in the information you have provided that the seawall's original construction was authorized by applicable land use permits in effect at the time it was constructed. If you have evidence that a coastal permit for the seawall has been issued at any time in the past, please do not hesitate to send it to me.

Under the Coastal Act, the placement of a solid structure in the coastal zone in the form of a revetment requires a coastal permit. You can apply for a coastal development permit for the revetment that existed prior to the storms of February 1998 by submitting an application. For the revetment to remain in place, a coastal permit needs to be issued. Alternatively, you have the option of submitting a claim of exemption accompanied by evidence that the revetment predates the effective date of the Coastal Act and that it was constructed consistent with all permits that were legally required at the time of construction.

2. Coastal Act exemption for certain repair or maintenance activities

The Coastal Act exempts from coastal permits certain repair or maintenance activities (Public Resources Code Section 30610(d)). To be exempt, such activities must not result in an addition to, or enlargement or expansion of, the object of those repair or maintenance activities. You have not asserted that work on your revetment is exempt under this Section, and my purpose in mentioning it is merely to clarify that we do not consider repair work on it to be exempt.

We have reached this conclusion for two reasons. One reason is that the revetment has been expanded through the placement of additional solid materials. The second reason is that the Commission's regulations provide in Section 13252 that repair and maintenance of a revetment involving placement of riprap or other solid materials on a beach or involving mechanized equipment on a bluff or within 20 feet of coastal waters is not exempt. Because additional riprap has been placed on the subject revetment, and the revetment is located on a beach and is subject to the wash of the tides, repair of it is not exempt from a coastal permit.

3. Addition to the revetment.

In addition to the exemption request noted above, your application states that you are applying for a coastal development permit to "add a revetment as a repair to the existing rip-rap wall". This request is accompanied by a schematic cross-sectional drawing showing installation of steel sheet piles backed by 12-inch-square concrete piles and faced by additional riprap.

We understand your application to include both repair work undertaken during or after February 1998 and additional work not yet begun. We interpret your application, however, not to include the original revetment itself. As noted in #1 above, Commission approval of an amendment to this application or a separate application would be necessary to legalize the original revetment.

I want to let you know that we have tentatively scheduled your application #1-98-58 for review by the Commission at the meeting of May 11-14, 1999 in Santa Rosa. I would add that we are filing the application as of April 19 and scheduling it for Commission review in spite of the fact that the materials you have submitted on March 22, 1999 did not fully respond to the requests for information that we sent you on July 10, 1998 and November 19, 1998.

We are filing the application, in any event, because the Executive Director may waive ordinary filing requirements for a coastal permit application for good cause. We believe such cause exists in this case because your permit application is an after-the-fact one. That is, the revetment that is the subject of your permit application has already been partially constructed, although it has not been permitted.

4. Coastal permit jurisdiction area.

I want to clarify that the site of the subject revetment lies within the Coastal Commission's coastal development permitting jurisdiction area. The Commission's mapping unit provided you a preliminary letter on June 5, 1998 that indicated your parcel boundaries did not appear to fall within the Commission's continuing coastal permit jurisdiction area. That letter stated, however, that the boundary between the Commission's retained permit jurisdiction and the appeal jurisdiction (i.e., County coastal permit jurisdiction) may vary depending on the exact location of public trust lands.

Site visits to the property conducted since June 1998 have demonstrated that the revetment is located in an area subject to the daily wash of the tides. Therefore, the revetment lies within the Commission's permanent jurisdiction area, which includes tidelands, submerged lands, and lands subject to the public trust.

5. Your request to attend staff meetings regarding 380 Princeton

You have requested to attend or be represented at Commission staff meetings held to discuss the subject property. The Commission staff meets regularly to discuss permit applications and the various steps that we take to respond to them. It is not practical or feasible to include permit applicants in all meetings held to discuss aspects of their applications. We are available to answer questions you may have about your application, however, and we will provide you with our written staff recommendation on your application as soon as it is published. You may also view the Commission's file on your permit application; please call to make an appointment to do so.

6. Your request regarding restarting construction at 380 Princeton

You have requested that Commission staff send you a letter stating that we have no objection to construction restarting on the commercial building at 380 Princeton. I believe this request was made because San Mateo County issued a stop-work letter on the construction of a commercial building at that address. I have spoken to Bill Rozar from the San Mateo County Planning Department who indicated that the County issued its letter because of concerns with County building permit compliance. The status of your County building permit is a matter for you to take up with the County directly, and therefore I do not believe it is necessary for Commission staff to take additional steps in this regard.

7. Designation of Robert Clark

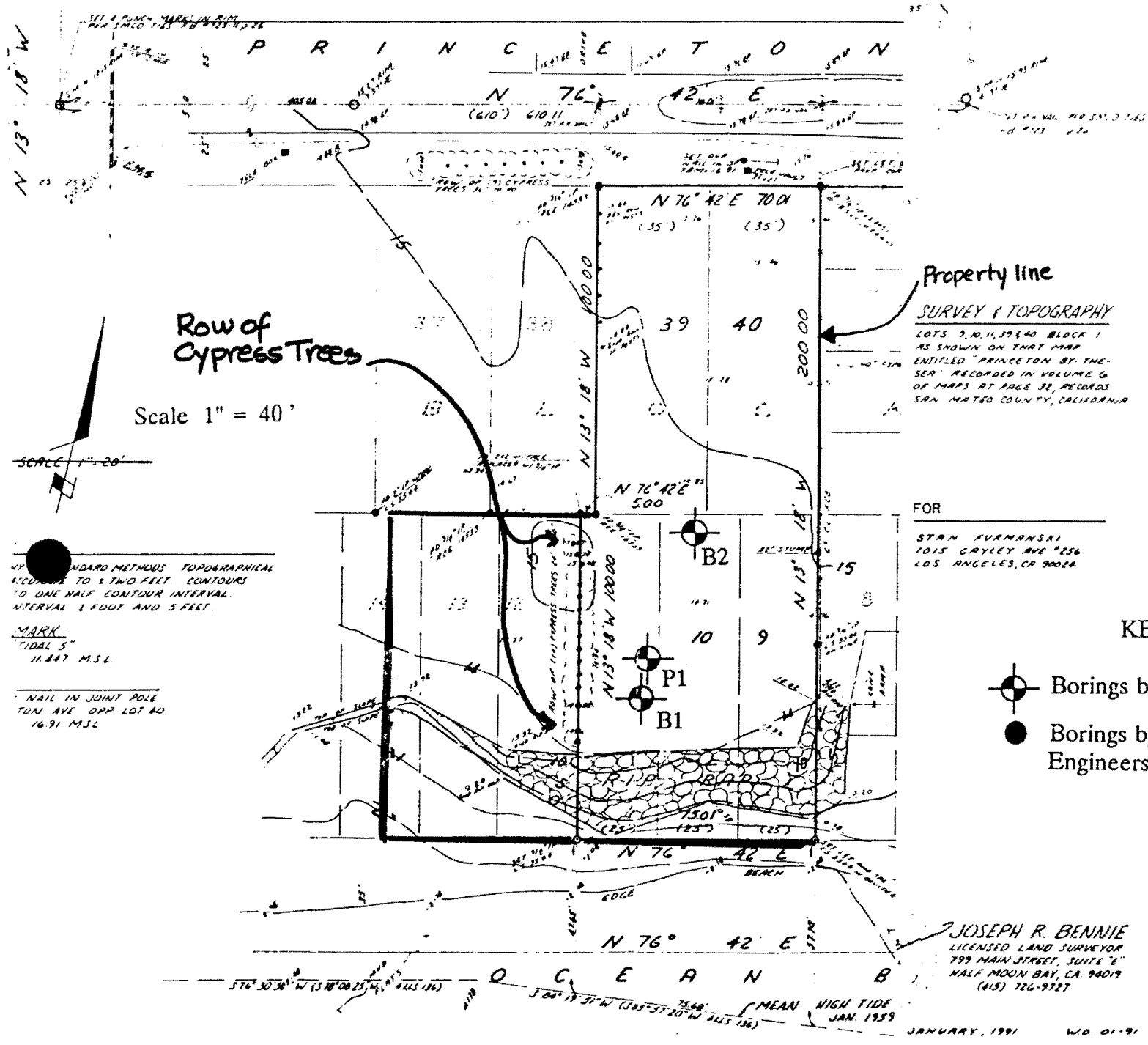
This is to acknowledge that you have provided an annotated copy of page 1 of your application form, indicating that Mr. Robert Clark would communicate on behalf of the applicant regarding this application. Thank you for sending that information.

In conclusion, your permit application is tentatively scheduled for Commission consideration at the meeting of May 11-14, 1999 in Santa Rosa. We will provide you with a notice of the time and place of the hearing when the Commission's agenda for that meeting is set, within approximately two weeks. We will provide you with a copy of the staff's recommendation on your application as soon as it is ready, also within the next couple of weeks. Please contact me if you have any questions.

Truly yours,

Steven F. Scholl, AICP
Deputy Director

EXHIBIT NO. 10
APPLICATION NO. 1-98-58
1991 Location of Seawall



Reference for eastern adjacent parcel borings: A report by Cooper "Report, Geotechnical Investigation, Proposed Boat Storage Building Parcel 10-B-66, Princeton, California, For Mr. Ronald Mickelson," dat

SITE PLAN of FURMANSKI PROPERTY
Showing 1991 Rip Rap and New Fill
Princeton by the Sea

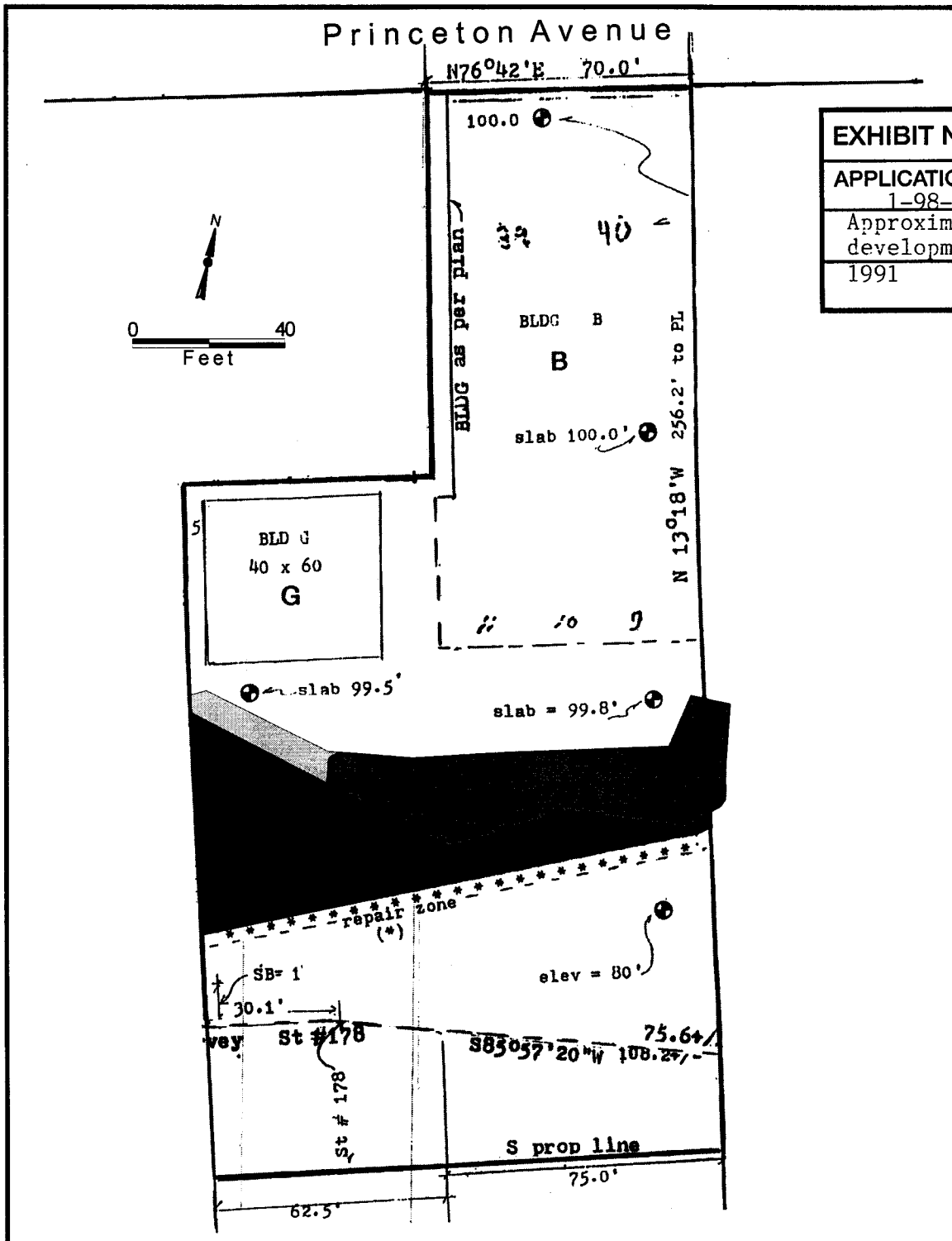


EXHIBIT NO. 11
APPLICATION NO. 1-98-58
Approximate development since 1991

Rip Rap as of 1991*
Fill Since 1991**
Bluff Face*

* 1991 Fill and Bluff Face Source: Report, Geotechnical Investigation for Mr. Stan Furmanski, Plate 1
Bay Area Geotechnical Group, February 21, 1991.

** Base Map and Existing Fill Source: Permit to Repair Rockslope Protection Project Application 198-58, Exhibit 2
Submitted March 23, 1999

STATE OF CALIFORNIA—THE RESOURCES AGENCY PETE WILSON, Governor

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

November 19, 1998

Stan Furmanski
Trianchor Marine
1015 Gayley Avenue, #256
Los Angeles, CA 90024

PROPERTY LOCATION: 350 and 380 Princeton Avenue, Princeton, San Mateo County, APNs 047-024-150, 047-024-160 and 047-024-170
PERMIT Nos.: 1-98-044G, 1-98-058

Dear Mr. Furmanski,

There are two parts to this letter:

(A) The first part addresses the information needed to determine whether the emergency work already completed in relation to Emergency Permit 1-98-044G is exempt under Section 30610(g) of the Coastal Act.

(B) The second part deals with additional information still needed to file Coastal Development Permit Application # 1-98-058.

A. Claim of Exemption for development completed in relation to Emergency Permit 1-98-044G

In our letter to you dated July 8, 1998 concerning additional information required to process Application # 1-98-058, I noted that you were claiming that development done under Emergency Permit 1-98-044G was exempt from permit requirements under Coastal Act Section 30610. I stated that we to believe that a Coastal Development permit is required to make that work permanent. We continue to believe that the information we have received to date does not demonstrate that the work you have performed meets the criteria set forth in Section 30106(g) to be exempt from coastal development permit requirements

Section 30610(g) states that no coastal development permit shall be required for:

(g) (1) The replacement of any structure, other than a public works facility, destroyed by a disaster. The replacement structure shall conform to applicable existing zoning requirements, shall be for the same use as the destroyed structure, shall not exceed either the floor area, height, or bulk of the destroyed structure by more than 10 percent, and shall be sited in the same location on the affected property as the destroyed structure.

(2) As used in this subdivision:

EXHIBIT NO. 12
APPLICATION NO. 1-98-58 Request for info needed for filing application
Nov. 19, 1998 (page 1 of 11)

(A) "Disaster" means any situation in which the force or forces which destroyed the structure to be replaced were beyond the control of its owner.

(B) "Bulk" means total interior cubic volume as measured from the exterior surface of the structure.

(C) "Structure" includes landscaping and any erosion control structure or device which is similar to that which existed prior to the occurrence of the disaster.

With regard to whether your project is exempt under 30610(g), it is important to determine at least three things: (a) whether the structure was "destroyed" within the meaning of this section, (b) whether the "replacement structure" is within the specified 10% dimensional limits, and (c) whether it is "in the same location," i.e. that it did not encroach further seaward onto the beach.

Section 30610(g) applies to "replacement of any structure...destroyed by a disaster." The reprints of news articles in your Attachment B through K regarding storm damage in San Mateo County, other areas of California, and Papua, New Guinea do not substitute for evidence that your pre-existing seawall was destroyed by a disaster. In fact, the documentation you provided in Attachment "W" to prove that a seawall existed in 1995 shows that all the rocks at the base of the seawall are unmoved from their previous positions. This appears to be strong evidence the seawall structure was not destroyed at all, and that your work did not fall under section 30610(g). To support your claim of exemption, you will need to submit sufficient evidence demonstrating that the structure was destroyed, and identifying what parts, and what overall percentage of the structure suffered that destruction.

I have reviewed the materials you submitted on June 12 and August 11, 1998. The information does not demonstrate that the total amount of rip-rap and dirt fill placed during the "emergency" work was less than 10% of the bulk of the pre-existing seawall. You had said in a previous phone conversation that you would be submitting a "volumetric analysis" of the material you added to the existing seawall pursuant to your emergency work request, but I did not find that in your submitted materials. Attachment 29D, #14 states that such a size/volumetric comparison has been made, and that "volumes show less than 10% difference." However, this analysis itself was not provided. To support your claim of exemption, please submit that analysis or other information that sufficiently demonstrates that the bulk of material added indeed did not exceed 10% of the pre-existing volume.

You also submitted photocopies that do apparently show that the seaward extent of the rip-rap has not been increased on the east end of the seawall (8/11/98 attachment "W,"). However, I have recently received photos of your parcel taken prior to the time you did your emergency work. When compared to the current conditions at the west end of the rip-rap wall, these photos appear to show that substantial material was added during that work, extending the footprint of the seawall further seaward on to the beach.

Our July letter to you asked for specific information that could resolve this issue. Specifically under item 3, "Site plans," I asked for plans that clearly show the location, footprints and cross-sections of (1) the existing rip-rap seawall prior to the emergency work, (2) the rip-rap wall as

enlarged by the emergency work, and (3) the additions to the structure proposed in your new application.

With regard to (1), your Attachment #12 indicates the footprint and contours of the seawall in April 1995. (Note that this figure shows the western part of the seawall extending south of your Assessor's Parcel line, shown as "ref."). You did not, however supply cross-sections of the seawall as it then existed.

Regarding (2), I have been unable to find anything specifically labeled as showing the seawall footprint as it existed after completion of your emergency work or as it exists today. In our phone conversation on October 28, 1998, followed by my faxed materials, I asked again that you supply accurate footprint and cross-section drawings of the location and extent of the seawall as it existed at completion of your emergency work. As you will see below, such survey information is also needed for other purposes to complete your application filing, so I have summarized the survey information needed in section B2(c) below. Please provide this information to support your possible exemption under Coastal Act section 30610(g).

We will certainly reconsider whether the work you performed to date is exempt under 30610(g) if you provide the information outlined above. In the meantime, we will assume that you are continuing to seek authorization under Permit Application No. 1-98-058 for both this work and the additional work you are proposing.

B. Information Required to Complete Filing of Application # 1-98-058

In our July letter, I specifically asked for several additional items before filing the application as complete and scheduling it for action. You provided extensive material in response, received in this office Aug. 11, 1998. I have reviewed those materials, and although the materials include some of the information we had requested, not all of the information and materials we had previously requested were provided. The following items still need to be submitted to complete the application:

1. **Signatures or authorizations of all applicants.** Your application form was signed only by you "for all applicants." However, the property owners, as shown in your Attachment #27 are Pique Partners and Trianchor Marine Enterprises. We will need a list of the partners in each of these entities, and written evidence (such as a letter signed by all the partners, or any relevant sections of the enterprise's bylaws) showing that you are fully authorized to sign for and bind each of them in all matters pertaining to this application.

2. **Project Plans.** Our staff engineer, Lesley Ewing, has reviewed the additional material you supplied along with the material originally submitted. The information so far provided for the application is not sufficient. We need some basic engineering information that is not included in the application:

   (a) The plans are not drawn to scale; they are not what we would accept as engineered plans.

(b) The elevation of the vertical wall is given as 20', but this elevation has not been referenced to any established baseline, such as mean sea level, mean lower low water, National Geodetic Vertical Datum, etc. It appears to be 20 feet above the "surf bed"; however, the surf bed has not been defined

(c) We need a profile of the property, seawalls and the beach area, drawn to scale and based on a site survey, showing property boundaries, the footprints and cross-sections of the existing structure/ rip-rap that is "in danger from erosion," the proposed "revetment", actual mean and maximum tide lines, and both the "summer" and "winter" beach profiles in relation to pre-existing, current and proposed seawalls (The terms "summer" profile and "winter" profile are used to represent the normal accreted beach and the normal eroded beach.) As noted above, corresponding information , based on an accurate survey, showing the seawall as it existed prior to your emergency work is also necessary to review your claim of exemption under Coastal Act 30610(g).

(d) The piling depth has not been shown. This depth should be established from the scour depth and the necessary embedment depth for structural stability from wave forces. Scour is a natural condition that often occurs at the base of a natural bluff or in front of a vertical wall. The initial submittal stated that, "with the installation of the improvements requested, the amount of scouring at the base will decline, since the additional materials to be installed are durable and designed for many years of service." While it is more likely that if a vertical wall is installed in front of the existing rip-rap, that scour will increase slightly, this response does not address our key concern about scour. During times of high wave action, the material in front of the proposed wall may be removed temporarily, creating a scour trench in front of the wall. If the total embedment depth does not take into account this loss of supporting material, the wall may fail. It is important to the engineering design of the proposed wall that scour be considered. It is important for our review of the engineering design that we know how the design engineer addressed scour and what scour depth was used in the design.

(e) The property boundaries for this site need to be clarified.

(f) Regarding the additions to the structure proposed in your new application, your Attachment #3 shows the new "revetment" addition located just inside the Assessor's Parcel line. You also show permanent backfill behind the retaining wall up to grade at the top of the wall. In your Attachments #6 and #26 you show the "proposed revetment" and "existing rip rap" north (landward) of the "revetment." You do not show any seawall materials south (seaward) of the "revetment" in any of these figures.

Please clarify if your application includes removing any fill materials that, as shown in your Attachment #3 and observed in our field visits, lie seaward of the

proposed location of the retaining wall, and submit revised plans, if necessary, to show all the work for which you are seeking authorization.

3. **Project Details (Site Plans)**. In addition to the items noted above, we also have not received the details of the structures involved that we requested under item 3 (site plans) of our July letter. These include descriptions of the materials used in the existing and proposed parts of the project, specifying the sizes, types, and amounts of rip-rap rock and any earthen or other type of backfill. Also, please submit the "volumetric analysis" discussed in Part A above or other information that sufficiently demonstrates the bulk of material already added and the additional material that your application proposes to add.

4. **Historical Shoreline.** Under item 4 of our July letter I had asked for any available photographic, mapped or other information that would show the changes to the parcel and its shoreline protection, in the last 15 years. I noted that any photos of the damage caused to the rip-rap seawall by the cited storms would also be very helpful, and asked for information about any habitat or vegetation that existed on the shoreline prior to the emergency work. As I noted in part "A" above, the photos you supplied did not show the prior conditions on the west end of the seawall. In addition, it appears from our aerial photos that your Attachment #12 does not accurately show the seawall as it existed in April 1995. Please supply any additional information described above that you may have.

5. **Summary of Effects on Shoreline Sand Supply**. Under item 5 of our July letter I asked for a narrative discussing what effects the structure could have on the movement of sand along the shoreline and how the project has been designed to eliminate or mitigate such impacts. You responded that sand loss is not an issue. I understand you have subsequently spoken with a coastal engineer about your project. In light of those conversations and additional information provided above by our staff engineer, is there additional information you can provide for the record?

6. **Property Ownership/Status of State Lands Commission Approval**. I noted the proposed development involves work within areas subject to tidal action.. The State Lands Commission (SLC) has responsibility for all state tide lands, trust lands, and sovereign lands. If a proposed project may be in an area subject to SLC jurisdiction, an application for the project cannot be filed without evidence that the SLC has made a specific determination as to its jurisdiction over the specific project. It is the applicant's responsibility to contact the SLC for this determination, and to provide a copy of the SLC's letter of response to the Commission. The SLC contact for San Mateo County is Nanci Smith at (916) 574-1862.

In addition, if any part of the project, including any construction activities, will take place in the area covered by the legislative grant to the Harbor District, we need evidence of authorization for such work by the Harbor District.

In our October 28 phone conversations and my fax to you on that date, I pointed out that superimposing your Attachment #3 on to Attachment #12 indicated that your seawall as shown in 1995 encroached upon a portion of the Ocean Blvd. paper street. According to the County,

Ocean Blvd. south of the parcel boundaries of Assessor parcel numbers 047-024-150, 047-024-160 and 047-024-170 is in the fee ownership of the County. Enclosed is a copy of the August 1908 Map of Survey for Princeton which records the dedication of streets including Ocean Blvd. and acceptance of these streets by the Board of Supervisors.. In your letter of November 14, 1998 you assert your ownership to a portion of Ocean Blvd. based upon various court decisions. Please provide a current recorded legal description of your property, or a letter from the County attesting that you have sufficient property rights over the Ocean Blvd. Paper street to develop what is proposed on the paper street.

Regardless of the fee ownership of the area subject to tidal action, the Commission asserts permit jurisdiction over all areas seaward of the ambulatory Mean High Tide Line. The Mean High Tide Line is not fixed, but ambulatory. The Commission asserts permit jurisdiction over development in any area that is "wet" at any time of the year. However, you of course have the opportunity to refute out interpretation of the extent or our jusrisdiction by submitting evidence of the Mean High Tide Line.

7. **Local Approvals.** I had requested a completed Appendix B, the Local Agency Review Form for the proposed work and copies of all permits granted for this property, including copies of the County planning staff report, letter of approval containing findings and conditions, and a complete set of plans for such projects. I subsequently obtained the staff report, findings and conditions on CDP 90-82 directly from the County. Condition number 9 of your CDP 90-82 as issued by the County on July 18, 1991 states:

> *The applicant shall not conduct any repair or alteration of the existing seawall without authorization from the Planning Director; a Coastal Development Permit may be required upon review of the repair proposal.*

Was any work on the seawall done between July 18, 1991 and the date you commenced work pursuant to our Emergency Permit 1-98-044G, and if so, what was done? For any such work, please provide evidence that the Planning Director approved the work as required by Condition number 9 of County CDP 90-82

We also need to have a completed Local Agency Review form for the project currently proposed, whether the County determines it needs to issue a permit or not.

8. **Alternatives Analysis**. I asked for an alternatives analysis, especially possible alternatives that conceivably could reduce the amount of coverage of the beach, such as removing the rip-rap and relocating the "revetment" at the bluff face, re-engineered the revetment to avoid the need for the proposed wall, and the no project alternative. Your response did not provide any detail on such alternatives. As we had requested in our July letter, please provide a written analysis of the feasibility of the various alternatives that might reduce or eliminate the coverage of the beach, including the no project alternative. As part of the no project alternative analysis, please discuss and document which, if any, existing structures were in danger from erosion prior to the placement of fill pursuant to Emergency Permit No. 1-98-044G and/or are now in danger from

erosion. One alternative to the proposed new vertical wall would be to repair the existing rip-rap. If the existing rip-rap is functioning well, it seems to be most sensible to repair and maintain it. If it is not functioning well and if it makes sense to rely now on a vertical wall (called a revetment in the application), then this new system could replace the old one. Please provide an analysis of the feasibility of removing the existing rip-rap to make room for the new wall. This approach would let you install your preferred protective option and minimize seaward encroachment.

You state your site would experience up to 3' of erosion annually without protection, yet you state the general area has excess sand that the Harbor District has had to remove regularly. This information suggests that you may have a readily available source of sand for beach nourishment. Build-up of the beach seaward of the existing rip-rap could perhaps be a viable and cost effective form of shoreline protection, given that there is a source of sand in the immediate area. This approach should be analyzed in the alternatives discussion.

9. **Effects on Public Access**. I had asked for information on how much of the area could be used by the public at different stages of the tide. I asked for a cross section that shows the former profile of the bluff, seawall, beach, and tidal area before the project was commenced as well as the proposed profile with the project as proposed, in place. I asked that these cross sections show where the profiles are intersected by the winter and summer mean lower low water line (MLLW), mean sea level line (MSL), and the mean higher high water line (MHHW). I was unable to find this information in the material submitted. Please provide this information.

On a recent visit to the area our staff noted that a well-worn path exists across the lower part of the seawall on to the east of your seawall, and appears to lead to what had been the lower part of your seawall. This path appears to have allowed lateral public access (that is walking along the shoreline) by traversing the rocks at the lower end of your seawall as it existed prior to your emergency work. This situation appears to have allowed public lateral access for longer periods of the day and during a wider range of tidal heights. Such use may have established a "prescriptive right of access" across your seawall. If so, the steepening and filling of your seawall done during your emergency work has interfered with such passage. Please provide any information you may have of the historic lateral access use of the seawall as it existed prior to your emergency work.

Again, as I noted in our July letter, once we receive this information, we can file your application as complete and schedule it for the Commission's consideration. Please feel free to call me at (415) 904-5267 if you have any questions.

Sincerely,

Jack Liebster
Coastal Planner

MAP OF
PRINCETON BY THE SEA
HALF MOON BAY
SAN MATEO COUNTY
CALIFORNIA

SCALE: 100 FT. TO 1 IN.

WE HEREBY CERTIFY THAT THIS IS A CORRECT MAP OF SURVEY MADE BY US IN AUGUST 1908.

Bunnell & Broughton
Civil Engineers and Surveyors
301 Baldwin Building
333 Kearney Street
S.F. Cal.

Ex 12 RB

FRANK P. BROPHY, and WILLIAM H. GEORGE, are the persons interested in, and the only parties in interest and the only parties necessary to give a clear title to the land and premises embodied in the within and accompanying map or plat, known as "Map of PRINCETON BY THE SEA, Half Moon Bay, San Mateo County, California." to be made, mapped and platted and do hereby dedicate to the public the following streets, avenues and boulevards, delineated thereon to public use to wit:-

OCEAN BOULEVARD, PRINCETON AVENUE, HARVARD AVENUE, YALE AVENUE, CORNELL AVENUE, CALIFORNIA AVENUE, STANFORD AVENUE, WEST POINT AVENUE, BROADWAY, PROSPECT WAY, COLUMBIA STREET, VASSAR STREET, REGENT STREET.

And we, and each of us do hereby acknowledge the making, mapping and platting of said lands and our consent thereto, and the dedication of said above mentioned avenues to public use and our consent to said dedication thereof.

IN WITNESS WHEREOF, we have hereunto set our hands and seals.

DATED. September 4th 1908.

Frank P. Brophy
William H. George

STATE OF CALIFORNIA
CITY AND COUNTY OF SAN FRANCISCO } ss.

On this 4th day of September, in the year Nineteen Hundred and Eight (1908) before me George Pattison, a Notary Public in and for the said City and County of San Francisco, residing therein duly commissioned and sworn personally appeared, FRANK P. BROPHY, known to me to be one of the parties who executed the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year in this certificate first above written

SEAL

George Pattison
Notary Public in and for the City and County of San Francisco, State of California.

I hereby certify that there are no liens for unpaid State and County or other taxes against this tract or subdivision of land, as shown on this map or any part thereof.

DATED September 8th, 1908.

(Seal)

H. H. Underhill
Auditor San Mateo County.

STATE OF CALIFORNIA
CITY AND COUNTY OF SAN FRANCISCO } ss.

On this 4th day of September in the year Nineteen Hundred and Eight (1908) before me George Pattison a notary public in and for said City and County of San Francisco, residing therein duly commissioned and sworn, personally appeared WILLIAM H GEORGE, known to me to be one of the parties who executed the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year in this certificate first above written.

(Seal)

George Pattison
Notary Public in and for the City and County of San Francisco, State of California.

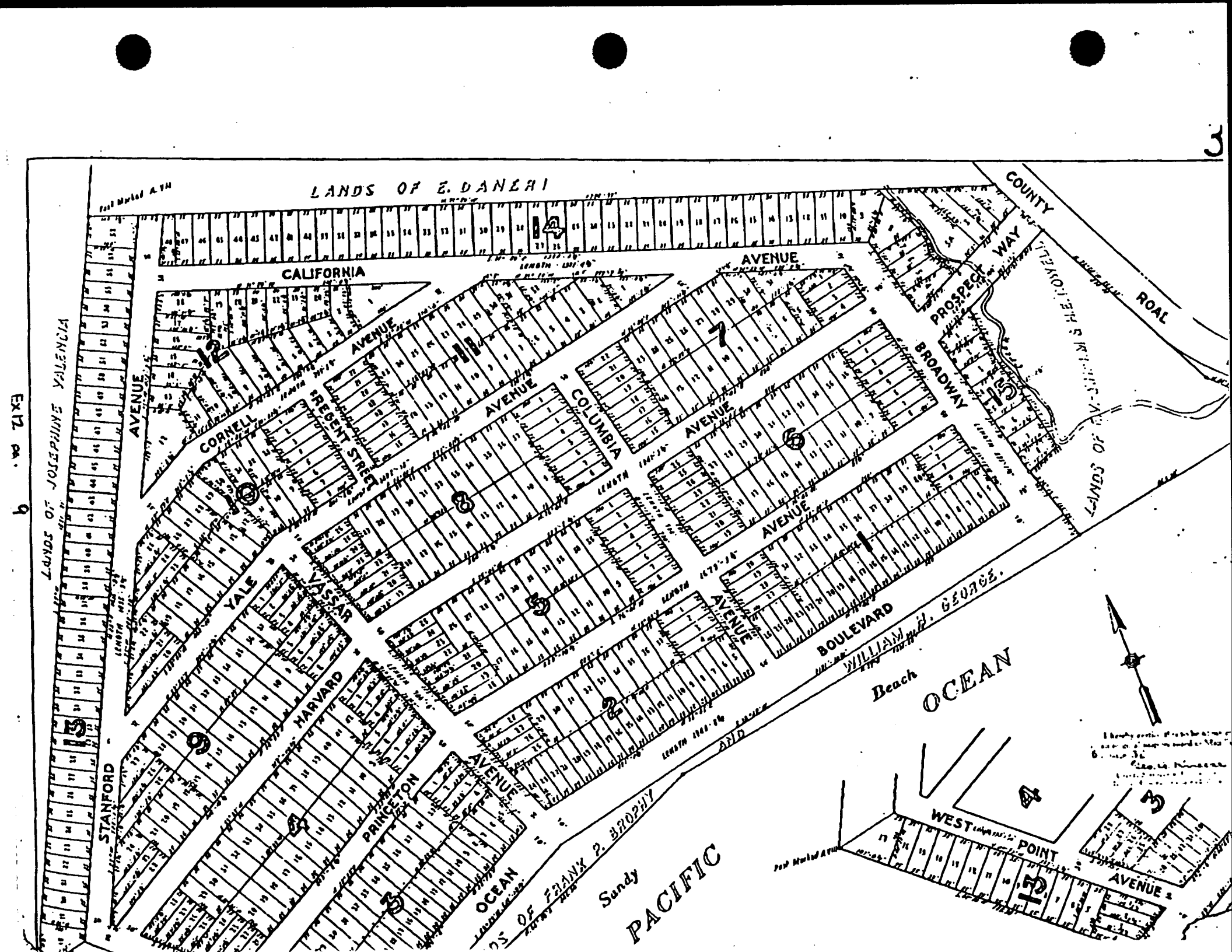
OCEAN BOULEVARD, PRINCETON AVENUE, HARVARD AVENUE, YALE AVENUE, CORNELL AVENUE, CALIFORNIA AVENUE, STANFORD AVENUE, WEST POINT AVENUE, BROADWAY, PROSPECT WAY, COLUMBIA STREET, VASSAR STREET, REGENT STREET, as designated and delineated on this map are hereby accepted by the Board of Supervisors of the County of San Mateo, State of California on behalf of the Public and dedicated to public use, by the resolution of said Board of Supervisors, adopted on the 8 day of Sept. 1908.

(SEAL)

Attest: Jas. H. Nash
Clerk of the Board of Supervisors of the County of San Mateo.

FILED at the request of FRANK P. BROPHY, September 8th 1908 at three o'clock P.M. San Mateo County Records.

[illegible] Johnston
County Recorder.


LANDS OF E. DANERI
CALIFORNIA AVENUE
CORNELL AVENUE
REGENT STREET
YALE AVENUE
HARVARD AVENUE
STANFORD AVENUE
PRINCETON AVENUE
COLUMBIA AVENUE
BROADWAY AVENUE
PROSPECT WAY
COUNTY ROAL
LANDS OF JOSEPHINE KOVACEVICH
LANDS OF JOSEPHINE YALENCIA
LANDS OF FRANK P. BRODIY
OCEAN BOULEVARD
WILLIAM H. GEORGE.
Beach
OCEAN
Sandy
PACIFIC
WEST POINT AVENUE
Exhibit 6

MAP OF
PRINCETON BY
HALF MOON
SAN MATEO CO
CALIFORN

SCALE: 100 FT. TO 1

WE HEREBY CERTIFY THAT THIS IS A COR
MADE BY US IN AUGUST 1908.

Punnell
CIVIL ENGINEERS
301 MALDON
333 KEA

FRANK P. BROPHY and WILLIAM H. GEORGE, are the persons interested in, and the only parties in interest and the only parties necessary to give a clear title to the land and premises included in the within and accompanying map or plat known as "Map of PRINCETON BY THE SEA, Half Moon Bay, San Mateo County, California." to be made, mapped and platted and do hereby dedicate to the public the following streets, avenues and boulevards, delineated thereon to public use to wit:-
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And we, and each of us do hereby acknowledge, the making, mapping and platting of said lands and our consent thereto, and the dedication of said above mentioned avenues to public use and our consent to said dedication.

IN WITNESS WHEREOF, we have hereunto set our hands and seals.
DATED. September 4th 1908.

Frank P. Brophy
William H. George

STATE OF CALIFORNIA

301 MACDONOUGH BUILDING
333 KEARNEY STREET
S.F. CAL.

d in, and the only parties in in-
d premises included in the with-
E SEA, Half Moon Bay, San Mateo
to the public the following streets,

NELL AVENUE, CALIFORNIA AVENUE,
MBIA STREET, VASSAR STREET, REG-

platting of said lands and our con-
vse and our consent to said dedic-

Frank P. Brophy
William H. George

Ex 17. 0. 11

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isco, residing therein duly com-
me to be one of the parties who
the same.
Official Seal the day and year

George Pattison
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nty of San Francisco, State of
lifornia.

, or other taxes against this
l.

M. H. Underhill
Auditor San Mateo County.

STATE OF CALIFORNIA } ss.
CITY AND COUNTY OF SAN FRANCISCO.

On this 4th day of September in the year Nineteen Hundred and Eight (1908) before me George Pattison a notary Public in and for said City and County of San Francisco, residing therein duly commissioned and sworn, personally appeared WILLIAM H. GEORGE, known to me to be one of the parties who executed the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year in this certificate first above written.

(Seal)

George Pattison
Notary Public in and for the
City and County of San Francisco,
State of California.

OCEAN BOULEVARD, PRINCETON AVENUE, HARVARD AVENUE, YALE AVENUE, CORNELL AVENUE, CALIFORNIA AVENUE, STANFORD AVENUE, WEST POINT AVENUE, BROADWAY, PROSPECT WAY, COLUMBIA STREET, VASSAR STREET, REGENT STREET, as designated and delineated on this map are hereby accepted by the Board of Supervisors of the County of San Mateo, State of California on behalf of the Public and dedicated to public use, by the resolution of said Board of Supervisors, adopted on the 8 day of Sept. 1908.

(SEAL)

Attest: Jas. H. Nash
Clerk of the Board of Supervisors
of the County of San Mateo.

FILED at the request of FRANK P. BROPHY, September 8th 1908 at three o'clock P.M. San Mateo County Records.

J. F. Johnston
County Recorder.

I hereby [illegible]
[illegible]
6 page 32
[illegible]

OCT 22 NOV

March 20 1999

Mr. Merrill,

1-98-058

1999

Attached is response to your Nov 19th letter.

Scale

2 (a) The Plans in Yellow, Blue, and Green binders, such as Exhibits 2, 3, 40, 41, 42 are dimensioned as shown, with scale of 1" = 27'. Attached is a scale drawing at 1" = 50', and 1" = 25'.

2 (b) The elev of TOR (top of revetment) is 100.
The elev 100. is established from the approved plan. The BOR (toe or Bottom Of Revetment) is 80'. Annual scour is usually less than 6 inches (0.5'). Scour is limited by the outer breakwater. For revetment design, as a safety factor the 0.5 scour depth is doubled to 1' and a further safety factor included, doubling it again to 2', although expected scour is 0.5. BOR' (with factor) is 80-2=78'. Reference elevations are N slab at 100.0, and station #178 at elevation of 77'.

2 (c) A section of the existing rockslope protection and proposed repair [not revetment] is Exhibit 1. The Plan is Exhibit #2, The revetment Plan locations are three alternatives, namely Blue Binder Exhibit #40, #41, #42.

2 (d) Pile length is 40', driven 20' down. Assuming a max scour of 2', this leaves embedment of 18' deep.
Expected scour is 0.5', but for design this value is increased to 1.' and doubled to 2' as a safety margin. If normal BOR is elev 80', with 20' embedment, then 80-2= 78' elev with 2' scour, and embedment is 18'.

Station 178 has elev of 77'. Top el: TOR=100'

2 (e) The boundaries are shown on Plan 2. (Bluebinder "B") Five Supreme Court cases support boundaries.

2 (f) The primary repair is Exhibit #1, #2, of blue binder, involves no revetment. As alternatives, three revetments are proposed: Blue Binder Exhibits #40, #41, #42. No rip-rap is required South of the concrete, but placing rip-rap there would reduce the chance of scour (but is not required structurally)

3. Describe materials: rip-rap
The lower wall has mainly 24-60" diam bolders, and upper wall 16-24" diam bolders, of excellent quality. The good quality stone is verified by an engineering consultation from a shoreline specialist (Ex #5). The specialist has proposed the "proposed repair", Exhibit #1, in Bluebinder.

EXHIBIT NO. 13
APPLICATION NO. 1-98-58
Applicant's response to Commission Request of Nov.19/98 (Page 1 of 3)

As Exhibit #35, evidence has been provided that there is compliance with the "less than 10%" provision of PRC300610. It also states that repair Exhibit #1, or #39 could be completed as well and still be within 10%. Since this applicant asked for all published CCC "regulations" as to seawalls and complied with them, no further more costly volumetrics is warranted, since the Government Code would bar staff from concocting a new costly regulation if such is not specifically published and filed with the Secretary of State.

Volume in new repair: It is estimated about 98 cu yards of additional rip-rap is needed to do the Exhibit #1 repair (primary plan).

4. Historical: Attachment "W", also reproduced as Bluebinder Ex #48, shows the bolders in photo, and toe unchanged in position. The witness statements Ex #31, 32, 35 attest to significant damage to rockslope protection by El Nino. The rockslope protection has been present since before 1974, and it historically has provided a valuable erosion control function. Much of the harbor is lined with rip-rap.

5. Sand loss is not an issue within the general harbor area, since sand is delivered each year into the harbor and there is "sand excess", not sand loss. The rockslope protection helps to prevent worsening of this excess condition. If sand is available within the harbor, transporting it to the toe of the rockslope protection could be done as a way to do beach nourishment. This would not be required structurally. If it is contemplated, or desirable to the commission, the transport of sand (beach nourishment) should be included as an optional permitted activity.

6. The State Lands Commission and Harbor District issued a combined approval in letter dated about October, 1998. It states in pertinant part:

> "Both the (Harbor) District and SLC (State Land Commission) staff presently assert no claim either that the project intrudes onto sovereign lands or that it would lie in an area that is subject to the public easement in navigable waters"

Mr. Leibster is wrong about Ocean Bulv, and the County has issued it own opinion letter, stating the County considers it has only an easement and no fee interest. Mr. Leibster was given also has 5 Supreme Court cases supporting the joint opinion of the applicant and County.

7. The existing plans, and building plans were approved by the LCP, and no further approvals are necessary. The County is awaiting CCC permit, and does not have to consider the same application.

8. The alternative analysis is delt with as Exhibit #44 of Bluebinder. Separate page.

9. The type of information you request is not available. Generally some sand 0.5' accretion occurs in summer and reverse in winter. Usually less than 1' in storms.

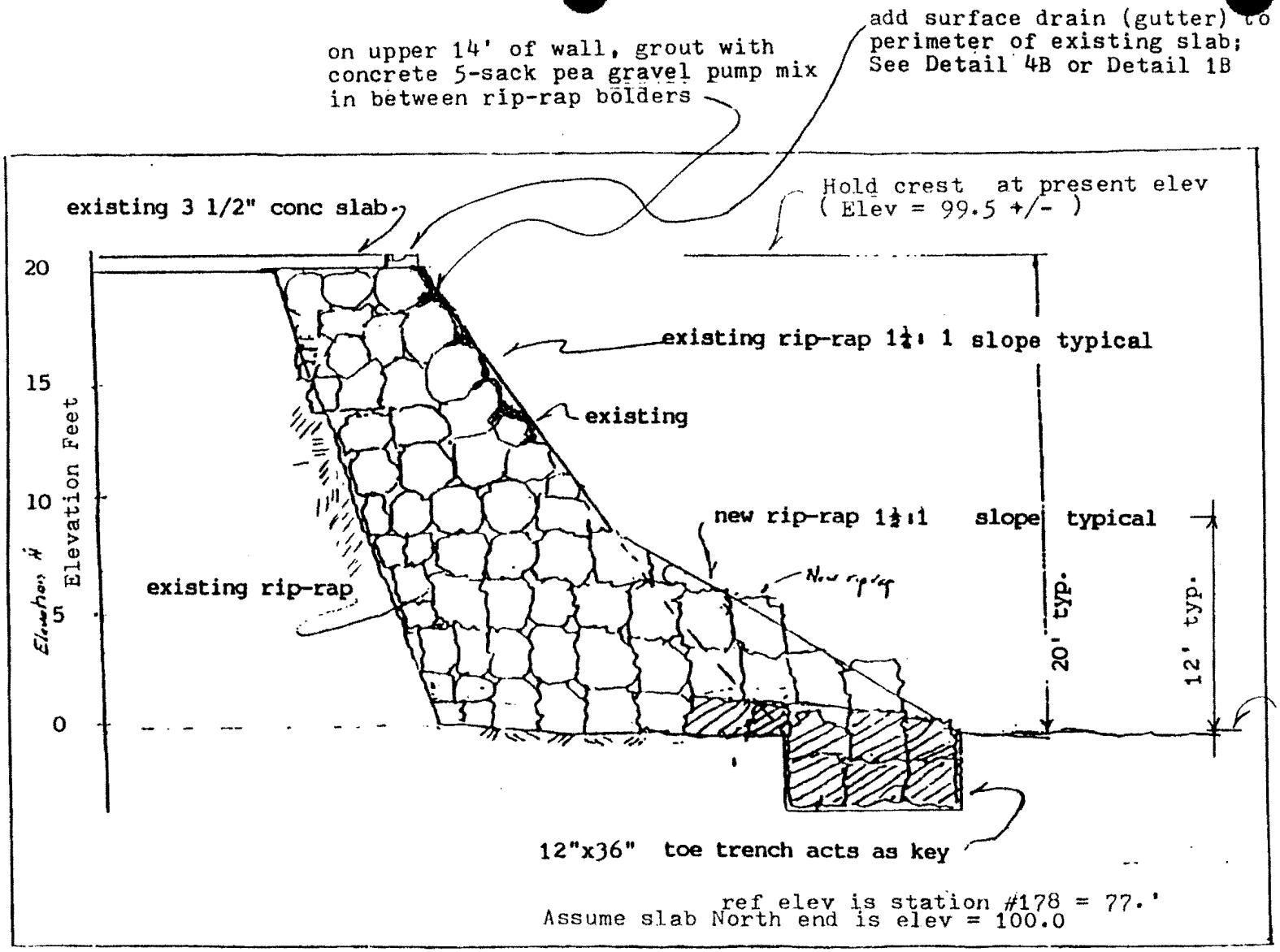
The Exhibits 31, 32, 35 are evidence that no "path" exists. Further, a Request under Public Records Act to Commission produced no evidence of a path, or any person trespassing on the property. Further, the U.S. Supreme Court decision of NOLLAN vs. COASTAL COMMISSION provides there is no right of access but a right to exclude as a matter of right. Also posting under CC 1008 has been present for years, and photos in CCC file, Photos marked "N" and "O" were on file in CCC files months before Leipster concocted the silly fantasy about a path. Mr. Merrill said he saw no path.

B 1. A "dated signature" on behalf of applicants has already been provided. This complies with 13053.5, & fulfills the signature & date requirement. A further authorization is attached. The Commission does not require all stockholders or owners to sign, as evidenced by the case of UNION OIL vs COASTAL COMMISSION, in which the thousands of Union Oil stockholders were NOT required to sign. Such a requirement would be burdensome, oppressive and designed to delay an applicant. Also, under the Calif Partnership Act, 1 partner's signature fulfills all legal requirement under the Act.

Respectfully,

/S/

Robert Clark, Trianchor Enterprises.
Address all correspondence to:
Robert Clark & S. Ibara
Trianchor Enterprises
1015 Gayley Ave #256
Los Angeles, Calif 90024



CROSS-SECTION OF EXISTING RIP-RAP & PROPOSED REMEDIAL WORK Scale: 1 in 6.1 ft

EXHIBIT NO. 14
APPLICATION NO. 1-98-58
Proposed New Riprap cross-section

REPAIR FOR EXISTING SEAWALL

EXHIBIT 1

380/350 PRINCETON

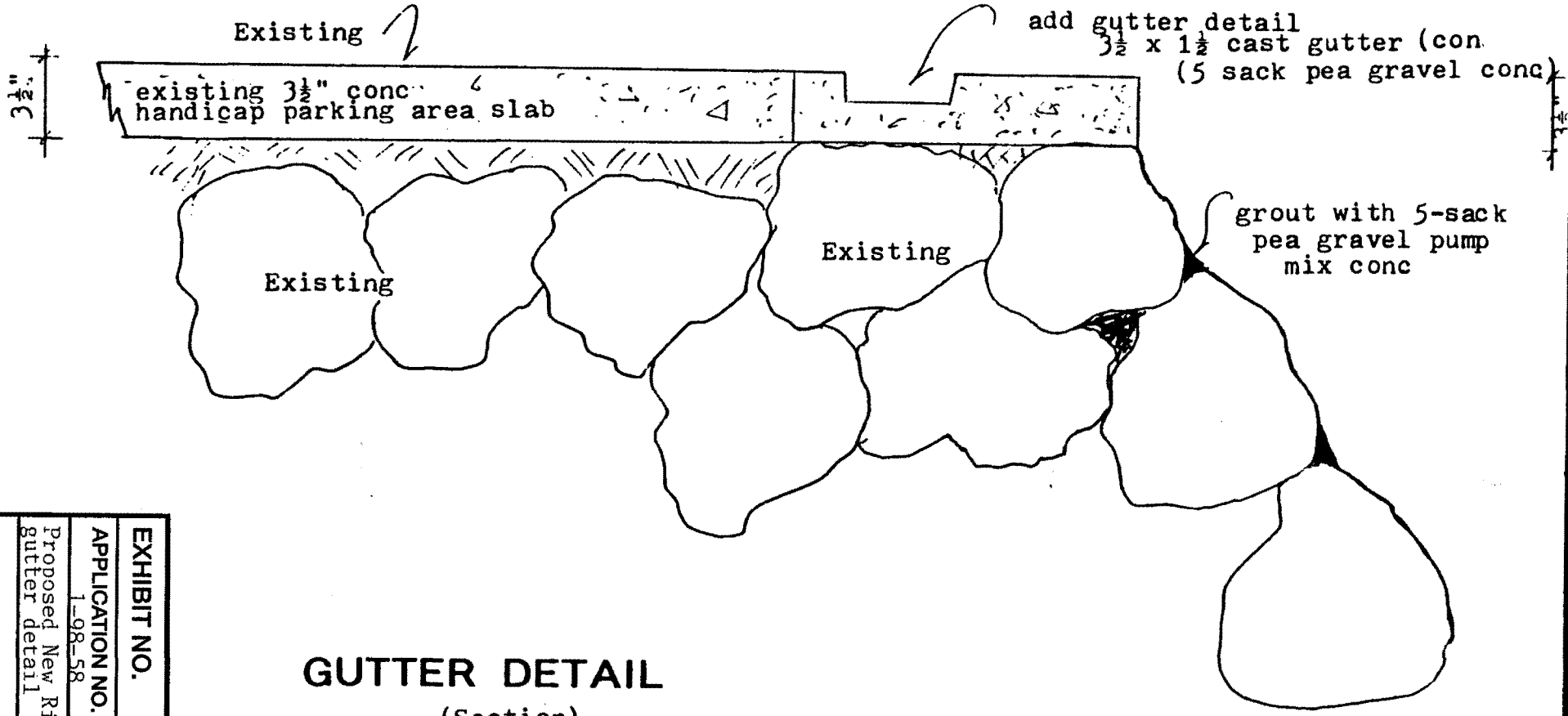
ADD GUTTER

add 3½" conc surface gutter
at margin of existing slab
width is 8 to 60"

EXISTING:

existing conc slab
is over layer of
granular underlayment
(sand), over bolders

add a recessed surface drain (gutter):
gutter conducts to downspouts



GUTTER DETAIL

(Section)

EXHIBIT NO. 15
APPLICATION NO. 1-98-58
Proposed New Riprap gutter detail

Exhibit 1B

STATE OF CALIFORNIA—THE RESOURCES AGENCY

PETE WILSON, Governor

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST AREA OFFICE
725 FRONT STREET, STE. 300
SANTA CRUZ, CA 95060
(408) 427-4863
HEARING IMPAIRED: (415) 904-5200

RECEIVED
MAY 16 1995
CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

REQUEST FOR WAIVER

Your proposed development requires a Coastal Development Permit under the law and current Commission Regulations (California Administrative Code, Title 14, Division 5.5). However, the Executive Director may waive the permit requirements in some circumstances.

Please complete the following information and submit the project plans. These plans will be kept on file. If the Executive Director waives the permit requirements, the waiver will not become effective until he reports it at the next available Commission meeting. For projects qualifying for a waiver pursuant to Sections 13250c or 13253, any three (3) or more Commissioners may require that the application be treated as a permit application. For projects qualifying for a waiver pursuant to Section 13238, one-third (1/3) of the appointed Commissioners may require that the application be treated as a permit application. You will be sent a copy of the approved waiver.

I Stan Furmanski (property owner's name), this April 29, 1995 (today's date)

request a waiver of Coastal Development requirements, per Section 13250c and 13253 of Commission Regulations for the following development: (describe all development proposed including any decks, swimming pools or hot tubs, amount of new square footage, grading, paving or other work proposed): Waiver to allow maintenance and slight repair of existing rip-rap which has existed many years. This is intended to preserve several beautiful large Cypress trees growing on my property, which are beautiful and a visual resource enjoyed by all for many years. Trees are 30 ft tall. Rip-rap is existing and common in this area- see photo

located at: 380 Princeton Avenue
Princeton By The Sea (San Mateo Co)

Assessor's parcel number: 047 024 090 &150. No trees trees are to be removed. I have received all appropriate zoning approvals from the local jurisdiction (attached). Also attached are my project plans.

Signature of property owner or representative

Stan Furmanski Trianchor Marine
1015 Gayley 256 LA Calif 90024

Mailing address 1015 Gayley Ave 256
Los Angeles, Calif 90024

EXHIBIT NO. 16
APPLICATION NO. 1-98-58
Applicant's May 1995 Request for Waiver

Ex.16

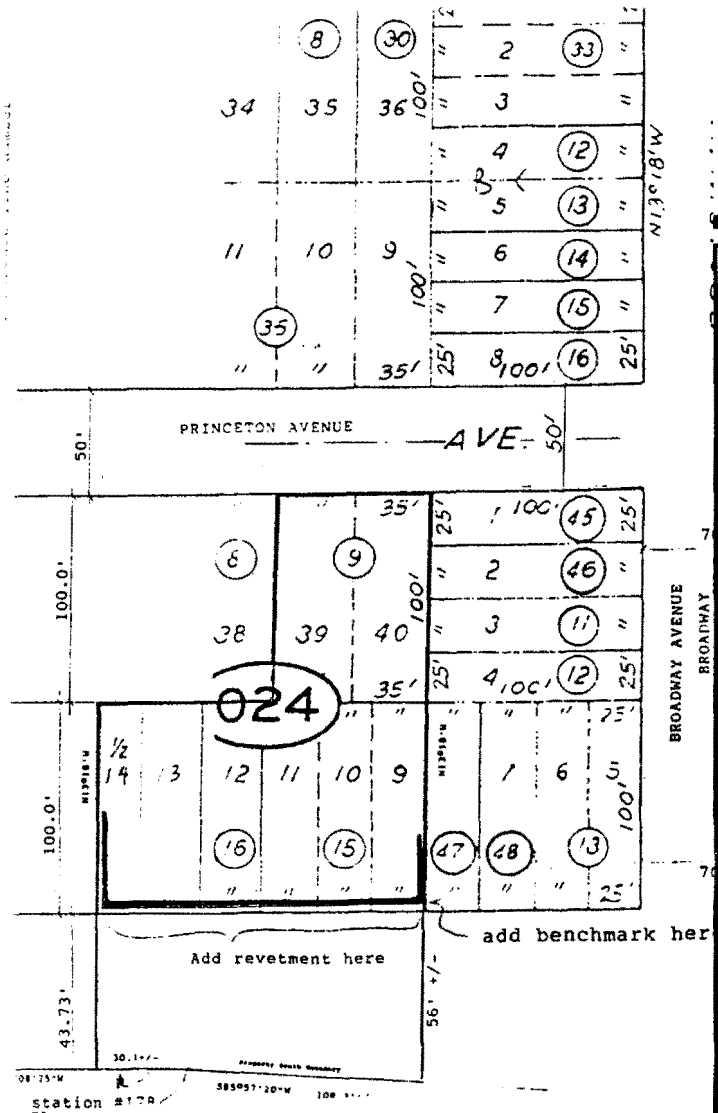


EXHIBIT NO. 17
APPLICATION NO. 1-98-58
Original Proposal

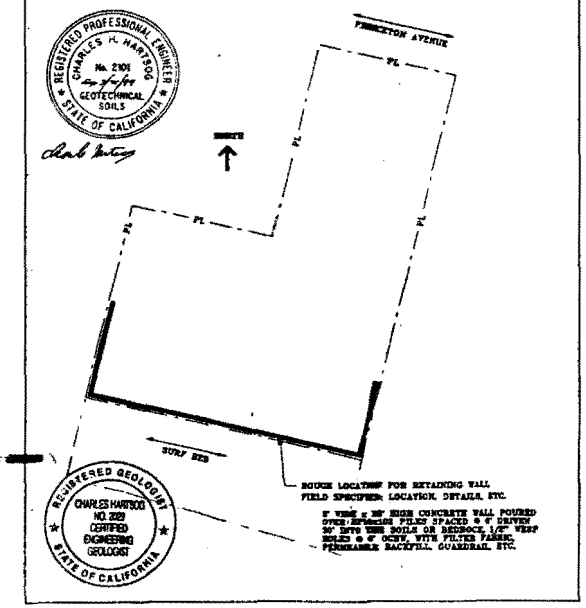
ATTACHMENT #

CHARLES H. HARTSOG
SOILS - CIVIL - STRUCTURAL ENGINEER
973 LINDA VISTA AVENUE, MOUNTAIN VIEW, CA. 94043-1902, FAX 650-968-8645, 800-877-6457 or 800-US-SOILS

ROUGH PRELIMINARY REPAIR LOCATION PLAN
NOT TO SCALE: 1"=40'+-
DATA FURNISHED BY OTHERS
CHANGES WILL BE SPECIFIED IN THE FIELD

TRIANCHOR MARINE - MR./MRS. STAN FUKMANSKI
350 AND 360 PRINCETON AVE
PRINCETON, CA.
JUNE 3, 1998

REGISTERED PROFESSIONAL ENGINEER
CHARLES H. HARTSOG
No. 2101
GEOTECHNICAL SOILS
STATE OF CALIFORNIA



REGISTERED GEOLOGIST
CHARLES HARTSOG
NO. 2129
CERTIFIED ENGINEERING GEOLOGIST
STATE OF CALIFORNIA

ROUGH LOCATION FOR RETAINING WALL
FIELD SPECIFIED: LOCATION, DETAILS, ETC.

8' HIGH ± 30' HIGH CONCRETE WALL POURED OVER #[illegible] PILES SPACED @ 6' DRIVEN 30' INTO THE SOILS OR BEDROCK, 1/2" WEEP HOLES @ 6' OCEW, WITH FILTER FABRIC, PERMEABLE BACKFILL, GUARDRAIL, ETC.

3B

Minor Revision Adds a Revetment to repair damage to an Existing Rip Rap Wall caused by severe winter (El Nino) storm disaster

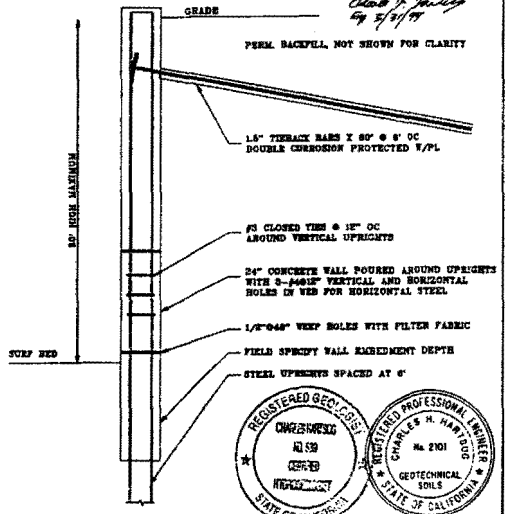
CHARLES H. HARTSOG
SOILS - CIVIL - STRUCTURAL ENGINEER
973 LINDA VISTA AVENUE, MOUNTAIN VIEW, CA. 94043-1902, FAX 650-968-8645, 800-877-6457 or 800-US-SOILS

RETAINING WALL DETAIL
350 AND 360 PRINCETON AVE. PRINCETON, CA.
MR./MRS. STAN FUKMANSKI,
JUNE 3, 1998
NOT TO SCALE: 1/4"=1'-0"

STRUCTURAL STEEL: 36 KSI
REINFORCING STEEL: 60 KSI
CONCRETE: 3000 PSI, 5.0" MAX AGG. SULFIDE RESIST
ALL STEEL SHALL BE CORROSION PROTECTED

REGISTERED PROFESSIONAL ENGINEER
CHARLES H. HARTSOG
#2532
STRUCTURAL
STATE OF CALIFORNIA

INSTALL GUARD RAILS
(NOT SHOWN FOR CLARITY)



REGISTERED GEOLOGIST
CHARLES HARTSOG
NO. 2129
CERTIFIED ENGINEERING GEOLOGIST
STATE OF CALIFORNIA

REGISTERED PROFESSIONAL ENGINEER
CHARLES H. HARTSOG
No. 2101
GEOTECHNICAL SOILS
STATE OF CALIFORNIA

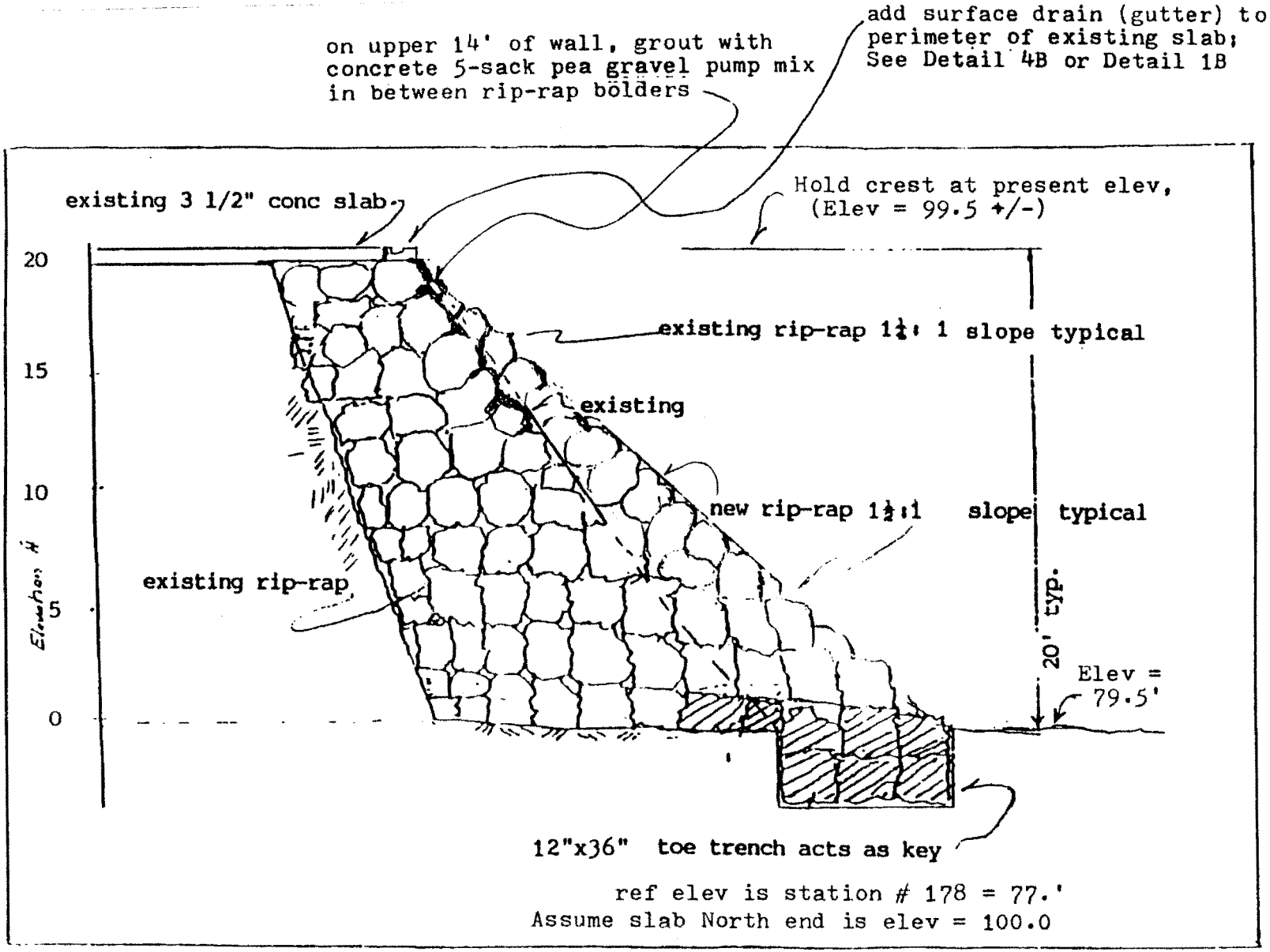
3C

ATTACHMENT #3

COASTAL PERMIT APPLICATION: To add revetment to repair damage to an Existing Rip Rap Wall caused by severe winter (El Nino) storm disaster

SHEET A
also same as ATTACHMENT #3

PLAN & SITE PLAN: Add Revetment
ATTACHMENT #3



CROSS-SECTION OF EXISTING RIP-RAP & PROPOSED REMEDIAL WORK Scale: 1 in 6.1 ft

EXHIBIT NO. 18
APPLICATION NO. 1-98-58
Alternative Variation Proposed New Riprap cross-section

REPAIR FOR EXISTING SEAWALL

380/350 PRINCETON

ATTACHMENT 39

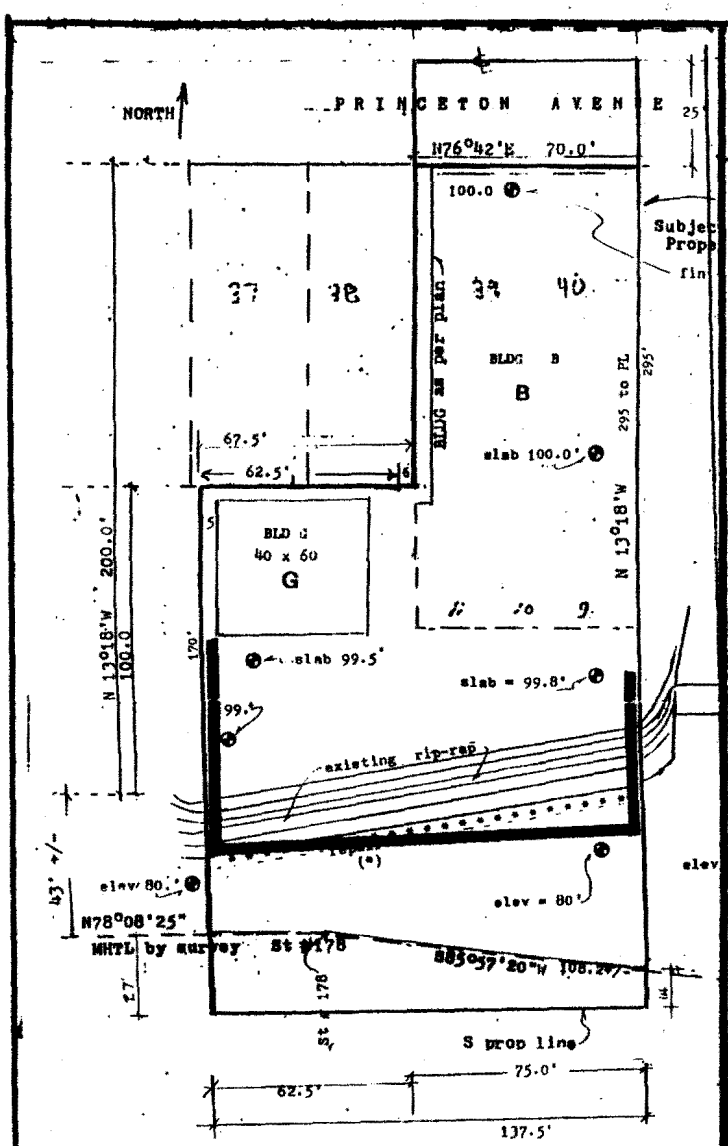


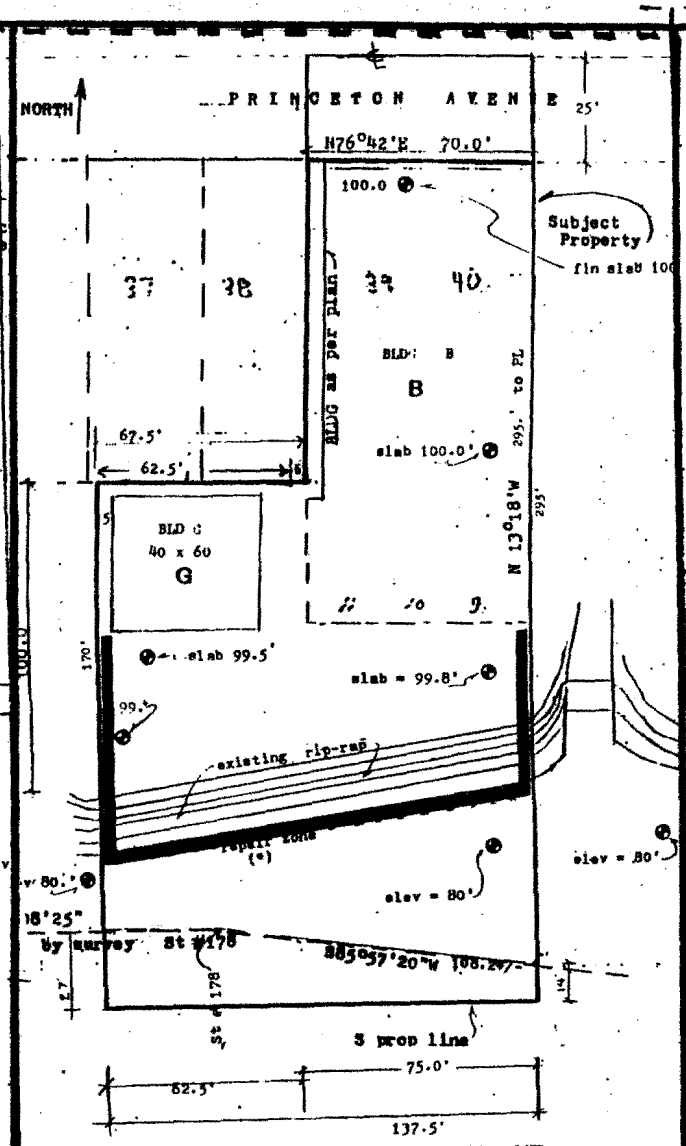
Exhibit 40 REPAIR PLAN 380 PRINCETON AVE

Scale: 1 in = 25 ft

Repair Plan

TOPOGRAPHIC FEATURES (repair zone)

1. each contour line = 3'



REPAIR PLAN 380 PRINCETON AVE

Exhibit 42

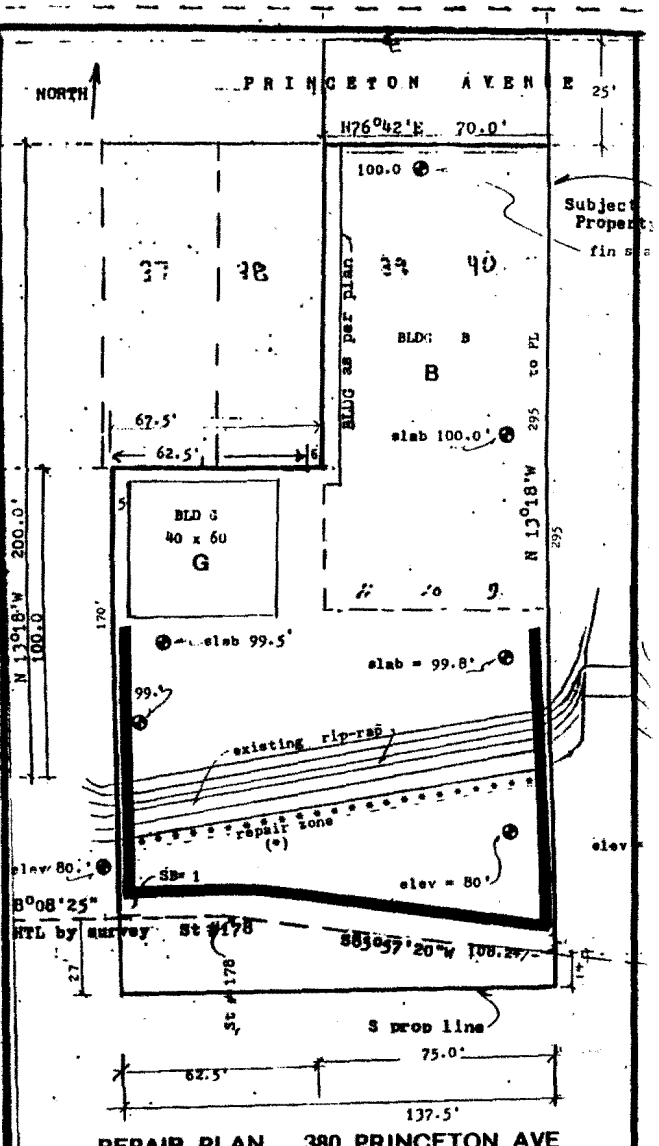
Scale: 1 in = 25 ft

Plan

IC FEATURES (repair zone)

contour line = 3'

2. conc revetment ht = 20'



REPAIR PLAN 380 PRINCETON AVE

Exhibit 41

Scale: 1 in = 25 ft

Plan

RAPHIC FEATURES (repair zone)

ach contour line = 3'

2. conc revetment ht = 20'

EXHIBIT NO. 19

APPLICATION NO. 1-98-58

Revetment Alternatives

DECLARATION OF THOMAS STEELE

I, Thomas Steele, know the following of my own personal knowledge, information and belief:

In February 1998, I was present at the subject property at 380 Princeton, adjacent to Pillar Point Harbor, and I can attest to the fact that very violent & large Pacific storms occurred in February and March, and I saw and can attest that the seawall at that location was significantly damaged and nearly entirely destroyed by those storms.

I personally saw the rip-rap wall damaged by storm action of the sea as follows: Damage was caused by storm surge, and wind-driven swells from the ocean, high storm tides, waves, wind driven rain, extreme rainfall, & cummulative storm damage from repeated insults of El Nino storms one-after-the other. This damage was storm-damage all out of the control of the owner. After the repair, a calculation of "bulk" was performed, and I agree the present 1999 bulk (volume) is less than 3.5% larger than previously, which is good compliance with the 10% rule, namely bulk is "less than 10%" larger, under P.R.C. 30610(g). Further proof of the storms is Attachments # B,C,D,E,F,G,H,I, confirming my account of the storms. My observation is the location of the toe is not significantly changed, as illustrated and proven by Attachment "W" submitted in about July 1998. The observation that some large bolders at the wall base (toe) are intact [on Att "W"] is due to the fact (which I observed), that during the El Nino storms there were high storm tides, and storm surges, and at high tide the lower bolders were UNDER

ATTACHMENT 31

EXHIBIT NO. 20
APPLICATION NO. 1-98-58
Declaration of Thomas Steele

WATER and therefore somewhat protected from surface waves, and wind-driven waves and "storm surge". Storm waves hit the upper part of the wall, which was more exposed and more severely destroyed the upper 7/8's of the wall. I observed those same large surface waves to destroy a fleet of boats within the harbor, and drive them aground, wrecking the boats. These observations attest that the same waves wrecking the wall, also wrecked boats. Attachments B,C,D,E,F,G,H,I also confirm storm damage.

This marine pheonomenon (that submerged objects are relatively immune to waves) is well known to sub-mariners (submarine mariners), since submarines may be severely damaged at the surface during a typhoon, but they are immune to typhoons and immune to wave damage if they submerge a few feet below the typhoon. This phonomenon explains why there was the maximal damage of the seawall in the upper 7/8's of the wall, & less below. Also, based on physics, largest lowest bolders also have higher inertia, lower potential energy, and thus are less prone to be damaged under these circumstances. Attachment W does properly show the location of the wall toe has not changed. Mr. Leibster's bogus conclusions about non-damage are totally unsound, and reflect Mr.Leibster likely has no training in engineering, and is totally unqualified as a witness. Hearsay objection is raised.

I am familiar with the seawall for the last 6 years. There has never been a path at or near the wall, and any suggestion by Mr. Leibster that one exists is false or a false statement. For years, signs with P.C. 602,603 and CC 1008 have been posted, on the site, since I have seen the signs and installed them over a period of years. Attachment N & Attachment O illustrate the signs Signs also were posted prior to, after repair, and presently.

March 12, 1999
Att #31

Thomas Steele

DECLARATION OF ROBERT JOHNSON

I, Robert Johnson, know the following of my own personal knowledge, information and belief:

In February 1998, I was present at the subject property at 380 Princeton, adjacent to Pillar Point Harbor, and I can attest to the fact that very violent & large Pacific storms occurred in February and March, and I saw and can attest that the seawall at that location was significantly damaged and nearly entirely destroyed by those storms.

I personally saw the rip-rap wall damaged by storm action of the sea as follows: Damage was caused by storm surge, and wind-driven swells from the ocean, high storm tides, waves, wind driven rain, extreme rainfall, & cummulative storm damage from repeated insults of El Nino storms one-after-the other. This damage was storm-damage all out of the control of the owner. After the repair, a calculation of "bulk" was performed, and I agree the present 1999 bulk (volume) is less than 3.5% larger than previously, which is good compliance with the 10% rule, namely bulk is "less than 10%" larger, under P.R.C. 30610(g). Further proof of the storms is Attachments # B,C,D,E,F,G,H,I, confirming my account of the storms. My observation is the location of the toe is not significantly changed, as illustrated and proven by Attachment "W" submitted in about July 1998. The observation that some large bolders at the wall base (toe) are intact [on Att "W"] is due to the fact (which I observed), that during the El Nino storms there were high storm tides, and storm surges, and at high tide the lower bolders were UNDER

ATTACHMENT 32

EXHIBIT NO. 21
APPLICATION NO. 1-98-58
Declaration of Robert Johnson

WATER and therefore somewhat protected from surface waves, and wind-driven waves and "storm surge". Storm waves hit the upper part of the wall, which was more exposed and more severely destroyed the upper 7/8's of the wall. I observed those same large surface waves to wreck a fleet of boats within the harbor, and drive them aground, wrecking the boats. These observations attest that the same waves wrecking the wall, also wrecked boats. Attachments B,C,D,E,F,G,H,I also confirm storm damage.

This marine pheonomenon (that submerged objects are relatively immune to waves) is well known to sub-mariners (submarine mariners), since submarines may be severely damaged at the surface during a typhoon, but they are immune to typhoons and immune to wave damage if they submerge a few feet below the typhoon. This phonomenon explains why there was the maximal damage of the seawall in the upper 7/8's of the wall, & less below. Also, based on physics, largest lowest bolders also have higher inertia, lower potential energy, and thus are less prone to be damaged under these circumstances. Attachment W does properly show the location of the wall toe has not changed. Mr. Leibster's bogus conclusions about non-damage are totally unsound, and reflect Mr.Leibster likely has no training in engineering, and is totally unqualified as a witness. Hearsay objection is raised.

I am familiar with the seawall for the last 5 years. There has never been a path at or near the wall, and any suggestion by Mr. Leibster that one exists is false or a false statement. For years, signs with P.C. 602,603 and CC 1008 have been posted, on the site, since I have seen the signs & seen them placed over a period of years. Attachment N & Attachment O illustrate the signs Signs also were posted prior to, after repair, and presently. I also saw them in March 1999.

March 12, 1999
Att #32 pg 2 Robert Johnson

Ex. 21, p. 2

ATTACHMENT 32

ATTACHMENT 35:

DECLARATION OF DAVID CHEN

1. I, David Chen, do CARTOGRAPHY and digital engineering calculations for digital cartography (map making).

2. I am familiar with the provision of P.R.C. 30610 which states repairs may be made without permit, provided the repaired bulk does not exceed the original by 10%. I have reviewed & have no disagreement with Attachments 33, 35, 36, 31, 32, W, A, B, C, D, E, F, G, H, I, N, O.

3. I agree with the statements in Attachment #32, that the wall was damaged by El Nino storms, and the following:

4. Attachment #32, a witness declaration states the wall was damaged and nearly destroyed: PG 1 LINE #4:

> "In February 1998, I was present at the subject property at 380 Princeton, adjacent to Pillar Point Harbor, and I can attest to the fact that very violent & large Pacific storms occurred in February and March, and I saw and can attest that the seawall at that location was significantly damaged and nearly entirely destroyed by those storms."

Further proof of destruction is given in Attachment #32, line #11:

[LINE #11] "I personally saw the rip-rap wall damaged by storm action of the sea as follows: Damage was caused by storm surge, and wind-driven swells from the ocean, high storm tides, waves, wind driven rain, extreme rainfall, & cummulative storm damage from repeated insults of El Nino storms one-after-the other. This damage was storm-damage all out of the control of the owner"

Also, Attachment "W" is a valuable comparison photograph proving the toe is unchanged in position between 1995 and 1998.

5. While some replaced or new rip-rap occurs on the Western end, out of view on "W", this does not represent a significant change in bulk, since it is far less than 10%.

Summary Field Work:

ATTACHMENT 35

EXHIBIT NO. 22
APPLICATION NO. 1-98-58
Declaration of David Chen

6. FIELD WORK

To calculate the present bulk, I made field measurements using laser instruments and optical surveying instruments. These measurements were referenced to known "MONUMENTS" such as shown on ATTACHMENT #40, #36, "M" and "N". I found Pillar Point 3, which is an important Triangulation Station set by the State, intact for FORTY (40) YEARS. It is pictured in ATT "M" and "N". I also located the "crest" and "toe" of the repaired wall. The information was digitized and present bulk was calculated.

Similarly, pre-storm data collected & data from ATTACHEMENT #40 was made numerical, & numerical calculations & volume calculations by computer show bulk-change was much less than 10% when compared to the present. It was a change of less than 4% . This is good compliance with the 10% rule, cited above, which permits rebuilding to 110% (or less) of the original bulk.

7. "LOCATION" I agree with the following (Attachment #32):

ATT #32, pg 1, LINE 21:

"Further proof of the storms is Attachments # B,C,D,E,F,G,H,I, confirming my account of the storms. My observation is the LOCATION OF THE TOE is not significantly changed, as illustrated and proven by Attachment "W" submitted in about July 1998. The observation that some large bolders at the wall base (toe) are intact [on Att "W"] is due to the fact (which I observed), that during the El Nino storms there were high storm tides, and storm surges, and at high tide the lower bolders were UNDER WATER and therefore somewhat protected from surface waves, and wind-driven waves and "storm surge". Storm waves hit the upper part of the wall, which was more exposed and more severely destroyed the upper 7/8's of the wall. I observed those same large surface waves to wreck a fleet of boats within the harbor, and drive them aground, wrecking the boats."

Attachment 32, pg 2 LINE #7:
"These observations attest that the same waves wrecking the Wall, also wrecked boats. Attachments B,C,D,E,F,G,H,I also confirm storm damage."

"This marine pheonomenon (that submerged objects are relatively immune to waves) is well known to sub-mariners (submarine mariners), since submarines may be severely damaged at the surface during a typhoon, but they are immune to typhoons and immune to wave damage if they submerge a few feet below the typhoon.This phonomenon explains why there was the maximal damage of the seawall in the upper 7/8's of the wall, & less below. Also, based on physics, largest lowest bolders also have higher inertia, lower potential energy, and thus are less prone to be damaged under these circumstances. Attachment W does properly show the location of the wall toe has not changed. Mr. Leibster bogus conclusions about non-damage are totally unsound, and reflect Mr.Leibster likely has no training in engineering, and is totally unqualified as a witness. Hearsay objection is raised.

ATTACHMENT 35 Ex. 22, p. 2

ATTACHMENT 35:

DECLARATION OF DAVID CHEN (continued)

8. My conclusion, is that the repair to the wall changed the bulk by considerably less than 10%, and therefore conforms to P.R.C. 30610 which states that disaster repairs may be made without permit, provided the repaired bulk does not exceed the original by 10%.

I have reviewed & have no disagreement with Attachments 33, 35, 36, 31, 32, W, A, B, C, D, E, F, G, H, I, N, O. 38,39, 40.

9. I also evaluated, theoretically, whether a further repair could be accomplished near the toe, to add a key and those repairs shown on Attachment #38 and #39. This computation was done by computer, and showed "YES", either repair (Att #38 or #39) could be done, and still stay within the overall 10% bulk limit under PRC 30610. ATT 38 and 39 leave the existing wall in place and would repair it.

10. I largely discount several rather inaccurate or false statements of Mr. Leibster, & also a so-called xerox-picture which is flawed and of no evidentiary value. The fact that a wall repair was done is no secret. Mr. Leibster has no physical control monuments, whereas my computations are referenced to PILLAR PT #3 and U.S. Geodetic references, illustr. ATT#40. I never saw any 'path' on the site or near the wall. I did see "C.C. 1008" signs posted for a number of years. I have seen a Response from the Commission stating that "no documents" exist as to any "path" or to any person crossing the property,or as to any Commissioner ever crossing the property. No charts or map show any path.

March 16, 1999

David Chen

Ex. 22, p. 3

ATTACHMENT 35

12 inches. A frictional coefficient of 0.35 may be used between firm soil and the bottom of concrete foundations.

SLAB-ON-GRADE FLOORS

As a minimum, all concrete slab-on-grade floors, pavements, or sidewalks should be supported on a subgrade prepared as recommended for native soil areas under SITE GRADING above. Floor slabs placed within the old fill area in conjunction with a drilled pier foundation could be expected to experience large uneven settlements, resulting in considerable cracking. Therefore, such slabs should be structurally independent of all foundation members with a positive separation between them, should be highly reinforced to limit cracking, and should contain frequent saw cuts to control cracking to specific locations. It is possible, if not likely, that the serviceability of such a slab could become unacceptable after several years, requiring maintenance and/or replacement; however, it would not be expected to affect the structure itself.

Conventional slab-on-grade floors used in conjunction with the conventional foundation alternative (completely reworked fill) would be provided much improved support as compared to the old fill in its existing condition. It is expected that frequent saw cuts to control cracking would be adequate to maintain the serviceability of the slab.

Good quality concrete is itself relatively impervious to transmission of soil moisture. If it is desired to further minimize dampness of interior floors, they should be underlain by a vapor barrier consisting of an at least 6-mil-thick polyethylene sheet, which is in turn underlain by at least four inches of No. 4 by 3/4-inch gravel base. A 2-inch-thick moist sand cushion may be placed over the impervious membrane to protect the membrane during construction, and to aid in curing the concrete. If the warehouse floor will be subjected to highly concentrated loads, or heavy forklift wheel loads, six inches of Class II Aggregate Base should be substituted for the 4-inch gravel base.

SLOPE PROTECTION

Rip-Rap

The Plan Formulation Document for the construction and design of the Pillar Point Marina breakwater by the U.S. Army Corps of Engineers outlines in some detail the storm conditions expected to prevail within the interior of the harbor. The conditions at this site are not significantly

EXHIBIT NO. 23
APPLICATION NO. 1-98-58
Excerpt, Bay Area Geotechnical Group
Feb. 21, 1991

different from those at the breakwater. That report has therefore been used as a guideline for our recommendations for protection of the harbor-side slope at this site.

As indicated earlier, sink-holes have developed behind the existing rip-rap slope protection. The slope protection should therefore be upgraded to provide more permanent protection. First, the existing rip-rap should be removed from the existing slope, and stockpiled to one side. Any massive chunks of concrete contained within the rip-rap should be broken into pieces that are 30 inches in maximum dimension, and combined with the stockpiled rip-rap. Pieces smaller than 12 inches should be stockpiled separately for use as a filter material beneath the rip-rap on the improved slope. Similarly, any remnants of concrete slabs contained within the rip-rap should be broken into pieces smaller than 12 inches in any dimension and combined with the stockpiled filter material, or they should be hauled off-site.

Next, the exposed slope should be cut back to a gradient of 2:1 and the resulting surface should be rolled with heavy construction equipment. Any identified areas of soft or excessively loose soils should be excavated to firm material and replaced with compacted fill. The slope should then be covered with a suitable erosion protection fabric, such as Mirafi 700X, or similar. The fabric should be properly anchored at the top and bottom of the slope in accordance with the manufacturer's recommendations. A 12-inch-thick layer of filter material as described below should be placed on the fabric, followed by a 2½-foot-thick layer of rock rip-rap. These layer thicknesses should be measured normal to the slope.

The base of the erosion fabric, filter material, and rip-rap should be at the existing slope toe, between Elevations 0 and -1. The slope protection should also extend up the slope to Elevation 12 or greater. In addition, the filter material and rip-rap should completely cover and protect the erosion fabric on the slope, both at the base and top of the slope protection area.

If either filter material or rip-rap must be imported to the site, they should meet the gradation requirements presented in the tables on the next page. It should be noted, that with the wide range of particle sizes in the filter material, great care should be taken to ensure that segregation does not occur during placement on the slope.

FILTER MATERIAL

Stone Size	Percent Finer
12"	100
3"	100-80
3/4"	80-60
No.4	60-30
No.40	20-0

RIP-RAP

Minimum Size	50 Percent Size	Maximum Size
90 pounds or 11 inches	400 pounds or 18 inches	1500 pounds or 30 inches

Retaining Wall

Alternatively, the upper portion of the slope could be protected by a retaining wall designed to resist lateral earth pressures. Retaining walls which are not rigidly restrained from movement at the top should be designed to withstand active earth pressures taken as an equivalent fluid pressure of 35 pounds per cubic foot (pcf). If the wall is to be restrained at the top, it should be designed to resist at-rest earth pressures of 50 pcf. In addition lateral pressures exerted by surcharge loads, such as slab loads, should be added to the above wall loads at a rate of 25 percent of the vertical surcharge load.

Retaining walls should be supported on drilled pier foundations designed as recommended above under FOUNDATIONS and LATERAL DESIGN, except that lateral resistance within the existing old fill material, above Elevation 0, should be ignored in design.

The retaining wall must also be provided with drainage behind the wall. A one-foot-thick layer of drain rock protected by a suitable filter fabric, or Class 2 Permeable Material should be used with a perforated pipe at the base of the wall. Collected water should be carried to a suitable outfall location and appropriately discharged. Weep holes should not be used, unless positive measures are

used to assure that wave action does not suck the drainage material from behind the wall through the holes.

General backfill behind the wall may consist of the on-site soils compacted in accordance with SITE GRADING. The drainage material behind the wall should be protected from surface water by at least 18 inches of compacted backfill soils.

SITE DRAINAGE

Drainage measures to control and collect surface runoff are an integral consideration in the proposed development. The ground surface should be sloped away from the building, and any area where water becomes concentrated should be provided with a catch basin. The structure should have roof gutters and downspouts, and all water from the downspouts should be carried away from all improvements in a manner that will not cause ponding or erosion.

The ground surface above the harbor-side slope should slope away from the top of the slope to prevent surface water from flowing over the slope. Any portion of the slope not covered by rip-rap (above Elevation 12) should be protected by planting erosion resistant vegetation immediately after construction.

CLOSURE

The recommendations presented in this report are based upon our understanding of the proposed development as described herein, and upon soil conditions encountered in a limited number or borings and probes on the site. It is not uncommon for unanticipated soil conditions to be encountered during construction, and it is not possible for all such variations to be found by a field exploration program appropriate for this type of project. The recommendations presented in this report are therefore contingent upon our review of all final grading, drainage and foundation plans, and upon geotechnical observation and testing by Bay Area Geotechnical Group of all pertinent aspects of construction, including site grading, foundation construction, and slope protection measures.

Approximate Project Site
4/19/93
Dept. of Boating and Waterways

EXHIBIT NO. 24
APPLICATION NO. 1-98-58
April 19, 1993 aerial photo

Ex. 24

PRINCETON, SAN MATEO COUNTY

USGS PHOTOGRAPH: KENNETH R. LAJOIE
5/5/1998

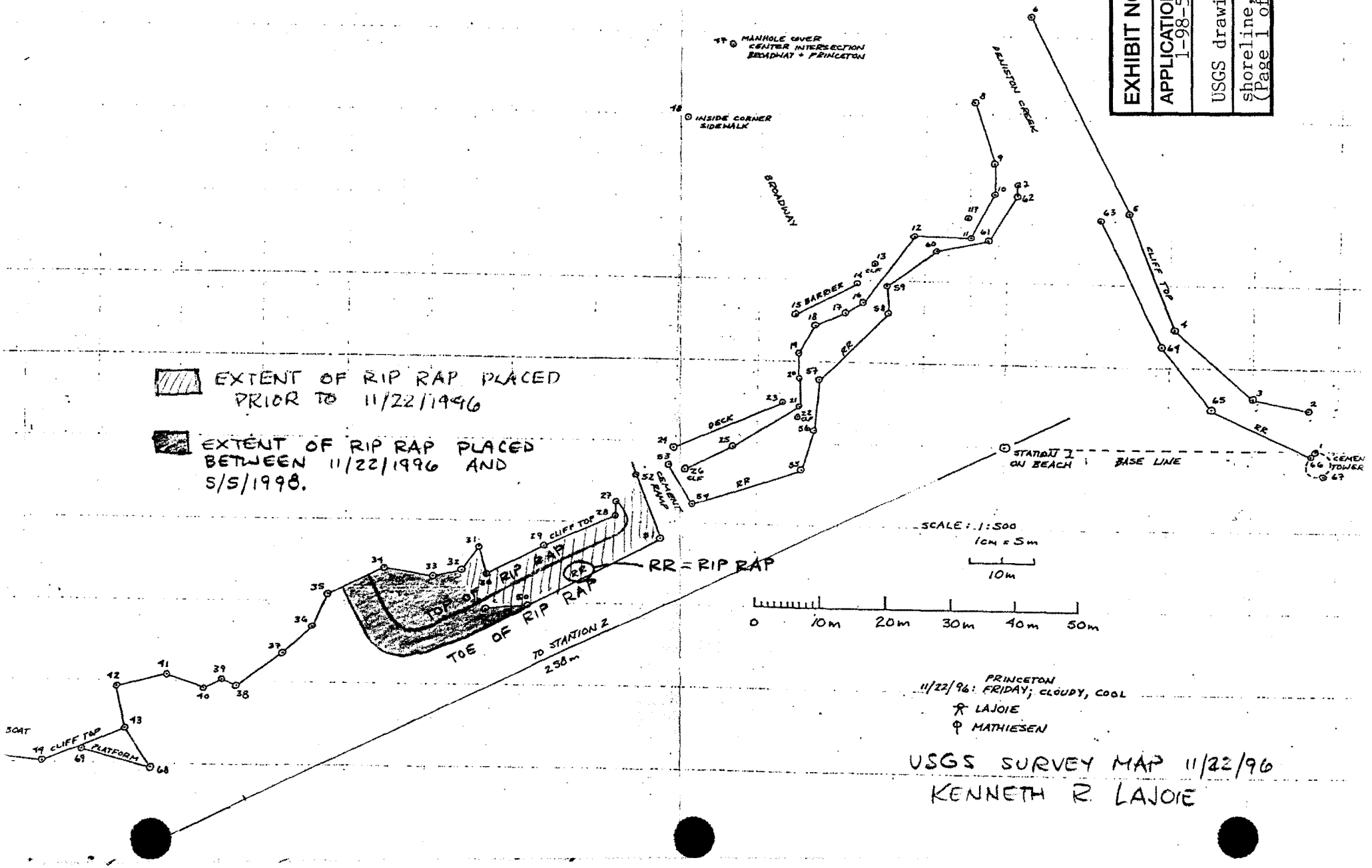
EXHIBIT NO. 25
APPLICATION NO. 1-98-58
May 5, 1998
USGS photo

Ex. 25

EXHIBIT NO. 26
APPLICATION NO. 1-98-58
Site before and after recent development

Ex. 26

EXHIBIT NO. 27
APPLICATION NO. 1-98-58
USGS drawing of shoreline, riprap (Page 1 of 2)



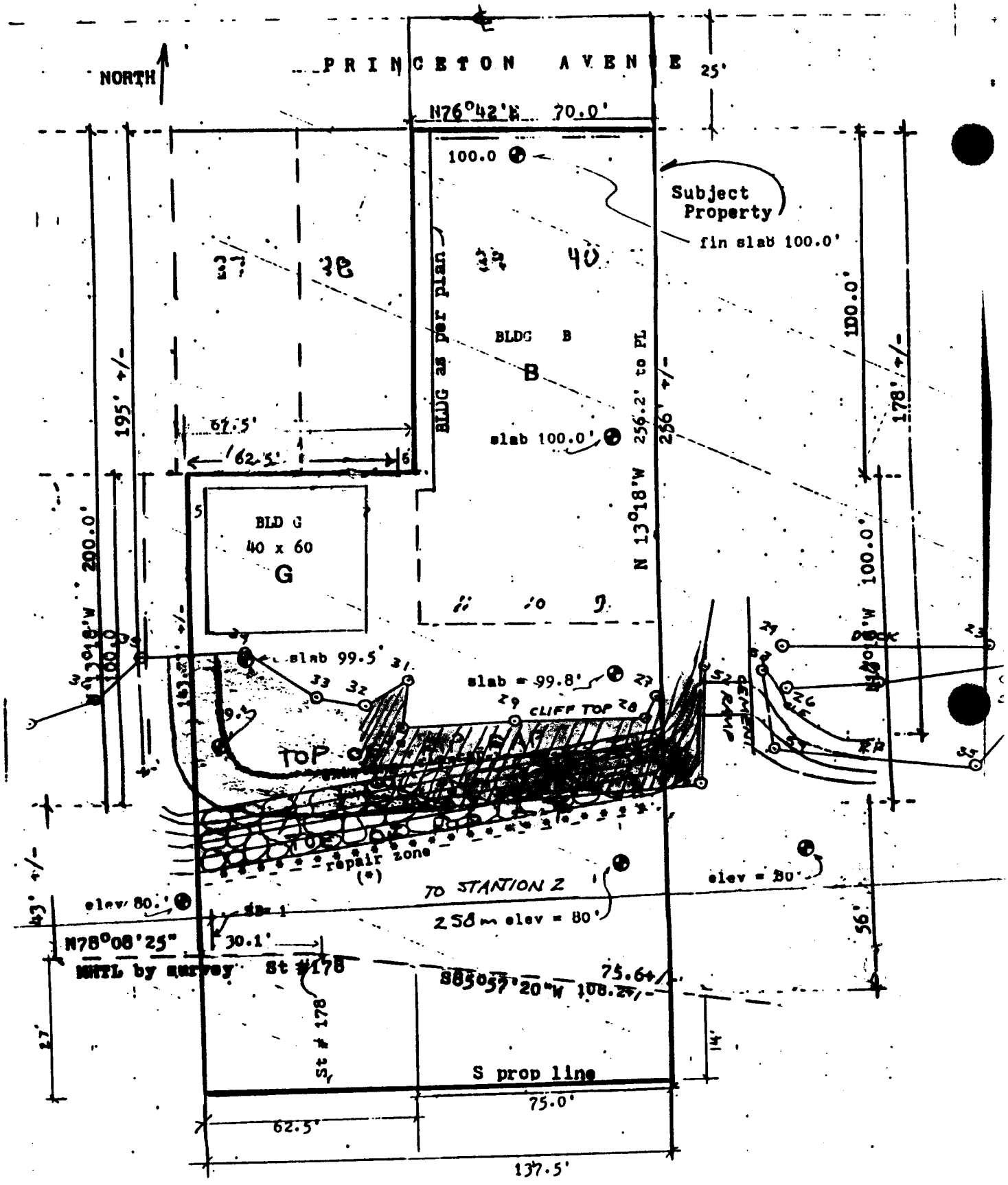


Exhibit 2 **REPAIR PLAN 380 PRINCETON AVE**

Repair/Grading Plan (no cutting involved)

TOPOGRAPHIC FEATURES (repair zone)

ATTACHMENT 2

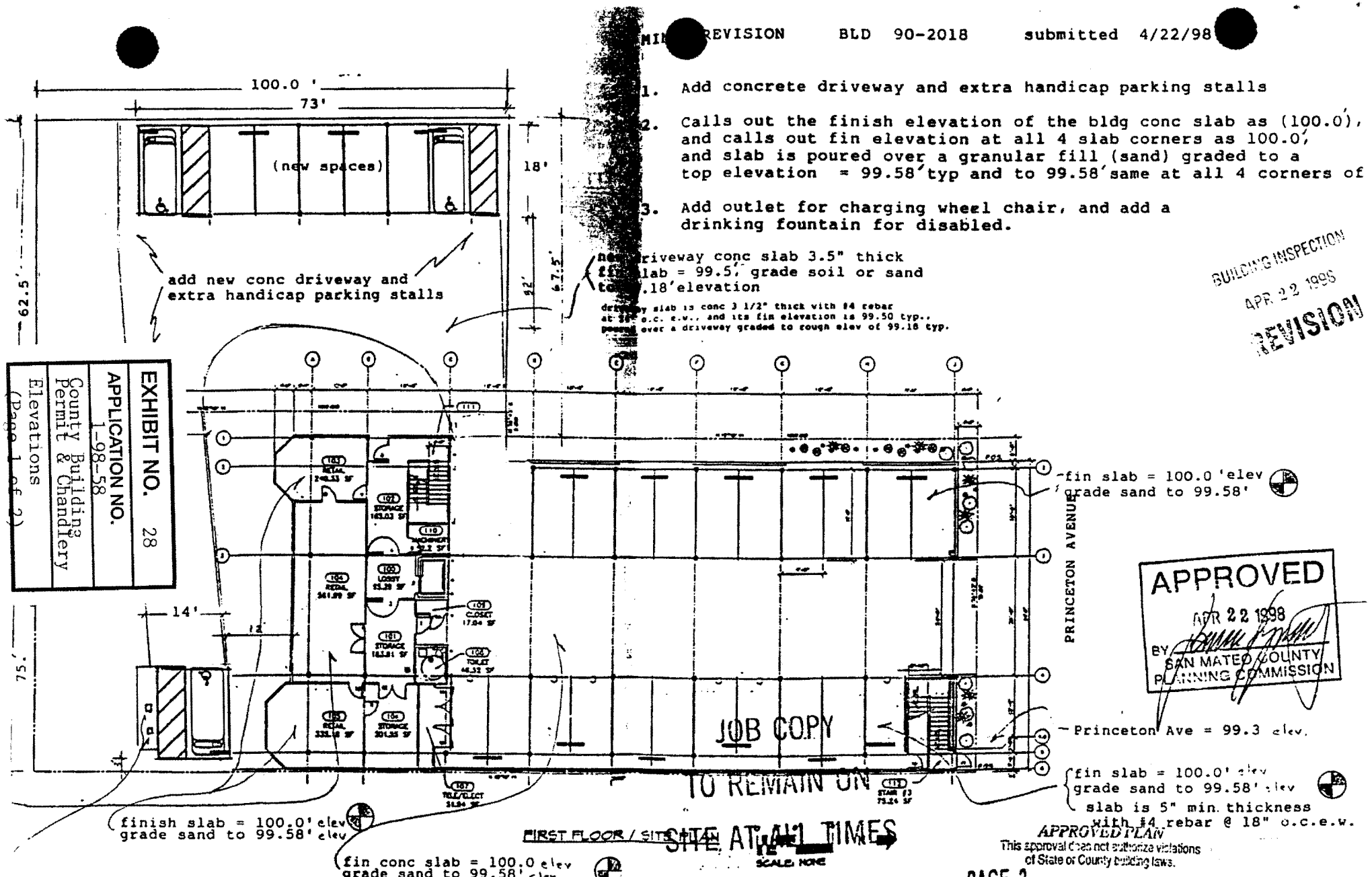
Ex. 27, p. 2

MINOR REVISION BLD 90-2018 submitted 4/22/98

1. Add concrete driveway and extra handicap parking stalls

2. Calls out the finish elevation of the bldg conc slab as (100.0'), and calls out fin elevation at all 4 slab corners as 100.0', and slab is poured over a granular fill (sand) graded to a top elevation = 99.58' typ and to 99.58' same at all 4 corners of bld

3. Add outlet for charging wheel chair, and add a drinking fountain for disabled.



add wheel chair charger and drinking fountain 2.5' S of new handicap parking stall

BUILDING INSPECTION
APR 22 1998
REVISION

APPROVED
APR 22 1998
BY SAN MATEO COUNTY PLANNING COMMISSION

APPROVED PLAN
This approval does not authorize violations of State or County building laws.

PAGE 2

APR 22 1998

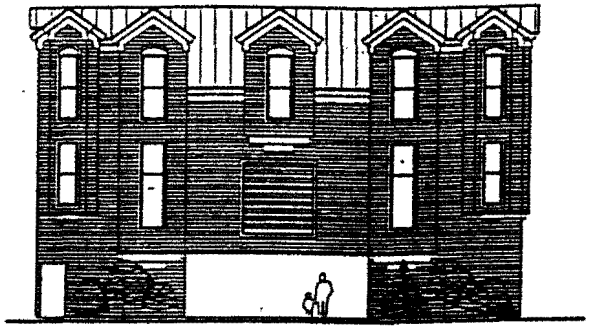
MINOR REVISION
APPLICANT'S SIGNATURE
BUILDING INSPECTION DIVISION

Ianchor Marine/Pique
1015 Gayley Avenue
Los Angeles, California 900

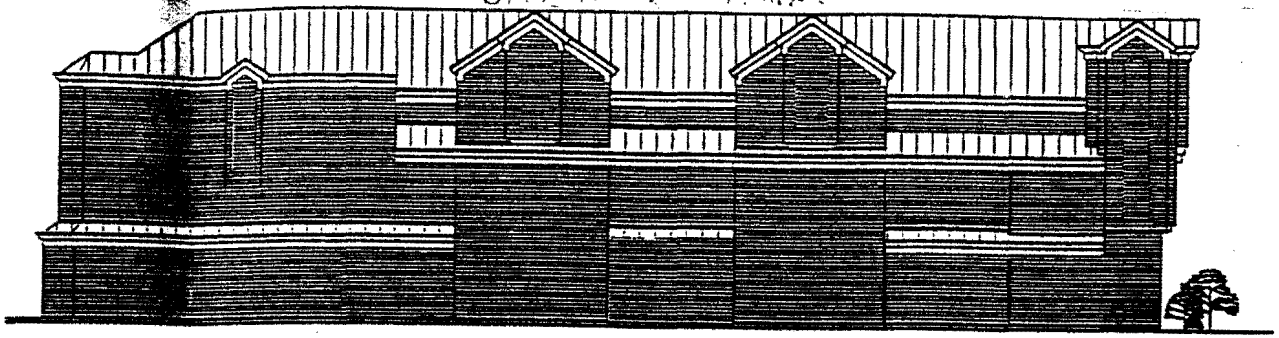
BLD 90-2018

ATTACHMENT U

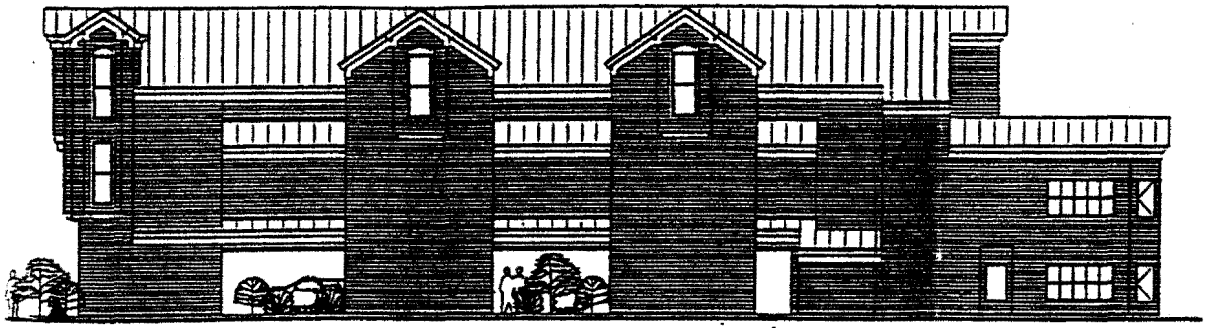
Ex.28, p1



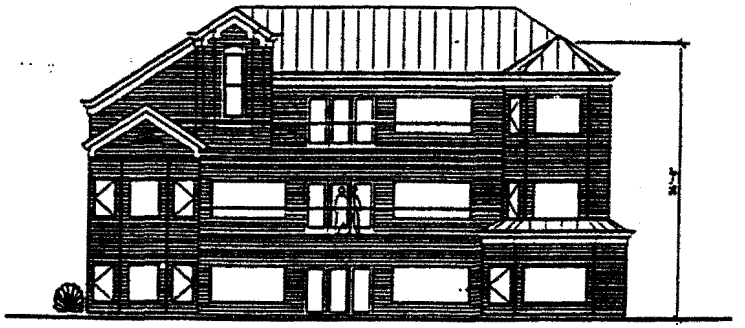
NORTH ELEVATION



EAST ELEVATION



WEST ELEVATION



SOUTH ELEVATION

NOBLE
CONSULTANTS INC.

March 16, 1999

834-01

Mr. Stan Furmanski
1015 Gayley Avenue, #256
Los Angeles, CA 90024

Re: 380/351 Princeton Avenue, Half Moon Bay
Shoreline Protection Consultation

Dear Mr. Furmanski:

On Wednesday, August 5, 1998, I inspected the subject property for the purpose of evaluating the emergency shoreline protection work that was placed during the last year. The inspection was performed at an estimated water level of 3.8 ft MLLW, based on preliminary water level recordings at the San Francisco Tidal Reference Station.

The following are my observations of the slope protection.

- The height of the rockslope protection was estimated at about 20 feet.
- The slope of the rock ranged between about 1.1:1 to 1.25:1 (horizontal:vertical).
- The lower part of the slope, from an estimated elevation of 0.0 ft, MLLW to 10.0. ft, MLLW, consisted of approximately 0.75 to 1.5 ton stone (24-30 inches in diameter). Despite the steepness, the bottom of the slope appeared to be stable. The rock was also of a good quality.
- The top half of the slope, from an estimated elevation of 10 ft, MLLW to 20 ft, MLLW, was steeper than the lower section in places. Most of the emergency rock was in this section. The rock size was approximately 0.25 to 0.75 ton stone (16-24 inches in diameter).
- Concrete rubble occurs sporadically throughout the slope. There is also some brick debris at the upper end of the slope in one location. Most of the concrete has been part of the slope for a long time, although some appears to be new.

ATTACHMENT 5

EXHIBIT NO. 29
APPLICATION NO. 1-98-58
Noble Engineering Letter
(Page 1 of 3)

The site is located within the outer Pillar Point Harbor breakwater but outside of the inner breakwaters that protect the marina. The rock slope at the site was, therefore, compared to the specifications of the inner breakwater rubble mound as a general guide to a stable design in this area. The crest elevation of the inner breakwater is estimated at about 12 ft, MLLW (Dames & Moore, 1976). The associated armor stone was specified to be about 0.1 to 0.6 tons in weight (10-22 inches in size). The seaward slope of the inner breakwater was designed at 1.5:1. Based on this comparison and my observations, it is my general opinion that rock quality and size are more than adequate for the site but that measures should be taken to reduce the slope of the protection, at least in the estimated wave runup zone up to about 12 ft, MLLW. My specific recommendations of additional work to be performed to meet standard coastal engineering design criteria includes the following:

1. Add rock riprap beginning at the toe of the slope up to an elevation of about 12 ft, MLLW to obtain a slope of 1.5:1. Rock should be of a similar quality as placed in the emergency protection and be about 0.25-0.75 tons in weight (16-24 inches in diameter).

2. The brick debris should be removed from the upper slope. Unacceptable (flat paving sections) new concrete rubble should also be removed. Concrete rubble that has been in place for a long time should remain.

3. The existing rock riprap above 12 ft, MLLW should be adjusted as required to fill existing voids and to obtain a slope of about 1.25:1. The rock should be keyed together to improve the stability and safety of the slope. Rock should be about 0.1 to 0.25 tons in weight (10-16 inches in size).

4. A lateral drain should be installed at the top of the slope to eliminate the potential erosion from surface runoff. Downspouts may be periodically placed through the rock slope protection as long as the outlet is well protected with rock.

In summary, the rock quality placed during the emergency condition is sufficiently large and is an excellent quality to protect the slope against wave induced erosion. The toe of the slope, which is critical to the stability of the structure, appears to have been stable for a long time. Adding rock in the wave zone to obtain a slope of 1.5:1 will increase the stability of the structure. Rock higher than wave runup zone should be adjusted and new rock added to increase the stability of the upper section of the slope.

We have recently reviewed documents provided by you regarding proposed slope repair procedures. Specifically, Exhibit 1 shows the recommended additional rock placement to obtain a slope of 1.5:1 below elevation 12 ft. MLLD. the installation of a lateral drain at the top of slope. and the grout filling of voids (Exhibit 1 and 1B) in lieu of placing additional rock in the upper part of the slope. Deleterious debris in the upper part of the slope as mentioned in the report should. however, be removed or broken up to be consistent with the surrounding riprap material. Repairs should be performed along the full length of the structure as shown in the plan views such as Exhibit 2.

If you have any questions regarding our observations or recommendations. please call.

Sincerely,

NOBLE CONSULTANTS. INC.

Scott M. Noble. P.E.

SMN/tp

To: Steven Scholl & Bob Merrill

Please find attached an amended application, which now does include a request to legalize the original rockslope protection, and then also to repair it. Legalization is sought by certificate of exemption and also by permit. (3 booklets)

Included are six (6) additional arguments that certificate of exemption is proper, since the rockslope protection PRE-DATES the effective date of the Act, and that the ACT is NOT retroactive.

Further, since the Act is not retroactive, the applicant is entitled to the same rights of Equal Protection of non-retroactivity enjoyed by hundreds of other owners whose structures predate and never were legalized.

26. ROCKSLOPE PROTECTION PRE-DATES THE 1976 ACT -

As reflected in Exhibits #1 and #2, the rockslope protection PRE-DATES the effective date of the Act of 1976. This fact grandfathers the structure, since the Act does not require retro-active compliance by owners. The present applicants are entitled to equal protection not to have to retroactively comply with the Act, since the Act does not require retroactive compliance.

27. NON-RETROACTIVITY OF COASTAL ACT

The applicants are not required to "legalize" an old structure, since there is no "legalization of old structures" under the Act. The Act is not retroactive, in effect. By example there are hundreds of bridges, warfs, piers and buildings in San Francisco built over the last 100 years, which are not "legalized" because the Act does not require it. It follows, the present applicants have no obligation under the act to do something called "legalization". Where hundreds of other owners of structures pre-dating the Act are "protected", the present applicants are entitled to "Equal Protection" under the non-retroactivity effect of the Coastal Act. To require this applicant to go through a long expensive permit process is a violation of applicant's rights to equal protection.

28. THE ACT EXEMPTS REPAIRS TO ALL PRE-DATED STRUCTURES, WITHOUT RESPECT TO 'LEGALIZATION'

The PRC 30610 provides "no coastal permit" shall be required for repairs and rebuilds after disaster, and there is no provision limiting it to only "legalized" old buildings. Applicants assert there is no distinction or provision favoring "legalized" nor excluding non-legalized structures. Applicants also challenge the concept of "legalizing" an old structure, since no such process is described in the Act. It would violate the "Ex Post Facto" rights of applicants.

The Constitution provides that laws shall not be formulated, enacted or operated retroactively to detriment of land owner. Violates Ex Post Facto prohibition. From latin "ex postfacto," or from what is done afterward.

EXHIBIT NO. 30
APPLICATION NO. 1-98-58
April 26-28, 1999 Amendment to
Application (Page 1 of 17)

29. BUILDING PERMIT AS EQUIVALENT TO ANY LEGALIZATION

The applicants assert the Coastal Act has no expressed provision requiring pre-dated structures to be "legalized", because there is no legalization procedure. The applicants did receive valid building permits in 1997 and 1998 which covered ALL the subject property, without exception, and were issued a CDP, as allowed under the Act. That CDP and building permit are all the legalization necessary, and the Coastal Act does NOT require an owner to return to the Commission for a never-ending series of "re-legalizations". The Act provides for only one type of CDP (and not different levels of CDP approval). Having already received the CDP from the local government, there is no requirement to do it again. They are final.

Applicants are protected by the "Finality of Action" statute which states no appeal nor objection shall be made after the 10-day appeal period. Since that 10-days has tolled, the applicants are ENTITLED TO FINALITY OF ACTION on their CDP and building permits. The original rockslope protection was known to exist and no appeal was filed.

30. APPLICANT CANNOT BE COMPELLED TO COMPLY RETROACTIVELY WITH A NON-EXISTENT STANDARD A) FINALITY OF ACTION; B) NON-EXISTENT STANDARD

As reflected above, the applicants have valid building permits and already-issued CDP. They are entitled by "Finality of Action" under the Act to no further review.

The applicants in June 1998 and November 1998 also made a request under the California Public Records Act, for the Commission to produce all its "standards" for building seawalls. Both requests were answered that no such standards exist. Under the Government Code, the Commission is prohibited by law from requiring a standard which is not formally publically adopted by way of a formal Rule Making File. Since NO STANDARD EXISTS and no file exists, the Commission has no legal basis to say the applicant has or has not complied with a standard. On this ground of "finality of action", and "no standard for rockslope protection", the exemption must be granted. In the alternative, a no fee permit could be issued based upon the undisputed fact Commission never adopted a standard as to rockslope walls, and applicant cannot be required to comply with a "non-existent" standard. Likewise an applicant can not legally be compelled to comply retro-actively with a non-existent standard. Further, the Act does not require "legalization" as to structures pre-dating the effective date of the Act.

31. PAT NOLLAN WAS NOT REQUIRED TO DO A "LEGALIZATION" OF STRUCTURE PRE-DATING THE EFFECTIVE DATE OF ACT [NOLLAN vs COASTAL COMMISSION]

In the U.S. Supreme Court case of NOLLAN vs. CALIF COASTAL COMMISSION [1986], the plaintiff NOLLAN owned a parcel with eight (8) identical features to

31. PAT NOLLAN WAS NOT REQUIRED TO DO A "LEGALIZATION" OF STRUCTURE PRE-DATING THE EFFECTIVE DATE OF ACT [NOLLAN vs COASTAL COMMISSION]

In the U.S. Supreme Court case of NOLLAN vs. CALIF COASTAL COMMISSION [1986], the plaintiff NOLLAN owned a parcel with eight (8) identical features to present subject property. For instance, there was an old rockslope protection, and structure both pre-dating the effective date of the 1976 Act. In that case, the U.S. S.Court did NOT require either the rockslope protection or the the structure to be "legalized" before they were improved and enlarged. The U.S. Supreme Court found the Commission did NOT have the authority to withhold a CDP or condition it, without first paying just compensation to Nollan. Nollan did prevail.

Since there are eight (8) identical features shared by NOLLAN and this applicant, the applicant seeks to assert the same arguments as Nollan and to have the favorable NOLLAN decision applied since the facts about the site are fundamentally identical.

For completeness, a list of eight (8) identical features follow: The ninth (9th) is that both NOLLAN and this applicant have rockslope protections predating the effective date of the Coastal Act. Both have applied to upgrade the parcels which share the following eight (8) physical characteristics of plot plan:

a. Both the NOLLAN parcel and the subject property parcels are oriented in a North-South direction.

b. Both the NOLLAN parcel and the subject property lie on the North and face the water on the South.

c. Both the NOLLAN parcel and the subject property have a rockslope protection running roughly from West to East across the property.

d. Both the NOLLAN parcel and the subject property show the orientation of the rockslope protection runs across the lots in the same direction and orientation.

e. The rockslope protection in NOLLAN provides the same type of erosion control and barrier protection that the rockslope provides in the subject property at 380 Princeton.

f. In both the NOLLAN parcel and the subject property there is a concrete horizontal slab extending Northward from the rockslope protection which serves a similar protective function.

g. The location of proposed buildings on the NOLLAN parcel are located somewhat North of the rockslope protection in the same way the approved buildings are located on the subject property plot plan.

h. In both the NOLLAN parcel and the subject parcel, the access road is located on the North adjacent to the parcel, so that the direction of automobile access is the same.

32. EFFECT OF COUNTY AMNESTY PROGRAM TO LEGALIZE EXISTING USES

As reflected in the foregoing arguments #28, #29, #30, and #31, the Coastal Act of 1976 does not require a process called "legalization of old structures pre-dating act". Nor is there "penalty", which if existed would violate Ex Post Facto constitutional rights against retroactive laws.

Further, as reflected above the County issued building permits in 1997 and 1998, and knew of the rockslope protection when it approved building permits and CDP, and the statute guaranteeing Finality of Action operates to protect the owners/applicants now.

The Commission should also be aware that the County of San Mateo Board of Supervisors in 1998 enacted an "AMNESTY PROGRAM" for all property in the Princeton area, with express intent of providing amnesty, and use permits and CDP compliance to all properties. The County offered the present applicants "Amnesty" under the "Amnesty Program", and the applicants accepted amnesty and timely filed requests for all amnesty, and grandfathering, and use permits and CDPs, and now are entitled to amnesty, and entitled and protected the same as all other land owners, and applicants. "Equal protection" operates to give all the benefits of "amnesty" to the applicants. Having been offered amnesty and accepted it, the applicants are not required to do any other act, or to seek any duplicative or excessive "re-legalization". The

applicants believe "re-legalization" is not described in the Coastal Act of 1976, and such a notion would violate the Government Code sections on rules, regulations, and rule-making files. That Code states no rule or regulation (i.e. about 're-legalization' of property) could be enforced unless accepted by the rule-making procedure. Hence the applicants are protected under the Government Code rule making statutes.

Documentary evidence that applicants TIMELY accepted Amnesty under the amnesty program is attached as Exhibit or attachment #14 and #5 + 32.

The County "Amnesty Program" has the effect of bringing the parcels into full compliance, and providing legal amnesty to the owners and applicants.

32. AMNESTY PROGRAM ACCEPTED BY APPLICANTS
(CONTINUED)

AMNESTY PROGRAM OF 1998 and 1999:

In 1998, the County of San Mateo via Supervisors, announced an "Amnesty Program" in order to issue use permits and CDP's to the Princeton area. The applicant timely applied for the "amnesty program" for the rockslope protection as reflected in Exhibit #3, #4, #5, since the County made an offer-of-amnesty and reduced fees. It also offerred to grandfather at no cost, for uses existing prior to 1978 which this applicant qualified for as to "erosion control use" for the rockslope protection.

The applicant, therefore, has rights under the plan since applicant timely applied to be grandfathered.

Having been offerred amnesty, and having accepted it, the applicant is grandfathered or entitled to be grandfathered.

The applicant is entitled to amnesty and entitled to "equal protection", the same as all others given amnesty for uses predating the year 1978. Since the rockslope protection existed in 1975, it is grandfathered.

TO: Steven Scholl 4/23/99

FROM: Stan Furmanski

Thank you for your letter of 4/19/99. An amended application has been sent to you (copy attached), which now includes an application to legalize the original rockslope protection, by way of certificate of exemption, and also by permit. Additionally, a repair application is added. You will receive the synopsis in three booklets "C", "D", and "E" which will arrive at your office on Monday morning 4/26.

Since the initial application in June 1998, the staff never requested an application to legalize the original wall, and appears your letter of 4/19 is the first time it has been suggested.

The newest materials submitted, such as "C", "D", "E" and "B", include twenty-five (25) grounds on which the original rockslope protection should be grandfathered, exempted, or permitted. Since "new" information is included, I would like to highlight several important points:

(1) There is considerable erosion within the Pillar Point harbor area, and a rockslope protection is an essential means of reducing erosion and as well slowing the process of "silting-in" of the harbor.

The federal government has evaluated why some property such as the subject property is exposed to larger waves and greater destructive erosive processes, and one of their wave-diagrams is included as Exhibit #16, which shows that a design defect of harbor construction and its geometry causes FOUR-TIMES larger waves to strike and erode the subject property than do waves in some other areas and most other areas of the harbor. This Exhibit illustrates that keeping and maintaining a rockslope protection at 380 Princeton is the only mechanism to prevent disasterous erosion, at rate otherwise 4-times greater than other parts of land adjacent to the harbor. There are other agency materials which indicate damage up to 6-times greater can be caused by two other phenomena which are "refraction" and "diffraction" which cause increase in wave amplitudes in a manner causing more destruction at the subject property, which is protected only by the existing rockslope protection.

Since the rockslope protection has provided an "erosion control use" for 25-years or more, this important use is a grandfathered use which PREDATES BOTH the Coastal Act of 1976, and predates the County zoning ordinance of 1978. Therefore, this essential use should be exempted or given an after-the-fact permit because it is essential to prevent erosion. The graphic diagram of Exhibit #16 shows that disasterous erosion will occur, since waves at least 4-times larger than elsewhere can and do occur directed at the subject property at 380 Princeton. Disaster erosion would occur, without the protection provided by the rockslope protection. It might also be noted that the U.S. Supreme Court recognized that protection of private property is an essential right of ownership, in NOLLAN vs CALIF COASTAL COMMISSION [1986].

(2) The California State Lands Commission has provided a favorable letter, which states this project does not intrude onto sovereign lands. This letter is in addition to the initial favorable letter from the mapping division of the Coastal Commission, already submitted.

The State Lands Commission and the S.M. Harbor District issued a combined approval in a letter dated about October 1998. It states in pertinant part its approval as follows:

> "Both the (Harbor) District and SLC (State Lands Commission) staff presently assert no claim either that the project intrudes onto sovereign lands or that it would lie in an area that is subject to the public easement in navigable waters"

That the State Lands Commission and Harbor District agreed was also reflected in the information sent in blue-binder "B" on page 2, paragraph number 6. It is reiterated here in case you missed it.

(3) The County of San Mateo also issued a favorable letter with regard to the fact that the applicant is owner of fee title in the property, and the County in its letter states it is not the owner of Ocean Boulevard, but that only an easement might be present. This letter and its official determination that the County does not own any fee title is a confirmation and affirmation of the applicant's position and the long-held belief that the property is in private ownership.

It should be noted that Mr. Leibster's erroneous statement was probably due to a mistake or hearsay on the phone. A hearsay objection is raised as to erroneous statements related by Mr. Leibster. Both the applicant and the County have always believed the subject property is all privately owned. This is also supported by federal court rulings that the property is all privately owned.

(4) There is mounting evidence that the PLOT PLAN of the property in NOLLAN vs. COASTAL COMMISSION is identical in many ways with the PLOT PLAN of the subject property. This is based upon a comparison diagram showing the layout of the PAT NOLLAN property in comparison to the layout of the subject property. A graphical comparison is attached as Exhibit #45, and Exhibit #41. You will note they are identical in the following ways:

a. Both the NOLLAN parcel and the subject property parcels are oriented in a North-South direction.

b. Both the NOLLAN parcel and the subject property lie on the North and face the water on the South.

c. Both the NOLLAN parcel and the subject property have a rockslope protection running roughly from West to East across the property.

d. Both the NOLLAN parcel and the subject property show the orientation of the rockslope protection runs across the lots in the same direction and orientation.

e. The rockslope protection in NOLLAN provides the same type of erosion control and barrier protection that the rockslope provides in the subject property at 380 Princeton.

f. In both the NOLLAN parcel and the subject property there is a concrete horizontal slab extending Northward from the rockslope protection which serves a similar protective function.

g. The location of proposed buildings on the NOLLAN parcel are located somewhat North of the rockslope protection in the same way the approved buildings are located on the subject property plot plan.

h. In both the NOLLAN parcel and the subject parcel, the access road is located on the North adjacent to the parcel, so that the direction of automobile access is the same.

Ex 30 p8

Plot Plan/Repair

Nollan Plan Comp.

These eight (8) similarities are confirmed by a site-visit to the NOLLAN property in January 1999, in which all these 8 identical features were confirmed by a site visit. It shold be noted that where the factual circumstances of an application or a case are so much the same, that then the legal decisions as to NOLLAN are applicable to the subject property. Pat Nollan asserted that he was owner of the entire property and that he could continue to own and enjoy his propertyon both sides of the rockslope protection, shown on Exhibit #45. The Coastal Commission contended it could delay Nollan's development unless Nollan gave up his rights to part or all of the land on the seaward side of Nollan's rockslope protection. The U.S. Supreme Court in NOLLAN vs COASTAL COMMISSION [1986], determined that Nollan rightfully owned all the property and was entitled to use and protect his ownership on both sides of the rockslope protection. The Court determined if the Commission wanted some use or part of it, that it would have to pay just compensation, and it could not delay Nollan nor delay the permits. It is noteworthy that the Court determined the "right to exclude others" was well-settled and that Nollan has the right to exclude others as a vested right of ownership. In the present instance, the applicant asserts the same right to maintain ownership of the property and to preserve the property by repair and augmentation of the seawall.

The eight (8) identical features of the parcels indicate that the decision of NOLLAN vs COASTAL COMMISSION is directly applicable to the benefit of the applicants. Also, the case is now "dictum" in all federal and state courts. Therefore, the request to grandfather or exempt or permit the rockslope protection should be approved without delay.

(5) Also, for clarification, the present proposal is to maintain the present rockslope protection in place and to incorporate the minor repairs outlined by Scott Noble, P.E. Professional Engineer, who is an engineer with shoreline experience. His firm, for instance, did design work for an update of the Pillar Point Harbor. The concrete retaining wall (revetment) design initially submitted is being presented as an "alternative" design to the above-described repair proposal.

(6) The recommendations of Scott Noble P.E. are listed in letter-form as Exhibit #10 attached to all of the booklets, namely "C", "D", "E" delivered to you on 2/26/99. It states that the existing rockslope protection can be made more durable by incorporating minor changes, which recommendations have become the basis of the favored-repair option. The sections attached to the 4/23/99 cover letter to Mr. Scholl incorporate the recommendations.

TO: STEVE SCHOLL [Claim of Exemption, orig rip-rap]

This is a claim of exemption based upon 25 grounds, including that orig revetment predates effective date of Coastal Act of 1976.

On these 3/ grounds:

1. EXHIBIT #1, LETTER establishes the rip-rap rockslope protection was present by 1975, prior to 1976 ACT.

2. EXHIBIT #2, LETTER further establishes the rip-rap wall was present by 1975, prior to 1976 ACT.
Rip-rap pre-existed the 1976 Act.

3. The Exhibit #1 also is evidence the "use" as an erosion control device was already present in 1975, 3 yrs prior to the zoning/bldg ordinance of 1978. The County grandfathers uses estabished prior to 1978.

4. The Exhibit #2 also is evidence of the "use" as a erosion control use in 1975 predates both the Coastal Act of 1976, and the zoning reg of 1978.

5. Exhibit #3 reflects the applicant timely applied for grandfathering of the use by 2/25/99, under a County approved amnesty program, entitling all applicants to a use-permit based on a use (1975) prior to year 1978.

6. By 1976 the erosion control use was already established, when State created a right-to-maintain-and-repair erosion control structures. This statute, 30610 created a right-to-repair,and right-to-maintain erosion control strutures. The right includes right to repair without permit, and without a fee, and replace after disaster.

7. The erosion control use, established by 1975, helps "harbor" by reducing silting-in, and thus the rip-rap wall is protective of the harbor.

8. The rip-rap by reducing silting, reduces the chance of boat-accidents from boat going aground on silt (evidence is Exhibit #1, and Exhibit #2).

9. The rip-rap uses PROTECT property from exposure to debris, and vandals and trespasses, which is an established use recognized by U.S. Supreme Court decisions (Nollan vs CCC

10. Protects private property [Nollan vs Coastal Comm]

11. Owner's right to Finality of Action on last CDP
12. Owner's right to repair rip-rap established by statute
13. Independently, on gov Duty to Maintain and Repair
14. Legal Effect of an Amnesty Program & Offer of Amnesty by local government; has effect of waiver
15. Protects property from debris and hepatitis virus under right to protect [Nollan vs. Cal Coastal]
16. Rockslope protection affords "special erosion protection" against State design-defect in harbor
17. Rockslope protection enables disabled owner's rights under ADA, for handicap parking.
18. Seawall serves same functions as in NOLLAN vs CCC
19. Applicant entitled to enforce NOLLAN decision.
20. Provides barrier to Africian sabellid worm parasite, so protects owner's property, gastropod the Fitzgarld Marine Reserve gastropods.
21. Favorable letter from State Lands Commission/Harbor supports applic.
22. Favorable letter from County, as to fee ownership
23. "Working Harbor", and "Unsafe Mudbottom" and sewage unsafe contamination, are "unsafe" within the Act, negating pub access provisio
24. Rockslope Protection protects Fitgarald Reserve by presenting a barrier to Africian "sabellid" worm parasite. [E-98-18, pg 16, Susan Hansch]
25. Rockslope Protection protects applicant and his property from contamination from Africian "sabellid" polychaete worm. [Nollan vs Cal C.C.]

31
Tabs

Plot Pla epair

Nollan Plan Comp.

12
13
14
15
19
20
22
23
24
25
26
27
28

Permit for Original Rockslope Protection

Title or Request:

"Coastal Permit for the original rockslope protection"
[After-the-fact approval of original protection which predated the Coastal Act of 1976, and for repairs based upon 25 separate grounds and for good cause.]

Prepared for California Coastal Commission consent agenda for May 11-14, 1999.

Job: 380 Princeton, San Mateo Co.

Applicant: Trianchor Enterprises File: 1-98-058

F

UPDATED/EXPANDED 4/26/99
synopsis/summary

D booklet #2

Ex 30.p 13

TO: Mr. S. Scholl,

COASTAL COMMISSION

I am familiar with 380 Princeton Avenue, in San Mateo County. I visited the site for a Christmas party in December 1975, which I recall as one of the better Christmas parties. I remember the rock slope protection and rip-rap wall was present in Dec 1975, since we mounted a Christmas tree in between the rip-rap rocks. The rip-rap helps keep the harbor from silting-in and as a boating person the wall helps by keeping the harbor open, and lessens the risk of going aground from a silted harbor. It also lowers cost from costly dredging.

April 21, 1999

Tom Roy

Tom Roy

Ex 30, pg. 14

To: Steven Scholl, 4/21

CALIF COASTAL COMMISSION

I am a worker in the Pillar Point area, familiar with 380 Princeton Avenue, which is near the harbor. I visited the site prior to Christmas, 1975, and the rip-rap rockslope protection was present then in 1975. I remember the rocks which protected the slope at 380 Princeton in 1975. I hope you approve work to maintain, repair and augment the seawall, which helps preserve the harbor by limiting erosion and slows the process of "silting-in" the harbor. Without the wall, much erosion would occur which would lead to silting and costly dredging. The rockslope protection present for more than 24 years helps preserve the harbor by limiting damage from erosion and silting-in.

April 21, 1999

Larry McIntyre

31 Tabs

Plot Plan/Repair

Nollan Plan Comp.

Certificate of Exemption

Title or Request:

"Certificate of Exemption as to original rockslope protection at 380 Princeton Avenue, based upon protection predating Coastal Act of 1976, and upon 25 separate grounds and for good cause."

Prepared for California Coastal Commission consent agenda for May 11-14, 1999.

Job: 380 Princeton, San Mateo Co.

Applicant: Trianchor Enterprises File: 1-98-058

G

UPDATED/EXPANDED 4/26/99

synopsis/summary

C booklet #2

Ex 30, pg. 16

31
Tabs

Permit for Repair of Rockslope Protection

Title or Request:

"Coastal Permit for the repair rockslope protection"
[After-the-fact approval of El Nino repair to wall which predated the Coastal Act of 1976, and for repairs based upon 25 separate grounds and for good cause.]

Prepared for California Coastal Commission consent agenda for May 11-14, 1999.

Job: 380 Princeton, San Mateo Co.

Applicant: Trianchor Enterprises File: 1-98-058

H

UPDATED/EXPANDED 4/26/99

synopsis/summary

E booklet #2

Ex 30, pg. 17

Plot Plan Repair

Nollan Plan Comp.

TO: STEVEN SCHOLL D. DIR.

RE: Application 1-98-058 RE SECTION 13072

This application has been amended and is also being further amended with booklets J,K, and L. I understand that under 13072 a hearing must be had on the fully amended application. I agree to extend the public hearing 49 days, so the fully amended application shall be placed on the June (Santa Barbara) calendar.

I understand the item will not be heard on May 13th or during the May meeting, and that this O.K. to extend 49 days does not influence the as yet unused option re postponement which is preserved.

5/8/99 R. Clark, agent

[this is delivered to you by Fed Exp on am 5/10/99]

ref: (2425)

EXHIBIT NO. 31
APPLICATION NO. 1-98-58
May 11, 1999 49-day waiver and
amendment statement

APPLICATION BOOKLET "J"

RE: Application 1-98-058

Title or Request: "Coastal Permit for Commercial Fishing Facility, Aquaculture, Marine Research and other coastal dependent uses within an area shaded yellow on Plan J-5.

Job: 380 Princeton, San Mateo Co

The application is "Amended" to include development within an area shaded-yellow on Plan J-5, which is to enable Forty-Five coastal dependent uses, including a commercial fishing facility and those listed in Exhibit 1 APPLICATION BOOKLET "J", AMENDS AND SUPERCEDES ALL PREVIOUS REQUESTS. Information in Book J and K supercedes and replaces by amendment previous requests.

5/10/99 R. Clark agent

EXHIBIT NO. 32
APPLICATION NO. 1-98-58
May 11, 1999 Amendment to
Application

BOOK J

MAY 1 1 1999

Permit for Commercial Fishing Facility, Aquaculture, Marine Research et. al.

APPLICATION BOOKLET "J"

RE: Application 1-98-058

Title or Request: "Coastal Permit for Commercial Fishing Facility, Aquaculture, Marine Research and other coastal dependent uses within an area shaded yellow on Plan J-5.

Job: 380 Princeton, San Mateo Co

Prepared for June meeting of Commission [Santa Barbara]

Applicant: Trianchor Enterprises File 1-98-058

APPLICATION BOOKLET "J", AMENDS AND SUPERCEDES

EXHIBIT NO. 33
APPLICATION NO. 1-98-58
"Book J"
(Page 1 of 13)

BOOK J

(preliminary/synopsis)

APPLICATION BOOKLET "J"

RE: Application 1-98-058

Title or Request: "Coastal Permit for Commercial Fishing Facility, Aquaculture, Marine Research and other coastal dependent uses within an area shaded yellow on Plan J-5.

SUMMARY OF THIS PERMIT APPLICATION:

The application is "Amended" to include development within an area shaded-yellow on Plan J-5, which is to enable Forty (40) coastal dependent uses, including a commercial fishing facility and those listed in Exhibit 1 **(summary J1)** The permit is to make improvements shown on J-2, J-3, J-4, J-7, J-8, and J-9 which furthers the 40 coastal dependent uses as listed in Summary J-1 (Exhibit 1), two pages. This permit is only for the area shaded-yellow on Plan J5 (tab #5).

The Coastal Act encourges aquaculture as a coastal dependent use, under Section 30411(c) and 30222.5, and states aquaculture applications should be given priority:

Coastal Act Section 30411(c) states in part:

> *The Legislature finds and declares that salt water or brackish water aquaculture is a coastal-dependent use which should be encouraged to augment food supplies and to further the policies set forth in Chapter 4 (commencing with Section 825) of Division 1.*

Coastal Act Section 30222.5 states:

> *Ocean front land that is suitable for coastal dependent aquaculture shall be protected for that use, and proposals for aquaculture facilities located on those sites shall be given priority, except over other coastal dependent developments or uses.*

Commercial fishing facilities and as well aquaculture receive statutory preference under Section 30233(a):

"The diking, filling, etc....shall be limited to the following.... (1) ...commercial fishing facilities, and under (8) Nature study, aquaculture, or similar resource dependent activities."

Mitigation measures include an oxygen monitoring station, with oximeter, and an aeration area using the rip-rap surface to oxygenate sea water by way of aeration.

Ex.33, p 2

APPLICATION BOOKLET "J"

RE: Application 1-98-058

Title or Request: "Coastal Permit for Commercial Fishing Facility, Aquaculture, Marine Research and other coastal dependent uses within an area shaded yellow on Plan J-5.

Job: 380 Princeton, San Mateo Co

The application is "Amended" to include development within an area shaded-yellow on Plan J-5, which is to enable Forty-Five coastal dependent uses, including a commercial fishing facility and those listed in Exhibit 1 APPLICATION BOOKLET "J", AMENDS AND SUPERCEDES ALL PREVIOUS REQUESTS. Information in Book J and K supercedes and replaces by amendment previous requests.

5/10/99 R. Clark agent

Ex. 33, p 3

Permit Advances These Permit Activities:

COASTAL DEPENDENT ACTIVITIES:

COMMERCIAL FISHING FACILITIES

Commercial bait and live bait station

Comm boat loading, bait boat loading,boat landing

Comm boat drive-up smog check (electronic)

Fish and bait holding area for shipment

Comm boat vertical evacuation point, tsunami

Comm boat vertical evacuation point, Pacific storm

Boat vertical evacuation point, El Nino storms

Owner vertical evacuation point, Pacific storms

AQUACULTURE

Commercial bait and live fish (captured).

Commercial gastropods, and live bait clams, etc.

Aeration station (oxygenation)

Commercial live bait, mollusks, & juvenile forms live/bait

Water quality monitoring station

Abalone research project
(monitor/reintroduction)

Public education (nature study project)

Oxygenation monitoring protect (electronic)

Vertical evacuation from storms; El Nino
(protects workers, visitors of aquaculture)

Comm landing for skiffs and maintence skiff

Emergency landing facility; evacuations

EDUCATION/NATURE STUDY: Aquarium

Aquarium to demonstrate native marine life

Oxygen monitoring project

Water quality monitoring project

Red abalone research project

Vertical evacuation from storms: safety prov

J1
Ex. 33, p4

Permit Advances These Permit Activities:

EDUCATION/NATURE STUDY: Aquarium

Aquarium to demonstrate native marine life

Oxygen monitoring project

Water quality monitoring project

Red abalone research project

Vertical evacuation from storms: safety prov

Handicap access to education/nature/aquarium

COMM LOADING AREA, EQUIP FOR THE ABOVE

HANDICAP ACCESS TO ABOVE

COASTAL DEPENDENT MARINE RESEARCH (COMMER. RELATED)

Water quality monitoring of Half Moon Bay (fixed)

Oxygen monitoring station (electronic)

Aeration system (to oxygenate sea water)

Growth-rate research project: aquaculture

Project: test to detect sebellid free stock

Project: tide data from electronic recording

Project: tsunami/tide recording data

Vertical evacuation for research workers/visitor

Handicap access to comm research area

TSUNAMI PROTECTION FOR ABOVE COMM FISHING FACILITY/FUNCTIONS

PROTECTION OF ABOVE COMM FISHING FACILITIES FROM PACIFIC STORMS

BEACH NOURISHMENT PROJECT & LONG TERM EROSION CONTROL

MAINTENANCE ACCESS FOR ABOVE COMM FISHING FACILITY

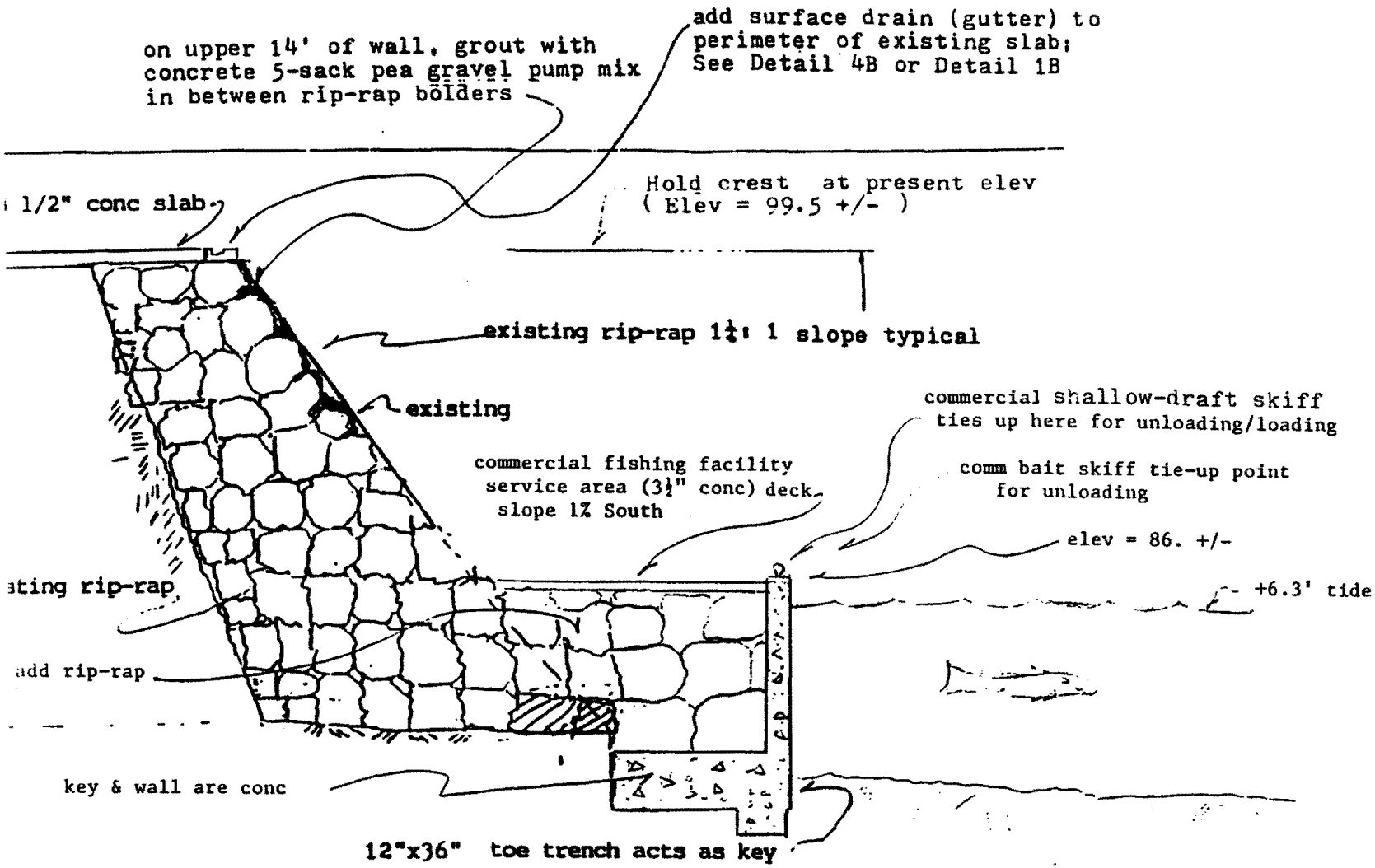
LOADING AREA TO EXISTING STRUCTURE (parking area)

LANDING FOR COMM BOAT & MAINTENCE SKIFF

EMERGENCY ACCESS TO EVACUATE MARINER IN DISTRESS

RECREATIONAL SKIFF LAUNCHING: RECRE. FISHING; NATURE STUDY

J1
Ex. 33, p5



Scale: 1 in = 6.1 ft

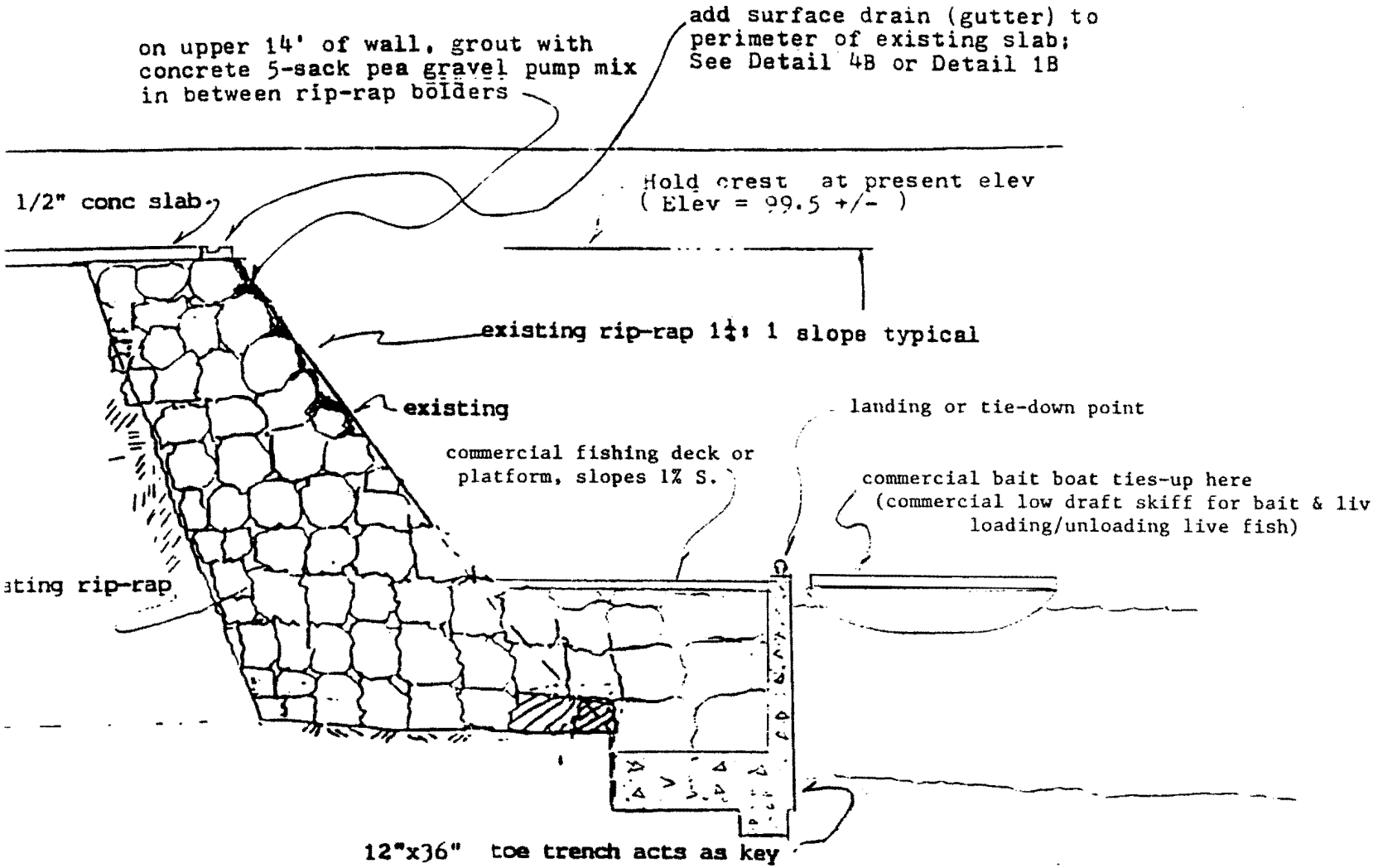
EXHIBIT J 2

380/350 PRINCETON

COMMERCIAL FISHING FACILITY SERVICE AREA, SECTION

SECTION J 2

Ex.33, p.6



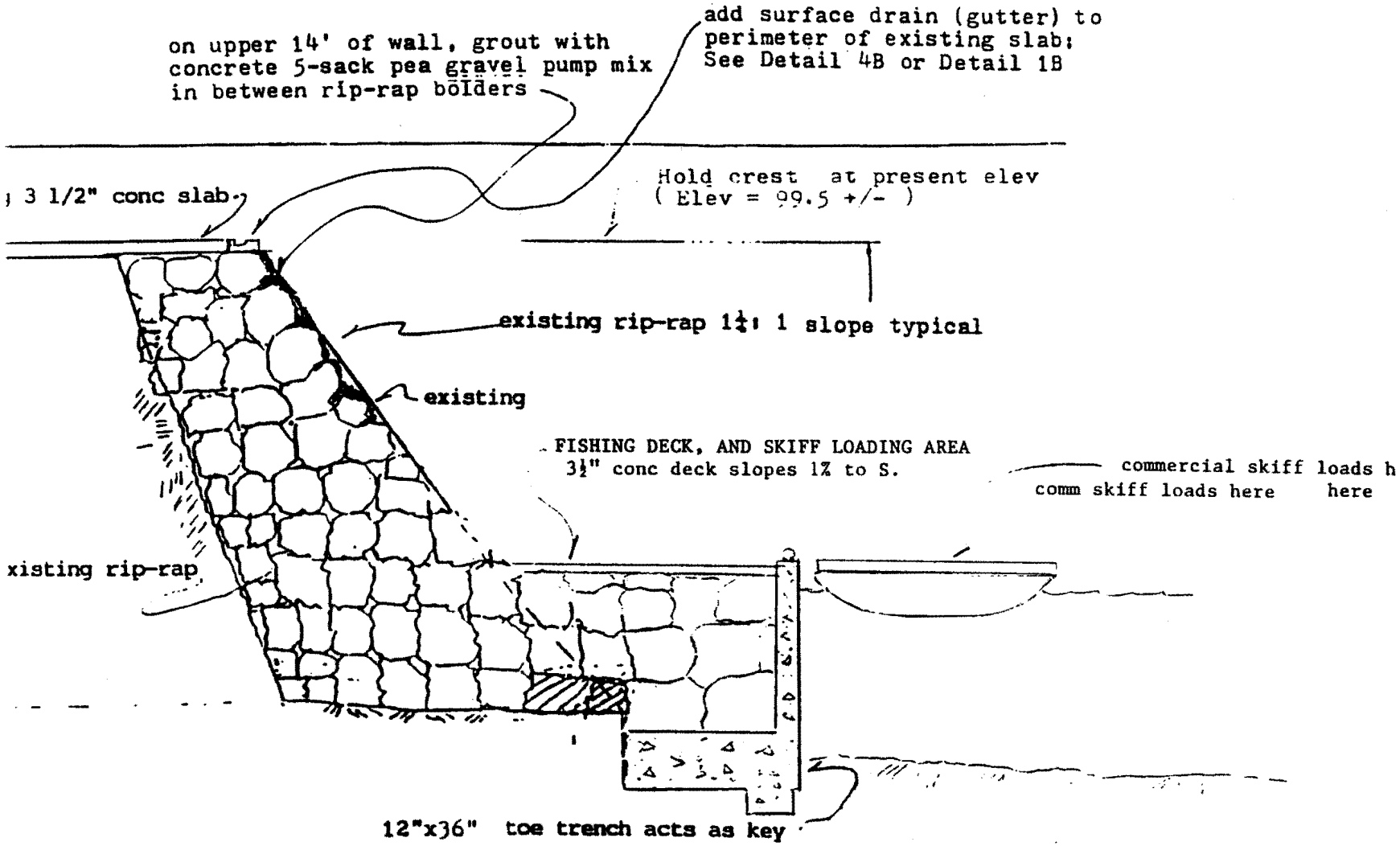
Scale: 1 in = 6.1 ft

EXHIBIT J 3

380/350 PRINCETON

COMMERCIAL FISHING FACILITY/AQUACULTURE AREA
SHOWS COMM SKIFF LOADING ONTO SERVICE DECK

Ex 33, p.7



Scale: 1 in = 6.1 ft

EXHIBIT J 4

380/350 PRINCETON

Ex.33, P.8

THE AREA SUBJECT TO THIS PERMIT APPLICATION IS
LIMITED ONLY TO THE YELLOW ZONE ON PLAN # J-5 (THIS PLAN)

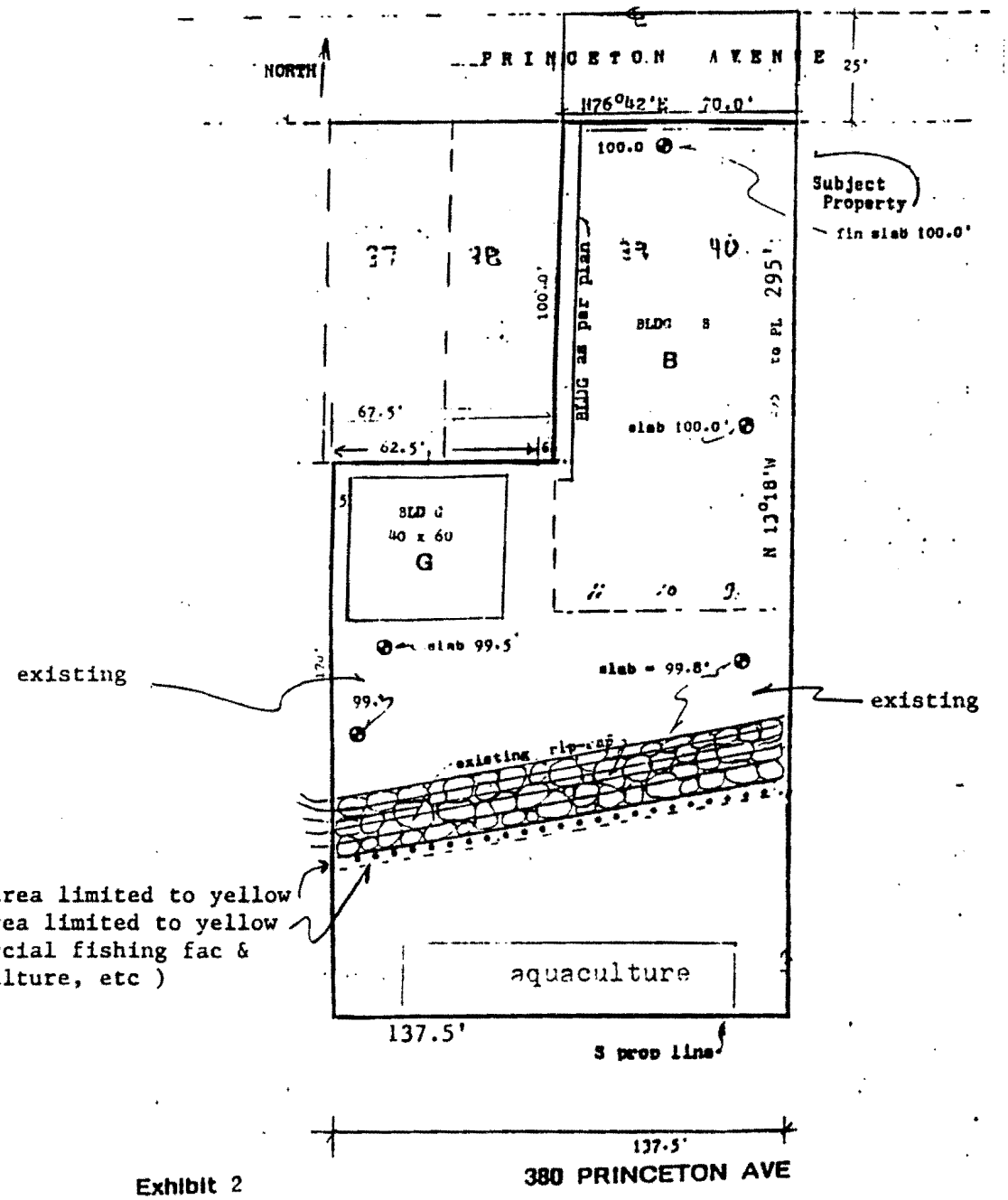


Exhibit 2

380 PRINCETON AVE

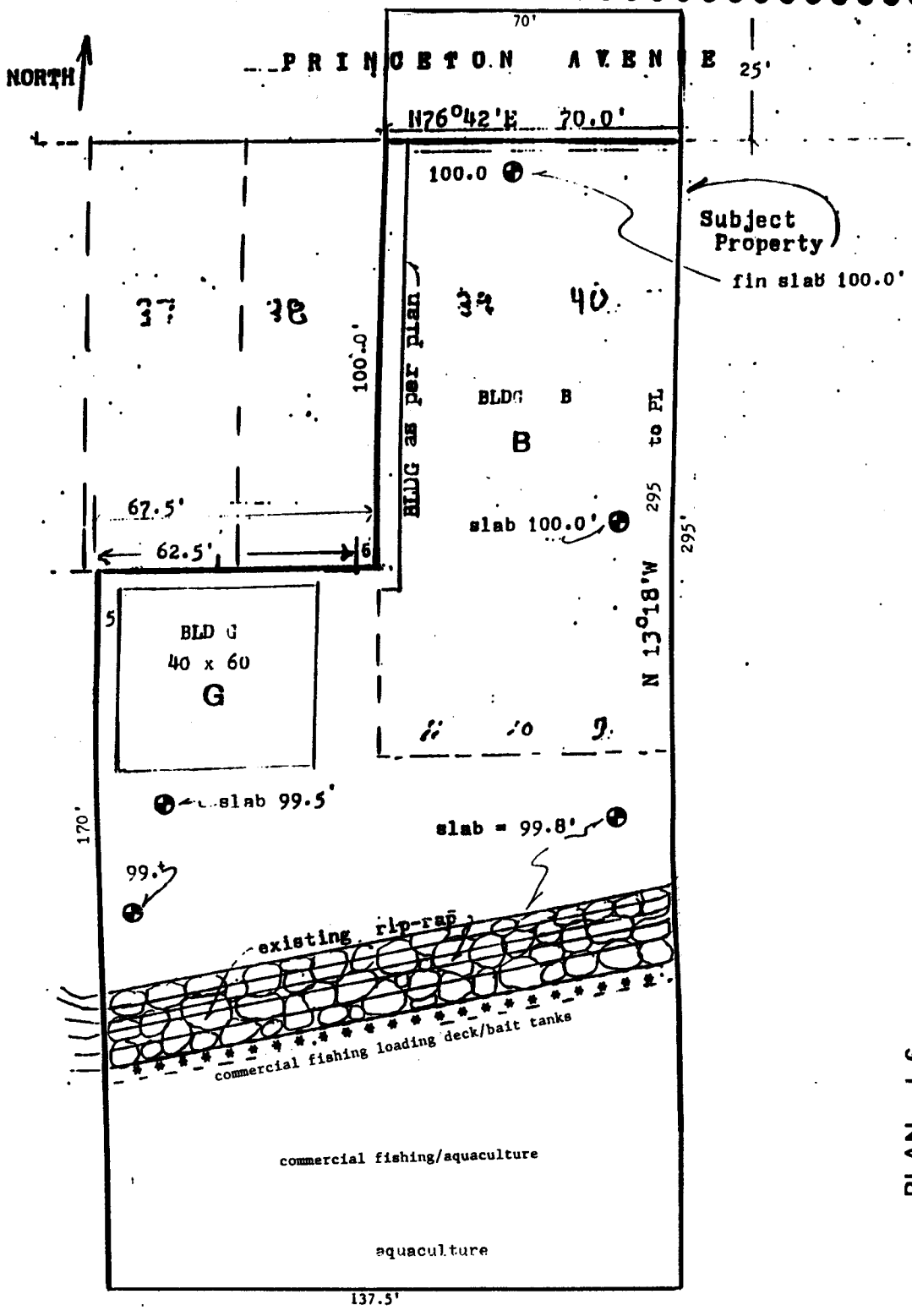
Scale: 1 in = 50 ft

TOPOGRAPHIC FEATURES

1. each contour line = 1'

THE AREA SUBJECT TO PERMIT APPLICATION IS LIMITED ONLY TO YELLOW ZONE ABOVE, PLAN J-5
The area subject to this permit application is shown in yellow
(new comm fishing facility develop, aquaculture at *****) limited to yellow zone

PLAN J 5



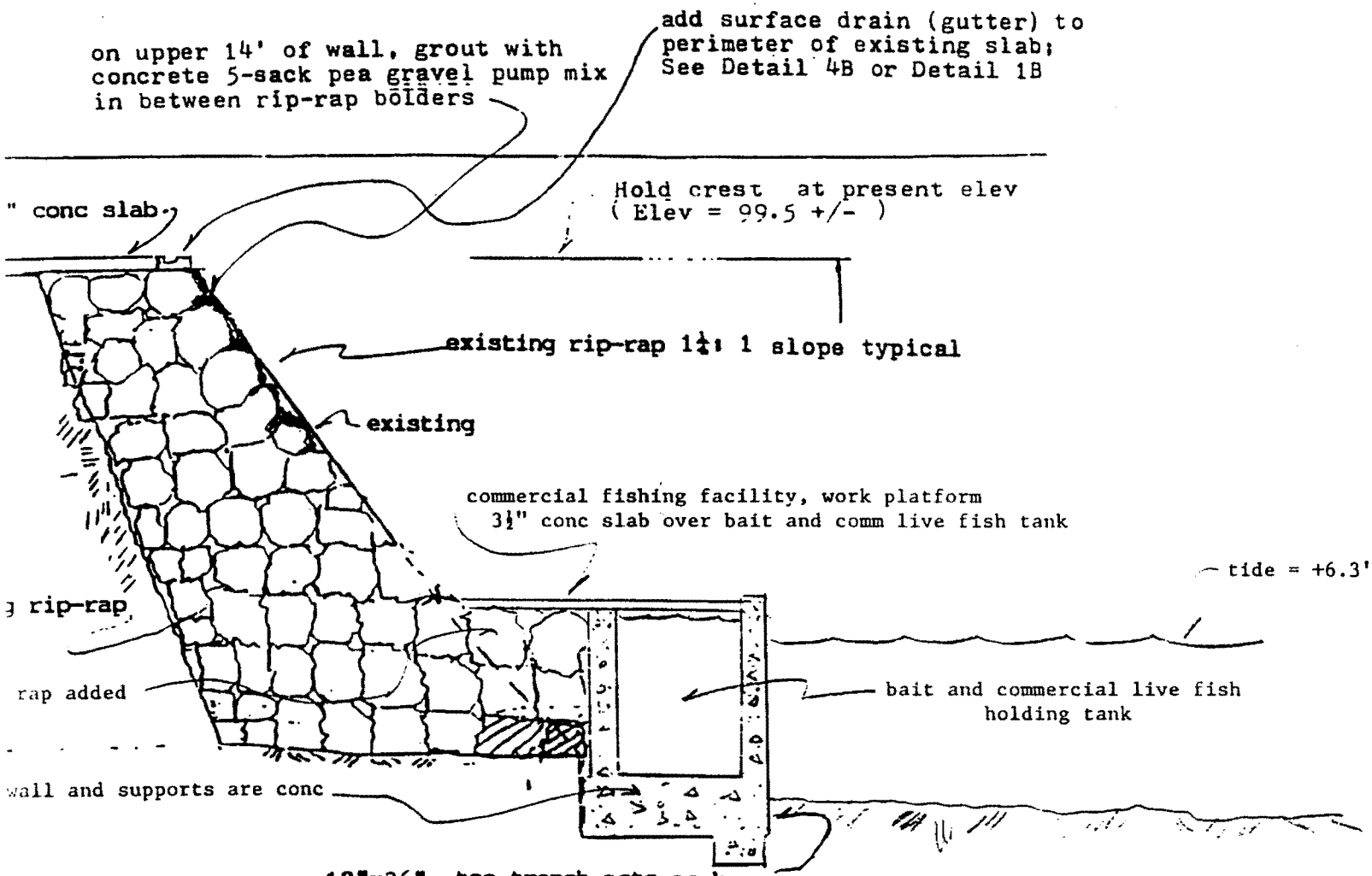
1. each contour line = 3 feet
2. the area subject to this permit application is limited only to the yellow zone shown on plan sheet J-5 (marked in yellow only).

Scale: 1 In = 25 ft

PLAN J 6

PLAN J 6

Ex. 33, p10



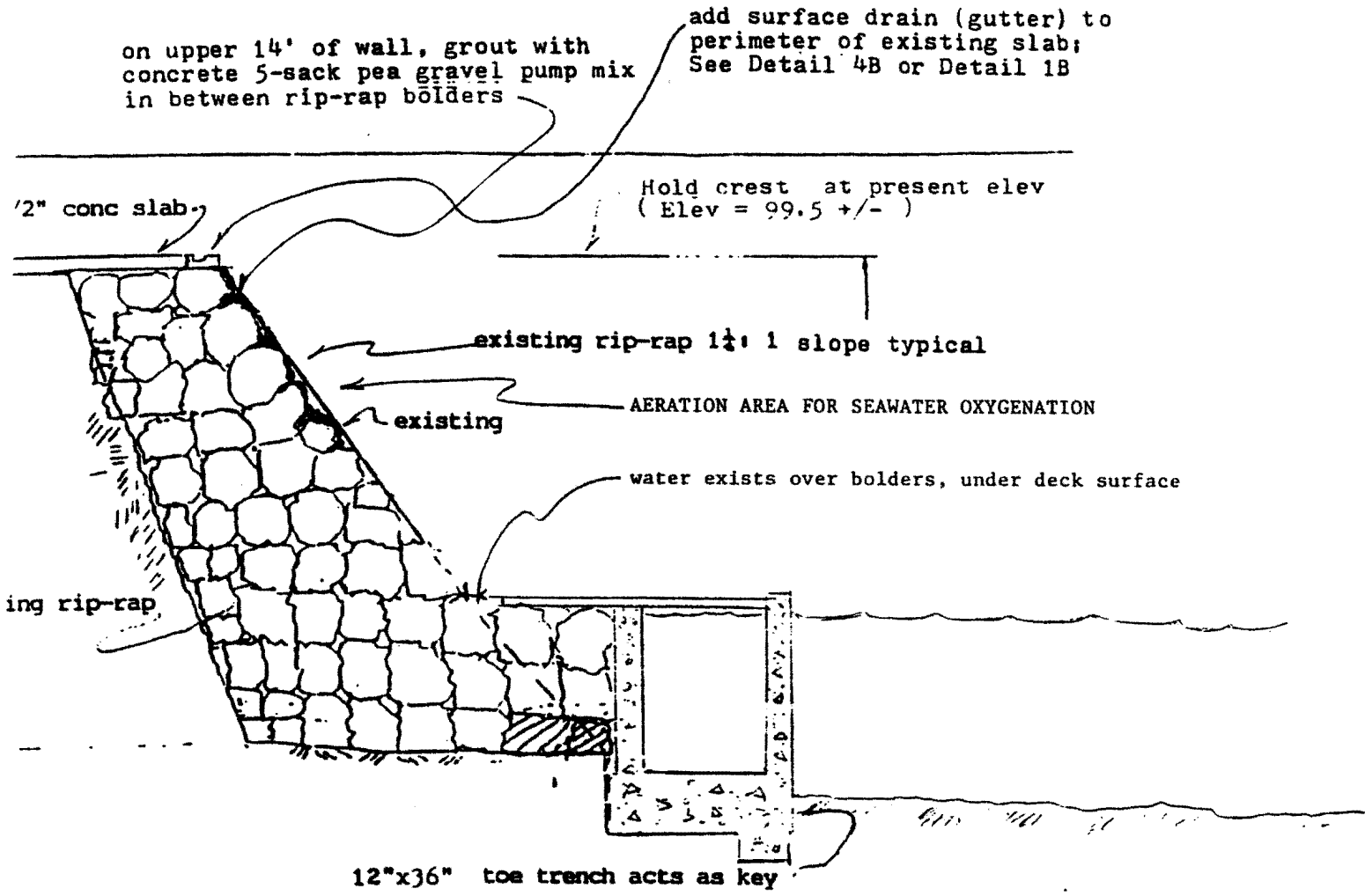
Scale: 1 in = 6.1 ft

EXHIBIT J 7

380/350 PRINCETON

COMMERCIAL FISHING FACILITY LOADING/UNLOADING AREA
SECTION THROUGH LIVE FISH TANK AT HIGH TIDE (+6.3').

Ex. 33, p 11



Assume slab North end is elev = 100.0

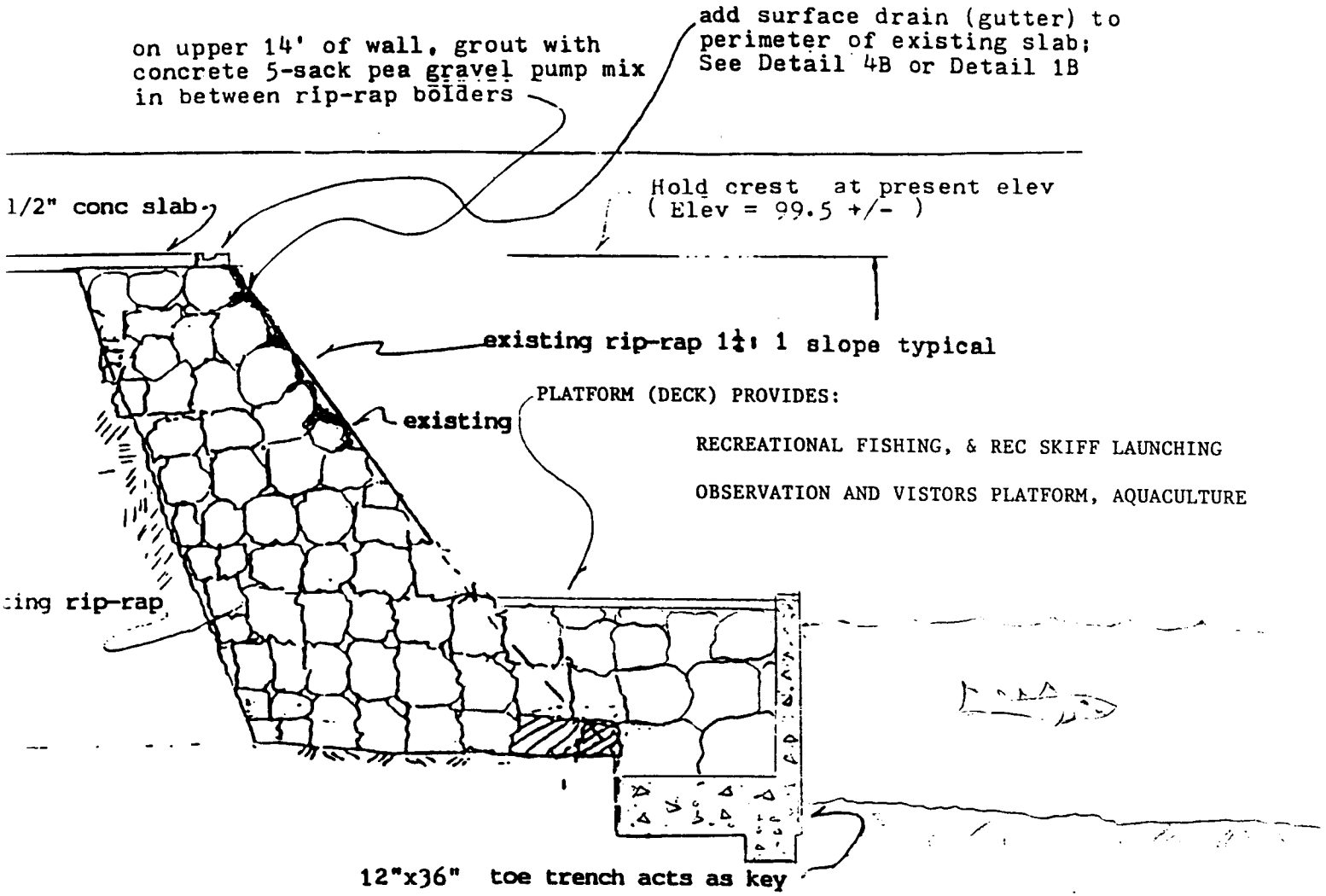
Scale: 1 in = 6.1 ft

EXHIBIT J 8

380/350 PRINCETON

AERATION OF SEA WATER IS OVER BOLDERS

Ex 33, P.12



Scale: 1 in = 6.1 ft

EXHIBIT J 9

380/350 PRINCETON

Ex. 33, P.13

Environmental Services Agency

Planning and Building Division

County of San Mateo

Mail Drop PLN122 · 455 County Center · 2nd Floor · Redwood City
California 94063 · Telephone 650/363-4161 · Fax 650/363-4849

May 11, 1999

Jack Liebster
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

Dear Mr. Liebster:

SUBJECT: Permit Number 1-98-058; Trianchor Marine & Pique Partners: Stan Furmanski; APN(s) 047-024-150, 047-024-160, 047-024-170

The County of San Mateo supports the recommendation made by the Coastal Commission staff to deny a coastal development permit for the proposed repairs and additions to the existing rip-rap wall at 350/380 Princeton Avenue. Although a Coastal Development Permit (CDP) was approved by the County for a chandlery building on the subject property in July 1991, no such authorization was given to allow repairs or additions to the seawall. We find no record of any permit substantiating the original placement of the riprap at the project site, nor of any CDPs that have been applied for or issued for repairs and alterations to the seawall. Recently, the County has received numerous requests to grant a Coastal Development Exemption (CDX) instead of a CDP for additional repairs and alterations to the subject seawall. Regardless of the inadequacy of the application, the proposed rip rap has been determined to lie within the Coastal Commission's retained jurisdiction area and the County does not have authority to act on these requests. We support the Commission staff in their findings that the project is not in conformance with the provisions of the California Coastal Act of 1976 or the California Environmental Quality Act. We will continue to hold the "stop work" notice on the chandlery until such action has been taken to mitigate the impacts of the riprap, subject to the Commission's decision at the public hearing on May 13, 1999. Thank you for providing us with the opportunity to comment on this matter.

EXHIBIT NO. 34
APPLICATION NO. 1-98-58
May 11, 1999 Letter from Terry Burnes, County of San Mateo

Sincerely,

Terry Burnes
Planning Administrator

Mr. Steven Scholl, 5/15/99

You are aware the application 1-98-058 is now being amended. The amendment adds Book "J", "JR" ands "JT", and amends-out (deletes) the earlier submissions, on 5/16/99. ← on 5/10/99

The amended application seeks a permit for aquaculture, aquaculture research, commercial fishing facility and marine research as set forth in book J, JR, JT, K and L.

The application is amended by removing earlier submissions, effective 5/15/99.

5/15/99 R. Clark agent

EXHIBIT NO. 35
APPLICATION NO. 1-98-58
May 17, 1999 Amendment to
Application

APPLICATION BOOKLET "JR"

Title or Request: "Coastal Permit for Aquaculture and Aquaculture Research"

Aquaculture research project is to promote sabellid-free stocks of abalone by research for a biomarker to be used to detect the sabellid. Method described below.

Permit to construct improvements to allow aquaculture of 4000 sabellid-free abalone obtained from certified sabellid-free stocks, and 4000 bivalves and gastropods. [Section J-10 shows typical modification]

Mitigation measures include an oxygen monitoring station, with oximeter, and an aeration area using the rip-rap surface to oxygenate sea water by way of aeration.

METHODS:

Research Method:

The aquaculture research project is to find a biomarker which can be used for "detection" of sabellid. The type of detection methods to be tried are "fluorescent antibody" tests to sabellid, and other sensitive tests. The sabellid-free abalone are required for normals and controls to verify sabellid-free stocks do not produce false-positive test results.

AQUACULTURE FACILITY:

Tanks will be contructed under a working deck as shown in Section J-10, and Plan J-5 and J-6, where sabellid-free stock will be raised, obtained from a certified sabellid-free source. The facility will be kept sabellid-free. The small number (4000) abalone will require only a small amount of kelp, available from approved sources.

There will be no impact on anchorage, since the site falls outside the bounds of the "anchorage zone" which was determined by calc by Marine Concepts Inc. Hence, the site does not cost any anchorage spaces at all.

Mitigation measures include an oxygen monitoring station, with oximeter, and an aeration area using the rip-rap surface to oxygenate sea water by way of aeration.

BENEFITS:

The aquaculture research project is to find a biomarker which can be used for "detection" of sabellid. The type of detection methods to be tried are "fluorescent antibody" tests to sabellid, and other sensitive tests. The sabellid free abalone are required for normals and controls to verify sabellid-free stocks do not produce false-positive test

EXHIBIT NO. 36
APPLICATION NO. 1-98-58
"Book JR" excerpts
(Page 1 of 9)

AERATION [Gravity Cascade] **(see J 8)**

Sea water is released near the top of the existing rock-slope protection, about 10 feet above the tanks, and runs down over the bolders by gravity, and thereby is aerated and the DO (oxygen tension) is increased. The aerated sea water empties by gravity into the aquaculture tank or bait tank. It can be turned off manually or electrically.
This method of oxygenation is a mitigation measure.
No other abalone proposal includes aeration or oxygen-ation. An oxygen monitor is also to be used.
This form of oxygenation is used by L.A. municipal water companies such as L.A. Metropolitan Water, which uses a gravity cascade over bolders in Newhall, California.

ANCHORAGE ISSUE:

There will be no impact on anchorage, since this site falls outside the bounds of the "anchorage zone" as determined by calculation by Concept Marine Inc. Hence this aqua-culture project does not cost any anchorage spaces at all. Applicant can supply Concept Marine's map on request, to show it is outside the "anchorage zone".

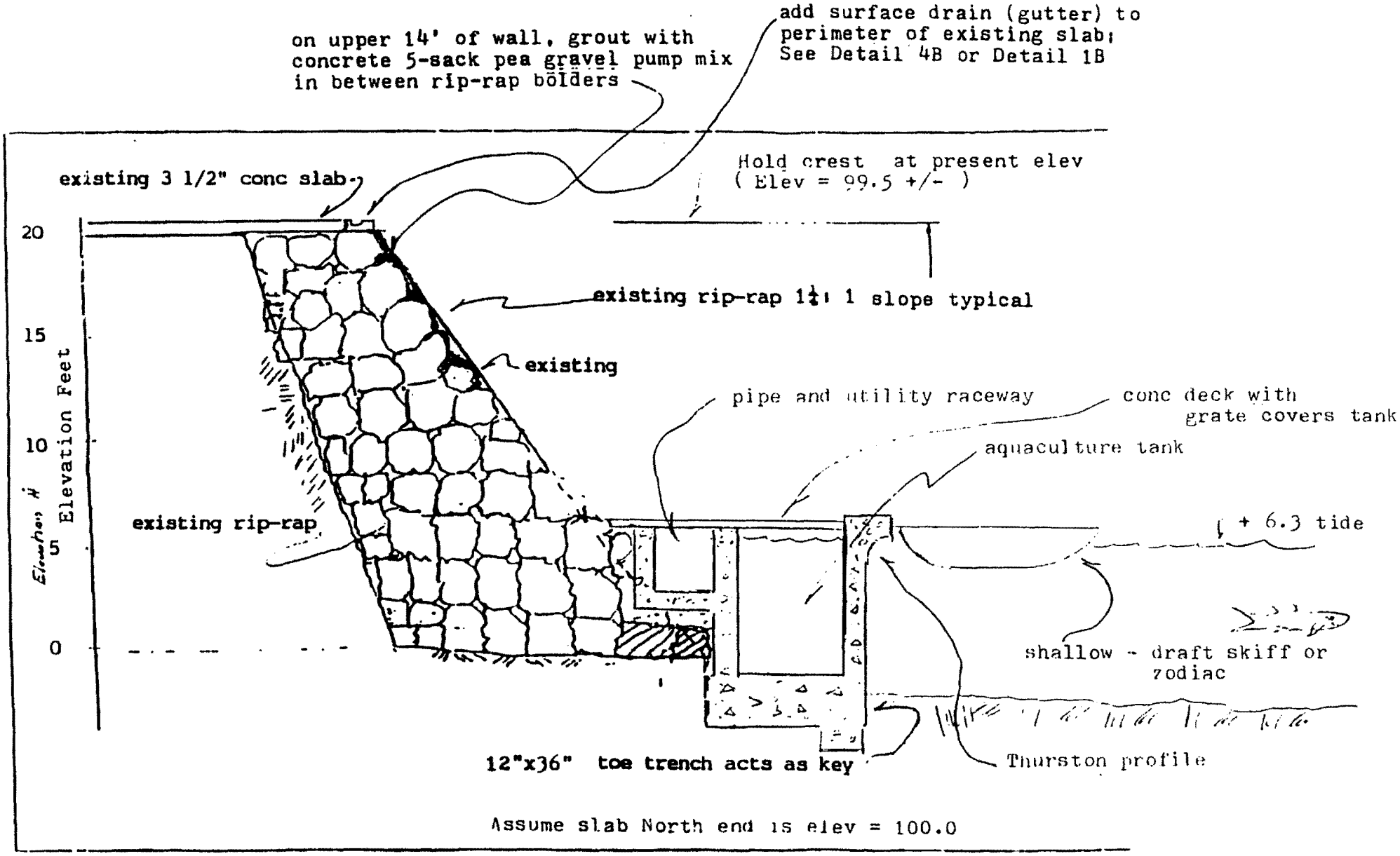
ACCESS: The Princeton area has ample vertical and lateral access from Broadway Ave, Columbia Ave, Vasar Ave, and West Point. Broadway is only 100 ft East. The U.S. Supreme Court found access 1300 ft away was more than adequate in NOLLAN vs COASTAL COMMISSION, in its landmark decision on access and views.

VISUAL:

The existing rockslope protection has been present more than 27 years, and the improvements will be below the crest. The existing public access laterally already gives good ocean views, which is a view which cannot be blocked by a structure "behind" the view. In the U.S. Supreme Court case of NOLLAN vs CALIF COASTAL COMMISSION, the commission wrongfully asserted that if Nollan enlarged his home, that views would be impaired, and the U.S. Supreme Court determined this argument to be preposterous, based upon the Court's decision that once someone looked out seaward, that their view could not be blocked "from behind". The Court found that Commission argument had no merit, and that Nollan's building and addition of a story did not impair a view. This U.S. Supreme Court decision is binding on the Commission, and is dictum in all federal and state Courts.

SHARED USE:

Tanks will be contructed under a working deck as shown in Section J-10, and Plan J-5 and J-6, where sabellid-free stock will be raised, obtained from a certified sabellid-free source. The facility will be kept sabellid-free. When needed, the tanks can be used for other marine organisms & live bait tanks [also a coastal dependent use]



Ex 36, p.4

EXHIBIT J10

380/350 PRINCETON

J10

Section J 10

APPLICATION BOOKLET "J"

RE: Application 1-98-058

Title or Request: "Coastal Permit for Commercial Fishing Facility, Aquaculture, Marine Research and other coastal dependent uses within an area shaded yellow on Plan J-5.

SUMMARY OF THIS PERMIT APPLICATION:

The application is "Amended" to include development within an area shaded-yellow on Plan J-5, which is to enable Forty (40) coastal dependent uses, including a commercial fishing facility and those listed in Exhibit 1 **(summary J1)** The permit is to make improvements shown on J-2, J-3, J-4, J-7, J-8, and J-9 which furthers the 40 coastal dependent uses as listed in Summary J-1 (Exhibit 1), two pages. This permit is only for the area shaded-yellow on Plan J5 (tab #5).

The Coastal Act encourges aquaculture as a coastal dependent use, under Section 30411(c) and 30222.5, and states aquaculture applications should be given priority:

Coastal Act Section 30411(c) states in part:

> *The Legislature finds and declares that salt water or brackish water aquaculture is a coastal-dependent use which should be encouraged to augment food supplies and to further the policies set forth in Chapter 4 (commencing with Section 825) of Division 1.*

Coastal Act Section 30222.5 states:

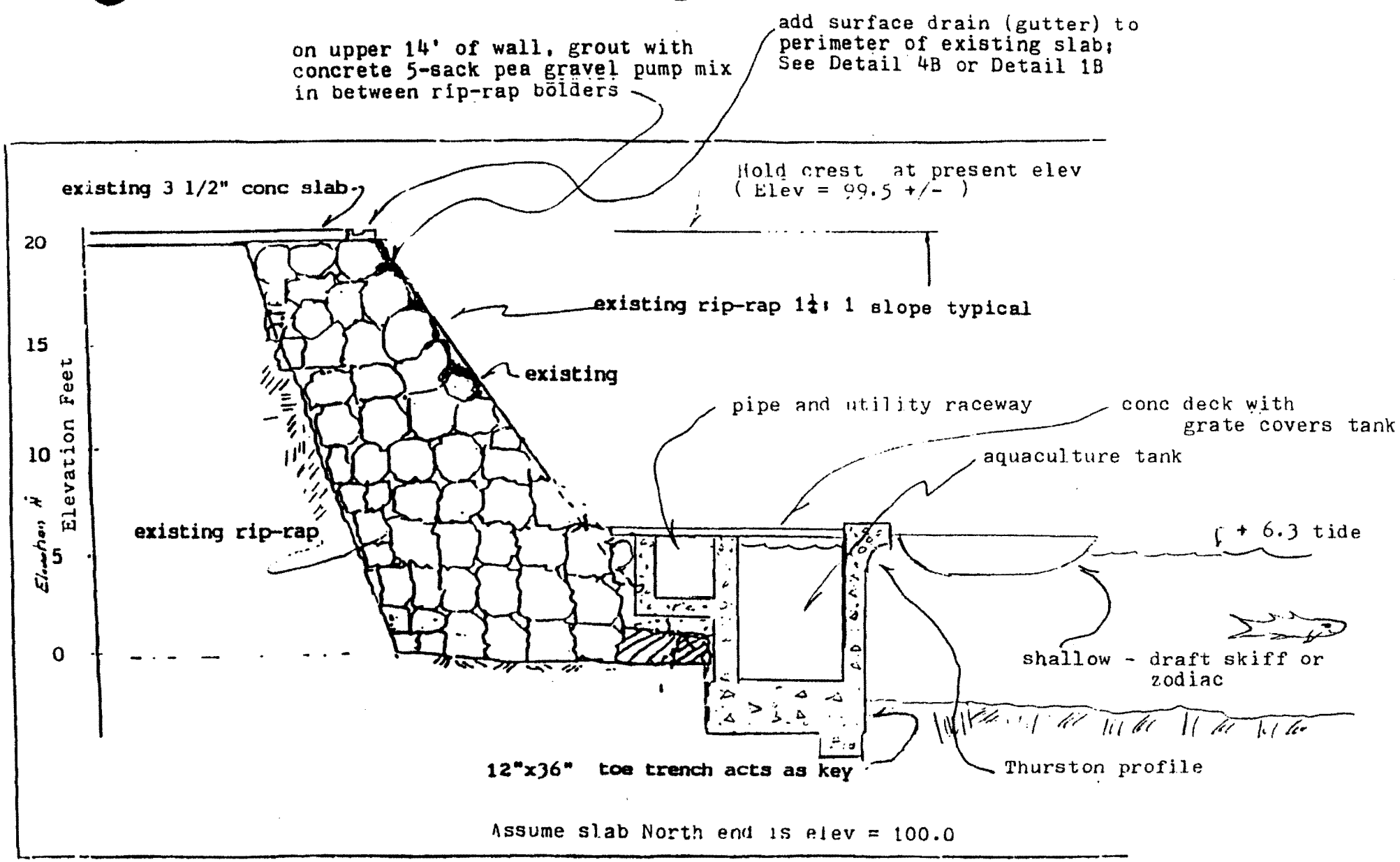
> *Ocean front land that is suitable for coastal dependent aquaculture shall be protected for that use, and proposals for aquaculture facilities located on those sites shall be given priority, except over other coastal dependent developments or uses.*

Commercial fishing facilities and as well aquaculture receive statutory preference under Section 30233(a):

"The diking, filling, etc....shall be limited to the following.... (1) ...commercial fishing facilities, and under (8) Nature study, aquaculture, or similar resource dependent activities."

Mitigation measures include an oxygen monitoring station, with oximeter, and an aeration area using the rip-rap surface to oxygenate sea water by way of aeration.

Ex.36, p.5



Ex. 36, p. 6

EXHIBIT J10

J10 **Section J 10**

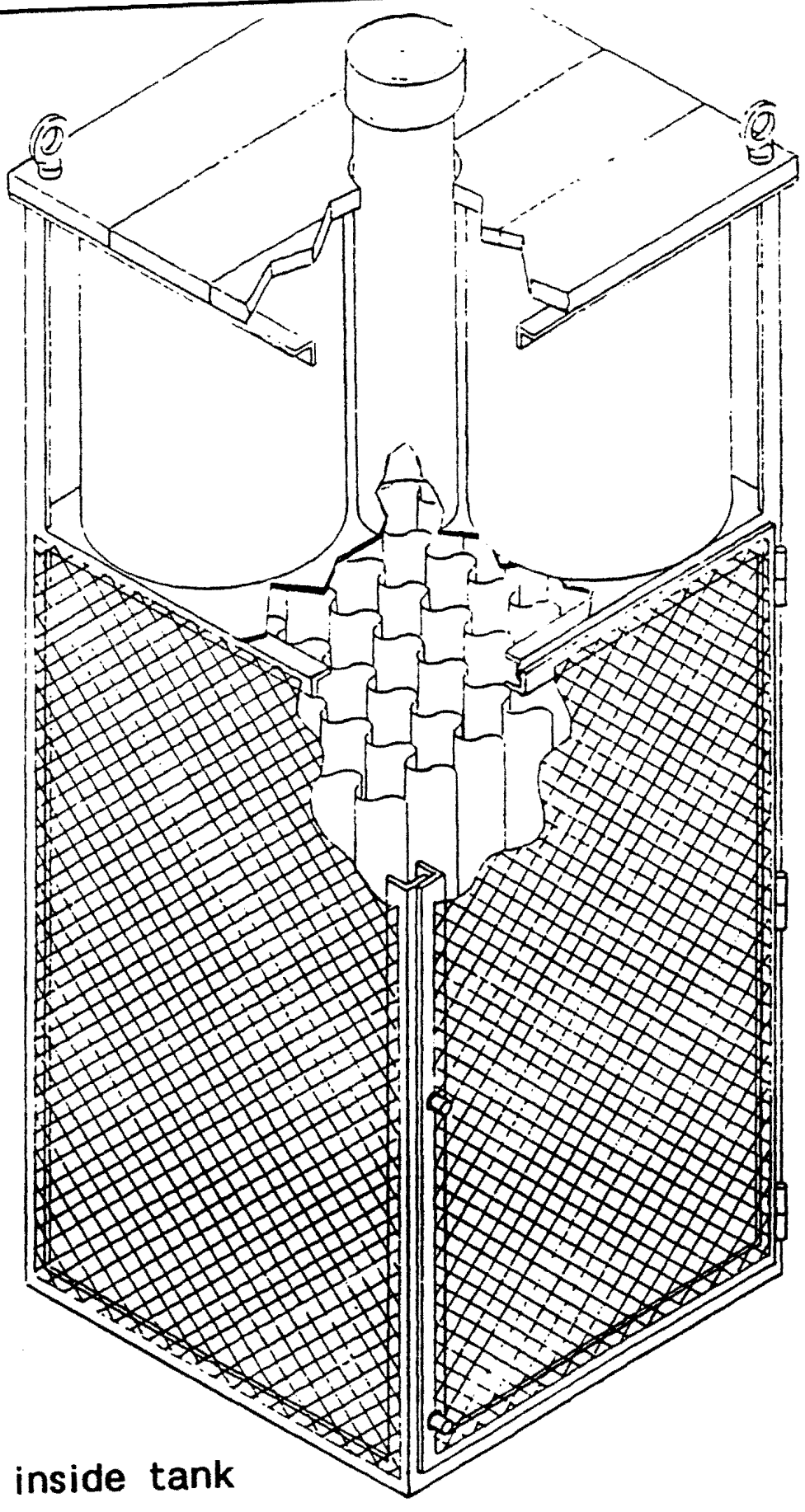
380/350 PRINCETON

Apart from this application:

Apart from this application:

There are a number of existing structures, existing uses and existing functions of those structures which applicants enjoy quite apart from this amended application. They ill be listed under J-11 to distinguish them and set them apart from any permit application under 1-98-058, since they are existing rights and uses which are not part of application

A separate list, describing them, and a map showing the relative location will be submitted as "J-11" in the near future. The J-11 list is not to be confused with any application to the coastal commission.



(insert)

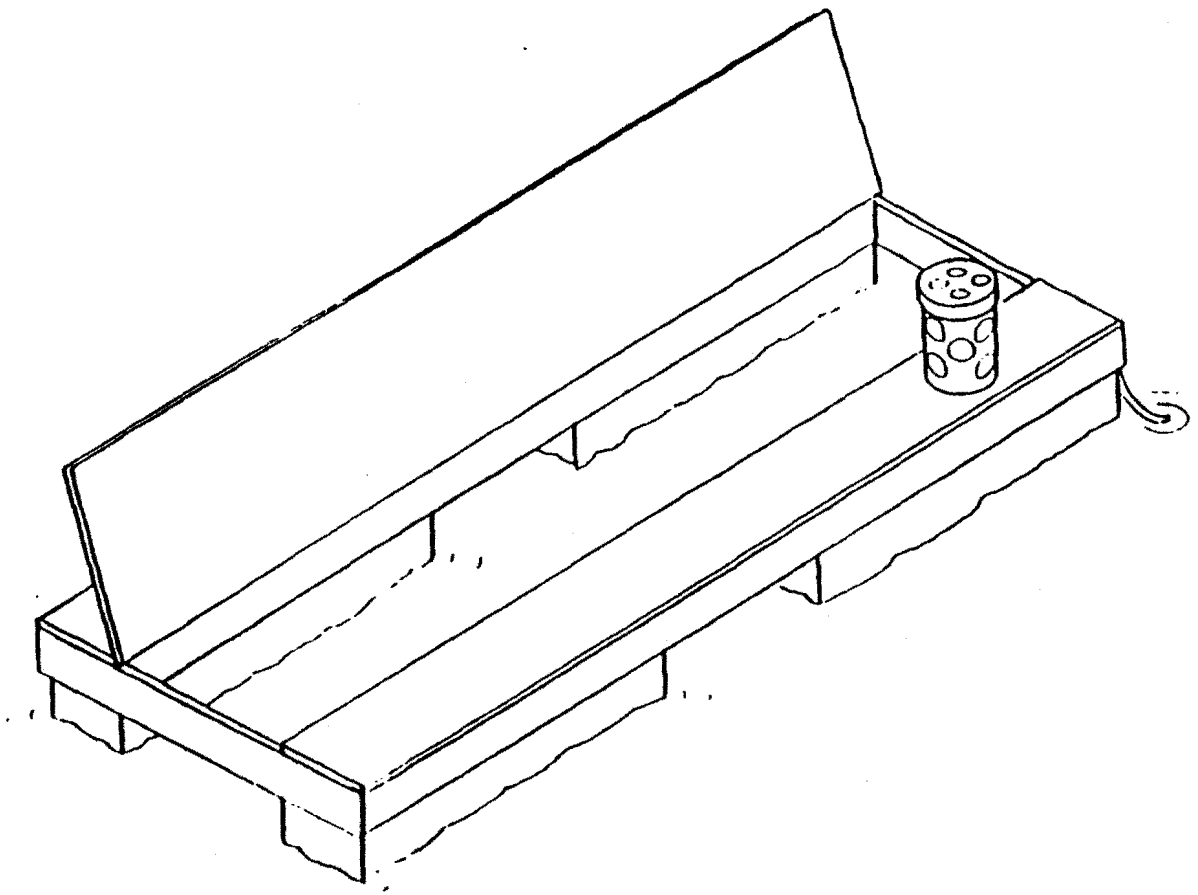
J14

typical inside tank

This cut-away drawing shows the cages design used for the larger abalone (2 - 3.5 "). These are 4' x 4' x 10' tall and can hold up to 5,000 animals. The tube at the top is for adding kelp.

or 4' x 4' x 5' ⟶ (2 000)

Ex36, p



J15

(insert)

typical inside tank

In this illustration, you can see a 4' x 10' raft with the security hatch open and a plastic cage on the deck. These cages are hung from the inside opening of the raft/ tank.

Ex. 36, P. 9

BOOK JT

Coastal permit application for:

Aquaculture & Aquaculture Research

APPLICATION BOOKLET JT

Title or Request: "Coastal Permit for Aquaculture and Aquaculture Research"

Aquaculture research project is to promote sabellid-free stocks of abalone by research for a biomarker to be used to detect the sabellid

Prepared for June Meeting, June 8-11, [Santa Barbara]
Submitted to: M.B. McEnespy & Commission &
Energy & Ocean Resources Unit

Applicant: Trianchor Enterprises File 1-98-058

Book JT to: Energy & Ocean Resources Unit

EXHIBIT NO. 37
APPLICATION NO. 1-98-58
"Book JT" excerpts
(Page 1 of 33)

BOOK JT

(synopsis)
Application and
Rebuttal: distribute to Commissioners for June 8-11 meeting

TO: M. B. McEnespy

Here is a one-page summary of some of the key points and advantages of this aquaculture proposal, as compared to the four raft-type proposals. "JT" is a more comprehensive and detailed application.

IMPORTANT GOOD POINTS:

1. There is no impact on anchorage with this proposal, since the site is outside the "anchorage zone" on the Concept Marine Inc. map of anchorage zones.

2. The scale is small, cultivating only 1% or less of of all abalone in harbor, so it is 99+% less polluting.

3. This proposal uses INLET and OUTLET filters which reduce organics and reduce TOC, so this proposal is much more environmentally kind alternative.

4. This proposal provides for aeration/oxygenation, which is a mitigation measure not found in the 4 other proposals.

5. The aquaculture tanks are better-fixed to the bottom, and have a Thurston-profile barrier built into the wall, making them very storm resistent. In contrast, floating rafts can break loose, & wreck and lack the storm resistence shown here.

6. There are 5 more important features which make this proposal better with respect to the sabellid problem, than any of the four (4) other proposals:

    a. INLET and OUTLET filters are installed to filter seawater, making it less like sabellid will enter.

    b. The double-wall tank with concrete exterior prevents sabellid from entering the tank

    c. Only sabellid-free stock from certified sources will be cultivated, so starting point is better.

    d. The aquaculture tanks are better-fixed to the bottom, and have a Thurston-profile barrier built into the wall, making them very storm resistent. With rafts, an infested raft might break loose & wreck & potentially spread sabellid.

    e. This proposal incorporates a research program to find a method of detecting sabellid using such laboratory techniques as ELISA (Enzyme-Linked Immunosorbent Assay)(ELISA). (See pages 22,23-33)

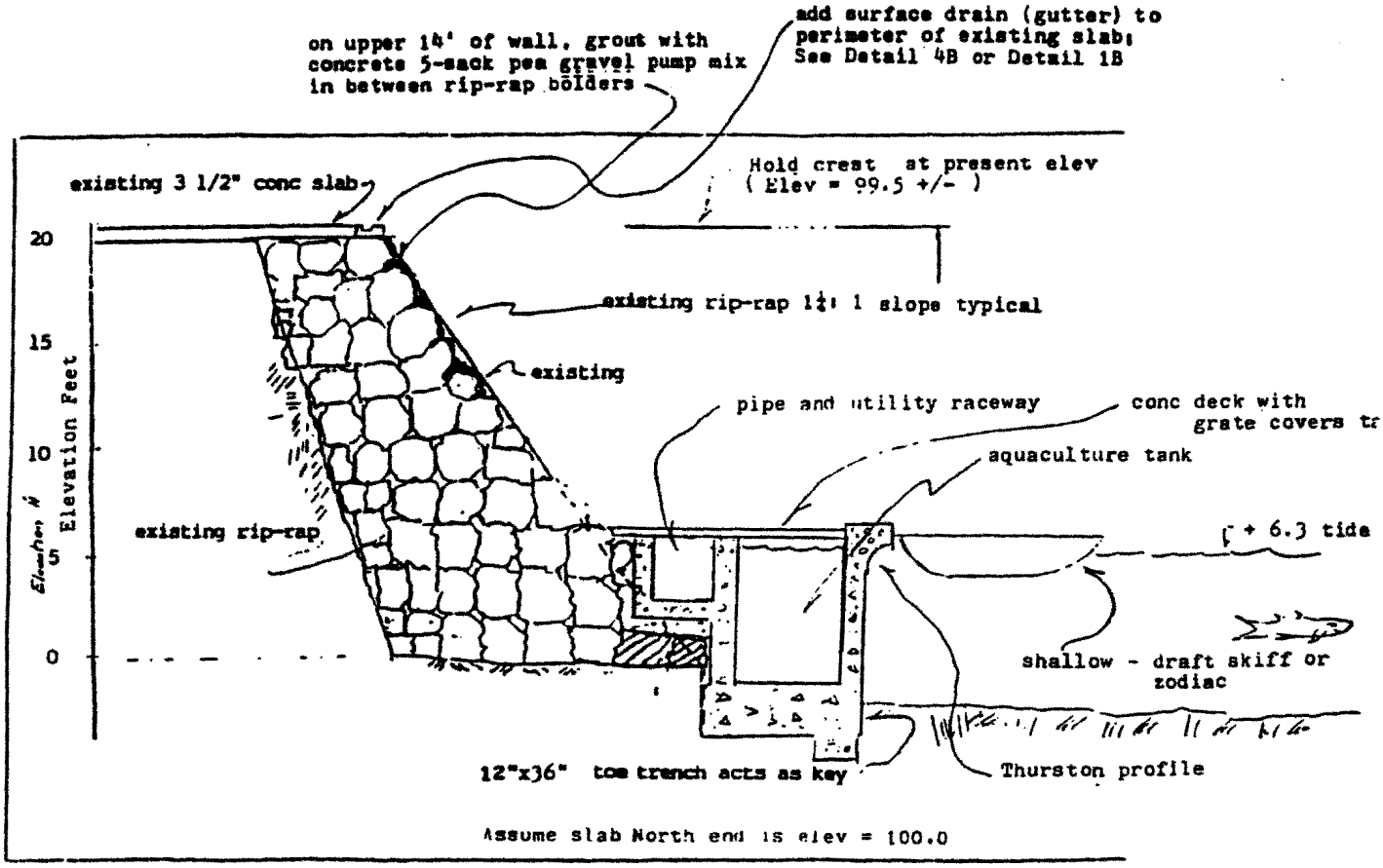
AQUACULTURE FACILITY:

Tanks will be contructed under a working deck as shown in Section J-10, and Plan J-5 and J-6, where sabellid-free stock will be raised, obtained from a certified sabellid-free source. The facility will be kept sabellid-free. The small number (4000) abalone will require only a small amount of kelp, available from approved sources.

There will be no impact on anchorage, since the site falls outside the bounds of the "anchorage zone" which was determined by calc by Marine Concepts Inc. Hence, the site does not cost any anchorage spaces at all.

Mitigation measures include an oxygen monitoring station, with oximeter, and an aeration area using the rip-rap surface to oxygenate sea water by way of aeration.

This aquaculture tank uses a Thurston Profile on the South side, facing the harbor, which is designed to withstand Pacific storms and to withstand El Nino. This arrangement is much more durable than the proposed rafts floating in the harbor, since rafts can become dislodge and wreck. This proposal is immune from the breaking-loose problem of rafts. Since this proposal cultivates only 1 % of all the abalone, its small size makes it 99+ % less polluting, since 99% less kelp is used and 99% less TOC is evolved. It is the only proposal providing oxygenation



APPLICATION BOOKLET "JT"

Title or Request: "Coastal Permit for Aquaculture and Aquaculture Research"

Aquaculture research project is to promote sabellid-free stocks of abalone by research for a biomarker to be used to detect the sabellid. Method described below.

Permit to construct improvements to allow aquaculture of 4000 sabellid-free abalone obtained from certified sabellid-free stocks, and 4000 bivalves and gastropods. [Section J-10 shows typical modification]

Mitigation measures include an oxygen monitoring station, with oximeter, and an aeration area using the rip-rap surface to oxygenate sea water by way of aeration.

METHODS:

Research Method:

The aquaculture research project is to find a biomarker which can be used for "detection" of sabellid. The type of detection methods to be tried are "fluorescent antibody" tests to sabellid, and other sensitive tests. The sabellid-free abalone are required for normals and controls to verify sabellid-free stocks do not produce false-positive test results.

One of the research methods to be investigated is called ELISA, known as Enzyme-Linked Immunosorbent Assay [ELISA]. It is described in concept below, and more completely in the attached summary in this application. (see page 22-29)

Enzyme-Linked Immunosorbent Assay (ELISA)

This unit describes six ELISA sytems for detecting antigen and antibodies (Figs. 11.2.1-11.2.6). In all protocols, the solid-phase reagents are incubated with secondary or tertiary reactants covalently coupled to an enzyme. Unbound conjugates are washed out and a chromogenic or fluorogenic substrate is added. As the substrate is hydrolyzed by the bound enzyme conjugate, a colored or fluorescent product—proportional to the amount of analysate in the test mixture—is generated and detected visually or with a microtiter plate reader. Antibody-sandwich ELISAs are generally the most sensitive and can detect 100 pg/ml to 1 ng/ml protein antigen (direct ELISAs are often an order of magnitude less sensitive).

THE AREA SUBJECT TO THIS PERMIT APPLICATION IS
LIMITED ONLY TO THE YELLOW ZONE ON PLAN # J-5 (THIS PLAN)

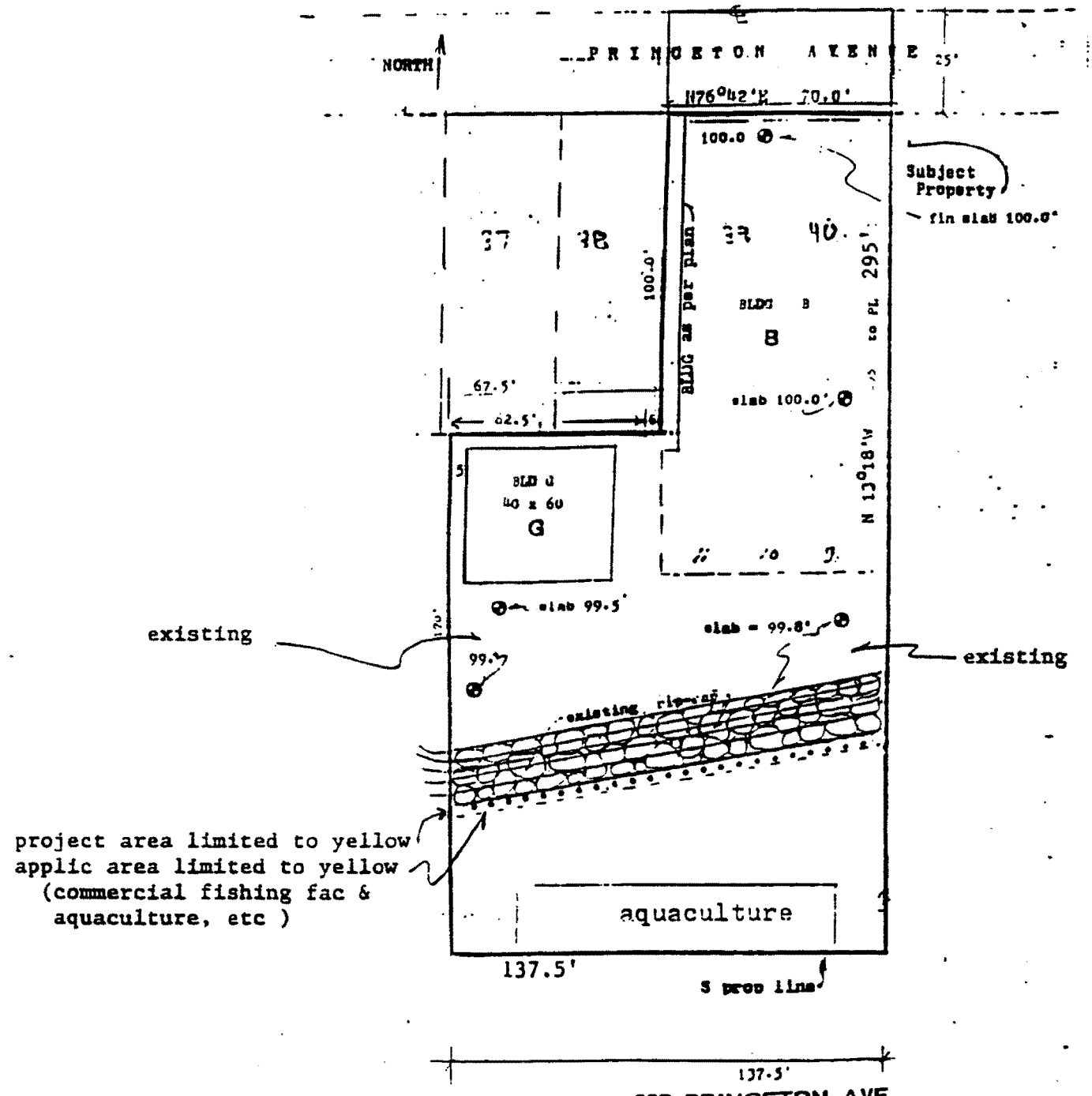


Exhibit 2

380 PRINCETON AVE

Scale: 1 in = 50 ft

TOPOGRAPHIC FEATURES

1. each contour line = 1'

THE AREA SUBJECT TO PERMIT APPLICATION IS LIMITED ONLY TO YELLOW ZONE ABOVE, PLAN J-5
The area subject to this permit application is shown in yellow
(new comm fishing facility develop, aquaculture at *****) limited to yellow zone

Ex. 37, p. 5

PLAN J 5

NO ANCHORAGE PROBLEM

The four other aquaculture applications involve the so-called anchorage issue, based upon a calculation of 202 acres as the "anchorage zone" based upon the work of Concept Marine Inc in 1998. This 202 acres is a space for anchorage.

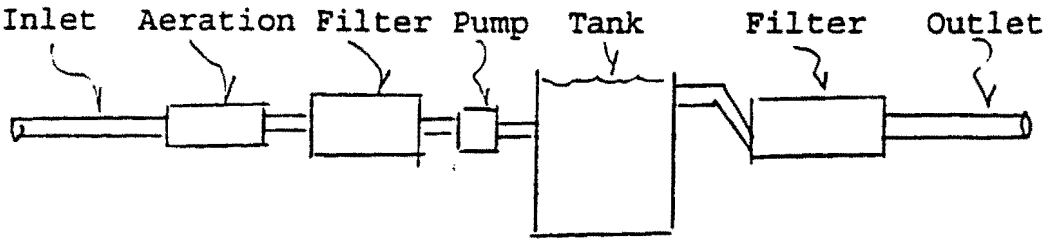
The present application [1-98-058] is located outside the anchorage zone, and so there is no achorage issue with this application. NO ANCHORAGE SPACES WILL BE LOST IF THIS COASTAL PERMIT IS ISSUED. This applicant has obtained all the work of Concept Marine Inc and can furnish the Concept Marine map to verify this development is located outside the boundaries of the anchorage zone, and hence there will be no impact on anchorage. Concept Marine's map uses hydrographic data to arrive at the 202 acres "anchorage zone", after excluding varous other areas from 284 acres of the outer harbor. Exhibit 23 confirms this applicant is outside the anchorage zone on the anchorage zone map. Hence, this application should be approved since no anchorages spaces are lost at all !

Ex. 37, p. 6

FILTRATION

Four other abalone aquaculutre plans do not filter the sea water, but merely suspend the rafts in the sea. This proposal involves tanks with sea water ports for incoming and outgoing sea water, which will be fixed to filters. The incoming sea water can be filtered and the outgoing as well. This keeps the abalone cleaner and more healthy & also reduces TOC release, since particulate material can be filtered out, rather than putting it in the bay. Filtering the incoming water is also felt to be a means of keeping sabellid-free stock from becoming infested from the sea. Therefore this method is superior to merely suspending the rafts in the sea, and it should be approved. Since filtering the water is a superior method, this application 1-98-058 should be approved, since this method of filtering is a "feasible alternative or feasible mitigation measure available which would substantial ly lessen any adverse impact". Hence, this proposal of a small, clean filtered facility should be approved.

FILTRATION [SCHEMATIC]



Filtering the incoming water is also felt to be a means of keeping sabellid-free stock from becoming infested from the sea. Therefore this method is superior to merely suspending the rafts in the sea, and it should be approved. Since filtering the water is a superior method, this application 1-98-058 should be approved, since this method of filtering is a "feasible alternative or feasible mitigation measure available which would substantial ly lessen any adverse impact". Hence, this proposal of a small, clean filtered facility should be approved.

AERATION [Gravity Cascade]

Sea water is released near the top of the existing rock-slope protection, about 10 feet above the tanks, and runs down over the bolders by gravity, and thereby is aerated and the DO (oxygen tension) is increased. The aerated sea water empties by gravity into the aquaculture tank or bait tank. It can be turned off manually or electrically. This method of oxygenation is a mitigation measure. No other abalone proposal includes aeration or oxygen-ation. An oxygen monitor is also to be used. This form of oxygenation is used by L.A. municipal water companies such as L.A. Metropolitan Water, which uses a gravity cascade over bolders in Newhall, California.

AERATION

The aquaculture and bait tanks are also equipped with air lines at the tank bottom to provide aeration as desired to the tank. Two tanks are insulated for temperature control Other abalone proposals lack such aeratin features.

Ex. 37, p. 8

FILTRATION

Other abalone aquaculture proposals do not filter the sea water, but merely suspend the rafts in the sea. This proposal involves tanks with sea water ports for incoming and outgoing sea water, which will be fixed to filters. The incoming sea water can be filtered and the outgoing as well. This keeps the abalone cleaner and more healthy and also reduces the TOC, since particulate material can be filtered out, rather than put into the bay. Filtering the incoming water is also felt to be a means of keeping sabellid-free stock from becoming infested from the sea. Therefore this method is superior to merely suspending the rafts in the sea, and it should be approved. Since filtering the water is a superior method, this application 1-98-058 should be approved, since this method of filtering is a "feasible alternative or feasible mitigation measure available which would substantial ly lessen any adverse impact". Hence, this proposal of a small, clean filtered facility should be approved.

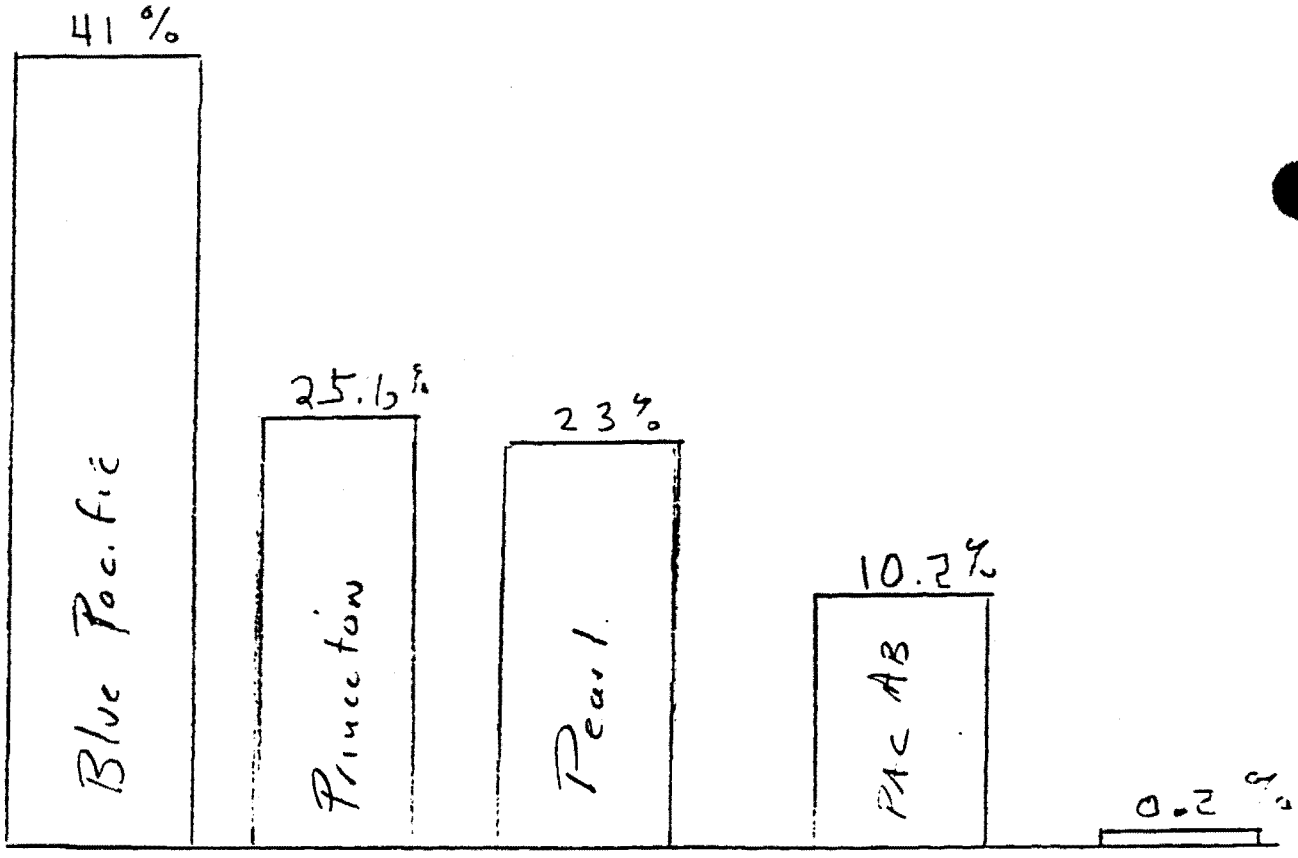
SMALL SCALE This proposal for aquaculture is for only a small number of abalone (4000), which is less than 1% the size of the other applications. Thus only 1% as much kelp is involved, and its small scale makes it desirable since it is 99+% less polluting than larger plans. Because of its small size and small scale it should be approved.

Ex 37, p 9

SMALL SCALE OPERATION

This histogram shows that this small scale aquaculture raises only 0.2 % (two-tenths of one percent) of all the harbor abalone, and so it is a small efficient operation which will use very little resources (0.2% of kelp). of kelp and will be 99.8 % less polluting, because of the small scale of the operation and its clean operation. This is the only application which provides for inlet and outlet filtration of sea water, which further makes this a clean small-scale aquaculture facility, representing less than 1 % of animals cultivated

Comparison of maximum numbers to be grown:		% Total
Blue Pacific	800,000	41 %
Princeton Abalone	500,000	25.6 %
Pearl Abalone	450,000	23 %
Pacific Abalone	200,000	10.2%
This application	4,000	0.2%



100-TIMES CLEANER

This aquaculture application provides an operation about 100-times cleaner than other proposals. Compared to Princeton Abalone [500,000 max], this proposal raises only 4000 abalone, which means it requires 125 times less kelp to operate, and produces 125 times less carbon byproducts. Furthermore, this project places INLET and OUTLET filters on the seawater, which reduces particulate outlet material further, so that this operation can be estimated about 500-times cleaner than other harbor installations at full capacity. [it would be only 0.2% of total abalone). Total # for harbor is about 1,954,000.

Comparison of maximum numbers to be grown:		% Total
Blue Pacific	800,000	41 %
Princeton Abalone	500,000	25.6 %
Pearl Abalone	450,000	23 %
Pacific Offshore	200,000	10.2%
This application	4,000	0.2%

SCENIC AND VISUAL QUALITIES

There are multiple access routes to the site, and there is ample vertical and lateral access as described in other parts of the application. A photograph, called Exhibit #17 shows a"view" from the rockslope protection looking South, with four lawn-chairs of the applicant placed at 50-foot intervals, each 50' farther out toward the sea. This is called the "Lawn-Chair Exhibit" (#17). This photo shows and defines the "view" is South, & that a person can walk vertically and then laterally to any lawn chair, and look South to see the "view" of the sea.

The proposed coastal development will not impair the view from the lawn chairs. This is confirmed by the U.S. Supreme Court Decision of NOLLAN vs CALIF COASTAL COMMISSION, where the Supreme Court ruled that once a viewer walks out and views the ocean, the view [looking South] can not be impaired by a structure located "behind" the viewer. It is noteworthy Mr. NOLLAN had a view to the South and a rockslope protection virtually identical to the that of this application. See Exhibit #24.

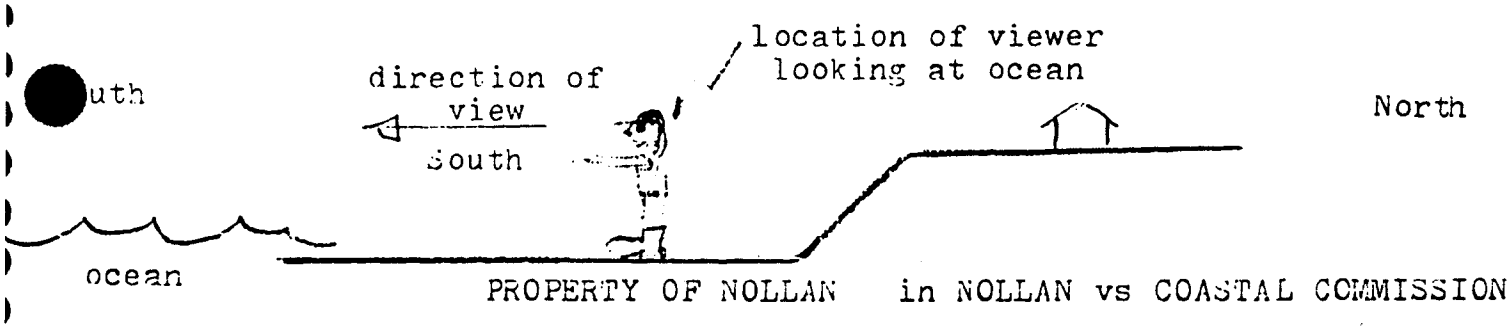
"VIEW" & THE NOLLAN DECISION

In the famous case of NOLLAN vs CALIF COASTAL COMMISSION, the U.S. Supreme Court considered the bogus argument of the Commission that if Nollan enlarged his building, that the view would be impaired. The Commission also wanted Nollan to grant a lateral easement. The U.S. Supreme Court ruled that once a person walks out and views the ocean, that the view [i.e. Southward in that case] is already defined Southward, and the view cannot be impaired by a building or addition located "behind" the head of the viewer. The U.S.Sup Court found Commission's theory of impairment-of-view-from-behind to be preposterous, and the case was decided in favor of NOLLAN as to all issues, including the view issue. This applicant has obtained the U.S. Supreme Court briefs from Mr. Nollan who won, and from the State of California which lost.

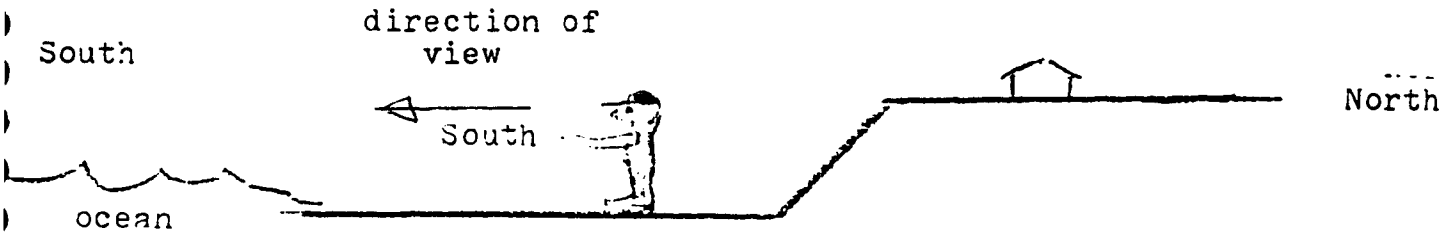
Nollan also had a rockslope protection and plot plan nearly identical, South facing the same as this applicant, and so the NOLLAN decision applies here since the face are same.See Exhibit #24.

"VIEW" & THE NOLLAN DECISION

In the famous case of NOLLAN vs CALIF COASTAL COMMISSION, the U.S. Supreme Court considered the bogus argument of the Commission that if Nollan enlarged his building, that the view would be somehow impaired. Commission also wanted Nollan to grant a lateral easement. The U.S. Supreme Court ruled that once a person walks out and views the ocean, that the view [i.e. Southward in that case] is already defined Southward, and the view cannot be impaired by a building or addition located "behind" the head of the viewer. The U.S. Sup Court found Commission's theory of impairment-of-view-from-behind to be preposterous, and the case was decided in favor of NOLLAN as to all issues, including the "veiw" issue. Likewise, in this case, once a person walks to the "lawn chairs" and looks South, the "view" is defined from the head of the viewer looking South, and the proposed development cannot impair the view, since it is "behind the head" of the viewer and thus can not impair the view under NOLLAN vs CALIF COASTAL COMMISSION [1986].



PROPERTY OF NOLLAN in NOLLAN vs COASTAL COMMISSION



PROPERTY OF THIS APPLICANT 1-98-058

Ex. 37, p. 13

NOLLAN IS NOW DICTUM

The NOLLAN decision was issued by the U.S. Supreme Court, which found the Coastal Commission had violated the Constitutional rights of Nollan as to the Just Compensation clause. The decision against the California Coastal Commission is "binding" upon the Commission, who should give this applicant "equal protection" under the Nollan decision and not raise "view" and "access" issues which have now been adjudicated in favor of land owners, and against the Commission and staff by extension.

The NOLLAN decision is now dictum in all U.S. Courts. The Commission should recognize that on this applicant's property, a person can walk to the location of EX 17-the lawn chairs, and view the Ocean Southward. It follows under Nolland, that a development to the North of the viewer would not impair his view, since views cannot be impaired "from behind". A comparison diagram is attached.
This applicant should be afforded "equal protection" under the Nollan decision, and not made to litigate the same view & access rights already adjudicated by the U.S. Supreme Court.

PROTECTION FROM STORMS

The other aquaculture applications allow rafts to float in the "outer harbor", attached only by anchors. In those cases a raft could become dislodged and wreck on the shore. Similar wrecks have happended to boats which break moorings and wreck on shore. The present application 1-98-058 is superior to all other proposals, since the abalone are cultivated inside a liner enclosed in a concrete tank cast into the base of the rockslope protection. The South face of the tank has a "Thurston Profile" facing the ocean, which is a physical profile designed to eliminate overtopping, and resist wave & storm action. Thurston-profile walls have been approved by the Coastal Commission and LCP's, and 15 or more have been placed on coast in California. Applicant has visited 15 Thurston-profile sites.

LACK OF SCOUR: Within Pillar Point harbor there is almost no scour, amounting to less than 6" up or down per year. Design assumptions doubled this to 12", & the proposed Thurston design is good.

DESIGNED FOR EL NINO

This aquaculture tank uses a Thurston Profile on the South side, facing the harbor, which is concrete. Identical Thurston profiles have been in use in California for more than 10 years, and have withstood El Nino and other Pacific Storms and storm surges. The applicant has visited 15 or more Thurston-designed structures in California, and they show virtually no storm damage, even after El Nino. The engineer Morris Thurston is a Registered Civil Engineer, has furnished the engineering section (Exhibit), which is the Thurston profile which is proposed for the South face of aquaculture tank.

It is noteworthy that a Thurston profile is also used on the seaward side of slope protection owned by Pat Nollan, who is the successful plaintiff in NOLLAN vs COASTAL COMMISSION. In that case the Commission staff attempted to gain access or control of Nollan's land seaward of rock-slope protection, but failed when Court ruled Nollan owned all land and as well N & S of the wall.

EDUCATIONAL AQUARIUM

After the aquaculture and commerical fishing facilty is completed, and specimens are available to be viewed, then a group of salt-water aquariums will be installed, as shown in section J- and JT- , which have their access from the same flat working deck of the commercial fishing facility. About half the tanks will be placed only 3' above the deck so that children, school children and disabled person can view aquariums directly without lifting. The others will be at adult eye-level for adults. The concept is that during defined hours on certain days, by appointment, schools and sea camps can tour as part of a regular school program or sea camp. The area will be gated for security and to prevent theft and vandalism. The educational aquarium is privately operated. No swimming.

STAIRWAY A stairway and lift are to be installed for access by children and disabled. The stairway functions for the education aquarium, aquaculture & commercial fishing deck.

SAND SUPPLY NOT A PROBLEM

In the Pillar Point Harbor area, at the site of proposed aquaculture development, sand supply is not an issue, since a great deal of sand is delivered from streams to the harbor producing a net excess [accretion] of sand. This excess sand is shown by the photograph "Y" and pg 35, which shows culverts overflowing with sand, and flooding from sand-filled drains and culverts. Since there is an excess of sand, sand supply is not an issue, and the aquaculture improvements can be approved without concern than sand supply will change or go down. Sand supply will be unchanged by the development. The rockslope protection present for 27 years will continue to reduce tidal and storm-induced erosion, and also reduces silting-in of the harbor, both of which are favorable outcomes.

Accretion of the beach is in progress, since sand and excess sand is delivered by streams. Under this accretion, rockslope protection is useful in helping growth of beaches and retarding storm erosion. A case cited in support is Bay Colony II vs State of California in which both accretion of sand and rockslope protection found to enhance protection of the coast.

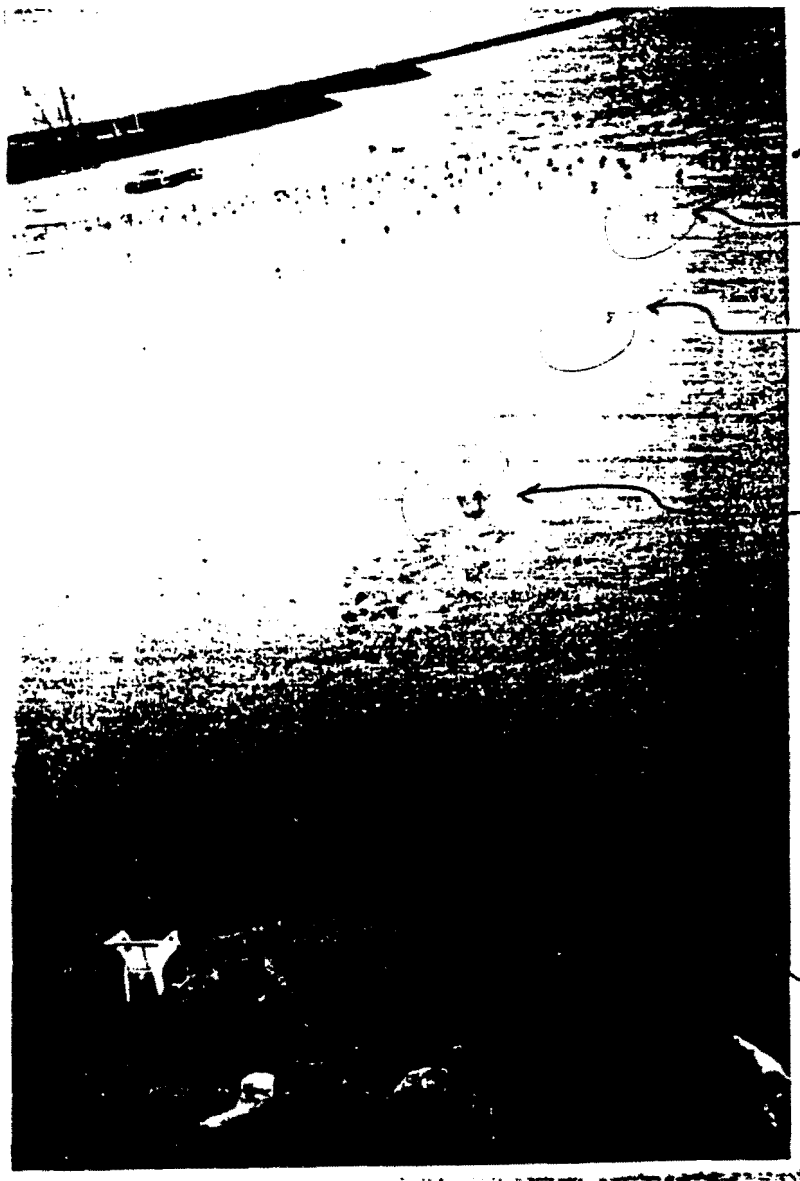
Ex. 37, p.17

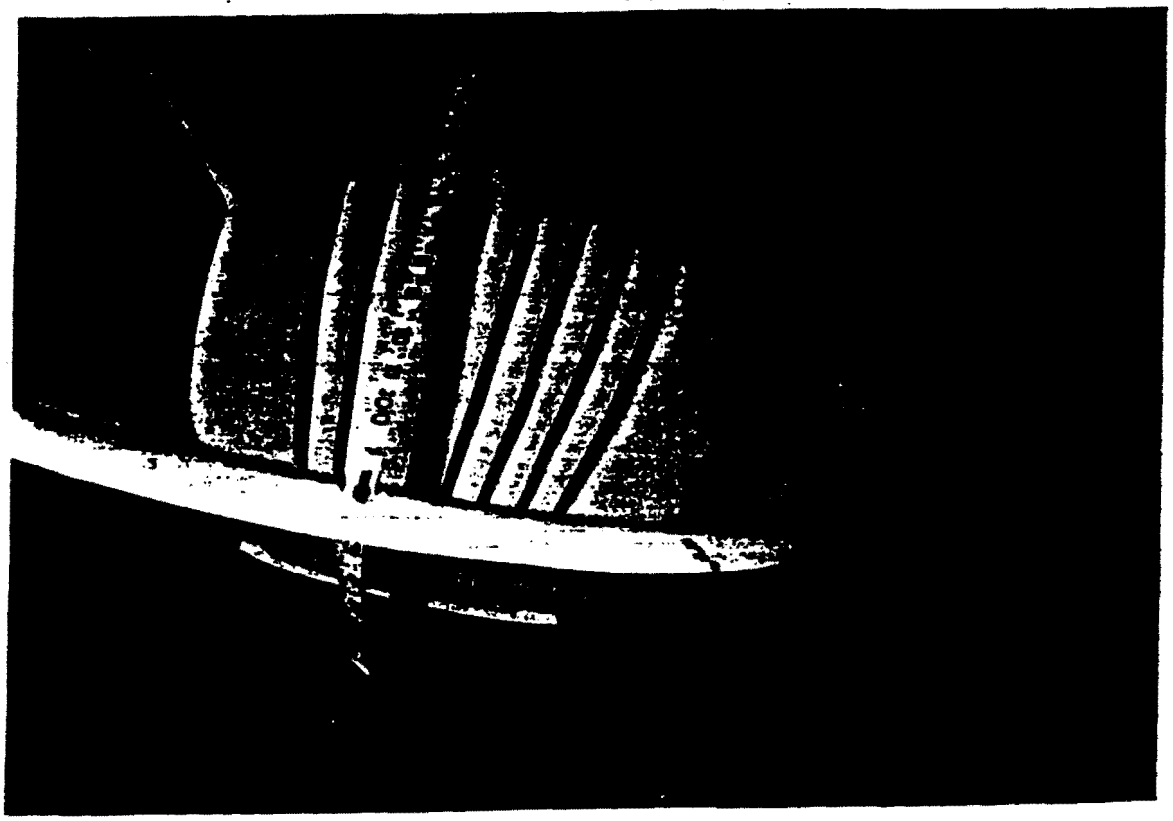
RESEARCH PROTOCOLS:

To find a biomarker or screening test to detect sabellid. Several scientific approaches will be investigated, such as the E.L.I.S.A. method "Enzyme-Linked Immunosorbent Assay" otherwise known as "ELISA". There are several protocols attached to this application as page 23-28. & such as protocol 4, known as Direct Cellular ELISA to Dectect Cell Surface Antigens. Similar tests are used in hospital labs to detect a number of conditions in humans. A sample protocol is page 23-29. The benefit of such research may be a method to detect sabellid or screen aquaculture colonies without "looking" at each abalone shell. The value of research generally is reflected in two published papers, one using heated water to inactivate sabellid. The other is micro-encapsulation as a means of giving sabellid oral administration of encapsuled material. Without such research, coastal native abalones are at risk of infestation with sabellid, as is common in parts of coastal Africa.

Ex. 37, p 18

Access from Broadway Ave





Lawnchair #3 measured at 100 ft

ACCESS

Pillar Point Harbor is a small-boat harbor, with excellent access from Highway #1, and also public access from the sea. The project site has access from Princeton Avenue, and there is ample vertical and lateral access from Broadway Avenue, Columbia Avenue, Vasar Avenue, and from West Point Avenue, as illustrated on attachment #p 36A.

By example, vertical and lateral access is provided by Broadway Avenue, located only 100 feet East of the project site. Persons wishing to reach the coast drive from Highway #1 to Broadway Avenue which terminates at the sea. A study described in the attached submission calculates that more than 4800 persons can use Broadway Avenue as an access per day which is more than 500-times more capacity than actual use. The area is not used by surfers because waves are much better 3 miles South. In addition to vertical and lateral access from Broadway Avenue, there is also access from Columbia Avenue, and Vasar Avenue and from West Point Avenue. No additional access is necessary.

It is noteworthy that in the U.S. Supreme Court case of NOLLAN vs CALIF COASTAL COMMISSION, Mr. Nollan had property on the Pacific Coast which was 1300 feet from one access point, and 1800 feet from another. The Coastal Commission wanted lateral access in front of Nollan's house across land owned in fee title by Nollan in front of a rockslope protection (seawall). The Commission refused to allow a remodel unless Nollan gave up lateral access rights. The Superior Court and the U.S. Supreme Court's decision found that Nollan had no obligation to give up any ownership, nor lateral access rights. The decision is relevant to the present case in three important ways:

1) The Commission acted unconstitutionally in its attempt to expand lateral access at the expense of the ownership rights of Mr. Nollan, who owned the land in fee simple. The Commission violated the Just Compensation Clause of the U.S. Constitution. Access to the coast 1300 feet away was ample access. In the present application, access from Broadway Avenue is only 100 feet away, and thus access is ample.

2) The Court determined that once the public had access to coast, that the views were determined by looking seaward, and that a person thus situated looking seaward, could not have his view forward blocked by a building located "behind" his head. On this point, the U.S. Supreme Court determined the Coastal Commission argument that enlarging the building would impair a view (or visual resource) was determined to be preposterous and without merit. The Court determined that the building enlargement would not cause impairment of any view.

WHITE LAWN CHAIRS DEMONSTRATE AMPLE ACCESS

To demonstrate existence of ample lateral and vertical access, a photograph (Attachment #17), was taken from the existing rockslope protection facing and viewing South, showing the position of several of the owner's white "lawn chairs", placed at 50-foot intervals each 50 feet farther out to sea. This photo, Attachment #17 (Page 35) shows that a person can walk to each lawn chair and look out to sea, giving them a view of the sea. This establishes the view is to the South, and that ample vertical and lateral access exists.

The view of the Ocean is to the South. Additional access routes are from Columbia Avenue, Vasar Avenue, and West Point in addition to Broadway Ave.

VISUAL RESOURCE AND VIEW

From the foregoing, and Exhibit #17, it is clear that a person can walk to any of the white lawn chairs, and view the sea by looking South.

In the U.S. Supreme Court case of NOLLAN vs CALIFORNIA COASTAL COMMISSION (1986), the commission wrongfully said that Nollan's proposal to enlarge his building would impair views of the coast. Nollan sued the Commission, and prevailed in the California Superior Court and also in the U.S. Supreme Court. The U.S. Supreme Court found that (as above) once a person walks out to the coast or beach and looks seaward, that the view is established "in front" of the viewer, and that such a view cannot be impaired "from behind". The Coastal Commission's legal argument that a view from in front of the building would be impaired from behind was determined to be preposterous and without merit. The same rationale applies here, since a viewer standing at one of the lawn chairs looks South to see the ocean, and his view cannot be impaired from behind.

Further, applicant has shown that 8 or more access routes are present, including access to the harbor from the sea. Such access routes are ample access, and will not be impaired by the proposed project. Restated another way, there is lateral and vertical access routes to the bay by boat from the Pacific Ocean and public launching ramps, and these additional access routes provide ample access which will not be impaired by the project.

Therefore, the applicant has shown ample vertical and lateral access, and shown that view established are looking South to the sea, and that such views will not be impaired using the decision provided in the case of NOLLAN vs. CALIF COASTAL COMMISSION (1986).

It is also noteworthy, that applicant has visited the Nollan property which has numerous similarities to the subject property which makes the Nollan decision applicable because the facts are the same.

Ex. 37, p. 21

SYNOPSIS OF "ACCESS" ISSUE RE THIS APPLICATION
IN VIEW OF U.S. SUPREME COURT DECISION IN
NOLLAN vs. CALIF COASTAL COMMISSION 493 U.S. 825

Pillar Point Harbor is a small-boat harbor, which has good public access. The applicant has shown at least eight (8) different means of vertical and lateral access, which are summarized as follows:

1) From Broadway Avenue, 70' wide, Attachment 15
2) From Columbia Avenue, 50' wide, Attachment 15
3) From Vassar Avenue, 50' wide, Attachment 15
4) From West Point Ave, 50' wide, Attachment 15
5) From the harbor by boat, day and night
6) From the open ocean at high and low tide by boat
7) From the air by seaplane landing in harbor
8) From the floating docks and harbor berths

It should be noteworthy, Pillar Point Harbor is a small-boat harbor, with EXCELLENT access BY-SEA at both high tide and low tide. This means there is 24-hour lateral access by boat, and 24-hour vertical access by boat, so that ample access is provided. Note: This is a HARBOR so access BY BOAT IS ADEQUATE. No additional foot access is needed.

There is public access by Samtrans bus, by automobile, and there is access by the County Airport, only a few hundred feet away. The County Airport is very close, being about 1/2 mile away, and is a 9th access, not listed above. The Coast Highway runs nearby for excellent road access.

The applicant has shown, that these 8 routes of public access are more than ample, and that there is 100 to 1000 times the access capacity compared to actual use. An analysis submitted June 12, 1998 shows that at the subject property which is within the harbor breakwater, few or no people try to surf or play in the waves, since the waves are very small INSIDE the breakwater. Surfers and most beach goers find much better, higher surf is found located 1/2 to 1 mile South on the open coast outside the harbor breakwater. Therefore, as shown by Utilization figures, very few people actually use the exposed mud on the floor of the harbor. Access capacity is hundreds of times greater than actual use. Exhibits #16,17,18 show ample lateral access is present. It should be noted that Broadway Avenue is only 100 feet from the subject property, and it alone has a capacity to deliver about 4800+ persons per day by way of suttlebus.

In the U.S. Supreme Court Case of NOLLAN vs CALIF COASTAL COMMISSION, the property of James Nollan was located 1800 ft from one access and 1300 ft from another. The two accesses were separated by 3100 ft. The Commission tried to force Nollan to give them an "easement" over Nollan 's seaward portion (front yard) of his Pacific Ocean beachfront property, as a condition re permit. Commission wanted to expand lateral access between the 2 public accesses located about 3100 feet apart. James Nollan objected to the

Commission's condition requiring an easement, and Nollan sued to invalidate the condition. The Superior Court agreed and issued a Writ of Mandate against the Commission and against the condition. Much litigation brought the matter by appeal eventually to the U.S. Supreme Court, which determined: 1) Commission's action violated the Just Compensation Clause of the 5th Amendment. 2) The condition per se was invalid. 3) Nollan had NO LEGAL OBLIGATION to ADD ANY ACCESS to what was already present 1300+' away. 4) Nollan had no duty to provide ANY access, per se, and was not required to analyze ACCESS in order to obtain his coastal permit. 5) Commission's policy of requiring an easement was a policy that was per se unconstitutional, because it violated the Just Compensation clause.

COMPARE FACTS TO NOLLAN CASE

In NOLLAN the facts were that there were only 2 public accesses, whereas in this case Applicant has shown there are 8 or more different public accesses to the area. In NOLLAN the closest access was 1300 feet away, whereas in this Application, the Broadway Ave access is ONLY 100 feet away. Applicant has shown Broadway Ave is so large it can easily deliver 4800+ persons per day.

Therefore, Applicant has shown there is ample public vertical and lateral access. Broadway Ave at 100'away is THIRTEEN (13) TIMES closer than was the nearest NOLLAN access which was 1300 feet distant from the Nolland property.

"HARBOR" IS FOR BOATS AND ACCESS BY BOAT
AND NOT NECESSARILY FOR PEDESTRIAN FOOT ACCESS

Since Roman times, marine harbors have been designed to fill with seawater at high tide, thus covering the mud harbor bottom with seawater, sometimes to a considerable depth. Water depth is maximum at high tide.
It is obvious, that Pillar Point Harbor by design fills with seawater at high tide, and the mud bottom of this harbor is commonly rendered inaccessible to pedestrians, because of the design of the harbor and tidal flow.
The mud bottom of a working harbor is simply not a place for pedestrians to venture at high tide. It would be totally absurd and ridiculous for a pedestrian to try to "walk across" the mud floor of the Pillar Point Harbor at high tide, due to maximal & dangerous depth of seawater in the harbor. Installing a painted pedestrian crosswalk, or "walk" signals on the harbor bottom would be just as absurd. Under many tidal conditions, access to many parts of the harbor is appropriately by boat, and pedestrian foot access across the harbor bottom is impossible, and basically an absurd and rediculous notion.

Further, pedestrians would be exposed to hazards on the mud bottom of the harbor, as illustrated by Attachment Y, illustrating that contamination is present, representing a hazard to would-be pedestrians on the harbor floor. Therefore, access on the mud floor of the harbor at high tide is a bad idea.

Ex. 37, p. 23

NOLLAN HELD "NO OBLIGATION" TO PROVIDE PEDESTRIAN ACCESS

In the case of NOLLAN, the Supreme Court found Nollan had no obligation to provide any pedestrian access. In the present application, owners assert their rights under the NOLLAN DECISION, that they cannot be forced to give an easement for pedestrian lateral access, whether over the mud bottom of a harbor, or elsewhere, or a high tide or any tidal condition. Therefore, pursuant to NOLLAN, the applicant is not obligated to give any easement for lateral access.

The U.S. Supreme Court decision in NOLLAN held that James Nollan had NO OBLIGATION to provide ANY ADDITIONAL lateral access. The 2 pre-existing accesses were separated by 3100'. Further, NOLLAN did not have to comply with any CCC "condition" for easement, in order to build his new building. The U.S. Supreme Court found the activity of the Commission and its "condition" to be Constitutionally invalid as a violation of the Just Compensation Clause of the 5th Amendment. It found the approach of CCC and their conduct to be unconstitutional. The Supreme Court also rejected all of the Commission's theories about such things as psychological or physical barriers being somekind justification for attempting to require an easement.

Also in McQueen vs South Carlina Coastal Council 496 S.E. 2d 643, the court found that at time permits were refused, then a taking had ocurred entitling the property owner to compensation.

Also a federal circuit affirmed awarding compensation for a taking of the plaintiff's property in the case of LOVELADIES HARBOR, 28 F 3d at 11.

From the above, it is clear that ample public access already exists by way of eight (8) different access pathways listed in the list above. No additional access can be demanded under NOLLAN.

BETTER FACTS HERE: It should also be noted in the present case, Applicant has much better facts than in Nollan. First, Applicant has 8 access paths instead of 2. Second, he has access at 100' away, whereas Nollan had nearest access at 1300 feet distant. Thirdly, Applicant already has in hand a valid permit to build under the LCP, and construction is underway from permits issued in March 1997. Those valid permits have no access condition. The present application deals merely with whether a permit is required to repair a rip-rap revetment damaged by a storm. That is to say, applicant already has a building permit, and a right-to-build, so that the general type of argument the Commission attempted in NOLLAN-- to TRY to obtain an easement as condition for permit is MEANINGLESS, and argument is moot. Applicant's right to build is already established.

Ex. 27, p. 24

SIGNIFICANCE OF STATE DIVESTING ITSELF OF ALL RIGHT AND TITLE TO LAND, AND ROLE OF STATE LEGISLATURE IN DEFINING OWNERSHIP BOUNDARIES IN THIS CASE

In 1959 and 1960, the State determined it would fix and determine on the ground the boundaries of its ownership of north Half Moon Bay, & then would divest itself of all right and title to the sovereign lands and trust lands in 1960.

The state divested all right and title to sovereign lands and trust lands, after fixing the boundaries to monuments. In about 1959, the State commenced a survey of the land, and fixed monuments in the ground in order to define and fix exactly all its OWNERSHIP, and to FIX THE BOUNDARIES. The State Lands Commission ordered a surveyor to establish a Trianglation Station called PILLAR POINT 3, in 1959, which was a brass disc engraved with the name and date and the name of the Lands Commission.

From PILLAR POINT 3, a survey was conducted and monuments were established to define and fix the boundaries much of the land to be divested. A series of "Stations" were established, including Station #178, as part of the survey. It is shown on ATTACHMENT L-1, L-2, showing Stations #159-185. This FIXED the boundaries including Stations #159-185. Other monuments were placed as well. The survey was recorded as 4 LLS 136 et al. The maker of the survey and Record Survey was the Calif State Lands Commission.

Using the Survey and PILLAR POINT 3, a legal description was drafted and approved by the state, which consisted of ALL of the ownership of state lands in north Half Moon Bay and fixed it to monuments on the ground. It included ownership on the mean high tide line as defined and fixed by the survey map and survey monuments on the ground, and the legal description all of which clearly specified PILLAR POINT 3 and a surveyed line determined in 1959, a few months before.

The legislature then in 1960 fixed the boundary of the lands as being the legal description, and conveyed and divested the state of all right and title, by conveying "all right and title to the sovereign lands" which was ALL the ownership the state had in land as fixed by the boundaries. Private property was North of the MHTL. The legislature also fixed the boundaries by making the boundaries an "act" of the state legislature, which fixed the boundaries. It became a legislative act which fixed the boundaries and legal description to specific points on the ground. It also required an additional survey to be recorded.

As a provision of the divestiture, another survey was to be performed, using PILLAR POINT 3, and the stations listed on the Survey of 1959, which incorporated the location of PILLAR POINT 3 for estab point of beginning, and the precise station locations, and station #178 into a new survey known as survey of the grant. It also

Ex. 37, p. 25

fixed the location of ownership to fixed points on the ground, and not to anything variable. This survey was required by the conveyance, and monuments and recording of the survey was required. The survey did use PILLAR POINT 3, and station #178 as required, and the survey was recorded, which recording further fixed the location of the land by specifying exact points on the ground. The fixed survey line has divested former state lands on the South, and private property on the North. Various owners and interested parties have preserved the survey monuments including PILLAR POINT 3, and Station #178 monuments. Three points emerge:

a) If the state had ANY INTEREST in the sovereign lands or trust lands in 1959, it fixed the boundaries by stature, and divested itself of all right and interest in 1960.

b) It is noteworthy that exact boundaries were fixed to the ground by an act of the legislature in 1960. The boundaries were declared in a Record Survey.

c) It should be noted that since the state was divested of "all right and title", that it thereafter has no ownership in the sovereign lands, trust lands, or divested lands.

d) The surveys are all recorded, and the MONUMENTS including PILLAR POINT 3 1959, and STATION #178 exist and are preserved, reflecting the lands (southward) which were divested by the state and not owned by it.

e) Public relied upon Record Survey and fixed nature of boundaries. Boundaries were never amended.

f) The conveyance of 1960 fixes the boundaries, and fixes them to physical fixed survey monuments on the ground, which still exist. The conveyance which fixes boundaries has the effect of law, since it was enacted as a statute by the State legislature.

Ex. 37, p. 26

SIGNIFICANCE OF PILLAR POINT 3, 1959

PILLAR POINT 3 1959 is a fixed Survey Triangulation Station located on the ground, at a known fixed location. It was established in 1959 and has been preserved to this day. It was utilized to fix the location of the sovereign lands and trust lands to be divested by the state, and Pillar Point 3, 1959 is described in all the Surveys and legal description fixing the boundary, and in the act of the state legislature (above) in a manner which defines on the ground and fixes the ownership lines to fixed known locations on the ground. PILLAR POINT 3 is one of those known locations, and it is also used as a master triangulation station for the department of Transportation (Highways) for use in building state roads and other fixed improvements. It was also used to lay-out the Pillar Point Harbor.
It was installed by the State Lands Commission in 1959 in order fix the Point of Beginning and fix other points in the 1959 and other Survey described above. PILLAR POINT 3 is fixed, permanent physical monument, which is demonstrated on photograph Attachment "M" & "N". It was verified intact and preserved as recently as July 1998. The brass disc states "PILLAR POINT 3 1959" DO NOT REMOVE.

Ex. 37, p. 27

9. Public Access issue

AMPLE ACCESS BY BROADWAY AVENUE AND OTHER STREETS:

There is ample public access from the streets of Broadway Avenue 70 feet wide, and by way of three additional streets, namely Columbia Avenue, Vassar Avenue, and West Point Avenue, all of which end at the water. Attachment #15, and #16 show these four roads which provide public vertical and lateral access. Broadway is located only 100' East of the subject property, and the Broadway access is 70' wide, which is very very wide.

As indicated by the analysis filed with the Commission on June 12, 1998, there is considerably more ACCESS CAPACITY than use of the area. Figures already submitted show there is at least 100 times more access capacity than actual use, and by some calculations 1000 times more capacitry than actual use.

As previously shown, three (3) shuttle buses can deliver more than 4800 persons per day to Broadway Avenue, but as actual use data shows on Attachment #21, fewer than 3 persons typically visit the area. This is because surfers avoid the area, and better surf and waves are to be had 1/2 mile and 1 mile South. Therefore public access capacity far exceeds use by a factor of 100 to 1000. No additional access capacity is necessary.

Photographs of the subject area, shown as Attachment #17, Attachment #18, #19 show and give documentary proof of at least 180 feet of sand extends out on the seaward side, which shows ample public access, both vertical and laterally. White lawn chairs were placed at 50-foot intervals out to sea. This far surpasses the amount of access which existed at the house of John and Marilyn NOLLAN.

In the case of NOLLAN VS CALIF COASTAL COMMISSION, the Coastal Commission tried to make wider its high-tide access by imposing a condition on the NOLLANDS that as a condition of a house permit NOLLAN must give up an easment Nolland's property, to improve (widen) lateral access at high tide. The Supreme Court in NOLLAN the condition was Constitutionally invalid under Just Compensation clause, and Supreme Court held that NOLLAN was NOT required to carry the burden to make wider the lateral access idea. Also, lateral accesses such as two 3000 feet apart is adequate access. Court found once a person is on the beach, that Nolland's house was no physical barrier and no theoretical psychological barrier.

In the present application, there are eight (8) routes of access, some only 100 feet away. In NOLLAND there were two routes of access 3000 ft apart.

It also held that without compensation, the taking of the land would constitute a "taking" without just compensation, just to further a goal of coastal access. The U.S. Supreme Court held that the Coastal Commission if it wanted the Nollan 's land, would be required go through formal condemnation proceedings and pay for it,

Ex 37, p 28

under the Just Compensation clause. The Coastal Commission never paid for the land and never obtained it. The U.S. Supreme Court held as Constitutionally invalid the commission's condition that Nolland must sign over an easement to increase high-tide lateral access.

AMPLE ACCESS TO HARBOR "BY SEA"

Further public access to the Harbor is afforded by entering to the "Harbor" by boat. The area was designed to be a small boat harbor, and this being the case, ample PUBLIC ACCESS entry by boat is already provided. Therefore, the applicant has shown another method of public access, this being available to the public both at high tide and low tide. Further, since dive-type boats are moored in the harbor, and the public has further methods of access by scuba via underwater access.

Therefore, ample public access is already afforded by boat at high tide and low tide. There is no need for additional access. Also, access by auto from highway #1 is available 24-hours a day, and not additional access is needed. Further, public access to the Miramar beach 1/2 mile South is available 24-hours a day.

Additionally, public access is available to the subject area of the harbor by "seaplane", which is an authorized means of entry authorized by the written conveyence of land by which state divested itself of all right and interest to the Harbor. A seaplane has been operated from the Harbor for profit, showing that public access by seaplane is also a method of public access to the area.

CONCLUSION: Access satisfies NOLLAN decision. On the basis of the eight (8) different means of public access-- namely by way of Broadway Avenue, Columbia Avenue, Vasser Avenue, Westpoint Ave, by way of Boat at high tide, by Boat at low tide, and by way of automobile to harbor 24 hours a day, and by way of seaplane, the applicant has already established the public has access to the subject Harbor area. The Broadway Avenue access is only 100 feet from the subject property. In the Supreme Court case of NOLLAN VS COASTAL COMMISSION there were only two (2) routes of access, separated by 3000 ft. One was 1200 and the other 1800 feet away. In the present application, there are eight (8) routes of access, some only 100 ft away. Therefore, this more than satisfies access deemed sufficient in the decision in the case of NOLLAN VS CALIFORNIA COASTAL COMMISSION, 483 U.S. 825 (1986). Under that decision, the Supreme Court invalidated the Coastal Commission's attempt to force Nolland to give them an easement for lateral access, as a condition of a coastal permit. Nollan 's property was adjacent to a beach have two accesses 3000 ft awart. The Supreme Court invalidated action by the Coastal Commission as violative of the Just Compensation Clause, and DID NOT require Nolland to provide an easement.

Ex. 37, p. 29

10. Private Property Issue

The original survey of privately owned real property was conducted in the year 1908, and the Recorded Survey has been of Record for 90 years. It was never contested.

The applicant annually cordons-off ALL PARTS of the property, and posts the cordon line with clear "No Trespassing" signs such as Attachment N & O, and at times fences off and excludes unauthorized persons from the property. This regular annual closure and cordoning-off precludes any chance of somekind of a hypothetical prescriptive rights claim. It should be noted that in the case of NOLLAN VS CALIF COASTAL COMMISSION, 483 U.S. 825, that the Supreme Court decision clearlystates that "the right to exclude others is one of the most essential sticks in the bundle of rights that are commonly characterized as property" rights. Therefore the Supreme Court upholds excluding others and cordoning as a clear fundamental property right of owning real property. The right to defend property and exclude others is also upheld in Loretto vs. Teleprompter 458 U.S. 419.

Ex. 37, p. 30

TITLE

The subject property is owned in fee as private property. The property became private property by way of original occupation prior to California becoming a state, and it has been in continuous ownership since that time.

A favorable letter from the County of San Mateo states that the County DOES NOT own any fee interest in the area called Ocean Bulv, and states that all the land is owned in fee privately.

A request under the Public Records Act shows the County failed to improve Ocean Boulevard, and under the Civil Code an old never-used easement is probably extinguished under the Civil Code.

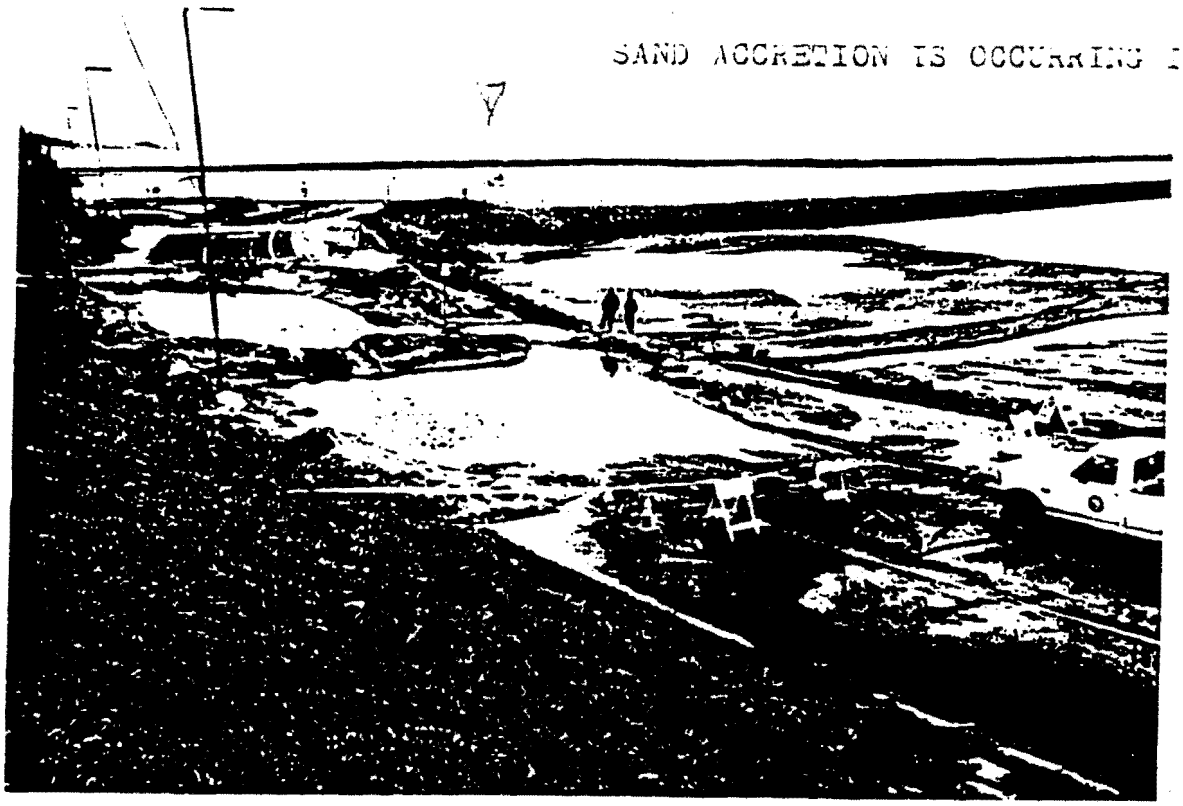
A favorable letter from the CCC maping division states that the property is not in the retained jurisdiction of the commission but may be within the appeal jurisdiction. This letter is attached as Attachment pg 50. (also reproduced next page)

SURVEY OF MHTL

The San Mateo Harbor District had a field survey done of the MHTL (Mean High Tide Line), which was done in 1991, and paid for by the Harbor District. That survey was tied to the monument Pillar Point #3, and ground survey markers were installed. One of those markers, called Station #178, marks the MHTL and falls on the subject property South of the proposed aquaculture tanks. Hence, the proposed development is all landward of station #178, and landward of the surveyed MHTL. The applicant has located both station #178 and Pillar Point#3

PHOTO DOCUMENTS EXCESS SAND DELIVERY

SAND ACCRETION IS OCCURRING IN HARBOR

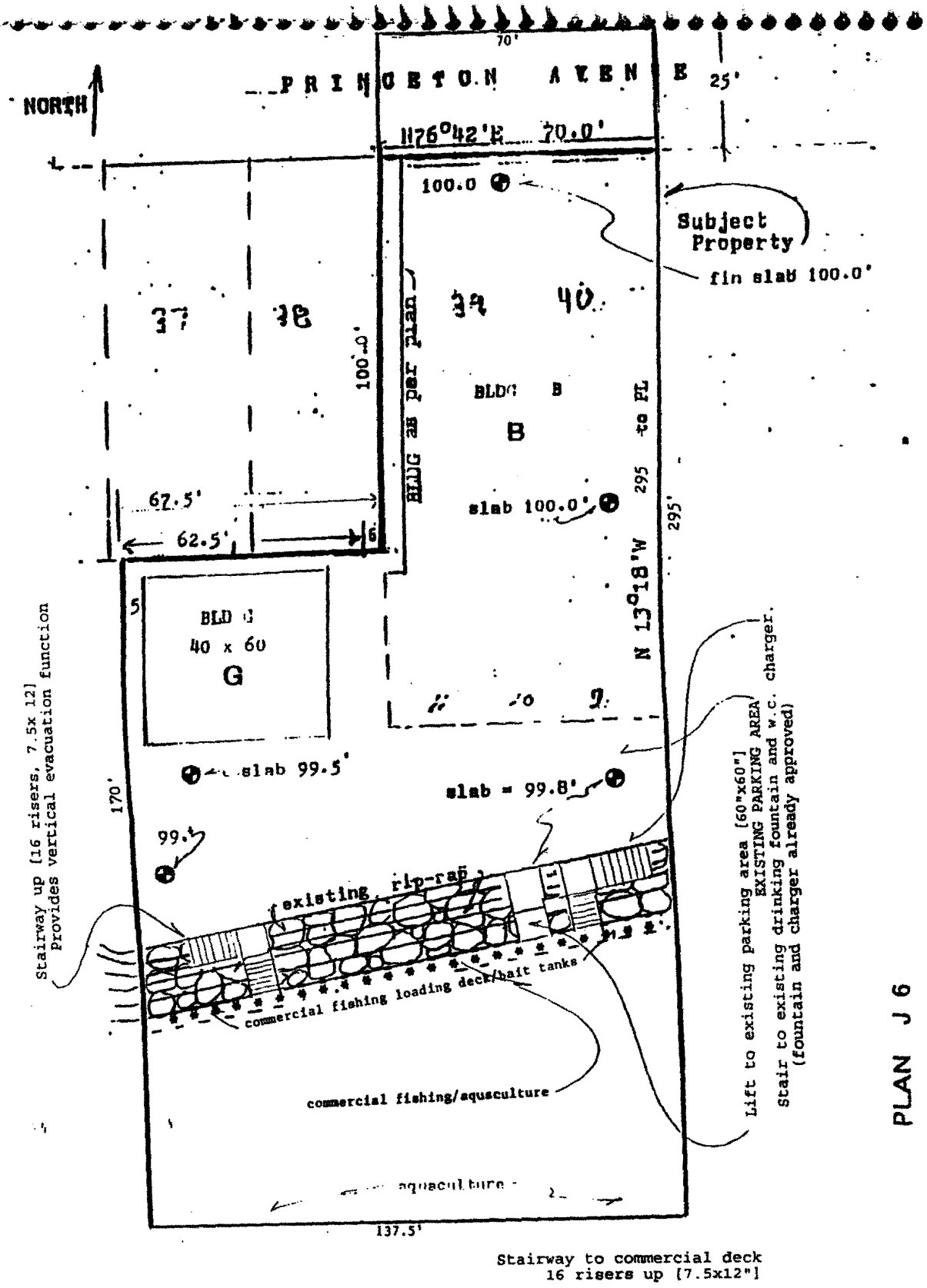


TWO LANE ROAD

Shoreline Sand Supply

Sand excess:
The harbor interior has a net sand excess mostly from sand washed down in the streams which enter the bay. Here is photographic proof of excess sand delivery. So much sand washed down into the Harbor, that sand covered over a two-lane road near the Harbor and also filled the water culverts intended to carry stream water under the road.

Ex. 37, p. 32
ATT Z



1. each contour line = 3 feet
2. the area subject to this permit application is limited only to the yellow zone shown on plan sheet J-5 (marked in yellow only).

PLAN J 6

Scale: 1 In = 25 ft

Ex. 37, p. 33

To: Steven Scholl 5/15/99

RE: 1-98-058 [SUMMARIZES AMENDMENTS]

You are aware the application 1-98-058 has been & is now amended. The amendment adds Aquaculture & Aquaculture Research, Commercial Fishing Facility, and other items listed as insert J-1 in books "J", "JR",& "JT" which are amendments ADDED effective May 10, 1999. The amended application applies to those areas highlighted on attachment J-5 in books J, JR, JT, K and L. The uses include about 40 coastal-dependent uses listed in attachment "J-1" in booklets you received "J" & "JR".

By a separate amendment effective 5/15/99, we are amending-out and DELETING from the application the original request, and requests in books B,C,D,E,F,G,H which are for certificate of exemption for original rockslope protection, repair of revetment, repair of rockslope protection, exemption for repair, etc. Instead, the following request is substituted by amendment as the present request: "coastal permit for aquaculture and aquaculture research, & commercial fishing facility, & aquarium, education site & other things listed in insert J-1 of book J, JR & JT."

I understand from the attached letter dated 5/11 that the fully amended application will be placed on the June calendar in Santa Barbara. As you are aware, the original staff report is flawed, and does not address any of the subject matter of the amended application.

5/15/99 for Trianchor, R. Clark

EXHIBIT NO. 38
APPLICATION NO. 1-98-58
May 18, 1999 Applicant's Summary
of Amendments (Page 1 of 12)

Coastal Permit Application for:

Aquaculture & Aquaculture Research

APPLICATION BOOKLET "JR"

Title or Request: "Coastal Permit for Aquaculture and Aquaculture Research"

Aquaculture research project is to promote sabellid-free stocks of abalone by research for a biomarker to be used to detect the sabellid

Prepared for June Meeting, June 8-11, [Santa Barbara]
Submitted to: M.B. McEnespy & Commission &
Energy & Ocean Resources Unit

Applicant: Trianchor Enterprises File 1-98-058

Book "JR" to: Energy & Ocean Resources Unit

(synopsis)

BOOK JR

BOOK J

Permit for Commercial Fishing Facility, Aquaculture, Marine Research et. al.

APPLICATION BOOKLET "J"

RE: Application 1-98-058

Title or Request: "Coastal Permit for Commercial Fishing Facility, Aquaculture, Marine Research and other coastal dependent uses within an area shaded yellow on Plan J-5.

Job: 380 Princeton, San Mateo Co

Prepared for June meeting of Commission [Santa Barbara]

Applicant: Trianchor Enterprises File 1-98-058

APPLICATION BOOKLET "J", AMENDS AND SUPERCEDES

BOOK JT

Coastal permit application for:

Aquaculture & Aquaculture Research

APPLICATION BOOKLET JT

Title or Request: "Coastal Permit for Aquaculture and Aquaculture Research"

Aquaculture research project is to promote sabellid-free stocks of abalone by research for a biomarker to be used to detect the sabellid

Prepared for June Meeting, June 8-11, [Santa Barbara]
Submitted to: M.B. McEnespy & Commission &
Energy & Ocean Resources Unit

Applicant: Trianchor Enterprises File 1-98-058

Book JT to: Energy & Ocean Resources Unit

BOOK JT

(synopsis)
Application and
Rebuttal: distribute to Commissioners for June 8-11 meeting

Ex. 38, p. 4

To: Steven Scholl 5/15/99

RE: 1-98-058 [JUNE MEETING] ←

We understand the amended application is on calendar for the June 8-11 1999 meeting in Santa Barbara. It is our desire to have the application approved, and we would be happy to meet with you by telephone, or otherwise to answer any questions. The amended application seeks a permit for improvements to conduct aquaculture, aquaculture research with regard to the sabellid polychaete problem, commercial fishing facility and about forty (40) other coastal-dependent uses listed as insert J-1 (Exhibit J-1) in books "J" & "JR".

The present aquaculture proposal is described in more than 100 pages in Book "JT" & "JR" includes numerous design-advantages over the four raft-type proposals. The proposal uses 125 times less kelp and is hundreds of times less polluting than the other proposals, since its scale is not large, and there are both sea water INLET & OUTLET filters, which make it more than 100-times clean-er than the raft-type proposals. The commercial fishing facility uses the same type of live-bait tanks which are filtered and aerated.

Such improvements make possible the demonstrat-ion of live marine animals in a small aquarium-exhibit for benefit of school children. This is a positive educational impact. The likely closure of the marine preserve to the public makes alternate educational experiences worthwhile. R. Clark.

Ex. 38, p. 5

TO: STEVEN SCHOLL & COMMISSION

Here is a one-page summary of some of the key points and advantages of this aquaculture proposal, as compared to the four raft-type proposals. "JT" is a more comprehensive and detailed application.

IMPORTANT GOOD POINTS:

1. There is no impact on anchorage with this proposal, since the site is outside the "anchorage zone" on the Concept Marine Inc. map of anchorage zones.

2. The scale is small, cultivating only 1% or less of of all abalone in harbor, so it is 99+% less polluting.

3. This proposal uses INLET and OUTLET filters which reduce organics and reduce TOC, so this proposal is much more environmentally kind alternative.

4. This proposal provides for aeration/oxygenation, which is a mitigation measure not found in the 4 other proposals.

5. The aquaculture tanks are better-fixed to the bottom, and have a Thurston-profile barrier built into the wall, making them very storm resistent. In contrast, floating rafts can break loose, & wreck and lack the storm resistence shown here.

6. There are 5 more important features which make this proposal better with respect to the sabellid problem, than any of the four (4) other proposals:

   a. INLET and OUTLET filters are installed to filter seawater, making it less like sabellid will enter.

   b. The double-wall tank with concrete exterior prevents sabellid from entering the tank

   c. Only sabellid-free stock from certified sources will be cultivated, so starting point is better.

   d. The aquaculture tanks are better-fixed to the bottom, and have a Thurston-profile barrier built into the wall, making them very storm resistent. With rafts, an infested raft might break loose & wreck & potentially spread sabellid.

   e. This proposal incorporates a research program to find a method of detecting sabellid using such laboratory techniques as ELISA (Enzyme-Linked Immunosorbent Assay)(ELISA). (See pages 22,23-33)

Ex. 38, p. 6

AQUACULTURE FACILITY:

Tanks will be contructed under a working deck as shown in Section J-10, and Plan J-5 and J-6, where sabellid-free stock will be raised, obtained from a certified sabellid-free source. The facility will be kept sabellid-free. The small number (4000) abalone will require only a small amount of kelp, available from approved sources.

There will be no impact on anchorage, since the site falls outside the bounds of the "anchorage zone" which was determined by calc by Marine Concepts Inc. Hence, the site does not cost any anchorage spaces at all.

Mitigation measures include an oxygen monitoring station, with oximeter, and an aeration area using the rip-rap surface to oxygenate sea water by way of aeration.

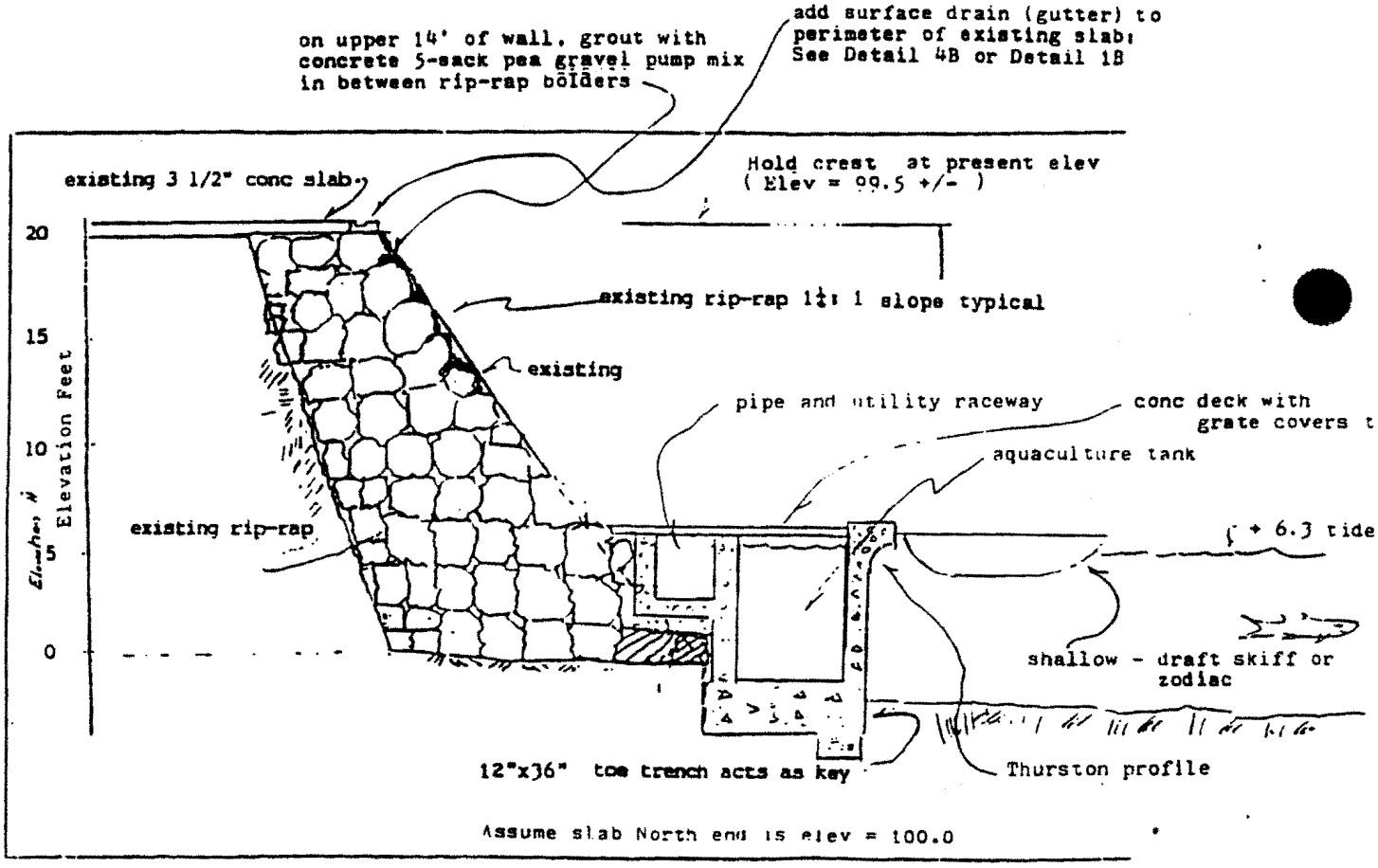


EXHIBIT J10

380/350 PRINCETON

J10 Section J 10

Ex. 38, p. 7

APPLICATION BOOKLET "JT"

Title or Request: "Coastal Permit for Aquaculture and Aquaculture Research"

Aquaculture research project is to promote sabellid-free stocks of abalone by research for a biomarker to be used to detect the sabellid. Method described below.

Permit to construct improvements to allow aquaculture of 4000 sabellid-free abalone obtained from certified sabellid-free stocks, and 4000 bivalves and gastropods. [Section J-10 shows typical modification]

Mitigation measures include an oxygen monitoring station, with oximeter, and an aeration area using the rip-rap surface to oxygenate sea water by way of aeration.

METHODS:

Research Method:

The aquaculture research project is to find a biomarker which can be used for "detection" of sabellid. The type of detection methods to be tried are "fluorescent antibody" tests to sabellid, and other sensitive tests. The sabellid-free abalone are required for normals and controls to verify sabellid-free stocks do not produce false-positive test results.

One of the research methods to be investigated is called ELISA, known as Enzyme-Linked Immunosorbent Assay [ELISA]. It is described in concept below, and more completely in the attached summary in this application. (see page 22-29)

Enzyme-Linked Immunosorbent Assay (ELISA)

This unit describes six ELISA sytems for detecting antigen and antibodies (Figs. 11.2.1-11.2.6). In all protocols, the solid-phase reagents are incubated with secondary or tertiary reactants covalently coupled to an enzyme. Unbound conjugates are washed out and a chromogenic or fluorogenic substrate is added. As the substrate is hydrolyzed by the bound enzyme conjugate, a colored or fluorescent product—proportional to the amount of analysate in the test mixture—is generated and detected visually or with a microtiter plate reader. Antibody-sandwich ELISAs are generally the most sensitive and can detect 100 pg/ml to 1 ng/ml protein antigen (direct ELISAs are often an order of magnitude less sensitive).

Ex. 38, p.8

STATE OF CALIFORNIA—THE RESOURCES AGENCY GRAY DAVIS, GOVERNOR

CALIFORNIA COASTAL COMMISSION
45 FREMONT, SUITE 2000
SAN FRANCISCO CA 94105-2219
VOICE AND TDD (415) 904-5200
FAX (415) 904-5400

May 11, 1999

SENT VIA FAX AND U.S. MAIL

Stan Furmanski
Trianchor Marine
1015 Gayley Avenue #256
Los Angeles, CA 90024

Re: Mr. Clark's letter dated 5/8/99 received here 5/10/99
Permit Application #1-98-058: 380/350 Princeton Ave., Princeton-by-the-Sea

Dear Mr. Furmanski:

This is just a quick note in response to your telephone request to Steven Scholl this morning, asking us to confirm the receipt of the above-mentioned letter. We did receive, and do agree to, Mr. Clark's request to extend the public hearing on your fully amended application for 49 days. Therefore, as he requested, the fully amended application will be placed on the Commission's June calendar in Santa Barabara, and not on May 13, 1999.

Yours truly,

Jack Liebster
Coastal Planner

cc.: R. Clark

To: Steven Scholl 5/15/99

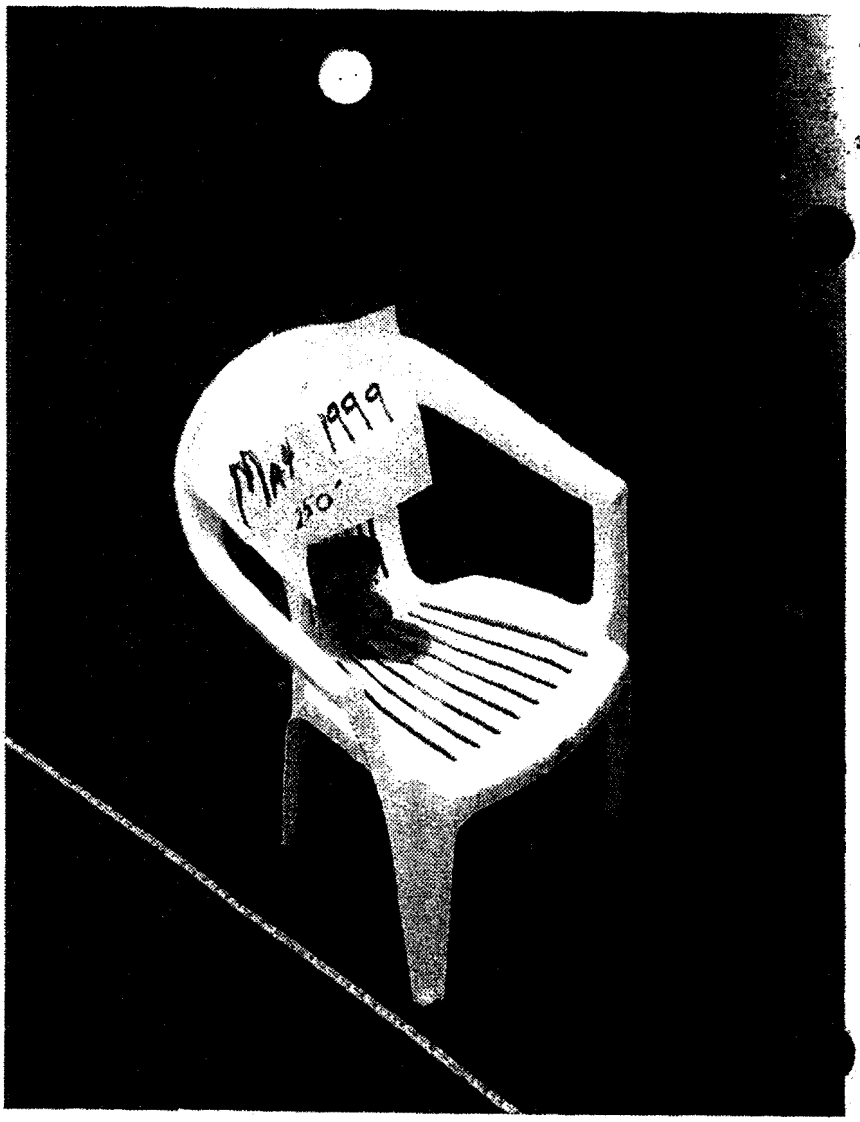
RE: 1-98-058 [LATERAL ACCESS PHOTO] EX 17a

LAWN-CHAIR EXHIBIT OF MAY 1999

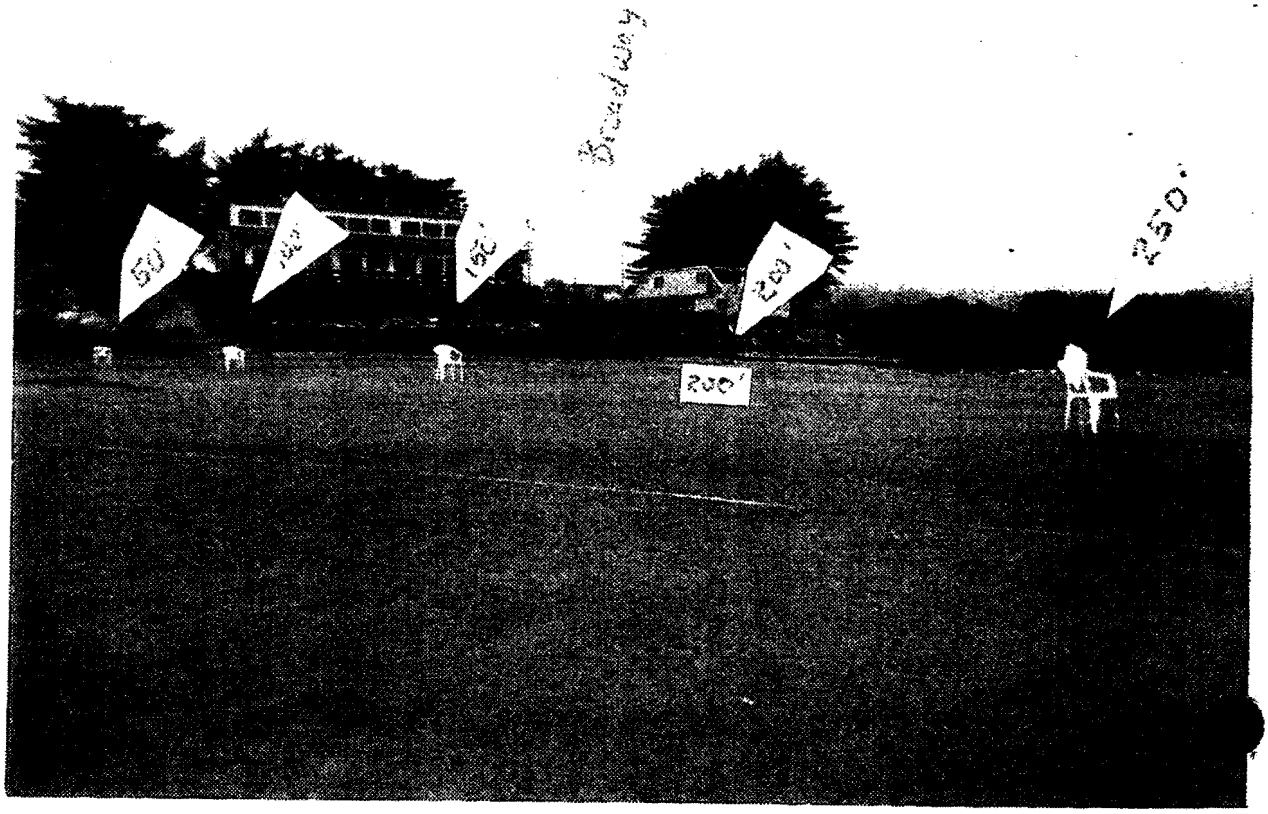
As you are aware, the subject property has ample lateral and vertical access from Broadway Ave and three other streets namely Columbia, Vasar and West Point. Very recently, in May 1999, a photograph was obtained demonstrating the ample lateral access. It is also called the "Lawn-Chair Exhibit" Ex 17a. Four (4) white lawn-chairs were placed on the South part of the subject property, each 50 feet farther South. This photo demonstrates a person can walk vertically and laterally to any of the Lawn Chairs, and look South for the Ocean View. There is 250 feet shown here which ample, and much more than in the NOLLAN case. In NOLLAN, the U.S. Supreme Court determined that once a person walks out to a viewing point (i.e. lawn chair), and looks [South], then the view is determined from that point and direction, and a view cannot be "impaired-from-behind the head" of the viewer. The same applies to this case, which shows 250 feet South of the proposed aquaculture & bait tank

This photo was obtained in May 1999, less than 30 days from the June Commission meeting date, and thus it is timely evidence of lateral access.

Also a comparison of plot plans shows the NOLLAN plot plan is identical is seven ways to the subject site plan.



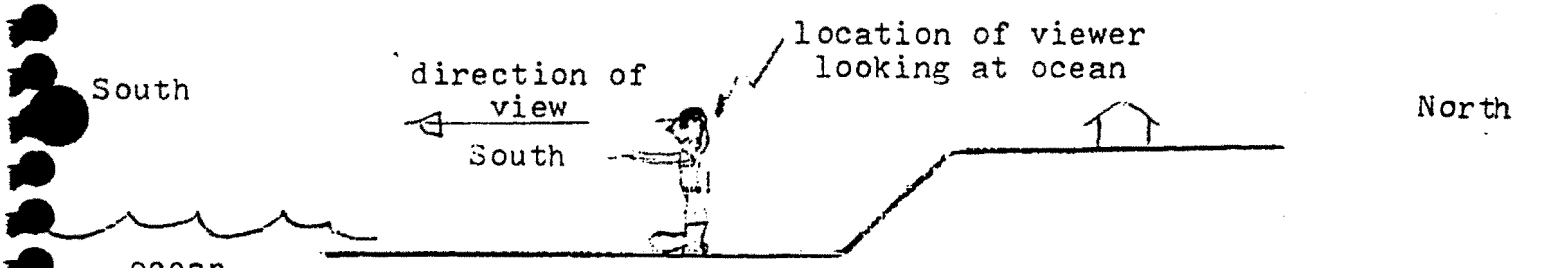
Lawn Chairs 50ft intervals



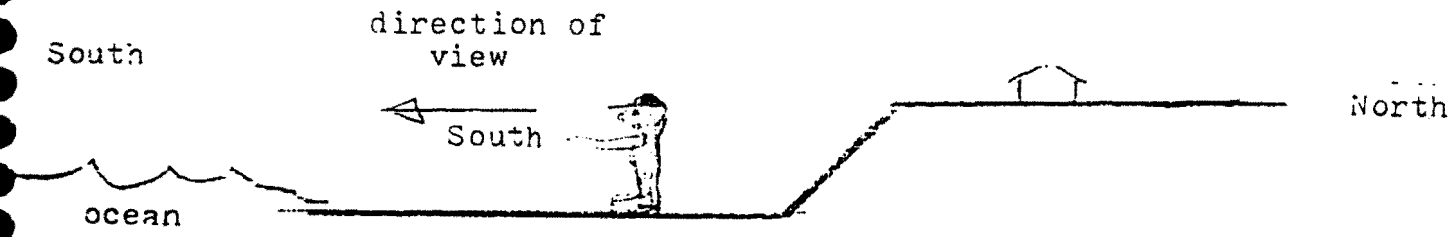
May 1999 Lateral Access Photo Exhibit 17a Ex.38, p. 11

"VIEW" & THE NOLLAN DECISION

In the famous case of NOLLAN vs CALIF COASTAL COMMISSION, the U.S. Supreme Court considered the bogus argument of the Commission that if Nollan enlarged his building, that the view would be somehow impaired. Commission also wanted Nollan to grant a lateral easement. The U.S. Supreme Court ruled that once a person walks out and views the ocean, that the view [i.e. Southward in that case] is already defined Southward, and the view cannot be impaired by a building or addition located "behind" the head of the viewer. The U.S. Sup Court found Commission's theory of impairment-of-view-from-behind to be preposterous, and the case was decided in favor of NOLLAN as to all issues, including the "veiw" issue. Likewise, in this case, once a person walks to the "lawn chairs" and looks South, the "view" is defined from the head of the viewer looking South, and the proposed development cannot impair the view, since it is "behind the head" of the viewer and thus can not impair the view under NOLLAN vs CALIF COASTAL COMMISSION [1986].



PROPERTY OF NOLLAN in NOLLAN vs COASTAL COMMISSION



PROPERTY OF THIS APPLICANT 1-98-058