

CALIFORNIA COASTAL COMMISSION

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Hearing Date:	May 13, 2005
Commission Action:	

STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.:	1-04-033
APPLICANT:	Tommie D. and Linda Dillion Trust
AGENT:	Norman de Vall
PROJECT LOCATION:	Along the north side of the Noyo River, approximately ½ mile upstream from the entrance to Noyo River Harbor, 32100 North Harbor Drive, Mendocino County. (APN 018-130-31)
PROJECT DESCRIPTION:	Make various improvements to an existing complex of uses on a waterfront parcel including repairing a wharf substructure; replacing a boat hoist and wharf railings, fencing, and decking; installing a new 30-foot by 40-foot storage shed with restroom for a new rowing club use of the site; improving an outdoor dining area and replacing storage sheds and trash facilities for the existing restaurant; installing a 27-foot-long caretaker's trailer; and installing vehicle barriers, signage, decorative piles, and landscaping.

LAND USE PLAN

DESIGNATION: FV (Fishing Village)

ZONING DESIGNATION: FV (Fishing Village), FP (Flood Plain)

LOCAL APPROVALS: Building Permit needed
FEMA Floodplain Elevation Certificate needed
Flood Hazard Zone Development Permit needed

OTHER APPROVALS: Possible State Lands Commission approval needed
Possible Army Corps of Engineers approval needed

SUBSTANTIVE FILE

DOCUMENTS: Mendocino County Local Coastal Program

SUMMARY OF STAFF RECOMMENDATION

The applicant seeks after the fact authorization of various improvements at the subject Noyo Harbor property consisting of replacement of storm-damaged dock shoring treated with ACZA, placement of new decking and lattice in the outside dining area, replacement of 200 feet of chain linked fence, placement of decorative piling posts (on land), placement of 75' of wooden railing at water edge of dock, placement of a trailer for the maintenance staff's occasional use, placement of temporary vehicle barriers in the RV park to protect RV hook ups from damage from the adjoining Noyo Bridge construction work, and relocation of restaurant dumpster and enclosure with wooden gate. The applicant also seeks authorization for new improvements, consisting of construction of a boat shed on the pier, placement of temporary chain link fence on a portion of the pier to limit access during construction on the pier, repair of boat hoist at the waters edge, repair and replacement of areas of pier surface for safety, placement of 3 signs (under 32 square feet each), construction of 2nd exit for an existing restaurant, replacement of restaurant storage sheds (10' x 16'), and replacement of posts in parking area with decorative pilings (on land).

Staff recommends that the Commission approve this application with special conditions. In order to protect water quality from the ACZA wood preservatives on the proposed vertical timber beam shoring, the project is proposed and conditioned to wrap the vertical timber shoring with plastic and to periodically inspect and maintain the integrity of the wrapping (Special Condition Nos. 1a and 1b). In order to protect water quality from construction activities, Special Condition No. 3 requires any construction debris and fuels, lubricants, and solvents to be contained and prevented from entering the Noyo River. The proposed project, as conditioned, is consistent with the priority use policies of the Coastal Act. All the uses at the site except for the new rowing club

and caretaker's trailer existed previous to this application. The proposed rowing club facility is a priority recreational use under Section 30224 of the Coastal Act, and the caretaker's trailer use is accessory to maintaining the other priority uses of the site. Furthermore, the facilities as proposed will not interfere with the other commercial fishing, recreational, and visitor-serving priority uses that exist at the site. To ensure that the colors and materials of the new building are compatible with the character of the surrounding area as required by Section 30251 of the Coastal Act, the staff is recommending Special Condition No. 9, which imposes design restrictions that require that all exterior siding, trim, and roofing of the proposed boat storage and bathroom structure be composed of materials of dark earth tone colors only. Lastly, because the Noyo Flats are within a flood plain, the staff is recommending Special Condition No. 7, which requires that prior to construction, the applicant demonstrate that the finished foundation of the structures would be elevated to or above the base flood elevation or designed to be flood-proofed and capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

As conditioned, staff believes the proposed project is fully consistent with the Chapter 3 policies of the Coastal Act. The motion to adopt the staff recommendation of approval with conditions is found on page 3.

STAFF NOTES

1. Jurisdiction and Standard of Review.

The proposed project is located in the Noyo Harbor within the Commission's area of retained coastal development permit jurisdiction where there are tidelands and other areas subject to the public trust. Therefore, the standard of review that the Commission must apply to the project is the Chapter 3 policies of the Coastal Act.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

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. 1-04-033 pursuant to the staff recommendation.

Staff Recommendation of Approval:

Staff recommends a YES vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution to Approve Permit:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment.

II. STANDARD CONDITIONS: See attached.

III. SPECIAL CONDITIONS:

1. Permit Expiration and Condition Compliance

Because some of the proposed development has already commenced, this coastal development permit shall be deemed issued upon the Commission's approval and will not expire. Failure to comply with the special conditions of this permit may result in the institution of an action to enforce those conditions under the provisions of Chapter 9 of the Coastal Act.

2. Timber Treatment

A. Within 30 days of issuance of permit, the permittee shall wrap the entire ACZA treated wood shoring authorized herein with a watertight protective plastic sleeve in a manner acceptable to the Executive Director as follows:

1. The wrapping shall take place at low tide, when the entire length of the shoring is exposed above the water line.
2. The material used for wrapping shall be durable and a minimum of 60 mil thick. All fastenings shall be of stainless steel.
3. All joints shall be sealed to prevent leakage.
4. ACZA shall be prevented from dripping over the top of the plastic wrapping either by sealing the top of the shoring or by installing collars near the top of the shoring and above the elevation of the highest tide.

B. In order to ensure the integrity of the shoring and its plastic wrapping, the permittee shall inspect it on the day of installation and on an annual basis thereafter. The shoring inspections shall be undertaken at low tide. If the

shoring inspection indicates that repairs are necessary, the applicant shall immediately complete those repairs that are exempt from coastal development permit requirements, and shall apply for an amendment to this permit for those repairs requiring a permit. The Executive Director shall determine whether an amendment to this permit is necessary pursuant to the requirements of the Coastal Act and the California Code of Regulations.

3. Construction Responsibilities and Debris Removal.

The permittee shall comply with the following construction-related requirements:

- A. All construction materials and debris originating from the project shall be contained in a manner to preclude uncontrolled entry and dispersion to the waters of the Noyo River, and all debris resulting from construction activities that enters the river shall be removed from harbor waters immediately;
- B. Any and all debris resulting from construction activities shall be collected and removed from the harbor for disposal at an authorized disposal site within one week of completion of construction;
- C. Fuels, lubricants, and solvents shall not be allowed to enter tidal waters of the Noyo River. Haz-mat materials including oil containment booms and absorbent pads shall be available immediately on-hand at the project site, and a registered first-response, professional haz-mat service shall be locally available on call. Any accidental spill shall be rapidly contained and cleaned up.

4. Permit Amendment

All development must occur in strict compliance with the proposal as set forth in the application for the permit as modified by the special conditions. Any deviation from the plan proposal, including any change to the use of the or the proposed use of the proposed trailer solely by a caretaker of the facilities at the subject property, shall require an amendment to this permit, unless the Executive Director determines that no amendment is legally required.

5. U.S. Army Corps of Engineers Approval

PRIOR TO COMMENCEMENT OF DEVELOPMENT AUTHORIZED BY PERMIT NO. 1-04-033, the permittee shall provide to the Executive Director a copy of a permit or letter of permission issued by the U.S. Army Corps of Engineers, or evidence that no permit or permission is required. The applicant shall inform the Executive Director of any proposed changes to the approved

project required by the U.S. Army Corps of Engineers. Such proposed changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is required.

6. State Lands Commission Review

PRIOR TO THE COMMENCEMENT OF DEVELOPMENT, the applicant shall submit to the Executive Director, for review and approval, a written determination from the State Lands Commission that:

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

7. Flood Hazard Zone Development Permit

PRIOR TO COMMENCEMENT OF DEVELOPMENT, the applicant shall provide to the Executive Director a copy of a Flood Hazard Zone Development Permit approved by the Mendocino County Planning and Building Department demonstrating that the finished foundation of the structures would be elevated to or above the base flood elevation or designed to be flood-proofed and capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. The applicant shall inform the Executive Director of any changes to the project required by the Mendocino County Planning and Building Department. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

8. Assumption of Risk

By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from flooding; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the

project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

9. **Design Restrictions**

- A. All exterior siding, trim, and roofing of the proposed boat storage and bathroom structure shall be composed of materials of dark earth tone colors only. The current owner or any future owner shall not repaint or stain the house with products that will lighten the color the house as approved. In addition, all exterior materials, including roofs and windows, shall be non-reflective to minimize glare; and
- B. All exterior lights, including any lights attached to the outside of the buildings, shall be the minimum necessary for the safe ingress and egress of the structures, and shall be low-wattage, non-reflective, shielded, and have a directional cast downward such that no light will shine beyond the boundaries of the subject parcel.

10. **Deed Restriction**

PRIOR TO COMMENCEMENT OF DEVELOPMENT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

III. **FINDINGS AND DECLARATIONS.**

A. **Site and Project Description.**

The project site is located on the north side of the Noyo River, approximately ½ mile upstream from the entrance to the Noyo Harbor, in Mendocino County, at 32100 North Harbor Drive near Fort Bragg. The site currently contains a restaurant/café, a large wharf and associated docks, a fish processing structure, a parking lot, and several accessory

buildings such as storage sheds and restrooms. There is also a large vacant area, which was formerly used as an RV park, which has since been abandoned, and a former charter-boat area, which is now proposed for a rowing club.

The project site is located within the historic Noyo Harbor, which has been historically used as a harbor for commercial fisherman with fish processing facilities, boat mooring facilities, as well as recreational boating. The site is located on a flat waterfront parcel situated just east of the Noyo Bridge, which is currently being rebuilt by Caltrans. The entire property has been previously disturbed and developed and it contains no environmentally sensitive habitat other than the adjacent Noyo River estuary. The area is not designated as a highly scenic area in the Mendocino County LCP, and there are only partial views of the estuary through the development from North Harbor Drive.

The applicants are seeking "after the fact" authorization for several improvements installed without the benefit of a coastal development permit as well as authorization for several proposed improvements to the site, which are depicted graphically on Exhibit 3 by the numbering below. The "after the fact" improvements include:

1. Temporary replacement of storm-damaged treated wood shoring under the dock;
3. Placement of approximately 1200 square feet of decking at outside dining area of restaurant to reduce "trip and fall" hazards, and 160 square feet of walkway, which defines access from restaurant to parking and restroom areas;
4. Replacement and addition of wood lattice panels around outside seating area of the restaurant;
5. Replacement of 200 linear feet of 6 feet high chain link fence and gates where appropriate to restrict access to the commercial dock area;
6. Placement of decorative piling posts and panels on existing fencing;
7. Placement of approximately 75 linear feet of wooden railing at the water's edge of the dock at the east end;
10. Placement of a 27-foot-long maintenance caretaker trailer with an entry deck for onsite attendant's occasional use;
11. Placement of temporary vehicle barriers in portion of the abandoned RV park leased by CalTrans, to protect existing utility hook-ups from further damage during Noyo bridge construction; and
12. Relocation of dumpsters from the restaurant dock to the extreme western edge of the parking lot and installation of a fenced enclosure around the dumpster to reduce vermin infestation.

The proposed new improvements include:

1. Temporary placement of approximately 45 linear feet of 6-foot high chain link fence and gate around a portion of the pier behind the restaurant to limit access during construction of a boat storage shed (see #9);
2. Repair of an existing boat hoist on the rowboat pier to facilitate rowboat launching;
4. Repair and replacement of the existing pier surface where necessary for safety;
5. Placement of 3 new signs, under 32 square feet each, indicated by A, B, and C on Exhibit No. 4, and depicted on Exhibit No. 5;
7. Install a second exit for restaurant dining area for emergency access and egress;
8. Replacement of existing storage sheds at rear of restaurant with 10' x 16' vermin-proof storage building with walk-in cooler and vegetable sink in compliance with County Health Department;.
9. Construction of a 30' x 40' on-dock boat storage shed for rowboats for a new rowing club, with ADA compliant restroom hooked to existing sewer;
10. Replacement of 4" x 4" posts at parking/fish plant boundary with 12" decorative pilings (on land); and
11. Replacement of decorative pilings in parking lots (on land).
12. Wrapping the treated wood shoring with a watertight protective plastic sleeve to prevent discharge of ACZA to the water

B. Priority Uses

Coastal Act Section 30234 states:

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

Coastal Act Section 30222 states:

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

Coastal Act Section 30224 states:

Increased recreational boating use of coastal waters shall be encouraged, in accordance with this division, by developing dry storage areas, increasing public launching facilities, providing additional berthing space in existing harbors, limiting non-water dependent land uses that congest access corridors and preclude boating support facilities, providing harbors for refuge, and by providing for new boating facilities in natural harbors, new protected water areas, and in areas dredged from dry land.

The Noyo Harbor, located along the lower ½-mile of the Noyo River east of Highway One, is the locus of a large commercial and recreational fishing port. The applicant's property is zoned "Fishing Village" under the Mendocino County's Certified Local Coastal Program. This district is intended to ensure that the limited available space on the flats at Noyo is reserved for industries that must be on or near the water. The Noyo Harbor area currently supports commercial fishing, recreational boating, and coastal dependent industrial uses.

The Dillion property supports activities consistent with the priority use policies of the Coastal Act. Current facilities at the site include a restaurant, a fish processing area, and limited small boat storage. The majority of the proposed improvements involve improvements to existing structures, such as the pier, the boat hoist, the replacement of existing storage sheds, and adding decking to the existing outside seating area of the restaurant. Other proposed improvements include adding decorative pilings to existing facilities (such as the parking lot), fencing existing facilities, installation of a caretaker's trailer, and the establishment of a new rowing club as discussed below. Other than the rowing club and the caretaker's trailer, none of these proposed activities represent a change in use or intensity of use at the site. Additionally, many of these proposed activities upgrade existing recreational boating and commercial fishing facilities, and the visitor serving commercial restaurant, which would support these priority uses in Noyo Harbor. Therefore, the proposed improvements to existing uses are consistent with Sections 30234, 30222, and 30224 of the Coastal Act.

The proposed construction of a 30' x 40' on-boat dock boat storage and restroom will support a new rowing club, which is a new use. This club will operate under a charter with the "Traditional Small Craft Association." Once the proposed storage shed is built, the club will open for membership, and all members of the public will be welcome. This club and support facilities, including the construction of the storage shed and the repair of the boat hoist, which will facilitate the launching of small craft boats, such as canoes and skulls, is consistent with Coastal Act Section 30224 which supports and encourages the creation of recreational boating facilities. Additionally, the new use does not conflict with commercial fishing, a priority use under the Coastal Act, because adequate space is available elsewhere on the site for fish processing, including the existing Empress Fish market and fish processing facilities on the site, consistent with the requirements of Section 30234 that proposed recreational boating facilities not interfere with commercial fishing needs.

The proposed placement of a 27-foot long maintenance caretaker trailer with an entry deck for onsite attendant's occasional use is also a new use at the site. This use as an occasional residence for an onsite attendant is consistent with the priority use policies because it would support the other priority uses of commercial fishing and recreational boating at the site, by providing an element of safety and facilitating maintenance of these activities. However, the general residential use of the trailer by someone other than a caretaker would not be consistent with the priority use policies of the Coastal Act as it would introduce a non-priority residential use that is not supportive of the other priority uses at the site, and would usurp waterfront area that may be needed for development of priority uses in the future. Therefore, the Commission attaches Special Condition No. 4 requiring that a permit amendment be obtained for any changes to the project including any change in use of the caretaker's trailer. Such a condition will ensure the Commission will be able to review any changes of use of the trailer to ensure consistency with the priority use policies of the Coastal Act. Furthermore, to ensure that all future owners of the property are aware of Special Condition No. 4, Special Condition No. 10 requires recordation of a deed restriction that imposes the special conditions of the permit as covenants, conditions, and restrictions on the use of the property.

Therefore, the Commission finds that the project, as conditioned, supports and enhances commercial fishing and recreational boating opportunities in Noyo Harbor, and is therefore consistent with Sections 30234, 30222, and 30224 of the Coastal Act.

C. Protection of Marine Resources and Coastal Water Quality

Section 30231 of the Coastal Act addresses the protection of coastal water quality and marine resources in conjunction with development and other land use activities. 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 the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of wastewater discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with the surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

The applicant requests after-the-fact authorization for the temporary replacement of storm damaged shoring under the existing dock. The replaced shoring consists of one 10-foot vertical timber beam, treated with ACZA (ammoniacal copper zinc arsenate), placed onto an existing submerged concrete pad, and attached to the underside of the dock. Approximately 3-5' of the treated beam is subject to submersion at high tide. ACZA is used to help preserve timber that is used in or near water and contains copper, zinc, and arsenic. Until recently, little

research had been conducted on the release of wood preservatives from existing structures and the environmental impacts, if any, of those releases. In a few recent studies, measurable amounts of preservatives were shown to be released into the environment. While the degree of environmental accumulation and biological impacts appear to be low, some release does occur.¹ Recognizing the potential impacts of using ACZA and other chemically treated wood products in the marine environment, a precautionary approach is warranted.

To minimize exposure of the ACZA to marine waters, Special Condition No. 2a requires that the shoring be wrapped with a watertight protective plastic sleeve. The Commission is also concerned about the use of plastic in the marine environment due to the possible deterioration of the pile wrapping and subsequent increase in marine debris. Since plastic is an inorganic material, it does not biodegrade, but rather continually breaks down into ever-smaller pieces. The presence of plastics in the coastal and ocean environment is both widespread and harmful to human and marine life. Consequently, it is necessary for the Commission to impose Special Condition No. 2b requiring maintenance of the plastic wrapping that encases the shoring beam. Special Condition 2b requires the permittee to annually inspect the shoring and its wrapping, and to undertake any repairs necessary to maintain the plastic wrapping (including patching any holes to ensure that the piles are completely encased) and/or the integrity of the piles. Furthermore, to ensure that all future owners of the property are aware of Special Condition No. 4, Special Condition No. 10 requires recordation of a deed restriction that imposes the special conditions of the permit as covenants, conditions, and restrictions on the use of the property. Only as conditioned will the proposed project ensure that marine resources and water quality be protected as required by Section 30231 of the Coastal Act.

Construction related debris and chemicals entering the waters of Noyo Harbor could adversely affect water quality and marine resources. Therefore, Special Condition No. 3 specifies that no construction materials, debris, or waste shall be placed in Noyo Harbor, and that all construction material, debris, and waste must be removed from the site after project completion and be legally disposed of outside the Coastal Zone consistent with the proposed project description.

Therefore, the Commission finds that the project, as conditioned, minimizes adverse impacts to the water quality of Noyo Harbor, and is therefore consistent with Section 30231 of the Coastal Act.

D. Flood Hazards

Section 30253 states in applicable part:

New development shall:

¹ *Guide for Minimizing the Effect of Preservative-treated Wood on Sensitive Environments*, Lebow and Tippie, prepared for United States Forest Service, February 2001.

(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

Coastal Act Section 30253 requires in applicable part that new development minimize risks to life and property in areas of high geologic, flood, and fire hazard and neither create nor contribute significantly to erosion or geologic instability.

The subject property is located along the Noyo River, and within a floodplain area as mapped by the Flood Insurance Rate Maps (FIRM). As described above, the project site is presently developed with commercial fishing facilities, a restaurant and parking lots. New recreational boating storage facilities and a caretaker's trailer are proposed, along with several other improvements to the site. The Local Coastal Program Consistency Review performed for the proposed project by the County of Mendocino noted that the project site is designated in the LCP as being within a flood combining zone and that the project shall comply with the Flood Plain standards set forth in chapter 20.420 of the Mendocino Coastal Zoning Code, and obtain all permits required by other agencies, such as the Federal Emergency Management Association (FEMA), and that a Floodplain Elevation Certificate is also required from FEMA.

To ensure that the proposed residence is designed to minimize risks to life and property from flood hazards as required by Coastal Act Section 30253, the Commission attaches Special Condition No. 7 that requires the applicant to provide evidence that a Flood Hazard Zone Development Permit has been approved by the Mendocino County Planning and Building Department prior to the commencement of construction.

Additionally, Special Condition No. 8 requires the landowner to assume the risks of flooding hazards to the property and waive any claim of liability on the part of the Commission. Given that the applicant has chosen to implement the project despite flooding risks, the applicant must assume the risks. In this way, the applicant is notified that the Commission is not liable for damage as a result of approving the permit for development. The condition also requires the applicant to indemnify the Commission in the event that third parties bring an action against the Commission as a result of the failure of the development to withstand hazards.

Furthermore, to ensure that all future owners of the property are aware of the flood hazard present at the site, the Commission's immunity from liability, and the indemnity afforded the Commission, Special Condition No. 10 requires recordation of a deed restriction that imposes the special conditions of the permit as covenants, conditions, and restrictions on the use of the property.

Therefore, as conditioned, the project would minimize risks to life and property from flood hazards and is consistent with Section 30253 of the Coastal Act.

E. Visual Resources

Section 30251 of the Coastal Act states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas...shall be subordinate to the character of its setting.

The subject site is located on the north side of Noyo River. It is not in an area designated as "highly scenic" in the Mendocino County LUP. As described above, the site is presently developed with commercial fishing facilities, a restaurant and parking lots. New recreational boating storage facilities and a caretaker's trailer are proposed, along with several other improvements to the site.

The project will not have significant adverse impacts on views to the ocean and Noyo River estuary, because the principal views through the site to the water from North Harbor Drive will be retained.

The changes proposed by the amendment would not involve any significant grading or excavation. Therefore, the project would not alter any natural landforms.

The Mendocino County Local Coastal Program Consistency Review noted that the project site is located in an area considered a "special community" in the Mendocino Coastal Zoning Code, and must conform to development criteria requiring the scale of development be within the scope and character of existing development in the surrounding neighborhood and that building materials and exterior colors be compatible with those of existing structures. The proposed materials for the proposed rowing club structure include wood siding to match the existing green color, and distressed corrugated metal, of rust and gray. Trim material would be 1 x 6 wood to match the existing wood at the site. The roofing would be rolled roofing of green color to match the existing roofs on site. Window frames are proposed to be white vinyl. The door material is proposed to be metal clad, simulated wood, and white in color. Fencing is proposed to be chain link with redwood panels, gray and natural wood. Other exterior materials are to be decorative pilings, weathered gray, and old commercial fishing nets and rope, which are proposed to be blue, brown and green.

To ensure that the proposed rowing club structure is subordinate to the character of the setting of the Noyo Harbor fishing village and consistent with Section 30251, Special Condition No. imposes design restrictions, which require that all exterior siding, trim, and roofing of the proposed boat storage and bathroom structure shall be composed of materials of dark earth tone colors only, and that all exterior lighting be the minimum necessary for the safe ingress and egress of the structures, and have a directional cast downward.

Therefore, the Commission finds that as conditioned, the proposed development as amended would be fully consistent with the visual resource protection requirements of Section 30251 of the Coastal Act, as (1) the development as amended would not block any additional view of the ocean and would be sited and designed to protect views to and along the ocean, (2) the development as amended includes no significant grading or excavation and therefore would minimize the alteration of landforms, and (3) the amended development, would be visually compatible with and subordinate to the character of surrounding areas.

F. Public Access

Section 30210 of the Coastal Act requires that maximum public access shall be provided consistent with public safety needs and the need to protect natural resource areas from overuse. Section 30212 of the Coastal Act requires that access from the nearest public roadway to the shoreline be provided in new development projects except where it is inconsistent with public safety, military security, or protection of fragile coastal resources, or adequate access exists nearby. Section 30211 requires that development not interfere with the public's right to access gained by use or legislative authorization. In applying Sections 30210, 30211 and 30212, the Commission is also limited by the need to show that any denial of a permit application based on these sections, or any decision to grant a permit subject to special conditions requiring public access, is necessary to avoid or offset a project's adverse impact on existing or potential access.

The subject site is located on the Noyo River, an arm of sea. The proposed rowing club improvements increase access and recreational opportunities on the Noyo River, and none of the proposed improvements would block or otherwise interfere with public access to the site. In addition, there is no existing waterfront trail along the wharf that would be affected by the proposed improvements. Furthermore, public access exists adjacent to the site, including Ocean Front Park on the West side of Noyo Bridge, which contains a public restroom, parking lot, and a beach. Therefore, the Commission finds that the development as conditioned does not have any significant adverse effect on public access, and that the development as amended without new public access is consistent with the coastal access requirements of Coastal Act Sections 30210, 30211, and 30212.

G. Alleged Violation

The site was developed with various improvements in an area within the Commission's jurisdiction without the benefit of a coastal development permit, as detailed in Finding A. Consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Review of this permit does not constitute a waiver of any legal action with regard to the cited alleged violation nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit. Special Condition No. 1 ensures that this permit is deemed issued upon

Commission approval, and that it will not expire, as development has already commenced and been completed.

H. State Waters

The project site is located in an area subject to the public trust. Therefore, to ensure that the applicant has the necessary authority to undertake all aspects of the project on these public lands, the Commission attaches Special Condition No. 6, which requires that the project be reviewed and where necessary approved by the State Lands Commission prior to the commencement of development.

I. U.S. Army Corps of Engineers Review

The project is within and adjacent to a navigable waterway and is subject to review by the U.S. Army Corps of Engineers (USACE). Pursuant to the Federal Coastal Management Act, any permit issued by a federal agency for activities that affect the coastal zone must be consistent with the coastal zone management program for that state. Under agreements between the Coastal Commission and the USACE, the Corps will not issue a permit until the Coastal Commission either approves a federal consistency certification for the project or approves a coastal development permit. To ensure that the project ultimately approved by the Corps is the same as the project authorized herein, the Commission attaches Special Condition No. 6 that requires the applicant, prior to the commencement of development, to demonstrate that all necessary approvals from the USACE for the proposed project have been obtained.

J. California Environmental Quality Act.

Section 13906 of the Commission's administrative regulation requires Coastal Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as modified by any conditions of approval, is 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 any feasible alternatives or feasible mitigation measures available, which would substantially lessen any significant adverse effect the proposed development may have on the environment.

The Commission incorporates its findings on Coastal Act consistency at this point as if set forth in full. The findings address and respond to all public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the staff report. As discussed above, the proposed project has been conditioned to be consistent with the policies of the Coastal Act. As specifically discussed in these above findings, which are hereby incorporated by reference, mitigation measures that will minimize or avoid all significant adverse environmental impacts have been required. As conditioned, there are no other feasible alternatives or feasible

mitigation measures available which would substantially lessen any significant adverse impacts, which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, can be found consistent with the requirements of the Coastal Act and to conform to CEQA.

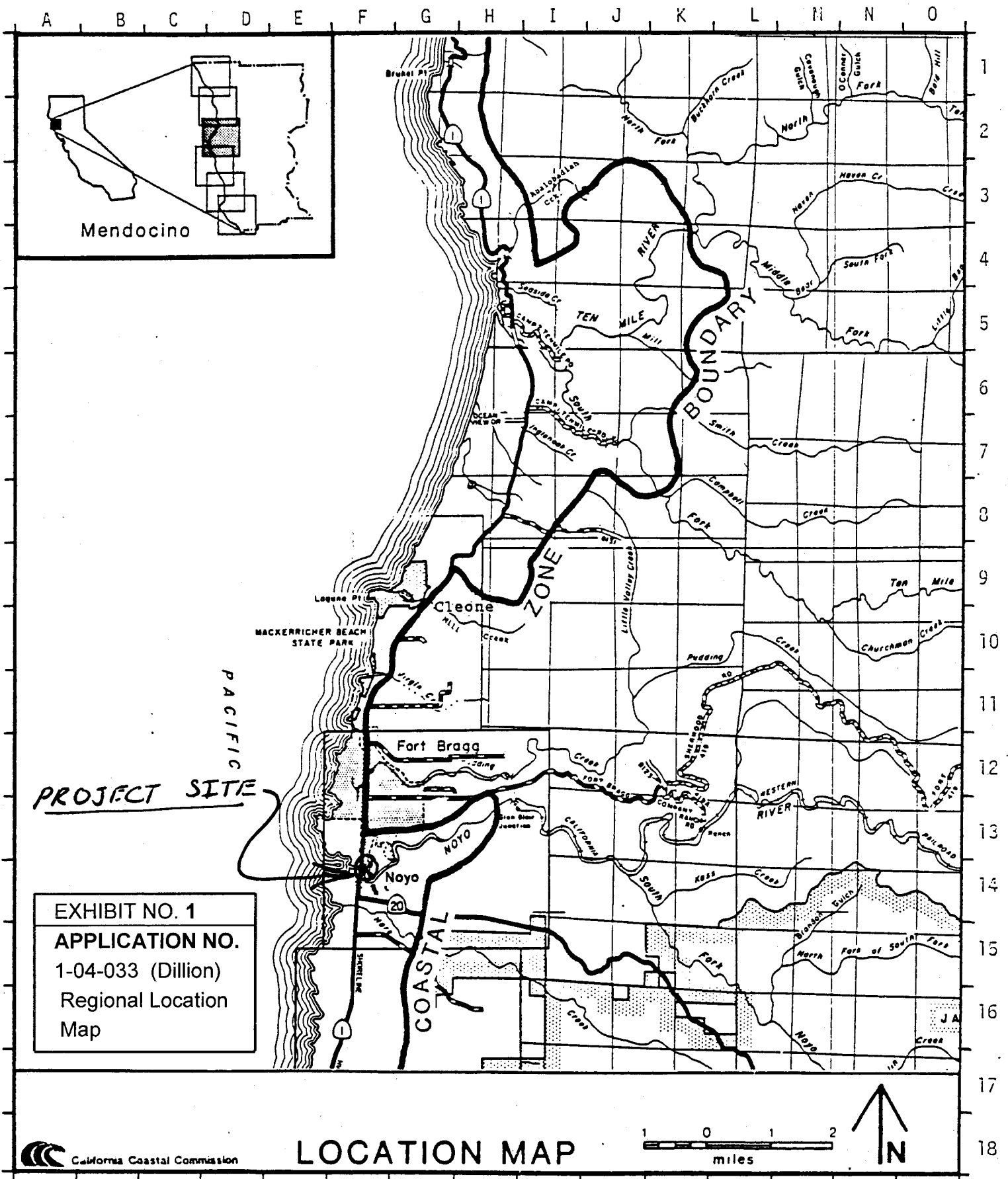
EXHIBITS:

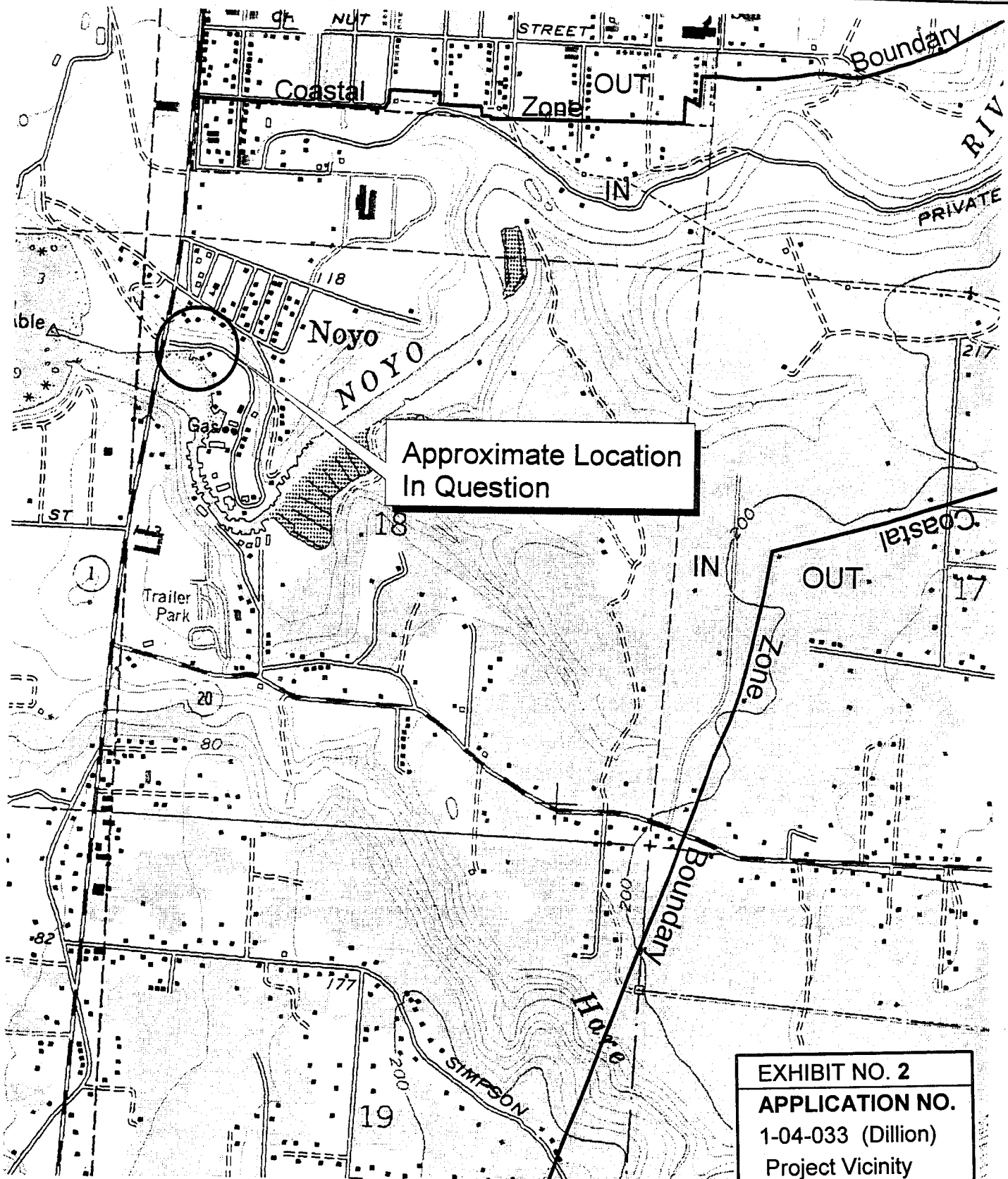
1. Regional Location Map
2. Vicinity Map
3. Project Site Plans
4. Proposed Signs
5. Revised Project Description

APPENDIX A

STANDARD CONDITIONS

1. Notice of Receipt and Acknowledgement. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Interpretation. Any questions of intent of interpretation of any condition will be resolved by the Executive Director of the Commission.
3. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.





BD No. 34-2003
APN 018-130-31
Mendocino County

Portion of Coastal Zone
Boundary Map No. 31
(Fort Bragg Quadrangle)

EXHIBIT NO. 2
APPLICATION NO.
1-04-033 (Dillion)
Project Vicinity
Map

CALIFORNIA
COASTAL
COMMISSION

Technical Services Division



PROJECT SITE PLANS

LEGEND

The applicants are seeking "after the fact" authorization for certain improvements already installed as well as authorization for several proposed improvements, which are depicted graphically on pages 3 and 4 of this exhibit respectively, by the numbering below.

The "after the fact" improvements include (shown on page 3):

1. Temporary replacement of storm-damaged treated wood shoring under the dock;
3. Placement of approximately 1200 square feet of decking at outside dining area of restaurant to reduce "trip and fall" hazards, and 160 square feet of walkway, which defines access from restaurant to parking and restroom areas;
4. Replacement and addition of wood lattice panels around outside seating area of the restaurant;
5. Replacement of 200 linear feet of 6 feet high chain link fence and gates where appropriate to restrict access to the commercial dock area;
6. Placement of decorative piling posts and panels on existing fencing;
7. Placement of approximately 75 linear feet of wooden railing at the water's edge of the dock at the east end
10. Placement of a 27-foot-long maintenance caretaker trailer with an entry deck for onsite attendant's occasional use;
11. Placement of temporary vehicle barriers in portion of the abandoned RV park leased by CalTrans, to protect existing utility hook-ups from further damage during Noyo bridge construction; and
12. Relocation of dumpsters from the restaurant dock to the extreme western edge of the parking lot and installation of a fenced enclosure around the dumpster to reduce vermin infestation.

The proposed new improvements (shown on page 4) include:

1. Temporary placement of approximately 45 linear feet of 6-foot high chain link fence and gate around a portion of the pier behind the restaurant to limit access during construction of a boat storage shed (see #9);
2. Repair of an existing boat hoist on the rowboat pier to facilitate rowboat launching;
4. Repair and replacement of the existing pier surface where necessary for safety;

EXHIBIT NO. 3

APPLICATION NO.

1-04-033 (Dillion)

Project Site Plan

(Page 1 of 4)

5. Placement of 3 new signs, under 32 square feet each, indicated by A, B, and C on Exhibit No. 4, and depicted on Exhibit No. 5;
7. Install a second exit for restaurant dining area for emergency access and egress;
8. Replacement of existing storage sheds at rear of restaurant with 10' x 16' vermin-proof storage building with walk-in cooler and vegetable sink in compliance with County Health Department;
9. Construction of a 30' x 40' on-dock boat storage shed for rowboats for a new rowing club, with ADA compliant restroom hooked to existing sewer;
10. Replacement of 4" x 4" posts at parking/fish plant boundary with 12" decorative pilings (on land); and
11. Replacement of decorative pilings in parking lots (on land).

EXHIBIT NO. 3
APPLICATION NO.
1-04-033 (Dillion)
Project Site Plan
(Page <u>2</u> of <u>4</u>)

↑ NORTH

1 inch = 40'

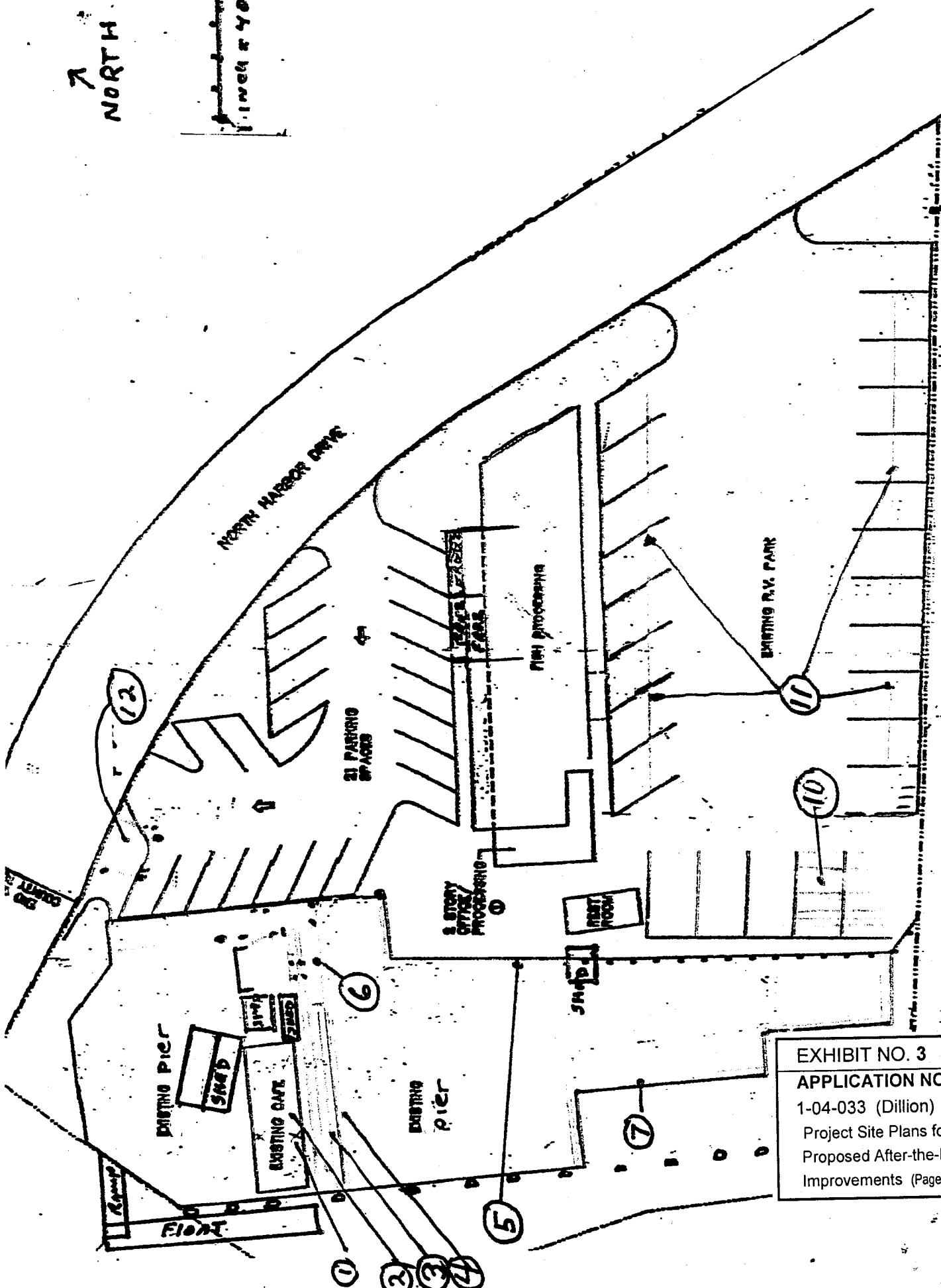
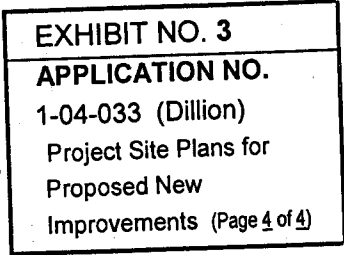
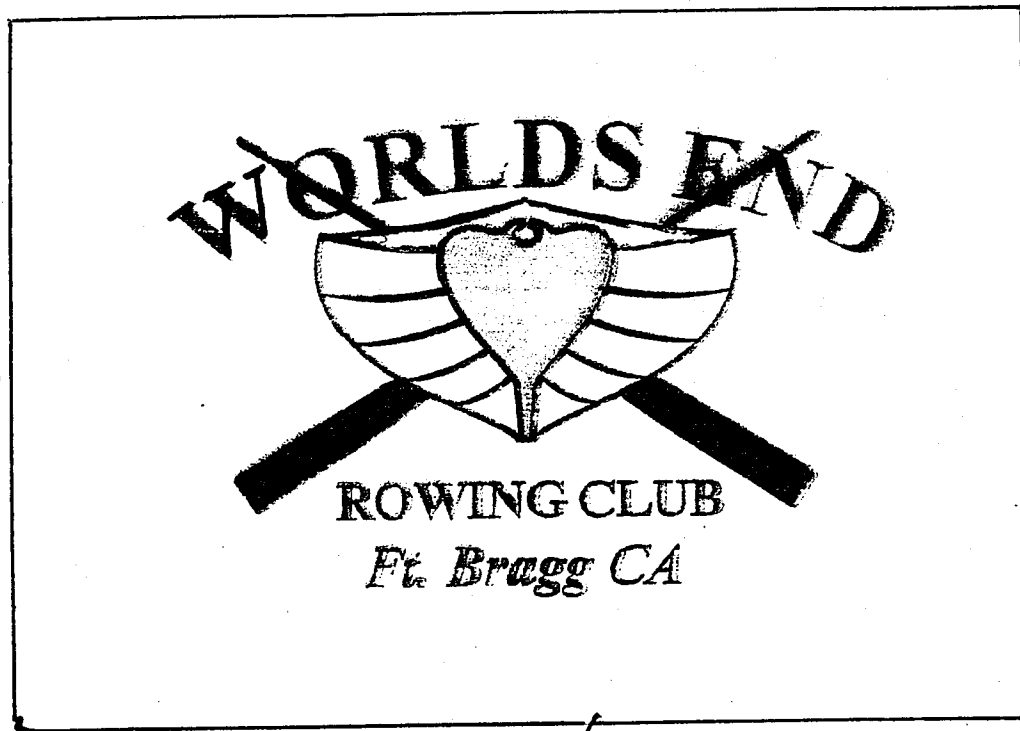


EXHIBIT NO. 3
 APPLICATION NO.
 1-04-033 (Dillion)
 Project Site Plans for
 Proposed After-the-Fact
 Improvements (Page 3 of 4)

0424011



3'9"



6'

± 24" NTS

3'

Empress Seafood, LLC.
32110 North Harbor Drive

The Fish Market

964-3557 www.Empress-Seafood.com

10'

30 SF NTS

EXHIBIT NO. 4
APPLICATION NO.
1-04-033 (Dillion)
Proposed New Signs
(Page 1 of 2)

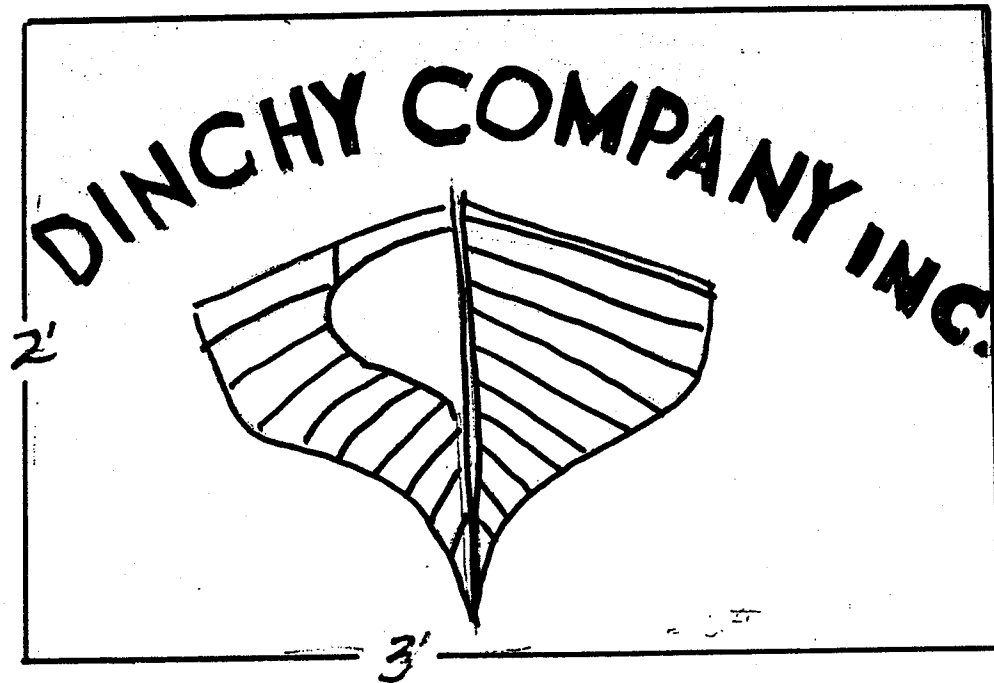


EXHIBIT NO. 4

APPLICATION NO.

1-04-033 (Dillion)

Proposed New Signs

(Page 2 of 2)

Norman L. de Vall
Planning and Land Use Consultant
P.O. Box 3
Elk, California 95432
(707) 877-3551 877:1861 357.5555
ndevall@mcn.org

April 21, 2005

Honorable Chair and Members
California Coastal Commission
North Coast District Office
710 E Street, Suite 200
Eureka, California 95501
via (707) 445:7877 (415) 904:5400
Permit App.
Dear Chair and Members,


re: Coastal Development
No. 1-04-033

On behalf of Owners, and as their Agent, we wish to amend our application to include the following conditions regarding the shoring which has been installed under the decking next to Sharon's Restaurant on the subject property:

Within 30 days of issuance of permit, the permittee shall wrap the entire ACZA treated wood shoring authorized herein with a watertight protective plastic sleeve in a manner acceptable to the Executive Director as follows:

1. The wrapping shall take place at low tide, when the entire height of the shoring is exposed above the water line.
2. The material used for wrapping shall be durable and a minimum of 60 mil thick. All fastenings shall be of stainless steel.
3. All joints shall be sealed to prevent leakage.
4. ACZA shall be prevented from dripping over the top of the plastic wrapping either by sealing the top of the shoring or by installing collars near the top of the shoring and above the elevation of the highest tide.

Sincerely,


Norman L. de Vall
Agent

cc: Dusty and Linda Dillion
via 459:1717

EXHIBIT NO. 5

APPLICATION NO.

1-04-033 (Dillion)

Revised Project

Description

