

## CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE  
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# F 6b

## MEMORANDUM

Date: July 12, 2007

To: Commissioners and Interested Parties

From: Peter Douglas, Executive Director  
Robert S. Merrill, North Coast District Manager  
Tiffany S. Tauber, Coastal Planner

Subject: **Addendum to Commission Meeting for Friday, July 13, 2007**  
**North Coast District Item F 6b, Application No. 1-06-045 (Daniel)**

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### STAFF NOTE

This addendum makes certain additions to the written staff recommendation dated June 29, 2007 to respond to correspondence received July 10, 2007 from Mary Weaver, representing adjacent property owners. The comment letter is attached to the Addendum as Attachment 1.

Specifically, this addendum adds Special Condition No. 5, and supporting findings, to limit the number of boats that can be moored at the proposed boat dock facility at any one time to ensure that boats are not moored in a manner that would encroach into the channel of the Noyo River.

Text to be added appears in **bold double-underline.**

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**I. Addition to the Special Conditions of the Staff Recommendation**

A. Special Condition No. 5 shall be added as follows:

**5. Boat Mooring Limitations**

**No more than two boats tied end to end shall be moored at the boat dock facility authorized by CDP No. 1-06-045 at any one time. Boats shall not be moored side by side.**

**REASON FOR CHANGE:** To ensure that boats moored at the dock facility would not encroach into the channel of the Noyo River in a manner that would cause an obstruction to navigation for other boaters.

**II. Addition to the Public Access Finding of the Staff Recommendation**

A. The last paragraph on page 11 shall be revised as follows:

The proposed project involves the replacement of piles used to secure a private seasonal floating dock along the Noyo River. There are no public trails or other public roads that provide shoreline access within the vicinity of the project. Furthermore, the proposed boat dock repair project will not change the nature or intensity of use of the site, and thus will not create any new demand for public access or otherwise create any additional burdens on public access. The piles and floating boat dock would not interfere with kayak, canoe, or other boat traffic on the river, as the piles have been replaced in the same general vicinity, but even closer to the river bank and well out of the main channel. **To ensure that boats are not moored at the dock facility in a manner that would encroach into the channel of the Noyo River and create a navigational obstruction to other users of the river, the Commission attaches Special Condition No. 5 that limits use of the dock to no more than two boats tied end to end at any one time and prohibits boats from being docked side by side.**

**REASON FOR CHANGE:** To add findings supporting Special Condition No. 5 regarding boat mooring limitations.

Agenda Item No. **F6b**  
Application # 1-06-045  
Mary Cesario Weaver  
Agent  
of adjacent property owners  
**In Opposition**

California Coastal Commission  
North Coast District Office  
710 E Street, Suite 200 (for Federal Express)  
Eureka, CA 95501

Mailing Address  
P.O. Box 4908  
Eureka, CA 95502-4908

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COASTAL COMMISSION

July 8, 2007

I represent the adjacent property owners (see color coded parcel map and list of owners) of this project who own APN's 018-230-12, 018-230-6, 018-230-22, 018-230-24, 018-230-20, 018-230-32, 018-230-1 & 018-230-28, and who are **all opposed** to this project.

**Exhibit A.**

They have all stated that these steel piles were erected over three years ago without a permit and that there were **never** old wooden pilings there contrary to the staff report.

Jack Thomas, who has owned the property immediately adjacent to the east of the subject property for over 25 years has stated that **there have never been any wood pilings on that site contrary to the applicant's agent who has stated in the staff report that they were in place and that boats were moored there for some forty years.**

Thomas states that for a few years prior to the applicant purchasing the property there was a small dock without benefit of a permit less than 40 feet long that **was attached to the shore without pilings** and eventually collapsed.

Neighbor Huckins states **sometimes people tied boats to trees** along the bank but that he never saw pilings there.

Consequently, this application is improper in that it is **not a replacement project, but rather new construction.**

**There were no “existing deteriorated and storm damaged wood piles” as indicated in the staff report.** See enclosed photograph. **Exhibit E.**

Therefore, some **4.2 square feet of pile fill** has been **“after the fact” added to the inter-tidal bottom of the Noyo River** which is **not in conformance with the wetland fill policies of Coastal Act Section 30233.** This fill is not replacing some 4.4 square feet of piling because those pilings never did exist.

**The 400 square feet of seasonal floating dock would be new construction also and not a replacement.**

Section 30233 also states that fill is limited to pilings **for public recreational piers that provide public access and recreational opportunities.** This is proposed to be a **private dock.**

**All the neighbors have stated that historically boats have always traveled up and down this north side of the river, the channel side, because the other side is too shallow. Since this is also one of the narrowest points on the river, traffic would be greatly impeded by these floating docks and interfere with the necessary navigation channel. Exhibit D.**

At the same time, private boats moored there **would not have access to the steep terrain of the land,** so people and cargo would have to be picked up in yet another boat to be transferred to shore in another location, **adding to the already congested channel area.**

**The community of organisms** that inhabit the mudflat area directly below the proposed piles **will be lost** as a result of the installation of the pilings, an area of 4.2 square feet. Mudflat environments provide habitat to benthic invertebrates which provide important prey for many fish and bird species.

Common invertebrates in shallow mudflat areas include various species of polecats, bivalves, and gastropods.

Consequently, **the project will have significant adverse impacts to the mudflat inter-tidal habitat since it is a new development and not a replacement as stated in the staff report.**

The **no project alternative** would not leave wood piles in a state of disrepair that would create an adverse impact to the biological productivity or water quality of the Noyo River because they never did exist.

The **no project alternative** is what the adjoining neighbors favor.

The applicant further states in the staff report that he has designed his 100+ foot long dock to accommodate two 40-foot boats. The applicant and his agent, who operate Tommy's Marine Service across and down river some four hundred feet from this dock and in a wider part of the river, **moor up to 6 boats, some well over 40 feet long to a dock about 120 feet long. On many days they overlap on to adjacent properties. They "side tie" the boats to one another, sort of like triple parking, as shown in the enclosed photographs. This practice will only add to more blockage of the navigable channel of the river. Photographs show this "side tie" method taken on two different days. See Exhibit F.**

The adjacent property owner to this new project would have great difficulty using a dock if he were to choose to build one. It would be very hard to maneuver another boat in next to this dock if the same triple mooring and overlapping were to occur.

**The proposed project does change the intensity and use of this site and will interfere with boat traffic on the river since it is on the north side of the river bank which is the main channel of the river at that point in the river as the south bank and middle section are shallower. Boats from the upper marina navigate this turn by hugging the north bank.**

Since the project is new development and not a replacement, **it does not conform to the California Environmental Quality Act (CEQA).**

**A response from the Department of Fish and Game which was not**

**included in the staff report is included in Exhibit C.**

**Exhibit A.** Color coded parcel map.

**Exhibit B.** Photographs of new, but rusty, pilings on subject property without the dock attached showing how narrow the river is there and the sharp bend where the deep navigation channel is close to the north bank and will be blocked by boats moored there.

**Exhibit C.** A letter from the Department of Fish and Game in regard to the Streambed Alteration Agreement.


**Exhibit D.** Photograph of rusted pilings and the marina wall across from the pilings showing how narrow the river is at that point.

**Exhibit E.** Aerial photograph of the Noyo Harbor and Noyo River taken circa 1970 before the applicant purchased the property, showing no pilings or dock in place some 35 to 40 years ago and how narrow the river is at that point.

**Exhibit F.** Photos showing double and triple “side tying” of boats together currently at Tommy’s Marine Service.

Thank you for your consideration in this matter.

Mary Cesario Weaver  
Agent of the adjacent property owners of this project.



P.O. Box 1395  
Mendocino, CA 95460

[maryinmendo@hotmail.com](mailto:maryinmendo@hotmail.com)

(707) 961-0937 or 357-2846

EXHIBIT A  
2 of 2

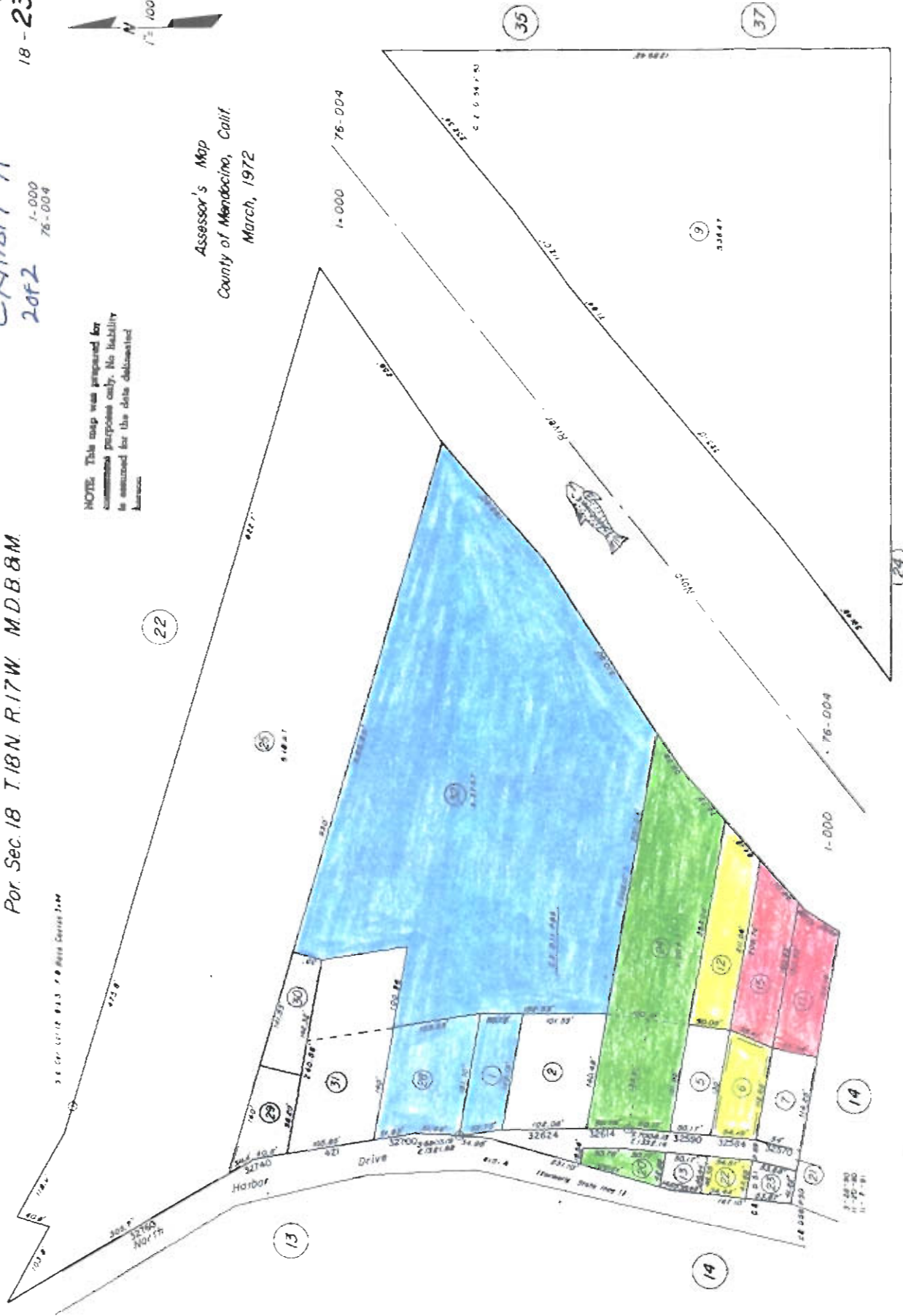
Por Sec 18 T18N R17W MDB&M

18-23



NOTE: This map was prepared for  
assessor's purposes only. No liability  
is assumed for the data delineated  
hereon.

Assessor's Map  
County of Mendocino, Calif.  
March, 1972



PINK - SUBJECT PROPERTY  
YELLOW  
GREEN  
BLUE  
NEIGHBORS OPPOSED TO PROJECT



**agentfirst**  
First American Title

EXHIBIT A

[Home](#) | 
 [FAST Order Status](#) | 
 [Search Office/User](#) | 
 [Farming](#) | 
 [Contacts](#) | 
 [Settings](#) | 
 [Help](#) | 
 [Log Off](#) | 
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## Property List

Search Criteria:

State:	CA	Full Name:	House Number:
County:	Mendocino	Last Name:	Street Name:
APN:	018-230	First Name:	Postal Code:

Matching Properties: 21

[Refine Search](#)

Apn	Address	City	Owner
1 018-230-01-00	441 N HARBOR	FORT BRAGG	SIHON DEANNA
2 018-230-02-00	501 CASA DEL NOYO	FORT BRAGG	OATES JESSIE F AND OATES ROBERT L
3 018-230-05-00	531 CASA DEL NOYO	FORT BRAGG	FERGUSON ELIZABETH A AND FERGUSON ALAN J
4 018-230-06-00	541 CASA DEL NOYO	FORT BRAGG	THOMAS JACK B
5 018-230-07-00	551 CASA DEL NOYO	FORT BRAGG	CHELLBERG BARBARA
6 018-230-09-00			NOYO HARBOR DISTRICT
7 018-230-11-00	557 CASA DEL NOYO	FORT BRAGG	DANIEL WILLIAM L
8 018-230-12-00	537 CASA DEL NOYO	FORT BRAGG	THOMAS JACK B TRUST
9 018-230-13-00	530 CASA DEL NOYO	FORT BRAGG	FERGUSON ELIZABETH A AND FERGUSON ALAN J
10 018-230-15-00	547 CASA DEL NOYO	FORT BRAGG	DANIEL WILLIAM L
11 018-230-20-00	520 CASA DEL NOYO	FORT BRAGG	HUCKINS JEAN
12 018-230-21-00			NOYO ASSOCIATES
13 018-230-22-00	540 CASA DEL NOYO	FORT BRAGG	THOMAS JACK B
14 018-230-23-00	550 CASA DEL NOYO	FORT BRAGG	ROSE RONALD G
15 018-230-24-00	521 CASA DEL NOYO	FORT BRAGG	HUCKINS JEAN AND HUCKINS DAVID P
16 018-230-25-00	401 N HARBOR	FORT BRAGG	COONEY THOMAS D AND FRAZER JOANNE M
17 018-230-28-00	431 N HARBOR	FORT BRAGG	SIHON DEANNA
18 018-230-29-00	411 N HARBOR	FORT BRAGG	MYERS LAVERNE D TRUST
19 018-230-30-00	415 N HARBOR	FORT BRAGG	MOORE LAURA M AND MOORE CHRISTOPHER L
20 018-230-31-00	421 N HARBOR	FORT BRAGG	BRAET DAURINE R AND BRAET JOHN O
21 018-230-32-00	425 N HARBOR	FORT BRAGG	SIHON DEANNA

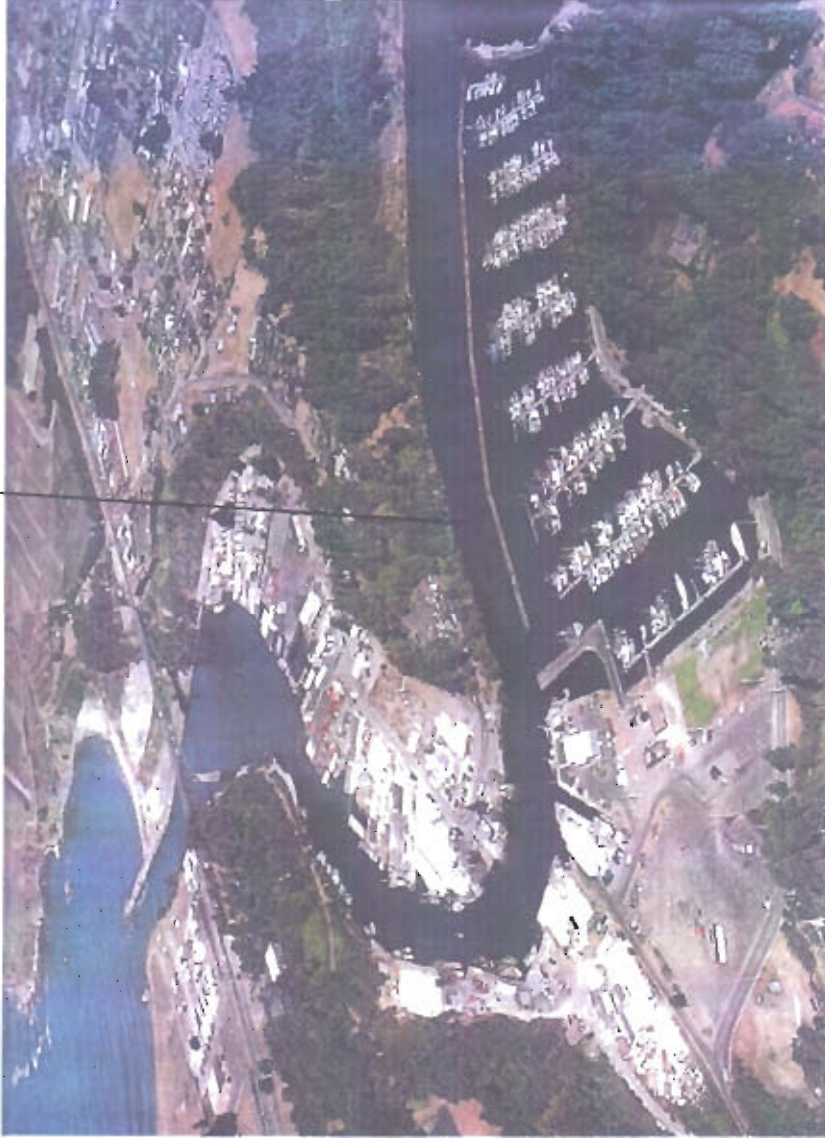
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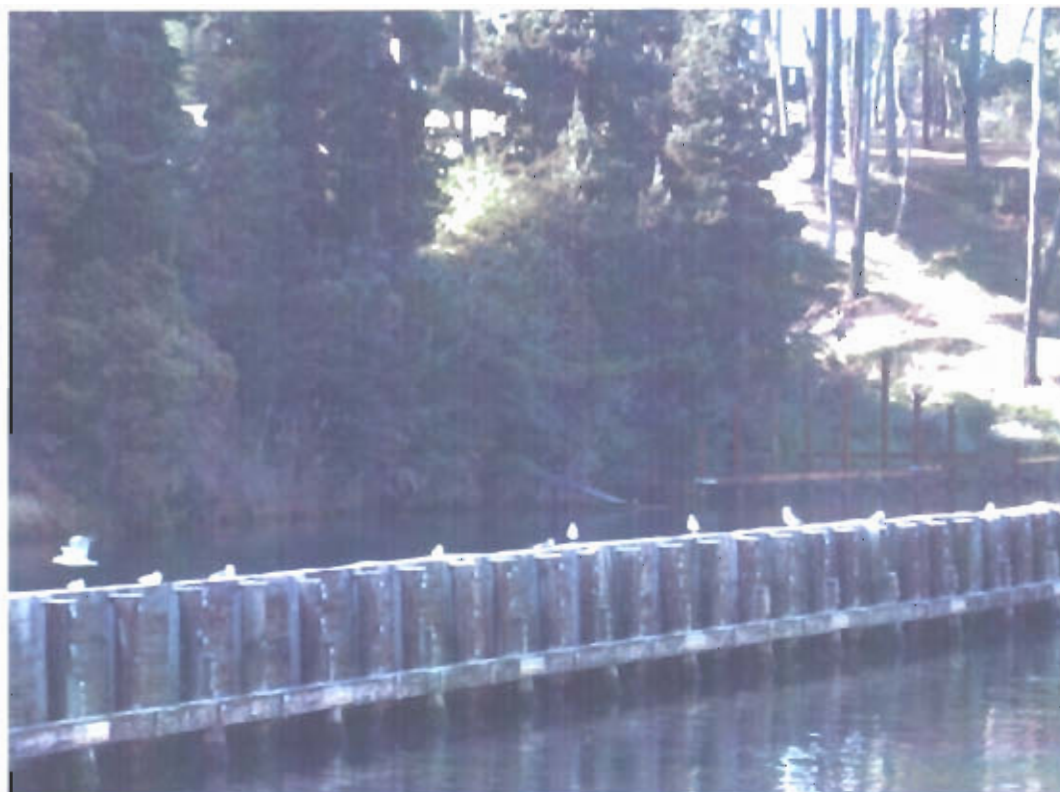
Server 159

- EXHIBIT E -

- LOCATION SHOWS NO PILING OR BULK -



- NOYO HARBOR, CIRCA 1970 -



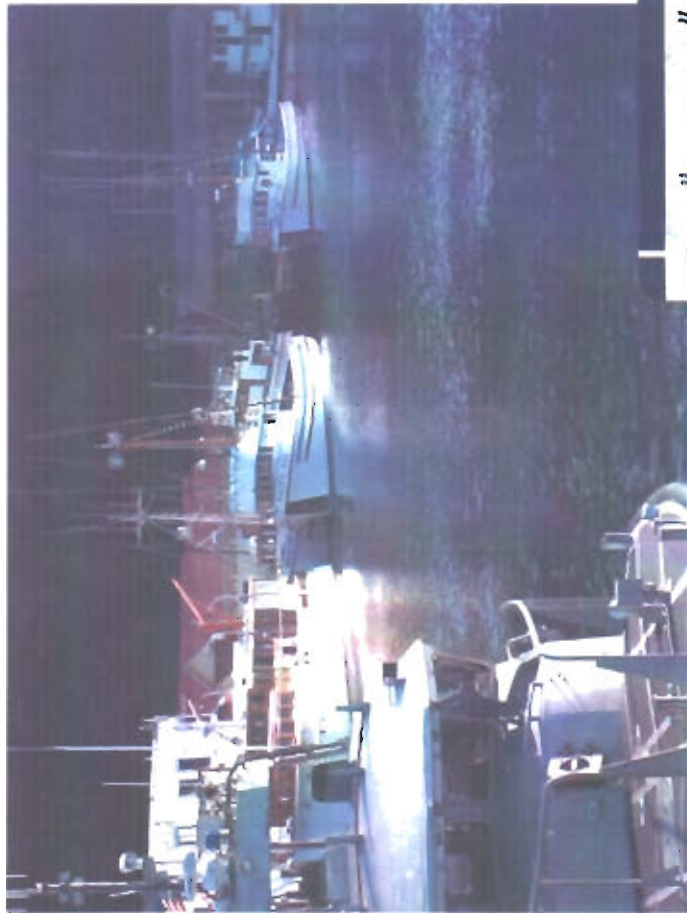
Steel pilings in background to the right; marina wall in foreground. Width of river about 60 to 70 feet.







- EXHIBIT F



- BOATS "SIDETIED" AT TOMMY'S MARINE

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# F 6b

Date Filed:	February 7, 2007
49th Day:	March 28, 2007
180 <sup>th</sup> Day:	August 6, 2007
Staff:	Tiffany S. Tauber
Staff Report:	June 29, 2007
Hearing Date:	July 13, 2007
Commission Action:	

## STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.:	<b>1-06-045</b>
APPLICANT:	<b>WILLIAM DANIEL</b>
AGENT:	Thomas Ancona
PROJECT LOCATION:	Along the north side of the Noyo River at 547 & 557 Casa Del Noyo Drive, Fort Bragg, Mendocino County (APNs 018-230- 11 & 018-230-15)
PROJECT DESCRIPTION:	After-the-fact replacement of eight, 10-inch- diameter wood piles with twelve, 8-inch- diameter steel piles and seasonal installation of a floating dock.
GENERAL PLAN DESIGNATION:	High Density Residential
ZONING DESIGNATION:	Garden Apartment/Condo
LOCAL APPROVALS REQUIRED:	None

OTHER APPROVALS REQUIRED: (1) Department of Fish and Game; (2) Army Corps of Engineers; (3) Noyo Harbor District Lease

SUBSTANTIVE FILE DOCUMENTS: City of Fort Bragg Local Coastal Program

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**SUMMARY OF STAFF RECOMMENDATION:**

Staff recommends that the Commission approve with conditions the coastal development permit for the proposed project involving after-the-fact replacement of eight, 10-inch-diameter wood piles with twelve, 8-inch-diameter steel piles and the seasonal installation of a floating dock comprised of five 4' x 20' wood floats moored end to end and attached to the piles.

The project site is located approximately ½ mile upstream from the Highway One Noyo River bridge, along the north bank of the Noyo River just below the Noyo River Lodge and directly across the river from the Noyo Harbor Mooring Basin, in the City of Fort Bragg, Mendocino County.

The existing deteriorated and storm damaged wood piles were replaced with steel piles in the same general location, but closer to the bank, approximately two years ago. This replacement, undertaken without the benefit of a coastal development permit, is the subject of the CDP application now before the Commission. The piles and floating dock are located adjacent to the river bank in a mudflat area void of eelgrass or other environmentally sensitive habitat.

The primary issue raised by the proposed project is the project's conformance with the wetland fill policies of Coastal Act Section 30233. The fill associated with the proposed project is for the replacement of eight wood piles with twelve steel piles used to attach a seasonal floating dock for use as a private boat mooring. The installation of 12, 8"-diameter steel piles, or approximately 4.2 square feet of pile fill, driven into the muddy intertidal bottom of the Noyo River to replace 8, 10"-diameter wood piles, or approximately 4.4 square feet of pile fill, represents a net decrease of approximately 0.2 square feet of pile fill over what existed prior to removal of the old wood piles. The installation of the seasonal floating dock, which consists of five 4' x 20' wood floats within the riverine habitat, involves the replacement of a total of 400 square feet of seasonal floating fill, the same amount that existed prior to commencement of the development.

The proposed project would result in an overall improvement to the water quality of the Noyo River by removing the creosote-treated wood piles and replacing them with steel piles that would not result in the leaching of hazardous pollutants into the water. To ensure that the steel piles, or other structural elements of the proposed boat dock are not treated with a coating that could have potential adverse impacts to water quality and

biological productivity, staff recommends Special Condition No. 1 that limits the placement of epoxy or creosote- treated piles or floats in the waters of the Noyo River.

The proposed project requires review and approval by several other agencies including Department of Fish and Game (DFG), Army Corps of Engineers (Corps), as well as a lease from the Noyo Harbor District. The applicant has submitted evidence of review and approval by the DFG. To ensure that the applicant receives all other necessary approvals, staff recommends Special Condition Nos. 2 and 3 that require the applicant to submit to the Executive Director evidence of a Corps permit and a lease from the Noyo Harbor District, respectively.

As conditioned, staff believes the proposed project is consistent with the Chapter 3 policies of the Coastal Act and recommends approval of the project with the above-described special conditions.

**The Motion to adopt the Staff Recommendation of Approval with Conditions is found on page 3 below.**

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**STAFF NOTES:**

**1. Standard of Review**

The proposed project is located in the City of Fort Bragg within the Commission's area of retained permit jurisdiction. The City of Fort Bragg has a certified LCP, but the proposed project is within an area shown on State Lands Commission maps over which the state retains a public trust interest. Therefore, the standard of review that the Commission must apply to the project is the Chapter 3 policies of the Coastal Act.

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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. 1-06-045 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 THE 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 Attachment A.**

**III. SPECIAL CONDITIONS:**

**1. Structural Treatment Limitations**

The piles and floats placed in the waters of the Noyo River shall not be treated with epoxy or creosote. Other wood preservatives may only be utilized if specifically approved by the Department of Fish and Game for use in marine waters.

**2. Noyo Harbor District Lease**

**Within 90 days of Commission approval or such additional time as the Executive Director may grant for good cause,** the permittee shall provide to the Executive Director a copy of a lease issued by the Noyo Harbor District for use of the site consistent with the Tideland Grant, or evidence that no lease or permission is required. The applicant shall inform the Executive Director of any changes to the project required by the Noyo Harbor District. 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.

**3. Army Corps of Engineers Approval**

**Within 90 days of Commission approval or such additional time as the Executive Director may grant for good cause,** the permittee shall provide to the Executive Director a copy of a permit issued by U.S. Army Corps of Engineers, a letter of

permission, or evidence that no permit or permission is required. The applicant shall inform the Executive Director of any changes to the project required by the U.S. Army Corps of Engineers. 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.

#### **4. Permit Expiration and Condition Compliance**

Because 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.

### **IV. FINDINGS AND DECLARATIONS:**

The Commission hereby finds and declares:

#### **1. Site and Project Description**

The project site is located approximately ½ mile upstream from the Highway One Noyo River bridge, along the north bank of the Noyo River just below the Noyo River Lodge and directly across the river from the Noyo Harbor Mooring Basin, in the City of Fort Bragg, Mendocino County (see Exhibit Nos. 1 & 2).

The proposed project involves after-the-fact approval of the replacement of eight, 10-inch-diameter wood piles with twelve, 8-inch-diameter steel piles and the seasonal installation of a private floating dock comprised of five 4' x 20' wood floats moored end to end and attached to the piles (see Exhibit No. 3).

The applicant indicates that the date of the installation of the original wood piles at the project site is unknown, as the piles were in place when the applicant purchased the property many years ago. However, the applicant's agent indicates that based on his knowledge of the history of the area, the original piles were in place and used to moor boats for over forty years. The deteriorated and storm damaged wood piles were replaced with steel piles in the same general location, but closer to the bank, approximately two years ago. This replacement, undertaken without the benefit of a CDP, is the subject of the CDP application now before the Commission. The piles and floating dock are located adjacent to the river bank in a mudflat area void of eelgrass or other environmentally sensitive habitat. The piles are not visible from Highway One due to their distant location upstream and around a point of land. The piles are visible from the Noyo Harbor Mooring Basin and from the river itself.

## **2. Fill in Coastal Waters and Protection of the Marine Environment**

The Coastal Act defines fill as including “*earth or any other substance or material... placed in a submerged area.*” The proposed project involves after-the-fact replacement of eight, 10-inch-diameter wood piles with twelve, 8-inch diameter steel piles and a seasonal floating dock.

Several Coastal Act policies address protection of the marine environment from the impacts of placing fill in coastal waters and other wetlands. These policies include Sections 30230, 30231, and 30233. Coastal Act Sections 30230 and 30231 protect the biological productivity and quality of coastal waters, streams, and wetlands through, among other means, controlling runoff and maintaining natural vegetation. Section 30233 applies to any diking, filling, or dredging project of open coastal waters. Installation of piles and a floating dock within the Noyo River is a form of filling open coastal waters, wetlands, or an estuary.

Section 30230 of the Coastal Act states, in applicable part:

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

Section 30231 of the Coastal Act 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.*

Section 30233(a) of the Coastal Act provides as 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:*

...

*(3) 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. [Emphasis added]*

...

*(c) In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary...*

The above policies set forth a number of different limitations on what development projects may be allowed in coastal waters. For analysis purposes, the limitations can be grouped into four general categories or tests. These tests are:

- a. that the purpose of the filling, diking, or dredging is for one of the eight uses allowed under Section 30233;
- b. that feasible mitigation measures have been provided to minimize adverse environmental effects;
- c. that the project has no feasible less environmentally damaging alternative; and
- d. that the biological productivity and functional capacity of the habitat shall be maintained and enhanced where feasible.

**(a) Allowable Use for Fill in Wetlands**

The first test for a proposed project involving filling or dredging in coastal waters, wetlands, or estuaries is whether the fill or dredging is for one of the eight allowable uses under Section 30233(a). Subsection (a)(3) lists "...*new or expanded boating facilities*" among the allowable uses for fill and dredging in coastal waters.

The fill associated with the proposed project is for the replacement of eight wood piles with twelve steel piles and the attachment of a seasonal floating dock for use as a private boat mooring. The piles and floating dock are located along the river frontage of two undeveloped parcels owned by the applicant and provide boat access to these parcels. Structural fill associated with the project would be limited to the installation of steel piles driven into the muddy intertidal bottom of the Noyo River. The installation of 12, 8"-diameter steel piles, or approximately 4.2 square feet of pile fill, driven into the muddy intertidal bottom of the Noyo River to replace 8, 10"-diameter wood piles, or approximately 4.4 square feet of pile fill, represents a net decrease of approximately 0.2 square feet of pile fill over what existed prior to removal of the old wood piles. The floating portion of the dock is located within the riverine habitat and includes the installation of a total of 400 square feet of seasonal floating fill.

Therefore, the Commission finds that the fill associated with the proposed project is for an allowable use for filling and dredging of coastal waters and wetlands, as the fill is for a boat docking facility consistent with subsection (a)(3) of Coastal Act Section 30233.

(b) **Mitigation of Impacts to Biological Productivity and Water Quality**

The third test set forth by Section 30233 is whether feasible mitigation measures have been provided to minimize adverse environmental impacts. The project involves after-the-fact replacement of 8, 10-inch-diameter wood piles with 12, 8-inch-diameter steel piles to secure a seasonal floating dock within the Noyo River. Depending on the manner in which the proposed project is conducted, the project could have potential adverse impacts to (i) mudflat habitat, and (ii) water quality. The potential impacts and their mitigation are discussed in the following sections:

(i) **Mudflat Habitat**

Approximately 4.2 square feet of steel piles would be installed in the mudflat habitat of the Noyo River estuary to replace approximately 4.4 square feet of wood piles that have deteriorated and been damaged by storms over the years. Mudflat environments provide habitat to benthic invertebrates, which provide important prey for many fish and bird species. Common invertebrates in shallow mudflat areas include various species of polychaetes, bivalves, and gastropods. The community of organisms that inhabit the mudflat area directly beneath the proposed piles would be lost as a result of the installation of piles. However, as the extent of the mudflat area displaced by the piles would comprise a slight net decrease of approximately 0.2 square feet of fill within the extensive mudflat habitat within the Noyo River estuary and the new piles would provide hardscape habitat for marine invertebrates, the Commission finds that the impact to muddy intertidal habitat is not significant.

Therefore, as conditioned, the proposed project would not result in significant adverse impacts to mudflat habitat and no further mitigation is necessary.

(ii) **Water Quality**

The proposed project involves the installation of steel piles and wood floats in a submerged area of the Noyo River estuary. Potential adverse impacts to the water quality of the Noyo River could occur if hazardous materials or other pollutants were allowed to enter coastal waters.

The use of certain kinds of wood preservatives commonly used to treat piles such as creosote, can lead to adverse impacts to water quality and biological productivity. Contaminants in the wood preservative can potentially leach out of the piles and into the water column where they can be absorbed by fish and other aquatic organisms with potentially adverse consequences. The applicant proposes to replace eight creosote-treated wood piles with twelve steel piles. The applicant has not proposed that the steel

piles be treated with an epoxy or other type of exterior treatment. Additionally, the applicant has indicated that none of the wood floats that comprise the seasonal floating dock are constructed of creosote-treated materials. Therefore, the proposed project would result in an overall improvement to the water quality of the Noyo River by removing the creosote-treated wood piles and replacing them with steel piles that would eliminate the leaching of hazardous pollutants into the water. To ensure that the steel piles, or other structural elements of the proposed boat dock are not treated with a coating that could have potential adverse impacts to water quality and biological productivity, the Commission attaches Special Condition No. 1 that prohibits treatment of the piles and floats with either epoxy or creosote. In addition, other wood preservatives may only be utilized if specifically approved by the Department of Fish and Game for use in marine waters.

Therefore, as conditioned, the proposed project would not result in significant adverse impacts to the water quality or biological productivity of the Noyo River.

(c) **Alternatives**

The third test set forth by Section 30233 of the Coastal Act regarding fill in coastal waters is that the proposed fill project must have no feasible less environmentally damaging alternative. In this case, the Commission has considered various alternatives, and determined that there are no feasible less environmentally damaging alternatives to the project as conditioned. Alternatives that have been identified include: (1) the “no project” alternative, and (2) using fewer piles to minimize the amount of fill.

As explained below, each of these alternatives are infeasible and/or do not result in a project that is less environmentally damaging than the proposed project.

(1) **No Project Alternative**

The proposed project involves the repair of a seasonal floating boat dock facility that has existed at the site for over forty years by replacing wood piles with steel piles. Over time, the wood piles deteriorated and became partially dislodged and damaged from winter storms. The no project alternative would leave the wood piles in a state of disrepair which would create an adverse impact to the biological productivity and water quality of the Noyo River from deteriorated creosote-treated piles in the water, and would create a potential hazard to other boaters and recreationists on the river as the piles continue to deteriorate. The proposed project would improve the structural integrity of the boat mooring facility in the same location, and would remove a source of water pollution from the river. Therefore, the Commission finds that the no project alternative is not a feasible less environmentally damaging alternative to the proposed project.

(2) Installing Fewer Piles to Secure the Floating Dock

The project involves after-the-fact replacement of 8, 10-inch-diameter wood piles with 12, 8-inch-diameter steel piles within the Noyo River. One alternative to the proposed project would be to install fewer piles such that the project would result in less wetland fill. The applicant has indicated that the location and number of piles have been engineered and designed to provide the greatest level of structural integrity for the long-term use of the site for boat mooring. The steel piles installed to replace the deteriorated wood piles would be located in the same general location, but slightly closer to the river bank and would extend the same distance (100 feet) along the shoreline as the wood piles. However, unlike wood piles, the steel piles would ensure greater longevity of the structure by minimizing rot and susceptibility to storm damage. Therefore, although the proposed project involves a slight increase in the amount of structural fill, the steel piles will require less maintenance in the future which will avoid potential construction impacts associated with replacing wood piles as they fall into more frequent disrepair. Decreasing the number of supporting piles would compromise the integrity of the structure such that it would not withstand the dynamic elements of the estuarine environment.

The proposed project has been designed with the least number of piles necessary to minimize impacts to estuarine habitat while providing necessary structural support. Therefore, the Commission finds that decreasing the number of piles is not a feasible less environmentally damaging alternative to the proposed project.

(3) Installing a Smaller Floating Dock

The project involves the seasonal installation of a floating dock comprised of five, 4' x 20' wood floats. The floating dock results in 400 square feet of seasonal floating fill, but does not involve any structural fill that would permanently displace riverine habitat. One alternative to the proposed project would be to install fewer, smaller floats that would result in less seasonal floating fill.

The applicant has indicated that the four-foot width of the floats is the typical standard size for such structures and is the minimum width necessary for safety and stability of the dock. The proposed 100-foot length of the dock is designed to accommodate two 40-foot boats while allowing adequate area for safe maneuvering. The 400-square-foot floating dock is not any larger than the similar floats that have been tied to the original wood piles in the same general location for over forty years. Therefore, the proposed project would not result in any significant increase in the amount of seasonal floating structural fill over that which has historically occurred at the site.

The proposed project has been designed with the least number and minimum size of wood floats to create a safe and functional boat dock facility. Therefore, the Commission finds that decreasing the size and number of floats is not a feasible less environmentally damaging alternative to the proposed project.

**(d) Maintenance and Enhancement of Marine Habitat Values**

The fourth general limitation set by Sections 30231 and 30233 is that any proposed dredging or filling in coastal waters must maintain and enhance the biological productivity and functional capacity of the habitat, where feasible.

As discussed above in the section of this finding on mitigation, the conditions of the permit would ensure that the project will not have significant adverse impacts on mudflat habitat, or water quality and thus, would not adversely affect the biological productivity and functional capacity of coastal waters, wetlands, or estuarine habitat. The Commission finds that the project, as conditioned, would maintain the biological productivity and functional capacity of the habitat consistent with the requirements of Sections 30230, 30231 and 30233 of the Coastal Act.

**(e) Conclusion**

The Commission thus finds that the project is an allowable use, that there is no feasible less environmentally damaging alternative, that feasible mitigation is required for potential impacts associated with the filling of coastal waters, and that marine habitat values will be maintained or enhanced. Therefore, the Commission finds that the proposed development, as conditioned, is consistent with Sections 30230, 30231 and 30233 of the Coastal Act.

**3. Public Access**

Section 30212 of the Coastal Act requires that access from the nearest public roadway to the shoreline be provided in new development projects except where it is inconsistent with public safety, military security, or protection of fragile coastal resources, or adequate access exists nearby. Section 30211 requires that development not interfere with the public's right to access gained by use or legislative authorization. In applying Section 30211 and 30212, the Commission is also limited by the need to show that any denial of a permit application based on 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 proposed project involves the replacement of piles used to secure a private seasonal floating dock along the Noyo River. There are no public trails or other public roads that provide shoreline access within the vicinity of the project. Furthermore, the proposed boat dock repair project will not change the nature or intensity of use of the site, and thus will not create any new demand for public access or otherwise create any additional burdens on public access. The piles and floating boat dock would not interfere with kayak, canoe, or other boat traffic on the river, as the piles have been replaced in the same general vicinity, but even closer to the river bank and well out of the main channel.

Although the seasonal floating dock would not be made available for use by the general public, there are several public boating facilities in the immediate vicinity including one located ¼ mile upstream from the site, one located ¼ mile downstream from the site, and the Noyo Harbor Mooring Basin located directly across the river from the site.

Therefore, the Commission finds that the proposed project does not have any adverse effect on public access, and that the project as proposed is consistent with the requirements of Coastal Act Sections 30210, 30211, and 30212.

#### **4. Other Agency Approvals**

##### **(i) Noyo Harbor District**

The Noyo Harbor District received a legislative grant of tidelands along the Noyo River and therefore administers the tidelands with oversight from the State Lands Commission. The applicant submitted evidence of having held a lease from the Noyo Harbor District for use of the floating dock from 1992 to 1999. According to the Noyo Harbor District, a new lease must be obtained by the applicant for continued use of the site. The District indicated that they would renew the lease upon the applicant presenting evidence of a coastal development permit for the piles and floating dock. Therefore, to ensure that the applicant has the necessary authorization from the Noyo Harbor District, the Commission attaches Special Condition No. 2 that requires the applicant to submit within 90 days of Commission approval or such additional time as the Executive Director may grant for good cause, evidence of a current lease agreement from the Noyo Harbor District for use of the site consistent with the Tidelands Grant.

##### **(ii) Department of Fish and Game**

The project also requires a 1600 Lake or Streambed Alteration Agreement (Agreement) from the Department of Fish and Game (DFG). The applicant obtained a letter from DFG dated December 4, 2006 in response to the applicant's Notification of Lake or Streambed Alteration (Notification No. 1600-2006-0757-3) in which the DFG indicates that if the Department does not issue a draft Agreement or inform the applicant that an agreement is not required by January 30, 2007, the applicant may complete the project without an Agreement. In a subsequent letter dated February 23, 2007, DFG indicates that due to staffing constraints, the DFG was unable to meet the required date for submitting a Lake or Streambed Alteration Agreement to the applicant. As a result, the letter indicates that the applicant may complete the project described in the notification without an agreement. As the project approved by the Commission herein is the same project as described in the notification from the applicant to DFG, the Commission does not require the applicant to submit any further evidence of project review or approval by DFG.

(iii) Army Corps of Engineers

The project requires review and approval by the U.S. Army Corps of Engineers (Corps). Pursuant to the Federal Coastal Zone Management Act, any permit issued by a federal agency for activities that affect the coastal zone must be consistent with the coastal zone management program for that state. Under agreements between the Coastal Commission and the U.S. Army Corps of Engineers, the Corps will not issue a permit until the Coastal Commission approves a federal consistency certification for the project or approves a permit. The applicant has indicated that staff from the Corps did a site visit, but has not issued the necessary permit. Therefore, to ensure that the project ultimately approved by the Corps is the same as the project authorized herein, the Commission attaches Special Condition No. 3 that requires the applicant to demonstrate within 90 days of Commission approval or such additional time as the Executive Director may grant for good cause, that all necessary approvals for the proposed project have been obtained from the Corps.

**5. Violation**

Although construction has taken place prior to submission of the subject permit application, consideration of the application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Approval of this permit does not constitute a waiver of any legal action with regard to the alleged violations nor does it constitute an admission as to the legality of any development undertaken on the subject sites without a coastal development permit.

**6. California Environmental Quality Act**

Section 13906 of the California Code of Regulation requires Coastal Commission approval of a coastal development permit application to be supported by findings showing that the application, as modified by any conditions of approval, is consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Public Resources Code 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 significantly lessen any significant effect that the activity may have on the environment.

The Commission incorporates its findings on conformity with Coastal Act policies at this point as if set forth in full. These 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 herein in the findings addressing the consistency of the proposed project with the Coastal Act, the proposed project has been conditioned in order to be found consistent with the policies of the Coastal Act. As specifically discussed in these above findings which are hereby incorporated by reference, mitigation measures which will minimize all adverse environmental impact have been required. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which

would substantially lessen any significant adverse impact that the activity would 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.

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**EXHIBITS:**

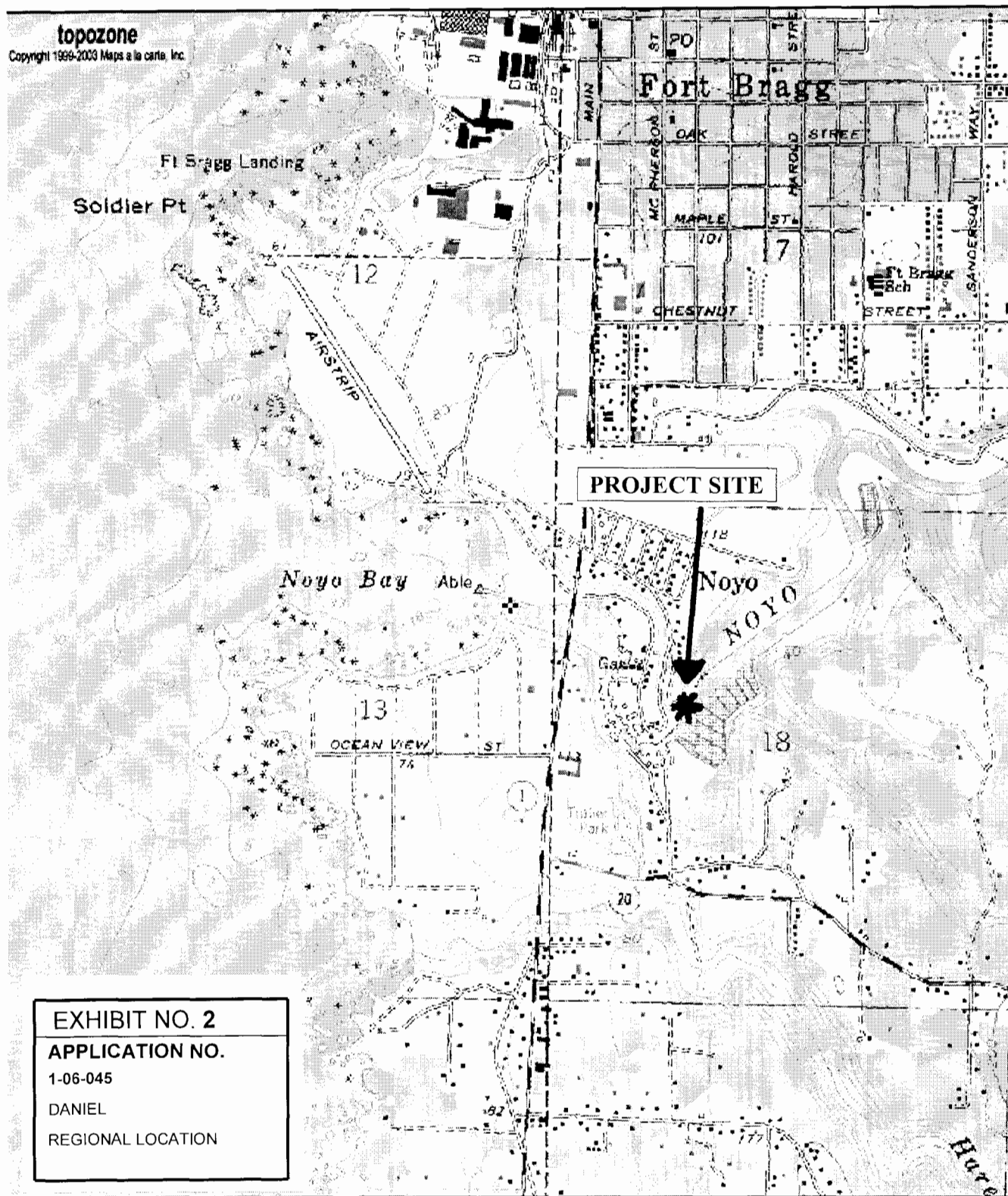
1. Regional Location Map
2. Vicinity Map
3. Project Plans

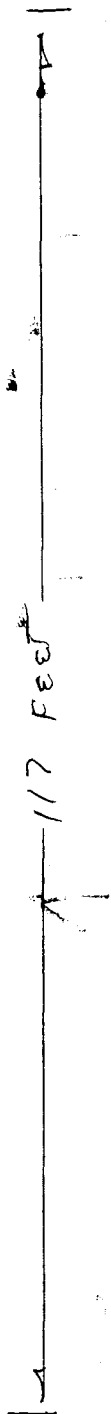
**ATTACHMENT A**

Standard Conditions:

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Interpretation. Any questions of intent of interpretation of any condition will be resolved by the Executive Director or 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.
4. 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.







SCALE

$\frac{1}{16} = 1 \text{ FOOT}$

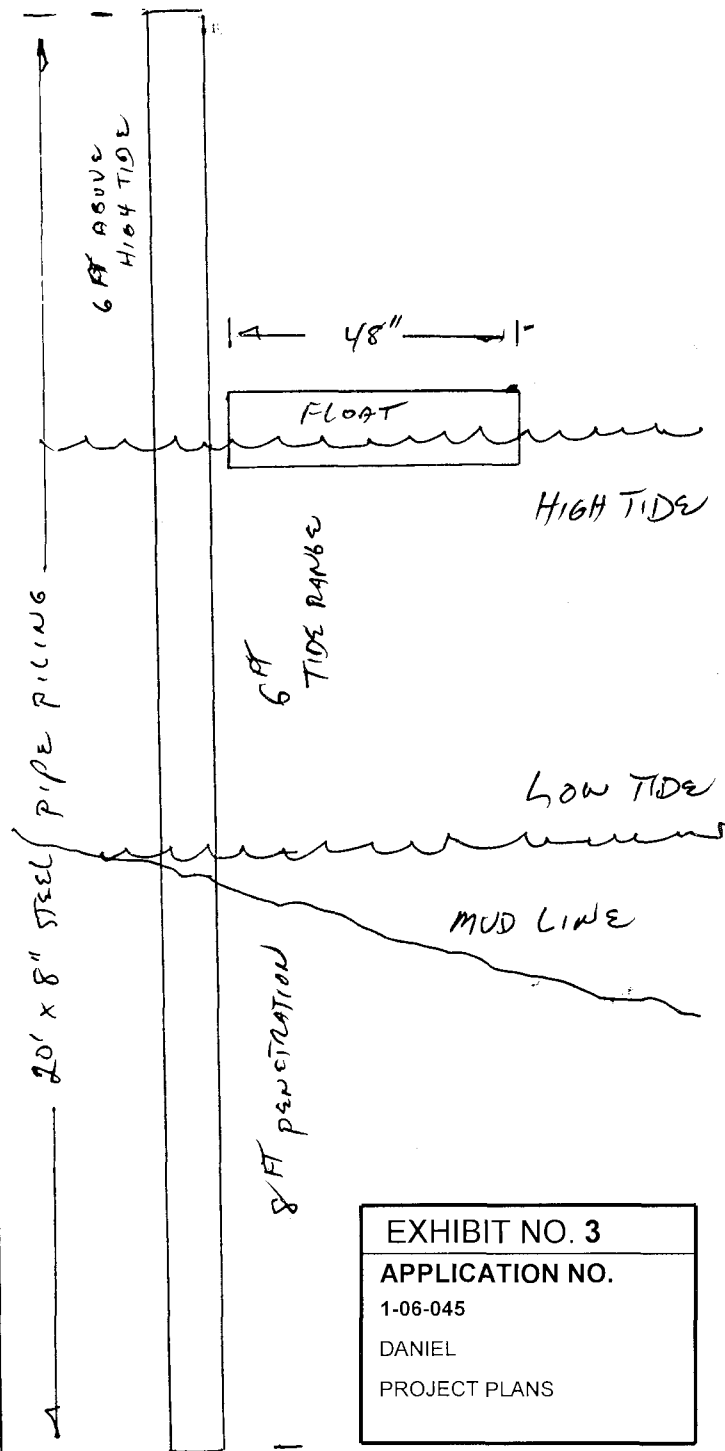
RIVER BANK

PILING 10 FT APART - TOTAL 110 FT

FLOATS

5 EACH FLOATS 4' x 20' WOOD CONSTRUCTION

PROPERTY LINE



TYPICAL  
PILING AND  
FLOAT

SCALE

$\frac{3}{8} = 12''$