MINUTE ITEM
This Calendar Item No. C18
was approved as Minute Item
No. 18 by the State Lands
Commission by a vote of 2
to 0 at its 12/21/94
meeting.

CALENDAR ITEM
C18

A 1

S 2

12/21/94
PRC 5414
J. Ludlow

SECOND AMENDMENT TO
GENERAL LEASE - COMMERCIAL USE PRC 5414.1

APPLICANT:
Art Narvaez and Johnnie E. Narvaez
P.O. Box 218
Albion, California 95410

AREA, TYPE LAND AND LOCATION:
Tide and submerged lands in the Albion River near Albion, Mendocino County.

LAND USE:
Proposed widening and repair of an existing boat ramp, construction of a new 300' X 4.5' floating dock connected to the shore by a new 60'X 20' pier, construction of a 3,500 lineal foot retaining wall for shoreline stabilization and removal of 71 cubic yards of material from the shoreline to create a new tidal mudflat and placement of all fill (71 cubic yards) behind the retaining wall.

TERMS OF ORIGINAL LEASE:
Initial period:
30 years beginning August 1, 1977 and ending July 31, 2007.

Consideration:
$927 per annum; five year rent review.

Liability insurance:
$300,000 combined single limit coverage.

Bond:
$2,000.

AMENDED LEASE TERMS:
Initial period:
30 years beginning August 1, 1977.

Consideration:
$1584 per annum; five year rent review.

Insurance:
$1,000,000 combined single limit coverage.

BASIS FOR CONSIDERATION:
Pursuant to 2 Cal. Code Regs. 2003.

APPLICANT STATUS:
Applicant is owner of a portion of the upland and permittee of a portion of the upland.

PREREQUISITE CONDITIONS, FEES AND EXPENSES:
Filing fee and processing costs have been received.

STATUTORY AND OTHER REFERENCES:
A. P.R.C.: Div. 6, Parts 1 and 2: Div. 13.

B. Cal Code Regs.: Title 3, Div. 3: Title 14, Div. 6.

AB 884:
06/21/95

OTHER PERTINENT INFORMATION:
1. On August 9, 1994, the California Coastal Commission granted permit #1-93-50 for this project under its certified regulatory program. (14 Cal. Code Regs. 15251 (c).

   Staff has reviewed the document and determined that the conditions, as specified in 14 Cal. Code Regs. 15253 (b), have been met for the Commission to use the environmental analysis document certified by the Coastal Commission as a Negative Declaration substitute in order to comply with the requirements of CEQA.

2. This amendment authorizes (1) the widening and repair of an existing boat ramp; (2) construction of a new 300'x 4.5' floating dock and 60'x 20' pier; (3) placement of approximately 3,500 lineal feet of retaining wall for shoreline stabilization; (4) removal of approximately 71 cubic yards of material from the shoreline to create a new tidal mudflat and placement of all fill behind the retaining wall; (5) increases the lease area to 1.103 acres; and (6) increases the insurance to $1,000,000 combined single limit coverage.

3. This activity involves lands identified as possessing significant environmental values pursuant to P.R.C.' 6370, et seq. Based upon the staff's consultation with the persons nominating such lands and through the CEQA process, it is the staff's opinion that the project, as proposed, is consistent with its use classifications.

EXHIBITS:

A. Site and Location Map

B. Coastal Commission Permit

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT AN ENVIRONMENTAL ANALYSIS DOCUMENT (COASTAL COMMISSION PERMIT #1-93-50, WAS CERTIFIED FOR THIS PROJECT BY THE CALIFORNIA COASTAL COMMISSION UNDER ITS CERTIFIED PROGRAM (14 CAL. CODE REGS. 15251 (c), THAT THE STATE LANDS COMMISSION HAS REVIEWED SUCH DOCUMENT AND THAT THE CONDITIONS AS SPECIFIED IN (14 CAL. CODE REGS. 15253 (b) HAVE BEEN MET.

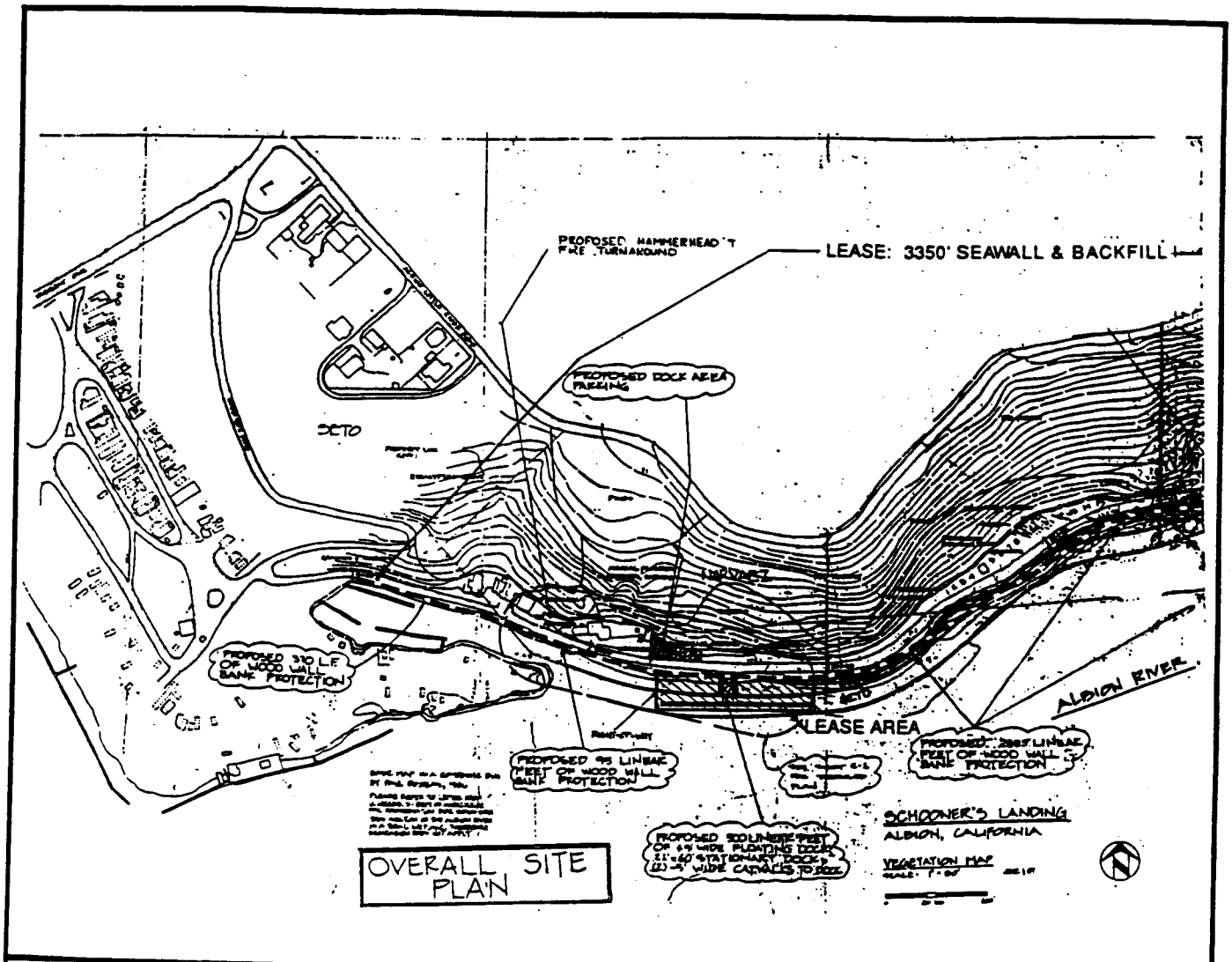
2. FIND THAT THIS ACTIVITY IS CONSISTENT WITH THE USE CLASSIFICATION DESIGNATED FOR THE LAND PURSUANT TO P.R.C. 6370, ET SEQ.

3. AUTHORIZE THE 2ND AMENDMENT OF LEASE PRC 5414.1 ISSUED TO ART NARVAEZ AND JOHNNIE E. NARVAEZ FOR (1) THE CONSTRUCTION ON A FLOATING DOCK AND FIXED PIER; (2) REPAIR AND WIDENING OF AN EXISTING BOAT RAMP; (3) CONSTRUCTION OF A 3500 FOOT RETAINING WALL FOR BANK STABILIZATION; (4) THE REMOVAL OF APPROXIMATELY 71 CUBIC YARDS OF MATERIAL FROM THE SHORELINE TO CREATE A NEW TIDAL MUDFLAT AND PLACEMENT OF ALL FILL (71 CUBIC YARDS) BEHIND THE RETAINING WALL; (5) INCREASE THE LEASE AREA TO 1.103 ACRES AND (6) INCREASE THE INSURANCE REQUIREMENT TO $1,000,000.

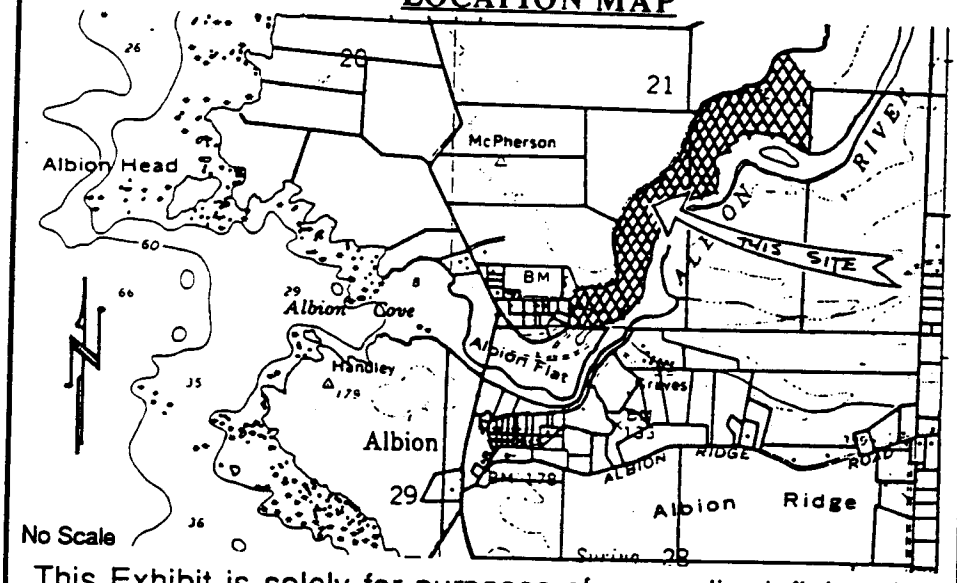
4. SUCH PERMITTED ACTIVITY IS CONTINGENT UPON THE APPLICANT'S COMPLIANCE WITH APPLICABLE PERMITS, RECOMMENDATIONS, OR LIMITATIONS ISSUED BY FEDERAL, STATE, AND LOCAL GOVERNMENT AGENCIES.

5. FIND THAT THIS AMENDMENT SHALL BE EFFECTIVE ON JANUARY 1, 1995.

6. FIND THAT ALL OTHER TERMS AND CONDITIONS OF LEASE PRC 5414.1 REMAIN IN FULL FORCE AND EFFECT.



LOCATION MAP



This Exhibit is solely for purposes of generally defining the lease premises, and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.

EXHIBIT "A"
PRC 5414
Schooner's Landing
Albion River
MENDOCINO COUNTY
Sheet 1 of 5 Sheets

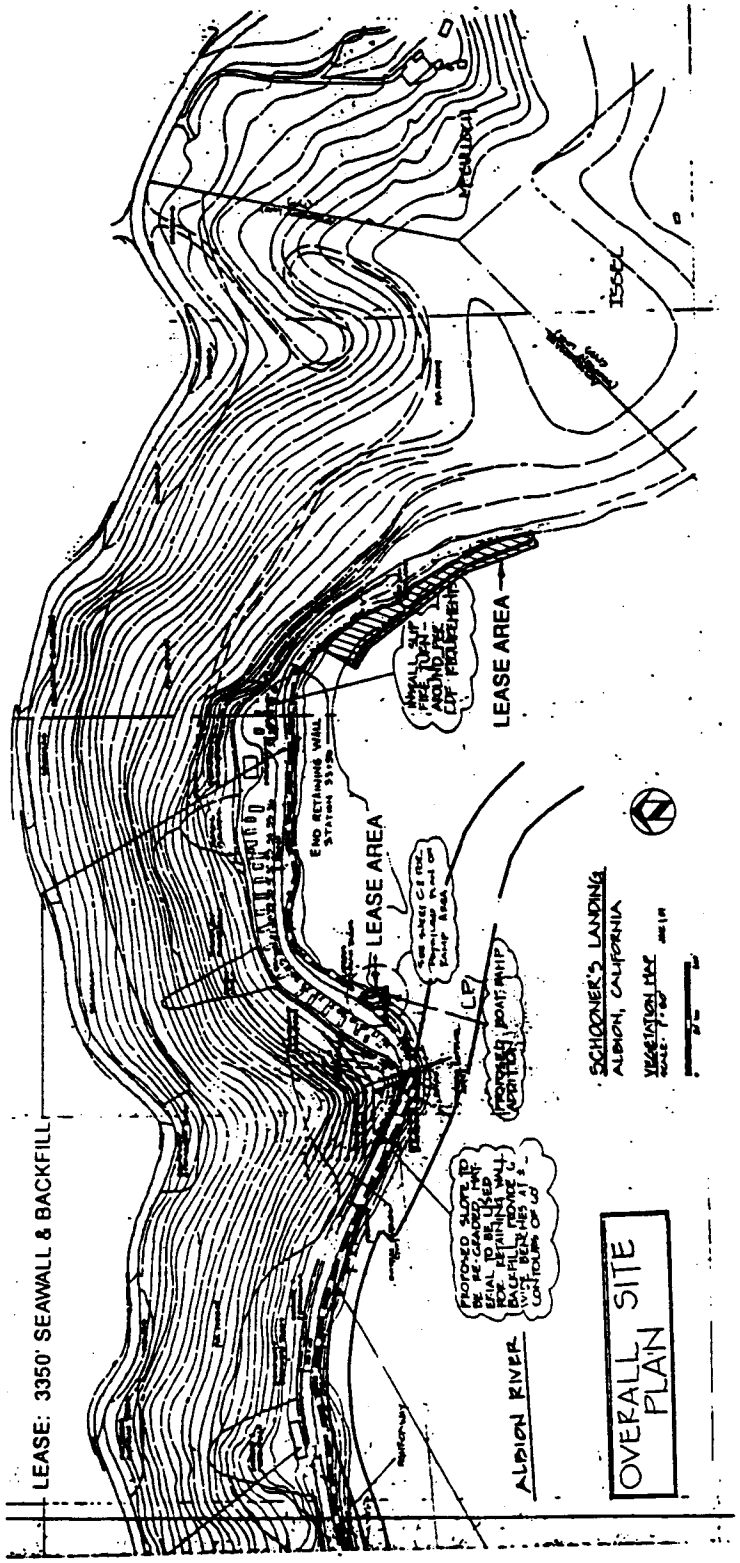


EXHIBIT "A"

PRC 5414

Schooner's Landing

Albion River

MENDOCINO COUNTY

Sheet 2 of 5 Sheets

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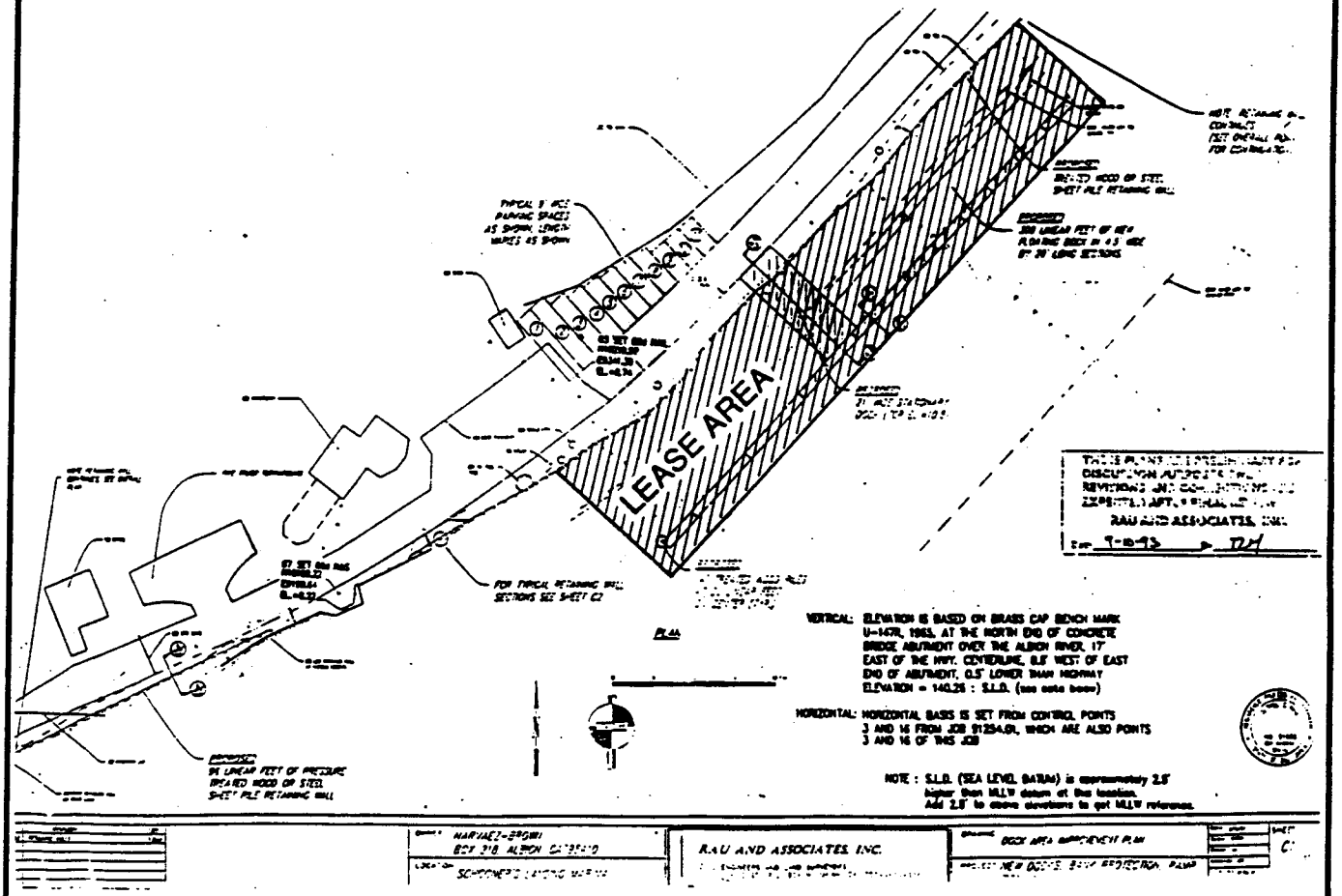

EXHIBIT "A"

PRC 5414

Schooner's Landing

Albion River

MENDOCINO COUNTY

Sheet 3 of 5 Sheets

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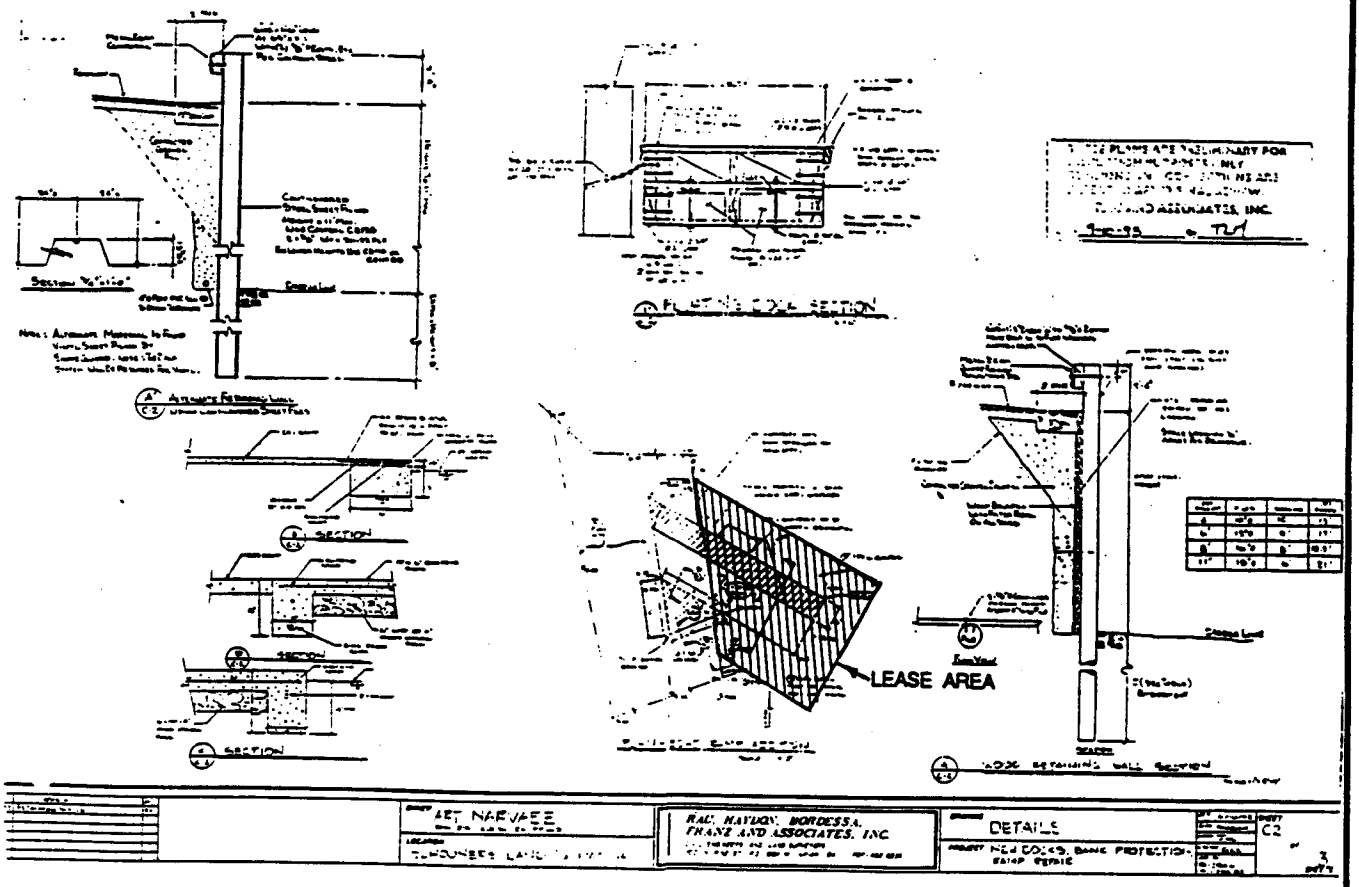

NO SCALE

EXHIBIT "A"

PRC 5414

Schooner's Landing

Albion River

MENDOCINO COUNTY

Sheet 4 of 5 Sheets

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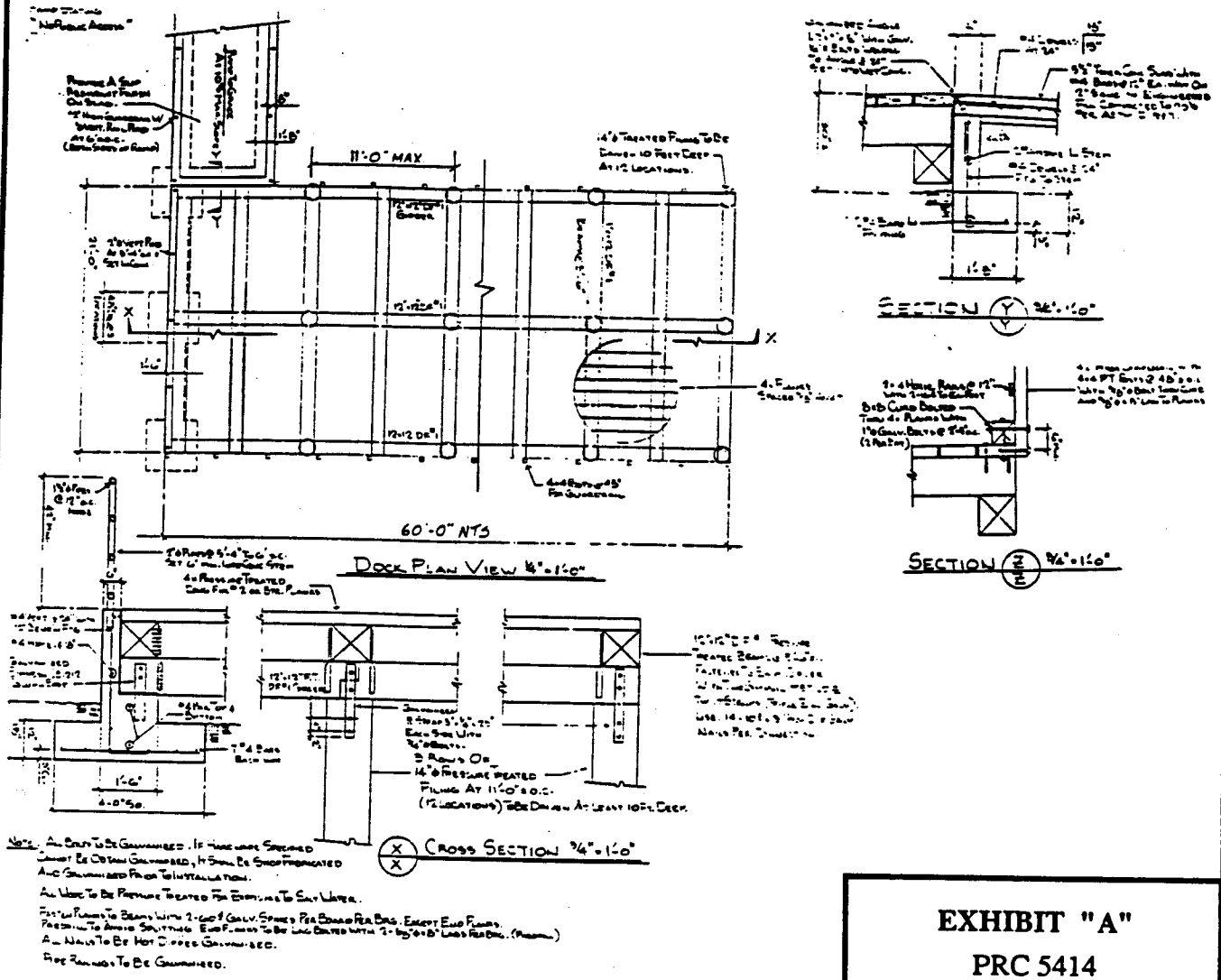

No Scale

EXHIBIT "A"
PRC 5414
Schooner's Landing
Albion River
MENDOCINO COUNTY
Sheet 5 of 5 Sheets

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STATE OF CALIFORNIA—THE RESOURCES AGENCY

PETE WILSON, Governor

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

SFS

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Filed:	Dec. 2, 1993
49th Day:	Waived
270th Day:	August 29, 1994
Staff:	Robert Merrill
Hearing Date:	August 9, 1994
Staff Report:	July 29, 1994
Commission Action:	

REVISED STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: **1-93-50**

APPLICANT: **ART NARVAEZ**

AGENT: Terry McGillivray, Rau and Associates, Inc.

PROJECT LOCATION: Along the north side of the Albion River at Schooner's Landing, approximately three-fourths of a mile east of Highway One, at 33621 Albion River North Side Road, Albion, Mendocino County. (APNs 123-060-10, 14)

PROJECT DESCRIPTION: Improve an existing private campground and marina facility by: (1) constructing approximately 3,500 lineal feet of shoreline stabilization, (2) widening and repairing an existing boat ramp, (3) installing a 300-foot-long by 4.5-foot-wide floating dock connected to shore by a 60-foot-long by 21-foot-wide fixed pier, (4) widening the existing entrance road to 18 feet in width and providing three fire truck turnarounds and 11 new parking spaces, and (5) removing approximately 71 cubic yards of material along the river side of the proposed shoreline stabilization improvements.

LOCAL APPROVALS RECEIVED: Mendocino County Use Permit #UM 8-87/92 and Negative Declaration

OTHER APPROVALS RECEIVED: California Regional Water Quality Control Board "Waiver of waste discharge requirements" and Section 401 Certification

OTHER APPROVALS REQUIRED: (1) State Lands Commission lease amendment; (2) U.S. Army Corps of Engineers Section 404 Permit; (3) California Department of Fish and Game 1601 streambed alteration agreement; and (4) California Department of Forestry "Final Clearance" and "Approval For Occupancy".

SUBSTANTIVE FILE DOCUMENTS: Mendocino County Local Coastal Program

STAFF NOTE:

This application was originally scheduled for Commission consideration at the January 11, 1994, Commission meeting in Santa Barbara. After preparation and mailing of the staff report, staff received correspondence from the owners of a portion of the project site objecting to the project on the grounds that the applicant did not have sufficient property interests to carry out the portion of the project on their property and had not sought the fee owners' permission. Staff brought the correspondence to the attention of the applicant, and although the applicant did not agree with the positions stated by the fee owners, the applicant agreed to postpone the public hearing pending resolution of the matter and waive and extend the Commission's deadlines for opening the public hearing and acting on the project.

Since that time, the Commission has requested and received information from both the applicant and the fee owners explaining the basis of each party's claim, and analyzing the merits of the other party's claim. Although the applicant has presented persuasive arguments as to how he has sufficient property rights to carry out the project, the issue still has not been fully resolved. The Commission's deadline for action on the project is August 29, 1994. Thus, the Commission must act on the project at the August 9, 1994 Commission meeting. Section 30601.5 of the Coastal Act places the burden of proof on the applicant to demonstrate that the applicant has the legal right to use the property for the purpose for which it is proposed. Therefore, to keep the property dispute from preventing the Commission from acting on the project by its required deadline, the staff recommends approval of the project with a condition (Special Condition No. 1) requiring the applicant to provide written evidence that either the fee owner has granted permission to the applicant or that a court judgement has been issued that affirms the right of the applicant to develop the disputed area as proposed by the applicant .

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby grants a permit, subject to the conditions below, for the proposed development on the grounds that the development, as conditioned, will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will be in conformity with the provisions of the Mendocino County Local Coastal Program, is between the sea and the first public road nearest the shoreline and is in conformance with the public access and public recreation policies of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. STANDARD CONDITIONS: See attached.

III. SPECIAL CONDITIONS:

1. Evidence of legal ability to use property.

PRIOR TO THE ISSUANCE of a coastal development permit, and subject to the review and approval of the Executive Director, the applicant shall provide written evidence that the fee interest owner of all portions of the subject site has given permission for the land to be developed as conditioned herein or that the applicant has the legal entitlement to use all portions of the property as conditioned herein.

2. State Lands Commission Review.

PRIOR TO ISSUANCE OF THE PERMIT, the applicant shall submit to the Executive Director written evidence that all approvals required by the State Lands Commission for the development, including an amended lease, have been obtained.

3. Dept. of Fish and Game Streambed Alteration Agreement.

PRIOR TO ISSUANCE OF THE PERMIT, the applicant shall submit to the Executive Director a copy of an approved streambed alteration agreement from the California Department of Fish and Game.

4. U.S. Army Corps of Engineers Review.

PRIOR TO THE COMMENCEMENT OF CONSTRUCTION, the applicant shall submit to the Executive Director a copy of a U.S. Army Corps of Engineers permit or letter of permission for the project authorized herein.

5. Limits of Construction Season.

All construction activities shall be performed only during the period of the year between between April 15 and October 15 to minimize erosion and sedimentation. In addition, all dock construction, widening and repair of the boat launching ramp, and all work on the portions of the seawall and road that will occur riverward of the mean high water line is further restricted to occur only after June 15 and October 15 to minimize adverse impacts on migratory fish.

6. Positioning of Seawall.

The proposed seawall shall be positioned along the shoreline embankment in the locations shown in the applicant's submittal dated December 2, 1993 and as shown in Exhibits 4 and 5 of the staff report. As depicted, the seawall will be located no further riverward than the existing Mean High Water line except at segments 1 and 6 of the proposed wall where the wall must be located further riverward to allow for widening of the entrance road to meet California Department of Forestry imposed fire truck access standards.

7. Compaction of Exposed Soil.

To reduce sedimentation of the river, all excavation and fill work to be performed below mean high water shall be performed only in the dry at lower stages of the tide. At any location where such work will not be completed before the next rise in the tide, the applicant shall recompact the disturbed soil using a Vibraplate compactor or similar piece of equipment prior to the area being retouched by the tides.

8. Fill Removal.

The applicant shall perform all of the 71 cubic yards of fill removal work proposed in the applicant's submittal dated December 2, 1993 and as shown in Exhibits 4 and 5 of the staff report prior to completion of the project.

9. Protection of Eelgrass

All construction shall be carried out in a manner that does not disturb the eelgrass in areas near proposed construction. Special attention shall be paid to the boat launch ramp and the proposed dock area where eelgrass is in close proximity to proposed development. All dock construction work, including pile driving, shall be performed from a shallow draft barge at stages of the tide above +2 feet MLLW. The barge shall be moved and kept away from all eelgrass beds during lower stages of the tide. No construction equipment, stockpiles of material, or any other materials or debris whatsoever shall be allowed to enter into any eelgrass areas.

10. Hazardous Materials

If hazardous materials are discovered within the existing shoreline embankment or elsewhere within the project site during construction authorized by this permit, all work shall be suspended. The applicant shall then have a qualified consultant inspect the project site, determine the nature of the materials discovered, and develop appropriate mitigation measures.

Should it be determined that mitigation measures are necessary, the applicant shall apply to the Commission for an amendment to permit 1-93-50, requesting that the permit be amended to include the mitigation plan proposed by the consultant. The plan shall provide for cleanup, monitoring, evaluation, protection, and mitigation on the project site. Should the consultant determine that no mitigation measures are necessary, then work on the project may be resumed.

11. Disposal of Construction Debris.

All construction debris shall be removed from the site upon completion of the project. Placement of any surplus material or debris in the coastal zone at a location other than in a licensed landfill will require a coastal development permit.

IV. Findings and Declarations.

The Commission hereby finds and declares as follows:

1. Site Description.

Schooner's Landing is located along the north side of the Albion River off of Albion River North Side Road, approximately three-fourths of a mile east of Highway One (see Exhibits 1 and 2). The site is not readily visible from the highway. Schooner's Landing is a private campground and marina facility, developed with 41 camp sites (25 with full hookup, 16 tent only), two bath houses, five septic fields, nine wells, two permanent residences, an entrance road, and boat launching facilities including a narrow one lane boat ramp and a 400-foot-long wooden floating dock.

In the vicinity of the project site, the Albion river cuts through a deep canyon with steeply sloped walls. The campground facility is located on a narrow man-made terrace along the north side of the river, created many years ago through a combination of cutting into the hillside and filling portions of the river. The shoreline edge of the terrace has been subject to a great deal of erosion, partly through tidal action but largely from the effects of boat wake. The erosion has contributed to sedimentation of the river and has adversely affected fisheries.

The canyon walls are heavily forested. However, most of the terrace is only minimally covered with vegetation, consisting mostly of a North Coast Scrub community. The depauperate remnants of a riparian community exists along the bank of the river.

In this location, the Albion River is a tidal estuary. The estuary provides important habitat for a variety of fresh water and marine species. The estuary supports various fisheries, including viable populations of coho and Chinook salmon, steelhead, and several non-game fish species. The estuary also supports a vigorous Eel Grass community that extends in patches along both sides of the river with the center channel remaining free of eelgrass. Eel grass beds provide valuable habitat for numerous species of wildlife including bottom dwelling organisms that hide within the foliage, numerous small organisms that live on eelgrass blades, and fish that use the beds for rearing, resting, and feeding.

No rare and endangered plant species have been identified anywhere at the site.

The project site is located on historic and existing tidelands and is thus totally within the Commission's retained jurisdictional area.

2. Project Description.

The applicant proposes to construct a variety of improvements at the campground/marina facility, including shoreline stabilization work, various

boat launching improvements, and shore-side parking and roadway improvements (see Exhibits 3-10).

The principal development proposed is the construction of approximately 3,500 lineal feet of sea wall to prevent erosion along the north bank of the Albion River which threatens the existing road (see Exhibits 3-7). The seawall would be constructed by driving either steel or vinyl sheet piling and back filling earthen material behind. If obstacles that prevent driving sheet piling are encountered during construction, the applicant would use an alternative wood wall design wherever necessary. Along most of the shoreline, the sheet piling would be driven at or just above the the mean high water line. Along two stretches of shoreline, the sheet piling would be driven out into the river from the shoreline a small distance to accommodate road widening mandated by the California Department of Forestry and Fire Protection to provide better access for fire fighting equipment. Approximately 71 cubic yards of river fill would be required in these areas. To compensate for the adverse impacts of this fill, the applicant proposes to remove 71 cubic yards of existing bank material that lies riverward of the proposed wall. to generate new [illegible] removed from below high water line

Included among the proposed boat launching improvements is a new dock (see Exhibits 3, 8, and 9). The dock would consist of a 300-foot-long by 4.5-foot-wide float connected to shore by a 60-foot-long by 21-foot-wide fixed pier. In addition, the applicant proposes to widen and repair an existing 10-foot-wide one-lane concrete boat ramp (see Exhibit 10). Along its upstream side, the ramp would be widened by six feet. The ramp would also be expanded by approximately 85 square feet into the corner formed by the ramp and the shoreline on the downstream side of the ramp to provide a better turning radius for boat trailers.

The proposed shore-side improvements consist of widening the existing entrance road to 18 feet in width and providing three fire truck turnarounds and 11 new parking spaces. The road widening and turnarounds are required to meet California Department of Forestry and Fire Protection standards for fire truck access.

3. <u>Legal Entitlement to Use the Property for The Proposed Development</u>.

Section 30601.5 of the Coastal Act states:

> Where the applicant for a coastal development permit is not the owner of a fee interest in the property on which a proposed development is to be located, but can demonstrate a legal right, interest, or other entitlement to use the property for the proposed development, the Commission shall not require the holder or owner of any superior interest in the property to join the applicant as co-applicant. All holders or owners of any other interests of record in the affected property shall be notified in writing of the permit application and invited to join as co-applicant. In addition, prior to the issuance of a coastal development permit, the applicant shall demonstrate the authority to comply with all conditions of approval.

Thus Section 30601.5 of the Coastal Act provides that if an applicant is not the owner of a fee interest in property, the applicant must demonstrate a legal right, interest, or entitlement to use the property in the manner proposed. Therefore, if there are any questions with regard to ownership of the property, the applicant is required to provide evidence that they have the legal right to use the property for the purpose for which it is proposed.

The applicant has submitted a right of way grant given to their predecessor in title which provides their predecessor in title with the right "to construct, maintain, and operate all means of communication and transportation of persons and property ..." (See Exhibit No. 13).

According to the applicant, this easement which ran to their land and burdened the fee owner's property includes a portion of a road along the edge of the Albion River which is subject to erosion due to the river waters working on the bank. The approximately 2,500-foot-long portion of the proposed retaining wall which is located within the easement area is seen by the applicant as necessary to maintain the integrity of the road and "is reasonable required to make the use of the easement safe and convenient." (See Exhibit 14 - Brigham letters). The applicant also seeks to build a new boating facility adjacent the north bank of the Albion River Channel northeast of the boating facilities owned and operated by the applicant's neighbor, the underlying fee owner of the subject right of way. The applicant does not identify if this portion of the proposed development is within or consistent with the subject easement.

The applicant's neighbor, Mr. Seto, the underlying fee owner of the subject right of way claims that some portions of the subject easement were extinguished almost immediately after they were created because those portions had been reconveyed back to the underlying fee owner. Mr. Seto, the underlying fee owner also claims that the proposed protective seawall may not be necessary for maintenance or preservation of the retained right of way privileges. Lastly, the underlying fee owner claims that the applicant has no right to access the river channel perpendicularly across that section of the strip of land along the north bank of the Albion River. (See Exhibit 15 - Newhouse letters).

Consistent with Section 30601.5 of the Coastal Act, staff solicited comment about the adequacy of the applicant's right of way property interests from both the applicant and the underlying fee owner. Since neither the applicant or the underlying fee owner have reached agreement on the extent and nature of the easement interests retained by the applicant, Special Condition No. 1 has been imposed to ensure that no development proceeds unless the applicant satisfies his burden to establish his legal ability to develop the site as conditioned herein or receives permission from the owner to develop the site as conditioned herein.

Both the underlying fee owner and the applicant have indicated their willingness to proceed if permission is granted from the owner. (See Exhibit 16). This permission would obviate any need ~~to finally determine the~~

extent and nature of the easement interests retained by the applicant. In addition, if permission is not obtained by the applicant for all portions of the proposed development involving the fee owner's land, the applicant is free to seek a permit amendment to delete those portions of the proposed development, or in the case of the proposed dock, relocate the dock to a portion of the project site that is not in dispute.

4. Fill in Coastal Waters and Wetlands

The Coastal Act defines fill as including "earth or any other substance or material...placed in a submerged area." The proposed project includes placing fill in coastal waters, as portions of the proposed bank stabilization, boat ramp expansion, and new dock will extend below the ordinary high water line. The total volume of fill proposed includes approximately 71 cubic yards of structural and earthen fill for the proposed seawall, approximately five cubic yard of concrete bottom fill to expand the boat ramp, and approximately piling for the boat dock. In addition, the float for the new dock will cover approximately 1,350 square feet of river surface area.

Several sections of the Coastal Act address the dredging of coastal waters and the protection of environmentally sensitive habitat. Section 30231 of the Coastal Act provides as follows, in applicable part:

> The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes...shall be maintained and, where feasible, restored...

Section 30233 of the Coastal Act provides as follows, in applicable part:

> (a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following [eight purposes, including...]
>
> (4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities, and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities...

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

a. that the purpose of the project is limited to one of eight uses.

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

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

d. that the biological productivity and functional capacity of the habitat shall be maintained and enhanced where feasible.

A. Permissible Use for Fill

The first general limitation set forth by the above referenced Chapter 3 policies is that any proposed fill can only be allowed for certain limited purposes. Under Section 30233(a), fill in coastal waters may only be performed for any of eight different uses, including under subsection (4), "in open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities, and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities..."

The proposed project satisfies the first test as the proposed fill is for "expanded boating facilities." A primary objective of the project is to preserve the existing boating facilities and access to them from dangers due to bank erosion. In addition, the applicant plans to expand the dock space and boat launching ramp, boating facilities that currently exist. Therefore, the Commission finds that the purpose of the fill is consistent with subsection (4) of Section 30233(a).

B. No Feasible Less Environmentally Damaging Alternatives.

A second general limitation set forth by the above referenced Chapter 3 policies is that any proposed fill project must have no less environmentally damaging feasible alternative.

It appears that there are no other feasible less environmentally damaging alternatives to the proposed bank stabilization project, the boat ramp, or the expanded boating facilities.

As noted, the vast majority of the fill proposed for the project (71 cubic yards) is for the proposed bank stabilization work. The applicant identified four possible alternatives to the proposed bank stabilization in information submitted with the application (see Exhibit 11). The four applicant identified alternatives are as follows:

Alternative 1: Seawall at Toe of Bank. This alternative would involve constructing the seawall at the base (toe) of the existing river bank. The alternative would stop current bank erosion as well as stabilize and allow for widening of the roadway. However, it would require a considerable amount of back fill to be placed behind the wall. In total, this alternative would require approximately 500 cy of fill material to be placed in coastal waters. As compared to the 71 cubic yards of fill proposed under the current proposal, this alternative is not less environmentally damaging.

Alternative 2: Seawall Located in Upland Areas Only. This alternative would require the use of sheet piling driven into the river bank at the top (head) of the bank or at locations further inland. It would require placing no fill as the sheet piles would be driven vertically into the ground inland of the mean high water line. Eventually, continued erosion of the river bank would expose the sheet piling. Although this alternative would result in no fill for bank stabilization, the alternative has since proven to be infeasible because of the need to meet certain safety standards required by the California Department of Forestry and Fire Protection (CDF). The entrance road to the Schooner's Landing is the only vehicle access into and out of the approximately two-thirds of a mile long project site, as the adjoining steep canyon wall and the narrow terrace upon which Schooner's Landing is developed preclude locating any other access roads into the site. To allow for fire-fighting capability, it is essential that the road be wide enough to accommodate fire trucks. CDF standards call for an 18-foot-wide roadway in this case. In some locations, positioning the seawall at the top of the bank or in any location out of the river would preclude widening the road the necessary amount to meet CDF standards.

Alternative 3: Rip rap. This alternative involves excavating the bank back to a 2:1 slope and placing 1 ton rip rap boulders to stabilize the river bank. This alternative would immediately stop shoreline erosion, however it would not provide for road widening where necessary. It would also require placement of an amount of fill similar to alternative 1 (approximately 500 cubic yards), and thus would not be less environmentally damaging than the current proposal.

Alternative 4: The no project alternative. This alternative would permit current bank erosion to continue, further contributing to the siltation and channelization problem in the Albion River. It would also prevent the widening of the road where necessary to meet CDF standards. The no-project alternative is unacceptable because without bank stabilization, erosion would eventually undermine the roadway and the dock adjacent to it, causing their collapse, and the loss of access to this site.

No other alternatives have been identified that would be feasible and less environmentally damaging. Therefore, the Commission finds that the proposed method of bank stabilization involves the least environmentally damaging feasible alternative as required by Section 30233(a).

With regards to the widening and repair of the boat launch ramp, the only apparent alternatives are the no project alternative or replacing the boat launch ramp at another location. Neither of these alternatives are feasible or less environmentally damaging than the proposed project. The no project alternative is unacceptable because the existing condition of the ramp represents a safety hazard. The applicant has noted that in the past, some boats being launched have slipped off of the side of the ramp because of its narrow width and difficult turning access. Replacing the ramp elsewhere along the shoreline of Schooner's Landing would require far more than the

approximately five cubic yards of fill involved in the applicant's proposal as an entirely new ramp would have to be constructed. Thus, replacing the ramp elsewhere is not less environmentally damaging than the proposed project.

With regard to the piling fill required for the new dock, there are no apparent alternatives that would be less environmentally damaging. The 4.5-foot width of the float, the 21-foot width of the fixed pier deck, and the number of new piles to be driven do not appear to be excessive in comparison with typical boat docks. In addition, by using pile supported fill as opposed to placing earthen fill to create a solid wharf structure, the project has minimized the amount of fill required and resulting adverse environmental impacts. The no project alternative would not accomplish the project objective of providing more mooring space for recreational boating, a priority use under the Coastal Act.

In conclusion, the Commission finds that there are no feasible less environmentally damaging alternatives to the various components of the fill required for the proposed project.

C. Mitigation for Adverse Impacts.

A third general limitation set forth by Sections 30231 and 30233(a) is that adequate mitigation for the adverse impacts of the proposed project on habitat values must be provided.

The proposed fill work could potentially have several adverse environmental effects on the estuary environment, including (1) reducing the surface area and volume of the river, (2) disturbance of migratory fish, (3) disturbance of eelgrass habitat, (4) disturbance of mud flat habitat, and (5) degradation of water quality. Feasible mitigation measures can be employed to minimize these potential adverse environmental effects.

Water Surface Area and Volume. The bank stabilization work and the boat ramp work is self-mitigating with respect to impacts on water surface area and volume, in that these project elements will not result in an appreciable net change in the amount of material existing within the confines of the river. A total of approximately 76 cubic yards of material will be placed below mean high water for these developments and a corresponding amount of material will be removed from portions of the shoreline embankment riverward of the new seawall. The Commission attaches Special Condition No. 5 requiring that the seawall be constructed in the locations proposed in the application so that no additional fill would result by constructing the wall in more riverward locations. In addition, the Commission attaches Special Condition No. 7 requiring that the proposed fill removal work be carried out to ensure that the project will not result in any net change in the amount of material existing within the confines of the river.

Migratory Fish. Performing pile driving or other construction in the river during the period when anadromous fish are migrating up or down the

river could adversely affect fisheries. To minimize disturbance of the migratory fish species that tend to use the river at that time of the year, the Commission attaches Special Condition No. 5. The condition limits all construction on the portions of the project that are proposed within the river itself to the period between June 15 and October 15. The affected work includes all dock construction, widening and repair of the boat launching ramp, and all work on the portions of the seawall and road that will occur riverward of the mean high water line. These limits to the construction season have been recommended by the Department of Fish and Game.

Eelgrass Habitat. Constructing docks, boat ramps, and shoreline stabilization along this section of the Albion River estuary could potentially disturb the rich eelgrass beds that exist along both sides of the channel. In addition to the direct damage development located within eelgrass beds would cause, development adjacent to or near eelgrass beds could adversely affect the habitat if construction equipment or debris were allowed to enter the live waters of the river and intrude into the eelgrass beds.

The proposed project has been designed to avoid direct intrusion into the eelgrass beds. None of the eelgrass beds come within 20 feet of the shoreline so none of the bank stabilization work will encroach into the beds. As shown in Exhibit 10, the boat ramp to be expanded extends out into the river to a point very close to but still shy of two eelgrass beds. The proposed dock will be constructed in an area where eelgrass beds are found. The fixed pier portion of the dock will cross over an eelgrass bed. However, the piling associated with the stationary dock will be positioned and driven in such a way that the existing Eel Grass beds will be avoided. The 300-foot-long floating dock, which will be oriented parallel to the shoreline, will be located outside of the eelgrass, farther out in the channel. Thus, no piles or other portions of the dock structure will touch any of the eelgrass beds.

The shading effect of the dock on the eelgrass is expected to be minimal. The botanical survey prepared for the project notes that healthy eelgrass beds are growing under and around the existing floating dock near the eastern end of the subject property. As the proposed floating dock is approximately the same width as the existing dock, it is expected the new dock would allow at least as much light to reach the eelgrass beds under it as reaches the eelgrass under the existing dock. As the fixed pier portion of the new dock will be positioned well above mean sea level, it is expected that an adequate amount of lateral incident light from morning and evening solar angles will be available to maintain the portion of the eelgrass beds directly under the fixed dock.

To avoid damaging the eelgrass beds with construction equipment during project construction, the applicant proposes to drive piles and construct the dock from a barge at tides above +2' mean lower low water (MLLW). At these stages of the tide, the relatively shallow draft of a barge would not reach bottom where the eelgrass exists. To ensure that construction is carried out in this manner as proposed by the applicant, the Commission attaches Special Condition

No. 9 which requires all dock construction work to be performed from a shallow draft barge at stages of the tide above +2 feet MLLW. The condition also requires the barge to be moved and kept away from all eelgrass beds during lower stages of the tide. Furthermore, as a precaution to avoid other potential construction related damage to nearby eelgrass beds, Special Condition No. 9 prohibits construction equipment, stockpiles of material, or any other debris from being allowed to enter into any eelgrass areas.

Mud flat Habitat. The dock piles, portions of the boat ramp expansion, and portions of the seawall will be located on unvegetated mud flat areas. Such mud flats support a variety of worms, mollusks, and other benthic organisms. The mud flat area to be covered by fill for the new seawall and the boat ramp expansion will be mitigated by the previously discussed removal of an equivalent amount of material from the shoreline embankment. The minor loss of mud flat area to be displaced by the piles required for the new dock is not proposed to be offset by the removal of other material. The botanical survey prepared for the project indicates that the impacts from the piles on benthic organisms will be offset by the new habitat that the surface area of the piles is expected to provide for such invertebrates as barnacles and mussels, and for isopods, algae, soft bodied worms and insect larvae. In previous permit actions, the Commission has often determined that wooden piles often enhance habitat values in this manner, and the Commission has often not required mitigation for loss of mud flat habitat due to the installation of wooden piles.

Water Quality. Grading and construction work performed during either the rainy season or during stages of the tide when the disturbed areas would be exposed to tidal action could cause intensive erosion and lead to greater sedimentation within the river. Such sedimentation would adversely affect water quality, and according to staff of the U.S. Fish & Wildlife Service, could adversely affect the eelgrass by coating the leaves with sediment and inhibiting photosynthesis and growth of plants. In addition, there is a remote chance the sheetpile driving and excavation work could adversely affect water quality by uncovering and exposing to the river hazardous materials previously buried in the river terrace where Schooner's Landing is located. As noted previously, the man-made terrace was constructed decades ago ago through a cut and fill operation. Although there is no evidence that hazardous materials were actually included in the fill placed to create the terrace, given the lack of regulation of hazardous materials that existed at the time, it is not inconceivable that some hazardous materials could have been used.

To reduce the potential for sedimentation impacts, the Commission attaches Special Condition No. 5 which limits all construction activities to the dry period of the year, between April 15 and October 15. Avoiding the rainy season will reduce the exposure of the construction zone to runoff and resulting erosion and sedimentation. In addition, the Commission attaches Special Condition No. 7 which requires that all excavation and fill work to be performed below mean high tide be performed only in the dry at lower stages of

the tide. Furthermore, the condition requires that soil disturbed by construction activities within the intertidal area be compacted prior to the next rise in tide. By compacting the soil through the use of a Vibraplate compactor or similar piece of equipment, the soil will be less susceptible to erosion.

To reduce the potential that any uncovered hazardous wastes might pollute the river, Special Condition No. 10 requires all work on the project to be suspended if hazardous materials are discovered during construction. Work can only resume after a qualified consultant has investigated the materials found and any necessary mitigation measures have been implemented.

The Commission finds, that as conditioned, the proposed project is consistent with the third test for approvable fill projects set forth in Section 30233 of the Coastal Act in that adequate mitigation for the adverse environmental effects of the proposed project will be provided.

D. Maintenance and Enhancement of Estuarine Habitat Values.

The fourth general limitation set by Sections 30231 and 30233(a) on fill project is that any proposed fill project shall maintain and enhance the biological productivity and functional capacity of the habitat, where feasible.

The proposed project, as conditioned, will ensure the continued biological productivity and functional capacity of the Albion River Estuary to support fisheries by limiting dredging in the river to only the period of the year when anadromous fish are not migrating through the area.

The proposed project will also avoid significant disruption to the eelgrass habitat in the Lower Albion River Estuary and will maintain the biological productivity and capacity of the habitat. As noted previously, the proposed project has been designed to avoid direct intrusion into the eelgrass beds. The fixed pier portion of the proposed dock will cross over an eelgrass bed, but no piles will be located within the eelgrass. The shading effect of the dock on the eelgrass is expected to be minimal as evidenced by the luxuriant eelgrass growth underneath an existing dock at the site. To ensure that construction is carried out in a manner that will not damage the eelgrass beds, special conditions of the permit require that (1) all dock construction work be performed from a shallow draft barge at higher stages of the tide, (2) all barges must be moved and kept away from all eelgrass beds during lower stages of the tide, and (3) all construction equipment, stockpiles of material, or any other debris must be kept out of any eelgrass area.

With regard to mud flat habitat, the mud flat area to be covered by fill for the new seawall and the boat ramp expansion will be mitigated by the previously discussed removal of an equivalent amount of material from the shoreline embankment. The minor loss of mud flat area to be displaced by the piles required for the new dock will not result in any appreciable diminishment of the mud flat habitat within the estuary. Therefore, the

project will not jeopardize the biological productivity and functional capacity of the Albion River estuary mud flat habitat.

The Commission finds that as the project will not have any significant adverse effects on the mud flat habitat in estuary, and the project has been conditioned to prevent significant impacts to eelgrass habitat, fisheries, and water quality, the project will maintain the biological productivity and quality of the Albion River Estuary, consistent with Section 30231 of the Coastal Act. Similarly, as conditioned, the proposed dredging will maintain the functional capacity of the estuary as required by Section 30233(c).

5. Allowable Shoreline Protection Device.

Section 30235 of the Coastal Act states, in part, that revetments, breakwaters, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply.

The proposed seawall will prevent continued bank erosion and prevent the access road into the project from washing away. The road is the only land-based means of access to the site and is essential to provide access to the existing campground and marina facility. The California Department of Forestry and Fire Protection has mandated that the road be widened as proposed by the applicant, to provide better access for fire fighting equipment. The marina and campground facilities are existing structures on the site, and the existing and proposed dock, and the existing boat launching ramp constitute coastal dependent uses as they must be located on or adjacent to the water to function at all.

The proposed seawall will not adversely affect local shoreline sand supply. The project site is along a river where there are no beaches, instead of along the open ocean. Thus, the wall will not alter littoral drift patterns or cause scouring of adjacent beaches as might result from the construction of seawalls along the ocean shoreline.

Therefore, the project is consistent with Section 30235 of the Coastal Act as the proposed seawall is required to protect existing structures and to serve coastal-dependent uses and has been designed to minimize adverse impacts on local shoreline sand supply.

6. 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 this section, 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 project site is identified on the County's LUP maps as a location for proposed lateral access along the Albion River. Section 4.9 of the LUP states that the public has had traditional access to the river at Albion Flat, but access is presently a problem and is often blocked.

As proposed, this project would have no significant impact on public access use of the area. The entrance road to Schooner's Landing parallels the river and is located close to the top of the river bank. The road provides the sole route for walking or riding along the shoreline. The road is gated, however, and the property owner does not make Schooner's Landing available for free general public access use for those members of the public bringing vehicles to the site. Use of the site for vehicular access is available to those who pay a fee for camping or boat launching. In addition, as a condition of approval of Use Permit Modification No. UM 8-87/92 for the proposed project, Mendocino County required that non-fee pedestrian access to and along the shoreline shall be provided during business hours.

To the extent that the public does use the site, members of the public will have at least the same capability of using the shoreline for public access purposes after project construction as they do now. As proposed, the road will be retained and widened in some locations. Widening the road may actually facilitate public access use somewhat by providing more room for pedestrians to avoid vehicles. None of the proposed development, including the seawall, expanded boat ramp, new dock, and road improvements will physically block use of the roadway or the adjoining shoreline. The development of the additional boat launching facilities could potentially increase the demand for public access by bringing additional boat owners and their guests to the site. However, as the entire mile-long length of the site would be available to any boater who wished to walk along the shoreline, any additional demand for public access use brought about by the project would appear to be easily accommodated at the site.

Concerns have been raised by the Executive Director of the Pacific Land Trust that the applicant and the adjoining property owner have erected fences and barriers over the last ten years that bar pedestrian access that used to exist in the area for launching canoes, kayaks, and other small craft that can be walked into the site without need of a vehicle (see Exhibit 12). In her letter to Commission staff, the Executive Director also points out that the Mendocino County Land Use Plan Maps identify the project site as a location for proposed lateral access along the Albion River.

As noted previously, the County has imposed a condition in the use permit modification granted for the project that requires the applicant to provide

non-fee pedestrian access to and along the shoreline during business hours. Thus, the stated concern about a bars to pedestrian access may be largely moot. However, the installation of a fence or barrier that would affect public access is a form of development that would require a coastal development permit under the Coastal Act. If sufficient evidence is gathered that the allegations are correct, the Commission would have the ability to pursue enforcement action. However, the Commission finds that allegations of unpermitted gates and barriers having been constructed on the site is a matter separate from the consideration of whether the development proposed under the current permit application is consistent with the Commission's public access policies. The permit application does not seek authorization for any existing or proposed gates or barriers.

Identification of the project site in the County LUP Maps as a proposed lateral accessway indicates that public access would be very desirable in this location. However, the fact that such an accessway would be very desirable . does not by itself provide a basis for the Commission to require additional public access. As previously noted, the Commission must be able to find that any permit condition it imposes requiring public access is necessary to avoid or offset a project's adverse impact on existing or potential access. As no such adverse impact of the development proposed in the application has been identified, the Commission finds that it is not appropriate to require public access through a special condition of this permit.

The Commission finds that the proposed project is consistent with Sections 30211 and 30212 of the Coastal Act.

7. Public Trust

Portions of the project are in areas that are in State owned waters or are otherwise subject to the public trust. The applicant has applied for an amendment to an existing lease from the State Lands Commission to allow use of these lands for the proposed project. Special Condition No. 2 requires that, prior to issuance of the coastal development permit, the applicant must submit written evidence to the Executive Director that the lease amendment required by the State Lands Commission has been obtained. The Commission attaches this condition to ensure that the applicant has obtained all the necessary property rights to carry out the project.

8. Department of Fish and Game Review.

The project requires a streambed alteration agreement from the Department of Fish and Game. The applicant has not yet received the agreement. Therefore, to ensure that the project reviewed by the the Department of Fish and Game is the same project that was reviewed under this permit by the Commission, the Commission attaches Special Condition No. 3 which requires that the applicant submit to the Executive Director a copy of an approved streambed alteration agreement from the Department prior to issuance of the permit.

9. U.S. Army Corps of Engineers Review

The project requires review and approval by the U.S. Army Corps of Engineers. 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. To ensure that the project ultimately approved by the Corps is the same as the project authorized herein, the Commission attaches Special Condition No. 4 which requires the permittee to submit to the Executive Director evidence of U.S. Army Corps of Engineers approval of the project prior to the commencement of construction.

10. Mendocino County LCP

Policy 3.1-4 of the Mendocino County LUP limits development within wetland areas to the eight permissible uses allowed by Coastal Act Section 30233(a) and states that diking and filling shall only be allowed when there is no less environmentally damaging alternative and when mitigation measures will be used to minimize adverse environmental effects. As discussed in Finding 3, "Filling of Coastal Waters," the proposed fill qualifies under Section 30233(a)(4) of the Coastal Act as fill for "expanded boating facilities." In addition, no feasible less environmentally damaging alternative has been identified and as conditioned, the project will employ mitigation measures to minimize the adverse environmental effects. Therefore the project is consistent with Policy 3.1-4.

The Commission notes, that in its approval of the use permit for the project, Mendocino County made findings stating that the proposed project is consistent with the County's certified LCP.

Section 30604 of the Coastal Act authorizes permit issuance if the project is consistent with Chapter 3 of the Coastal Act. Approval of the project, as conditioned to fully mitigate for the project's wetland fill impacts is consistent with Chapter 3 of the Coastal Act as discussed above.

11. California Environmental Quality Act (CEQA)

Section 13096 of the Commission's administrative regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(i) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity many have on the environment. As discussed above, the project has been mitigated to avoid or minimize

impacts to coastal resources, specifically to prevent sedimentation and other impacts on the water quality of the Albion River, to protect the environmentally sensitive eelgrass habitat, and to maintain river surface area and volume. The project, as conditioned, will not have a significant adverse effect on the environment, within the meaning of CEQA.

For purposes of the California Environmental Quality Act's environmental review process, the lead agency for the project is Mendocino County. The County adopted a negative declaration for the project on July 15, 1993. The project, as conditioned, will not have a significant adverse effect on the environment, within the meaning of CEQA.

7235p

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. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

3. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.

4. Interpretation. Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.

5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.

6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

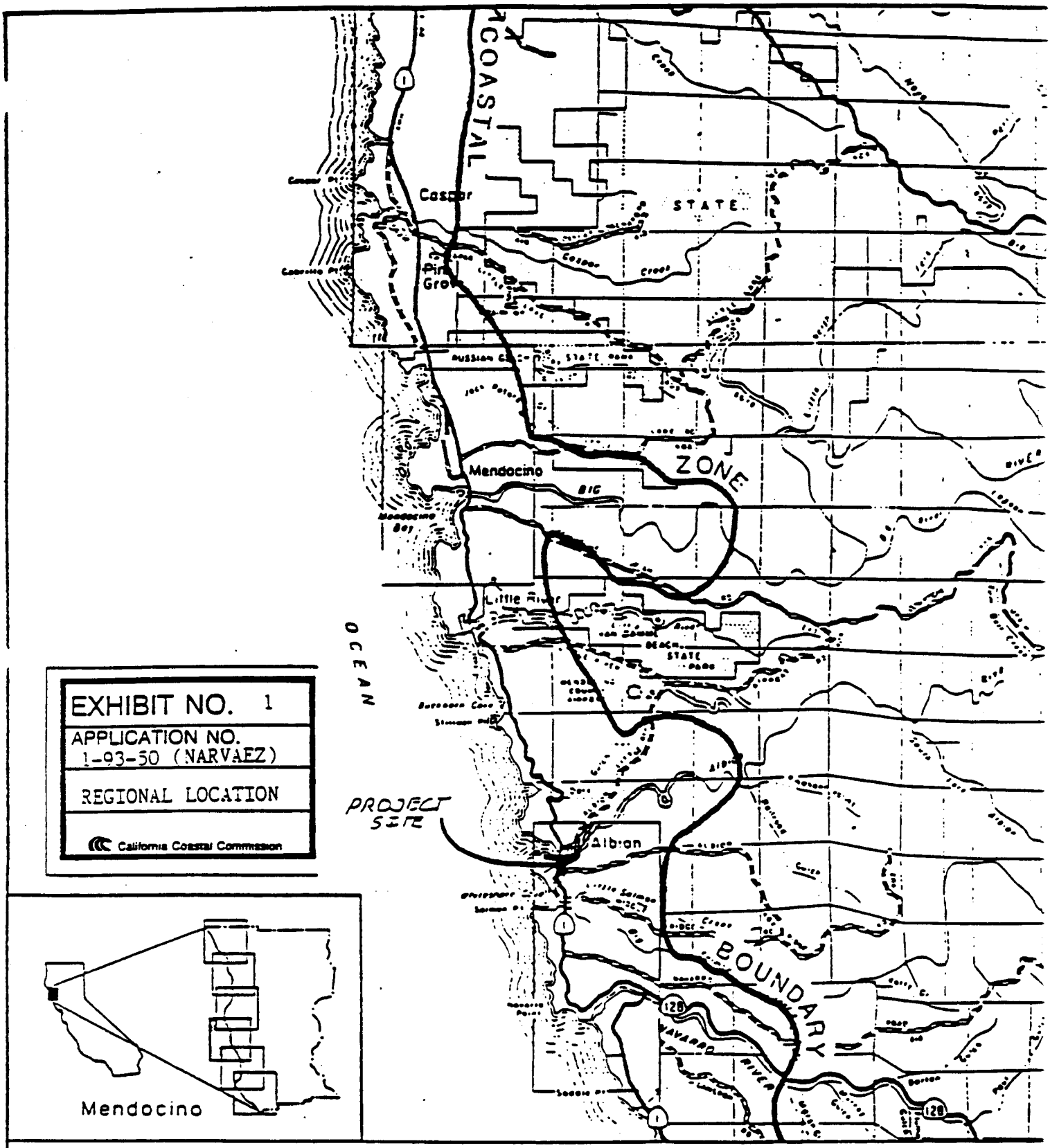


EXHIBIT NO. 1

APPLICATION NO. 1-93-50 (NARVAEZ)

REGIONAL LOCATION

California Coastal Commission

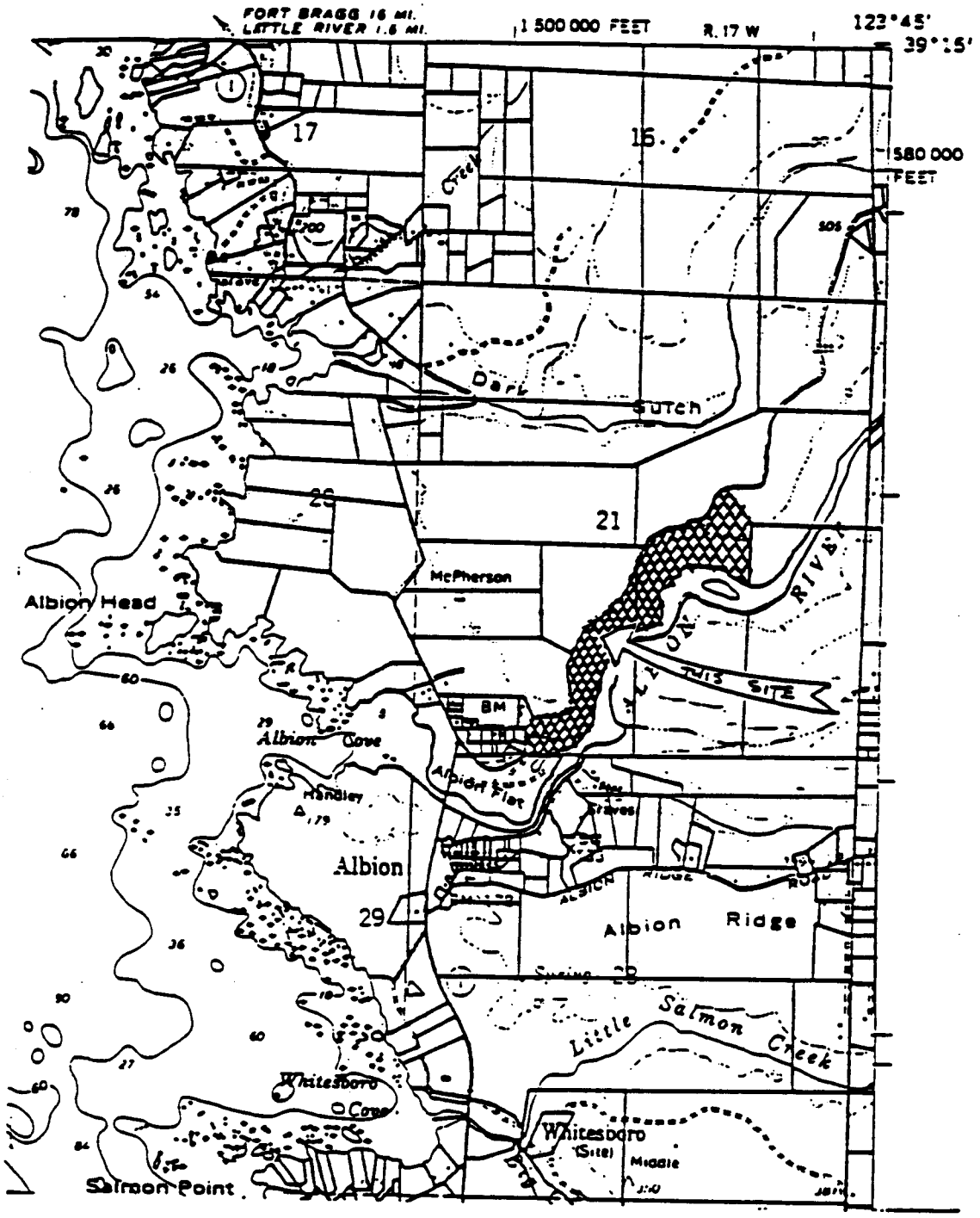
California Coastal Commission

LOCATION MAP

County of Mendocino

ALBION QUADRANGLE

R 17 W



SCALE: 1" = 2000'

EXHIBIT NO. 2

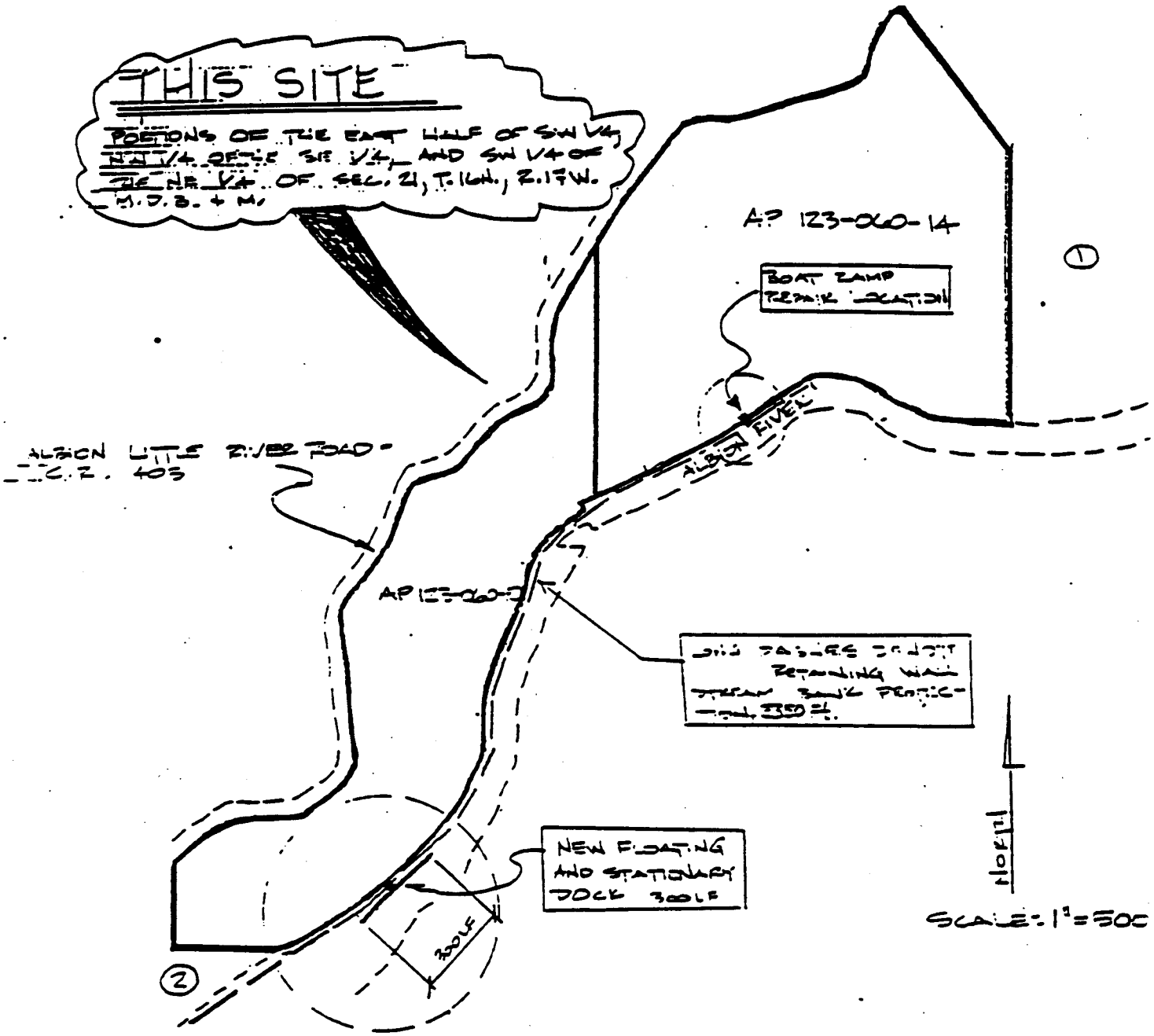
APPLICATION NO. 1-93-50 (NARVAEZ)

VICINITY MAP

California Coastal Commission

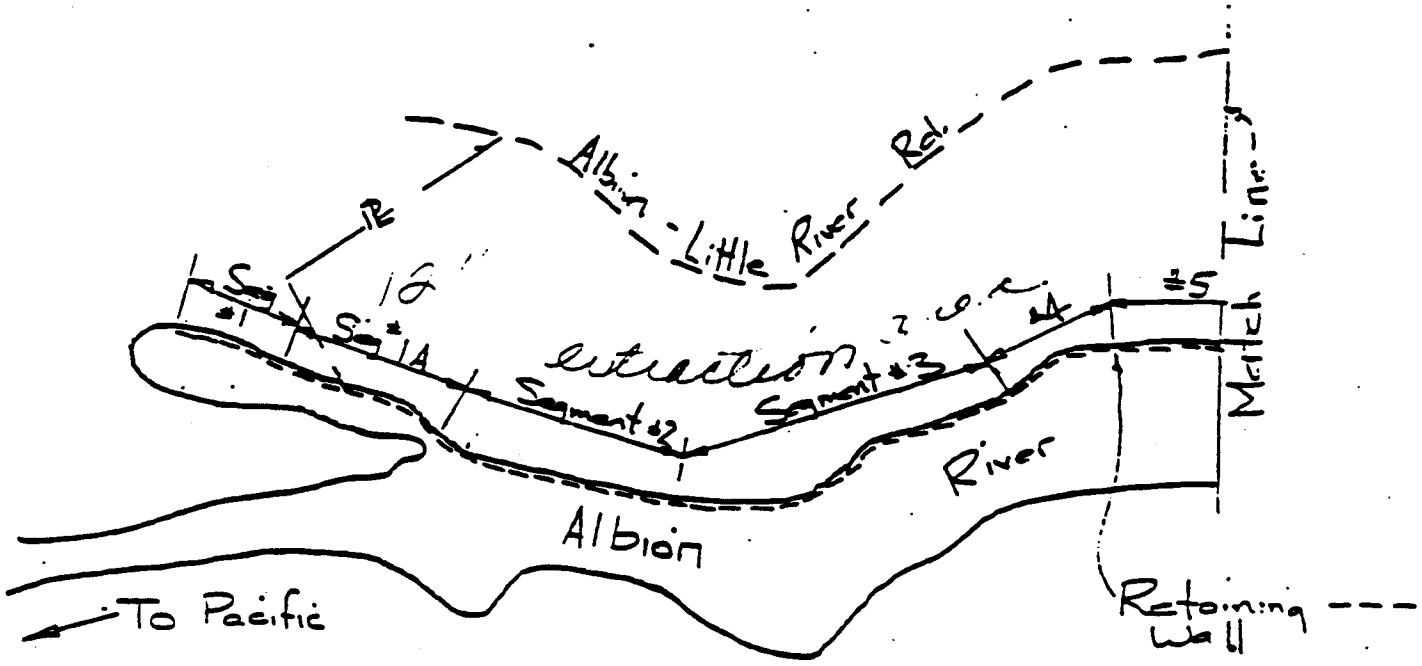
CALENDAR PAGE 30

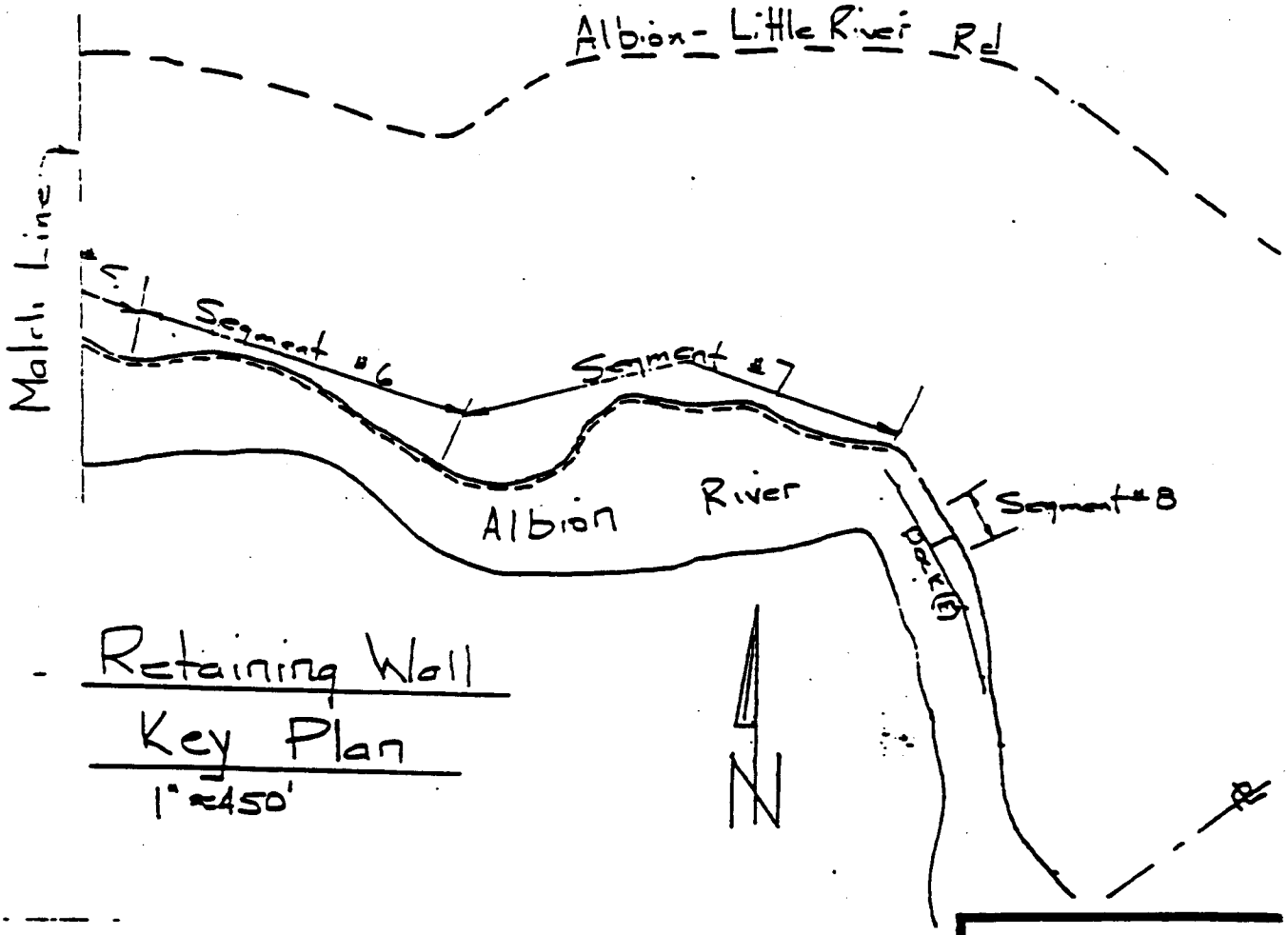
MINUTE PAGE 4759



SITE MAP

CALENDAR PAGE	EXHIBIT NO.
MINUTE PAGE	APPLICATION NO. 1-93-90 (NARV
	4760
	SITE MAP
	California Coastal Com

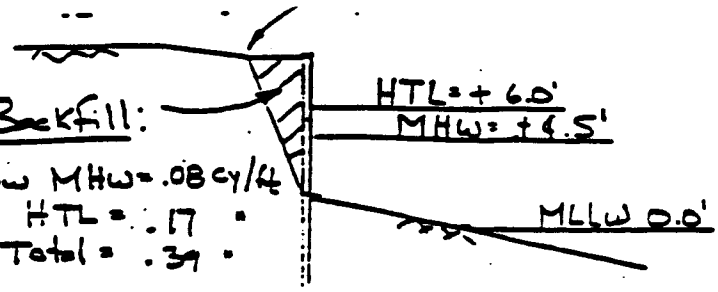




Retaining Wall
Key Plan
1" = 450'

EXHIBIT NO. 4
APPLICATION NO. 1-93-50 (NARVAEZ)
SEAWALL SEGMENTS
California Coastal Commission

CALENDAR PAGE 64.32
MINUTE PAGE 4784



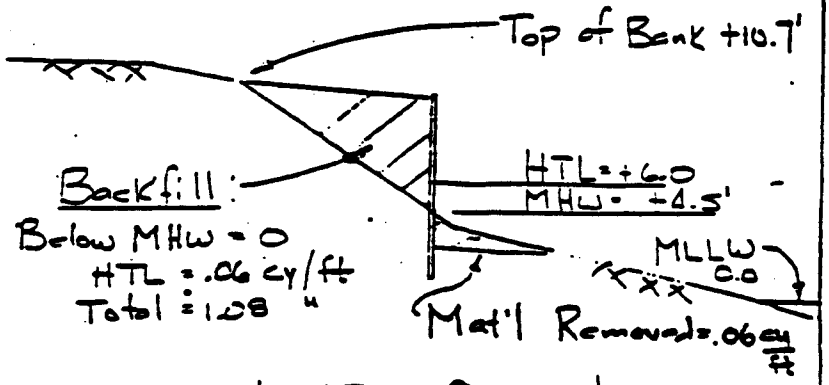
Backfill:
Below MHW = .08 cy/ft
HTL = .17 "
Total = .39 "

Segment #1 0+00 to 2+00

Backfill
Below MHW = 0
HTL = .04 cy/ft
Total = .37 "

Mat'l Removed .09 cy/ft

Segment # 2 5+00 to 9-



Backfill:
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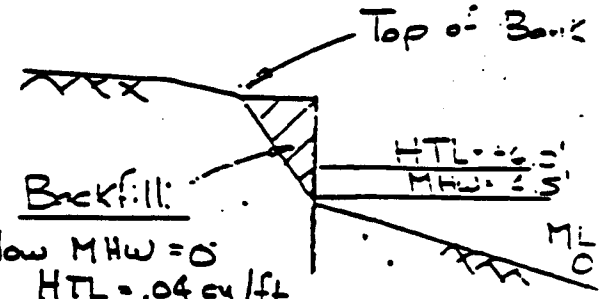
HTL = .06 cy/ft
Total = 1.08 "

Segment #3 9+00 to 15+00



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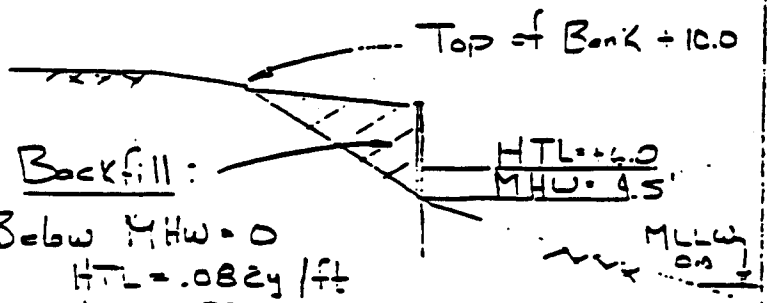
Total = .37 "

Segment # 4 15+00 to 17-



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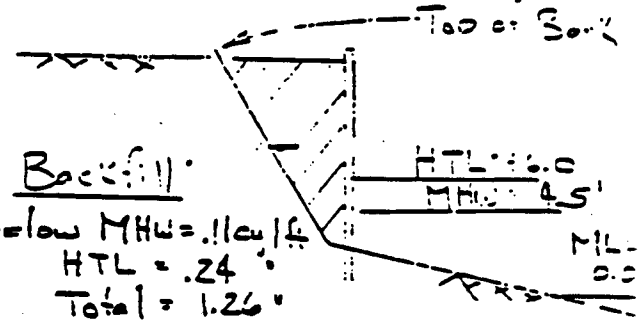
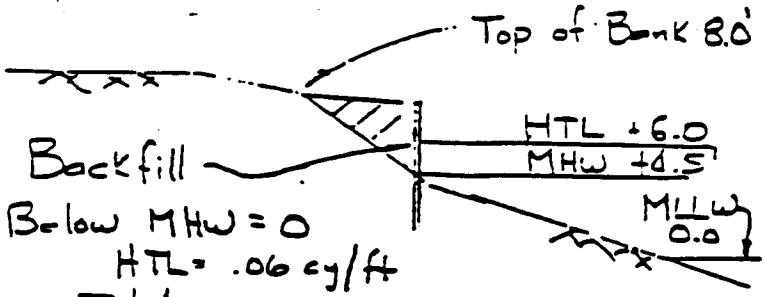
Total = .83 "

Segment # 5 17+00 to 20+00



Backfill
Below MHW = .11 cy/ft
HTL = .24 "
Total = 1.26 "

Segment # 6 20+00 to 25



Backfill
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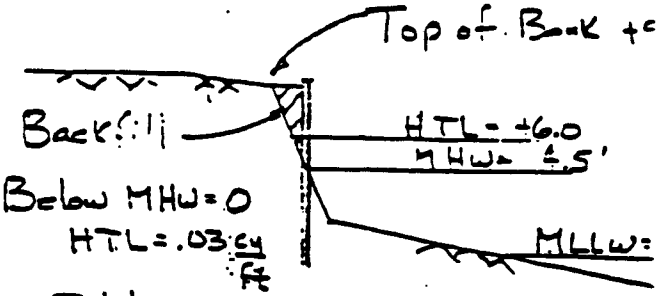
HTL = .06 cy/ft
Total = .32 "

Segment # 7 25+00 to 33+50



Backfill
Below MHW = 0
HTL = .03 cy/ft
Total = .15 "

Segment # 1A 2+00 to 5+0

EXHIBIT NO.
APPLICATION NO. 1-93-50 (NARVAEZ)
SEAWALL ALTERATIONS AT EACH SEGMENT
California Coastal Commission

CALENDAR PAGE 4733
MINUTE PAGE 4762

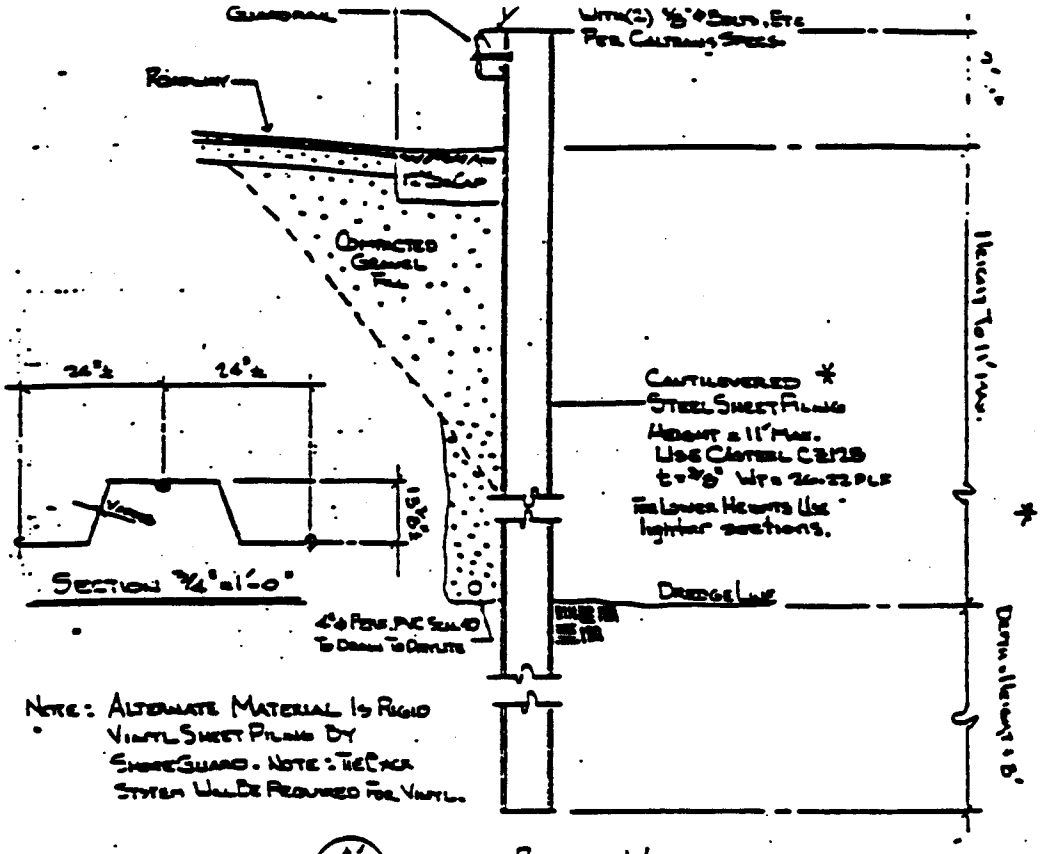
Summary
Retaining Wall Fill

Segment	length	Backfill (cy)			Material (2) Removed
		Below MHW	Below HTL	Total	
1	200'	16 (1)	34	78	0
1A	300'	0	9	45	0
2	400'	0	16	148	35
3	600'	0	36	648	36
4	200'	0	8	74	0
5	300'	0	24	249	0
6	500'	55 (1)	120	630	0
7	850'	0	51	272	0
8	100'	0	8	133	0
Total	3450'	71 cy	306 cy	2277 cy	71 cy

(1) Required to maintain min. road width requirements.

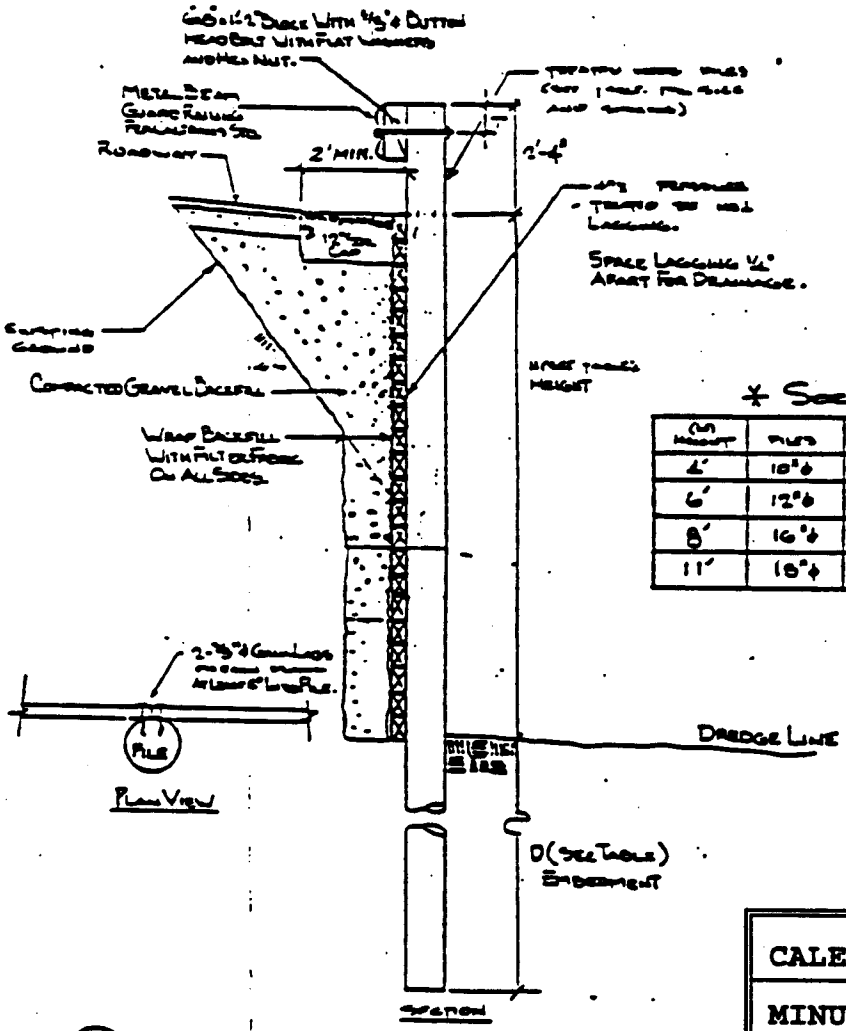
(2) Required by Cal Coastal Commission to offset fill below MHW. This material will be removed from an area free of vegetation and disposed of locally above the high tide line

EXHIBIT NO. 6
APPLICATION NO. 3-93-50 (NARVAEZ)
SEAWALL PLAN
California Coastal Commission



Note:
* For some areas the wall will be tied back to a deadman.

A' / C-2 Retaining Wall Using Cantilevered Sheet Piles



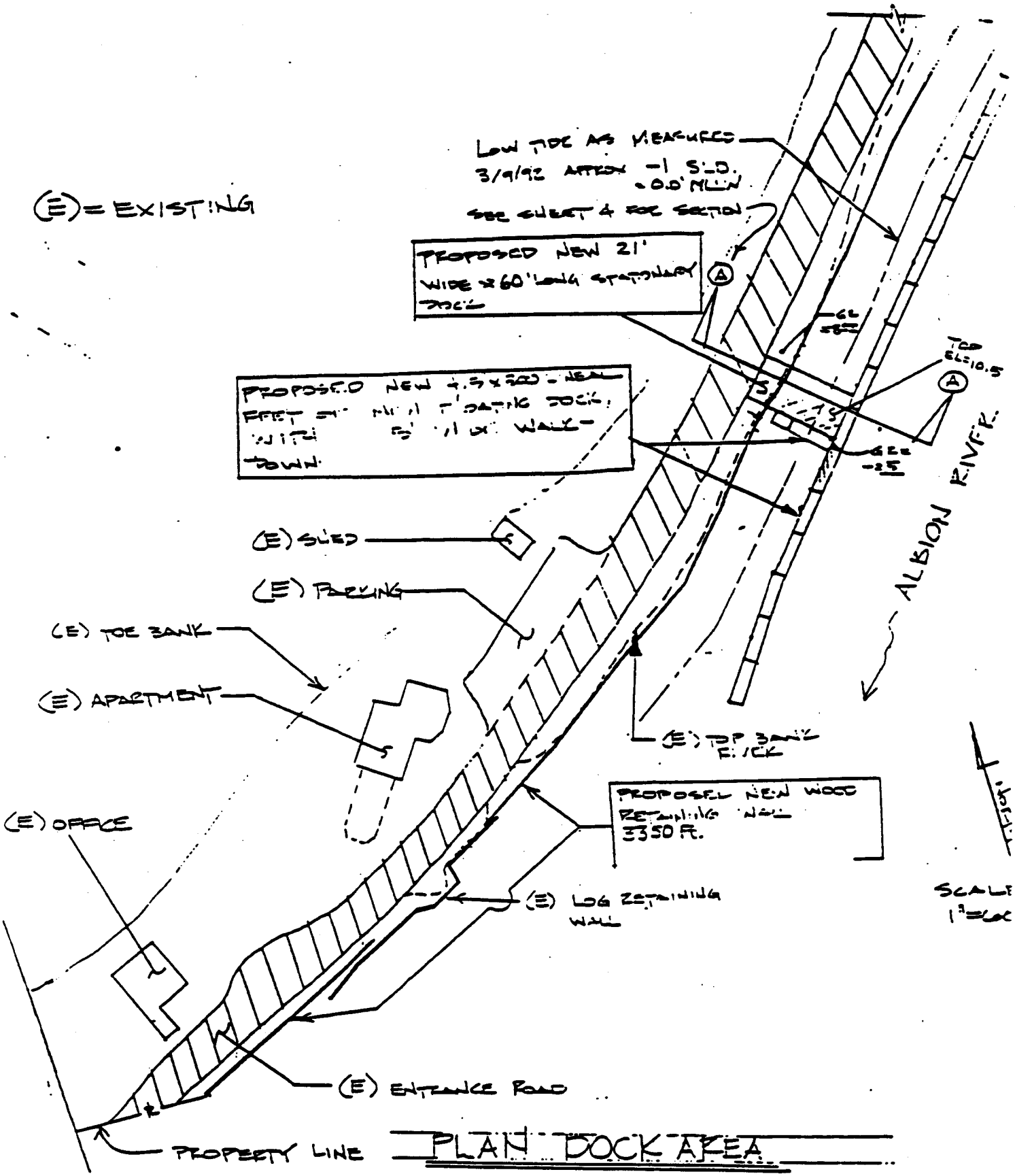
* See Note:

(W) Height	Piles	[illegible]	(D) [illegible]
4'	10"φ	10'	15'
6'	12"φ	9'	17'
8'	16"φ	8'	18.5'
11'	18"φ	6'	21'

A / C-2 Wood Retaining Wall Section

Scale: 1" = 2'-0"

EXHIBIT NO. 7
APPLICATION NO. 1-93-50 (NEWAEZ)
CALENDAR PAGE 64.34
MINUTE PAGE 4764
SEAWALL DESIGN
California Coastal Commission



PLAN DOCK AREA

CALENDAR PAGE 64	EXHIBIT NO. 8
MINUTE PAGE 4765	APPLICATION NO. 1-93-50 (NARVAEZ)
	DOCK PLAN

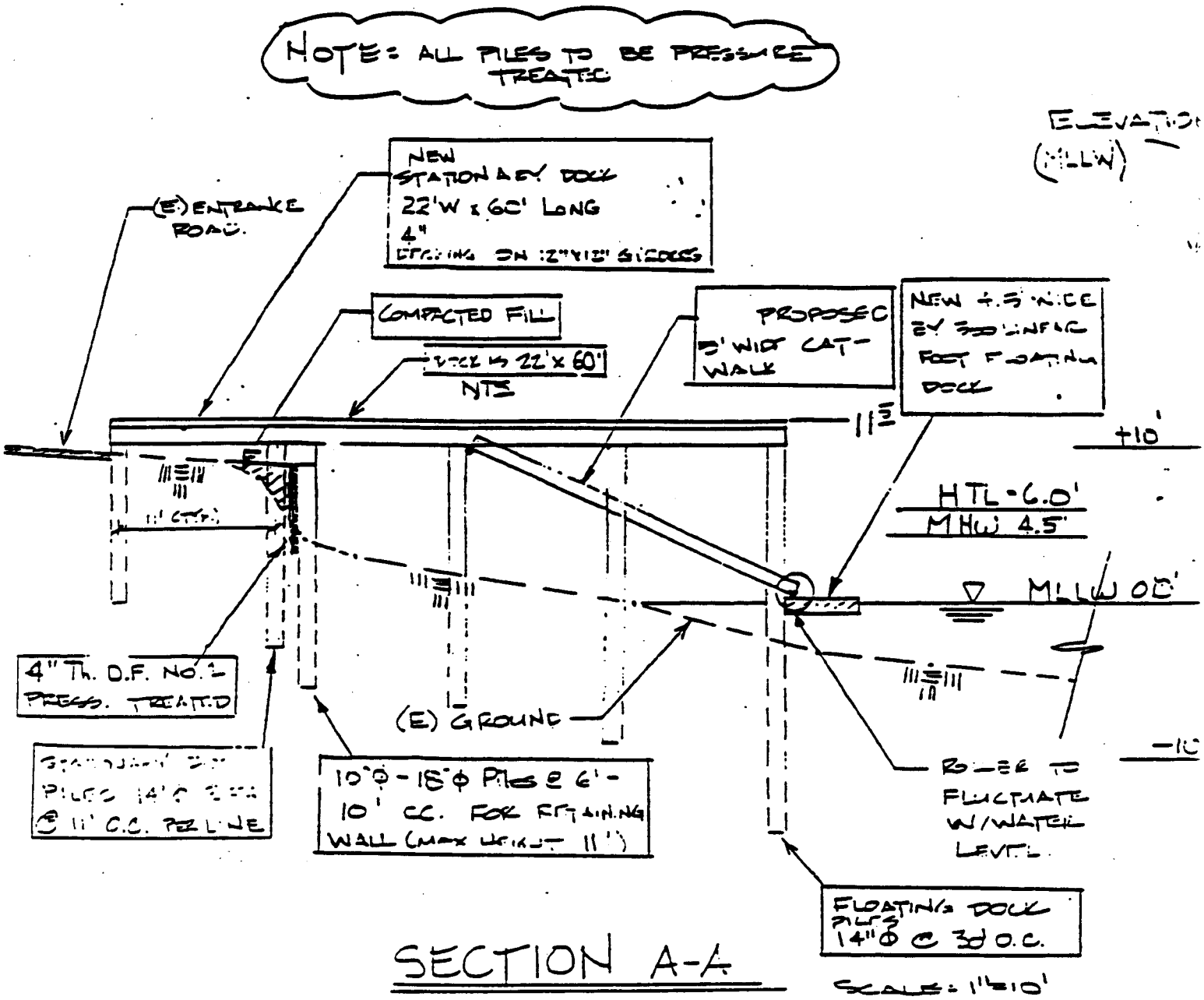
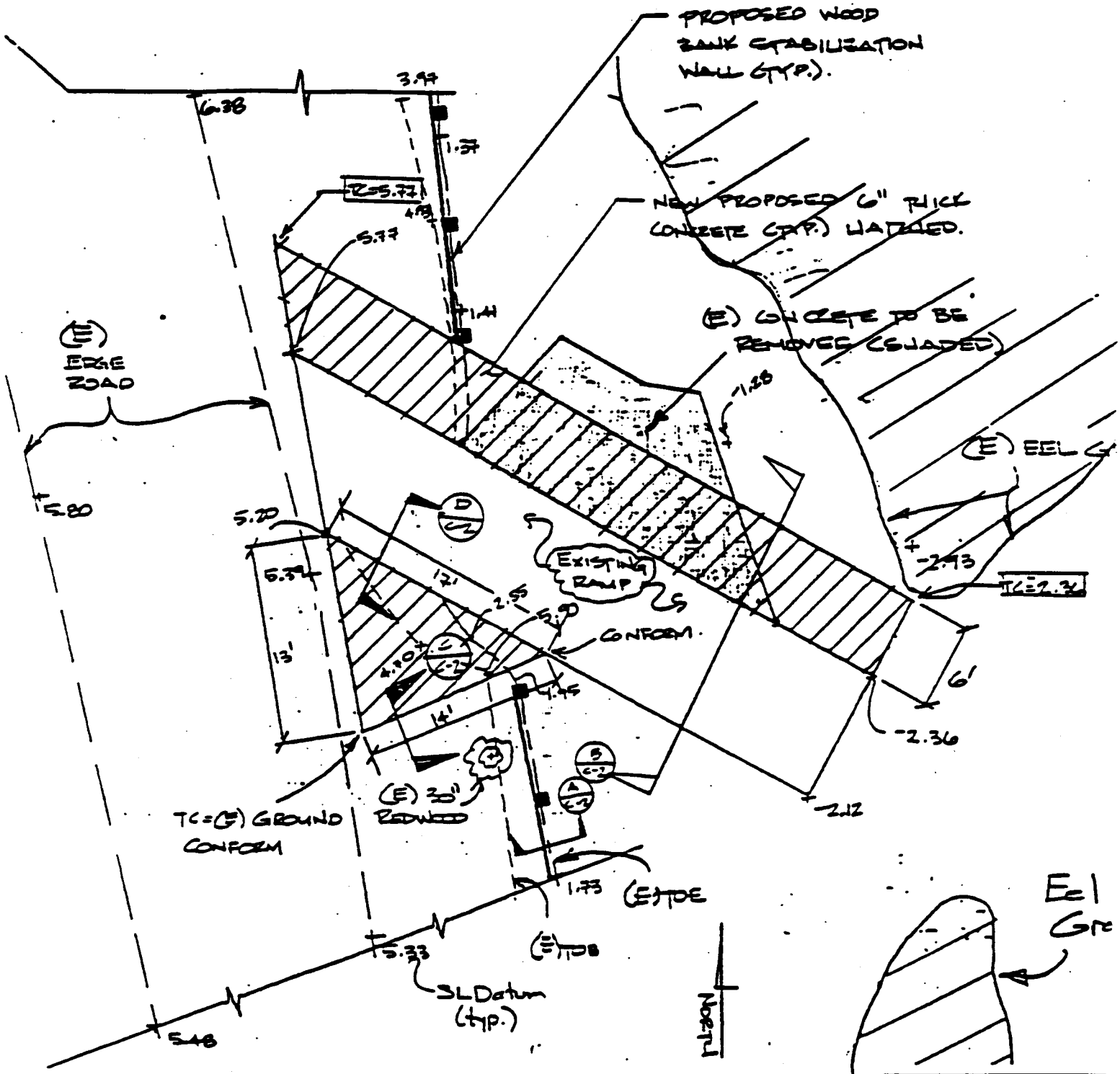


EXHIBIT NO 9
APPLICATION NO. 4-93-50 (NAR) AEZ
DOCK SECTION
California Coastal Commission

CALENDAR PAGE 64
MINUTE PAGE 4766



PLAN - BOAT RAMP ADDITION

SCALE: 1" = 10'

EXHIBIT NO. 1C

APPLICATION NO. 1-95-50 (NARVAEZ)

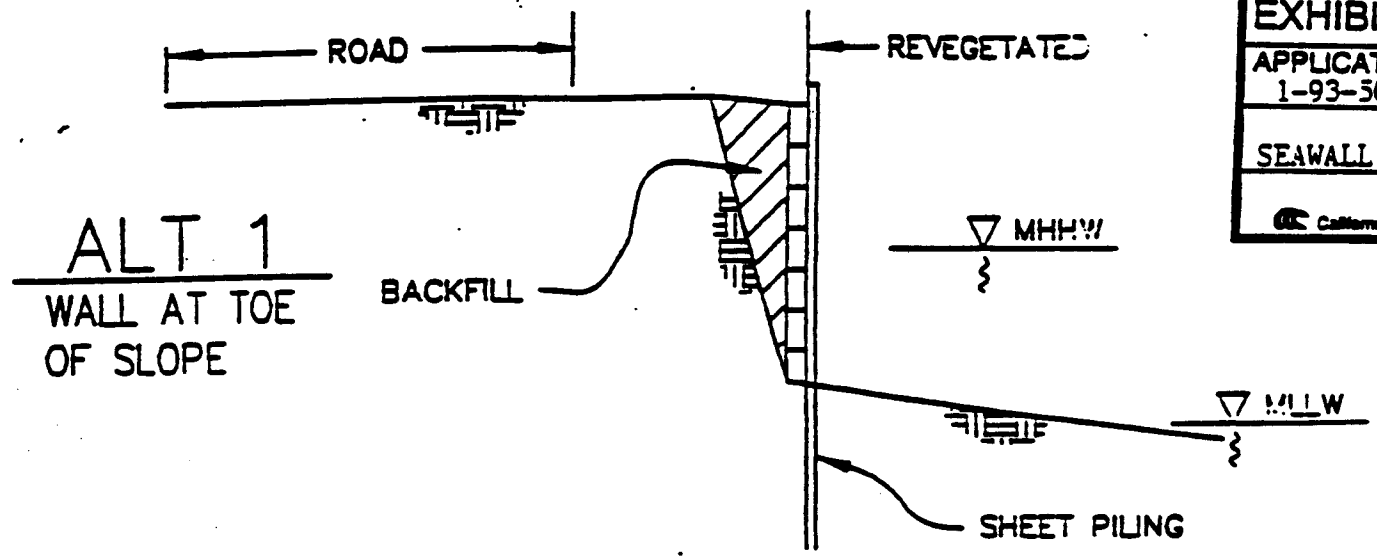
CALENDAR PAGE 64

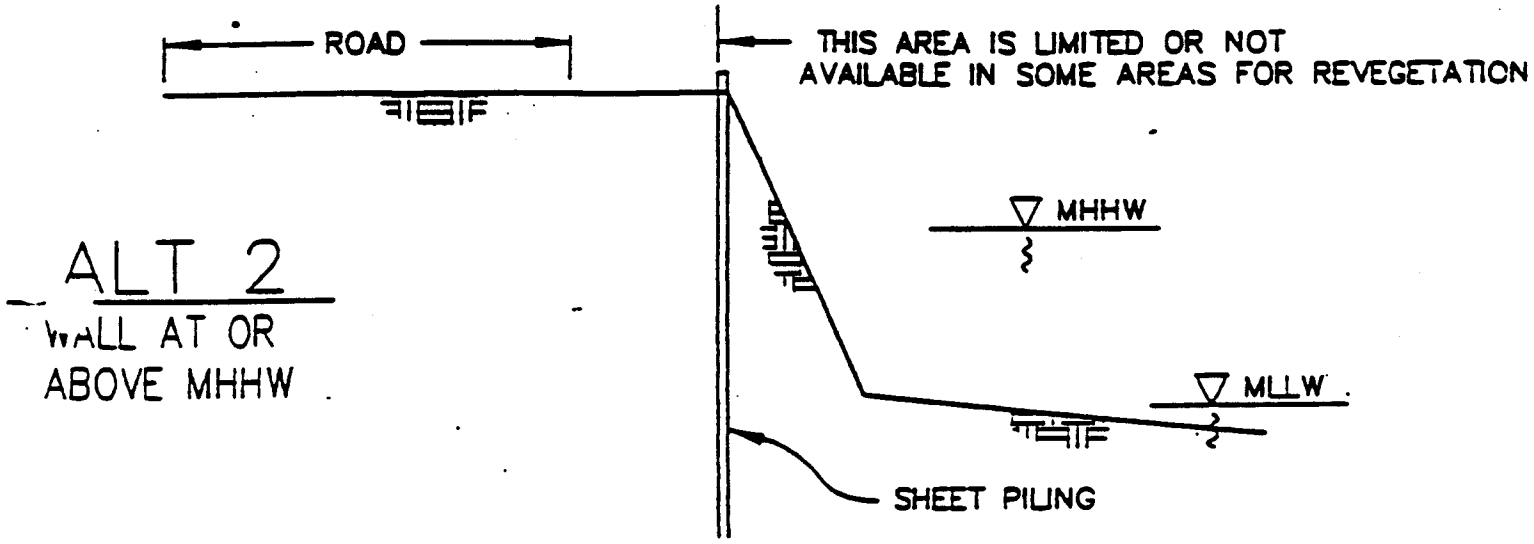
MINUTE PAGE 4707

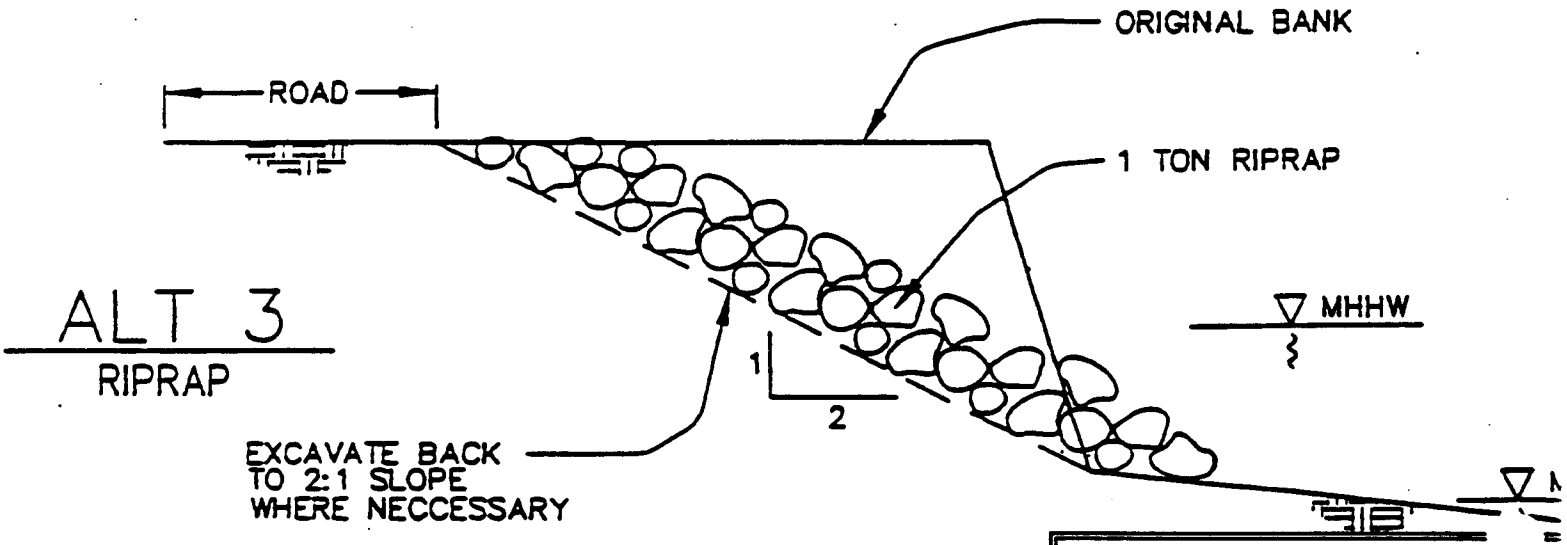
BOAT RAMP

California Coastal Commission

EXHIBIT NO. 11
APPLICATION NO. 1-93-50 (NARVAEZ)
SEAWALL ALTERNAT
California Coastal Commission







CALENDAR PAGE 64.38
MINUTE PAGE 4768

BANK PROTECTION ALTERNATES

NO SCALE

EXHIBIT NO. 12
APPLICATION NO. 1-93-50 (NARVAEZ)
CORRESPONDENCE
(1 of 2)
California Coastal Commission

Pacific Land Trust

P. O. Box 590
Mendocino, Cal. 95460
707/937-2709

Rixanne Wehren, Executive Director

"to preserve and cherish natural land"

Oct. 11, 1993

Mr. Bob Merrill
California Coastal Commission
45 Fremont, Suite 2000
San Francisco, CAL 94105-2219

Dear Mr. Merrill,

We spoke on the phone last month about the public access situation at the mouth of the Albion River. As there are two permit applications for this area before the Coastal Commission, I feel that this is a good time to address public access to this river.

In the past ten years, the public access has been steadily enroached upon by the adjacent landowners, slowly squeezing off the area where locals have traditionally approached the water and launched canoes and kayaks. People had been able to park at the end of the county road and walk up river or put in their canoes, or park near the road trestle and walk to the beach. However, now the landowners have put up fences and barriers, as well as "no parking" signs, and no longer allow the locals to access the river. When I recently asked the campground owner if there was a place along either bank where one could launch a canoe by portage, she replied "no, it's all private property, you have to pay."

People have walked, fished, and canoed this river since time began, and I don't think the landowners have the right to close it off and only allow access for their own private profit. They do provide a launch ramp for bigger boats, and I don't object to that business, but the public has a right to use the river too. The geography of the area lends itself to domination by these two landowners, Narvaez and Sero, but the public has always used this access, and we are determined to retain the right to do so.

CALENDAR PAGE 64.39
MINUTE PAGE 4769

The only road leading to the north side of the river is a county road, and deadends within 15 feet of a little slough. We are requesting that the Coastal Commission support our right to use this road and slough to provide public access. There is a small dock at this point that had been used in the past, but fell into disrepair when the area was roped off. We propose to repair the dock to provide canoe launch by portage (no motorized boats), and request the provision of a small area for parking 10 cars at the end of the county road.

We would also like to see a parking area for the beach established near the trestle, perhaps in the right-of-way that extends along underneath the trestle. Both of these areas are designated as access points in the Mendocino County General Plan, Coastal Element. Parking is essential to public access, as there is no safe area to park for 1/2 mile in either direction, and the steep walls of the river valley make pedestrian approach very difficult, if not impossible for most people.

I would like to see a copy of the Seto application before the staff report is written so that I can comment on it and be included in the staff report. Would you please have your staff send me a copy? I already have the Narvaez application at the county level. I would also like to get a copy of the staff report when it comes out for Narvaez.

Thank you for your willingness to work with the Pacific Land Trust on this issue that is so important to our communiy.

Sincerely,

Rixanne Wehren

Rixanne Wehren

EXHIBIT NO. 10

APPLICATION NO. 1-95-50 (NARVAEZ)

CALENDAR PAGE 04.40

MINUTE PAGE 4770

CORRESPONDENCE

(2 of 2)

California Coastal Commission

GEORGE C. RAU
PRESIDENT
WALTER HAYDON
VICE PRESIDENT
ANDREW E. BORDESSA
VICE PRESIDENT
ROGER VINCENT
VICE PRESIDENT

RAU AND ASSOCIATES INC.

CIVIL ENGINEERS • LAND SURVEYORS

February 24, 1994

RECEIVED
MAR - 2 1994
CALIFORNIA
COASTAL COMMISSION

California Coastal Commission
45 Fremont, Suite 2000
San Francisco CA 94105-2219

Attn: Bob Merrill

Job Number 91-254

RE: NARVAEZ: 1-93-50

Dear Mr. Merrill:

Several weeks ago you put Mr. Narvaez's application on "hold" due to a question over property ownership and access rights. We have researched this issue, and believe that the enclosed documents demonstrate Mr. Narvaez's right to proceed with the project. We have enclosed copies of recorded documents regarding a Right-of-Way granted to Mr. Palle H. Anderson by Masonite Corporation in 1966 (see Item #1). Mr. Narvaez is the successor to this easement as shown on Items 2 through 9.

Based on a preliminary legal review of the language of this Right-of-Way, we believe that it is sufficiently broad to allow Mr. Narvaez to proceed with the project as described in the application.

Please let us know if you require any additional information.

Very truly yours,

Terry L. McGillivray

TLM:lam

c: Art Narvaez

EXHIBIT NO. 13
APPLICATION NO.
1-93-50 NARVAEZ
Right-of-Way
(PAGE 1 OF 4)
CALENDAR PAGE 64.41
California Coastal Commission
MINUTE PAGE 4771

100 NORTH PINE STREET • P.O. BOX M • UKIAH, CALIFORNIA 95482 • 707-462-6536 • FAX 707-463-2729

50765

Item #1

GRANT OF RIGHTS OF WAY

THIS INDENTURE, made the 25th day of February, 1966 between MASONITE CORPORATION, Grantor, and Palle H. Andersen, a married man, Grantee, 2841

WITNESSETH:

The Grantor grants to Grantee, as his sole and separate property, his successors, assigns, and permittees, a non-exclusive right of way 40 feet in width upon which to construct, maintain and operate all means of communication and transportation of persons and property over and across that certain real property situated in the County of Mendocino, State of California, and more particularly described as follows, to wit:

PARCEL ONE: An easement and right of way 50 feet wide along the Albion River and adjoining the South bank thereof across Section 21, T16N, R17W, M.D.B.&M. from the South line of said Section 21 to its junction with Parcel Two in the NWSE of said Section 21, this point being the old East bridgehead of the Albion Lumber Co. Railroad.

PARCEL TWO: A strip of land 100 feet wide and 40 feet wide described as follows: BEGINNING at a point on the East line of Section Twenty-one (21), Township Sixteen (16) North, Range Seventeen (17) West, Mount Diablo Meridian, from whence the Northeast corner of said Section Twenty-one (21) bears North 2160.3 feet; thence from a tangent that bears South 41° 51' West 27.6 feet along a 5° curve right through an angle 1° 23'; thence South 43° 14' West 26.2 feet; thence 209.3 feet along a 10° curve left through an angle 20° 56'; thence South 22° 18' West 19.8 feet; thence 265.3 feet along a 2° 30' curve right through an angle of 6° 38'; thence South 28° 56' West 304.3 feet; thence 167.1 feet along a 7° 30' curve left through an angle of 12° 32'; thence South 16° 24' West 21.4 feet; thence 605.2 feet along a 9° curve right through an angle of 54° 28'; thence South 70° 52' West 212.1 feet; thence 163.7 feet along a 10° curve right through an angle of 16° 22'; thence South 87° 14' West 153.1 feet; thence 160.3 feet along a 20° curve right through an angle of 32° 10'; thence North 60° 36' West 183.0 feet; thence 329.8 feet along a 20° curve left through an angle of 65° 57'; thence South 53° 27' West 298.8 feet; thence 100.2 feet along a 15° curve right through an angle of 15° 02'; thence South 68° 29' West 228.3 feet; thence 86.8 feet along a 9° 30' curve left through an angle of 8° 15' to a point on the North and South one-quarter section line of said Section Twenty-one (21) said point being the ending of the 100 foot strip of land and the beginning of a 40 foot wide strip of land, being 20 feet wide on each side of the continued

EXHIBIT NO. 13
APPLICATION NO. 1-93-50 NARVAEZ
Right-of-Way
(page 2 of 4)
California Coastal Commission

BOOK 727 PAGE 40

16X17

Sec 21 - [illegible]

Sec 28 - [illegible]

50765
CALENDAR PAGE M.C. 64.42
MINUTE PAGE 9 194672

centerline; thence continuing along said 9° 30' curve left a distance of 384.8 feet through an angle of 36° 33'; thence South 23° 41' West 81.8 feet; thence 70.0 feet along a 20° curve right through an angle of 14°; thence South 37° 41' West 30.3 feet; thence 180.6 feet along a 21° curve left through an angle of 37° 56'; thence South 0° 15' West 222.5 feet; thence 255.0 feet along a 16° curve right through an angle of 40° 48'; thence South 40° 33' West 174.0 feet; thence 321.9 feet along a 7° curve right through an angle of 22° 32'; thence South 63° 05' West 60.0 feet, more or less, over the Southeast quarter of the Northeast quarter, the North half of the Southeast quarter, and the East half of the Southwest quarter to a point on the South line of said Section Twenty-one (21).

PARCEL THREE: A strip of land 50 feet wide along the Albion River and adjoining the South bank thereof in Lot 4, Section 28, T16N, R17W, M.D.B.&M.

PARCEL FOUR: 20 feet on both sides of the centerline of the existing private roadway in Lot 5, Section 28, T16N, R17W, M.D.B.&M. beginning at the County road on the West and extending Northeasterly to and along the North bank of the Albion River to a junction with Parcel Two. This parcel four is a southwesterly extension of Parcel Two in a straight line to the county road.

Part of Parcel 4

PARCEL FIVE: A strip of land 100 feet wide along the Albion River and adjoining the North bank thereof across the NESE of Section 21, T16N, R17W, M.D.B.&M.

IN WITNESS WHEREOF, Grantor through its duly authorized officers, has executed this conveyance this 25th day of February, 1966.

MASONITE CORPORATION

By Robert N. Lacomes

Its Vice-President

By John R. Geary

Its Assistant Secretary

Faye B. Berlin

OFFICIAL SEAL
FAYE B. BERLIN
NOTARY PUBLIC-CALIFORNIA
PRINCIPAL OFFICE IN
MENDOCINO COUNTY

FAYE B. BERLIN
My Commission Expires Nov. 4, 1968

BOOK 727 PAGE 41

MASONITE CORPORATION DELAWARE

EXHIBIT NO. 13
APPLICATION NO. 1-93-50 NARVAEZ
Right-of-Way
(page 5 of 4)

CALENDAR PAGE 64.43
California Coastal Commission
MINUTE PAGE 4773

OCT 19 1966

STATE OF CALIFORNIA,
County of Mendocino } ss.

On this 25th day of March in the year one thousand nine hundred and sixty six before me, a Notary Public in and for the County of State of California, residing therein, duly commissioned and sworn, personally appeared Robert N. Rasmus and John R. Lavery known to me to be the Vice-President and Assistant Secretary of the corporation described in and that executed the within instrument, and also known to me to be the persons who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same.

OFFICIAL SEAL
FAYE B BERLIN
NOTARY PUBLIC-CALIFORNIA
PRINCIPAL OFFICE IN
MENDOCINO COUNTY

FAYE B. BERLIN
My Commission Expires Nov. 4, 1968

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal in the Mendocino County of California the day and year in this certificate first above written.

Faye B. Berlin

Notary Public in and for the County of Mendocino State of California.

My Commission Expires Nov. 4, 1968

Cowdery's Form No. 28—(Acknowledgment—Corporation).
(C. C. Sec. 1190-1190.1)

50765
RECORDED AT REQUEST OF
Bell + Cox
BOOK 727 PAGE 40
OCT 19 4 25 PM '66
OFFICIAL RECORDS
MENDOCINO COUNTY, CALIF.
Vida Richardson
DEPUTY
FEE $3.60

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CHECKED

BOOK 727 PAGE 42

EXHIBIT NO. 13
APPLICATION NO. 1-93-50 NARVAEZ
Right-of-Way
(page 4 of 4)
California Coastal Commission

CALENDAR PAGE 64.44
MINUTE PAGE 4774
OCT 19 1966

BRIGHAM & GAUSTAD
ATTORNEYS AT LAW
VICTORY THEATRE PLAZA
387 NORTH STATE STREET, SUITE 100
POST OFFICE BOX 358
UKIAH, CALIFORNIA 95482

THOMAS S. BRIGHAM
G. SCOTT GAUSTAD

KATHY LOHR
LEGAL ASSISTANT

TELEPHONE:
(707)463-1429

APR 25 1994
CALIFORNIA
COASTAL COMMISSION

April 21, 1994

EXHIBIT NO. 14
APPLICATION NO.
1-93-50 NARVAEZ
Applicant's
property interest
letters (1 of 7)
California Coastal Commission

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

Attention: Bob Merrill

Re: Narvaez:1-93-50

Dear Mr. Merrill:

I represent Art Narvaez, the above captioned applicant. I understand that you have requested an explanation of the legal basis for Mr. Narvaez's right to construct the retaining wall dock and other improvements which are part of the above application. This letter should supply that explanation. I am also enclosing the retaining wall sections which show the nature of the project in relation to the mean high water line and the road.

I understand that Terry McGillivray, Mr. Narvaez's engineer, had previously supplied you with a reference to the pertinent legal document. In Mr. McGillivray's letter of February 24, 1994, he makes reference to a right-of-way granted by Masonite Corporation to Mr. Palle H. Anderson. That right-of-way gave Mr. Anderson the right to "construct, maintain, and operate all means of communication and transportation of persons and property . . ." Mr. Anderson is Mr. Navarez's predecessor in title. Masonite is Mr. Seto's predecessor.

Mr. Narvaez's easement includes a road along the edge of the Albion River which is subject to erosion due to the river waters working on the bank. The retaining wall is necessary to maintain the integrity of that bank and thus that road. As Masonite is the predecessor of Seto and Anderson was the predecessor of Narvaez, that right-of-way runs with the Narvaez property and burdens the Seto property. It is hornbook law that the owner of an easement has the right to maintain and repair the easement, including the construction of improvements "which are reasonably required to make the use of the easement safe and convenient." (See 5 Miller & Starr, California Real Estate 2nd, "Easements"

Obviously the maintenance of the bank is tantamount to the maintenance of the road bed, i.e., if the bank is not maintained it will soon not be a road.

It is imperative that any lingering questions which your staff may have about the legal basis for Mr. Narvaez's project be identified and communicated to us as soon as possible. There has already been a three month delay occasioned by questions about the property rights. Fish and Game has established June 15 to October 15 as the construction window for most of the marine work. Any additional delay could jeopardize Mr. Narvaez's opportunity to get the necessary work done in that window. That delay would be very expensive.

In addition, the road is in imminent danger of failing at several locations. But for the relatively mild 1993-1994 winter, there may have already been failures in the road.

Concerning the position of the servient tenement owner (Mr. Seto), as noted above, Mr. Narvaez's project is well within his legal rights. Nevertheless, it is my understanding that Mr. Seto does not object to the retaining wall. In fact he will benefit from the westerly portion of the retaining wall and he is not paying for any portion of it. Any objection he has would only be in his capacity as a competitor of Mr. Narvaez's.

Again, please let me know immediately if there are any other questions or if you have some legal basis for disagreeing with our position.

Sincerely,

THOMAS S. BRIGHAM

TSB/mp
Enclosure
cc: Terry McGillivray
Art Narvaez

EXHIBIT NO. 14
APPLICATION NO. 1-93-50 NARVAEZ
Applicant's property interest letters (2 of 7)
California Coastal Commission

BRIGHAM & GAUSTAD
ATTORNEYS AT LAW
VICTORY THEATRE PLAZA
387 NORTH STATE STREET, SUITE 100
POST OFFICE BOX 358
UKIAH, CALIFORNIA 95482

THOMAS S. BRIGHAM
G. SCOTT GAUSTAD

KATHY LOHR
LEGAL ASSISTANT

TELEPHONE
(707)463-142:

RECEIVED
MAY 12 1994
CALIFORNIA
COASTAL COMMISSION

May 10, 1994

EXHIBIT NO. 14
APPLICATION NO.
1-93-50 NARVAEZ
Applicant's
property interest
letters (3 of 7)
California Coastal Commission

Bob Merrill
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

re: Narvaez: 1-93-50

Dear Mr. Merrill:

Since writing to you on April 21, I have spoken with Ann Cheddar and have reviewed the February 8 letter from Mr. Seto's counsel, David Newhouse. It is apparent from his letter that Mr. Newhouse agrees that both the owner of the underlying fee and the owner of the easement have a right to construct retaining walls or other structures necessary to preserve the roadway. (See Miller and Starr, California Real Estate 2d, "Easements", §15:66.) I assume that issue is settled.

Mr. Newhouse does argue that the landowner also has the right to reclaim land that has been carried away by the river. That issue is not relevant to this application. All Mr. Narvaez is seeking to do is to shore up and protect what is still there.

The only issue, therefore, is whether Mr. Narvaez has an easement across the roadway in question. Mr. Newhouse claims that the easement was extinguished almost immediately after it was created. He relies on a grant deed by Mr. Narvaez's predecessor to Masonite Corporation of portions of the Southeast quarter of the Southwest quarter of Section 21, T16N, R17W, MDB&M (Book 727, page 720 of Mendocino County Records).

The Narvaez right of way was not extinguished by the deed in question because that deed conveyed only that part of the Southeast quarter of the Southwest quarter "lying South and East of the Deeded Masonite Corporation lands". At that point, the "lands" of Masonite consisted of the strip of land over which Narvaez's predecessor had retained an easement and is now designated as SETO parcel #8. Thus, the deed merely conveyed the property between the road easement and the centerline of Albion River. (See map enclosed.) Bases on the 1972 survey by Norman Glover, the land in

question (Book 727 Page 720) is entirely under water at high tide, and thus appears to be under state jurisdiction.

The Grant of Right of Way (at Book 727, Page 721) which is also referenced in Mr. Newhouse's letter, is likewise irrelevant as it pertains to property further east. Mr. Narvaez's predecessor was not conveying away his lands by that deed, he was simply conveying a nonexclusive right of way to Masonite over the subject roadway. Thus, when the dust settled, Masonite owned what is now Mendocino County AP #123-06-05 in fee (now owned by Seto) and Narvaez's predecessor owned an non-exclusive right of way over the road on the old Masonite property.

Enclosed is a map (Sheets 1-3) which illustrates all of the above.

Sincerely,

THOMAS S. BRIGHAM

TSB/KL/kl
enc
pc: Ann Cheddar
David Newhouse
Terry McGillivray

EXHIBIT NO. 14
APPLICATION NO. 1-93-50 NARVAEZ
Applicant's property interest letters (4 of 7)
California Coastal Commission
CALENDAR PAGE 04.48
MINUTE PAGE 4778

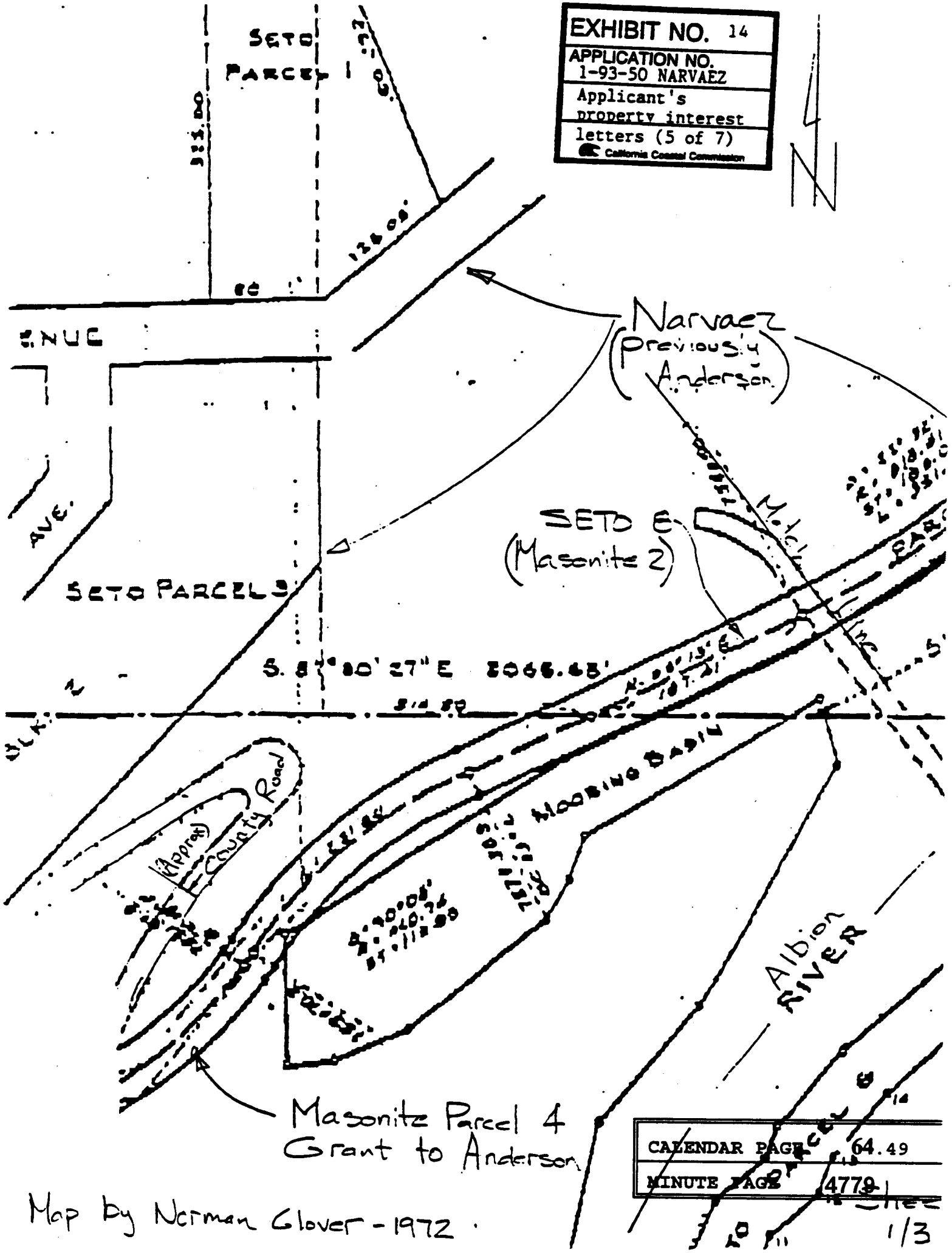


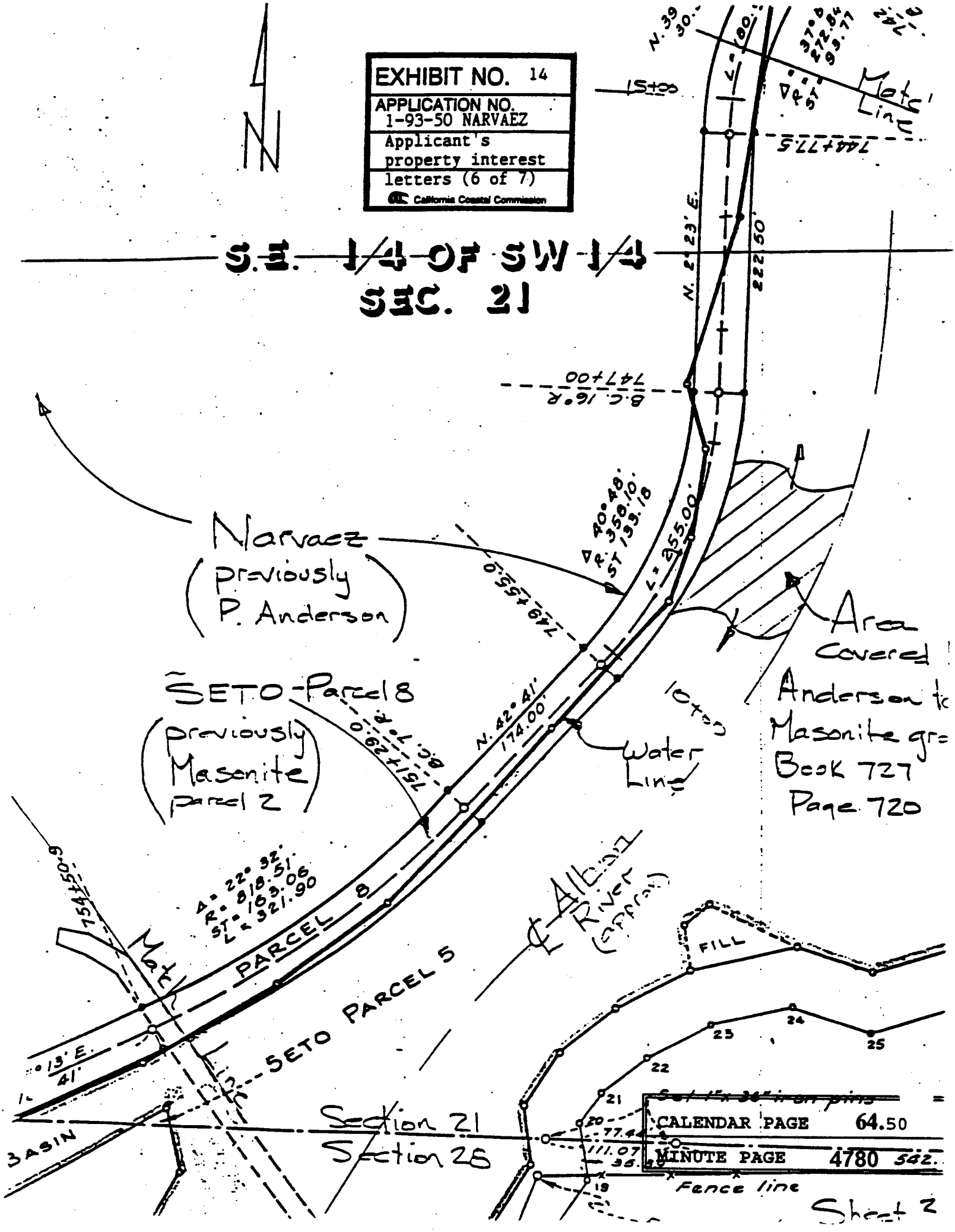
EXHIBIT NO. 14
APPLICATION NO.
1-93-50 NARVAEZ
Applicant's property interest letters (5 of 7)
California Coastal Commission
SETO PARCEL 1
Narvaez (Previously Anderson)
SETO 8 (Masonite 2)
SETO PARCEL 3
S. 87°30' 27" E 3066.68'
MOORING BASIN
(Approx) County Road
Albion RIVER
Masonite Parcel 4 Grant to Anderson
CALENDAR PAGE 64.49
MINUTE PAGE 4779
Map by Norman Glover - 1972
1/3

EXHIBIT NO. 14

APPLICATION NO. 1-93-50 NARVAEZ

Applicant's property interest letters (6 of 7)

California Coastal Commission



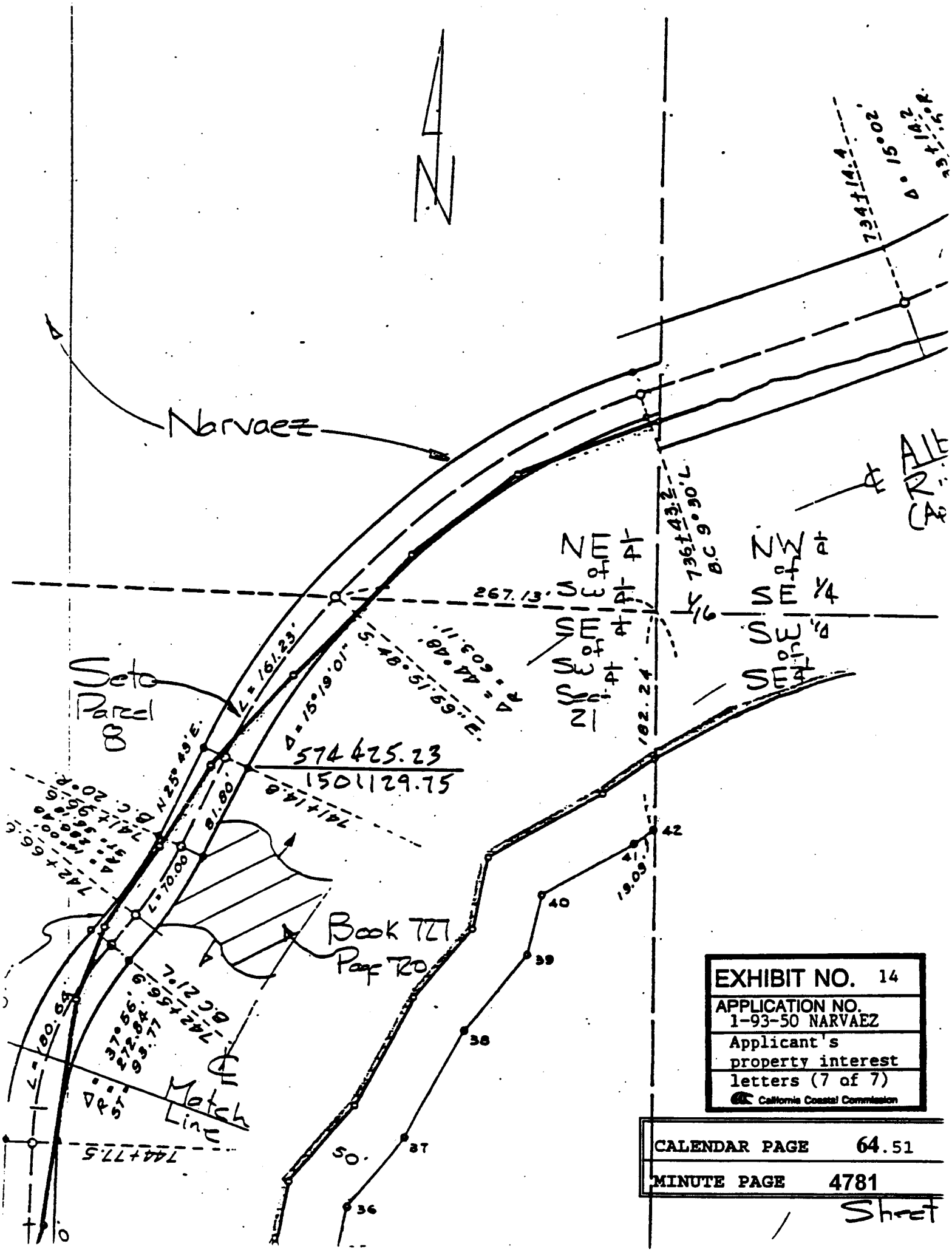


EXHIBIT NO. 14
APPLICATION NO. 1-93-50 NARVAEZ
Applicant's property interest letters (7 of 7)
California Coastal Commission

CALENDAR PAGE	64.51
MINUTE PAGE	4781

Sheet

NEWHOUSE & ASSOCIATES
Twin Oaks Office Plaza Suite 112
477 Ninth Ave.
San Mateo, Ca. 94402-1854

David E. Newhouse, Esq.
Ca. State Bar No. 54,217

Tel. No. (415) 348-8652
Fax. No. (415) 348-8655

February 8, 1994

EXHIBIT NO. 15
APPLICATION NO. 1-93-50 NARVAEZ
Fee owner's property interest letters (1 of 9)
California Coastal Commission

Sum Moo Seto
459 - 40th Ave.
San Francisco, Ca.94121

RE: Albion River Front Property

Dear Mr. Seto:

I have reviewed a copy of the Dec. 10, 1970 Grant Deed from MASONITE CORPORATION to PSP CORPORATION recorded 12/28/70 in Book 834 pages 505-509 Official Records Mendocino County, Ca. and in particular Parcel No. 8 described therein, hereinafter the GRANT DEED. I have also reviewed a copy of a Right-of-Way Grant dated Feb. 25, 1966 from MASONITE CORPORATION to PALLE H. ANDERSON recorded Oct. 19, 1966 Official Records Mendocino County, Ca., hereinafter the RIGHT OF WAY GRANT. Finally, I have reviewed the requests and documents provided by Te L. McGillivray on behalf of Art Narvaez for a retainer wall easement, hereinafter the RETAINER WALL EASEMENT REQUEST.

The GRANT DEED from Masonite Corporation to PSP corporation reserves to Masonite a *non-exclusive easement of right of way* over the strips of land designated therein as Parcels 4, 6, & 8 *which included the right to construct, if necessary, maintain and operate all means of transportation.* Parcel Six of the grant deed is described as *a strip of land 50 feet in width along the Southern and Eastern banks* of the *Albion River, measured from the line of mean high tide.* Parcel Seven of the grant deed is described as *a right of way 50 feet wide for road adjoining the south bank of the Albion River.*

The RIGHT-OF-WAY GRANT from Masonite Corporation to Palle H. Anderson conveyed a non-exclusive easement of right of way to construct, maintain and operate all means of communications and transportation of people and property across strips of property designated therein as Parcels One - Five. Parcels One and Three of the grant are described as *adjoining the south bank* of the Albion River, and Parcel Five of the Grant is described as *adjoining the north bank* of the Albion River.

The RETAINER WALL EASEMENT REQUEST, uses the description of Parcel Two of the RIGHT-OF-WAY GRANT to describe the southeasterly boundary of property between it and Albion Little River Road, the Grantee's (Narvaez) property as the dominant tenement (Exhibit B).

Excepted from the description of Exhibit B in the RETAINER WALL EASEMENT REQUEST is a deed to Masonite Corporation recorded 11/21/66 in Book 727 Page 720, Official Records Mendocino County, Ca. On a hunch, I obtained a fax copy of that deed from First American Title Co. in Ukiah Ca. That deed consists of two pages: (enlarged copy enclosed)

Page One comprising: a grant conveyance from Palle H. Anderson to Masonite Corporation of real property in the southeast quarter of the southwest quarter of Sec. [illegible], T16N, R17W, M.D.B. & M. south and east of the deeded lands of Masonite Corp. and north & west of the center line of Albion River, and

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APPLICATION NO. 1-93-50 NARVAEZ
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Page Two comprising: a grant of a non-exclusive right of way from Palle H. Anderson to Masonite Corporation in gross, 40 feet wide to construct, maintain & operate all means of communication and transportation of persons and property across two parcels, Parcel One being a 100 wide strip of land adjoining the northern bank of the Albion River in the NW quarter of the SE quarter of Sec. 21, T16N, R17W, M.D.B. & M., Parcel Two being a 100 wide strip of land adjoining the northern bank of the Albion River across the SE quarter of the NE quarter of Sec. 21, T16N, R17W, M.D.B. & M.

Finally you have advised:

(i) that a former railroad ran along the centerline of the strips of land described in the respective grants lying along the north and south banks of the Albion River;

(ii) that there has been some erosion of the river banks over the years;

(iii) that you and your wife, Jenny P. Seto are the successors in interest to PSP CORPORATION and are the current fee owner's of the parcels described in the GRANT DEED;

(iv) that an adjacent landowner (Narvaez) maybe a successor in interest to the non-exclusive RIGHT-OF-WAY GRANT to PALLE H. ANDERSON;

(v) that adjacent landowner Narvaez may wish to construct a dock from his adjacent parcel across one of the strips of land conveyed by the GRANT DEED to the river in a section where the river bank has eroded away; and

(vi) that the water level of Albion River adjacent the respective strip parcel has seasonal highs and lows and is influenced by tides;

You have requested an opinion with regard to the property rights that may be exercised affecting the strip parcels lying along the north banks of Albion River, in particular affecting Parcel Eight described in the GRANT DEED (designated as Parcel Two in the RIGHT-OF-WAY GRANT & as providing the southeasterly boundary of the proposed dominant tenement in the RETAINING WALL EASEMENT REQUEST of Narvaez). Basically you want answers to the following questions:

1. Is title to the strip parcels along the banks of the Albion River affected by erosion (avulsion)?

2. Can the eroded river bank be reclaimed, and if so, by whom?

3. Does an owner of a parcel adjacent to a Strip Parcels have a right to construct a fixture across that Strip Parcel for connecting his parcel to the river?

4. Can a successor in interest to either the non-exclusive right-of-way reserved by MASONITE CORPORATION or granted to PALLE H. ANDERSON construct a fixture across a strip parcel from an adjacent parcel connecting it to the river?

Current case law provides that one who loses land by avulsion retains title to the land ever though part of the land now may be under water. *Beach Colony II v. Coastal Com'n of State of California* (1984) 151 Cal.App.3d 1107, 1115 199 Cal.Rptr. 195,

In *Beach Colony II* (supra) debris back-up behind a bridge during a flood caused flood waters to wash away land nominally above the 100 year flood plain of a stream enlarging an existing lagoon and marsh. The court held that a property owner has a legal right to eject overflowing waters and to replace land lost through avulsion subject to reasonable conditions that maybe imposed by special agencies having jurisdiction over the area where the property lies. The court also held that, under the special circumstances covered by Civil Code Section 1015, the property owner's right to reclaim or recover a 'distinguishable body of land' suddenly and violently carried away to another location by action of a river or stream is subject to the one year time limitation of the statute. *Beach Colony II* (supra) 151 Cal.App.3d at 119

While the factual circumstances of *Beach Colony II* are not quite on all fours with your situation, even the California Supreme Court recognizes the right of a land owner to recovery land inundated by water by reason of an eroded levee. [See *State v. Superior Court Lake County (Lyon)* (1981) 29 Cal.3d 210, 230 Fn. 18, 172 Cal.Rptr 696 which imposes a public trust upon lands between the seasonal high and low water lines of non-tidal lakes and streams, citing *Bohn v. Albertson*, (1951) 107 Cal.App.2d 738, 238 P.2d 128.]

Accordingly, with regard to the portions of the land strips that may have eroded away, as successors under the GRANT DEED, you and Jenny hold legal title to the land under water, and may reclaim it subject to reasonable limitations that may be imposed by, for example, the Coastal Commission. *Beach Colony II* (supra) 151 Cal.App.3d at 119.

Also, since the non-exclusive easement of right of way over the strips of land including Parcel reserved by Masonite Corporation includes a right to construct, if necessary, maintain and operate means of transportation, it or its successor in interest could reclaim eroded portions of the strip for purpose of effectuating transportation along the line of the right of way.

With regard anybody claiming any right-of-way rights deriving from Palle H. Anderson, because Anderson conveyed those rights back to Masonite Corporation, all rights relative to that right of way servitude were extinguished on Nov. 21, 1966. [See C.C. § 811(1).]

An owner of property which is immediately upland, adjacent a stream or lake holds an exclusive right to use the land between the high and low water lines in a manner that is not incompatible with the public's interest in the property. C.C. §830; *State v. Superior Court Lake County (Lyon)* (1981) 29 Cal.3d 210, 232, 172 Cal.Rptr 696. This public trust right is the same right the public holds in lands between the mean high and low tides. As the strip parcels conveyed by the GRANT DEED are immediately adjacent the Albion River, you can not preclude the public from recreating in the river and on the banks up to the high water line, assuming that line is higher on the bank than the mean high tide. The owner of a parcel adjacent the land side of a strip parcel described in the GRANT DEED has no greater right than of a member of the public to recreate on the river bank between the high and low water lines. In short, an owner of such adjacent property does not have a right to construct a fixture across or on your Strip Parcel in order to join his land to the river with out first obtaining permission from you and your wife.

Finally, the right of way reserved by Masonite Corp. is a servitude which is not attached to other land or property rights. C.C. § 802. And, from the nature of the reservation and the property described, the reserved right of way easement for transportation is along a particular line, i.e., along a continuous center line bisecting the respective strip parcels. *Miro v. Superior Court for San Bernardino* (1970) 5 Cal.App.3d 87, 96, 84 Cal.Rptr. 874; *Ballard v. Titus* (1910) 157 C. 673, 110 P. 118; *Fletche* *Stapleton* (1932) 10 P.2d 1019, 123 C.A. 133 This is not a right of way to cross a strip pa perpendicularly for the purpose of connecting an adjacent parcel to the river. Accordingly, an adjacent property owner claiming rights as a successor in interest to the right of way easement reserved by Masonite Corp. can not build a fixture across a strip parcel without your permission.

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California Coastal Commission

In conclusion, based upon the documents I have reviewed I am of the opinion, subject to such reasonable conditions as may be imposed by public agencies such as the Coastal Commission, with regard to the Strip Parcels described in the GRANT DEED:

1. Your title to the Strip Parcels (including Parcel Eight) along the banks of the Albion River is not affected by erosion of the river banks, and if any portion of a strip parcel is under water you hold title to the land under the water;

2. You and your wife Jenny have an exclusive right to reclaim any portion of the Strip Parcels eroded away by the river for ALL PURPOSES; Masonite Corp. or the successor in interest to the right of way easement reserved in the GRANT DEED may reclaim eroded sections of a Strip Parcel for the limited purpose of providing transportation along the long center line of the parcel;

3. An owner of a parcel adjacent to a Strip Parcel DOES NOT HAVE A RIGHT to construct a fixture across or on that Strip Parcel for purposes connecting his parcel to the river even if the high water line of the river along an eroded section of the river bank intrudes across a section of the Strip Parcel onto his parcel.

4. The non-exclusive right-of-way granted to Palle H. Anderson by Masonite Corp. was extinguished when Palle H. Anderson re-conveyed that interest back to Masonite Corp., and there can be no successors to that interest; and

5. A successor in interest to the non-exclusive right-of-way reserved by Masonite Corporation can not construct a fixture perpendicularly across a Strip Parcel for connecting an adjacent parcel to the river.

If any questions arise, I will be more than happy to provide whatever professional assistance and answers that I can.

Very truly yours,

David E. Newhouse, Esq.

DEN:den
enc.

51229

RECORDED AT REQUEST OF

BOOK 727 PAGE 720
Nov 2 11 08 AM '66

OFFICIAL RECORDS
MENDOCINO COUNTY, CALIF.

RECORDED AT REQUEST OF

Nov 2 11 08 AM '66

OFFICIAL RECORDS
MENDOCINO COUNTY, CALIF.

GRANT DEED

EXHIBIT NO. 15
APPLICATION NO. 1-93-50 NARVAEZ
Fee owner's property interest letters (5 of 9)
California Coastal Commission

PALLE H. ANDERSEN, a married man

hereby GRANT to

MASONITE CORPORATION, A Delaware Corporation

All that real property situated in the County of MENDOCINO State of California, described as follows:

All of the Southeast quarter of the Southwest quarter of Section 21, Township 16 North, Range 17 West, M. D. B. & M. lying South and East of the Deeded Masonite Corporation lands and North and West of the Center of the Albion River.

Same as Seto Parcels

Date October 18, 1966

Palle H. Andersen

STATE OF CALIFORNIA
County of Mendocino } ss.

On October 18, 1966, before me, Conrad L. Cox, a Notary Public in and for said County and State, personally appeared Palle H. Andersen, known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same.

WITNESS my hand and official seal.

Conrad L. Cox
Notary Public

(SEAL)

My commission expires September 13, 1967

Conrad L. Cox
Notary Public in and for said County and State

CONRAD L. COX
NOTARY PUBLIC-CALIFORNIA
PRINCIPAL OFFICE IN
COUNTY OF MENDOCINO

REDWOOD EMPIRE TITLE COMPANY

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4786
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51229

MAIL TAX STATEMENT TO: Masonite Corporation, P.O. Box 268, Ukiah, Calif.

BOOK 727 PAGE 720

RECORDED AT REQUEST OF
[illegible]
at 9 min. past 11 d. M.
Nov 2 1966
BOOK 727 PAGE 721
OFFICIAL RECORDS
MENDOCINO COUNTY, CALIFORNIA
VIOLA RICHARDSON, Recorder
[illegible]

51230

EXHIBIT NO. 15
APPLICATION NO. 1-93-50 NARVAEZ
Fee owner's property interest letters (6 of 9)
California Coastal Commission

GRANT OF RIGHT OF WAY

THIS INDENTURE, made the 18th day of October, 1965 between Palle H. Andersen, a married man, Grantor, and Masonite Corporation, Grantee;

WITNESSETH:

The Grantor grants to Grantee, its successors, assigns, and permittees, a non-exclusive right of way in gross 40 feet in width upon which to construct, maintain, and operate all means of communication and transportation of persons and property over and across that certain real property situated in the County of Mendocino, State of California, and more particularly described as follows, to wit:

PARCEL ONE: A strip of land 100 feet wide along the Albion River and adjoining the North bank thereof across the NWSE of Section 21, T16N, R17W, M.D.B.&M.

PARCEL TWO: A strip of land 100 feet wide along the Albion River and adjoining the North bank thereof across the SENE of Section 21, T16N, R17W, M.D.B.&M.

IN WITNESS WHEREOF, Grantor has executed this conveyance this 18th day of October, 1965.

pt Sec 21-16-17

[illegible]

STATE OF CALIFORNIA,
County of Mendocino } ss.
On this 18th day of October in the year one thousand nine hundred and sixty-six before me, Conrad L. Cox, a Notary Public, State of California, duly commissioned and sworn, personally appeared Palle H. Andersen

known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal in the County of Mendocino the day and year in this certificate first above written.

Notary Public, State of California. Conrad L. Cox
My Commission Expires 9/13/67

CONRAD L. COX
NOTARY PUBLIC CALIFORNIA
[illegible]

51230

BOOK 727 PAGE 721

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NEWHOUSE & ASSOCIATES
Twin Oaks Office Plaza Suite 112
477 Ninth Ave.
San Mateo, Ca. 94402-1854

David E. Newhouse, Esq.
Ca. State Bar No. 54,217

Tel. No. (415) 348-865?
Fax. No. (415) 348-8?

June 14, 1994

EXHIBIT NO. 15
APPLICATION NO. 1-93-50 NARVAEZ
Fee owner's property interest letters (7 of 9)
California Coastal Commission

RECEIVED
JUN 20 1994
CALIFORNIA COASTAL COMMISSION

Bob Merrill
California Coastal Commission
45 Fremont Street
San Francisco, CA. 94105

RE: Coastal Development Permit Application 1-93-50 Application of Art Narvaez for: Construction of a Seawall, and Construction of Boating Facilities along Northern Bank of Albion River, Mendocino County

Dear Mr. Merrill:

Responding to the invitation for comment regarding contentions made on behalf of Art Narvaez by Thomas S. Brigham, Esq., the construction proposed by Mr. Narvaez in reality should be considered a two separate projects. One project addresses construction of a protective seawall along the north bank .. the Albion River. The second project addresses construction of additional boating facilities in the Albion River channel accessed from the north bank of the river.

PROTECTIVE SEAWALL PROJECT

With regard to the proposed seawall construction along the North Bank of the Albion River, at the present time a private road exists along the north bank of the Albion River in the eastern half of the Southwest quarter and the northern half of southeast quarter respectively of Section 21, Township 16 North 17 West, M.D.B. M. To evaluated the interests of Mr. Narvaez with regard to that private road, the following points should be considered[1]:

1. Palle Andersen (Narvaez's predecessor as contended by Mr. Brigham) held a tract of land located in the southeast quarter of the southwest quarter of Section 21, Township 16 North 17 West, M.D.B. M. conveyed by Masonite Corporation (Masonite) to Andersen per a Deed recorded April 13, 1954 in Book 368 Page 184 Records Mendocino County.

2. The first Grant of Right of Way from Masonite Corporation to Palle Andersen (Andersen) executed on Feb. 25, 1966 and recorded **Oct. 19, 1966 was a non-exclusive** *right of way* recited in gross, but apparently appurtenant the Andersen tract per the Deed recorded April 13, 1954. In particular, Parcel Four of that grant is described as an existing private road which connects to Parcel Two of that grant which is described as a strip of land along the north bank of the river adjacent to the Andersen property.

Solo parcel #3

[1] For purposes of these comments, the partial Map and handwritten explanations provided by Mr. Brigham are assumed to be correct. I also assume for puposes of these comments that P. Anderson was a previous owner of the Narvaez Parcel(s). I have not yet reviewed conveyancing, from Palle Andersen to A. Narvaez to ascertain whether Mr. Narvaez is in fact dealing with prior property rights of Andersen. Finally I have not physically examined the area of the proposed projects.

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APPLICATION NO.
1-93-50 NARVAEZ
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property interest
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California Coastal Commission

3. The language of the **Oct. 18, 1966** Grant Deed at Book 727 Page 720 Records Mendocino County from Palle Andersen to Masonite Corporation must be interpreted in context of his contemporaneous Grant of Right of Way to Masonite Corporation recorded at book 727 page 721 Records Mendocino County both of which were executed on **Oct. 18, 1966** and thereafter recorded on Nov. 2, 1966. In particular, since under California Civil Code Section 811(1) vesting of a right of a servitude (right of way) and the right of the servient tenement in the same person extinguishes the servitude, in October 1966 Masonite and Andersen intended to extinguish some portions of the servitude previously created on Feb. 25, 1966, but not recorded until **Oct. 19, 1966**.

4. The terms contained in the **Oct. 18, 1966** Grant Deed from Andersen to Masonite Corporation "... *lying to the south and east of the Deeded Masonite Corporation lands*", properly interpreted, refers to lands Masonite conveyed by deed to third parties, not to lands of Masonite situated in the Town of Albion per the Map entitled "Albion" Mendocino County Records.

5. On October 18, 1966, Andersen and Masonite did not extinguish the right of way servitudes described for Parcels One, Three, Four, and Five, of the Grant recorded **Oct. 19, 1966**.

6. Also the language of the Andersen to Masonite grants of **Oct. 18, 1966**, excludes two small separated sections of the right of way in Parcel Two of the Masonite to Andersen Feb. 25, 1966 Grant recorded **Oct. 19, 1966**, namely one lying within the northeast corner of the southwest quarter, and the other lying within the northeast corner of the southeast quarter respectively of Section 21, Township 16 North 17 West, M.D.B. M.

7. From the above assumptions, I infer, contrary to Mr. Brigham, that Andersen and Masonite intended by the October 18, 1966 grants that the Andersen property be used for a road, not the strip of land along side the north bank of the river previously used for the railroad (removed) thereafter conveyed by Masonite to Setos' predecessor.

8. I further infer, that unless the physical geography of the area precludes use of the adjacent Andersen (Narvaez) parcel for a road, the Andersen to Masonite Grants executed **Oct. 18, 1966** extinguished pursuant California Civil Code Section 811(3) the right of way through those two small excluded separated sections of the prior railroad right of way. Specifically, the act of extinguishing the right of way servitude connecting between and at the ends of the seperated sections of the right of way is incompatible with a privilege of passage over the Masonite (Seto) land along the described line parallel the river bank.

Based upon the above points, I conclude that permission of Sum & Jenny Seto, as the owners of the property upon which the seawall is to be constructed, should be obtained before the proposed construction of the protective seawall is allowed to proceed. In particular, a proposed protective seawall may not be necessary for maintenance or preservation of the **non-exclusive** right of way privileges retained by Andersen. Moreover, that right of way privilege is enjoyed by others including Masonite.

The Setos do not have any objections to the proposed construction of the protective seawall which preserves the riverbank and protects the existing private roadway, however, Mr. Narvaez has not obtained Setos' permission to construct it yet. Under no circumstances will Setos consent to the existing private roadway becoming a public way.

EXHIBIT NO. 15
APPLICATION NO. 1-93-50 NARVAEZ
Fee owner's property interest letters (9 of 9)
California Coastal Commission

BOATING FACILITY PROJECT

I am unsure of the exact location proposed for the construction of additional boating facilities adjacent the north bank of the Albion River Channel northeast of the mooring basin and boating facilities owned and operated by Seto.[2] Historically, an existing boat launch facility was located by a prior owner of the Narvaez parcel(s) at Setos' request at the northeast end of their strip of land along the north bank of the Albion River previously used for a railroad.

Moreover, nowhere in the language of the various grants between Andersen and Masonite is there any inference that Masonite conveyed or that Andersen (now Narvaez) retained a servitude comprising a right to access to the river channel perpendicularly across that section of the strip of land along the north bank of the Albion River previously used for a railroad conveyed by Masonite to Setos' predecessor (Parcel 8).

Accordingly, if Mr. Narvaez wishes to locate his contemplated new boating facility in the Albion River channel adjacent that strip of land previously used for the railroad along the north bank of the river, he should first acquire a right to access the new facility in the river along a defined line perpendicularly crossing that strip of land from his tract before being permitted to construct the new facility. Mr. Narvaez has not acquired a right to access the river channel by perpendicularly crossing Setos' section of the strip of land previously used for a railroad along the north bank of the river.

Until Mr. Narvaez acquires a right to perpendicularly cross their strip of land along the north bank of the river, the Setos strongly object to and will resist proposed construction of additional boating facilities in the river channel accessed by perpendicularly crossing their land.

Very truly yours,

David E. Newhouse, Esq.

DEN:den
cc Sum & Jenny Seto
Thomas S. Brigham, Esq.

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[2] The maps provided by Mr. Brigham do not specify where or if the proposed boating facilities are located in the section of the river depicted.

GEORGE C. RAU
PRESIDENT
WALTER HAYDON
VICE PRESIDENT
ANDREW E. BORDESSA
VICE PRESIDENT
ROGER VINCENT
VICE PRESIDENT

RAU AND ASSOCIATES INC.

CIVIL ENGINEERS • LAND SURVEYORS

EXHIBIT NO. 16
APPLICATION NO. 1-93-50 NARVAEZ
Proposed Agreement
(1 of 2)
California Coastal Commission

July 27, 1994

David E. Newhouse
Twin Oak Office Plaza, Suite 112
477 Ninth Avenue
San Mateo, CA 94402-1854

Job Number 91-254

RE: ALBION RIVER DEVELOPMENT

Dear Mr. Newhouse:

The purpose of this letter is to attempt to reach an agreement between Mr. Sum Seto and Mr. Art Narvaez regarding Mr. Narvaez's proposed development along the Albion River.

Mr. Narvaez's application will be heard August 9 by the Coastal Commission. We have not yet received any written feedback from Tom Brigham's letter of May 10 or your letter of June 14; however, our reading is that they will most likely approve the project with conditions.

We are not sure what these conditions (in regard to the Seto/Narvaez property rights issue) will be. However, it seems preferable that the two principals involved decide these issues rather than having to deal with a CCC decision which may be unacceptable to one party or the other.

Building on your letter of June 14, wherein you indicated that the Seto's did not object to the seawall, we would like to reach an agreement where Mr. Narvaez has the right to construct and maintain this seawall. On January 4, 1994, we sent Mr. Seto a proposed "Right of Entry" agreement and easement for the retaining wall for the westerly portion of the wall. We have modified these documents to include the entire length which is on or near Mr. Seto's property, and include them with this package. Please review these documents, and either ask Mr. and Mrs. Seto to sign them, or let us know what changes you would recommend.

In regard to the dock, Mr. Narvaez could move the dock to the easterly part of the property (away from Mr. Seto's property); however, he prefers the currently proposed location. If Seto's objections to the dock are based on potential commercial fishing uses, Mr. Narvaez is willing to agree that it will only be used for recreational purposes. If the objections are based on insuring safe access to Mr. Seto's docks on the inner mooring basin, we have enclosed a drawing (Figure 1) which shows approximately 175 foot clearance between the west end of the new dock and the old bridge piers. This should be more than adequate for boats moored at the inner basin. If the objections are for other reasons, please let us know, so that we may address them.

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100 NORTH PINE STREET • P.O. BOX M • UKIAH, CALIFORNIA 95482 • 707-462-6536 • FAX 707-463-2729

We still believe that Mr. Narvaez has a valid right of way on this property, but it appears to be more beneficial to both parties to reach an amiable agreement as outlined above. I will telephone you in the near future to follow up on this letter.

Very truly yours,

Terry L. McGillivray

TLM:lam

c: Sum Seto
Bob Merrill - California Coastal Commission
Art Narvaez
Tom Brigham

EXHIBIT NO. 16
APPLICATION NO. 1-93-50 NARVAEZ
Proposed Agreement
(2 of 2)
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