

41. ASSIGNMENT AND AMENDMENT OF PERMIT PRC 1956.9

During consideration of Calendar Item 41 attached, Mr. James F. Trout, Assistant Executive Officer, reported that two staff members had attended the Corps of Engineers hearing held on June 19, 1979, concerning this subject. Approximately 200 people attended the hearing, of which about 15 were supportive of the surfers and asked for additional studies to be made before the rocks were taken as proposed. The balance of the people were in support of the project. He indicated the Corps will take about 45 days to review the matter and then make their decision. He concluded that it is the staff's recommendation that the item be approved as submitted.

Appearances in support of the staff's recommendation:

Mr. Mario Machi, the proposed assignor. During Mr. Machi's testimony, he distributed to the Commission a copy of a newspaper article from the Humboldt Times dated July 17, 1959, "Governor Signs Shelter Cove Refuge Harbor Bill", a copy of which is on file in the office of the State Lands Commission. Mr. Machi indicated that he is willing to dedicate an easement across his property for public access to the beach if certain improvements are made to the harbor. He stressed that an improved breakwater is badly needed to improve the safety of the harbor.

Mr. Anthony Machi, a property owner in the area. Mr. Machi expressed his support for the staff's recommendation stressing 1) the importance of improving the breakwater to provide a much safer harbor for the boats to enter; and 2) the importance of improving the access road to the beach area. He was upset that a small group of surfers were able to hold-up an important project which a large number of residents in the area support.

Mr. Carl Hammer, a resident in the area. He indicated his support for the project and that of other senior citizens in the area.

Zeke Grader, General Manager, Pacific Coast Federation of Fishermen's Association. Mr. Grader supported the creation of an improved breakwater, but urged that the dumping of engine blocks in the harbor be ceased. He stated one of the Association's long-range concerns is that no one individual has a monopoly on fishing activities at Shelter Cove.

Jeremiah Scott, Counsel, Humboldt Bay Harbor Recreation and Conservation District, urged the Commission's favorable consideration of the staff's recommendation and pointed out that the public benefit which would be derived would far exceed the utility of a few surfers who would use the area.

Jack Alderson, Executive Officer of the Humboldt Bay Harbor Recreation and Conservation District, appeared in support of the staff's recommendation.

Appearances in Opposition to the staff's recommendation:

Mark Hoffert, Member of the Western Surfing Association. Mr. Hoffert stated that surfing is a very important recreational interest within the State and Shelter Cove and that there are prospects for increased growth of the sport. He urged the Commission to consider alternate rock sites. He asked that the Commission 1) as a condition to issuing the permit, require the use of alternative rock sources instead of using the rocks at Dead Man's Reef; 2) require a performance bond to guarantee no detrimental effects to the surfing; and 3) postpone acting on this assignment until the Corps of Engineers had made a decision.

Mr. Thomas Pratte, representing the Northern California Branch of the Western Surfing Association. Mr. Pratte also recommended that alternative sources of rocks be investigated. He stated they do not oppose improvement of the harbor, however, they strongly feel that these improvements should not be dependent on degradation of the surfing resource at Dead Man's Reef.

Douglas Galatti, resident of the area and representing the local surfing population. Mr. Galatti stated that their only opposition to the project concerns the removal of rock from the intertidal zone in front of Dead Man's Gulch. Mr. Galatti submitted and read into the record a resolution by the Dead Man's Defense Committee and Western Surfing Association dated June 26, 1979, on file in the office of the State Lands Commission. The resolution requested that the Commission consider other named alternative rock sources, rather than that of Dead Man's Reef. After those sources have been exhausted, and Dead Man's Reef is chosen as the site from which the rocks will be removed, they requested that a comprehensive study be required and an analysis undertaken by representatives of the surfing community in cooperation with the Humboldt Bay Harbor Recreation and Conservation District. In addition, Mr. Galatti asked that the Commission recognize surfing as a resource and requested that a provision be inserted in the agreement to the effect that if the rock removal occurs, that this be the last time the area is mined for it.

After the proponents and opponents had presented testimony, Chairman Cory asked the staff why a Negative Declaration had been filed instead of an Environmental Impact Report due to the significant environmental impact which the removal of the rocks will have on the area. Mr. Trout stated that no comments were received during the comment period of the Negative Declaration. Mr. Cory then stated that in light of the testimony given at this and previous meetings, he was not willing to certify that there would be no significant effect on the environment.

Commission-Alternate Sheldon Lytton asked if comments were not received during the period of circulation of the Negative Declaration, is the Commission to ignore new facts being presented at this meeting? Assistant Attorney General Jan Stevens advised the Commission that it could accept the District as lead agency and since no adverse comments were received and the 30-day period for submitting comments had elapsed, it could concur with the District's findings. However, the Commission is not foreclosed from accepting additional evidence with respect to environmental issues and from requiring a separate evaluation. If alternative rock sources which are being proposed are to be considered by the Commission, an additional supplemental environmental evaluation would have to be made of those sources to ascertain what effect their removal would have on the environment. In answer to Mr. Lytton's question as to whether the Commission is obligated to consider new facts, Mr. Stevens stated he could not answer that question at this time, but it is his opinion the Commission does have the authority to exercise its discretion and consider any relevant evidence that is presented to it. Mr. Lytton requested that the staff send him a letter setting forth the Commission's options. Another question which had to be resolved was on what basis are the rocks to be measured which are to be removed: 25% of the number, volume or weight?

The Commission expressed its support for improving the breakwater and the harbor, but stressed that the questions concerning how the rocks are to be measured and the legal implications concerning the Negative Declaration must be answered. It therefore deferred acting on the item until the following meeting and instructed both the proponents and opponents to meet and work out a compromise.

Attachment: Calendar Item 41.

CALENDAR ITEM

41.

6/79
W 21813
PRC 1956.9
De La Cruz

ASSIGNMENT AND AMENDMENT OF
PERMIT PRC 1956.9

ASSIGNOR: Mario J. Machi
Shelter Cove
Whitehorn, California 95489

ASSIGNEE: Humboldt Bay, Harbor, Recreation and
Conservation District
P. O. Box 134
Eureka, California 95501

ORIGINAL PERMIT

AREA, TYPE LAND AND LOCATION:
A 0.10 acre parcel of tide and submerged
land in the Pacific Ocean at Shelter Cove,
Humboldt County.

LAND USE: Construction and maintenance of a rock
mound breakwater.

TERMS: Unspecified term beginning July 15, 1957.

CONSIDERATION:
None.

AMENDED PERMIT

AREA, TYPE LAND AND LOCATION:
A 290 acre parcel of tide and submerged
land in the Pacific Ocean at Shelter Cove,
Humboldt County.

LAND USE: Construction and maintenance of a small
craft launching facility; maintenance of
an existing mooring area; improvement and
maintenance of an existing rock mound break-
water; removal of rock from the intertidal
zone in front of Dead Man's Gulch for the
purpose of improving the existing breakwater.

TERMS: Initial period: 25 years from June 1,
1979.

A 2

S 2

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Consideration: Public use and benefit, with the State reserving the right to set a monetary rental if the Commission finds that such action is in the State's best interest.

PREREQUISITE TERMS, FEES AND EXPENSES:

Applicant is permittee of upland.

Processing costs have been received.

STATUTORY AND OTHER REFERENCES:

A. P.R.C.: Div. 6, Parts 1 & 2.

B. Cal. Adm. Code: Title 2, Div. 3.

BACKGROUND:

Mr. Machi has had a protective structure permit with the State Lands Commission since 1957, however, initial construction of the breakwater did not start until 1974. Mr. Machi, at that time, had received all approvals from State, federal and local agencies. The breakwater project, as authorized in 1974, has not been completed.

The 1974 Coastal Permit NCR-74-C-174 approved by the Regional Coastal Commission was for the construction of the breakwater using rock from the reef of Dead Man's Gulch from an elevation of low water or above. The Regional Commission's decision was appealed by project opponents who were concerned about the effect of the project on surfing and access, the State Coastal Commission upheld the Regional Commission's decision and granted the permit for the breakwater and rock borrow area. Since the development project allowed in Permit NCR-74-C-137 has not been completed, the 1974 Coastal permit is still valid and can be assigned.

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The breakwater, which was the subject of Permit A-202-74, is part of the Harbor District's major improvements of the recreational facilities at Shelter Cove. Shelter Cove provides the only launching facilities for small boats in the Pacific Ocean between the Eel River and Noyo Harbor. The District's proposed improvements also include reconstruction and paving of an access road to the beach area, a boat-launching ramp, construction of a turnabout area at the boat ramp and support facilities on the adjacent uplands.

The only existing land access is across Mr. Machi's upland property. As part of this project, Mr. Machi has agreed to dedicate a 50' wide roadway easement across his property to the Harbor District for public access to the beach for recreational purposes.

Mr. Machi has stated to the Harbor District that if the improvements to the breakwater cannot be completed, he will not dedicate the necessary easement for public access to the beach.

The Harbor District's project received approval from the North Regional Coastal Commission in December of 1978 (78-C-306), with the condition that the Harbor District obtain rock to improve the breakwater from the area above the mean higher high water line and from the beach at Dead Man's Gulch.

The Regional Commission's decision was appealed to the State Coastal Commission by a local surfing group, Western Surfers Association and the Sierra Club. The appeal was based on the supposed detrimental effects that the rock removal portion of the project would have on surfing, and the alleged growth inducing impacts which may occur as a result of the increase use of the improved launching facilities at Shelter

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Cove. The State Coastal Commission found no substantial issue and upheld the Regional Commission decision. The State Coastal Commission also found and upheld that Mr. Machi's 1974 permit was still valid and could be assigned to the District.

CURRENT SITUATION:

Since the Harbor District has a valid permit from the Coastal Commission for the improvements at Shelter Cove, the Harbor District has requested that Mr. Machi's State Lands Commission Permit for the maintenance of the breakwater be assigned to the District. Also, the Harbor District has obtained an assignment on Mr. Machi's 1974 Coastal Permit (NCR-74-C-137) in order to obtain a sufficient amount of rock from the intertidal area at Dead Man's Gulch. The rock will be used to improve the breakwater and provide for safer launching and retrieval of small boats in Shelter Cove.

The appellants to the 1978 Coastal permit, the surfing group and Western Surfing Association, have filed suit naming the California Coastal Commission as Respondent and the Harbor District Respondent and Real Party in interest. The Petitioners contend that the Coastal Commission approval of the Harbor District's Shelter Cove project is contrary to the policies of the 1976 Coastal Act. Petitioners have requested to State Lands Commission that this matter be postponed until the court has rendered its decision.

OTHER PERTINENT INFORMATION:

1. The annual rental of the site is estimated to be \$13,900. The Harbor District's application to the State Lands Commission includes the construction of a paved launching ramp; improvements to the breakwater; removal of rock from the intertidal area in front of Dead Man's Gulch and a lease of the tide and submerged

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lands in Shelter Cove. The above would enable the Harbor District to work-up a mooring and anchoring plan which will include protection for environmentally sensitive areas within the Shelter Cove.

2. Shelter Cove has historically been used as a mooring and anchorage area by commercial and small recreational boats. The present system of mooring buoys and anchoring of boats in Shelter Cove is being conducted with no controls. This includes the placing of engine blocks, etc. as means of anchoring the mooring buoys. The incorporation of the tide and submerged lands into the amended permit will allow the Harbor District to control and perpetuate the existing uses at Shelter Cove.
3. The Harbor District does not contemplate any expanded uses at Shelter Cove. However, as a condition to the issuance of this permit, the Harbor District shall prepare and deliver to the Commission's staff, within 1 year of the approval date of this permit, a mooring plan for Shelter Cove for review and approval.
4. The United States Coast Guard and the United States Army Corps of Engineers have expressed their concerns over the indiscriminate manner in which the mooring buoys have been placed. They have suggested to the Harbor District that once the mooring buoys come under the supervision of the Harbor District, Shelter Cove can be designated, at the request of the Harbor District, as a "Special Anchorage Area".
5. Original permit is being amended to reflect:
 - A. New permittee.

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- B. Additional land uses.
 - C. Revised description.
 - D. Conversion of a protective structure permit to a public agency permit.
 - E. Generally to bring the permit format into current leasing policy.
6. A negative declaration was prepared by the Humboldt Bay, Harbor, Recreation and Conservation District, pursuant to CEQA and implementing regulations.

A notice of determination has been received.

7. This project is situated on State land identified as possessing significant environmental values pursuant to P.R.C. 6370.1, and is classified in a use category, Class A, which authorizes Restricted Use.

Staff has coordinated this project with those agencies and organizations who nominated the site as containing significant environmental values. They have found this project to be compatible with their nomination.

8. This project is consistent with Article 6.5 because it will protect and upgrade the commercial fishing and recreational boating industry; and provide coastal access.

APPROVALS OBTAINED:

North Coast Regional Commission.

FURTHER APPROVALS REQUIRED:

United States Army Corps of Engineers.

EXHIBITS:

- A. Land Description.
- B. Location Map.
- C. Negative Declaration.
- D. Notice of Determination.

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IT IS RECOMMENDED THAT THE COMMISSION:

1. DETERMINE THAT AN EIR HAS NOT BEEN PREPARED FOR THIS PROJECT, BUT THAT A NEGATIVE DECLARATION HAS BEEN PREPARED BY THE HUMBOLDT BAY, HARBOR, RECREATION AND CONSERVATION DISTRICT, ON MAY 10, 1977.
2. CERTIFY THAT THE COMMISSIONER HAS REVIEWED AND CONSIDERED THE INFORMATION CONTAINED IN THE NEGATIVE DECLARATION.
3. DETERMINE THAT THE PROJECT WILL NOT HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT.
4. DETERMINE THAT THE PROJECT IS CONSISTENT WITH THE PROVISIONS OF ARTICLE 6.5 OF TITLE 2 OF THE CAL. ADM. CODE.
5. FIND THAT APPROVAL OF THE ASSIGNMENT AND AMENDMENT OF PRC 1956.9 WILL HAVE NO SIGNIFICANT EFFECT UPON ENVIRONMENTAL CHARACTERISTICS IDENTIFIED PURSUANT TO SECTION 6370.1, OF THE P.R.C.
6. APPROVE THE ASSIGNMENT OF PRC 1956.9 FROM MARIO J. MACHI TO THE HUMBOLDT BAY, HARBOR, RECREATION AND CONSERVATION DISTRICT EFFECTIVE JUNE 1, 1979.
7. APPROVE THE AMENDMENT OF PRC 1956.9 TO CONVERT A PROTECTIVE STRUCTURE PERMIT TO A 25-YEAR GENERAL PERMIT - PUBLIC AGENCY USE TO THE HUMBOLDT BAY., HARBOR, RECREATION AND CONSERVATION DISTRICT FROM JUNE 1, 1979; IN CONSIDERATION OF THE PUBLIC USE AND BENEFIT; WITH THE STATE RESERVING THE RIGHT AT ANY TIME TO SET A MONETARY RENTAL IF THE COMMISSION FINDS SUCH ACTION TO BE IN THE STATE'S BEST INTEREST; FOR (a) THE CONSTRUCTION AND MAINTENANCE OF A SMALL CRAFT LAUNCHING FACILITIES; (b) MAINTENANCE OF AN EXISTING MOORING AREA; (c) IMPROVEMENT AND MAINTENANCE OF A ROCK MOUND LEAKWATER; (d) REMOVAL OF ROCK FROM THE INTERTIDAL ZONE IN FRONT OF DEAD MAN'S GULCH, THE ABOVE LISTED ACTIVITIES TO BE PERFORMED ON LANDS DESCRIBED IN EXHIBIT "A" ATTACHED AND BY REFERENCE MADE A PART HEREOF.

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(Rev. 6/25/79)

EXHIBIT "A"

LAND DESCRIPTION

W 21813

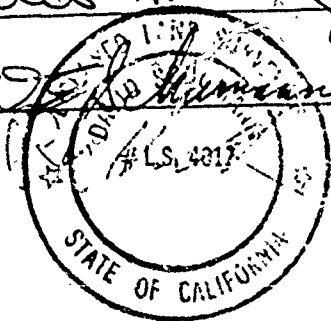
A parcel of tide and submerged land lying in the Pacific Ocean, situated in T5S, R1E, HM, Humboldt County, State of California, more particularly described as follows:

COMMENCING at the section corner common to Sections 9, 10, 15 and 16; thence S 20° 04' 26" W 4,312 feet to the ordinary high water mark at the southern tip of Point Delgado, said point being the POINT OF BEGINNING of this parcel; thence from said point of beginning south 890 feet to the intersection with the protracted section line common to Sections 16 and 21, thence along said protracted section line east to the ordinary high water mark of the Pacific Ocean; thence northwesterly along said ordinary high water mark to the point of beginning.

EXCEPTING THEREFROM any portion lying landward of the ordinary high water mark of the Pacific Ocean.

END OF DESCRIPTION

Prepared Chris N. Perry Checked J. K. & J. J. [Signature]
Reviewed [Signature] Date 4/10/79



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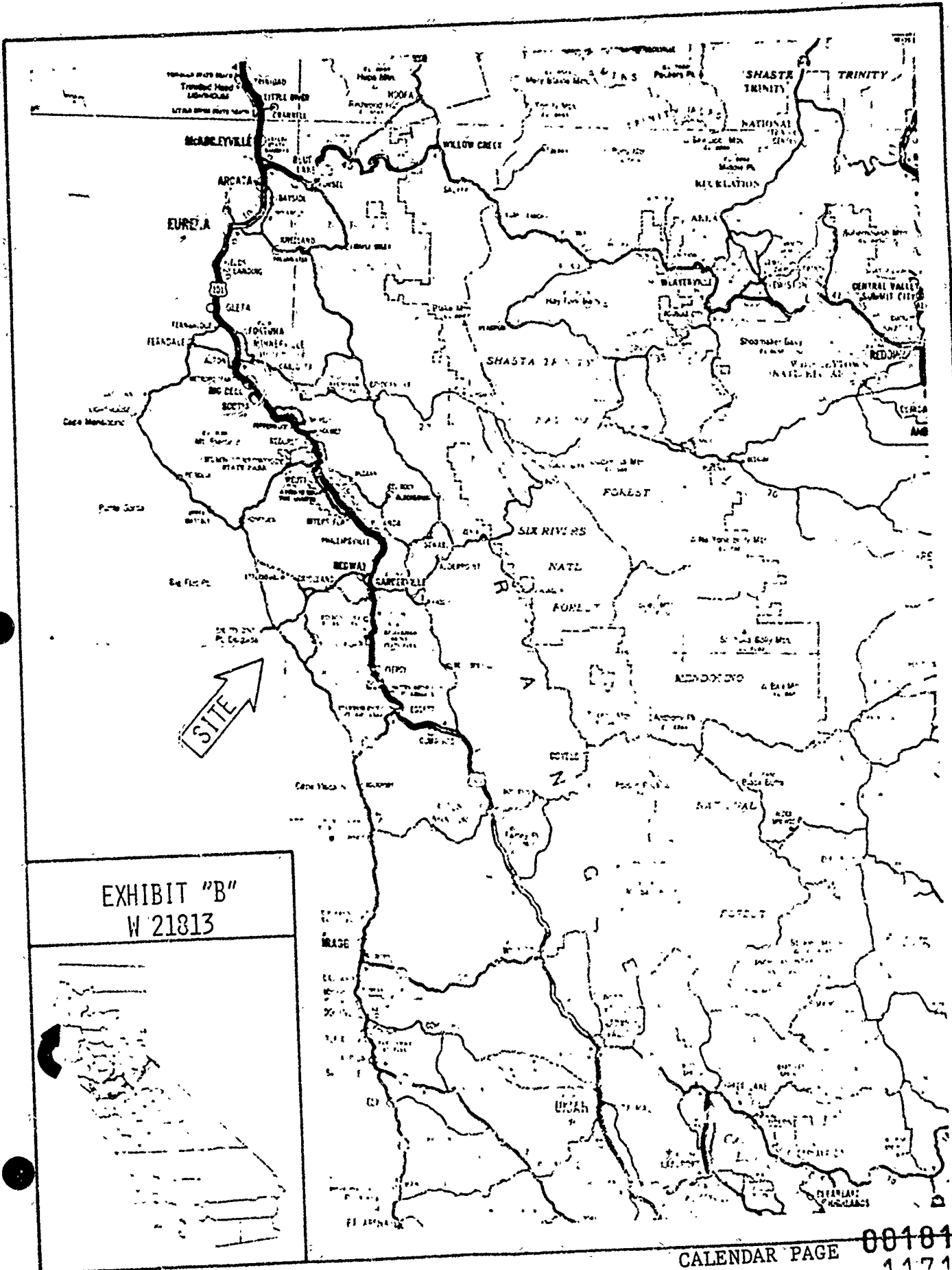


EXHIBIT "B"
 W 21813

HUMBOLDT BAY HARBOR,
RECREATION AND CONSERVATION DISTRICT

EXHIBIT "C" 5.4

NEGATIVE DECLARATION

Project: To improve small craft launching facilities at Shelter Cove, California.

Applicant: Humboldt Bay Harbor, Recreation and Conservation District
Post Office Box 134
Eureka, California 95501.

Property Owner: Humboldt Bay Harbor, Recreation and Conservation District
Bureau of Land Management

Location: On the Pacific Coast approximately twenty-three (23) miles west of Highway 101 at Garberville.

Project Description: To acquire a public right of way across private property creating free public access to ocean boat launching facilities, to widen the existing launch ramp access removing material and moving the bluff face back up to five feet above the ramp access creating better drainage and stabilizing the area, paving the launch ramp access and turn around area, stabilizing the bluff face below the launch ramp access to eliminate erosion, to improve the wave energy dissipator utilizing local rock from the intertidal area in front of Dead Mans Gulch, and to provide free public day use parking for 24 automobile/trailer combinations, 12 single spaces, public restrooms and picnic facilities.

Project Purpose: To increase public safety while launching small craft at Shelter Cove, to ease free public access to the Shelter Cove beach area and to install needed sanitary facilities.

General Site Description: Shelter Cove lies under the south face of Point Delgada and affords fair shelter in northwest weather but is exposed and dangerous with south and west storms. An occasional swell runs in the cove. Point Delgada is backed by steep mountains covered with brush and trees. Though Shelter Cove is state tidelands, there is no control of mooring, anchoring or discharges.

A hard packed sandy beach stretches south to Dead Mans Gulch approximately .4 of a mile with a rocky beach continuing .25 miles to the northerly Point No Pass. There is very little area at high tide where public use facilities could be developed.

A paved, two lane county road connects Shelter Cove to Highway 101 at Garberville.

Boat launching facilities at this time are primitive. A dirt ramp connects the paved county road to the bluff and then down to the beach. This is across private property and a charge for the crossing is made. The ramp from the top of the bluff to the beach is steep, unpaved and is carved from sandstone. Traction, even in dry weather, is difficult for many vehicles.

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The Federal Government estimated in 1974 that there were approximately 11,000 boat launchings per year utilizing these primitive facilities. The owner of the private property documented 6,000 launchings during the summer of 1976. In the immediate vicinity of the bluff top are a seasonal restaurant, an r.v. park, and an eight unit motel and 1.9 acres belonging to BIM for beach access and recreational purposes.

The Pacific Ocean in the immediate area of Shelter Cove is very productive with bottom fish and salmon creating a demand for access and launching.

Shelter Cove is the only refuge between Fort Bragg 44 miles to the south and Humboldt Bay 60 miles to the north and there are no other known ocean launching ramps in this stretch.

Basis for a Negative Declaration

1. The proposed project will lead to a change of the ambient noise level only during construction.
2. The project will have no known effect to the area respective to historic, cultural or natural effects, for the project is designed to improve existing facilities and usage. The only new feature will be the public restroom.
3. There will be no significant visual effect, the aesthetics of the area will be enhanced by the improvement of existing facilities.
4. The work will enhance a recreational area.
5. The activity will not alter the pattern or behavior of non-human species except during the short term of construction. The rock to be used from the Dead Mans Gulch area does not act as substrata for either algae or animal life.
6. There are no known important breeding, nesting or feeding areas in the vicinity of the proposed project that would be interfered with. The sterile rock from the Dead Mans Creek area will be moved to the wave energy dissipator as other rock has been before creating a productive habitat.
7. The project will not lead to a significant change in air or water quality.
8. The project will not disturb the ecological balance of the area, as the area is already impacted.
9. The project will have no effect on any public water supply source, treatment facility or distribution system.
10. The project will not be detrimental to the quality of human environment, the opposite, it should increase the safe usage of the launching facilities.

REVIEW: This Negative Declaration was reviewed by the Board of Commissioners of the Humboldt Bay Harbor, Recreation and Conservation District at its regular meeting of _____ and found to be:

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Adequate x

Inadequate _____



ROBERT E. DAVENPORT, President
Board of Commissioners

Date: May 10, 1977

HARBOR, RECREATION, AND CONSERVATION
DISTRICT
(707) 443-0801
P. O. Box 134
Eureka, California 95501



Division
J. A. Gast

3th Division
H. N. Christensen

5th Division
R. L. Henderson
Secretary

NOTICE OF DETERMINATION

TO: Secretary for Resources
1416 Ninth Street, Rm. 1311
Sacramento, CA 95814

 County Clerk
County of Humboldt
825 Fifth Street
Eureka, CA 95814

SUBJECT: Filing of Notice of Determination in compliance with
Section 21108 or 21152 of the Public Resources Code.

Project Title
Shelter Cove Improvement of Small Craft Launching Facilities

State Clearinghouse Number (If submitted to State Clearinghouse)
SCH Number 77062142

Contact Person Mr. Jack Alderson Telephone Number 443-0801 (707)

Project Location
Shelter Cove, California

Project Description

To improve boat launching facilities by providing public access to beach, providing a paved access to the beach launch area, providing public restrooms and parking.

This is to advise that the Humboldt Bay Harbor, Recreation and Conservation District has made the following determinations regarding the above described project:

1. The project has been approved disapproved by the Humboldt Bay Harbor, Recreation & Conservation District.
2. The project will will not have a significant effect on the environment.
3. An Environmental Impact Report was prepared for this project pursuant to the provisions of CEQA.
 A Negative Declaration was prepared for this project pursuant to the provisions of CEQA. A copy of the Negative Declaration is attached.

Date Received for Filing _____

[Signature]
President, Board of Commissioners

Enclosure 3