CALIFORNIA COASTAL COMMISSION
CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
(831) 427-4863

W13b

Filed:	04/02/02
180th day:	09/29/02
Staff:	SAM-SC
Staff report:	08/22/02
Hearing date:	09/11/02

STAFF REPORT: REGULAR CALENDAR

Application number.....**3-01-102**

Applicant.....**Shepard Kett/Values Pacific**

Agent .....Melanie Mayer Gideon

Project location.....7401 Sandholt Road, Moss Landing Harbor, Moss Landing, Monterey County, APN's 133-251-011 and 133-251-012 (Exhibits A, B, and C).

Project description.....Placement of 5,880 cubic yards of fill and a 1,750 cubic yard rip-rap revetment to replace and protect approximately 40 feet of land lost to erosion. The project also involves construction of a 267-foot long 10-foot wide pier[1], including the installation of 60 pier pilings.

Approvals Required.....US Army Corps of Engineers (USACOE or Corps) permit, and Moss Landing Harbor District construction permit.

File documents.....CCC Coastal Development Permit Application file 3-01-102; Geotechnical Investigation for Moss Landing Harbor Dredging Project Moss Landing Harbor, California (January 1996).

Recommendation.....Denial

Summary of Staff Recommendation:

The project proposes to reestablish land lost to erosion by placing 5,880 cubic yards of fill and constructing a 1,750 cubic yard rip-rap revetment, within inter-tidal areas of Moss Landing Harbor that are privately owned but subject to a public trust easement for navigation, commerce and fishing. The project also involves the construction of new 180-foot long 10-foot wide pier, which will connect to an existing 87-foot long pier that will be demolished and rebuilt. Staff recommends that the Commission **DENY** the coastal development permit because the project is inconsistent with Coastal Act standards that: limit the placement of fill and the construction of shoreline protective devices; protect the functional capacities of wetlands; and, require public access and recreation opportunities to be protected, maximized, and enhanced.

Coastal Act Section 30233 allows fill in very limited circumstances, such as for new or expanded port facilities and coastal-dependent industrial facilities where there is no feasible less environmentally

[1] The project proposes to rebuild an 87 foot long pier that is no longer attached to the land, and construct 187 feet of new pier to connect it the rebuilt pier to the fill area.

damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects. The placement of fill must also maintain or enhance the functional capacity of wetlands. The proposed project is inconsistent with these requirements because the area of fill will not be used for port facilities or coastal dependent industries, and because less environmentally damaging alternatives would be available to accommodate such uses, should they be proposed in the future (e.g., alternatives that do not involve the filling of wetland areas subject to the public trust easement). The project is also inconsistent with Section 30233 because it does not include feasible mitigation available to minimize the adverse environmental impacts of the project and maintain the functional capacity of the wetland, such as mitigation to offset the loss of approximately 0.5 acre of aquatic habitat.

Coastal Act Section 30235 limits the placement of shoreline protection to those areas where existing structures or coastal dependent uses are at risk and requires such structures to be designed to eliminate or mitigate adverse impacts to local shoreline sand supply. In addition, Coastal Act Section 30253(2) states that new development shall neither create nor contribute significantly to the erosion, geologic instability of destruction of the site or surrounding areas. The proposed project is inconsistent with these requirements because there is no coastal dependent use occurring on, or proposed for the site, and there are no structures at risk; the limited structural development on the site (i.e., a metal warehouse and two small wooden buildings) are neither currently threatened by erosion nor substantial enough to warrant protection. Moreover, the applicant has not addressed, nor provided mitigation for, the proposed revetment's impacts on local sand supplies and the stability of adjacent shoreline areas.

Finally, the proposed project conflicts with the public access and recreation policies of the Coastal Act because it will place fill in an area over which the public has an easement for commerce, navigation and fishing. Currently, the public uses the area proposed to be filled for beach oriented recreation and fishing. The installation of fill and a rip rap revetment will interfere with the public's right of access to this area inconsistent with Coastal Act Section 30211, and will reduce areas available for water oriented recreation inconsistent with Section 30220.

Staff Report Contents

1. Staff Recommendation on Coastal Development Permit 3
2. Recommended Findings and Declarations 4
   A. Project Location 4
   B. Project Description 5
   C. Standard of Review 5
   D. Issue Analysis 5
      1. Filling of Coastal Waters 5
      a. Coastal Act Policies: 5
      b. Analysis: 7
      c. Conclusion: 8
      2. Construction of Revetments and Seawalls 9
      a. Coastal Act Policies 9

b. Analysis 9
c. Conclusion 10
3. Hazards 10
a. Coastal Act Policies: 10
b. Analysis: 10
c. Conclusion: 11
4. Public Access and Recreation 11
a. Coastal Act Policies: 11
b. Analysis: 12
c. Conclusion: 12
5. California Environmental Quality Act (CEQA) 12

List of Exhibits

A. Regional Location Map
B. Project Vicinity Map
C. Assessor's Parcel Map
D. Site Plans
E. Aerial Photos
F. Harbor District Letter Dated 11/30/01
G. Letter from Applicant's Representative Dated 02/05/02
H. Letter from Applicant's Attorney Dated 08/09/02
I. Boundary Determination

1. Staff Recommendation on Coastal Development Permit

The staff recommends that the Commission, after public hearing, **deny** the proposed project. Staff recommends a **NO** vote on the following motion:

MOTION: *I move that the Commission approve Coastal Development Permit No. 3-01-102 for the development proposed by the applicant.*

STAFF RECOMMENDATION OF DENIAL:

Staff recommends a **NO** vote. Failure of this motion will result in denial of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO DENY THE PERMIT AMENDMENT:

The Commission hereby denies the proposed coastal development permit on the grounds that the development will not conform with the policies of Chapter 3 of the Coastal Act. Approval of the amendment would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the

amended development on the environment.

2. Recommended Findings and Declarations

The Commission finds and declares as follows:

A. Project Location

Moss Landing is a coastal community within unincorporated northern Monterey County. It is located near the middle of Monterey Bay between the cities of Santa Cruz (approximately 26 miles north) and Monterey (approximately 18 miles south), and between two river systems, the Pajaro River (approximately 1.5 miles north) and the Salinas River (approximately 4 miles south) (See Exhibit A for regional location map and Exhibit B for site vicinity map.). Moss Landing Harbor, one of only six harbors located along the Central Coast area, lies just west of Highway 1 in Moss Landing, at the mouth of Elkhorn Slough and at the head of the Monterey Submarine Canyon. Moss Landing is also adjacent to the Monterey Bay National Marine Sanctuary, the nation's eleventh and largest marine sanctuary, protecting marine resources that include the nation's most expansive kelp forests and one of North America's largest underwater canyons.

Moss Landing Harbor was created in 1947 when the US Army Corps of Engineers (USACOE) first dredged the mouth of Elkhorn Slough near the northern extent of the Old Salinas River mouth. The Harbor occupies a portion of the Old Salinas River channel paralleling the coast and separated from the ocean by sand spits and dunes. Permanent jetties placed along the north and south sides of the entrance provide year-round access to the Pacific Ocean. Inland of the Highway 1 Bridge is the Elkhorn Slough, watershed, a 4,000 acre coastal estuary whose tidal exchange flows through the Harbor.

The Harbor entrance and Elkhorn Slough channel essentially divides the Moss Landing Harbor into two parts, referred to as the North and South Harbor areas, respectively. The North Harbor area occupies a portion of the Old Salinas River near its confluence with Bennett Slough, and the South Harbor area occupies portions of both the Old Salinas River and the mouth of Moro Cojo Slough (Exhibit B). The project site is located at the northwestern end of the South Harbor area.

The site consists of two adjoining lots on the east side of Sandholdt Rd. (APNs133-251-001 and 133-251-003) that are separated from the southern harbor mouth breakwater by a single intervening lot owned by the Moss Landing Harbor District (see Exhibit C). According to a survey conducted in 2001, most of Parcel 3 (which contains the damaged pier) is located below the mean high tide line. Ownership of the inter-tidal areas of this parcel has been addressed by the Monterey County Superior Court, in Case Number 80050, which states that the area of the proposed development is privately owned, but subject to an easement in favor of the public or commerce, navigation, and fishing (see Exhibit H). Development within this area is also subject to the review and approval of the Moss Landing Harbor District and the U.S. Army Corps of Engineers.

Structures on Parcel 1, which is located entirely above the mean high tide line, include a double height metal building with an attached one story wooden building, another one story wooden building and fencing (See Exhibit D). A letter from the applicant, dated 2/5/02, states that the site also includes a seawater well, and infrastructure such as piping and electrical and sewer service. There is currently no use of the site, coastal-dependent or otherwise, except perhaps for storage in the existing buildings.

B. Project Description

The applicant proposes to recreate land that has been lost to erosion by placing 5,880 cubic yards of fill and 1,750 cubic yards of rip-rap in areas below the mean high tide line. The proposed revetment will be roughly 340 ft. long, 25 ft. wide at its base, 5 ft. wide at its top, and approximately 6.8 feet in height. The base of the revetment is located approximately 100 feet away from the existing shoreline at its furthest point, and 40 feet at its closest point. The proposed fill will cover an area of 16,869 square feet, and the base of the revetment will cover approximately 8,500 square feet, resulting in a total loss of approximately 0.58 acres of inter-tidal/benthic habitats.

The project also proposes to demolish and rebuild an existing 87 foot-long pier that is no longer connected to the shoreline, and to construct 180 feet of new pier to complete its connection to the land. In total the pier would be 267 feet long and 10 feet wide, and have 60 pilings. Public access on the proposed pier is not included in the project description. The project will also need permit approval from the US Army Corps of Engineers (USACOE), and a construction permit from the Harbor District.

C. Standard of Review

The proposed project would take place within the Commission's coastal development permit jurisdiction, which includes existing and former (now filled) tidelands (see Exhibit I). The standard of review for new development in the Commission's jurisdiction area is the Chapter 3 policies of the Coastal Act.

D. Issue Analysis

1. Filling of Coastal Waters

a. Coastal Act Policies:

Coastal Act Section 30233 states:

(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:

(l) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.

(2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.

(3) In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities, shall not exceed 25 percent of the degraded wetland.

(4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.

(5) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.

(6) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.

(7) Restoration purposes.

(8) Nature study, aquaculture, or similar resource dependent activities.

(b) Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation. Dredge spoils suitable for beach replenishment should be transported for such purposes to appropriate beaches or into suitable long shore current systems.

(c) In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary. Any alteration of coastal wetlands identified by the Department of Fish and Game, including, but not limited to, the l9 coastal wetlands identified in its report entitled, "Acquisition Priorities for the Coastal Wetlands of California", shall be limited to very minor incidental public facilities, restorative measures, nature study, commercial fishing facilities in Bodega Bay, and development in already developed parts of south San Diego Bay, if otherwise in accordance with this division.

For the purposes of this section, "commercial fishing facilities in Bodega Bay" means that not less than 80 percent of all boating facilities proposed to be developed or improved, where such improvement would create additional berths in Bodega Bay, shall be designed and used for commercial fishing activities.

(d) Erosion control and flood control facilities constructed on water courses can impede the movement of sediment and nutrients which would otherwise be carried by storm runoff into coastal waters. To facilitate the continued delivery of these sediments to the littoral zone, whenever feasible, the material removed from these facilities may be placed at appropriate points on the shoreline in accordance with other applicable provisions of this division, where feasible mitigation measures have been provided to minimize adverse environmental effects. Aspects that shall be considered before issuing a coastal development permit for such purposes are the method of placement, time of year of placement, and sensitivity of the placement area.

b. Analysis:

Fill proposed as part of this project consists of the 1,750 cubic yards of rip-rap for shoreline protection, 5,880 cubic yards of sandy material to backfill behind the proposed seawall, and 60 pier pilings proposed to rebuild and restore an existing, damaged pier that does not currently connect to solid land. Filling of open coastal waters is permissible for certain purposes (e.g., for port and coastal dependent industrial facilities) where it is determined that there is no feasible less environmentally damaging alternative and where mitigation measures are provided to minimize adverse environmental effects.

There are three primary reasons why the proposed project is inconsistent with Coastal Act Policies regulating wetland fill. First, there is no existing or proposed use of the site that would allow for the fill within the limitations of Coastal Act Section 30233(a). It is recognized that the project site provides a prime location for coastal dependent industry and/or expanded port facilities, and is designated by the Monterey County LCP for such uses. However, the placement of fill cannot be found consistent with Section 30233(a), until such uses are either permitted or in existence. Furthermore, with respect to the fill associated with the proposed pier pilings, Section 30233(a) allows such fill for <u>public recreational piers</u> that provide public access and recreational opportunities. The pier proposed in this project does not include provision of public access, even though it is located on lands that are subject to a public trust easement for commerce, navigation, and fishing.

Second, the proposed placement of fill must be the least environmentally damaging alternative available to accommodate any of the limited purposes for which fill can be authorized. Lesser damaging alternatives for accommodating coastal dependent or port uses, such as those that do not involve a shoreline structure, and those that would avoid and minimize wetland fill, must be considered first. An effective analysis of such alternatives cannot occur until the applicant identifies the proposed use of the site.

Third, the proposed fill does not maintain the functional capacity of the affected wetland area. As previously noted, the project will result in the loss of approximately 0.58 acre of intertidal/wetland

habitat. To maintain the functional capacity of the wetland, the loss of such habitat areas must be avoided, for example, by placing shoreline protection above the mean high tide line. Where the loss of wetlands cannot be avoided, wetland impacts must be minimized and mitigated, for example through the use of a vertical structure such as a bulkhead that will impact less wetland area, and by creating and/or enhancing wetland areas as a means to offset wetland loss. The unmitigated and avoidable loss of wetland associated with the proposed project is therefore inconsistent with Section 30233(c) because it will diminish the functional capacity of the Old Salinas River channel.

The applicant claims that the proposed fill is allowable because Section 30233(a)(2) allows diking and filling for the purpose of "maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps." The applicant's representative's August 9, 2002 letter (See Exhibit H) states that erosion of the Values Pacific property is depositing sediment within the boat berthing and mooring areas of the harbor, and that as a result, the proposed fill and shoreline protection will maintain navigation channels and berthing areas. Contrary to this assertion, subsection (2) of 30233(a) is intended to allow harbor districts to dredge to maintain harbor facilities, not to allow private property owners to armor their shorelines and fill to reclaim eroded property. Additionally, the lack of pertinent geologic information about the patterns of erosion and deposition within the harbor makes it impossible to conclude that the proposed project will serve to maintain harbor channels. In fact, since the project has the potential to increase erosion of the property immediately to the north, or other unprotected sections of the harbor, it may exacerbate problems of sediment deposition within harbor areas.

Having processed numerous permits for dredging in Moss Landing Harbor, the Commission is familiar with the needs and challenges associated with harbor facility maintenance. The Commission is supportive of a comprehensive approach to understanding and addressing the erosion/deposition forces within the harbor. In contrast, this project is a piecemeal approach to addressing harbor maintenance and management needs. The project has not been accompanied by, or designed in accordance with, the geotechnical analyses needed to ensure that project complies with Coastal Act objectives of maintaining harbor facilities and preserving the functional capacity of the Old Salinas river channel and the Elkhorn Slough watershed. The development of an effective solution to the erosion and deposition problems affecting the harbor, which also carries out Coastal Act resource protection criteria, demands the participation of the Harbor District.

c. Conclusion:

The proposed fill is inconsistent with Section 30233 of the Coastal Act because it is not currently needed, nor the least environmentally damaging alternative available, to accommodate the limited uses for which the fill of open coastal waters is allowed. Moreover, the project has not been designed to protect the functional capacity of wetland areas, as it will result in the unmitigated loss of approximately 0.58 acre of inter-tidal/benthic habitat. As a result of these inconsistencies, the project must be denied.

2. Construction of Revetments and Seawalls

a. Coastal Act Policies

Section 30235*. Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fish kills should be phased out or upgraded where feasible.*

b. Analysis

The Kett property is zoned by the Monterey County LCP for coastal-dependent light industrial use and located within a harbor that supports commercial fishing, recreational boating, research vessels and an energy plant. However, there is no current use on the site, and there is no coastal-dependent use proposed for the site that warrants the construction of a shoreline protection device consistent with Coastal Act Section 30235.

Nor are there any structures on the site that are at imminent risk from erosion. Currently the site is vacant with the exception of a metal warehouse-type of building and two small one-story wooden buildings. The applicant states that a seawater well also exists on the site. The closest existing structure is located 215 feet from the top of bank, while the other wooden structure and the metal building are located 292.5 feet from the top of bank (See Exhibit D, page 1), and the applicant has not submitted any evidence or geotechnical analysis showing that the structures are at risk. As aerial photos of the site show (Exhibit E), erosion rates seem to have stabilized, as the shoreline has not receded a substantial amount from the 1993 shoreline. Assuming that the existing metal and wooden storage buildings are structures that could be protected, given proof of endangerment, there is still a less environmentally damaging alternative available to the property owner. These types of structures can be easily moved, thus providing a less environmentally damaging option to building a seawall. Coastal Act Section 30235 only allows seawalls where they are required, and in this instance they are not required. Additionally, this Section does not allow the construction of shoreline structures to protect vacant, unimproved property.

In a letter dated August 9, 2002 (attached as Exhibit H), the applicant asserts that Section 30235 is not applicable to the proposed project because the erosion of the Values Pacific property “cannot properly be described as a “natural shoreline process,” but instead is the direct result of the reconstruction of the harbor entrance by the Army Core (sic) of Engineers several years ago.” The applicant also notes that the structure is not on the shoreline of the ocean, but is located in the interior of the harbor.

Notwithstanding the potential that that erosion at this location may be partly influenced by man-made structures, erosion and sediment deposition within the harbor is part of the natural shoreline processes that is addressed by Section 30235. The Coastal Act does not distinguish shoreline areas within a harbor from other types of shorelines in its application of this policy. Thus, it is clear that Coastal Act Section

30253 is applicable to the proposed project.

In addition to the absence of a structure or use requiring protection, the project is inconsistent with Section 30235 because it not been accompanied by the technical analyses necessary to ensure that impact to local sand supplies will be avoided. The proposed revetment will alter a complex system of tidal flow, wave reflection, and erosion and sediment deposition, and has the potential to exacerbate erosion of adjacent property as well as diminish the amount of sand supplied to local beaches. In order to address the requirements of Coastal Act Sections 30235 and 30253(2), proposals for such development must be accompanied by scientific analyses of potential impacts to sand supplies and adjacent properties, along with specific mitigation measures to minimize any unavoidable impacts. Given the fact that the development application lacks this critical technical information, a permit cannot be approved consistent with Coastal Act Sections 30235 and Section 30253(2).

c. Conclusion

The proposed construction of a shoreline protection structure at the Kett property is inconsistent with Coastal Act Section 30235 because there is no current coastal-dependent use or existing structure threatened by erosion that warrants such a protective device. In addition, the proposed revetment poses adverse impacts to local sand supplies and the stability of adjacent properties that have not been adequately addressed, inconsistent with Coastal Act Sections 30235. The permit application must therefore be denied.

3. Hazards

a. Coastal Act Policies:

Coastal Act Sections 30253 states, in relevant part:

Section 30253. *New development shall:*

> *(2)Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

b. Analysis:

Section 30253 prohibits new development from creating or contributing significantly to erosion. This Section also prohibits new development that would require the construction of protective devices that alter natural shoreline processes. In this case, the proposed shoreline protection device will change wave and erosion patterns within the harbor, in a manner that may increase erosion of other property (e.g., the adjacent unprotected property to the north) and trigger the need for additional shoreline armoring. As previously noted, the project has not been accompanied by the geotechnical analyses needed to evaluate and avoid such impacts. As a result, the project is inconsistent with Coastal Act Section 30253(2) and

must be denied.

c. Conclusion:

The complex interactions of erosion and depositional forces within Moss Landing Harbor require that new shoreline structures that alter such processes be carefully designed and reviewed to prevent the creation of new, unanticipated problems. Due to the lack of project specific geotechnical data and analyses required to evaluate this important issue, the proposed project cannot be found consistent with Coastal Act Section 30253(2) and therefore must be denied. A comprehensive analysis of the way in which the proposed project will affect erosion and sediment deposition within the harbor is essential to address the requirements of Section 30253(2), as well as other Coastal Act requirements identified previously in this report.

4. Public Access and Recreation

a. Coastal Act Policies:

Coastal Act Section 30604(c) requires that every coastal development permit issued for any development between the nearest public road and the sea includes a specific finding that the development is in conformance with the public access and recreation policies of Chapter 3 of the Coastal Act. The proposed project is located seaward of the first public through road, State Highway Route 1.

Coastal Act Sections 30210 through 30213, 30220 and 30224 specifically protect public access and recreation. In particular:

> ***30210****: In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*
>
> ***Section 4 of Article X of the California Constitution*** *No individual, partnership, or corporation, claiming or possessing the frontage or tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this State, shall be permitted to exclude the right of way to such water whenever it is required for any public purpose, nor to destroy or obstruct the free navigation of such water; and the Legislature shall enact such laws as will give the most liberal construction to this provision, so that access to the navigable waters of this State shall be always attainable for the people thereof.*
>
> ***Section 30213:*** *Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred. …*
>
> ***Section 30220.*** *Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.*

b. Analysis:

Moss Landing Harbor provides public access and recreational opportunities of regional and Statewide significance. Boat launching and berthing facilities, two kayak rental companies, Elkhorn Slough and Monterey Bay tours are all available here. Fishing, harbor-side dining, nature observation and similar pursuits are available at the harbor, while beachcombing, shopping and camping are available at adjacent areas. Entry to the south spit beach is free, and many other opportunities such as boat launching and dining are within the affordable end of the range.

Currently, the shoreline at the project site supports a small beach that is accessible and used by the public at low tides for coastal recreation and water-oriented activities. As previously noted, the public's right to use this area for fishing, navigation and commerce has been confirmed in 1991 by the Superior Court in Case number 80050. Construction of a seawall and the placement of fill will result in the destruction of this beach area, and conflict with Section 4 of Article X of the California Constitution, which guarantees the right of the public to use and enjoy public tidelands. Additionally, after construction of the proposed revetment and reconstruction of the damaged pier, it is presumed that the public will no longer have access to this area, as there is nothing in the project description that includes provisions for public access. Therefore, because the project does not protect or encourage public access, and in fact eliminates a low cost opportunity for water oriented recreation, it is inconsistent with Coastal Act Sections 30210, 30213 and 30220 and therefore must be denied.

Additionally, the delivery of 1,750 cubic yards of rip rap for the seawall, and 5,880 cubic yards of fill, will require numerous truck trips on Highway 1, which is the principal artery for both commerce and recreational access in this region. The two-lane portion of the highway between Moss Landing and Castroville is already operating at full capacity during peak periods, and unless properly managed, truck traffic generated by the project could further impair the recreational capacity of Highway 1.

c. Conclusion:

The project is inconsistent with Coastal Act policies calling for public access and recreation opportunities to be protected and maximized because it will result in a loss of beach area that provides low-cost opportunities for water oriented recreation, and will interfere with the public's right to use this area, as confirmed by the Superior Court of the State of California in Case No. 80050. The project must therefore be denied.

5. California Environmental Quality Act (CEQA)

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of CEQA.

In this instance CEQA does not apply. Public Resources Code Section 21080 outlines the application of CEQA to discretionary projects. Subsection 21080.b.5 states that CEQA shall not apply to "projects which a public agency rejects or disapproves", therefore in this instance CEQA requirements do not apply.