

## CALIFORNIA COASTAL COMMISSION

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# F 11c

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 Commission Action:

## STAFF REPORT: REGULAR CALENDAR

APPLICATION NUMBER	<b>1-10-033</b>
APPLICANT	<b>California Redwood Company</b>
AGENT	SHN Consulting Engineers & Geologists (Attn: Rosalind Litzky)
PROJECT LOCATION	Over open waters of Humboldt Bay at the former North Coast Export dock located at 1339 Fay Avenue, Fairhaven area, Humboldt County (APNs 401-122-11 & -12).
PROJECT DESCRIPTION	Repair and maintenance of structures supporting the chip conveyer belt and mooring dock at an existing wood chip export facility involving: (1) installing 44 sets of steel bracing on existing steel piles and reinforcing 20 steel piles with steel reinforcement; (2) repairing damaged piles with bracket and truss modifications; (3) replacing various diagonal and horizontal braces; (4) replacing various timber dolphin struts; (5) repairing water (fire suppression and potable), electrical, and communications services; (6) repairing and/or replacing barriers on timber dolphin structures; (7) repairing and/or replacing decking on timber dolphin structures; and (8) repairing access decking where needed.
LOCAL LAND USE PLAN DESIGNATION	Coastal-dependent industrial (MC)

LOCAL ZONING DESIGNATION	Coastal-dependent industrial with archaeological resources combining zone designation (MC/A)
LOCAL APPROVALS RECEIVED	Humboldt County Conditional Use Permit No. UP-227-30
OTHER APPROVALS RECEIVED	(1) Humboldt Bay Harbor, Recreation & Conservation District Administrative Permit No. A-2010-05 issued September 22, 2010; (2) North Coast Regional Water Quality Control Board WQC WDID No. 1B11012WNHU issued May 10, 2011; and (3) U.S. Army Corps of Engineers Nationwide Permit No. 3 File No. 2010-00228 issued June 29, 2010 (effective upon issuance of CDP).
OTHER APPROVALS REQUIRED	None
SUBSTANTIVE FILE DOCUMENTS	(1) NOAA-Fisheries information consultation letter dated June 1, 2011 (File No. 2010/04014); (2) Commission File Nos. 1-83-154, 1-87-115-W, 1-91-42, & 1-92-26; and (3) Humboldt County Local Coastal Program

### **SUMMARY OF STAFF RECOMMENDATION**

Staff recommends approval with conditions of the coastal development permit application for the proposed repair and maintenance project on the basis that, as conditioned, the project is consistent with the Chapter 3 policies of the Coastal Act.

The California Redwood Company is planning to rehabilitate an existing sawmill byproduct (wood chip) export facility located on Humboldt Bay that has been idle for approximately seven years. The project site is located on the west side of Humboldt Bay, in the Fairhaven/Samoa area (1339 Fay Avenue, APNs 401-122-11 & -12) (Exhibit Nos. 1-2). Humboldt Bay is California's second largest natural bay, and it is the North Coast's only deep-water port. The subject property is planned and zoned for coastal-dependent industrial uses under the County's certified LCP. The area surrounding the subject site is primarily industrial.

The facility, originally constructed in 1974-1975, consists of an existing timber pier that extends approximately 710 feet out from shore and connects to a reinforced concrete platform structure that is supported by 14-inch diameter concrete filled steel piles (Exhibit Nos. 4-5). The pier structure is used to support a belt conveyor and a steel frame loading tower (supported on the concrete platform) that are used to transfer wood chips

from a storage yard to ships moored to five dolphins arranged parallel to the shoreline. The dolphins are concrete structures supported by 16-inch diameter steel pipe piles filled with concrete. The dolphins are connected by wood-framed walkways supported on timber piles. The pier and dolphin walkway decking sit at an approximate elevation of 18 feet above mean lower low water (MLLW).

According to the applicant, the facility is one of two wood chip export facilities on the West Coast that can load wood chips directly into the holds of ships, which transport the product overseas. The applicant plans to rehabilitate the existing dock so that ships approximately 700 feet long with the ability to carry up to 50,000 tons of cargo could moor at the dock, which runs along a 38-foot-deep channel.

The applicant proposes to conduct repair and maintenance activities on a variety of structures supporting the chip conveyer belt and mooring dock, including, in part, repairing/reinforcing an estimated 39% of the structure's 163 steel piles, replacing approximately 15% of the braces associated with the 264 wood piles, and replacing 25% of the timber dolphin struts (see Exhibit Nos. 5 and 7). The proposed repair and maintenance work would rehabilitate the existing facility to the point that it could obtain the crane lifting capacity necessary to operate at the level for which it was originally built. No increase in capacity is proposed, nor are any new structures or additional equipment being proposed.

The proposed repair and maintenance project would not add any new piles, but it would install new steel bracings on existing steel piles, replacement wood bracings on existing wooden piles, and replacement dolphin struts. Some of these features would extend below mean high water level and therefore constitute a form of fill. Staff believes that the proposed fill is for an allowable use, there is no feasible less environmentally damaging alternative, adequate mitigation (in the form of recommended Special Condition Nos. 1 through 3) is required for potential impacts associated with the filling of coastal waters, and marine habitat values will be maintained or enhanced. Therefore, staff believes that the proposed repair and maintenance development, as conditioned, is consistent with Sections 30230, 30231, and 30233 of the Coastal Act.

Special Condition No. 1 would impose certain construction-related responsibilities that must be adhered to during the authorized work, including measures to ensure that eelgrass beds located in the project vicinity would be protected from repair and maintenance activities. Special Condition No. 2 would require submittal of a final solid debris management and disposal plan prior to permit issuance for the Executive Director's review and approval. The plan would in part ensure that the authorized repair and maintenance work would not result in construction materials or pollutants entering coastal waters or wetlands and would require the use of "best management practices" (BMPs) to prevent construction and demolition materials, scraps, creosote dust, and other pollutants from entering bay waters and intertidal wetlands. Special Condition No. 3 would protect osprey nesting habitat on the site by requiring submittal of an Osprey Protection and Nest Removal Plan prior to permit issuance for the Executive Director's

review and approval. The plan would include in part provisions for (1) ensuring that commencement of the authorized repair and maintenance activities shall be delayed until a qualified biologist confirms that the osprey nesting season is complete (2) removing all inactive osprey nests on the site following completion of the osprey nesting; (3) installing nest-detering cones or equivalent devices atop light poles and the steel tower where nests were located to discourage osprey from nesting on the site next year when repair and maintenance and increased industrial activities during the nesting season could cause a nest to fail (e.g., be abandoned in the middle of the nesting season); and (4) submitting a pre-construction report detailing the results of the osprey nesting survey and nest removal and deterrence activities required above for the Executive Director's review and written approval prior to commencement of the authorized work.

In summary, staff believes that the proposed project, as conditioned, is consistent with all applicable Chapter 3 policies of the Coastal Act, and staff recommends approval. **The Motion to adopt the staff recommendation of Approval with Conditions is found on page 4 below.**

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**STAFF NOTES:**

**1. Standard of Review**

The project site is located in the Commission's retained permit jurisdiction. The County of Humboldt has a certified local coastal program (LCP), but the site is within an area shown on State Lands Commission maps over which the State retains a public trust interest. Therefore, the standard of review that the Commission must apply to the project is the Chapter 3 policies of the Coastal Act.

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**I. MOTION, STAFF RECOMMENDATION, & RESOLUTION**

The staff recommends that the Commission adopt the following resolution:

**Motion:**

*I move that the Commission approve Coastal Development Permit No. 1-10-033 pursuant to the staff recommendation.*

**Staff Recommendation of Approval:**

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

**Resolution to Approve Permit with Conditions:**

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

**II. STANDARD CONDITIONS:** See Appendix A.

**III. SPECIAL CONDITIONS:**

**1. Construction Standards & Responsibilities**

Construction-related standards and responsibilities shall include, but shall not be limited to, the following best management practices (BMPs):

- (A) The authorized repair and maintenance activities shall not commence until after the osprey nest(s) on the site are confirmed to be inactive by a qualified biologist, as required by Special Condition No. 3;
- (B) The authorized repair and maintenance activities that involve the removal and installation of pier and dock support materials below the mean high water line shall be conducted during periods of low tide only;
- (C) The authorized repair and maintenance activities that involve the use of equipment over water, below mean high water, shall use non-petroleum hydraulic fluid only;
- (D) No construction materials, debris, or waste shall be placed or stored where it may be subject to entering waters of Humboldt Bay or associated intertidal wetland habitats;
- (E) A floating boom shall be installed (in accordance with the final plan required and approved pursuant to Special Condition No. 2) around the project area within the bay, including between the timber dolphin structure and the eelgrass beds located closer to the shoreline, to contain any debris that may become inadvertently dislodged during repair and maintenance work. Any debris discharged into coastal waters shall be recovered immediately and disposed of properly. Non-buoyant debris discharged into coastal waters shall be recovered by divers as soon as possible after loss;
- (F) A temporary blanket system or similar method, as approved in the final plan required and approved pursuant to Special Condition No. 2, shall be used to

collect any scraps and dust that may inadvertently fall from existing creosote piles during repair activities;

- (G) Any barge used for the authorized repair and maintenance work shall be floating at all times and shall only operate at tides high enough so that the barge does not rest against the intertidal mudflat bottom. The barge shall be tied to the existing dock structure rather than anchored to avoid disturbance to the bay substrate;
- (H) During construction, all trash shall be properly contained, removed from the work site, and disposed of on a regular basis to avoid contamination of habitat during construction activities. Following construction, all trash and construction debris shall be removed from work area and disposed of properly in accordance with Special Condition No. 2;
- (I) Any fueling, maintenance, and washing of construction equipment shall occur onshore only, within confined areas specifically designed to control runoff, and located more than 100 feet away from the mean high tide line. Barge fueling shall occur only off-site at an approved facility;
- (J) Fuels, lubricants, and solvents shall not be allowed to enter the coastal waters or wetlands. All equipment used during construction shall be free of oil and fuel leaks at all times.
- (K) Hazardous materials management equipment including oil containment booms and absorbent pads shall be available immediately on-hand at the project site and a registered first-response professional hazardous materials clean-up remediation service shall be locally available on call.
- (L) An on-site spill prevention and control response program, consisting of BMPs for the storage of clean-up materials, training, designation of responsible individuals, and reporting protocols to the appropriate public and emergency services agencies in the event of a spill, shall be implemented at the project site to capture and clean-up any accidental releases of oil, grease, fuels, lubricants, or other hazardous materials from entering coastal waters;
- (M) All on-site stockpiles of construction debris shall be covered and contained at all times to contain polluted water runoff;
- (N) At the end of the construction period, the permittee shall inspect the project area and ensure that no debris, trash, or construction materials remain on the shoreline or in the water and that the repair and maintenance activities have not created any hazard to navigation; and
- (O) Prior to commencement of the repair and maintenance activities authorized by this permit, the permittee shall ensure that all on-site workers and contractors understand and agree to observe the standards for work outlined in this permit.

## **2. Solid Debris Management & Disposal Plan**

- (A) **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for review and written approval of the Executive

Director, a minimum of two (2) copies of a solid debris management and disposal plan designed in part to protect water quality and marine resources during the authorized repair and maintenance activities:

- (1) The plan shall demonstrate all of the following:
  - (a) The authorized repair and maintenance work shall not result in construction materials or pollutants entering coastal waters or wetlands;
  - (b) Best Management Practices (BMPs), including but not limited to installing barriers or nets under structures located over bay waters, shall be used to prevent construction and demolition materials, scraps, creosote dust, and other pollutants from entering bay waters and intertidal wetlands;
  - (c) Floating booms shall be used to contain floating wood or other construction and demolition debris at the construction site;
  - (d) Bracings and other materials to be replaced during the authorized repair and maintenance activities that were previously treated with creosote or other wood preservatives shall not be mixed with non-treated debris;
  - (e) All temporary stockpiles of demolition and construction debris shall be located where they can feasibly be contained with appropriate BMPs to prevent any discharge of contaminants to the bay;
  - (f) All proposed disposal sites shall be located in upland areas where materials may be lawfully disposed;
  - (g) All demolition and construction debris shall be removed from the site and taken to the approved disposal sites within 60 days of removal from the bay; and
  - (h) The final plan shall be consistent with all other requirements of this coastal development permit.
- (2) The plan shall include, at a minimum, the following components:
  - (a) A narrative report describing all solid debris management measures to be used and all debris disposal methods including, but not limited, to how it will be determined whether the materials to be removed have been treated with creosote or other wood preservatives, how treated materials and salvageable materials will be separated from other debris, and how debris will be removed from the construction site;
  - (b) Information about each proposed disposal site including the specific location, name, evidence that the disposal site is an upland location, and evidence that the disposal site may lawfully accept the debris (*e.g.*, provide the relevant permit number for the disposal facility from the local jurisdiction, if applicable);

- (c) A site plan showing the location of all solid debris management measures and where all stockpiling and sorting of debris will occur; and
  - (d) A schedule for the installation and removal of the proposed solid debris management measures and for when demolition debris will be removed from the site and taken to the approved disposal sites.
- (B) The permittee shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission approved amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

### **3. Osprey Protection and Nest Removal Plan**

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for review and written approval of the Executive Director, a minimum of two (2) copies of an Osprey Protection and Nest Removal Plan, prepared by a qualified biologist, for ensuring that (1) the authorized repair and maintenance work avoid all active osprey nests on the site until chicks have fledged, and (2) all osprey nests located on site are appropriately removed following the end of the nesting season and prior to commencement of the authorized development so that the nests do not become reoccupied by birds in future nesting seasons, when light, noise, and other disturbance related to increased industrial and shipping activities at the site could disturb future nesting birds. The plan shall, at a minimum, include the following:
- 1) Provisions for ensuring that commencement of the authorized repair and maintenance activities shall be delayed until a qualified biologist confirms that the osprey nesting season is complete and that human activities and disturbance in the vicinity of the active nest(s) will be restricted or minimized until a qualified biologist confirms that chicks have fledged;
  - 2) Provisions for removing all inactive osprey nests on the site following completion of the osprey nesting season (as confirmed by the qualified biologist's survey results required above);
  - 3) Provisions for installing nest-detering perch guards or equivalent devices atop light poles and the steel tower where nests were located to discourage osprey from nesting on the site next year when repair and maintenance and increased industrial activities during the nesting season could cause a nest to fail (e.g., be abandoned in the middle of the nesting season); and
  - 4) Provisions for submitting a pre-construction report detailing the results of the osprey nesting survey and nest removal and deterrence activities required above for the Executive Director's review and written approval prior to commencement of the authorized work. The report shall include a narrative description of the osprey nest survey dates, methods, and results, details on nest removal dates, including how it was determined that nests



were inactive prior to their removal, and details on nest deterrent devices installed to discourage future nesting attempts on the site.

- B. The permittee shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission approved amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

#### **4. Channel Access During Construction**

At all times during project construction, and at all stages of the tide at and above the mean lower low water (MLLW), a passage of at least 50 feet wide in the channel of Humboldt Bay immediately adjacent to the subject repair and maintenance area shall be kept clear of all obstructions including floating and submerged structures, equipment, and suspended overhead hazards to allow for continued access through the bay around the project area by boats and recreational water craft. The passage shall be clearly marked with floating buoys.

#### **5. State Lands Commission Review**

**PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director, a written determination from the State Lands Commission that:

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

### **IV. FINDINGS & DECLARATIONS:**

The Commission hereby finds and declares as follows:

#### **A. PROJECT DESCRIPTION**

The California Redwood Company is planning to rehabilitate an existing sawmill byproduct (wood chip) export facility located on Humboldt Bay that has been idle for approximately seven years. The facility, originally constructed in 1974-1975, consists of an existing 16-ft-wide to 29-ft-wide timber pier that extends approximately 710 feet out from shore and connects to a 37-foot-by-42-foot reinforced concrete platform structure that is supported by 14-inch diameter concrete filled steel piles (see Exhibit Nos. 4-5 for a general layout of the facility). The pier structure is used to support a belt conveyor and a steel frame loading tower (supported on the concrete platform) that are used to transfer

wood chips from a storage yard to ships moored to five dolphins arranged parallel to the shoreline. The belt conveyor is supported on the timber deck for the first 304 feet of length from shore. For the next 128 feet it is supported by six timber-framed pile bents, and for the remaining length to the tower the conveyor is supported by a steel-framed structure. The steel conveyor frames are supported on reinforced concrete caps and 14-inch diameter steel piles filled with concrete. Three breasting dolphins and a single mooring dolphin are located on each side of the loading tower. The dolphins are concrete structures supported by 16-inch diameter steel pipe piles filled with concrete. The dolphins are connected by 3.5-foot-wide wood-framed walkways supported on timber piles. The pier and dolphin walkway decking sit at an approximate elevation of 18 feet above mean lower low water (MLLW). The overall facility (the majority of which is within the coastal development permitting jurisdiction of the County) also has a two chip truck dumps, a maintenance shop, fueling station, scales, and a chip lab for receiving and moisture-testing of chips.

According to the applicant, the facility is one of two wood chip export facilities on the West Coast that can load wood chips directly into the holds of ships, which transport the product overseas. The applicant plans to rehabilitate the existing dock so that ships approximately 700 feet long with the ability to carry up to 50,000 tons of cargo could moor at the dock, which runs along a 38-foot-deep channel. Approximately eight ships per year would be required to move wood chips (mostly Douglas-fir) under current market conditions, and an additional eight to ten ships may be needed if additional markets are developed (e.g., tanoak and redwood). In order to comply with the California Marine Invasive Species Act, ships utilizing the dock would retain their ballast water while in waters of Humboldt Bay.

The Commission has issued at least three permits for repairs to the facility in the past. In July of 1987 the Commission granted CDP Waiver No. 1-87-115-W to relocate and reconstruct the personnel lunch room and restroom building from its previous location on the concrete pier to an onshore location in the vicinity of the pierhead. In April of 1991, in response to damage to two piles caused by a ship at berth, Commission Administrative Permit No. 1-91-42 authorized the installation of two replacement piles and additional repairs to the walkway providing access to the vessel mooring area. In April of 1992, Commission Administrative Permit No. 1-92-26 authorized additional walkway repairs and replacement of six additional piles damaged during ship mooring operations.

The scope of the repairs proposed under the current CDP application is much larger than the scope of repair and maintenance activities authorized under previous permits, in part due to the age of the facility and the extensive salt corrosion that has occurred during the period that the facility has been idle over the past decade. Specifically, the applicant proposes to conduct repair and maintenance activities on a variety of structures supporting the chip conveyer belt and mooring dock, including, in part, repairing/reinforcing an estimated 39% of the structure's 163 steel piles, replacing approximately 15% of the braces associated with the 264 wood piles, and replacing 25% of the timber dolphin struts. The proposed repair and maintenance work would rehabilitate the existing

facility to the point that it could obtain the crane lifting capacity necessary to operate at the level for which it was originally built. No increase in capacity is proposed, nor are any new structures or additional equipment being proposed.

As proposed, the repair and maintenance work would involve the following:

- installing 44 sets of steel bracing on existing steel piles and reinforcing 20 steel piles with steel reinforcement;
- repairing damaged piles with bracket and truss modifications;
- replacing ten 24-ft diagonal braces, ten 12-ft horizontal braces, fourteen 18-ft horizontal braces, forty 20-ft horizontal braces, and twelve 24-ft horizontal braces (see photos, Exhibit No. 7);
- replacing four 6-ft timber dolphin struts, twelve 10-ft timber dolphin struts, and six 16-ft timber dolphin struts (see photos, Exhibit No. 7);
- repairing water (fire suppression and potable), electrical, and communications services (see photos, Exhibit No. 7);
- repairing and/or replacing as needed wooden barriers and decking on the timber dolphin structures (see photos, Exhibit No. 7); and
- repairing pedestrian or worker access decking (e.g., metal catwalk) where needed (see photos, Exhibit No. 7).

The majority of the proposed repairs occur on portions of the structure located above the bay waters, above the mean high tide line, but some of the repairs (e.g., lower horizontal bracings) would occur below the mean high tide line (Exhibit No. 7). All of the proposed repairs would be above the mean low tide line and there would be no disturbance to the bottom substrate. The applicant proposes to conduct most of the repair work from a floating barge. To prevent disturbance to the bay substrate, barge mooring work periods would be restricted to tides sufficient to allow the barge to float rather than rest on the bottom substrate. The applicant proposes to refuel the barge off-site at an approved facility elsewhere on Humboldt Bay. Other construction equipment is proposed to be fueled at onshore fueling facilities or by a fuel truck.

Following reinforcement of the dock structures, a hydraulic crane would be operated from the dock to complete the repair work. The crane is proposed to be checked for leaks, cleaned prior to arrival on site, and spill response materials and suitably trained personnel are proposed to be on site at all times.

## **B. ENVIRONMENTAL SETTING**

The project site is located on the west side of Humboldt Bay, in the Fairhaven/Samoa area (1339 Fay Avenue, APNs 401-122-11 & -12) (Exhibit Nos. 1-2). The subject property is planned and zoned for coastal-dependent industrial uses under the County's

certified LCP. The area surrounding the subject site is primarily industrial, with the DG Fairhaven Power cogeneration facility to the west, the former LP pulp mill (currently owned by Freshwater Tissue, LLC) to the immediate north, and miscellaneous, mostly vacant industrial properties to the south. The existing pier and dolphin structures, belt conveyor, and loading tower are visible from public vantage points in Eureka, including from the Del Norte Street fishing pier and the Eureka Boat Basin.

Humboldt Bay is California's second largest natural bay, and it is the North Coast's only deep-water port. Protected from ocean waves and storms by the Samoa Peninsula (also known as the North Spit) and the South Spit, Humboldt Bay is a sheltered, generally shallow, coastal water body that is open to the ocean yet nearly surrounded by land. The subject site is one of several existing shipping terminals on the bay (Exhibit No. 3). Historically, the Port of Humboldt Bay's main purposes were to export forest products and to serve as the home port for a vast commercial fishing fleet. Today, Humboldt Bay continues to serve as a working port, capable of handling ocean-going vessels with domestic or international cargoes.

In addition to port-related functions, Humboldt Bay also supports marinas, boat/ship repair facilities, commercial fishing, mariculture, and various other commercial activities that contribute significantly to the local economies. In terms of recreation, sport fishing, waterfowl hunting, and small-craft boating are popular water-dependent recreational activities on the bay. Opportunities for near-shore recreation such as beachcombing, nature walks, and birding occur at numerous sites all around the bay, though there are no available public access points, beaches, or trails at or in the immediate vicinity of the subject site (which is in an industrial area).

Ecologically, Humboldt Bay contains a diverse biota of at least 300 invertebrate species, 100 fish species, over 100 species of birds (that regularly frequent the various wetland habitats associated with the bay), and over 30 species of mammals (in and around the bay). Annual runs of Chinook salmon (*Oncorhynchus tshawytscha*), coho salmon (*O. kisutch*), and steelhead trout (*O. mykiss irideus*) ascend the major bay tributaries, and the bay is an important nursery ground for several commercial species including Pacific herring, lingcod, at least three species of crab, and various other species. Numerous rare, threatened, and endangered species inhabit the bay and its associated habitats, including tidewater goby (*Eucyclogobius newberryi*), the three salmonid species mentioned above, coastal cutthroat trout (*Oncorhynchus clarkii clarkii*), green sturgeon (*Acipenser medirostris*), double-crested cormorant (*Phalacrocorax auritus*), osprey (*Pandion haliaetus*), several rare salt marsh plant species (e.g., Humboldt Bay owl's clover, *Castilleja ambigua* ssp. *humboldtiensis* and Point Reyes' bird's-beak, *Cordylanthus maritimus* ssp. *palustris*), and various other species. Bands (or "beds") of eelgrass (*Zostera marina*), which generally occur in intertidal habitats of the bay near the level of mean low water, are widespread in the south bay and in parts of Arcata Bay (the northern section of the bay). Eelgrass beds are considered to be a type of environmentally sensitive habitat worthy of protection because they function as important shelter, foraging, and in some cases spawning habitats for a variety of fish species. The long, green leaves of the

aquatic flowering plant also are an important food source for certain sensitive bird species, such as black brant (*Branta bericla*, small migratory geese). Beds of eelgrass are present at the subject site, between the timber dolphin structures and the shoreline (Exhibit No. 6). The beds are outside of the proposed work area. Three osprey nests also are present at the subject site (Exhibit No. 6-7), though only one of the nests is active (currently occupied). The occupied nest is located on top of a light pole adjacent to the landward end of the pier structure. The two inactive (not currently occupied) nests occur atop a light pole near the southern end of the property and on the steel tower at the end of the pier.

### **C. PERMIT AUTHORITY, EXTRAORDINARY METHODS OF REPAIR & MAINTENANCE**

Coastal Act Section 30610(d) generally exempts from Coastal Act permitting requirements the repair or maintenance of structures that does not result in an addition to, or enlargement or expansion of, the structure being repaired or maintained. However, the Commission retains authority to review certain extraordinary methods of repair and maintenance of existing structures that involve a risk of substantial adverse environmental impact as enumerated in Section 13252 of the Commission regulations.

Section 30610 of the Coastal Act provides, in relevant part (emphasis added):

*Notwithstanding any other provision of this division, no coastal development permit shall be required pursuant to this chapter for the following types of development and in the following areas: . . .*

*(d) Repair or maintenance activities that do not result in an addition to, or enlargement or expansion of, the object of those repair or maintenance activities; provided, however, that if the commission determines that certain extraordinary methods of repair and maintenance involve a risk of substantial adverse environmental impact, it shall, by regulation, require that a permit be obtained pursuant to this chapter.*

Section 13252 of the Commission administrative regulations (14 CCR 13000 *et seq.*) provides, in relevant part (emphasis added):

*For purposes of Public Resources Code section 30610(d), the following extraordinary methods of repair and maintenance shall require a coastal development permit because they involve a risk of substantial adverse environmental impact:...*

*(3) Any repair or maintenance to facilities or structures or work located in an environmentally sensitive habitat area, any sand area, within 50 feet of the edge of a coastal bluff or environmentally sensitive habitat area, or within 20 feet of coastal waters or streams that include:*

*(A) The placement or removal, whether temporary or permanent, of rip-rap, rocks, sand or other beach materials or any other forms of solid materials;*

*(B) The presence, whether temporary or permanent, of mechanized equipment or construction materials.*

*All repair and maintenance activities governed by the above provisions shall be subject to the permit regulations promulgated pursuant to the Coastal Act, including but not limited to the regulations governing administrative and emergency permits. The provisions of this section shall not be applicable to methods of repair and maintenance undertaken by the ports listed in Public Resources Code section 30700 unless so provided elsewhere in these regulations. The provisions of this section shall not be applicable to those activities specifically described in the document entitled Repair, Maintenance and Utility Hookups, adopted by the Commission on September 5, 1978 unless a proposed activity will have a risk of substantial adverse impact on public access, environmentally sensitive habitat area, wetlands, or public views to the ocean....*

The proposed project is a repair and maintenance project because it does not involve an addition to or enlargement of the subject dock structure, which was originally constructed in 1974. Although certain types of repair projects are exempt from CDP requirements, Section 13252 of the regulations requires a coastal development permit for extraordinary methods of repair and maintenance enumerated in the regulation. The proposed repair work involves the placement of construction materials and removal and placement of solid materials within an environmentally sensitive habitat area (waters of Humboldt Bay). The proposed repair project therefore requires a coastal development permit under CCR Section 13252(a)(3).

In considering a permit application for a repair or maintenance project pursuant to the above-cited authority, the Commission reviews whether the proposed method of repair or maintenance is consistent with the Chapter 3 policies of the Coastal Act. The Commission's evaluation of such repair and maintenance projects does not extend to an evaluation of the conformity with the Coastal Act of the underlying existing development.

The repair and maintenance of docks, such as is proposed under the subject CDP application, can have adverse impacts on coastal resources, in this case environmentally sensitive eelgrass beds, sensitive fish species, nesting osprey, and other sensitive species and marine resources, if not properly undertaken with appropriate mitigation. As described above, the applicant proposes to repair and maintain the dock in its existing footprint by reinforcing an estimated 39% of the structure's 163 steel piles, replacing approximately 15% of the braces associated with the 264 wood piles, and replacing 25% of the timber dolphin struts. Most of the repair work will be conducted from a floating barge. The methods proposed for repairing and maintaining the dock structure generally are typical of dock maintenance projects statewide. The applicant has included a number of mitigation measures as part of its proposal, such as restricting barge mooring work periods to tides sufficient to allow the barge to float rather than rest on the mudflats; refueling the barge off-site at an approved facility elsewhere on Humboldt Bay; and fueling other construction equipment at onshore fueling facilities. Although these and other measures proposed by the applicant are appropriate, additional measures are needed to avoid or minimize potential project impacts on water quality, marine resources, and environmentally sensitive habitat areas. The conditions required to meet these standards are discussed in the following findings relevant to the protection of water quality, marine

resources, and environmentally sensitive habitat areas. Therefore, as conditioned in these Findings, the Commission finds that the proposed project is consistent with all applicable Chapter 3 policies of the Coastal Act.

#### **D. PROTECTION OF WATER QUALITY & MARINE RESOURCES**

The Coastal Act defines fill as including “*earth or any other substance or material... placed in a submerged area.*” The piles supporting the pier and dolphin structures and their associated bracings and struts represent a form of fill since they are submerged, at least in part, during periods of high tides. The proposed repair and maintenance project will not add any new piles, but it will install new steel bracings on existing steel piles, replacement wood bracings on existing wooden piles, and replacement dolphin struts. Some of these features will extend below mean high water level and therefore constitute a form of fill. Thus, the Commission must consider whether authorizing the fill is consistent with Coastal Act policies addressing the protection of the marine environment, including, but not limited to the requirements of Section 30233 regarding the filling of coastal waters.

Several Coastal Act policies address protection of the marine environment from the impacts of development such as the construction and repair and maintenance of piers and docks. These policies include Sections 30230, 30231, and 30233. Section 30230 applies generally to any development in marine environments. Section 30231 applies broadly to coastal waters, streams, wetlands, estuaries, and lakes. Section 30233 applies to any diking, filling, or dredging project of open coastal waters. Installation of a floating dock within Humboldt Bay is a form of filling open coastal waters, wetlands, or an estuary.

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

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

Section 30231 of the Coastal Act states as follows:

*The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.* [Emphasis added.]

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

(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:

(1) 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 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.

(4) 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.

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

(6) Restoration purposes.

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

...

(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... [Emphasis added.]

...

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

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



Each is discussed separately below.

(a) Allowable Use for Dredging and Filling of Coastal Waters

The first test set forth above is that any proposed filling, diking, or dredging must be for an allowable purpose as specified under Section 30233 of the Coastal Act. Section 30233(a)(1) allows the placement of fill for new or expanded port, energy, and coastal-dependent industrial facilities, provided there are no less environmentally damaging alternatives and that feasible mitigation measures have been provided to minimize adverse environmental effects. The proposed project involves repairs and maintenance to a pier and ship mooring structure associated with a coastal-dependent industrial facility on Humboldt Bay designed to facilitate the loading of export cargo directly into the holds of ships. The proposed new fill (new pile bracings, etc.), which will be submerged at high tides though not at low tides, is associated with a coastal-dependent industrial facility. Therefore, to the extent that the proposed project is the least environmentally damaging alternative and mitigation measures will minimize adverse environmental effects (see below), the proposed project is consistent with the use limitations under Section 30233(a).

(b) Alternatives

The second test set forth by the Commission's fill and dredge policies is that the proposed filling or dredging project must have no feasible less environmentally damaging alternative. In this case, the Commission has considered alternatives and determines that there are no feasible less environmentally damaging alternatives to the project as conditioned. Alternatives that have been identified include: (1) the "no project" alternative; and (2) the more extensive rebuild alternative.

(1) *Alternative 1: "No Project"*

The "no project" alternative would leave the pier and dolphin structure in its current corroded, dilapidated condition with no further corrective action being taken with respect affecting repairs to the structure. Such non-action would be in violation of local building codes, state harbor, navigation, and boating facilities laws, and related environmental protection regulations. The no project alternative would not address the issue of the unsafe and potentially harmful state of the decking and dock in terms of injuries to persons for future structural failure of these facilities and damage to the marine environment (e.g., see photos, Exhibit No. 7). Furthermore, the no project alternative would not rehabilitate an existing coastal-dependent facility that has been a component of the Port of Humboldt Bay for over three decades. The Coastal Act prioritizes coastal-dependent and coastal-related development over other types of development proposed along the shoreline. Therefore the no project alternative is not a feasible less environmentally damaging alternative to the proposed project as conditioned.

(2) *Alternative 2: More extensively rebuild the dilapidated structure*

As described above, the proposed repair and maintenance work will rehabilitate the existing facility to the point that it will be able to obtain the crane lifting capacity necessary to operate at the level for which it was originally built in 1974. No increase in capacity is proposed, nor are any new structures or additional equipment being proposed.

An alternative to the proposed project would be to more extensively rebuild the old, dilapidated structure, rather than simply repairing, reinforcing, and replacing in-kind the deficient bracing, struts, decking, and barriers but otherwise leaving the majority of the structure in place, as is. This alternative would lead to more direct and indirect environmental impacts than the proposed project, including impacts from deconstructing the existing structures and rebuilding an entirely new structure in its place. This alternative would result in new structural pile fill, which would directly displace some amount of tidal mudflat habitat. There also would be at least the same level or greater of potential water quality impacts discussed above, as well as additional acoustic impacts (from installing the new piles) to sensitive fish species inhabiting the bay channel at the project site. Pile-driving generates hydroacoustic pressure impulses and particle velocities that can cause effects on fish ranging from altered behavior, hearing loss, and tissue injuries to immediate mortality. Thus, this alternative is not a less environmentally damaging alternative to the proposed project as conditioned.

Based on the alternatives analysis above, the Commission concludes that there are no feasible less environmentally damaging alternatives to the proposed project as conditioned.

(c) Feasible Mitigation Measures

The third test set forth by the above-cited policies is whether feasible mitigation measures have been provided to minimize adverse environmental effects. The proposed repair and maintenance activities could have potential adverse impacts to: (a) the water quality and marine habitats of the bay from construction-related equipment and from the accidental release of hazardous materials or solid debris associated with construction activities; (b) adjacent environmentally sensitive eelgrass beds; and (c) osprey nesting habitat at the project site. The potential adverse impacts and their mitigations are discussed in the following sections.

*(1) Protection of Water Quality*

The proposed repair and maintenance work will be conducted on a pier and timber dolphin structure that extends over 700 feet out into the open water and intertidal zone of Humboldt Bay. The majority of the proposed repairs occur on portions of the structure located above the bay waters, above the mean high tide line, but some of the repairs (e.g., lower horizontal bracings – see photos, Exhibit No. 7) will occur below the mean high tide line. Additionally, a hydraulic crane will be operated from the pier for some of the proposed repair work.

Potential adverse impacts to the water quality of the bay could occur during the construction process if hazardous materials, construction debris, or other pollutants were to enter coastal waters. The applicant has not submitted a list of best management practices (BMPs) to be implemented, other than the proposal to restrict barge mooring work periods to tides sufficient to allow the barge to float rather than rest on the bottom substrate, to refuel the barge off-site at an approved facility elsewhere on Humboldt Bay, and to refuel other construction equipment at onshore fueling facilities or by a fuel truck.

To ensure that a more comprehensive BMP program is implemented during the proposed repair and maintenance work to avoid adverse water quality impacts associated with construction debris and equipment, **Special Condition No. 1** imposes certain construction-related responsibilities that must be adhered to during the authorized work. Most notably, these responsibilities require that (a) the authorized repair and maintenance activities that involve the removal and installation of pier and dock support materials below the mean high water line shall be conducted during periods of low tide only; (b) the authorized repair and maintenance activities that involve the use of equipment over water, below mean high water, shall use non-petroleum hydraulic fluid only; (c) no construction materials, debris, or waste shall be placed or stored where it may be subject to entering waters of Humboldt Bay or associated intertidal wetland habitats; (d) a floating boom shall be installed around the project area within the bay, including between the timber dolphin structure and the eelgrass beds located closer to the shoreline, to contain any debris that may become inadvertently dislodged during repair and maintenance work; (e) a temporary blanket system or similar method shall be used to collect any scraps and dust that may inadvertently fall from existing creosote piles during repair activities; (f) any barge used for the authorized repair and maintenance work shall be floating at all times and shall only operate at tides high enough so that the barge does not rest against the intertidal mudflat bottom; (g) during construction, all trash shall be properly contained, removed from the work site, and disposed of on a regular basis to avoid contamination of habitat during construction activities; (h) any fueling, maintenance, and washing of construction equipment shall occur onshore only, within confined areas specifically designed to control runoff, and located more than 100 feet away from the mean high tide line, and barge fueling shall occur only off-site at an approved facility; (i) fuels, lubricants, and solvents shall not be allowed to enter the coastal waters or wetlands; (j) hazardous materials management equipment including oil containment booms and absorbent pads shall be available immediately on-hand at the project site and a registered first-response professional hazardous materials clean-up remediation service shall be locally available on call; (k) an on-site spill prevention and control response program, consisting of BMPs for the storage of clean-up materials, training, designation of responsible individuals, and reporting protocols to the appropriate public and emergency services agencies in the event of a spill, shall be implemented at the project site to capture and clean-up any accidental releases of oil, grease, fuels, lubricants, or other hazardous materials from entering coastal waters; and (l) all on-site stockpiles of construction debris shall be covered and contained at all times to contain polluted water runoff.

Additionally, the Commission attaches **Special Condition No. 2**, which requires submittal of a final solid debris management and disposal plan prior to permit issuance for the Executive Director's review and approval. The plan must demonstrate that (a) the authorized repair and maintenance work shall not result in construction materials or pollutants entering coastal waters or wetlands; (b) BMPs, including but not limited to installing barriers or nets under structures located over bay waters, shall be used to prevent construction and demolition materials, scraps, creosote dust, and other pollutants from entering bay waters and intertidal wetlands; (c) floating booms shall be used to contain floating wood or other construction and demolition debris at the construction site; (d) bracings and other materials to be replaced during the authorized repair and maintenance activities that were previously treated with creosote or other wood preservatives shall not be mixed with non-treated debris; (e) all temporary stockpiles of demolition and construction debris shall be located where they can feasibly be contained with appropriate BMPs to prevent any discharge of contaminants to the bay; (f) all proposed disposal sites shall be located in upland areas where materials may be lawfully disposed; (g) all demolition and construction debris shall be removed from the site and taken to the approved disposal sites within 60 days of removal from the bay; and (h) the final plan shall be consistent with all other requirements of this coastal development permit.

The special conditions discussed above will minimize adverse impacts to water quality while not conflicting with any determinations by the State Water Resources Control Board or any California Regional Water Quality Control Board in matters relating to water quality as required by Section 30412 of the Coastal Act.

Therefore, the Commission finds that as conditioned to require (a) submittal and implementation of final plans for solid debris management and disposal, and (b) adherence to various construction responsibilities, the repair and maintenance project provides feasible mitigation measures to minimize potential water quality impacts, as required by Sections 30230 and 30233 of the Coastal Act.

### *(2) Protection of Eelgrass*

The proposed repair and maintenance activities could potentially impact environmentally sensitive eelgrass habitat in the project vicinity (see Exhibit No. 6) if hazardous materials, construction debris, or other pollutants were to enter coastal waters and contaminate the habitat or if the barge proposed to be used during construction were to rest on the bay substrate where the eelgrass beds are growing, thereby damaging the delicate plant leaves. The proposed repair and maintenance work will not create any new shading impacts on eelgrass habitat since the footprint of the existing structure will not be expanded. Additionally, the proposed barge work is not expected to impact eelgrass beds in the area, since the beds occur shoreward of the proposed work area (Exhibit No. 6). Nevertheless, to ensure that the authorized repair and maintenance work avoids direct and indirect impacts to eelgrass, **Special Condition No. 1-D** requires that a floating boom be

installed around the perimeter of the work area within the bay, including between the timber dolphin structure and the eelgrass beds located closer to the shoreline, to contain any debris that may become inadvertently dislodged during repair and maintenance work. In addition, **Special Condition No. 1-F** requires that any barge used for the authorized repair and maintenance work shall be floating at all times and shall only operate at tides high enough so that the barge does not rest against the intertidal mudflat bottom. Finally, the various other water quality protection measures required by Special Condition Nos. 1 and 2 as discussed above also will serve to protect the nearby eelgrass habitat.

Therefore, the Commission finds that as conditioned to require (a) installation of a floating boom to define the work area and contain any debris that inadvertently becomes dislodged into the bay, (b) that any barge used during construction be operated only at tides high enough so that the barge floats at all times and does not rest against the intertidal mudflat habitat where the eelgrass grows, and (c) the various other water quality protect measures required by Special Condition Nos. 1 and 2 discussed above, the project provides feasible mitigation measures to minimize the project's potential impacts on eelgrass habitat, as required by Section 30233(a) of the Coastal Act.

### *(3) Protection of Osprey Nesting Habitat*

As discussed above, three osprey nests are present at the subject site (Exhibit No. 6), though only one of the nests is active (currently occupied). The occupied nest is located on top of a light pole adjacent to the landward end of the pier structure (see photo in Exhibit No. 7). The two inactive (not currently occupied) nests occur atop a light pole near the southern end of the property and on the steel tower at the end of the pier (see photo in Exhibit No. 7). It is unclear how long the nests have been present on the site or when the inactive nests last were occupied by nesting birds. It is possible that all three nests belong to the same breeding pair, as osprey mate for life, and a pair may rotate the use of different nests in close proximity to one another over different breeding years to avoid parasites or disease-causing organisms that may infect a nest.

Osprey (*Pandion haliaetus*) is a large raptor species that historically nested throughout much of California (as well as other parts of the country and world). Due to human persecution, habitat alteration, and the use of DDT following World War II, the osprey population in the state declined throughout much of its historic range. Today the osprey breeding range in California is restricted to the northern parts of the state, and the species is listed by the Department of Fish and Game as a Species of Special Concern. Ospreys primarily prey on fish, and the species is sometimes referred to the fish eagle or sea hawk. The birds generally nest in forested habitats near large water bodies, in tall, stable snags or in live trees with flat or broken tops that will support large stick nests. Sometimes ospreys build nests on tall cliffs or on human-made structures, such as is the case at the subject site. Adult birds often show a high degree of nest fidelity, meaning that they return to a particular nesting site each year. Ospreys are particularly sensitive to disturbance during the courtship and nesting seasons (typically March through September), and disturbance during this time may result in nest abandonment.

Staff from the Eureka office of the Department of Fish and Game was consulted on the proposed project and recommended postponement of construction until after the nesting season, as well as removal of the unoccupied nests on the site following completion of the nesting season and prior to commencement of the authorized repair and maintenance work. This will allow the birds that currently are occupying the active nest on the site to remain in the nest undisturbed until the chicks have fledged. Subsequent nest removal from the site will ensure that the nests are unavailable for nesting next year when light, noise, and other disturbance related to increased industrial and shipping activities at the site would be disruptive to nesting birds, potentially leading to nest abandonment. Installing nest-detering structures (such as triangular perch guards) on the light poles and steel tower will further deter future nesting attempts in these areas. Any breeding pair that seeks nesting habitat at the site in future years most likely would also be deterred by the increased noise, light, and other human disturbance at the active industrial facility, in which case the pair would seek nesting habitat elsewhere around the bay.

The Commission's ecologist (John Dixon) agrees with the DFG recommendations for avoidance and protection of sensitive osprey nesting habitat, and Dr. Dixon expressed his belief that in this particular case, the unoccupied osprey nests at the subject site do not represent environmentally sensitive habitat in their unoccupied state. Therefore, the removal of the unoccupied nests after the nesting season as recommended will not result in ESHA disturbance.

To ensure that the recommended osprey nesting habitat avoidance measures are implemented as proposed, the Commission attaches **Special Condition No. 3**. This condition requires submittal of an Osprey Protection and Nest Removal Plan prior to permit issuance for the Executive Director's review and approval. The plan must be prepared by a qualified biologist and must, at a minimum, include provisions for (1) ensuring that commencement of the authorized repair and maintenance activities shall be delayed until a qualified biologist has confirmed that the osprey nesting season is complete and that human activities and disturbance in the vicinity of the active nest(s) will be restricted or minimized until a qualified biologist confirms that chicks have fledged; (2) removing all inactive osprey nests on the site following completion of the osprey nesting season (as confirmed by the qualified biologist's survey results required above); (3) installing nest-detering perch guards or equivalent devices atop light poles and the steel tower where nests were located to discourage osprey from nesting on the site next year when repair and maintenance and increased industrial activities during the nesting season could cause a nest to fail (e.g., be abandoned in the middle of the nesting season); and (4) submitting a pre-construction report detailing the results of the osprey nesting survey and nest removal and deterrence activities required above for the Executive Director's review and written approval prior to commencement of the authorized work. The report shall include a narrative description of the osprey nest survey dates, methods, and results, details on nest removal dates, including how it was determined that nests were inactive prior to their removal, and details on nest deterrent devices installed to discourage future nesting attempts on the site.

In addition, Special Condition No. 1-A prohibits the authorized repair and maintenance activities from commencing until after the osprey nest(s) on the site are confirmed to be inactive by a qualified biologist, as required by Special Condition No. 3.

Therefore, the Commission finds that as conditioned, the proposed repair and maintenance project provides feasible mitigation measures to minimize the project's potential impacts on sensitive bird nesting habitat, as required by Section 30233(a) of the Coastal Act.

(d) Maintenance and Enhancement of Marine Habitat Values

The fourth general limitation set by Sections 30230, 30231, and 30233 of the Coastal Act is that any proposed dredging or filling project in coastal waters must maintain and enhance the biological productivity and functional capacity of the habitat, where feasible.

As discussed in the section of this finding on mitigation, the conditions of the coastal development permit will ensure that the project will not have adverse impacts on water quality, marine resources, environmentally sensitive habitat areas, or any other coastal resources. By avoiding impacts to coastal resources, the Commission finds that the project, as conditioned, will maintain the biological productivity and functional capacity of the habitat consistent with the requirements of Sections 30230, 30231, and 30233 of the Coastal Act.

Conclusion

In conclusion, the Commission finds that the new structural fill associated with the proposed repair and maintenance project is for an allowable (coastal-dependent industrial) use, there is no feasible less environmentally damaging alternative, adequate mitigation is required for potential impacts associated with the filling of coastal waters, and marine habitat values will be maintained or enhanced. Therefore, the Commission finds that the proposed development, as conditioned, is consistent with Sections 30230, 30231, and 30233 of the Coastal Act.

**E. PUBLIC ACCESS**

Section 30210 of the Coastal Act requires that maximum public access shall be provided consistent with public safety needs and the need to protect natural resource areas from overuse. Section 30212 of the Coastal Act requires that access from the nearest public roadway to the shoreline be provided in new development projects except where it is inconsistent with public safety, military security, or protection of fragile coastal resources, or adequate access exists nearby. Section 30211 requires that development not interfere with the public's right to access gained by use or legislative authorization. Section 30214 of the Coastal Act provides that the public access policies of the Coastal Act shall be implemented in a manner that takes into account the capacity of the site and

the fragility of natural resources in the area. In applying Sections 30210, 30211, 30212, and 30214, the Commission is also limited by the need to show that any denial of a permit application based on these sections, or any decision to grant a permit subject to special conditions requiring public access, is necessary to avoid or offset a project's adverse impact on existing or potential access.

The proposed repair and maintenance of an existing chip export facility will not adversely affect public access. The proposed project will not displace any existing bay access facilities. In addition, the project will not increase the demand for public access facilities, as it will not increase population density in the area and will not otherwise draw more people to the waterfront. Thus, the Commission does not find it necessary to require that public access be provided as a result of the proposed repair and maintenance project. The Commission therefore finds that the proposed project as conditioned will not have any significant adverse effect on public access, and the project as proposed without new public access is consistent with the requirements of Coastal Act Sections 30210, 30211, and 30212.

#### **F. OTHER APPROVALS**

The project is located within Humboldt Bay and is subject to the review and approval of the Humboldt Bay Harbor District, the North Coast Regional Water Quality Control Board, and the U.S. Army Corps of Engineers. The applicant has applied for and received a permit from the District (Permit No. A-2010-05 issued September 22, 2010), the Board (WQC WDID No. 1B11012WNHU issued May 10, 2011), and the Corps for approval of the proposed project. The Corps determined, in a letter to the applicant dated June 29, 2011, that the project qualifies for authorization under Department of the Army Nationwide Permit 3 (Maintenance). The Corps issued the Nationwide Permit, with the caveat that the permit will not become valid until a coastal development permit has been issued. Therefore, the Commission finds that no special condition is needed to require submittal of these other agency approvals prior to permit issuance or prior to commencement of construction, since all other necessary approvals from these agencies have been obtained.

#### **G. STATE LANDS**

The project site is located in an area subject to the public trust. Therefore, to ensure that the applicant has the necessary authority to undertake all aspects of the project on these public lands, the Commission attaches **Special Condition No. 5**, which requires that the project be reviewed and where necessary approved by the State Lands Commission prior to the issuance of the coastal development permit.

#### **H. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**



The Humboldt Bay Harbor, Recreation & Conservation District served as the lead agency for the repair and maintenance project for CEQA purposes. The District filed a notice of exemption for the project on September 20, 2010 pursuant to Section 15302 of CEQA Guidelines (Replacement or Reconstruction).

Section 13906 of the Commission's administrative regulation requires Coastal Commission approval of coastal development permit applications to be supported by a finding showing the application, as modified by any conditions of approval, is consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are any feasible alternatives or feasible mitigation measures available, which would substantially lessen any significant adverse effect the proposed development may have on the environment.

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

**V. EXHIBITS:**

- (1) Regional Location Map
- (2) Project Vicinity Map
- (3) Humboldt Bay Shipping Terminals
- (4) Aerial Photo (2010) of the Subject Site
- (5) Site Plan (General Layout)
- (6) Locations of Eelgrass Beds & Osprey Nests
- (7) Site Photos Detailing Proposed Work
- (8) NOAA-Fisheries Informal Consultation Letter

## **APPENDIX 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. Interpretation:

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

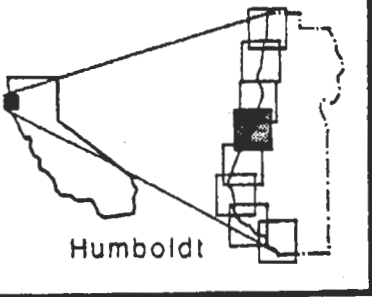
4. Assignment:

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

5. Terms and Conditions Run with the Land:

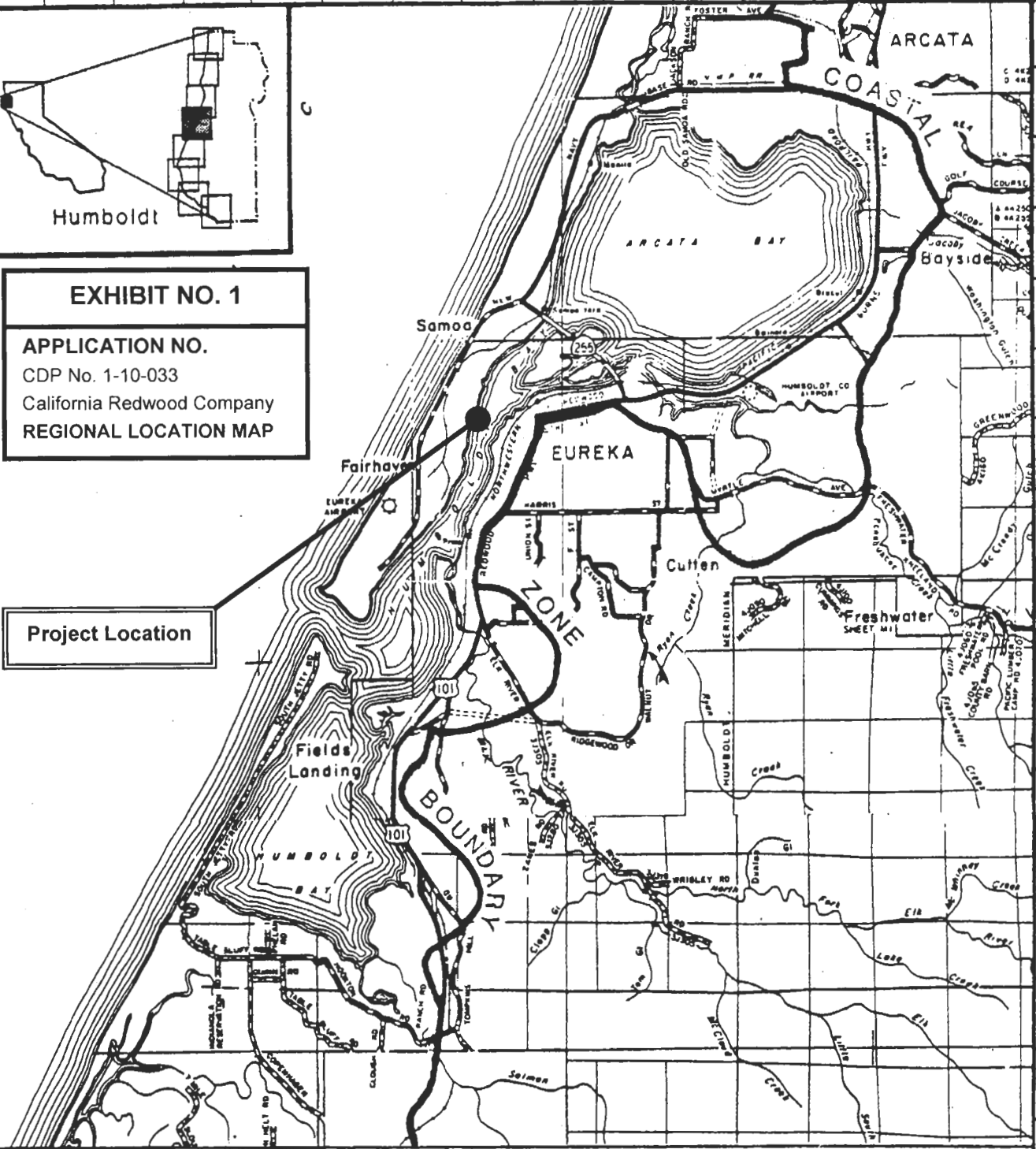
These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

A B C D E F G H I J K L M N O



**EXHIBIT NO. 1**  
**APPLICATION NO.**  
CDP No. 1-10-033  
California Redwood Company  
**REGIONAL LOCATION MAP**

**Project Location**



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# LOCATION MAP



County of Humboldt





# Humboldt Bay Shipping Terminals

Redwood Marine Terminal

Subject Site

Fairhaven Business Park

Schneider Dock

Sierra Pacific

EXHIBIT NO. 3

APPLICATION NO.

1-10-033

CALIFORNIA REDWOOD CO.

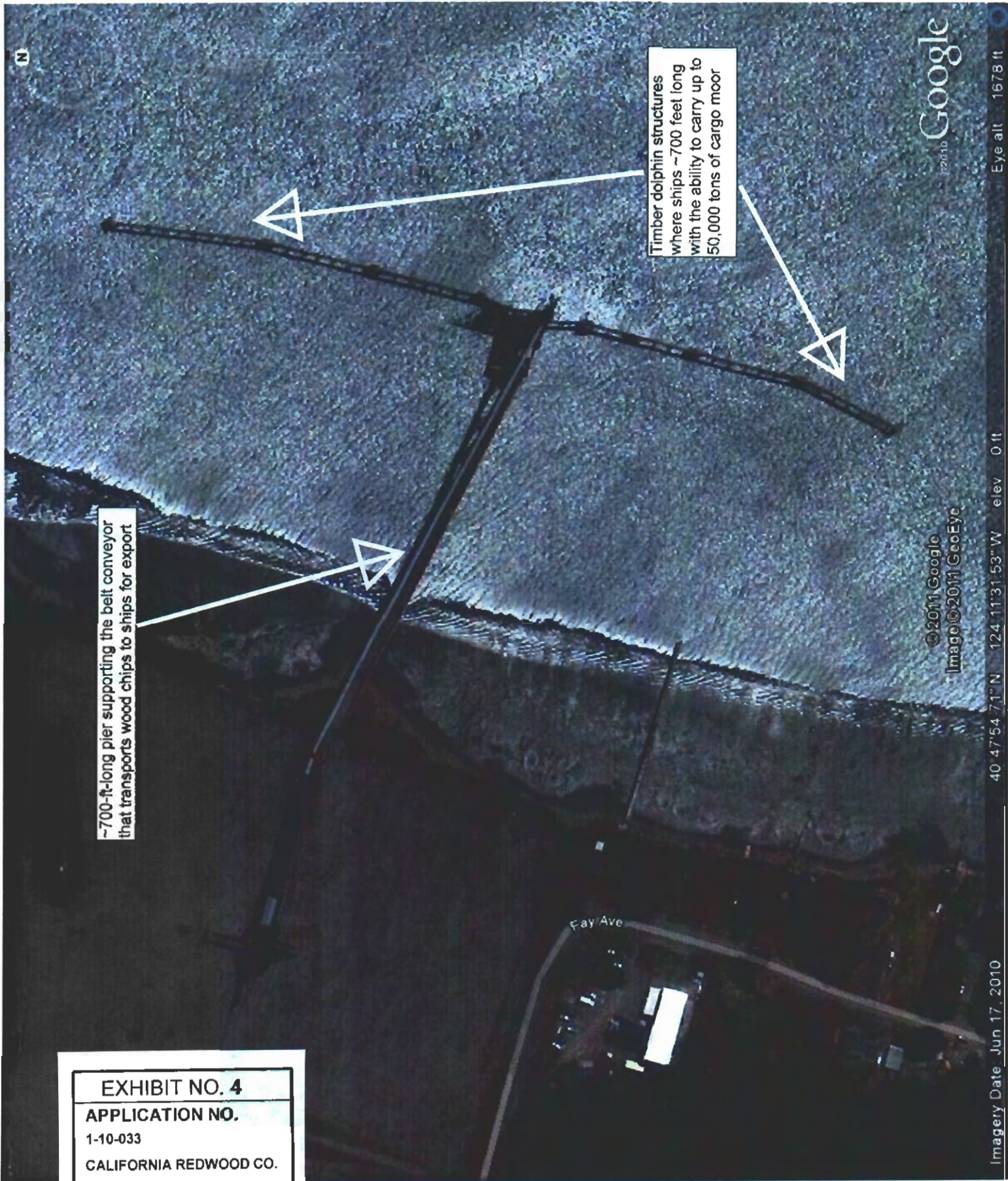
HUMBOLDT BAY SHIPPING  
TERMINALS

Humboldt Bay Forest Products

Fields Landing Terminal







N

~700-ft-long pier supporting the belt conveyor that transports wood chips to ships for export

Timber dolphin structures where ships ~700 feet long with the ability to carry up to 50,000 tons of cargo moor

Google

©2011 Google  
Image ©2011 GeoEye

Eye alt 1678 ft

40° 47' 54.71" N 124° 11' 31.53" W elev 0 ft

Imagery Date Jun 17, 2010

**EXHIBIT NO. 4**

**APPLICATION NO.**

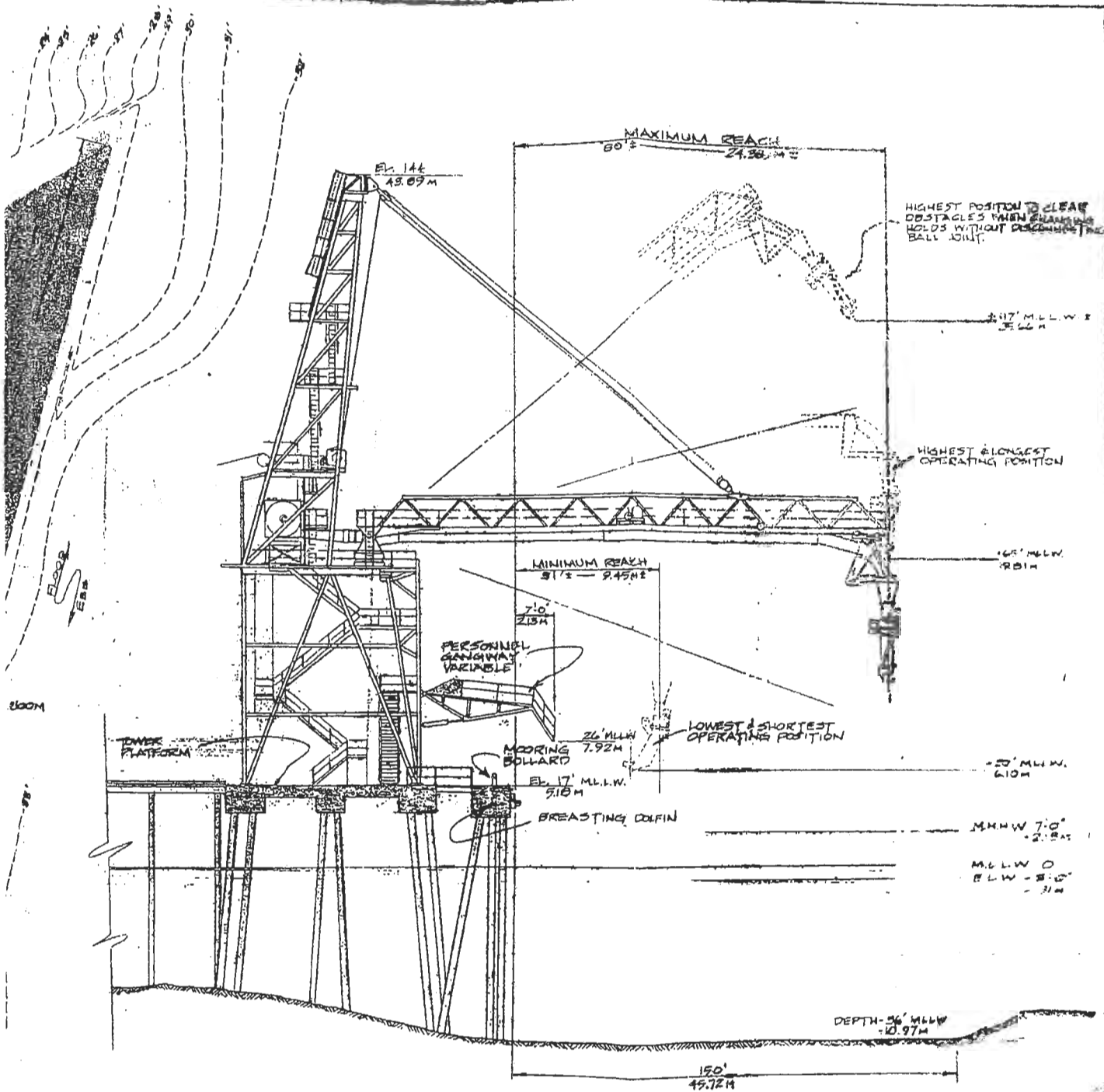
1-10-033

CALIFORNIA REDWOOD CO.

AERIAL PHOTO (2010) OF THE SUBJECT SITE







**SECTION A-A**  
**LOADING TOWER**  
 NOT TO SCALE

**NOTES:**  
 1. ALL SOUNDINGS AND UNDERWATER PROFILE BELIEVED TO BE CORRECT BUT SHOULD BE VERIFIED.  
 2. HEIGHTS OF TOWER AND APPURTENANT EQUIPMENT WAS SCALED FROM RADAR DNGI NO. B 200305 AND SHOULD BE VERIFIED.

NORTH COAST EXPORT COMPANY			WATERFRONT FACILITIES		
GENERAL LAYOUT			WINZLER & KELLY		
NO. DATE REVISIONS BY APPR			CORPORATE TIME ENGINEERS		
DRAWN BY CHECKED BY SCALE DATE			13-23		
LBS SHOWN AUG 79			13-23		





1 inch = 500 feet  
0 500



**EXHIBIT NO. 6**  
**APPLICATION NO.**  
 1-10-033  
**CALIFORNIA REDWOOD CO.**  
**LOCATIONS OF EELGRASS**  
**BEDS & OSPREY NESTS**

**EXPLANATION**

 APPROXIMATE PARCEL BOUNDARIES

 APPROXIMATE EELGRASS LOCATIONS

 APPROXIMATE OSPREY NEST LOCATIONS

**SEI**  
 Consulting Engineers  
 & Geologists, Inc.

California Redwood Company  
 Chip Export Facility  
 Samoa, CA  
 July 2011

Location of Biological Resources  
 010015  
 Figure 1

site\_plan.mxd



**EXHIBIT NO. 7**

**APPLICATION NO.**

1-10-033

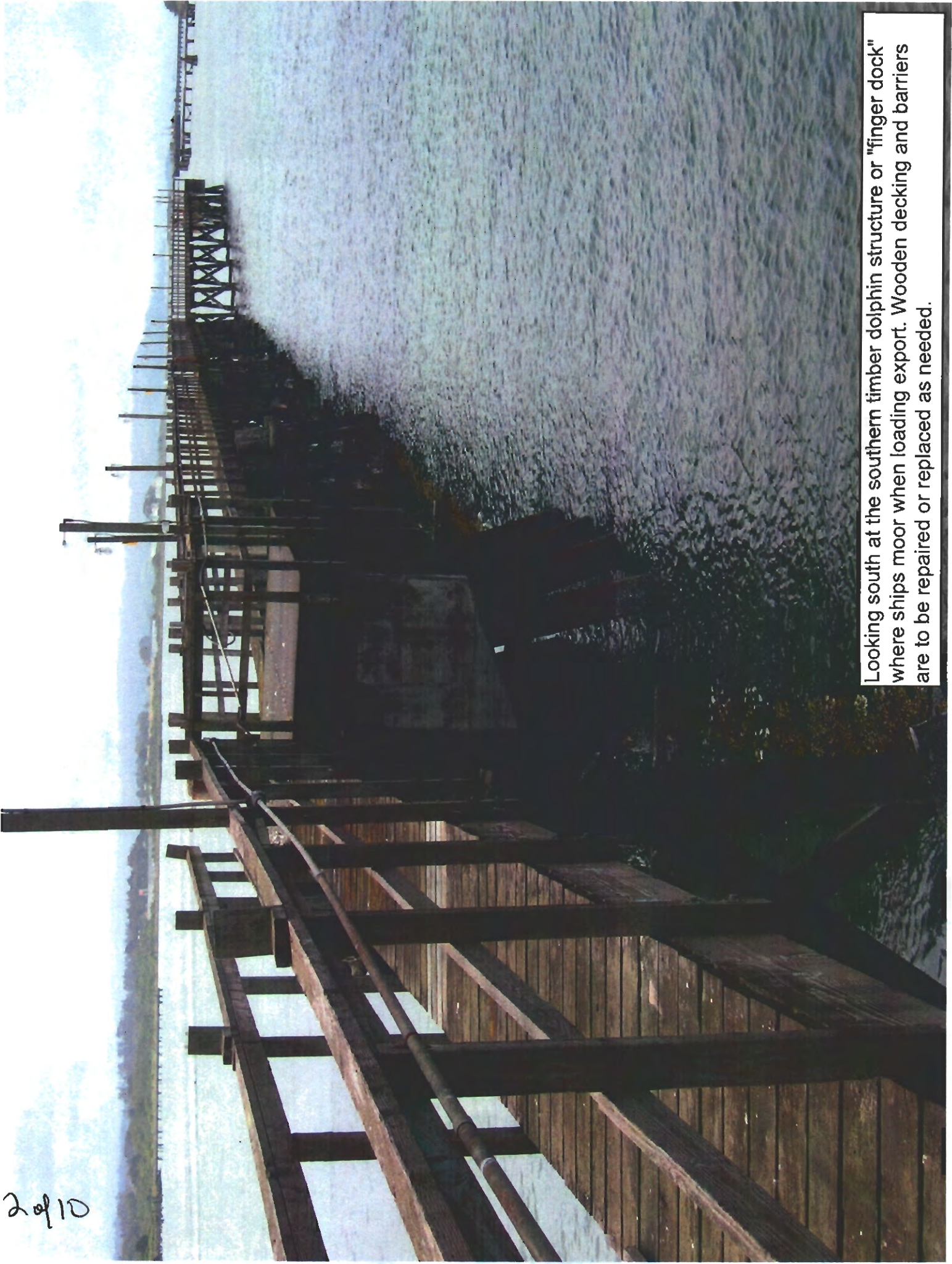
CALIFORNIA REDWOOD CO.

**SITE PHOTOS DETAILING  
PROPOSED WORK (1 of 10)**

Looking east out the ~700-foot-long pier and belt conveyor that transports wood chips directly into ships for export. Repair and maintenance activities are proposed to occur to the portion of the structure approximately where the belt starts to ascend.



2 of 10



Looking south at the southern timber dolphin structure or "finger dock" where ships moor when loading export. Wooden decking and barriers are to be repaired or replaced as needed.





View of one of the concrete mooring dolphins. Barriers are proposed to be repaired or replaced as needed.

3.410

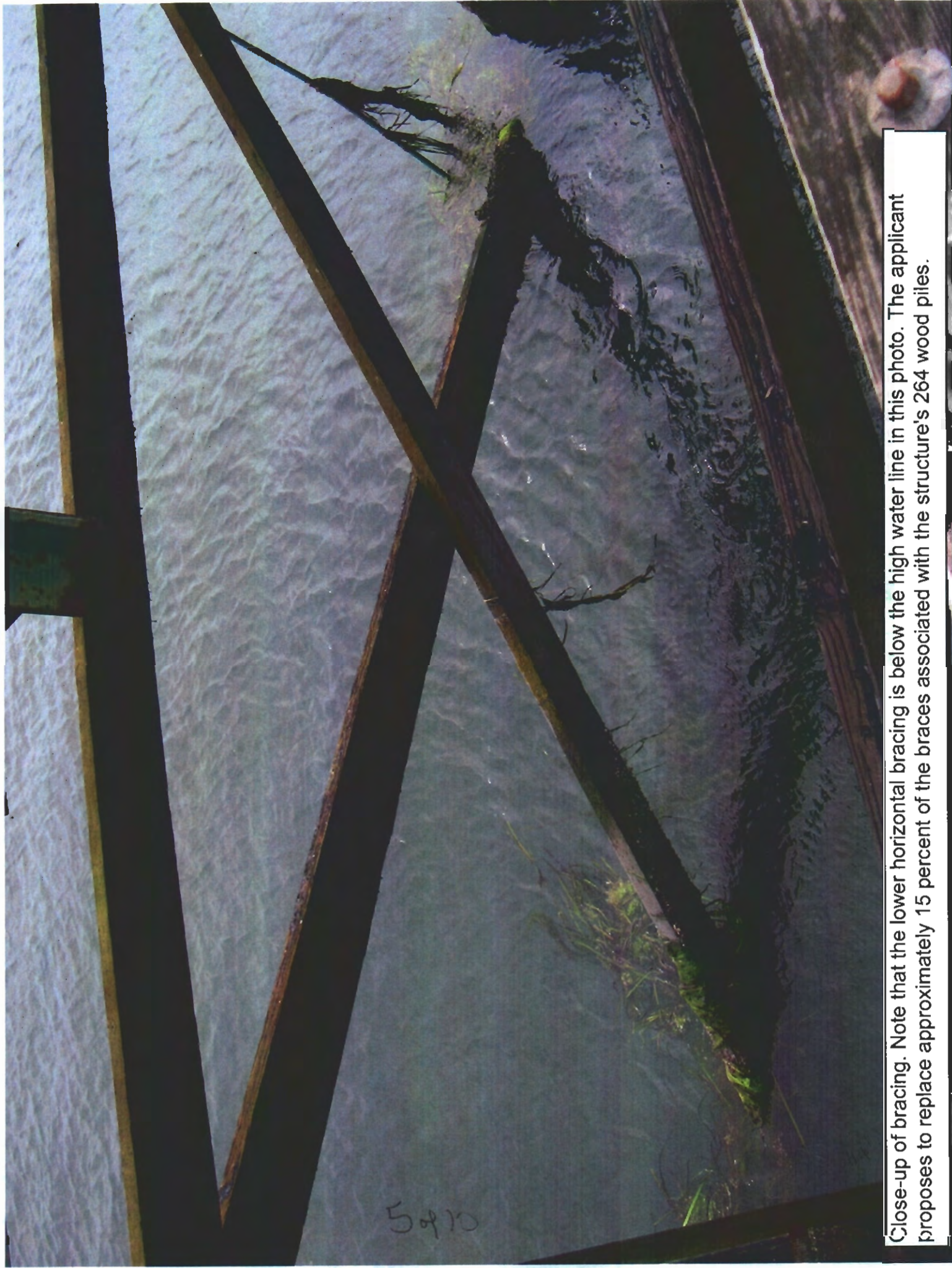


4910



View of one of the northern timber dolphin structure/finger dock. Decking and barriers are to be repaired or replaced as needed. Certain horizontal and diagonal braces throughout the dolphin structures also are proposed to be replaced.





Close-up of bracing. Note that the lower horizontal bracing is below the high water line in this photo. The applicant proposes to replace approximately 15 percent of the braces associated with the structure's 264 wood piles.





Example of decking on timber dolphin structure in need of replacement

6910





Example of catwalk on the belt conveyor structure in need of repair/replacement.





Example of where worker access to conveyor is in need of replacement due to excessive salt corrosion.

8010



View of the belt conveyor from the seaward end of the pier. An active osprey nest is located on the light pole visible in the photo near the base of the conveyor belt adjacent to the shoreline.

9410







An inactive (not currently occupied) osprey nest is located atop the steel tower at the end of the pier over Humboldt Bay.

10010



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE  
Southwest Region  
501 West Ocean Boulevard, Suite 4200  
Long Beach, California 90802-4213

In response refer to:  
2010/04014

JUN 01 2011

Ms. Jane M. Hicks  
Chief, Regulatory Division  
U.S. Army Corps of Engineers  
1455 Market Street  
San Francisco, California 94103-1398

RECEIVED

JUN 10 2011

CALIFORNIA  
COASTAL COMMISSION

Dear Ms. Hicks:

On August 13, 2010, NOAA's National Marine Fisheries Service (NMFS) received the U.S. Army Corps of Engineers' (Corps) letter requesting initiation of informal consultation pursuant to section 7(a)(2) of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. § 1531 *et seq.*), and its implementing regulations (50 CFR Part 402), on the issuance of a permit (File Number 2010-00228) for repairs to the California Redwood Company's (CRC; applicant) dock structure located in Humboldt Bay, Humboldt County, California. On October 15, 2010, NMFS sent a letter to the Corps requesting additional information needed to proceed with consultation. On March 28, 2011, NMFS received a written response from CRC's consulting firm (SHN Consulting Engineer's & Geologists, Inc., hereafter referred to as SHN), and on March 30, 2011, NMFS received your written response to our request for additional information and clarification.

This letter constitutes informal consultation for the following Federally threatened species: (1) Southern Oregon/Northern California Coast (SONCC) coho salmon (*Oncorhynchus kisutch*; 70 FR 37160, June 28, 2005); (2) California Coastal (CC) Chinook salmon (*O. tshawytscha*; 70 FR 37160, June 28, 2005); (3) Northern California (NC) Steelhead (*O. mykiss*; 71 FR 834, January 5, 2006); (4) Southern Distinct Population Segment (DPS) North American green sturgeon (*Acipenser medirostris*; 71 FR 17757, April 7, 2006); (5) SONCC coho salmon critical habitat (64 FR 24049, May 5, 1999); (6) CC Chinook salmon critical habitat (70 FR 52488, September 2, 2005); (7) NC steelhead critical habitat (70 FR 52488, September 2, 2005); (8) Southern DPS North American green sturgeon critical habitat (74 FR 52300, October 9, 2009); and (9) Southern DPS Pacific eulachon (*Thaleichthys pacificus*, 75 FR 13012, March 18, 2010).

The Corps also requested consultation on essential fish habitat (EFH) for species managed under the Pacific Coast Salmon, Pacific Coast Groundfish, and Coastal Pelagics Fishery Management Plans, pursuant to section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), 16 U.S.C. § 1855(b). In addition, this letter constitutes consultation under the authority of and in accordance with provisions of the Fish and Wildlife Coordination Act (FWCA) of 1934, as amended, 16 U.S.C. § 661 *et seq.*

<b>EXHIBIT NO. 8</b>
<b>APPLICATION NO.</b> 1-10-033 CALIFORNIA REDWOOD CO. NOAA FISHERIES INFORMAL CONSULTATION LETTER (1 of 5)



## PROPOSED ACTION

The Corps proposes to authorize the repair and replacement of structures supporting the chip conveyor belt and mooring dock at the CRC wood chip export facility, pursuant to section 10 of the Rivers and Harbors Act of 1899, as amended, 33 U.S.C. § 403. The dock extends approximately 700 feet over open waters of Humboldt Bay, with portions of the structure located over sub-tidal sections of the bay. The dock consists of a timber-pile-supported finger dock, a timber-pile-supported central platform, a steel pile supported concrete deck and pile caps, and a chip conveyor. A series of steel dolphins connected by a timber walkway extends in both directions from the main dock structure. The conveyor is supported on four timber bents using full height timber piles and four steel bents supported by concrete pile caps on steel pilings. The conveyor will transport wood chips from onshore to a blower on the central platform, thence to the hold of a ship moored to the finger dock. According to SHN, the repairs are expected to be completed within 7 to 9 months following the issuance of the Corps permit.

The project includes the installation of steel bracing on steel piles, reinforcement of steel piles with rebar, repair of damaged piles near the central platform, replacement of diagonal horizontal braces and timber dolphin struts, repair of water services (fire suppression and potable water), and repair of electrical and communication services.

A floating work barge would be used to perform most of the repairs. To prevent disturbance to the bay substrate, the barge will be moored to the dock and work periods restricted to tides that allow the barge to float. The barge will be fueled at an approved facility elsewhere on Humboldt Bay. Other construction equipment will be fueled at onshore fueling facilities or by a fuel truck. Following reinforcement of the dock structure, a hydraulic crane will be operated from the dock to complete the repair work. The crane will be checked for leaks, cleaned prior to arrival on site, and spill response materials and suitably trained personnel will be on site.

In the letter requesting initiation of consultation, the Corps stated that, "While no fill discharge and no channel dredging is anticipated..., there may be impacts...from accidental dropping of construction materials or equipment into bay waters and possible pollution effects from equipment leaking petroleum or hydraulic fluids into the bay." The Corps went on to state that the following special conditions to the permit will be required:

"...the applicant [will] prepare a Solid Debris Management Plan that would prevent construction materials from entering bay waters by methods including but not limited to installing barriers or nets under structures located over bay waters and installation of floating debris booms to contain floating wood or other construction and demolition debris at the construction site. The contained and trapped materials would be removed from the work site to an upland disposal site located above the High Tide Line. Oil spill prevention and response kits will be required on site, and equipment operators will be trained to use these kits."

Following dock repair, ships approximately 700 feet long that can carry up to 50,000 tons of cargo could be moored at the dock. Approximately eight ships per year would be required to

move wood chips under current market conditions, and an additional 8 to 10 ships may be needed if additional markets are developed. In order to comply with the California Marine Invasive Species Act, ships utilizing the dock will retain their ballast water while in waters of Humboldt Bay. NMFS identified vessel-related activity (i.e., vessel traffic, ballast water exchange) as an interdependent action that will be included in the analysis of the effects of the action. Interdependent actions are those that have no independent utility apart from the action under consideration (50 CFR § 402.02).

### **Description of the Action Area**

The action area for the project includes the area immediately adjacent to the dock and extending approximately 150 feet from the dock into the bay (the area that may be affected during implementation of facility repairs). A band of eelgrass (*Zostera marina*) grows on about one third of the mudflats under the dock. The action area also includes the Federal Navigation channel between the dock and the mouth of Humboldt Bay (a distance of about one-half mile) that would be during vessel ingress and egress to the chip export facility. Adult SONCC coho salmon, CC Chinook salmon, and NC steelhead are in the project area in the fall during migration to spawning areas primarily in Elk River, Freshwater Creek, and Jacoby Creek. Outmigrating smolts are expected to move through the project area, primarily from March through June. Based on detections of several tagged Southern DPS North American green sturgeon in 2006, individuals may be present as temporary residents in Humboldt Bay from June through October, utilizing the deeper waters of the North Bay Federal Navigation Channel as a migratory corridor between the Pacific Ocean and northern Humboldt Bay. Southern DPS Pacific eulachon may occasionally occur in Humboldt Bay tributaries, although the only documented occurrence was in 1977. Critical habitat for eulachon does not exist within Humboldt Bay.

### **Effects of the Proposed Action**

The project will result in vibration and noise from construction activities, which may expose listed species in the action area to greater than ambient noises during project implementation. However, the expected increased sound will be minimal as all construction work will occur outside of the water column. Disturbance to critical habitat in the bay is also discountable due to the debris containment measures described above, use of the existing dock for mooring, and best management practices (BMPs) which restrict the work barge from running aground. Because the dock will not be expanded, eelgrass beds will not be subjected to increased shading. Further, all work is restricted to portions of the dock outside of the eelgrass area. Thus, no shading of eelgrass or physical disturbance to eelgrass is anticipated. Construction activities may use temporary lighting at night, but the number of individuals that may experience altered behavior patterns is likely to be insignificant. BMPs are expected to substantially reduce the potential impacts of hazardous chemicals (such as fuel, hydraulic fluid, or construction debris containing preservatives) at the project site.

Due to all construction work occurring outside of the water column, NMFS believes the exposure of individual SONCC coho salmon, CC Chinook salmon, NC steelhead, Southern DPS

North American green sturgeon, and Southern DPS Pacific eulachon to the project is unlikely, and effects to individuals are discountable.

NMFS believes that listed species present during the movement and operation of chip export vessels will be exposed to noise and vibration. NMFS expects that species will avoid chip export vessels, and that the avoidance of, and increased sound from, ships will be temporary; thereby resulting in non-lethal behavioral responses. Ballast water exchange will follow the state of California's Marine Invasive Species Act guidelines, which prohibit ballast water exchange within waters of Humboldt Bay.

### **ESA Conclusion**

Based on our review of information provided, a site visit, and our understanding of listed species and critical habitats within the action area, NMFS concurs with the Corps determination that the proposed project may affect, but is not likely to adversely affect Federally threatened SONCC coho salmon, CC Chinook salmon, NC steelhead, Southern DPS North American green sturgeon, and Southern DPS Pacific eulachon, and is not likely to adversely affect their critical habitats.

This concludes informal section 7 consultation in accordance with 50 CFR § 402.14(b)(1) for the proposed project. However, reinitiating consultation may be required where discretionary Federal involvement or control over the action has been retained or is authorized by law, and if: (1) the project is modified in a manner that causes an effect to the listed species or critical habitat that was not previously considered, (2) new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered, or (3) a new species is listed or critical habitat designated that may be affected by the project.

### **EFH CONSULTATION**

NMFS determined that the project would not adversely affect EFH for species managed under the Pacific Coast Salmon, Pacific Coast Groundfish, and Coastal Pelagics Fishery Management Plans. Potential adverse effects to EFH from the project would primarily be from the unlikely and accidental release of construction materials into the water. However, NMFS believes the project has been designed to minimize and reduce the likelihood of such accidents during project implementation. Also, ballast water exchange will follow the state of California's Marine Invasive Species Act guidelines, which prohibit ballast water exchange within waters of Humboldt Bay. Further, potential adverse effects to EFH from ship traffic to and from the dock are not expected. Therefore, NMFS provides no additional conservation recommendations. This concludes EFH consultation for the project. Pursuant to 50 CFR 600.920(I), the Corps must reinitiate EFH consultation with NMFS if the proposed action is substantially revised in a way that may adversely affect EFH.



## FWCA CONSULTATION

The purpose of the FWCA is to ensure that wildlife conservation receives equal consideration, and is coordinated with other aspects of water resources development (16 U.S.C. 661). The FWCA establishes a consultation requirement for Federal departments and agencies that undertake any action that proposes to modify any stream or other body of water for any purpose, including navigation and drainage [16 U.S.C. 662(a)]. Consistent with this consultation requirement, NMFS may provide recommendations and comments to Federal action agencies for the purpose of conserving fish and wildlife resources. NMFS has no recommendations to make beyond the methods for avoiding impact already incorporated into the project design.

If you have any questions regarding these consultations, please contact Mr. Zane Ruddy at (707) 825-5173, or via electronic mail at [zane.ruddy@noaa.gov](mailto:zane.ruddy@noaa.gov).

Sincerely,



Rodney R. McInnis  
Regional Administrator

cc: Copy to ARN 151422SWR2010AR0280  
cc: Chris Yates, NMFS, Long Beach