

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE
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W17b

MEMORANDUM

Date: April 10, 2012

To: Commissioners and Interested Parties [Click here to go to the original staff report.](#)

From: Charles Lester, Executive Director
Robert S. Merrill, District Manager – North Coast District

Subject: **Addendum to Commission Meeting for Wednesday, April 11, 2012
North Coast District Item W17b, Application No. 1-10-035-A1 (Crescent City Harbor District)**

This addendum presents certain revisions and additions to the staff recommendation for approval of the project with conditions mailed on March 30, 2012, including: (I) modifications to Special Condition No 12, and (II) revisions and additions to the findings that present findings that staff was unable to complete prior to mailing of the staff report. Staff continues to recommend approval of the permit with conditions as recommended in the March 30, 2012 staff report.

I. Modifications to Special Condition No. 12.

Deleted wording within the modified special condition as recommended in the March 30, 2012 staff report is shown in ~~striketrough~~ text, and new condition language as recommended in the March 30, 2012 staff report appears as double-underlined text.

Additional wording within the modified special condition to be deleted is shown in ~~**bold striketrough**~~ text, and additional new condition language appears as **bold double-underlined** text

- *Special Condition No. 12 on page 10 of the staff recommendation shall be modified as follows:*

12. National Marine Fisheries Service Consultation Results

~~PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT~~

AMENDMENT NO. 1-10-035-A1, INSTALLATION OF THE ADMINISTRATIVE DOCK AND ITS SUPPORTING PILES, the permittee shall provide to the Executive Director a copy of the informal consultation, letter of concurrence, biological opinion or other documentation issued by the National Marine Fisheries Service (NOAA Fisheries) regarding their assessment of the potential effects of the **development as amended installation of the Administrative Dock** on fish and wildlife species subject to protections of the Endangered Species Act, the Marine Mammals Protection Act, the Magnuson-Stevens Fishery Conservation and Management Act, the Marine Mammals Protection Act, and all other applicable natural resources law. The applicant shall inform the Executive Director of any changes to the project required by NOAA Fisheries, including but not limited to, required changes that may conflict with modifications or conditions imposed by the Commission in approving Coastal Development Permit No. 1-10-035 as amended. Such changes shall not be incorporated into the project until the applicant obtains a further Commission amendment to this amended coastal development permit, unless the Executive Director determines that no amendment is legally required.

REASON FOR CHANGE: The applicant has already obtained an informal consultation letter from NOAA Fisheries addressing all aspects of the proposed development under Coastal Development Permit 1-10-035 as amended except for the installation of the Administrative Dock. The Administrative Dock will be installed under separate contract. The proposed construction of the rest of the docks in the Inner Boat Basin is tightly scheduled to be performed during the narrow summer work window required for the project. The Harbor District's goal is to complete a portion of the harbor improvements prior to next winter to facilitate the crab fishing season when there will be a critical need for berth space at the harbor by commercial fishermen. To avoid delaying the other portions of the development while NOAA Fisheries reviews the Administrative Dock installation work, the applicant has requested that evidence of NOAA Fisheries approval of the Administrative Dock installation be required to be submitted prior to commencement of the installation of the Administrative Dock rather than prior to issuance of the amended permit for the entire development. Therefore, the special condition has been revised to only require submittal of the NOAA Fisheries approval that still needs to be obtained for the Administrative Dock and to allow for submittal of the NOAA Fisheries approval prior to commencement of the Administrative Dock.

II. Revisions and Additions to Findings

- *Modify the text of the “Effects on Sensitive Fish and Wildlife Species” subsection of the “Feasible Mitigation Measures” Section of Finding E, “Protection of Coastal Waters and Water Quality,” beginning on page 24 as follows:*

Text to be deleted is shown in ~~bold-strikethrough~~, text to be added appears in **bold double-underline**.

Effects on Sensitive Fish and Wildlife Species

To avoid impacts to various sensitive fish and wildlife species, the applicant proposes that the inner boat basin in-water repairs and upgrade construction be undertaken between June 1 and November 15. Mechanized equipment needed for the project includes dredging equipment, barges, and various land-based material delivery vehicles, excavators, back-hoes, and possibly a crane.

On April 26, 2011, the National Marine Fisheries Service (“NMFS” or “NOAA Fisheries”) issued an informal consultation letter for the associated Corps FCWA Section 404 permit for tsunami repairs and harbor upgrades within the Inner Boat Basin. The informal consultation outlined that project’s potential effects on marine species listed under the federal Endangered Species Act and “Essential Fish Habitat” (EFH) under the Magnuson-Stevens Fishery and Conservation Act. The consultation addressed potential impacts to various threatened and endangered species evaluated in the biological assessment provided by the funding agency, including coho salmon (*Oncorhynchus kisutch*), Steller Sea lions (*Eumetopias jubatus*), Western Snowy Plover (*Charadrius alexandrinus nivosus*), Marbled Murrelet (*Brachyramphus marmoratus*), and California Brown Pelican (*Pelecanus occidentalis*), and EFH for salmon species.

The NOAA Fisheries consultation concluded that the project may affect, but is not likely to adversely affect, listed salmonids, Steller sea lions, western snowy plovers, marbled murrelets, and California brown pelicans (see CDP Amendment No. 1-10-035-A1, Exhibit No. 10).

Based on: (1) the conclusion of the biological assessment prepared by the Harbor District that the development will not result in significant adverse impacts on marine biological resources; (2) the informal consultation letter provided by NOAA Fisheries and its findings that based upon the impact avoidance and mitigation measures cooperatively developed by the applicant and the agency, the proposed project will not likely result in significant direct or cumulative impacts to endangered or threatened species or other protected fish and wildlife; the Commission finds that with the attachment of certain special conditions, the proposed project is consistent with the Coastal Act Chapter 3 policies.

To ensure that the proposed outer boat basin repairs and enhancements are carried out in a manner that will not cause significant adverse impacts to sensitive fish species or habitat, as to be determined by NOAA Fisheries staff, the Commission attaches **Special Condition Nos. 1-32, 4, 15, and 16**. These conditions require that final revised plans for the development incorporate all impact minimizing mitigation measures identified in the final letter of concurrence or biological opinion, and that in-water construction activities be conducted only during the period of June 1 through November 15, to protect sensitive fish and marine mammal species by avoiding times of the year when these species are normally present. Furthermore, the conditions require that all project work be conducted during periods of low-tides only, above the water surface to minimize suspended sediment and potential water quality impacts that could affect sensitive fish and wildlife species. **In addition, the conditions require the submittal of a marine mammal protection plan providing for measures to deter marine mammals from hauling out at the project location during construction activities including pile driving and to halt project activities if any marine mammal enters the project area during in-water construction activities. Moreover, the conditions require the applicant to maximize the use a vibratory system to seat the casing of the new piles to minimize acoustic impacts on sensitive fish species.** Final review and coordination with NOAA Fisheries and all other reviewing agencies except for the Army Corps of Engineers must occur **prior to the commencement of construction of the Administrative Dock or** prior to issuance of the CDP, with Army Corps of Engineers coordination occurring prior to commencement of development. With these conditions, the Commission will be able to reconsider through a permit amendment if necessary, the consistency of the proposed project as modified with the Coastal Act if NOAA Fisheries or the other reviewing agencies require changes to the project to further mitigate impacts on biological resources that are not currently anticipated.

- *Add the following “Geologic Hazards” finding as new Finding H on page 32 prior to existing Finding H, “California Environmental Quality Act (CEQA),” which will be renumbered as Finding I.*

The entire finding is new and is shown in plain text for reading clarity.

D. Geologic Hazards

Coastal Act Section 30253 states in applicable part:

New development shall do all of the following:

- (a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
- (b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

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Coastal Act Section 30253 requires in applicable part that new development minimize risks to life and property in areas of high geologic, flood, and fire hazard and neither create nor contribute significantly to erosion or geologic instability.

The rock slope shoreline protective device, the additional piles to be installed, and the Administrative Dock to be installed are located in an area of high geologic and flood hazard from waves and tidal action, and the proposed rock slope protection rehabilitation work is necessary to repair previous damage from these hazards and strengthen the rock slope protection against further damage from such hazards. To assure the structural integrity and stability of the repaired rock slope shoreline protection and pile and dock facilities, the amended project has been engineered. Based on an analysis of the effects of the March 11, 2011 tsunami, the Harbor District has determined that the 24-inch diameter piles are too small to completely withstand the forces of the design tsunami (50-year tsunami event). The amendment proposes to substitute the installation of 30-inch diameter concrete piles for the previously authorized installation of 24-inch piles. In addition, the Harbor District's analysis of the results of the March, 2011 tsunami, indicate that three additional piles are needed to strengthen the docks to withstand the effects of the design tsunami. The quarry rock, piles, and dock to be used in the repairs and the design of the amended development meet appropriate engineering specifications.

Due to the uncertain nature and inherent risk associated with the construction of improvements in high energy coastal environments, the Commission attaches Special Condition No. 14. Special Condition No. 14 requires the applicant to assume the risks of extraordinary erosion and flood hazards associated with the additional improvements to the inner boat basin area authorized by the permit amendment and waive any claim of liability on the part of the Commission. Given that the applicant has chosen to implement the amended project despite these risks, the applicant must assume the risks. In this way, the applicant is notified that the Commission is not liable for damage as a result of approving the permit for the development. The condition also requires the applicant to indemnify the Commission in the event that third parties bring an action against the Commission as a result of the failure of the amended development to withstand hazards.

The Commission finds that as conditioned, the amended development will minimize risks to life and property from geologic and flood hazards, will assure stability and structural integrity, and will neither create nor contribute significantly to erosion, geologic instability, or erosion of the site or surrounding area consistent with the requirements of Section 30253 of the Coastal Act.

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W17b

Date Filed:	December 20, 2011
49th Day:	February 7, 2012
180 th Day:	June 17, 2012
Staff:	Robert S. Merrill
Staff Report:	March 30, 2012
Hearing Date:	April 11, 2012
Commission Action:	

STAFF REPORT: PERMIT AMENDMENT

APPLICATION NO.: **1-10-035-A1**

APPLICANT: **Crescent City Harbor District**

AGENT OF PROCESS: Stover Engineering

PROJECT LOCATION: At various locations within the approximately 17.5-acre land and water areas comprising the Crescent City Harbor District's Inner Boat Basin and Upland Dredge Spoils Disposal Ponds, 101 Citizens Dock Road, Crescent City (Del Norte County). APN 117-020-16 and 117-170-11.

DESCRIPTION OF PROJECT

PREVIOUSLY APPROVED: Phased rehabilitation of the Crescent City Harbor Inner Boat Basin to pre-disaster capacities and functions by: (1) dredging 7,424 cubic yards of tsunami-deposited sediment from the basin for disposal within the District's adjacent upland spoils disposal ponds; (2) repairing tsunami damaged shoreline revetments at approximately ten discrete locations; (3) replacing approximately 161 damaged docking structural piles and installing approximately 80 additional piles; (4) installing a new storm surge/tsunami wave attenuator; (5) removing and replacing damage dock platforms; (6) installing ADA-compliant gangways; (7) replacing

dock utilities; and (8) installing a fire protection system.

DESCRIPTION OF PROPOSED

AMENDMENT REQUEST:

Modify permit granted for rehabilitation of Harbor's Inner Boat Basin Marina for additional permanent repairs to Inner Boat Basin to repair damage from March 11, 2011 tsunami including repairs to rock slope protection (RSP), installing 8 additional piles, replacing the administrative dock, and expanding the work window, to June 1 through November 15,

LOCAL APPROVALS RECEIVED:

(1) U.S. Army Corps of Engineers Federal Clean Water Act (FCWA) *Section 404 Individual Permit* or *Nationwide Permit(s)* (2) Regional Water Quality Control Board FCWA §401 *Water Quality Certification*; and (3) NOAA Fisheries Endangered Species Act and Essential Fish Habitat Consultation *Letter of Concurrence* or *Biological Opinion* for original project and additional rock slope protection and work window changes proposed under CDP amendment request.

OTHER APPROVALS REQUIRED:

(1) NOAA Fisheries Endangered Species Act and Essential Fish Habitat Consultation *Letter of Concurrence* or *Biological Opinion* for Administrative Dock replacement and installation of 8 additional piles proposed in CDP amendment request.

SUBSTANTIVE FILE

DOCUMENTS:

(1) County of Del Norte LCP.

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends approval with conditions of the coastal development permit amendment application on the basis that, as conditioned by the Commission, the project is consistent with the Chapter 3 policies of the Coastal Act.

The proposed amendment involves authorization to repair damage to facilities at Crescent City Harbor District's inner boat basin resulting from the March 2011 tsunami generated by the 9.0 Tohoku Earthquake in Japan to restore the inner boat basin to its pre-March 2011 capacity and function. The proposed amendment would modify Coastal

Development Permit No. 1-10-035 granted to the Crescent City Harbor District on February 11, 2011, for the Crescent City Harbor Inner Boat Basin Restoration Project. The original project had been proposed to restore and reinforce harbor facilities damaged by an earlier 2006 tsunami. The elements of the amendment include: (1) permanent authorization of work conducted under an emergency permit involving reconstruction of the rock slope protection lining the entire 2,500-foot-length of shoreline embankment; (2) placement of 8 additional piles to supplement the 241 piles authorized under the original permit and increasing the diameter of the piles from 24 inches to 30 inches; (3) replacement of the Administrative Dock at the entrance to the inner boat basin near the Harbor District office and provided a place for boat to temporarily moor while boaters check in at the office or to pump-out vessel sewage, and (4) amending the seasonal work window for performing the rehabilitation work required by Special Condition No. 2 of the permit, lengthening the window by 60 days.

As the applicant proposes to undertake the improvements to the outer boat basin to provide essential protection for the safety and longevity of commercial fishing and recreational boat mooring, loading and launching operations, the staff recommends that the Commission finds that the proposed fill for the piles and dock are permissible under Section 30233(a) subsection (1) for new or expanded port facilities, including commercial fishing facilities, and subsection and (3) for new or expanded boating facilities in open coastal waters, other than wetlands, including streams, estuaries, and lakes, that provide public access and recreational opportunities.

A principal issues raised by the proposed project is the appropriateness of the expanded seasonal work window by 60 days from June 1 through November 15. Staff recommends that the Commission approve the expanded work window as window is consistent with an April 26, 2011, NOAA Fisheries informal consultation letter in which concluded that the project may affect, but is not likely to adversely affect, listed salmonids, Steller sea lions, other marine mammals, and other sensitive species.

Staff is recommending a number of additional special conditions and modification to existing special conditions to minimize other potential impacts of the development, including conditions designed to minimize impacts to water quality by requiring submittal of an erosion and sedimentation control plan, a final debris disposal plan, and adherence to construction responsibilities designed to minimize the release of debris and pollutants in the waters of the harbor.

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

The Motion to adopt the Staff Recommendation of Approval with Conditions is found below on page 4-5.

STAFF NOTES:

1. Jurisdiction and Standard of Review

The site of the proposed project is within and adjacent to the semi-confined waters of the Crescent City Harbor, an embayment of the Pacific Ocean. The project is located in areas subject to the public trust within the Coastal Commission's area of original or retained jurisdiction. Therefore, the standard of review that the Commission must apply to the development is the Chapter 3 policies of the Coastal Act.

2. Scope

This staff report addresses only the coastal resource issues affected by the proposed permit amendment, provides recommended special conditions to reduce and mitigate significant impacts to coastal resources caused by the development as amended in order to achieve consistency with Chapter 3 of the Coastal Act, and provides findings for conditional approval of the amended development. All other analyses, findings, and conditions related to the originally permitted development, except as specifically affected by the current permit amendment request and addressed herein, remain as stated within the original permit approval adopted by the Commission on February 11, 2011 (Exhibit No. 12).

3. Addendum

This staff report does not contain the complete findings for approval of the project. Staff was unable to complete the findings prior to the mailing of the staff report. However, staff will present the remaining portion of the recommended findings for approval of the project as part of the addendum at the Commission meeting. The findings contained in both this staff report and its addendum will reflect the basis for approval with conditions.

I. MOTION, STAFF RECOMMENDATION AND RESOLUTION:

The staff recommends that the Commission adopt the following resolution:

Motion:

I move that the Commission approve Coastal Development Permit Amendment No. 1-10-035-A1 pursuant to the staff recommendation.

STAFF RECOMMENDATION OF APPROVAL:

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

RESOLUTION TO APPROVE THE PERMIT AMENDMENT:

The Commission hereby approves the coastal development permit amendment and adopts the findings set forth below on grounds that the development as with the proposed amendment, as conditioned, will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit amendment complies with the California Environmental Quality Act because feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the amended development on the environment.

II. STANDARD CONDITIONS: (See attached Appendix A.)

III. SPECIAL CONDITIONS:

Note: The original permit (CDP No. 1-09-020) contains 13 special conditions, three of which are reimposed as conditions of CDP Amendment No. 1-10-035-A1 without any changes and remain in full force and effect, including Special Condition Nos. 3, 8 and 9. Special Condition Nos. 1, 2, 4, 5, 6, 7, 10, 11, 12 and 13 are modified and reimposed as a condition of CDP Amendment No. 1-10-035-A1. Special Condition Nos. 14, 15, and 16 are additional new special conditions attached to CDP Amendment No. 1-10-035-A1. For comparison, the text of the original permit conditions is included in Exhibit No. 12.

Deleted wording within the modified special conditions is shown in ~~bold strikethrough~~ text, and new condition language appears as **bold double-underlined** text.

1. Final Design and Construction Plans

- A. **PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT AMENDMENT NO. 1-10-035-A1**, the applicant shall submit to the Executive Director for review and written approval final design and construction plans for the project as amended which are consistent with: (1) the approved project narrative and preliminary site plans titled "CCHD [Crescent City Harbor District] Marina Replacement," dated April 16, 2010, as prepared by Stover Engineering Civil Engineers and Consultants and Ben C. Gerwick, Inc., attached as Exhibit No. 5, including site plans, foundation plans, structural plans, and material specifications **as modified by project changes approved under CDP Amendment No. 1-10-035**; (2) all impact minimizing mitigation measures as may be required by NOAA Fisheries in any letter of concurrence, biological opinion, or other review documentation issued after completion of consultation with the U.S. Army Corps of Engineers on effects of the project **as amended** on marine species and essential fish habitat; and (3) all special conditions of Coastal Development Permit No. 1-10-035-**A1**.

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

2. Timing of Construction

- a. In-water construction activities authorized by this permit, shall be conducted during the period of **July 1 June 1** through **October 15 November 15**, or for such additional time that the Executive Director may permit for good cause and in consultation with all relevant resource protection agencies, to minimize conflicts with commercial and recreational fisheries and to protect sensitive fish species; and
- b. All construction activities involving the removal and/or placement of rip rap within coastal waters authorized under this coastal development permit shall be conducted during periods of low-tides only and from above the water surface to the maximum extent feasible to minimize the generation of suspended sediment and potential water quality impacts.

4. Final Sedimentation & Stormwater Runoff Control Plan

- A. **PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT AMENDMENT NO. 1-10-035-A1**, the applicant shall submit, for the review and written approval of the Executive Director, a final detailed Sedimentation & Stormwater Runoff Control Plan that addresses all phases of development and construction activities authorized under this **amended** coastal development permit **except for the excavation and replacement of approximately 56,000 cubic yards of engineered rock slope protection along the shoreline embankments of the inner harbor which was previously constructed pursuant to Emergency Permit No. 1-11-032-G.**

- (1) The Sedimentation and Run-off Control Plan shall be consistent with the requirements of Special Condition No. 3 and the other conditions of this permit, and demonstrate that:
- (a) Run-off from the project site shall not increase sedimentation in coastal waters;

- (b) Run-off from the project site shall not result in pollutants entering coastal waters;
 - (c) Best Management Practices (BMPs) shall be used to prevent the entry of polluted stormwater runoff into coastal waters during the construction of the authorized structures, including, but not limited to, the use of relevant best management practices (BMPs) as detailed in the "California Storm Water Best Management Practice Handbooks (Construction and Industrial/ Commercial), developed by Camp, Dresser, & McKee et al. for the Storm Water Quality Task Force (e.g., BMP Nos. EC-1–Scheduling, SE-1–Silt Fence &/or SE-9–Straw Bale Barrier, NS-9–Vehicle & Equipment Fueling, NS-10–Vehicle & Equipment Maintenance & Repair; NS-14–Material Over Water, NS-15–Demolition Adjacent to Water, WM-1–Material Delivery & Storage, WM-3–Stockpile Management, WM–Spill Prevention & Control, WM-6–Hazardous Waste Management, WM-9–Concrete Waste Management, SC-11–Spill Prevention, Control, & Cleanup, and others, as appropriate).
- (2) The Sedimentation and Run-off Control Plan shall include, at a minimum, the following components:
 - (a) A schedule for the installation and maintenance of appropriate construction source control best management practices (BMPs) to prevent entry of stormwater run-off into the construction site and the entrainment of excavated materials into run-off leaving the construction site; and
 - (b) A schedule for installation, use and maintenance of appropriate BMPs to prevent the entry of polluted stormwater run-off from the completed development into coastal waters.
- B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a further Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

5. **Hazardous Materials Management Plan**

A. **PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT**

AMENDMENT NO. 1-10-035-A1, the applicant shall submit, for the review and written approval of the Executive Director, a plan to reduce impacts to water quality from the use and management of hazardous materials on the site. The plan shall be prepared by a licensed engineer with experience in hazardous materials management. The plan shall address all phases of development and construction activities authorized under this **amended** coastal development permit **except for the excavation and replacement of approximately 56,000 cubic yards of engineered rock slope protection along the shoreline embankments of the inner harbor which was previously constructed pursuant to Emergency Permit No. 1-11-032-G**, and shall be consistent with the requirements of Special Condition No. 3 and the other conditions of this **amended** permit. The plan, at a minimum, shall provide for the following:

- (1) Equipment fueling shall occur only during daylight hours in designated fueling areas;
 - (2) Oil absorbent booms and/or pads shall be on site at all times during project construction. All equipment used during construction shall be free of oil and fuel leaks at all times;
 - (3) Provisions for the handling, cleanup, and disposal of any hazardous or non-hazardous materials used during the construction project including, but not limited to, paint, asphalt, cement, equipment fuel and oil, and contaminated sediments;
 - (4) A schedule for maintenance of containment measures on a regular basis throughout the duration of the project;
 - (5) Provisions for the containment of rinsate from the cleaning of equipment and methods and locations for disposal off-site. Containment and handling shall be in upland areas and otherwise outside of any environmentally sensitive habitat areas;
 - (6) A site map detailing the location(s) for hazardous materials storage, equipment fueling and maintenance, and any concrete wash-out facilities; and
 - (7) Reporting protocols to the appropriate public and emergency services agencies in the event of a spill.
- (B) The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a

further Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

6. Demolition Materials and Drilling Spoils Disposal Plan

A. PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT

AMENDMENT NO. 1-10-035-A1, the applicant shall submit, for the review and approval of the Executive Director, a plan detailing the methods by which, and locations at which, demolition materials and excavation spoils will be legally disposed. The plan shall demonstrate at a minimum that:

- (a) No construction materials, debris, or waste shall be placed or stored where it may be subject to entering waters of Crescent City Harbor; and
- (b) All construction debris, including general wastes from the demolition of the damaged dock piling and decking, and excavated harbor sediments and bedrock material, shall be removed and disposed of in an upland location outside of the coastal zone or at an approved disposal facility.

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

7. Sewage Pump-out Facilities

The existing sewage pump-out facility ~~on~~ at the administrative dock shall be relocated and maintained in conjunction with replacement of the administrative dock and made available for use by boaters using the inner harbor boat basin on a daily basis as proposed in Coastal Development Permit Amendment Request No. 1-10-035-A1.

10. U.S. Army Corps of Engineers Approval

PRIOR TO COMMENCEMENT OF ANY DEVELOPMENT AUTHORIZED BY COASTAL DEVELOPMENT PERMIT AMENDMENT NO. 1-10-035-A1, the permittee shall provide to the Executive Director a copy of a individual permit, nationwide permit, letter of modification or other approval issued by the Army Corps of Engineers reflecting final design modifications, or evidence that no letter of modification or other approval is required. The applicant shall inform the Executive Director of any changes to the project required by the Corps, including but not limited to, required

changes that may conflict with modifications or conditions imposed by the Commission in approving Coastal Development Permit No. 1-10-035 as amended. Such changes shall not be incorporated into the project until the applicant obtains a further Commission amendment to this amended coastal development permit, unless the Executive Director determines that no amendment is legally required.

11. State Lands Commission Review

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT

AMENDMENT NO. 1-10-035-A1, 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.

12. National Marine Fisheries Service Consultation Results

PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT

AMENDMENT NO. 1-10-035-A1, the permittee shall provide to the Executive Director a copy of the informal consultation, letter of concurrence, biological opinion or other documentation issued by the National Marine Fisheries Service (NOAA Fisheries) regarding their assessment of the potential effects of the development as amended on fish and wildlife species subject to protections of the Endangered Species Act, the Marine Mammals Protection Act, the Magnuson-Stevens Fishery Conservation and Management Act, the Marine Mammals Protection Act, and all other applicable natural resources law. The applicant shall inform the Executive Director of any changes to the project required by NOAA Fisheries, including but not limited to, required changes that may conflict with modifications or conditions imposed by the Commission in approving Coastal Development Permit No. 1-10-035 as amended. Such changes shall not be incorporated into the project until the applicant obtains a further Commission amendment to this amended coastal development permit, unless the Executive Director determines that no amendment is legally required.

13. Regional Water Quality Control Board Approval

PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT

AMENDMENT NO. 1-10-035-A1, the applicant shall provide to the Executive Director a copy of a Water Quality Certification or other approval issued by the North Coast Regional Water Quality Control Board, or evidence that no approval is required. The applicant shall inform the Executive Director of any changes to the project required by the Regional Board, including but not limited to, required changes that may conflict with modifications or conditions imposed by the Commission in approving Coastal Development Permit No. 1-10-035 **as amended**. Such changes shall not be incorporated into the project until the applicant obtains a **further** Commission amendment to this **amended** coastal development permit, unless the Executive Director determines that no amendment is legally required.

14. Assumption of Risk for CDP Amendment No. 1-10-035-A1

By acceptance of this permit amendment, the applicant acknowledges and agrees: (i) that the site may be subject to hazards from waves, tidal inundation, and other hazards; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

15. Marine Mammal Protection Plan

A. PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT AMENDMENT NO. 1-10-035-A1, the applicant shall submit, for the review and approval of the Executive Director, a plan detailing the measures to be employed to protect marine mammals. The plan shall be prepared in consultation with the National Marine Fisheries Service (NOAA Fisheries) and provide for (a) monitoring the presence and project impacts to marine mammals during the course of the Inner Boat Basin repair by a biologist with expertise in observing marine mammal behavior, (b) deterring marine mammals from hauling out at the project location during construction activities using non-lethal and non-injurious methods, (c) halting project activities if any marine mammal enters the project area during in-water construction until the marine mammal has moved outside of the project area. The plan shall be consistent with the April 26, 2011 informal consultation letter for the project issued by NOAA Fisheries.

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

16. Installation of Pile Casings

The permittee shall use a vibratory system to seat the casings of the new piles to be installed. Should locations within the project area be found where use of a vibratory system has been demonstrated to the satisfaction of the Executive Director to be infeasible prior to seating the pile casings, the permittee may use an impact hammer in those locations in conjunction with use of a bubble curtain approved by NOAA Fisheries

IV. FINDINGS AND DECLARATIONS FOR APPROVAL

The Commission hereby finds and declares:

A. Background.

The Commission granted Coastal Development Permit No. 1-10-035 to the Crescent City Harbor District on February 11, 2011, for the Crescent City Harbor Inner Boat Basin Restoration Project. The project had been proposed to restore and reinforce harbor facilities damaged by a 2006 tsunami resulting from an 8.3 magnitude earthquake in the Kuril Islands of Japan that generated a tsunami that reached California shores. The 2006 tsunami inflicted approximately \$20 million worth of damage to the inner boat basin dock, pilings, floats, and utility infrastructure (electrical, potable water, and fire protection). To minimize future risk of tsunami hazards, the facilities to be reconstructed were designed to withstand the forces of a 50-year tsunami event. The specific development authorized in the Coastal Development Permit No. 1-10-035 included: (1) dredging 7,424 cubic yards of tsunami-deposited sediment from the basin for disposal within the District's adjacent upland spoils disposal ponds; (2) repairing tsunami damaged shoreline revetments at approximately ten discrete locations; (3) replacing approximately 161 damaged docking structural piles and installing approximately 80 additional piles; (4) installing a new storm surge/tsunami wave attenuator; (5) removing and replacing damage dock platforms; (6) installing ADA-compliant gangways; (7) replacing dock utilities; and (8) installing a fire protection system. A complete description of the approved development is included in Finding B on pages 12-17 of the

Adopted Findings for Coastal Development Permit No. 1-10-035, attached as Exhibit No. 12.

Within a month of the Commission's approval of the original permit and prior to the Harbor District's completion of bid documents for the approved development, the Crescent City Harbor experienced extensive damage from the March 11, 2011 tsunami generated by the 9.0 magnitude Tohoku Earthquake off the coast of Japan. Virtually all of the docks in the Inner Boat Basin were destroyed and many vessels sank, leaving the Inner Boat Basin non-functional.

In the immediate aftermath of the disaster, Commission staff met with the Harbor District staff at the harbor and determined that the initial clean-up work to remove sunken vessels and tsunami debris was exempt from coastal development permit requirements pursuant to Section 30600(e)(1) of the Coastal Act¹. The Harbor District later applied for an emergency permit to dredge the approximately 140,000 cubic yards of tsunami-deposited sediment materials impeding safe vessel navigation with the Inner Basin and for installing temporary floating docks to allow resumed use of the Inner Boat Basin by commercial fishing vessels during the high-demand fall-winter crabbing season. On October 3, 2011, the Executive Director issued Emergency Permit No 1-11-032-G (See Exhibit No. 9) for the proposed work finding that given the critical nature of the harbor in terms of serving as both a home and transient port to commercial fishing vessels and as a harbor-of-refuge to all mariners, immediate and expedited action was needed to construct repairs to restore, repair, or maintain public service facilities. The specific development authorized by the emergency permit included (a) dredging of approximately 140,000 cubic yards of tsunami-deposited sediment materials; (b) excavation and replacement of approximately 56,000 cubic yards of engineered rock slope protection along the shoreline embankments of the inner harbor; (c) rehabilitation of the damaged outer 280-lineal feet of the Inner Boat Basin Breakwater; and (d) removal of damaged dock piles, (e) the installation of approximately 150 new replacement piles, and (f) the installation and subsequent removal of 1,500 lineal feet of temporary floating dock assemblies.

The current permit amendment request would modify the existing Coastal Development Permit No. 1-10-035 to include additional harbor rehabilitation development work needed to repair damage resulting from the March 11, 2011 tsunami and to amend the seasonal work window for performing the rehabilitation work required by Special

¹ Section 30600(e)(1) of the Coastal Act exempts immediate emergency work necessary to protect life or property or immediate emergency repairs to public service facilities necessary to maintain service as a result of a disaster in a disaster-stricken area in which a state of emergency has been proclaimed by the Governor. Staff determined that the vessel and debris removal activities proposed by the Harbor District constituted immediate emergency work to a public service facility necessary to protect life and property from pollution from spilled vessel fuels and oils in a County for which Governor Brown declared a state of emergency on March 11, 2011.

Condition No. 2 of the permit. Some of the additional rehabilitation work has already been performed pursuant to Emergency Permit No. 1-11-032-G granted by the Executive Director. Work authorized under an emergency permit is considered to be temporary work done in an emergency situation. If a property owner wishes to have the emergency work become a permanent development, a regular coastal development permit or permit amendment must be obtained. The current permit amendment request in part seeks authorization to have some of the work performed under Emergency Permit No. 1-11-032-G become permanent development². Additional harbor rehabilitation work not authorized by the emergency permit is also proposed.

B. Project Setting

Crescent City Harbor is located approximately 20 miles south of the California-Oregon border in west-central Del Norte County (see Exhibit Nos.1-2). The harbor lies on the seaward edge of the broad coastal plain that extends from South Beach to the south to the lower Smith River floodplain to the north. The harbor lies within a crescent-shaped bay, with Battery Point as the upcoast (western) limit and the rocky causeway connecting the former offshore Whaler Island, approximately one mile to the southeast, as the downcoast (eastern) limit. A significant anadromous fish-bearing watercourse, Elk Creek, enters the harbor on its northeastern shoreline.

The relative location of this south-facing cove, situated between the Ports of Humboldt Bay and Brookings (Oregon), makes it an important “harbor of refuge” from the predominantly northwesterly winds and seas in the area. In addition, the constructed outer breakwaters provide supplemental protection against westerly and southerly storms. Facilities within the bounds of the harbor include a boat basin, launch areas, a repair and fabrication boatyard, associated marina fueling, lift hoist, drayage, stevedore, waste disposal services, a recreational vehicle park, and other ancillary visitor accommodations and harbor-related services.

Two principal features of the Crescent City Harbor are the Inner Boat Basin and the Outer Boat Basin. The Outer Boat Basin includes the waters of the harbor that are seaward of the shore-side industrial area of the harbor and which are partially enclosed by (a) the approximately ____-mile long narrow projection of filled land that extends

² The development authorized by Emergency Permit No. 1-11-032-G that the applicant proposes to be made permanent under CDP Amendment No. 1-10-035 is limited to the excavation and replacement of approximately 56,000 cubic yards of engineered rock slope protection along the shoreline embankments of the inner harbor. The applicant has separately applied for an amendment to CDP No. 1-08-047 for authorization to make permanent the breakwater repairs authorized under the emergency permit. The applicant never installed the 150 replacement piles authorized under the emergency permit, utilizing instead the existing damaged piles within the Inner Boat Basin to support the temporary floating dock assemblies also authorized under the emergency permit. The other development authorized under the emergency permit did not involve development that the applicant wants to be made permanent, including the 140,000 cubic yards of dredging and the installation and removal of the temporary dock assemblies.

perpendicular to the shoreline to Whaler Island and supports Anchor Way, and (b) a breakwater that extends northwest from Whaler Island parallel to the mainland.

The Inner Boat Basin is located to the north of the Outer Boat Basin, northwest of Citizen's Dock Road and extends further landward than the Outer Boat Basin. The inner boat basin project site comprises an approximately 17.5-acre rectangular area of water area partially enclosed by revetment covered shoreline embankment on most of three sides and an in-water breakwater along its seaward side. The Inner Boat Basin is the main berthing area for commercial fishing boats and recreational vessels at the harbor. The project area for the permit amendment also includes the site of the Administrative Dock, located just outside the rectangular Inner Boat Basin along the shoreline adjacent to the end of Citizen's Dock Road just east of the Federal Channel that leads into the Inner Boat Basin.

The surfaces of the inner boat basin revetment, breakwater, and dock pilings supports habitat for a diversity of marine algal, invertebrate, and fish species. Species diversity tends to be higher along the outer, harbor side of the inner boat basin compared to the inward side. According to a 2007 biological assessment completed by the funding agency, the seaward-side community is similar to assemblages found at nearby natural outer-coast, moderately exposed sites. Biodiversity on the inward side is believed to be decreased due to sand accumulation and scour. Organisms on the inward side of the inner boat basin are characteristic of protected high intertidal areas. No species of concern were located during the inventory. However, the harbor, in general, provides habitat to a variety of sensitive fish and wildlife species, including coho salmon and Steller sea lion.

Although eelgrass (*Zostera marina*) had not been known to inhabit tidal and submerged areas of the Crescent City Harbor, eelgrass beds have been discovered by staff of the Department of Fish & Game in certain locations within the Outer Harbor Basin and near the Administrative Dock location since the tsunami. No eelgrass has been observed within the Inner Harbor Basin itself. Eelgrass is considered Essential Fish Habitat (EFH) under the Magnuson-Stevens Fishery Conservation and Management Act. A preliminary eelgrass survey was conducted by the Harbor District's consultants on March 13, 2012 at various locations along the Outer Harbor Basin shoreline and also along the shoreline area in the vicinity of the Administrative Dock, near the entrance to the Inner Boat Basin. In the vicinity of the Administrative Dock, an approximately 241 square meter eelgrass bed was located. The surveyed bed is located just to the northeast of the Administrative Dock, but does not extend to the Administrative Dock location itself.

C. Permit Amendment Description

The permit amendment request would modify the existing Coastal Development Permit No. 1-10-035 to include additional harbor rehabilitation development work needed to repair damage resulting from the March 3011 tsunami and to amend the seasonal work

window for performing the rehabilitation work required by Special Condition No. 2 of the permit. Some of the additional rehabilitation work has already been performed pursuant to Emergency Permit No. 1-11-032-G granted by the Executive Director in October of 2011. Work authorized under an emergency permit is considered to be temporary work done in an emergency situation. If a property owner wishes to have the emergency work become a permanent development, a regular coastal development permit or permit amendment must be obtained. The current permit amendment request in part seeks authorization to have some of the work performed under Emergency Permit No. 1-11-032-G become permanent development. Additional new work not authorized by an emergency permit is also proposed. The amendments to the approved development include the following specific components:

Replace Rock Slope Protection

The original permit authorized repairs to the existing rock slope protection that lines the embankments that form the inner perimeter of the inner boat basin. The authorized repairs included repairs to two large areas in the southeastern corner of the inner boat basin that were 45 feet and 150 feet in length, as well as spot repairs in a number of other areas. None of these repairs were performed prior to the March 11, 2011 tsunami. The rock slope protection (RSP) around the entire inner basin incurred significant additional damage as a result of the March 2011 tsunami. The RSP was undermined by the strong currents of the tsunami causing the RSP to slough into the harbor and lose its original shape, grade, and function, creating the potential for significant erosion of the shoreline and interference with the operation of the harbor. Emergency Permit No. 1-11-032-G granted temporary authorization to replace the RSP along the entire 2,500-foot-long perimeter embankment of the inner boat basin. The permit amendment would authorize this RSP repair work on a permanent basis and would substitute the 2,500-foot-length of RSP repair for the more limited RSP repairs authorized under the original permit.

As proposed, the RSP along the entire 2,500-foot-long inner boat basin embankments would be permanently authorized for removal and replacement. The reconstruction of the RSP includes removing the original rock and geo-fabric, regrading the embankment to the original 1.5 to 1 slope, replacing the geo-fabric, and placing one and two ton quarry rock to re-establish the revetment. To keep the RSP in place and protect it from additional sloughing in the future, the RSP is keyed in within a toe trench below the scour depth (-14.0 feet). A silt curtain was placed parallel to the work area to minimize turbidity during construction. The reconstructed revetment encroaches no further into the water than the originally constructed RSP. Approximately 56,000 cubic yards of rock and earthen materials is proposed to be removed from the previously existing RSP and replaced with the same amount of new quarry rock.

To facilitate the removal and replacement of the RSP, portions of the existing sidewalk that extends across the length of the top of the RSP are proposed to be removed and replaced.

Placement of Additional and Larger Piles

The original permit authorized replacement of all of 161 of the 12-14inch diameter steel piles that had previously been installed in the inner boat basin to support the marina docks with 241 24-inch diameter concrete piles. None of the piles authorized under the original permit have been installed. Based on an analysis of the effects of the March 11, 2011 tsunami, the Harbor District has determined that the 24-inch diameter piles are too small to completely withstand the forces of the design tsunami (50-year tsunami event). The amendment proposes to substitute the installation of 30-inch diameter concrete piles for the previously authorized installation of 24-inch piles. In addition, the amendment proposes to install an additional eight concrete piles. The Harbor District's analysis of the results of the March, 2011 tsunami, indicate that three additional piles are needed to strengthen the docks to withstand the effects of the design tsunami. Five of the additional eight piles now proposed would be installed to support a replacement Administrative Dock (discussed below) which had not been proposed to be replaced on under the original permit but which is now proposed as the previously existing Administrative Dock was destroyed by the March 2011 tsunami.

The 241 replacement piles authorized under the original permit and the eight additional piles now proposed would all be installed in the same manner proposed under the original permit. Each new pile would be installed first by vibratory driving a steel casing through the silt on the bottom of the inner boat basin and then impact driving the steel casing approximately six inches into the rock under the slit. The casing would be of a larger diameter than the pile to be installed. After removal of the overburden within the steel casing, an augering rig would be used to bore into the underlying bedrock to the required depth, ranging from 20 to 40 feet depending upon location, to ensure adequate lateral and vertical support for the estimated pile static and live loads. The drilling spoils within the steel casing would be removed for proper disposal. Following the boring, a new pre-fabricated steel-reinforced concrete pile would be lowered into socket bored beneath the casing. After the pile has been set at its appropriate depth, the space between the casing and the pre-fabricated piling would then be grouted. Pile installation would require the use of two barges: a derrick barge to install the casing, place the pile and grout the socket, and a drill barge to auger the socket.

Replacement of Administrative Dock

The March 2011 tsunami destroyed the Administrative Dock and its associated gangway and boat sewage pump-out connection to an on-shore sewer line. The Administrative Dock was located at the entrance to the inner boat basin near the Harbor District office and provided a place for boat to temporarily moor while boaters check in at the office or to pump-out vessel sewage. The Administrative Dock had not been proposed to be replaced under the original permit and the Harbor District now seeks authorization to replace it. The replacement dock would be supported by five new piles as described

above.

The replacement dock would be the same size as the dock that was destroyed (60 feet long by 8 feet wide) and would be replaced in the same location. However, the new gangway to the dock must be improved to meet Americans with Disability Act (ADA) standards, and thus will be somewhat longer. The longer 80-foot-long by 6-foot-wide gangway necessitates moving the shore-side landing of the gangway slightly to the east, which in turn will necessitate relocating the onshore vessel sewage pumping facilities slightly to the east. The buried onshore sewage line to which vessel sewage is discharged does not require relocating as the new onshore pump location is in-line with the existing sewage line route.

Work Window Amendment

Special Condition No. 2 of the original permit limits the seasonal work window for construction activities as follows (in applicable part):

2. Timing of Construction
 - a. In-water construction activities authorized by this permit, shall be conducted during the period of July 1 through October 15, or for such additional time that the Executive Director may permit for good cause and in consultation with all relevant resource protection agencies, to minimize conflicts with commercial and recreational fisheries and to protect sensitive fish species; ...

The Commission imposed the seasonal work window on the anticipated two year construction project to ensure that the proposed inner boat basin repairs and enhancements would be carried out in a manner that will not cause significant adverse impacts to sensitive fish species or habitat, as to be determined by NOAA Fisheries staff. In-water construction activities were to be conducted only during the period of July 1 through October 15, to protect sensitive fish and marine mammal species by avoiding times of the year when these species are normally present.

The permit amendment request would extend the seasonal work window specified by Special Condition No. 2 by 60 days to the period of June 1 through November 15. The amendment request application includes evidence that the extended work window has been determined by NOAA Fisheries to be acceptable under the present conditions of the inner boat basin and the project with the expanded work window would have insignificant effects on sensitive species. The Harbor District indicates that the 60-day increase to the work window would expedite project completion, resulting in lower costs for the applicant, reduced impacts over time, and faster re-colonization of organisms and habitat.

D. Revetment 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 repairs to the existing rock slope protection that were performed as temporary development under Emergency Permit No. 1-11-032-G and which the applicant now seeks authorization as permanent development constitute a repair and maintenance project because repairs do not involve an addition to or enlargement of the subject rock slope protection. 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 50 feet of a coastal bluff and within 20 feet of coastal waters. The proposed repair project therefore requires a coastal development permit under CCR Section 13252(a)(1).

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 shoreline protective devices, such as is proposed under the subject CDP application, can have adverse impacts on coastal resources, in this case primarily tidal wetlands and coastal waters adjacent to the project area, if not properly undertaken with appropriate mitigation. As described above, the applicant proposes to repair and maintain the existing rock slope shoreline protective device by excavating and removing the existing rock slope protection and placing approximately 56,000 cubic yards of quarry rock along the entire 2,500-foot-long reach of the inner boat basin embankments. The rock is proposed to be placed on to restore the 1.5 horizontal to 1 vertical slope of the rock slope protection revetment as it was originally constructed. The applicant has included a number of mitigation measures as part of its proposal, as discussed above, such as limiting work to the dry season and using standard appropriate Best Management Practices (BMPs) to avoid sediment discharges to the waters of the harbor. Therefore, as conditioned, the Commission finds that the proposed rock slope protection repairs are consistent with all applicable Chapter 3 policies of the Coastal Act.

E. Protection of Coastal Waters & Water Quality.

1. Applicable Coastal Act Policies and Standards

Section 30230 of the Coastal Act states the following:

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 the following (emphasis added):

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 30232 of the Coastal Act states the following:

Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials. Effective containments and cleanup facilities and procedures shall be provided for accidental spills that do occur.

Section 30233 of the Coastal Act states, in applicable part:

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

(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.]

2. Consistency Analysis

The proposed project involves in water construction activities including the installation of rock slope protection and additional dock piles. When read together as a suite of policy directives, Sections 30230, 30231, and 30233 of the Coastal Act set forth a number of different limitations on what types of projects may be allowed in coastal wetlands and waters. For analysis purposes, the limitations applicable to the subject project can be grouped into four general categories or tests. These tests require that projects that entail the dredging, diking, or filling of wetlands and waters demonstrate that:

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

Each category is discussed separately below.

Permissible Use for Dredging and Filling in Coastal Waters

The Commission must evaluate the proposed pile installation as “new” development rather than as a repair and maintenance project. As discussed in Finding D, above, the rock slope protection repairs are considered repair and maintenance for which the Commission reviews whether the proposed method of repair or maintenance is consistent with the Chapter 3 policies of the Coastal Act but does not evaluate the development for conformity with the use limitations of the Coastal Act

For analysis purposes, the Commission must find that the proposed fill for the piles within the intertidal and tidal zone is for an allowable purpose as specified under Section 30233 of the Coastal Act. The relevant categories of uses listed under Section 30233(a) that relate to the proposed revetment improvements are subsection (1) involving new or expanded port facilities, including commercial fishing facilities, and subsection, (2) dredging for maintaining existing, or restoring previously dredged depths in existing vessel berthing and mooring areas, and launching ramps, and (3) in open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities that provide public access and recreational opportunities.

The inner boat basin was constructed to create a harbor for boaters to moor, launch, and retrieve their boats. Once the inner boat basin is rehabilitated and reinforced, exposure of persons and property to potentially injury and damage from wave attack will be lessened.

As the applicant proposes to undertake these improvements to the inner boat basin to provide essential protection for the safety and longevity of commercial fishing and recreational boat mooring, loading and launching operations, the Commission finds that the proposed fill for the piles is permissible under Section 30233(a) subsection (1) for new or expanded port facilities, including commercial fishing facilities, and subsection (3) for new or expanded boating facilities in open coastal waters, other than wetlands, including streams, estuaries, and lakes, that provide public access and recreational opportunities.

Least Environmentally Damaging Feasible Alternative

The second test set forth by the Commission's dredging and fill policies is that the proposed fill project must have no feasible less environmentally damaging alternative. Coastal Act Section 30108 defines "feasible" as follows:

"Feasible" means capable of being accomplished in a successful manner within a reasonable time, taking into account economic, environmental, social, and technological factors.

Alternatives to the proposed project that were examined include the "no-project" alternative. As explained below, the alternatives analyzed are infeasible and/or do not result in a project that is less environmentally damaging than the proposed project as conditioned:

"No-Project" Alternative

The "no project" alternative would mean that no additional piles are installed and no additional repairs to the rock slope protection repairs would be undertaken within the inner boat basin.

Without the proposed additional piles and the proposed repairs and augmentation of the rock slope protection lining the shoreline embankments of the inner boat basin and in the area of the Administration Doc, erosion of the shoreline embankments would continue further causing blockage of certain vessel mooring and erosion of shore-side facilities. As discussed above, Crescent City Harbor has been used for commercial and recreational fishing for decades, and it provides the only harbor of refuge from the common northwesterly winds and seas between Brookings in southern Oregon and Trinidad Bay in Humboldt County. Moreover, commercial fishing and recreational boating are given high priority under the Coastal Act, and the Coastal Act policies call for the protection of these uses and the facilities needed to continue these uses. Therefore, the Commission finds that there is no less environmentally damaging feasible alternative to the development as conditioned, as required by Section 30233(a).

Feasible Mitigation Measures

The third test set forth by Section 30233 is whether feasible mitigation measures have been provided to minimize adverse environmental impacts. The proposed development would be located within and around coastal waters and wetlands. Depending on the manner in which the proposed filling is conducted, the significant adverse impacts of the project may include: (1) effects on sensitive fish and wildlife species; (2) water quality impacts from the placement of sediment containing materials in and/or undertaking construction involving the use of hazardous materials in close proximity to coastal waters; and (3) displacement of harbor bottom habitat by the installation of new piles. The potential impacts and their mitigation are discussed below.

Effects on Sensitive Fish and Wildlife Species

To avoid impacts to various sensitive fish and wildlife species, the applicant proposes that the inner boat basin in-water repairs and upgrade construction be undertaken between June 1 and November 15. Mechanized equipment needed for the project includes dredging equipment, barges, and various land-based material delivery vehicles, excavators, back-hoes, and possibly a crane.

On April 26, 2011, the National Marine Fisheries Service (“NMFS” or “NOAA Fisheries”) issued an informal consultation letter for the associated Corps FCWA Section 404 permit for tsunami repairs and harbor upgrades within the Inner Boat Basin. The informal consultation outlined that project’s potential effects on marine species listed under the federal Endangered Species Act and “Essential Fish Habitat” (EFH) under the Magnuson-Stevens Fishery and Conservation Act. The consultation addressed potential impacts to various threatened and endangered species evaluated in the biological assessment provided by the funding agency, including coho salmon (*Oncorhynchus kisutch*), Steller Sea lions (*Eumetopias jubatus*), Western Snowy Plover (*Charadrius alexandrinus nivosus*), Marbled Murrelet (*Brachyramphus marmoratus*), and California Brown Pelican (*Pelecanus occidentalis*), and EFH for salmon species.

The NOAA Fisheries consultation concluded that the project may affect, but is not likely to adversely affect, listed salmonids, Steller sea lions, western snowy plovers, marbled murrelets, and California brown pelicans (see CDP Amendment No. 1-10-035-A1, Exhibit No. 10).

Based on: (1) the conclusion of the biological assessment prepared by the Harbor District that the development will not result in significant adverse impacts on marine biological resources; (2) the informal consultation letter provided by NOAA Fisheries and its findings that based upon the impact avoidance and mitigation measures cooperatively developed by the applicant and the agency, the proposed project will not likely result in significant direct or cumulative impacts to endangered or threatened species or other protected fish and wildlife; the Commission finds that with the attachment of certain special conditions, the proposed project is consistent with the Coastal Act Chapter 3 policies.

To ensure that the proposed outer boat basin repairs and enhancements are carried out in a manner that will not cause significant adverse impacts to sensitive fish species or habitat, as to be determined by NOAA Fisheries staff, the Commission attaches **Special Condition Nos. 1-3**. These conditions require that final revised plans for the development incorporate all impact minimizing mitigation measures identified in the final letter of concurrence or biological opinion, and that in-water construction activities be conducted only during the period of June 1 through November 15, to protect sensitive fish and marine mammal species by avoiding times of the year when these species are normally present. Furthermore, the conditions require that all project work be conducted during periods of low-tides only, above the water surface to minimize suspended sediment and potential water quality impacts that could affect sensitive fish and wildlife species. Final review and coordination with NOAA Fisheries and all other reviewing agencies except for the Army Corps of Engineers must occur prior to issuance of the CDP, with Army Corps of Engineers coordination occurring prior to commencement of development. With these conditions, the Commission will be able to reconsider through a permit amendment if necessary, the consistency of the proposed project as modified with the Coastal Act if NOAA Fisheries or the other reviewing agencies require changes to the project to further mitigate impacts on biological resources that are not currently anticipated.

Construction and Runoff Impacts on Water Quality

The proposed pile installation could adversely affect water quality. The use of construction equipment and materials within sensitive marine habitats could lead to habitat contamination and impacts through the discharge of debris, trash, and contaminants such as leaky gas and other fluids and sediment- and other pollutant-laden runoff. Allowing such debris or pollutants to enter the ocean could adversely affect water quality and marine organisms inconsistent with Coastal Act Sections 30230, 30231, and 30232.

Coastal Act Section 30231 protects the quality of coastal waters, streams, and wetlands through, among other means, controlling runoff. Sediment-laden runoff from a project

work site, upon entering coastal waters, increases turbidity and adversely affects fish and other sensitive aquatic species. Sediment is considered a pollutant that affects visibility through the water and affects plant productivity, animal behavior (such as foraging) and reproduction, and the ability of animals to obtain adequate oxygen from the water. In addition, sediment is the medium by which many other pollutants are delivered to aquatic environments, as many pollutants are chemically or physically associated with the sediment particles.

In addition, Coastal Act Section 30232 requires protection against the spillage of crude oil, gas, petroleum products and hazardous substances and requires that effective containments and cleanup procedures be provided for accidental spills that do occur. The applicant has proposed to prepare a hazardous materials management plan to address the transport, handling, and storage of fuels and other equipment fluids, with emphasis on preventing releases to the ocean or beach, and to address spill prevention, cleanup, and disposal. To date, however, no such plan has been prepared.

Given that the proposed construction methods and activities: (1) will be located within and adjacent to coastal waters and thus could cause an increase in sediment and other pollutants entering coastal waters and other sensitive habitats through either the release of polluted runoff from the project site and/or leaky equipment contaminating coastal waters and beaches; and (2) are located within an area of special biological significance, which warrants “special protection” under Coastal Act Section 30230, the Commission finds it necessary to attach Special Condition Nos. 3 through 6, as described below.

- **Special Condition No. 3** requires adherence to various construction responsibilities including, but not limited to, the following: (a) construction methods shall conform to those described in Findings Section IV.B.2 *Project Description*, specifically, the outer boat basin rehabilitation shall be conducted from land (which will allow marine organisms inhabiting the existing inner boat basin to continue to have habitat available in areas of the inner boat basin not being worked on); (b) no construction materials, equipment, debris, or waste shall be placed or stored where it may be subject to wave, wind, or rain erosion and dispersion; (c) public roadway surfaces adjacent to the construction entrances shall be swept at the end of each day to remove sediment and/or other construction materials deposited due to construction activities, to prevent such sediment and/or materials from contaminating coastal waters or other environmentally sensitive habitat areas; (d) any and all debris resulting from construction activities shall be removed from the inner boat basin and adjacent beach areas on a daily basis and disposed of at an appropriate location(s); (e) any fueling and maintenance of construction equipment shall occur within upland areas outside of environmentally sensitive habitat areas or within designated staging areas, mobile fueling of construction equipment and vehicles on and around the inner boat basin construction site shall be prohibited, and mechanized heavy equipment and other vehicles used during the construction process shall not be stored

or re-fueled within 50 feet of drainage courses and other coastal waters; (f) construction vehicles shall be maintained and washed in confined areas specifically designed to control runoff and located more than 100 feet away from the mean high tide line; (g) floating booms shall be used to contain debris discharged into coastal waters, and any debris discharged shall be removed as soon as possible but no later than the end of the each day; (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 restoration activities; (i) 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; and (j) at the end of the construction period, the permittee shall inspect the project area and ensure that no debris, trash, or construction material remain on the beach, inner boat basin, or in the water.

- **Special Condition No. 5** requires submittal of a final Sedimentation and Runoff Control Plan, which shall demonstrate that: (a) run-off from the project site shall not increase sedimentation in coastal waters; (b) run-off from the project site shall not result in pollutants entering coastal waters; and (c) Best Management Practices (BMPs) shall be used to prevent the entry of polluted stormwater runoff into coastal waters during the construction of the authorized structures.
- **Special Condition No. 6** requires submittal of a final Hazardous Materials Management Plan, which, at a minimum, shall provide for the following (a) equipment fueling shall occur only during daylight hours in designated fueling areas; (b) oil absorbent booms and/or pads shall be on site at all times during project construction, and all equipment used during construction shall be free of oil and fuel leaks at all times; (c) provisions for the handling, cleanup, and disposal of any hazardous or non-hazardous materials used during the construction project including, but not limited to, paint, asphalt, cement, equipment fuel and oil, and contaminated sediments; (d) a schedule for maintenance of containment measures on a regular basis throughout the duration of the project; (e) provisions for the containment of rinsate from the cleaning of equipment and methods and locations for disposal off-site; (f) a site map detailing the location(s) for hazardous materials storage, equipment fueling and maintenance, and any concrete wash-out facilities; and (g) reporting protocols to the appropriate public and emergency services agencies in the event of a spill.

Loss of Harbor Bottom Habitat

The applicant is proposing to add eight piles and increase the size of the 241 previously authorized piles from 24 inch diameter to 30 inch diameter. The piles will be installed

on the silty-sandy substrate that underlies the Crescent City Harbor. Such harbor bottom materials typically support a variety of worms, mollusks, and other benthic organisms. However, this displacement is not a significant adverse impact to the habitat.

The primary adverse effect is the displacement of the soft bottom substrate, resulting in a loss of habitat area for invertebrates that dwell in or on the substrate within the intertidal area. On the other hand, the expanded surface area of the piles provide hard intertidal substrate habitat that is beneficial for other kinds of sessile marine invertebrates such as barnacles and mussels. In past studies of the Crescent City Harbor conducted by Applied Environmental Technologies, Inc. in 2006 and URS Corporation in 2007 for the preceding maintenance dredging and breakwater repair projects, respectively, the harbor's consultants characterized the harbor waters, including in the sandy areas within the inner boat basin project area, to be very harsh intertidal environments subject to intensive wave action, wide temperature range fluctuations, and periodic tidal exposure at their periphery. As a result, larger areas within the inner harbor are effectively denuded of vegetative cover, and exhibit a pattern of decreasing density and diversity of marine epifauna corresponding to locations furthest into the harbor's dock and wharf recesses. In addition, the bottom materials within the boat basin were found to have a relatively high wood fragment content compared to similar areas further out into the harbor. These studies also reported that while the area of soft bottom habitat in the harbor is extensive, areas of hard intertidal substrate are relatively limited to the perimeter shoreline revetments and remnants of the former sea stack known as Whaler's Island.

Therefore, the Commission finds that no additional mitigation is necessary for the increased number and size of dock piles.

Conclusion

The Commission finds that as conditioned, all feasible mitigation measures have been provided to minimize adverse environmental effects consistent with Section 30233(a) of the Coastal Act. In addition, The Commission finds that as conditioned to require: (1) adherence to various construction responsibilities to protect coastal resources; (2) submittal of an eelgrass mitigation and monitoring plan, and (3) submittal of a final sedimentation and runoff control plan, hazardous materials management plan, and debris disposal plan; the proposed development is consistent with Coastal Act Sections 30230, 30231, and 30232.

Maintenance & Enhancement of Biological Productivity & Functional Capacity

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

As discussed above, the conditions of the permit will ensure that the project will not have significant adverse impacts on the water quality of any of the coastal waters in the project area and will ensure that the project construction will not adversely affect the biological productivity and functional capacity coastal waters or wetlands. Therefore, 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.

F. Protection of Commercial Fishing & Recreational Boating Facilities.

1. Applicable Coastal Act Policies and Standards

Section 30224 of the Coastal Act states:

Increased recreational boating use of coastal waters shall be encouraged, in accordance with this division, by developing dry storage areas, increasing public launching facilities, providing additional berthing space in existing harbors, limiting non-water-dependent land uses that congest access corridors and preclude boating support facilities, providing harbors of refuge, and by providing for new boating facilities in natural harbors, new protected water areas, and in areas dredged from dry land.
[Emphases added.]

Section 30234 of the Coastal Act states, in applicable part:

Facilities serving the commercial fishing and recreational boating industries shall be protected and, where feasible, upgraded... [Emphasis added.]

2. Consistency Analysis

Crescent City Harbor has long been used as a launch site for commercial and recreational fishermen, and provides the only harbor of refuge from the common northwesterly winds and seas between Brookings Oregon and Trinidad Bay in Humboldt County, as discussed above. As discussed above in Findings Section IV.A, the Crescent City Harbor Boat Basin, which has been managed by the applicant since the early 1970s, includes a marina access road, boat slips, parking and work areas, utilities, and the inner boat basin itself. Prior to the Harbor District's involvement, the boat mooring and launch area had been used by local commercial and sport fishermen and maintained on an ad hoc informal basis by a consortium of commercial fishing interests and other community members. In addition to Citizen's Dock, several other wooden piers were originally in place along the northern side of the harbor.

The inner boat basin's capability to moor and shelter watercraft from wave attack has been reduced due to 2006 tsunami event. In addition, the inner boat basin in its damaged condition is vulnerable to further damage that would likely lead to its eventual closure if the marina is not rehabilitated.

Temporary impacts to public access as a result of construction activities are possible, but would be of limited duration and are not significant. Thus, the Commission concludes that the project as conditioned would protect boating and beach recreational opportunities consistent with Coastal Act Sections 30210, 30213, 30220, 30224, 30234 and 30234.5. Therefore, the Commission finds that, as conditioned, the proposed project would preserve public access and recreational opportunities and, is consistent with the above-cited public access and recreational policies of the Coastal Act.

G. Public Recreation and Access.

Coastal Act Section 30604(c) requires that every coastal development permit issued for new development between the nearest public road and the sea "shall include a specific finding that the development is in conformity with the public access and recreation policies of [Coastal Act] Chapter 3." The proposed project is located seaward of the first through public road.

Coastal Act Sections 30210 through 30214 and 30220 through 30224 specifically protect public access and recreation. In particular:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse. [PRC §30210]

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation. [PRC §30211]

Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects... [PRC §30212(a)]

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred. [PRC §30213]

The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case... [PRC §30214 (a)]

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area. [PRC § 30221]

Increased recreational boating use of coastal waters shall be encouraged, in accordance with this division, [...] providing harbors of refuge, and by providing for new boating facilities in natural harbors, new protected water areas, and in areas dredged from dry land. [PRC §30224]

Likewise, Coastal Act Section 30240 (b) also requires that development not interfere with recreational areas and states:

Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

Crescent City Harbor provides public access and recreational opportunities of regional and statewide significance. These opportunities include boat launching, berthing for commercial vessels and recreational boats, boat repair areas, marine-related retail/commercial businesses, sailing programs, yacht club and boat sales, and passive recreational pursuits, such as shoreline walking, beachcombing, and bird-watching. The District's inner boat basin repair and upgrade project as amended would strongly benefit public access and recreation, in two ways: (1) by restoring boat berthing capacity and providing enhanced protection from coastal flooding and erosion storm surge to the harbor's berthing areas; and (2) by including disabled access facilities (ADA/ABA-compliant gangways) to the inner boat basin that will expand opportunities for public use.

Temporary impacts to public access as a result of construction activities are possible, but would be of limited duration and are not significant. Thus, the Commission concludes that the project as conditioned would protect boating and beach recreational opportunities consistent with Coastal Act Sections 30210, 30213, 30220, 30224, 30234 and 30234.5. Therefore, the Commission finds that, as conditioned the proposed amended development would preserve public access and recreational opportunities and, is consistent with the above-cited public access and recreational policies of the Coastal Act.

H. California Environmental Quality Act (CEQA).

The Crescent City Harbor District served as the lead agency for the original project for CEQA purposes. The District found the subject inner boat basin repairs and upgrades qualified for “Class 1” and “2” categorical exemptions to environmental review, pursuant to Sections 15301 and 15302 of the CEQA Guidelines (14 CCR §§15000) as repair, maintenance, replacement, and/or reconstruction of existing structures.

In response to the March 11, 2011 tsunami, the Governor of California declared a state of emergency for Del Norte and other affected coastal counties. The District found the additional repairs and actions needed to respond to the devastation caused by the March 11, 2011 tsunami qualified for categorical exemptions to environmental review, pursuant to Section 15269 of the CEQA Guidelines (14 CCR §§15000) as “Emergency Projects.”

Section 13906 of the California Code of Regulation requires Coastal Commission approval of a coastal development permit application to be supported by findings showing that the application, as modified by any conditions of approval, is consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Public Resources Code Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available, which would significantly lessen any significant effect that the activity may have on the environment.

The Commission incorporates its findings on Coastal Act consistency at this point as if set forth in full. As discussed above, the proposed amended development has been conditioned to be consistent with the policies of Chapter 3 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 amended development, as conditioned to mitigate the identified impacts, can be found consistent with the requirements of the Coastal Act to conform to CEQA.

V. EXHIBITS

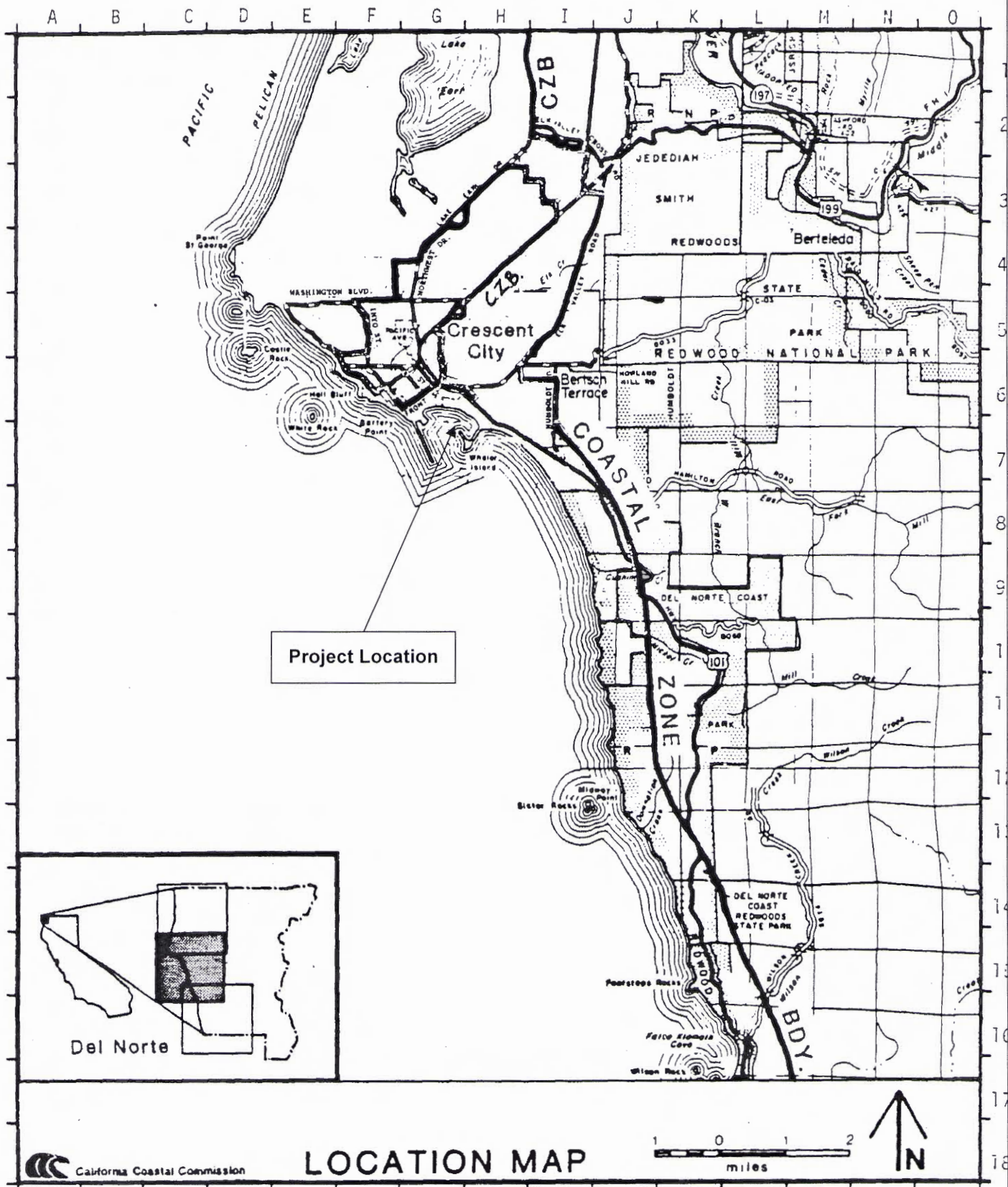
1. Regional Location Map
2. Vicinity Map
3. Project Site Aerial Photo

4. 2005 Oblique Aerial Photo
5. Project Description
6. Site Plan
7. Revetment Repair Sections
8. Site Plan Excerpts From Original Permit
9. Emergency Permit No. 1-11-032-G
10. NOAA Fisheries Consultation
11. Preliminary Eelgrass Survey
12. Original Permit (1-10-035) Adopted Findings

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.



County of Del Norte

EXHIBIT NO. 1

APPLICATION NO.

1-10-035-A1

CRESCENT CITY HARBOR
DISTRICT

LOCATION MAP

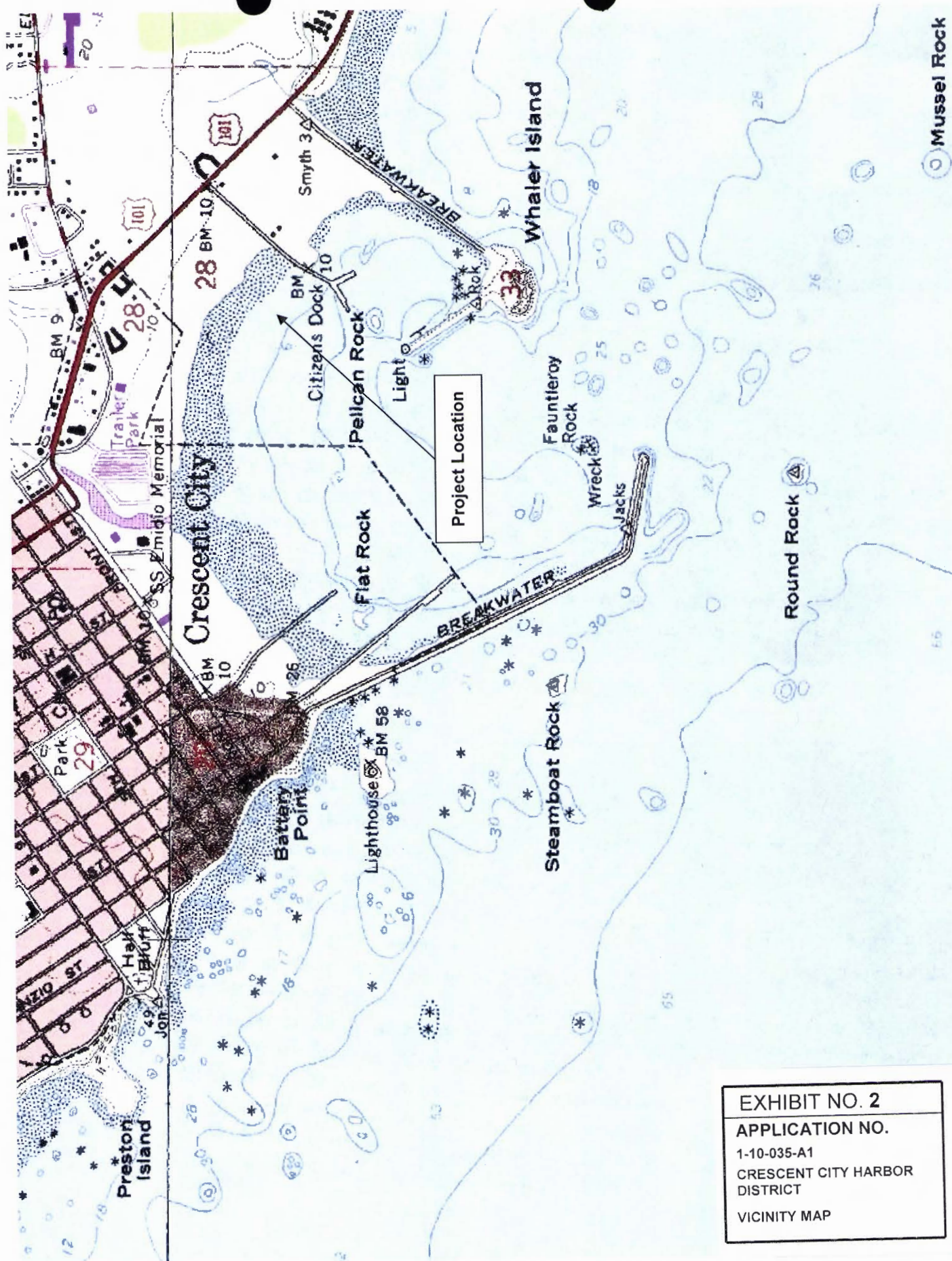




EXHIBIT NO. 3

APPLICATION NO.

1-10-035-A1

CRESCENT CITY HARBOR
DISTRICT

PROJECT SITE AERIAL



EXHIBIT NO. 4

APPLICATION NO.

1-10-035-A1

CRESCENT CITY HARBOR
DISTRICT

2005 AERIAL

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Application for Amendment to Coastal Development Permit

CDP No. 1-10-035

EXHIBIT NO. 5

APPLICATION NO.

1-10-035-A1

CRESCENT CITY HARBOR
DISTRICT

PROJECT DESCRIPTION
(1 of 7)

Description of Proposed Amendment:

The Crescent City Harbor District received permit approval (CDP No. 1-10-035) from the Coastal Commission on February 11, 2011, for the *Crescent City Harbor Inner Boat Basin Restoration Project*. The project description included in the permit granted by the Commission included (1) dredging tsunami-deposited sediment from the basin; (2) repairing tsunami damaged shoreline revetments; (3) replacing approximately 161 damaged docking structural piles and installing approximately 80 additional piles; (4) installing a new storm surge/tsunami wave attenuator; (5) removing and replacing damaged dock platforms; (6) installing ADA-compliant gangways; (7) replacing dock utilities; and (8) installing a fire protection system.

The application package submitted by the Harbor for CDP No. 1-10-035, were based on the damage inflicted by the 2006 tsunami and designing the repairs to comply with current standards and permit conditions issued by the Coastal Commission and other agencies and applicable regulations.

On March 11, 2011, prior to completion of bid documents for the items as permitted in CDP No. 1-10-035, the Crescent City Harbor experienced even greater and more extensive damage to the Harbor as a result of the tsunami generated by the Tohoku Earthquake (9.0). On March 18, 2011, the Governor of California responded to the extensive tsunami damage by declaring a state of emergency for Del Norte County and other affected coastal counties. On April 13, 2011, the President declared a Federal Disaster.

While the Harbor was damaged but still functional as a result of the 2006 tsunami, the March 2011 tsunami generated a series of significant surges that caused major damage to the inner boat basin. The Inner Boat Basin became non-functional. An emergency permit was requested from and granted by the Coastal Commission (Emergency Permit No. 1-11-032-G) in order to undertake timely restoration of the inner boat basin prior to the onset of winter storms.

The permanent repairs to the Inner Boat Basin as a result of the additional damage caused by the March 2011 tsunami and the extent of the damage over and beyond the 2006 tsunami require amending the existing CDP (No. 1-10-035). The affected elements of CDP No. 1-10-035 are as follows:

Replace Rock Slope Protection (RSP)

The existing CDP identifies in general two revetment areas within the inner boat basin requiring extensive repair and several areas requiring spot repairs. The two larger areas are located in the southeast corner of the inner boat basin. These two areas are approximately 45 feet in length and 150 feet in length. The damaged RSP areas required the replacement of the geo-fabric and placement of one- and two-ton revetment materials (rock). Any removed and/or

remaining RSP would have been replaced on the revetment area to match the existing slope. The RSP repairs would be conducted within the footprint of the existing revetment materials, with the new materials being placed at approximately the same slope as that of the existing adjacent materials and within the excavated areas extending back away from the inner boat basin such that no further encroachment into the water would occur. The locations of the rock slope protection replacement areas were identified on Figure 4 of the permit application. The amount of rock slope protection (RSP) work estimated in the existing CDP was 4,253 cubic yards.

Post-March 2011 tsunami damage surveys have determined that the rock slope protection (RSP) around the inner boat basin has suffered significant additional damage as a result of the March tsunami. The RSP was undermined by the strong currents of the tsunami causing the RSP to slough into the harbor and lose its original shape, grade, and function of the RSP. The loss of the original shape and grade is such that the RSP in its present condition is inadequate to protect the contact area between the water and the shoreline creating the potential for increased erosion and interference with the operation of the harbor. Additionally the loss of shape and grade will interfere with the new floats (docks) and cause damage during tidal fluctuations to the new replacement facilities. The level and extent of damage to the RSP require the replacement of the RSP for the entire length (2500 lineal feet) within the Inner Boat Basin.

Stover Engineering has estimated that approximately 56,000 CY of RSP needs to be removed and replace. Of this total amount, approximately 39,000 CY of the RSP is located below the Mean High Water Mark. This includes approximately 4,200 CY of new material required to achieve the design grades for the repaired RSP. In order to keep the RSP in place and protect it from sloughing in the future, the RSP will be keyed in below the scour depth (-14.0 feet). To facilitate removal of existing RSP and placement of new RSP, a portion or portions of the existing sidewalk will be removed and replaced. In order to minimize turbidity during construction of the toe trench and during re-placement of the RSP, a silt curtain will be placed parallel to the work area. A revised Figure 4 is attached show the areas of repair for the RSP at the Inner Boat Basin. A typical repair section is also attached.

Public access will be interrupted during the actual reconstruction; however any such interruptions will be temporary. The sidewalk around the Inner Boat Basin will be repaired and/or replaced. While the amounts of material to be replaced have increased, the work is basically still the same but on a larger scale. The Harbor is not requesting any change in the conditions of approval, only an increase in the volume and extent of the RSP work for the Inner Boat Basin facility.

Remove and Replace Pilings

Prior to the 2006 tsunami event, there were approximately 161 piles within the inner boat basin. These damaged piles are/were steel piles, either 12 inches or 14 inches in diameter and varying in depth into the floor of the inner boat basin but are about 8 feet in depth. During an on-site inspection by the Harbor's consulting engineer (Stover Engineering) with the CalEMA Technical Assistance Program Section and the Area Coordinator, OES determined that all of the pilings in

the inner boat basin would have to be replaced as a result of the 2006 tsunami. Their decision was based on the intensity and height of the waves that caused the docks to pound against the piles, breaking them loose from their footings.

To resist the hydraulic forces from the design tsunami (50 year event) requires the installation of more, larger, taller, and stronger, pilings. The existing CDP application describes the method of installation. In summary a larger diameter casing will be used to install a smaller diameter casing. The larger diameter steel casing will be placed through the silt on the basin bottom and drive the casing approximately six inches into the rock under the silt. After removal of the overburden within the steel casing, a "drill" would be used to create a round hole into the rock. Any spoils would be contained in the steel casing and removed to the barge being used to install the new pilings. The steel casing will also mitigate sound attenuation into the water during the installation. Then following the boring, the next steps will be to lower the new pile into the hole and grout the annulus between the casing and the pile. Two barges are required; a derrick barge to install the casing, place the pile and grout the socket, and a drill barge to drill the socket. In order to meet the needed resistance to a 50 year design event, the number of pilings to be installed increases by 80 with approximately 36 of the increased 80 pilings being installed on H Dock, the wave attenuator. The total number of pilings would be approximately 241.

The number of pilings proposed to address the 2006 tsunami damage was based on a permit requirement that the design resist flows generated by a 50 year tsunami event. A computer model was prepared and the information from that model resulted in a design that identified the need for 241 pilings to be installed. As a result of the events of the March 2011 tsunami, an equivalent 50 year tsunami event, the model was adjusted to reflect real world experience. The model was reasonably accurate and the events of March 2011 were comparable to the event impacts that the model projected. However, the model did not anticipate the amount of sediment that the March 2011 tsunami carried. The additional hydraulic impact with the suspended sediment (sand) was recalculated resulting in an increase in the number of pilings from 241 to 244 in total number of pilings. The additional work required to replace the administrative dock (not previously damaged by the 2006 tsunami) add another 5 pilings for a total number of pilings to be installed now approximately 249 pilings.

While the number of pilings to be replaced has increased slightly, the work is basically still the same. The Harbor is not requesting any change in the conditions of approval, only an increase in the number of pilings and adding the pilings necessary to replace the missing Administrative Dock of the Inner Boat Basin facility.

Administrative Dock

As part of the permit approval (CDP No. 1-10-035) from the Coastal Commission on February 11, 201, for the Crescent City Harbor Inner Boat Basin Restoration Project, special condition was included. This condition states "(t)he existing sewage pump-out facility on the administrative dock shall be maintained and made available for use by boaters using the inner harbor boat basin on a daily basis." Condition 7 is discussed in the staff report as being imposed as the continued availability of the "existing" centralized sewage pump-out facility near the

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entrance to the inner boat basin is essential to provide an alternative to boaters simply discharging sewage into the waters of the boat basin.

The administrative dock was destroyed by the March 11, 2011, tsunami. The dock, ramp, and pump out connection are all no longer present. The Harbor intends to replace this facility in the same location with basically the same size pumping connection on the same size dock. Current standards require that the previous gangway be improved to meet ADA standards. This means that while the dock will be in the same previous location, the ramp will have to be extended to meet ADA standards requiring its ramp platform (connection to land) to be relocated easterly to allow the additional required length. The onshore sewage pumping facility will also have to be relocated easterly to the new platform location to allow the dock pumping facility to be attached to the ramp to make its connection between the dock and the on-shore pump and sewage line connection. The sewage line will not require relocating as the new onshore pump location is in-line with the existing sewage line route.

An overall condition of the action of the Coastal Commission for the Inner Boat Basin Restoration Project is that the improvements must be designed for 50-year recurrence interval tsunami event. This standard has been used in the design of the replacement facilities for the Inner Boat Basin and therefore will be used in the design of the replacement of the administrative dock which is part of the Inner Boat Basin facility. Meeting the 50-year standard will require installation of new pilings at the administrative dock. The prior dock was connected to four 13 inch steel "H" beams, vertically driven and used as pilings. The new pilings for the replacement dock will be the same pilings design and installation methods being used for the rest of the Inner Boat Basin. Preliminary engineering indicates that the new administrative dock will require three to five new pilings to withstand the 50-year event currents generated at its location within the entrance channel of the Inner Boat Basin. The new piling count discussed above includes up to 5 pilings for the administrative dock and removal of up to four of the existing "H" beam by either cutting them off at the bed line or lifting them vertically from the harbor.

Installation procedures for the Administrative Dock, its ADA compliant gangway, and its replacement pilings will be in compliance with the existing conditions of the issuance by the Coastal Commission.

Work Window Amendment

The Coastal Commission approval of a CDP No. 1-10-035 for the rehabilitation of the Inner Boat Basin includes Special Condition 2 (Timing of Construction). This condition is applicable to the waters of the Inner Boat Basin. Special Condition 2a of the CDP reads as follows:

"Construction activities authorized by this permit, shall be conducted during the period of July 1 through October 15, or for such additional time that the Executive Director may permit for good cause and in consultation with all relevant resource protection agencies, to minimize conflicts with commercial and recreational fisheries and to protect sensitive fish species;..."

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At the time of approval of the CDP by the Coastal Commission in February of 2011, NOAA Fisheries had not completed their review of the project but had verbally stated that based on their review to that date, the agency would most likely find that given the characteristics of the site being enclosed behind breakwater jetties and the construction season limitation mitigation measures included in the project design, the development would not likely result in significant direct or cumulative impacts take to federally-listed endangered or threatened species or other protected fish and wildlife. The action of the Coastal Commission was based on the preliminary statement of NOAA Fisheries as discussed above, the biological assessment prepared by the Harbor that the development will not result in significant adverse impacts on marine biological resources, and the proposed mitigation measures to schedule work in the water during the period of July 1 through October 15.

Since action by the Coastal Commission, the Harbor experienced the March 11, 2011, which devastated the Inner Boat Basin. The magnitude 9 earthquake in Japan set in motion a tsunami consisting of a series of waves increasing in intensity from 6 am, peaking at 11:30 am, then decreasing in intensity but continuing over a 48 hours period in the harbor area. The peak wave height of 2.4 meters (measured from the flat sea to peak) equates to a 16 foot swell difference from peak to trough. This rapid fluctuation in wave action and water level created excessive side forces as well as vertical impacts to the docks, pilings, and boats in the inner boat basin. The tsunami wave action was sufficient to suspend sand and carry it into the inner boat basin, as the water reached equilibrium and movement slowed, sedimentation occurred. The March 2011 tsunami deposited 87,776 cubic yards of silt into the inner boat basin which is in addition to the 7,424 cubic yards attributable to the 2006 tsunami. The sand generated by the 2011 tsunami was not deposited evenly throughout the inner boat basin. Scour took place at the entrance to the basin and deposition was greatest toward the center of the basin as the currents spun clockwise within the confines of the inner boat basin. Scoured depths reached 15 feet and accumulated sand built up enough sand and silt to create islands at low tides. The thickness of sand debris reached between 5 and 8 feet of accumulated sand over the previous depth of the harbor.

The completion of the consultation process with NOAA Fisheries, initiated in the previous fall and therefore prior to the March tsunami, was delayed until April 26, 2011 due to efforts of all cooperating agencies including NOAA Fisheries to address the immediate impacts of the March tsunami.

The consultation letter issued by NOAA Fisheries addressed coho salmon within the Southern Oregon/Northern California Coast (SONCC), southern Distinct Population Segment (DPS) North American green sturgeon, eastern DPS Stellar seal lion, essential fish habitat (EFH) for species managed under the Pacific Coast Salmon, Pacific Coast Groundfish, and Coastal Pelagics Fishery Management Plan. On page 4 of the letter of consultation it states that "(l)ittle data exist for the Elk Creek coho salmon population, however, the best available information indicates extremely low abundance for both juveniles and adults." The letter also states that "(d)ue to the timing of proposed in-water activities (June 1 through November 15), NMFS thinks exposure of coho salmon in the action area is unlikely and the project will have insignificant effect to SONCC coho salmon." Regarding green sturgeon, the consultation letter on page 5 states that "NMFS is

unaware of information that suggests green sturgeon regularly frequent the action area, and given the lack of observations or incidences of bycatch in California fisheries, NMFS believes they are rare visitors to the action area." The consultation letter also on page 5 addresses the Stellar sea lion. The letter states that "(a)ny Stellar sea lion that may approach the inner boat basin would be a transiting adult that would likely avoid the area due to the level of human activity in the harbor. In addition, a biological monitor will be present to shut down in-water construction activities if a marine mammal enters the action area." The consultation letter concludes that "...the proposed project may affect, but is not likely to adversely affect federally threatened SONCC coho salmon, southern DPS North American green sturgeon, eastern DPS Stellar sea lions, or their designated critical habitats."

The letter also provides EFH consultation and concludes that NMFS provides no additional recommendations over those previously discussed. Similarly, NMFS also did not make any recommendations regarding FWCA (wildlife conservation). Regarding the Marine Mammals Protection Act (MMPA), NMFS expects that the number of marine mammals with the project area to be "relatively low" since the attraction for marine mammals to the project area has been "destroyed" as a result of the tsunamis. The letter does direct that the Harbor will adhere to NMFS MMPA biological monitoring guidance that outlines non-injurious methods of deterring marine mammals from the project area. Observation by Harbor staff agrees with the statement regarding the decline of marine mammals in the project area. Seals and other animals are infrequent visitors to the Inner Boat Basin area, usually turning around and leaving the area short after entering.

Enclosed is the letter of consultation from NOAA Fisheries applicable to the Inner Boat Basin Rehabilitation and the CDP issued by the Coastal Commission. Recently we asked for clarification from NOAA Fisheries about implementation of their letter of consultation. Our email to NOAA Fisheries was as follows:

Our consulting engineers, Ben C. Gerwick, Inc. and Treadwell & Rollo are fairly confident that all of the new pilings will only require the use of a vibratory system to seat the new casings. There is a remote possibility that limited areas could be incurred that would require installation of a portion of a casing by an impact hammer. In order to address this possibility, we at the harbor are proposing to include the following language in our bid documents:

"A VIBRATORY HAMMER WILL BE USED TO SEAT THE CASING FOR EACH PILING. SHOULD AREAS BE FOUND THAT REQUIRE USE OF AN IMPACT HAMMER TO INSTALL THE CASING, A BUBBLE CURTAIN WILL BE USED AS PART OF THE INSTALLATION OF THE PILING CASING DURING THE USE OF THE IMPACT HAMMER."

Is the above wording acceptable to you to conform with the letter of consultation?

On a second matter, I have been looking at your email of April 27, 2011. You may have answered this question previously, and if so I apologize. Since it now appears that the bulk if not all of the new casing will be seated by use of a vibratory method instead of an

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impact hammer, does the 200 meter "shut down" zone still apply for vibratory installation? My reading is that it would still apply for any casing installation that requires an impact hammer. If I am misreading please correct and/or clarify. We need to alert the contractor of the possible "shut down" so that it is known prior to bid award and therefore does not become some "new" issue for the contractor. Our plan is to have the monitor to report to the Harbor engineer who will have the authority to "shut down" construction activity if necessary.

The response from staff at NOAA Fisheries:

Yes, your proposed language is suitable and consistent with our letter of concurrence.

I've re-analyzed the acoustic effects of vibratory hammers on marine mammals, and have concluded that the "shut down zone" should be scaled down to 50 meters when the vibratory hammer is in use. This is consistent with minimum shut down zone guidance from NMFS headquarters. Vibratory hammers produce moderate levels of airborne noise, but have been shown to produce underwater noise levels that can result in injury or behavioral disturbance to marine mammals. As a reminder, the biological monitor will still need to monitor a 500-m zone for Steller sea lions. Also, to diminish the likelihood of a shut down, we encourage the District to employ the marine mammal deterrence methods described in the MMPA biological monitoring guidance.

So, in conclusion, the District would only shut down operations if:

1. A marine mammal comes within 50-m of the active vibratory hammer.
2. A marine mammal comes within 200-m of the active impact hammer.
3. A Steller sea lion comes within 500-m during any pile driving event.

I hope I have answered your questions. If you need anything clarified feel free to email or give me a call.

A copy of the original email exchange is enclosed.

NOAA Fisheries made their determinations after the occurrence of the March 11, 2011 tsunami. As a result of the tsunami the facility was essentially destroyed and the habitat value also essentially destroyed. NOAA Fisheries has determined that an expanded work window is acceptable under the present conditions which allows the inner boat basin work to "...be constructed incrementally over 2 years with all in-water pile driving and dredging activities restricted to June 1 through November 15." The dredging has occurred, removing the accumulate silt, sand, and debris from the Inner Boat Basin. Re-establishing habitat will occur once the permanent improvements are accomplished and re-colonization starts. Expanding the work window of CDP No. 1-10-035 July 1 through October 15, to the NOAA authorized work window of June 1 through November 15, adds 60 days to the work window. This increase of the work window can expedite the project completion resulting in lower costs for the Harbor, reduced impacts over time, and re-colonization of organisms and habitat.

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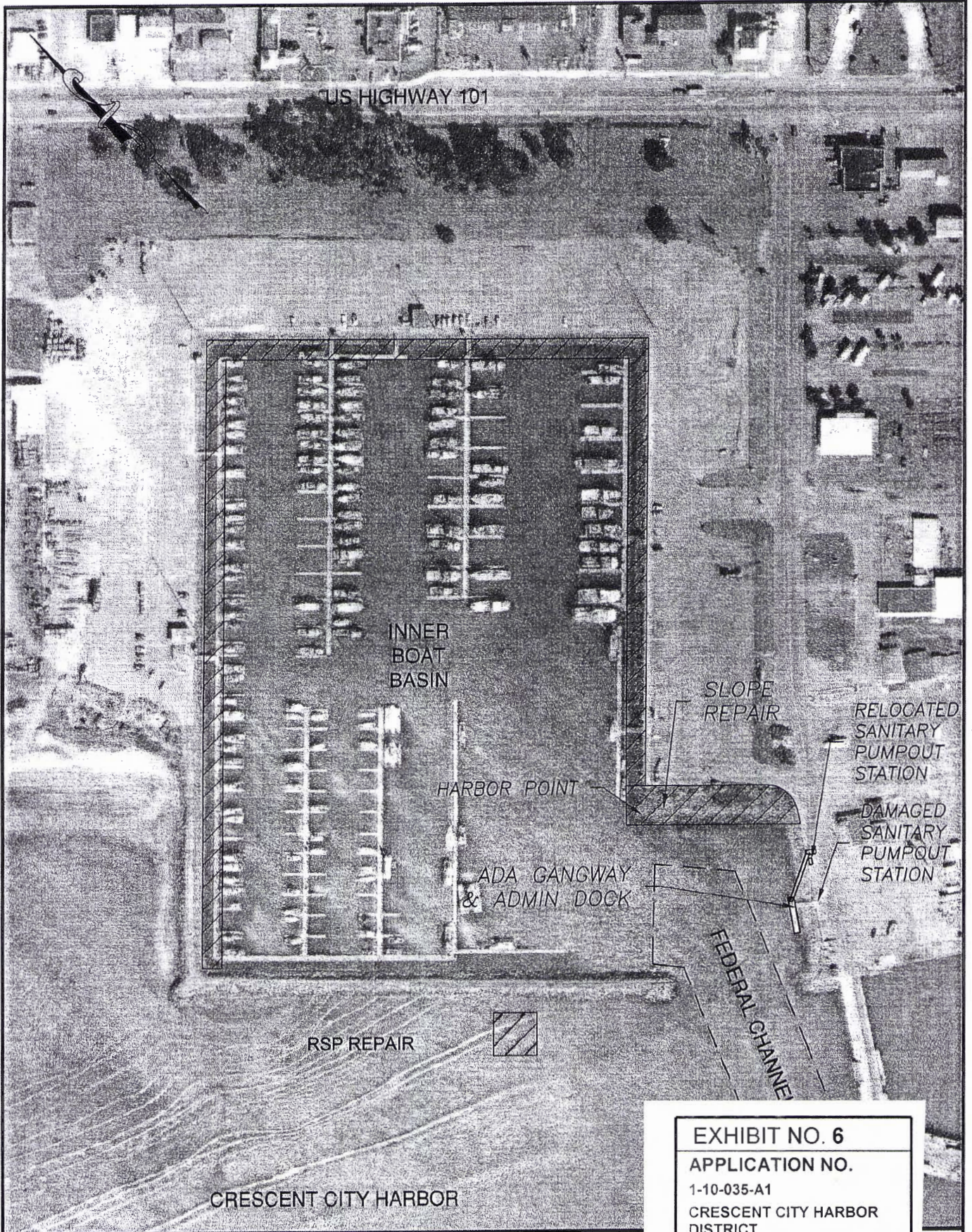


EXHIBIT NO. 6

APPLICATION NO.

1-10-035-A1

CRESCENT CITY HARBOR
DISTRICT

SITE PLAN

STOVER ENGINEERING
Civil Engineers and Consultants

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CRESCENT CITY HARBOR DISTRICT
CRESCENT CITY, CA

ONE INCH

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FIGURE 4: AREAS OF REPAIR