CALIFORNIA COASTAL COMMISSION
NORTH COAST DISTRICT OFFICE
1385 8TH STREET, SUITE 130
ARCATA, CA 95521
VOICE (707) 826-8950
FACSIMILE (707) 826-8960

Th7c

Filed:	1/30/13
180th day:	7/29/13
Staff:	R. Merrill-A
Staff Report:	4/19/13
Hearing Date:	5/9/13

STAFF REPORT: REGULAR CALENDAR

Application No.:	**1-13-003**
Applicant:	**Crescent City Harbor District**
Agent:	Stover Engineering
Location:	At Citizens Dock and three commercial fish docks within the Crescent City Harbor District's Outer Boat Basin, Crescent City, Del Norte County (APN 117-020-16).
Project Description:	Repairs to Citizens Dock and three commercial fish docks involving replacement of damaged and/or missing fender piles.
Staff Recommendation:	Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The Crescent City Harbor District proposes to repair boat docking facilities within the "District's Outer Boat Basin in Crescent City damaged by the March 11, 2011 a tsunami generated by the 9.0 magnitude Tohoku Earthquake off the coast of Japan. The proposed development involves replacing a total of 31damaged and missing fender piles and associated chocks, walers, and ladders at Citizens Dock and three commercial fish docks within the harbor.

Staff believes that with the recommended conditions, the proposed dock repair project will minimize significant adverse impacts the marine environment including effects on sensitive fish and wildlife species and water quality consistent with the requirements of Sections 30230, 30231, 30232, and 30233 of the Coastal Act that feasible mitigation measures be provided to minimize adverse environmental effects of fill in coastal waters and wetlands.

Staff recommends Special Condition No. 4 requiring the use of a vibratory hammer for pile installation as proposed by the applicant rather than other forms of pile driving to ensure that the pile installation does not create hyroacoustic impacts on sensititve fish species in the harbor. In addition, staff recommends Special Condition No. 3 requiring that in-water repairs only be undertaken between June 1 and November 15 as proposed by the applicant to avoid impacts to sensitive fish and wildlife species. Furthermore, staff recommends Special Condition 2 requiring the applicant to submit for the review and approval of the Executive Director a debris disposal plan prior to issuance of the permit to ensure that the removed marine debris that may have been previously treated with wood preservatives and other debris is taken to appropriate landfills. Finally, staff recommends Special Condition 5 requiring adherence to various construction responsibilities to minimize water quality impacts. Among other requirements, the condition requires various measures to minimize the leaching into harbor waters of contaminants from the small amount of pressure-treated wood that is proposed to be used in some of the dock repairs.

Commission staff recommends approval of CDP application 1-13-003, as conditioned.

TABLE OF CONTENTS

APPENDICES

EXHIBITS

I. MOTION AND RESOLUTION

The staff recommends that the Commission adopt the following resolution:

Motion:

I move that the Commission approve coastal development permit 1-13-003 pursuant to the staff recommendation.

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

Resolution:

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

II. STANDARD CONDITIONS

This permit is granted subject to the following 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 amount 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.

III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. **State Lands Commission Review** . PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director, a written determination from the State Lands Commission that (a) no state lands are involved in the development; or (b) state lands are involved in the development and all permits or other approvals 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.

2. Debris Disposal Plan

(A) PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, a plan detailing the methods by which, and locations at which excavated material and other project debris will be legally disposed. The plan shall demonstrate at a minimum that:

(i) No construction materials, debris, or waste shall be placed or stored where it may be subject to entering waters of Crescent City Harbor; and

(ii) All construction debris, including general wastes from the excavation of existing damaged rock slope protection materials shall be removed and disposed of in an upland location outside of the coastal zone or at a disposal facility authorized to accept such debris and any contaminants contained within the debris.

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

3. **Timing of Construction** In-water construction activities authorized by this permit, shall be conducted during the period of June 1 through 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

4. **Pile Driving**. The fender piles to be installed shall be installed using a vibratory hammer as proposed. No change the pile driving method shall occur without a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

5. Construction Responsibilities

The permittee shall comply with the following construction-related requirements:

a. 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. Construction materials shall be stored only in approved designated staging and stockpiling areas;

b. Any and all debris resulting from construction activities shall be removed on a daily basis and disposed of at an appropriate location(s);

c. Any fueling and maintenance of construction equipment except for the barge-mounted crane 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. Mechanized heavy equipment and other vehicles used during the construction process except for the barge-mounted crane shall not be stored or re-fueled within 50 feet of drainage courses and other coastal waters;

d. Construction vehicles except for the barge-mounted crane 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;

e 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;

f. 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 inner boat basin rehabilitation activities. Following construction, all trash and construction debris shall be removed from work areas and disposed of properly;

g. At the end of the construction period, the permittee shall inspect the project area and ensure that no debris, trash, or construction materials remain on land or in the water, and that the project has not created any hazard to navigation;

h. Fuels, lubricants, and solvents shall not be allowed to enter the coastal waters. 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;

i. Preservative-treated wood used in construction of the project must meet the American Wood Protection Association's (AWPA) wood preservative standards, specifically AWPA Standard U1, the primary specification for pressure-treated wood;

j. ACZA preservative-treated wood shall be treated to the proper preservative retention standard (i.e., amount of preservative) specified by the AWPA for the appropriate AWPA Use Category. The ACZA preservative-treated wood used for the project shall not have a preservative retention exceeding the minimum specified for the appropriate Use Category, in order to minimize the amount of preservative present in treated wood on-site that may subsequently leach into the marine environment;

k. The ACZA preservative-treated wood shall be inspected on-site to assure it is free of visible surface residues or bleeding of preservatives. If ACZA preservative-treated wood has a noticeable ammonia odor, then it has not been properly processed or aged, and the preservative may thus not be properly fixed, therefore the lumber shall not be used;

l. The ACZA preservative-treated wood shall be stored away from the water until it is needed for installation. The wood shall be stacked above the ground, and the area shall have adequate drainage to prevent the wood from being subjected to standing water. If there is a chance of precipitation, the wood shall be stored under a covered area or tarp to minimize exposure to precipitation;

m. Whenever possible, cutting or drilling of ACZA preservative-treated wood shall be performed at a site a minimum of 100 feet away from the water, to minimize transport of sawdust by wind. The resulting sawdust, drill shavings, and wood scraps shall be contained and collected, in order to prevent the discharge of preservative-treated wood to the marine environment. If it is essential that treated wood be cut or drilled in place on the dock, all sawdust, shavings, and wood scraps generated during construction must be collected and prevented from entering the water below;

n. The procedures outlined in AWPA Standard M4, Standard for the Care of Preservative-Treated Wood Products, shall be followed when applying a topical (non-pressure treated) preservative to the cut ends of treated wood. Whenever possible, application of a topical preservative to treated wood shall be performed at a site a minimum of 100 feet away from the water, equipped with containment for potential drips and spills, in order to prevent discharge of the preservative to the environment. The topical preservative shall not be applied in the rain. Any excess topical preservative shall be wiped off, and the preservative must be allowed to fully dry before the wood is used in

construction. If a small amount of touch-up preservative application must be performed over water, then tarps or containers must be used to capture any potential spills or drips.

6. Assumption of Risk

By acceptance of this permit, 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.

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares as follows:

A. BACKGROUND AND PROJECT DESCRIPTION

The Crescent City Harbor District proposes to repair boat docking facilities within the "District's Outer Boat Basin in Crescent City by replacing a number of damaged and missing fender piles and associated chocks, walers, and ladders at Citizens Dock and three commercial fish docks.

On March 11, 2011, a tsunami generated by the 9.0 magnitude Tohoku Earthquake off the coast of Japan struck the California coast. The Crescent City Harbor experienced extensive damage from tsunami-generated surges with the greatest damage occurring within the harbor's Inner Boat Basin. Virtually all of the docks in the Inner Boat Basin were destroyed and many vessels sank, leaving the Inner Boat Basin non-functional. Extensive damage also occurred to the rock slope protection (RSP) covering the shoreline embankment. Other damage occurred within the outer harbor and to the support facilities in the harbor. The rapid fluctuation in wave action and water level created excessive side forces as well as vertical impacts causing damage to Citizens Dock and three commercial fish docks in the Outer Harbor.

Citizens Dock is a Y-shaped dock that extends into the Outer Boat Basin from the end of Citizens Dock Road near the entrance to the Inner Boat Basin. The dock was originally built in the 1950's for the offloading and transfer of fish and crab. The 210-foot-long by 62-foot wide south wharf has several fish buying stations located upon it. The 260-foot-long by 40-foot-wide west wharf supports a fish buying station and a commercial ice plant for the fishing fleet. The 260-foot-long by 34-foot-wide approach trestle provides access to both wharfs. Citizens Dock consists of a timber trestle connected to two timber wharfs with a concrete deck.

The proposed repairs to Citizens Dock consists of replacing a total of approximately 13 missing and damaged fender piles and their associated timber chocks, walers, and ladders. Fender piles

are nonstructural piles located on the exterior perimeter of the dock that cushion the dock from vessel impacts, protect the outer row of structural piles from damage, and protect the hulls of craft moored at the dock from undue abrasion. Chocks are timber graces placed between fender piles near deck level to hold the piles in position and give them lateral stability. Walers, sometimes referred to as "spacer timbers," are the horizontal beams that add rigidity to fender piles. The two metal ladders to be replaced provide access between the dock and the moored vessels.

The three commercial fish docks extend from the northeast shoreline of the Outer Boat Basin between the Synchrolift Dock and the Anchor Way groin and serve particular fish processors and include from north to south: Wild Planet Foods, Inc., (Dock 1); Pacific Choice (Dock 2); and Alber Seafood (Dock 3). Each of the three docks is approximately 120-feet-long by 25 feet wide. A total of 18 missing or damaged fender piles are proposed to be replaced at the three docks including 4 at Dock 1, 10 at Dock 2, and 4 at Dock 3. Chocks and walers at these docks would be replaced on an as needed basis.

The damaged piles to be removed at each of the docks would be removed with the use of vibratory pile driving equipment mounted on a barge. Debris would be placed on a separate flat barge and later off-loaded for disposal at an appropriate landfill. The damaged steel ladders are proposed to be salvaged for metal recycling.

The replacement fender piles to be install on Citizens Dock and the three commercial fish docks would be fiber reinforced plastic (FRP) piles. The piles would be installed using the vibratory pile-driving equipment.

The applicant proposes to limit in-water development activities to the period of June 1 through November 15 to minimize impacts on sensitive salmonids and proposes a variety of best management practices detailed in Appendix B to minimize impact to water quality.

B. ENVIRONMENTAL SETTING

Crescent City Harbor is located approximately 20 miles south of the California-Oregon border in west-central Del Norte County (see Exhibit No 1). 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.

The surfaces of the dock pilings support habitat for a diversity of marine algal, invertebrate, and fish species. 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 surveyed and found to exist in certain locations within the Outer Boat Basin, but not in the vicinity of the docks proposed to be repaired under permit application 1-13-003.

C. 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.

D. OTHER AGENCY APPROVALS

U.S. Army Corps of Engineers

The Corps determined, in a letter to the applicant dated March 14, 2013, that the project qualifies for authorization under Department of the Army Nationwide Permit (NWP) 3 (Maintenance). The Corps' approval is valid for four years until March 17, 2017.

California State Lands Commission

The project site is located in an area that was formerly State-owned waters, but remains otherwise subject to the public trust. On July 13, 1963, by Senate Bill No. 1383, the State of California transferred all rights, title, and interest to portions of the submerged and tidelands within Crescent City Harbor and surrounding ocean waters to the District. In granting these ownership rights, the State Lands Commission (SLC) has retained authority over these former sovereign lands through both exempted and reserved rights to all deposits of minerals, and its public trust responsibilities under the state Constitution. Granted lands are monitored by the SLC to ensure compliance with the terms of the issued statutory grant. These grants encourage development of tidelands consistent with the public trust, while requiring grantees to re-invest revenues produced from the lands back into the lands where they are generated. To assure that the applicant has a sufficient legal property interest in the site to carry out the project consistent with the terms and conditions of this permit, the Commission attaches Special Condition No. 1. This special condition requires that the applicant submit evidence that any necessary authorization from the State Lands Commission has been obtained prior to issuance of the permit.

E. DOCK 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 replacement of damaged and missing fender piles and associated chocks, walers, and ladders at Citizens Dock and the three commercial fish constitutes a repair and maintenance project because the repairs do not involve an addition to or enlargement of the subject docks. A limited number of piles and associated chocks, walers, and ladders would be replaced, but no additional piles or associated materials would be added to the docks. The number of piles chocks, walers, to be replaced consist of only a small percentage of the total number of such elements on the docks. The replacement piles would encroach no further into the water than the piles they would replace.

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 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 pilings and other dock facilities, such as is proposed under the subject CDP application, can have adverse impacts on coastal resources, in this case primarily on sensitive fish species and coastal water quality. 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 discharges to the waters of the harbor. Although these and other measures proposed by the applicant are appropriate, additional measures are needed to avoid or minimize potential project impacts on water quality and sensitive fish species. The conditions required to meet these standards are discussed in the following findings relevant to water quality and marine resources. Therefore, as conditioned, the Commission finds that the proposed dock repairs are consistent with all applicable Chapter 3 policies of the Coastal Act.

F. PROTECTION OF COASTAL WATERS

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 30231of 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.*
>
> …
>
> *(c) In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary…[Emphasis added.]*

The proposed replacement of fender piles at Citizens Dock and the three commercial docks involves the placement of pile fill within coastal waters. The above policies set forth a number of different limitations on what development projects may be allowed in coastal wetlands and waters. As discussed in Finding E above, 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. However, the Commission must review whether the proposed method of repair or maintenance is consistent with the Chapter 3 policies of the Coastal Act. For analysis purposes, the applicable parts of the above listed policies require that development involving the filling of coastal waters shall only be permitted where 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; and (2) water quality impacts from the placement of materials in and/or undertaking construction involving the use of hazardous materials in close proximity to coastal waters.

Effects on Sensitive Fish and Wildlife Species The Crescent City Harbor supports threatened and endangered anadromous salmon species as well as a large variety of other fish species. The development will require the driving of a total of 31 replacement fender piles at existing docks. Some forms of pile-driving generate hydroacoustic pressure impulses and particle velocities that can cause effects on fish ranging from altered behavior, hearing loss, and tissue injuries to immediate mortality. The Commission has considered such impacts in the review of other pile driving projects and has sometimes required hydroacoustic monitoring and imposed limits on the frequency of pile driving and the hYdroacoustic impacts that may be generated by such projects. However, the proposed project does not use the kind of pile-driving equipment for which the Commission has imposed such limitations in the past. The applicant proposes to instead use a vibratory hammer for installing the piles. A vibratory hammer does not generate the kind of hydroacoustic pressure impulses that can be generated by traditional pile driving. A vibratory hammer vibrates piles through sandy silty substrate rather than pounding the piles through the substrate as is done with traditional pile driving. Because the fender piles are not load bearing piles that support the weight of the dock, the fender piles do not need to be seated in bedrock underneath bottom sediments as load-bearing piles often need to be. Therefore, the proposed pile installation will not create significant adverse hyroacoustic impacts on sensititve fish species. To insure that pile driving will only be conducted with the use of a vibratory hammer and no other forms of pile driving that could create impacts to fish, the Commission attaches Special Condition No. 4 which requires the use of a vibratory hammer as proposed.

In-water construction activities can result in other kinds of adverse impacts to various fish and wildlife species such as increasing turbidity and direct injury to fish in the area. To avoid impacts to various sensitive fish and wildlife species, the applicant proposes that in-water repairs only be undertaken between June 1 and November 15. Mechanized equipment needed for the project includes a barge mounted crane and various land-based material delivery vehicles.

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 for the preceding inner boat basin repair and enhancement project 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).

The applicant has structured the proposed project to employ the same impact avoidance and mitigation measures as was used in the inner boat basin repair and enhancement project and has similarly asserted that the project would have no effect on sensitive species.

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 for the associated tsunami repairs and harbor upgrade project within the Inner Boat Basin 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; (3) the proposed mitigation measures incorporated into the project to schedule construction when sensitive species are unlikely to be within the harbor, and (4) the results of other biological consultations conducted by NOAA Fisheries for other development activities in the harbor, including navigational channel maintenance dredging and breakwater repair work, the Commission finds that with the attachment of certain special conditions, the proposed project is consistent with the Coastal Act Chapter 3 policies.

To further ensure that the proposed dock repairs are carried out in a manner that will not cause significant adverse impacts to sensitive fish species or habitat consistent with the determinations of NOAA Fisheries, the Commission attaches Special Condition No.3. This condition requires 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 sensitive fish and marine mammal species these species are more likely to be present.

Impacts on Water Quality. The proposed dock repairs could adversely affect water quality. The use of construction equipment and materials in and around sensitive marine and beach habitats could lead to habitat contamination and impacts through the discharge of debris, trash, and contaminants such as leaky gas and other fluids and other pollutant-laden runoff. In addition, the applicant proposes the use of wood preservatives in some of the dock elements to be replaced. The use of treated wood in docks creates the potential for toxic chemicals to leach into coastal waters. Allowing such debris or pollutants to enter the waters of the harbor 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. Runoff from a project work site, upon entering coastal waters, increases turbidity and adversely affects fish and other sensitive aquatic species.

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.

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 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. 2 and 5 as described below.

- **Special Condition No. 2** requires that the applicant submit for the review and approval of the Executive Director a debris disposal plan prior to issuance of the permit. The application does not specify where the damaged piles and other debris to be removed from the site will be disposed of. The special condition will help ensure that the removed marine debris that may have been previously treated with wood preservatives and other debris is taken to landfills appropriate to the kind of debris to be disposed and the contaminants that may be contained within the debris.

- **Special Condition No. 5** requires adherence to various construction responsibilities including, but not limited to, the following: (a) 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; (b) 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); (c) any fueling and maintenance of construction equipment except for the barge-mounted crane 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; (d) construction vehicles except for the barge-mounted crane 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; (e) 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; (f) 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; (g) 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 (h) 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.

  The special condition also requires certain measures designed to minimize water quality impacts from the treatment, storage, construction, and use of wood materials in the project treated with ACZA (ammonicacal copper zinc arsenate). The applicant proposed to use wood pressure-treated with ACZA in the chocks for fender piles, walers, and wooden members use for securing the steel stairways.

The piles themselves will not be constructed of wood and thus will not require treatment with ACZA. ACZA is commonly used to preserve wood that is used in construction in or over the water. NOAA Fisheries (2009)* states that the leaching of copper from ACZA-treated wood demonstrates a general trend of higher initial leaching rates that decrease rapidly within days. Within a few weeks to months, copper leaching decreases to very small levels; however, this is dependent upon pH, temperature, and other variables.

The small amount of preservative-treated wood that will be used in this project, the large volume of marine waters, and the tidal flushing, make it unlikely that potentially problematic water column concentrations of copper will occur in this location, if Best Management Practices (BMPs) are followed. Special Condition 4 include the following requirements to minimize the impacts of ACZA preservative-treated wood on the marine environment.

1. Preservative-treated wood used in construction of the project must meet the American Wood Protection Association's (AWPA) wood preservative standards, specifically AWPA Standard U1, the primary specification for pressure-treated wood;

2. ACZA preservative-treated wood shall be treated to the proper preservative retention standard (i.e., amount of preservative) specified by the AWPA for the appropriate AWPA Use Category. In general, as the Use Category number rises, there is a consequential increase in the required preservative retention; the required depth of penetration may also increase. Use Category UC4B is appropriate for wood exposed to saltwater splash, and may thus likely be the appropriate choice for this project. Use Category UC5A, which has a higher retention standard, is appropriate for wood with continuous saltwater exposure. The ACZA preservative-treated wood used for the project shall not have a preservative retention exceeding the minimum specified for the appropriate Use Category, in order to minimize the amount of preservative present in treated wood on-site that may subsequently leach into the marine environment.

3. The ACZA preservative-treated wood shall be inspected on-site to assure it is free of visible surface residues or bleeding of preservatives. If ACZA preservative-treated wood has a noticeable ammonia odor, then it has not been properly processed or aged, and the preservative may thus not be properly fixed, therefore the lumber shall not be used.

4. The ACZA preservative-treated wood shall be stored away from the water until it is needed for installation. The wood shall be stacked above the ground, and the area shall have adequate drainage to prevent the wood from being subjected to standing water. If there is a chance of precipitation, the wood shall be stored under a covered area or tarp to minimize exposure to precipitation.

5. Whenever possible, cutting or drilling of ACZA preservative-treated wood shall be performed at a site a minimum of 100 feet away from the water, to minimize transport of sawdust by wind. The resulting sawdust, drill shavings, and wood scraps shall be contained and collected, in order to prevent the discharge of preservative-treated wood to the marine environment. If it is essential that treated wood be cut or drilled in place on the dock, all sawdust, shavings, and wood scraps generated during construction must be collected and prevented from entering the water below. Because of their greater surface area to volume ratio, the release of small treated-wood particles such as sawdust and shavings to the water makes a disproportionately large contribution to the overall release of preservatives from the structure.

6. The procedures outlined in AWPA Standard M4, Standard for the Care of Preservative-Treated Wood Products, shall be followed when applying a topical (non-pressure treated) preservative to the cut ends of treated wood. Whenever possible, application of a topical preservative to treated wood shall be performed at a site a minimum of 100 feet away from the water, equipped with containment for potential drips and spills, in order to prevent discharge of the preservative to the environment. The topical preservative shall not be applied in the rain. Any excess topical preservative shall be wiped off, and the preservative must be allowed to fully dry before the wood is used in construction. If a small amount of touch-up preservative application must be performed over water, then tarps or containers must be used to capture any potential spills or drips.

The Commission finds that as conditioned, the proposed development will minimize significant adverse impacts the marine environment including effects on effects on sensitive fish and wildlife species and water quality consistent with the requirements of Section 30233 of the Coastal Act that feasible mitigation measures be provided to minimize adverse environmental effects of fill in coastal waters and wetlands. The Commission further finds that as conditioned, the development will protect the quality of coastal water, and wetlands, appropriate to maintain optimum populations of marine organisms consistent with Sections 30230 and 30231 of the Coastal Act. Moreover, the Commission finds that as conditioned, the development will protect against the spillage of gas, petroleum products, or hazardous substances and provide effective containments and cleanup facilities and procedures for accidental spills consistent with Section 30232 of the Coastal Act.

F. Protection of Commercial Fishing & Recreational Boating Facilities.

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.]

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.

The harbor's capability to moor and shelter watercraft from wave attack has been reduced due to the 2011 tsunami event. Citizens Dock and the three commercial fish docks in their damaged condition are vulnerable to further damage that would likely lead to the eventual closure of these dock facilities if the docks are not rehabilitated. In addition, the missing and damaged fender piles endanger the safety of fishing boats mooring at the docks. Therefore, the repair project is necessary to protect dock facilities that serve the commercial fishing industry.

To minimize conflicts with biological resources, the proposed construction activities would occur between June 1 and November 15. Commercial and sports fishing is most common during late spring through mid-fall, and again in late fall through winter during the crab season. The project will be conducted during part of this time period. However, the Commission finds that this impact is short-term and temporary, and the rehabilitation of Citizens Dock and the three commercial fish docks will maintain and restore boat mooring capacity and improve vessel access and safety over the long-term..

Therefore, the Commission finds that the project as conditioned will protect and improve Citizens Dock and the three commercial fish docks that serves commercial fisheries and recreational boating, consistent with Coastal Act Sections 30224 and 30234.

I. 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 30212 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)]

> *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]

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.

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. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The applicant served as the lead agency for the project for CEQA purposes. The applicant determined the project to qualify for exemption from CEQA review under Sections 15301 (Existing Facilities).

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

The Commission incorporates its findings on Coastal Act consistency at this point as if set forth in full. As discussed above, the proposed project has been conditioned to be consistent with the

policies of the Coastal Act. No public comments regarding potential significant adverse environmental effects of the project were received by the applicant as the lead agency during CEQA review of the project, nor were any public comments received by the Coastal Commission prior to preparation of the staff report. As specifically discussed in these above findings, which are hereby incorporated by reference, mitigation measures that will minimize or avoid all significant adverse environmental impacts have been required. As conditioned, there are no other feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impacts which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, can be found consistent with the requirements of the Coastal Act to conform to CEQA.

APPENDIX A: SUBSTANTIVE FILE DOCUMENTS

1. County of Del Norte Local Coastal Program

APPENDIX B: APPLICANT PROPOSED MITIGATION MEASURES

Mitigations (to be included as part of a contract for work)

1. In-water activities shall be limited to the period of June 1 through November 15.

2. A vibratory hammer shall be used to install FRP piles and any chemically treated wood material used to replace spacers and chocks shall be coated with a biologically inert substance.

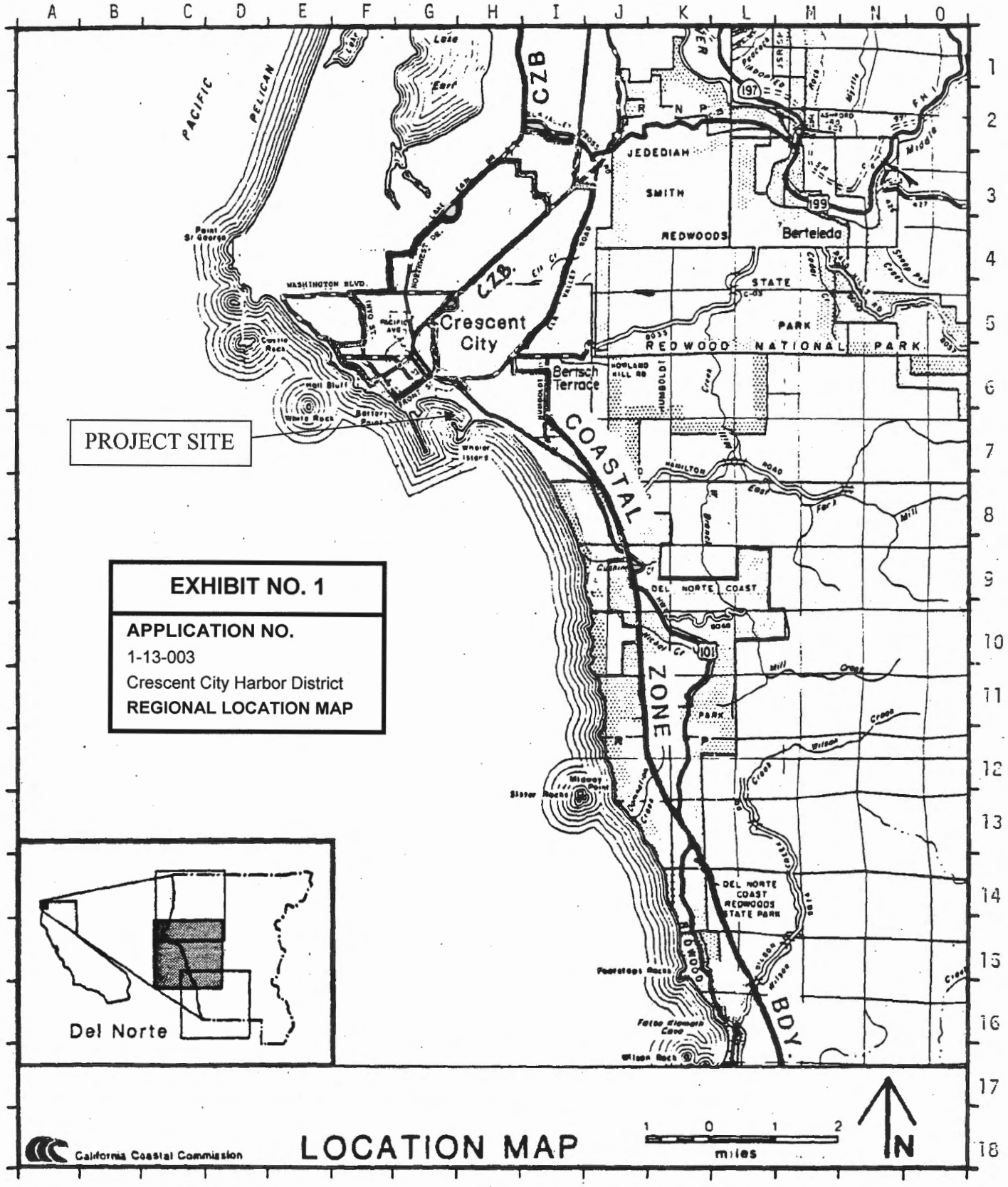
3. During construction, the contractor shall maintain floating rafts beneath the work area as needed to contain any falling debris from the project activity. Floating debris booms shall be placed as needed around the work area to intercept any debris. Any debris falling into the waters of the Harbor shall be immediately retrieved. Captured material will be disposed of at an appropriately permitted upland site.

4. During removal of existing piles, whenever possible the entire pile will be extracted. If a pile cannot be extracted it will be cut off 3 feet below the mud line and the new pile will be placed beside the old pile and vibrated into position. When piles are removed, they will be placed on the material barge or an awaiting truck and taken to a disposal or reuse site permitted for acceptance of such waste. Residual mud will not be washed into the waters of the Harbor.

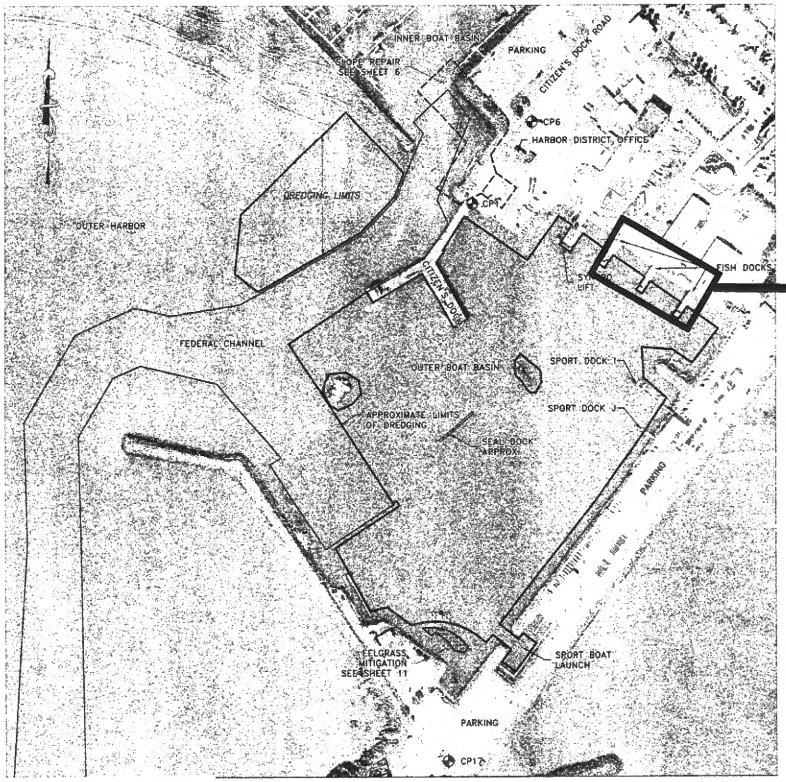
5. Minimum cutting the boring will occur over the water. If necessary, other devices such as tarps and plywood sheets will be used to prevent materials from entering the water.

6. Adequate best management practices shall be performed to prevent the discharge to the waters of the Harbor of construction materials and any incidental falling materials from the pier, dock, or wharf deck, temporary access areas, equipment staging areas and other construction areas. Construction equipment shall be maintained and fueled in areas where accidental spills shall not impact waters of the harbor. No equipment or vehicles will be stored on the pier dock, or wharf in order to reduce the potential for any spills or debris entering the water.

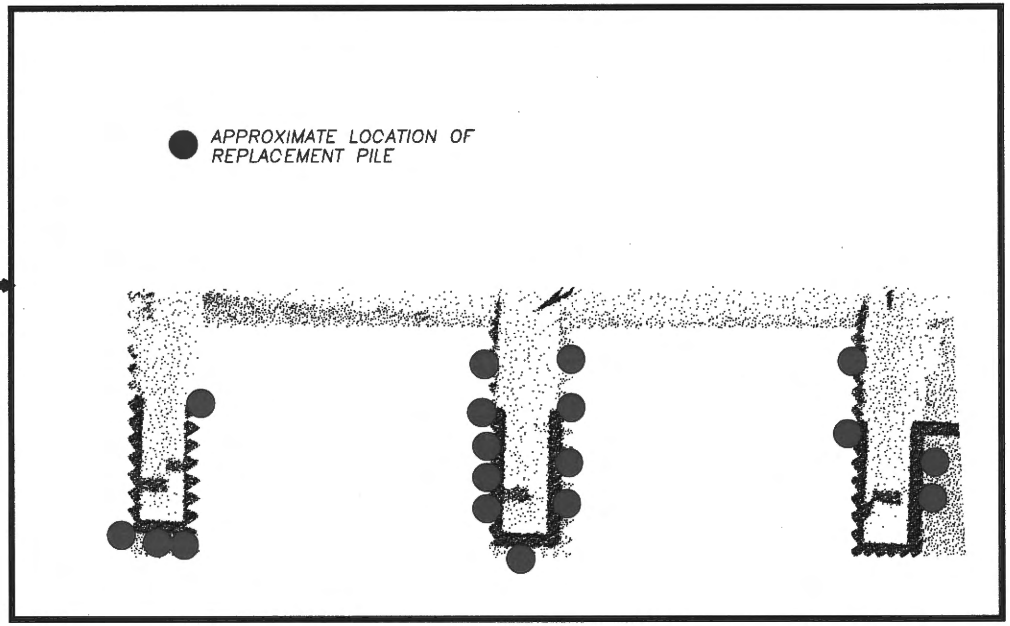
7. When operations are completed, any excess material shall be removed from the work area and any areas adjacent to the work area where such material may be washed into the waters of the Harbor. During construction, the contractor shall not dump any litter or construction debris into the waters of the Harbor. All such debris and waste shall be picked up daily and properly disposed of at an approved disposal site.



County of Del Norte



SITE MAP
NTS



1/S1.03
NTS

EXHIBIT NO. 2
APPLICATION NO.
1-13-003
CRESCENT CITY HARBOR DISTRICT
SITE PLANS (1 of 2)

No.	Date	Revision	Aprvd.

DRAWING INFO: DESIGNED BY: RCY DRAWN BY: GLH CHECKED BY: WLS

0 1" BAR IS EQUAL TO ONE INCH ON ORIGINAL DRAWING. ADJUST SCALES IF DISTANCE VARIES ACCORDINGLY.

STOVER ENGINEERING
Civil Engineers and Consultants
PO BOX 783 - 711 H STREET
CRESCENT CITY, CA 95531 - 707-465-6742

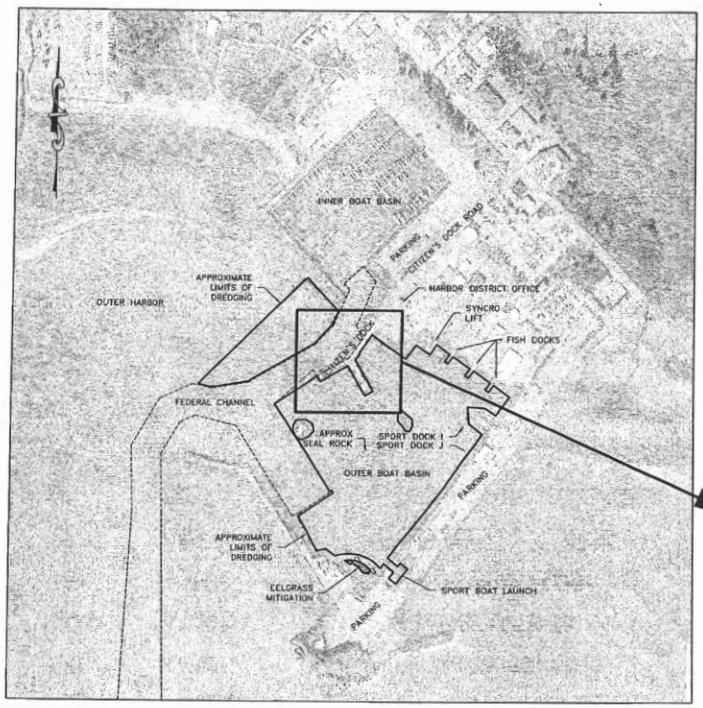
PRELIMINARY

BEN C. GERWICK, INC.
1300 CLAY STREET, 7TH FLOOR
OAKLAND, CA 94612
TEL: (510) 839-8872
FAX: (510) 839-9715

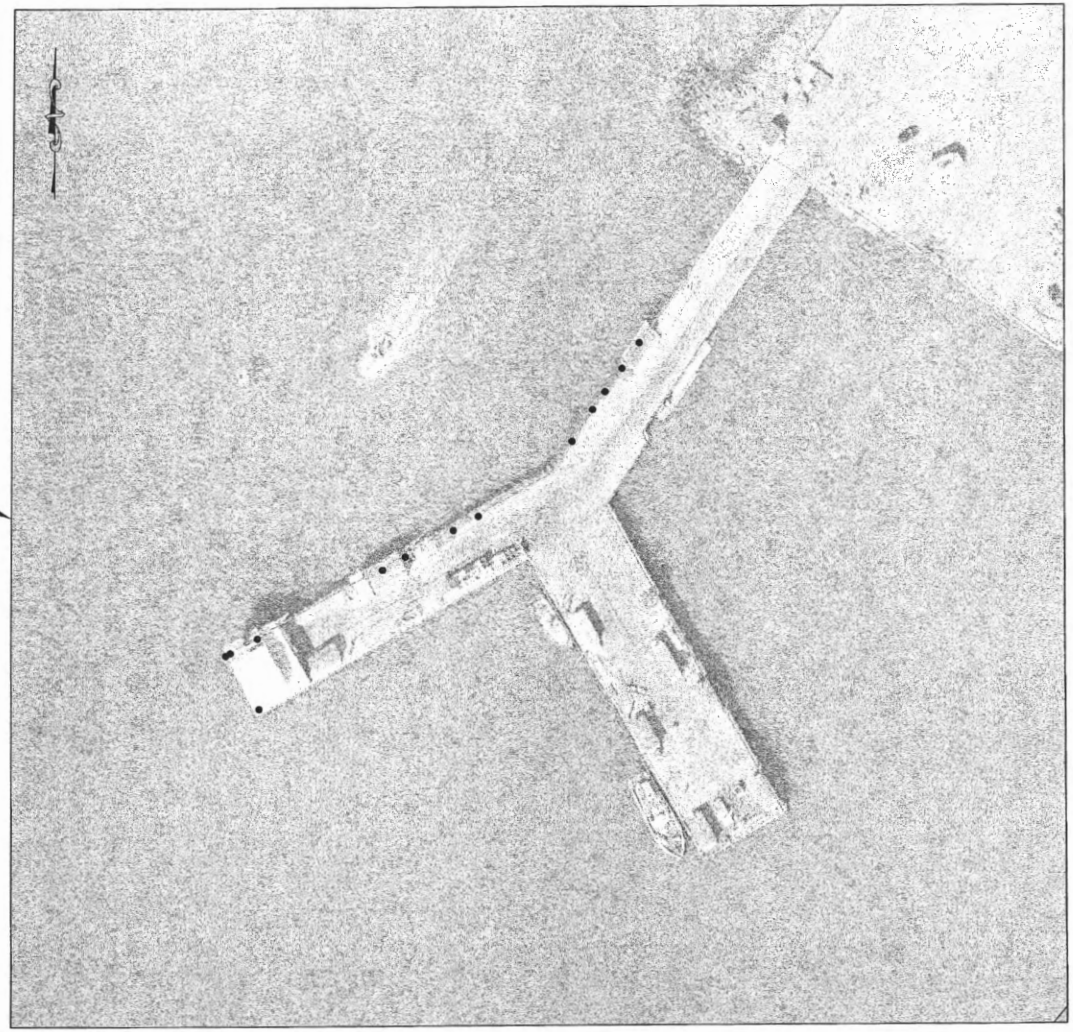
CRESCENT CITY HARBOR DISTRICT
FISH DOCK PILE REPAIR
CRESCENT CITY, CA

PILE REPAIR

JOB NO. 4130
SCALE: H: NTS
DATE: 2/5/2013
SHEET
S1.03



SITE MAP
1"=400'



● APPROXIMATE LOCATION OF REPLACEMENT PILE

No.	Date	Revision	Aprvd.

DRAWING INFO: DESIGNED BY: JDO DRAWN BY: GLH CHECKED BY: WLS

0 1" BAR IS EQUAL TO ONE INCH ON ORIGINAL DRAWING. ADJUST SCALES IF DISTANCE VARIES ACCORDINGLY.

STOVER ENGINEERING
Civil Engineers and Consultants
PO BOX 783 - 711 H STREET
CRESCENT CITY, CA 95531 - 707-465-6742

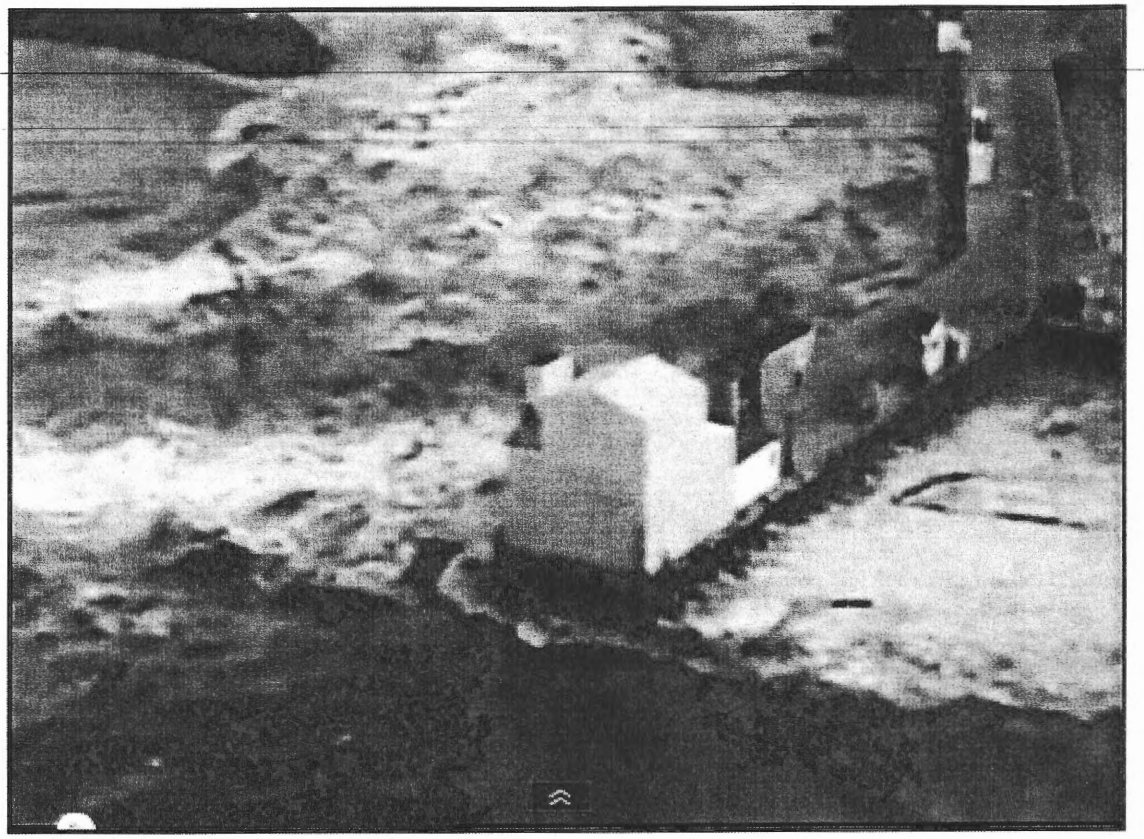
Ben C. Gerwick, Inc.
a COWI company

CRESCENT CITY HARBOR DISTRICT
CITIZEN'S DOCK PILE REPAIR
CRESCENT CITY, CA

PILE REPAIR

JOB NO. 41__
SCALE: AS SHOWN
DATE: 04/04/2013
SHEET
FIG 1.0

S:\4183 - CCHD - NORTH RESTROOM\dwg\c3d\20130404 CITIZENS DOCK PILE REPAIR.dwg



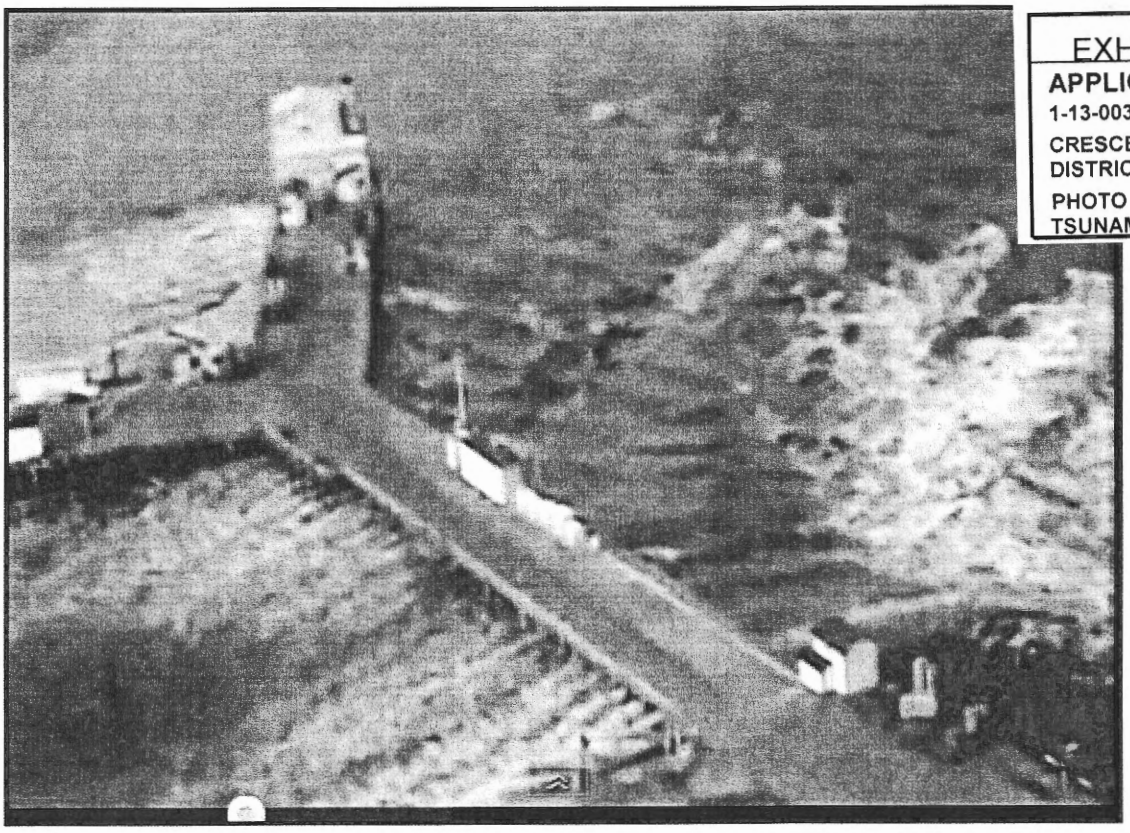


EXHIBIT NO. 3

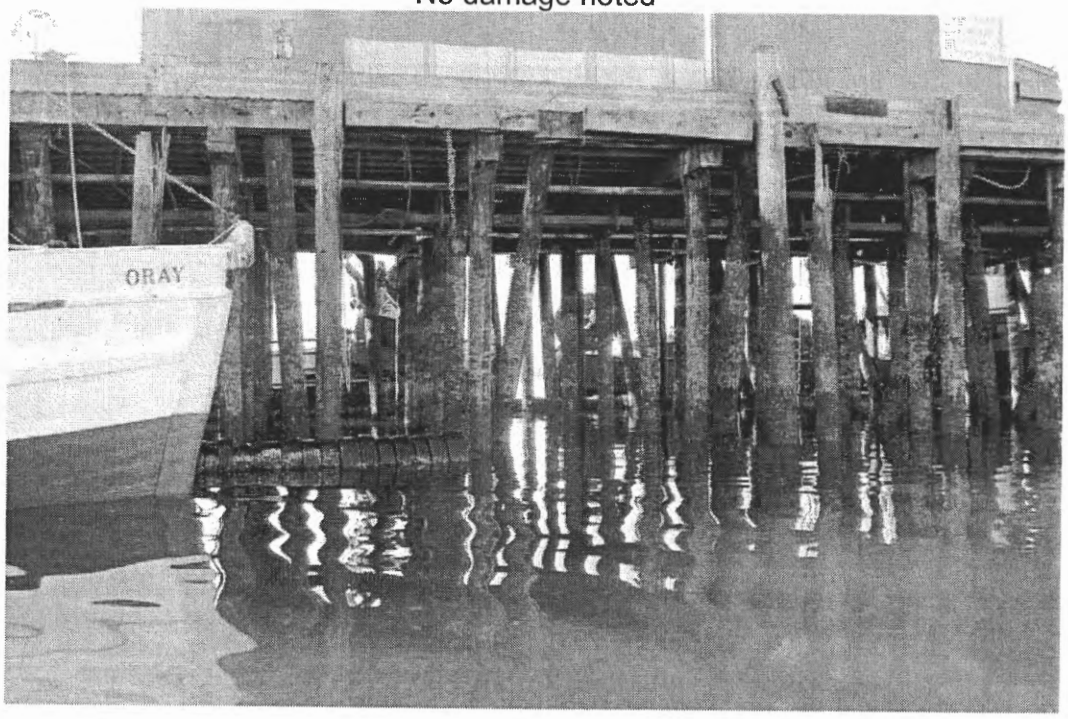
APPLICATION NO.

1-13-003

CRESCENT CITY HARBOR DISTRICT

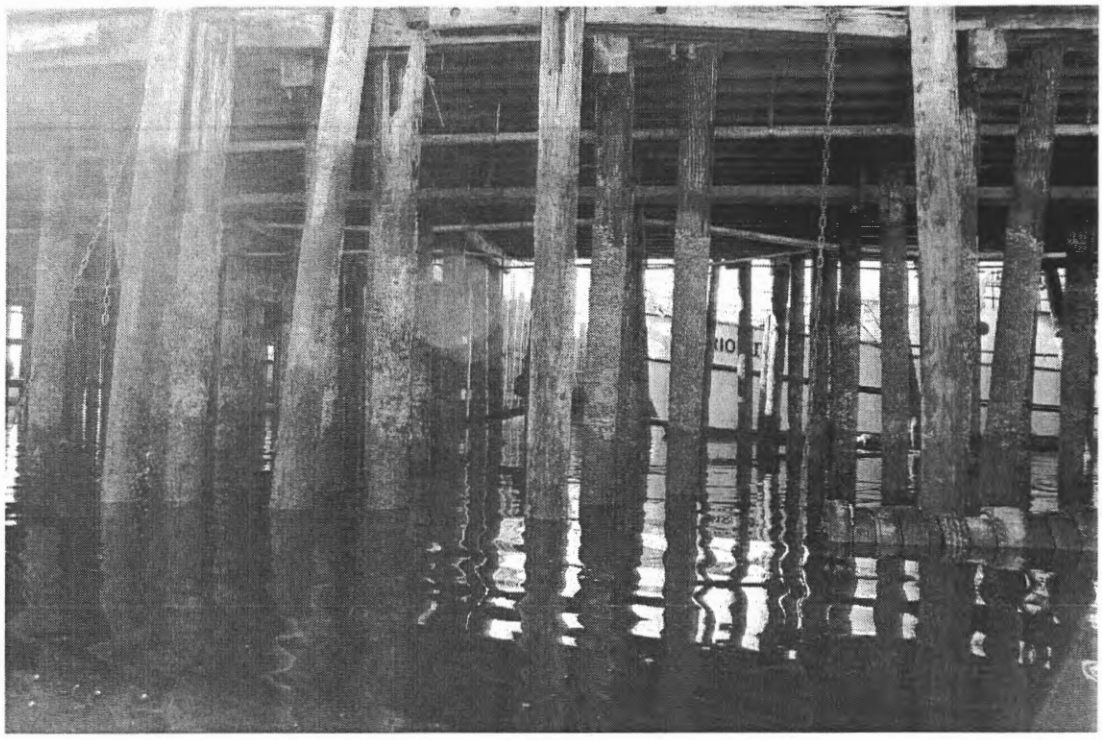
PHOTO OF CITIZENS DOCK & TSUNAMI SURGE

West Wharf Bents 7 to 10 (Photo #325)
No damage noted

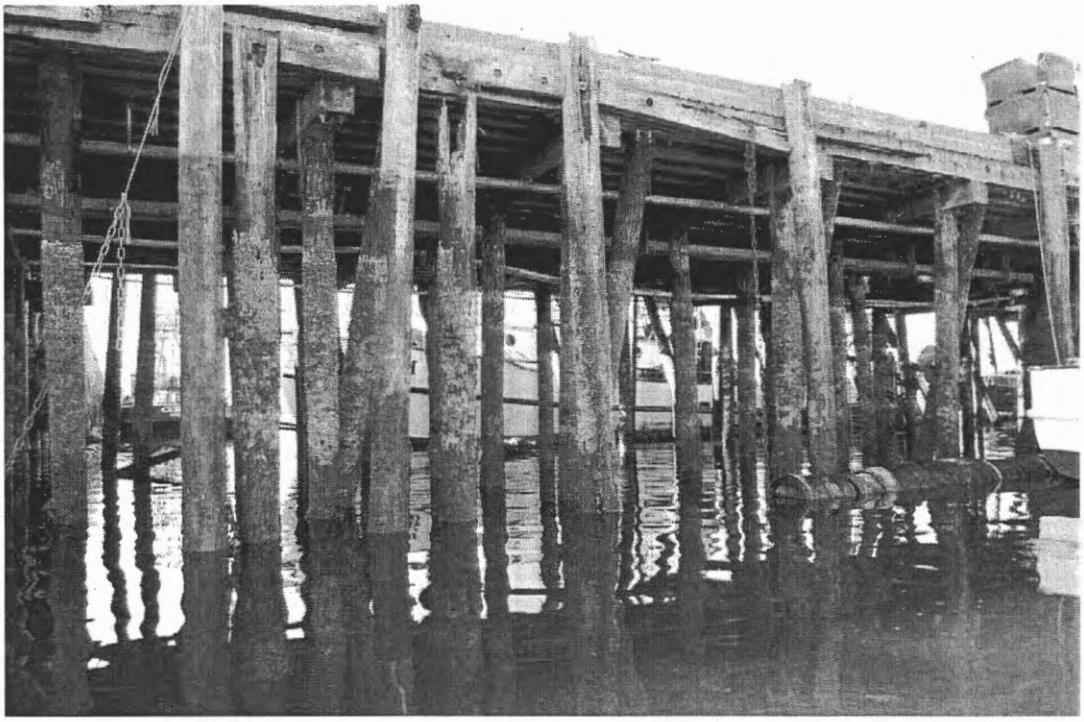


Between Bents 9 and 15 unable to survey due to the vessel "Moray" (Photo #327)
Missing fender pile between Bents 15 & 16

EXHIBIT NO. 4
APPLICATION NO.
1-13-003
CRESCENT CITY HARBOR DISTRICT
PHOTO OF CITIZENS DOCK PILING DAMAGE (1 of 3)

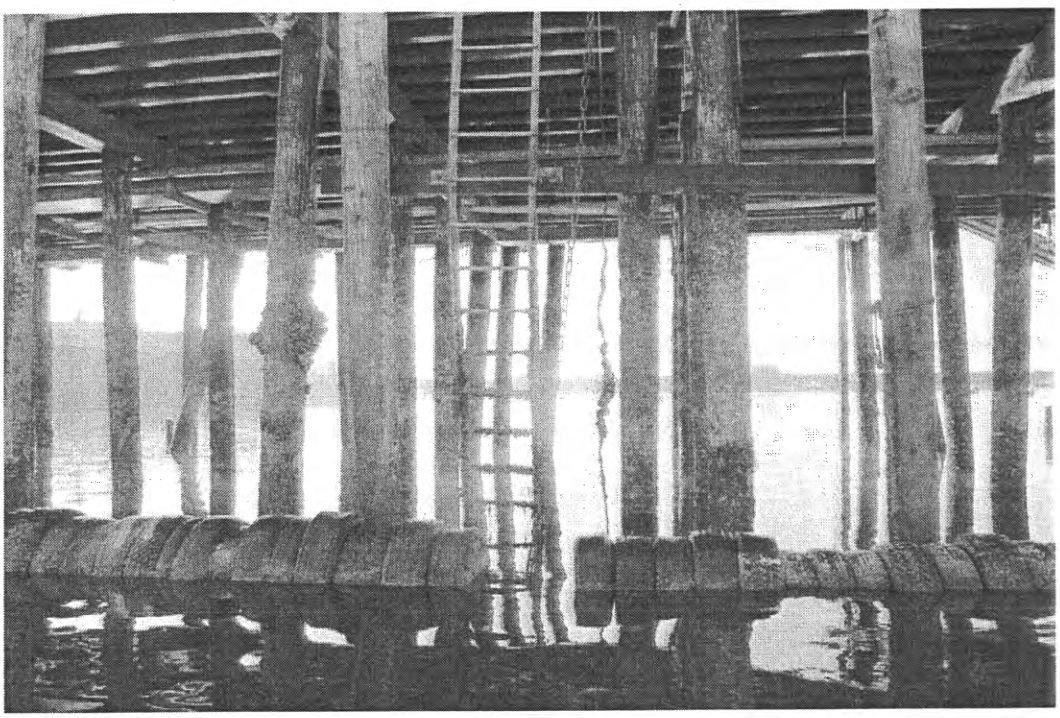


West Wharf Bents 6 to 9 (Photo #326
No damage noted

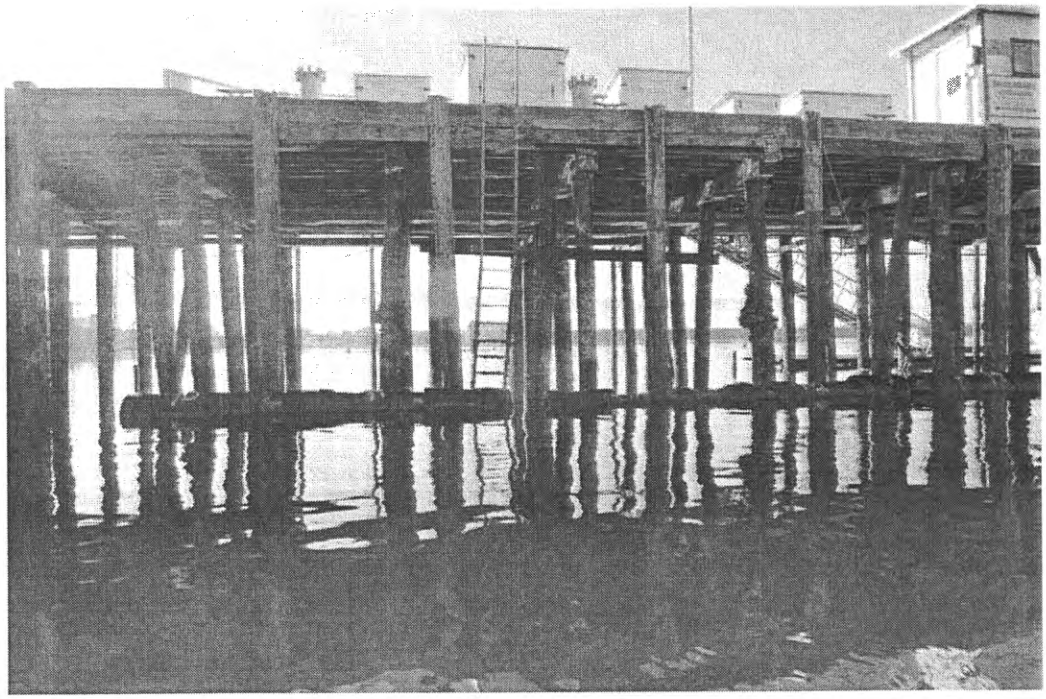


West Wharf Bents 7 to 10 (Photo #324)
Repair/replace chock between Bents 8 & 9

243



Approach Trestle Bents 11 to 12 (Photo #311)
Steel ladder bent



Approach Trestle Bents 10 to 13 (Photo #312)
Steel ladder bent

393