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# Th12b

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## STAFF REPORT: REGULAR CALENDAR

**Application No.:** 1-22-0279

**Applicant:** U.S. Fish and Wildlife Service (Attn: Cashell Villa, Refuge Manager) & Ken Bates

**Location:** Tuluwat Island, Humboldt Bay (APN 405-021-05 & -06)

**Project Description:** Renovate an existing boat dock and gangway by replacing 14 failing and damaged wooden creosote-laden piles with 9 new steel piles and replace existing gangway handrails with new wooden handrails.

**Staff Recommendation:** Approval with conditions

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### SUMMARY OF STAFF RECOMMENDATION

The applicant proposes to perform renovations to an existing dock which is used as the primary method to access the site. The proposed renovation work involves the removal of fourteen (14) 12-inch-diameter wooden piles and the installation of nine (9) 10-inch diameter steel piles. Work would be performed from a barge using a crane; wooden piles will be pulled or cut 12 inches below the substrate and disposed of offsite, and new steel piles will be installed with a low volume water jet.

The major Coastal Act issues raised by this project include potential impacts to marine resources and water quality. The proposed project could cause indirect temporary impacts to potentially occur from increased turbidity or shading from the staging barge. Staff recommends **Special Condition 1** requiring the applicant comply with various construction best management practices (BMPs) and **Special Condition 2** requiring submittal of a Debris Disposal Plan to protect water quality and aquatic resources. **Special Condition 3** requires the applicant indemnify and hold harmless the

Commission in the event of natural hazards. Additionally, **Special Condition 4** requires a tribal monitor or tribal-appointed qualified cultural resource specialist be on site to monitor any ground disturbing work and to cease work activity upon discovery of archaeological resources.

Staff believes that the proposed project, as conditioned, is consistent with all applicable Chapter 3 policies of the Coastal Act. The Motion to adopt the staff recommendation of **approval** of CDP 1-22-0279 with conditions is found on page 4.

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## I. Motion and Resolution

### A. Motion

I move that the Commission **approve** Coastal Development Permit Application No. 1-22-0279 pursuant to the staff recommendation.

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

### B. Resolution

The Commission hereby **approves** Coastal Development Permit Application No. 1-22-0279 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 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.

### III. Special Conditions

This permit is granted subject to the following special conditions:

1. **Construction Standards, Restrictions, and Responsibilities.** The permittee shall employ construction-related “best management practices” (BMPs) to protect water quality and adjacent sensitive habit areas as proposed in the application materials, as required herein, and by permits and/or consultations issued by the North Coast Regional Water Quality Control Board, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, NOAA-Fisheries, and the Humboldt Bay Harbor, Recreation, and Conservation District. The permittee shall ensure that all on-site workers and contractors understand and agree to observe the standards and limitations for work outlined in this permit and in the detailed project description included as part of the application submittal and as revised by these conditions.
  - A. Timing of Construction: In accordance with the permittee’s proposal, in-water construction authorized by this permit shall be conducted only during the period of July 15th through October 15th protect marine resources and the biological productivity and quality of coastal waters unless otherwise approved in writing by the Executive Director and the federal and state resource agencies listed above as having no substantial impacts to coastal resources because of timing. Operations will be limited to the designated work areas to minimize disturbance to sediment, vegetative communities, and marine habitats.
  - B. Pile Installation: Steel piles to be installed shall be installed using a low volume 1-inch steel water jet and not an impact hammer.
  - C. Pile Removal: Creosote piles to be removed shall be pulled at high tide with the use of a boom, wench, or crane on a scow. Any pilings that cannot be pulled shall be cut off below the mudflat during low tide. The operator shall “break” the soil/pile bond prior to pulling in order to limit pile breakage and sediment adhesion. Piles shall be removed slowly to limit sediment disturbance.
    1. If pulling fails to completely remove the piles, the permittee shall ensure that the piles are cut a minimum of one foot below the mudline.

2. A drop cloth shall be utilized to collect all material and disposed of in accordance with current laws.
  3. Holes left in the sediment by the pilings shall be allowed to naturally refill with mud.
  4. Piles shall not be hosed off, scraped, or otherwise cleaned once they are removed from the sediment.
- D. Barge Operations, Work Surface, Containment: The work surface on barge and/or pier shall include a containment area for removed piles and any sediment removed during pile removal to prevent any contaminated materials or sediment from re-entering the water.
1. The pile shall not be shaken, hosed-off, left hanging to drip or any other action intended to clean or remove adhering material from the pile.
  2. The barge and tugboat shall not be boarded onto or scar the mudflats.
- E. Debris Capture in Water:
1. A floating surface boom shall be installed prior to commencement of dock renovation work to capture floating surface debris. Debris will be collected, placed in the containment area, to be disposed of along with the pilings.
  2. The boom shall be located at a sufficient distance from the work area to ensure capture of all work materials.
- F. Use of Heavy Equipment and Spill Prevention:
1. Bio-degradable hydraulic fluid shall be utilized if feasible.
  2. Equipment shall be fueled away from the water and inspected to prevent introduction of fueling chemicals into the Bay.
  3. A spill response kit, including oil absorbent pads shall be on-site to collect any petroleum product that is accidentally released.
- G. Rainfall Avoidance: If rainfall is forecasted during the time construction activities are being performed (i.e., the National Weather Service's Northwestern California forecast for the Eureka/Arcata area predicts a greater than 50% chance of precipitation for the timeframe in which the work is to be conducted), all onsite stockpiles of construction debris shall be covered and secured before the onset of precipitation.
- H. Other Required BMPs:

1. All debris and piles must be removed from the water and properly stored or disposed of at the end of each work day.
  2. No construction materials, equipment, debris, or waste shall be placed or stored where it may be subject to wave, wind, or rain erosion or dispersion. If temporary storage of debris is necessary, all debris must be covered at all times and taken to a licensed waste facility to be disposed of or recycled per State of California recycling standards as soon as possible and before the onset of the rainy season.
  3. Any and all debris resulting from construction activities shall be removed on a daily basis or immediately if waters are rough and stored or disposed of at an appropriate location.
  4. At the end of the construction period, the permittee shall inspect the project area and ensure that no debris, trash, or construction materials remain on the shoreline or in the water and that the dock renovation work has not created any hazard to navigation.
- 2. Debris Disposal Plan.** PRIOR TO COMMENCEMENT OF CONSTRUCTION OF THE DEVELOPMENT AUTHORIZED BY COASTAL DEVELOPMENT PERMIT 1-22-0279, the permittee shall submit, for the review and written approval of the Executive Director, a final Debris Disposal Plan for the disposal of piles and associated debris. The plan shall identify authorized disposal site(s) where materials will be lawfully disposed of on a regular basis and describe the manner and schedule by which the materials will be removed from the construction site. The permittee shall undertake development in accordance with the approved final Debris Disposal Plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.
- 3. Assumption of Risk, Waiver of Liability, and Indemnity Agreement.** By acceptance of this permit, the permittee acknowledges and agrees (a) that the site may be subject to hazards from waves, ground shaking, tsunamis, and other geologic and flood hazards; (b) to assume the risks to the permittee and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (c) 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 (d) 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.

- 4. Protection of Archaeological Resources.** PRIOR TO COMMENCEMENT OF CONSTRUCTION OF THE DEVELOPMENT AUTHORIZED BY COASTAL DEVELOPMENT PERMIT 1-22-0279, a tribal monitor or tribal-appointed qualified cultural resource specialist shall be contracted to monitor construction activities involving ground disturbing work that occurs on shore or in up to two (2) feet of water. If an area of cultural deposits or human remains is discovered during the course of the project, all construction shall cease and shall not recommence until a qualified cultural resource specialist, in consultation with the Tribal Historic Preservation Officers of the Wiyot Tribe, the Bear River Band of Rohnerville Rancheria, and the Blue Lake Rancheria, analyzes the significance of the find and prepares a supplementary archaeological plan for the review and approval of the Executive Director, and either: (A) the Executive Director approves the Supplementary Archaeological Plan and determines that the Supplementary Archaeological Plan's recommended changes to the proposed development or mitigation measures are de minimis in nature and scope, or (B) the Executive Director reviews the Supplementary Archaeological Plan, determines that the changes proposed therein are not de minimis, and the permittee has thereafter obtained an amendment to CDP 1-22-0279.

#### **IV. Findings and Declarations**

The Commission hereby finds and declares as follows:

##### **A. Project Description and Background**

The applicants, the U.S. Fish and Wildlife Service on behalf of the Humboldt Bay National Wildlife Refuge and on-site resident, Ken Bates, propose to renovate an existing boat dock situated on the southeastern side of Tuluwat Island in Humboldt Bay. The site is adjacent to lands within the incorporated limits of the City of Eureka but is only accessible by boat. There is currently sparse development located at and near the project site, including Mr. Bates's residence on the subject property, which has been under federal ownership since 1998.<sup>1</sup> The subject site is one of several small (~1 acre) lots of the approximately 200-acre island, the majority of which is owned by the Wiyot Tribe.

The boat dock to be repaired was originally constructed prior to 1972 and provides boating access, including to an 8-foot by 10-foot floating dock and connecting gangway,

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<sup>1</sup> Mr. Bates donated his property to the federal government in 1998 and may reside on the property for the duration of his lifetime. Under 16 U.S.C § 460k-2 (Cooperation with agencies, organizations and individuals; acceptance of donations; restrictive covenants), the Secretary is authorized to cooperate with public and private agencies, organizations, and individuals, and he may accept and use donations of funds and real and personal property. Such acceptance may be accomplished under the terms and conditions of restrictive covenants imposed by donors when such covenants are deemed by the Secretary to be compatible with the purposes of the wildlife refuges, games ranges, fish hatcheries, and other fish and wildlife conservation areas.



to the island property that is under the ownership of and within the boundaries of the Refuge. The onsite resident, Mr. Bates, has resided on the property since 1974.

The existing dock structure consists of 14 creosote paired pilings, 7 corresponding redwood longitudinal boards, decking, and a handrail along the gangway that spans the majority of the length of the structure. The existing dock facility is approximately 103 feet long and 5 feet wide. The renovated dock structure will occupy the same location and will be the same size as the current failing dock but will be built at a higher elevation. Pile replacement proposed includes the removal of all 14 damaged wooden creosote piles and installation of 9 new steel piles to support the dock structure. The wooden material comprising the decking and longitudinal supports of the gangway will be reused as feasible, and the gangway handrail will be rebuilt and replaced with a new wooden handrail.

Pulling of piles would be done at high tide with the use of a boom, wench, or crane on a scow. Any pilings that cannot be pulled would be cut off below the mudflat during low tide. All resulting saw dust from pile-cutting will be collected on a tarp spread around the project area and removed off-site. All other new components of the dock would be pre-cut and fit away from the bay before being moved into position. The new steel piles will be installed using a low volume 1-inch steel water jet.

The removed pilings will either be taken to a licensed waste facility immediately following pile removal or hauled by barge to a marine facility on Humboldt Bay temporarily until they can be taken to the licensed waste facility to be disposed of or recycled per State of California recycling standards. The applicant plans to complete construction between July 15<sup>th</sup> and October 15<sup>th</sup> during the dry season and outside of salmonid and green sturgeon spawning migrations between.

## **B. Standard of Review**

The project site is located entirely in the Commission's retained permit jurisdiction. The City of Eureka has a certified Local Coastal Program (LCP), but the site is within tidelands, submerged lands, and an area shown on State Lands Commission maps over which the State retains a public trust interest. Therefore, consistent with Public Resources Code sections 30519(b) and 30604(a), the standard of review that the Commission must apply to the project is the Chapter 3 policies of the Coastal Act.

## **C. Other Agency Approvals**

### U.S. Army Corps of Engineers (Corps)

The applicant has received a permit from the Corps, which expires in March of 2026. Through the Corps' process, consultations were completed with the U.S. Fish and Wildlife Service and the NOAA-Fisheries (National Marine Fisheries Service).

### Humboldt Bay Harbor Recreation and Conservation District (Harbor District)

The Harbor District is a county-wide district established by the legislature with permit jurisdiction over all the tidelands and submerged lands of Humboldt Bay. The Harbor District issued a permit for the proposed development (Permit No. 2021-004), which expires in November 2022.

#### North Coast Regional Water Quality Control Board

The Regional Board has regulatory jurisdiction over the project pursuant to the Clean Water Act and California Water Code. The applicant has received a permit from the Regional Board (WDID 1B21097WNHU).

### **D. Protection of Marine Resources and Water Quality**

Section 30230 of the Coastal Act states:

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.

Section 30231 of the Coastal Act states:

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

Section 30232 of the Coastal Act states:

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 containment and cleanup facilities and procedures shall be provided for accidental spills that do occur.

The above-cited policies require protection of marine resources, water quality, and the marine environment to sustain the biological productivity of coastal waters and maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes. The development involves work in Humboldt Bay that could impact marine resources and the biological productivity and quality of the bay. Although there are no known eelgrass beds within

100 feet of the project site, the installation of new piles and the removal of existing piles within the bay could result in sediments, debris, or hazardous materials entering coastal waters and impacting sensitive fish species, marine resources, and the water quality of the estuary.

With the guidance of NMFS, the USFWS, the Harbor District, the Regional Water Board, and the Corps, the application proposal includes various measures and Best Management Practices for construction that will protect water quality and minimize the potential for water quality and marine resource impacts. New pilings will be set eight feet into the substrate during high tides from a floating scow, using a one-inch diameter steel water jet pipe to create spaces in the substrate to insert the pilings. All of the work planned to occur at high tides, including pile removals and installations, are expected to occur over no more than five tidal cycles during the months of September and October. The applicants will limit construction activities to the dry season and to the period that avoids spawning migrations of salmonids and green sturgeon (i.e., construction will be limited to the period of July 15<sup>th</sup> through October 15<sup>th</sup>). Cutting, drilling, and dry fitting new components will occur away from the bay to reduce introduction of debris into bay. In addition, piles will be removed completely, or if complete removal is not possible, they will be cut below the mudflat to remove the existing creosote-treated fill material and restore the mudflat substrate. During pile removal, measures such as removing the piles slowly and “breaking” the soil/pile bond prior to pulling will limit pile sediment adhesion and disturbance to soils. Additionally, saw dust produced from cut piles will be captured using a drop cloth/tarp placed around the work area during construction. Furthermore, a floating surface boom will be used to capture any floating surface debris. Moreover, equipment will be fueled away from the water, bio-degradable hydraulic fluid will be used, and a spill response kit will be present to prevent introduction of chemicals into the water. Additionally, the barge and tugboat used for the work will neither board nor scar the mudflats. Also, a preliminary eelgrass survey was completed to confirm that no eelgrass is present in proximity to the project work area. Further, all contractors will be instructed to avoid docking in areas (outside of the project location) with potential eelgrass habitat to avoid causing shade overcast. Lastly, all demolition debris and waste will be appropriately disposed of at a licensed facility capable of receiving the debris. Upon completion of the dock renovation work, any debris or materials that fall into the water or onto the mudflat will be retrieved.

The Commission finds the use of these proposed measures appropriate to protect water quality and marine resources. Thus, the Commission attaches **Special Condition 1** to require implementation of these measures as proposed.

In addition, because the applicant has not yet determined where debris (old creosote pilings) will be disposed of and when, **Special Condition 2** requires submittal of a final debris disposal plan for the Executive Director’s review and approval prior to commencement of construction. This will ensure that contaminated materials are not inappropriately disposed of or stored in a manner that could impact water quality or sensitive marine resources.

Therefore, the Commission finds that the proposed project as conditioned will minimize significant adverse impacts on the marine environment, to sensitive fish species, and will protect the quality of coastal water appropriate to maintain marine organisms consistent with sections 30230, 30231, and 30232 of the Coastal Act.

### **E. Fill of Coastal Waters and Wetlands**

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

- a. The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:
  - (1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.
  - (2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.
  - (3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.
  - (4) Incidental public service purposes, including, but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.
  - (5) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.
  - (6) Restoration purposes.
  - (7) Nature study, aquaculture, or similar resource dependent activities.
- b. Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation. Dredge spoils suitable for beach replenishment should be transported for these purposes to appropriate beaches or into suitable longshore current systems.
- c. In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary...

Section 30108.2 defines fill as “earth or any other substance or material, including pilings placed for the purposes of erecting structures thereon, placed in a submerged area.” As discussed above, the existing dock facility is approximately 103 feet long and 5 feet wide (with a total area of ~595 square feet), and the proposed project involves the removal of the 14 existing wooden creosote piles and the installation of 9 new structural steel piles (fill) embedded in the subtidal bay substrate (mudflat). The steel piles to be installed are smaller than the existing piles to be removed and thus will result in a net decrease in bay fill relative to current conditions as summarized in Table 1 below:

**TABLE 1. FILL OF COASTAL WATERS**

<b>Fill Removal &amp; Placement</b>	<b>No. of piles</b>	<b>Diameter (in)</b>	<b>Area of Mudflat Displaced (sf)</b>
Piles to be installed	9	10	3.9
Piles to be removed	-14	12	-18
<b>Net Reduction in Fill</b>			<b>14.1 square feet</b>

Nevertheless, the project involves new fill of coastal waters and wetlands in the form of the 9 new steel piles needed to support the renovated boat dock. The Commission may only authorize fill in open coastal waters, wetlands, or estuaries for new development that fits within one of seven use categories described in Coastal Act section 30233(a)(1)-(7), only if the placement of fill is the least environmentally damaging feasible alternative, and feasible mitigation measures must be provided to minimize adverse environmental effects.

a. Allowable Uses

The proposed use of the fill is allowed pursuant to section 30233(a)(3) for a boating facility on public (federal) land within the Humboldt Bay National Wildlife Refuge. Replacement of the failing dock’s wooden creosote pilings with new steel pilings and renovation of the boat dock will allow for continued boating access to the property by the onsite resident and by Fish and Wildlife Service personnel. Therefore, the Commission finds that the proposed fill and dredging associated with the project are for an allowable use under Coastal Action section 30233(a)(3).

b. Alternatives

For projects involving diking, dredging, and filling of coastal waters, the Commission must ensure that the placement of fill in coastal waters is the least environmentally damaging feasible alternative. Coastal Act section 30108 defines “feasible” as “...capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.”

Alternatives that have been identified include the “no project” alternative or a scaled down alternative which includes makeshift patching of portions of the dock and leaving the piles in place.

- i. No Project Alternative: The primary purpose of the proposed project is to renovate an existing boat dock to ensure the safe and continued use of the dock. Under the “no project” alternative, the dock would continue to deteriorate which may result in failure of the dock, which in turn would threaten the water quality and marine resources of Humboldt Bay. As the project is necessary to maintain continued access to the site, the no project alternative is not a feasible less environmentally damaging alternative to the proposed project as conditioned.
- ii. Alternative construction materials or methods: The applicants could leave the damaged existing wooden piles in place and renovate the existing longitudinal boards, decking, and handrails. This option is a short-term solution, and the dock pilings would continue to deteriorate and ultimately fail, thereby threatening the water quality and marine resources of Humboldt Bay. Failure of the dock would also result in discontinued access to and management of the site. Therefore, the short-term replacement alternative is not a feasible less environmentally damaging alternative to the proposed project as conditioned.

The Commission concludes that, as conditioned to include the feasible mitigation measures discussed in part above and reiterated below, the proposed development as conditioned is the least environmentally damaging feasible alternative and consistent with the alternatives test of section 30233(a).

c. Feasible Mitigation Measures

As discussed above, the replacement piles will not result in a net increase of the amount of fill in coastal waters and will result in a net decrease in bay fill relative to current conditions as summarized in Table 1 above. The applicants have designed the project with minimal impacts to coastal and marine resources and has proposed several measures to further minimize any adverse environmental effects. As previously discussed, **Special Conditions 1 and 2** include numerous feasible mitigation measures to protect eelgrass, water quality, and other aquatic resources.

The applicants propose to remove all old piles in their entirety to ensure this net reduction in fill is achieved. If piles break during removal, **Special Condition 1** is included to ensure that all existing piles that cannot be removed in their entirety are cut off a minimum of one foot below the mudline to ensure that the total area of displacement of bay muds is minimized. Removal of the piles in this manner will enable sediment to eventually settle in the holes from which the piles will be removed and reestablish mudflat within the areas previously displaced by the piles. Thus, the proposed project, as conditioned, will minimize adverse environmental effects from the fill of mudflat and subtidal bay habitats.

Therefore, the Commission finds that the proposed project as conditioned provides feasible mitigation measures to minimize adverse environmental effects consistent with section 30233(a).

d. Biological Productivity and Functionality

The fourth general limitation set by section 30233(c) is that any proposed dredging or filling in coastal wetlands or estuaries must maintain or enhance the functional capacity of the wetland.

The mitigation measures incorporated into the project and required by the special conditions discussed above will ensure that the project will not have significant adverse impacts on coastal waters or wetlands in and around the project vicinity. In fact, as proposed and conditioned, the project will improve the functionality of wetlands by removing creosote pilings from Humboldt Bay. Therefore, the Commission finds that the proposed project, as conditioned, will maintain and enhance the functional capacity of wetlands consistent with the requirements of section 30233 of the Coastal Act.

Conclusion

For all of the reasons set forth above, the Commission finds that the proposed development, as conditioned, is consistent with section 30233 of the Coastal Act.

**F. Coastal Hazards**

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...

The subject site, along with most of Tuluwat Island, is subject to potential geologic and flood hazards from liquification, tsunami inundation, and flooding associated with high waves and storm events. Within the past year, storm waves have caused individual pilings to dislodge from the dock, and flooding and damage to the structure will likely worsen given projected sea-level rise for the region.

The proposed renovations to the dock will improve the safety and structural stability of the dock by replacing failing wooden pilings with new steel piles. Piles will be installed by a licensed contractor under the oversight of the U.S. Fish and Wildlife Service engineer, who will inspect the structure and verify that it has been constructed in compliance with proposed engineered plans for structural stability.

The proposed elevation of the dock will be approximately 10.5 feet following the renovations. The current mean monthly higher high water (MHHW) elevation on Humboldt Bay is 6.5 feet, and the average annual king tide elevation is 8.8 feet. The California Ocean Protection Council's State of California Sea-Level Rise Guidance 2018 Update, and the Commission's 2018 adopted Sea Level Rise Policy Guidance, both contain a set of sea level rise projections for 12 tide gauges throughout California, and both agencies recommend using these projections and related information as best available science on sea level rise in California. Table 2, below, provides the projections for Humboldt Bay (measured at NOAA's North Spit Tide Gage), which has the highest relative rate of sea level rise in the State due to active land subsidence.

**Table 2. Projected Sea Level Rise (in feet) on Humboldt Bay**

	<b>Low</b> Risk Aversion (ft.)	<b>Medium-High</b> Risk Aversion (ft.)	<b>Extreme</b> Risk Aversion (ft.)
2030	0.7	1	1.2
2050	1.5	2.3	3.1
2070	2.4	4	5.6
2100	4.1	7.6	10.9

The proposed new steel piles could extend the life of the boat dock for another 50 years. Given that the medium-high risk aversion sea level rise projection for 2070 is 4 feet, the dock will remain accessible for its design life, but may occasionally be overtopped during king tide events. With only occasional inundation, the dock will remain usable for its anticipated life. In addition, because the dock is not critical infrastructure and will not include the addition of a habitable structure, occasional inundation from the highest tides will not result in a significant risk to life or property.

In terms of tsunami risk, the dock facility is located within the mapped tsunami inundation area on the Tsunami Inundation Map for Emergency Planning (California Geological Survey, March 11, 2021).<sup>2</sup> The inundation area represents the maximum considered tsunami runup from several extreme, infrequent, and realistic tsunami sources.<sup>3</sup> As the dock facility is a coastal-dependent use, there is no alternative location for siting the structure that would avoid the zone. However, a tsunami warning system is in place in the area, including evacuation drills for residents and employees in the area, and a warning system that includes emergency notifications and sirens in the event of a tsunami and alert people to seek higher ground. As there is no alternative location for siting the dock facility along the bay that would avoid the tsunami zone, and, as

<sup>2</sup> See

[https://www.conservation.ca.gov/cgs/Documents/SHP/Tsunami/HazardArea/Maps/Tsunami\\_Hazard\\_Area\\_Map\\_Humboldt\\_County\\_a11y.pdf](https://www.conservation.ca.gov/cgs/Documents/SHP/Tsunami/HazardArea/Maps/Tsunami_Hazard_Area_Map_Humboldt_County_a11y.pdf).

<sup>3</sup> A 975-year average return period tsunami model (with a 5% probability of exceedance in 50 years) was used as a basis for the maximum inundation extent for inundation mapping in conjunction with data from an earlier 2009 mapping effort. The 2009 maps were not probabilistic and instead used a suite of tsunami source events for modeling, representing realistic local and distant earthquakes and hypothetical extreme undersea, near-shore landslides.



discussed, there are tsunami risk minimization measures in place, the Commission finds that the proposed development minimizes tsunami hazard risk.

The Coastal Act recognizes that certain types of development, such as the proposed project to replace damaged piles on the dock, involve some level of risk. Coastal Act policies require the Commission to establish the appropriate degree of risk acceptable for the proposed development and to determine who should assume the risk. When development in areas of identified hazards is proposed, the Commission considers the hazard associated with the project site and the potential cost to the public, as well as the owner's property rights. As such, the Commission finds that due to the unforeseen possibility of liquefaction, storm waves, surges, and erosion, the applicant shall assume these risks as a condition of approval. Therefore, **Special Condition 3** requires the applicant to assume the risks of extraordinary waves, ground shaking, liquefaction, and other hazards and waive any claim of liability on the part of the Commission.

Therefore, for the reasons discussed above, the Commission finds that the proposed project, as conditioned, is consistent with Coastal Act section 30253.

## **G. Archaeological Resources**

Section 30244 of the Coastal Act states:

Where development would adversely impact archeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.

The project area lies within the traditional territory of the Wiyot tribe, and, as discussed above, most of Tuluwat Island is under the current ownership of the Wiyot Tribe. At the time that Euro-Americans first made contact in this region, the Wiyot lived almost exclusively in villages along the protected shores of Humboldt Bay and near the mouths of the Eel and Mad Rivers. Three federally recognized Tribes in the region – the Wiyot Tribe, the Blue Lake Rancheria, and the Bear River Band of the Rohnerville Rancheria – include citizens of Wiyot ancestry that are culturally affiliated with the greater Humboldt Bay region Wiyot ethnographic area as mapped by the Tribes.

Tuluwat, the island on which the project site is located, is the site of a former Wiyot village. At Tuluwat, Wiyot held the annual "world renewal ceremony," a dance lasting seven to ten days. The ground beneath portions of Tuluwat is an enormous clamshell mound (or midden) measuring many acres in size and estimated to be over 1,000 years old.

The applicant consulted with the Wiyot area tribes in April and September of 2021 and provided the following summary:

The FWS initiated tribal consultation via in-person meeting with the cultural resources staff of the Wiyot, Bear River Band of Rohnerville Rancheria, and Blue Lake Rancheria on 26 April 2021. A verbal and written description of the

undertaking along with maps of the APE were provided to the group, followed by a discussion of the project. The group expressed interest in having the dock surveyed to determine the historical significance and integrity of the structure, as well as identifying the dock's location in relationship to a known historical landmark (CA-HUM-67), which is also located on Tuluwat Island. Follow-up e-mails were sent to the aforementioned tribes after the survey to notify the group of the results.

Email correspondence occurred on September 8-9, 2021. The group was informed of the dock's condition and location relative to CA-HUM-67. An assessment of the dock's condition and historical integrity was provided to the tribes. Responses were received the same day concurring with the dock assessment.

Pursuant to its Tribal Consultation Policy, Commission staff also conducted outreach to the Wiyot area tribes to inform them of the receipt of the CDP application for the proposed dock renovation project and to invite their comments and recommendations. Responses were received from the Tribal Historic Preservation Offices of the Blue Lake Rancheria and the Wiyot Tribe recommending that in addition to inadvertent discovery protocols, a tribal monitor should be present for all pile installation and removal work directly on the shoreline or in adjacent mudflats (up to two feet below the waters of Humboldt Bay).

Thus, to ensure protection of any cultural resources that may be discovered at the site during pile removal or installation work, as recommended by the tribes, the Commission attaches **Special Condition 4**. This condition requires that a tribal monitor or appointed qualified cultural resource specialist be on-site as recommended. Additionally, if an area of cultural deposits is discovered during the course of the project, all construction must cease and a qualified cultural resource specialist must analyze the significance of the find in conjunction with the THPOs for the Wiyot Tribe, the Bear River Band of Rohnerville Rancheria, and the Blue Lake Rancheria. To recommence construction following discovery of cultural deposits, the applicant is required to submit a supplementary archaeological plan for the review and approval of the Executive Director, who determines whether the changes are de minimis in nature and scope, or whether an amendment to this permit is required.

Therefore, the Commission finds that the proposed project as conditioned includes reasonable mitigation measures to protect archaeological resources consistent with Coastal Act section 30244.

## **H. Public Access**

Section 30210 of the Coastal Act requires that maximum public access shall be provided consistent with public safety needs and the need to protect natural resource areas from overuse. Section 30212 of the Coastal Act requires that access from the nearest public roadway to the shoreline be provided in new development projects, except where it is inconsistent with public safety, military security, or protection of fragile

coastal resources, or where adequate access exists nearby. Section 30211 of the Coastal Act requires that development not interfere with the public's right to access gained by use or legislative authorization. Section 30214 of the Coastal Act provides that the public access policies of the Coastal Act shall be implemented in a manner that takes into account the capacity of the site and the fragility of natural resources in the area. In applying sections 30210, 30211, 30212, and 30214, the Commission is also limited by the need to show that any denial of a permit application based on these sections or any decision to grant a permit subject to special conditions requiring public access is necessary to avoid or offset a project's adverse impact on existing or potential access.

The proposed dock repairs will not adversely affect public access. There currently is no public access to the site, though it is part of the federal wildlife refuge and in the future controlled public access may be offered on the site, which the new dock could also facilitate, pursuant to future updates to the Refuge management plan. The Refuge management plan will next be updated in five years, and any changes to access at the site will be evaluated at that time. As the project will not increase the demand for public access facilities and involves no expansion of use, the Commission does not find it necessary to require that public access be provided as a result of the proposed project.

The Commission thus finds that the proposed project will not have any significant adverse effects on public access and is consistent with the requirements of Coastal Act sections 30210, 30211, 30212, and 30214.

## **I. California Environmental Quality Act (CEQA)**

The Humboldt Bay Harbor, Recreation and Conservation District served as the lead agency for the project for CEQA purposes. The Harbor District filed a notice of exemption for the project on November 8, 2021 pursuant to section 15301 and 15302 of the CEQA Guidelines, which exempts the repair and replacement of existing structures involving negligible or no expansion of use.

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

The Commission's review, analysis, and decision-making process for CDPs and CDP amendments has been certified by the Secretary of the Natural Resources Agency as being the functional equivalent of the environmental review required by CEQA (CCR Section 15251(f)). Accordingly, this report has discussed the relevant coastal resource issues with the proposal and 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 were received prior to preparation of the staff report. As specifically discussed in these above findings, which are hereby incorporated by reference, mitigation measures that will minimize or avoid all significant adverse environmental impacts have been required. As conditioned, there are no other feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impacts which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, can be found consistent with the requirements of the Coastal Act and thus conforms with CEQA.

1-22-0279 (U.S. Fish & Wildlife Service & Bates)

**APPENDIX A**

**SUBSTANTIVE FILE DOCUMENTS**

CDP Application File No. 1-22-0279 (initially received 4/7/2022)

City of Eureka Certified Local Coastal Program