



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, PORTLAND DISTRICT
NORTH BEND FIELD OFFICE
2201 BROADWAY, SUITE C
NORTH BEND, OR 97459-2372

February 18, 2021

Regulatory Branch
Corps No.: NWP-2019-513

Mr. Jeff Griffin
Port of Bandon
PO Box 206
Bandon, Oregon 97411
portmanager@portofbandon.com

Dear Mr. Griffin:

The U.S. Army Corps of Engineers (Corps) received the Port of Bandon's (Port) request for Department of the Army authorization to conduct work above and below the mean high water mark of the Coquille River to remove, install and conduct annual maintenance to docks and pilings. The project is located at the Port marina in Bandon, Coos County, Oregon at Latitude/Longitude: 43.120459°, -124.411329°. This "Letter of Permission" (LOP) permit authorizes your project as depicted on the enclosed drawings (Enclosure 1). The time limit for completing the work authorized by this LOP ends 10 years from the date of this letter.

The Port will remove multiple existing wooden moorage floats, a wooden gangway measuring four feet wide and 40 feet long, 106 creosote treated wooden pilings and 18 galvanized steel pilings. The Port will install new open grated fiber reinforced plastic dock floats supported on high density polyethylene pontoon floats, a concrete breakwater dock, and 49, 16-inch diameter galvanized steel pilings. In addition, the Port will remove 75 wooden pilings measuring approximately 12 to 18 inches in diameter from an area located directly north and outside of the marina to accommodate fisheries and habitat concerns of the National Marine Fisheries Service (NMFS).

The Port will conduct work from the top of bank around the marina or from a vessel operating in the waterway. The Port will remove and install the dock floats via a crane and excavator, and by hand. The Port will remove the existing pilings via a vibratory hammer or by hand. The Port will install the new pilings by vibratory hammer or socket techniques. Annual maintenance of the docks and pilings is authorized subject to reporting per special condition (c) below.

In order for this LOP authorization to be valid, you must ensure the work is performed in accordance with the enclosed Letter of Permission General Conditions (Enclosure 2) and the following special conditions:

a. This Corps permit does not authorize you to take an endangered species in particular those species identified in Enclosure 3. In order to legally take a listed species, you must have separate authorization under the Endangered Species Act (ESA) (e.g., an ESA Section 10 permit, or a biological opinion under ESA Section 7, with “incidental take” provisions with which you must comply). The NMFS SLOPES IV In-water Over-water Structures programmatic biological opinion dated April 5, 2012 (NMFS Reference Number 2011/05585), contains mandatory terms and conditions to implement the reasonable and prudent measures that are associated with the “incidental take” that is also specified in the opinion. Your authorization under this Corps permit is conditional upon your compliance with all of the applicable mandatory terms and conditions associated with the incidental take statement. Failure to comply with the applicable terms and conditions associated with incidental take of this opinion, where a take of the listed species occurs, would constitute an unauthorized take, and it would also constitute noncompliance with your Corps permit. The NMFS is the appropriate authority to determine compliance with the terms and conditions of its opinion and with the ESA.

b. Permittee shall fully implement all applicable Proposed Design Criteria (PDC) of the SLOPES IV In-water Over-water Structures programmatic biological opinion. A detailed list of the PDCs are enclosed (Enclosure 3). The applicable PDCs for the project include numbers: 6, 7, 11, 15-18, 21, 24-27, and 30-33.

c. Permittee shall complete an Action Completion Form consistent with the reporting requirements of the SLOPES IV In-water Over-water Structures programmatic biological opinion for all actions completed below the mean high water mark of Coquille River in relation to the permitted action. The form shall be submitted to the Corps Regulatory Branch and NMFS e-mail inbox at the following addresses: cenwp.notify@usace.army.mil; slopes.nwr@noaa.gov.

d. All in-water work shall be performed during the in-water work period of October 1 to February 15, to minimize impacts to aquatic species. Exceptions to this time period requires specific approval from the Corps and the National Marine Fisheries Service.

e. If human remains or cultural resources are discovered during the performance of the authorized work the permittee shall implement the Inadvertent Discovery Plan procedures (Enclosure 4) and immediately notify the U.S. Army Corps of Engineers, Portland District, Regulatory Branch.

f. Permittee shall comply with the conditions specified in the Oregon Department of Land Conservation and Development coastal zone management consistency determination dated December 22, 2020 (Enclosure 5).

g. Permittee shall notify the U.S. Coast Guard District Thirteen of the project by e-mail at: D13-PF-LNM@uscg.mil at least 14 days prior to commencing construction activities, so the project information can be issued in the Local Notice to Mariners.

The requirements of the Endangered Species Act were met through a programmatic biological opinion as listed in the special condition above. The complete text of the biological opinion is available for your review at: <https://www.nwp.usace.army.mil/environment/>. Please note, you must submit an *Action Completion Report* form for each activity undertaken for this project; the *Action Completion Report* form is provided in Enclosure 3. Please submit the report and any other reports associated with this permit to either the letterhead address above or by e-mail to: cenwp.notify@usace.army.mil. For submittals by e-mail, the e-mail subject line shall include the Corps project number listed above and the name of the county where the project is located.

We have reviewed your project pursuant to the requirements of the Endangered Species Act, the Magnuson-Stevens Fishery Conservation and Management Act and the National Historic Preservation Act. We have determined the project complies with the requirements of these laws provided you comply with all of the permit general and special conditions.

Please note, LOP General Condition 5, Historic Properties / Cultural Resources, details procedures should an inadvertent discovery occur. You must ensure that you comply with this condition during the construction of your project.

The Coquille River is a water of the U.S. If you believe this is inaccurate, you may request a preliminary or approved jurisdictional determination (JD). If one is requested, please be aware that we may require the submittal of additional information to complete the JD and work authorized in this letter may not occur until the JD has been completed.

If you object to any terms or conditions of this LOP, you may request an administrative appeal under our regulations (33 CFR Part 331) as described in the enclosed *Notification of Administrative Appeal Options and Process and Request for Appeal* form (Enclosure 6).

This LOP permit is based on the project description and construction methods provided in your permit application. If you propose changes to the project, you must submit revised plans to this office and receive our approval of the revisions prior to performing the work. Failure to comply with all terms and conditions of this LOP invalidates this authorization and could result in a violation of Section 10 of the Rivers

and Harbors Act. You must also obtain all local, State, and other Federal permits that apply to this project.

Upon completing the authorized work, you must fill out and return the enclosed *Compliance Certification* form (Enclosure 7). We would like to hear about your experience working with the Portland District, Regulatory Branch. Please complete a customer service survey form at the following address:
https://corpsmapu.usace.army.mil/cm_apex/f?p=136:4.

If you have any questions regarding this LOP, please contact Mr. Tyler Krug by telephone at (541) 756-2097 or e-mail at: Tyler.J.Krug@usace.army.mil. This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

FOR THE COMMANDER, MICHAEL D. HELTON, PMP, COLONEL, CORPS OF ENGINEERS, DISTRICT COMMANDER:

A handwritten signature in black ink, appearing to read 'W. Abadie', with a long horizontal line extending to the right.

For: William D. Abadie
Chief, Regulatory Branch

Enclosures

cc:

Oregon Department of State Lands (Bob Lobdell, bob.lobdell@state.or.us)
Oregon Department of Environmental Quality (401applications@deq.state.or.us)
Oregon Department of Land Conservation and Development (Patty Snow, patty.snow@state.or.us; Deanna Caracciolo, deanna.caracciolo@state.or.us)
Corps, Waterways Maintenance Section (Casey O'Donnell, casey.p.odonnell@usace.army.mil) (with drawings)

PORT OF BANDON BANDON MARINA REDEVELOPMENT



VICINITY MAP
NOT TO SCALE



LOCATION MAP
NOT TO SCALE

SHEET INDEX

- 1 TITLE SHEET AND SHEET INDEX
- 2 EXISTING CONDITIONS
- 3 DEMOLITION PLAN
- 4 PROPOSED FLOAT LAYOUT
- 5 PILE DETAILS
- 6 TYPICAL FLOAT SECTIONS
- 7 ALTERNATE HDPE FLOAT SECTIONS
- 8 GANGWAY DETAILS
- 9 PROPOSED WATER UTILITY PLAN
- 10 ELECTRICAL SERVICE PLAN

PROJECT INFORMATION

TIDAL DATA
 MEAN HIGHER HIGH WATER (MHHW): 7.10'
 MEAN HIGH WATER (MHW): 6.38'
 MEAN TIDE LEVEL (MTL): 3.77'
 MEAN LOW WATER (MLW): 1.18'
 MEAN LOWER LOW WATER (MLLW): 0.00'

PROJECT DATA
 LATITUDE: 43° 7.2' N
 LONGITUDE: 124° 24.8' W

DIGITAL SIGNATURE

THIS DRAWING SET WAS CREATED AS AN ELECTRONIC DOCUMENT. IF THE ELECTRONIC DOCUMENT DOES NOT INCLUDE A VERIFIABLE DIGITAL SIGNATURE BY ABOVE, PLEASE CONTACT THE ENGINEER OF RECORD FOR THE ORIGINAL CERTIFIED ELECTRONIC DOCUMENT.

P | N | D
 ENGINEERS, INC.
 1746 Fourth Avenue S., Suite 300
 Seattle, Washington 98134
 P: 206.624.1387
 www.pndengineers.com

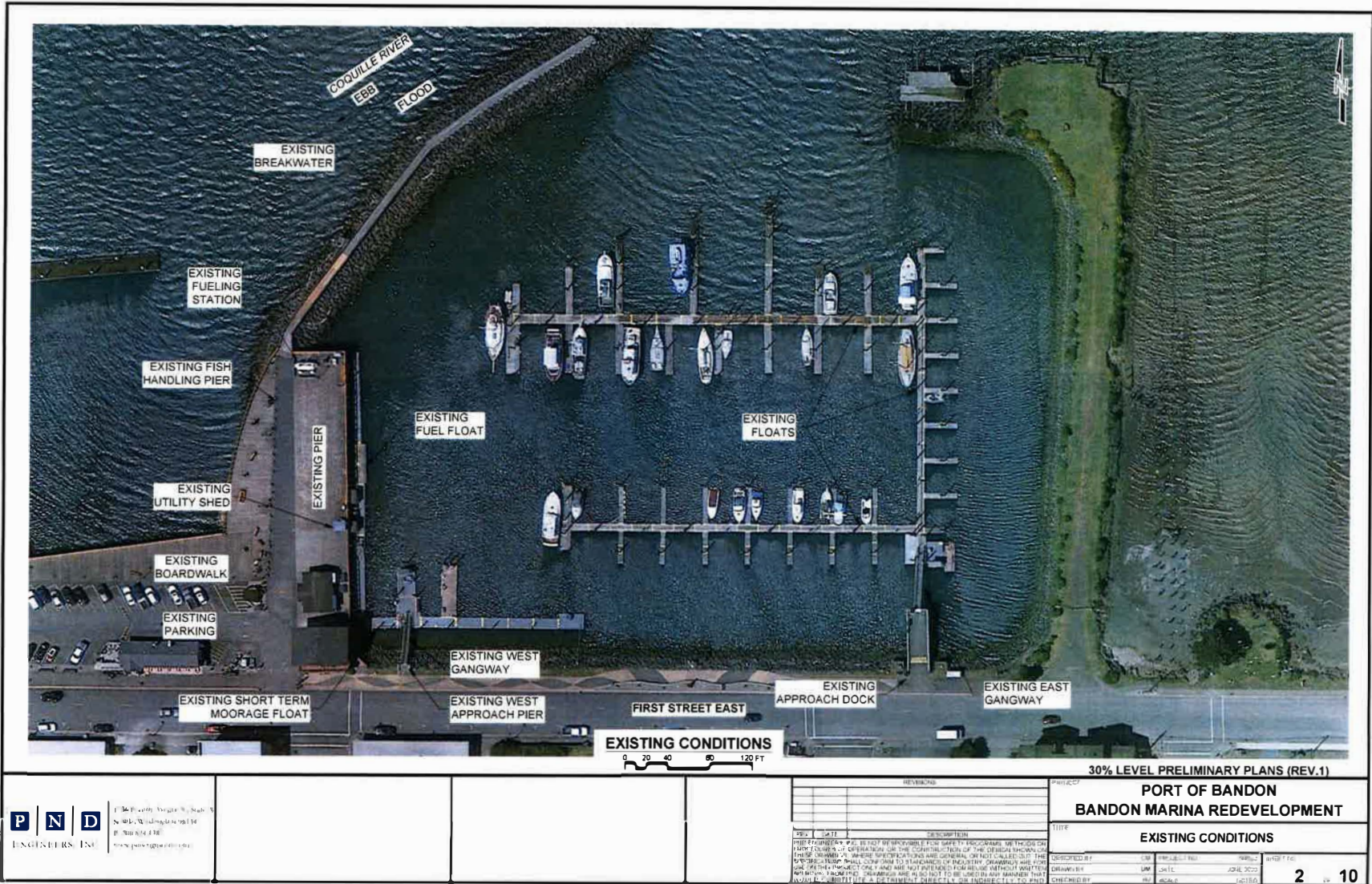
30% LEVEL PRELIMINARY PLANS (REV.1)

PORT OF BANDON
BANDON MARINA REDEVELOPMENT

TITLE SHEET AND SHEET INDEX

REV.	DATE	DESCRIPTION

DESIGNED BY	AW	IN CHARGE	TRM	DATE	06/17/2020
DRAWN BY	AW	CHECKED	TRM	SCALE	AS SHOWN
CHECKED BY	AW	DATE	06/17/2020	SHEET	1
					OF 10



30% LEVEL PRELIMINARY PLANS (REV.1)

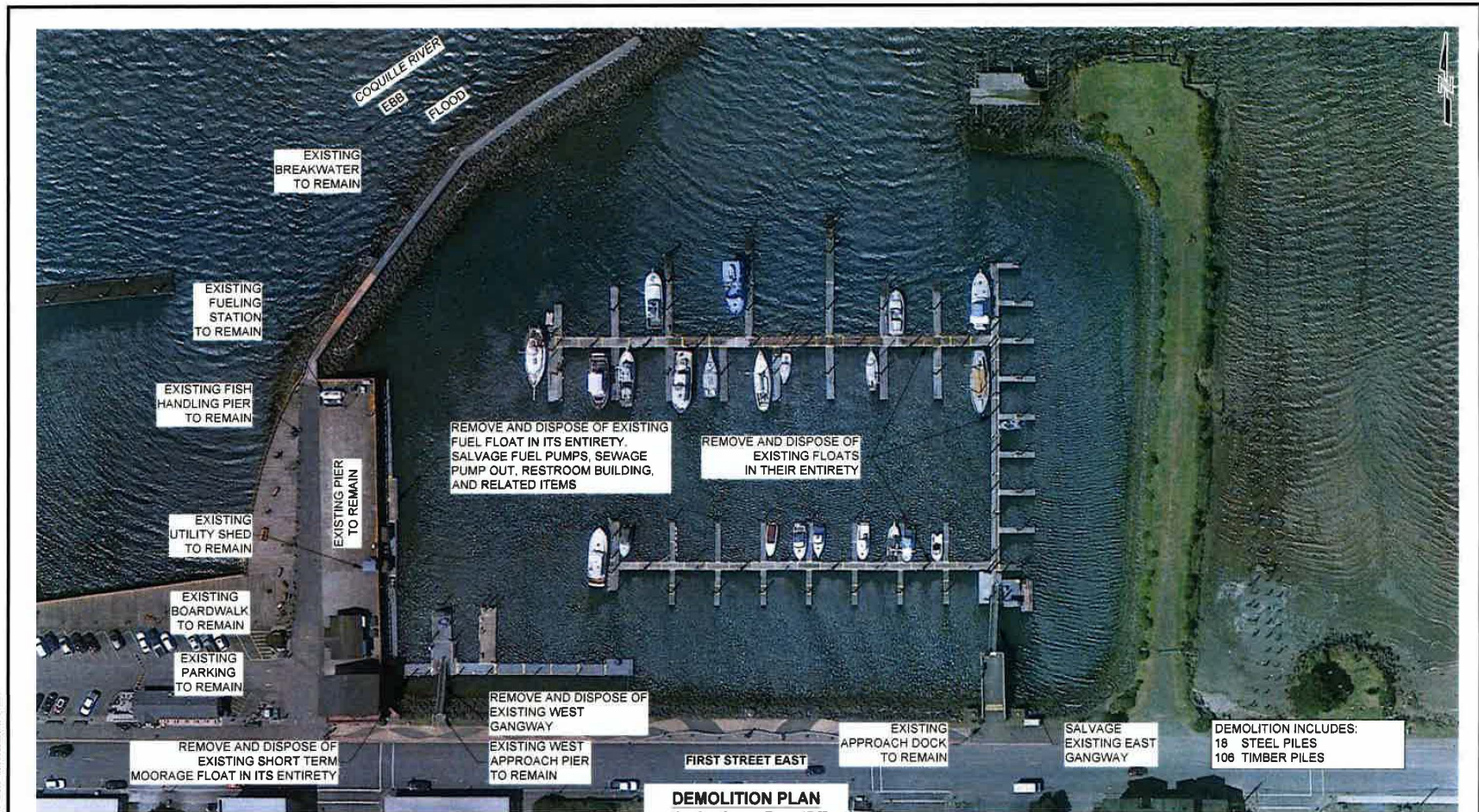
**PORT OF BANDON
BANDON MARINA REDEVELOPMENT**

TITLE: **EXISTING CONDITIONS**

NO.	DATE	DESCRIPTION

DESIGNED BY	UM	DATE	JUNE 2022
DRAWN BY	UM	DATE	JUNE 2022
CHECKED BY	UM	DATE	JUNE 2022

2 of **10**



30% LEVEL PRELIMINARY PLANS (REV.1)

P N D
ENGINEERS, INC.

1746 Beach Avenue S, Suite 3
Seaside, Washington 98134
P: 206.624.1187
www.pndengineers.com

REV.	DATE	DESCRIPTION

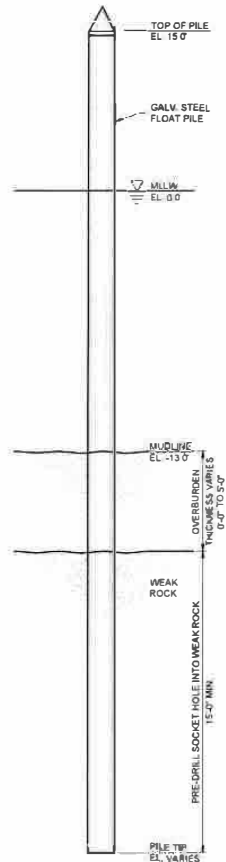
PROJECT		PORT OF BANDON BANDON MARINA REDEVELOPMENT	
TITLE		DEMOLITION PLAN	
DESIGNED BY	LW	PROJECT NO.	118027
DRAWN BY	DW	DATE	JUNE 2020
CHECKED BY	ML	SCALE	AS SHOWN
SHEET NO.			3 OF 10



PROPOSED FLOAT LAYOUT

30% LEVEL PRELIMINARY PLANS (REV.1)

<p>17 McDaniel Avenue S. Suite A N. W. Bandon, Oregon 97110 P: 503.634.1300 www.pndengineers.com</p>	<p>PORT OF BANDON BANDON MARINA REDEVELOPMENT</p>		<p>PROJECT</p>
	<p>PROPOSED FLOAT LAYOUT</p>		<p>TITLE</p>
	<p>DESIGNED BY: []</p> <p>CHECKED BY: []</p> <p>DATE: []</p>	<p>DATE: []</p> <p>DATE: []</p>	<p>SHEET NO: []</p> <p>OF []</p>

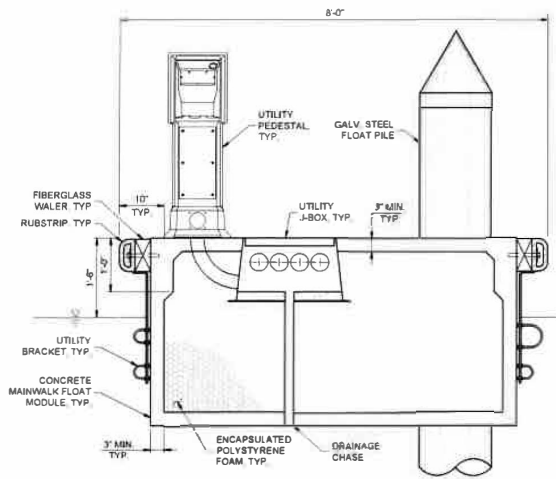


TYPICAL FLOAT PILE

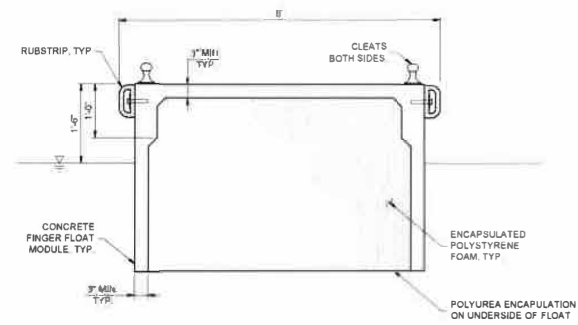
PILE SCHEDULE			
FLOAT	PILE SIZE	THICKNESS	PILE COUNT
A	16"Ø	0.500"	9
B	16"Ø	0.500"	18
C	16"Ø	0.500"	15
D	16"Ø	0.500"	2
E	16"Ø	0.500"	5
TOTAL	--	--	49

PROJECT: 30% LEVEL PRELIMINARY PLANS (REV. 1) BANDON MARINA REDEVELOPMENT
 DRAWING: PILE DETAILS
 DATE: 06/20/2019
 SHEET: 5 OF 10

<p>PND ENGINEERS, INC.</p>	1701 4th Avenue, Suite 3 Seattle, Washington 98134 P: 206.624.1387 www.pndengineers.com					30% LEVEL PRELIMINARY PLANS (REV. 1) PORT OF BANDON BANDON MARINA REDEVELOPMENT	
							PILE DETAILS
		PND ENGINEERS, INC. IS NOT RESPONSIBLE FOR SAFETY PROGRAMS, METHODS OR PROCEDURES OF OPERATION OR THE CONSTRUCTION OF THE DESIGN OR OF THE DRAWINGS, WHERE SPECIFICATIONS ARE GENERAL OR NOT CALLED OUT THE SPECIFICATIONS SHALL BE ONLY TO THE EXTENT OF INCLUDING DRAWINGS AND OTHER INFORMATION FROM PND. CHANGES ARE ALSO NOT TO BE MADE IN ANY MANNER THAT WOULD CONTRADICT OR BE IN CONFLICT WITH THE DRAWINGS OR THE DESIGN.					DESIGNED BY: [] CD: [] TITLE: [] DRAWN BY: [] DATE: [] SHEET NO.: [] CHECKED BY: [] SCALE: [] TOTAL SHEETS: []



**FLOAT C
CONCRETE SECTION
BREAKWATER**



**FLOAT C FINGER FLOAT
CONCRETE SECTION**

30% LEVEL PRELIMINARY PLANS (REV.1)

**PORT OF BANDON
BANDON MARINA REDEVELOPMENT**

TYPICAL CONCRETE FLOAT SECTIONS

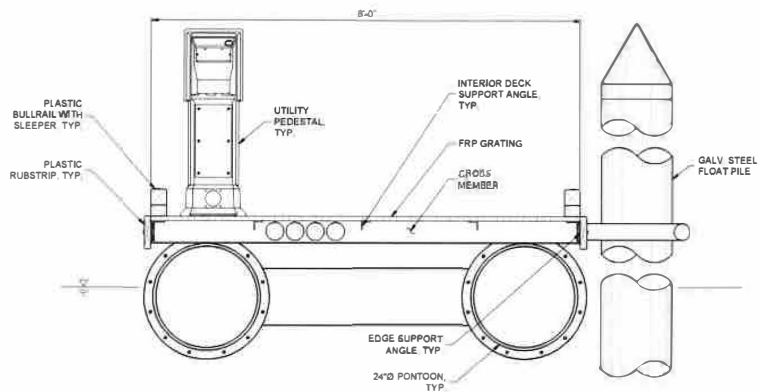


1710 Fourth Avenue S. Suite 3
Seattle, Washington 98134
P: 206.474.1387
www.pndengineers.com

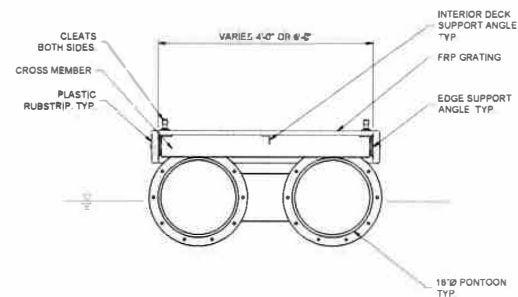
REV.	DATE	DESCRIPTION

DESIGNED BY	DATE	SCALE	PROJECT NO.	DATE	SCALE

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**MAINWALK FLOAT
HDPE SECTION**



**FINGER FLOAT
HDPE SECTION**

30% LEVEL PRELIMINARY PLANS (REV.1)

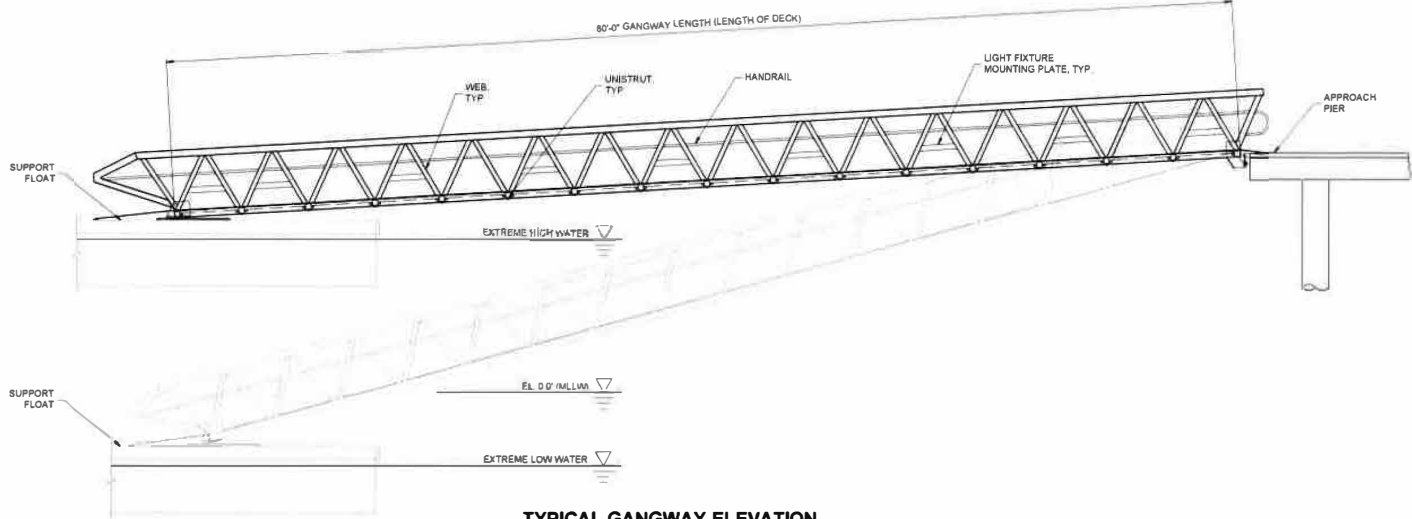
**PORT OF BANDON
BANDON MARINA REDEVELOPMENT**

ALTERNATE HDPE FLOAT SECTIONS

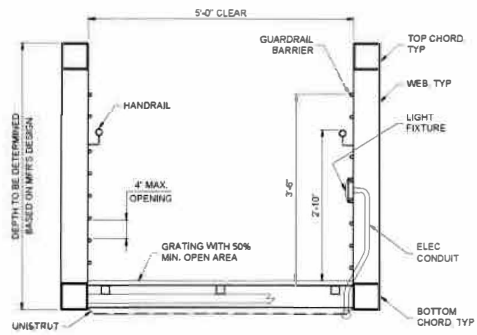
REV.	DATE	DESCRIPTION

DESIGNED BY	DATE	PROJECT NO.	SHEET NO.
CHECKED BY	DATE		
SCALE			

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TYPICAL GANGWAY ELEVATION



TYPICAL GANGWAY SECTION

30% LEVEL PRELIMINARY PLANS (REV.1)

**PORT OF BANDON
BANDON MARINA REDEVELOPMENT**

GANGWAY DETAILS

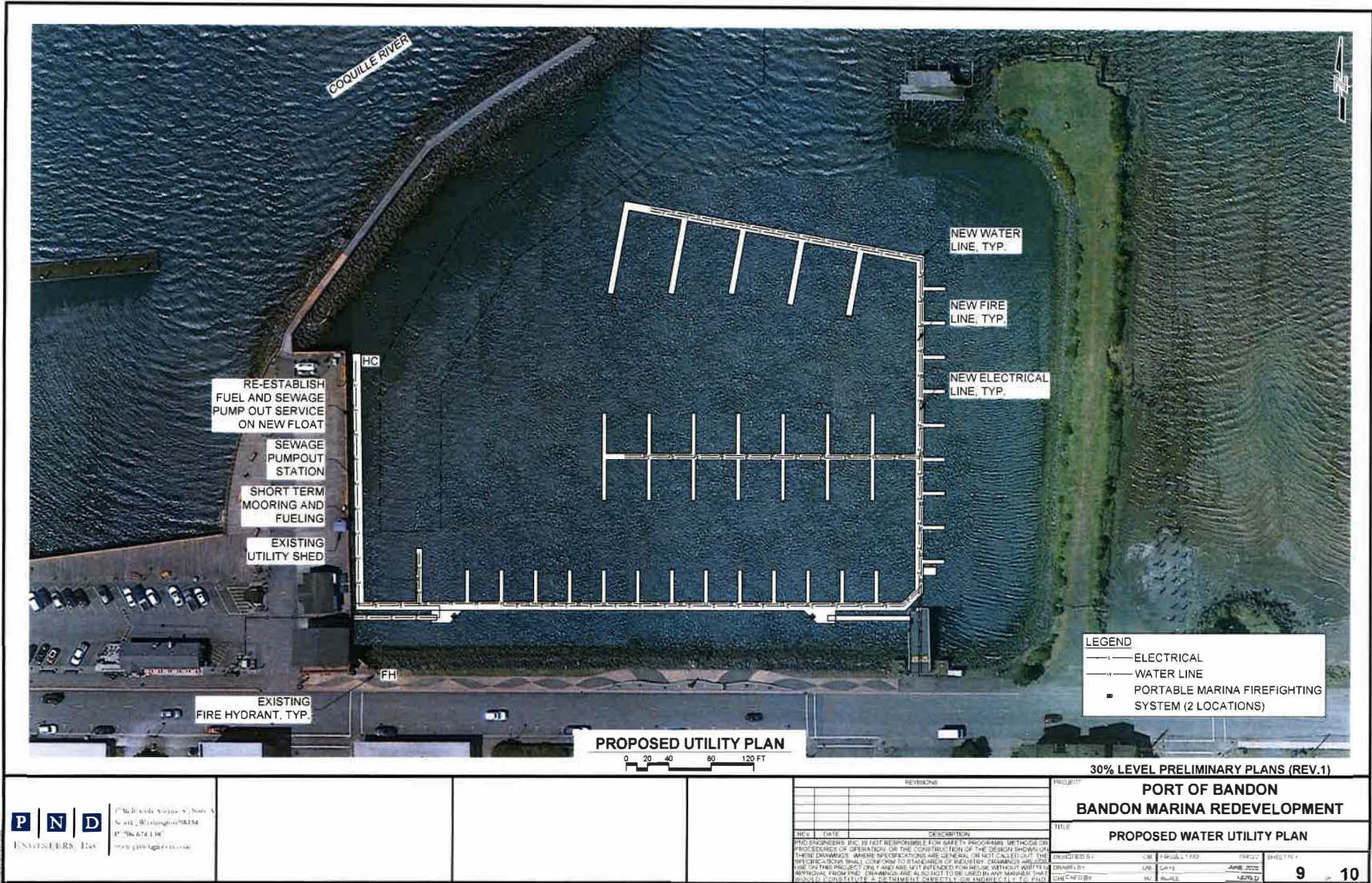


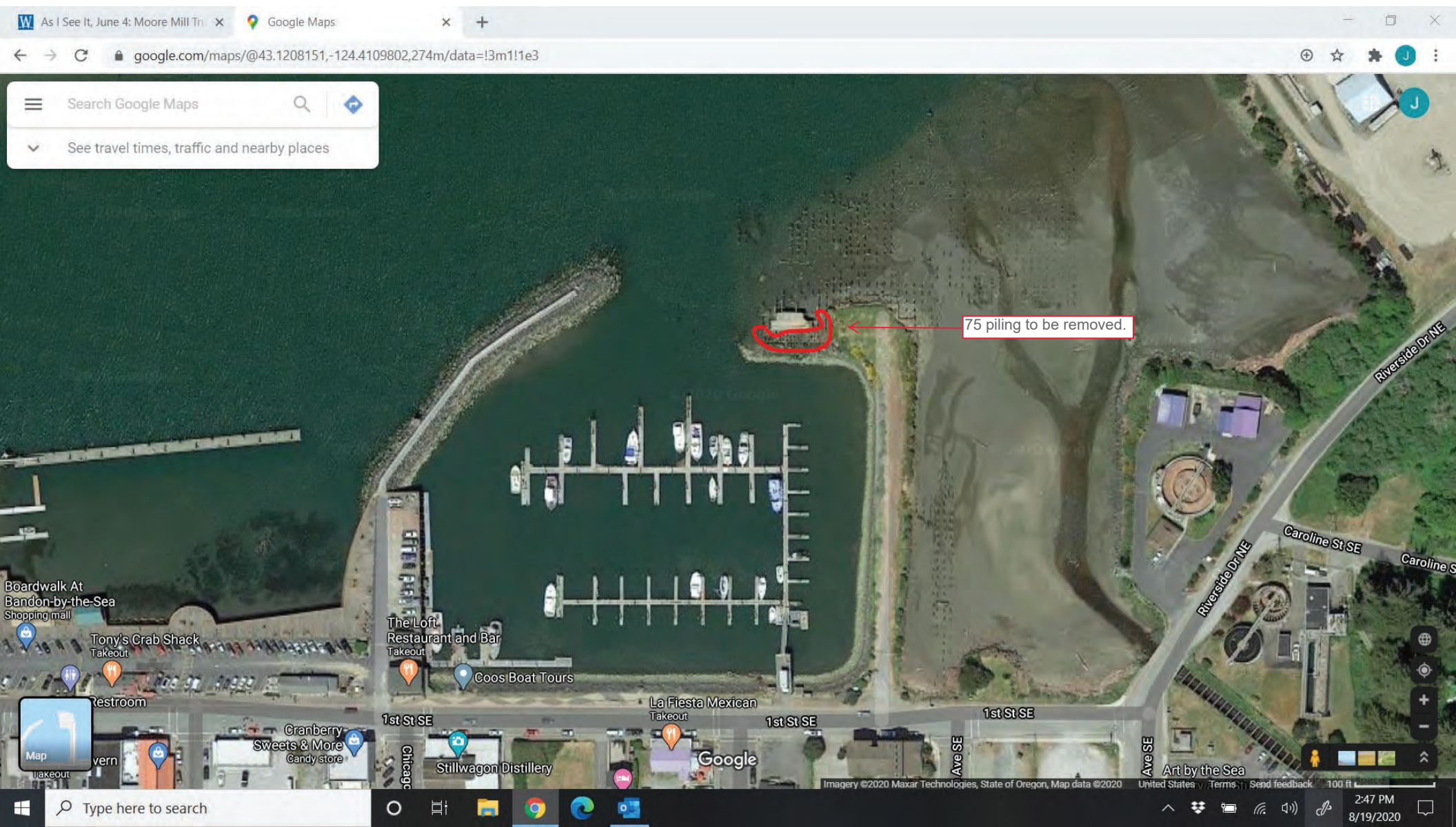
1700 15th Avenue S., Suite 800
Seattle, Washington 98134
P: 206.424.1188
www.pbs.com

REV.	DATE	DESCRIPTION

DESIGNED BY	CM	DRAWN BY	CM	CHECKED BY	CM	DATE	JUNE 2010
CHECKED BY	CM	DATE	JUNE 2010				

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US Army Corps
of Engineers®
Portland District

Letter of Permission General Conditions

July 1, 2020

1. Notification. Upon starting the authorized activities, the permittee shall notify the U.S. Army Corps of Engineers, Portland District, Regulatory Branch that the work has started. Notification shall be provided by e-mail to cenwp.notify@usace.army.mil and the email subject line shall include the Corps project number and the project location by county.

2. Contractor Notification of Permit Requirements. The permittee must provide a copy of the Letter of Permission letter, General Conditions, and permit drawings to all contractors and any other parties performing the authorized work, prior to the commencement of any work in waters of the U.S.

3. Navigation.

- a. Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.
- b. The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the U.S. Army Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

4. Maintenance. Permittee must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. Permittee is not relieved of this requirement if permittee abandons the permitted activity, although permittee may make a good faith transfer to a third party in compliance with General Condition No. 6 below. Should permittee wish to cease to maintain the authorized activity or should permittee desire to abandon it without a good faith transfer, permittee must obtain a modification of this permit from this U.S. Army Corps of Engineers, Portland District, Regulatory Branch, which may require restoration of the area.

5. Historic Properties / Cultural Resources. If permittee discovers any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, permittee must immediately notify the U.S. Army Corps of Engineers, Portland District, Regulatory Branch (Corps) of what the permittee has found. The Corps will

initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

6. Transfer of Permit. If Permittee sells the property associated with this permit and the structures or work authorized by this permit are still in existence at the time the property is transferred the terms and conditions of this permit, including any special conditions, will continue to be binding on the new owner(s) of the property. The permit can be transferred without changing property ownership. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, the transferee shall submit a signed and dated statement accepting the permit as the transferee to the U.S. Army Corps of Engineers, Portland District, Regulatory Branch (Corps). The permit transfer may also be documented on the optional *Permit Transfer* form available from the Corps.

7. Coastal Zone Management. If a conditioned coastal zone consistency concurrence has been issued for the project, permittee must comply with the conditions specified in the concurrence as special conditions to the Letter of Permission permit. For your convenience, a copy of the concurrence is enclosed with the Letter of Permission permit if it contains such conditions.

8. Water Quality. If a conditioned water quality certification has been issued for the project, permittee must comply with the conditions specified in the certification as special conditions to the Letter of Permission permit. For your convenience, a copy of the certification is enclosed with the Letter of Permission permit if it contains such conditions.

9. Access for Inspection. Permittee must allow representatives from the U.S. Army Corps of Engineers to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of permittee's permit.

10. Limits of this Authorization.

- a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.
- b. This permit does not grant any property rights or exclusive privileges.
- c. This permit does not authorize any injury to the property or rights of others.
- d. This permit does not authorize interference with any existing or proposed Federal project.

11. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

- a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
- b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
- c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
- d. Design or construction deficiencies associated with the permitted work.
- e. Damage claims associated with any future modification, suspension, or revocation of this permit.

12. Reliance on Permittee's Data. The U.S. Army Corps of Engineers' determination that issuance of this permit is not contrary to the public interest was made in reliance on information that permittee provided.

13. Reevaluation of Permit Decision. The U.S. Army Corps of Engineers may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

- a. Permittee fails to comply with the terms and conditions of this permit.
- b. The information provided by permittee in support of permittee's permit application proves to have been false, incomplete, or inaccurate (see paragraph 8 above).
- c. Significant new information surfaces which the U.S. Army Corps of Engineers did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5.

The referenced enforcement procedures provide for the issuance of an administrative order requiring permittee to comply with the terms and conditions of permittee's permit and for the initiation of legal action where appropriate. Permittee will be required to pay for any corrective measures ordered by U.S. Army Corps of Engineers (Corps), and if permittee fail to comply with such directive, the Corps may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill permittee for the cost.

14. Time Extensions. The Letter of Permission authorization establishes a time limit for the completion of the activity. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable considerations to a request for an extension of the time limit. If more time is needed to complete the authorized activity, submit a request for a time extension to the U.S. Army Corps of Engineers for consideration at least one month before the time limit is reached.

15. Compliance Certification. Within 30 days of completing the authorized work and the implementation of any required compensatory mitigation, the permittee shall submit a signed *Compliance Certification* form to the U.S. Army Corps of Engineers, Portland District, Regulatory Branch certifying that the work, including any required compensatory mitigation, was conducted in accordance with the provisions of the Letter of Permission.

Endangered Species Act - Section 7 Formal Programmatic Opinion, Letter Of Concurrence

and

Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation

Revisions to Standard Local Operating Procedures for Endangered Species to
Administer Actions Authorized or Carried Out by the U.S. Army Corps of Engineers in Oregon
(SLOPES IV In-water Over-water Structures)

NMFS Consultation Number: 2011/05585

Federal Action Agency: Army Corps of Engineers
Portland District, Operations and Regulatory Branches

Date Issued: April 5, 2012

Affected Species and Determinations

ESA-Listed Species	ESA Status	Is the action likely to adversely affect this species or its critical habitat?	Is this Action likely to jeopardize this species?	Is this Action likely to destroy or adversely modify critical habitat for this species?
Lower Columbia River Chinook salmon	T	Yes	No	No
Upper Willamette River Chinook salmon	T	Yes	No	No
Upper Columbia River spring-run Chinook salmon	E	Yes	No	No
Snake River spring/summer run Chinook salmon	T	Yes	No	No
Snake River fall-run Chinook salmon	T	Yes	No	No
Columbia River chum salmon	T	Yes	No	No
Lower Columbia River coho salmon	T	Yes	No	N/A
Oregon Coast coho salmon	T	Yes	No	No
Southern Oregon/Northern California coasts coho salmon	T	Yes	No	No
Snake River sockeye salmon	E	Yes	No	No
Lower Columbia River steelhead	T	Yes	No	No
Upper Willamette River steelhead	T	Yes	No	No
Middle Columbia River steelhead	T	Yes	No	No
Upper Columbia River steelhead	T	Yes	No	No
Snake River Basin steelhead	T	Yes	No	No
Southern green sturgeon	T	Yes	No	No
Eulachon	T	Yes	No	No
Steller sea lion	T	No	No	N/A

Fishery Management Plan that Describes EFH in the Action Area	Would the action adversely Affect EFH?	Are EFH conservation Recommendation provided?
Coastal Pelagic Species	Yes	Yes
Pacific Coast Groundfish	Yes	Yes
Pacific Coast Salmon	Yes	Yes

**Excerpt from SLOPES IV In-water Over-water Structures General Construction April 5, 2012
Proposed Design Criteria**

1.3.1.2 General Construction

11. **Pollution and erosion control.** Any action that will require earthwork and may increase soil erosion and cause runoff with visible sediment into surface water, or that will require the use of materials that are hazardous or toxic to aquatic life (such as motor fuel, oil, or drilling fluid), must have a pollution and erosion control plan that is developed and carried out by the applicant, and commensurate with the scale of the action.
 - a. The plan must include practices to minimize erosion and sedimentation associated with all aspects of the project (e.g., staging areas, stockpiles, grading); to prevent construction debris from dropping or otherwise entering any stream or waterbody; and to prevent and control hazardous material spills.
 - b. During construction, erosion controls and streams must be monitored and maintained daily during the rainy season and weekly during the dry season as necessary to ensure controls are properly functioning.
 - c. If monitoring shows that the erosion controls are ineffective at preventing visible sediment discharge, the project must stop to evaluate erosion control measures. Repairs, replacements or the installation of additional erosion control measures must be completed before the project resumes.
 - d. Proper maintenance includes removal of sediment and debris from erosion controls like silt fences or hay bales once it has reached on-third of the exposed height of the control.

12. **Stormwater management.** Any action that will expand, recondition, reconstruct, or replace pavement, replace a stream crossing, otherwise increase the contributing impervious surface within the project area, or create a new stormwater conveyance or discharge facility, must have a stormwater management plan that is developed and carried out by the applicant, commensurate with the scale of the action, and approved by NMFS. The stormwater plan submitted for approval must include all of the information called for by the "Checklist for Submission of a Stormwater Plan" (ODEQ 2008, or most recent version), or an explanation of why any missing information is not applicable to a specific project.

13. **Site restoration.** Any action that results in significant disturbance of riparian vegetation, soils, streambanks, or stream channel must have a site restoration plan that is developed and carried out by the permittee (or Corps), that is commensurate with the scale of the action. The goal of the plan is to ensure that riparian vegetation, soils, streambanks, and stream channel are cleaned up and restored after the action is complete. No single criterion is sufficient to measure restoration success, but the intent is that the following features should be present in the upland parts of the project area, within reasonable limits of natural and management variation:
 - a. Human and livestock disturbance, if any, are confined to small areas necessary for access or other special management situations.
 - b. Areas with signs of significant past erosion are completely stabilized and healed, bare soil spaces are small and well-dispersed.
 - c. Soil movement, such as active rills and soil deposition around plants or in small basins, is absent or slight and local.
 - d. Native woody and herbaceous vegetation, and germination microsites, are present and well distributed across the site.
 - e. Plants are native species and have normal, vigorous growth form, and a high probability of remaining vigorous, healthy and dominant over undesired competing vegetation.

- f. Vegetation structure is resulting in rooting throughout the available soil profile.
- g. Plant litter is well distributed and effective in protecting the soil with little or no litter accumulated against vegetation as a result of active sheet erosion (“litter dams”).
- h. A continuous corridor of shrubs and trees appropriate to the site are present to provide shade and other habitat functions for the entire streambank.
- i. Streambanks are stable, well vegetated, and protected at margins by roots that extend below baseflow elevation, or by coarse-grained alluvial debris.

14. Compensatory mitigation. Any action that will permanently displace riparian or aquatic habitats or otherwise prevent development of properly functioning condition of natural habitat processes will require compensatory mitigation to fully offset those impacts.

- a. Examples of actions requiring compensatory mitigation include construction of a new or enlarged boat ramp or float, the addition of scour protection to a boat ramp, or construction of new impervious surfaces without adequate stormwater treatment.
- b. For displaced riparian and aquatic habitat, the primary habitat functions of concern are related to the physical and biological features essential to the long-term conservation of listed species. Those are water quality, water quantity, channel substrate, floodplain connectivity, forage, natural cover, space, and free passage. Examples of acceptable mitigation for riparian losses includes planting trees or other woody vegetation in the riparian area, removal of existing overwater structures or restoration of shallow-water, off-channel, or beach habitat by adding features such as submerged or overhanging large wood, aquatic vegetation, large rocks and boulders, side channels and undercut banks.
- c. For new impervious surfaces with inadequate stormwater treatment, the primary habitat functions of concern are water quality and water quantity. Examples of acceptable mitigation for inadequate stormwater management includes providing adequate stormwater treatment at an alternate site where it did not exist before or retrofitting an existing but substandard stormwater facility to provide capacity necessary to infiltrate and retain the proper volume of stormwater.
- d. As part of NMFS’s review under clause 3 above, NMFS will determine if the proposed compensatory mitigation fully offsets permanent displacement of riparian or aquatic habitats and/or impacts that prevent development of properly functioning processes.

15. Preconstruction activity. Before alteration of the action area, flag the boundaries of clearing limits associated with site access and construction to minimize soil and vegetation disturbance, and ensure that all temporary erosion controls are in place and functional.

16. Site preparation. During site preparation, conserve native materials for restoration, including large wood, vegetation, topsoil and channel materials (gravel, cobble and boulders) displaced by construction. Whenever practical, leave native materials where they are found and in areas to be cleared, clip vegetation at ground level to retain root mass and encourage reestablishment of native vegetation. Building and related structures may not be constructed inside the riparian management area.

17. Heavy equipment. Heavy equipment will be selected and operated as necessary to minimize adverse effects on the environment (e.g., minimally-sized, low pressure tires, minimal hard turn paths for tracked vehicles, temporary mats or plates within wet areas or sensitive soils); and all vehicles and other heavy equipment will be used as follows:

- a. Stored, fueled and maintained in a vehicle staging area placed 150 feet or more from any waterbody, or in an isolated hard zone such as a paved parking lot.
- b. Inspected daily for fluid leaks before leaving the vehicle staging area for operation within 50 feet of any waterbody.

- c. Steam-cleaned before operation below ordinary high water, and as often as necessary during operation to remain free of all external oil, grease, mud, seeds, organisms and other visible contaminants.
- d. Generators, cranes and any other stationary equipment operated within 150 feet of any waterbody will be maintained and protected as necessary to prevent leaks and spills from entering the water.

18. In-water work period. All work within the active channel will be completed in accordance with the Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife resources (ODFW 2000, or the most recent version), except as follows:

- a. All in-water work in the Willamette River mainstem between Willamette Falls and the confluence with the Columbia River must be completed between July 1 and October 31.
- b. All in-water work in the Columbia River mainstem below Bonneville Dam, except pile driving, must be completed between November 1 and December 31.
- c. Pile driving in the Columbia River mainstem below Bonneville Dam must be completed between October 1 and November 31.
- d. Hydraulic and topographic measurements and encased geotechnical drilling may be completed at any time, if a fish biologist determines that no adult fish are congregating for spawning and no redds are occupied by eggs or pre-emergent alevins within 300 feet of the work site.

19. Actions that require work area isolation. Any action that involves excavation (other than access management), backfilling, embankment construction, or similar work below ordinary high water where adult or juvenile fish are reasonably certain to be present, or 300 feet or less upstream from spawning habitats, must be effectively isolated from the active stream.

20. Fish capture and removal. Whenever work isolation is required and ESA-listed fish are likely to be present, the applicant must attempt to capture and remove the fish as follows:

- a. A fishery biologist experienced with work area isolation and competent to ensure the safe capture, handling and release of all fish will supervise this part of the action, and complete the fish salvage form from Appendix C that will be submitted with the action completion report.
- b. Any fish trapped within the isolated work area must be captured and released using a trap, seine, electrofishing, or other methods as prudent to minimize the risk of injury, then released at a safe release site.
- c. If electrofishing is used to capture fish, that work must consistent with NMFS' electrofishing guidelines (NMFS 2000).

21. Piling installation. Pilings may be concrete, steel round pile 24 inches in diameter or smaller, steel H-pile designated as HP24 or smaller, or wood that has not been treated with preservatives or pesticides. Any proposal to use wood pilings treated with preservatives or pesticides is not covered by this consultation and will require individual consultation.

- a. When practical, use a vibratory hammer for piling installation. For pile driving in the Columbia River in the month of October, only a vibratory hammer may be used.
- b. Jetting may be used for piling installation in areas with coarse, uncontaminated sediments.

22. Pile driving with an impact hammer. When using an impact hammer to drive or proof steel piles, one of the following sound attenuation methods must be used:

- a. Completely isolate the pile from flowing water by dewatering the area around the pile.
- b. If water velocity is 1.6 feet per second or less, surround the piling being driven by a confined or unconfined bubble curtain (see NMFS and USFWS 2006, Wursig *et al.* 2000, and Longmuir and Lively 2001) that will distribute small air bubbles around 100% of the piling perimeter for the full depth of the water column.
- c. If water velocity is greater than 1.6 feet per second, surround the piling being driven by a confined bubble curtain (*e.g.*, a bubble ring surrounded by a fabric or non-metallic sleeve) that will distribute air bubbles around 100% of the piling perimeter for the full depth of the water column.

23. Pile driving where Steller sea lions may be present. If the action area is between Bonneville Dam and the mouth of the Columbia River, or outside of the Columbia River but within 10-miles of a Steller sea lion haul-out¹, the following conditions apply:

- a. A biologist qualified in marine mammal identification will be on site during all pile driving and will notify the operator to cease operations if a Steller sea lion enters the 1,200 foot radius of the pile.
- b. Pile driving may not begin if Steller sea lions are within 1,200 feet of the pile being driven.
- c. Pile driving must cease if Steller sea lions approach to within 1,200 feet of the pile being driven.

24. Pile removal. Use the following steps to minimize creosote release, sediment disturbance and sediment resuspension:

- a. Install a floating surface boom to capture floating surface debris.
- b. Keep all equipment (*e.g.*, bucket, steel cable, vibratory hammer) out of the water, grip piles above the waterline, and complete all work during low water and low current conditions.
- c. Dislodge the piling with a vibratory hammer, when possible; never intentionally break a pile by twisting or bending.
- d. Slowly lift the pile from the sediment and through the water column.
- e. Place the pile in a containment basin on a barge deck, pier, or shoreline without attempting to clean or remove any adhering sediment – a containment basin for the removed piles and any adhering sediment may be constructed of durable plastic sheeting with sidewalls supported by hay bales or another support structure to contain all sediment and return flow which may otherwise be directed back to the waterway.
- f. Fill the holes left by each piling with clean, native sediments immediately upon removal.
- g. Dispose of all removed piles, floating surface debris, any sediment spilled on work surfaces, and all containment supplies at a permitted upland disposal site.

25. Broken or intractable piling. When a pile breaks or is intractable during removal, continue removal as follows:

- a. Make every attempt short of excavation to remove each piling, if a pile in uncontaminated sediment is intractable, breaks above the surface, or breaks below the surface, cut the pile or stump off at least 3 feet below the surface of the sediment.
- b. If dredging is likely where broken piles are buried, use a global positioning system (GPS) device to note the location of all broken piles for future use in site debris characterization.

¹ Haul outs are located at 3 Arches Rock, Orford Reed, Rogue Reef, Sea Lion Caves, Cape Arago State Park, Oregon Islands National Wildlife Refuge and South Jetty Columbia River.

26. Pesticide-treated wood installation.² Use of lumber, pilings, or other wood products treated or preserved with pesticidal compounds may not be used below ordinary high water, or as part of an in-water or overwater structure.

27. Pesticide-treated wood removal. When it is necessary to remove pesticide-treated wood, the following conditions apply.

- a. Ensure that, to the extent possible, no wood debris falls into the water. If wood debris does fall into the water, remove it immediately.
- b. After removal, place wood debris in an appropriate dry storage site until it can be removed from the project area.
- c. Do not leave wood construction debris in the water or stacked on the streambank at or below the ordinary high water.
- d. Evaluate wood construction debris removed during a project, including pesticide-treated wood pilings, to ensure proper disposal of debris.

1.3.1.3 Types of Actions In-water or Over-water Structures

28. Boat ramps. All boat ramps must consist of pre-cast concrete slabs below ordinary high water, and may be cast-in-place above ordinary high water if completed in the dry. Rock may be used to prevent scouring, down-cutting, or failure at the boat ramp, provided that the rock is no larger than necessary and does not extend further than 4-feet from the edge of the ramp in any direction.

29. Educational signs. To educate the public about pollution from boating activities and its prevention, the Corps shall install (Corps project) or require the following information or its equivalent to be posted on a permanent sign that will be maintained at each permitted facility that is used by the public (e.g., a public boat ramp or marina):

- a. A description of the ESA-listed species which are or may be present in the project area.
- b. Notice that adults and juveniles of these species are protected by the ESA and other laws so that they can successfully migrate, spawn, rear, and complete other behaviors necessary for their recovery.
- c. Therefore, all users of the facility are encouraged or required to: (i) Follow procedures and rules governing use of sewage pump-out facilities; (ii) minimize the fuel and oil released into surface waters during fueling, and from bilges and gas tanks; (iii) avoid cleaning boat hulls in the water to prevent the release of cleaner, paint and solvent; (iv) practice sound fish cleaning and waste management, including proper disposal of fish waste; and (v) dispose of all solid and liquid waste produced while boating in a proper facility away from surface waters.

² For alternatives sources of structural lumber and pilings designed for industrial and marine applications, but not based on pesticide-treated wood, including silica-based wood preservation, improved recycled plastic technology, and environmentally safe wood sealer and stains, see, e.g., Resco Plastics (Coos Bay, Oregon; ph. 541.269.5485) and American Plastic Lumber (Shingle Springs, California; ph. 530.677.7700) for lumber from recycled plastic; Plastic Pilings, Inc. (Rialto, California; ph. 909.874.4080) for structural and non-structural lumber from recycled plastic; Timbersil (Placentia, California; ph. 714.223.1804) for outdoor lumber treated with silica; Kebony (ph. 888.914.9995) for outdoor lumber impregnated with a resin from furfuryl alcohol, a byproduct of sugar production; and Timber Pro Coatings (Portland, Oregon; ph. 503.232.1705) for a silica-based internal wood stabilizer, and a low-VOC wood sealer/stain. The use of trade, firm, or corporation names in this Opinion is for the information and convenience of the action agencies, and does not constitute an official endorsement or approval by the U.S. Department of Commerce or NMFS of any product or service to the exclusion of others that may be suitable.

- 30. Flotation material.** All synthetic flotation material must be permanently encapsulated to prevent breakup into small pieces and dispersal in water.
- 31. New or replacement floats.** Any new or replacement float must be placed at least 50 feet from the shoreline (100-feet from the shoreline in the Columbia River) as measured at ordinary low water or mean lower low water and may not be placed in an estuarine area with submerged aquatic vegetation. Any float wider than 6-feet must also include (a) an open area of grating that is at least 50% of the total surface area,; or (b) be placed where current velocity is at least 0.7 feet per second year-round. Floats may not exceed 10' in width or 40' in length or a total of 400 square feet.
- 32. Piscivorous birds.** All float pilings, mooring buoys, and navigational aids must be fitted with devices to prevent perching by piscivorous birds.
- 33. Relocation of existing structures in a marina.** Any existing structure that is relocated in a marina must remain within the existing overall footprint, but no closer than 50 feet of the shoreline (100 feet in the Columbia River) as measured at ordinary low water or mean lower low water.
- 34. Repair or replacement of wall and roof components for a covered moorage or boat house.** Any replacement for a roof, wall, or garage door of a covered moorage or boat house must be made of translucent materials or incorporate skylights to allow light penetration.

Dredging

- 35. Dredging to Maintain Vessel Access.** When dredging to maintain access to previously authorized docks, wharfs, mooring structures, and boat ramps, the following conditions apply:
- All dredged materials and subsequent leave surface must be suitable and approved for in-water disposal using newly acquired or historical data based on criteria in the Sediment Evaluation Framework ((USACE *et al.* 2009).
 - All dredged sediment and debris must be side cast or returned to the channel within the ordinary high-water line downstream from the dredging site where it will be recruited by the next annual high flow and continue to provide aquatic habitat functions.
 - The dredging must not alter the character, scope, size, or location of the project area or previously authorized dredge prism.
- 36. Dredging to Maintain Functionality.** When discharging or excavating to maintain the functionality of a channel, culvert, intake, or outfall, the following conditions apply:
- Either the discharge or excavation may not exceed 25 cubic yards, or include any water intake or point of diversion that does not have a fish screen that is installed, operated and maintained according to NMFS fish screen criteria and meet NMFS fish passage criteria.
 - All dredged materials and subsequent leave surface must be suitable and approved for in-water disposal using newly acquired or historical data based on criteria in the Sediment Evaluation Framework.
 - All dredged sediment and debris must be side cast or returned within the annual high flow channel downstream from the dredging site where it will continue to provide aquatic habitat functions.
 - The dredging must not alter the character, scope, size, or location of the project area.

SLOPES IV PROGRAMMATIC – IN-WATER OVER-WATER STRUCTURES ACTION COMPLETION FORM

Within 60 days of completing all work below ordinary high water (OHW) as part of an action completed under the SLOPES IV In-water Over-water Structures programmatic opinion, submit the completed action completion form with the following information to NMFS at slopes.nwr@noaa.gov. Use the NMFS Public Consultation Tracking System-Consultation Initiation and Reporting System (CIRS) to submit this report when the online system becomes available.

Corps Permit #:

Corps Contact:

Action Title

Start and End Dates for the completion of in-water work:

Start:

End:

Any Dates work ceased due to high flows:

Include With This Form:

1. Photos of habitat conditions before, during, and after action completion
2. Evidence of compliance with fish screen criteria for any pump used
3. A summary of the results of pollution and erosion control inspections, including any erosion control failure, contaminant release, and correction effort
4. Number, type, and diameter of any pilings removed or broken during removal
5. A description of any riparian area cleared within 150 feet of OHW
6. Linear feet of bank alteration
7. A description of site restoration
8. A completed Salvage Reporting Form from Appendix D for any action that requires fish salvage
9. As-Built drawings for any action involving riprap revetment, stormwater management facility, or bridge rehabilitation or replacement.

SLOPES IV PROGRAMMATIC – IN-WATER OVER-WATER STRUCTURES SALVAGE REPORTING FORM

Within 10 days of completing a capture and release as part of an action completed under the SLOPES IV In-water Over-water Structures programmatic opinion, the applicant or, for Corps civil works actions, the Corps must submit a complete a Salvage Reporting Form, or its equivalent, with the following information to NMFS at slopes.nwr@noaa.gov. Use the NMFS Public Consultation Tracking System-Consultation Initiation and Reporting System (CIRS) to submit this report when the online system becomes available.

Corps Permit #:

Corps Contact:

Action Title

Date of Fish Salvage Operation:

**Supervisory Fish Biologist (name,
address & telephone number):**

Include With This Form:

1. A description of methods used to isolate the work area, remove fish, minimize adverse effects on fish, and evaluate their effectiveness.
2. A description of the stream conditions before and following placement and removal of barriers.
3. A description of the number of fish handled, condition at release, number injured, and number killed by species.

SLOPES IV PROGRAMMATIC – IN-WATER OVER-WATER STRUCTURES RESTORATION/ COMPENSATORY MITIGATION REPORTING FORM

By December 31 of any year in which the Corps approves that the site restoration or compensatory mitigation is complete, the Corps, must submit a complete a Site Restoration/Compensatory Mitigation Reporting Form, or its equivalent, with the following information to NMFS at slopes.nwr@noaa.gov. Use the NMFS Public Consultation Tracking System-Consultation Initiation and Reporting System (CIRS) to submit this report when the online system becomes available.

Corps Permit #:

Corps Contact:

Action Title

Type of Activity:

Include With This Form:

1. Photos of habitat conditions before, during, and after action completion
2. Location of Major Hazard (Lat./Long. And 6th Field HUC Code)
3. Start and end date for the work
4. A summary of the results of mitigation or restoration work completed

Inadvertent Discovery Plan

August 22, 2018

1. Introduction

The U.S. Army Corps of Engineers (Corps) completes the requirements of Section 106 of the National Historic Preservation Act (NHPA), as applicable, for projects authorized by a Department of the Army permit. However, cultural resources or historic properties may unexpectedly be encountered during project construction based on the project location or type of work. These unforeseen finds are called an inadvertent discovery. This plan describes requirements should an inadvertent discovery occur.

In accordance with Section 106 of the NHPA, Federal agencies, such as the Corps, are required to take into account the effects of any permitted action to historic properties. The Corps completes these requirements in cooperation with States, local governments, Native American Tribes, and private organizations and individuals. There are numerous federal and state laws and regulations that apply to historic preservation that include, but are not limited to:

National Historic Preservation Act – [54 USC 306108] [36 CFR 60]

Native American Graves Protection and Repatriation Act – [25 USC 3001] [43 CFR 10]

Procedures for the Protection of Historic Properties – [33 CFR 325 – Appendix C]

Consultation and Coordination with Indian Tribal Governments – [Executive Order 13175]

Rights and Duties Relating to Cemeteries, Human Bodies and Anatomical Gifts – [ORS 97.740- 97.760]

Oregon Historical and Heritage Agencies, Programs and Tax Provisions; Museums; Local Symphonies and Bands; Archaeological Objects and Sites – [ORS 358.905 – 358.955]

Permits and Conditions for Excavation or Removal of Archaeological or Historical Material; Rules; Criminal Penalty – [ORS 390.235]

2. Background

For thousands of years, Native American Tribes have lived on the lands that now comprise the state of Oregon. Although these lands are under various ownerships, Native Americans still retain a strong connection to their ancestral lands. Tribal archeological and burial sites are not simply artifacts of the Tribe's cultural past, but are considered sacred and represent a continuing connection with their ancestors. Native American cultural resources, ancestral remains, funerary objects, sacred objects, and objects of cultural patrimony are protected under federal and state laws. Examples of Tribal cultural resources include, but are not limited to: lithic flakes, stone tools, Native American human remains, remnants of structures (e.g. house pits), fish weirs, and/or shell middens.

In addition to potential Tribal-related sites, non-Tribal cultural and historical resources are also protected under federal and state laws. Examples of material that may be found at a historic-period site include, but are not limited to: glass bottles, cans, structural

foundations, machinery or parts, nails and many other items. If material such as this is uncovered during the course of a project, the procedures outlined below are applicable.

3. Inadvertent Discovery – The permittee shall implement the following procedures:

a. Projects that do not require monitoring by a professional archeologist (see permit special conditions):

1) In the event evidence of human burials, human skeletal remains, cultural items, suspected cultural items, or historic properties, as defined by the NHPA, are discovered and/or may be affected during the course of the authorized work, the permittee shall **Immediately Cease All Ground Disturbing Activities** that may cause further disturbance to those remains or resources. The area of the find shall be secured and protected from further disturbance, including an appropriate buffer around the discovery (i.e. 100 feet) using flagging or other visible marker. Sensitive resources, such as human skeletal remains, may not include visual markers in order to avoid attracting attention. The find may be temporarily protected through stabilization or non-destructive covering. Reasonable steps shall be taken to ensure confidentiality of the discovery and restrict access. The permittee or permittee's representative shall immediately notify the Corps and other appropriate agencies as identified in part 3(a)(2) of this plan, below.

2) Notification Procedures:

- Notification to the Corps, Portland District, Regulatory Branch Archeologist shall be made by email to winston.s.zack@usace.army.mil or phone at 503-808-4337 as soon as possible following discovery, but in no case later than 24 hours. The email or call shall clearly specify the purpose is to report a cultural resource discovery, provide the permittee's name, and Corps permit number.
- The permittee shall also notify the Corps representative (by email or telephone) as identified in the permit letter.
- If the inadvertent discovery is identified as human skeletal remains on non-federal or non-tribal public and private lands, the permittee shall report the discovery to the Oregon State Police at (503) 731-4717 and the county medical examiner/coroner in the most expeditious manner possible. The remains shall not be touched, moved, or further disturbed. The county medical examiner/coroner will assume jurisdiction over the human skeletal remains and make a determination of whether those remains are forensic or non-forensic. If the county medical examiner/coroner determines the remains are non-forensic, then they will report that finding to the Oregon State Historic Preservation Office (SHPO) who will then take jurisdiction over the remains.
- In all inadvertent discovery situations, the permittee is also responsible for contacting the SHPO at (503) 986-0690.

3) Failure to stop work immediately and continue such stoppage could result in a violation of federal and state laws. Violators may be subject to civil and criminal penalties. Work shall remain suspended until notified by the Corps that work may proceed.

4) The permittee shall not resume construction in the area surrounding the discovery until the Corps Regulatory Branch re-authorizes project construction, pursuant to 36 CFR Part 800.13.

b. Projects that require monitoring by a professional archeologist (see permit special conditions):

1) The Corps-required archeological monitor has the authority to temporarily stop all ground disturbing activities in the event evidence of human burials, human skeletal remains, cultural items, suspected cultural items, or historic properties, as defined by the NHPA, are discovered and/or may be affected during the course of the authorized work. Upon positive identification of human burials, human skeletal remains, cultural items, suspected cultural items, or historic properties, as defined by the NHPA, the archeological monitor shall notify the permittee of the inadvertent discovery and the permittee shall **Immediately Cease All Ground Disturbing Activities**. The archeological monitor will take actions necessary to secure the discovery location. The permittee or permittee's representative shall immediately notify the Corps and other appropriate agencies as necessary as described in the Notification Procedures above. Work shall remain suspended until notified by the Corps that work may proceed.

2) Before work can proceed, first, the nature of the discovery must be evaluated. If it is determined the discovery contains human remains, then section 4 below shall be initiated. If the discovery contains less than 10 artifacts, then paragraph 3) below shall be followed. If the discovery contains more than 10 artifacts and does not contain human skeletal remains, then the Corps, in consultation with the SHPO and tribes as appropriate, will determine whether the site may be eligible for listing in the National Register of Historic Places (NRHP). If deemed insignificant the Corps will allow work to continue. If deemed significant, the Corps, in consultation with the SHPO, will evaluate whether the continuation of work would constitute an adverse effect. If the Corps determines the effect will not be adverse, or the area can be avoided, then work will be allowed to continue. If the inadvertent discovery location cannot be avoided, and continuing work would have an adverse effect on the site, the Corps, in consultation with the permittee, SHPO, and tribes as appropriate, will need to draft and finalize a Memorandum of Agreement for the treatment of the historic site before work can proceed.

3) If an isolated artifact (defined as fewer than 10 artifacts by the SHPO) is identified, the archeological monitor shall determine: a) whether there is potential for other artifacts to be present in the vicinity of the initial discovery by acquiring a

state-issued archaeological testing permit (pursuant to state law) to conduct additional survey, soil screening, subsurface testing, or other method deemed appropriate, and b) whether the identified artifacts alone are significant. These two considerations will be used to determine if sufficient evidence is present to define a historic site (i.e. potentially eligible for listing in the NRHP). If upon closer examination the materials discovered are not consistent with human burials, human remains, cultural items, suspected cultural items, or historic properties, as defined by the NHPA, the monitoring archeologist shall notify the Corps (via by phone or email message), and can then allow work to proceed but with caution and at a slower rate until the monitor is confident no sites are represented. The isolated finds shall be reported in the archeological monitor's post-construction monitoring report.

4. Human Remains

a. Plan of Action: If human burials and/or human skeletal remains are discovered, the archeological monitor shall ensure all unauthorized personnel have vacated the site location in a safe manner, make reasonable efforts to secure the location, and stabilize the remains if necessary (e.g. prevent remains from falling out of a trench wall). Every reasonable effort will be made by the monitor to ensure the remains are not physically handled or examined by unauthorized personnel until the proper notifications have been made. Reference is made to the Tribal Position Paper on Human Remains found on SHPO's website at:

http://www.oregon.gov/OPRD/HCD/ARCH/docs/Tribal_position_paper_on_Human_Remains.pdf.

b. Treatment Plan: The permittee shall develop a Treatment Plan (TP) in consultation with the Corps, SHPO, and tribe(s), as needed, to ensure the proper handling, protection, or temporary storage of human remains and/or cultural items until the proper tribe or other entity, as appropriate, can be identified and those resources can be repatriated. The TP will define the items found; develop a strategy for handling/moving human remains and/or cultural items, if applicable; develop a strategy for determining whether additional human remains and/or cultural items are endangered; determine if additional testing is necessary to identify site boundaries; and determine the disposition of the human remains and/or cultural items. The TP will be agreed upon by all parties involved before any future ground disturbance activities resume.



Oregon

Kate Brown, Governor

Oregon Coastal Management Program
Department of Land Conservation and Development
635 Capitol Street, Suite 150
Salem, Oregon 97301-2540
Phone (503) 373-0050
FAX (503) 378-6033
www.oregon.gov/LCD/OCMP

December 21, 2020

Jeff Griffin
Port of Bandon
PO Box 206
Bandon, OR 97411

Project: Port of Bandon Marina Replacement/Reconfiguration
Permit: NWP-2019-513 via Letter of Permission (LOP)
Location: Port of Bandon Marina on the Coquille River (43.120459, -124.411329)

Description: Replace the existing Port of Bandon Marina facilities to meet safety and usability standards. The applicant is requesting a 10 year maintenance permit to allow for periodic maintenance of the new facility. The applicant has increased the project scope to include additional mitigation through offsite piling removal.

Decision: **Concurrence.** After reviewing potential coastal effects and applying the enforceable policies of the Oregon Coastal Management Program to the action requiring a federal permit, the OCMP has concurred with the consistency certification for this activity seeking a federal permit. There are no special conditions attached to this concurrence.

Dear Mr. Griffin,

The Oregon Coastal Management Program (OCMP-DLCD) has reviewed the U.S. Army Corps of Engineers (USACE) permit application NWP-2019-513 for consistency with the state's Coastal Management Program (Program). Any federal action in the coastal zone including administering a federal permit or license, like the Section 404/401 permits under the Clean Water Act or Section 10 of the Rivers and Harbors Act, triggers a federal consistency review to comply with the federal Coastal Zone Management Act (CZMA) of 1972. OCMP has reviewed the proposed project and consistency certification pursuant to CZMA Section 307(c)(3) and attendant regulations of 15 CFR part 930.

The CZMA requires an applicant for a federal license or permit affecting any coastal use or resource within a state's coastal zone to comply with the enforceable policies of the State's federally approved coastal management program.

Oregon's federally approved program is a "networked" coastal management program that integrates authorities of local governments and other state agencies as the "enforceable policies" of the Program. To be consistent with the Program, the proposed project must be consistent with:

- 1) Oregon's Statewide Planning Goals;
- 2) Applicable acknowledged city or county comprehensive plan;
- 3) Selected state authorities (e.g. selected statute sections).

Findings:


OCMP-DLCD independently evaluated the project against Oregon’s federally approved enforceable policies and has determined that the project is consistent with the Program. Evidence in support of this includes the issuance of the following permits or authorizations:

- Oregon Department of State Lands
 - Removal-Fill permit #62786-RF issued December 16, 2020
 - Submerged and Submersible Lands Lease #22052-ML issued January 27, 2016
- Oregon Department of Fish and Wildlife
 - ODFW submitted comments on September 30, 2020, which have been addressed.

Additional Information:

- The applicant has certified that to the best of their knowledge and belief, the project complies with the enforceable policies of the Program and will be completed in a manner consistent with the Program. The Coastal Zone Certification was signed by Jeff Griffin (applicant) on June 25, 2020 (see signed Block 12 below).
- All Necessary Data and Information (NDI) required to initiate federal consistency review was received on August 24, 2020.
- This project is under consideration for a Letter of Permission (LOP) by the U.S. Army Corps of Engineers.
- The City of Bandon City Manager signed Land Use Affidavit (Block 11 of the JPA) on June 25, 2020, confirming that the proposed project is consistent with the applicable comprehensive plan and land use regulations.
- The 30-day public comment period for this project began on September 3, 2020 and yielded zero public comments.

Certification Statement (JPA, Block 12)

(12) COASTAL ZONE CERTIFICATION	
If the proposed activity described in your permit application is within the Oregon Coastal Zone , the following certification is required before your application can be processed. The signed statement will be forwarded to the Oregon Department of Land Conservation and Development (DLCD) for its concurrence or objection. For additional information on the Oregon Coastal Zone Management Program and consistency reviews of federally permitted projects, contact DLCD at 635 Capitol Street NE, Suite 150, Salem, Oregon 97301 or call 503-373-0050 or click here .	
CERTIFICATION STATEMENT	
I certify that, to the best of my knowledge and belief, the proposed activity described in this application complies with the approved Oregon Coastal Zone Management Program and will be completed in a manner consistent with the program.	
Print /Type Applicant Name Jeff Griffin	Title Port Manager
Applicant Signature 	Date 6-25-2020

Consistency Decision Details & Conditions

OCMP-DLCD **concurs**, to the applicant’s certification that the proposal is consistent with the Program. Failure to obtain and abide by all required local, state, or federal permits may constitute a violation of local, state, and/or federal law and subject the applicant to one or more enforcement actions.

Right of Appeal (To Special Conditions)

**There are no special conditions attached to this concurrence.*

If the applicant objects to any conditions within this decision, all parties shall treat DLCD’s concurrence

as an objection. 15 CFR § 930.4(a)(1). Pursuant to 15 CFR § 930.63(e), and within 30 days from receipt of this letter, the applicant may request that the Secretary of Commerce override OCMP-DLCD's conditions/objection. In order to grant an override request, the Secretary must find that the activity is consistent with the objectives or purposes of the CZMA, or is necessary in the interest of national security. A copy of the request and supporting information must be sent to OCMP-DLCD and the federal permitting or licensing agency. The Secretary may collect fees from the applicant for administering and processing their request. 15 CFR § 930.63.

The appellant shall send the Notice of appeal to the Secretary, Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW., Washington, DC 20230; a copy of the notice of appeal to the OCMP-DLCD; and to the Assistant General Counsel for Ocean Services (GCOS), 1305 East West Highway, Room 6111 SSMC 4, Silver Spring, Maryland 20910.

If you have any questions or comments regarding this coastal zone management consistency finding or the consistency review process, please contact me at 503-956-8163 or by e-mail at: deanna.caracciolo@state.or.us.

Sincerely,



Deanna Caracciolo
Coastal State-Federal Relations Coordinator

Cc: Tyler Krug (USACE)

**NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND
REQUEST FOR APPEAL**

Applicant: Jeff Griffin, Port of Bandon		File Number: NWP-2019-513	Date: February 18, 2021
Attached is:			See Section below
X	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A	
	PROFFERED PERMIT (Standard Permit or Letter of permission)	B	
	PERMIT DENIAL	C	
	APPROVED JURISDICTIONAL DETERMINATION	D	
	PRELIMINARY JURISDICTIONAL DETERMINATION	E	

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found in Corps regulations at 33 CFR Part 331, or at <http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/FederalRegulation.aspx>

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process you may contact:
William D. Abadie, Chief Regulatory Branch
U.S. Army Corps of Engineers, Portland District Office
PO Box 2946
Portland, OR 97208-2946
Telephone: (503)808-4373
Email: William.D.Abadie@usace.army.mil

If you only have questions regarding the appeal process you may also contact:
Melinda M. Larsen, Regulatory Appeals Review Officer
U.S. Army Corps of Engineers, Northwestern Division
1201 NE Lloyd Blvd., Suite 400
Portland, OR 97232
Telephone: (503) 808-3888
Email: Melinda.M.Larsen@usace.army.mil

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

<hr/> Signature of appellant or agent.	Date:	Telephone number:
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US Army Corps
of Engineers®
Portland District

Compliance Certification

1. **Permit Number:** NWP-2019-513
2. **Permittee Name:** Port of Bandon
3. **County Location:** Coos

Upon completing the activity authorized by the permit, please complete the sections below, sign and date this certification, and return it to the U.S. Army Corps of Engineers, Portland District, Regulatory Branch. The certification can be submitted by email at cenwp.notify@usace.army.mil or by regular mail at the following address:

U.S. Army Corps of Engineers
CENWP-OD-GL
P.O. Box 2946
Portland, OR 97208-2946

4. Corps-required Compensatory Mitigation (see permit special conditions):

a. Mitigation Bank / In-lieu Fee Credit Transaction Documents:

Not Applicable Submitted Enclosed

b. Permittee-responsible mitigation (e.g., construction and plantings) has been constructed (not including future monitoring). As-built report:

Not Applicable Submitted Enclosed

5. Endangered Species Act – Standard Local Operating Procedures (SLOPES)

(see permit special conditions):

a. SLOPES Action Completion Report:

Not Applicable Submitted Enclosed

b. SLOPES Fish Salvage Report:

Not Applicable Submitted Enclosed

c. SLOPES Site Restoration / Compensatory Mitigation Report:

Not Applicable Submitted Enclosed

I hereby certify the work authorized by the above-referenced permit has been completed in accordance with all of the permit terms and conditions.

Signature of Permittee

Date