

| Approval Classes | Approval Class Definitions | Sub-Class Types | Approval Authority & Process |
|------------------|---|---|---|
| Class I | Permits for use of tidelands that are cancelable by the municipality on 30 days' notice | None | May be made by the Administrator with or without approval of the Assembly. |
| Class II | Class II Approval: Personal use docks and facilities that are immediately seaward of deeded lands and deeded tidelands. | Class IIA: Grants the owner exclusive use of a personal dock that does not exceed 300 linear feet and the tidelands that are immediately adjacent to the facility. Class IIB: For the exclusive use of personal docks with a perimeter of more than 300 linear feet. Class IIC: Approval for mooring buoys. | Approvals shall be made by the Assembly by motion. -Assembly may decide that a Class II facility follow the Class III procedures. Approvals shall be made by the Assembly by motion. -Assembly may decide that a Class II facility follow the Class III procedures. The Planning Commission may approve Class IIC applications with appeal rights to the Assembly. OR , Approvals can be made by the Assembly by motion, or the Assembly may decide that a Class II facility follow the Class III procedures. |
| Class III | Leases for commercial docks and facilities and/or personal docks that include the lease of space and facilities. The approval of Class III facilities shall grant the facility owner exclusive use of the facility. The area required for the berthing of all vessels shall be included in the lease area. Class III facilities include community use docks or docks constructed and owned by individuals other than the upland property owner. | None | Lease is considered and approved via ordinance |

M-Windsor/S-Hughey moved to adopt the findings as listed in the staff report. Motion passed 4-0 by voice vote.

C [CUP 19-14](#)

Public hearing and consideration of a conditional use permit for a short-term rental at 208 Kaagwaantaan Street in the R-1 single-family and duplex residential district. The lot is also known as Lot 1, Back Street Subdivision. The request is filed by Jennifer Alley. The owner of record is Jennifer Alley.

- Attachments:** [CUP 19-14 208 Kaagwaantaan STR Staff Report](#)
 [CUP 19-14 208 Kaagwaantaan STR Aerial](#)
 [CUP 19-14 208 Kaagwaantaan STR Floor Plan](#)
 [CUP 19-14 208 Kaagwaantaan STR Photos](#)
 [CUP 19-14 208 Kaagwaantaan STR Plat](#)
 [CUP 19-14 208 Kaagwaantaan STR Renter Handout](#)
 [CUP 19-14 208 Kaagwaantaan STR Application](#)
 [CUP 19-14 208 Kaagwaantaan STR Public Comment](#)

Ainslie described the property as a single-family home which was owner-occupied. There was a guest suite on the first floor of the house with a bedroom and bathroom; there was not a separate kitchen or cooking facilities and therefore the guest suite would not be considered a separate dwelling unit, diminishing the impact of using the space as a short-term rental on housing stock. The property was at the entrance of Kaagwaantaan Street which was a slow speed, one-way street. Detailed instructions would be needed in the handout to provide directions to ensure compliance with the traffic rules. Ainslie noted that parking could be a potential issue, as the renter handout instructed guests to utilize a City owned lot used for parking adjacent to mailboxes on Kaagwaantaan. Ainslie also noted that one public comment from a neighbor across the street had been received in support of the proposal. Ainslie recommended approval.

The applicant, Jennifer Alley, came forward. Commissioners discussed potential parking issues with the applicant. Alley stated that her property had more than enough room for parking. Windsor noted that when working in the area, he did not find lack of parking to be an issue.

M-Windsor/S-Hughey moved to table consideration of this item until the end of the meeting. Motion passed 4-0 by voice vote.

M-Windsor/S-Hughey moved to approve the conditional use permit for a short-term rental at 208 Kaagwaantaan in the R-1 single-family and duplex residential zoning district subject to the attached conditions of approval. The property was also known as Lot 1, Back Street Subdivision. The request was filed by Jennifer Alley. The owner of record was Jennifer Alley. Motion passed 4-0 by voice vote.

M-Windsor/S-Hughey move to adopt the findings as listed in the staff report. Motion passed 4-0 by voice vote.

D [LM 19-01](#)

Public hearing and consideration of a tidelands lease request for submerged municipal tidelands immediately adjacent to 1401 and 1403 Halibut Point Road in the R-1 single-family and duplex residential district. The lots are also

known as Lots 1 and 2, Borhauer Subdivision. The request is filed by Kris Pearson, John Hardwick, and Ral West. The owners of record are Kris and Erica Pearson, John T. Hardwick Revocable Living Trust, and Ral West Revocable Living Trust.

Attachments: [LM 19-01 1401 & 1403 HPR Tidelands Lease Staff Report](#)
[LM 19-01 1401 & 1403 HPR Tidelands Lease Aerial](#)
[LM 19-01 1401 & 1403 HPR Tidelands Lease Lease Area](#)
[LM 19-01 1401 & 1403 HPR Tidelands Lease Dock Plans](#)
[LM 19-001 1401 & 1403 HPR Tidelands Lease RES 94-580](#)
[LM 19-01 1401 & 1403 HPR Tidelands Lease Applicant Materials](#)

Ainslie laid-out the process by which Municipal tidelands leases are considered and potentially granted. The proposal was classified as a Class IIB permit which is a personal use dock in which the perimeter exceeds 300 linear feet. The role of the Planning Commission in this case was to provide comments on the proposal to staff and the applicant, provide a venue for public hearing and testimony, and to recommend, or not recommend, the proposal to the Assembly. Ainslie noted that per the zoning code, personal use docks are a conditional use in R-1 zones; if the item was recommended for approval, a conditional use permit would come before the Commission at the next meeting. Ainslie clarified that a competitive bid was not needed in this case, because the applicants were the upland property owners. Ainslie stated how the proposal was consistent with the limited use of the area as described in RES 94-580. The proposal had been considered by the Ports and Harbors Commission on 9/11/19 to ensure that there would be no interference with harbor operations; Ports and Harbors voted unanimously to recommend approval of the proposal.

Ainslie described the details of the proposal. Due to the shallow shoreline in the area, it was difficult to access submerged tidelands with adequate depth required for a dock facility which is why a 200 foot pier and 70 foot gangway between shore and the two floats sized 12 feet by 40 feet and 12 feet by 100 feet were needed. Given the expense of such infrastructure, the applicants had decided a joint project would be most efficient. Though there were no land issues present in this case, there was the potential for marine infrastructure, marine traffic, and noise disturbances to occur. The mitigations to these potential issues included the distance between the docks and shore where residences are located, the curvature of the shore line around the subject properties, the fact that the properties were within the breakwater where moderate to heavy marine traffic already occurred, and that the Army Corps of Engineers would be providing oversight of environmental impact through their permitting process. Ainslie stated that she had received one verbal comment from a neighbor in support of the proposal. Ainslie recommended approval. Windsor inquired about the length of the lease, Ainslie answered that due to the classification of the permit, the lease would be for 10 years. Hughey asked if any easements were in place or would be created to ensure access to the shared dock. Ainslie answered that there were no existing or proposed easements, but that the applicants intended to create a legal document/covenant to ensure continued access and maintenance of the dock even in the event that the properties were to transfer ownership.

The applicants, Kris Pearson, John Hardwick, and Ral West came forward. West clarified that they were creating a dock association as the legal instrument for the shared facilities. Pearson and Hughey discussed some of the construction logistics.

M-Hughey/S-Windsor moved to recommend approval of the lease request for Municipal tidelands located seaward of 1401 and 1403 Halibut Point Road. The properties were also known as Lots 1 and 2 Borhauer Subdivision. The request was filed by Kris Pearson, John Hardwick, and Ral West. The owners of record were Kris and Erica Pearson, John T. Hardwick Revocable Living Trust, and Ral West Revocable Living Trust. Motion passed 4-0 by voice vote.

E [P 19-03](#)

Public hearing and consideration of a preliminary plat for a minor subdivision at 1306 Halibut Point Road in the R-2 zoning district. The property is also known as Lot 1A, Little Critter Subdivision. The applicant is the Sitka Community Land Trust. The owner of record is the Sitka Community Land Trust.

Attachments: [P 19-03 SCLT 1306 HPR Staff Report](#)
 [P 19-03 SCLT 1306 HPR Aerial](#)
 [P 19-03 SCLT 1306 HPR Current Plat](#)
 [P 19-03 SCLT 1306 HPR Preliminary Plat](#)
 [P 19-03 SCLT 1306 HPR Applicant Materials](#)

Hughey recused himself to become the applicant.

Ainslie recalled that the Commission had reviewed the conceptual plat of this proposal at the May 1st meeting. The property in question had been deeded to the Sitka Community Land Trust (SCLT) for the affordable housing project, much of which had been previously subdivided for the project. The remaining unsubdivided land was largely non-developable due to the slope, stability, and access issues that would be present. However, on the southeast side of this area, there was a plateau SCLT believed to be buildable, however, not buildable for the SCLT. The access from SCLT property to the plateau would be too steep, and easements from neighbors would be needed. Given these challenges, development of the area would no longer fit within the organization's purview for affordable housing. SCLT reached a preliminary agreement with the neighbor at 1301 Edgecumbe Drive, Robert Woolsey, to purchase this area if the proposed subdivision was successful. The applicant had done significant work to ensure that adequate access and utilities were available to the newly created lot, and to plat necessary easements. The Public Works department was waiting for preliminary plat approval to be achieved before issuing a license for the private use of Kostrometinoff Street which would be used to access the newly created lot. This license would ensure equitable sharing of maintenance costs for all neighbors using the right-of-way. Obtaining the license was a conditional of approval. Ainslie also described a future boundary line adjustment Woolsey planned to request if the subdivision was successful. Ainslie concluded that approving the subdivision would allow SCLT to use the land that would otherwise be surplus to further finance the affordable housing project, would make use of otherwise vacant land, the newly created lot provided adequate space, air, utility needs, meeting the development standards, and that the proposal was an opportunity to clean-up maintenance of the privately used Kostrometinoff Street. Ainslie recommended approval. Spivey asked if the access had been reviewed by emergency services. Ainslie answered that the Police and Fire Departments had been included on a review of the project during the conceptual stage and neither had stated concern regarding the access. Ainslie stated this could be revisited and clarified before final plat approval.

Assessor Evaluation Provided 3.4.22

| | |
|---|------------|
| Parcel # | |
| Total Sq. Ft. | 36,800 |
| Lease Rate (CAP) | 0.045 |
| Upland/Filled Value PSF | \$9.99 |
| Unfilled Value PSF (25% of Upland) | \$2.50 |
| Submerged/Prefilled Value PSF (50% of Unfilled Value) | \$1.25 |
| Market Value | \$45,954 |
| Annual Market Rent | \$2,067.93 |

*comp 3-0690-000

LOC 2.45

**Narrative to accompany Application for
Tideland Lease at 1403/1401 Halibut Point Road**

John Hardwick and Ral West (via their respective Revocable Living Trusts) purchased the property located at 1401 Halibut Point Road. They have begun construction of a new primary residence on this property. The neighbor owning the property at 1403 Halibut Point Road, Kris Pearson, also wishes to build a dock and proposes to join with John Hardwick and Ral West in the applications for permits and tideland lease, as well as the construction of the dock. Each property owner has multiple vessels requiring moorage at this proposed dock.

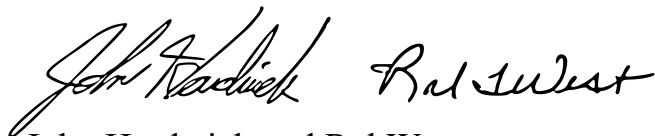
Hardwick/West and Pearson have contracted with an engineer in Ketchikan, Trevor Sande, for the purpose of designing the dock and applying for Corps of Engineers Permit. Preliminary drawings for the dock and the proposed placement of the dock are attached.

This is Trevor's recommendation for the dimensions and location of the dock: The pier is centered on the extension of the common line between properties. The float is offset toward deeper water. I show fill on land, ideally this would extend to the mean high water line but we would need survey data to determine where that line is. Pier could be constructed from land during low tide. I recommend 8' minimum with 10' preferred. I consider 10' float a minimum and recommend 12' on the outer float for better turning at the tee.

The length of the floating dock would be 100'.

John Hardwick and Ral West have been residents of Sitka since 2006, and own a home and several pieces of income property in Sitka.

Respectfully Submitted,

Handwritten signatures of John Hardwick and Ral West in black ink.

John Hardwick and Ral West



① PIER PLAN VIEW
② SCALE: 1"=100'

VICINITY MAP

APPLICATION BY:

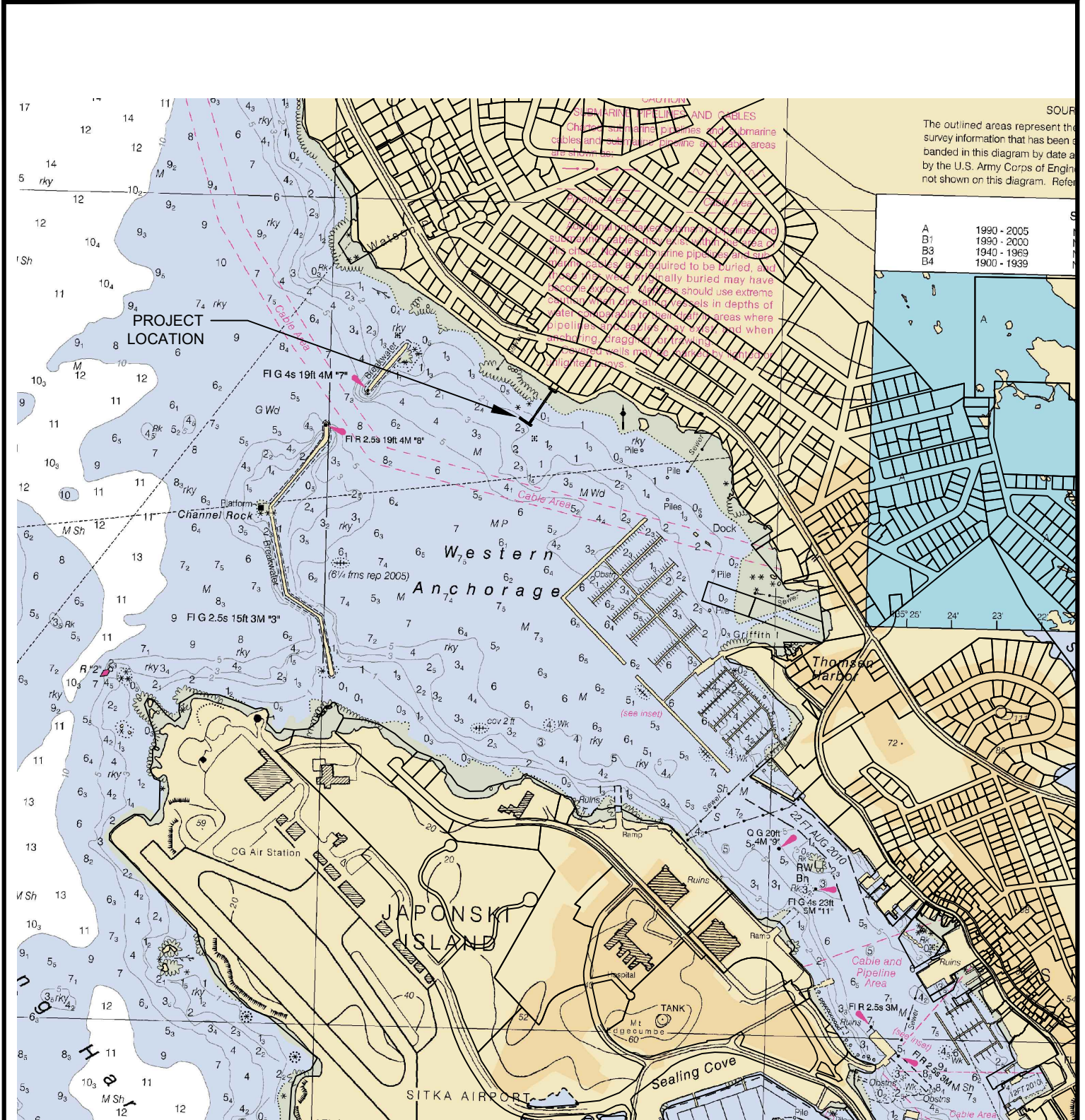
*PEARSON
PIER AND MOORAGE
FLOAT*

AT: SITKA

LOCATED IN: T.55S., R.63E., SECTION 36
Lat 57°3'44.1"N, Long. 135°21'34.8"W

DATE: 7-25-19

SHEET **1** OF **7**



① VICINITY MAP
② SCALE: 1":1000'

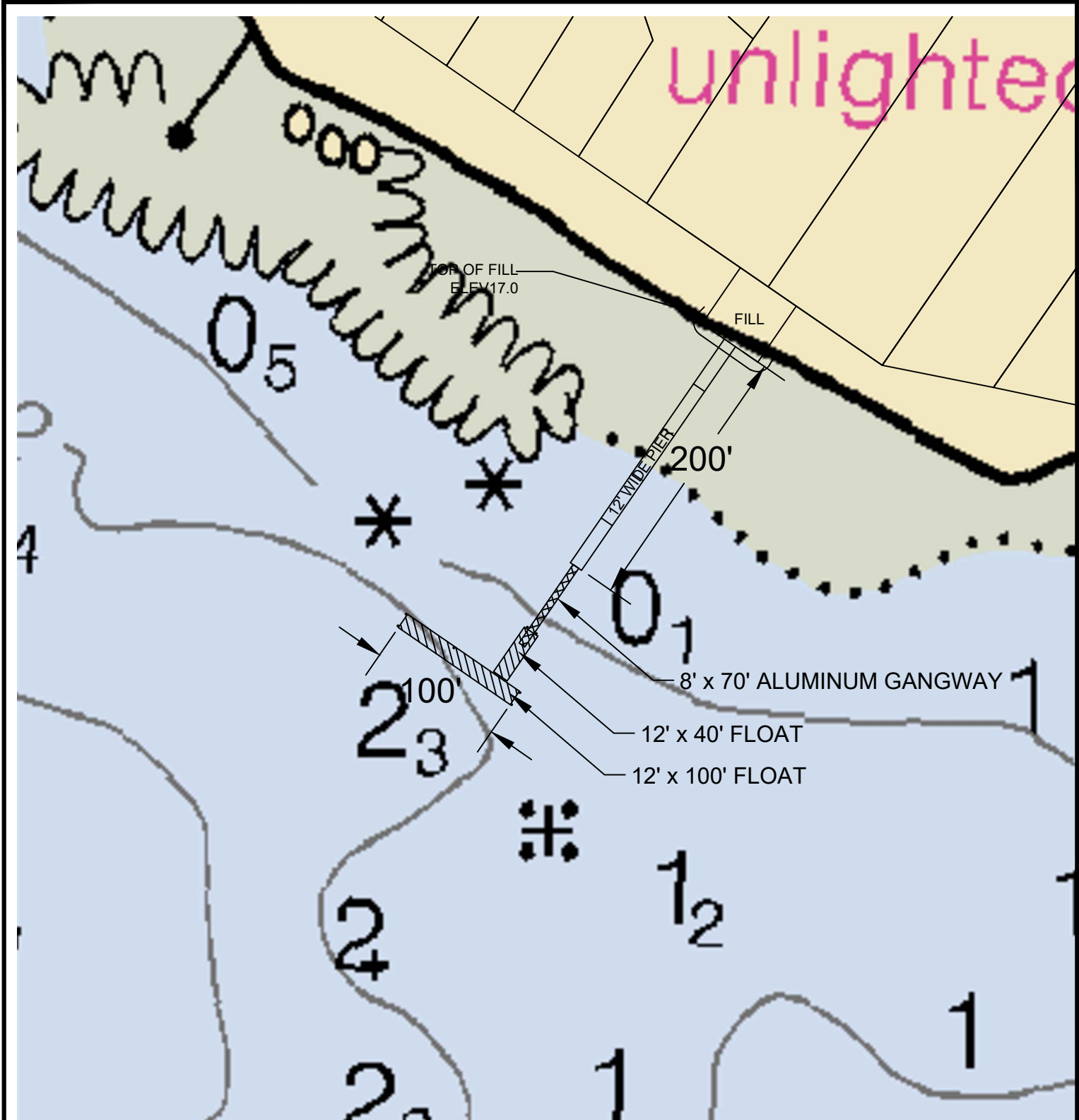
TIDAL DATA SOURCE: NOAA
NAUTICAL CHART SITKA
HARBOR ENTRANCES

PIER AND FLOAT PLAN VIEW

APPLICATION BY:

PEARSON
PIER AND MOORAGE
FLOAT

AT: SITKA
LOCATED IN: T.55S., R.63E., SECTION 36
Lat 57°3'44.1"N, Long. 135°21'34.8"W
DATE: 7-25-19 SHEET **2** OF **7**



① CAUSEWAY SECTION VIEW
 ③ SCALE: 1":100'

TIDAL DATA SOURCE: NOAA
 NAUTICAL CHART SITKA
 HARBOR ENTRANCES

**PIER AND FLOAT
 PLAN VIEW**

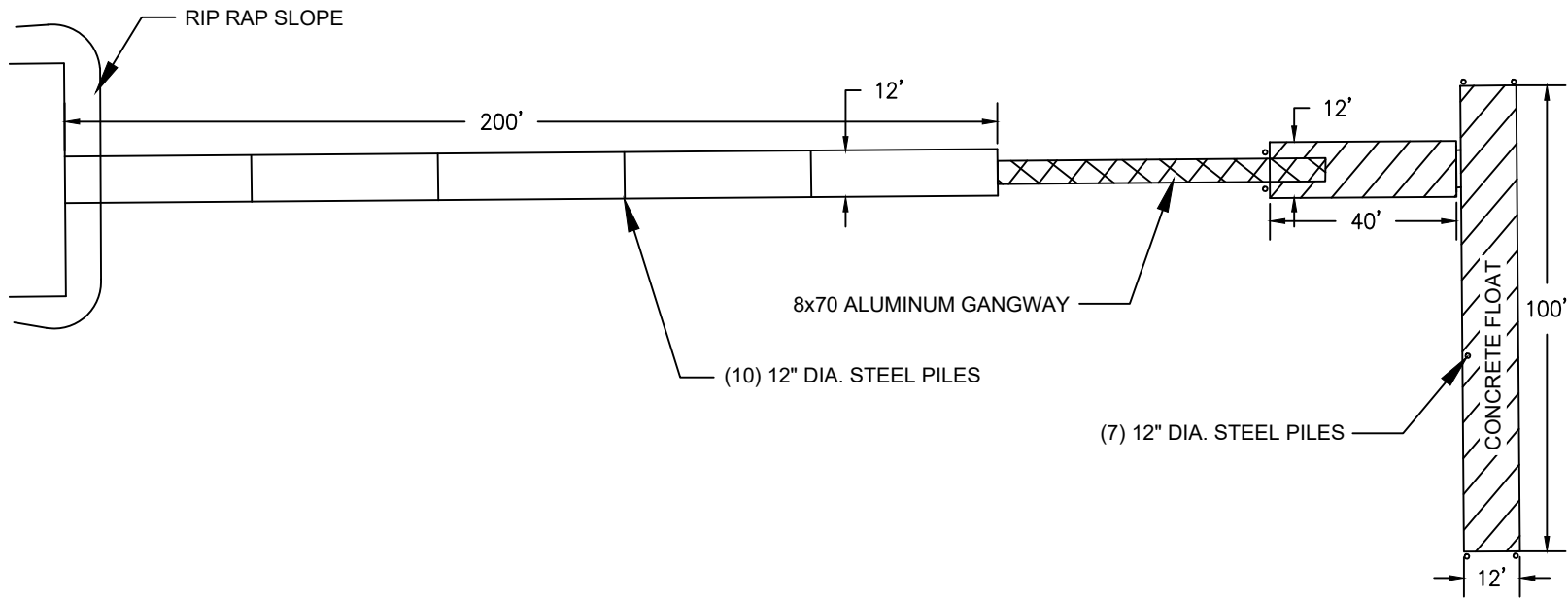
APPLICATION BY:
 KRIS PEARSON

PEARSON
 PIER AND MOORAGE
 FLOAT

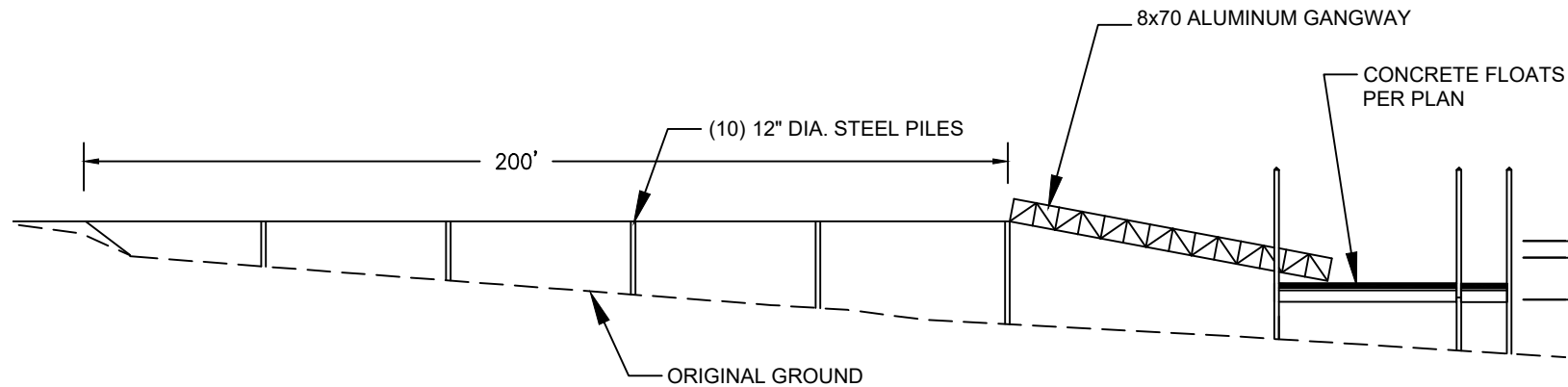
AT: SITKA
 LOCATED IN: T.55S., R.63E., SECTION 36
 Lat 57°3'44.1"N, Long. 135°21'34.8"W

DATE: 7/25/19

SHEET **3** OF **7**



1
4 RAMP AND FLOAT PLAN VIEW
1"=40'



2
4 RAMP AND FLOAT ELEVATION VIEW
1"=40'

TYPICAL SECTIONS

APPLICATION BY:

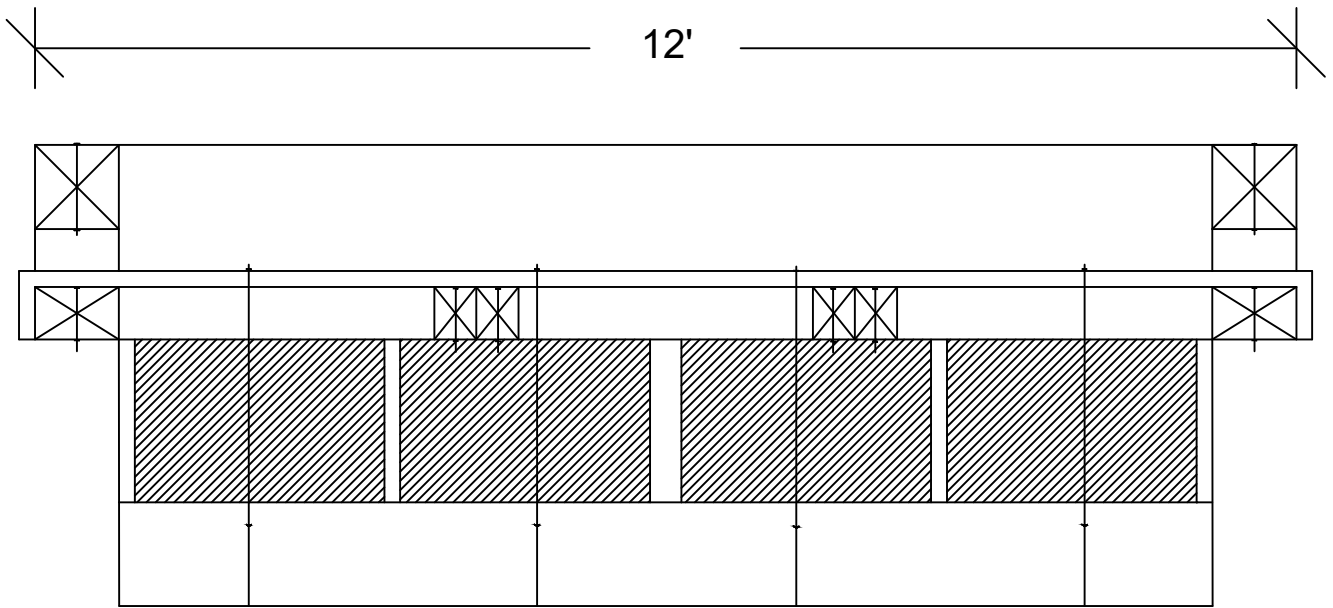
PEARSON
PIER AND MOORAGE
FLOAT

AT: SITKA

LOCATED IN: T.55S., R.63E., SECTION 36
Lot 57'3"44.1"N, Long. 135°21'34.8"W

DATE: 7-25-19

SHEET 4 OF 7



TYPICAL CONCRETE FLOAT

TIDAL DATA SOURCE: NOAA
NAUTICAL CHART SITKA
HARBOR EXTRANCES

**PIER AND FLOAT
PLAN VIEW**

APPLICATION BY:
KRIS PEARSON

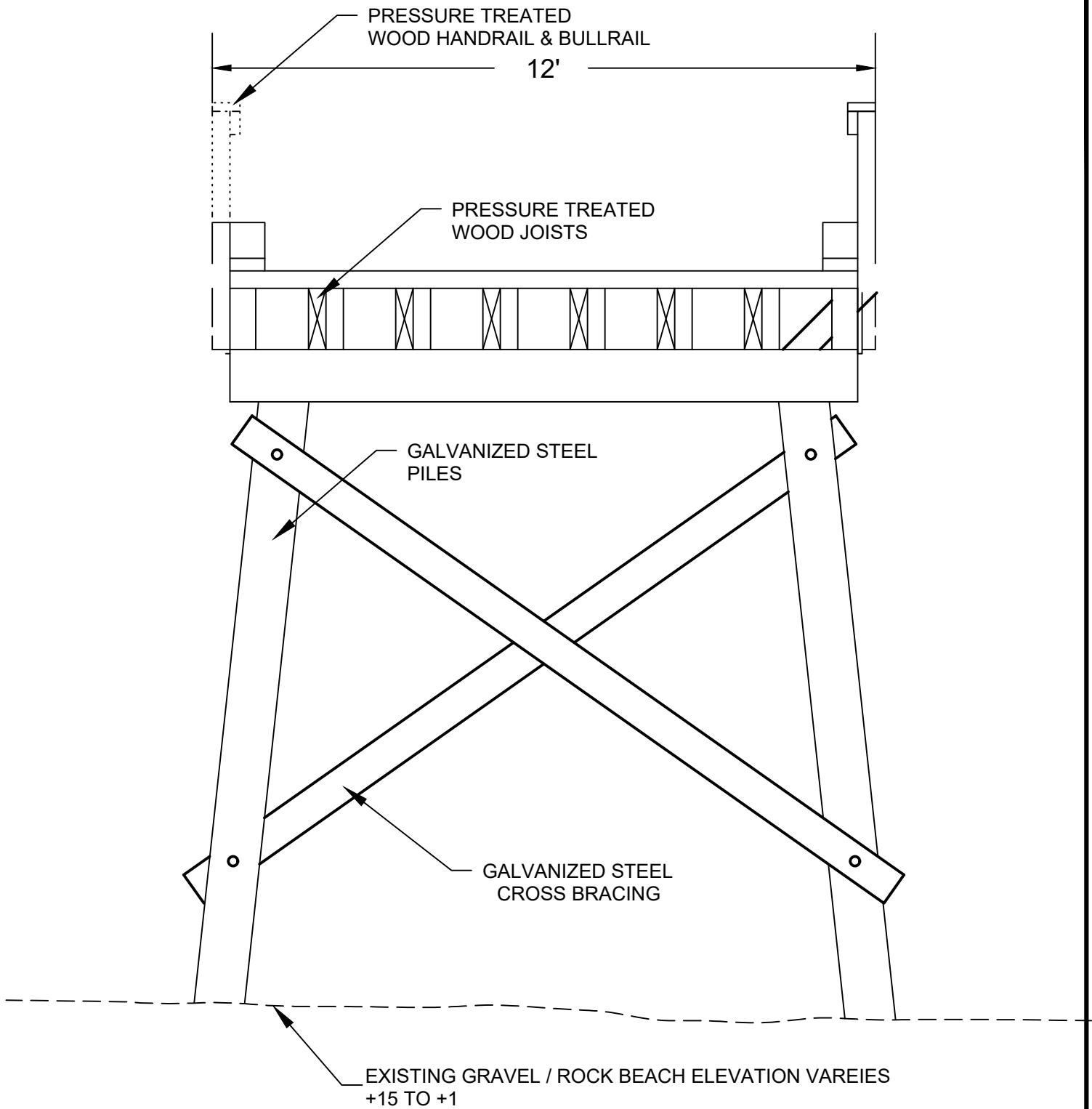
PEARSON
PIER AND MOORAGE
FLOAT

AT: SITKA

LOCATED IN: T.55S., R.63E., SECTION 36
Lat 57°3'44.1"N, Long. 135°21'34.8"W

DATE: 7/25/19

SHEET **3** OF **7**



TYPICAL PIER

TIDAL DATA SOURCE: NOAA
NAUTICAL CHART SITKA
HARBOR EXTRANCES

PIER AND FLOAT PLAN VIEW

APPLICATION BY:
KRIS PEARSON

PEARSON
PIER AND MOORAGE
FLOAT

AT: SITKA

LOCATED IN: T.55S., R.63E., SECTION 36
Lat 57°3'44.1"N, Long. 135°21'34.8"W

DATE: 7/25/19

SHEET **6** OF **7**



DEPARTMENT OF THE ARMY
ALASKA DISTRICT, U.S. ARMY CORPS OF ENGINEERS
REGULATORY DIVISION
P.O. BOX 22270
JUNEAU, AK 99802-2270

November 7, 2019

Regulatory Division
POA-2019-00536

1401-3 HPR Dock Association
Attention: John Hardwick
107A Toivo Circle
Sitka, Alaska 99835

Dear Mr. Hardwick:


Enclosed is the signed Letter of Permission (LOP), file number POA-2019-00536, Sitka Harbor, authorizing the installation of structures in navigable waters of the United States (U.S.) to construct pile-supported dock. Additionally, enclosed are a Notification of Administrative Appeals Options and Process and Request for Appeal form regarding this Department of the Army Letter of Permission (see section labeled "Initial Proffered Permit"), and a Notice of Authorization, which should be posted in a prominent location near the authorized work.

The project site is located within Section 35, T. 55 S., R. 63 E., Copper River Meridian; USGS Quad Map Sitka A-5; Latitude 57.062250° N., Longitude 135.359667° W.; 1401 Halibut Point Road; in Sitka, Alaska.

If changes to the plans or location of the work are necessary for any reason, plans must be submitted to us immediately. Federal law requires approval of any changes before construction begins. Nothing in this letter excuses you from compliance with other Federal, State, or local statutes, ordinances, or regulations

Please contact me via email at: Randal.P.Vigil@usace.army.mil, by mail at the address above, or by phone at (907) 790-4491, if you have questions or to request a paper copy of the LOP and enclosures.

Sincerely,



Randal P. Vigil
Project Manager

Enclosures



DEPARTMENT OF THE ARMY
ALASKA DISTRICT, U.S. ARMY CORPS OF ENGINEERS
REGULATORY DIVISION
P.O. BOX 22270
JUNEAU, AK 99802-2270

November 7, 2019

Regulatory Division
POA-2019-00536

DEPARTMENT OF THE ARMY
LETTER OF PERMISSION

Authorization is hereby granted to 1401-3 HPR Dock Association, to install the following structures below the Mean High Water Mark (+9.1 feet above the 0.0 foot contour) for the construction of a dock in Sitka Harbor, which is a navigable water of the United States (U.S.):

- one 12 foot wide x 200 foot long pile-supported, (10) 12-inch diameter steel, aluminum decked pier;
- one 12 foot wide x 40 foot long concrete float;
- one 12 foot wide x 100 foot long concrete float;
- one 8 foot wide x 70 foot long aluminum gangway;
- (7) 12-inch diameter steel, concrete float, anchor piles.

The work will be performed in accordance with the enclosed plan, sheets 1 – 7, dated August 27, 2019, which are incorporated in and made a part of this Letter of Permission.

This action is based upon the recommendation of the Chief of Engineers and under the provisions of Section 10 of the 1899 Rivers and Harbors Act (30 Stat 1151; 33 U.S.C. 403).

This authorization is subject to the following special conditions and the enclosed general conditions and further information (see enclosure entitled: GENERAL CONDITIONS/INFORMATION).

Special Conditions:

1. The permittee shall comply with the Federal Endangered Species Act, you must implement all of the mitigating measures identified in the enclosed National Marine Fisheries Service letter of concurrence (Number NMFS # AKRO-2019-03283, dated November 4, 2019), including those ascribed to the Corps therein. If you are unable to implement any of these measures, you must immediately notify the Corps and the National Marine Fisheries Service so we may consult as appropriate, prior to initiating the work, in accordance with Federal law.

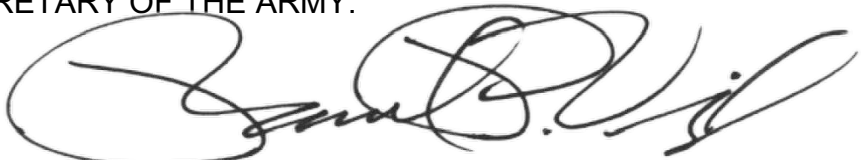
2. You must install and maintain, at your expense, any safety lights and signals prescribed by the U.S. Coast Guard (USCG), through regulations or otherwise, on your authorized facilities. The USCG may be reached at the following address and telephone number: Commander (oan), 17th Coast Guard District, Post Office Box 25517, Juneau, Alaska 99802, (907) 463-2272.

3. The permittee understands and agrees that, if future operations by the U.S. 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 Corps, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the U.S. No claim shall be made against the U.S. on account of any such removal or alteration.

4. Within 60 days of completion of the work authorized by this permit, the Permittee shall complete the attached "Self-Certification Statement of Compliance" form and submit it to the Corps (U.S. Army Corps of Engineers, Regulatory Division, CEPOA-RD, Juneau Field Office, P.O. Box 22270 Juneau, AK. In the event that the completed work deviates in any manner from the authorized work, the Permittee shall describe the deviations between the work authorized by this permit and the work as constructed on the "Self-Certification Statement of Compliance" form. The description of any deviations on the "Self-Certification Statement of Compliance" form does not constitute approval of any deviations by the Corps.

Nothing in this authorization shall be construed as excusing you from compliance with other Federal, State, or local statutes, ordinances, or regulations which may affect the proposed work.

BY AUTHORITY OF THE SECRETARY OF THE ARMY:



November 7, 2019

DATE

FOR: District Engineer
U.S. Army, Corps of Engineers

GENERAL CONDITIONS/INFORMATION

1. The time limit for completing the work authorized ends five years from the date of this authorization. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit you must immediately notify this office of what you have found. We 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.
4. If you sell the property associated with this permit, you must contact the Alaska District Corps of Engineers to validate the transfer of this authorization.
5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit.
6. You must allow representatives from this office 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 your permit.

Further Information:

1. 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.

2. 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 un-permitted 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 U.S. in the public interest.

c. Damages to persons, property, or to other permitted or un-permitted 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.

3. Reliance on Applicant's Data. The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

4. Re-evaluation of Permit Decision. This office may re-evaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a re-evaluation include, but are not limited to, the following:

a. You fail to comply with the terms and conditions of this permit.

b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 3 above).

c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a re-evaluation 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 you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may, in certain situations, (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

5. Extensions. General Condition #1 establishes a time limit for the completion of the activity authorized by this permit. 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 consideration to a request for an extension of this time limit.



**This notice of authorization must be
conspicuously displayed at the site of work.**

United States Army Corps of Engineers
Sitka Harbor

**A PERMIT TO: INSTALL STRUCTURES IN NAVIGABLE WATERS OF THE
UNITED STATES.**

AT: 1401 HALIBUT POINT ROAD; IN SITKA, AK

HAS BEEN ISSUED TO: 1401-3 HPR DOCK ASSOCIATION

on: NOVEMBER 7, 2019 and expires on: NOVEMBER 30, 2019

ADDRESS OF PERMITTEE: 107A TOIVO CIRCLE, SITKA, AK 99835

Permit Number:

POA-2019-00536

**FOR: *District Commander*
Randal P. Vigil
Project Manager
REGULATORY DIVISION**

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

| | | |
|--|---|-------------------|
| Applicant: 1401-3 HPR Dock Association | File Number: POA-2019-00536 | Date: 11/07/2019 |
| 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 at

http://www.usace.army.mil/CECW/Pages/reg_materials.aspx or Corps regulations at 33 CFR Part 331.

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:

Randal Vigil
Alaska District Corps of Engineers
Juneau Regulatory Field Office (CEPOA-RD-SE)
Post Office Box 22270
Juneau, Alaska 99802-2270
(907) 790-4491

If you only have questions regarding the appeal process you may also contact:

Regulatory Program Manager
U.S. Army Corps of Engineers, Pacific Ocean Division
CEPOD-PDC, Bldg 525
Fort Shafter, HI 96858-5440

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.

Signature of appellant or agent.

Date:

Telephone number:

SELF-CERTIFICATION STATEMENT OF COMPLIANCE

Permit Number: POA-2019-00536

Permittee's Name & Address (please print or type): _____

Telephone Number: _____

Location of the Work: _____

Date Work Started: _____ Date Work Completed: _____

PROPERTY IS INACCESSIBLE WITHOUT PRIOR NOTIFICATION: YES _____ NO _____
TO SCHEDULE AN INSPECTION PLEASE CONTACT _____
AT _____

Description of the Work (e.g. bank stabilization, residential or commercial filling, docks, dredging, etc.): _____

Acreage or Square Feet of Impacts to Waters of the United States: _____

Describe Mitigation completed (if applicable): _____

Describe any Deviations from Permit (attach drawing(s) depicting the deviations):

I certify that all work and mitigation (if applicable) was done in accordance with the limitations and conditions as described in the permit. Any deviations as described above are depicted on the attached drawing(s).

Signature of Permittee

Full Name of Permittee (printed or typed)

Date



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

National Marine Fisheries Service

P.O. Box 21668

Juneau, Alaska 99802-1668

November 4, 2019

Col. Philip Borders
U.S. Army Corps of Engineers, Alaska District
Regulatory Division
P. O. Box 22270
Juneau, AK 99802-2270

Re: R&M Engineering, Sitka Harbor 1401-3 HPR Dock Association dock, POA-2019-00536, AKRO-2019-03283

Dear Colonel Borders:

This letter responds to your request for concurrence from the National Marine Fisheries Service (NMFS) pursuant to Section 7 of the Endangered Species Act (ESA) for the proposal to construct a dock supported by seventeen 12-inch diameter steel piles inside the breakwater of Sitka Harbor near Sitka, Alaska. NMFS received a request for an expedited informal consultation on October 29, 2019. Your revised request qualified for our expedited review and concurrence because it met our screening criteria and contained all required information on your proposed action, mitigation measures, and its potential effects to listed species and designated critical habitat. Expedited consultation for this proposed action commenced on October 29, 2019.

We reviewed your consultation request document and related materials. Based on our knowledge, expertise, and the materials you provided, we concur with your conclusions that the proposed action with its proposed mitigation measures (including a 3,500-m exclusion zone that encompasses all waters within the breakwater and extends westward to where the underwater sound is attenuated by the Parker Group of islands), is not likely to adversely affect the Mexico distinct population segment (DPS) humpback whale (*Megaptera novaeangliae*), Western DPS Steller sea lion (*Eumetopias jubatus*), Northeast Pacific fin whale (*Balaenoptera physalus*), North Pacific right whale (*Eubalaena japonica*), or North Pacific sperm whale (*Physeter macrocephalus*). A complete administrative record of this consultation is on file at the Juneau NMFS office.

Reinitiation of consultation is required where discretionary federal involvement or control over the action has been retained or is authorized by law and if (1) take of listed species occurs, (2) new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered, (3) the action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in this concurrence letter, or (4) a new species is listed or critical habitat designated that may be affected by the identified action (50 CFR 402.16).

Please direct any questions regarding this letter and instruct the applicant to submit the protected species observer report to Julie Scheurer, at Julie.scheurer@noaa.gov or 907-586-7111.

Sincerely,

Jonathan M. Kurland
Assistant Regional Administrator
for Protected Resources

cc: Randal.P.Vigil@usace.army.mil





DEPARTMENT OF THE ARMY
ALASKA DISTRICT, U.S. ARMY CORPS OF ENGINEERS
REGULATORY DIVISION
P.O. BOX 22270
JUNEAU, AK 99802-2270

October 29, 2019

Regulatory Division
POA-2019-00536

Mr. Jon Kurland
Assistant Regional Administrator for Protected Resources
National Marine Fisheries Service, Alaska Region
Post Office Box 21668
Juneau, Alaska 99802

Dear Mr. Kurland,

The U.S. Army Corps of Engineers, Regulatory Division (Corps) has received and is reviewing a Department of the Army (DA) permit application submitted by R&M Engineering-Ketchikan on behalf of the 1401-3 HPR Dock Association for the proposed project as described below. The Corps requests initiation of expedited informal consultation under section 7(a)(2) of the Endangered Species Act (ESA) for the proposed project. As the federal lead action agency, the Corps intends to review the proposed project for authorization pursuant to Section 10 of the Rivers and Harbors Act of 1899 (Section 10) (33 USC 403).

The purpose of this letter is to evaluate the potential effect of the proposed action on species listed as endangered or threatened under the ESA, or their designated critical habitat. Our supporting analysis is provided below. We request your written concurrence if you agree with our determination.

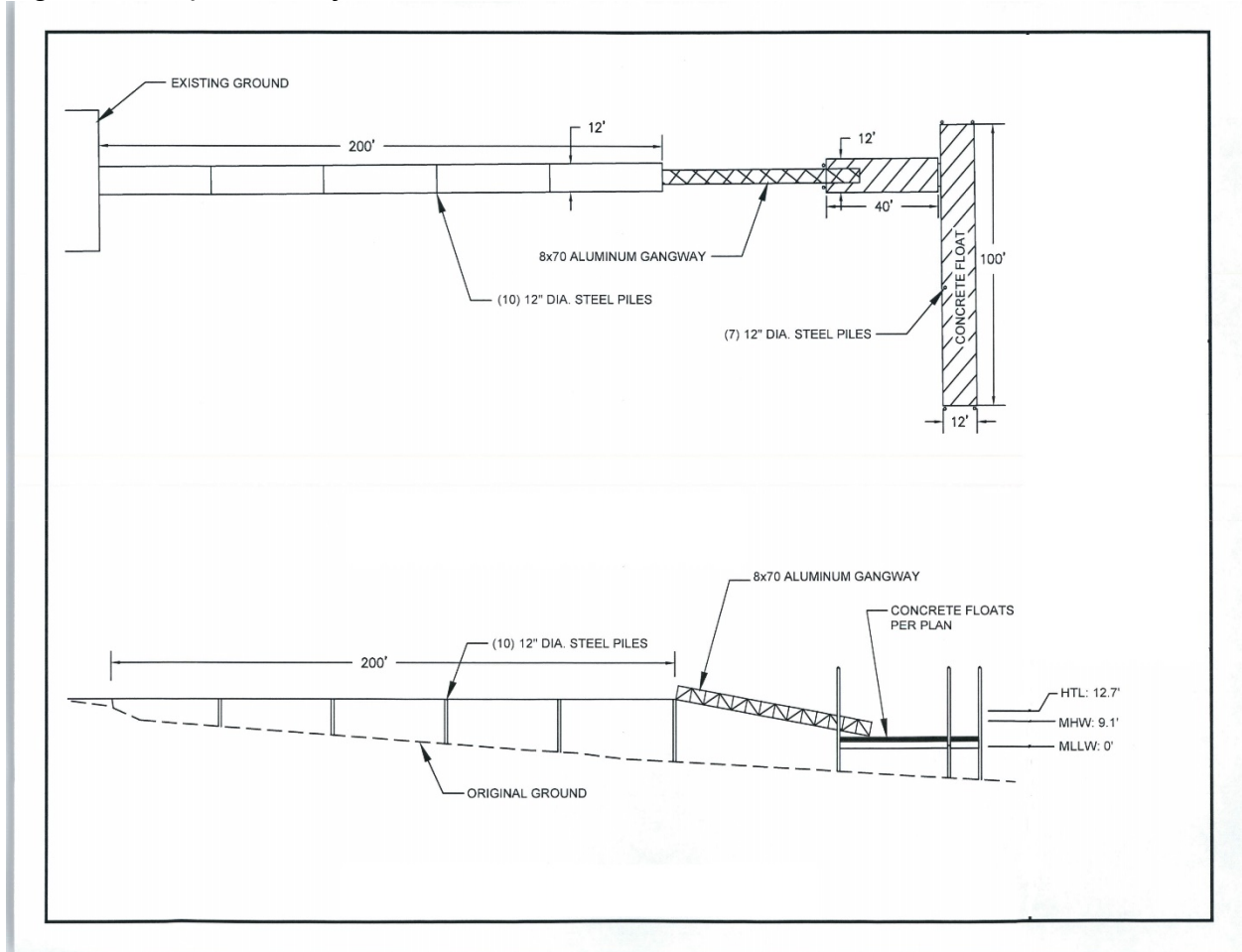
Project Description

The proposed project would involve the following work in, over, or below the Mean High Water Mark (+9.1 feet above the 0.0 foot contour) in Sitka Harbor, which is a navigable water of the United States (U.S.):

- Construct one 12 foot wide x 200 foot long pile supported, (10) 12-inch diameter steel, aluminum decked pier;
- Install one 12 foot wide x 40 foot long concrete float;
- Install one 12 foot wide x 100 foot long concrete float;
- Install one 8 foot wide x 70 foot long aluminum gangway;

- Install (7) 12-inch diameter steel, concrete float, anchor piles.

Figure 1. Proposed Project Plan



The project site is located at Section 35, T. 55 S., R. 63 E., Copper River Meridian; USGS Quad Map Sitka A-5; Latitude 57.062250° N., Longitude 135.359667° W.; 1401 Halibut Point Road; in Sitka, Alaska. Figure 2 shows the project location.

Figure 2. Project Location Map

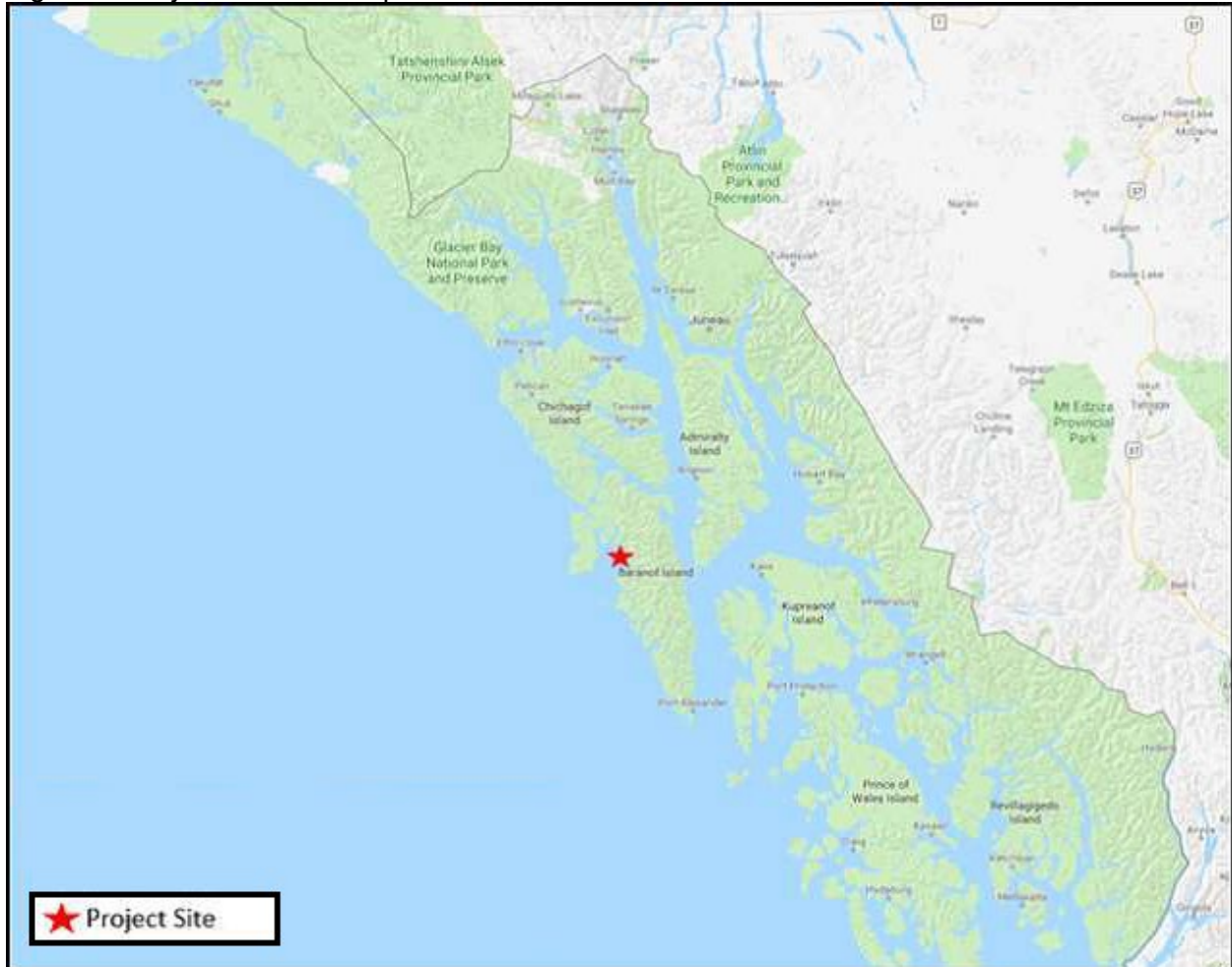
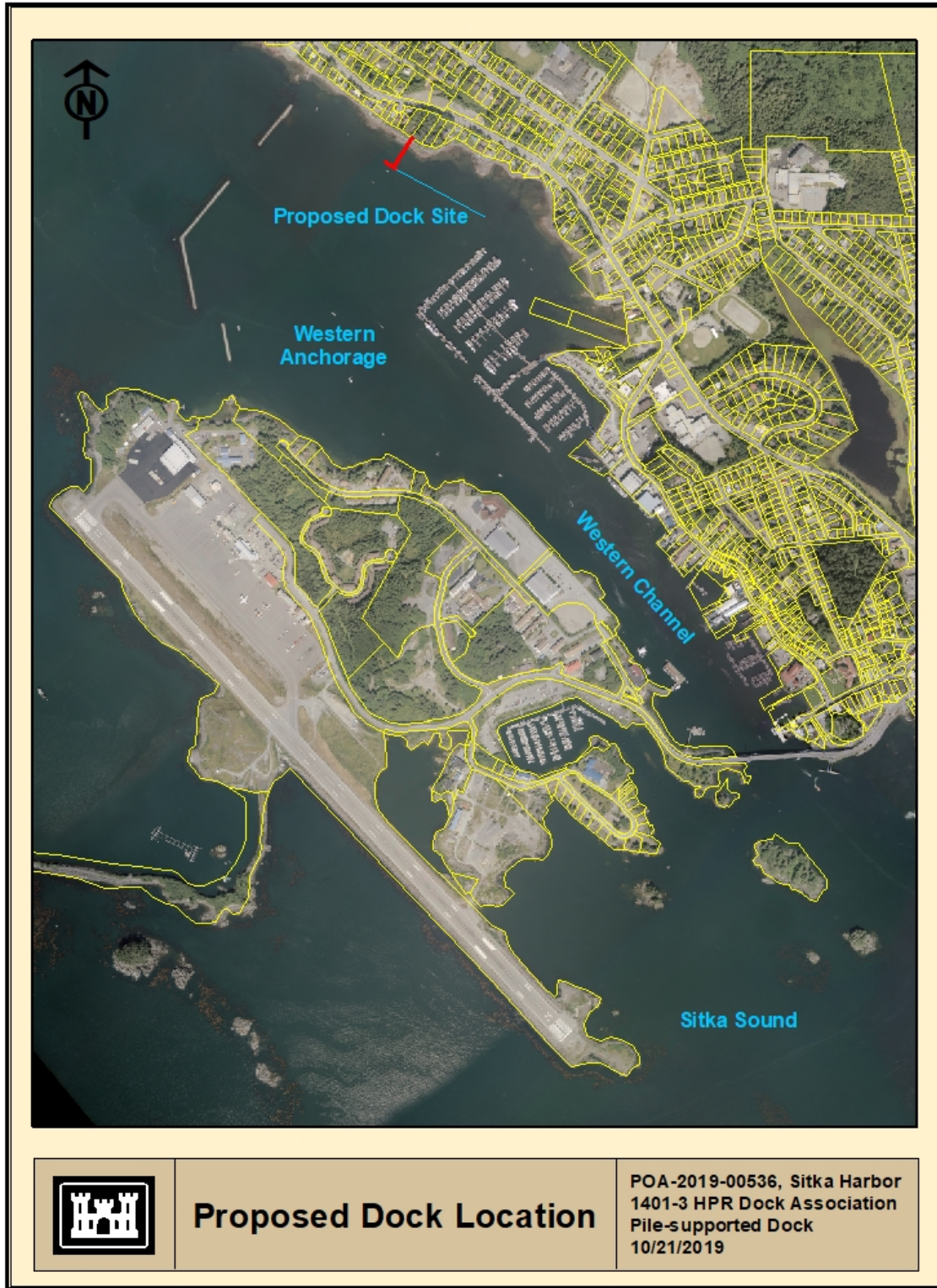


Figure 3. Proposed Dock Site



Construction Methods

Pile Installation Equipment

The following equipment would be used:

- Vibratory hammer- Model: ICE 22-30, Energy rating: 183 ft. lbs., Max Frequency: 615 vpm, Force: 81 tons.
- Drill- Model: Sandvick Silverdrill 32-SD12/39, Weight: 1085 lb, Drill bit: 14", Air consumption: 250 psi.
- Compressor: Model: Ingersoll Rand 1170-350 (1170 CFM @ 350 PSI), RPM: 1800 RPM.

Pile Installation

Piles would be installed with a vibratory hammer. If bedrock is encountered piles would be socketed into the bedrock with a down-hole drill with under-reamer bit (the drill will be used first to drill a hole into the bedrock to a maximum depth of 5 feet and then socket the pile into the bedrock). Drilling would be done through a casing; fill the hole with sand, remove casing, and install the piling.

If a vibratory hammer can be used on all 17 piles. Duration would be approximately 10 minutes per piling. If no drilling is required, six piles per day would be installed.

Drilling pile sockets averages 45 minutes per pile. Worst case scenario is that drilling would be required on all piling, which would result in two piles installed per day.

Construction Vessels

The following vessels are expected to be used to support construction:

- One flexi float material barge (approximately 80 feet x 20 feet by 5 feet) to transport materials equipment from Sitka dock to the project site.
- A construction barge, the H2 (crane barge 85 feet x 35 feet x 5 feet), to be used onsite to perform construction.
- A 26 foot twin 300 hp push tug "CECIL P."
- One skiff (16-foot skiff with a 60 horsepower outboard motor) transported to the project site on the construction barge or acquired locally in Sitka to support construction activities.

Transport of Materials and Equipment

The materials would be shipped direct from Washington to Sitka via Alaska Marine Lines or Samson Tug & Barge. The flexifloat sectional material barge, any required drilling equipment & casing would be shipped via Alaska Marine Lines or Samson Tug and barge from Ketchikan to Sitka. The H2 construction barge & CECIL P push tug would travel Ketchikan to Sitka under their own power, perform the work, and demobilize back to Ketchikan upon completion. Once on site, the H2 would deploy a

four point anchor / winch system, as well as 90 foot spud to control positioning while performing the work.

Transport of Workers to and from Work Platform

Transport of Workers to and from Work Platform Construction workers would either walk directly on to the work platform or use a skiff within the harbor for transport to the work platform. There could be multiple skiff trips during the day; however, the area of travel would be small and enclosed within the harbor's breakwater.

Dates and Duration

Work is expected to commence on or around May 1, 2020, and extend through May 9, 2020. If permitted, the project proponent would have five years to complete the proposed work.

Description of the Action Area

The action area is defined in the ESA regulations (50 CFR 402.02) as the area within which all direct and indirect effects of the project will occur. The action area is distinct from and larger than the project footprint because some elements of the project may affect listed species some distance from the project footprint. The action area, therefore, extends out to a point where no measurable effects from the project are expected to occur.

For this project, the action area has been determined by the area of water that will be ensonified above the NMFS Level B harassment acoustic threshold of 120 decibels (dB) re 1 μ Pa (rms) for continuous sources (e.g. vibratory pile driving), the area where received noise levels from pile driving could expose humpback whales and Steller sea lions to behavioral harassment. This area has been calculated to extend approximately 12,023 meters from the sound sources in Sitka Sound in Southeast Alaska (Table 1).

The distance to the Level B threshold was calculated based on a proxy source level of 160.0 SPL for vibratory installation of 24-inch diameter steel piles and using the practical spreading model in the Zone of Influence spreadsheet tool developed by NMFS. The proxy source level is from the 90th percentile measured source levels from pile driving of 24-inch diameter piles to construct the Alaska Department of Transportation and Public Facilities Kodiak Ferry Terminal in Kodiak, Alaska (Denes et al. 2017, Table 72).

Table 1. Calculated Distances to Level B Shutdown Zones

| Source | NMFS-managed species (m) |
|---------------------------------------|--------------------------|
| Vibratory Pile Driving/Removal | |
| 12-inch installation | 5,412 |
| Socketing (down-hole drilling) | |
| 12-inch installation | 12,023 |

NOTE: The Sitka Harbor breakwater, Parker Group Islands, and the harbor topography stop underwater noise transmission before it reaches these calculated distances, thus, the Action Area is truncated where these landforms and structures stop underwater noise transmission. See Figure 4.

Table 2. Sitka Harbor Dock Project Shut Down Zones

| Source | NMFS-managed species (m) |
|---------------------------------------|--|
| Vibratory Pile Driving | |
| 12-inch installation | 3,500 west of breakwater 1,000 inside of harbor |
| Socketing (down-hole drilling) | |
| 12-inch installation | 3,500 west of breakwater 1,000 inside of harbor |

Sitka Dock Project Action Area

The action area of the proposed project would normally encompass the disturbances defined by Level B Harassment acoustic threshold, an alternative action area is proposed based on the breakwater present in the Sitka Harbor and the narrow characteristics of the Sitka Channel. A similar determination was made by NMFS for the dock construction project for Silver Bay Seafoods in False Pass, AK. Figure 4 shows the proposed action area.



Figure 4. Proposed action area for the Sitka Dock Project.

NMFS Listed Species and Critical Habitat in the Action Area

Within the action area, threatened Mexico Distinct Population Segment (DPS) humpback whale (*M. novaeangliae*); endangered Western DPS Steller sea lion (*E. jubatus*); endangered fin whale (*Balaenoptera physalus*); endangered North Pacific right whale (*Eubalaena japonica*); and endangered sperm whale (*Physeter macrocephalus*); occur.

Critical habitat has been designated for two of these species, the North Pacific right whale and the Western DPS Steller sea lion; however, the project action area does not encompass critical habitat of any ESA-listed species, and thus this project will have no effect on critical habitat.

Humpback Whale

Humpback whale migrations from their tropical calving and breeding grounds in winter to their high-latitude feeding grounds in summer. However, humpback whales have been observed in Southeast Alaska in all months of the year.

Straley et al. (2018) documented 440 humpback whales at the north end of Eastern Channel over 190 hours of observation over eight years (Straley et al. 2018; Table 3). During 21 days of monitoring during the construction of GPIP Dock between October 9 and November 9, 2017, 39 humpback whales were observed (Turnagain 2017). No humpback whales were observed within Sitka Channel during the eight days of monitoring in January 2017 during the construction of the Sitka Petro Dock (Windward 2017). Near Biorka Island, about 25 kilometers south of the project, 22, 3, 0, and two humpback whales were sighted in June, July, August, and September 2018, respectively (Turnagain 2018). Humpback whales were not observed during recent monitoring conducted for short periods over eight days in September 2018 near Crescent Harbor (SolsticeAK 2018).

Table 3. Total number of Individuals Observed and Minutes of Observation by Month from Whale Park between 1995 and 2002 1 (From Straley, et al. 2018)

| Species | Jan | Feb | Mar | Apr | May | Jun | Jul | Aug | Sept | Oct | Nov | Dec |
|---------------------------|------------|------------|------------|------------|------------|------------|------------|------------|-------------|------------|------------|------------|
| Humpback whales | 73 | 35 | 6 | 3 | 0 | N/A | N/A | N/A | 16 | 66 | 131 | 110 |
| Steller sea lions | 287 | 180 | 66 | 8 | 0 | N/A | N/A | N/A | 12 | 18 | 113 | 22 |
| Observation effort (mins) | 1,127 | 1,646 | 1,608 | 960 | 258 | 0 | 0 | 0 | 1,197 | 1,667 | 1,807 | 1,085 |

1 No observations were made between June and August.

Most of the humpback whales that are found feeding in Sitka Sound in winter months make the migration south across the North Pacific to their mating and calving grounds in Hawaii and Mexico; however, this likely occurs after herring have moved out of the project area. Humpback whales have been documented making the migration in under 40 days, allowing whales to feed longer before they migrate south for mating and calving activities (ASG 1997).

Similar to the rest of Southeast Alaska, based on the analysis of Wade et al. (2016), there is a 93.9 percent probability that humpback whales occurring in the action area belong to the non-listed (recovered) Hawaii DPS and there is a 6.1 percent probability that humpback whales occurring in Sitka Sound and Silver Bay belong to the threatened Mexico DPS.

Critical habitat has not been designated for the humpback whale.

Though humpback whales are routinely observed in the Sitka Sound during foraging and migrating activities, their occurrence in the project area is unlikely due to heavy boat traffic and the narrow characteristics of the Sitka Channel. However, the applicant would implement shutdown procedures if a humpback whale is observed to enter the shutdown zone.

Steller Sea Lion

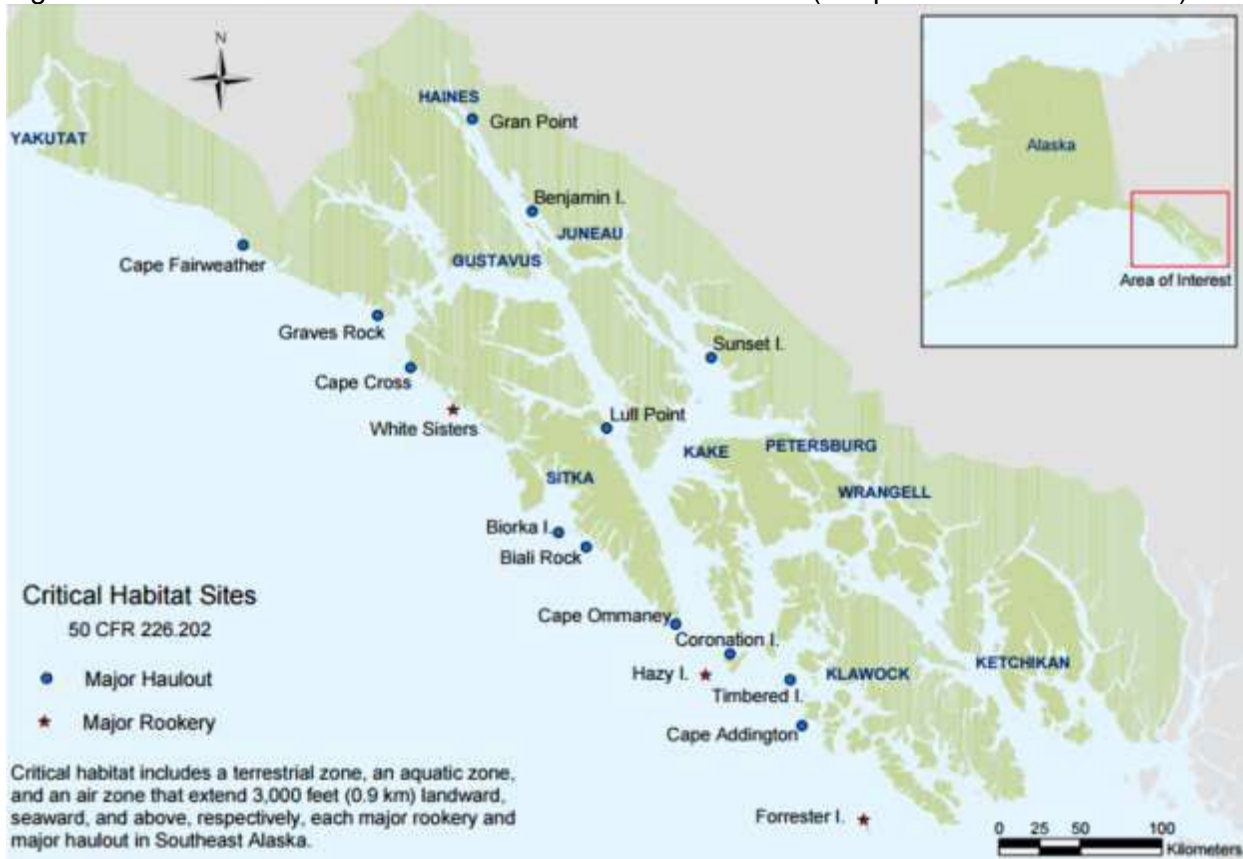
Steller sea lions occur year-round in the project action area. Most are expected to be from the Eastern DPS; however, it is likely that some Steller sea lions in the action area are from the Western DPS (Jemison et al. 2013; NMFS 2013). Jemison et al. (2013) estimated an average annual breeding season movement of Western DPS Steller sea lions to southeast Alaska of 917 animals. Based this information, approximately half of the observed Steller sea lions in the project area could belong to the endangered western DPS.

Steller sea lions were seen from Whale Park during every month of monitoring (September to May) between 1994 and 2002 (Straley et al. 2018). In June 2019 and in the vicinity of the action area, a total of 42 individual Steller sea lions were sighted on three separate days during the O'Connell Bridge Lightering Float Replacement Project (SolsticeAK 2019). Individual sea lions were seen on 19 of 21 days in Silver Bay and Easter Channel during monitoring for GPIP dock construction between October and November 2017 (Turnagain 2017). Near Biorka Island, sea lions were seen infrequently; six, two, and zero sea lions were sighted in June, July, and August 2018, respectively (Turnagain 2018). During eight days of monitoring for the Petro Marine dock in January 2017, individual sea lions were seen on three days (Windward 2017). Steller sea lions were observed five of eight days during recent monitoring conducted in 2018 near the action area where a group of 4 sea lions were observed once and remaining observations were of individuals (SolsticeAK 2018). Steller sea lions are expected near the project footprint because they are observed occasionally in the area year-round.

During Straley's surveys, Steller sea lions were often seen in groups of two to three; however, a group of more than 100 was sighted on at least one occasion (Straley et al. 2018). Sightings were of single individuals and up to groups of three during the O'Connell Lightering Float (SolsticeAK 2019). Steller sea lions in groups of one to eight individuals were observed around Sitka GPIP dock construction. All Steller sea lions were alone in Sitka Channel during Petro Marine Dock construction monitoring (Windward 2017). SolsticeAK (2018) observed a group of four sea lions on one day; however, most sea lions were alone during the September 2018 monitoring period.

NMFS designated critical habitat for the Steller sea lion on August 27, 1993 (58 FR 45269). The project action area does not overlap Steller sea lion critical habitat. The Biorka Island haulout (over 25 kilometers southwest of the proposed action area; Figure 5) is the closest designated critical habitat in Southeast, Alaska and is well outside the action area.

Figure 5. Steller Sea Lion Critical Habitat in Southeast Alaska (Adapted from NMFS 2017a)



Given their widespread range and their opportunistic foraging strategies, we conclude that Steller sea lions may be in the project action area during the proposed project activities; however, the applicant would implement shutdown procedures if a Steller sea lion is observed likely to enter the shutdown zone.

Fin Whales

Fin whales are rare in the inside waters of southeastern Alaska (Neilson et al. 2012) and within the Crescent Harbor Float Replacement Project action area. During 190 hours of observation between September and May from 1994 to 2002 from Sitka's Whale Park, located at the north end of Eastern Channel in Sitka Sound, Straley et al. (2018) did not observe any fin whales. During 21 days of monitoring during the construction of Gary Paxon Industrial Park (GPIP) Dock in Sawmill Cove near Sitka between October 9 and November 9, 2017, no fin whales were observed (Turnagain 2017). No fin whales were observed within Sitka Channel and in the vicinity of the Crescent Harbor during the 8 days of monitoring in January 2017 during the construction of the Sitka Petro Dock (Windward 2017). Near Biorka Island, about 25 kilometers south of the project, no fin whales were sighted in June, July, August, or September 2018 (Turnagain 2018). Fin whales were not observed near Crescent

Harbor during recent monitoring conducted for 15-minute periods over eight days in September 2018 (SolsticeAK 2018).

Critical habitat has not been designated for the fin whale.

Based on the information above, fin whales are not expected in the project area because they are rare in the Eastern Channel of Sitka Sound. We conclude that it would be extremely unlikely to encounter a fin whale in the action area; however, the applicant would implement shutdown procedures if a fin whale is observed likely to enter the shutdown zone.

North Pacific Right Whale

North Pacific right whales are rare in the action area. During Straley et al.'s (2018) 190 hours of monitoring, no North Pacific right whales were observed in the Crescent Harbor Float Replacement Project action area. The whales were not observed during the 21 days of monitoring during the construction of GPIP Dock in October and November 2017 (Turnagain 2017). They were not observed during the eight days of monitoring during the construction of the Sitka Petro Dock in January 2017 (Windward 2017). They were not sighted during recent monitoring at Biorka Island (25 kilometers south of Crescent Harbor) in June, July, August, or September 2018 (Turnagain 2018). Additionally, North Pacific right whales were not observed during limited monitoring conducted in September 2018 in the immediate vicinity of the lightering float (SolsticeAK 2018).

The designated critical habitat in the Gulf of Alaska (located over 900 kilometers [550 miles] west of the proposed action) is the closest designated critical habitat for the North Pacific right whale and is well outside the action area.

North Pacific right whales are not expected in the project area because they are rare, and because the project location is not a documented feeding or calving area. We conclude that it would be extremely unlikely to encounter a North Pacific right whale in the action area; however, the applicant would implement shutdown procedures if a right whale is observed likely to enter the shutdown zone.

Sperm Whale

Sperm whales are rare in the action area, because they are pelagic and prefer more open water habitats than are found in Sitka Sound. Sperm whales were not seen during 190 hours of observation completed by Straley et al. (2018); during 21 days of monitoring for GPIP dock construction between October and November 2017 (Turnagain 2017); during eight days of monitoring for the Petro Marine dock in January 2017 (Windward 2017); during 40 days of monitoring for Biorka Dock construction between June and September 2018; or during limited monitoring over eight days at the lightering float in September 2018 (SolsticeAK 2018).

Critical habitat has not been designated for the sperm whale.

Sperm whales are not expected in the action area, and we conclude that it would be extremely unlikely to encounter a sperm whale in the action area; however, the applicant would implement shutdown procedures if a sperm whale is observed likely to enter the shutdown zone.

Effects Determination

Acoustic Disturbance

Possible impacts to marine mammals exposed to loud underwater noise include mortality (directly from the noise, or indirectly from a reaction to the noise), injury, and disturbance ranging from severe (e.g., abandonment of vital habitat) to mild (e.g., startle response), if pile driving is not shut down when individuals are within the action area.

Hearing loss, Discomfort, or Injury

If a received sound level is high enough, the sound may cause discomfort or tissue damage to auditory or other systems. An animal may experience temporary loss of hearing, partial, or full hearing loss. Marine mammals exposed to high received sound levels may experience non-auditory physiological effect such as increased stress, neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage. Permanent, partial, or full hearing loss may occur if marine mammals are exposed to underwater sounds exceeding the injury threshold of 180 or 190 dB re 1p.Parms for humpback whales and Steller sea lions, respectively (NMFS 2016). Although proposed vibratory hammer and drilling will introduce continuous sounds into the water, the activities are not expected to cause hearing loss, discomfort, or injury due to the implementation of mitigation measures, including the maintenance of an exclusion zone.

Behavioral Changes

Marine mammals that are exposed to elevated noise levels associated with in-water vibratory drilling could exhibit behavioral changes such as increased swimming speed, increased surfacing time, or decreased foraging. Additional responses of marine mammals to pile driving activity might include a reduction of acoustic activity, a reduction in the number of individuals in the area, and avoidance of the area. Of these, temporary avoidance of the noise-impacted area is anticipated to be the most likely response on this project. Avoidance responses may be initially strong if an individual moves rapidly away from the source or weak if animal movement is only slightly deflected away from the source. Individuals likely return after completion of pile installation, as demonstrated by a variety of studies about temporary displacement of marine mammals by industrial activity (Richardson et al. 1995)

Masking

Marine mammal auditory signals may be masked by increased noise levels or overlapping frequencies. The project area is within an existing navigation channel, and therefore marine mammals that come into the area may already be habituated to increased noise levels. Sound levels from existing cruise ship traffic near Sitka have

likely resulted in the habituation of whales and sea lions to noise in the area, since they are sometimes seen in the area when vessels are nearby.

We do not anticipate that installation of the proposed dock will expose any ESA-listed species to sound pressure levels that reach Level A or B acoustic harassment thresholds because: 1) the projects incorporate monitoring and mitigation measures that includes an 3,500 meter exclusion zone outside the harbor breakwater which minimizes the risk of exposure for any individual that enters it; 2) sound vibrations will only escape the center gap in the breakwater during pile driving within the harbor (approximately three hours over nine days or thirteen hours worst case scenario), thereby reducing the likelihood of exposure to listed species; 3) sound levels from existing vessel traffic has resulted in habituation to noise among whales (particularly humpback whales) and sea lions occurring near the area; and 4) two Protected Species Observers will monitor the area before, during, and after pile installation.

Noise Impact to Prey Species

Fish populations in the project area that serve as humpback whale and Steller sea lion prey could be affected by noise from in-water pile-driving. High underwater SPLs have been documented to alter behavior, cause hearing loss, and injure or kill individual fish by causing serious internal injury (Hastings and Popper 2005). However, given the small area of the project site, the short duration of vibratory drilling, and the fact that any physical changes to this habitat would not be likely to reduce the localized availability of fish, it is unlikely that listed whales or Steller sea lions would be affected. The applicant considers potential impacts to prey resources to be discountable.

Habitat Alteration

The project would occur over 25.6 kilometers from the nearest Steller sea lion critical habitat, and the project is not expected to impact any of the essential features that define critical habitat for any species.

Vibratory drilling for the new dock will briefly disturb the substrate and increase the turbidity of the water due to disturbed sediment. Sedimentation associated with the project is not likely to have detectable effects on any or their habitat, because the area that would be impacted would be within the breakwaters of Sitka Harbor. Indirect effects to prey due to sediment in the water would be minimal due to re-colonization and the temporary nature of the activity, and are expected to be undetectable to whales or Steller sea lions. In addition, that facility does not include poured concrete foundations or creosote piles that are toxic to fish.

Vessel Traffic

When this project is completed, it will not result in an increased number of vessels in the action area. The proposed dock would result in a slight increase in mooring capacity within Sitka Harbor, however vessel traffic in and out of the surrounding waters would remain unchanged, as the boats that would moor at the dock already traverse these waters, and there would be no increased risk of vessel strikes in the future. We

have also considered the likelihood that an increase in vessel traffic related to project activities would generally increase the risk of interactions between marine mammals and vessels in the action area above and beyond baseline conditions. The use of a barge and a small skiff would cause a small, localized, temporary increase in vessel traffic for less than one month. Given the extremely small increase in vessel traffic above existing levels in this reach of Sitka Harbor, there will be no measurable or detectable increase in the risk of vessel strike, and effects to listed species that could be found in the area are discountable.

Mitigation Measures

The applicant has agreed to implement the following standard mitigation measures for pile driving projects in order to minimize the risk of harm to listed species for their proposed project:

1. Two protected species observers (PSOs), able to accurately identify and distinguish species of Alaska marine mammals, will be present before and during all in-water construction and demolition activities.
2. Prior to in-water construction activities, an exclusion (i.e., shut-down) zone will be established. For this project, the exclusion zone includes all marine waters within 3,500 meters west of the breakwater and 1,000 meters within the harbor of the sound source.
3. Pile-driving will not be conducted unless all waters within and adjacent to the exclusion zone are clearly visible.
4. The PSO(s) will be positioned such that the entire exclusion zone is visible to them (e.g., situated on a platform, elevated promontory, boat or aircraft).
5. The PSO(s) will have the following to aid in determining the location of observed listed species, to take action if listed species enter the exclusion zone, and to record these events:
 - a. Binoculars;
 - b. Range finder;
 - c. GPS;
 - d. Compass;
 - e. Two-way radio communication with construction foreman/superintendent; and
 - f. A log book of all activities which will be made available to NMFS upon request.
6. The PSO(s) will have no other primary duty than watching for and reporting on events related to listed species.
7. The PSO(s) will have the ability to communicate orally, by radio or in person, with project personnel to provide real-time information on listed species observed in the area as necessary, and will have the authority to order a shutdown of noise-producing operations in the event that a listed species is observed within or is judged likely to enter the exclusion zone.
8. The PSO(s) will work in shifts lasting no longer than four hours with at least a one hour break between shifts, and will not perform duties as a PSO for more than 12 hours in a 24 hour period (to reduce PSO fatigue).

9. The PSO(s) will scan the exclusion zone for the presence of listed species for 30 minutes before any pile-driving or removal activities take place.
 - a. If any listed species are present within the exclusion zone, pile-driving and removal activities will not begin until the animal(s) has left the exclusion zone or no listed species have been observed in the exclusion zone for 15 minutes (for pinnipeds) or 30 minutes (for cetaceans).
10. Throughout all pile-driving activity, the PSO(s) will continuously scan the exclusion zone to ensure that listed species do not enter it.
 - a. If any listed species enter, or appear likely to enter, the exclusion zone during pile-driving or removal activities, all pile-driving activity will cease immediately. Pile-driving activities may resume when the animal(s) has been observed leaving the area on its own accord. If the animal(s) is not observed leaving the area but is no longer visible, pile-driving activity may begin 15 minutes (for pinnipeds) or 30 minutes (for cetaceans) after the animal is last observed in the area. Note: If a listed species is observed within the exclusion zone during construction operations, the PSO will notify NMFS immediately after ordering a shut-down of operations.
11. One week prior to beginning construction the NMFS will be notified when work will commence. Contact Ms. Julie Scheurer (julie.scheurer@noaa.gov) at NMFS Protected Resources Division, Juneau Office.
12. Ramp-up (soft start) procedures will be applied prior to beginning pile-driving activities each day and/or when pile-driving hammers have been idle for more than 30 minutes:
 - a. For impact pile-driving, contractors will be required to provide an initial set of three strikes from the hammer at 40 percent energy, followed by a 30 second waiting period. This procedure shall be repeated two additional times prior to operational impact pile driving.
13. All in-water pile driving will be completed by May 9, 2020.
14. A final PSO report will be provided to NMFS.
 - a. The reporting period for each monthly PSO report will be the entire calendar month, and reports will be submitted by close of business on the fifth day of the month following the end of the reporting period (e.g., the monthly report covering April 1 to 30, will be submitted to the NMFS by close of business on May 5).
 - b. PSO report data will also include the following for each listed species observation or "sighting event" if repeated sightings are made of the same animal(s):
 - i. Species, date, and time for each sighting event.
 - ii. Number of animals per sighting event; and number of adults/juveniles/calves per sighting event.
 - iii. Primary, and, if observed, secondary behaviors of the marine mammals in each sighting event.
 - iv. Geographic coordinates for the observed animals, with the position recorded by using the most precise coordinates practicable (coordinates

- must be recorded in decimal degrees, or similar standard, and defined coordinate system).
- v. Time of the most recent pile-driving or other project activity prior to listed species observation.
 - vi. Environmental conditions as they existed during each sighting event, including Beaufort sea state, weather conditions, visibility (km/mi), lighting conditions, and percent ice cover.
- c. A final report will be submitted to the NMFS within 90 days after the final pile has been driven for the project. The report will summarize the results of listed species monitoring conducted during the in-water project activities. The report will include items from the list above, as well as the following:
- i. Summaries of monitoring efforts including total hours, total distances, and listed species distribution through the study period, accounting for sea state and other factors that affect visibility and detectability of listed species.
 - ii. A description of any factors that may have influenced detectability of listed species (e.g., sea state, number of observers, fog, glare, etc.).
 - iii. Species composition, occurrence, and distribution of listed species sightings, including date, water depth, numbers, age/size/gender categories (if determinable), group sizes, and ice cover.
 - iv. Number of listed species observed (by species) during periods with and without project activities (and other variables that could affect detectability), such as:
 - 1. Initial listed species sighting distances versus project activity at time of sighting.
 - 2. Observed listed species behaviors and movement types versus project activity at time of sighting.
 - 3. Numbers of listed species sightings/individuals seen versus project activity at time of sighting.
 - 4. Distribution of listed species around the action area versus project activity at time of sighting.
15. Though take is not authorized, if a listed species is taken (i.e., a listed species is observed entering the 3,500 and 1,000 meter exclusion zone before pile-driving operations can be shut down), re-initiation of consultation is required, and the take must be reported to NMFS within one business day (contact listed at item 15 below). PSO records for listed species taken by project activities must include:
- a. All the information that must be listed in the PSO report.
 - b. Number of listed species taken.
 - c. The date and time of each take.
 - d. The cause of the take (e.g., impact hammer operating at maximum energy).
 - e. The time the listed species entered the exclusion zone, and, if known, the time it exited the zone.
 - f. Mitigation measures implemented prior to and after the animal entered the exclusion zone.

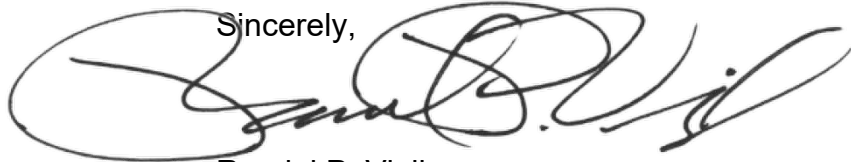
16. All reports will be submitted to: Ms. Julie Scheurer (julie.scheurer@noaa.gov) at NMFS Protected Resources Division, Juneau Office.

Conclusions

Based on the best information available, the Corps has determined that the potential stressors posed by this project would result in insignificant impacts, or the likelihood of impacts would be discountable, for ESA-listed species under the NMFS jurisdiction. For these reasons, the Corps has determined that the proposed action may affect, but is not likely to adversely affect the Western DPS of Steller sea lion or the Mexico DPS of humpback whale. The Corps requests written concurrence under Section 7 of the ESA, as amended (16 U.S.C. §1531 et seq.), with that determination within 30- days of the date of this letter.

The Corps is considering using a Letter of Permission, to authorize these activities. Should you require further information regarding this project, please contact me via email at Randal.P.Vigil@usace.army.mil, by mail at the address above, or by phone at (907) 790-4491. Thank you for your assistance and attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Randal P. Vigil", written in a cursive style with a large initial "R".

Randal P. Vigil
Project Manager

Literature Cited

- Alaska Sea Grant (ASG). 1997. Alaska Science Journeys. Whale Migration. Interview with biologist Jan Straley.
https://seagrant.uaf.edu/news/97ASJ/11.25.97_WhaleMigration.html
- Denes, S.L., G.J. Warner, M.E. Austin, and A.O. MacGillivray. 2016. Hydroacoustic Pile Driving Noise Study – Comprehensive Report. Prepared by Jasco Applied Sciences for Alaska Department of Transportation and Public Facilities.
- Hastings, M.C. and A.N. Popper. 2005. Effects of sound on fish. Technical report for Jones and Stokes to California Department of Transportation.
- Jemison, L. A., G. W. Pendleton, L. W. Fritz, K. K. Hastings, J. M. Maniscalco, A. W. Trites, and T. S. Gelatt. 2013. Inter-population movements of Steller sea lions in Alaska with implications for population separation. PLoS ONE 8:e70167.
- National Marine Fisheries Service (NMFS). No Date. Map of Designated Steller Sea Lion Critical Habitat in Southeast, Alaska.
- NMFS. 2016. Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing: Underwater Acoustic Thresholds for Onset of Permanent and Temporary Threshold Shifts. U.S. Dept. of Commer., NOAA. NOAA Technical Memorandum NMFS-OPR-55, 178 p.
<https://repository.library.noaa.gov/view/noaa/15850>
- NMFS. 2013. Occurrence of western distinct population segment Steller sea lions East of 144° W. longitude. NOAA, National Marine Fisheries Service, Alaska Region, Juneau, AK. 3 pp.
https://alaskafisheries.noaa.gov/sites/default/files/wdps_sect7guidance1213final.pdf
- Neilson, J.L., C. Gabriele, A. Jensen, K. Jackson, and J. Straley. 2012. Summary of Reported Whale-Vessel Collisions in Alaskan Waters. Journal of Marine Biology, vol. 2012, Article ID 106282, 18 pages, 2012. doi:10.1155/2012/106282.
https://alaskafisheries.noaa.gov/sites/default/files/2012_whalevesselcollisions.pdf
- Richardson, W.J., C.R. Greene, C.I. Malme, and D.H. Thomson. 1995. Marine Mammals and Noise. Academic Press, Inc. San Diego, California.
- Solstice Alaska Consulting, Inc (SolsticeAK). 2019. O'Connell Bridge Lightering Float Replacement Project Marine Mammal Monitoring Report, June 2019.
- SolsticeAK. 2018a. O'Connell Bridge Lightering Float Project Teleconference. August 9, 2018. Comment from NMFS AK representative Suzie Teerlink that up to half of the Steller sea lions in the project vicinity could be from the Western DPS.
- Straley, J., K. Pendell, and G. Ganey. 2018. Marine Mammal Report-Eastern Channel Project. J. Straley Investigations, PO Box 273 Sitka, AK 99835.
- Straley, Jan. 2017. Personal communication between K. Arduser, planner for Solstice Alaska Consulting, Inc. and Jan Straley, whale biologist and marine biology professor, regarding humpback whale abundance and seasonal distribution near the GPIP Dock Project Area.
- Turnagain Marine Construction (Turnagain). 2018. Monthly Marine Mammal Monitoring Reports from monitoring at Biorka Island in June, July, and August during construction of the Federal Aviation Administration's Biorka Dock Replacement Project. Logs submitted to National Marine Fisheries Service by Turnagain Marine Construction.
- Turnagain. 2017. Marine Mammal Monitoring Forms from monitoring of Silver Bay in October and November 2017 during construction of the City and Borough of Sitka's

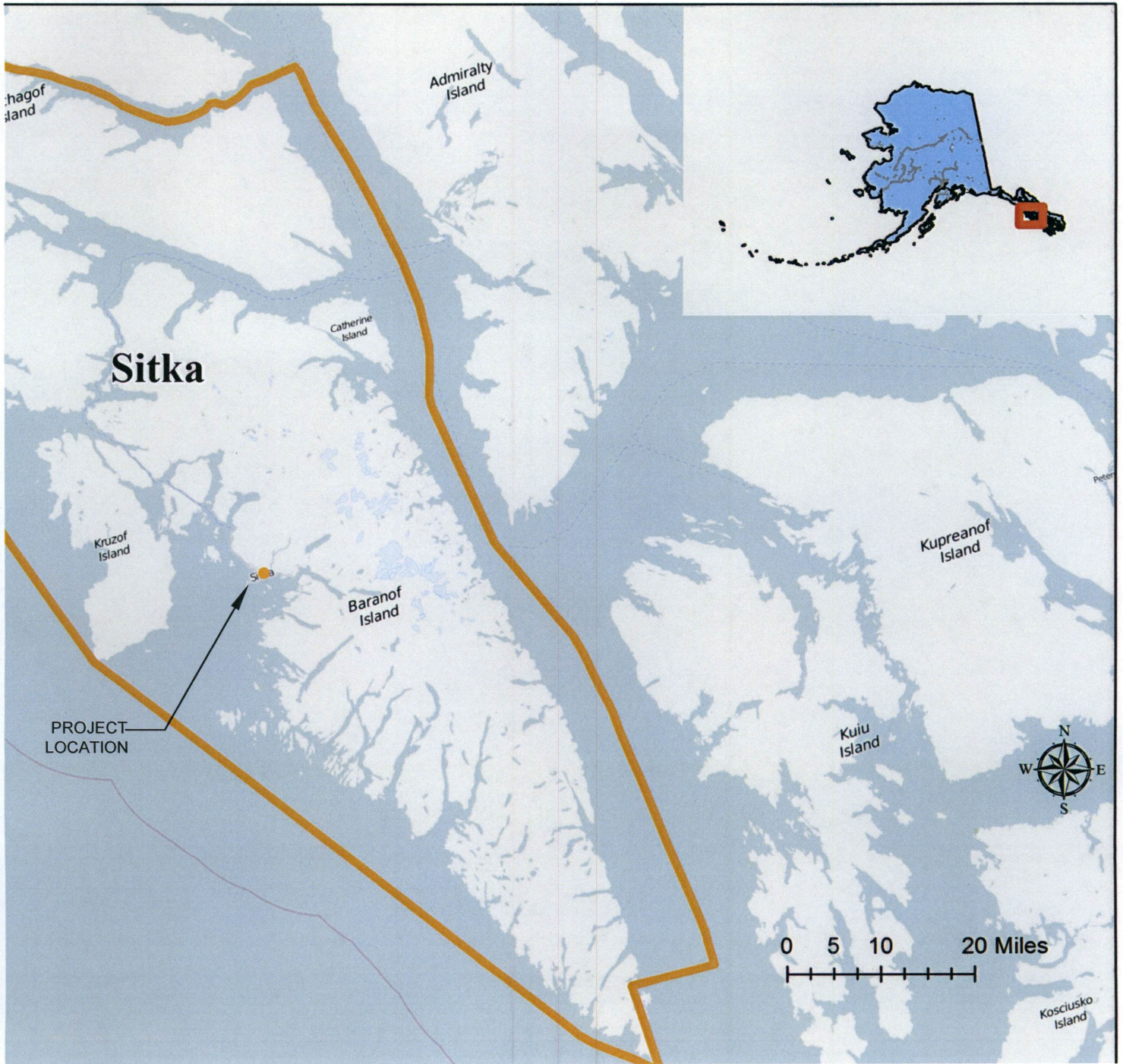
Gary Paxton Industrial Park (GPIP) Dock. Logs submitted to National Marine Fisheries Service by Turnagain Marine Construction.

Wade, P.R., T. J. Quinn II, J. Barlow, C. S. Baker, A. M. Burdin, J. Calambokidis, P. J. Clapham, E. Falcone, J. K. B. Ford, C. M. Gabriele, R. Leduc, D. K. Mattila, L. Rojas-Bracho, J. Straley, B. L. Taylor, Urbán R., D. Weller, B. H. Witteveen, and M. Yamaguchi. 2016. Estimates of abundance and migratory destination for North Pacific humpback whales in both summer feeding areas and winter mating and calving areas. Paper SC/66b/IA21 submitted to the Scientific Committee of the International Whaling Commission, June 2016, Bled, Slovenia.

Windward Project Solutions (Windward). 2017. Marine Mammal Monitoring Forms from monitoring of Sitka Channel and Middle Channel in January 2017 during replacement of Petro Marine's South Sitka Channel Fuel Dock. Report submitted to National Marine

CF:

Jon.kurland@noaa.gov



① PIER PLAN VIEW
 ② SCALE: 1":100'

VICINITY MAP

APPLICATION BY:
 1401-3 HPR DOCK ASSOCIATION
 1401 HALIBUT POINT ROAD

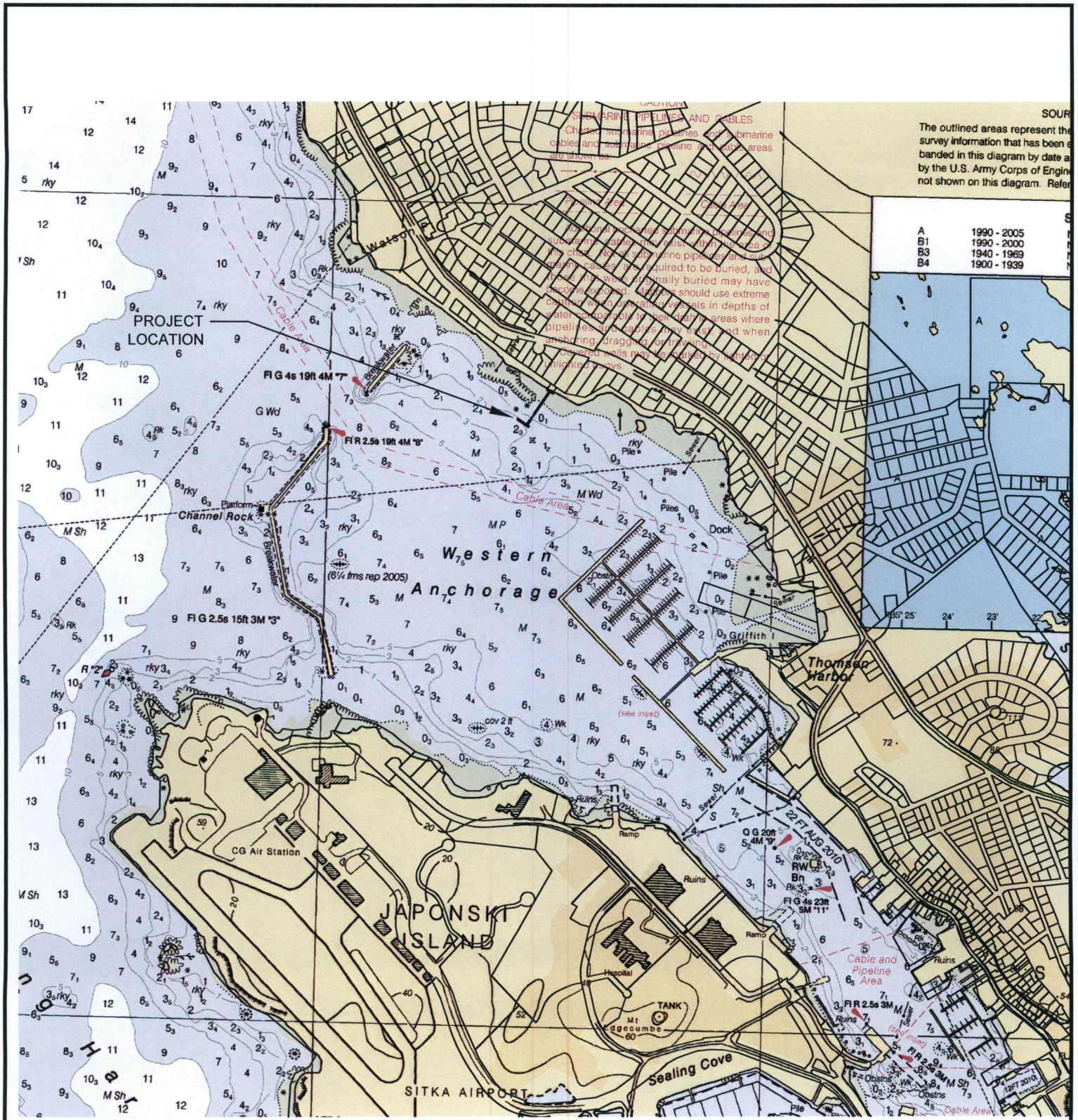
SITKA
 PIER AND MOORAGE
 FLOAT

AT: SITKA

LOCATED IN: T.55S., R.63E., SECTION 36
 Lat 57°3'44.1"N, Long. 135°21'34.8"W

DATE: 8-27-19

SHEET **1** OF **7**



SOUR
The outlined areas represent the survey information that has been tabulated in this diagram by date as shown by the U.S. Army Corps of Engineers. Refer to the legend for information not shown on this diagram.

| | |
|----|-------------|
| A | 1990 - 2005 |
| B1 | 1990 - 2000 |
| B3 | 1940 - 1969 |
| B4 | 1900 - 1939 |

- 1 VICINITY MAP
- 2 SCALE: 1"=1000'

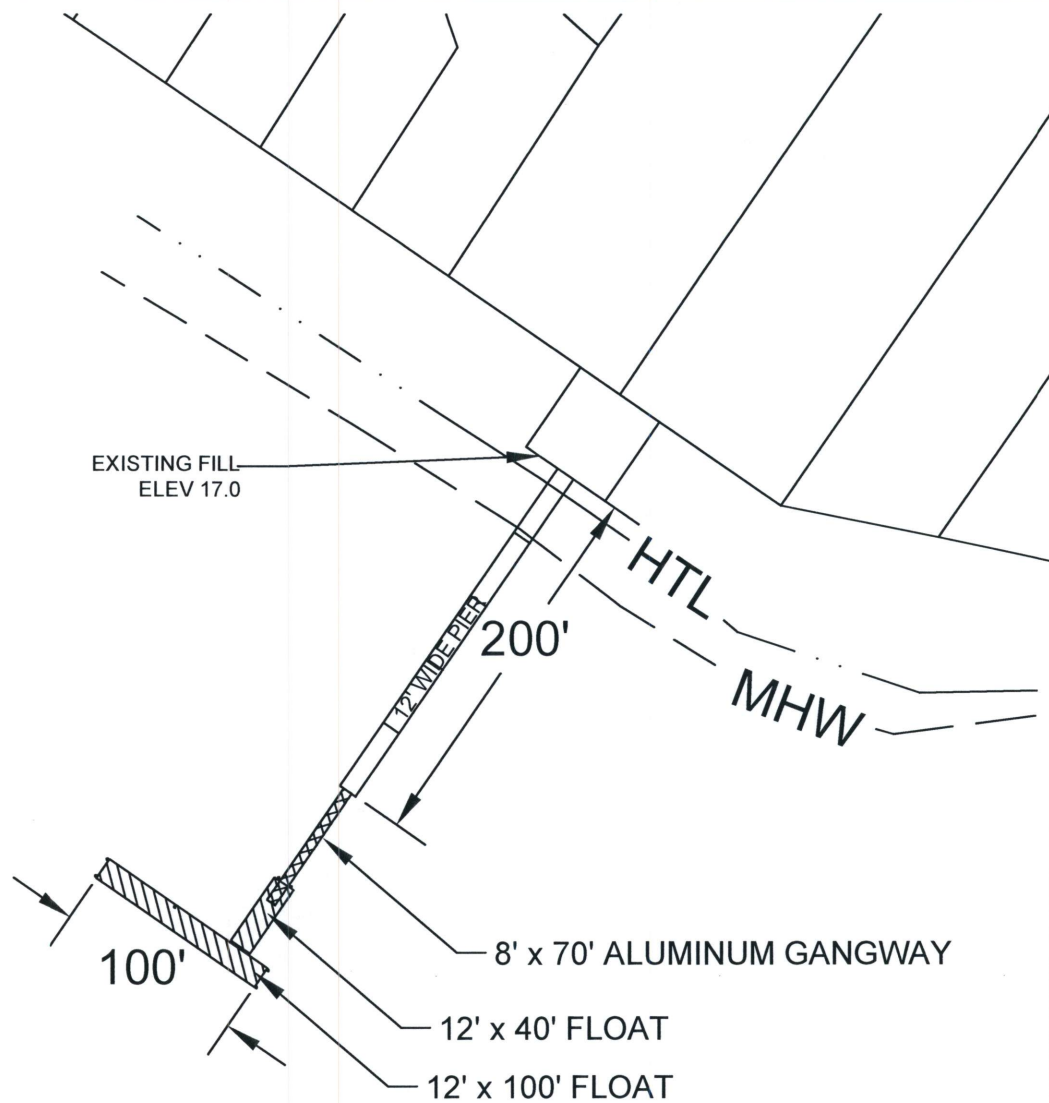
TIDAL DATA SOURCE: NOAA
NAUTICAL CHART SITKA
HARBOR ENTRANCES

PIER AND FLOAT PLAN VIEW

APPLICATION BY:
1401-3 HPR DOCK ASSOCIATION
1401 HALIBUT POINT ROAD

SITKA
PIER AND MOORAGE
FLOAT

AT: SITKA
LOCATED IN: T.55S., R.63E., SECTION 36
Lat 57°3'44.1"N, Long. 135°21'34.8"W



① CAUSEWAY SECTION VIEW
③ SCALE: 1":100'

TIDAL DATA SOURCE: NOAA
NAUTICAL CHART SITKA
HARBOR ENTRANCES

**PIER AND FLOAT
PLAN VIEW**

APPLICATION BY:
1401-3 HPR DOCK ASSOCIATION
1401 HALIBUT POINT ROAD

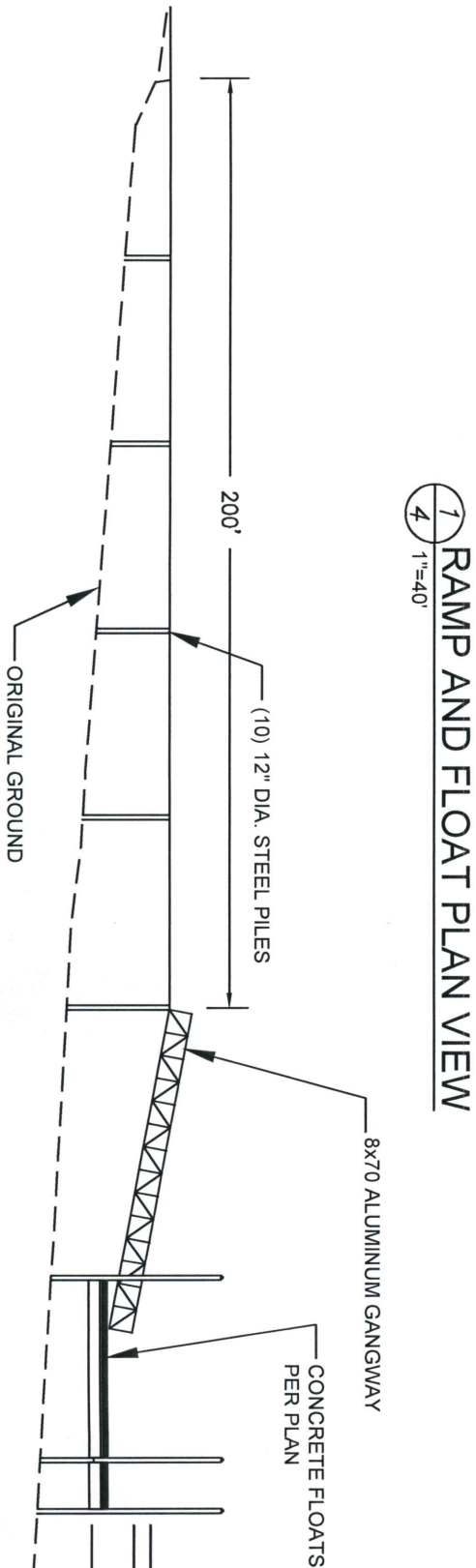
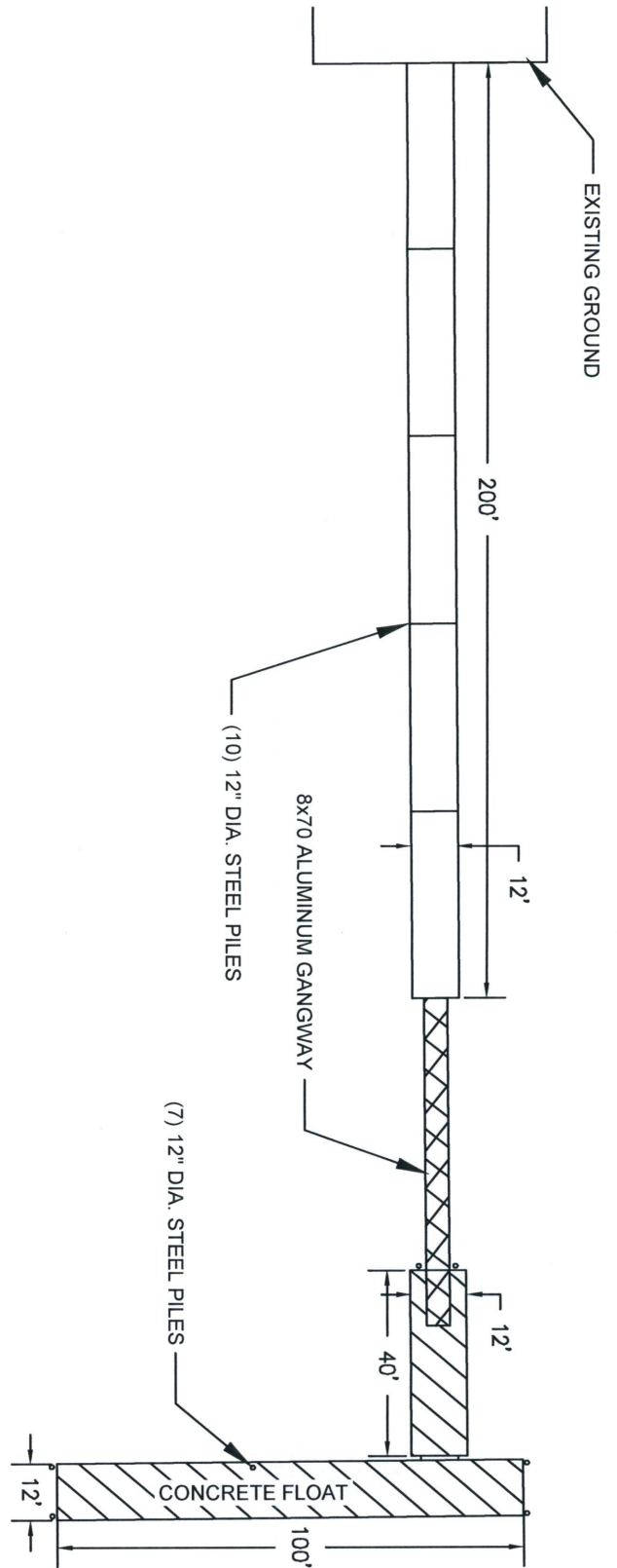
SITKA
PIER AND MOORAGE
FLOAT

AT: SITKA

LOCATED IN: T.55S., R.63E., SECTION 36
Lat 57°3'44.1"N, Long. 135°21'34.8"W

DATE: 8/27/19

SHEET **3** OF **6**



TYPICAL SECTIONS

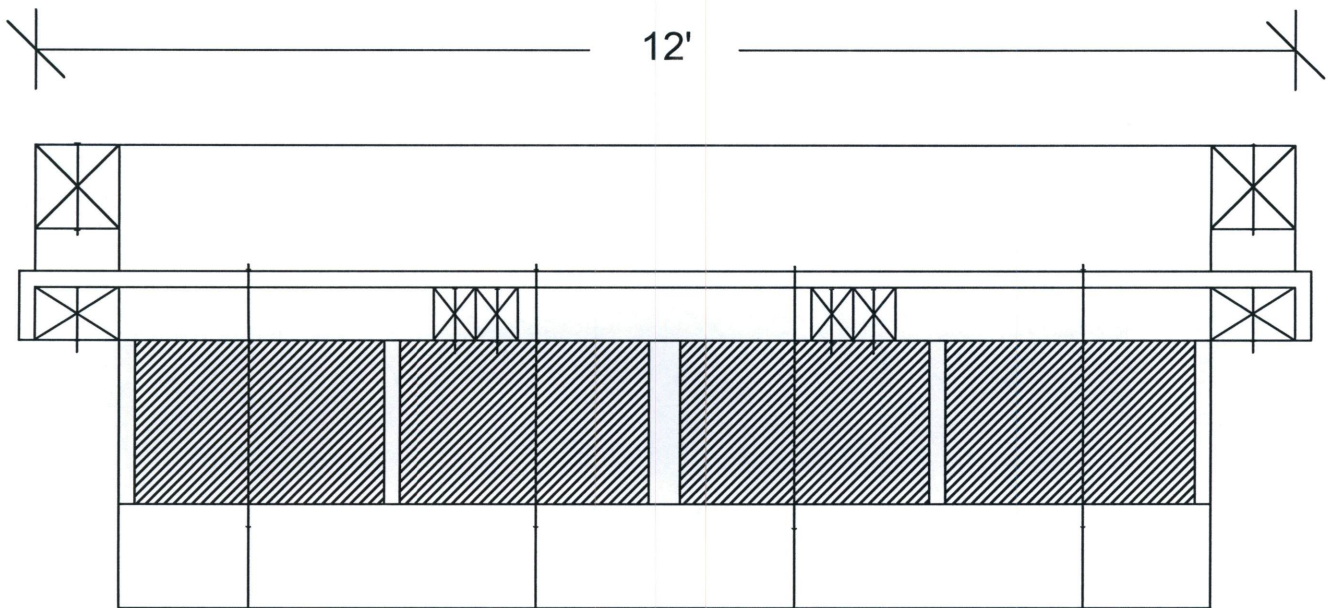
APPLICATION BY:
1401-3 HPR DOCK ASSOCIATION
1401 HALIBUT POINT ROAD

SITKA PIER AND MOORAGE FLOAT

AT: SITKA
LOCATED IN: T.55S., R.63E., SECTION 36
Lat 57°3'44.1"N, Long. 135°21'34.8"W

DATE: 7-25-19

SHEET **4** OF **6**



TYPICAL CONCRETE FLOAT

TIDAL DATA SOURCE: NOAA
NAUTICAL CHART SITKA
HARBOR EXTRANCES

**PIER AND FLOAT
PLAN VIEW**

APPLICATION BY:
1401-3 HPR DOCK ASSOCIATION
1401 HALIBUT POINT ROAD

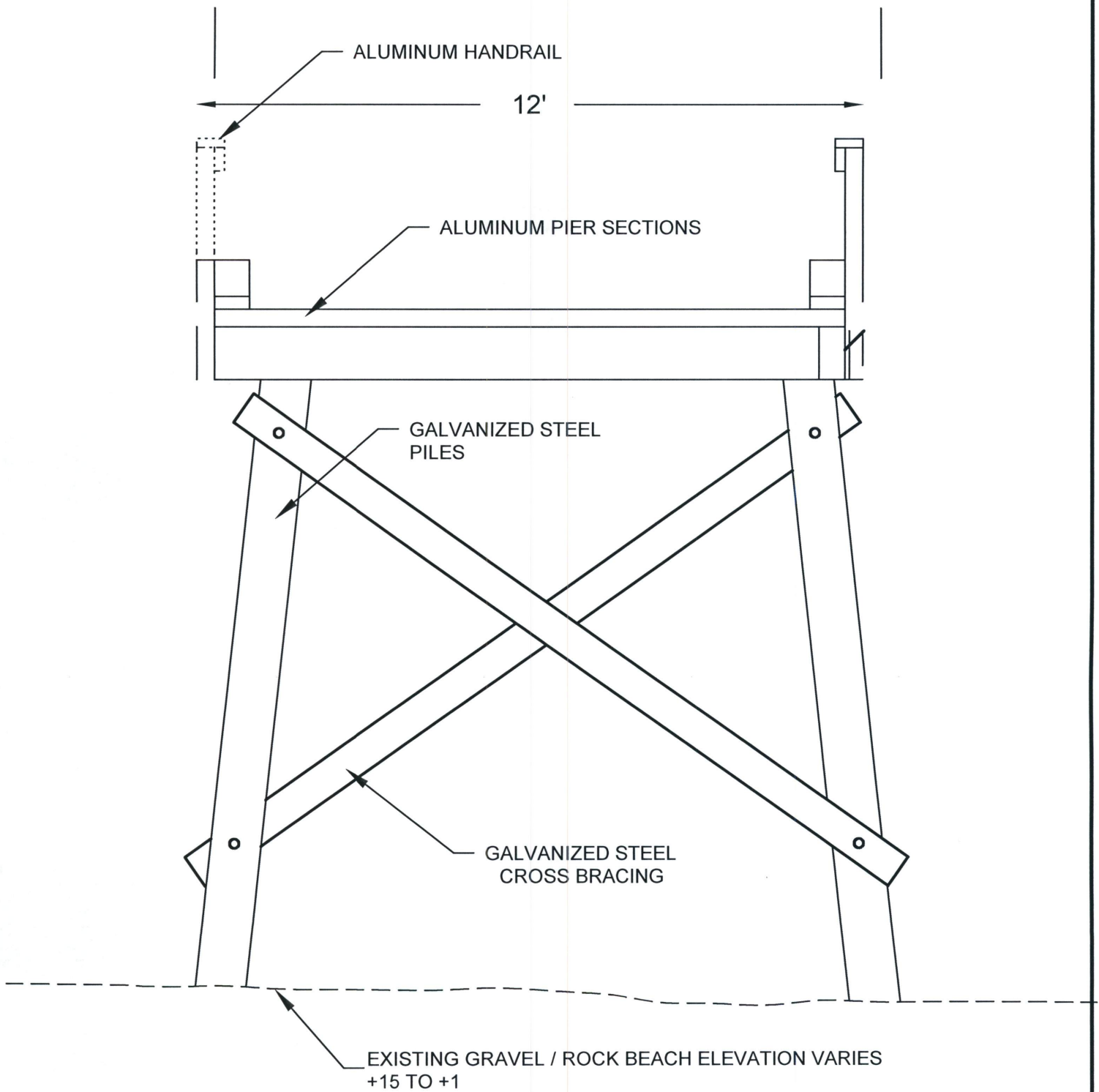
SITKA
PIER AND MOORAGE
FLOAT

AT: SITKA

LOCATED IN: T.55S., R.63E., SECTION 36
Lat 57°3'44.1"N, Long. 135°21'34.8"W

DATE: 7/25/19

SHEET **5** OF **6**



TYPICAL PIER

TIDAL DATA SOURCE: NOAA
NAUTICAL CHART SITKA
HARBOR ENTRANCES

PIER AND FLOAT PLAN VIEW

APPLICATION BY:
1401-3 HPR DOCK ASSOCIATION
1401 HALIBUT POINT ROAD

SITKA
PIER AND MOORAGE
FLOAT

AT: SITKA

LOCATED IN: T.55S., R.63E., SECTION 36
Lat 57°3'44.1"N, Long. 135°21'34.8"W

DATE: 7/25/19

SHEET **6** OF **6**