



Board of Harbor Commissioners

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June 19, 2017

VIA E-MAIL AND U.S. MAIL

Tao Tao Song
Chief Executive Officer
Oyster Point Development, LLC
c/o Greenland USA – San Francisco
400 Marina Boulevard, Suite 200
South San Francisco, CA 94080

Re: Response to OPD April 27, 2017 Letter;
Demand for Immediate Maintenance and Repair of Full Service Fuel Dock on Parcel E-3
and E-4, and Related Facilities Pursuant to Lease and Management Agreement of
Parcels E, E-1, E-2, E-3 and E-4

Dear Mr. Song:

On March 24, 2017, the San Mateo County Harbor District (District) sent Oyster Point Development (OPD) a Notice of Violation concerning the above referenced lease (Lease). In that letter the District (i) outlined the failure of OPD to maintain the fuel dock, (ii) sought assurances that OPD would operate the fuel dock service in compliance with the Lease, and (iii) expressed appropriate concern with a lack of inspections evidencing that the fuel dock was in compliance with applicable regulations. Your April 27, 2017 response fails satisfactorily to address any of those three important issues.

The District therefore now writes to respond to your letter, further explain OPD's failures under the Lease and to provide specific instructions to ensure OPD's compliance. Pursuant to Article XIX of the General Conditions, this letter is a written demand to OPD to perform its obligations. Absent timely and diligent efforts by OPD to cure, the District will avail itself of all its rights under the Lease and at law, including but not limited to issuing default notices to terminate and withholding any assignments based on the ongoing violations.

1. OPD's Failure to Maintain the Fuel Dock. OPD is not in compliance with its operational and maintenance obligations under the Lease. It is undisputed that Article IV of the Lease requires OPD to maintain a full service marine fuel dock, and provide all equipment required for the operation of a full service marine fuel dock. In fact, the Lease and associated documents go to great lengths to describe the detailed operational and maintenance obligations and expectations of OPD with respect to the fuel dock. Article VI of the Lease requires that the maintenance and repairs required by the Lease and the General Conditions satisfy not only District standards, but also standards imposed by the Regional Water Quality Control Board. Article X of the General Conditions requires OPD to operate the fuel dock in a manner similar to other harbor facilities in Northern California and must maintain the fuel dock in safe condition. Article XII of the General Conditions requires that OPD maintain the fuel dock in such a manner as to protect it from damage. Finally, Article XXII of the General Conditions requires OPD to

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maintain the fuel dock in good condition and repair and in accordance with all applicable laws, rules, ordinances, orders and regulations of government agencies that have such jurisdiction.

The mandatory Design Criteria for Construction by Lessees, which is attached to the Lease as Exhibit B (Design Criteria), imposes an additional duty on OPD to maintain the fuel dock in compliance with all ordinances, codes, rules, and laws of the jurisdiction in which it is built. (See page 3 of Design Criteria) Further, as set forth on page 45 of the Design Criteria:

Where called for in a lease, adequate fueling facilities shall be provided in accordance with codes previously mentioned herein, the Fire Protection Standard for Marinas and Boatyards, National Fire Protection Association No. 303 – 1969 and the requirements of the County of San Mateo and City Fire Departments. **All precautions must be taken to insure a safe facility.** Adequate remote shut-off mechanisms shall be incorporated in the design. Provisions shall be made for oil spillage clean up and control in order to comply with E.P.A. regulations.

OPD must maintain the fuel dock in accordance with these obligations. The August 11, 2016 estoppel certificate does not excuse or waive OPD's past, current, and ongoing Lease obligations to maintain the fuel dock in a safe and clean condition. While your April 27, 2017 letter includes some inspection reports and claims OPD invested in maintenance to put the fuel dock in good condition, the facts show otherwise.

Attached to this letter are photographs that clearly show severe visible deterioration of the dock, including uneven transitions on the plywood surfaces, protruding screws, detached rub rails, loose cleats and overall dry rot. Due to OPD's ongoing neglect, in particular over the last 8 months since OPD assumed the Lease, the timber planking, sheeting, and stringers are now in need of total replacement. The fuel dock is now a trip hazard, presenting a clear safety issue. The fuel dispensers have not been lubricated and maintained, and show internal and external corrosion damage. In sum, the condition of the dock is simply unsafe.

OPD's own statements confirm its insufficient efforts. OPD's calculations show OPD has invested only \$2,250 for maintenance and repair activities since August 2016. Further, OPD provided a series of something it calls a "Morning Inspection Sheet," covering a period from January 3, 2017 to April 20, 2017. These logs are shockingly inadequate and inaccurate. The logs cover such a limited period of time as to be of little value, and it appears that OPD is only inspecting the fuel dock on week days, whereas one would expect weekends to be the busiest days of the week at a professionally managed fuel dock. One particular item on the Morning Inspection Sheet requires the inspector to confirm all floats and gangways are secure and safe (no holes, loose decking, etc.), no water leaks, no loose debris on docks, and hoses and power cords stowed properly. This item has been checked, without explanation, on the Morning Inspection Sheets for each day's report despite the fact that such a representation is clearly false. The enclosed photographs evidence loose decking, near-rotting frames, and deficiently secured hoses.

In sum, OPD's failure of basic maintenance activities has resulted in such poor conditions that District cannot imagine that anything other than a replacement of the dock will cure the deficiencies. The City of South San Francisco commissioned an independent inspection of the fuel dock, which concurs with the District's opinion.

Consistent with that report, and in order to cure the deficiencies and comply with the Lease, OPD must, at a minimum, (a) restore the dock structures to a safe and usable condition, including without limitation replacing all damaged or rotting plywood surfaces, eliminating uneven transitions or sloping of the gangway, and replacing irreparably impaired dock sheeting and stringers; (b) address the deterioration of the floating pay shack; (c) repair and cap piles as necessary; (d) replace and properly secure all discolored and rotting hoses attached to the fuel dock; (e) correct the sub-standard electrical supply to the dock; (f) repair as necessary the approach structure girders; (g) apply suitable epoxy paint or other sufficient non-slip paint on all decking surface areas; (h) replace the corroded fuel dispensers; (i) securely fasten any loose rub rails and/or cleats; (j) add the necessary sump at the transition from below to above ground fuel lines.

2. OPD's Failure to Employ Full-Time Fuel Dock Service Personnel. OPD's April 27, 2017 letter ignored this issue completely. As you know, Article IV of the Lease requires that OPD operate a full service marine fuel dock. This is not a peripheral obligation. Rather fuel service is an essential element of operating a well-run marina consistent with the OPD's obligations to the District's tenants and the boating public. Indeed, in Article X of the General Conditions, OPD covenanted to operate the fuel dock "fully and continuously" in order to accomplish the fundamental purpose of lease—to benefit the public.

The District's March 24, 2017 letter put OPD on notice that it was not meeting its obligations by providing at least one on-site staff person available to provide assistance during operating hours to customers that approach the dock for re-fueling or other related purposes. The District can no longer tolerate a situation in which its tenants, and the boating public, are deprived of a service to which they are entitled. Accordingly, OPD must hire personnel so that an on-site staff person is available during all operating hours of the fuel dock.

3. OPD's Failure to Complete Adequate Inspections. In its March 24, 2017 letter, the District asked OPD for copies of current inspections of the fuel dock in order to ensure that OPD was in compliance with all environmental requirements as required by Articles X and XIII of the Lease's General Conditions.

In response, OPD provided an incomplete set of OPD's Morning Inspection Sheets. These sheets fail to accurately explain the fuel dock's current deficient condition and show a list of issues that OPD continues to ignore. OPD also provided copies of its monthly Underground Storage Tank Inspection Reports, which indicate numerous violations, many of which have not been corrected to date and some of which are repeated, month-to-month, sometimes as many as seven times. Most of these violations are after August 2016, when OPD assumed the lease.

The produced "inspection reports" demonstrate a disturbing pattern of neglect, as OPD has obviously not been able to provide clean fuel in a dependable manner. Not only does this negatively impact Oyster Point Marina tenants and Bay Area boaters, but as important, OPD's neglect has potentially threatened the sensitive marine environment. Due to this neglect, the amount of fuel that has leaked into groundwater and saturated surrounding soils is unknown at present. In addition to all its remedies under the Lease, the District will hold OPD responsible for the costs for the clean-up and possible fines that may be incurred when the current fuel tanks and fuel lines are replaced.

OPD must provide the District with a complete set of inspection reports, showing that pollutants are not being discharged into the harbor waters and that the fuel system is otherwise complying

with all applicable environmental rules and regulations. OPD will be responsible for updating the fuel tank and the fuel lines from the tank to the water's edge. The District does not intend on allowing OPD to avoid this responsibility by neglecting the rest of its obligations and then trying to assign a Lease for non-compliant property. Any satisfactory resolution of the issues described in this letter must, as a practical matter, include a proposal for the upgrades to the fuel tank.

4. District's Response to OPD's Assignment Claim. In its April 27, 2017 letter, OPD suggests that a 2011 Agreement between the District and the City of South San Francisco contemplate the assignment and termination of the Lease. This suggestion is not borne out by the plain language of that agreement. Section 4 of that Agreement specifically describes a self-executing amendment to the JPA between the City of South San Francisco and the District regarding the property to be conveyed to OPD by the City. But such is not the case with regard to the Lease, which importantly is not part of the property to be conveyed pursuant to Section 4 of that Agreement. Rather, the Lease is part of a number of properties discussed in Section 5 of the 2011 Agreement. Section 5 does not speak at all to any assignment or termination of any lease, including the Lease at issue here, but only describes financial arrangements between the City and the District in the event that the Lease is assigned (by some unnamed entity) and thereafter terminated (again, by an unnamed entity). In no way does the 2011 Agreement between the District and the City of San Francisco compel, or even contemplate, any assignment of the Lease.


Further, the District is not a party to the Disposition and Development Agreement or the Development Agreement referenced in your April 27, 2017 letter, and those agreements do not create or impose any obligations on District. To the extent OPD intends to assign or terminate the Lease, we advise OPD to refer to the Lease as the controlling document

Conclusion

As you know, Article XVI of the Lease requires that OPD obtain the District's written approval for any assignment of its leasehold interests. While the District remains committed to cooperating with the development deal between the City and OPD, the District cannot and will not approve any assignment of any leases so long as these Lease obligations and issues are unresolved.

The District demands that OPD take immediate and diligent actions to remedy the above deficiencies in order to comply with the terms of the Lease. Please respond to this letter confirming such actions no later than June 30, 2017. The District reserves all its rights to avail itself of appropriate remedies under the Lease and at law, including but not limited a right to terminate the Lease, damages, and withholding of proposed assignment.

Very truly yours,



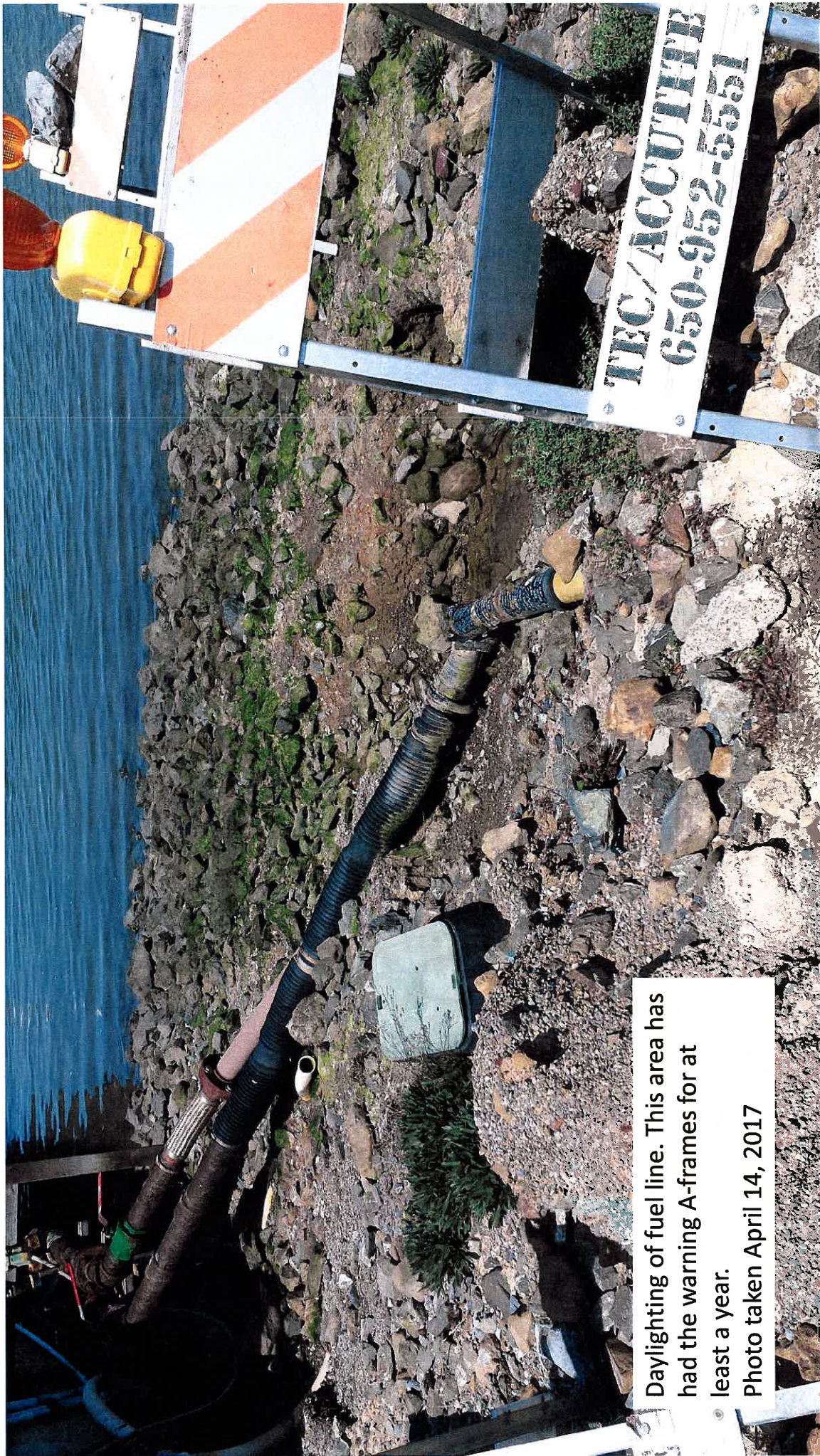
Stephen McGrath, General Manager
San Mateo County Harbor District

Enclosure

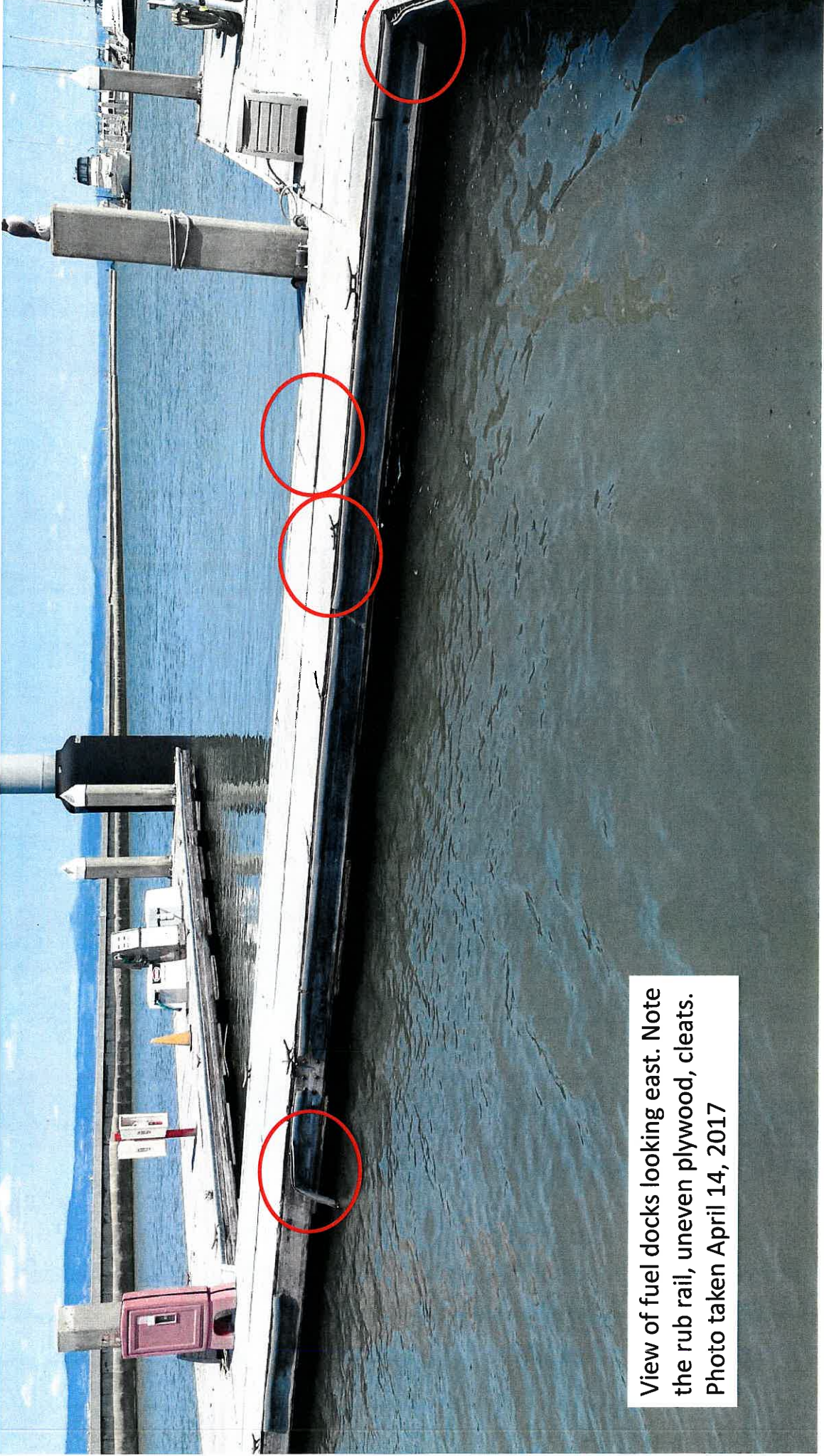
cc: Steven Miller; District Counsel

OPM Fuel Dock

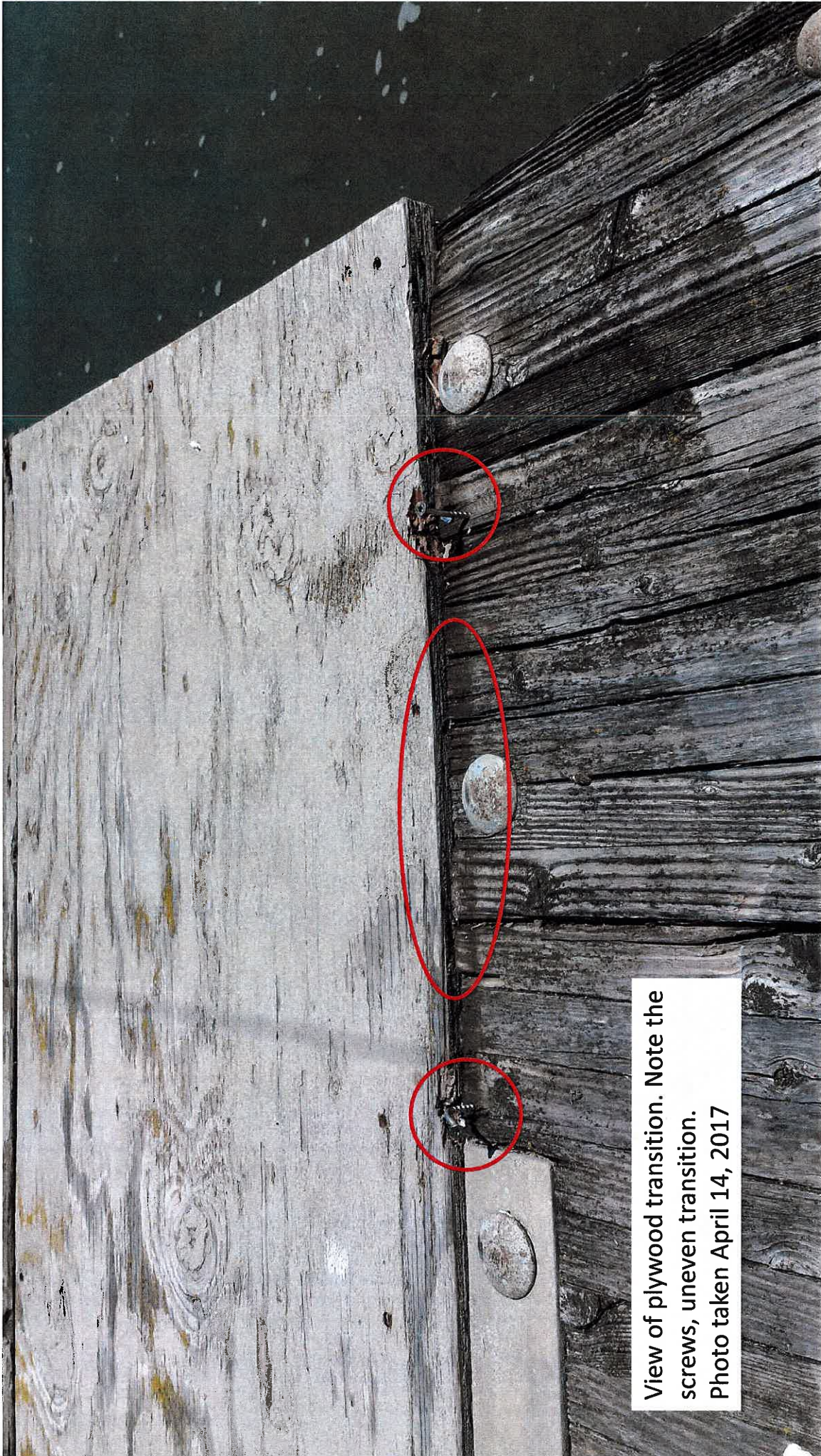
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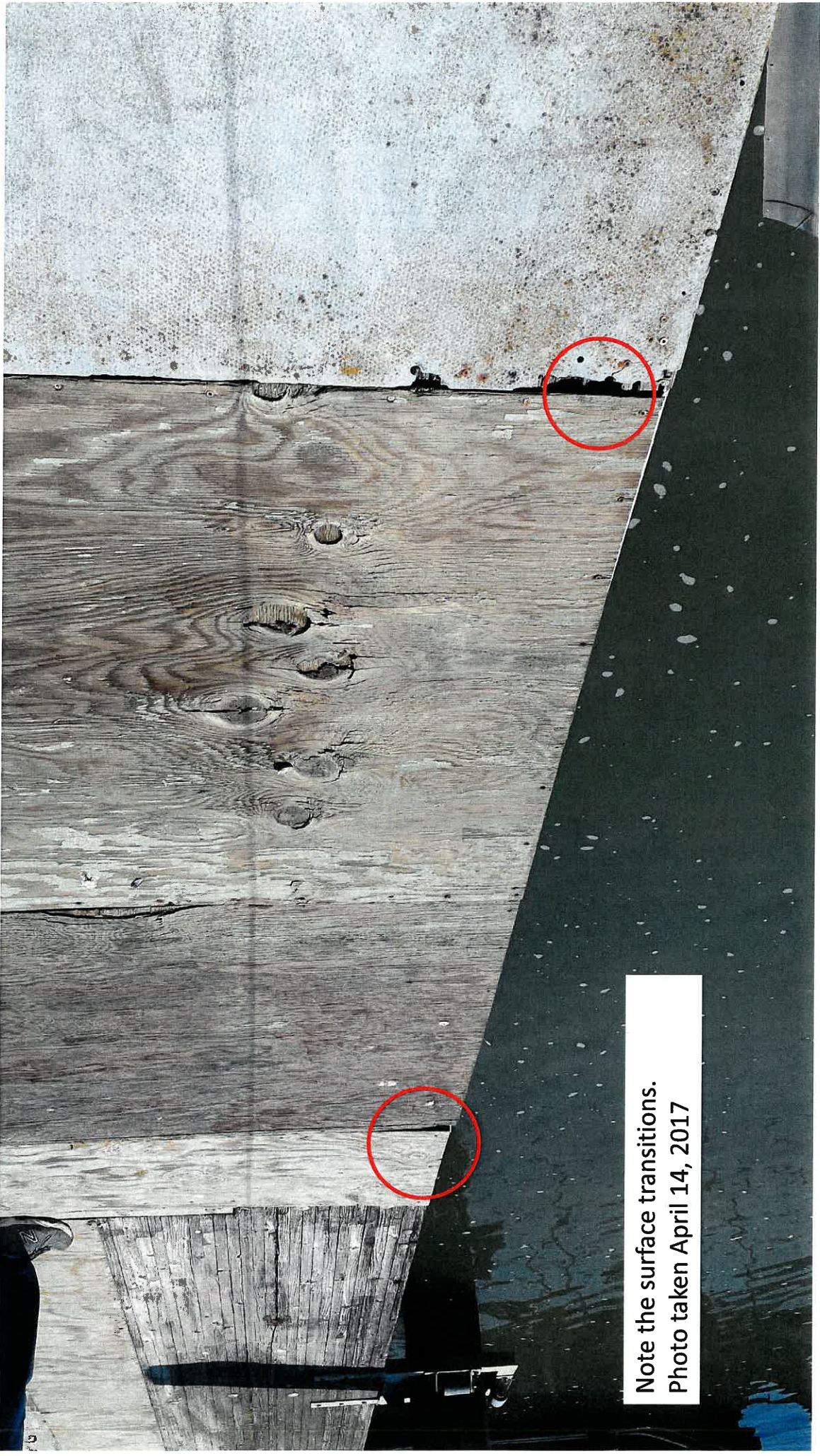
Daylighting of fuel line. This area has had the warning A-frames for at least a year.
Photo taken April 14, 2017



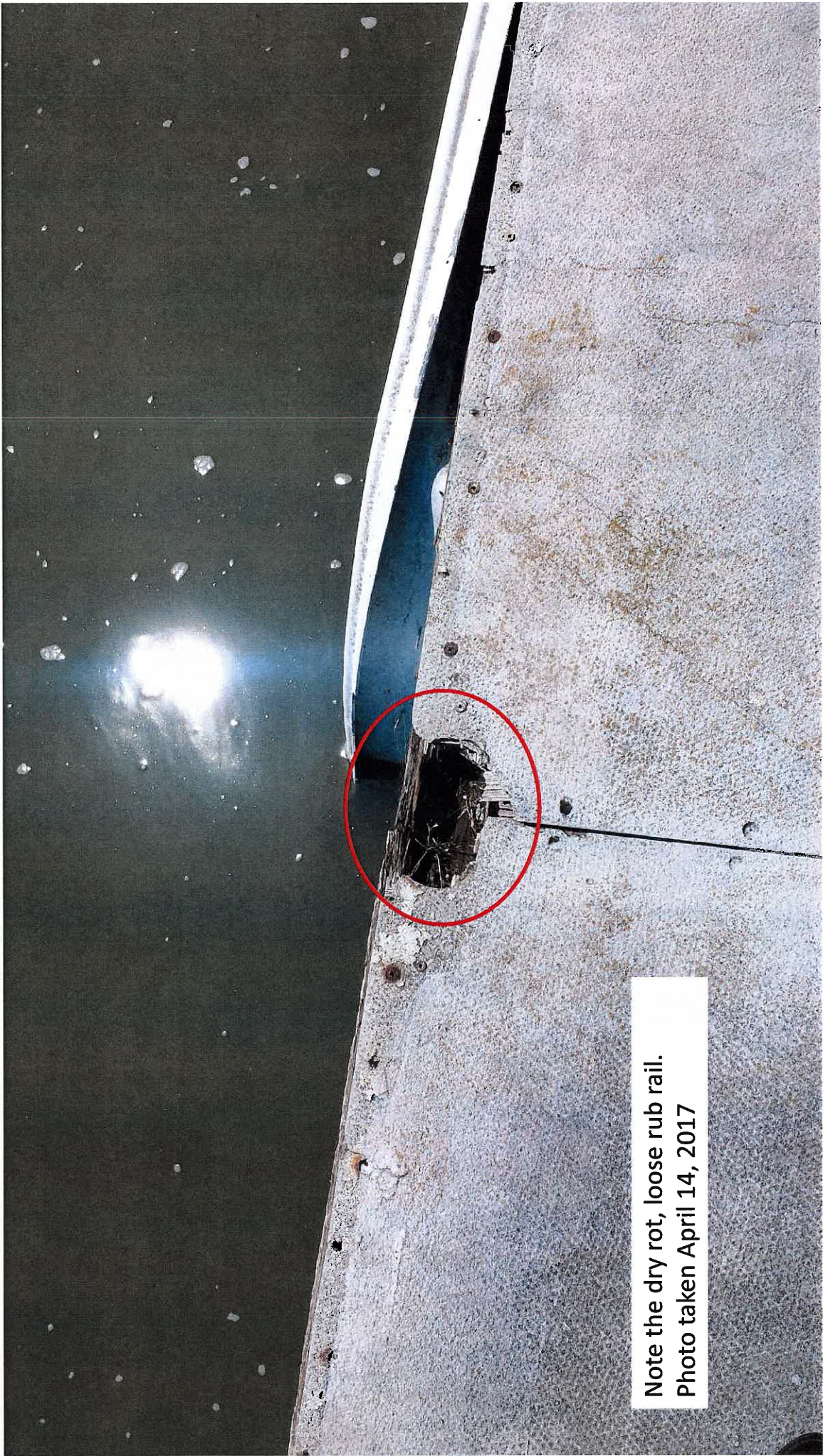
View of fuel docks looking east. Note the rub rail, uneven plywood, cleats. Photo taken April 14, 2017



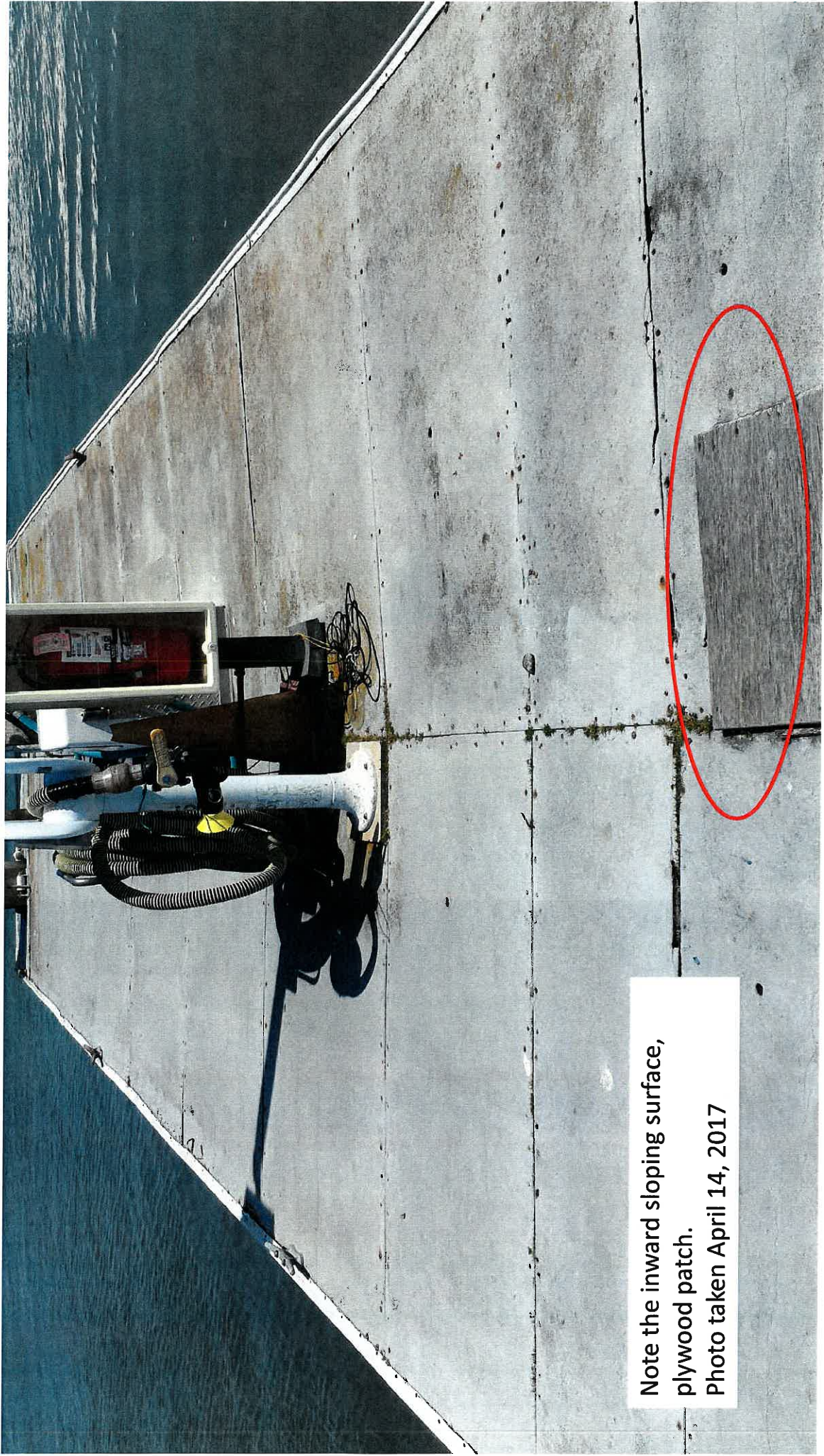
View of plywood transition. Note the screws, uneven transition. Photo taken April 14, 2017



Note the surface transitions.
Photo taken April 14, 2017



Note the dry rot, loose rub rail.
Photo taken April 14, 2017



Note the inward sloping surface,
plywood patch.
Photo taken April 14, 2017



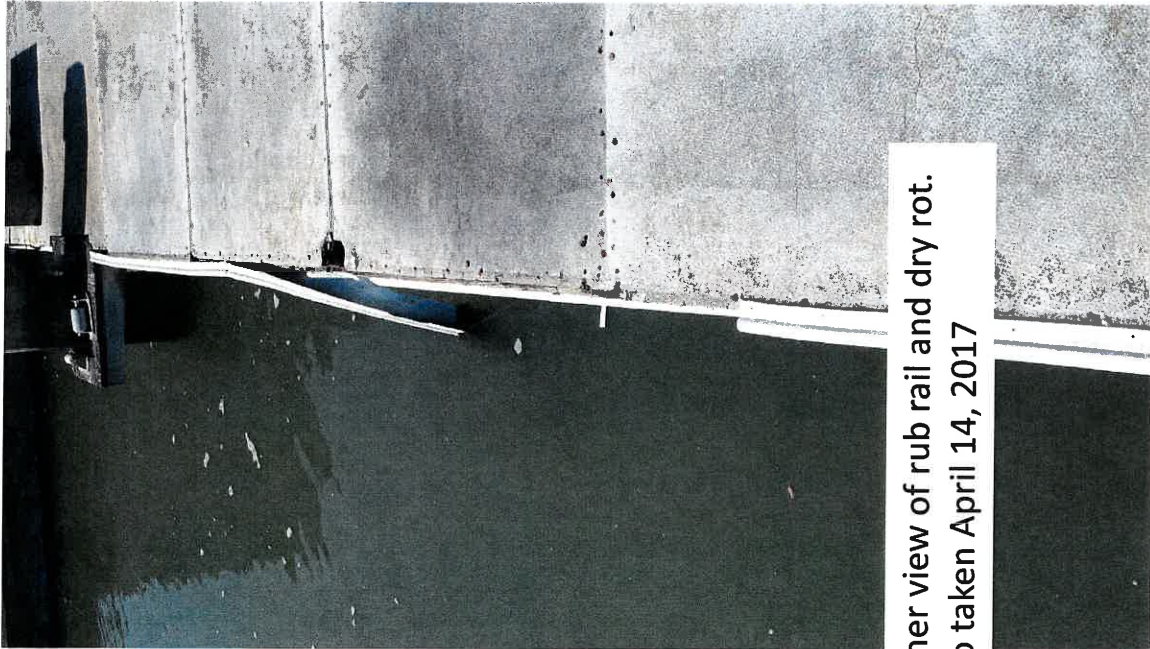
Note the uneven plywood.
Photo taken April 14, 2017



Note the dry rot, loose cleat.
Photo taken April 14, 2017



Another view of plywood patch.
Photo taken April 14, 2017



Another view of rub rail and dry rot.
Photo taken April 14, 2017

