

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE
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W10a

MEMORANDUM

Date: October 4, 2011 [Click here to go to the original staff report.](#)

To: Commissioners and Interested Parties

From: Charles Lester, Executive Director
 Robert Merrill, District Manager – North Coast District
 Melissa Kraemer, Coastal Program Analyst – North Coast District

Subject: **Addendum to Commission Meeting for Wednesday, October 5, 2009
 North Coast District Item W10a
 Appeal No. A-1-MEN-09-052 (Blue Port, LLC)**

Staff is proposing to make certain changes to the September 23, 2011 de novo staff recommendation on Appeal No. A-1-MEN-09-052. The changes include adding clarifying language to Special Condition No. 21 and substituting references within the condition currently made to Exhibit 6 to references to Exhibit No. 17, a new exhibit being added to the staff report. Exhibit No. 17 is a parcel map that more clearly show the assessors parcels that must be merged and/or henceforth treated as one single parcel pursuant to the requirements of Special Condition No. 21 and the applicant's project description.

I. REVISIONS TO RECOMMENDED SPECIAL CONDITION NO. 21

Staff is recommending modifications to the text of Special Condition No. 21 on pages 21-23 of the September 23, 2011 staff report as follows (text to be deleted is shown in ~~strikethrough~~; text to be added appears in **bold double-underline**):

21. Limitations on APN 131-080-01, APN 131-080-02, and APN 131-080-05.

The applicant/permittee shall satisfy either Part A or Part B below:

- A. Unless the applicant demonstrates to the satisfaction of the Executive Director and the County of Mendocino that the three APNs, APN 131-080-01, APN 131-080-02, and APN 131-080-05 as depicted on Exhibit No. ~~6-17~~ currently exist as three legal lots, the applicant shall satisfy the requirements of A1-A3 below:

- A1. **PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. A-1-MEN-09-052**, the applicant shall submit written evidence, for the review and approval of the Executive Director, that the applicant/landowner acknowledges, agrees to, and has implemented the requirements of subsection A1, A2 and A3.
- A2. By acceptance of this permit, the applicant agrees, on behalf of itself and all successors and assigns with respect to the subject property, that all portions of the property identified as APN 131-080-01, APN 131-080-02, and APN 131-080-05 and generally depicted on Exhibit No. ~~6-17~~: (a) comprise one single legal parcel generally depicted in Exhibit No. ~~6-17~~; (b) shall henceforth be considered and treated as one single parcel for all purposes including but not limited to sale, conveyance, lease, development, taxation or encumbrance; and (c) shall not be divided or alienated from each other or from the single legal parcel of which they are a part, and
- A3. **PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. A-1-MEN-09-052**, the applicant shall execute and record a deed restriction against the single legal parcel containing the property identified as APN 131-080-01, APN 131-080-02, and APN 131-080-05, in a form acceptable to the Executive Director, reflecting the restrictions set forth above. The deed restriction shall include a legal description and graphic depiction of the property identified as APN 131-080-01, APN 131-080-02, and APN 131-080-05 and generally depicted on Exhibit No. ~~6-17~~. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens, including tax liens, and encumbrances that the Executive Director determines may affect the enforceability of the restriction.

OR

- B. To the extent that the applicant demonstrates to the satisfaction of the Executive Director and the County of Mendocino that the three APNs, APN 131-080-01, APN 131-080-02, and APN 131-080-05 as depicted on Exhibit No. ~~6-17~~ currently exist as three separate legal lots, the applicant shall satisfy the requirements of B1-B4 below:
- B1. By acceptance of this permit, the applicant agrees, on behalf of itself and all successors and assigns with respect to the subject property, that (1) all portions of the three parcels, APN 131-080-01, APN 131-080-02, and APN 131-080-05 as depicted on Exhibit No. ~~6-17~~ shall be formally and irrevocably recombined and unified for purposes of the Subdivision Map Act and the Coastal Act, and shall henceforth be considered and treated as

a single parcel of land for all purposes with respect to the lands included therein, including but not limited to sale, conveyance, lease, development, taxation or encumbrance, and (2) the single parcel created thereby shall not be divided, and none of the parcels existing at the time of this permit approval shall be alienated from each other or from any portion of the combined and unified parcel hereby created, and

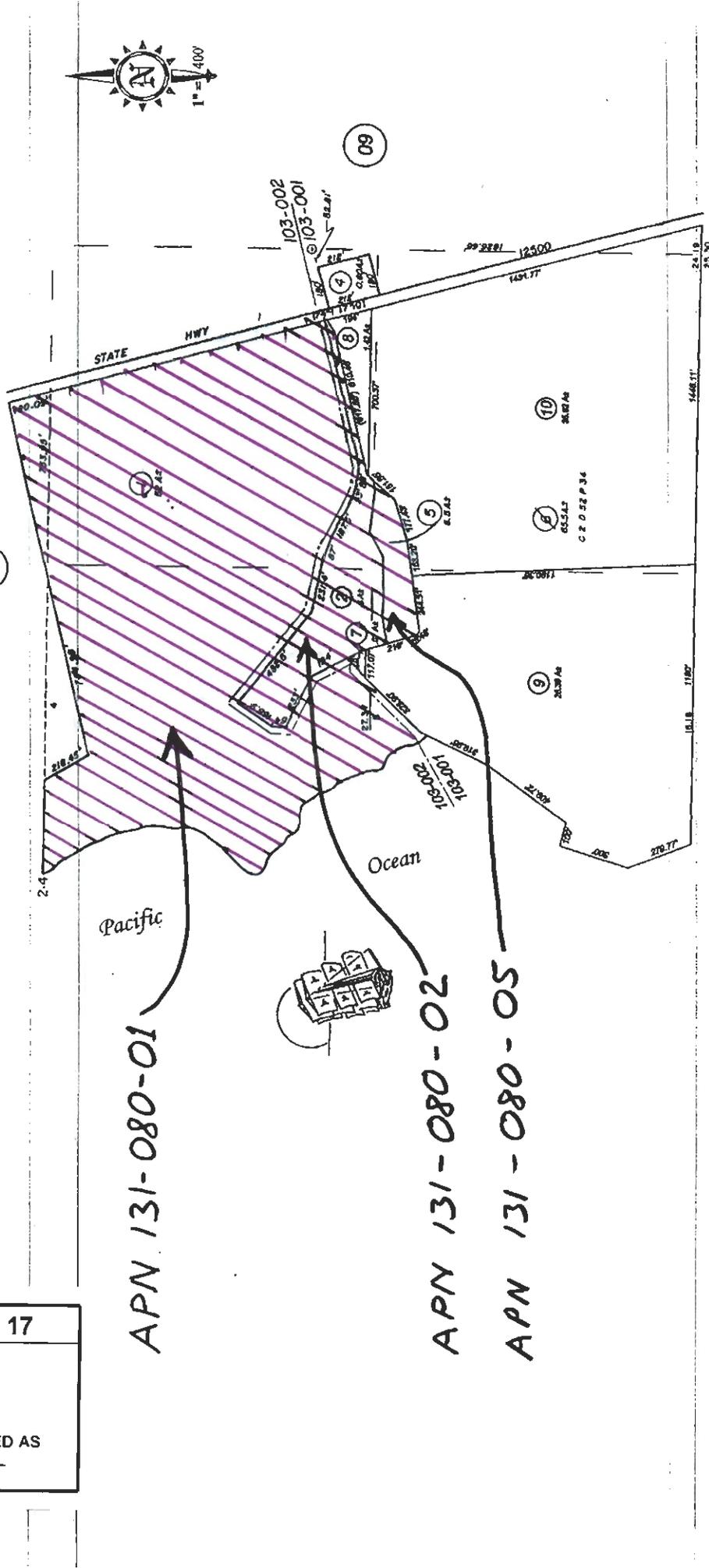
- B2. **PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. A-1-MEN-09-052**, the applicant shall execute and record a deed restriction against each parcel described above, in a form acceptable to the Executive Director, reflecting the restrictions set forth above. The deed restriction shall include a legal description and graphic depiction of the 3 parcels being combined and unified. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens, including tax liens, and encumbrances that the Executive Director determines may affect the enforceability of the restriction, and
- B3. **PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. A-1-MEN-09-052**, but after the deed restriction described in the prior paragraph is recorded, the applicant shall provide evidence to the Executive Director that the applicant has (1) provided a copy of the deed restriction to the Mendocino County Assessor's office and requested that the assessor's office (a) revise its records and maps to reflect the combination of the parcels, including assigning a new, single APN for the unified parcel, and (b) send the Commission notice when it has done so, indicating the new single APN; and (2) provided a copy of the deed restriction to the Mendocino County Department of Planning and Building Services and applied for a Subdivision Map Act approval to merge the parcels into one.
- B4. **PRIOR TO COMMENCEMENT OF DEVELOPMENT OTHER THAN THE MERGER OF LOTS**, the permittee shall submit to the Executive Director evidence that the Notice of Merger of the subject lots has been recorded.
- C. If circumstances arise in the future beyond the control of the landowner or operator that render continued agricultural production on the property infeasible, the above-identified limitations on the division of the property subject to this permit may be eliminated only if the permittee obtains: (1) Commission certification of an amendment to the LCP changing the land use designation of the parcel to another land use in accordance with all applicable policies of the certified LUP and the Coastal Act; and (2) Commission approval of an amendment to this coastal development permit.

II. NEW EXHIBIT NO. 17

Staff is adding attached new Exhibit No. 17 to the staff report. Exhibit No. 17 is a parcel map that more clearly show the assessors parcels that must be merged and/or henceforth treated as one single parcel pursuant to the requirements of Special Condition No. 21 and the applicant's project description.

Por. of S1/2 of Sec. 24 T.14N. R.17W. M.D.B.&M.

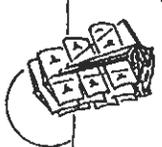
EXHIBIT NO. 17
APPEAL NO. A-1-MEN-09-052
BLUE PORT, LLC
APNs TO BE TREATED AS ONE SINGLE PARCEL



APN 131-080-01

APN 131-080-02

APN 131-080-05



10

09

07

NOTE: This map was prepared for assessment purposes only. No liability is assumed for the data delineated hereon.

Assessor's Map
County of Mendocino, Calif.
Updated March 9, 2006

JUL 9 2010

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE
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W10a

Filed:	December 21, 2009
49 th Day:	February 8, 2010
Hearing Opened:	January 15, 2010
Staff:	Melissa Kraemer
Staff Report:	September 23, 2011
Hearing Date:	October 5, 2011

STAFF REPORT: APPEAL**DE NOVO HEARING**

APPEAL NO.: **A-1-MEN-09-052**

APPLICANTS: **Blue Port, LLC; Attn: Gower Smith**

LOCAL GOVERNMENT: County of Mendocino

DECISION: Approval with Conditions

PROJECT LOCATION: At Bridgeport Landing, approximately three miles south of Elk, on the west side of Highway One, approximately 1.5-miles north of its intersection with Mallo Pass Creek, at 12350 Highway One, Mendocino County (APNs 131-080-01, -02, & -05).

PROJECT DESCRIPTION
(as approved by the County): Construction of (1) a 5,183-square-foot, 2-story, single-family residence with an attached 675-square-foot garage and 1,536 square feet of upper and lower attached decks (for a total structural size of 7,394 square feet and a maximum height of 18 feet above natural grade); (2) a ~3,180-square-foot, 2-story barn with a maximum height of 25-feet above natural grade; (3) a 600-square-foot, 1-story guest cottage with attached deck and 192-square-foot cabana; (4) a 192-square-foot hobby workshop; (5) a 216-square-foot garden storage shed; (6) a 160-square-foot cabana with attached deck; (7) reconstruction of an existing 1,250-square-foot, 2-story “shack” to a new detached home office with a maximum height of 25 feet above natural

grade; (8) a new septic system, driveway, water storage tank, well, and roof-mounted solar system; and (9) request for temporary use of a guest cottage during construction.

PROJECT DESCRIPTION
(as amended *de novo*):

Develop a 58.5-acre parcel by (A) constructing: (1) a 4,277-square-foot, 2-story, single family residence with an attached 640-square-foot, 2-story guest cottage and a total of 585 square feet of upper and lower attached decks and patios (for a total structural size of 5,502 square feet and a maximum height of 25 feet above natural grade); (2) a 4,560-square-foot, 3-story barn, with a maximum height of 40 feet above natural grade; (3) a 192-square-foot hot-tub outbuilding with an average height of 13 feet above natural grade; (4) a 120-square-foot well pump house with an average height of 13 feet above natural grade; (5) a new septic system, (6) a 10-foot-wide non-paved driveway, (7) a new underground 5,000-gallon rainwater-runoff storage tank, (8) a production well, (9) a roof-mounted solar panels, (10) landscaping for privacy screening from the neighboring residence to the north; and (11) an 8-foot-high fence constructed of natural wooden posts and “invisible” game wire to separate the farm area from the dwelling area; (B) reconstructing an existing 1,250-square-foot, 2-story “shack” to a new detached home office with a maximum height of 25 feet above natural grade; (C) merging the three underlying lots (APNs) into a single 58.5-acre parcel to the extent that such APNs are separate legal lots and limiting further division of the property without a site-specific LCP amendment; (D) recordation of a deed restriction that would (a) limit development in the agricultural area of the property (excluding bluff areas, sensitive habitat areas, and the areas of the bluff top proposed for development of the structured depicted on the applicants’ revised site plan) to agricultural related facilities and (b) require that areas within the agricultural area except for existing and approved development shall be at all times maintained in active agricultural use; and (E) temporarily occupying the restored shack/office during construction of the main residence.

APPELLANTS:

Commissioners Pat Kruer & Sara J. Wan

**SUBSTANTIVE FILE
DOCUMENTS:**

(1) Mendocino County CDP No. 42-2007;
(2) Mendocino County Local Coastal Program;
(3) *Engineering Geologic Reconnaissance, Proposed Smith Residence, 12350 South Highway One, Elk, Mendocino*

County, California – 12071.1, dated July 12, 2007, by BACE Geotechnical, Santa Rosa, CA;
(4) *Report Supplement, Results of Slope Stability Analyses and Documentation of Aerial Photograph Studies, Smith Residence, 12350 South Highway 1, Elk, Mendocino County, California*, dated March 14, 2011, by BACE Geotechnical, Santa Rosa, CA; and
(5) Local Record for County CDP No. 42-2007

**SUMMARY OF STAFF RECOMMENDATION DE NOVO:
APPROVAL WITH CONDITIONS**

Staff recommends approval with special conditions of the coastal development permit application for the proposed development on a 58.6-acre blufftop rangelands property south of Elk along the rural Mendocino County coast. Staff believes that as conditioned, the development as revised for purposes of the Commission’s de novo hearing would be consistent with the Mendocino County LCP and the public access policies of the Coastal Act.

The proposed project consists of (A) constructing: (1) a 4,277-square-foot, 2-story, single family residence with an attached 640-square-foot, 2-story guest cottage and a total of 585 square feet of upper and lower attached decks and patios (for a total structural size of 5,502 square feet and a maximum height of 25 feet above natural grade); (2) a 4,560-square-foot, 3-story barn, with a maximum height of 40 feet above natural grade; (3) a 192-square-foot hot-tub outbuilding with an average height of 13 feet above natural grade; (4) a 120-square-foot well pump house with an average height of 13 feet above natural grade; (5) a new septic system, (6) a 10-foot-wide non-paved driveway, (7) a new underground 5,000-gallon rainwater-runoff storage tank, (8) a production well, (9) a roof-mounted solar panels, (10) landscaping for privacy screening from the neighboring residence to the north; and (11) an 8-foot-high fence constructed of natural wooden posts and “invisible” game wire to separate the farm area from the dwelling area; (B) reconstructing an existing 1,250-square-foot, 2-story “shack” to a new detached home office with a maximum height of 25 feet above natural grade; (C) merging the three underlying lots (APNs) into a single 58.5-acre parcel; (D) recordation of a deed restriction that would (a) limit development in the agricultural area of the property (excluding bluff areas, sensitive habitat areas, and the areas of the bluff top proposed for development of the structured depicted on the applicants’ revised site plan) to agricultural related facilities and (b) require that areas within the agricultural area except for existing and approved development shall be at all times maintained in active agricultural use; and (E) temporarily occupying the restored shack/office during construction of the main residence.

A principal issue raised by the proposed development is the conformance of the project with the agricultural resource policies of the LCP. The Coastal Act protects coastal agriculture first and foremost by requiring that “*new development be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it...*” Coupled with this framework for limiting urban development to existing developed areas, the Coastal Act requires the

establishment of stable urban-rural boundaries to assure that urban sprawl from existing urban areas does not overtake rural agricultural areas. The Coastal Act also requires that the maximum amount of prime agricultural land be maintained in agricultural production, and that the conversion of agricultural land be limited to instances where agriculture is no longer feasible or where the viability of existing agricultural use is already severely limited by conflicts with urban uses or where conversion of agricultural lands would complete a logical neighborhood and contribute to the establishment of a stable limit to urban development or would concentrate development in urban areas.

The Mendocino County LCP carries out the requirements of Coastal Act Sections 30241, 30242, and 30250, through land use and zoning policies designed to maintain the maximum amount of agricultural lands in agricultural production and to concentrate development within or in close proximity to existing areas that are able to accommodate it.

For purposes of the Commission's *de novo* review of the project, the applicant submitted an economic analysis of current and proposed agricultural activities for the subject site. The agricultural analysis includes an evaluation that the subject property is not currently considered economically viable as an independent grazing operation. However, the analysis indicates that the site would be viable for producing crops. According to the agricultural resources submittal, the applicant intends to develop the subject site to "be an economically viable and productive lifestyle organic farm." The applicant proposes to live on the land and graze approximately 25 beef cattle, a small herd of alpacas, and a small number of sheep on upwards of 38 acres total, and to utilize the remaining land to experiment with intense farming methods growing various crops in addition to the grazing of cattle and sheep. The applicant proposes to irrigate cropland using onsite water resources and to experiment with various crops including peppers, celery, lettuce, garlic, lemongrass, berries, and bulbs such as daffodils and iris. Crops will be planted in some fenced-off areas for use as animal feed.

Measures have been identified statewide to address the increasing trend of non-farming related single-family homes being developed on agricultural lands. These measures include: (1) prohibiting all non-farm dwellings on agricultural lands, (2) limiting the size of new homes on agricultural lands, and (3) requiring agricultural conservation easements that ensure that land remains in agricultural use as opposed to simply remaining available for agricultural use. These measures have been adopted or are currently under consideration by many jurisdictions throughout the state and nation.

While agricultural conservation easements typically prohibit development of agricultural land, they do not necessarily ensure that the land will continue to be farmed. To accomplish this, an easement must include an affirmative farming requirement in addition to development prohibitions. Without a clause requiring continued agricultural use, an easement can only guarantee the protection of open space but cannot guarantee the land will remain in agricultural use. In recognition of this shortcoming, affirmative farming clauses are included in agricultural conservation easements.

The proposed project as revised for the Commission's *de novo* review satisfies the first two measures to maximize agricultural resource protection because all proposed developments will

be utilized for agricultural purposes and are the minimum size necessary to support continued and renewed agricultural use of the subject parcel. The applicants propose that through the use of onsite developments designed to support active farming and management of farming operations, the project as proposed will enhance the productivity of on-site agricultural lands. The applicants further hope their intensive farming approach, if successful, could serve as a model that could be applied to improve the productivity and economic viability of adjacent lands. To demonstrate their commitment to actively improving and maintaining the subject property in agricultural production and ensure that agricultural land is not impermissibly converted for residential uses, the applicant has proposed as part of the revised project description the recordation of a deed restriction (Exhibit X) that would (A) limit development in the agricultural area of the property (excluding bluff areas and the areas of the bluff top proposed for development of the single-family house, office, barn, well, septic system and other accessory structures as depicted on the applicants' previously submitted site plan) to (1) agricultural development and (B) require that areas within the agricultural area shall be at all times maintained in active agricultural use.

Consistent with the applicant's proposal, Special Condition No. 20 would require the applicant to execute and record a deed restriction against the property identified as APN 131-080-01, APN 131-080-02, and APN 131-080-05 in a form acceptable to the Executive Director, reflecting the restrictions set forth above, and affecting all areas of the property within the designated "agricultural area envelope" as depicted in Exhibit No. 12.

Because the applicant proposes to record an affirmative agricultural deed restriction to ensure that the area of the property outside of the development envelope will remain in agricultural use, staff believes that the revised project as proposed for the purposes of the Commission's *de novo* review further ensures protection of agricultural resources, consistent with the certified LCP policies that include but are not limited to LUP Policies 3.2-1, 3.2-5, and 3.2-16, and CZC Sections 20.368.005, 20.532.095, and, 20.532.100.

The proposed development also raises issues regarding the protection of visual resources. The property is located on a coastal terrace bluff-top lot on the west side of Highway One in a designated "Highly Scenic Area" (HSA) under the Mendocino County LCP. The area is characterized by large open range lands and agricultural properties in a sparsely developed rural setting. The nearest higher-density residential communities are located approximately three miles to the north in the unincorporated community of Elk and 10 miles to the south in the unincorporated community of Manchester. Blue-water views to the ocean are available to both north-bound and south-bound Highway One travelers across the open grassland portions of the property. These ocean views are across the property interrupted in some areas by a backdrop of mature cypress and eucalyptus trees growing along the bluff edge near the western end of the property. There also is a stand of mature riparian vegetation lining an unnamed stream and associated pond on the southern end of the property between the highway and the bluff edge.

The LCP contains numerous provisions to protect the County's coastal visual resources, especially in designated Highly Scenic Areas (HSAs). The LCP policies require that new development in highly scenic areas protect views to and along the coast and be subordinate to the character of its setting. LUP Policy 3.5-4 and CZC Section 20.504.015(C)(7) specifically require that the visual impacts of development on terraces be minimized in applicable part by (a)

avoiding development, other than farm buildings, in large open areas if an alternative site exists, (b) minimizing the number of structures and clustering them near existing vegetation, natural landforms or artificial berms, and (c) designing development to be in scale with rural character of the area. The applicants propose to develop all new structures near the western bluff edge (while maintaining the geologic setbacks prescribed by the geologic reports) against a backdrop of mature cypress trees, rather than in the large, open, grassy areas of the property between the highway and the bluff edge. This siting is consistent with LUP Policy 3.5-4 and CZC Section 20.504.015(C)(7), which requires that development in large open areas be avoided since an alternative site exists. In addition, the project as revised minimizes the number of proposed structures, consistent with LUP Policy 3.5-4 and CZC Section 20.504.015(C)(7), by consolidating the main residence and guest cottage together (rather than as two independent structures as approved by the County), and by deleting the hobby workshop and garden shed structures originally approved by the County from the revised project plans. The project proposes a total of five new independent structures (versus seven as originally approved by the County), three of which (main house/guest house, barn, and hot tub outbuilding) will be clustered near the southwestern end of the property in front of (as viewed from Highway One) a backdrop of mature evergreen cypress trees. The proposed 1,250-square-foot restored office and 120-square-foot well pump house will be sited north of the other proposed structures yet still in front of (as viewed from Highway One) a backdrop of mature evergreen vegetation (eucalyptus trees). The proposed clustering of structures and siting of new buildings in front of (as viewed from Highway One) a backdrop of mature evergreen vegetation over 40 feet in height will minimize the visual impacts of the proposed development on the coastal terrace, consistent with LUP Policy 3.5-3 and CZC Section 20.504.015(C).

Staff is recommending Special Condition No. 4 which would require that all existing trees located seaward of the approved building sites that serve as a visual backdrop to the structures shall be maintained in good condition and replaced if necessary. In addition, Special Condition No. 3 requires the submittal of a landscape plan that would provide for the planting of additional trees on the inland side of the proposed structures to soften their appearance as viewed from Highway One.

To ensure the construction materials and colors used for the proposed development are subordinate to the natural setting and minimize reflective surfaces consistent with LCP policies, the staff is recommending Special Condition No. 7. This condition requires that prior to permit issuance the applicant submit design plans in part showing proposed materials and colors for the new structures and requires that dark earthtone colors be used that are compatible with the appearance of the buildings' natural and man-made surroundings. In addition, the condition prohibits the use of reflective glass, reflective exterior finishings, or reflective roofing. Special Condition No. 8 would require that all exterior lights be the minimum necessary for the safe ingress and egress of structures and be low-wattage, non-reflective, shielded, and be cast downward such that no light will be directed to shine beyond the boundaries of the subject parcel. Finally, Special Condition No. 10 would require that all utility extensions be placed underground consistent with the LCP.

As recommended with the inclusion of these special conditions, staff believes the proposed development will be visually compatible with and subordinate to the character of the its setting

consistent with LUP Policies 3.5-1 and 3.5-3 and CZC Sections 20.504.015(C)(3) and 20.504.020(D)

The development is proposed on a bluff-top lot that is subject to bluff retreat. A geotechnical report has been prepared for the project demonstrating the development will be safely located on the lot to avoid bluff retreat during the life of the project and to avoid the need to develop shoreline protective structures in the future. Recommended Special Condition No. 12 would prohibit the construction of shoreline protective devices on the parcel and requires that the landowner remove or relocate the development if bluff retreat reaches the point where the permitted development is threatened. Special Condition No. 13 would require the landowner to assume the risks of extraordinary erosion and geologic hazards of the property and waive any claim of liability on the part of the Commission. As conditioned, staff believes the proposed development is consistent with the policies of the certified LCP regarding geologic hazards, including LUP Policies 3.4-1, 3.4-7, 3.4-12 and CZC Sections 20.500.010, 20.015.015, and 20.500.020.

Therefore, as conditioned, staff recommends that the Commission find that the project is consistent with the certified Mendocino County LCP.

The motion to Adopt the staff recommendation of approval with conditions is on page 9.

STAFF NOTES:

1. Procedure

On January 15, 2010, the Commission found that the appeal of the County of Mendocino's approval of a local coastal development permit for a single family residence and associated development raised a substantial issue with respect to the grounds on which the appeal had been filed, pursuant to Section 13115 of the Title 14 of the California Code of Regulations. As a result, the County's approval is no longer effective, and the Commission must consider the application *de novo*. The Commission may approve, approve with conditions (including conditions different than those imposed by the County), or deny the application. Since the proposed project is within an area for which the Commission has certified a Local Coastal Program (LCP) and is located between the first public road and the sea, the applicable standard of review for the Commission to consider is whether the development is consistent with the Mendocino County certified LCP and the public access policies of the Coastal Act. Testimony may be taken from all interested persons at the *de novo* hearing.

2. Submittal of Additional Information by the Applicant

For the purposes of *de novo* review by the Commission, the applicant has provided Commission staff with supplemental information consisting of the following:

- (a) A revised project description, revised site plan, and revised floor plans and building elevations (Exhibit Nos. 5 and 6);

- (b) *Report Supplement, Results of Slope Stability Analyses and Documentation of Aerial Photograph Studies, Smith Residence, 12350 South Highway 1, Elk, Mendocino County, California*, dated March 14, 2011, by BACE Geotechnical, Santa Rosa, CA (Exhibit No. 13);
- (c) *Botanical Inspection of September 14, 2010* by Botanist Terry Sullivan, Mill Valley, CA and *Evaluation of Wetland Soils and Hydrology at Three Data Points*, dated April 15, 2011, by Christopher Thayer, Lafayette, CA (Exhibit No. 14);
- (d) Supplemental septic system information; and
- (e) An agricultural analysis dated August 31, 2011.

The supplemental information addresses issues raised by the appeal and provides additional information that was not a part of the record when the County originally acted to approve the coastal development permit.

3. Amended Project Description Submitted by Applicant for *de novo* Review

For the purposes of *de novo* review by the Commission, the applicant submitted a revised project description and revised plans that make changes to the proposed residential development as originally approved by the County. The project revisions were designed to address concerns raised in the appeal that the project (1) included structures greater than one story in height in a designated highly scenic area west of Highway One, inconsistent with Policy 3.5-3 of the certified Land Use Plan (LUP); (2) did not minimize the number of new structures to be sited on the coastal terrace and cluster them together, as is required by LUP Policy 3.5-4 and Coastal Zoning Code (CZC) Section 20.504.015(C); and would convert agricultural lands inconsistent with the range lands and agricultural lands protection policies of the certified LCP.

The proposed project as revised for the Commission's *de novo* review involves the development of a 58.5-acre parcel by (A) constructing: (1) a 4,277-square-foot, 2-story, single family residence with an attached 640-square-foot, 2-story guest cottage and a total of 585 square feet of upper and lower attached decks and patios (for a total structural size of 5,502 square feet and a maximum height of 25 feet above natural grade); (2) a 4,560-square-foot, 3-story barn, with a maximum height of 40 feet above natural grade; (3) a 192-square-foot hot-tub outbuilding with an average height of 13 feet above natural grade; (4) a 120-square-foot well pump house with an average height of 13 feet above natural grade; (5) a new septic system, (6) a 10-foot-wide non-paved driveway, (7) a new underground 5,000-gallon rainwater-runoff storage tank, (8) a production well, (9) a roof-mounted solar panels, (10) landscaping for privacy screening from the neighboring residence to the north; and (11) an 8-foot-high fence constructed of natural wooden posts and "invisible" game wire to separate the farm area from the dwelling area; (B) reconstructing an existing 1,250-square-foot, 2-story "shack" to a new detached home office with a maximum height of 25 feet above natural grade; (C) merging the three underlying lots (APNs) into a single 58.5-acre parcel to the extent that such APNs are separate legal lots and limiting further division of the property without a site-specific LCP amendment; (D) recordation of a deed restriction that would (a) limit development in the agricultural area of the property (excluding bluff areas, sensitive habitat areas, and the areas of the bluff top proposed for development of the structured depicted on the applicants' revised site plan) to agricultural related

facilities and (b) require that areas within the agricultural area except for existing and approved development shall be at all times maintained in active agricultural use; and (E) temporarily occupying the restored shack/office during construction of the main residence.

The amended project description and supporting information address issues raised by the appeal where applicable and provide additional information concerning the amended project proposal that was not a part of the record when the County originally acted to approve the coastal development permit.

I. MOTION, STAFF RECOMMENDATION *DE NOVO*, & RESOLUTION:

Motion:

I move that the Commission approve Coastal Development Permit No. A-1-MEN-09-052 subject to conditions.

Staff Recommendation of Approval:

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

Resolution to Approve Permit:

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

II. STANDARD CONDITIONS: See Appendix A.

III. SPECIAL CONDITIONS:

1. Septic System Approval

PRIOR TO COMMENCEMENT OF DEVELOPMENT, the applicant shall submit to the Executive Director evidence of final approval of the proposed septic system the Mendocino County Division of Environmental Health (DEH), or evidence from the DEH that no further review and approval is required. The applicant shall inform the Executive Director of any

changes to the project required by the DEH. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

2. Caltrans Encroachment Permit

PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. A-1-MEN-09-052, the applicant shall submit for the review and approval of the Executive Director a copy of an Encroachment Permit issued by California Department of Transportation for the construction of the proposed driveway connection to Highway One, or evidence that no permit is required. The applicant shall inform the Executive Director of any changes to the project required by the County. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

3. Landscaping Plan

A. PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. A-1-MEN-09-052, the applicant shall submit a final landscaping plan for the review and approval of the Executive Director. The plan shall be prepared by a qualified botanist, licensed landscape architect, or other professional with knowledge and expertise in the native flora of and appropriate landscaping for coastal Mendocino County.

(1) The plan shall demonstrate, at a minimum, all of the following:

- i. A minimum of ten trees and additional shrubs shall be planted along the inland side of the residence, barn, office and other buildings authorized by the permit. New landscaping shall be selected and designed with the primary goal of at a minimum partially screening the new structures and other development (including satellite receiving dish antennas) authorized by CDP No. A-1-MEN-09-052 from public views along Highway One while not affecting public views to the ocean;
- ii. Only drought tolerant plants shall be planted in the geologic setback areas;
- iii. All proposed plantings shall consist of plant species native to coastal Mendocino County and shall be obtained from local genetic stocks within Mendocino County. If documentation is provided to the Executive Director that demonstrates that native vegetation from coastal Mendocino County and/or from local genetic stock is not available, native vegetation obtained from genetic stock outside the local area but from within the adjacent region of the floristic province may be used;
- iv. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or by the State of California shall be planted or allowed to naturalize or persist on the parcel. No plant species listed as a “noxious weed” by the State of California or the U.S. Federal Government shall be planted within the property;

- v. No rodenticides of any kind shall be utilized within the property that is the subject of this coastal development permit;
 - vi. All landscaping approved pursuant to this plan as well as all existing trees and shrubs on the property that serve as a visual backdrop to the structures and development authorized pursuant to CDP No. A-1-MEN-09-052 as viewed from Highway One shall be maintained in good growing condition for the life of the project and shall be replaced as necessary pursuant to Special Condition No. 4 no later than May 1st of the next spring season or with another native evergreen species common to the coastal Mendocino County area that will grow to a similar or greater height.
- (2) The plan shall include, at a minimum, the following components:
- i. A final landscape site plan map depicting the proposed species, type (e.g., 1-gallon, 5-gallon, bare-root, etc.), expected size at maturity, and location of all plant materials to be planted on the property. The landscaping site plan map also should show the location of all development authorized pursuant to CDP No. A-1-MEN-09-052 and other site features including, but not limited to, environmentally sensitive habitat areas, ESHA buffers, the delineated bluff edge, and geologic setback areas;
 - ii. Information on all existing trees and shrubs on the property, including the types (e.g., species) and approximate heights and locations of each;
 - iii. A schedule for the planting of the proposed and replacement landscaping;
 - iv. Provisions for ensuring that all proposed plantings and all existing trees and shrubs on the property that serve as a visual backdrop to the structures and development authorized by this permit shall be maintained in good condition throughout the life of the project to ensure continued compliance with the approved final landscape plan. If any of the existing trees or any of the trees and plants to be planted die, become decadent, rotten, or weakened by decay or disease, or are removed for any reason, they shall be replaced; and
 - v. Provisions for monitoring and reporting on the success of the landscaping plan on a regular basis such that monitoring results shall be submitted annually to the Executive Director by December 31st of each calendar year for a minimum of five years.
- B. The permittee shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

4. Maintenance of Existing Backdrop of Trees

All existing trees located seaward of the approved building sites for the structures authorized pursuant to CDP No. A-1-MEN-09-052 that serve as a visual backdrop to the authorized structures as viewed from Highway One, and all new vegetation planted for visual screening or supplemental backdrop purposes pursuant to Special Condition No. 3, shall be maintained in good condition throughout the life of the project. If any of this vegetation dies, become decadent, rots, is weakened by decay or disease, or is removed for any reason, it shall be replaced no later than May 1st of the next spring season with native, evergreen vegetation from species common to coastal Mendocino County that will grow to a similar or greater mass and height. All proposed plantings shall be obtained from local genetic stocks within Mendocino County. If documentation is provided to the Executive Director that demonstrates that native vegetation from local genetic stock is not available, native vegetation obtained from genetic stock outside the local area, but from within the adjacent region of the floristic province, may be used.

5. Deed Restriction

PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. A-1-MEN-09-052, the applicant shall submit for the review and written approval of the Executive Director, documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions, and restrictions on the use and enjoyment of the property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

6. Revised Plans for the Proposed New Barn

- A. **PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. A-1-MEN-09-052**, the applicant shall submit, for the review and approval of the Executive Director, revised floor plans and elevations for the proposed new barn that substantially conform to the plans dated May 17, 2011 except that the plans shall be revised such that the maximum height of the barn does not exceed 35 feet.
- B. The permittee shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

7. Design Plan & Restrictions

A. **PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. A-1-MEN-09-052**, the applicant shall submit, for the review and approval of the Executive Director, a design plan showing proposed materials and colors for the new single-family residence, guest cottage, barn, restored “shack”/office, and other accessory structures, including exterior bodies, trims, sidings, roofs, and other features.

(1) The plan shall demonstrate that:

- i. Materials and colors used in construction shall be of dark earth tone colors compatible with the appearance of the buildings’ natural and man-made surroundings;
- ii. All exterior materials, including roofs and windows, are non-reflective to minimize glare; and
- iii. Any proposed satellite receiving dish antennas shall be positioned behind structures and/or landscaping such that the satellite dish is not visible.

(2) The plan shall include, at a minimum, the following components:

- i. Building elevation drawings, photos, and/or artist’s renderings of the authorized structures which illustrate the proposed colors for the trim and exterior body of the structures and indicate which architectural features would be painted with the base and trim colors;
- ii. Details on proposed colors and materials for flashings, windows, doors, gutters, downspouts, deck railings, chimneys, and other building features visible from public vantage points;
- iii. Details on the proposed location and size of satellite receiving dish antennas;
- iv. A sample of the proposed roofing material with specifications for the hue, chroma, and reflectivity of the color of the roofing.

B. The permittee shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

8. Design and Exterior Lighting Restrictions

All exterior lights, including any lights attached to the outside of the buildings, shall be the minimum necessary for the safe ingress and egress of the structures, and shall be low-wattage, non-reflective, shielded, and have a directional cast downward such that no light will shine beyond the boundaries of the subject parcel.

9. Future Development

This permit is only for the development described in coastal development permit no. A-1-MEN-09-052. Any future improvements or changes to the single-family residence or other approved structures shall require an amendment to Permit No. A-1-MEN-09-052 from the Commission, or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

10. Underground Utility Extensions

All utility extensions connected to development authorized pursuant to CDP No. A-1-MEN-09-052 shall be placed underground.

11. Minimization of Geologic Hazards

- A. All final design and construction plans including foundations, grading, retaining walls, and drainage plans, shall be consistent with the recommendations contained in the BACE Geotechnical report prepared for the site dated July 12, 2007 and the revised recommended setbacks in the March 14, 2011 supplemental report (Exhibit No. 13). **PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. A-1-MEN-09-052**, the applicant shall submit, for the Executive Director's review and approval, evidence that a licensed professional (Certified Engineering Geologist or Geotechnical Engineer) has reviewed and approved all final design, construction, foundation, grading and drainage plans and has certified that each of those plans is consistent with the Commission-specified bluff setback and all of the recommendations specified in the above-referenced geotechnical reports approved by the California Coastal Commission for the project site.
- B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

12. No Future Bluff or Shoreline Protective Device

- A. By acceptance of this permit, the applicant agrees, on behalf of itself and all successors and assigns, that no bluff or shoreline protective device(s) shall ever be constructed to protect the new single-family residence, guest cottage, decking, barn, pump house, hot tub enclosure, restored shed/office, septic system, driveway, water storage tanks, well, or other associated development authorized pursuant to Coastal Development Permit No. A-1-MEN-09-052, in the event that any of the aforementioned development is threatened with damage or destruction from waves, erosion, storm conditions, bluff retreat, landslides, ground subsidence, or other natural hazards in the future. By acceptance of this permit, the applicant hereby waives, on behalf of itself and all successors and assigns, any rights to construct such devices to protect the single-family residence, guest cottage, decking, barn, pump house, hot tub enclosure, restored shed/office, septic system, driveway, water storage tanks, well, or other associated development that may exist under Public Resources Code Section 30235 or under Mendocino County Land Use

Plan Policy No. 3.4-12, and Mendocino County Coastal Zoning Code Section 20.500.020(E)(1).

- B. By acceptance of this Permit, the applicant further agrees, on behalf of itself and all successors and assigns, that the landowner shall remove the single-family residence, guest cottage, decking, barn, pump house, hot tub enclosure, restored shed/office, septic system, driveway, water storage tanks, well, or other associated development authorized by this permit if any government agency has ordered that the structures are not to be occupied due to any of the hazards identified above. In the event that portions of the aforementioned development fall to the beach before they are removed, the landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.
- C. In the event the edge of the bluff recedes to within 10 feet of the single-family residence, guest cottage, decking, barn, pump house, hot tub enclosure, restored shed/office, septic system, driveway, water storage tanks, well, or other associated development but no government agency has ordered that the structures not be occupied, a geotechnical investigation shall be prepared by a licensed geologist or civil engineer with coastal experience retained by the applicant, that addresses whether any portions of the structures are threatened by waves, erosion, storm conditions, or other natural hazards. The report shall identify all those immediate or potential future measures that could stabilize the single-family residence, guest cottage, decking, barn, pump house, hot tub enclosure, restored shed/office, septic system, driveway, water storage tanks, well, or other associated development without shore or bluff protection, including but not limited to, removal or relocation of portions of the single-family residence, guest cottage, decking, barn, pump house, hot tub enclosure, restored shed/office, septic system, driveway, water storage tanks, well, or other associated development. The report shall be submitted to the Executive Director and the appropriate local government official. If the geotechnical report concludes that the single-family residence, guest cottage, decking, barn, pump house, hot tub enclosure, restored shed/office, septic system, driveway, water storage tanks, well, or other associated development is unsafe for use, the permittee shall, within 90 days of submitting the report, apply for a coastal development permit amendment to remedy the hazard which shall include removal of the threatened portion of the single-family residence, guest cottage, decking, barn, pump house, hot tub enclosure, restored shed/office, septic system, driveway, water storage tanks, well, or other associated development.

13. Assumption of Risk, Waiver of Liability & Indemnity

By acceptance of this permit, the applicant acknowledges and agrees: (i) that the site may be subject to hazards from landslide, bluff retreat, erosion, subsidence, earth movement, liquefaction, and other geologic hazards; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with

respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

14. Removal of Unauthorized Development Seaward of the Bluff Edge

WITHIN 90 DAYS OF ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. A-1-MEN-09-052, the applicant shall submit to the Executive Director evidence of removal of existing development located on the property's bluff face recommended for removal in the BACE Geotechnical report prepared for the site dated July 12, 2007 including, but not limited to, trailer, large storage container, and fencing.

15. Protection of Environmentally Sensitive Habitat Areas

The permittee shall comply with the following requirements to protect sensitive plant habitat:

- A. Temporary construction fencing shall be installed prior to commencement of construction activities between the authorized development areas and the 100-foot riparian ESHA buffer area and the 50-foot wetland buffer areas delineated on the site to prevent any ground or vegetation disturbance to the riparian and wetland ESHAs;
- B. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or by the State of California shall be employed or allowed to naturalize or persist at the site of the proposed development. No plant species listed as a "noxious weed" by the State of California or the U.S. Federal Government shall be utilized within the property;
- C. The canopy and root zones of existing living trees on the site shall be protected through temporary fencing or screening during construction;
- D. No rodenticides of any kind shall be used on the property that is the subject of this coastal development permit; and
- E. During installation of the septic infrastructure authorized pursuant to this coastal development permit in the vicinity of the wetland ESHA delineated on the site plan map, construction equipment and materials shall avoid direct disturbance to the wetland area. No stockpiling shall occur within the wetland area or within the established 50-foot buffer area

16. Restrictions on Accessory Structures & Temporary Occupancy of Travel Trailer

The following restrictions shall apply with respect to the barn, restored shack/office, guest cottage, and existing travel trailer on the property:

- A. Any rental or lease of the barn, restored shack/office, or guest cottage separate from rental of the main residence is prohibited;
- B. The restored shack/office may be used as a residence with cooking or kitchen facilities only during construction of the main residence and only until an occupancy permit is granted by Mendocino County for use of the new residence. The restored shack/office shall not subsequently be converted into a residence or second unit;

- C. All cooking and/or kitchen facilities must be removed from the restored shack/office within 60 days of completion of the main residence;
- D. The barn and guest cottage shall not contain cooking or kitchen facilities; and
- E. The existing travel trailer/camper that was placed on the property without the benefit of a coastal development permit may only be occupied for the period required to complete construction of the restored shack/office, which is authorized to be used for temporary occupancy during construction of the main residence. The travel trailer shall not be occupied for more than two years unless an amendment is obtained from the Commission to allow a longer period of occupancy.

17. Final Erosion and Sedimentation Control Plan

- A. **PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. A-1-MEN-09-052**, the applicant shall submit for the review and written approval of the Executive Director a final plan(s) for erosion and sedimentation control during construction activities:

- (1) The plan(s) shall demonstrate that:
 - i. Straw bales, coir rolls, silt fencing, or other devices as appropriate shall be installed prior to and maintained throughout the construction period to contain runoff from construction areas, trap entrained sediment and other pollutants, and prevent discharge of sediment and pollutants into any ESHA or ESHA buffer area on the property;
 - ii. Existing vegetation shall be maintained on site to the maximum extent feasible during construction;
 - iii. Any disturbed areas shall be replanted or seeded as soon as possible following completion of construction activities, consistent with the planting limitations required by Special Condition No. 3, and there shall be no less than 100 percent coverage within 90 days after seeding;
 - iv. All on-site stockpiles of construction materials, soil, and debris shall be covered and contained at all times to prevent polluted water runoff; and
 - v. Temporary exclusion/construction fencing shall be installed between the all ESHA buffer areas and all construction areas throughout the course of all construction activities;
- (2) The plan shall include, at a minimum, the following components:
 - i. A description of the location and timing of the installation of erosion and sedimentation control devices and the types of devices proposed to be used;
 - ii. A description of the location and timing of the installation of temporary fencing for ESHA protection; and
 - iii. A site plan map that shows the locations of BMP devices and temporary protective fencing to be installed;

- B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

18. Final Grading & Drainage Plan

- A. **PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. A-1-MEN-09-052**, the applicant shall submit a final grading and drainage plan for the review and written approval of the Executive Director.

- (1) The plan shall demonstrate that:

- i. Grading shall avoid and in no way disrupt wetland, riparian, or any other ESHA, ESHA buffer, or natural drainage patterns;
- ii. Grading shall not significantly increase volumes of surface runoff, and adequate measures shall be taken to ensure there is no increase in surface runoff off-site;
- iii. The area of soil to be disturbed at any one time and the duration of its exposure shall be limited;
- iv. Construction equipment shall be limited to the actual area to be disturbed according to the approved development plans;
- v. Existing vegetation shall be maintained on site to the maximum extent feasible; trees and tree roots shall be protected from damage by proper grading techniques;
- vi. Native vegetation shall be replanted consistent with the planting limitations of Special Condition No. 3 to help control erosion; and
- vii. No drainage features shall be directed towards the bluff edges or geologic setback areas.

- (2) The plan shall include, at a minimum, the following components:

- i. A site plan map showing the proposed maximum limits of grading and anticipated cut and fill volumes;
- ii. A description of the location and timing of the installation of any drainage features and the types of drainage features proposed to be used; and
- iii. A schedule for proposed grading activities.

- B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

19. Drainage Plan for Culvert on Bluff Face

- A. **PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. A-1-MEN-09-052**, the applicant shall submit a final drainage plan for the review and written approval of the Executive Director. The plan shall demonstrate that the drainage pipe on the existing bluff-face beach access road shall be routed along the inboard side of the road all the way down to the bedrock near the lower end of the road to curtail drainage-related erosion in this area as recommended by the Commission's geologist.
- B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

20. Agricultural Use

- A. No development, as defined in Section 30106 of the Coastal Act shall occur within the agricultural area envelope generally depicted in Exhibit No. 12 of the staff recommendation except for:
- (1) Agricultural production activities defined as "activities that are directly related to the cultivation of agricultural commodities for sale." Agricultural commodities are limited to food and fiber in their raw unprocessed state, and ornamental plant material;
 - (2) Agricultural support facilities directly related to the cultivation, packaging, and processing of food, fiber, and ornamental plants produced on the site, such as agricultural barns, fences, and agricultural ponds, except that no structures shall be located within any wetlands, streams, riparian corridor, sensitive habitat areas and shall maintain a minimum 100-foot buffer from these areas. For riparian areas, the buffer shall be measured from the limit of riparian vegetation or the high water point if no riparian vegetation exists. For wetlands, the buffer shall be measured from the outermost line of wetland vegetation. Except for development that is exempt from coastal development permit requirements pursuant to the Coastal Act, new development shall be consistent with the visual resource protection policies, wetland and EHSa protection policies, and all other policies and standards of the certified Mendocino County LCP and require an amendment to this coastal development permit or a new coastal development permit;
 - (3) Installation and maintenance of the underground utilities and water storage tank authorized by this permit and the installation of any additional underground utilities and underground storage tanks/containers if approved by the Coastal Commission as an amendment to this coastal development permit;
 - (4) Farm labor housing, if approved by the Coastal Commission as an amendment to this coastal development permit;

- (5) Construction and maintenance of a 10-foot wide access road extending from Highway One to the building development sites along the west side of the property as authorized by this permit, and as shown on Exhibit No. 6;
 - (6) Maintenance and upgrade of the existing road from Highway One along the southern boundary of the subject property to the building development sites and any other paths, tracks or parts of the land used to transport materials farm produce, farm equipment, or labor if approved by the Coastal Commission as an amendment to this coastal development permit;
 - (7) Installation and maintenance of the septic system leachfields, including the leachfield authorized by this permit and the designated future replacement leachfield that will require additional coastal development permit authorization as shown on Exhibit No. 6.
 - (8) Use of the agricultural area envelope for personal orchard and vegetable gardens and raising personal livestock and pets in a manner that does not interfere with commercial agricultural operations at the site if approved by the Coastal Commission as an amendment to this coastal development permit; and
 - (9) Landscaping authorized by this permit and additional landscaping if approved by the Coastal Commission as an amendment to this coastal development permit.
- B. All portions of the agricultural area envelope generally depicted in Exhibit No. 12 of the staff report (except for the areas covered by the existing and any future permissible development included in the above permit conditions above that has been authorized by a coastal development permit) shall at all times be maintained in active agricultural use. Active agricultural use shall be defined as the use of land for the purpose of producing an agricultural commodity for commercial purposes. The Permittees may satisfy this requirement by engaging in good faith in agriculture at a commercial scale and/or by leasing the area of the Property other than those areas excepted above, in whole or in part, to a farm operator for commercial agricultural use. The terms of any lease agreement for purposes of this condition shall be based at or below current market rate for comparable agricultural land in the region and shall reflect a good faith effort on the part of the Permittees to maintain continued agricultural use of the property. The Permittees shall be responsible for ensuring that an adequate water supply and other necessary infrastructure and improvements are available for the life of the approved development to sustain the agricultural viability of the property.
- C. The landowners shall submit to the Executive Director such information as may reasonably be required to monitor the landowners' compliance with the terms of this condition. Such information may include a written report describing current uses and changes in uses (including residential uses). The written report and any other required information shall be provided as needed upon the request of the Executive Director in a form as shall be reasonably required by same. If the landowner enters into a lease agreement with a farm operator for any portion of the property, a copy of the lease agreement may also be required as further documentation of compliance with this condition.

- D. If circumstances arise in the future beyond the control of the landowner or operator that render continued agricultural production on the property infeasible, the affirmative agricultural deed restriction may either be converted to an open space deed restriction or eliminated in its entirety only if: (1) the permittee obtains Commission certification of an amendment to the LCP changing the land use designation of the parcel to Open Space or another land use in accordance with all applicable policies of the certified LUP and the Coastal Act; and (2) the requirements of Paragraph B above are thereafter extinguished by Commission approval of an amendment to this coastal development permit.
- E. **PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. A-1-MEN-09-052**, and after satisfaction of Special Condition No. 21, the applicant shall execute and record a deed restriction against the property identified as APN 131-080-01, APN 131-080-02, and APN 131-080-05 in a form acceptable to the Executive Director, reflecting the restrictions set forth above. The deed restriction shall include a legal description and graphic depiction of (a) the property identified as APN 131-080-01, APN 131-080-02, and APN 131-080-05, generally depicted on Exhibit No. 6; and (b) a formal metes and bounds legal description and corresponding graphic depiction, both prepared by a licensed surveyor, of the portion of the subject property affected by this condition, as generally described above and shown on Exhibit No. 12 attached to this staff report. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens, that the Executive Director determines may affect the enforceability of the restriction.

21. Limitations on APN 131-080-01, APN 131-080-02, and APN 131-080-05.

- A. Unless the applicant demonstrates to the satisfaction of the Executive Director and the County of Mendocino that the three APNs, APN 131-080-01, APN 131-080-02, and APN 131-080-05 as depicted on Exhibit No. 6 currently exist as three legal lots, the applicant shall satisfy the requirements of A1-A3 below:
- A1. **PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. A-1-MEN-09-052**, the applicant shall submit written evidence, for the review and approval of the Executive Director, that the applicant/landowner acknowledges, agrees to, and has implemented the requirements of subsection A1, A2 and A3.
- A2. By acceptance of this permit, the applicant agrees, on behalf of itself and all successors and assigns with respect to the subject property, that all portions of the property identified as APN 131-080-01, APN 131-080-02, and APN 131-080-05 and generally depicted on Exhibit No. 6: (a) comprise one single legal parcel generally depicted in Exhibit No. 6; (b) shall henceforth be considered and treated as one single parcel for all purposes including but not limited to sale, conveyance, lease, development, taxation or encumbrance; and (c) shall not be divided or alienated from each other or from the single legal parcel of which they are a part, and
- A3. **PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. A-1-MEN-09-052**, the applicant shall execute and record a deed restriction against the single legal parcel containing the property identified as APN 131-080-01,

APN 131-080-02, and APN 131-080-05, in a form acceptable to the Executive Director, reflecting the restrictions set forth above. The deed restriction shall include a legal description and graphic depiction of the property identified as APN 131-080-01, APN 131-080-02, and APN 131-080-05 and generally depicted on Exhibit No. 6. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens, including tax liens, and encumbrances that the Executive Director determines may affect the enforceability of the restriction.

OR

- B. To the extent that the applicant demonstrates to the satisfaction of the Executive Director and the County of Mendocino that the three APNs, APN 131-080-01, APN 131-080-02, and APN 131-080-05 as depicted on Exhibit No. 6 currently exist as three separate legal lots, the applicant shall satisfy the requirements of B1-B4 below:
- B1. By acceptance of this permit, the applicant agrees, on behalf of itself and all successors and assigns with respect to the subject property, that (1) all portions of the three parcels, APN 131-080-01, APN 131-080-02, and APN 131-080-05 as depicted on Exhibit No. 6 shall be formally and irrevocably recombined and unified for purposes of the Subdivision Map Act and the Coastal Act, and shall henceforth be considered and treated as a single parcel of land for all purposes with respect to the lands included therein, including but not limited to sale, conveyance, lease, development, taxation or encumbrance, and (2) the single parcel created thereby shall not be divided, and none of the parcels existing at the time of this permit approval shall be alienated from each other or from any portion of the combined and unified parcel hereby created, and
- B2. **PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. A-1-MEN-09-052**, the applicant shall execute and record a deed restriction against each parcel described above, in a form acceptable to the Executive Director, reflecting the restrictions set forth above. The deed restriction shall include a legal description and graphic depiction of the 3 parcels being combined and unified. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens, including tax liens, and encumbrances that the Executive Director determines may affect the enforceability of the restriction, and
- B3. **PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. A-1-MEN-09-052**, but after the deed restriction described in the prior paragraph is recorded, the applicant shall provide evidence to the Executive Director that the applicant has (1) provided a copy of the deed restriction to the Mendocino County Assessor's office and requested that the assessor's office (a) revise its records and maps to reflect the combination of the parcels, including assigning a new, single APN for the unified parcel, and (b) send the Commission notice when it has done so, indicating the new single APN; and (2) provided a copy of the deed restriction

to the Mendocino County Department of Planning and Building Services and applied for a Subdivision Map Act approval to merge the parcels into one.

- B4. **PRIOR TO COMMENCEMENT OF DEVELOPMENT OTHER THAN THE MERGER OF LOTS**, the permittee shall submit to the Executive Director evidence that the Notice of Merger of the subject lots has been recorded.
- C. If circumstances arise in the future beyond the control of the landowner or operator that render continued agricultural production on the property infeasible, the above-identified limitations on the division of the property subject to this permit may be eliminated only if the permittee obtains: (1) Commission certification of an amendment to the LCP changing the land use designation of the parcel to another land use in accordance with all applicable policies of the certified LUP and the Coastal Act; and (2) Commission approval of an amendment to this coastal development permit.

22. Construction Standards and Best Management Practices (BMPs)

The applicant shall undertake development in accordance with the following constructed-related BMPs:

- A. Excess excavated material resulting from construction activities shall be disposed of at a disposal site outside the coastal zone or within the coastal zone pursuant to a valid coastal development permit;
- B. Straw bales, coir rolls, or silt fencing structures shall be installed prior to construction to prevent runoff from construction areas from draining towards the bluff edge, creek or riparian habitat, or other ESHA on the project site;
- C. On-site vegetation shall be maintained to the maximum extent possible during construction activities;
- D. Disturbed areas shall be replanted as soon as feasible following completion of construction, but in any event no later than May 1st of the next spring season consistent with the final approved landscape plan required by Special Condition No. 3;
- E. All on-site stockpiles of construction debris shall be covered and contained at all times to prevent polluted water runoff;
- F. Temporary construction fencing shall be installed prior to commencement on construction activities between the authorized septic leachfield areas and the riparian ESHA buffer area delineated on the site to prevent any ground or vegetation disturbance to the ESHA; and
- G. The canopy and root zones of existing living trees on site shall be protected with temporary fencing or screening during construction.

23. Conditions Imposed By Local Government

This action has no effect on conditions imposed by a local government pursuant to an authority other than the Coastal Act.

IV. FINDINGS & DECLARATIONS

The Commission hereby finds and declares as follows:

A. Incorporation of Substantial Issue Findings

The Commission hereby incorporates by reference the Substantial Issue Findings contained in the Commission staff report dated December 30, 2009.

B. Project History

The project site is located near Bridgeport Landing, approximately three miles south of Elk and 10 miles north of Manchester State Park, on the west side of Highway One, at 12350 Highway One (APNs 131-080-01, -02, & -05) (Exhibit Nos. 1 and 2).

On November 20, 2009, the Mendocino County Coastal Permit Administrator approved Coastal Development Permit No. CDP 42-2007 for the following development: (1) a new 5,183-square-foot, 2-story, single-family residence with an attached 675-square-foot garage and 1,536 square feet of upper and lower attached decks (for a total structural size of 7,394 square feet and a maximum height of 18 feet above natural grade); (2) a ~3,180-square-foot, 2-story barn with a maximum height of 25-feet above natural grade; (3) a 600-square-foot, 1-story guest cottage with attached deck and 192-square-foot cabana; (4) a 192-square-foot hobby workshop; (5) a 216-square-foot garden storage shed; (6) a 160-square-foot cabana with attached deck; (7) reconstruction of an existing 1,250-square-foot, 2-story “shack” to a new detached home office with a maximum height of 25 feet above natural grade; (8) a new septic system, driveway, water storage tank, well, and roof-mounted solar system; and (9) request for temporary use of a guest cottage during construction.

On December 21, 2009, an appeal of the County’s approval of the project was filed by Commissioners Krueer and Wan (Exhibit No. 16). The appeal was filed with the Commission in a timely manner, within 10 working days of receipt by the Commission of the County’s Notice of Final Action on December 7, 2009 (Exhibit No. 15). On January 15, 2010, the Commission opened the hearing on the appeal and found that a Substantial Issue had been raised with regard to the consistency of the project as approved and the applicable policies of the LCP concerning visual resources protection. First, the Commission found that the two-story residence, as approved by the County, raised a substantial issue of conformance with the limitations of Land Use Plan (LUP) Policy 3.5-3 on structures greater than one story in highly scenic areas west of Highway One. Second, the Commission found that the residential complex, as approved by the County, raised a substantial issue of conformance with the limitations of LUP Policy 3.5-4 and Coastal Zoning Code (CZC) Section 20.504.015(C), which require that approved development minimize the number of new structures to be sited on the coastal terrace and cluster them together.

The Commission continued the *de novo* portion of the appeal hearing so that the applicant could provide additional information relating to the substantial issue. The applicant has provided Commission staff with supplemental information consisting of the following:

- (a) A revised project description, revised site plan, and revised floor plans and building elevations (Exhibit Nos. 5-6);
- (b) *Report Supplement, Results of Slope Stability Analyses and Documentation of Aerial Photograph Studies, Smith Residence, 12350 South Highway 1, Elk, Mendocino County, California*, dated March 14, 2011, by BACE Geotechnical, Santa Rosa, CA (Exhibit No. 13);
- (c) *Botanical Inspection of September 14, 2010* by Botanist Terry Sullivan, Mill Valley, CA and *Evaluation of Wetland Soils and Hydrology at Three Data Points*, dated April 15, 2011, by Christopher Thayer, Lafayette, CA (Exhibit No. 14);
- (d) Supplemental septic system information; and
- (e) An agricultural analysis dated August 31, 2011.

The supplemental information addresses issues raised by the appeal and provides additional information that was not a part of the record when the County originally acted to approve the coastal development permit. For purposes of the Commission's *de novo* review, the applicant also submitted a revised project description and revised plans (Exhibit Nos. 5 and 6) designed to address the issues raised on appeal, which are discussed below in Finding IV-D (Project Description).

C. Environmental Setting

The approximately 60-acre property, which consists of three separate Assessor's Parcel Numbers (APNs: 131-080-01, -02, & -05), is located on a bluff-top lot on the west side of Highway One at the historic Bridgeport Landing (a log-shipping site used for a short time in the mid-19th century) approximately three miles south of the unincorporated community of Elk and approximately 10 miles north of Manchester State Park (Exhibit Nos. 1-3). The subject area is rural, sparsely developed, and designated as a "Highly Scenic Area" in the Mendocino County LCP. Blue-water views to the ocean are available to both north-bound and south-bound Highway One travelers across the open grassland portions of the property. These ocean views are interrupted in some areas by a backdrop of mature cypress and eucalyptus trees growing along the bluff edge near the western end of the property. The trees are apparent in aerial photos of the site dating back to at least 1972. There also is a stand of mature riparian vegetation lining an unnamed stream and associated pond on the southern end of the property between the highway and the bluff edge.

The property is planned and zoned "Range Lands" (RL) with a maximum dwelling density of one unit per 160 acres. Principal permitted uses on lands designated "RL" in the Mendocino County Land Use Plan are "grazing and forage for livestock, including: raising of crops, wildlife habitat improvement; one single family dwelling per legally created parcel, harvesting of firewood for the residents personal use, and home occupations."

Topographically the property consists largely of a more or less flat, open, elevated marine terrace at an approximate elevation of 200 feet above mean sea level. At the bluff edge near the southern end of the property, northwest-facing and southwest-facing steep bluffs meet and form a small, prominent point that juts seaward beyond the bluffs. An old dirt road (ATV-accessible) leading

to what historically (19th century) was Bridgeport Landing cuts across the property's northwestern bluff face to the beach below.

Vegetatively, according to the results of a botanical survey of the property conducted in 2005 (Exhibit No. 14), the flat terrace portion of the site is dominated mostly by the non-native grasses bent grass (*Agrostis stolonifera*) and sweet vernal grass (*Anthoxanthum odoratum*). Native coastal scrub vegetation dominates the bluff faces, comprised of species such as dudleya (*Dudleya caespitosa*), seaside wooly sunflower (*Eriophyllum staechadifolium*), and coast buckwheat (*Eriogonum latifolium*). The riparian habitat around the unnamed stream and pond at the southern end of the property consists mostly of arroyo willow (*Salix lasiolepis*) and Sitka willow (*S. sitchensis*).

The property supports rare species and habitats including (1) Mendocino Coast paintbrush (*Castilleja mendocinensis*), a CNPS List 1B.2¹ sensitive plant species that occurs along the steep bluff faces above the ocean; (2) suitable habitat for Point Arena mountain beaver (*Aplodontia rufa nigra*), a federally endangered rodent species, in the riparian area around the stream and associated pond and in the coastal scrub habitats along the bluff faces (after a field investigation by U.S. Fish and Wildlife Service staff in November of 2008, no evidence of mountain beaver presence was detected on the property, though suitable habitat was identified in the areas described above); (3) aquatic and riparian habitats associated with the unnamed natural drainage that flows westward from Highway One across the southern portion of the property, over the bluff edge, and down the southwestern bluff face; and (4) a small isolated wetland, dominated by hydrophytic rushes (*Juncus* sp.) in a topographic low spot on the western side of the coastal terrace.

The subject site is vacant and undeveloped except for (a) an old, dilapidated, two-story, wooden "shack" (built prior to 1970) near the bluff edge, (b) unimproved, unpaved ranch roads along the perimeter of and through the middle of the property, (c) old wooden and barbed-wire fencing across parts of the property, (d) new replacement wooden fence posts installed (without the benefit of a coastal development permit) for new livestock/garden fencing, (e) a trailer coach parked (without the benefit of a coastal development permit) near the bluff edge, and (f) a large storage container placed (without the benefit of a coastal development permit) seaward of the northwest bluff edge (on an old dormant landslide area).

D. Project Description

The development as originally approved by the County involved construction of (1) a 5,183-square-foot, 2-story, single-family residence with an attached 675-square-foot garage and 1,536 square feet of upper and lower attached decks (for a total structural size of 7,394 square feet and a maximum height of 18 feet above natural grade); (2) a ~3,180-square-foot, 2-story barn with a maximum height of 25-feet above natural grade; (3) a 600-square-foot, 1-story guest cottage with attached deck and 192-square-foot cabana; (4) a 192-square-foot hobby workshop; (5) a 216-square-foot garden storage shed; (6) a 160-square-foot cabana with attached deck; (7)

¹ California Native Plant Society (CNPS). 2011. Inventory of Rare and Endangered Plants (online edition, v8-01a). California Native Plant Society. Sacramento, CA. Accessed on Monday, May 09, 2011. Rare Plant Rank 1B = "Rare, threatened, or endangered in California and elsewhere"; .2 = "Fairly endangered in California."

reconstruction of an existing 1,250-square-foot, 2-story “shack” to a new detached home office with a maximum height of 25 feet above natural grade; (8) a new septic system, driveway, water storage tank, well, and roof-mounted solar system; and (9) request for temporary use of a guest cottage during construction (Exhibit Nos. 4 and 15).

The proposed project as revised for the Commission’s *de novo* review involves the development of a 58.5-acre parcel by (A) constructing: (1) a 4,277-square-foot, 2-story, single family residence with an attached 640-square-foot, 2-story guest cottage and a total of 585 square feet of upper and lower attached decks and patios (for a total structural size of 5,502 square feet and a maximum height of 25 feet above natural grade); (2) a 4,560-square-foot, 3-story barn, with a maximum height of 40 feet above natural grade; (3) a 192-square-foot hot-tub outbuilding with an average height of 13 feet above natural grade; (4) a 120-square-foot well pump house with an average height of 13 feet above natural grade; (5) a new septic system, (6) a 10-foot-wide non-paved driveway, (7) a new underground 5,000-gallon rainwater-runoff storage tank, (8) a production well, (9) a roof-mounted solar panels, (10) landscaping for privacy screening from the neighboring residence to the north; and (11) an 8-foot-high fence constructed of natural wooden posts and “invisible” game wire to separate the farm area from the dwelling area; (B) reconstructing an existing 1,250-square-foot, 2-story “shack” to a new detached home office with a maximum height of 25 feet above natural grade; (C) merging the three underlying lots (APNs) into a single 58.5-acre parcel to the extent that such APNs are separate legal lots and limiting further division of the property without a site-specific LCP amendment; (D) recordation of a deed restriction that would (a) limit development in the agricultural area of the property (excluding bluff areas, sensitive habitat areas, and the areas of the bluff top proposed for development of the structured depicted on the applicants’ revised site plan) to agricultural related facilities and (b) require that areas within the agricultural area except for existing and approved development shall be at all times maintained in active agricultural use; and (E) temporarily occupying the restored shack/office during construction of the main residence.

The following table summarizes some of the changes that have been made to the project between the County’s approval and the current proposal:

Table 1. Summary of project elements as approved by the County and as currently proposed.

Project Elements	As Approved by Mendocino County	As Revised for the Commission’s <i>de novo</i> review
New single family residence	5,183 sf 2-story 18-ft max. height	4,277 sf 2-story 25-ft max. height
Attached garage	675 sf (attached to main residence)	Not proposed (2-car parking proposed to be contained within barn)
Attached decks and patios	1,536 sf (upper & lower)	585 sf (upper & lower)
Total structural size of main residence, garage, & decks	7,394 sf (<u>not</u> including 600 sf detached guest house)	5,502 sf (<u>including</u> 640 sf attached guest house)

Guest cottage	Detached 600 sf 1-story 18-ft max. height	Attached 640 sf 2-story 25-ft max. height
Barn	~3,180 sf 2-story 25-ft max. height	4,560 sf 3-story 40-ft max. height
Restored "shack"	1,250 sf 2-story 25-ft max. height	1,250 sf 2-story 25-ft max. height
"Cabana" or "Hot tub onsen"	162 sf 13-ft avg. height	192 sf 13-ft avg. height
Hobby workshop	192 sf 13-ft avg. height	Not proposed
Garden shed	216 sf 13-ft avg. height	Not proposed
Well pump house	Not part of project	120 sf 13-ft avg. height
Total number of independent structures	7	5
Total structural size of all structures combined	12,094 sf	11,624 sf

For the purposes of *de novo* review by the Commission, the applicant submitted a revised project description and revised plans (Exhibit Nos. 5-6) that make changes to the development originally approved by the County. The project revisions were designed to address concerns raised in the appeal that the project (1) included structures greater than one story in height in a designated highly scenic area west of Highway One that would affect public views to the ocean, inconsistent with LUP Policy 3.5-3, and (2) did not minimize the number of new structures to be sited on the coastal terrace and cluster them together, as is required by LUP Policy 3.5-4 and CZC Section 20.504.015(C).

With regard to the issue of the project's consistency with LUP Policy 3.5-3 regarding structures greater than one-story in height in designated highly scenic areas, LUP Policy 3.5-3 requires that new development west of Highway One in designated "Highly Scenic Areas" be limited to one-story (above natural grade) unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures. As approved by the County, the two-story main residence was located in an area that would interrupt blue water views to the ocean from Highway One. The revised project as currently proposed would site all structures to have a backdrop of tall, evergreen trees such that no public views to the ocean are affected.

With regard to the issue of the LCP requirement that new structures on coastal terraces be minimized and clustered, the proposed revised plans would (a) delete two of the structures that had originally been approved by the County (the hobby workshop and garden storage shed); (b) consolidate the proposed single family residence and guest cottage together; and (c) cluster all structures in the area immediately in front of the row of tall cypress trees, with only the proposed well pump house necessarily separated from the other clustered structures (though still backed by tall evergreen woody vegetation).

In addition, for the purposes of *de novo* review by the Commission, the applicant submitted a quantitative slope stability analysis (Exhibit No. 13). No slope stability analysis had been available as a basis for the County's approval of the original project (though a geologic report had been prepared prior to the County's approval of the project by BACE Geotechnical dated July 12, 2007). The geologic hazard policies of the LCP require, in part, that new development minimize the risk of geologic hazard, assure structural integrity and stability, and neither create nor contribute significantly to erosion, geologic instability or destruction of the site or surrounding areas nor in any way require the construction of protective devices that would substantially alter natural landforms along the bluff. The LCP policies also require that development be set back a sufficient distance from the bluff edge to ensure its safety from bluff erosion and cliff retreat during its economic lifespan (75 years). To provide the appropriate factor of safety to guard against bluff retreat hazards, the slope stability analysis, which was prepared by the applicant's consultant BACE Geotechnical, dated March 14, 2011, recommends a geologic setback of 32 feet from the northwest-facing bluff, 51 feet from the southwest-facing bluff, and 50 feet from the dormant landslide located just seaward of the northwestern bluff edge. In contrast, the geologic report that was the basis for the County's approval of the original project recommended a geologic setback of 31.25 feet from the northwest-facing bluff, 40.6 feet from the southwest-facing bluff, and no additional setback from the dormant landslide was given.

Furthermore, when the site was visited by Commission staff following the appeal, a small isolated wetland was noted near the site where the County approved the new guest house. For the purposes of *de novo* review by the Commission, the applicant submitted additional information regarding the wetland boundaries and setback distances of all proposed new development from the wetland (Exhibit No. 14). The applicant's revised development plan locates all new structures at least 50 feet away from the wetland.

Finally, the applicant has also amended the project description to propose recordation of a deed restriction that would (a) limit development in the agricultural area of the property (excluding bluff areas, sensitive habitat areas, and the areas of the bluff top proposed for development of the structured depicted on the applicants' revised site plan) to agricultural related facilities and (b) require that areas within the agricultural area except for existing and approved development shall be at all times maintained in active agricultural use.

The exterior colors of the new residence are proposed to include natural darkish earth tones including Valspar Medallion's "Warm 'n Toasty" (#40077) and "Burnt Umber" (#40079). Other than specifying these two exterior colors and horizontal cedar siding on the various structures, no sample schemes or descriptions have been provided for the various roofing, flashings, trims, windows, doors, gutters, downspouts, deck railings, chimneys, and other visible features.

E. Locating New Development

Summary of Applicable LCP Provisions:

Policy 3.9-1 of the Mendocino County Land Use Plan (LUP) states that new development shall be located within or near existing developed areas able to accommodate it or in other areas with

adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. The intent of this policy is to channel development toward more urbanized areas where services are provided and potential impacts to resources are minimized.

LUP Policy 3.8-1 states that Highway 1 capacity, availability of water and sewage disposal, and other known planning factors shall be considered when considering applications for development.

Project Consistency with Applicable LCP Provisions:

The subject property is located in a rural area planned and zoned for Range Lands (RL) uses under the certified Mendocino County LCP. Principal uses permitted in the RL district include Single-Family Residential, Vacation Home Rental, General Agriculture, Light Agriculture, Row and Field Crops, Tree Crops, Passive Recreation, and Fish & Wildlife Habitat Management. The proposed development is compatible with the RL zoning district and consists of principal permitted uses. According to Section 20.368 of the Coastal Zoning Code (CZC), the minimum lot area for the RL district is 160 acres (the subject property totals approximately 60 acres in size), and the maximum lot coverage for the district is 10 percent (the proposed development equates to a maximum lot coverage of less than 1 percent).

The proposed development will be served by an on-site septic system. The preliminary septic system design was reviewed and approved by the County Division of Environmental Health. DEH also reevaluated the septic system design for its adequacy to serve the proposed project as amended for purposes of the Commission's *de novo* review and found it to be adequate. **Special Condition No. 1** is required to ensure that the DEH reviews and approves the final septic design plans.

The proposed development will be served by three different water sources: an on-site well, harvested rainwater, and water extracted from the small pond on the southern end of the property. The test well on the property was drilled sometime before 2005 by a previous property owner without the benefit of a coastal development permit. According to the applicant, a pump test performed on the 34-foot-deep well demonstrated an approximate flow rate of 0.41-gallons/minute in the summer of 2009. The minimum flow-rate standard for single family residential development in this area as established by the County DEH's 1989 Coastal Groundwater Development Guidelines (which is part of the certified Mendocino County LCP) is 0.5-gallon/minute. The applicant plans to install a 2,500-gallon underground water storage tank near the well to store water for garden irrigation needs and to supply water to the proposed powder room in the restored "shack"/office. The applicant calculated that with a summer flow rate of 0.41-gallons per minute (and higher during the rainy season), the tank would fill to capacity in a little over four days. In addition to the water supply from the well, the applicant proposes to harvest rain water from over 6,000 square feet of roof runoff from the proposed new residential and barn structures and to store the harvested water in a 5,000-gallon underground water storage tank near the barn. The stored rainwater runoff is proposed to be treated for use as the primary water supply to the house, guest cottage, barn, and hot tub enclosure. Based on the applicant's calculations of average annual rainfall, the seasonality of the rainfall, and the

proposed capture area, the applicant asserts that the proposed 5,000 gallon water storage tank will provide 2.5-times the required capacity to ensure year round water supply to the various proposed buildings. Finally, the applicant proposes to use water from the approximately 4-acre holding pond near the southern end of the property as a third water source. The pond was permitted by the Commission in 1978 under CDP No. NCR-78-A-337. The applicant is permitted to take half the available impounded water for irrigation purposes. The existing irrigation system connected to the pond includes a 9-inch-diameter water line that runs north to south and supplies a wheel line irrigation system that the applicant has found sufficient to irrigate the entire property year round. The proposed domestic water system combining the use of the on-site well, the harvested rain water, and the impounded pond water as three different sources has been reviewed and verified by the applicant's consultant, Carl Rittiman, C.P.S.S., who determined that the water supply will be adequate to serve the development. Thus, the Commission finds that the property will have an adequate water supply to serve the development as proposed.

As the subject property already was in existence prior to certification of the LCP, cumulative adverse impacts on the traffic capacity of Highway One from the proposed new residence were taken into account at the time that the LCP was certified. Therefore, the proposed single-family residence would not result in significant adverse impacts to the traffic capacity of Highway One, consistent with the applicable provisions of LUP Policy 3.8-1. **Special Condition No. 2** is attached to ensure that the applicant obtain the necessary encroachment permit from Caltrans for the proposed improvement of the access driveway connection to Highway One to serve the new residence, and that any changes to the project plans required by the encroachment permit shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit.

As discussed below, the proposed development has been conditioned to include mitigation measures, which will minimize all significant adverse environmental impacts. Therefore, the Commission finds that as conditioned, the proposed development is consistent with LUP Policies 3.9-1 and 3.8-1 and CZC Section 20.532.100(A)(2) because (1) the development is located within an existing developed area, (2) there are adequate services to serve the proposed development, and (3) the development will not significantly contribute to adverse cumulative impacts on highway capacity, or, as discussed in the Findings below, on scenic values, geologic hazards, environmentally sensitive habitats, water quality, or public access, and is compatible with the long-term protection of resource lands of the RL zoning district.

F. Visual Resources

Summary of Applicable LCP Provisions:

Land Use Plan (LUP) Policy 3.5-1 states, in applicable part, as follows (emphasis added):

...

The scenic and visual qualities of Mendocino County coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas and, where

feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas designated by the County of Mendocino Coastal Element shall be subordinate to the character of its setting.

LUP Policy 3.5-3 states, in applicable part, as follows (emphasis added):

The visual resource areas listed below are those which have been identified on the land use maps and shall be designated as “highly scenic areas,” within which new development shall be subordinate to the character of its setting. Any development permitted in these areas shall provide for the protection of ocean and coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes. ...

- *Portions of the coastal zone within the Highly Scenic Area west of Highway 1 between the Navarro River and the north boundary of the City of Point Arena as mapped with noted exceptions and inclusions of certain areas east of Highway 1...*

In addition to other visual policy requirements, new development west of Highway One in designated "highly scenic areas" is limited to one-story (above natural grade) unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures. Variances from this standard may be allowed for planned unit development that provides clustering and other forms of meaningful visual mitigation. New development should be subordinate to natural setting and minimize reflective surfaces. All proposed divisions of land and boundary line adjustments within "highly scenic areas" will be analyzed for consistency of potential future development with visual resource policies and shall not be allowed if development of resulting parcel(s) could not be consistent with visual policies.

LUP Policy 3.5-4 states as follows (emphasis added):

Buildings and building groups that must be sited within the highly scenic area shall be sited near the toe of a slope, below rather than on a ridge, or in or near the edge of a wooded area. Except for farm buildings, development in the middle of large open areas shall be avoided if an alternative site exists.

Minimize visual impact of development on hillsides by (1) requiring grading or construction to follow the natural contours; (2) resiting or prohibiting new development that requires grading, cutting and filling that would significantly and permanently alter or destroy the appearance of natural landforms; (3) designing structures to fit hillside sites rather than altering landform to accommodate buildings designed for level sites; (4) concentrate development near existing major vegetation, and (5) promote roof angles and exterior finish which blend with hillside. Minimize visual impacts of development on terraces by (1) avoiding development in large open areas if alternative site exists; (2) minimize the number of structures and cluster them near existing vegetation, natural landforms or artificial berms; (3) provide bluff setbacks for development adjacent to or near public areas along the shoreline; (4) design development to be in scale with rural character of the area. Minimize visual impact of development on ridges by (1) prohibiting development that projects above the ridgeline; (2) if no alternative site is available below the ridgeline, development shall be sited and designed to reduce visual impacts by utilizing existing vegetation, structural orientation, landscaping, and shall be limited to a single story above the natural elevation; (3) prohibiting removal of tree masses which destroy the ridgeline silhouette. Nothing in this policy shall preclude the development of a legally existing parcel.

LUP Policy 3.5-5 states as follows:

Providing that trees will not block coastal views from public areas such as roads, parks and trails, tree planting to screen buildings shall be encouraged. In specific areas, identified and adopted on the land use plan maps, trees currently blocking views to and along the coast shall be required to be removed or thinned as a condition of new development in those specific areas. New development shall not allow trees to block ocean views.

...

LUP Policy 3.5-8 states as follows (emphasis added):

Power transmission lines shall be located along established corridors. Elsewhere transmission lines shall be located to minimize visual prominence. Where overhead transmission lines cannot be located along established corridors, and are visually intrusive within a "highly scenic area", the lines shall be placed underground west of Highway One and below ridgelines east of Highway One if technically feasible. Certain lines shall, over time, be relocated or placed underground in accord with PUC regulations (see Big River Planning Area Policy 4.7-3 and Policy 3.11-9). Distribution lines shall be underground in new subdivisions.

LUP Policy 3.5-15 states as follows (emphasis added):

Installation of satellite receiving dishes shall require a coastal permit. In highly scenic areas, dishes shall be located so as to minimize visual impacts. Security lighting and floodlighting for occasional and/or emergency use shall be permitted in all areas. Minor additions to existing nightlighting for safety purposes shall be exempt from a coastal permit. In any event no lights shall be installed so that they distract motorists and they shall be shielded so that they do not shine or glare beyond the limits of the parcel wherever possible.

Section 20.504.015, "Highly Scenic Areas," of the Coastal Zoning Code (CZC) states, in applicable part, as follows (emphasis added):

...

(C) Development Criteria.

(1) Any development permitted in highly scenic areas shall provide for the protection of coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes.

(2) In highly scenic areas west of Highway 1 as identified on the Coastal Element land use plan maps, new development shall be limited to eighteen (18) feet above natural grade, unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures.

(3) New development shall be subordinate to the natural setting and minimize reflective surfaces. In highly scenic areas, building materials including siding and roof materials shall be selected to blend in hue and brightness with their surroundings.

...

(5) Buildings and building groups that must be sited in highly scenic areas shall be sited:

(a) Near the toe of a slope;

(b) Below rather than on a ridge; and

(c) *In or near a wooded area.*

...

(7) Minimize visual impacts of development on terraces by the following criteria:

(a) *Avoiding development, other than farm buildings, in large open areas if alternative site exists;*

(b) Minimize the number of structures and cluster them near existing vegetation, natural landforms or artificial berms;

(c) *Provide bluff setbacks for development adjacent to or near public areas along the shoreline;*

(d) Design development to be in scale with rural character of the area.

...

(10) Tree planting to screen buildings shall be encouraged, however, new development shall not allow trees to interfere with coastal/ocean views from public areas...

(12) Power distribution lines shall be placed underground in designated "highly scenic areas" west of Highway 1 and in new subdivisions. East of Highway 1, power lines shall be placed below ridgelines if technically feasible.

(13) *Access roads and driveways shall be sited such that they cause minimum visual disturbance and shall not directly access Highway 1 where an alternate configuration is feasible. (Ord. No. 3785 (part), adopted 1991).*

CZC Section 20.504.020 states, in applicable part, as follows (emphasis added):

...

(D) *The scenic and visual qualities of Mendocino County Coastal Areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas designated by the County of Mendocino Coastal Element shall be subordinate to the character of its setting. (Ord. No. 3785 (part), adopted 1991)*

CZC Section 20.504.030 states, in applicable part, as follows (emphasis added):

(A) *Major considerations in installing satellite receiving dish antenna(s) concern positioning disks to avoid interference and to minimize visual impacts on the surrounding landscape. Installation of satellite receiving dishes shall require a coastal development permit and must comply with other criteria of this Chapter...*

(B) *Development Criteria.*

(1) Minimize visual impacts when installing private or commercial satellite receiving dish antenna(s) in designated Highly Scenic Areas by:

(a) Placing dish to take advantage of any natural shielding that exists at or around the proposed dish location, e.g., houses, shrubs, trees.

(b) *Establishing a setback from the rim of a ridge or hilltop where a dish will be placed so as to not create an additional silhouette.*

(c) Landscaping terrain around dish with low shrubs or small trees to screen dish and supporting structure at any off-site location without interfering with satellite reception. (Ord. No. 3785 (part), adopted 1991)

CZC Section 20.504.035 states, in applicable part, as follows (emphasis added):

(A) Essential criteria for the development of night lighting for any purpose shall take into consideration the impact of light intrusion upon the sparsely developed region of the highly scenic coastal zone.

(1) No light or light standard shall be erected in a manner that exceeds either the height limit designated in this Division for the zoning district in which the light is located or the height of the closest building on the subject property whichever is the lesser.

(2) Where possible, all lights, whether installed for security, safety or landscape design purposes, shall be shielded or shall be positioned in a manner that will not shine light or allow light glare to exceed the boundaries of the parcel on which it is placed.

(3) Security lighting and flood lighting for occasional and/or emergency use shall be permitted in all areas.

(4) Minor additions to existing night lighting for safety purposes shall be exempt from a coastal development permit.

(5) No lights shall be installed so that they distract motorists. (Ord. No. 3785 (part), adopted 1991)

CZC Section 20.368.040 states as follows (emphasis added):

Building Height Limit for RL Districts.

Twenty-eight (28) feet above natural grade for non-Highly Scenic Areas and for Highly Scenic Areas east of Highway One. Eighteen (18) feet above natural grade for Highly Scenic Areas west of Highway One unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures. Thirty-five (35) feet above natural grade for uninhabited accessory structures not in an area designated as a Highly Scenic Area (See Section 20.504.015(C)(2)). (Ord. No. 3785 (part), adopted 1991)

Project Consistency with Applicable LCP Provisions:

The approximately 60-acre property is located on a coastal terrace bluff-top lot on the west side of Highway One in a designated “Highly Scenic Area” (HSA) under the Mendocino County LCP. The area is characterized by large open range lands and agricultural properties in a sparsely developed rural setting. The nearest higher-density residential communities are located approximately three miles to the north in the unincorporated community of Elk and 10 miles to the south in the unincorporated community of Manchester. As described above, blue-water views to the ocean are available to both north-bound and south-bound Highway One travelers across the open grassland portions of the property. From the south, the property comes into view at post mile (PM) marker 27 for ~0.1-mile, PM 27.5 for ~0.3-mile, and PM 27.9 for ~0.3-mile. From the north, the property is in view for ~0.3-mile. These ocean views are across the property interrupted in some areas by a backdrop of mature cypress and eucalyptus trees growing along the bluff edge near the western end of the property. The trees are apparent in aerial photos of the site dating back to at least 1972. There also is a stand of mature riparian vegetation lining an

unnamed stream and associated pond on the southern end of the property between the highway and the bluff edge.

As described above, the LCP contains numerous provisions to protect the County’s coastal visual resources, especially in designated Highly Scenic Areas (HSAs). The policies and standards applicable to the proposed project that require the protection of visual resources are summarized in Table 2 below and discussed in sequence in the following nine subsections.

Table 2. Summary of Applicable LCP Provisions Relating to the Protection of Visual Resources at the Subject Site, a Designated “Highly Scenic Area.”

	Summary of Applicable LCP Provisions for Visual Resources Protection	Relevant LCP Policy or Section
1	The visual impacts of new development on coastal terraces shall be minimized by (1) avoiding development in large open areas if an alternative site exists; (2) minimizing the number of structures and clustering them near existing vegetation; and (3) designing development to be in scale with the rural character of the area.	LUP Policy 3.5-4 and CZC Section 20.504.015(C)(7)
2	New development shall be sited and designed to protect views to and along the ocean and scenic coastal areas. Development west of Highway One shall be limited to 18 feet and one-story, unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures.	LUP Policies 3.5-1 and 3.5-3 and CZC Sections 20.504.015(C)(1) & (2), 20.504.020(D), & 20.368.040
3	Tree planting to screen buildings is encouraged, so long as the trees will not block coastal views from public areas.	LUP Policy 3.5-5 and CZC Section 20.504.015(C)(10)
4	New development shall minimize the alteration of natural land forms.	LUP Policy 3.5-1 and CZC Section 20.504.020(D)
5	New development shall minimize reflective surfaces.	LUP Policy 3.5-3 and CZC Section 20.504.015(C)(3)
6	Building materials shall be selected to blend in hue and brightness with their surroundings.	CZC Section 20.504.015(C)(3)
7	The visual impacts of satellite receiving dish antennas and exterior lighting shall be minimized.	LUP Policy 3.5-15 and CZC Sections 20.504.030 and 20.504.035
8	Power distribution lines shall be placed underground.	LUP Policy 3.5-8 and CZC Section 20.504.015(C)(12)
9	New development shall be visually compatible with and subordinate to the character of surrounding areas.	LUP Policies 3.5-1 and 3.5-3 and CZC Sections 20.504.015(C)(3) and 20.504.020(D)

1. *Minimizing Visual Impacts of Development on Terraces*

LUP Policy 3.5-4 and CZC Section 20.504.015(C)(7) require that the visual impacts of development on terraces be minimized in applicable part by (a) avoiding development, other than farm buildings, in large open areas if an alternative site exists, (b) minimizing the number of structures and clustering them near existing vegetation, natural landforms or artificial berms, and (c) designing development to be in scale with rural character of the area.

(a) Avoiding development in large open areas if an alternative site exists

The applicants propose to develop all new structures near the western bluff edge (while maintaining the geologic setbacks prescribed by the geologic reports) against a backdrop of mature cypress trees, rather than in the large, open, grassy areas of the property between the highway and the bluff edge. This siting is consistent with LUP Policy 3.5-4 and CZC Section 20.504.015(C)(7), which requires that development in large open areas be avoided since an alternative site exists.

(b) Minimizing the number of structures and clustering them near existing vegetation

The project as revised for the Commission's *de novo* review minimizes the number of proposed structures, consistent with LUP Policy 3.5-4 and CZC Section 20.504.015(C)(7), by consolidating the main residence and guest cottage together (rather than as two independent structures as approved by the County), and by deleting the hobby workshop and garden shed structures originally approved by the County from the revised project plans. The project proposes a total of five new independent structures (versus seven as originally approved by the County), three of which (main house/guest house, barn, and hot tub outbuilding) will be clustered near the southwestern end of the property in front of (as viewed from Highway One) a backdrop of mature evergreen cypress trees. The proposed 1,250-square-foot restored shack/office and 120-square-foot well pump house will be sited north of the other proposed structures yet still in front of (as viewed from Highway One) a backdrop of mature evergreen vegetation (eucalyptus trees). The proposed clustering of structures and siting of new buildings in front of (as viewed from Highway One) a backdrop of mature evergreen vegetation over 40 feet in height will minimize the visual impacts of the proposed development on the coastal terrace. Because of this proposed clustering of development in front of large vegetative backdrops (as viewed from the highway), no public views to the ocean will be affected by the proposed development, consistent with LUP Policy 3.5-3 and CZC Section 20.504.015(C). The mature evergreen cypress trees, which are over 40 feet tall, will provide an adequate visual backdrop to the proposed 25-foot-tall residence, 35-foot-tall barn (as limited by Special Condition No. 6, discussed below), 25-foot-tall restored shack/office, and 13-foot-tall hot tub outbuilding.

The Commission finds that if the vegetative backdrop to the proposed new structures was to die, become decadent, rotten, or weakened by decay or disease, or was removed for any reason, the visual impacts of the development on the coastal terrace would not be minimized. Furthermore, as the vegetation that will serve as a backdrop to the proposed new structures is visible on aerial photographs dating back at least to 1972 and is therefore already nearly 40 years old and may not survive for the entire economic life of the proposed new structures, the Commission finds it necessary to require additional plantings to help screen the proposed buildings, as is encouraged by LUP Policy 3.5-5 and CZC Section 20.504.015(C)(10). Therefore, the Commission attaches Special Condition Nos. 4-5. **Special Condition No. 4** requires that all existing trees located

seaward of the approved building sites for the structures authorized pursuant to CDP No. A-1-MEN-09-052 that serve as a visual backdrop to the authorized structures as viewed from Highway One, and all new vegetation planted for visual screening or supplemental backdrop purposes pursuant to **Special Condition No. 3** (discussed below in subsection 3) between the highway and the structures authorized pursuant to CDP No. A-1-MEN-09-052, shall be maintained in good condition throughout the life of the project. If any of this vegetation dies, become decadent, rots, is weakened by decay or disease, or is removed for any reason, it shall be replaced no later than May 1st of the next spring season with native, evergreen vegetation from species common to coastal Mendocino County that will grow to a similar or greater mass and height.

Moreover, **Special Condition No. 5** requires that the applicants record a deed restriction detailing the specific development authorized under the permit, identifying all applicable special conditions attached to the permit. The condition will provide notice to future buyers of the property of the terms and limitations placed on the use of the property, including landscaping restrictions and requirements because the deed restriction will run with the land in perpetuity.

Finally, as discussed in more detail below ESHA finding, **Special Condition No. 15** requires in part that the canopy and root zones of existing living trees on the site shall be protected through temporary fencing or screening during construction, and **Special Condition No. 18** requires submittal, prior to permit issuance, of final grading plan that in part demonstrates that trees and tree roots shall be protected from damage by proper grading techniques.

Therefore, the Commission finds that as conditioned the visual impacts of the proposed new development on the coastal terrace will be minimized consistent with LUP Policy 3.5-4 and CZC Section 20.504.015(C)(7) by minimizing the number of structures, clustering them near existing vegetation, and implementing (through the special conditions discussed above) various measures to protect and maintain the vegetation that will serve to protect public views to the coast.

(c) Designing development to be in scale with rural character of the area

The project as revised for the Commission's *de novo* review is designed to be in scale with the rural character of the area. Development in the vicinity of the subject property is sparse, as the area is characterized by large, rural lots with limited development. Similar to the proposed project's proposal to develop a new residence and a number of accessory structures, many of the surrounding properties also are developed with multiple accessory structures including a garages, guest cottages, barns, and other accessory structures. Additionally, the proposed size (in terms of square footage) of the new residence and accessory structures is on par with the size of surrounding development (Exhibit No. 10). Even the relatively tall barn is proposed to be similar in height to an existing 40+-foot-tall barn located across the highway from the subject site. Furthermore, the proposed maximum height of the new structures is in scale with the heights of surrounding structures, including the existing 25-foot-high "shack" on the subject property that is proposed for demolition and reconstruction under this permit application and a barn across the highway from the subject property that is over 40 feet tall.

Therefore, the Commission finds that the proposed development, as conditioned, is consistent with LUP Policy 3.5-4 and CZC Section 20.504.015(C)(7), as the project will (a) avoid development in large open areas, (b) minimize the number of structures and cluster them near existing vegetation, and (c) be in scale with rural character of the area.

2. Protecting Views To and Along the Coast and Limiting Development Height

LUP Policies 3.5-1 and 3.5-3 and CZC Sections 20.504.015(C)(1) and 20.504.020(D) require permitted development to be sited and designed to protect views to and along the ocean and scenic coastal areas from public areas including highways and roads. Furthermore, LUP Policy 3.5-3 and CZC Sections 20.504.015(C)(2) and 30.368.040 require that new development west of Highway One in designated HSAs be limited in height (one-story and 18 feet), unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures.

As discussed above, the proposed project will be sited and designed such that the proposed development will not block views to the ocean from public areas, including highways, roads, coastal trails, beaches, or coastal streams. The principal views of the ocean in the area are afforded from Highway One, and as seen from the highway, all of the proposed development would be located against a backdrop of existing vegetation where the development will not block any additional ocean views not already blocked by the existing vegetation. Although the proposed new residence, guest cottage, and restored “shack”/office each will be two-stories in height with a maximum height of 25 feet, LUP Policy 3.5-3 and CZC Sections 20.504.015(C)(2) and 30.368.040 allow for this height increase over 18 feet or one-story in cases where an increase in height would not affect public views to the ocean or be out of character with surrounding structures. As discussed above, the proposed maximum height of the new structures is in scale with the heights of surrounding structures, including the existing 25-foot-high “shack” on the subject property that is proposed for demolition and reconstruction under this permit application and a barn across the highway from the subject property that is over 40 feet tall. Additionally, the landscaping plan required by **Special Condition No. 3** and the requirement of **Special Condition No. 4** to maintain vegetation and landscaping on the property that will serve as a backdrop to or will shield the proposed development from public views will help ensure that the proposed new development will not significantly affect public views from the highway across the site.

The Commission finds, however, that CZC Section 20.368.040 expressly prohibits a height of greater than 35 feet for uninhabited accessory structures in the Range Lands zoning district. As the new barn would have a height of 40 feet as proposed, the Commission attaches **Special Condition No. 6** to require the applicant to submit revised floor plans and building elevations for the proposed new barn prior to permit issuance. The revised plans shall substantially conform to the proposed plans (Exhibit No. 6), except the maximum structure height should be reduced from 40 feet to a maximum of 35 feet. The Commission finds that a maximum 35-foot-tall barn at the proposed location in front of (as viewed from Highway One) a backdrop of mature evergreen vegetation that is well over 40 feet in height will minimize the visual impacts of the proposed development on the coastal terrace and will not affect public views to the ocean.

Therefore, the Commission finds that the proposed development as conditioned is consistent with LUP Policies 3.5-1 and 3.5-3 and CZC Sections 20.504.015(C)(1) and 20.504.020(D), as the development will be sited and designed to not affect public views to the ocean or be out of character with surrounding structures.

3. Utilizing Tree Planting to Screen Development

LUP Policy 3.5-5 and CZC Section 20.504.015(C)(10) encourage tree planting to screen buildings, provided that the trees not block coastal views from public areas. **Special Condition No. 3** requires submittal of a landscaping plan that includes planting of a minimum of ten trees and additional shrubs to screen portions of the development as viewed from public vantage points. In particular, the required landscaping plan will propose evergreen drought-tolerant woody vegetation to partially screen the new buildings as viewed from the highway. The requirements for monitoring and replanting trees that do not survive will help ensure that the proposed landscaping will be successful at the site. Therefore, the Commission finds that the proposed development as conditioned is consistent with LUP Policy 3.5-5 and CZC Section 20.504.015(C)(10), as the project as conditioned includes landscaping to screen the proposed residence in a manner that will not block coastal views from public areas.

4. Minimizing Landform Alteration

LUP Policy 3.5-1 and CZC Section 20.504.020 in part require that new development in highly scenic areas minimize the alteration of natural landforms. As previously discussed, the property is mostly level, and the development as proposed will not require any cut slopes or major grading that would alter or destroy the appearance of the natural topography of the site beyond the introduction of a new residence and accessory structures to the terrace setting. As discussed in more detail below (ESHA finding, below), **Special Condition No. 18** requires submittal, prior to permit issuance, of final grading plan demonstrating in part that (a) grading shall avoid and in no way disrupt wetland or riparian ESHA, ESHA buffer, or natural drainage patterns; (b) grading shall not significantly increase volumes of surface runoff, and adequate measures shall be taken to ensure there is no increase in surface runoff off-site; (c) the area of soil to be disturbed at any one time and the duration of its exposure shall be limited; (d) construction equipment shall be limited to the actual area to be disturbed according to the approved development plans; and (e) existing vegetation shall be maintained on site to the maximum extent feasible. Therefore, the Commission finds that the proposed development as conditioned is consistent with LUP Policy 3.5-1 CZC Section 20.504.020, in that the proposed development will minimize the alteration of natural landforms.

5. Minimizing Reflective Surfaces

LUP Policy 3.5-3 and CZC Section 20.504.015(C)(3) require that new development in highly scenic areas minimize reflective surfaces.

As proposed, numerous windows along south-facing, east-facing, and north-facing elevations of the proposed new residence and various accessory structures would be visible from public vantage points along Highway One. The applicant also proposes to install a series of solar panels on the west-facing roof of the proposed new residence, but the panels are proposed to be low

reflectivity and angled to minimize viewing from Highway One. Although the site plan (Exhibit No. 6) shows some landscaping proposed along the proposed fence line north of the new structures, no landscaping plan has been submitted, and it is not clear that all the new windows on the various proposed structures would be screened by the proposed landscaping. If not, the development as proposed would not minimize reflective surfaces inconsistent with LUP Policy 3.5-3 and CZC Section 20.504.015(C)(3).

To ensure that the proposed development does not result in increased glare as viewed from public vantage points, **Special Condition No. 7** requires that prior to permit issuance the applicant submit design plans showing in part that all exterior materials, including roofs and windows, are proposed as non-reflective to minimize glare. In addition, the condition prohibits the use of reflective glass, reflective exterior finishings, or reflective roofing. Moreover, as discussed above, **Special Condition No. 5** requires that the applicants record a deed restriction detailing the specific development authorized under the permit, identifying all applicable special conditions attached to the permit, and providing notice to future owners of the terms and limitations placed on the use of the property, including restrictions on colors, materials, and lighting. The condition will ensure that any future buyers of the property are made aware of the development restrictions on the site because the deed restriction will run with the land in perpetuity.

The Commission finds that while the proposed development as conditioned will not result in significant adverse visual impacts, future development or further improvements to the new single-family residence at the site could result in potential adverse visual impacts if such new development or improvements are not properly sited and designed. The Commission notes that Section 30610(a) of the Coastal Act and Chapter 20.532.020(C) of the CZC exempt certain improvements to single-family residences from coastal development permit requirements. Pursuant to this exemption, once a residence has been constructed, certain improvements that the applicant might propose in the future are normally exempt from the need for a permit or permit amendment. However, in this case because the project site is located within a highly scenic area, future improvements to the approved project would not be exempt from permit requirements pursuant to Section 30610(a) of the Coastal Act, Section 13250 of the Commission's regulations, and CZC Section 20.532.020(C), which incorporates Section 13250 of the Commission's regulations. Section 30610(a) requires the Commission to specify by regulation those classes of development which involve a risk of adverse environmental effects and require that a permit be obtained for such improvements. Pursuant to Section 30610(a) of the Coastal Act, the Commission adopted Section 13250 of Title 14 of the California Code of Regulations, which specifically authorizes the Commission to require a permit for improvements to existing single-family residences that could involve a risk of adverse environmental effect. In addition, Section 13250(b)(1) indicates that improvements to an existing single-family residence in an area designated as highly scenic in a certified land use plan involve a risk of adverse environmental effect and therefore are not exempt. As discussed previously, the entire subject property is within an area designated in the certified Mendocino Land Use Plan as highly scenic. Therefore, pursuant to Section 13250(b)(1) of the Commission's regulations and CZC Section 20.532.020(C), **Special Condition No. 9** expressly states that any future improvements to the single-family residence will require a coastal development permit such that the County and the Commission will have the ability to review all future development on the site to ensure that

future improvements will not be sited or designed in a manner that would result in an adverse environmental impacts.

Therefore, the Commission finds that proposed development as conditioned is consistent with LUP Policy 3.5-3 and CZC Section 20.504.015(C)(3), as reflective surfaces will be minimized.

6. Utilizing Appropriate Building Materials and Colors

CZC Section 20.504.015(C)(3) requires in part that in highly scenic areas, building materials, including siding and roof materials, be selected to blend in hue and brightness with their surroundings.

No specific design plans have been submitted, except the exterior colors of the new structures are proposed to include natural darkish earth tones including Valspar Medallion's "Warm 'n Toasty" (#40077) and "Burnt Umber" (#40079). Other than specifying these two exterior colors and horizontal cedar siding on the various structures, no sample schemes or descriptions have been provided for the various roofing, flashings, trims, windows, doors, gutters, downspouts, deck railings, chimneys, and other building features visible from public vantage points.

Because the project site sits on an open coastal terrace in a sparsely populated area, choosing bright, non-earth-tone colors would cause the proposed structures to be more visually prominent in a manner that would not blend with the surroundings, including with the backdrop of evergreen vegetation. To ensure the construction materials and colors used for the proposed development are subordinate to the natural setting and minimize reflective surfaces consistent with the above-cited LCP policies, the Commission attaches **Special Condition No. 7**. This condition requires that prior to permit issuance the applicant submit design plans in part showing proposed materials and colors for the new single-family residence, guest cottage, barn, restored "shack"/office, and other accessory structures, including exterior bodies, trims, sidings, roofs, and other features. The plans shall demonstrate in part that materials and colors used in construction are compatible with the appearance of the buildings' natural and man-made surroundings and are visually unobtrusive. The condition requires that the permittee undertake development in accordance with the approved final plans. As previously discussed, the deed restriction required by **Special Condition No. 5** will ensure that future owners of the property are aware of the terms and limitations placed on the use of the property, including restrictions on colors and materials, and the County and the Commission to have the ability to review all future development on the site (as required by Special Condition No. 9) to ensure that future improvements will not be sited or designed in a manner that would result in adverse environmental impacts.

Therefore, the Commission finds that proposed development as conditioned is consistent with CZC Section 20.504.015(C)(3), as building materials and colors will blend in hue and brightness with their surroundings.

7. Minimizing Visual Impacts of Satellite Receiving Dish Antennas and Exterior Lighting

LUP Policy 3.5-15 and CZC Sections 20.504.030 and 20.504.035 specify criteria for the development of satellite receiving dish antennae and exterior lighting in designated HSAs.

The applicant has not submitted details on any planned satellite receiving dish antennas or exterior lighting. **Special Condition No. 7** requires that prior to permit issuance the applicant submit design plans that (among other things) demonstrate that the visual impacts of any proposed satellite receiving dish antennas will be minimized by positioning any such antennae behind structures and/or landscaping such that the satellite dish is not visible from Highway One. To minimize the potential glare from any exterior lighting installed on the property, **Special Condition No. 8** requires that all exterior lights be the minimum necessary for the safe ingress and egress of structures and be low-wattage, non-reflective, shielded, and be cast downward such that no light will be directed to shine beyond the boundaries of the subject parcel.

Therefore, the Commission finds that proposed development as conditioned is consistent with LUP Policy 3.5-15 and CZC Sections 20.504.030 and 20.504.035, as the visual impacts of any exterior lighting and satellite receiving dish antennas associated with the new development will be minimized.

8. *Underground utilities*

LUP Policy 3.5-8 and CZC Section 20.504.015(C)(12) require that power distribution lines be placed underground in designated “Highly Scenic Areas” west of Highway One. Thus, the Commission attaches **Special Condition No. 10** to require that all utility extensions connected to development authorized pursuant to CDP No. A-1-MEN-09-052 be placed underground consistent with the LCP.

9. *Visually Compatible with and Subordinate to the Character of the Setting*

LUP Policies 3.5-1 and 3.5-3 and CZC Sections 20.504.015(C)(3) and 20.504.020(D) require in part that new development in highly scenic areas be visually compatible with and subordinate to the character of the surrounding area.

As discussed above, with the inclusion of Special Condition Nos. 3 through 10, the proposed development has been conditioned to include mitigation measures to ensure that it will be visually compatible with and subordinate to the character of the its setting.

Conclusion

Therefore, for all of the reasons discussed above, the Commission finds that the proposed development, as conditioned, is consistent with the numerous visual resource protection policies of the certified LCP.

G. Geologic Hazards

Summary of Applicable LCP Provisions:

Mendocino County Land Use Plan (LUP) Policy 3.4-1 states the following (emphasis added):

The County shall review all applications for Coastal Development permits to determine threats from and impacts on geologic hazards arising from seismic events, tsunami runup, landslides, beach erosion, expansive soils and subsidence and shall require appropriate mitigation measures

to minimize such threats. In areas of known or potential geologic hazards, such as shoreline and bluff top lots and areas delineated on the hazards maps the County shall require a geologic investigation and report, prior to development, to be prepared by a licensed engineering geologist or registered civil engineer with expertise in soils analysis to determine if mitigation measures could stabilize the site. Where mitigation measures are determined to be necessary, by the geologist, or registered civil engineer the County shall require that the foundation construction and earthwork be supervised and certified by a licensed engineering geologist, or a registered civil engineer with soil analysis expertise to ensure that the mitigation measures are properly incorporated into the development.

LUP Policy 3.4-7 states, in applicable part, the following (emphasis added):

The County shall require that new structures be set back a sufficient distance from the edges of bluffs to ensure their safety from bluff erosion and cliff retreat during their economic life spans (75 years). Setbacks shall be of sufficient distance to eliminate the need for shoreline protective works. Adequate setback distances will be determined from information derived from the required geologic investigation and from the following setback formula:

$$\text{Setback (meters)} = \text{Structure life (years)} \times \text{Retreat rate (meters/year)}$$

The retreat rate shall be determined from historical observation (e.g., aerial photographs) and/or from a complete geotechnical investigation.

...

LUP Policy 3.4-8 states the following (emphasis added):

Property owners should maintain drought-tolerant vegetation within the required blufftop setback. The County shall permit grading necessary to establish proper drainage or to install landscaping and minor improvements in the blufftop setback.

LUP Policy 3.4-9 states the following (emphasis added):

Any development landward of the blufftop setback shall be constructed so as to ensure that surface and subsurface drainage does not contribute to the erosion of the bluff face or to the instability of the bluff itself.

LUP Policy 3.4-10 states the following (emphasis added):

No development shall be permitted on the bluff face because of the fragility of this environment and the potential for resultant increase in bluff and beach erosion due to poorly-sited development. However, where they would substantially further the public welfare, developments such as staircase accessways to beaches or pipelines to serve coastal-dependent industry may be allowed as conditional uses, following a full environmental, geologic and engineering review and upon the determinations that no feasible less environmentally damaging alternative is available and that feasible mitigation measures have been provided to minimize all adverse environmental effects.

LUP Policy 3.4-12 states the following (emphasis added):

Seawalls, breakwaters, revetments, groins, harbor channels and other structures altering natural shoreline processes or retaining walls shall not be permitted unless judged necessary for the protection of existing development or public beaches or coastal dependent uses. Allowed developments shall be processed as conditional uses, following full environmental geologic and engineering review. This review shall include site-specific information pertaining to seasonal

storms, tidal surges, tsunami runups, littoral drift, sand accretion and beach and bluff face erosion. In each case, a determination shall be made that no feasible less environmentally damaging alternative is available and that the structure has been designed to eliminate or mitigate adverse impacts upon local shoreline sand supply and to minimize other adverse environmental effects. The design and construction of allowed protective structures shall respect natural landforms, shall provide for lateral beach access, and shall minimize visual impacts through all available means.

Mendocino County Coastal Zoning Code (CZC) Section 20.500.010 states the following (emphasis added):

(A) The purpose of this section is to insure that development in Mendocino County's Coastal Zone shall:

- (1) Minimize risk to life and property in areas of high geologic, flood and fire hazard;*
- (2) Assure structural integrity and stability; and*
- (3) Neither create nor contribute significantly to erosion, geologic instability or destruction of the site or surrounding areas, nor in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. (Ord. No. 3785 (part), adopted 1991)*

CZC Section 20.500.015 states the following (emphasis added):

(A) Determination of Hazard Areas.

- (1) Preliminary Investigation. The Coastal Permit Administrator shall review all applications for Coastal Development Permits to determine threats from and impacts on geologic hazards.*
- (2) Geologic Investigation and Report. In areas of known or potential geologic hazards such as shoreline and blufftop lots and areas delineated on the hazard maps, a geologic investigation and report, prior to development approval, shall be required. The report shall be prepared by a licensed engineering geologist or registered civil engineer pursuant to the site investigation requirements in Chapter 20.532.*

(B) Mitigation Required. Where mitigation measures are determined to be necessary, the foundation, construction and earthwork shall be supervised and certified by a licensed engineering geologist or a registered civil engineer with soil analysis expertise who shall certify that the required mitigation measures are incorporated into the development. (Ord. No. 3785 (part), adopted 1991)

CZC Section 20.500.020 states, in applicable part, the following (emphasis added):

...

(B) Bluffs.

- (1) New structures shall be setback a sufficient distance from the edges of bluffs to ensure their safety from bluff erosion and cliff retreat during their economic life spans (seventy-five (75) years). New development shall be setback from the edge of bluffs a distance determined from information derived from the required geologic investigation and the setback formula as follows:*

$$\text{Setback (meters)} = \text{structure life (75 years)} \times \text{retreat rate (meters/year)}$$

Note: The retreat rate shall be determined from historical observation (aerial photos) and/or from a complete geotechnical investigation.

(2) Drought tolerant vegetation shall be required within the blufftop setback.

(3) Construction landward of the setback shall not contribute to erosion of the bluff face or to instability of the bluff.

(4) No new development shall be allowed on the bluff face except such developments that would substantially further the public welfare including staircase accessways to beaches and pipelines to serve coastal-dependent industry. These developments shall only be allowed as conditional uses, following a full environmental, geologic and engineering review and upon a finding that no feasible, less environmentally damaging alternative is available. Mitigation measures shall be required to minimize all adverse environmental effects.

...

(E) Erosion.

(1) Seawalls, breakwaters, revetments, groins, harbor channels and other structures altering natural shoreline processes or retaining walls shall not be permitted unless judged necessary for the protection of existing development, public beaches or coastal dependent uses. Environmental geologic and engineering review shall include site-specific information pertaining to seasonal storms, tidal surges, tsunami runups, littoral drift, sand accretion and beach and bluff face erosion. In each case, a determination shall be made that no feasible less environmentally damaging alternative is available and that the structure has been designed to eliminate or mitigate adverse impacts upon local shoreline sand supply and to minimize other significant adverse environmental effects.

Project Consistency with Applicable LCP Provisions:

As summarized above, LUP Policy 3.4-1 and CZC Section 20.500.015(A) require all applications for coastal development permits in areas of known or potential geologic hazards such as shoreline and bluff-top lots be reviewed to ensure that new development will be safe from bluff erosion and cliff retreat. To this end, LUP Policy 3.4-7 and CZC Sections 20.500.010(A)(3) and 20.500.020(E) direct the approving authority to assure that new development is sited and designed to provide adequate setbacks from geologically hazardous areas, and that restrictions of land uses be applied as necessary to ensure that the construction of seawalls or other shoreline protective structures will not be needed “in any way” over the full 75-year economic lifespan of the development. A sole exception to this prohibition on the construction of shoreline protective devices is provided in CZC Section 20.500.020(E) for protecting existing development, public beaches, and coastal-dependent uses. LUP Policy 3.4-8 and CZC Section 20.500.020(B)(2) require property owners to maintain drought-tolerant vegetation within the required bluff top setback area to minimize the need for watering, which could accelerate bluff-top erosion. Similarly, LUP Policy 3.4-9 and CZC Section 20.500.020(B)(3) require development landward of the bluff-top setback to be constructed so as to ensure that surface and subsurface drainage does not contribute to the erosion of the bluff face or the instability of the bluff itself. Finally, CZC Section 20.500.010 requires that all development in the County coastal zone minimize risk to life and property in areas of high geologic hazard, assure structural integrity and stability, and neither create nor contribute

significantly to erosion or engender the need for protective devices that would alter natural landforms along bluffs and cliffs.

(1) Mitigation Measures to Minimize Geologic Hazards and Ensure Safety from Bluff Erosion & Retreat during the Economic Lifespan of the Proposed Development

As discussed above in Finding IV-C, the subject property, which is approximately 58.5 acres in size, is located on a more or less flat, uplifted coastal terrace at an elevation of approximately 200 feet above mean sea level. According to the geologic investigation prepared by the applicant's consultant (BACE Geotechnical), the subject property is underlain by Franciscan Complex bedrock. The terrace was formed during the Pleistocene Epoch, when periods of glaciation caused sea level fluctuations, which created a series of steps, or terraces, cut into the coastal bedrock by wave erosion. Sediments, comprised mostly of sand and silt, with some gravel and clay, were deposited on the generally flat terrace surfaces while they were submerged by the elevated sea levels. As encountered in the geologic test pits, the bedrock at the property is covered by approximately 12 to more than 15 feet of these terrace deposits. The report identifies the flat, graded area immediately below (seaward of) the northwestern bluff edge and off of the beach access road (leading to what historically was Bridgeport Landing) as an old, stabilized landslide. The applicants have a large cargo container stored in this area. A shallow slough (slip-out) area within the terrace deposits also was identified on the bluff face along the beach access road. The area is described as unvegetated and "experiencing accelerated erosion, primarily during severe storm periods." In addition, a small active waterfall was located in the northwestern bluff face above the beach access road approximately one-third of the way down the road. The water flows into an open culvert that crosses beneath the road and empties over the bluffs on the outboard side. The report notes that the lower end of the access road was washed out by ocean waves just above the beach some time prior to 1997.

The proposed project as revised for the Commission's *de novo* review involves the construction of a new single family residence, guest cottage, barn, and other associated structures and development on the western side of the property near the bluff edge. In previous actions on coastal development permits and appeals, the Commission has interpreted Section 30253 of the Coastal Act, LUP Policy 3.4-7, and CZC Section 20.500.010(A) to require that coastal development be sited a sufficient distance landward of coastal bluffs that it will neither be endangered by erosion nor lead to the construction of protective coastal armoring during the assumed economic life of the development. LUP Policy 3.4-7 indicates the economic life of a structure to be 75 years. A setback adequate to protect development over the economic life of a development must account both for the expected bluff retreat during that time period and the existing slope stability. Long-term bluff retreat is measured by examining historic data, including vertical aerial photographs and any surveys conducted that identified the bluff edge, and estimating changes in this rate that may be associated with continuing or accelerating sea level rise. Slope stability is a measure of the resistance of a slope to landsliding, and can be assessed by a quantitative slope stability analysis. Stability is usually defined as a factor of safety against landsliding of 1.5, so the distance from the bluff edge necessary to achieve a factor of safety of 1.5 normally must be added to the setback stipulated above.

For purposes of *de novo* review by the Commission, the applicant's geologist, BACE geotechnical, submitted a quantitative slope stability analysis (dated March 14, 2011) (Exhibit No. 13) as a supplemental report to the original geotechnical investigation dated July 12, 2007. The slope stability analysis states the following, in part, with regard to the geologic stability of the coastal terrace:

"...The overall height of the bluffs (approximately 230 feet) affords blufftop structures continued protection from storm surges, tsunamis, and wave runups, even considering the projected sea level rise. The combination of high elevation and geologic stability of the property make its susceptibility to the detrimental effects of sea level rise relatively low, at least over the next 75 years." (p. 6)

The report recommends a geologic setback of 32 feet from the northwest-facing bluff, 51 feet from the southwest-facing bluff, and 50 feet from the dormant landslide located just seaward of the northwestern bluff edge. In contrast, the geologic report that was the basis for the County's approval of the original project recommended a geologic setback of 31.25 feet from the northwest-facing bluff, 40.6 feet from the southwest-facing bluff, and no additional setback from the dormant landslide was given. In addition to the recommended setbacks, the report also includes recommendations on foundation support. The Commission's geologist Dr. Mark Johnsson has reviewed the report and agrees with its conclusions, recommended setbacks, and other recommendations.

As shown on the plans revised for the Commission's *de novo* review (Exhibit No. 6), the proposed locations of the proposed new structures conform to the recommended geologic setbacks. The Commission finds that the minimum 32-foot setback from the northwest-facing bluff, 51-foot setback from the southwest-facing bluff, and 50-foot setback from the dormant landslide located just seaward of the northwestern bluff edge proposed by the applicant is appropriate mitigation for stability hazards associated with the site and are sufficient to protect the new development from bluff retreat hazards over its expected economic life consistent with the policies and standards of the certified LCP. Adherence to these requirements is required by **Special Condition No. 11.**, which requires that prior to permit issuance, a geotechnical engineer shall approve all final design, construction, foundation, grading and drainage plans, and shall review the anchoring systems and anticipated seismic loading of the proposed buildings and provide recommendations, as necessary, for appropriate restraint systems, as recommended by the geologic report. Moreover, the condition requires that all other recommendations included in the BACE Geotechnical report dated July 12, 2007 and supplemental report dated March 14, 2011 prepared for the site (Exhibit No. 13) be incorporated into final plans. The condition further requires that the foundation construction and earthwork be supervised and certified by a licensed engineering geologist, or a registered civil engineer with soil analysis expertise, to ensure that the geologic hazard mitigation measures are properly incorporated into the development. The Commission finds that only as conditioned to ensure that the mitigation measures are properly incorporated into the development can the project be found consistent with LUP Policies 3.4-1 and 3.4-7 and CZC Section 20.500.010(A).

The applicant is proposing to construct a new single family residence on a high uplifted marine terrace bluff that is actively eroding. Consequently, the development would be located in an area of high geologic hazard. However, new development can only be found consistent with LUP

Policy 3.4-7, and CZC Section 20.500.010(A) if the risks to life and property from the geologic hazards are minimized and if a protective device will not be needed in the future. The applicants have submitted information from a registered engineering geologist which states that the site is geotechnically suitable for the planned residential construction.

Although a comprehensive geotechnical evaluation is a necessary and useful tool that the Commission relies on to determine if proposed development is permissible at all on any given bluff top site, the Commission finds that a geotechnical evaluation alone is not a guarantee that a development will be safe from bluff retreat. It has been the experience of the Commission that in some instances, even when a thorough professional geotechnical analysis of a site has concluded that a proposed development will be safe from bluff retreat hazards, unexpected bluff retreat episodes that threaten development during the life of the structure sometimes still do occur. Examples of this situation include the following:

- The Kavich Home at 176 Roundhouse Creek Road in the Big Lagoon Area north of Trinidad (Humboldt County). In 1989, the Commission approved the construction of a new house on a vacant bluff top parcel (CDP No. 1-87-230). Based on the geotechnical report prepared for the project it was estimated that bluff retreat would jeopardize the approved structure in about 40 to 50 years. In 1999 the owners applied for a coastal development permit to move the approved house from the bluff-top parcel to a landward parcel, because the house was threatened by 40 to 60 feet of unexpected bluff retreat that occurred during a 1998 El Niño storm event. The Executive Director issued a CDP waiver (1-99-066-W) to authorize moving the house in September of 1999.
- The Denver/Canter home at 164/172 Neptune Avenue in Encinitas (San Diego County). In 1984, the Commission approved construction of a new house on a vacant bluff-top lot (CDP No. 6-84-461) based on a positive geotechnical report. In 1993, the owners applied for a seawall to protect the home (CDP Application No. 6-93-135). The Commission denied the request. In 1996 (CDP Application No. 6-96-138) and again in 1997 (CDP Application No. 6-97-90), the owners again applied for a seawall to protect the home. The Commission denied the requests. In 1998, the owners again requested a seawall (CDP Application No. 6-98-39) and submitted a geotechnical report that documented the extent of the threat to the home. The Commission approved the request on November 5, 1998.
- The Arnold project at 3820 Vista Blanca in San Clemente (Orange County). Coastal development permit (CDP No. 5-88-177) for a bluff-top project required protection from bluff-top erosion, despite geotechnical information submitted with the permit application that suggested no such protection would be required if the project conformed to 25-foot bluff top setback. An emergency coastal development permit (CDP No. 5-93-254-G) later was issued to authorize bluff-top protective works.

The Commission emphasizes that the above examples are not intended to be absolute indicators of bluff erosion on the subject parcel, as coastal geology can vary significantly from location to location. However, these examples do illustrate that site-specific geotechnical evaluations cannot always accurately account for the spatial and temporal variability associated with coastal processes and therefore cannot always absolutely predict bluff erosion rates. Collectively, these

examples have helped the Commission form its opinion on the vagaries of geotechnical evaluations with regard to predicting bluff erosion rates.

Although the project has been evaluated and designed in a manner to minimize the risk of geologic hazards, and although the Commission is requiring with Special Condition No. 11 that the applicant adhere to all recommended specifications (including recommended setbacks) to minimize potential geologic hazards, some risk of geologic hazard still remains. This risk is reflected in the slope stability analysis report (Exhibit No. 8), which references certain “limitations” of the analysis, such as:

“...Changes in the condition of a site can occur with the passage of time, whether they are due to natural events or to human activities on this, or adjacent sites. In addition, changes in applicable or appropriate codes and standards may occur, whether they result from legislation or the broadening of knowledge...” [p. 8]

This language in the report itself is indicative of the underlying uncertainties of this and any geotechnical evaluation and supports the notion that no guarantees can be made regarding the safety of the proposed development with respect to bluff retreat. Geologic hazards are episodic, and bluffs that may seem stable now may not be so in the future.

Geologic hazards are episodic, and bluffs that may seem stable now may not be so in the future. Therefore, the Commission finds that the subject lot is an inherently hazardous piece of property, that the bluff face is clearly eroding in some areas, and that the proposed new development will be subject to geologic hazard and could potentially someday require a bluff or shoreline protective device, inconsistent with LUP Policy 3.4-7 and CZC Sections 20.500.010 and 20.500.020(B). The Commission thus finds that the proposed development could not be approved as being consistent with LUP Policy 3.4-7 and CZC Section 20.500.010 and 20.500.020(B) if projected bluff retreat would affect the proposed development and necessitate construction of a seawall to protect it. Based upon the geologic report and supplemental documents prepared by the applicants’ geologist, the Commission finds that the risks of geologic hazard are minimized if development is sited and designed according to the setback and construction recommendations and conditions of this permit. However, given that the risk cannot be eliminated and the geologic report cannot assure that shoreline protection will never be needed to protect the residence, the Commission finds that the proposed development is consistent with the Mendocino County LCP only if it is conditioned to provide that shoreline protection will not be constructed. Thus, the Commission further finds that due to the inherently hazardous nature of this lot, the fact that no geology report can conclude with certainty that a geologic hazard does not exist, the fact that the approved development and its maintenance may cause future problems that were not anticipated, and because new development shall not engender the need for shoreline protective devices, it is necessary to attach Special Condition No. 12 to ensure that no future shoreline protective device will be constructed to protect the proposed new development.

Special Condition No. 12 prohibits the construction of shoreline protective devices on the parcel, requires that the landowner provide a geotechnical investigation and remove the permitted single-family residence, garage, decking, porches, driveway, septic system, propane tank, and water and utility connections and/or other development approved by CDP No. A-1-

MEN-09-052 if bluff retreat reaches the point where the permitted development is threatened, and requires that the landowners accept sole responsibility for the removal of any structural debris resulting from landslides, slope failures, or erosion of the site.

These requirements are necessary for compliance with CZC Section 20.500.010, which states that new development shall minimize risk to life and property in areas of high geologic hazard, assure structural integrity and stability, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding areas, nor in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. The Commission finds that the proposed development could not be approved as being consistent with CZC Section 20.500.010 if projected bluff retreat would affect the proposed development and necessitate construction of a seawall to protect it.

Special Condition No. 13 requires the landowner to assume the risks of extraordinary erosion and geologic hazards of the property and waive any claim of liability on the part of the Commission. Given that the applicant has chosen to implement the project despite these risks, the applicant must assume the risks. In this way, the applicant is notified that the Commission is not liable for damage as a result of approving the permit for development. The condition also requires the applicant to indemnify the Commission in the event that third parties bring an action against the Commission as a result of the failure of the development to withstand hazards. In addition, the requirement of **Special Condition No. 5** that a deed restriction be recorded, will ensure that future owners of the property will be informed of the risks, the Commission's immunity from liability, and the indemnity afforded the Commission.

In addition, as noted above, some risks of an unforeseen natural disaster, such as massive slope failure, erosion, etc., could result in destruction or partial destruction of the single family residence or other development approved by the Commission. Furthermore, the development itself and its maintenance may cause future problems that were not anticipated. When such an event takes place, public funds are often sought for the clean-up of structural debris that winds up on the beach or on an adjacent property. As a precaution, in case such an unexpected event occurs on the subject property, **Special Condition No. 12(B)** requires the landowner to accept sole responsibility for the removal of any structural debris resulting from landslides, slope failures, or erosion on the site, and agree to remove the single-family residence, barn, and other permitted development should the bluff retreat reach the point where a government agency has ordered that the structures not be occupied or used

The Commission finds that **Special Condition No. 5** is required to provide notice of potential hazards of the property and help eliminate false expectations on the part of potential buyers of the property, lending institutions, and insurance agencies that the property is safe for an indefinite period of time and for further development indefinitely into the future, or that a protective device could be constructed to protect the approved development. The condition requires that the applicant record and execute a deed restriction approved by the Executive Director against the property that imposes the special conditions of this permit as covenants, conditions, and restrictions on the use and enjoyment of the property.

Because the geologic report identified several areas on the bluff face that are weak and/or actively eroding, including the dormant landslide area below the northwestern bluff edge, the report recommended that care be taken to avoid concentrated surface flow of runoff along the bluff face. Specifically, the July 12, 2007 BACE Geotechnical report recommended “more effective drainage be implemented for the [dormant landslide] area, and that the other, existing temporary structures (fences, trailer, etc.) be removed” (p. 7). As discussed above, **Special Condition No. 11** requires that prior to permit issuance, a geotechnical engineer shall approve all final plans, including drainage plans, and provide recommendations as necessary for appropriate site development to minimize erosion and geologic hazards. Inclusion of this special condition will ensure project consistency with LUP Policy 3.4-9, which requires that any development landward of the blufftop setback shall be constructed so as to ensure that surface and subsurface drainage does not contribute to the erosion of the bluff face or to the instability of the bluff itself. In addition, LUP Policy 3.4-8 and CZC Section 20.500.020(B)(2) require property owners to maintain drought-tolerant vegetation within the required bluff-top setback to minimize the potential for soil saturation which could promote soil instability and erosion. Therefore, the Commission attaches **Special Condition No. 3**. As described above, this condition requires submittal of a landscaping plan for the Executive Director’s review and approval prior to permit issuance that includes, in part, a provision ensuring that drought-tolerant vegetation only shall be maintained within the geologic setback area to minimize the need for landscaping irrigation and the potential for geologic hazards.

(2) *Proposed Development Located on Bluff Face*

LUP Policy 3.4-10 and CZC 20.500.020(B)(4) prohibit development on bluff faces except in limited cases where the development would substantially further the public welfare, such as staircase accessways to beaches or pipelines to serve coastal-dependent industry, and in those cases only following a full environmental, geologic and engineering review and upon the determinations that no feasible less environmentally damaging alternative is available and that feasible mitigation measures have been provided to minimize all adverse environmental effects.

As discussed above in Finding IV-C (Environmental Setting), the applicant has installed new 10-foot-tall wooden fence posts down the bluff face to replace an old dilapidated fence that historically been placed in that area and also placed a trailer and large storage container on the graded old landslide area located below the northwestern bluff edge without the benefit of a coastal development permit. The July 12, 2007 BACE Geotechnical report noted the instability of the area and recommended that “existing temporary structures (fences, trailer, etc.) be removed” (p. 7). Because LUP Policy 3.4-10 and CZC 20.500.020(B)(4) prohibit this type of development on bluff faces and because the applicant’s geologist recommended the removal of this development in these geologically unstable areas, the Commission attaches **Special Condition No. 14**. This condition requires the applicant to provide evidence to the Executive Director within 90 days of permit issuance that all unauthorized development has been removed from the bluff face.

Conclusion

The Commission thus finds that the proposed development, as conditioned, is consistent with the policies of the certified LCP regarding geologic hazards, including LUP Policies 3.4-1, 3.4-7,

3.4-12 and CZC Sections 20.500.010, 20.015.015, and 20.500.020, since the development as conditioned will not contribute significantly to the creation of any geologic hazards, will not have adverse impacts on the stability of the coastal bluff or on erosion, and will not require the construction of shoreline protective works. In addition, the Commission finds that the project as conditioned is consistent with LUP Section 3.4-10 and CZC Section 20.500.020(B)(4), as no new development will be allowed on the bluff face. Only as conditioned is the proposed development consistent with these LCP policies on geologic hazards and bluff face development.

H. Environmentally Sensitive Habitat Areas (ESHA)

Summary of Applicable LCP Provisions:

LUP Policy 3.1-2 states the following (emphasis added):

Development proposals in environmentally sensitive habitat areas such as wetlands, riparian zones on streams or sensitive plant or wildlife habitats (all exclusive of buffer zones) including, but not limited to those shown on the Land Use Maps, shall be subject to special review to determine the current extent of the sensitive resource. Where representatives of the County Planning Department, the California Department of Fish and Game, the California Coastal Commission, and the applicant are uncertain about the extent of sensitive habitat on any parcel such disagreements shall be investigated by an on-site inspection by the landowner and/or agents, County Planning Department staff member, a representative of California Department of Fish and Game, a representative of the California Coastal Commission. The on-site inspection shall be coordinated by the County Planning Department and will take place within 3 weeks, weather and site conditions permitting, of the receipt of a written request from the landowner/agent for clarification of sensitive habitat areas.

If all of the members of this group agree that the boundaries of the resource in question should be adjusted following the site inspection, such development should be approved only if specific findings are made which are based upon substantial evidence that the resource as identified will not be significantly degraded by the proposed development. If such findings cannot be made, the development shall be denied. Criteria used for determining the extent of wetlands and other wet environmentally sensitive habitat areas are found in Appendix 8 and shall be used when determining the extent of wetlands.

LUP Policy 3.1-7 states the following (emphasis added):

A buffer area shall be established adjacent to all environmentally sensitive habitat areas. The purpose of this buffer area shall be to provide for a sufficient area to protect the environmentally sensitive habitat from significant degradation resulting from future developments. The width of the buffer area shall be a minimum of 100 feet, unless an applicant can demonstrate, after consultation and agreement with the California Department of Fish and Game, and County Planning Staff, that 100 feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. The buffer area shall be measured from the outside edge of the environmentally sensitive habitat areas and shall not be less than 50 feet in width. New land division shall not be allowed which will create new parcels entirely within a buffer area. Developments permitted within a buffer area shall generally be the same as those uses permitted in the adjacent environmentally sensitive habitat area and must comply at a minimum with each of the following standards:

- 1. It shall be sited and designed to prevent impacts which would significantly degrade such areas;*

2. *It shall be compatible with the continuance of such habitat areas by maintaining their functional capacity and their ability to be self-sustaining and to maintain natural species diversity; and*
3. *Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel. Mitigation measures, such as planting riparian vegetation, shall be required to replace the protective values of the buffer area on the parcel, at a minimum ratio of 1:1, which are lost as a result of development under this solution.*

LUP Policy 3.1-18 states the following (emphasis added):

Public access to sensitive wildlife habitats such as rookeries or haulout areas shall be regulated, to insure that public access will not significantly adversely affect the sensitive resources being protected.

Development within buffer areas recommended by the California Department of Fish and Game to protect rare or endangered wildlife species and their nesting or breeding areas shall meet guidelines and management practices established by the Department of Fish and Game, and must be consistent with other applicable policies of this plan.

LUP Policy 3.2-6 states the following:

Existing agricultural ponds constructed on dry land and designed to store water for irrigation, fire protection or livestock shall not be classified as wetlands or regulated as such. Future proposals for agricultural ponds which involve the use of streams for the water source and may also involve or affect extensive areas of riparian vegetation shall be subject to conditional use permit review.

CZC Section 20.496.015 states, in applicable part, the following (emphasis added):

(A) Determining Extent of ESHA. *The Coastal Permit Administrator shall review, with the assistance of land use maps, all permit applications for coastal developments to determine whether the project has the potential to impact an ESHA. A project has the potential to impact an ESHA if:*

...

(2) The development is proposed to be located within an ESHA, according to an on-site investigation, or documented resource information; ...

(3) The development is proposed to be located within one hundred (100) feet of an environmentally sensitive habitat and/or has potential to negatively impact the long-term maintenance of the habitat, as determined through the project review.

...

(D) Development Approval. *Such development shall only be approved if the following occurs:*

(1) All members of the site inspection team agree to the boundaries of the sensitive resource area; and

(2) Findings are made by the approving authority that the resource will not be significantly degraded by the development as set forth in Section 20.532.100(A)(1).

(E) Denial of Development. *If findings cannot be made pursuant to Section 20.532.100(A)(1), the development shall be denied.*

CZC Section 20.532.100 states, in applicable part, the following (emphasis added):

In addition to required findings, the approving authority may approve or conditionally approve an application for a permit or variance within the Coastal Zone only if the following findings, as applicable, are made:

(A) Resource Protection Impact Findings.

(1) Development in Environmentally Sensitive Habitat Areas. No development shall be allowed in an ESHA unless the following findings are made:

- (a) The resource as identified will not be significantly degraded by the proposed development.
- (b) There is no feasible less environmentally damaging alternative.
- (c) All feasible mitigation measures capable of reducing or eliminating project related impacts have been adopted.

...

Section 20.496.020 of the CZC states, in applicable part, the following (emphasis added):

(A) Buffer areas. A buffer shall be established adjacent to all environmentally sensitive habitat areas. The purpose of this buffer area shall be to provide for a sufficient area to protect the environmentally sensitive habitat from degradation resulting from future developments and shall be compatible with the continuance of such habitat areas.

(1) Width. The width of the buffer area shall be a minimum of one hundred (100) feet, unless an applicant can demonstrate, after consultation with the California Department of Fish and Game, and County Planning staff, that one hundred feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. The buffer area shall be measured from the outside edge of the Environmentally Sensitive Habitat Areas and shall not be less than fifty (50) feet in width. New land division shall not be allowed which will create new parcels entirely within a buffer area. Developments permitted within a buffer area shall generally be the same as those uses permitted in the adjacent Environmentally Sensitive Habitat Area.

Standards for determining the appropriate width of the buffer area are as follows:

- (a) *Biological Significance of Adjacent Lands...*
...
- (b) *Sensitivity of Species to Disturbance...*
...
- (c) *Susceptibility of Parcel to Erosion...*
...
- (d) *Use of Natural Topographic Features to Locate Development...*
...
- (e) *Use of Existing Cultural Features to Locate Buffer Zones...*
...
- (f) *Lot Configuration and Location of Existing Development...*
...
- (g) *Type and Scale of Development Proposed...*
...

(2) Configuration...

...

(3) Land Division....

(4) Permitted Development. Development permitted within the buffer area shall comply at a minimum with the following standards:

(a) Development shall be compatible with the continuance of the adjacent habitat area by maintaining the functional capacity, their ability to be self-sustaining and maintain natural species diversity.

(b) Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel.

(c) Development shall be sited and designed to prevent impacts which would degrade adjacent habitat areas. The determination of the best site shall include consideration of drainage, access, soil type, vegetation, hydrological characteristics, elevation, topography, and distance from natural stream channels. The term "best site" shall be defined as the site having the least impact on the maintenance of the biological and physical integrity of the buffer strip or critical habitat protection area and on the maintenance of the hydrologic capacity of these areas to pass a one hundred (100) year flood without increased damage to the coastal zone natural environment or human systems.

(d) Development shall be compatible with the continuance of such habitat areas by maintaining their functional capacity and their ability to be self-sustaining and to maintain natural species diversity.

(e) Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel. Mitigation measures, such as planting riparian vegetation, shall be required to replace the protective values of the buffer area on the parcel, at a minimum ratio of 1:1, which are lost as a result of development under this solution.

(f) Development shall minimize the following: impervious surfaces, removal of vegetation, amount of bare soil, noise, dust, artificial light, nutrient runoff, air pollution, and human intrusion into the wetland and minimize alteration of natural landforms.

(g) Where riparian vegetation is lost due to development, such vegetation shall be replaced at a minimum ratio of one to one (1:1) to restore the protective values of the buffer area.

(h) Aboveground structures shall allow peak surface water flows from a one hundred (100) year flood to pass with no significant impediment.

(i) Hydraulic capacity, subsurface flow patterns, biological diversity, and/or biological or hydrological processes, either terrestrial or aquatic, shall be protected.

(j) Priority for drainage conveyance from a development site shall be through the natural stream environment zones, if any exist, in the development area. In the drainage system design report or development plan, the capacity of natural stream environment zones to convey runoff from the completed

development shall be evaluated and integrated with the drainage system whenever possible. No structure shall interrupt the flow of groundwater within a buffer strip. Foundations shall be situated with the long axis of interrupted impermeable vertical surfaces oriented parallel to the groundwater flow direction. Piers may be allowed on a case by case basis.

(k) If findings are made that the effects of developing an ESHA buffer area may result in significant adverse impacts to the ESHA, mitigation measures will be required as a condition of project approval. Noise barriers, buffer areas in permanent open space, land dedication for erosion control, and wetland restoration, including off-site drainage improvements, may be required as mitigation measures for developments adjacent to environmentally sensitive habitats.

Project Consistency with Applicable LCP Provisions:

As discussed above in Finding IV-C (Environmental Setting), the property supports rare species and habitats including (1) Mendocino Coast paintbrush (*Castilleja mendocinensis*), a CNPS List 1B.2² sensitive plant species; (2) suitable habitat for Point Arena mountain beaver (*Aplodontia rufa nigra*), a federally endangered rodent species; (3) aquatic and riparian habitats associated with the unnamed natural drainage that flows westward from Highway One across the southern portion of the property, over the bluff edge, and down the southwestern bluff face; and (4) a small isolated wetland, dominated by hydrophytic rushes (*Juncus effuses* var. *pacificus*) in a topographic low spot on the western side of the coastal terrace. The various sensitive species and habitats were identified through botanical and ESHA surveys conducted on the property in 2002 and 2005 (Exhibit No. 14), technical assistance (in the form of a site visit and recommendations) from U.S. Fish and Wildlife Service staff in 2008, and, for the purposes of *de novo* review by the Commission, additional information on the isolated wetland area from the applicant's botanical consultants (Exhibit No. 14).

As cited above, LUP Policy 3.1-7 and CZC Section 20.496 contain specific requirements for the establishment of a buffer area between development and an adjacent ESHA to protect ESHA from disturbances associated with proposed development. The width of the buffer area is required to be a minimum of 100 feet, unless an applicant can demonstrate, after consultation with the California Department of Fish and Game and County Planning staff, that 100 feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. The buffer area is required to be measured from the outside edge of the ESHA and shall not be less than 50 feet in width. Development permitted within a buffer area is required to be generally the same as those uses permitted in the adjacent environmentally sensitive habitat area and must comply within the standards set forth in CZC Section 20.496.020(A)(4)(a)-(k).

The botanical and ESHA surveys located approximately 10 Mendocino paintbrush individuals growing along the steep bluff face of the northwestern-facing bluff above the ocean in areas

² California Native Plant Society (CNPS). 2011. Inventory of Rare and Endangered Plants (online edition, v8-01a). California Native Plant Society. Sacramento, CA. Accessed on Monday, May 09, 2011. Rare Plant Rank 1B = "Rare, threatened, or endangered in California and elsewhere"; .2 = "Fairly endangered in California."

inaccessible to development. The surveys also documented riparian habitat along the unnamed creek and associated lake near the southern property boundary. Although no individuals of Point Arena mountain beaver or evidence of beaver burrows were located on the property, suitable habitat (vegetative species and cover) for the species was identified in the aforementioned riparian area and along portions of the southwestern bluff face. The report recommended and mapped 100-foot setback buffers between the identified rare plant, riparian, and mountain beaver habitat areas and all proposed new development. The proposed plans as revised for the Commission's *de novo* review incorporate these recommended 100-foot setback areas and site all new development well outside of the setback areas.

With regard to the isolated wetland area located near the southwestern end of the property near the bluff edge (Exhibit No. 6), the applicant is proposing a buffer width of 50 feet between the wetland and the proposed new house and barn structures. The existing "track", which is an existing partially gravel-surfaced unimproved driveway bisecting the property, butts up against one edge of the isolated wetland. The applicant's botanical consultant opined that a 50-foot setback between the wetland and the proposed new structures would be adequate since the wetland area is small, isolated, dominated by exotic species, and unlikely to be exploited seasonally by wetland fauna.

LUP Policy 3.1-7 and CZC Section 20.496.020 allow for a buffer width to be reduced from 110 feet to a minimum of 50 feet under certain circumstances. Below, the various standards contained within CZC Section 20.496.020(A)(1)(a) through (g) are evaluated to substantiate the adequacy of the proposed 52-foot buffer:

- (a) Biological significance of adjacent lands: The isolated wetland is not connected to any water body or riparian habitat, but rather it is a small isolated area that occurs in the middle of open, upland range lands on the property. Thus, the habitat is not functionally dependent on the surrounding areas and habitats for its continuance.
- (b) Sensitivity of the species/habitat to disturbance: The small isolated wetland is characterized by a predominance of rushes and exotic grasses, is not perennially ponded, and does not support a diverse vegetative structure. Thus, the area does not provide habitat for wetland- or aquatic-oriented animals. Because of this, noise, lights, and motion at a distance (such as would be present in the residential and accessory structures proposed to be located 52 feet away) will not significantly affect the wetland habitat. The principal factors that could disturb the habitat include fill placement, grading, and invasion by exotic plants. Thus, measures that are more important and more effective for protecting the wetland habitat than wide spatial buffers are measures such as the use of exclusionary fencing during construction, preserving the habitat from future development, restricting landscaping on the property, and requiring the removal of nonnative invasive species that encroach onto the property. Thus, a 50-foot buffer will be adequate to protect the wetland habitat from disturbance, provided these mitigation measures are incorporated into the project (see below).
- (c) Susceptibility of the parcel to erosion: As documented in the geologic reports, the coastal terrace property is more or less flat. If best management erosion control practices are used to protect the wetland during construction, then the proposed development is not

expected to significantly change the potential for erosion in the vicinity of the wetland ESHA. Thus, a 50-foot buffer will be adequate provided these mitigation measures are incorporated into the project (see below).

- (d) Use of natural or existing cultural features to locate the buffer area: Because the wetland ESHA is isolated in the midst of open, upland range land habitat, there are no obvious natural features, other than the bluff edges to the southwest and northwest, to aid in the determination of an appropriate buffer width. The 50-foot wetland buffer has been proposed based on both the location of natural features and site constraints (location of vegetative backdrop and prescribed geologic setback areas) as well as the location of cultural features (existing structure and driveway) on the property. The proposed development will be sited and designed primarily to minimize the visual impacts of the new development on public views to the ocean in this highly scenic area. Thus, development is proposed to be sited far away from Highway One (rather than close to the highway so as not to obstruct views across the open grasslands of the property to the ocean) and up against a vegetative backdrop of evergreen trees (so as not to affect public views to the ocean). Additionally, the proposed new structures will be clustered near the existing structure on the property (which is proposed to be demolished and rebuilt) and along the existing “track” (unimproved driveway). In this respect, the ability to establish a wider buffer around the isolated wetland is somewhat constrained by location of the existing development as well as the location of the vegetative backdrop, which occurs along only a portion of the bluff edge rather than throughout the entire length of the western bluff edge. Moreover, a wider wetland buffer is further precluded by the need to site proposed new development outside of the recommended geologic setback areas and 100-foot riparian buffer area.
- (e) Lot configuration and the location of existing development: As discussed above, the proposed new structures will be clustered near the existing structure on the property (which is proposed to be demolished and rebuilt) and along the existing “track” (unimproved driveway). Additionally, because the location and shape of the isolated wetland are oriented such that the wetland spans a considerable area that runs parallel to the northwestern bluff edge in front of the vegetative backdrop of tall evergreen trees, the proposed new structures necessarily must be sited between the trees (for consistency with the visual resources protection policies of the LCP, as discussed above) and the isolated wetland, while at the same time maintaining prescribed geologic setback distances.
- (f) Type and scale of development proposed: The proposed new single-family residence, barn, and other accessory structures all are principally permitted in the Range Lands zoning district (as discussed further below). The scale of the project has been minimized for the purposes of the Commission’s *de novo* review and is consistent with development in the surrounding area (see Exhibit No. 10).

Of the several factors discussed above, the Commission finds that those most significant to the determination of buffer width adequacy are (a) the low biological significance of the lands adjacent to the ESHA, (b) the low importance of a greater than 50-foot buffer to avoid habitat disturbance provided other mitigation measures are provided, and (c) the low susceptibility of the area around the wetland ESHA to erosion. This particular wetland ESHA, unlike certain plant

and animal ESHA, does not depend on the functional relationships of adjacent lands that a larger buffer area is usually intended to protect such as supporting habitats for breeding, nesting, feeding, or resting activities. Therefore, in the case of this wetland ESHA, there is less of a need for a wide buffer to help sustain the habitat on the site (in contrast to the wider buffers deemed necessary and proposed for the riparian, rare plant, and Point Arena mountain beaver suitable habitat ESHAs). In addition, the fact that the development site around the wetland ESHA is more or less flat indicates that erosion and sedimentation from construction and from the completed development are less likely to affect the ESHA than erosion and sedimentation would if the adjacent development had a steeper slope with greater potential for erosion, particularly with implementation of the additional erosion and sedimentation control and grading and drainage plans required by Special Condition Nos. 17 and 18 described below. Additionally, as discussed above, there are measures that are more important and more effective for protecting the wetland habitat from disturbance than wide spatial buffers including the use of protective temporary fencing during construction and imposing landscaping restrictions. With these mitigation measures, coupled with the various special conditions, the Commission finds that a 50-foot buffer will be adequate to protect the wetland ESHA from possible significant disruption caused by the proposed development.

Special Condition No. 21 lists various measures for protecting the various ESHAs and ESHA buffer areas on the property including, in part, (a) temporary construction fencing shall be installed prior to commencement of construction activities between the authorized development areas and the 100-foot riparian ESHA buffer area and the 50-foot wetland buffer areas delineated on the site to prevent any ground or vegetation disturbance to the riparian and wetland ESHAs; (b) no plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or by the State of California shall be employed or allowed to naturalize or persist at the site of the proposed development; and (c) the canopy and root zones of existing living trees on the site shall be protected through temporary fencing or screening during construction.

To further protect Point Arena mountain beaver habitat on the property, the Commission also attaches **Special Condition No. 21-D**. To help in the establishment of vegetation, rodenticides are sometimes used to prevent rats, moles, voles, and other similar small animals from eating the newly planted saplings. Certain rodenticides, particularly those utilizing blood anticoagulant compounds such as brodifacoum, bromadiolone and diphacinone, have been found to poses significant primary and secondary risks to non-target wildlife present in urban and urban/wildland areas. As the target species are preyed upon by raptors or other environmentally sensitive predators and scavengers, these compounds can bio-accumulate in the animals that have consumed the rodents to concentrations toxic to the ingesting non-target species. Therefore, to minimize this potential significant adverse cumulative impact to Point Arena mountain beaver and other environmentally sensitive wildlife species, Special Condition No. **21-D** prohibits the use of any and all rodenticides on the subject property. **Special Condition No. 21-E** further requires that during installation of the septic infrastructure authorized pursuant to this coastal development permit in the vicinity of the wetland ESHA delineated on the site plan map, construction equipment and materials shall avoid direct disturbance to the wetland area. The condition prohibits stockpiling of materials or construction equipment within the wetland area or within the established 50-foot buffer area.

Moreover, as discussed above, **Special Condition No. 5** requires the applicants to record a deed restriction that imposes the special conditions of the permit as covenants, conditions, and restrictions on the use of the property to ensure that both the applicants and future purchasers of the property are notified of the prohibitions and restrictions on the property established by the special condition of this permit.

To ensure that erosion control measures and other protective measures proposed by the applicant are implemented, the Commission attaches Special Condition Nos. 17 and 18. **Special Condition No. 17** requires submittal, prior to permit issuance, of final erosion and sedimentation control plan for construction activities. The plan shall demonstrate that (a) straw bales, coir rolls, silt fencing, or other devices as appropriate shall be installed prior to and maintained throughout the construction period to contain runoff from construction areas, trap entrained sediment and other pollutants, and prevent discharge of sediment and pollutants into any ESHA or ESHA buffer area on the property; (b) existing vegetation shall be maintained on site to the maximum extent feasible during construction; (c) any disturbed areas shall be replanted or seeded as soon as possible following completion of construction activities, consistent with the planting limitations required by Special Condition No. 3, and there shall be no less than 100 percent coverage within 90 days after seeding; (d) all on-site stockpiles of construction materials, soil, and debris shall be covered and contained at all times to prevent polluted water runoff; and (e) temporary exclusion/construction fencing shall be installed between the all ESHA buffer areas and all construction areas throughout the course of all construction activities. **Special Condition No. 18** requires submittal, prior to permit issuance, of final grading and drainage plans demonstrating that (a) grading shall avoid and in no way disrupt wetland or riparian ESHA, ESHA buffer, or natural drainage patterns; (b) grading shall not significantly increase volumes of surface runoff, and adequate measures shall be taken to ensure there is no increase in surface runoff off-site; (c) the area of soil to be disturbed at any one time and the duration of its exposure shall be limited; (d) construction equipment shall be limited to the actual area to be disturbed according to the approved development plans; (e) existing vegetation shall be maintained on site to the maximum extent feasible; trees and tree roots shall be protected from damage by proper grading techniques; and (f) no drainage features shall be directed towards the bluff edges or geologic setback areas.

With the mitigation measures discussed above, which are designed to prevent impacts that would significantly degrade adjacent ESHA, the project as conditioned will not significantly degrade adjacent ESHA and will be compatible with the continuance of the ESHAs on the property. Therefore, the Commission finds that the proposed development, as conditioned, is consistent with the provisions of LUP Policies 3.1-7 and CZC Section 20.496.020 concerning establishment of buffers between development and existing ESHA because (1) an ESHA buffer will be established between all new development and the ESHA on the site, (2) the proposed project establishes an ESHA buffer width based on the standards set forth in CZC Section 20.496.020(A)(1)(a) through (g) for reducing the minimum buffer below 100 feet, and (3) all impacts of the development that could significantly degrade adjacent ESHA will be prevented.

I. Protection of Water Quality

Summary of Applicable LCP Provisions:

LUP Policy 3.1-25 states the following:

The Mendocino Coast is an area containing many types of marine resources of statewide significance. Marine resources shall be maintained, enhanced and, where feasible, restored; areas and species of special biologic or economic significance shall be given special protection; and the biologic productivity of coastal waters shall be sustained.

CZC Section 20.492.010 incorporates grading standards and states the following, in applicable part (emphasis added):

(A) Grading shall not significantly disrupt natural drainage patterns and shall not significantly increase volumes of surface runoff unless adequate measures are taken to provide for the increase in surface runoff.

(B) Development shall be planned to fit the topography, soils, geology, hydrology, and other conditions existing on the site so that grading is kept to an absolute minimum.

...

(G) The area of soil to be disturbed at any one time and the duration of its exposure shall be limited. Erosion and sediment control measures shall be installed as soon as possible following the disturbance of the soils. Construction equipment shall be limited to the actual area to be disturbed according to the approved development plans. (Ord. No. 3785 (part), adopted 1991)

...

CZC Section 20.492.015 incorporates erosion standards and states in applicable part (emphasis added):

(A) The erosion rate shall not exceed the natural or existing level before development.

(B) Existing vegetation shall be maintained on the construction site to the maximum extent feasible. Trees shall be protected from damage by proper grading techniques.

(C) Areas of disturbed soil shall be reseeded and covered with vegetation as soon as possible after disturbance, but no less than one hundred (100) percent coverage in ninety (90) days after seeding; mulches may be used to cover ground areas temporarily.

...

(G) Erosion control devices shall be installed in coordination with clearing, grubbing, and grading of downstream construction; the plan shall describe the location and timing for the installation of such devices and shall describe the parties responsible for repair and maintenance of such devices.

CZC Section 20.492.020 incorporates sedimentation standards and states in applicable part:

(A) Sediment basins (e.g., debris basins, desilting basins, or silt traps) shall be installed in conjunction with initial grading operations and maintained through the development/construction process to remove sediment from runoff wastes that may drain from land undergoing development to environmentally sensitive areas.

(B) To prevent sedimentation of off-site areas, vegetation shall be maintained to the maximum extent possible on the development site. Where necessarily removed during construction, native vegetation shall be replanted to help control sedimentation.

(C) Temporary mechanical means of controlling sedimentation, such as hay baling or temporary berms around the site may be used as part of an overall grading plan, subject to the approval of the Coastal Permit Administrator.

...

CZC Section 20.492.025 incorporates runoff standards and states in applicable part:

...

(C) The acceptability of alternative methods of storm water retention shall be based on appropriate engineering studies. Control methods to regulate the rate of storm water discharge that may be acceptable include retention of water on level surfaces, the use of grass areas, underground storage, and oversized storm drains with restricted outlets or energy dissipators.

...

(H) A combination of storage and controlled release of storm water runoff shall be required for all development and construction that drains into wetlands.

...

(K) All development that is within, or drains into, environmentally sensitive habitat, is a commercial or residential subdivision, is a service station or automotive repair facility or that includes commercial development or a parking lot, shall capture and infiltrate or treat, using relevant best management practices, including structural best management practices, all runoff from storms of a magnitude such that the runoff from eight-five (85) percent of storms is captured or treated. (Ord. No. 3785 (part), adopted 1991, Ord. No. 4083, adopted 2002)

...

Project Consistency with Applicable LCP Provisions:

LUP Policy 3.1-25 requires the protection of the biological productivity of coastal waters. Section 20.492.010 through .025 of the coastal zoning code set forth various standards for grading, erosion, sedimentation, and runoff control, which require the protection of, among other things, natural drainage areas, natural landforms, and environmentally sensitive habitat areas.

The proposed project involves the construction of a new single-family residence, guest cottage, barn, restored shed/office, pump house, septic system, and other associated development. As discussed previously, the subject parcel is located on a bluff-top lot above the ocean. The geologic report identified several areas on the bluff face that are weak and/or actively eroding, including the dormant landslide area below the northwestern bluff edge, and recommended that care be taken to avoid concentrated surface flow of runoff along the bluff face. As discussed above, **Special Condition No. 11** requires that prior to permit issuance, a geotechnical engineer shall approve all final plans, including drainage plans, and provide recommendations as necessary for appropriate site development to minimize erosion and geologic hazards. Also as discussed above, **Special Condition No. 3** requires submittal of a landscaping plan for the Executive Director's review and approval prior to permit issuance that includes, in part, a provision ensuring that drought-tolerant vegetation only shall be maintained within the geologic setback area to minimize the need for landscaping irrigation and the potential for geologic hazards. Not only will these conditions help ensure that runoff from the project site does not exacerbate erosion and geologic instability, but they also will help protect water quality, consistent with the water quality protection policies and standards of the LCP cited above.

Runoff originating from the development site that is allowed to drain down the bluff face toward the ocean or that is directed to the unnamed creek on the property could contain entrained sediment and other pollutants in the runoff that would contribute to degradation of the quality of coastal waters. As the parcel proposed for residential development does not currently contain any developed impervious surfaces, the majority of stormwater at the site infiltrates prior to leaving the site as surface runoff. However, the increase in impervious surface area from the proposed development would decrease the infiltrative function and capacity of the existing permeable land on site. The reduction of permeable surface area would lead to an increase in the volume and velocity of stormwater runoff that can be expected to leave the site. Sediment and other pollutants entrained in stormwater runoff from the development that is carried down toward the ocean or toward the creek would contribute to degradation of the quality of coastal waters and any intervening sensitive habitat.

Other than removing herbaceous vegetation from within the proposed building envelope areas, the applicant proposes to retain the vast majority of the 58.5-acre property in its natural, vegetated condition and to plant additional landscaping in some areas, which will continue to allow for infiltration of stormwater, thereby greatly reducing the potential that runoff from the completed development will affect coastal waters. Additionally, the applicant does not propose to install an impervious (e.g., asphalt) driveway through the property, so the existing pervious (gravel) driveway surface will continue to provide filtration of stormwater runoff and further minimize the amount of stormwater runoff that potentially leaving the site once the proposed residential development is complete. Moreover, the applicant proposes to capture stormwater runoff from the roofs of the various proposed new structures for storage in a proposed 5,000-gallon underground storage tank and domestic use.

Therefore, the Commission finds that sedimentation impacts from runoff will be of greatest concern *during* construction. Construction of the proposed development will expose soil to erosion potential and entrainment in runoff, particularly during the rainy season. To ensure that best management practices (BMPs) are implemented to control the erosion of exposed soils and minimize sedimentation of coastal waters during construction, the Commission attaches **Special Condition No. 22**. This condition requires the implementation of Best Management Practices (BMPs) to control erosion and sedimentation during and following construction. These required BMPs include (a) disposing of any excess excavated material resulting from construction activities at a disposal site outside the coastal zone or within the coastal zone pursuant to a valid coastal development permit; (b) installing straw bales, coir rolls, or silt fencing structures to prevent runoff from construction areas from draining towards the bluff edge, creek or riparian habitat, or other ESHA on the project site, (c) maintaining on-site vegetation to the maximum extent possible during construction activities; (d) replanting any disturbed areas as soon as feasible following completion of construction, but in any event no later than May 1st of the next spring season consistent with the final approved landscape plan required by Special Condition No. 3; (e) covering and containing all on-site stockpiles of construction debris at all times to prevent polluted water runoff; (f) installing temporary construction fencing prior to commencement on construction activities between the authorized septic leachfield areas and the riparian ESHA buffer area delineated on the site to prevent any ground or vegetation disturbance

to the ESHA; and (g) protecting the canopy and root zones of existing living trees on site through temporary fencing or screening during construction.

Therefore, the Commission finds that as conditioned, the proposed development is consistent with CZC Section 20.492.020, because erosion and sedimentation will be controlled and minimized. Furthermore, the Commission finds that the proposed development as conditioned is consistent with the provisions of LUP Policy 3.1-25 requiring that the biological productivity of coastal waters be sustained because stormwater runoff from the proposed development would be directed away from the areas that drain to the unnamed creek or to the ocean.

The Commission further finds that the proposed development, as conditioned, is consistent with CZC Sections 20.492.010, -015, -020, and -025, which set standards for grading, erosion control, sedimentation, and runoff control, respectively, because, among other reasons, natural drainage areas, natural landforms, and adjacent properties will be protected from cut and fill operations, erosion will not be increased, the maximum amount of vegetation feasible will be retained on site, and relevant BMPs will be used to capture and infiltrate storm water runoff. Moreover, the Commission finds that the proposed development, as conditioned, is consistent with the provisions of LUP Policy 3.1-25 requiring that the biological productivity of coastal waters be sustained.

J. Protection of Range Land Resources

Summary of Applicable LCP Provisions:

LUP Policy 3.2-1 states the following (emphasis added):

All agricultural land use, as represented within the agriculturally designated boundaries on the land use maps, shall be designated AG 60 or RL 160 for the purpose of determining density.

This will support continued coastal agriculture use. One housing unit will be allowed for each existing parcel. Additional dwellings for resident agricultural workers shall be considered as conditional uses, subject to the provisions of this plan.

LUP Policy 3.2-4 states the following (emphasis added):

No permit shall be issued to convert prime land and/or land under Williamson Act to non-agricultural uses, unless all of the following criteria are met:

- 1. all agriculturally unsuitable lands on the parcel have been developed or determined to be undevelopable; and*
- 2. agricultural use of the soils can not be successfully continued or renewed within a reasonable period of time, taking into account economic, environmental, social, and technological factors (Section 30108 of the Coastal Act); and*
- 3. clearly defined buffer areas are developed between agricultural and nonagricultural uses (see Policies 3.2-9, 3.2-12 and 3.2-13); and*
- 4. the productivity of any adjacent agricultural lands is not diminished, including the ability of the land to sustain dry farming or animal grazing; and*
- 5. public service and facility expansions and permitted uses do not impair agricultural viability, either through increased assessment costs or degraded air and water quality; and*

6. *in addition, for parcels adjacent to urban areas, the viability of agricultural uses is severely limited by conflicts with urban uses, and the conversion of land would complete a logical and viable neighborhood and contribute to the establishment of a stable limit to urban development.*

CZC Section 20.508.015 “General Criteria” of the Agricultural Resources Chapter states the following:

An owner of property within an agricultural district, either AG or RL, may request agricultural preserve status under a Williamson Act contract pursuant to Chapter 22.08 of the Mendocino County Code. No permit shall be issued to convert prime lands and/or land under Williamson Act contracts to non-agricultural uses, without complying with Chapter 22.08 of the Mendocino County Code and making supplemental findings pursuant to Section 20.532.100(B)(2) and making the finding that continued, renewed, or potential agricultural use of the property is not feasible based upon an economic feasibility evaluation prepared pursuant to Section 20.524.015(C)(3). (Ord. No. 3785 (part), adopted 1991)

LUP Policy 3.2-5 states the following:

All other lands suitable for agricultural use shall not be converted to nonagricultural uses unless (1) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land or concentrate development consistent with Section 30250. Any such permitted conversion shall be compatible with continued agricultural use on surrounding lands.

CZC Section 20.508.010 “Purpose” of the Agricultural Resources Chapter states the following:

The purpose of this Chapter is to insure that the maximum amount of agricultural land shall be maintained in agricultural production to assure the protection of the area's agricultural economy. All other lands suitable for agricultural use shall not be converted to non-agricultural uses unless (1) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land or concentrate development consistent with Section 30250. Any such permitted conversion shall be compatible with continued agricultural use on surrounding lands. (Ord. No. 3785 (part), adopted 1991)

LUP Policy 3.2-6 states the following:

Existing agricultural ponds constructed on dry land and designed to store water for irrigation, fire protection or livestock shall not be classified as wetlands or regulated as such. Future proposals for agricultural ponds which involve the use of streams for the water source and may also involve or affect extensive areas of riparian vegetation shall be subject to conditional use permit review.

LUP Policy 3.2-9 states the following (emphasis added):

In order to minimize agricultural-residential conflicts, land divisions or site plans in a residential area shall not result in a residential structure being closer than 200 feet from a parcel designated for agricultural use unless there is no other feasible building site on the parcel.

LUP Policy 3.2-12 states the following (emphasis added):

Limit residential uses and subdivisions adjacent to Type I Ag Preserve land to a low density standard to provide a buffer to minimize the conflicts between agricultural operations and

residential land uses. New parcels created adjacent to an Ag Preserve shall be limited to a five (5) acre minimum. For parcels beyond the 5-acre minimum buffer (parcels which would be separated from the Ag Preserve by the buffer), the minimum parcel size would be dictated by the land use classification and applicable policies of the Coastal Element. If parcels adjacent to Type I Ag Preserve are designated Clustering (:CL) or Planned Development (:PD), the density will be dictated by the General Plan Land Use classification provided that the residential development is located not closer than 200 feet from the property line(s) of the protected agricultural resource or at the farthest feasible point from said property line(s). For residential development within 200 feet of the agricultural parcels(s), density shall not exceed one dwelling unit per 5 acres. (There shall be a minimum of 5 acres of lot area for each dwelling unit located within the 200-foot limit). Approval of any land divisions shall be consistent with Policy 3.9-2 and only when the creation of new parcels at the proposed acreages will not adversely affect the long term productivity of agricultural lands.

LUP Policy 3.2-13 states the following (emphasis added):

Limit residential uses and subdivisions adjacent to Type II Ag Preserve to a low density standard to provide a buffer to minimize the conflicts between agricultural operations and residential land uses. New parcels created adjacent to an Ag Preserve shall be limited to a ten (10) acre minimum. For parcels beyond the 10-acre minimum buffer (parcels which would be separated from the Ag Preserve by the buffer), the minimum parcel size would be dictated by the land use classification and applicable policies of the Coastal Element. If parcels adjacent to Type II Ag Preserve are designated Clustering (:CL) or Planned Development (:PD), the density will be dictated by the General Plan Land Use classification provided that the residential development is located not closer than 200 feet from the property line(s) of the protected agricultural resource or at the farthest feasible point from said property line(s). For residential development within 200 feet of the agricultural parcel(s), density shall not exceed one dwelling unit per 10 acres. (There shall be a minimum of 10 acres of lot area for each dwelling unit located within the 200-foot limit). Approval of any land divisions shall be consistent with Policy 3.9-2 and only when the creation of new parcels at the proposed acreages will not adversely affect the long term productivity of agricultural lands.

CZC Section 20.508.020 “Buffer Areas” of the Agricultural Resources Chapter states the following (emphasis added):

Development adjacent to agriculturally designated parcels is subject to the following:

(A) Development Adjacent to Agriculturally Designated Parcels.

(1) No new dwellings in a residential area shall be located closer than two hundred (200) feet from an agriculturally designated parcel unless there is no other feasible building site on the parcel.

(2) New parcels shall not be created that would result in a dwelling within two hundred (200) feet of an agriculturally designated parcel.

(B) Development Adjacent to Type I Agricultural Preserves.

(1) New parcels created adjacent to Type I Agricultural Preserves shall be a minimum of five (5) acres, however, parcels designated Clustering Development Combining District (:CL) or Planned Unit Development Combining District (:PD) may be developed at a density specified by the base zone provided that no dwelling is closer than two hundred (200) feet from the property line of the Preserve or at the furthest feasible point from said property line.

(C) Development Adjacent to Type II Agricultural Preserve.

(1) New parcels created adjacent to Type II Agricultural Preserve shall be a minimum of ten (10) acres, however, parcels designated Clustering Development Combining District (:CL) or Planned Unit Development Combining District (:PD) may be developed at a density specified by the base zone provided that no dwelling is closer than two hundred (200) feet from the property line of the Preserve or at the furthest feasible point from said property line. (Ord. No. 3785 (part), adopted 1991)

LUP Policy 3.2-16 states the following (emphasis added):

All agricultural lands designated AG or RL shall not be divided nor converted to non-agricultural uses unless (1) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land or (3) concentrate development consistent with Section 30250. Any such permitted division or conversion shall be compatible with continued agricultural use of surrounding parcels.

"Feasible", as used in this policy, includes the necessity for consideration of an economic feasibility evaluation containing both the following elements:

- (1) An analysis of the gross revenue from the agricultural products grown in the area for the five years immediately preceding the date of the filing of proposed local coastal program or an amendment to any local coastal program.*
- (2) An analysis of the operational expenses beyond the control of the owner/operator associated with the production of the agricultural products grown in the area for the five years immediately preceding the date of the filing of a proposed local coastal program or an amendment to any local coastal program.*

For purposes of this policy, "area" means a geographic area of sufficient size to provide an accurate evaluation of the economic feasibility of agricultural uses for those lands included in the local coastal plan.

CZC Chapter 20.368 "Rangelands District" describes the intent of the zoning district and includes certain allowable use types as follows (emphasis added):

Sec. 20.368.005 Intent. *This district is intended to encompass lands within the Coastal Zone which are suited for and are appropriately retained for the grazing of livestock and which may also contain some timber producing areas. (Ord. No. 3785 (part), adopted 1991)*

Sec. 20.368.010 Principal Permitted Uses for RL Districts.

The following use types are permitted in the Range Lands District:

(A) Coastal Residential Use Types.

Family Residential: Single-Family;

Vacation Home Rental.

(B) Coastal Agricultural Use Types.

General Agriculture;

Light Agriculture;

Row and Field Crops;

Tree Crops.

(C) Coastal Open Space Use Types.

Passive Recreation.

(D) Coastal Natural Resource Use Types.

Fish and Wildlife Habitat Management. (Ord. No. 3785 (part), adopted 1991)

Sec. 20.368.015 Conditional Uses for RL Districts.

The following are permitted uses upon the issuance of a coastal development use permit:

(A) Coastal Residential Use Types.

Family Residential: Dwelling Groups;

Family Residential: Cluster Development;

Farm Employee Housing;

Farm Labor Housing.

(B) Coastal Civic Use Types.

Alternative Energy Facilities: On-site;

Alternative Energy Facilities: Off-site;

Community Recreation;

Major Impact Utilities;

Minor Impact Utilities.

(C) Coastal Commercial Use Types.

Animal Sales and Services: Auctioning;

Animal Sales and Services: Horse Stables;

Animal Sales and Services: Kennels;

Animal Sales and Services: Veterinary (Large Animals);

Commercial Recreation: Outdoor Sports and Recreation;

Cottage Industries.

(D) Coastal Agricultural Use Types.

Animal Waste Processing;

Forest Production and Processing: Commercial Woodlots;

Forest Production and Processing: Limited;

Horticulture;

Packing and Processing: General;

Packing and Processing: Fisheries Byproducts.

(E) Coastal Open Space Use Types.

Active Recreation.

(F) Coastal Extractive Use Types.

Mining and Processing;

Onshore Oil and Gas Development Facilities.

(G) Coastal Natural Resource Use Types.

Watershed Management. (Ord. No. 3785 (part), adopted 1991)

Sec. 20.368.020 Minimum Lot Area for RL Districts.

One hundred sixty (160) acres. (Ord. No. 3785 (part), adopted 1991)

Sec. 20.368.025 Maximum Dwelling Density for RL Districts.

One (1) unit per one hundred sixty (160) acres except as provided pursuant to Section 20.316.020 (Farm Employee Housing), Section 20.316.025 (Farm Labor Housing), Section 20.456.015 (Accessory Uses), Section 20.460.035 (Use of a Trailer Coach) and Section 20.460.040 (Family Care Unit). In no case shall there be more than four (4) dwellings per parcel whether single family residential, farm employee housing, farm labor housing, accessory living unit or family care unit, except where Chapter 20.412 "Clustering Development Combining District" applies. (Ord. No. 3785 (part), adopted 1991)

Sec. 20.368.030 Minimum Front, Rear and Side Yards for RL Districts.

Fifty (50) feet each. (Ord. No. 3785 (part), adopted 1991)

Sec. 20.368.035 Setback Exception.

Any nonconforming parcel which is less than five (5) acres shall observe a minimum front, side and rear yard of twenty (20) feet. (Ord. No. 3785 (part), adopted 1991)

Sec. 20.368.040 Building Height Limit for RL Districts.

Twenty-eight (28) feet above natural grade for non-Highly Scenic Areas and for Highly Scenic Areas east of Highway One. Eighteen (18) feet above natural grade for Highly Scenic Areas west of Highway One unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures. Thirty-five (35) feet above natural grade for uninhabited accessory structures not in an area designated as a Highly Scenic Area (See Section 20.504.015(C)(2)). (Ord. No. 3785 (part), adopted 1991)

Sec. 20.368.045 Maximum Lot Coverage for RL Districts.

Twenty (20) percent for parcels less than two (2) acres in size. Fifteen (15) percent for parcels from two (2) acres to five (5) acres in size. Ten (10) percent for parcels over five (5) acres in size. (Ord. No. 3785 (part), adopted 1991)

CZC Section 20.456.015 "Residential and Agricultural Use Types" specifies the accessory buildings and uses permissible in the district, as follows (emphasis added):

Subject to the restrictions and limitations of this Chapter, including the granting of a Coastal Development Permit, where applicable, the following accessory buildings and uses shall be permitted in all zoning districts which allow a single-family residence:

- (A) Private Garages.*
- (B) Children's playhouse, patios, porches, gazebos, etc.*
- (C) Windmills.*
- (D) Shops (non-business purposes).*
- (E) Barns.*
- (F) Private swimming pools and hot tubs (not subject to setback requirements in the side or rear yards of any district).*
- (G) Accessory Living Unit. Not more than one accessory living unit for each legal parcel.*
- ...*
- (J) Travel Trailer or Camper. The maintaining of one (1) travel trailer or camper in dead storage where it is not used for occupancy or business purposes. All stored travel trailers or campers in excess of one (1) shall be stored out of sight from a public right-of-way.*

The connection, for any continuous period exceeding forty-eight (48) hours, of any utility or service such as electrical, water, gas or sewage to the travel trailer or camper shall be prima facie evidence that it is being used for habitation or business purposes.

...

(O) Other Necessary and Customary Uses. Accessory non-residential uses and nonresidential structures, in addition to those identified above, which are necessarily and customarily associated with, and are appropriate, incidental, and subordinate to a principal permitted use, as determined by the Director of Planning and Building Services. (Ord. No. 3785 (part), adopted 1991)

CZC Section 20.532.095 “Required Findings for All Coastal Development Permits” states:

- (A) The granting or modification of any coastal development permit by the approving authority shall be supported by findings which establish that:*
- (1) The proposed development is in conformity with the certified local coastal program;*
and
 - (2) The proposed development will be provided with adequate utilities, access roads, drainage and other necessary facilities; and*
 - (3) The proposed development is consistent with the purpose and intent of the zoning district applicable to the property, as well as the provisions of this Division and preserves the integrity of the zoning district; and*
 - (4) The proposed development will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.*
 - (5) The proposed development will not have any adverse impacts on any known archaeological or paleontological resource.*
 - (6) Other public services, including but not limited to, solid waste and public roadway capacity have been considered and are adequate to serve the proposed development.*
- (B) If the proposed development is located between the first public road and the sea or the shoreline of any body of water, the following additional finding must be made:*
- (1) The proposed development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act and the Coastal Element of the General Plan. (Ord. No. 3785 (part), adopted 1991)*

CZC Section 20.532.100 “Supplemental Findings” states in applicable part the following:

In addition to required findings, the approving authority may approve or conditionally approve an application for a permit or variance within the Coastal Zone only if the following findings, as applicable, are made:

(A) Resource Protection Impact Findings.

(1) Development in Environmentally Sensitive Habitat Areas.

...

(2) Impact Finding For Resource Lands Designated AG, RL and FL. No permit shall be granted in these zoning districts until the following finding is made:
(a) The proposed use is compatible with the long-term protection of resource lands.

...

(2) Impact Findings for Conversion of Prime Agricultural or Williamson Act Contracted Lands. Conversion of prime land and/or land under Williamson

Act Contract to non-agricultural uses is prohibited, unless all of the following findings are made. For the purposes of this section, conversion is defined as either development in an AG or RL designation not classified as a residential, agricultural, or natural resource use type or the amending and rezoning of the Coastal Element Land Use Designation AG or RL to a classification other than AG or RL including amendments to add visitor-serving facilities.

- (a) All agriculturally unsuitable lands on the parcel have been developed or determined to be undevelopable;
- (b) Agricultural use of the soils cannot be successfully continued or renewed within a reasonable period of time, taking into account economic, environmental, social and technological factors;
- (c) Clearly defined buffer areas are established between agricultural and non-agricultural uses;
- (d) The productivity of any adjacent agricultural lands will not be diminished, including the ability of the land to sustain dry farming or animal grazing;
- (e) Public service and facility expansions and permitted uses do not impair agricultural viability, either through increased assessment costs or degraded air and water quality; and
- (f) For parcels adjacent to urban areas, the viability of agricultural uses is severely limited by contacts with urban uses, and the conversion of land would complete a logical and viable neighborhood and contribute to the establishment of a stable limit to urban development.

...

Project Consistency with Applicable LCP Provisions:

1. Agricultural Issues Overview

The Mendocino County Land Use Plan (LUP) Section 3.2 includes a narrative that highlights the agricultural issues of the area. According to this narrative, approximately 3,500 acres of land in the coastal zone are tilled, irrigated or cropped, mostly for forage, including 40 livestock operators in the coastal zone that raise 1,200 head of beef and 4,300 sheep. Full-time operations are concentrated between Elk and Point Arena, where the largest areas of prime soils are found. Coastal agriculture also includes several nurseries principally raising fuchsias, azaleas, and rhododendrons. Forty acres near Caspar supports daffodils, suggesting a potential for a bulb industry similar to that in Del Norte County. Mendocino County LUP Section 3.2 states that “The land use policies of the Coastal Element, with its emphasis on the preservation and enhancement of agriculture, should encourage these landowners to maintain their farms in production.” To that end, Mendocino County Coastal Zoning Code (CZC) Section 20.532.100(A)(2) requires that proposed development in the Range Lands (RL) zoning district be compatible with the long-term protection of the resource lands.

2. The Coastal Act Policy Framework

The Coastal Act protects coastal agriculture first and foremost by requiring that “new development be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it . . .” (Section 30250(a)). This requirement to concentrate urban

development in existing urban areas establishes the fundamental framework for assuring that new urban development, including urban services, are not located in rural coastal areas where the protection of agricultural, scenic, biological, and other coastal resources is paramount. Coupled with this framework for limiting urban development to existing developed areas, the Coastal Act requires the establishment of stable urban-rural boundaries to assure that urban sprawl from existing urban areas does not overtake rural agricultural areas. The Coastal Act also requires that the maximum amount of prime agricultural land be maintained in agricultural production, and that the conversion of agricultural land be limited to instances where agriculture is no longer feasible or where the viability of existing agricultural use is already severely limited by conflicts with urban uses or where conversion of agricultural lands would complete a logical neighborhood and contribute to the establishment of a stable limit to urban development or would concentrate development in urban areas. Specifically, Coastal Act Section 30241 states:

The maximum amount of prime agricultural land shall be maintained in agricultural production to assure the protection of the area's agricultural economy, and conflicts shall be minimized between agricultural and urban land uses through all of the following:

(a) By establishing stable boundaries separating urban and rural areas, including, where necessary clearly defined buffer areas to minimize conflicts between agricultural and urban land uses.

(b) By limiting conversions of agricultural lands around the periphery of urban areas to the lands where the viability of existing agricultural use is already severely limited by conflicts with urban uses or where the conversion of the lands would complete a logical and viable neighborhood and contribute to the establishment of a stable limit to urban development.

(c) By permitting the conversion of agricultural land surrounded by urban uses where the conversion of the land would be consistent with Section 30250.

(d) By developing available lands not suited for agriculture prior to the conversion of agricultural lands.

(e) By assuring that public service and facility expansions and nonagricultural development do not impair agricultural viability, either through increased assessment costs or degraded air and water quality.

(f) By assuring that all divisions of prime agricultural lands, except those conversions approved pursuant to subdivision (b), and all development adjacent to prime agricultural lands shall not diminish the productivity of such prime agricultural lands.

The clear intent of section 30241 is to maintain prime agricultural land in agricultural production and assure that agricultural land is not converted to non-agricultural land uses except in limited circumstances on the periphery of designated urban areas. Thus, the presumption inherent in Coastal Act Section 30241 is that conversion of agricultural lands is prohibited unless there is some basic incompatibility or conflict with immediately adjacent urban land uses that makes agricultural use no longer viable, or unless conversion would complete a logical urban area and/or help to establish a stable urban-rural boundary that better protects agricultural land.³

³ Coastal Act section 30113 defines prime agricultural land as those lands defined as prime in sections (1), (2), (3), and (4) of Williamson Act section 51201(c). This includes: (1) All land that qualifies for rating as class I or class II in the Natural Resource Conservation Service land use capability classifications. 2) Land which qualifies for rating 80 through 100 in the Storie Index Rating. (3) Land which supports livestock used for the production

The Coastal Act also contemplates that both the identification and protection of agricultural land, and its possible conversion to non-agricultural land uses, will be specifically addressed through LCP planning. In particular, the Coastal Act contemplates that in conjunction with the identification of urban-rural boundaries, agricultural lands will be designated and restricted to agricultural land uses, unless a future LCP amendment is approved that allows the conversion of the land to non-agricultural uses. Coastal Act Section 30241.5 identifies a viability test for conversion of agricultural lands around the urban periphery when conversion is an issue in any LCP or LCP amendment.

In comparison to Section 30241 and its focus on conversions of agricultural lands around the urban fringe and creating a stable urban-rural boundary, Section 30242 addresses conversions of land suitable for agriculture in all locations. Coastal Act section 30242 states:

All other lands suitable for agricultural use shall not be converted to non-agricultural uses unless (1) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land or concentrate development consistent with Section 30250. Any such permitted conversion shall be compatible with continued agricultural use on surrounding lands.

Section 30242 states rules to be applied for conversion of “all other lands suitable for agricultural use,” i.e., all conversions not addressed by the general Section 30241 policy against prime land conversions (“the maximum amount of prime agricultural land shall be maintained in agricultural production...”) or the specific conversion standards of Section 30241 and 30241.5. Section 30242 includes no direct requirement for considering the resulting stability of the urban limit and in general provided a different standard of review than does 30241(b). Notably, Section 30242 does not deal with “agricultural land,” but rather with “all other lands suitable for agriculture.” One of the tests for conversion of such land is that agricultural use cannot feasibly be continued or renewed. This wording indicates that the policy was intended to be broadly applied, even to land, which is not currently in agricultural use.

In summary, the Coastal Act provisions on conversion of agricultural lands are as follows: Prime agricultural lands are to be maintained in production. Prime and non-prime agricultural lands either on the urban periphery or surrounded by urban uses may be converted if they satisfy standards stated in subsections (b) and (c) of Section 30241, as well as other applicable provisions of the Coastal Act. All other lands suitable for agricultural use may be converted only if conversion is consistent with section 30242 and other applicable provisions of the Act. When an LCP or LCP amendment proposes conversion of any agricultural land on the urban periphery under the viability provision of Section 30241(b), the viability tests of Section 30241.5 also must be satisfied.

of food and fiber and which has an annual carrying capacity equivalent to at least one animal unit per acre as defined by the United States Department of Agriculture. (4) Land planted with fruit- or nut-bearing trees, vines, bushes or crops which have a nonbearing period of less than five years and which will normally return during the commercial bearing period on an annual basis from the production of unprocessed agricultural plant production not less than two hundred dollars (\$200) per acre.

3. The Agriculture Policies of the Mendocino County LCP

The Mendocino County LCP carries out the requirements of Coastal Act Sections 30241, 30242, and 30250 through land use and zoning policies designed to maintain the maximum amount of agricultural lands in agricultural production and to concentrate development within or in close proximity to existing areas that are able to accommodate it. LUP Policy 3.9-1 implements Coastal Act Section 30250 by requiring that new development be allowed *only* if it is demonstrated that it will not have significant impacts on coastal resources.

In addition to the general urban-rural planning framework of the LCP, the Agriculture component of the certified LCP contains provisions to carry forward key provisions of the Coastal Act. First, LUP Section 3.2 and CZC Section 20.308.095(J) define prime agricultural land and other land suitable for agriculture. The LCP definition of prime land is based on the Williamson Act, consistent with Coastal Act section 30113. Second, LUP Policies 3.2-1 through 3.2-16 strictly limit the circumstances under which agricultural land can be subdivided or converted to non-agricultural land uses. LUP Policies 3.2-5 and 3.2-16 implement Coastal Act Sections 30241 and 30242 by requiring that development on lands suitable for agricultural use (or, in LUP Policy 3.2-16, designated AG or RL) be allowed only if it is demonstrated that the development does not convert agricultural lands to a non-agricultural use, unless (1) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land or concentrate development consistent with Coastal Act Section 30250. LUP Policy 3.2-5 further requires that any such permitted conversion shall be compatible with continued agricultural use on surrounding lands. LUP Section 3.2 describes agricultural land as including prime agricultural land, land in existing agricultural use, land with agricultural potential, or lands under Williamson Act contracts. CZC Section 20.336.005 describes agricultural use types as including the on-site production of plant and animal products by agricultural methods, and further includes certain uses that are accessory to said agricultural uses, as specified in CZC Chapter 20.456.

The Mendocino County CZC implements these land use policies through requirements such as CZC Section 20.532.100(A)(2)(a) that prohibits the granting of a coastal development permit unless it can be found that any proposed use in resource lands designated AG, RL, and FL is compatible with the long-term protection of resource lands.

The subject property is zoned RL-160 (Range Lands, 160-acre minimum). The 58.5-acre size of the subject property is recognized by the County of Mendocino as a legal non-conforming parcel size (in existence prior to County land use designations and Coastal Commission certification of the County's LCP) that cannot be subdivided. The principal permitted use for Range Lands includes grazing and forage for livestock, raising of crops and wildlife habitat improvement; and one single family dwelling per legally created parcel. LUP Policy 3.2-1 requires that all agricultural land use shall be designated AG 60 or RL 160 for the purpose of determining density, and to support continued agriculture use. Chapter 2 of the Mendocino County LUP describes the intent of the Range Lands classification as follows:

The Range Lands classification is intended to be applied to lands which are suited for and are appropriately retained for the grazing of livestock and which may also contain some timber producing areas. The classification includes land eligible for incorporation into Type II

Agricultural Preserves, other lands generally in range use, intermixed smaller parcels and other contiguous lands, the inclusion of which is necessary for the protection and efficient management of range lands. (Emphasis added)

In addition to the permissibility of one single-family residence on Range Lands, Mendocino County CZC identifies general agriculture (e.g., raising of livestock, animal husbandry, grazing); light agriculture (e.g., grazing, bee keeping, sale of agricultural products grown on the premises, raising/butchering/marketing of small farm animals); row and field crops, and tree crops as principal permitted use types, among others.

CZC Section 20.368.015 specifies the conditionally permitted uses allowable on agricultural lands in the Range Lands District. Most of these conditionally permitted uses are uses that are ancillary to or supportive of agricultural production and are therefore clearly consistent with the above-cited LCP and Coastal Act policies that require the maximum amount of agricultural lands to remain in agricultural production. However, some of the conditionally permitted uses specified in the LUP and zoning code are not ancillary to or supportive of agricultural production, including oil and gas development facilities and alternative energy facilities, which are Coastal Act priority uses.

Consistent with Coastal Act Sections 30222, 30241 and 30242, the LCP gives precedence to agricultural land protection over these other Coastal Act priority uses on agricultural lands by specifying that these conditionally permitted uses may only be authorized on agricultural lands provided they meet the LCP requirements for preservation of prime agricultural soils; prohibiting conversion of agricultural land to non-agricultural land uses; and maintaining productivity of on-site and adjacent agricultural lands, as set forth in CZC Section 20.532.100(B).

4. Project Overview

4.1 Historic and Proposed Ag Use

On August 31, 2011, the applicant submitted an agricultural analysis and economic feasibility evaluation (Exhibit No. 11) in response to additional information requested by Commission staff for the purposes of *de novo* review. This “agricultural resources submittal” includes information about the soils, water resources, economics, and historic uses of the subject property and surrounding parcels relative to the current and proposed uses from an agricultural perspective.

4.1.1 Historic and Surrounding Land Uses

The small town of Elk, with a population of approximately 200, historically attracted settlers who came to hunt, trap or ranch the area. An area to the south of Elk was once known as the town of Bridgeport (known as Miller to the Post Office due to the existence of another Bridgeport); however this small town no longer exists today. According to the Elk Coast Business Association,⁴ Bridgeport's most prosperous years extended from 1870 to 1890 with activities including mixed farming, grain and potato raising, sheep and cattle ranching, lumber, wood products, and tan bark. An existing office located on the subject property once served as

⁴ <http://www.elkcoast.com/retired/MapHistory.html>

the original office for Bridgeport Landing, which functioned as a shipping port in the mid-to-late 1800's when roads were not available to access the town.

The Bridgeport District contains rich farming soil and scenic vistas. The Elk Coast Business Association describes this area as one of the few areas left on the Mendocino coast where farming plays a major role. Zoned 160 acres minimum range land, the area is home to mainly large ranches. Some smaller parcels exist that were created before the current County zoning ordinances were established. The current leading industries are dairying, farming, sheep and cattle-raising. Lands surrounding the subject parcel include parcels leased to a local dairy for cattle grazing; a ranch on a portion of a 324-acre ownership where peas, grain crops and fava beans are grown; and cattle ranching.

The agricultural resources submittal indicates that historically the subject property was operated to grow 40 acres of snow peas and vegetables when the irrigation was fully operating and when labor costs allowed the entire property to be farmed economically. It further indicates that the parcel has been leased in the past for grazing. The applicants purchased the property in 2004 and most recently, the parcel was leased in 2004 for grazing purposes, however the need for fence maintenance and repair resulted in negligible income to the property owners. The agricultural resources submittal indicates that the proposed fencing project could not be completed until a Coastal Development permit was granted. It further notes that the owners purchased livestock to run on the property, however until a Coastal Development permit is granted the current owners are not prepared to intensify farming operations.

4.1.2 Economic Analysis

The agricultural resources submittal includes an economic analysis of current and proposed agricultural activities for the subject site. The narrative in the analysis includes a summary of the 5-year revenue and operating expenses for the subject property, and notes that property taxes were "accounted on a cash basis and due to the Agricultural Preserve status being denied by the Mendocino Tax Commissioner the property taxes are likely to be higher in future years." The economic data for the past five years was prepared by the applicant's Certified Practicing Accountant (C.P.A.), who has a background in Agricultural Economics.

The agricultural analysis describes the expected "animal unit month"⁵ (AUM) yield for the property as one (1) unit per acre. The applicants note that since they currently do not live on the property and must manage the property remotely, they are currently managing approximately 1 head of cattle (and alpacas) per 10 acres. The narrative in their agricultural analysis includes an evaluation of expected income that could be realized under a scenario of leasing the land for grazing and states the following:

The rangeland in its current form is suitable only for grazing which will yield rental income of \$15 to \$20 per acre per month at best for a 5 month season per year. This can facilitate a

⁵ An "animal unit" (AU) is a standardized measure of animals used for various agricultural purposes. A 1,000-pound beef cow is the standard measure of an animal unit. The dry matter forage requirement of one animal unit is 26 pounds per day. Animal unit equivalents (AUE) are calculated for various other animals. A 700-pound steer is 0.80 animal units. A 1,300 pound horse is 1.20 animal units. A 120-pound sheep is 0.20 animal units. The amount of forage used by one animal unit in a month is an "animal unit month."

maximum total income of \$5,800 per year before costs which is significantly less than the historical annual operating expenses which would likely increase due to increased maintenance and insurance costs. Property taxes alone that are payable to the State of California would mean that the property can never make a profit if leased in its current state for grazing purposes.

The applicants note that they anticipate increasing the stocking to 1 head of cattle per acre for areas not used for crops once they occupy the site. The agricultural economic analysis includes a scenario of operating 38 head of cattle and managing crops on the remainder of the land. The analysis utilizes crop data provided in a 2009 annual report⁶ prepared by Mendocino County Department of Agriculture. The submittal also includes crop data provided by the California Department of Food and Agriculture 2007 Agricultural Statistics, with potential income per acre listed for crops that are assumed to be viable at the subject site and which are noted in the Mendocino County Agricultural Commissioner's annual report. The narrative in the submittal was prepared by the applicant and states the following:

The Mendocino Department of Agriculture 2009 Annual Crop Report states that Gross Value to Growers was \$600 per head for cattle and \$100 per head for sheep. The gross revenue per year from operating 38 head of cattle is estimated at \$600 per head = \$22,800 total. The gross revenue from crops is conservatively estimated at \$5,000 per acre providing gross revenue from crops at \$100,000 per year and a total annual gross revenue of \$122,800. After variable (e.g. harvesting costs) the net will be sufficient to cover the variable expenses and property tax expenses. However the returns would still be moderate and insufficient to provide a significant economic return on investment. However the owners are expecting to finance the asset purchases and not anticipate a significant return on investment from farming operations, unless the property proves suitable for intensely productive farming of higher return vegetables, bulbs and organic crops in which case the gross revenues and contributions from crops could double and in such case the property would become a highly economically viable farm unit.

The analysis further considers that the property could alternatively support 40 acres of crops, depending on seasonal fluctuations in water availability. Under an intense farming scenario as described in the applicant's narrative above, the applicant anticipates that "Some of the higher yielding crops could produce annual income of approximately \$10,000 per acre which could potentially facilitate income of up to \$400,000 per year before expenses which will obviously be higher than historical averages. However with the owners proposed capital investments the major expense increase will be labor to manage and operate the farm..."

The agricultural analysis includes an evaluation that the subject property is not currently considered economically viable as an independent grazing operation. The applicants assert that "It is clear from the economic analysis in Appendix B that continued agricultural use is not feasible and the owners plans for renewed agricultural use requires all of the above referenced amenities [discussed below] which are 100% in support of preserving prime agricultural use." The Commission finds that Mendocino County LUP Policies 3.2-5 and 3.2-16 require that all agricultural lands designated AG or RL shall not be divided nor converted to non-agricultural uses unless certain conditions can be demonstrated, including that continued *or* renewed

⁶ Commission staff also reviewed the 2010 Mendocino County annual crop report, which shows a yield of \$728 per head of cattle and \$95 per head for sheep. The 2010 report indicated that the 2010 season experienced a wet spring followed by a cooler than average summer, resulting in improved rangeland quality following years of drought.

agricultural use is not feasible.⁷ Therefore, whether or not the Commission agrees with the applicant's assertion that the land is not now economically feasible to support an agricultural use in its current unimproved form, the analysis demonstrates that renewed agricultural use is feasible under a variety of agricultural operations scenarios. Accordingly, because at the very least renewed agricultural use is feasible on the property, LUP Policies 3.2-5 and 3.2-16 require the Commission to deny any proposed conversion of agricultural land to non-agricultural uses.

4.1.3 Proposed Uses

According to the agricultural resources submittal, the applicant intends to develop the subject site to "be an economically viable and productive lifestyle organic farm." The applicant proposes to live on the land and graze approximately 25 beef cattle, a small herd of alpacas, and a small number of sheep on upwards of 38 acres total, and to utilize the remaining land to experiment with intense farming methods growing various crops in addition to the grazing of cattle and sheep. The applicant proposes to irrigate cropland using onsite water resources and to experiment with various crops including peppers, celery, lettuce, garlic, lemongrass, berries, and bulbs such as daffodils and iris. Crops will be planted in some fenced-off areas for use as animal feed.

As described previously, the applicant submitted a revised project description and revised plans (Exhibit Nos. 5 and 6) for the purposes of *de novo* review by the Commission that make changes to the development originally approved by the County. The proposed project as revised for the Commission's *de novo* review reconfigures the placement and size of structures in a way that addresses 1) geologic bluff setback requirements; 2) wetland ESHA setback requirements; and 3) visual subordination requirements by clustering development against backdrops of existing trees.

The proposed project as revised for the Commission's *de novo* review involves the development of a 58.5-acre parcel by (A) constructing: (1) a 4,277-square-foot, 2-story, single family residence with an attached 640-square-foot, 2-story guest cottage and a total of 585 square feet of upper and lower attached decks and patios (for a total structural size of 5,502 square feet and a maximum height of 25 feet above natural grade); (2) a 4,560-square-foot, 3-story barn, with a maximum height of 40 feet above natural grade; (3) a 192-square-foot hot-tub outbuilding with an average height of 13 feet above natural grade; (4) a 120-square-foot well pump house with an average height of 13 feet above natural grade; (5) a new septic system, (6) a 10-foot-wide non-paved driveway, (7) a new underground 5,000-gallon rainwater-runoff storage tank, (8) a production well, (9) a roof-mounted solar panels, (10) landscaping for privacy screening from the neighboring residence to the north; and (11) an 8-foot-high fence constructed of natural wooden posts and "invisible" game wire to separate the farm area from the dwelling area; (B) reconstructing an existing 1,250-square-foot, 2-story "shack" to a new detached home office with a maximum height of 25 feet above natural grade; (C) merging the three underlying lots (APNs) into a single 58.5-acre parcel to the extent that such APNs are separate legal lots and limiting further division of the property without a site-specific LCP amendment; (D) recordation of a deed restriction that would (a) limit development in the agricultural area of the property

⁷ Mendocino County LUP Policy 3.2-16 defines "Feasible" for the purpose of that section as including the necessity for consideration of a 5-year economic feasibility evaluation containing both of the following elements: 1.) An analysis of the gross revenue from the agricultural products grown in the area; and 2.) An analysis of the operational expenses beyond the control of the owner/operator associated with the production of the agricultural products grown in the area.

(excluding bluff areas, sensitive habitat areas, and the areas of the bluff top proposed for development of the structured depicted on the applicants' revised site plan) to agricultural related facilities and (b) require that areas within the agricultural area except for existing and approved development shall be at all times maintained in active agricultural use; and (E) temporarily occupying the restored shack/office during construction of the main residence.

4.2 Prime vs. Non-prime Soils

As cited above, Coastal Act Sections 30241 and 30242 require the protection of prime agricultural lands and set limits on the conversion of all agricultural lands to non-agricultural uses. Coastal Act Section 30113 defines "*prime agricultural land*" through incorporation-by-reference of paragraphs (1) through (4) of Section 51201(c) of the California Government Code:

"Prime agricultural land entails land with any of the follow characteristics: (1) a rating as class I or class II in the Natural Resource Conservation Service land use capability classifications; or (2) a rating 80 through 100 in the Storie Index Rating; or (3) the ability to support livestock used for the production of food and fiber with an annual carrying capacity equivalent to at least one animal unit per acre as defined by the United States Department of Agriculture; or (4) the ability to normally yield in a commercial bearing period on an annual basis not less than two hundred dollars (\$200) per acre of unprocessed agricultural plant production of fruit- or nut-bearing trees, vines, bushes or crops which have a nonbearing period of less than five years."

The four different prongs of the definition of "prime agricultural land" relate to the value and utility of the land in terms of range of agricultural uses and productivity. The land use capability classification rates the utility of the land based on various physical factors (e.g., rock type, soil type, slope, erosion potential, etc.). The lower the rating the more utility the land is considered to have for various agricultural uses. The Storie Index Rating is based on soil characteristics that govern the land's potential utilization and productive capacity (e.g., characteristics of the soil profile, surface texture, slope, drainage, nutrient level, acidity, alkalinity, etc.) independent of other physical or economic factors that might determine the desirability of growing certain plants in a given location. The third paragraph of the definition speaks to the number of "animal units" the land can sustain. An "animal unit" (AU) is a standardized measure of animals used for various agricultural purposes. A 1,000-pound beef cow is the standard measure of an animal unit. The dry matter forage requirement of one animal unit is 26 pounds per day. Animal unit equivalents (AUE) are calculated for various other animals. A 700-pound steer is 0.80 animal units. A 1,300-pound horse is 1.20 animal units. A 120-pound sheep is 0.20 animal units. The amount of forage used by one animal unit in a month is an "animal unit month" (AUM). Finally, the fourth prong of the definition of prime agricultural land relates to the agricultural value of the land in terms of its capacity to generate a minimum commercial revenue of \$200 per acre. Land that meets any one of the four criteria in the definition is considered "prime" under the Coastal Act.

The Mendocino County Land Use Plan Section 3.2 references the definition of "prime agricultural lands" used in Coastal Act Section 30113 and Section 51201 of the California Government Code as:

- All land which qualifies for rating as Class I or Class II in the Soil Conservation Service land use capability classifications.

- Land which qualifies for rating 80 through 100 in the Storie Index Rating.
- Land which supports livestock used for the production of food and fiber and which has an annual carrying capacity equivalent to at least one animal unit per acre as defined by the United States Department of Agriculture.
- Land planted with fruit or nut-bearing trees, vines, bushes, or crops which have a nonbearing period of less than five years and which will normally return during the commercial bearing period on an annual basis from the production of unprocessed agricultural plant production not less than \$200 per acre.

The subject property comprises 58.5 acres of highly fertile and gently sloping land with rich top soil up to 10 feet deep in parts and suitable for both grazing and cropping. Most soils on the subject parcels are designated as “prime” on the Mendocino County Land Use Map (No. 21). The agricultural analysis includes reference to the 1998 Mendocino County General Soil Map and uses soil descriptions at a coarse scale (1:506,880). Commission staff has utilized a more current soil map prepared by the U.S. Department of Agriculture Natural Resources Conservation Service (USDA NRCS)⁸ at a scale of 1:16,600 that shows the subject parcel and surrounding lands, and at a scale of 1:8,430 to show greater site detail.

The NRCS 2008 maps (Exhibit No. 8) show the majority of the subject property consists of Mallopass Loam (map symbol 182), with some Windyhollow loam (map symbol 225) near Highway One, and Bruhel-Abalobadiah-Vizcaino complex (map symbol 115) surrounding the riparian corridor and pond on the property. Table 2 below summarizes soil characteristics relative to the criteria for prime agricultural land designation using data from NRCS:

Table 2. Summary of NRCS Soil Characteristics for the Subject Property.

Map Unit Symbol	Map Unit Name	Land Use Capability Classification (Nonirrigated)	Land Use Capability Classification (Irrigated)	Storie Index Rating
115	Bruhel-Abalobadiah-Vizcaino complex, 9 to 30 percent slopes	4	N/A	63
139	Drystrobepts (bluff face)	N/A	N/A	Not rated
182	Mallopass loam, 0 to 5 percent slopes	3	2	86
225	Windyhollow loam, 0 to 5 percent slopes	3	2	66

The agricultural analysis submitted by the applicant acknowledges that the subject property can support one animal unit per acre. The subject property therefore meets the criteria for prime

⁸ Natural Resources Conservation Service. Version 6, Jan 4, 2008. Accessed online at <http://websoilsurvey.nrcs.usda.gov>

agricultural land designation for each soil type because at minimum all lands are capable of supporting one animal unit per acre. Mallopass Loam is further supported as a “prime” agricultural soil with a Land Use Capability Classification of II if irrigated (the applicant proposes to irrigate the lands), and a Storie Index Rating of 86. Lastly, areas of the subject property depicted as Windyhollow loam further support a prime agricultural designation with Land Use Capability Classification of II (if irrigated).

The “prime agricultural lands” definition requires only one of the items described above be satisfied to meet this designation. This land qualifies as prime agricultural land based on three of the four criteria because: (1) it contains Class II soil if irrigated; (2) it contains soil with a Storie Index rating between 80 and 100; and (3) it supports livestock with an annual carrying capacity of at least one animal unit per acre.

4.3 Water for Agricultural Use

In 1978 the property was granted a Coastal Commission permit to draw irrigation water from an approximately 4-acre pond (impounded water associated with the unnamed perennial stream that flows along the southern end of the property). The irrigation system includes a 9-inch-diameter water line that runs north to south and supplies a wheel line irrigation system capable of watering the entire property year round.

The agricultural analysis indicates the property will utilize 3 separate water sources: 1) rainwater captured from the roofs of the buildings; 2) irrigation water from the existing pond which has streams running into it year round; and 3) well water from an existing well. The primary water supply to all the buildings will be the rainwater. The primary irrigation water supply will be the pond, with back-up water supply being provided by the existing well that runs year round.

5. Residential Development on Agricultural Lands

The LCP only permits conversion of agricultural land for residential development where the development does not diminish the productivity or viability of agricultural land or the ability to keep agricultural land in production. The Commission’s findings for the certification of the LCP support the interpretation of these policies to mean that agricultural uses have clear priority over residential uses. The LCP policies including LUP Policy 3.9-1 further satisfy the requirement of Coastal Act Section 30250(a) to concentrate development in order to avoid individual or cumulative impacts to coastal resources, such as agricultural lands and highly scenic areas, by requiring that new development be allowed *only* if it is demonstrated that it will not have significant impacts on coastal resources. Mendocino County LUP Policy 3.2-1 recognizes lands designated RL 160 (rangelands; 160-acre minimum) for the purposes of determining density, but further states that one housing unit will be allowed for each existing parcel to support continued coastal agriculture use. Mendocino County CZC Section 20.368.005 describes the designation of the rangelands districts as intending to encompass lands within the Coastal Zone which are suited for and are appropriately retained for the grazing of livestock.

The Mendocino County LCP does authorize a single family residence as a principally-permitted use on agricultural lands, as indicated in CZC Section 20.368.010, only if consistent with all other applicable LCP policies, such as LUP Policy 3.2-5 and 3.2-16. Further, each LCP policy

must be applied in a manner that maximizes consistency with all other LCP provisions, including CZC Section 20.532.095 which requires that the granting of any coastal development permit must be supported by findings that the development is in conformity with the certified LCP and that the development is consistent with the purpose and intent of the zoning district and preserves the integrity of the zoning district. Additionally, CZC Section 20.532.100 further requires that no permit shall be granted on lands designated RL unless the proposed use is compatible with the long-term protection of resource lands. As such, the Commission finds the Mendocino County certified LCP allows the conversion of agricultural lands for residential development only if it does not diminish the productivity or viability of agricultural land or the ability to keep agricultural land in production and if continued or renewed agricultural use of the land is infeasible.

In contrast to residential development that is incidental to and/or in support of agricultural production such as farmer and farm labor housing, the development of non-farming related single-family homes on agricultural lands is contrary to the goal of keeping agricultural lands in agricultural production. Given increasingly high housing costs, agricultural use cannot compete with the use of land for residential development even on a large un-subdivided farm parcel or ranch on the Mendocino County coast. The recent statewide trend to develop large expensive homes on such properties exacerbates this problem by increasing the speculative value of these large parcels in the scenic rural coast side as sites for such homes. The development resulting from these pressures is widely recognized as contributing to the loss of agricultural production on agricultural land in conflict with the LCP requirement to maintain the maximum amount of agricultural land in agricultural production.

The loss of available lands for farming to residential development is now being recognized as a national trend and many states, including California have recently taken actions in attempt to curb this “rural sprawl.” The American Farmland Trust views rural residential sprawl as a major threat to farm production stating:

The majority of the Central Valley’s population lives in urban areas totaling more than 1,236 square miles. Yet that number does not tell the full story. What are not counted are the rural-residential parcels. These residences, also known as “ranchettes,” dot the rural landscape and affect everything from routine farming practices... a ranchette removes more farmland from agriculture than any higher density suburban dwelling.⁹

And:

The subdivision of land into ranchettes fuels speculation that drives up the cost of land and eventually makes it unaffordable for commercial agricultural production. The proliferation of rural residences throughout agricultural areas also poses a very real risk, right-to-farm laws notwithstanding, that agricultural insurance premiums will rise and that farming practices may be further regulated to protect public health and safety. Thus, agricultural policy should also address the need to significantly reduce scattered, rural development.

Greater certainty about land use expectations is critical to both farmers and developers. Places to farm and places to build should be clearly delineated, mutually exclusive and consistently

⁹ Ranchettes: The subtle Sprawl, A study of Rural Residential Development in California’s Central Valley, AFT 2000.

enforced... [This] will also insulate agricultural production from speculation and other pressures exerted by urban proximity, and encourage reinvestment in California agriculture to meet the demands of a changing global marketplace.¹⁰

In its literature concerning agricultural conservation easements, as further discussed below, California FarmLink states:

Agricultural conservation easements may also limit the size of any single-family house to be build on the property with the intent to ensure that the house will be used by a true farmer instead of a "gentleman" farmer. An owner predominantly depending on agricultural income will presumably not be able to afford a significantly larger than average size house (i.e. 4,000 sq. ft.). If such an estate home were built, a farmer looking to purchase the land in the future would be priced out of the market.

The New Jersey Farmland Affordability/Availability Working Group observed:

The viability of New Jersey's agricultural industry depends on ensuring that farmland is affordable and available to new and established farmers. If farmers don't have access to farmland they can't farm.

Under the State Agricultural Retention and Development Act, the investment of Public Funds is intended to preserve land and strengthen the viability of agriculture. Estate situations – where the landowner does not farm the land or only minimally farms it – run counter to that purpose. To maintain public confidence in the Farmland Preservation Program and ensure preserved farmland remains available and affordable to farmers, the issue of housing on preserved farms needs to be addressed.¹¹

Measures identified to address this issue include: (1) prohibiting all non-farm dwellings on agricultural lands, (2) limiting the size of new homes on agricultural lands, and (3) requiring agricultural conservation easements that ensure that land remains *in* agricultural use as opposed to simply remaining *available* for agricultural use. These measures have been adopted or are currently under consideration by many jurisdictions throughout the state and nation. As further discussed below, the Commission finds that such measures are necessary to ensure that the proposed development conforms to the agricultural protection requirements of the County's LCP.

As previously described, the applicants propose to actively farm their property. To enable their active involvement in farming operations, they propose to live on site in order to develop the property and direct the work to be done to improve productivity such that it becomes an economically viable farm unit. The agricultural analysis highlights that the 3-hour commute each way from their current home in San Francisco makes it unpractical for the owners to commute daily or for other short periods of time that would be necessary to actively oversee and manage farming operations. The proposed residence includes an attached guest house designed to accommodate a farm worker on a transient basis while providing separate access from the main home to allow the privacy of the property owners.

¹⁰ Suggestions for an Agricultural Component of Governor Arnold Schwarzenegger's Smart Growth Initiative, AFT, May 2004.

¹¹ Recommendations of the New Jersey Farmland Affordability/Availability Working Group, September 23, 2004.

The barn development is proposed to serve multiple agricultural uses, including to house tractors, ATVs, farm equipment, stock feed, seed and fertilizer storage; space for employees or contractors to work on farm projects or to process and package harvested crops; and parking for personal vehicles (a 675-square-foot, 2-car garage was eliminated from the project proposal for the purposes of the Commission's *de novo* review). The moist salt air of this coastal bluff-top property mandates a need to house and protect farming equipment and supplies. The barn as conditioned will consist of a 4,560-square-foot, 3-story structure, with a maximum height of 35 feet above natural grade and a ground cover footprint of 2,400 square feet.

The agricultural analysis characterizes the 120-square-foot pump house as facilitating the back-up water system for agricultural purposes. In addition, the project as proposed includes rebuilding an existing 625-square-foot, two-story (1,250 square feet total) dilapidated office shed in an alternate location (to facilitate clustering of development for visual subordination). The office is proposed to serve as an on-site workplace to manage the farm business and other business interests in a way that can financially support a full-time presence on-site for active farm management. The applicant proposes to utilize the space for online marketing of agricultural products, and notes in the narrative of the agricultural analysis submittal that the house size and number of rooms was significantly reduced from the Mendocino County approved plans so that there is no longer any isolated office workplace in the main residence building (the project as approved by Mendocino County authorized development of a 5,183-square-foot, two-story house plus 675-square-foot garage, whereas the project as revised for the Commission's *de novo* review proposes a 4,277-square-foot, two-story house without garage).

Principal uses permitted in the RL district include Single-Family Residential, Vacation Home Rental, General Agriculture, Light Agriculture, Row and Field Crops, Tree Crops, Passive Recreation, and Fish & Wildlife Habitat Management. All proposed development falls within the range of principally permitted uses, including the barn, restored shed, hot tub, and guest house – all of which are considered accessory buildings and uses pursuant to CZC Section 20.456.015 as cited above. Section 20.308.050 of the CZC limits the size of guest cottages to 640 square feet and prohibits the structure from containing a kitchen. As seen in the proposed plans, the guest cottage as proposed complies with these restrictions.

If the land was improved and managed entirely for grazing cattle, the gross revenue per year from operating 58 head of cattle when estimated at \$600 per head amounts to \$34,800 total before expenses. While grazing is a common use on surrounding agricultural lands, many of the surrounding parcels are held in common contiguous ownership by just a handful of owners. These contiguously-owned parcels are all similarly-designated agricultural lands (including lands designated RL-160, FL-160, and AG-60¹²) with total acreages ranging from 44 acres (Elk Creamery- east of Highway One outside highly scenic area designation) up to 940 acres.

Few records are available for comparison of surrounding developments. Data from the local record that was supplied from the County Assessor's office shows developments in the surrounding area that include single family residential developments with garages (ranging in

¹² RL-160=Range Lands, 160-acre minimum; FL-160=Forest Lands, 160-acre minimum; and AG-60=Agriculture, 60-acre minimum. All three have similar agricultural priority uses in the certified LCP.

size from 1,120 square feet on 5 acres, to 5,612 square feet on 99 acres east of Highway 1) in addition to barns and outbuildings; however many of these parcels have no record of issuance of a coastal development permit and it is unclear whether many of these developments predate the Coastal Act. On the adjacent 5-acre parcel to the north, Mendocino County issued a permit in 1997 for a 3,200 square-foot single family residential development plus conversion of an existing house to a 640-square-foot guest cottage and 440-square-foot garage (County Permit No. CDP 44-97). In 2002, the County approved a modification (CDP No. 44-97(M)) of the permit to increase the size of the residence to 3,520 square feet (inclusive of a garage) and authorized installation of a 5,200-gallon water holding tank (CDP No. 57-02) on grade (screened from views with native vegetation).

The applicants propose that through the use of onsite developments designed to support active farming and management of farming operations, the project as proposed will enhance the productivity of on-site agricultural lands. The applicants further hope their intensive farming approach, if successful, could serve as a model that could be applied to improve the productivity and economic viability of adjacent lands. As discussed further below, reducing the size of the proposed single family residence from 5,183 square feet to 4,277 square feet and eliminating the proposed 675-square-foot, two-car garage, the applicant has minimized the proposed development to that which is necessary solely to support necessary agricultural operations. Moreover, to demonstrate their commitment to actively improving and maintaining the subject property in agricultural production and ensure that agricultural land is not impermissibly converted for residential uses, the applicant has proposed as part of the revised project description for purposes of the Commission's *de novo* review of CDP Appeal No. A-1-MEN-09-052 the recordation of a deed restriction (Exhibit No. 5) that would (A) limit development in the agricultural area of the property (excluding bluff areas and the areas of the bluff top proposed for development of the single-family house, office, barn, well, septic system and other accessory structures as depicted on the applicants' previously submitted site plan) to (1) agricultural production, (2) agricultural support facilities directly related to the cultivation of food, fiber, and ornamental plants being undertaken at the site, (3) installation and maintenance of underground utilities and underground storage tanks, (4) farm labor housing if approved by the Coastal Commission, (5) construction and maintenance of access roads approved by the Commission, (6) installation and maintenance of septic system leachfields approved by the Commission, and (7) limited owners personal uses including landscaping, passageways, livestock, vegetables and orchard to the extent such uses do not interfere with commercial agricultural operations; and (B) require that areas within the agricultural area shall be at all times maintained in active agricultural use. Therefore, the Commission finds that the revised project as proposed for the purposes of *de novo* review does not convert prime agricultural lands to non-agricultural uses because the proposed farmhouse (that includes guest space for the use of a farm worker), barn, pump house, and office shed all directly support the continued and renewed use of agricultural productivity of the site, consistent with LUP Policies 3.2-1 and 3.2-5.

Therefore, the Commission finds that the farmhouse, as proposed for the purposes of *de novo* review, will not impermissibly convert agricultural lands for a residential use and is the minimum size necessary to accomplish the agricultural purpose of the proposed agricultural farm and is therefore compatible with the long-term protection of resource lands. Therefore, the project as conditioned is consistent with the agricultural resource protection policies of the

certified LCP, including but not limited to LUP Policies 3.2-1, 3.2-5, and 3.2-16 and CZC Sections 20.368.005, 20.532.095, and, 20.532.100.

5.1 Development Envelope

As discussed above, a core policy concern of the Coastal Act is the protection of coastal agriculture through the limitation of non-agricultural land uses on agricultural lands. The original Coastal Plan that formed the basis for the Coastal Act identified this concern, including the issue of land speculation and valuation that could effectively undermine the goal of maintaining agricultural lands. Akin to the Williamson Act concern for not valuing agricultural land at non-agricultural prices, the Coastal Act evinces a concern for the protection of an area's agricultural economy, and an assurance that increased assessments due to public services or non-agricultural development do not impair agriculture. In order to meet the LCP requirements to maintain the maximum amount of agricultural land in production and to minimize conflicts with other land uses, the Commission finds that measures must be implemented to discourage the continuation of the statewide, nationwide, and local trend to treat agricultural lands as new home sites, where agricultural use becomes secondary to residential development.

The project as approved by the County included seven structures that occupied a total ground cover of approximately 7,465 square feet (in addition to the driveway, decks, and patios), with the total lot coverage as described in the County staff report comprising 39,394 square feet (including the approximately 14,900-square-foot driveway). The County's approval resulted in 1% lot coverage of the 58.5-acre parcel (2,548,260 square feet). Section 20.368.045 of the coastal zoning code authorizes a 10-percent maximum lot coverage in the RL district.

As discussed above, the applicants have taken measures to minimize the total development envelope to that which is solely necessary to support their active agricultural operations on the subject property. The project as revised for the Commission's *de novo* review consists of a reduction in both size and number of structures on the parcel: by eliminating the 2-car garage; reducing lot coverage of the residence, decks, and patios; and eliminating a garden shed, hobby workshop, and secondary "cabana," the revised project has been reduced to 5 structures that occupy a total of ground cover of approximately 5,927 square feet (in addition to the driveway and a reduced number of patios and decks).

All proposed development will be clustered near the western side of the property, which will maximize the open space grassland areas between Highway One and the bluff edge available for Range Land uses. The developments have additionally been further clustered in the project as revised for the Commission's *de novo* review, beyond the design approved by the County, such that all structural developments are sited against the backdrop of trees to ensure visual subordination within this designated highly scenic area. For the purposes of the Commission's *de novo* review the "guest house"¹³ design has been revised by reducing the footprint and clustering such that it is now within/attached to the adjacent house. This guest space consists of 640 square feet within the two-story residential structure (but with a separate entry to allow privacy from the

¹³ A "guest cottage" is defined by CZC Section 20.308.050(I) as a detached building (not exceeding 640 square feet of gross floor area), of permanent construction, without kitchen, clearly subordinate and incidental to the primary dwelling on the same lot, and intended for use without compensation by guests of the occupants of the primary dwelling (Ord. 3785 (part), adopted 1991).

main house), thereby contributing a total land coverage of 320 square feet instead of its original, single-story detached design that occupied 600 square feet of land coverage. The reduction in structure size and location has therefore resulted in an approximately 1,538-square-foot decrease in land cover occupied by structural developments (plus additional reductions in attached decks and patios) that not only further subordinates the project design from public viewsheds, but minimizes the development to only that which is needed to support onsite agricultural activities. Site constraints limited further clustering of developments such that the new location for the office/shed is setback against a backdrop of trees rather than clustered closer to other site developments. The 58.5-acre parcel size includes a portion of the property that is comprised of bluff face and shoreline, necessitating bluff-top geologic setbacks from all structural developments. Therefore, based upon aerial imagery interpretation and GIS analysis, the flat, useable portion of the property is estimated to comprise 48.75 acres (2,123,550 square feet). Following a site visit by Commission staff, an approximately 8,453-square-foot seasonal wetland was identified in addition to the approximately 14 acres (609,840 square feet) that comprise the agricultural pond, surrounding riparian area, and riparian ESHA buffers. The location of the seasonal wetland with its required minimum 50-foot ESHA buffer precluded additional clustering of structures in this area. The proposed pump house adjacent to the office/shed has been sited adjacent to the existing well to facilitate water delivery.

As of result of project changes submitted for the Commission's *de novo* review, the Commission finds that the project as conditioned will not have significant impacts on coastal resources, consistent with LUP Policy 3.9-1, because the revised project design reconfigures the placement and size of structures in a way that addresses 1) geologic bluff setback requirements; 2) wetland ESHA setback requirements; 3) visual subordination requirements by clustering development against backdrops of existing trees; and 4) minimizes the size of structures necessary to accomplish the proposed agricultural uses. Furthermore, because the proposed residence (that includes guest space for the use of a farm worker), barn, pump house, and office shed all directly support the continued and renewed use of agricultural productivity of the site, the Commission finds that the proposed project does not impermissibly convert agricultural land for residential uses, consistent with the agricultural resource protection policies of the certified LCP, including but not limited to LUP Policies 3.2-1 and 3.2-5, and CZC Sections 20.368.005, 20.532.095, and, 20.532.100. Finally, as described below, the project as conditioned to require implementation of the applicant's voluntary affirmative agriculture restriction will ensure that agricultural land is not impermissibly converted for residential uses and that the maximum amount of agricultural land is maintained in agricultural production, consistent with CZC Section 20.508.010.

5.2 Affirmative Agricultural Deed Restriction

As indicated above, measures have been identified statewide to address the increasing trend of non-farming related single-family homes being developed on agricultural lands. These measures include: (1) prohibiting all non-farm dwellings on agricultural lands, (2) limiting the size of new homes on agricultural lands, and (3) requiring agricultural conservation easements that ensure that land remains *in* agricultural use as opposed to simply remaining *available* for agricultural use. These measures have been adopted or are currently under consideration by many jurisdictions throughout the state and nation.

While agricultural conservation easements typically *prohibit* development of agricultural land, they do not necessarily ensure that the land will continue to be farmed. To accomplish this, an easement must include an *affirmative* farming requirement in addition to development prohibitions. Without a clause requiring continued agricultural use, an easement can only guarantee the protection of open space but cannot guarantee the land will remain in agricultural use. In recognition of this shortcoming, affirmative farming clauses are included in agricultural conservation easements.

As discussed previously, the proposed project as revised for the Commission's *de novo* review satisfies the first two measures to maximize agricultural resource protection because all proposed developments will be utilized for agricultural purposes and are the minimum size necessary to support continued and renewed agricultural use of the subject parcel. The applicants propose that through the use of onsite developments designed to support active farming and management of farming operations, the project as proposed will enhance the productivity of on-site agricultural lands. The applicants further hope their intensive farming approach, if successful, could serve as a model that could be applied to improve the productivity and economic viability of adjacent lands. To demonstrate their commitment to actively improving and maintaining the subject property in agricultural production and ensure that agricultural land is not impermissibly converted for residential uses, the applicant has proposed as part of the revised project description for purposes of the Commission's *de novo* review of Coastal Development Permit Appeal No. A-1-MEN-09-052 the recordation of a deed restriction that would (A) limit development in the agricultural area of the property (excluding bluff areas and the areas of the bluff top proposed for development of the single-family house, office, barn, well, septic system and other accessory structures as depicted on the applicants' previously submitted site plan) to (1) agricultural production, (2) agricultural support facilities directly related to the cultivation of food, fiber, and ornamental plants being undertaken at the site, (3) installation and maintenance of underground utilities and underground storage tanks, (4) farm labor housing if approved by the Coastal Commission, (5) construction and maintenance of access roads approved by the Commission, (6) installation and maintenance of septic system leachfields approved by the Commission, and (7) limited owners personal uses including landscaping, passageways, livestock, vegetables and orchard to the extent such uses do not interfere with commercial agricultural operations; and (B) require that areas within the agricultural area shall be at all times maintained in active agricultural use.

In addition, consistent with the applicant's proposal, **Special Condition No. 21** requires the applicant to execute and record a deed restriction against the property identified as APN 131-080-01, APN 131-080-02, and APN 131-080-05 in a form acceptable to the Executive Director, reflecting the restrictions set forth above, and affecting all areas of the property within the designated "agricultural area envelope" as depicted in Exhibit No. 12. For the purposes of the Special Condition, the agricultural area will be limited to agricultural production activities¹⁴, which are defined as "activities that are directly related to the cultivation of agricultural commodities for sale." Agricultural commodities are limited to food and fiber in their raw unprocessed state, and to ornamental plant material.

¹⁴Special Condition No. 20 includes certain identified exceptions to the agricultural use requirement, such as installation and maintenance of the septic leachfield, and improvements and maintenance of the access driveway.

As required by **Special Condition No. 9**, any improvements or future developments to the subject property would either require additional coastal development permit, or an amendment to Coastal Development Permit Appeal No. A-1-MEN-09-052. Title 14 Section 13166 of the Public Resources code requires the Executive Director to reject an application for an amendment to an approved permit if it's determined that "the proposed amendment would lessen or avoid the intended effect of an approved or conditionally approved permit unless the applicant presents newly discovered material information, which he could not, with reasonable diligence, have discovered and produced before the permit was granted." The applicant has expressed a desire for some degree of flexibility in the requirements that limit future uses in the agricultural area envelope to ensure that options are available to change the land use if for example, circumstances change in 50 years such that agricultural use is no longer an economically viable option. LUP Policies 3.2-4 and 3.2-5 limit conversion of agricultural lands to instances where: agriculture is no longer feasible; or where the viability of existing agricultural use is already severely limited by conflicts with urban uses; or where conversion of agricultural lands would complete a logical neighborhood and contribute to the establishment of a stable limit to urban development; or would concentrate development in urban areas. Therefore, **Special Condition No. 20(D)** provides a mechanism to allow conversion of the agricultural deed restriction to an open space deed restriction only if circumstances arise beyond the control of the landowner that render continued agricultural production on the property infeasible. In addition, **Special Condition No. 20(D)** requires Commission certification of an amendment to the LCP that would change the land use designation of the parcel to Open Space in accordance with all applicable policies of the certified LUP and the Coastal Act, and further provides that the requirements of the agricultural area deed restriction described above may only be extinguished upon Commission approval of an amendment to this coastal development permit.

Because the applicant proposes to record an affirmative agricultural deed restriction to ensure that the area of the property outside of the development envelope will remain in agricultural use, the Commission finds that the revised project as proposed for the purposes of the Commission's *de novo* review further ensures protection of agricultural resources, consistent with the certified LCP policies that include but are not limited to LUP Policies 3.2-1, 3.2-5, and 3.2-16, and CZC Sections 20.368.005, 20.532.095, and, 20.532.100.

5.3 Minimizing Conflicts with Adjacent Agricultural Lands

As discussed above, conflicts may occur between residential and agricultural land uses when in close proximity. Typical conflicts where urban and agricultural lands meet include noise, dust, and odors from agricultural operations; trespass and trash accumulation on agriculture lands; road-access conflicts between agriculturally related machinery and automobiles; limitations of pesticide application, urban garden pest transfer, theft, vandalism; and human encroachment from urban lands. Such conflicts can threaten continued agricultural cultivation when its proximity to non-agricultural uses (such as residential) raises issues and/or concerns with standard agricultural practices (such as chemical spraying and fertilizing) or ongoing agricultural by-products (such as dust and noise from machine operations associated with cultivating, spraying, and harvesting), which may post a threat to the non-agricultural uses.

The land use policies of the certified LCP strive to minimize such conflicts by requiring buffers between developments in residential areas and agricultural lands. LUP Policy 3.2-9 and CZC Section 20.508.020(A)(1) require that site plans in a residential area should not result in a residential structure being located closer than 200 feet from a parcel designated for agricultural use unless there is no other feasible building site on the parcel. LUP Policies 3.2-12 and 3.2-13 limit residential development adjacent to Type I and Type II Agricultural Preserves, respectively, to restrict such developments from occurring closer than 200 feet from the property lines of the protected agricultural resource or from the farthest feasible point from said property lines.

The adjacent parcels to the north and south are not Type I or Type II Agricultural Preserves. It is unknown whether the southerly adjacent parcel is currently in active agricultural use or not. As indicated previously, the adjacent property to the north consists of a five-acre parcel with a single family residential development that was approved by the County in 1997, with subsequent modifications in 2002. According to the local record, the owners to the north occupy the site as their permanent residence. The subject bluff-top property is located west of and adjacent to Highway One. Lands designated as Type I and Type II Agricultural Preserves do occur across the highway from the subject property, on the east side of Highway One at Bridgeport Landing, at 12451 South Highway One (Agricultural Preserve Contract No. 963). The preserve spans three parcels (APNs 131-090-05, 131-090-06 and 131-070-08) on a total of approximately 265 acres. As indicated previously, the proposed project as revised for the purposes of the Commission's *de novo* review seeks to actively farm the land. Therefore, while the proposed development includes a single-family residence, the dwelling unit and accessory structures are proposed as the minimum necessary to support continued and renewed agricultural operations on the site. Furthermore, all structures have been clustered against a backdrop of trees that are located against the western-most edge of the parcel and nearly midway between the northern and southern parcel boundaries. As a result, the proposed structures will be located approximately 250 feet from the northern boundary, 600 feet from the southern boundary, and over 1,300 feet from the eastern boundary. Therefore, the Commission finds that the project as revised for the purposes of the Commission's *de novo* review ensures that the maximum amount of agricultural land is maintained in agricultural production and is compatible with continued agricultural use on surrounding lands, consistent with the agricultural buffer policies that include but are not limited to LUP Policies 3.2-9, 3.2-12, and 3.2-13, and CZC Sections 20.508.010 and 20.508.020.

5.4 Parcel Merger

As described previously, the subject property is zoned RL-160 (rangelands, 160-acre minimum). The 58.5-acre size of the subject property is recognized by the County of Mendocino as a legal non-conforming parcel size (in existence prior to County land use designations and Coastal Commission certification of the County's LCP) that cannot be subdivided. The subject property in its current configuration consists of three separate assessor parcel numbers (APNs. 131-080-01, -02, and -05). According to Mendocino County staff (personal communication September 16, 2011), APN 131-080-02 was created as an arbitrary number for tax purposes (to create a North-South tax boundary) and is technically not a separate parcel.

To further demonstrate their commitment to active agricultural use of the subject property consistent with the LCP's agricultural lands policies, the applicant proposes to merge the three

assessor parcel numbers (APNs) that are the subject of the permit application to the extent these APNs comprise separate legal parcels, and to prohibit subsequent land division of the property. To this end, **Special Condition 21(A)** requires the applicant submit, prior to issuance of Coastal Development Permit Appeal No. A-1-MEN-09-052, a Notice of Merger approved by Mendocino County for APNs 131-080-001, 131-080-02, and 131-080-005 which comprise the subject property, thereby legally merging the subject lots into one legal parcel. **Special Condition 21(B)** requires that prior to commencement of development other than the merger of lots, the applicant shall submit to the Executive Director for their review and approval evidence that a Notice of Merger of the subject lots has been recorded.

In their offer to include a special condition limiting future land division of the subject property, the applicant has expressed interest in possessing the flexibility if appropriate in 50 years to approach the Commission for consideration of a land division as a way of preventing the devaluation of the property. However, the applicant acknowledges and Commission staff agrees that such is appropriate would be a rigorous endeavor without any guarantee of success.

The parcel is a legally non-conforming parcel that does not currently meet the density requirements of the land use designation and zoning district. While some forms of development are not required to meet the density requirements of the base zoning district (such as farm labor housing as defined in CZC Section 20.316.020 and subject to a conditional use permit as set forth in CZC Section 20.368.015), land divisions – including lot line adjustments – are strictly regulated by the policies of the certified LCP. LUP Policy 3.9-2 provides criteria for new land divisions outside the urban/rural boundaries that prohibits the creation of new parcels smaller than the minimum parcel sizes designated on the Land Use Maps, and that disallows the creation of new parcels unless 50% of the existing usable parcels within the surrounding area have been developed. The Mendocino County certified LCP further limits land divisions in agricultural lands through policies such as LUP Policy 3.2-1 and CZC Sections 20.368.025 and 20.356.025, which ensure that agricultural land be maintained in agricultural production by requiring maximum dwelling density requirements of 160 acres for lands designated RL (Rangelands District) and 60 acres for lands designated AG (Agriculture District), respectively. The applicant would therefore first be required to submit an application to Mendocino County for an LCP amendment to change the land use and zoning designation, which would require substantial justification for such a change in the density and intensity of use. Such an LCP amendment, if approved by the County, would subsequently require Coastal Commission review and certification for consistency with all Coastal Act policies, including but not limited to Coastal Act Sections 30241, 30242, and 30250.

In addition, LUP Policies 3.2-4 and 3.2-5 limit conversion of agricultural lands to instances where: agriculture is no longer feasible; or where the viability of existing agricultural use is already severely limited by conflicts with urban uses; or where conversion of agricultural lands would complete a logical neighborhood and contribute to the establishment of a stable limit to urban development; or would concentrate development in urban areas.

LUP Policies 3.2-9, 3.2-12 and 3.2-13 further limit development in agricultural areas by precluding land divisions from occurring in a way that would site residential development within 200 feet of an agricultural operation, maintain low density standards near Type I and Type II

agricultural preserves. Land divisions in agricultural areas are further limited by LUP Policies 3.2-15 and 3.2-16 and CZC Sections 20.524.015 and 20.532.100(C) that disallow land divisions unless such a land division: 1) is compatible with continued agricultural use of surrounding parcels; 2) would preserve prime agricultural land; and/or 3) concentrate development consistent with Section 30250 of the Coastal Act. For proposed divisions of prime agricultural lands, LUP Policy 3.2-15 and CZC Section 20.524.015(C) additionally require submittal of an approved master plan and economic feasibility study reviewed by the County Agricultural Commission, and 20.532.100(C)(2) requires findings that demonstrate such a land division would: a) protect continued agricultural use and contribute to agricultural viability; b) not conflict with continued agricultural use of the subject property and the overall operation; c) is only for purposes allowed in AG or RL designations; and d) will not contribute to development conflicts with natural resource habitats and visual resource policies.

Therefore, the Commission finds that for all the reasons above, further subdivision is not likely to be allowed at the subject property. However, the Commission acknowledges without assurances of success that if circumstances arise in the future beyond the control of the landowner or operator that render continued agricultural production on the property infeasible, the applicant reserves the right to apply for an amendment to the LCP to change the land use classification of the parcel from Range land to another land use classification and to apply for an amendment to Coastal Development Permit A-1-MEN-09-052 to remove any requirements (such as that the land be maintained in agricultural use, be limited to agricultural-related development, and/or that prohibit land division).

Therefore, the Commission finds that the proposed development, as conditioned, limits additional residential development and related increases to the dwelling density, is compatible with the long-term protection of the RL resource lands, and ensures that agricultural land be maintained in agricultural production as required by LUP Policies 3.2-5, 3.2-9, 3.2-12, 3.2-13, 3.2-15 3.2-16 and 3.9-2; and Sections 20.316.020, 20.356.025, 20.368.015, 20.524.015, and 20.532.100 of the certified coastal zoning code.

K. Public Access

Summary of Applicable LCP Provisions:

Projects located between the first public road and the sea and within the coastal development permit jurisdiction of a local government are subject to the public coastal access policies of both the Coastal Act and the certified LCP. Coastal Act Sections 30210, 30211, and 30212 require the provision of maximum public access opportunities, with limited exceptions. Section 30210 states that maximum access and recreational opportunities shall be provided consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse. Section 30211 states that development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation. Section 30212 states that public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, adequate access exists nearby, or agriculture would be adversely affected. In its

application of the above policies, the Commission is limited by the need to show that any denial of a permit application based on this section or any decision to grant a permit subject to special conditions requiring public access is necessary to avoid or offset a project's adverse impact on existing or potential access.

Project Consistency with Applicable LCP Provisions:

Although the proposed development is located between the first public road and the sea, the project will not adversely affect public access. There are no trails that provide shoreline access within the vicinity of the project that will be affected by the proposed project. Furthermore, the proposed project will not create any new demand for public access or otherwise create any additional burdens on public access.

Therefore, the Commission finds that the proposed project does not have any significant adverse effect on public access, and that the project as proposed without new public access is consistent with the requirements of Coastal Act Sections 30210, 30211, 30212, and 30214 and the public access policies of the County's certified LCP.

L. Alleged Violation

Although certain development has allegedly taken place at the project site without the benefit of a coastal development permit (including construction of a test well, placement of a travel trailer/camper and storage container on the property, and partial erection of a new fence across portions of the property), consideration of the application by the Commission has been based solely upon the proposed project's conformance with the Mendocino County certified Local Coastal Program and the Chapter 3 public access policies of the Coastal Act. Approval of this permit does not constitute a waiver of any legal action with regard to the alleged violations nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal development permit.

M. California Environmental Quality Act

Mendocino County is the lead agency for the purposes of CEQA review. The County determined the project to be categorically exempt (Class 3) from CEQA requirements.

Section 13096 of the Commission's administrative regulations requires Commission approval of coastal development permit applications to be supported by a finding showing the application, as modified by any conditions of approval, to be consistent with any applicable requirement of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available, which would substantially lessen any significant adverse effect the proposed development may have on the environment.

The Commission incorporates its findings on conformity with Coastal Act policies at this point as if set forth in full. These findings address and respond to all public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the staff report. As discussed herein, in the findings addressing the consistency of

the proposed project with the certified Mendocino County LCP, the proposed project has been conditioned to be found consistent with the certified Mendocino County LCP and the public access policies of the Coastal Act. All feasible mitigation measures, which will minimize all significant adverse environmental impacts have been required. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact that the activity may have on the environment. Therefore, the Commission finds that the proposed project can be found to be consistent with the requirements of the Coastal Act to conform to CEQA.

EXHIBITS:

1. Regional Location Map
2. Topographic Map
3. Aerial Photograph
4. County-Approved Project Plans
5. Revised Project Description
6. Proposed Project Plans
7. Water Availability and Proposed Water Use
8. Soil Maps
9. View from Highway One as Approved by County and as Currently Proposed
10. Surrounding Development
11. Agricultural Resources Impacts Analysis
12. Active Agricultural Use Envelope
13. Supplemental Geologic Report
14. Wetland & ESHA Assessments
15. Notice of Final Local Action & County Staff Report
16. Appeal

APPENDIX A

STANDARD CONDITIONS:

1. Notice of Receipt & Acknowledgement

The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.

2. Expiration

If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

3. Interpretation

Any questions of intent of interpretation of any condition will be resolved by the Executive Director of the Commission.

4. Assignment

The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

5. Terms & Conditions Run with the Land

These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.