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STAFF REPORT: MATERIAL AMENDMENT

Amendment Application No.: 1-11-037-A1

Applicant: City of Eureka

Location: Along the eastern shoreline of the Inner-Reach of Humboldt Bay, extending southerly from the foot of Truesdale Street to Pound Road, within the City of Eureka, Humboldt County (APNs 007-081-16, 007-091-02, 007-091-03, 007-091-05, 007-091-06, 007-091-07, 007-091-08, 007-091-11, 019-321-12, 019-321-05, 019-331-08, 019-331-09, 302-171-01, 302-181-02, and 302-181-31).

Description of Previously Approved Project: Develop the *Elk River Access Area / Hiksari' Trail Project* entailing the improvement of an existing 1¾-mile informal network of walking trails and parking areas.

Proposed Amendment: Install two bird-viewing structures and one children's playground directly adjacent to the Coastal (Hiksari') Trail.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

On March 9, 2012, the Commission approved with conditions Coastal Development Permit (CDP) No. 1-11-037 for the construction of a multiple-use portion of the California Coastal Trail and related coastal access support facilities along 1.2 miles of shoreline from Truesdale Street south to Pound Road in Eureka, Humboldt County. The Coastal (Hiksari') Trail, now constructed, provides public access to the Elk River Wildlife Area, Elk River estuary, and Humboldt Bay.

The proposed amendment involves installing two bird-viewing structures and one children's playground along this segment of the Coastal Trail to enhance shoreline recreation and nature study opportunities for a variety of users. Both bird-viewing structures would be located within three feet of the trail, one just south of the northern Hilfiker Lane parking lot in palustrine emergent wetland habitat and one approximately half a mile south of the southern Hilfiker Lane parking lot in degraded dune environmentally sensitive habitat area (ESHA).

Staff believes the 60-square-foot of wetland fill associated with the northern bird-viewing structure is for a permissible use consistent with Section 30233(a)(7) of the Coastal Act as "nature study," and is the least environmentally damaging, feasible alternative. The City proposes to mitigate for the fill through the creation of new wetland habitat in a nearby 60-square-foot upland area prior to the construction of the bird-viewing shelter. Staff also believes the 60-square-foot southern bird-viewing shelter to be constructed within dune ESHA is for a resource-dependent use and that the ESHA will be protected against any significant disruption of habitat values, consistent with Section 30240(a) of the Coastal Act.

As conditioned to require a final wetland mitigation plan and to address archaeological, visual resource, and water quality concerns, staff recommends that the Commission find the project consistent with the Chapter 3 policies of the Coastal Act.

The motion to conditionally approve the modified development is found on page [4](#).

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APPENDICES

[Appendix A](#) – Substantive File Documents

EXHIBITS

- Exhibit 1 – Regional Location Map
- Exhibit 2 – Project Vicinity
- Exhibit 3 – Locations of Proposed Trail Amenities
- Exhibit 4 – Bird-Viewing Structure Plans
- Exhibit 5 – Proposed Wetland Mitigation Plan
- Exhibit 6 – CDP No. 1-11-037

I. MOTION AND RESOLUTION

Motion:

*I move that the Commission **approve** the proposed amendment to Coastal Development Permit No. 1-11-037 subject to the conditions set forth in the staff recommendation.*

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

Resolution:

The Commission hereby approves the coastal development permit amendment on the grounds that the development as amended and subject to conditions, will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit amendment complies with the California Environmental Quality Act because feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the amended development on the environment.

II. STANDARD AND SPECIAL CONDITIONS

The standard conditions and Special Conditions Nos. 1-14 of CDP No. 1-11-037 remain in full force and effect. **Special Condition No. 15 of the original permit is modified as shown below and reimposed as a condition of CDP Amendment No. 1-09-020-A1. Special Condition Nos. 16, 17, 18, and 19 are additional new special conditions attached to CDP Amendment No. A1-09-020-A1.** The new and modified conditions are listed below. New language appears as **bold double-underlined** text. See **Exhibit 6** for the text of all the original permit conditions.

15. Protection of Archaeological Resources

- A. If an area of historic or prehistoric cultural resources or human remains are discovered during the course of the project or pre-construction testing, all construction shall cease and shall not recommence except as provided in subsection (B) hereof, and qualified cultural resources specialist shall analyze the significance of the find in consultation with the Tribal Historical Preservation Officers of the Wiyot Tribe, the Bear River Band of Rohnerville Rancheria, and the Blue Lake Rancheria.
- B. A permittee seeking to recommence construction following discovery of the cultural deposits shall submit an archaeological plan for the review and approval of the Executive Director.

1. If the Executive Director approves the Archaeological Plan and determines that the Archaeological Plan's recommended changes to the proposed development or mitigation measures are *de minimis* in nature and scope, construction may recommence after this determination is made by the Executive Director.
 2. If the Executive Director approves the Archaeological Plan but determines that the changes therein are not *de minimis*, construction may not recommence until after an amendment to this permit is approved by the Commission.
- C. **AT LEAST TWO WEEKS PRIOR TO COMMENCEMENT OF GROUND-DISTURBING ACTIVITIES FOR DEVELOPMENT AUTHORIZED BY CDP AMENDMENT NO. 1-11-037-A1, the Permittee shall notify the Tribal Historic Preservation Officers (THPOs) from the Bear River Band of Rohnerville Rancheria and the Wiyot Tribe Table Bluff Reservation of the construction schedule and arrange for tribal representative(s) to be present to observe ground-disturbing activities if deemed necessary by the THPO(s).**
- D. **A cultural resources monitor approved by the Bear River Band of Rohnerville Rancheria and/or the Wiyot Tribe Table Bluff Reservation shall be present to oversee all activities associated with the development authorized by CDP Amendment No. 1-11-037-A1 in which there will be ground disturbance unless evidence has been submitted for the review and approval of the Executive Director that the THPOs of these two entities have agreed that a cultural resources monitor need not be present.**

16. Final Wetland Mitigation Plan for CDP Amendment No. 1-11-037-A1

- A. **PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT AMENDMENT NO. 1-11-037-A1, the applicant shall submit, for the review and approval of the Executive Director, a final wetland mitigation plan to provide compensatory wetland habitat by creating 60 square feet of new wetlands in the proposed upland location (shown in Exhibit 5). The final wetland mitigation plan shall include the following:**
1. **A detailed site plan of the compensatory replacement wetlands mitigation site.**
 2. **The final design and construction methods that will be used to create 60 square feet of wetlands.**
 3. **Provisions for completion of the grading work necessary to establish the required habitat prior to construction of the northern bird-viewing structure.**
 4. **Provisions for submittal within 30 days of completion of the initial mitigation work of "as built" plans demonstrating that the initial mitigation work has been completed in accordance with the approved final wetland mitigation plan.**
- 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 further Commission amendment to this coastal development permit unless the Executive Director determines that no further amendment is legally required.**

17. Final Design Plan for Playground

- A. **PRIOR TO CONSTRUCTION OF THE PLAYGROUND NEAR THE TRUESDALE STREET TRAILHEAD, the applicant shall submit for review and approval of the Executive Director, final plans for the playground.**
1. **The plans shall demonstrate that the playground:**

- a. Does not introduce significantly increased levels of lighting or glare into the area that could directly, indirectly, or cumulatively adversely impact biological and visual resources through, among other means: (1) requiring fixtures to be down-cast with full cut-offs, (2) limiting lighting levels to low-wattage output necessary to provide minimal illumination necessary for personal safety and site security, (3) using orientations that prevent the lighting from shining beyond the playground area, and (4) prohibiting the use of highly reflective building materials;
 - b. Is visually compatible with the character of surrounding areas with respect to height and bulk, and does not significantly obstruct views from public vantage points; and
 - c. Conforms in architectural style, construction materials, surface treatments, and physical appearance with other public access amenities along the Hiksari' Trail and similar improvements along the inner reach of Humboldt Bay.
 2. The plan shall contain at a minimum:
 - a. A site plan for the overall layout of the playground;
 - b. To-scale, dimensioned elevations of all playground structures including any seating;
 - c. A description of the materials and colors of any playground structures or ground cover; and
 - d. Design specifications for all luminaries.
 - 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 required.
18. Pressure-Treated Wood Best Management Practices. To minimize impacts from the use of treated wood in the construction of the viewing shelters, the following additional BMPs shall be implemented: (i) cutting or drilling of treated wood shall occur at least 100 feet away from coastal waters and wetlands, and any sawdust, drill shavings, and wood scraps shall be contained and collected in order to prevent the discharge of treated wood to the marine environment; and (ii) treated wood materials shall be stored during construction in a contained, covered area to minimize exposure to precipitation.
19. Assumption of Risk, Waiver of Liability and Indemnity Agreement. By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from waves, storm surge, and flooding; or, erosion and earth movement; (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.

III. FINDINGS AND DECLARATIONS

A. AMENDMENT DESCRIPTION

Description of the Project Setting & Previously Approved Project

On March 9, 2012, the Commission approved with conditions Coastal Development Permit (CDP) Application No. 1-11-037 for the construction of a multiple-use, paved portion of the California Coastal Trail and related coastal access support facilities along 1.2 miles of shoreline in south Eureka from the foot of Truesdale Street south to the Pound Road Park & Ride lot (**Exhibits 1 & 2**). The Coastal (Hiksari’) Trail, now fully constructed, winds through the 104-acre Elk River Wildlife Area, a popular coastal recreational destination for both local residents and visitors and a “Type C” state wildlife refuge. The trail not only enhances public access to the Elk River Wildlife Area, Elk River estuary, and Humboldt Bay, but acts as a part of the future Eureka Waterfront Trail, an envisioned 6.5-mile segment of the California Coastal Trail along the entire Eureka waterfront.

Along with the construction of the multi-use trail, the original CDP included the construction and/or enhancement of four trailheads, including a 23-space parking lot and vista point with restroom facilities at the foot of Truesdale Street (just south of the Bayshore Mall), an eight-space parking lot and paddle boat access facility at the northwest end of Hilfiker Lane, a 21-space parking lot with restroom facilities at the southwest end of Hilfiker Lane, and the Pound Road Park and Ride. Informational kiosks with map information have been installed at each access area, in addition to benches, picnic tables and interpretive signage highlighting the area’s natural and cultural history. To mitigate for project impacts on wetlands, the original CDP also permitted the creation of 48,356 square feet of estuarine emergent salt marsh wetland habitat just north of the southern Hilfiker Lane parking lot in an area previously covered with upland fill material, debris, and ruderal vegetation. See **Exhibit 6** for the Adopted Findings of the original permit.

The project site contains a variety of habitats, including upland forest, coastal prairie, foredune/dunemat, saltmarsh wetland, estuarine wetland, and riparian woodland habitats. During field visits conducted for the original project by SHN Consulting Engineers & Geologists, Inc. (SHN) in 2007, three special status plant species (Point Reyes bird’s-beak, Humboldt Bay owl’s clover, and Lyngbye’s sedge) and three special status wildlife species (Osprey, Brown Pelican, and Double-crested Cormorant) were observed in the project area and vicinity along with 38 other avian species. In addition, the Federal endangered tidewater goby (*Eucyclogobius newberryi*), Federal/State threatened coho salmon (*Oncorhynchus kisutch*), and Federal threatened/State endangered northern California steelhead (*Oncorhynchus mykiss irideus*) are known to occur in the estuarine bay/river waters adjacent to the project area.

Proposed Amendment

The City proposes to amend the *Elk River Access Area / Hiksari' Trail Project* to provide two bird-viewing structures and one children's playground along the existing trail. Both bird-viewing structures would be located within three feet of the trail, one just south of the northern Hilfiker Lane parking lot in palustrine emergent wetland habitat and one approximately half a mile south of the southern Hilfiker Lane parking lot in degraded dune habitat (See **Exhibit 3, pgs. 4-7** for maps and photographs of the proposed locations). The structures would consist of a roof covering to provide shelter with partial walls to screen viewers from wildlife. The open floor under the shelter would be covered with gravel. The structures would be six-foot-wide by ten-foot-long with an eight-foot-high roof (**Exhibit 4**). The shelter roofs would be supported by posts connected to four 18-inch-diameter pier footings set two-feet deep in concrete. The City proposes to construct the structures of arsenic-free, pressure-treated fir or a composite decking material, and to use the two parking lots on Hilfiker Lane for staging. According to the project description, no heavy equipment would be used to install the structures, any cutting of materials or cement preparation work would be performed in upland areas away from coastal waters and environmentally sensitive habitat areas (ESHAs), and all construction debris would be contained, collected, and disposed of properly in an upland location.

The City also proposes to install a playground just south of the Truesdale Trailhead in a grassy area adjacent to the McCullen's Pump Station on the inland side of the Hiksari' Trail. The area where the playground is proposed was formerly the site of a City industrial yard and contains no wetlands or other sensitive habitat areas (See **Exhibit 3, pgs. 2-3** for a map and photograph of the proposed location). The City proposes to first grade an approximately 100-foot by 100-foot area no deeper than six inches and then install an Americans with Disabilities Act (ADA)-compliant playground surface and modular concrete playground equipment. The equipment would be nature-themed and would not require foundational supports. Two picnic benches would also be installed in the playground, one being ADA-compliant. Staging for this portion of the project would occur in the Truesdale Trailhead parking lot.

B. STANDARD OF REVIEW

The proposed project is located in the Commission's retained jurisdiction. The City of Eureka has a certified local coastal program (LCP), but the site is within an area shown on State Lands Commission maps over which the state retains a public trust interest. Therefore, the standard of review that the Commission must apply to the project is the Chapter 3 policies of the Coastal Act.

C. OTHER AGENCY APPROVALS

No other agency approvals are required for the development.

D. FILL OF WETLANDS

Section 30230 of the Coastal Act states:

*Marine resources shall be maintained, enhanced, and where feasible, restored.
Special protection shall be given to areas and species of special biological or*

economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 of the Coastal Act states:

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

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

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

...

(7) Nature study, aquaculture, or similar resource dependent activities.

...

(c) In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary...

According to a wetland delineation and biological constraints analysis conducted in 2007 by SHN for the original Elk River Access/ Hiksari’ Trail Project, none of the locations for the currently proposed trail amenities delineated as wetlands. Prior to the approval and construction of the parking lot at the foot of Hilfiker Lane under the original CDP, the area where the northern bird-viewing structure is proposed was used for trail parking and was largely devoid of vegetation. However, now that the area is no longer disturbed by parking, it has become covered in ruderal herbaceous vegetation that includes wetland indicator species. Because the area where the northern bird-viewing structure is proposed is not definitively uplands and no new wetland delineation has been performed, the area is now presumed to be wetlands.

The northern bird-viewing shelter will cover an area of 60 square feet with four 18-inch diameter corner posts and a gravel-covered floor with an awning above. Coastal Act Section 30108.2 defines “fill” as “*earth or any other substance or material, including pilings placed for the purposes of erecting structures thereon, placed in a submerged area.*” Under this definition, any

parts of the proposed structure that are inserted into the wetland or cover the wetland constitute fill. Therefore the northern bird-viewing shelter will result in 60 square feet of wetland fill.

The above-cited Coastal Act policies set forth a number of different limitations on what development projects may be allowed in coastal wetlands. For analysis purposes, the limitations can be grouped into four general categories or tests, which in combination must demonstrate the following (1) that the purpose of any proposed filling, diking, or dredging is for one of the seven uses allowed under Section 30233(a); (2) that the project has no feasible less environmentally damaging alternative; (3) that feasible mitigation measures have been provided to minimize adverse environmental effects; and (4) that the biological productivity and functional capacity of the habitat shall be maintained and enhanced where feasible. Each category is discussed below.

Allowable Use

The first test for a proposed project involving fill is whether the fill is for one of the eight allowable uses under Section 30233(a). The purpose of the bird-viewing structure is to facilitate the public's ability to experience the surrounding natural setting. Among the allowable uses listed under Section 30233(a), the use which most closely matches the project objectives is subcategory (7), "nature study."

"Nature study" is formally defined as, the study of animals and plants in the natural world, usually at an elementary level.¹ In her treatise on the importance of fostering a conservation ethic in children through environmental education starting at an early age, the renowned natural science educator Anna Botsford Comstock characterizes "nature study" as follows:

It consists of simple, truthful observations that may like beads on a string, finally be threaded upon the understanding and thus held together as a logical and harmonious whole... In nature study, the work begins with any plant or creature which chances to interest the pupil. It begins with the robin that comes back to us in March promising spring; or it begins with the maple leaf which flutters to the ground in all the beauty of its autumnal tints. A course in biological science leads to the comprehension of all kinds of life on our globe. Nature study is for the comprehension of the individual life of the bird, insect, or plant that is nearest at hand.² [Emphases added.]

By providing venues for incidental exploration of the physical and biological world, wildlife viewing facilities in natural settings generally are recognized as one of the best ways to ensure continued public support for protecting environmentally significant natural areas and to encourage an appropriate level of visitation. This perspective is at the core of the many public outreach and grant-funding efforts undertaken by natural resource conservation-oriented public agencies and other non-government organizations, from the Coastal Conservancy to many of the numerous land trusts involved in public access acquisition and development (including the

¹ Webster's Revised Unabridged Dictionary, C. & G. Merriam Company, 1913.

² Anna Botsford Comstock, *Handbook of Nature Study*, Comstock Publishing Associates, Inc., 1939.

NRLT). Regardless of their age, people in general are more likely to develop a stewardship ethic toward the natural environment if they are educated about the importance of the overall ecosystem, especially if provided the opportunity to experience the physical, mental and spiritual benefits of these areas first-hand. Providing for the development of trails and wildlife viewing amenities into the outer fringes of marshes and wetlands can be an ideal setting for such activities, as they offer a safe, convenient and unique perspective of the rich and diverse biological resources associated with watercourses, estuaries, and the natural coastline.

The subject bird-viewing structure would create a sheltered, off-trail space where people could observe, photograph, and study the abundant birdlife at the mouth of the Elk River year-round regardless of the weather without obstructing the path of those walking, running or biking along the trail or disturbing the birds. Thus the bird-viewing structure is a development that improves the ability of trail users to study nature. In addition, the structure is dependent upon the presence of the surrounding wildlife and habitat to provide a nature study experience. Thus, the proposed development within coastal wetlands is a form of “*nature study... or similar resource-dependent activities*,” as is: (1) a development type integral to the appreciation and comprehension of biophysical elements that comprise wetland areas; and (2) dependent upon the presence of the natural area resource where the viewing shelter is located to provide a nature study experience. As such, the Commission finds that the proposed wetland fill is inherently for the purpose of nature study, a use consistent with Section 30233(a) of the Coastal Act.

Alternatives

The Commission must further find that there is no feasible less environmentally damaging alternative to placing fill in wetlands. Coastal Act Section 30108 defines “feasible” as “...*capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social and technological factors.*” In this case, alternatives that have been identified include: (a) alternative siting, (b) alternative designs, (c) alternative installation methods, and (d) a “no project” alternative.

a. Alternative siting

The City proposes the northern bird-viewing structure to provide an off-path, sheltered, concealed location from which to view the several hundred to a few thousand birds routinely using the northern extent of the Elk River Estuary and Spit, including shorebirds, waterfowl, gulls, pelicans, wading birds such as egrets and herons, and cormorants. Alternative locations for the bird-viewing shelter could be considered. However, based on discussions with the Audubon Society, the best place to view this abundance of birdlife is from the river side of the trail between the northern Hilfiker Lane parking lot and the abandoned fuel line trestle that crosses the mouth of the Elk River. This area is largely covered in intertidal mudflat and salt marsh estuarine habitat that transitions into foredune/dunemat habitat with substantial clusters of native American dunegrass (*Leymus mollis*). The City originally proposed to locate the northern birdwatching station closer to the Elk River at the end of an unpaved path on estuarine intertidal regularly exposed wetlands. After a site visit with the Commission Staff Ecologist on December 5, 2014, the City relocated the proposed shelter to a site directly adjacent to the paved trail that is largely covered in ruderal vegetation. While this area is still presumed to be wetlands, it was formerly used for vehicle parking and continues to

be regularly disturbed by trail users who stray off path. In contrast to the original location, this location better avoids tidal inundation and native vegetation while still being useful for viewing wildlife on the northern extent of the Elk River Estuary and Spit. Thus the proposed location is the least environmentally damaging feasible alternative.

b. Alternative designs

To minimize the area of ground disturbance, the proposed bird-viewing structure is relatively small (covering 60 square feet). A smaller shelter would not provide sufficient area for nature study activities for groups and would not appreciably reduce wetland fill impacts. The proposed viewing shelter will allow users to stand out of the path of travel along the main trail to enjoy the nature study experience. In this case the Commission finds that the proposed shelter's size and configuration strikes a reasonable balance between allowing adequate utility for nature study, while avoiding excessive additional wetland fill that could lead to more pronounced and significant levels of disruption and fragmentation of the habitat values of the area. Therefore, the use of alternative designs is not a less environmentally damaging feasible alternative.

c. Alternative installation methods

The City proposes to install the structure without heavy equipment, digging the holes for each support by hand. The use of heavy equipment could compact or otherwise degrade surrounding wetlands and could crush vegetation and disturb soil resulting in increased erosion into nearby Elk River and Humboldt Bay. Heavy equipment also has the potential to leak or spill fuels, lubricants, and solvents into coastal waters and wetlands. Therefore, the use of alternative installation methods is not a less environmentally damaging feasible alternative.

d. No project alternative

The no project alternative means that no viewing platform would be built within the wetland area. Under the "no project" alternative, the objective of the proposed project, to improve bird viewing at the northern end of the Elk River Estuary and Spit, would not be met. The Redwood Region Audubon Society (RRAS) and other members of the public requested the installation of the proposed bird-viewing structure to enhance bird watching, photography, and survey endeavors in the area, including monthly bird walks guided by the Audubon society and open to the public. The structure will offer shelter and concealment for optics and people, as well as protection for birds and other wildlife by obstructing viewers from their presence. In addition, the structure will provide pedestrians with a designated place to step off the multi-use trail to observe wildlife, discouraging the use of volunteer paths through sensitive habitat areas and limiting the area where trampling will occur. Therefore, the no project alternative is not a less environmentally damaging feasible alternative.

For the reasons described above, the Commission finds that there is no less environmentally damaging feasible alternative to the development as conditioned, as required by Section 30233(a).

Mitigation Measures

The third test set forth by Section 30233(a) is whether feasible mitigation measures have been provided to minimize any adverse environmental impacts. The proposed project could have a number of potential adverse effects, including: (1) impairment of water quality from construction activities and the use of treated wood; and (2) wetland fill impacts. The potential adverse impacts and their mitigation are discussed in the following sections:

a. Impairment of water quality

The proposed bird-viewing shelters and playground will be constructed in close proximity to Elk River and Humboldt Bay. Accordingly, the construction activities have the potential to cause adverse impacts to coastal waters. Specifically, the installation of the trail amenities could have an adverse impact on water quality if treated-wood were to leach contaminants into the marine environment, or if sediment, construction debris, or hazardous materials were to enter the river or bay.

Chromated copper arsenate (CCA), ammoniacal copper zinc arsenate (ACZA), and ammoniacal copper arsenate (ACA) are pressure-treated wood preservatives derived from metal compounds and arsenic. The toxic properties of these metal-arsenate compounds preserve the wood from decay fungi, wood-attacking insects (including termites), and marine borers. These chemicals can have adverse environmental impacts when used where they can leach into the aquatic environment. Alternative arsenic-free treated wood preservatives include alkaline copper quaternary (ACQ) and copper azole (CA, CA-B, and CA-C), which are copper-based treatments. ACQ and CA prevent decay from fungi and insects and are registered for use in freshwater and marine environments. However, copper can pose a risk of aquatic toxicity even in small concentrations, and copper is regulated by the State of California as a Persistent and Bioaccumulative Toxic Substance.

To avoid release of potentially toxic wood preservative chemicals into coastal waters, the City is proposing to use arsenic-free, pressure-treated wood. The City also proposes to cut all wood in upland areas away from coastal waters and ESHAs and to collect any debris generated from the cutting of wood and dispose of it properly. To ensure that the proposed precautions against the release of wood preservative chemicals into coastal waters are implemented, the Commission attaches **Special Condition No. 18**. This special conditions requires that (a) the cutting and drilling of treated wood occur at least 100 feet away from coastal waters and wetlands, (b) all sawdust, drill shavings, and wood scraps be contained and collected for disposal, and (c) that treated wood material be stored in a contained and covered area to minimize exposure to precipitation.

Potential adverse impacts to the water quality of Humboldt Bay could also occur during the construction process if sediment, hazardous materials, or construction debris were to enter coastal waters. To minimize temporary construction impacts to water quality, the Commission reimposes **Special Conditions No. 3 and 4** of the original permit requiring the City to submit an erosion and runoff control plan and adhere to various construction-related responsibilities so that no construction materials, debris, or waste shall be allowed to enter coastal waters or be placed where it may be washed by rainfall or runoff into coastal waters. The Commission finds that the amended development, as conditioned,

provides feasible mitigation measures to minimize potential adverse environmental impacts of construction on water quality.

b. Wetland fill impacts

As described above, the installation of the northern bird-viewing structure would result in up to 60 square feet of fill in palustrine wetlands dominated by non-native grasses. The City is proposing to mitigate for this fill through the creation of new wetland habitat in a nearby 60-square-foot upland area prior to the construction of the bird-viewing shelter. The City proposes to excavate the site to six inches below the existing surface elevations. The City believes that once the fill is removed, the site will become inundated with water during the rainy season (See **Exhibit 5** for the City's proposed wetland mitigation plan).

Given, (1) the lack of expected temporal loss of wetland habitat (as wetland restoration will occur prior to wetland impact), (2) the high likelihood of restoration success (due to the relatively high average annual rainfall in the region, the type of wetlands to be restored, the success of nearby City-managed wetland restoration projects, and the location of the mitigation site near existing, functioning wetlands), and (3) the fact that the amended development will likely reduce habitat degradation by defining a designated off-path wildlife observation area and thus discourage the establishment of redundant volunteer trails, the Commission finds that the proposed 1:1 ratio of wetland fill to wetland creation is appropriate in this case.

To ensure that the creation of 60 square feet of wetlands is accomplished as proposed, the Commission attaches **Special Condition No. 16** to this permit amendment to require the applicant to submit a final wetland mitigation plan. The plan must include: (1) a detailed site plan of the compensatory replacement wetlands mitigation site; (2) the final design and construction methods that will be used to create 60 square feet of wetlands; (3) provisions for completion of the work necessary to establish the required habitat prior to the construction of the northern bird-viewing shelter; and (2) provisions for submittal within 30 days of completion of the initial mitigation work of as-built plans demonstrating the work has been completed. Therefore, the Commission finds that the amended development as conditioned provides feasible mitigation measures to minimize the project's wetland habitat impacts.

Maintaining and Enhancing Functional Capacity

The fourth general limitation set by Sections 30230, 30231 and 30233 is that any proposed dredging or filling in coastal wetlands must maintain and enhance the biological productivity and functional capacity of the habitat, where feasible. Section 30233(c) states that the diking, filling, or dredging of wetlands shall maintain or enhance the functional capacity of the wetland. Sections 30230 states that marine resources shall be maintained, enhanced, and where feasible, restored. Section 30231 also states that the biological productivity of coastal waters appropriate to maintain optimum populations of all species of marine organisms and protect human health shall be maintained and, where feasible, restored.

As discussed in the above Findings, the conditions of the permit will ensure that the project will not have significant adverse impacts on water quality or surrounding habitats and will ensure that

the project construction will not adversely affect the biological productivity and functional capacity coastal waters or wetlands. Therefore, the Commission finds that the project, as conditioned, will maintain and enhance the biological productivity and functional capacity of the habitat maintain and restore optimum populations of marine organisms and protect human health consistent with the requirements of Sections 30230, 30231, and 30233 of the Coastal Act.

Conclusion

The wetland fill associated with the project is for one of the allowable uses for filling enumerated in Coastal Act Section 30233(a). Furthermore, there are no less environmentally damaging feasible alternatives available to further reduce or avoid the filling of wetlands and water quality impacts. Moreover, as proposed and augmented by the attachment of additional special conditions to the permit's approval, all feasible mitigation measures have been provided to minimize the environmental impacts of the proposed fill and maintain and enhance, where feasible, the biological productivity and quality of coastal waters. Therefore, the Commission finds the project to be consistent with Sections 30230, 30231, and 30233(a) of the Coastal Act.

E. PROTECTION OF ENVIRONMENTALLY SENSITIVE HABITAT AREAS

Section 30107.5 of the Coastal Act defines "environmentally sensitive habitat area" as:

any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

Section 30240 of the Coastal Act states in part that:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

According to the wetland delineation and biological constraints analysis conducted by SHN in 2007, the area in the vicinity of the southern bird-viewing structure between the trail to the east and the estuarine habitat along Elk River to the west supports dune mat habitat. Dune mat, named for its low-growing mat-like vegetation, consists of characteristic native dune species, many of which are becoming increasingly uncommon. The dune mat habitat directly adjacent to the trail where the southern bird-viewing structure is proposed is highly degraded by foot traffic, nonnative grasses, and rocks and other debris from past fill. However, as one travels west away from the trail towards Elk River, the dune mat habitat becomes increasingly higher quality. The higher quality dune mat vegetation in the area supports native grasses including red fescue and large-flowered sand-dune bluegrass (*Poa macrantha*) and native dunemat species, including

beach primrose (*Camissonia cheiranthifolia*), beach morning glory, yellow sand verbena (*Abronia latifolia*), beach knotweed, beach bursage, dune tansy (*Tanacetum camphoratum*), dune goldenrod (*Solidago spathulata*), and beach buckwheat (*Eriogonum latifolium*) with scattered sea thrift (*Armeria maritima ssp. californica*) and beach pea (*Lathyrus littoralis*).

Coastal sand dunes constitute one of the most geographically constrained habitats in California and are in decline due in large part to displacement by human development, degradation by invasive species, and erosive damage due to human activities. As a result, though once widespread along the west coast, only relatively small, fragmented patches of intact coastal dune habitat remain today. Dunes are a dynamic habitat subject to extremes of physical disturbance, drying, and salt spray, and support a unique suite of native plant and animal species adapted to such harsh conditions. Even where degraded, the Coastal Commission has often found dune mat to meet the definition of ESHA due to the rarity of the physical habitat, its vulnerability to degradation, and its important ecosystem functions. Therefore, the Commission finds that the degraded coastal dune habitat in which the 60-square-foot southern bird-viewing structure is proposed constitutes ESHA as defined by Section 30107.5 of the Coastal Act.

Section 30240(a) of the Coastal Act limits activities within ESHAs to uses that are dependent on the resources of the ESHA. As similarly discussed above in Findings Section III(B) “*Fill of Wetlands – Allowable Use*”, the primary purpose of the bird-viewing structures is nature study, as they directly facilitate the public’s ability to experience the adjoining habitat and require proximity to the habitat so that the intended experiential examination of the resources may be realized. Accordingly, the southern bird-viewing structure represents a use dependent on the resources of the ESHA consistent with the limitations imposed by Coastal Act Section 30240(a).

Under Section 30240(a) of the Coastal Act, the Commission must also find that ESHA will be protected against any significant disruption of habitat values. Originally the City proposed to site the southern bird-viewing structure a few hundred feet west of the California Coastal Trail in high quality dune mat habitat. This location would not only have impacted higher quality habitat supporting an abundance of native species, but would have required a larger area of impact as it would have necessitated the construction of one or more footpath trails leading from the main trail out to the structure. After a site visit with the Commission Staff Ecologist on December 5, 2014, the City relocated the proposed shelter to a site directly adjacent to the paved trail that is largely covered in ruderal vegetation. As this area is already trampled by pedestrians, bicyclists, and dogs on a daily basis, the construction of an open-floored structure will not significantly disrupt its habitat value. In addition, the amended development will likely reduce habitat degradation in nearby dune mat ESHA by defining a designated off-path wildlife observation area and thus discouraging the establishment of redundant volunteer trails and viewing areas. Therefore, the Commission finds that the amended development, as conditioned, will be undertaken in a manner that protects against significant disruption of ESHA habitat values, consistent with Section 30240(a) of the Coastal Act.

F. ARCHEOLOGICAL RESOURCES

Section 30244 of the Coastal Act states as follows:

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

The project area is located within the ethnographic territory of the Wiyot people, who lived in villages along the protected shores of Humboldt Bay, the mouth of the Elk River, and at other sheltered sites inland of the open coast. Wiyot people call the Elk River area *Iksori*. Their ancestors once lived in *Iksori* in redwood plank homes and traveled Elk River and Humboldt Bay in redwood dug-out canoes. An extensive archeological and cultural resources investigation was conducted for the original Elk River Access Area/Hiksari' Trail project in July 2010 by Roscoe & Associates. A number of archaeologically sensitive areas were mapped in the project area, including the historic Indian community and town site of Bucksport in the vicinity of the proposed playground, and the former Wiyot village of Hirsori/Iksa'ri in the vicinity of the southern bird-viewing structure. The City enlisted Roscoe and Associates to review the location of the proposed trail amenities and conduct a supplemental site visit in 2014. Based on recommendations made by the consultant, the City proposes to contact the Tribal Historic Preservation Officers (THPOs) of the Wiyot Tribe Table Bluff Reservation and the Bear River Band of Rohnerville Rancheria to schedule a tribal monitor to be present on site during all excavation activities.

To ensure protection of any archaeological or cultural resources that may be discovered at the site during construction of the amended development, the Commission modifies and reimposes **Special Condition No. 15** of the original permit. This condition requires that if an area of cultural deposits is discovered during the course of the project, all construction must cease, and a qualified cultural resource specialist must analyze the significance of the find and in consultation with the THPOs of the Wiyot Tribe, the Bear River Band of Rohnerville Rancheria, and the Blue Lake Rancheria, recommend any needed changes to the proposed development or mitigation measures to protect archaeological resources. To recommence development following discovery of cultural deposits, the applicant is required to submit a supplementary archaeological plan for the review and approval of the Executive Director to determine whether the changes are *de minimis* in nature and scope, or whether an amendment to this permit is required. Special Condition No. 15 has been modified to also require the applicant to coordinate with the THPOs of the Bear River Band of Rohnerville Rancheria and the Wiyot Tribe to arrange for a cultural resources monitor to be present on the project site during ground-disturbing activities.

Therefore, the Commission finds that the amended development, as conditioned, is consistent with Coastal Act Section 30244, as the development will include mitigation measures to ensure that the development will not adversely impact archaeological resources.

G. VISUAL RESOURCES

Section 30251 of the Coastal Act states that the scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. The Section requires, in

applicable part, that permitted development be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, and to be visually compatible with the character of surrounding areas.

The proposed bird-viewing structures will be on the bay/river side of the California Coastal Trail and thus will be highly visible from public vantage points along the trail. However, the proposed structures are relatively small and open and will not obstruct views to and along Elk River and Humboldt Bay, entail significant landform alteration, or be visually incompatible with the character of the surroundings. Furthermore, people who use the structures will be afforded enhanced views of the coastal and estuarine habitat as the structures will provide a designated, protected place to step off the multi-use trail and observe wildlife.

The playground will be located on the inland side of the trail directly south of the McMullen Pump Station. From this location, the playground will not block views of the river and bay from the trail and will be largely hidden from view from the Truesdale Street Trailhead. The area where the proposed playground will be located is the former site of an industrial yard and is currently covered in debris and ruderal vegetation. Compared to the site's former and current conditions, the proposed playground will likely have a positive visual impact. In addition, the nature theme of the playground will help the development be compatible with the natural, scenic character of the surrounding area.

The City has not yet submitted a final design plan for the proposed playground. To ensure that the playground is visually compatible with the character of the natural setting, the Commission attaches **Special Condition No. 17**. Special Condition No. 17 requires the applicant to submit plans that describe the overall layout of the playground and the dimensions, colors, and materials of any playground structures or ground cover, and demonstrate that these site amenities will be visually compatible with the character of surrounding areas and will not adversely affect the visual resources of the area.

The Commission therefore finds that the amended project, as conditioned, will be consistent with Section 30251 of the Coastal Act.

H. PUBLIC ACCESS AND RECREATION

In the authorization of new development within the coastal zone, the public access policies within Chapter 3, Article 2 of the Coastal Act set forth a series of requirements for the protection, accommodation, and provision of coastal access. These policies direct that maximum access be provided, subject to certain limitations, especially with regard to the protection of public health and safety and environmental resources.

Section 30210 of the Coastal Act requires that maximum public access shall be provided consistent with public safety needs and the need to protect natural resource areas from overuse. Section 30212 of the Coastal Act requires that access from the nearest public roadway to the shoreline be provided in new development projects, except where it is inconsistent with public safety, military security, or protection of fragile coastal resources, or where adequate access exists nearby. Section 30211 of the Coastal Act requires that development not interfere with the public's right to access gained by use or legislative authorization. Section 30214 of the Coastal

Act provides that the public access policies of the Coastal Act shall be implemented in a manner that takes into account the capacity of the site and the fragility of natural resources in the area. In applying Sections 30210, 30211, 30212, and 30214, the Commission is also limited by the need to show that any denial of a permit application based on these sections or any decision to grant a permit subject to special conditions requiring public access is necessary to avoid or offset a project's adverse impact on existing or potential access.

The Hiksari' Trail provides public access to the Elk River Wildlife Area, Elk River estuary, and Humboldt Bay and acts as a critical link in the Eureka waterfront section of the California Coastal Trail that, once complete, will provide a continuous, multi-use coastal trail and bicycle path along the eastern shoreline of mid Humboldt Bay. The additional trail amenities proposed under this amendment will enhance shoreline recreational and nature study opportunities along the trail for a variety of users. The proposed nature-themed, ADA-compliant playground with picnic tables will provide a low-cost public recreational opportunity in view of Humboldt Bay, and the proposed bird-viewing structures will facilitate observation of the abundant wildlife in the area including resident shorebirds, birds of prey, harbor seals, and river otters that frequent the Elk River Estuary. While these proposed additional coastal recreational amenities may draw more people to the waterfront, they are distributed throughout the area, and based on their locations, will likely be accessed from different trailheads. In addition, they will attract appropriate users and deter the inappropriate uses that negatively impact sensitive habitat and water quality. Thus, the amended development will establish new recreational amenities, foster nature study, and expand the use of existing coastal access facilities. Therefore, the Commission finds that the amended project as conditioned is consistent with the public access and coastal recreation policies of the Coastal Act.

I. CALIFORNIA ENVIRONMENTAL QUALITY ACT

On January, 11, 2011, the City of Eureka, acting as the lead CEQA agency, certified a Mitigated Negative Declaration ("MND") for the project that includes nine mitigation measures that would avoid or reduce to insignificance, all adverse environmental impacts of the project. The nine MND mitigation measures were subsequently incorporated into the design of the project.

Section 13096 of the Commission's administrative regulations requires Coastal Commission approval of coastal development permit applications to be supported by a finding showing the application, as modified by any conditions of approval, is 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 any feasible alternatives or feasible mitigation measures available, which would substantially lessen any significant adverse effect the proposed development may have on the environment.

The Commission incorporates its findings on conformity with Coastal Act policies at this point as if set forth in full. As discussed above, the project as proposed to be amended has been conditioned to be consistent with the policies of the Coastal Act. No public comments regarding potential significant adverse environmental effects of the project amendment were received prior to preparation of the staff report. As specifically discussed in these above findings, which are hereby incorporated by reference, mitigation measures that will minimize or avoid all significant adverse environmental impacts have been required. As conditioned, there are no feasible

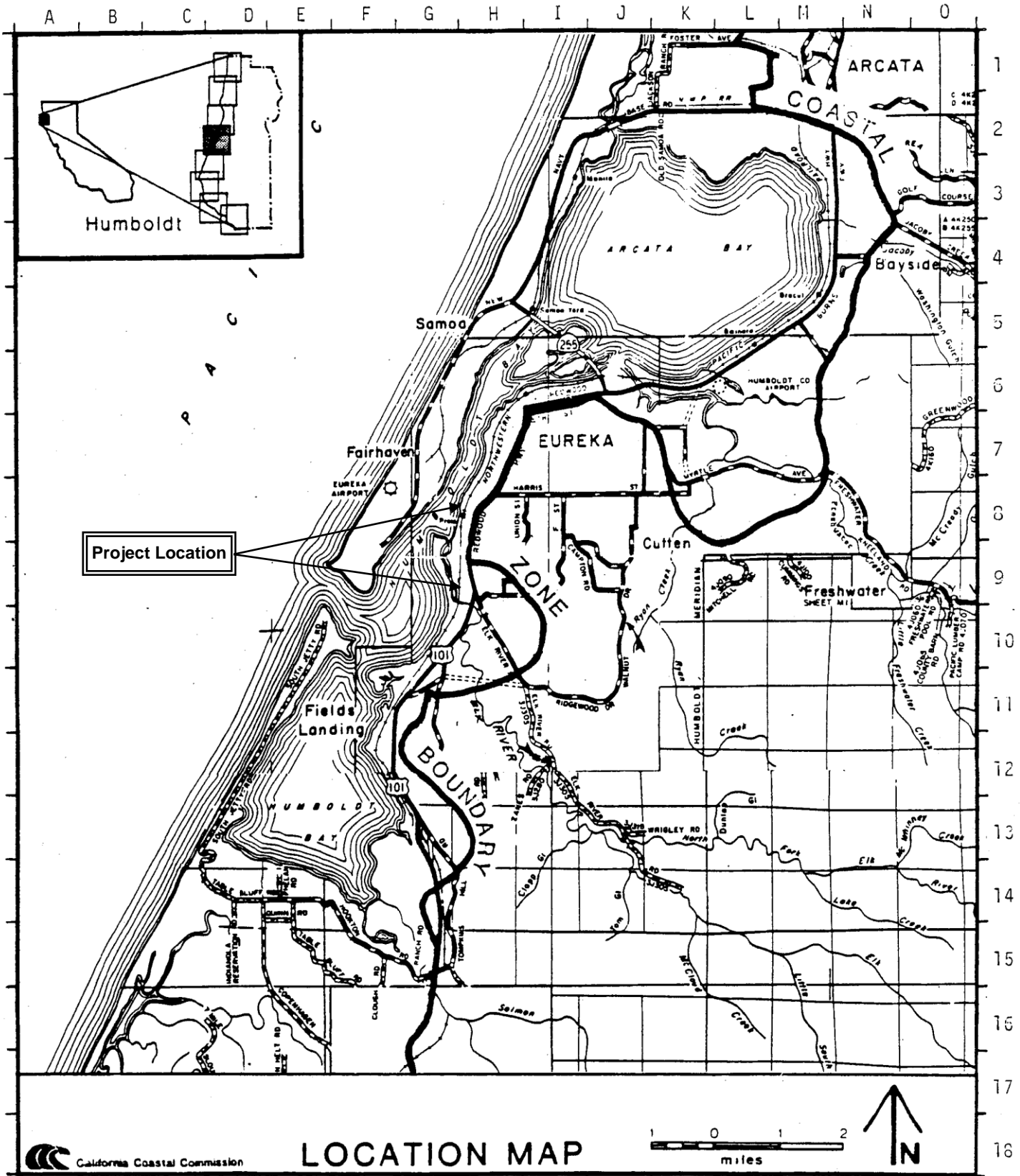
alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impacts which the activity may have on the environment. Therefore, the Commission finds that the proposed amended development, as conditioned to mitigate the identified impacts, can be found to be consistent with the requirements of the Coastal Act to conform to CEQA.

APPENDIX A
SUBSTANTIVE FILE DOCUMENTS

City of Eureka Elk River Access/ Iksori Trail Project Mitigated Negative Declaration (SCH #2010112050).

As-Built Report, Elk River Wildlife Trail Improvement Project, Salt Marsh Mitigation. Prepared by SHN Consulting Engineers & Geologists, Inc.; March 27, 2013.

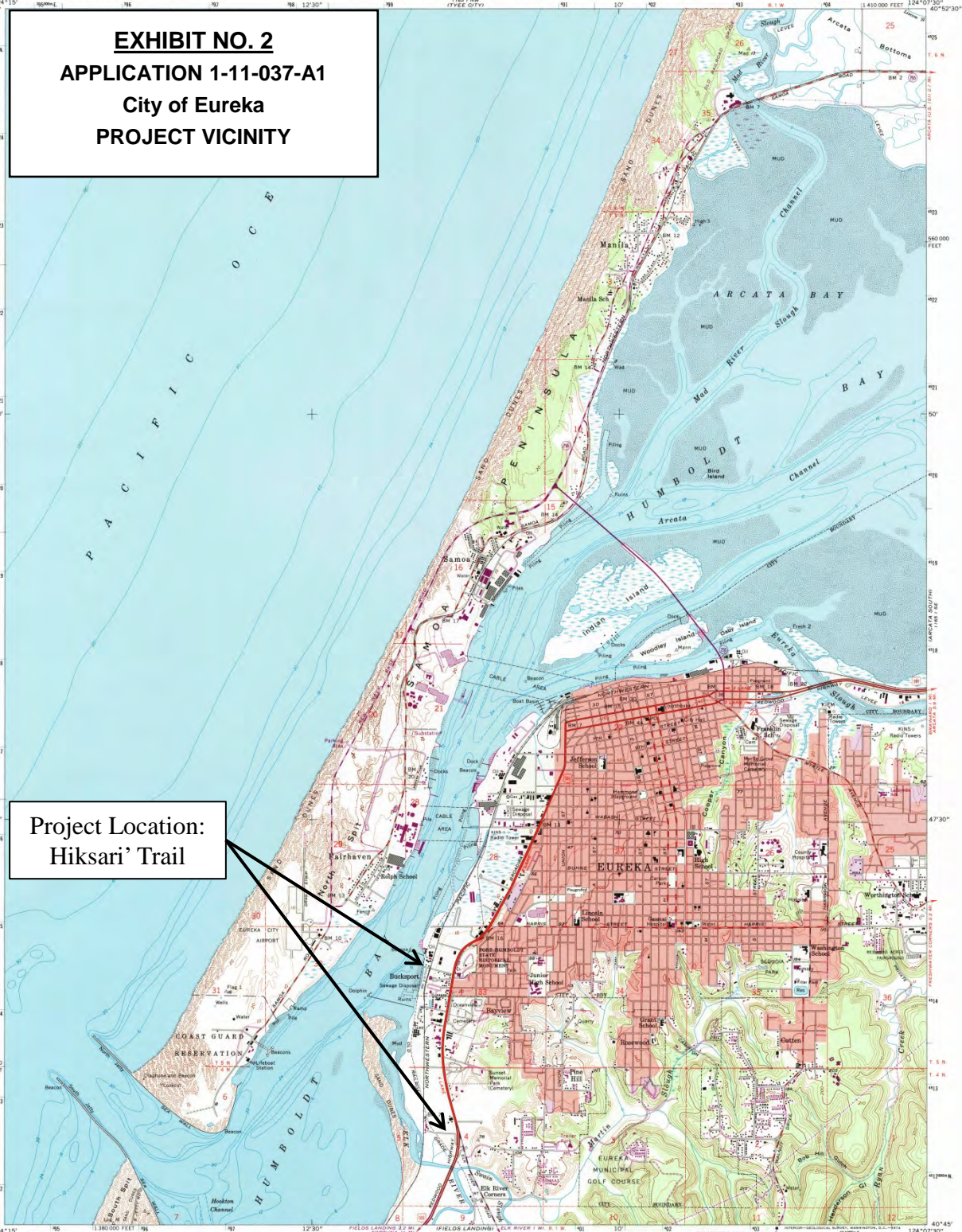
File for Coastal Development Permit No. 1-11-037.



County of Humboldt

EXHIBIT NO. 1
APPLICATION 1-11-037-A1
City of Eureka
REGIONAL LOCATION MAP

EXHIBIT NO. 2
APPLICATION 1-11-037-A1
City of Eureka
PROJECT VICINITY



Project Location:
Hiksari' Trail

Mapped, edited, and published by the Geological Survey
Control by USGS, USCAGS, and USCE
Topography from aerial photographs by Kelsh plotter
and by stroboscope survey 1968. Aerial photographs taken 1956
Hydrography compiled from USC&GS chart 5832 (1956)
Polyconic projection. 1927 North American datum
10,000-foot grid based on California coordinate system, zone 1
1,000-meter Universal Transverse Mercator grid ticks,
zone 10, shown in blue
Red tint indicates areas in which only landmark buildings are shown
Revisions shown in purple compiled from aerial photographs
taken 1972. This information not field checked
Purple tint indicates extension of urban areas

UTM GRID AND 1972 MAGNETIC NORTH
DECLINATION AT CENTER OF SHEET

SCALE 1:24,000

CONTOUR INTERVAL 20 FEET
DOTTED LINES REPRESENT 10 FOOT CONTOURS
DEPTH CURVES IN FEET-DATUM IS MEAN LOWER LOW WATER
SHREDLING LINES REPRESENTS THE APPROXIMATE LINE OF MEAN HIGH WATER
THE MEAN RANGE OF TIDE IS APPROXIMATELY 4 FEET

THIS MAP COMPLIES WITH NATIONAL MAP ACCURACY STANDARDS
FOR SALE BY U. S. GEOLOGICAL SURVEY, DENVER, COLORADO 80225, OR RESTON, VIRGINIA 22092
A FOLDER DESCRIBING TOPOGRAPHIC MAPS AND SYMBOLS IS AVAILABLE ON REQUEST

ROAD CLASSIFICATION
Heavy-duty Road Light-duty Road
Medium-duty Road Unimproved dirt Road
U.S. Route State Route

EUREKA, CALIF.
S.W. EUREKA 15 QUADRANGLE
N4045-W12407.5/7.5
1968
PHOTOREVISED 1972
AMS 1165 15V-SERIES V985



EXHIBIT NO. 3
APPLICATION 1-11-037-A1
City of Eureka
LOCATION OF PROPOSED
TRAIL AMENITIES – 1 of 7

Map of Project Vicinity

(2014 Aerial Photograph from City of
Eureka GIS; Community Development
Department Viewer)



Truesdale Trailhead/Vista

Humboldt Bay

Proposed Playground

Mouth of the Elk River

Hwy 101

Truesdale St

Location of Proposed Playground

(2014 Aerial Photograph from City of Eureka GIS; Community Development Department Viewer)



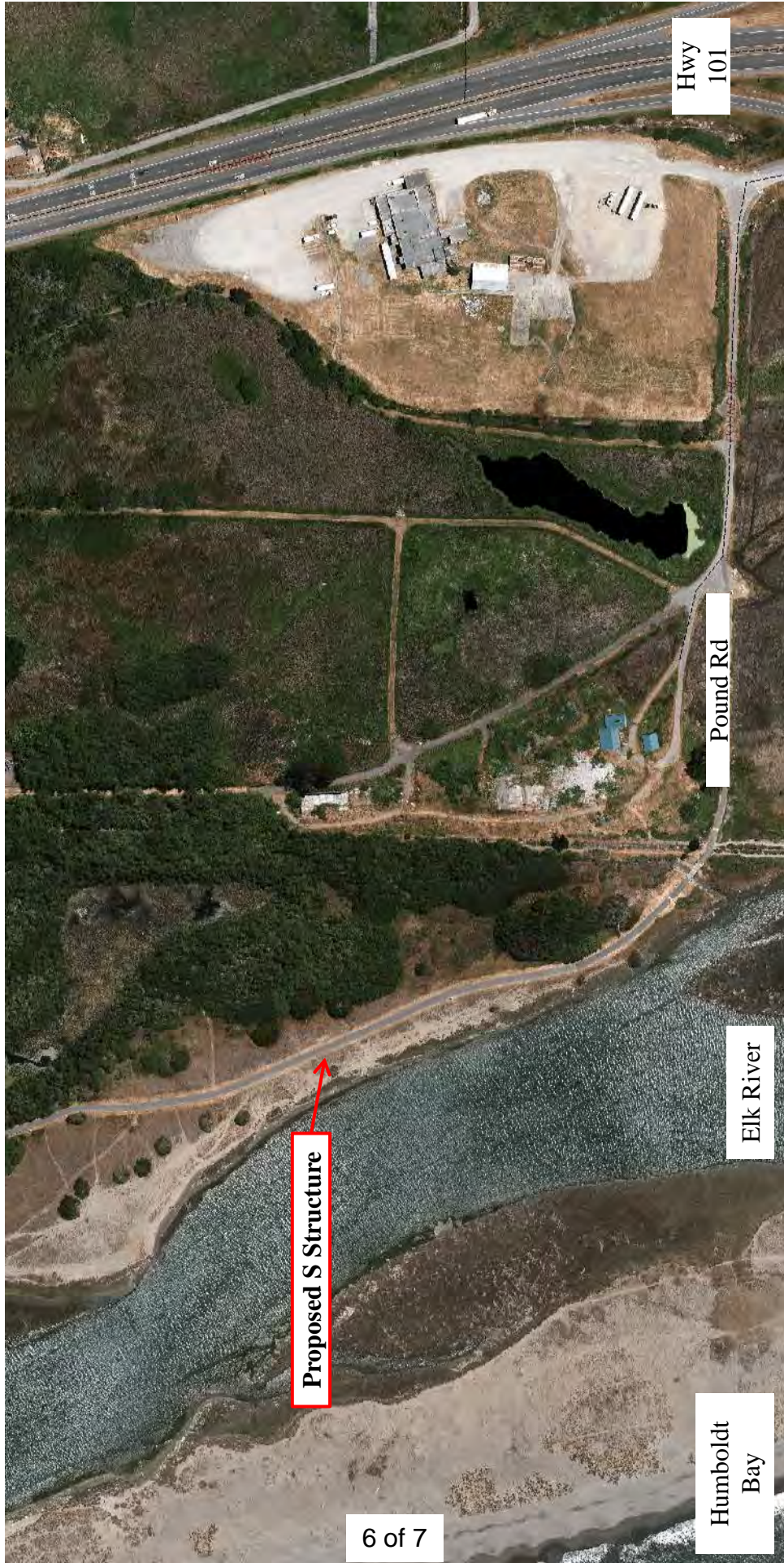


Location of Proposed North Bird-Viewing Platform

(2014 Aerial Photograph from City of Eureka GIS; Community Development Department Viewer)

**Location of Proposed
North Viewing
Structure**

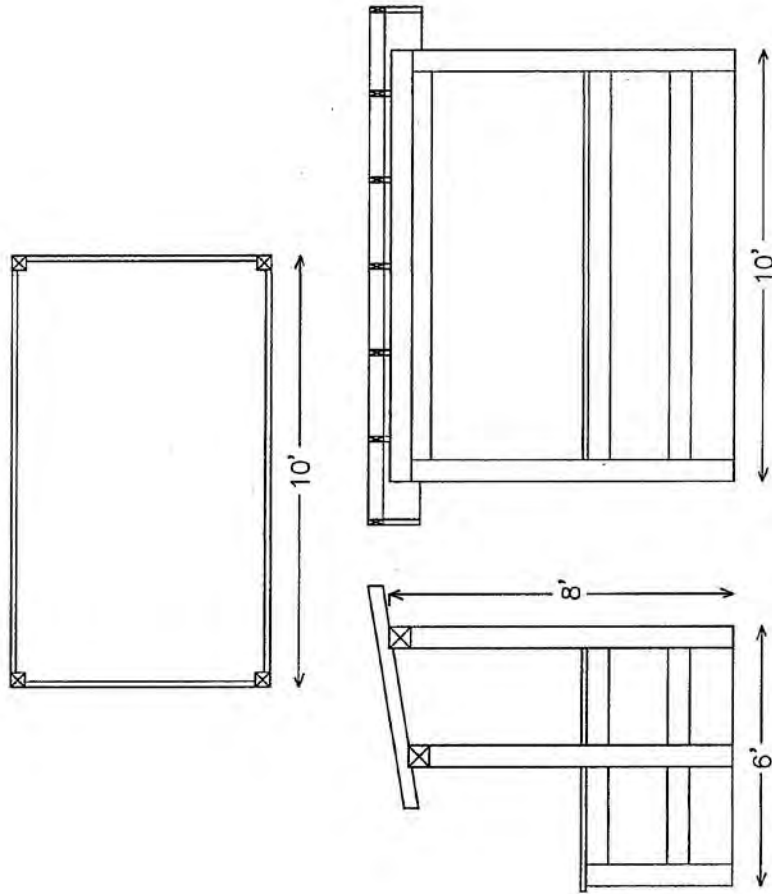




Location of Proposed South Bird-Viewing Platform

(2014 Aerial Photograph from City of Eureka GIS; Community Development Department Viewer)





Plans for Bird-Viewing Platforms

EXHIBIT NO. 4
APPLICATION 1-11-037-A1
City of Eureka
BIRD-VIEWING STRUCTURE
PLANS

Coastal Development Permit (CDP) Amendment Application 1-11-037-A1

Proposed Mitigation Project Description

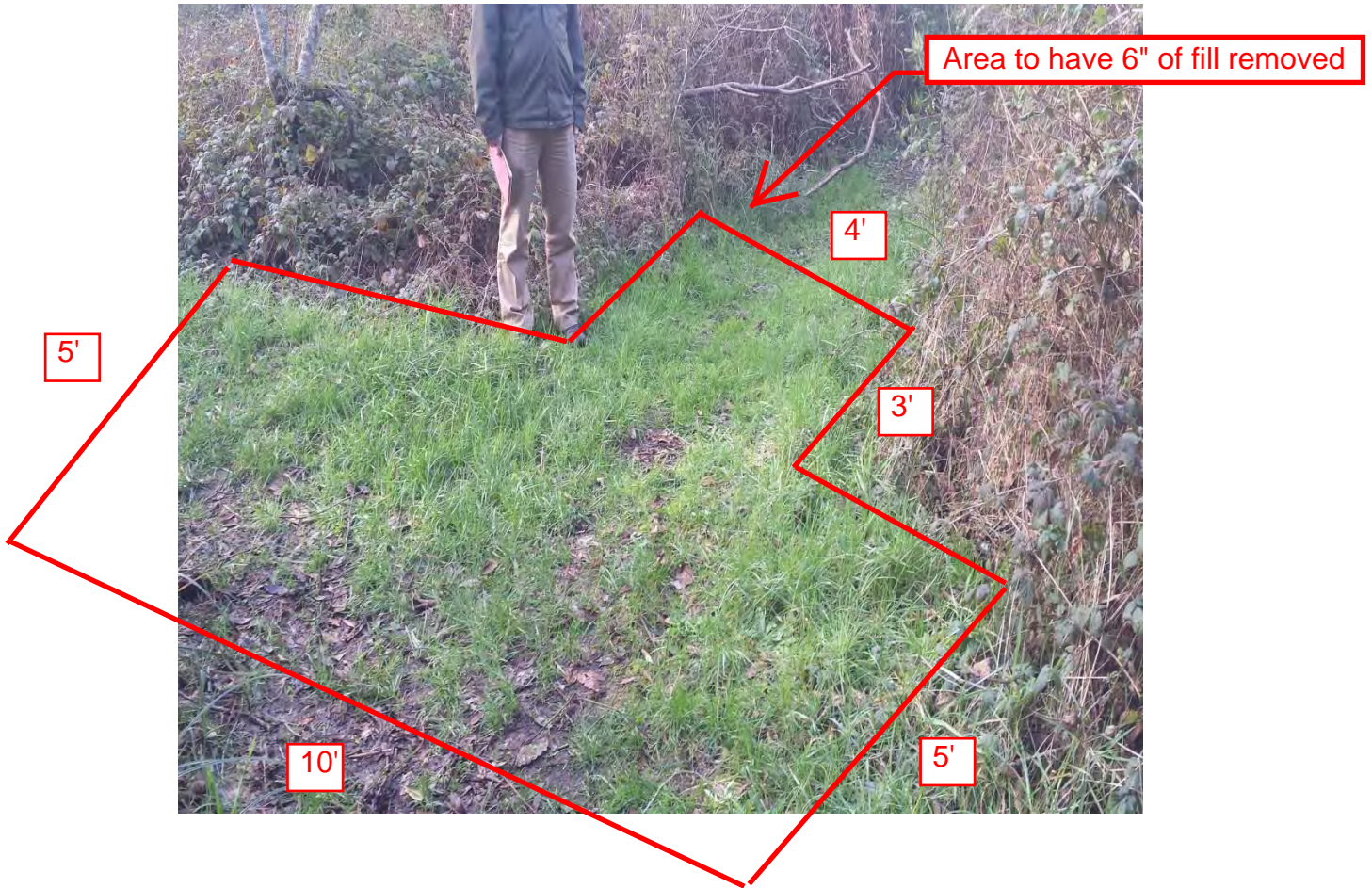
Based on a site visit from Coastal Commission staff, the northerly platform area will require impacts to a degraded wetland. The impacts will include direct impacts for the four post holes and shading and foot traffic impacts from the structure, equaling a total of 60 square feet of impacts. The City is proposing a 1:1 mitigation for these impacts by removing six inches of fill adjacent to the project site, prior to construction of the structure. Due to the mitigation preceding any impacts, there will be no temporal loss of degraded wetland. Furthermore, the location of the north platform is in an area directly adjacent to the trail where users impact the area on a daily basis. Coastal Commission staff met with City staff to agree upon an appropriate on-site location (see below). The proposed mitigation area has no riparian canopy over it. The City will remove the fill using shovels and place it in an upland location for later re-use at City Parks. All work related to this mitigation will occur in the dry season (April 15th to October 15th) and BMPs will be in place in order to prevent any discharges into wetland areas. See below for the proposed mitigation area site plan.

EXHIBIT NO. 5
APPLICATION 1-11-037-A1
City of Eureka
PROPOSED WETLAND
MITIGATION PLAN – 1 of 3

Mitigation Location



Mitigation Site Plan



CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE
 710 E STREET • SUITE 200
 EUREKA, CA 95501
 VOICE (707) 445-7833
 FACSIMILE (707) 445-7877

**EXHIBIT NO. 6****APPLICATION 1-11-037-A1****City of Eureka****CDP No. 1-11-037****- 1 of 45****F8b**

Filed: November 4, 2011
 49th Day: December 23, 2011
 180th Day: May 2, 2012
 Staff: Jim Baskin
 Staff Report: February 23, 2012
 Hearing Date: March 9, 2012
 Commission Action:

STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: **1-11-037**

APPLICANT: **City of Eureka – Department of Community Development**

PROJECT LOCATION: Along the eastern shoreline of the Inner-Reach of Humboldt Bay, extending southerly from the foot of Truesdale Street to Pound Road, within the City of Eureka, Humboldt County, APNs 007-081-16, 007-091-02, 007-091-03, 007-091-05, 007-091-06, 007-091-07, 007-091-08, 007-091-11, 019-321-12, 019-321-05, 019-331-08, 019-331-09, 302-171-01, 302-181-02, and 302-181-31.

PROJECT DESCRIPTION: Develop the *Elk River Access Area / Hiksari' Trail Project* entailing the improvement of an existing 1¾-mile informal network of walking trails and parking areas by upgrading an approximately 1.2-mile length of trail to fully-accessible multi-use status, and installing other trail and vehicle parking support facility amenities, including restrooms, interpretive signage, trailhead parking lot / vista point enhancements, a paddle boat launching accessway, invasive exotic plant removal, native landscaping revegetation, and saltwater marsh restoration.

LOCAL APPROVALS RECEIVED: Humboldt Bay Harbor, Recreation, and Conservation District Permit No. 11-09, granted January 17, 2012.

OTHER APPROVALS RECEIVED: North Coast Regional Water Quality Control Board FCWA § 401 Certification.

OTHER APPROVALS PENDING: U.S. Army Corps of Engineers Permit FCWA Section 404 Nationwide Permit No. 14 – Linear Transportation Projects.

SUBSTANTIVE FILE
DOCUMENTS:

Biological Resources Assessment and Wetland Delineation for the Elk River Wildlife Trail Improvement Project (SHN Consulting Engineers & Geologists, Inc., January 30, 2007); *Biological Resources Assessment Phase II Elk River Wildlife Trail Improvement Project* (SHN Consulting Engineers & Geologists, Inc., October, 2007); *Buffer Reduction Request Letter* (SHN Consulting Engineers & Geologists, Inc., November 22, 2010); *Salt Marsh Mitigation for the Elk River Wildlife Trail Improvement Project, Eureka California – Monitoring and Reporting Plan* (SHN Consulting Engineers & Geologists, Inc., March, 2011); *A Cultural Resources Investigation of the Elk River Trail Access Project Located in Humboldt County, California* (Roscoe & Associates, July 2010); *Elk River Access Project / Iksori Trail CEQA Mitigated Negative Declaration SCH No. 2010112050* (City of Eureka, January 11 2012).

SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission approve with conditions the City of Eureka's application for the construction of the *Elk River Access Area / Hiksari' Trail Project* along the eastern Humboldt Bay shoreline. The public access improvements, nature trail, and habitat enhancement project would entail the phased construction of a fully-accessible (Americans with Disabilities Act / California Code of Regulations Title 24-compliant) multi-use and pedestrian/bicycle nature trail and related coastal access support facilities along a 1.2-mile length of the inner reach of Humboldt Bay between Truesdale Street and Pound Road, through the 104-acre Elk River Wildlife Area, a popular coastal recreational destination for both local residents and visitors to the area and "Type C" state wildlife refuge. Principal features of the proposed project entail the development of a 23-parking-space trailhead/vista point at the Truesdale Street northern end of the project improved with restroom amenities, development of a paddle boat access facility with eight-space parking lot, and improvements to the existing Hilfiker Lane entrance to the Elk River Wildlife Area, including the construction of new restroom facilities.

The project would enhance non-vehicular lateral public shoreline access for a wide spectrum of coastal visitors along an urbanized section of the City that heretofore required transit along busy street frontages to access the open space and wildlife areas at the southern end of the project. The Coastal Act encourages the improvement of shoreline public access facilities and authorizes nature trails that provide interpretative materials about the adjoining habitat, thereby directly facilitating the public's experience of the adjoining habitat. However, notwithstanding the public benefits the project would afford, the development requires approximately 9,053 square-feet of wetland fill for the portions of the proposed 1.2-mile trail that cannot feasibly be avoided. In addition, construction, grading, and paving activities would be undertaken within close proximity to several environmentally sensitive plant and animal habitat area associated with margins of Humboldt Bay. Despite its intended benefits, if not conducted and maintained properly, the project could fail to minimize significant direct and cumulative adverse impacts on these sensitive environmental resources.

Staff believes the wetland fill associated with the project is for a permissible use consistent with Section 30233(a)(7) of the Coastal Act as "nature study, aquaculture, or similar resource dependent activities." Regarding impacts to ESHA other than the dredging and filling of wetlands, staff also believes the nature trail is a resource dependent use, consistent with Section 30240(a) of the Coastal Act. Staff is recommending 15 special conditions to ensure that environmentally sensitive resources and other coastal resources in the project area are adequately protected such that significant ESHA disruption is avoided, permissible wetlands impacts are minimized, and all necessary property rights to conduct the project have been secured:

Special Condition No. 1 requires the applicant, prior to issuance of the coastal development permit, to submit a set of revised final construction plans detailing the

design of the site improvements in full conformance with the standards of the Coastal Act as further adjusted by the conditions of the permit's approval.

Special Condition No. 2 requires that prior to issuance of the coastal development permit, compensatory wetlands replacement mitigation and monitoring plan be prepared and submitted for the approval of the Executive Director that details provisions for the creations of new salt marsh wetlands to compensate for the wetlands to be unavoidably filled for creation of Class I nature trail. The final plan must substantially conform to the preliminary mitigation plan prepared by the City, but shall be revised to include among other things that the mitigation plan reflect a 5.3:1 compensatory replacement wetland mitigation ratio, reflect the finalized design of the adjoining Hilfiker Lane trail segment, and include additional detail with respect to the timing for initiation and completion of the restoration, identification of success criteria, and the location of baseline reference and monitoring sites.

Special Condition No. 3 requires the applicant to prepare and submit for the Executive Director's approval a stormwater runoff and erosion control plan, identifying appropriate construction-phase and permanent water best management practices to be incorporated into the project to prevent potential impacts to water quality, and a hazardous materials spill prevention and clean-up plan detailing both the efforts to be taken and the materials and equipment available for preventing and responding to any accidental release of hazardous materials during construction of the coastal access facilities.

Special Condition No. 4 sets specific construction phase performance standards to be followed during development of the project improvements to further ensure that water quality impacts are avoided and minimized.

Special Condition No. 5 requires the applicant, prior to issuance of the permit, to submit for the review and approval of the Executive Director, a final landscaping plan, detailing the types and locations of revegetative, bio-filtration, and decorative plantings to be installed at the project site. The plan must include provisions for the exclusive use of native species derived from local genetic stocks, where available, and prohibitions on the use of certain problematic rodenticides.

Special Condition No. 6 directs that the development be implemented in strict compliance with the proposal set forth in the permit application as modified by the special conditions. Any deviations from the approved site plan, mitigation and monitoring plan, or stormwater/erosion control or landscaping plans shall require an approved permit amendment, unless the Executive Director determines that a permit amendment is not legally required.

Special Condition No. 7 requires the permittee, upon acceptance of the coastal development permit, to acknowledge the inherent risks associated with developing the project, agree to assume such risks as to injuries and damages from such hazards, to

unconditionally waive any claim of damage or liability against the Commission, and to indemnify and hold harmless the Commission against any and all associated liability, claims, demands, damages, costs, and payments arising from any injury or damage due to such hazards.

Special Condition No. 8 requires the applicant prior to permit issuance to submit, for the review and approval of the Executive Director, a lighting, signage, fencing, barrier, and seating plan demonstrating that these site amenities will be constructed in a manner that will not adversely affect visual resources of the area.

Special Condition Nos. 9-13 require the applicant, prior to issuance of the permit in most cases and prior to commencement of construction in one case, to submit evidence that any necessary authorizations from the State Lands Commission (legal property interest), the City of Eureka (design review), the Humboldt Bay Harbor, Recreation, and Conservation District (general development permit), Public Utilities Commission (grade railroad crossing), and the U.S. Army Corps of Engineers (FCWA Section 404 individual or nationwide permit) have been obtained.

Special Condition No. 14 requires that in the event that the City chooses to sell the property, the City shall first record a deed restriction imposing all terms and conditions of the permit as conditions, covenants, and restrictions on the use of the property to inform purchasers of the permit requirements.

Special Condition No. 15 requires the permittee, upon the discovery of any archaeological resources during pre-construction testing, construction, or during the operation of the facility all activity cease and Wiyot Tribal Historical Preservation Officers be consulted as to the significance of the discovery. Recommencement of work shall be predicated upon Executive Director approval of an Archaeological Plan setting forth additional mitigation measures or project changes as needed to protect the encountered archaeological resources.

Staff recommends that the Commission find the project, as conditioned, consistent with the Chapter 3 policies of the Coastal Act.

The motion to adopt the Staff Recommendation of Approval with Conditions is found on page 6.

STAFF NOTE

1. Jurisdiction and Standard of Review.

The proposed project site is located in the Commission's retained permit jurisdiction. The City of Eureka has a certified LCP, but the site is within an area shown on State Lands Commission maps over which the State retains a public trust interest. Therefore, the standard of review that the Commission must apply to the project is the Chapter 3 policies of the Coastal Act.

I. MOTION, STAFF RECOMMENDATION, AND RESOLUTION

The staff recommends that the Commission adopt the following resolution:

Motion:

I move that the Commission approve Coastal Development Permit No. 1-11-037 pursuant to the staff recommendation.

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 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 attached.

III. SPECIAL CONDITIONS:

1. Revised Design and Construction Plans

A. PRIOR TO THE ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. 1-11-037, the applicant shall submit, for the review and written approval of the Executive Director, final design and construction plans which are consistent with the approved preliminary plans prepared by: (1) Redwood Community Action Agency – Natural Resources Services, dated February 22, 2012 (*“Proposed Elk River Parkway,” “Pound Road Park and Ride,” “Pound Road Crossing,” “Pound Road Trailhead,” “Railroad Crossing,” “Railroad Crossing*

(*NCRA SPEC*), “*ERWS*,” “*ERWS FULL PAGE 1*,” “*ERWS FULL PAGE 2*,” “*ERWS FULL PAGE 3*,” “*Schwaika* [Trail Segment],” “*Hilfiker* [Trail Segment],” “*Primitive Boat Launch Parking Area*,” and “*Hilfiker to Truesdale* [Trail Segment]”); (2) SHN Consulting Engineers & Geologists, Inc., March, 2011 (“*Salt Marsh Mitigation for the Elk River Wildlife Trail Improvement Project, Eureka California – Monitoring and Reporting Plan*”); (3) City of Eureka, undated (“*Hilfiker Parking and Trail Improvement Sketch*”); and (4) LACO Associates, dated September 22, 2011 (“*Truesdale Vista Point Project*”), attached as Exhibit No. 6, including site plans, floor plans, building elevations, roofing plans, foundation plans, structural plans, final material specifications, signage, drainage facilities, and lighting, fencing, barriers, public art installations, and seating plans, consistent with Special Condition Nos. 2, 3, 5, and 8.

- 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 site plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

2. Final Wetland Mitigation Plan

- A. **PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. 1-11-037**, the applicant shall submit for review and written approval of the Executive Director, a final wetland mitigation plan for all wetland impacts associated with the proposed project that has been developed in consultation with the California Department of Fish & Game and U.S. Fish & Wildlife Service, and which substantially conforms with the plans prepared by SHN Consulting Engineers, titled, “*Salt Marsh Mitigation for the Elk River Wildlife Trail Improvement Project Eureka, California*,” dated March, 2011, except that the plan shall be revised to include provisions conforming to all of the following.

1. The plan shall demonstrate that:
 - (a) Impacts to environmentally sensitive wetlands habitat are minimized through a reduction in surfaced trail width to eight feet with two-foot-wide, unpaved shoulders, with a corresponding reduction in the width of trailside vegetation clearance;
 - (b) Compensatory in- and out-of-kind saltmarsh habitat area is provided by creation of new wetlands on an upland area based upon a replacement ratio of 5.3:1;
 - (c) All wetland impacts that are identified as temporary (such as temporary fill areas) shall be fully restored. Restoration of temporarily impacted areas shall include at a minimum, restoration of before-impact elevations, restoration of before-impact

- hydrology, removal of all non-native plant species, and replanting with locally collected native wetland plant species;
- (d) Improvement of the compensatory replacement wetlands mitigation site will be completed within one year of the completion of the portion of the trail that involves filling the wetlands;
 - (e) The mitigation site shall provide for saltmarsh plant growth of an equivalent percentage density and species diversity as exists in the saltmarsh wetland adjoining the identified mitigation site;
 - (f) The mitigation site will be monitored for five years following improvement of the mitigation site to ensure the success of the mitigation; and
 - (g) The mitigation site shall be remediated within a year of a determination by the permittee or the Executive Director that monitoring results indicate that the site does not meet the identified performance standards in the approved final monitoring and mitigation program. If the performance criteria have not been met at the end of five years following the completion of construction of the project, the applicant shall submit an amendment to the coastal development permit proposing additional mitigation to ensure all performance criteria are satisfied consistent with all terms and conditions of this permit.
2. The plan shall include, at a minimum, the following:
- (a) A detailed site plan of the wetland impact areas as disclosed in *Delineation for the Elk River Wildlife Trail Improvement Project* (SHN Consulting Engineers & Geologists, Inc., January 30, 2007) and *Biological Resources Assessment Phase II Elk River Wildlife Trail Improvement Project* (SHN Consulting Engineers & Geologists, Inc., October, 2007). The final plan shall delineate all impact areas on a dimensioned, to-scale map, depicting elevations, surrounding landforms, the types of impact, both permanent and temporary, (i.e., direct filling or wetlands, shading of wetlands from elevated bridge structures, removal of hydrophytic vegetative cover), and the exact acreage of each impact so identified;
 - (b) The baseline ecological assessment of the wetland impact area;
 - (c) A detailed final site plan of the compensatory replacement wetlands mitigation site, as proposed in “*Salt Marsh Mitigation for the Elk River Wildlife Trail Improvement Project, Eureka California – Monitoring and Reporting Plan,*” report dated March, 2011, as prepared by SHN Consulting Engineers & Geologists, Inc., illustrating the following features:
 - i. The replacement mitigation site;

- ii. The location of reference and monitoring cross-sections of inter- and supra-tidal habitat areas within the adjoining saltmarsh areas and replacement site, respectively; and
 - iii. The extent of restored areas and the buffer surrounding the restored areas from adjacent development.
 - (d) The goals, objectives, and performance standards for the mitigation site, including the following:
 - i. Plant cover percentages, density, and species diversity for compensatory saltmarsh habitat based upon that in the reference area adjoining the restoration site; and
 - ii. Floral re-colonization success reference and monitoring counts for saltmarsh compensatory habitat based upon direct sampling of the cover and density of appropriate hydrophytic indicator species using established biological survey protocols.
 - (f) The final design and construction methods that will be used to ensure the mitigation site achieves the defined goals, objectives, and performance standards;
 - (g) Provisions for monitoring the success of the mitigation site for five years following improvement of the mitigation site with the submittal of annual monitoring plans for the review and approval of the Executive Director by December 31 of each year.
 - (h) Provisions for submittal, within 30 days of completion of initial restoration work of “as built” plans demonstrating that the wetland mitigation site has been established in accordance with the approved design and construction methods; and
 - (i) Proposed remediation measures for ensuring the success of the mitigation.
- 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 required.

3. Erosion and Run-Off Control Plans

- A. **PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. 1-11-037**, the applicant shall submit, for review and written approval of the Executive Director, a plan for erosion and run-off control.

- 1. **EROSION CONTROL PLAN**

- a. The erosion control plan shall demonstrate that:

- (1) During construction, erosion on the site shall be controlled to avoid adverse impacts on adjacent environmentally sensitive resource areas;
- (2) The following temporary erosion control measures shall be used during construction: hay bale and/or silt fence barriers around all ground-disturbed excavations, stormwater drainage inlet protection;
- (3) Following construction, erosion on the site shall be controlled to avoid adverse impacts on adjacent environmentally sensitive resource areas;
- (4) The following permanent erosion control measures shall be installed: landscaping of all open areas not otherwise developed with areas not otherwise developed with structures or impervious surfacing; and
- (5) The erosion control plan is consistent with all terms and conditions of the permit.

b. The plan shall include, at a minimum, the following components:

- (1) A narrative report describing all temporary run-off and erosion control measures to be used during construction and all permanent erosion control measures to be installed for permanent erosion control;
- (2) A site plan showing the location of all temporary erosion control measures;
- (3) A schedule for installation and removal of the temporary erosion control measures;
- (4) A site plan showing the location of all permanent erosion control measures; and
- (5) A schedule for installation and maintenance of the permanent erosion control measures.

2. RUN-OFF CONTROL PLAN

a. The run-off control plan shall demonstrate that:

- (1) Runoff from the project shall not increase sedimentation into coastal waters;
- (2) Runoff from all trail surfaces, improved streets, and other impervious surfaces along the project trail and roadways shall be directed/collected and discharged into either vegetated trailside swales or the centralized bio-filtration detention drainage basin as

- illustrated on project site, grading, and erosion control plans to avoid degradation of water quality either on or off the site;
- (3) Stormwater run-off from all parking areas, driveways and other impervious surfaces within the coastal access support facilities on the site shall be collected and conveyed into the centralized bio-filtration detention drainage basin as illustrated on project site, grading, and erosion control plans avoid ponding, erosion, or water quality impacts either on or off the site; and
 - (4) The proposed runoff control plan is consistent with all terms and conditions of the permit.
- b. The plan shall include, at a minimum, the following components:
- (1) A schedule for installation and maintenance of the vegetated swale and bio-filtration detention drainage basin systems; and
 - (2) A site plan showing finished grades (at one-foot (1') contour intervals) and the location of the drainage improvements.
- B. The erosion and runoff control plan shall, prior to submittal to the Executive Director, be reviewed and certified by a qualified professional to ensure that the plan is consistent with the drainage requirements of the City of Eureka Public Works Department and the stormwater runoff treatment standards set forth herein.
- C. 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.

4. Construction Responsibilities and Debris Removal

The permittee shall comply with the following construction-related requirements:

- A. No construction materials, debris, or waste shall be placed or stored where it may be subject to wave erosion and dispersion;
- B. Any and all debris resulting from construction activities shall be removed from the coastal waters immediately;
- C. Sand from the beach, cobbles, or shoreline rocks shall not be used for construction material;

- D. Staging and storage of construction machinery and storage of debris shall not take place on any adjacent coastal access support facilities (e.g., parking lots, bike paths, or walkways);
- E. No debris, soil, silt, sand, bark, slash, sawdust, rubbish, cement or concrete, oil or petroleum products, or other organic or earthen material from any grading and construction activities shall be allowed to enter into or be placed where it may be washed by rainfall or runoff into coastal waters;
- F. Any fueling of construction equipment shall occur on the paved areas within the adjoining developed public park or recreational vehicle park at a minimum of 100 feet landward from the Mean High High Water (MHHW) line of Humboldt Bay or Ordinary High Water Line (OHWL) of Elk River;
- G. Silt screens, straw bales, and/or coir-rolls appropriate for use in riverside and floodplain settings applications shall be installed around the perimeter of the areas to be graded and excavated prior to the initiation of grading and excavation activities and shall be maintained throughout project construction. Additional silt and sediment barrier materials shall be kept at the site and deployed as needed to reinforce sediment containment structures should unseasonable rainfall occur;
- H. If rainfall is forecast during the time construction activities are being performed: (i) all exposed soils materials excavated to form the project's roadway, coastal access support facilities, swales, and bio-filtration detention drainage basin improvements shall be covered with minimum 10-mil plastic sheeting, secured with sand bagging or other appropriate materials, and (ii) any other exposed soil areas shall be promptly mulched before the onset of precipitation;
- I. Mechanized heavy equipment, including excavation, paving, and materials delivery vehicles used during the construction process shall not be staged, operated, stored, or re-fueled within 100 feet of the waters of Humboldt Bay or Elk Creek;
- J. To minimize the entrainment and entry of hydrocarbon-tainted runoff into coastal waters, asphaltic concrete paving operations shall be performed during dry-weather periods when the National Weather Service's Northwestern California forecast for the Eureka sub-area of the Redwood Coast predicts a less than 50 percent chance of precipitation for the timeframe in which the paving work is to be conducted; and
- K. Fuels, lubricants, and solvents shall not be allowed to enter the waters of Humboldt Bay or Elk River. Hazardous materials management equipment including oil containment booms and absorbent pads shall be available immediately on-hand at the project site, and a registered first-response,

professional hazardous materials clean-up/remediation service shall be locally available on call. Any accidental spill shall be rapidly contained and cleaned up. All heavy equipment operating in or near the water's edge shall utilize vegetable-based oil as hydraulic fluid.

5. Landscaping Plan

A. **PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. 1-11-037**, the applicant shall submit for the review and written approval of the Executive Director, final landscaping plans prepared by a licensed landscape architect.

1. The plan shall demonstrate that:
 - a. Only native plant species obtained from local genetic stocks shall be planted within the restoration and mitigation sites. If documentation is provided to the Executive Director prior to planting that demonstrates that native vegetation from local genetic stock is not available, native vegetation obtained from genetic stock outside of the local area may be used;
 - b. Only non-invasive plant species shall be planted as landscaping within the parking lot coastal access support facility at the site;
 - c. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be identified from time to time by the State of California, shall be employed or allowed to naturalize or persist on the site. No plant species listed as a "noxious weed" by the governments of the State of California or the United States shall be planted within the property;
 - d. Rodenticides containing any anticoagulant compounds, including, but not limited to, Bromadiolone or Diphacinone shall not be used;
 - e. All planting will be completed within 60 days after completion of construction;
 - f. All required plantings will be maintained in good growing conditions through-out the life of the project, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the landscape plan; and

- g. Landscaping will be installed and maintained consistent with the standards of Section 10-5.2930 of the City of Eureka Municipal Code regarding landscaping and screening.
- 2. The plan shall include, at a minimum, the following components:
 - a. A map showing the type, size, and location of all plant materials that will be installed on the developed site, the irrigation system, topography of the developed site, and all other landscape features;
 - b. A schedule for installation of plants, specifically prohibiting the installation of plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be identified from time to time by the State of California;
 - c. Provisions for on-going maintenance and replacement of plants as may be needed from time-to-time;
 - d. Prohibitions against the use of rodenticides containing any anticoagulant compounds, including, but not limited to, Bromadiolone or Diphacinone; and
 - e. A description of the source of all plant materials 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 plan shall occur without a Commission amendment to the coastal development permit unless the Executive Director determines that no amendment is legally required.

6. Future Development Restriction

This permit is only for the development described in Coastal Development Permit Application No. 1-11-037. All development authorized by Coastal Development Permit No. 1-11-037 must occur in strict compliance with the proposal set forth in the application for the permit as modified by the special conditions. Any deviation from the project proposal, including a change in the location or extent of the access trail and support facilities, or offsite road improvements, increases in the intensity, density, or specific use of the site, or any other changes to the proposed project will require an amendment to Permit No. 1-11-037 from the Commission or securement of an additional coastal development permit from the Commission unless the Executive Director determines such permit or permit amendment is not legally required.

7. Assumption of Risk, Waiver of Liability and Indemnity Agreement

By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from waves, storm surge, and flooding; or, erosion and earth movement; (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.

8. Lighting, Signage, Fencing, Barriers, Public Art, and Seating Plan

A. **PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. 1-11-037**, the applicant shall submit, for review and written approval of the Executive Director final plans for all exterior lighting, directional, cautionary, interpretive, and commemorative signage, fencing, barriers, public art installations, and seating to be constructed as part of the *Elk River Access Area / Hiksari' Trail Project*.

1. The plans shall demonstrate that the lighting, signage, barriers and other site improvements to be erected at the project site:
 - a. Do not introduce significantly increased levels of lighting or glare into the area that could directly, indirectly, or cumulatively adversely impact biological and visual resources through, among other means: (1) requiring fixtures to be down-cast with full cut-offs, (2) limiting lighting levels to low-wattage output necessary to provide minimal illumination necessary for personal safety and site security, (3) using orientations that prevent the lighting from shining beyond the trail or parking lot areas, and (4) prohibiting the use of highly reflective building materials;
 - b. Are visually compatible with the character of surrounding areas with respect to height and bulk, and do not significantly obstruct views from public vantage points (Truesdale Street, Hilfiker Lane, and Pound Road) and the signage substantially conforms with the preliminary signage plans prepared by: (1) LACO Associates, titled "Truesdale Vista Point Project," dated September 22, 2011, and Redwood Community Action Agency, titled "*Proposed Elk River Parkway*," "*Pound Road Park and Ride*," "*Pound Road Crossing*," "*Pound Road Trailhead*," "*Railroad Crossing*,"

“Railroad Crossing (NCRA SPEC),” “ERWS,” “ERWS FULL PAGE 1,” “ERWS FULL PAGE 2,” “ERWS FULL PAGE 3,” “Schwaika [Trail Segment],” “Hilfiker [Trail Segment],” “Primitive Boat Launch Parking Area,” and “Hilfiker to Truesdale [Trail Segment]”), dated February 22, 2012; and

- c. Conform in architectural style, construction materials, surface treatments, and physical appearance with other similar improvements along the inner reach of Humboldt Bay.
2. The plan shall contain at a minimum:
 - a. Site plan location of all exterior lighting, signage, fencing, barriers, and seating;
 - b. Design specifications for all luminaries;
 - c. To-scale, dimensioned elevation plan depictions of the signage, including clear representation of sign verbiage and symbology; and
 - d. A description of the materials and colors of the sign elements.
- 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 required.

9. State Lands Commission Review

PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. 1-11-037, the applicant shall submit to the Executive Director a written determination from the State Lands Commission that:

- A. No State or public trust lands are involved in the development; or
- B. State or public trust lands are involved in the development and all permits required by the State Lands Commission have been obtained; or
- C. State or public trust lands may be involved in the development, but pending a final determination an agreement has been made with the State Lands Commission for the project to proceed without prejudice to that determination.

10. City of Eureka Design Review Approval

PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. 1-11-037, the applicant shall provide to the Executive Director a copy of the discretionary design review approval issued by the City of Eureka. The applicant shall inform the Executive

Director of any changes to the project required by the City. 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.

11. Public Utilities Commission Approval

PRIOR TO CONSTRUCTION OF THE BRIDGED SOUTH SLOUGH OR NORTH COAST RAILROAD AUTHORITY RAIL CORRIDOR, the permittee shall provide to the Executive Director a copy of a permit, license, review-approval, or authorization issued by the California Public Utilities Commission (CPUC), or evidence that no permit or grant of authority is required. The applicant shall inform the Executive Director of any changes to the project required by the CPUC. 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.

12. Encroachment Permit

PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. 1-11-037, the applicant shall submit to the Executive Director for review and written approval, evidence of an encroachment permit from the California Department of Transportation. The encroachment permit or exemption shall evidence the ability of the applicant to develop within State properties, including public street rights-of-way, as conditioned herein.

13. U.S. Army Corps of Engineers Approval

PRIOR TO COMMENCEMENT OF ANY CONSTRUCTION, the permittee shall provide to the Executive Director a copy of a permit issued by the Army Corps of Engineers, or letter of permission, or evidence that no permit or permission is required. The applicant shall inform the Executive Director of any changes to the project required by the Army Corps of Engineers. 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.

14. Agreement to Record Deed Restriction if Property Conveyed

A. **PRIOR TO ANY CONVEYANCE OF THE PROPERTY THAT IS THE SUBJECT OF THIS COASTAL DEVELOPMENT PERMIT**, the applicant shall execute and record 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

(hereinafter referred to as the “Standard and Special Conditions”); and (2) imposing all Standard and Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The restriction shall include a legal description of the applicant’s entire parcel or parcels. It shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the Standard and Special 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.

- B. **PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. 1-11-037**, the applicant shall submit a written agreement, in a form and content acceptable to the Executive Director, incorporating all of the above terms of this condition.

15. Protection of Archaeological Resources

- A. If an area of historic or prehistoric cultural resources or human remains are discovered during the course of the project or pre-construction testing, all construction shall cease and shall not recommence except as provided in subsection (B) hereof, and qualified cultural resources specialist shall analyze the significance of the find in consultation with the Tribal Historical Preservation Officers of the Wiyot Tribe, the Bear River Band of Rohnerville Rancheria, and the Blue Lake Rancheria.
- B. A permittee seeking to recommence construction following discovery of the cultural deposits shall submit an archaeological plan for the review and approval of the Executive Director.
1. If the Executive Director approves the Archaeological Plan and determines that the Archaeological Plan’s recommended changes to the proposed development or mitigation measures are *de minimis* in nature and scope, construction may recommence after this determination is made by the Executive Director.
 2. If the Executive Director approves the Archaeological Plan but determines that the changes therein are not *de minimis*, construction may not recommence until after an amendment to this permit is approved by the Commission.

IV. FINDINGS AND DECLARATIONS.

A. Site and Project Description.

The proposed coastal access, nature trail, and habitat improvements are located along the eastern shoreline of the inner reach of Humboldt Bay, the relatively narrow collection of channels and islands that connect the “South” Bay with the “North” or “Arcata Bay” (see Exhibit Nos. 1-2). The project area comprises the shoreline from the foot of Truesdale Street extending southerly through the Elk River Wildlife Area then easterly along Pound Road to its intersection with a Highway 101 frontage road terminating at Caltrans’ Elk River Park and Ride Lot No. 102 (see Exhibit Nos. 3-4).

The proposed alignment of the Elk River Trail currently consists of disturbed areas with abandoned industrial infrastructure, encampments, and ruderal vegetation, as well as upland forest, foredune/dunemat, riparian forest, salt marsh, and freshwater marsh (see Exhibit Nos. 7 and 8, pages 10-13 and 9-15, respectively). Vegetation in disturbed areas along the planned trail is dominated by coyote bush (*Baccharis pilularis*), Himalaya berry (*Rubus discolor*), and Scotch broom (*Cytisus scoparius*). The upland forest areas are dominated by bluegum eucalyptus (*Eucalyptus globulus*) with small amounts of Monterey pine (*Pinus radiata*), while dominant plant species in the foredune /dunemat include European beachgrass (*Ammophila aranaria*), sandmat (*Chamaesyce* sp.), salt rush (*Juncus lesueurii*), and sweet vernal grass (*Anthoxanthum odoratum*). The riparian forest is dominated by willows (*Salix* sp., California wax myrtle (*Myrica californica*), and cascara (*Rhamnus purshiana*). The salt marsh is dominated by dense-flowered cordgrass, (*Spartina densiflora*), with pickleweed (*Salicornia virginica*) and saltgrass (*Distichlis spicata*), as well as occurrences of the rare Point Reyes bird’s-beak (*Cordylanthus maritimus* spp. *palustris*), Humboldt Bay owl’s clover (*Castilleja ambigua* ssp. *humboldtensis*), and Lyngbye’s sedge (*Carex lyngbyei*). Dominant species in the freshwater marsh include northern willow herb (*Epilobium ciliatum*), velvet grass (*Holcus lanatus*), Pacific silverweed (*Argentina pacifica*), and creeping buttercup (*Ranunculus repens*). The project area and vicinity provides habitat for a variety of wildlife, including red-shouldered hawks (*Buteo lineatus*), American kestrels (*Falco sparverius*), osprey (*Pandion haliaetus*), marsh wrens (*Cistothorus palustris*), cedar waxwings (*Bombycilla cedrorum*), western meadowlark (*Sturnella neglecta*), grey foxes (*Urocyon cinereoargenteus*), and Pacific tree frogs (*Pseudacris regilla*).

The City’s Land Use Plan portion of its certified Local Coastal Program (LCP) specifically enumerates the vista point/trailhead at the northern terminus of the project as one of the public works projects to be undertaken as part of the City’s *Eureka Waterfront Revitalization Program*. Moreover, the LCP’s coastal access inventory identifies the project portions between Truesdale Street and Hilfiker Lane as lying along the route of a “...continuous waterfront trail [that] shall be dedicated and developed in conjunction with future development in order to connect the vertical accessways at the two street ends.” Further to the south, the portions of the project through the Elk River Wildlife

Area are identified as “[p]ublic accessways [that] shall be implemented by the City in consultation with the Department of Fish and Game.” In addition, the Truesdale Street Access/Vista Point, Elk River Paddling Access, Elk River Wildlife Area Trailhead, and Elk River Wildlife Area Trail elements are diagrammatically shown as features along a portion of “Humboldt Co. Section 20” of the California Coastal Trail (see Exhibit No. 5) Finally, the Redwood Community Action Agency’s identifies the project alignment as part of the “Central – Palco Marsh/Elk River C6.02” segment among its “Tier 1” strategy priorities for seeking grant funding towards implementation of the portions of the CCT through Humboldt County (see http://www.naturalresourcecesservices.org/assets/files/Plans/CCT/Humboldt_CCT_Priority_Project%20Report_abridged_withoutBridge.pdf).

The City of Eureka is proposing the *Elk River Access Area / Hiksari’ Trail Project* to provide another linkage in the regionally planned, continuous, multi-use coastal trail and bicycle path along the eastern shoreline of mid Humboldt Bay. The City also intends to upgrade current public access to natural areas along the City’s southwestern bayfront by widening and surfacing the existing informal main pathways through the project area to accommodate bicycles and pedestrian traffic, including the installation of informational signage and raised observation platforms at key areas to guide individuals along the trail. Thus, the trail would function as a nature trail and the development would include interpretive panels and trailhead kiosks with additional interpretive materials about the adjoining habitat, directly facilitating the public’s ability to experience the adjoining habitat.

Phase One

The northern first phase of the project, alternately referred to as “*Northern Elk River Parkway*,” would entail construction of a Class I multipurpose trail from the Truesdale Street Vista Point/ Trailhead, commencing at the foot of Truesdale Street and routed along the bay shoreline and Hilfiker Lane to the existing Elk River Wildlife Area trailhead parking lot just north of the City’s wastewater treatment Plant (see Exhibit No. 6).

Access support facilities to be developed as part of the first phase include a trailhead 23-space public access parking lot and a small public restroom, together with a series of benches and picnic tables, a two-level water fountain, solid waste and recyclables receptacles, pet waste collection station, paved sidewalks, perimeter fencing, decorative landscaping and additional directional cautionary, and commemorative signage. The Truesdale Street parking lot would be surfaced with a combination of asphaltic-concrete (seventeen spaces) and permeable paver stones (six spaces). The vista point/trailhead would utilize Low Impact Development (“LID”) techniques to address stormwater treatment and detention for the upgraded portion of Truesdale Street and parking lot, where 6 of the 23 spaces would utilize permeable pavement as a demonstration of a green infrastructure application. Stormwater would be directed into landscape plantings which would detain and filter runoff. To mitigate for the effects of the increased stormwater runoff from impervious surface improvements, and traffic impacts from increased

multimodal conflicts associated with the construction and use of the facilities, the City proposes to construct a roughly 3,000-square-foot, bio-filtration stormwater detention drainage facility, and make roadside improvements along Truesdale Street, respectively.

Further along the route as the trail emerges at the northern end of Hilfiker Lane, a “primitive” (no boat launching ramp) paddle boat access facility would be constructed entailing an eight-space, crushed rock-surfaced off-street parking area together with a geo-fabric stabilized, native materials-surfaced trail leading to the bay water’s edge.

The project first phase would terminate at the existing parking lot at the northern entrance to the Elk River Wildlife Area, where another couplet of restroom facilities would be installed. In addition to refurbishing the existing 21-space parking lot, other proposed new amenities include an entry kiosk, two additional trailhead interpretive signs, two benches, three picnic tables, trash receptacles, a dog waste cleanup station and appropriately placed, low-intensity lighting. Existing chain-link fencing and some or all of the large boulders would be removed and replaced with more aesthetic vehicular access control barriers.

Phase Two

The southern second project phase (AKA: “*South Elk River Parkway*”) entails extending the trail further to the south through the Elk River Wildlife Area. To minimize impacts to wetlands and encroachment into environmentally sensitive habitat areas, the trail through this segment would be developed to the minimum eight-foot-width surfaced trail with the two-foot unpaved shoulders standard established for Class I bikeways, with vegetation obstruction clearance limited to a 12-foot overall developed trail width. Upon reaching the southern end of the wildlife area, the route would turn east, ramp up to the elevated railroad via a pre-fabricated steel truss bridge span over South Slough, cross the railroad tracks and continue along the westerly extension and northern side of Pound Road as Class III roadside pedestrian/bicycle paths to terminate back onto Highway 101 at the Elk River Park and Ride Lot No. 103 (see Exhibit No. 6 pages 4-8).

Trailside and support amenities through the southern second project phase segment would be limited primarily to cautionary signage at the rail corridor crossing, up to nine interpretative panels and a Pound Road Access Point entry kiosk at the Caltrans Elk River Park and Ride Lot. In addition, a new gate would be erected across Pound Road just past the entry to the Pro-Pacific Fresh produce trucking terminal property. Access users would share the roadway with a limited number of vehicular users, namely City wastewater treatment plant personnel and one private landowner who would be provided with keys to the gate.

B. Protection of Marine Resources, Wetlands, and Coastal Water Quality.

1. Applicable Coastal Act Policies and Standards

Section 30108 defines the term “feasible” as follows:

‘Feasible’ means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.

Section 30108.2 of the Coastal Act defines “fill” as:

“the placement of earth or any other substance or material in a submerged area.”

Section 30230 of the Coastal Act states, in applicable part:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 of the Coastal Act addresses the protection of coastal water quality and marine resources in conjunction with development and other land use activities. Section 30231 states:

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

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

The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less

environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

- (1) *New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.*
- (2) *Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*
- (3) *In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.*
- (4) *Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*
- (5) *Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*
- (6) *Restoration purposes.*
- (7) *Nature study, aquaculture, or similar resource dependent activities. [Emphases added.]*

2. Consistency Analysis

The project involves the construction of public coastal access facilities along the immediate shoreline areas of Humboldt Bay and Elk River. Based upon a routine wetland delineation and biological constraints analysis conducted by SHN Consulting Engineers, wetland and biological resources were taken into account in the design of the proposed *Elk River Access Area / Hiksari' Trail* development project (see Exhibit Nos. 7 and 8). Notwithstanding efforts to construct the project improvements exclusively in upland areas, several segments of the existing informal trails pass through wetlands for which their surface improvement to facilitate nature study access would unavoidably entail filling of approximately 9,053 square feet of wetlands along the trails' combined 1.6-mile length.

The above policies set forth a number of different limitations on what development projects may be allowed in coastal wetlands. For analysis purposes, the limitations can be grouped into four general categories or tests. These tests are:

- The purpose of the filling, diking, or dredging is for one of the uses enumerated in Section 30233(a);
- The project has no feasible less environmentally damaging alternative;
- Feasible mitigation measures have been provided to minimize adverse environmental effects; and
- The biological productivity and functional capacity of the habitat shall be maintained and enhanced where feasible.

1. Permissible Use for Fill

The first test for a proposed project involving fill is whether the fill is for one of the seven allowable uses under Section 30233(a). One of the allowable uses for dredging, diking, and filling in wetlands which matches the project objectives is “nature study,” enumerated as Section 30233(a)(7).

The project includes a proposal to fill and/or remove/clear associated hydrophytic vegetative cover over a total of approximately 9,053 square-feet of wetland area composed of palustrine forested wetland, palustrine emergent wetland, palustrine scrub-shrub, estuarine intertidal irregularly exposed wetland (salt marsh), and estuarine intertidal regularly exposed wetlands, associated with development of the nature trail along the margins of Humboldt Bay. The proposed wetlands fill/vegetation removal is needed for the construction of the trail through wetland areas that could not be otherwise avoided to provide an eight-foot cross-sectional width to meet minimum Class I bikeway standards as required by the funding agencies for multi-modal nature trails.

The Commission has considered the development of new recreational trail segments through wetlands and other environmentally sensitive resource areas, where design efforts have been made to minimize such intrusions to the smallest feasible area or least impacting routes, and where the trail segment functions as a nature trail, to be a form of “nature study... or similar resource dependent activities” (see findings for County of Santa Barbara LCP Amendment No. STB-MAJ-3-02 (Toro Canyon Planning Area) County of Humboldt LCP Amendment No. HUM-MAJ-1-03 (Riparian Corridor Trails), and Coastal Development Permit 3-11-074, City of Santa Cruz, Applicant (Arana Gulch Master Plan)).

Trails are utilized for a variety of utilitarian and aesthetic reasons. Although the use of trails does not in every case entail nature study, the proposed facilities certainly support such a pursuit. The trail plans and project narrative include provisions for installation of numerous interpretive panels along the path/bikeway’s route, the installation of an interpretative display kiosk at the creek/harbor vista overlook point, and benches and

seating within the parking lot facility and along the trail for resting and contemplation of the natural setting. Thus, the trail would function as a nature trail and the development would include interpretive panels and trailhead kiosks with additional interpretive materials about the adjoining habitat, directly facilitating the public's ability to experience the adjoining habitat. Besides the utilitarian role of being a route for non-motorized transit between points, separate and apart from vehicular accessways, the proposed recreational trails would serve the function of providing physical access to scenic, usually undeveloped natural areas, for aerobic exercise and/or more meditative pastimes. These accessways provide opportunities for visitors to such areas to interact with the natural environment through sensorial observation and contemplation of the physical and biological features encountered along the trail.

“Nature study” is formally defined as, “the study of animals and plants in the natural world, usually at an elementary level.”¹ In her treatise on the importance of fostering a conservation ethic in children through environmental education starting at an early age, the renowned natural science educator Anne Botsford Comstock characterizes “nature study” as follows:

It consists of simple, truthful observations that may like beads on a string, finally be threaded upon the understanding and thus held together as a logical and harmonious whole... In nature study, the work begins with any plant or creature which chances to interest the pupil. It begins with the robin that comes back to us in March promising spring; or it begins with the maple leaf which flutters to the ground in all the beauty of its autumnal tints. A course in biological science leads to the comprehension of all kinds of life on our globe. Nature study is for the comprehension of the individual life of the bird, insect, or plant that is nearest at hand.²
[Emphases added.]

By providing venues for incidental exploration of the physical and biological world, trails in natural settings are generally recognized as one of the best ways to ensure continued public support for protecting environmentally significant natural areas and to encourage an appropriate level of visitation. This perspective is at the core of the many public outreach and grant-funding efforts undertaken by natural resource conservation-oriented public agencies and other non-government organizations, from the Coastal Conservancy to many of the numerous land trusts involved in public access acquisition and development. Regardless of their age, people in general are more likely to develop a stewardship ethic toward the natural environment if they are educated about the importance to the overall ecosystem, especially if they provided the opportunity to experience the physical, mental and spiritual benefits of these areas first-hand. Providing

¹ *Webster's Revised Unabridged Dictionary*, C. & G. Merriam Company, 1913.

² Anne Botsford Comstock, *Handbook of Nature Study*, Comstock Publishing Associates, Inc., 1939

for the development of trails into riparian corridors and other shoreline areas can be an ideal setting for such activities, as they offer a safe, convenient and unique perspective of the rich and diverse biological resources associated with watercourses, estuaries, and the open coastline.

Thus, trails through riparian corridors and shoreline areas such as the project site may similarly be considered a form of “*nature study... or similar resource-dependent activities*,” as they are: (1) a development type integral to the appreciation and comprehension of biophysical elements that comprise riparian areas; and (2) dependent upon the presence of the natural area resource through which they pass to provide a nature study experience.

Therefore, the Commission finds that the proposed placement of fill within coastal waters and wetlands for purposes of constructing the Harbor Trail North Segment is for one of the allowable uses for dredging, diking, and filling of coastal waters pursuant to Section 30233(a)(7) of the Coastal Act.

2. Least Environmentally Damaging Feasible Alternative

The second test of Section 30233(a) is whether there are feasible less environmentally damaging alternatives to the proposed project. In this case, the Commission has considered project options, and determines that there are no feasible less environmentally damaging alternatives to the project as conditioned. Alternatives that have been identified include: (1) reducing the width of the trail to further minimize wetland filling (2) shifting the trail’s alignment to fully avoid wetland fill; and (3) the “no project” alternative.

a. Further Reduction in Trail Cross-sectional Widths

Although developing a pathway narrower than eight feet in width would be possible, such a further reduced-width trail would not meet the City’s objectives of affording fully accessible, safe, two-way nature trail facilities for simultaneous use by pedestrians, bicyclists, wheelchair users, strollers, and leashed dogs. In fact, some might argue that a wider path width is necessary to avoid potential user conflicts along the paved path segments, and that eight feet is too narrow in this respect.³

³ The Commission notes that the original project proposal called for a ten-foot paved trail cross-sectional width with one shoulder having a four-foot width to provide a separate path segment for runners. Following discussions with Commission staff, the City amended its project description to subsequently revise the path cross-section down to the established minimum width standard of eight-feet with two-foot shoulders for Class I pedestrian trail as set forth by the California Department of Transportation.

This alternative would require that the path/bikeway be further narrowed from the minimum eight-foot width allowable for Class I path/bikeway facilities.⁴ This alternative would also cause increased hazards to bicyclists contrary to Class I bike standards⁵ by placing cyclists in correspondingly closer proximity to roadside obstructions. In this case, the Commission finds that the proposed eight-foot-wide paved path width thus strikes a reasonable balance between allowing adequate path utility while avoiding excessive additional wetland filling that could lead to more pronounced and significant levels of disruption and fragmentation of the habitat values of the area. Thus, when all economic, environmental and social factors are considered, further narrowing of the trail is not a feasible less environmentally damaging alternative.

b. Trail Configurations/Alignments that Fully Avoid Wetlands

Another alternative would reconfigure the project by shifting the trail alignment laterally through portions of the Crowley Natural Area and within the Elk River Wildlife Area segments to fully avoid the proposed filling of wetlands. This alternative would have lesser impact insofar as the placement of wetlands fill to construction the trails would be eliminated. However, such an amended trail routing would require extensive vegetation removal, grading and other landform alterations through other environmentally sensitive upland areas, including unique patches of dominant native American dunegrass (*Leymus mollis* spp. *mollis*), other supratidal dunemat community occurrences, or through terrestrial-to-estuarine ecotonal transitional areas where freshwater, willow-dominated wetlands grade into Point Reyes bird's-beak dominated saltmarsh. Such a routing could disrupt the hydrologic and habitat connections between the two areas. Therefore, when all environmental, technological and social factors are considered, realignment of the trail to avoid all filling or wetlands is not a feasible less environmentally damaging alternative.

b. No Project Alternative

The no project alternative means that no fully accessible, Class I pedestrian/bicycle trail would be developed between Truesdale Street and Pound Road along Humboldt Bay. The objective of the proposed project—to provide a (mostly)⁶ grade-separate Class I pedestrian, bicycling, and nature trail facilities

⁴ See Chapter 1000, Section 1003.1(1) “Widths,” *Highway Design Manual*, California Department of Transportation, Division of Design for Project Delivery, September 1, 2006, excerpted in Exhibit No. 8.

⁵ See Chapter 1000, Section 1003.1(2) “Clearance to Obstructions,” *Highway Design Manual*, California Department of Transportation, Division of Design for Project Delivery, September 1, 2006, excerpted in Exhibit No. 8.

⁶ Due to failure to secure an easement through the southern Crowley property, a portion of the *Hiksari'* Trail will be routed adjacent to the travelway of Hilfiker Lane. The City has

through the urban periphery of Eureka would not be met. Moreover, without the proposed trail cross-sectional development through the relatively small area of wetlands, no feasible access to and through the Elk River Wildlife Area could be developed for wheelchair-borne coastal visitors. As a result, access through the area and the ability to conduct and pursue nature study would continue to be limited to fully ambulatory pedestrians and cyclists along the present pattern of ill-defined and redundant trails and path fragments, requiring the fording of the South Slough crossing during wet-weather periods and portaging over the tripping hazard-prone railroad bed, a potentially hazardous undertaking, before continuing on toward the trailhead access points further to the east. Such difficult maneuvering would likely serve as a disincentive for many to use this segment of the trail and continue to expose pedestrians and cyclists to significant trail use safety issues. Accordingly, taking into consideration the economic, environmental, and social factors, the no project option is not a feasible less environmentally damaging alternative.

The City did not evaluate off-site alternatives for providing a nature trail further inland because any such off-site alternative would not meet the intent of developing resource-dependent nature study amenities in close proximity to the Humboldt Bay shoreline, as depicted in the *Eureka-Elk River Trail Plan*, developed cooperatively by the City, the California Department of Fish and Game, and the Humboldt Bay Harbor, Recreation, and Conservation District (see http://naturalresourceservices.org/assets/files/Documents/ElkRiverAccessFinal8_02.pdf).

Thus, based on the alternatives analysis above, the Commission concludes that the proposed project is the least environmentally damaging feasible alternative.

3. Feasible Mitigation Measures

The third test set forth by Section 30233 is whether feasible mitigation measures have been provided to minimize significant adverse environmental impacts.

Depending on the manner in which the proposed access facilities are constructed and maintained, the proposed project could have potential adverse effects on the aquatic, emergent, and upland terrestrial environments of Elk River, Humboldt Bay, and the project site environs by: (a) direct filling and vegetative cover removal/clearance of 9,053 square-feet of emergent estuarine and palustrine wetlands from construction of the Class I pedestrian/bikeway nature trail; and (b) polluting estuarine aquatic fish and wildlife habitat with sediment, debris, or hazardous materials originating from the project.

indicated that, upon future acquisition of the property or securing of an access easement, a permit amendment will be secured to reroute this portion of the trail through the Crowley parcel as a Class I path.

a. Filling of Wetlands / Development Adjacent to ESHA

The project involves construction activities in and adjacent to the emergent estuarine and palustrine wetlands along lower Elk River and the inner reach of Humboldt Bay. As discussed above, the filling of project area wetlands has been minimized by revisions to the project's original design. Nonetheless, a combination of approximately 9,053 square feet of unavoidable fill and clearing of adjoining riparian wetland vegetation would need to be undertaken within the palustrine emergent persistent wetland to create the base and trail surface for the Class I pedestrian/bicycle nature trail and the bridged span over South Slough. To offset these potential impacts, the applicant proposes the following mitigation measures:

- All wetlands either directly filled, or that would have their vegetative cover removed or cleared will be replaced onsite / out-of-kind at a 5.3:1 ratio by the restoration of a 48,356-square-foot area of filled/reclaimed bay shoreline immediately north of the ERWA Hilfiker Lane Access Point to reestablish saltmarsh wetlands in the area.
- The project will include the removal of resource degrading exotic-invasive vegetation and replanting with native species endemic to the project area.
- As part of the interpretive signage program, botanically sensitive areas will be marked to discourage damage and educate visitors.
- The city's leash law will assist in limiting disturbance by dogs along the trail.
- Appropriate exclusionary signage will be employed in particularly sensitive areas, especially around the compensatory wetlands mitigation site.

Notwithstanding these proposed mitigation measures, the Commission has further conditioned the permit to ensure that all potentially significant adverse impacts to environmentally sensitive habitat areas are minimized: Special Condition No. 2 requires the applicant to submit, for the review and approval of the Executive Director, a final wetlands mitigation and monitoring plan that provides for the establishment of 48,356 square-feet of estuarine emergent salt marsh wetlands at a 5.3:1 replacement to compensate for the direct spatial and indirect temporal loss of wetlands to be filled or cleared for the trail's construction. Given the relatively small area affected, its location on the upland edge of the subject wetland ESHA, the relatively fast-growing nature of willows, and the lack of multi-stratum complexity of the resource area involved, the Commission finds the required mitigation at a 5.3:1 replacement ratio will be sufficient to mitigate for the filling.

Furthermore Special Condition No. 1 requires the applicant to develop the project in strict conformance to the application, as may be modified by any special conditions, including the above-described wetland mitigation measures regarding constructive noticing of the environmental sensitivity of the project area through erection of appropriate signage, and the placement of barriers around the trail, vista point, and support facility perimeters. As conditioned, the project will minimize adverse environmental effects on emergent

estuarine and palustrine emergent persistent wetlands along Elk River and Humboldt Bay.

b. Impacts to Estuarine Water Quality and Aquatic Habitat

Construction activities in and adjacent to the river and bay could result in degradation of water quality through the discharge of soil materials either directly into these water bodies or by entrainment into runoff passing over ground disturbed areas. To prevent sediment and other discharge from upland sources into Elk River and Humboldt Bay, the applicant proposes the following mitigation measures:

- Protective measures will be put into place during construction to prevent or minimize wetland contamination due to in-fill material, pedestrian and vehicle traffic, disturbance of wetland vegetation and/or runoff of pollutants.
- Silt fences or barriers will be used to retain disturbed soils and prevent soils from entering Elk River/Humboldt Bay. The fences or barriers will remain in place until ground cover vegetation is completely reestablished.
- Trail construction will be done during the dry season (April-October) to allow for better erosion control. Equipment staging area will be on confined to existing disturbed areas and street rights-of-ways, on paved or hardened surfaces.
- Equipment refueling will be done only in upland areas, a minimum of 100 feet from the river/bay edge. Equipment will be properly maintained and reasonably clean of grease and oil prior to entering construction area.
- Hazardous materials spill abatement equipment will be kept on site at all times.
- A vegetated stormwater retention pond will be incorporated into the Truesdale Street vista point/trailhead parking lot to provide bio-filtration treatment of polluted runoff from the parking lot. The approximate size of the pond will be 150 feet x 30 feet with the final size determined after the site is completely surveyed.

The Commission has further conditioned the permit to ensure that all potentially significant adverse impacts to coastal water quality are minimized: Special Condition No. 3 requires the applicant, prior to permit issuance, to submit, for the Executive Director's review and approval, an erosion and runoff control plan that includes certain specified water quality best management practices for minimizing impacts to coastal waters associated with the filling and construction activities to be conducted in proximity to Elk River and the Humboldt Bay. As the water quality measures proposed by the applicant were quite vague and lacked specificity as to the locations and types of measures to be employed, development of a formal erosion and runoff control plan is necessary to address those deficiencies.

c) Mitigation Conclusion

Therefore as proposed and further conditioned as described above, the Commission finds that feasible mitigation is included within the project design to minimize all significant adverse impacts associated with the proposed filling of coastal waters.

4. Maintenance and Enhancement of Marine Habitat Values

The fourth general limitation set by Section 30230, 30231, and 30233(c) is that any proposed filling in tidal waters or submerged land must maintain and enhance the biological productivity and functional capacity of the habitat, where feasible.

As discussed above, the project will not have significant adverse impacts on the estuarine marine resources of lower Elk River and Humboldt Bay. The mitigation measures incorporated into the project and required by the Special Conditions discussed above will ensure that the construction of the nature trail and access support facilities and other related improvements will maintain and enhance, where feasible, the biological productivity and functional capacity of the tidal waters or marine resources. Furthermore, by establishing a 3,000 square-foot detention basin in a filled and reclaimed portion of the highway right-of-way, the project will serve to increase the amount of emergent vegetated areas fringing the bay, and create salt marsh wetlands habitat for the Point Reyes bird's-beak (*Cordylanthus maritimus* spp. *palustris*), as well as for other species-of-special concern, notably Humboldt Bay owl's clover (*Castilleja ambigua* ssp. *humboldtensis*), and Lyngbye's sedge (*Carex lyngbyei*). Therefore, the Commission finds that the project, as proposed, will maintain and enhance the biological productivity and functional capacity of the habitat consistent with the requirements of Section 30233 and 30231 of the Coastal Act.

5. Conclusion

The wetland fill associated with the project is for one of the allowable uses for filling enumerated in Coastal Act Section 30233(a). Furthermore, the applicant has documented that there are no other feasible, less environmentally damaging alternatives available to further reduce or avoid the subject filling of wetlands. Moreover, as proposed and augmented by the attachment of additional special conditions to the permit's approval, all feasible mitigation measures have been provided to minimize the environmental impacts of the proposed fill and maintain and enhance, where feasible, the biological productivity and quality of coastal waters. Therefore, the Commission finds the project to be consistent with Sections 30230, 30231, and 30233(a) of the Coastal Act.

C. Protection of Environmentally Sensitive Riparian Habitat Areas.

1. Applicable Coastal Act Policies and Standards

Section 30240 of the Coastal Act states:

- (a) *Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.*
- (b) *Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

Coastal Act Section 30107.7 defines “environmentally sensitive area as meaning:

...any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

2. Consistency Analysis

Section 30240(a) requires that ESHA shall be protected against any significant disruption of habitat values, and that only uses dependent on the resources within the ESHA be allowed within the area. Apart from the direct filling of wetlands addressed in Findings Section IV.B *Protection of Marine Resources, Wetlands, and Coastal Water Quality* above, the development entails the lateral removal and clearing of hydrophytic willow, alder, and other vegetation for purposes of improving existing trails for nature study uses in the Elk River Wildlife Area and surrounding City-owned open space lands. The vegetation to be removed and cut consists primarily of willow, red alder, cascara, and California wax-myrtle overstory canopy vegetation that has encroached within the last 20 to 30 years over the former cleared roadways and rail sidings once in active use in the current Elk River Wildlife Area. According to the applicant’s project narrative (see Exhibit No. 6), the purpose of the vegetation removal and clearing is to develop a nature trail facility developed to minimum width standards to be fully accessible to multi-modal pedestrian and bicycle use. As similarly discussed in preceding Findings Section IV.B *Protection of Marine Resources, Wetlands, and Coastal Water Quality* above, the primary purpose for this trail amenity is “nature study,” which requires entry into and through the ESHA so that the intended experiential examination of the resources may be realized. Thus, the trail would function as a nature trail and the development would include interpretive panels and trailhead kiosks with additional interpretative materials about the adjoining habitat, directly facilitating the public’s ability to experience the adjoining habitat. Accordingly, the project represents a use dependent on the resources of the ESHAs consistent with the limitations imposed by Coastal Act Section 30240(a).

The removal and clearance of wetland ESHA trailside vegetation will not result in significant disruption of wetland habitat values for the following reasons:

- The proposed action does not include the cutting of any mature trees (over 10-inch DBH) existing within the DFG wildlife refuge that may provide significant perching and/or nesting habitat to raptors and special-status passerine bird species, such as the Willow Flycatcher (*Empidonax traillii*), Black-capped Chickadee (*Poecile atricapillus*), Yellow Warbler (*Dendroica petechia*), or Yellow-breasted Chat (*Icteria virens*);
- The smaller-class tree and shrub layer vegetation that would be removed does not consist of other rare or endangered plants, nor provides significant habitat for rare or endangered wildlife;
- The roughly 2,800 square-foot area of vegetation that would be removed is very abundant in the area, representing a small fraction of the 8.3 acres of Palustrine Scrub-Shrub and forested wetlands habitats within the project area portion of the greater Elk River estuary / Humboldt Bay Inner Reach environs; and
- The removed/cleared riparian wetland vegetation will be mitigated at a 5.3:1 compensatory replacement mitigation ratio of restored, potentially highly productive salt marsh wetlands to be developed adjacent to thriving Point Reyes bird's-beak habitat.

Section 30240(b) of the Coastal Act requires that development adjacent to ESHA be sited and designed to prevent impacts which would significantly degrade those areas and shall be compatible with the continuance of those habitats. Though heavily degraded by homeless encampments and compromised by the presence of invasive exotic plant species, much of the immediate area surrounding *the Elk Rive Access Area/Hiksari' Trail Project* area contain sensitive habitats composed of wetlands and related rare plant habitat, dune mat, unvegetated dunes, back dune deflation plain, and maritime forest ecotones. Consequently, the vegetation removal and planting associated with the project has the potential of negatively affecting these adjacent areas unless appropriate protective measures are included to avoid and minimize such potential adverse impacts.

Biological resource assessments and wetland delineations performed by SHN Consulting Engineers in 2007 found that the proposed development would be situated adjacent to several distinct coastal wetlands and rare plant environmentally sensitive habitat areas (see Exhibit Nos. 7 and 8). In addition, the reports noted the presence of one special status plant in the project area: Point Reyes bird's-beak (*Cordylanthus maritimus* spp. *palustris*), a species that appears on the California Native Plants Society's List 1B⁷,

⁷ Pursuant to the Native Plant Protection Act (NPPA) and the California Endangered Species Act (CESA), plants appearing on the California Native Plant Society's "List 1B" and "List 2" meet the definition as species eligible for state listing as a rare, threatened, or endangered plant. List 1B plants are defined as "rare plant species vulnerable under present circumstances or to have a high potential for becoming so because of its limited

respectively. The Point Reyes bird's-beak area on the project site, essentially occurring in four locations in the "Southern Crowley Property" area west of Hilfiker Lane, and in scattered occurrences within the Elk River Wildlife Area shoreline. The Point Reyes bird's-beak area on the project site, as with many of the other native salt marsh species, has been in decline for decades from displacement by invasive dense-flowered cordgrass (*Spartina densiflora*), and could eventually be extirpated at this location in the very near future absent focused and proactive measures to improve such habitat. These species do not occur within the immediate area where the trail and support facilities construction would be performed and care would be taken in the staging of equipment and materials to avoid impacts to this rare plant habitat.

Also noted in the report were three California and/or Federal listed species of birds: Western Snowy Plover (*Charadrius alexandrinus nivosus*), Brown Pelican (*Pelecanus occidentalis*) and the bald eagle (*Haliaeetus leucocephalus*), and nine other avian, amphibian, rodent, and fish species on the California Species of Special Concern list occurring in the vicinity of the project site. In addition, the Federal endangered tidewater goby (*Eucyclogobius newberryi*), Federal/State threatened coho salmon (*Oncorhynchus kisutch*), and Federal threatened/State endangered northern California steelhead (*Oncorhynchus mykiss irideus*) occur in the estuarine bay/river waters vicinity of the project area.

The biological assessment reports conclude that damage to sensitive species will be avoided or mitigated by directing pedestrian trails away from sensitive habitat areas to the greatest extent feasible and by providing fencing to prevent access. Native riparian vegetation should also be preserved and encouraged to expand in the project area to benefit native wildlife. In addition, exotic invasive plants will be removed and native plants will be revegetated in upland areas adjacent to degraded upland forest, foredune/dunemat, and estuarine, palustrine emergent, and scrub-scrub wetlands, which will help abate the further spread of exotic-invasive species into the adjoining environmentally sensitive habitat areas. Other measures to protect adjacent ESHA are proposed, including the following:

- Undesired ornamental cultivars and/or hybrids of evening primrose will be removed as possible during construction and after a sufficient growing cycle has occurred to allow for plant identification.
- Botanically sensitive areas will be marked to discourage damage and educate visitors.

or vulnerable habitat, its low numbers of individuals per population (even though they may be wide ranging), or its limited number of populations." List 2 plants are defined as "plants rare, threatened, or endangered in California, but more common elsewhere." The NPPA mandates that plants so listed be considered in the preparation of all environmental analyses conducted pursuant to the California Environmental Quality Act (CEQA).

- Wetland setbacks will be maintained per agency requirements in all other areas not entailing unavoidable trail construction encroachment. Any reduction in wetland setbacks will be reviewed and approved by the appropriate agency before any changes are implemented.
- Protective measures will be put into place during construction to prevent or minimize wetland contamination due to in-fill material, pedestrian and vehicle traffic, disturbance of wetland vegetation and/or runoff of pollutants.
- The city's leash law will assist in limiting disturbance by dogs along the trail.
- Ground-disturbance will be minimized by limiting the vegetation removal to above-surface cutting;
- The disposal of lopped/mulched cuttings will be limited to non-wetland sites; and
- Cleared trailside areas will be treated to remove any exotic-invasive plant species that might have become established in disturbed soil areas.

Introduction of Exotic Invasive Plants

The use of non-invasive plant species adjacent to environmentally sensitive habitat areas (ESHAs) is critical to protecting such areas from disturbance. If invasive species are planted adjacent to an ESHA they can displace native species and alter the composition, function, and biological productivity of the ESHA.

The project generally identifies the planting of native tree species to mitigate for the loss of any trees removed during project construction and that, “where possible, invasive exotic species of vegetation will be removed.” However, the proposed project does not further specify the source or composition of the replacement native trees nor precludes the planting of other plant species beyond those identified in the permit application.

To assure that the biological integrity of the project area is maintained, the Commission attaches Special Condition No. 5. Special Condition No. 5 requires that for all project restoration and mitigation sites only native species appropriate to the site be used. Plantings derived from local genetic stocks are to be used when available. For decorative landscaping within the parking lot access support facility, use of exotic invasive species are prohibited. Special Condition No. 5 also specifically prohibits the planting of any plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be identified from time to time by the State of California, shall be employed or allowed to naturalize or persist on the site. Furthermore, no plant species listed as a ‘noxious weed’ by the governments of the State of California or the United States are to be utilized in project revegetation and landscaping areas.

Use of Anticoagulant-based Rodenticides

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 pose 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.

To avoid this potential cumulative impact to environmentally sensitive wildlife species, Special Condition No. 5 contains a prohibition on the use of such anticoagulant-based rodenticides.

In conclusion, the Commission finds that the environmentally sensitive habitat areas adjacent to the development would be protected against any significant disruption of habitat values, and only uses dependent on ESHA resources would be developed within ESHA. In addition, as conditioned, the proposed access facilities improvements and their associated construction staging areas, and offsite road and drainage improvements have been sited and designed to prevent impacts that would significantly degrade adjacent environmentally sensitive areas, and would be compatible with the continuance of those habitat and recreation areas. Therefore, the Commission finds that the proposed development, as proposed and conditioned, is consistent with Section 30240 of the Coastal Act.

D. Public Access and Coastal Recreational Opportunities.

1. Applicable Coastal Act Policies and Standards

Coastal Act Sections 30210, 30211, and 30212 require the provision of maximum public access opportunities, with limited exceptions.

Coastal Act Section 30210 requires in applicable part that maximum public access and recreational opportunities be provided when consistent with public safety, private property rights, and natural resource protection. Section 30211 requires in applicable part that development not interfere with the public's right of access to the sea where acquired through use (i.e., potential prescriptive rights or rights of implied dedication). Section 30212 requires in applicable part that public access from the nearest public roadway to the shoreline and along the coast be provided in new development projects, except in certain instances, such as when adequate access exists nearby or when the provision of public access would be inconsistent with public safety.

In applying Sections 30210, 30211 and 30212, the Commission is limited by the need to show that any denial of a permit application based on these sections, or any decision to grant a permit subject to special conditions requiring public access, is necessary to avoid or offset a project's adverse impact on existing or potential public access.

In addition Coastal Sections 30220 through 30224 direct that suitable oceanfront private and public lands be reserved, protected, and prioritized for recreational oriented development in the interest of fostering recreational opportunities and other coastal-dependent uses. Of particular applicability to the *Elk River Access Area / Hiksari' Trail Project* are sections 30221 and 30223, as follows:

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

These overlapping Coastal Act policies require that public recreational opportunities be maximized, while ensuring that natural resources are protected.

2. Consistency Analysis

Primary objectives of the development are to enhance public coastal access, recreational, and nature study opportunities in the Eureka Area. The project's construction is specifically recommended as a priority implementation measure for completion of the California Coastal Trail, as set forth in the Coastal Conservancy's "SB 908 Report."⁸ In addition to serving as a coastal recreational access facility, the development will also serve to further regional non-vehicular transportation plan goals providing separate trail and path facilities parallel to Highway 101 for pedestrian and bike traffic traveling in the urbanized Eureka area. With regard to coastal recreational opportunities, the project will increase public recreational opportunities in and through an approximately 200-acre area by expanding multi-modal accessibility to include wheelchair users. Interpretive displays and overlook areas would be located along the trail routes at locations that minimize impacts to sensitive habitats. Limited bench seating will be provided at important interpretive junctions and scenic overlooks. Additional signage would be installed as needed to discourage off-trail use.

The proposed trail system and associated improvements are for the specific purpose of expanding and enhancing nature study and public recreational interpretive access, including in terms of low-cost access opportunities, in the environs of the Humboldt Bay inner reach and the Elk River Wildlife Area Trail. Coastal Act policies demand that maximum public recreational access opportunities and low-cost recreation facilities be protected, encouraged, and provided. The proposed project, including the proposed improved trail system that will provide access for a variety of users (i.e., pedestrians,

⁸ *Completing the California Coastal Trail*, Coastal Conservancy, January 2003

bicyclists, persons in wheelchairs or using strollers, etc.) will further Coastal Act goals in the City of Eureka and Humboldt County. The eight-foot wide multi-use paths are adequately sized to handle the expected flow of users, while the four-foot-wide unpaved pedestrian-only paths comprising the ERWA “Riverside Trail” will provide a slower-paced, lower key alternate experience.

Thus, the development would establish new public beach access facilities, foster nature study, and expanded use of existing recreational amenities. Therefore, the Commission finds that the proposed project as conditioned, which includes substantial new public access facilities, is consistent with the public access and coastal recreation policies of the Coastal Act.

E. Visual Resources.

1. Applicable Coastal Act Policies and Standards

Coastal Act Section 30251 states:

The scenic and visual qualities of 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 such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

Coastal Act Section 30240(b), previously cited, also protects the aesthetics of coastal recreation areas such as *Elk River Wildlife Area*. Section 30240(b) states:

Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

2. Consistency Analysis

The project site is located in and adjacent to the *Elk River Wildlife Area* open space area in the City of Eureka. The natural setting of the area provides a visual respite from the surrounding more urbanized areas of the City (see Exhibit Nos. 3 and 4 for aerial photographs of the *Elk River Wildlife Area* and the surrounding urban environment). As discussed above, the site contains a variety of habitats, such as upland forest, coastal prairie, dune grassland, and saltmarsh and estuarine wetlands, and riparian woodland

habitats. The riparian corridors are associated with “North Slough” and “South Slough”, flanking the wildlife refuge. In general, with the exception of the portions within the viewshed of Hilfiker Lane, the *Elk River Wildlife Area / Hiksari’ Trail* has relatively low visibility from nearby roads and other surrounding public viewpoints because of the heavy vegetation on the east side of the project area.

Views of Humboldt Bay and the mouth of Elk River are afforded from the entire length of the project site, including from the central meadow area within the wildlife area. Glimpses of the inter-mixed residential and commercial-industrial uses to the east of the area between Truesdale Street and Hilfiker Lane are visible from the northern portion of the site and parts of the central meadow area of the site. There are generally limited views from other parts of the site because of topography and heavy vegetation. The long-range views from the site include scenic views of the Humboldt Hill and Table Bluff landforms when looking south from many points on the site, especially the ERWA meadow area.

In general, because of its undeveloped nature and abundant habitat areas, the project area is a significant visual resource. Its importance in this regard is only magnified by the fact that it is located in the midst of an urbanized area.

The proposed project includes closing selected existing unauthorized pathways and restoring these areas. These improvements, plus the proposed habitat restorations and enhancements, will improve the visual experience for pedestrians, bicyclists, and wheelchair users alike. Likewise, the habitat enhancement portion of the proposed project should enhance visual resources as well as habitat resources.

The project includes approximately 1.2 miles of eight-foot-wide paved multi-use paths and just over 1,000 feet of unpaved “riverside” path in the meadow (see Exhibit No. 6 for oblique aerial photograph of the proposed paths). Except for the short bridge over South Slough discussed below, the proposed trail access improvements are at-grade facilities, so their visual impact will be minimal. In addition, the paved paths surfacing materials will be colored a neutral tone to better blend with the hues of the surrounding coastal prairie environment. Furthermore, neither long-range views of the coastal foothills nor scenic views of the Humboldt Bay will be impacted by the proposed pathway development.

The *Elk River Access Area/Hiksari’ Trail Project* does include numerous above-grade elements that would be visible from both the publicly accessible roadsides and within the project area itself. These improvements include the two new restroom facilities, one each at the Truesdale Street and Hilfiker Lane Access Points, and the various railhead kiosks, benches, picnic tables, purposefully visible interpretive and other signage to direct access and educate the public, dog waste clean-up amenities, and viewing platforms to be developed throughout the project site. However, as preliminarily depicted on the project plans (see Exhibit No. 6), the height, bulk, location, and design of these structures are not over-sized from those typically in use at other coastal access facilities in the area and will not adversely affect the visual character or views to and along the coast or from

scenic areas. For example, the largest of these improvements, the restrooms, will be clustered next to other structural development, such as the McCullens Avenue Pump Station near the Truesdale Street vista point/trailhead, or located in the portion of the existing Hilfiker Lane Access Point parking lot that is as far back from the bay and wildlife refuge as possible to allow for connection to the sewer line passing through the site.

With respect to signage, despite their beneficial interpretative and educational purposes, if not limited in amount, size, and location, such signage could create visual clutter and block views. To ensure that the signs minimize visual intrusion and are compatible with the open space setting, the Commission attaches Special Condition No. 8. Special Condition No. 8 requires the applicant to submit plans that describe the overall dimensions of the signage and the type of materials to be used. Special Condition No. 8 requires that project signage be sited and designed to protect visual resources, and developed consistent with the preliminary plans submitted with the permit application. The Commission finds that as depicted and described in the preliminary plans as being similar to that found in areas adjoining the project site and typical to public access facility signage statewide, the proposed project sign elements will not result in blocked views, create clutter, or be intrusive or distracting to the trail facility users.

The proposed project includes a new bridge over South Slough. The bridge and its railings at this location represent one of the most prominent visual features of the proposed project. This eight-foot-wide section of trail would be paved for bicycle, pedestrian, and wheelchair access. The railings for the bridge would be made of steel pipe with a galvanized finish to match the neutral tones of the paved bridge pathway. The proposed bridge will be located behind the railroad levee berm and will only minimally obstruct views in its immediate vicinity for which enhanced views from the bridged section would be provided. One tree will be required to be removed to construct the bridge, and a limited number of tree branches will need to be pruned back to allow for construction. Although the bridge will be visible from certain points in the *Elk River Wildlife Area / Hiksari' Trail* open space, the relatively low profile of the bridge, intervening vegetation, and its neutral finishes should not significantly degrade the site's visual character.

In addition, Special Condition No. 5 includes within the landscaping plan submittal and review requirements, provisions that any landscaping and screening be demonstrated as consistent with the City's zoning code. This provision is included to ensure: (1) visual continuity of the landscaping within the project bounds with landscaping on other properties adjoining the project site, either as currently exists or might be required at some later time; and (2) that the landscaping is installed and maintained consistent with established practices suited to the North Coast's marine-influenced climate so that the landscaping has the greatest likelihood of being successfully established and sustained to serve its intended ornamental, screening, and visual resource protection functions.

In conclusion, the proposed project primarily involves low-lying, at-grade development that will not obstruct views to and along Elk River and Humboldt Bay, entail significant landform alteration, or be visually incompatible with the character of the surroundings. The proposed paved paths will be neutral in color. The proposed restoration components of the project, including habitat restoration and removal of unauthorized trails, will improve the existing visual resources of *Elk River Wildlife Area / Hiksari' Trail* area. Other elements of the project, including the South Slough bridge have been designed to be low profile and neutral in color and tone as possible to minimize visual impacts. In addition, the clustered, relatively small restroom structures and short viewing platforms will not adversely affect visual resources. Moreover, permit approval is also conditioned upon submission of final plans for the public access amenities (including signage, benches, etc.) to ensure that these amenities do not impact sensitive resources, including visual resources. The Commission therefore finds the proposal, as conditioned, will be sited and designed to protect coastal views, minimize the alteration of natural land forms, and be visually compatible with the character of the surrounding area, consistent with Section 30251 of the Coastal Act.

F. State Waters.

The project site entails areas which were submerged, intertidal and/or overflow lands at the time of California's statehood in 1850. Notwithstanding that most of the site is currently not subject to tidal inundation, the site remains subject to public trust oversight by the State Lands Commission. To assure that no aspect of the project would be inconsistent with the public trust limitations as may continue to be applied to the site, the Commission attaches Special Condition No. 9. Special Condition No. 9 requires the applicant, prior to issuance of the permit to submit for the review and approval of the Executive Director, evidence that the State Lands Commission has reviewed the approved development proposal and determined what if any permits or other grants of authority may be required before the project work may commence.

G. Other Agency Approvals.

The project requires discretionary design review approval by the City of Eureka. As the project entails a grade crossing of an established railroad corridor, pursuant to its delegated federal and state statutory authority, approval and licensing by the California Public Utilities Commission of the trail's grade crossing of the North Coast Railroad Authority's rail corridor is also required. As the Pound Road Access Point portion of the project entails work within the right-of-way of Highway 101, an encroachment permit must be secured from the California Department of Transportation (CDOT). Additionally, portions of the proposed project also require review and authorization by the U.S. Army Corps of Engineers. Pursuant to the Federal Coastal Zone Management Act, any permit issued by a federal agency for activities that affect the coastal zone must be consistent with the coastal zone management program for that state. Under agreements between the Coastal Commission and the U.S. Army Corps of Engineers, the

Corps will not issue a permit until the Coastal Commission approves a federal consistency certification for the project or approves a permit. To ensure that the project ultimately approved by the City, CPUC, CDOT, and the Corps is the same as the project authorized herein, the Commission attaches Special Condition Nos. 10, 11, 12 and 13, which require the City to submit to the Executive Director evidence of these agencies' approval of the project prior to the issuance of the permit or prior to the commencement of construction. The conditions require that any project changes resulting from these other agency approvals not be incorporated into the project until the applicant obtains any necessary amendments to this coastal development permit.

H. Archaeological and Paleontological Resources.

1. Applicable Coastal Act Policies and Standards

Coastal Act Section 30244 states:

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

2. Consistency Analysis

The proposed project area is located within the ethnographic territory of the Wiyot Indians, who lived in villages along the protected shores of Humboldt Bay, the mouth of the Elk River, and at other sheltered sites inland of the open coast. The relatively large and sedentary populations of these villages engaged in an economy of salmon fishing, marine-mammal hunting, shellfish gathering, and seasonal excursions inland for acorns.

As part of the environmental analysis conducted for the *Elk River Access Area/Hiksari' Trail Project*, an extensive cultural resources investigation was conducted in July 2010 by Roscoe & Associates for the project. This cultural resource investigation involved a thorough records search, including records of the Native American Heritage Commission, the Tribal Historical Preservation Officers (THPO) of the Wiyot Tribe, the Bear River Band of Rohnerville Rancheria, and the Blue Lake Rancheria, review of previous archaeological investigations, a nearly complete field survey of the entire project area, and interviews with knowledgeable sources. The field survey and records referrals resulted in the identification of two archaeological resource areas within the project area and at least two additional resource areas within close proximity to the development site. Furthermore, based on the field and records examinations, and the consultation between the principal investigator and the THPO, concerns were identified with respect to potential adverse impacts to archaeological mitigation measures to avoid or reduce impacts associated with construction of the trail and public access support improvements identified in the project plans. In particular, requests for immediate cessation of work in the event of discovery of archaeological resources during construction, and consultation

with the three reviewing THPOs was requested. The City subsequently incorporated these requests into the mitigation program for the project, as discussed in the Mitigated Negative Declaration adopted for the project (see Findings Section IV.I, below).

To ensure protection of any archaeological or cultural resources that may be discovered at the site during construction of the proposed project, the Commission attaches Special Condition No. 15. This condition requires that if an area of cultural deposits is discovered during the course of the project, all construction must cease, and a qualified cultural resource specialist must analyze the significance of the find and in consultation with the Tribal Historical Preservation Officers of the Wiyot Tribe, the Bear River Band of Rohnerville Rancheria, and the Blue Lake Rancheria recommend any needed changes to the proposed development or mitigation measures to protect archaeological resources at either the site of pre-project testing or during construction. To recommence development following discovery of cultural deposits, the applicant is required to submit a supplementary archaeological plan for the review and approval of the Executive Director to determine whether the changes are *de minimis* in nature and scope, or whether an amendment to this permit is required.

Therefore, the Commission finds that the proposed project, as conditioned, is consistent with Coastal Act Section 30244, as the development will include mitigation measures to ensure that the development will not adversely impact archaeological resources.

I. California Environmental Quality Act.

On January, 11, 2011, the City of Eureka, acting as the lead CEQA agency, certified Mitigated Negative Declaration (“MND”), Statewide Clearinghouse No. 2010112050, for the project that includes nine mitigation measures that would avoid or reduce to insignificance, all adverse environmental impacts of the project. The nine MND mitigation measures were subsequently incorporated into the design of the project.

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

The Commission incorporates its findings on Coastal Act consistency at this point as if set forth in full. Those 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 above, the proposed project has been conditioned to be consistent with the policies of the Coastal Act. As specifically

discussed in these above findings, which are hereby incorporated by reference, mitigation measures that will minimize or avoid all significant adverse environmental impacts have been required. As conditioned, there are no other feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impacts, which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, can be found consistent with the requirements of the Coastal Act and to conform to CEQA.

EXHIBITS:

1. Regional Location Map
2. Vicinity Map
3. Site Aerial Photograph - Plan View
4. Site Aerial Photograph – Oblique View
5. *Coastwalk* California Coastal Trail – “Humboldt Co. Section 20” Map
6. Project Site Plans
7. Excerpts, Phase I Biological Constraints Analysis and Wetland Delineation
8. Excerpts, Phase II Biological Constraints Analysis and Wetland Delineation
9. Excerpts, CDOT *Highway Design Manual – Bikeway Planning and Design*
10. Salt Marsh Mitigation, Monitoring, and Reporting Plan
11. Buffer Reduction Request
12. Agency Correspondence

APPENDIX A

STANDARD CONDITIONS

1. Notice of Receipt and 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 amount 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 and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.