

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE
 1385 8TH STREET • SUITE 130
 ARCATA, CA 95521
 VOICE (707) 826-8950

**W14a**

Filed: 08/28/17
 49th Day: 11/06/17
 Staff: M. Kraemer-A
 Staff Report: 09/22/17
 Hearing Date: 10/11/17

**STAFF REPORT AND RECOMMENDATION ON APPEAL
 SUBSTANTIAL ISSUE DETERMINATION**

Local Government: County of Humboldt

Local Decision: Approval with Conditions

Appeal No.: A-1-HUM-17-0043

Applicant: Ronald Dias

Location: 3127 Mitchell Heights Drive, Eureka area, Humboldt County (APNs 402-301-011, 017-152-016, -021, -022, and -023).

Project Description: Major vegetation removal across approximately 11 acres involving the commercial harvesting of redwood trees and the removal of associated forest vegetation on undeveloped lots within a previously-approved residential subdivision.

Appellant: Kimberly Tays

Staff Recommendation: No Substantial Issue

IMPORTANT HEARING PROCEDURE NOTE

This is a substantial issue only hearing. Testimony will be taken only on the question of whether the appeal raises a substantial issue. Generally, and at the discretion of the Chair, testimony is limited to 3 minutes total per side. Please plan your testimony accordingly. Only the applicant, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify. Others may submit comments in writing. If the Commission determines that the appeal does raise a substantial issue, the *de novo* phase of the hearing will occur at a future Commission meeting during which it will take public testimony.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission, after public hearing, determine that no substantial issue exists with respect to the grounds on which the appeal has been filed.

The County's approval is a modification (amendment) to CDP-03-012 approved by the County in 2006 that authorized the division of 33.3 acres of rural residential land into 13 lots ranging in size from 1.25 to 4.51 acres. Under the subject approval, the County authorized major vegetation removal of approximately 11 acres of forest vegetation involving the commercial harvesting of redwood trees and the removal of some forest understory vegetation to reduce fire hazards around existing structures on adjacent properties and to thin forested areas for the future development of new residential structures on undeveloped lots in the previously-approved subdivision. Because the authorized harvesting qualifies for exemptions from Timber Harvest Plan requirements under the California Forest Practices Act, the major vegetation removal approved by the County constitutes development under Coastal Act section 30106 and the certified LCP that requires a CDP.

The Commission received an appeal of the County's approval from Kimberly Tays. The appeal raises contentions related to visual resources, biological resources, and water quality. Regarding visual resources, the appeal contends that the County's approval does not ensure that the "visible treeline" will "suffer the minimum feasible disturbance" as required by LUP sec. 3.40-B-2. The purpose of conducting the tree removal project is in part to reduce the possible spread of fire through the property, which the State classifies as being within the "wildland urban interface" and identifies as an area of "moderate fire hazard severity. This fire rating means that the property could function as a fire vector where fire could spread throughout the property's existing vegetative fuels, thereby putting several residential structures on adjacent properties at risk. Staff believes that the appeal contention that the approved project is not consistent with the visual resource protection policies of the LPC raises no substantial issue because (1) the post-harvest stand tree density and tree size as well as representative post-harvest photographs depicting post-harvest forest conditions confirm that post-harvest forest on the site would look similar to existing and surrounding forests, compatible with the character of the surrounding area; (2) due to existing site topography and intervening vegetation, only limited portions of the tree removal area are visible as part of the representative treeline visible from public vantage points; and (3) the approved project requires, through enforceable CDP conditions, adherence to the plot plan and to state Forest Practice Rules (FPR), both of which require that timber harvest operations leave a post-harvest stand of remaining trees that are healthy, dominant, and well distributed throughout the project area. Staff therefore believes that there is a high degree of legal and factual support for the County's decision that the development as approved is consistent with the visual resources protection policies of the certified LCP.

Regarding biological issues, the appeal contends that the County's approval does not adequately protect environmentally sensitive habitat areas (ESHA), because (a) the allowance for the removal of trees during the bird nesting season, even with the requirement that the site be surveyed by a qualified ornithologist prior to operations, potentially could impact nesting habitat for sensitive species associated with the nearby Freshwater Slough ESHA, and (b) the approved project does not include adequate protections for a tree-lined gulch adjacent to the property by

not adequately identifying a protection zone around the gulch where no timber operations would occur. Staff believes there is a high degree of factual and legal support for the County's decision that the project as approved protects ESHA. The approved project includes conditions prohibiting harvesting and equipment near watercourses, restricts work in sensitive habitat areas and associated buffer areas, requires measures to protect nesting birds, and requires retention of snags as well as live trees with visible evidence of use as nesting sites. In addition, the approved project requires (1) minimum buffers of 50-75 feet around the gulch; (2) appropriate soil stabilization measures; and (3) flagging of the gulch and its associated buffer on the ground by a registered professional forester prior to the pre-harvest site inspection by CalFire staff.

Finally, the appeal contends that the project approved by the County does not adequately protect the water quality of Freshwater Slough, which supports sensitive fish and other sensitive species. Again, staff believes there is a high degree of factual and legal support for the County's decision that the project as approved protects water quality. The approved project: (1) does not authorize activities that would impede the natural drainage pattern or have a significant effect on water quality or wildlife habitat (CDP conditions 1); (2) prohibits tree removal and equipment within 50 to 75 feet of the drainage area (CDP conditions 1 and 4); (3) requires maintenance of natural vegetation within and immediately adjacent to the gulch (CDP condition 1); and (4) includes conditions requiring that the timber harvesting shall be consistent with the plot plan, with FPR, which includes erosion control requirements, with the MND, and with BMPs required by section 3432(8) of the Framework Plan (e.g., required replanting as needed to aid in erosion control; and appropriate runoff control measures).

Therefore, staff recommends that the Commission find that the appeal raises no substantial issue regarding conformance of the approved project with the certified LCP and the Chapter 3 policies of the Coastal Act. **The motion to adopt the staff recommendation of No Substantial Issue is found on [Page 5](#).**

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APPENDICES

[Appendix A – Commission’s Appeal Jurisdiction Over Project](#)

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EXHIBITS

[Exhibit 1 – Regional location map](#)

[Exhibit 2 – Vicinity topographic maps](#)

[Exhibit 3 – Aerial photo with topo lines](#)

[Exhibit 4 –Maps of zoning, approved subdivision, and approved plot plans](#)

[Exhibit 5 –Approved tree removal plans](#)

[Exhibit 6 – Approved CDP conditions and associated project requirements](#)

[Exhibit 7 – Visual assessment of the approved tree removal project](#)

[Exhibit 8 – Notice of Final Local Action and Findings for Approval of County CDP](#)

[Exhibit 9 – Appeal by Kimberly Tays filed August 28, 2017](#)

[Exhibit 10 – Letter from Applicant’s Forester addressing appeal contentions](#)

I. MOTION AND RESOLUTION

Motion:

I move that the Commission determine and resolve that Appeal No. A-1-HUM-17-0043 does not present a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion by voting “Yes” as is recommended by staff will result in a finding of **No Substantial Issue** and adoption of the following resolution and findings. The local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

Resolution:

The Commission hereby finds that Appeal No. A-1-HUM-17-0043 raises No Substantial Issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency of the approved development with the certified LCP and/or the public access policies of the Coastal Act.

II. FINDINGS AND DECLARATIONS

A. APPEAL JURISDICTION AND PROCEDURES

Pursuant to Coastal Act Section 30603(a), Humboldt County’s approval is appealable to the Coastal Commission because the development approved by the County is not designated as the “principal permitted use” under the certified LCP, because the tree and associated vegetation removal are considered to be a commercial timber harvest under the County’s regulations and require a conditional use permit. The Commission’s appeal jurisdiction is further discussed in [Appendix A](#), which is hereby incorporated by reference. The grounds for an appeal are limited to an allegation that the approved development does not conform to the standards set forth in the certified Local Coastal Program (LCP).

Coastal Act Section 30625(b) requires the Commission to hear an appeal unless it determines that no substantial issue¹ exists with respect to the grounds on which the appeal has been filed. Even when the Commission chooses not to hear an appeal, an appellant nevertheless may obtain

¹ The term “substantial issue” is not defined in the Coastal Act or its implementing regulations. In previous decisions on appeals, the Commission has generally been guided by the following factors in making substantial issue determinations: (a) the degree of factual and legal support for the local government’s decision; (b) the extent and scope of the development as approved or denied by the local government; (c) the significance of the coastal resources affected by the decision; (d) the precedential value of the local government’s decision for future interpretations of its LCP; and, (e) whether the appeal raises only local issues, or those of regional or statewide significance.

judicial review of the local government's coastal permit decision by filing a petition for a writ of mandate pursuant to Code of Civil Procedure, Section 1094.5. Commission staff has analyzed the administrative record for the approved project, including, but not limited to, the County's Final Local Action Notice for the development ([Exhibit 8](#)), the appellant's claims ([Exhibit 9](#)), and the relevant requirements of the certified LCP ([Appendix C](#)). Staff is recommending that the Commission find that the appeal raises no substantial issue with respect to the grounds on which the appeal was filed.

In this case, because the staff is recommending that the appeal raises no substantial issue, the Commission will hear arguments and vote on the substantial issue question. Generally, and at the discretion of the Chair, qualified persons will have three minutes per side to address whether the appeals raise a substantial issue. The only persons qualified to testify before the Commission on the substantial issue question are the applicant, the appellant, and persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing. It takes a majority of Commissioners present to find that no substantial issue is raised.

If the Commission determines that the appeal does not raise a substantial issue, the local government approval will stand. If the Commission determines that the appeal does raise a substantial issue, the Commission would continue the *de novo* portion of the appeal hearing to a subsequent meeting.

B. LOCAL GOVERNMENT ACTION

On August 3, 2017, the Humboldt County Zoning Administrator approved Coastal Development Permit No. CDP-03-012XM with special conditions. The subject approval is a modification (amendment) to CDP-03-012 approved by the County in 2006 that authorized the division of 33.3 acres of rural residential land into 13 lots ranging in size from 1.25 to 4.51 acres (discussed further in Finding II-D below).

The County granted its approval of CDP-03-012XM subject to nine special conditions, including, but not limited to, conditions requiring, in part, the following (see [Exhibit 6](#) for all required conditions):

- (1) Adherence to:
 - a) Forest Practice Rules: Regulations for Fire Clearance and Less-Than-3-Acre exemptions (14 CCR § 1038(c) and 1104.1), which include, but are not limited to, restrictions (i) prohibiting the harvesting of large, old trees; (ii) limiting silvicultural methods (e.g., clearcutting is prohibited); (iii) prohibiting harvesting and equipment near watercourses; and (iv) restricting work in sensitive habitat areas and associated buffer areas. For harvesting in areas between 150 feet and 300 feet from existing structures, the regulations also require that “the post-harvest stand be primarily comprised of healthy and vigorous dominant and codominant trees well distributed throughout the treated area...”;

- b) Small Woodland Performance Standards: Include, but are not limited to, restrictions on time and number of days of harvesting, truck traffic, air quality, noise, no cutting of old-growth, and limiting operations on slopes greater than 15%;
 - c) Mitigation measures from the Mitigated Negative Declaration: Including measures related to protection of (i) nesting birds consistent with Condition #7, (ii) archaeological resources consistent with Condition #6, and (iii) human remains inadvertently discovered during operations; and
 - d) Erosion control measures: Including measures identified in § 3432(8) of the County's Framework Plan and other measures, including, but not limited to, (i) retaining snags; (ii) retaining live trees with visible evidence of use as nesting sites by hawks, owls, eagles, osprey, herons, or egrets; (iii) minimizing land clearing and vegetation removal; (iv) prior to the onset of the rainy season, reseeding and planting disturbed areas with grass and native or naturalized vegetation and mulching with natural or chemical stabilizers to aid in erosion control and ensure revegetation; and (v) controlling runoff using appropriate BMPs;
- (2) Submittal of a post-harvest report to the County Planning Division within 30 days of completion of the authorized harvest operations certifying that the project was implemented in compliance with all measures required by Condition #1, and, if needed, requiring that remedial measures as recommended by the Registered Professional Forester be performed to rectify any compliance deficiencies;
 - (3) Clean-up of wood waste in a manner that does not create a nuisance or public health and safety hazard, including a prohibition on the burying or disposal of waste and slash on-site and a requirement to obtain a Burn Permit from the local fire district and an Air Quality Smoke Management Permit from the air quality management district prior to any on-site burning activities;
 - (4) Prohibition on any deviations from either the plot plan or from carrying out the project in accordance with Condition #1 above without prior written authorization from the Planning Division and without a permit amendment for any major changes;
 - (5) Prior to initiation of any operations, submittal of written certification from the applicant, licensed timber operator or registered professional forester that they have received and agree to the terms and conditions under which this timber harvest may be conducted;
 - (6) Measures to protect archaeological and historical resources that may inadvertently be discovered during operations; and
 - (7) Measures to protect nesting birds by either avoiding work during the nesting season (March 15-August 15) or, for work during the nesting season, having a qualified ornithologist survey the area no more than seven days prior to operations and flag for avoidance of any active nests found, including appropriate buffers established in consultation with the California Department of Fish and Wildlife.

C. FILING OF APPEAL

The Coastal Commission's North Coast District Office received the County's Notice of Final Local Action on August 23, 2017 ([Exhibit 8](#)). On August 28th, the Commission received an appeal of the County's approval from Kimberly Tays. The appeal was filed in a timely manner, within 10 working days of receipt by the Commission of the County's Notice of Final Action ([Exhibit 9](#)). The appeal raises contentions related to visual resources, biological resources, and water quality. In summary, the appeal contends the following:

- Contention #1: The project approved by the County does not adequately protect visual resources, inconsistent with section 3.40 of the LUP (including, but not limited to, section 30251 of the Coastal Act), because the tree removal project (a) does not ensure that the "treeline" will "suffer the minimum feasible disturbance" as required by LUP sec. 3.40-B-2, and (b) will not be compatible with the character of the surrounding area, thereby degrading the scenic and visual qualities of the site as viewed from public vantage points (Highway 101, Myrtle Ave., and other vantage points). There are alternatives to the approved project that would better protect visual resources that should have been analyzed by the County.
- Contention #2: The project approved by the County does not adequately protect adjacent ESHA, inconsistent with section 3.30 of the LUP (including section 30240 of the Coastal Act), because (a) the allowance for the removal of trees during the bird nesting season, even with the requirement that the site be surveyed by a qualified ornithologist prior to operations, potentially could impact nesting habitat for sensitive species associated with the nearby Freshwater Slough ESHA, and impacts to this forest habitat could therefore impact environmentally sensitive slough habitat, and (b) the approved project does not include adequate protections for the gulch by not adequately identifying a protection zone around the gulch where no timber operations would occur.
- Contention #3: The project approved by the County does not adequately protect water quality, inconsistent with section 3.30 of the LUP (including section 30231 of the Coastal Act), because removal of the trees will increase runoff and erosion will impact Freshwater Slough, which supports sensitive fish and other sensitive species, and specific best management practices (BMPs) to mitigate runoff impacts have not been identified.
- Contention #4. The project approved by the County is inconsistent with the requirements of CEQA, including (1) the requirements of Public Resources Code section 21080.5(d)(2)(A) that prohibit a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would lessen any significant effect the activity may have on the environment, as the County's approval did not assess such alternatives, and (2) the requirements of 14 CCR § 15126.4(a)(4)(B) that mitigations measures be roughly proportional to the impacts of the project in that the County's approval contains no mitigation measures that are proportional to the extensive impacts of the project.

D. BACKGROUND

The project area is located on Lot 5, Lot 10, and the Remainder Parcel (also referred to as “Phase 3”) of the Dias Subdivision (Book 25 of Maps, pages 20-23) ([Exhibits 1-4](#)). In 2006, the County approved CDP-03-012 for the Dias Subdivision that authorized the division of 33.3 acres into 13 lots ranging in size from 1.25 to 4.51 acres. The subdivision was proposed to be developed as Phase 1 (Lots 1 through 3), Phase 2 (Lots 4 through 10) and Phase 3 (Lots 11 through 13). To date, the County has approved single family homes, accessory structures, on-site sewage disposal systems, and in some cases tree removal on all but three of the resultant lots under two previous CDPs, neither of which were appealed to the Commission. All subdivision parcels are served by community water (Humboldt Community Services District). The approved subdivision project also authorized road improvements through and around the area to address emergency access and traffic impacts.

Because an approximately 0.6-acre portion of the Dias Subdivision property is located within an area of the Commission’s retained CDP jurisdiction, the applicant also obtained a CDP for the subdivision from the Commission. In September of 2010, the Commission approved CDP 1-10-014² for the division of the portions of the property within the Commission’s jurisdiction. The Commission granted its approval subject to two special conditions: (1) imposition of open space area restrictions over the portions of the property within the Commission’s retained CDP jurisdiction; and (2) a requirement that the applicant execute and record a deed restriction over the subject property imposing the Special Conditions of the Commission’s permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The restrictions prohibiting development within the open space area were required to protect wetland and riparian vegetation in that area and to protect an existing gulch feature on an adjacent property that provides drainage for the property and which supplies water for agricultural purposes to farmlands located north of the subject property.

In 2015 the County approved CDP 14-076 authorizing the construction of eight single-family residences, accessory structures, and on-site septic systems, including primary and reserve leach fields, on eight lots within the Dias subdivision, including on Lots 5 and 10, which are within the project area that is the subject of this appeal ([Exhibit 4](#)). Some of the trees that will be removed within the project area have already been permitted for removal under the two CDPs issued by the County cited above. Trees already permitted for removal under previous permits that were not appealed to the Commission, but which are planned to be removed concurrently with the tree removal project that is the subject of this appeal, include approximately eight large redwood trees on Lot 5, four large redwoods on Lot 10, and an estimated several dozen trees within the footprint of the previously approved subdivision roads and other subdivision infrastructure.

E. PROJECT DESCRIPTION

The approved project involves major vegetation removal of approximately 11 acres³ of forest vegetation involving the commercial harvesting of redwood trees and the removal of some forest

² See <https://documents.coastal.ca.gov/reports/2010/9/Th8a-9-2010.pdf>.

³ The total size of the subject lots where major vegetation removal will occur is closer to 18 acres in size, but approximately 5 acres within these lots currently do not support forest vegetation (i.e., open, grassy areas and the portion of the permitted subdivision road that already has been constructed).

understory vegetation to reduce vegetative fuels around existing structures on adjacent properties and to thin forested areas for the future development of new residential structures on undeveloped lots in the previously-approved subdivision described above (see [Exhibit 5](#), project plans).

The approved project authorizes the harvesting of timber consistent with the California Forest Practice Rules (FPR) exemptions for (a) “the cutting or removal of trees...which eliminates the vertical continuity of vegetative fuels and the horizontal continuity of tree crowns for the purpose of reducing flammable materials and maintaining a fuel break to reduce fire spread, duration and intensity” [14 CCR §1038(c)]; and (b) “conversion of timberland to a non-timber use of less than three acres in one contiguous ownership” (14 CCR §1104.1). The definition of development in the Coastal Act (section 30106) includes the removal or harvesting of major vegetation other than for certain limited purposes, including for timber operations which are in accordance with a timber harvesting plan (THP) submitted pursuant to provisions of the Forest Practices Act (FPA). The timber operations approved by the County will not require a THP, because the authorized harvesting qualifies for exemptions from THP requirements under the FPA. Thus, the major vegetation removal approved by the County does constitute development under the Coastal Act and the certified LCP and therefore requires a CDP.

The approved vegetation removal and fuels reduction will involve clearing, thinning, removal of ladder fuels, and treatment and removal of logging slash and woody debris. Specifically, the approved project authorizes three different timber harvesting prescriptions in three different zones across the subject site: (1) areas within 150 feet of existing structures (totaling approximately 5 acres); (2) areas between 150 feet and 300 feet from existing structures (totaling approximately 6 acres); and (3) the less-than-3-acre (1.3-acre) “conversion” area (which is located more than 300 feet from existing structures). The pre-harvest and post-harvest descriptions of the three zones provided to the County for its consideration of the CDP application are as follows:

| | Pre-harvest | Post-harvest |
|----------------------------------------------|--------------------|---------------------|
| 0-150 feet from existing structures | | |
| No. of trees/acre | 100 | 20 |
| Avg. diameter of trees | 21 inches | 23 inches |
| Percent crown cover | 85 | 20-25 |
| 150-300 feet from existing structures | | |
| No. of trees/acre | 120 | 30 |
| Avg. diameter of trees | 20 inches | 21 inches |
| Percent crown cover | 85 | 30-35 |
| 1.3-acre “conversion” area | | |
| No. of trees/acre | 90 | 20 |
| Avg. diameter of trees | 20 inches | 21 inches |
| Percent crown cover | 75 | 25-30 |

Because there are approximately 1,500 trees within the project area, the plot plan approved by the County does not identify the location of each tree to be removed. Instead, the approved tree removal plans, which are required by CDP conditions #1, #2 and #4, describe the forest conditions

on the property both pre-harvest and post-harvest in terms of number of trees per acre, average tree diameter, and average crown cover for each identified tree removal zone described above and as identified on the approved plot plan. As is required by FPR, trees to be harvested are identified on the ground (in this case with blue paint markings) indicating either trees to be harvested (marked with a blue line) or trees to remain (marked with an “L” for “leave”). Some of the factors affecting whether a tree is selected for removal or retention within each zone relate to: (a) type of tree or vegetation (e.g., scrubby vegetation such as *Cotoneaster*, which is highly flammable, will be targeted for removal); (b) growth form of tree relative to fire risk (e.g., trees with “ladder fuels” are targeted for removal); (c) proximity to surrounding trees, including those targeted for retention (e.g., FPR requires that canopies be sufficiently spaced to minimize the risk of fire spread from canopy to canopy); (d) size of tree (e.g., FPR require that larger trees on average (quadratic mean diameter) be retained; and (e) value of tree for wildlife (e.g., FPR requires that snags and other “wildlife-friendly” trees, such as those with cavities or large limbs, be retained).

Access to the tree removal areas will be via an existing road that was approved under a previous County-issued CDP for the subdivision and has been partially constructed (i.e., the footprint of the roadway has been graded in part, and some tree and other vegetation removal within the road footprint has occurred, but the road has not yet been widened, sloped, or paved to County standards per approved plans per subdivision road and permit requirements). The project will require only minimal grading of an existing road, and the landing site for stockpiling logs and for treating (e.g., chipping) slash will be located on the existing subdivision roadway. Operations are expected to take 4-6 weeks to complete. Hauling of logs will require 20 to 30 days (assuming 4 loads per day with one truck). Hours of operation will be from 7:00 a.m. to 4:00 p.m. Monday through Saturday.

F. ENVIRONMENTAL SETTING

The project area is located on the south side of Myrtle Avenue, approximately one mile east of Eureka ([Exhibits 1-3](#)). The site is about a mile and a half inland from Humboldt Bay, and approximately three-quarters of a mile from the coastal zone boundary to the south. Freshwater Slough, a tidally influenced slough connected to Humboldt Bay, is located north of Myrtle Avenue across from the subject site. Elevations in the project area range from approximately 50 feet to 150 feet above sea level, and the topography of the site is relatively gentle.

Portions of the project site are visible from low-lying areas around Humboldt Bay, including from portions of three public roadways (Highway 101 corridor north of Eureka, Myrtle Avenue, and the northerly end of Devoy Road). There is a northeastern/southwestern trending ridgeline in the approximate middle of the project area. As such, the southeastern portion of the project area, which is below and beyond the ridgeline, is not visible from public vantage points along the highway, Devoy Road, or Myrtle Avenue due to topography and intervening forest vegetation on separate properties northeast of the subject site.

According to the applicant’s consulting Registered Professional Forester (RPF), the project area is comprised of third-growth redwood forest, and the trees proposed for removal are primarily (99%) redwood trees (there also are scattered Douglas-fir and Sitka spruce trees). The redwood forest consists of typical upland vegetation commonly associated with redwood forests in the

region (e.g., various species of ferns and native and nonnative herbaceous plants). Subdivision roads permitted under the County's 2006 subdivision approval, which have already been partially constructed, extend into the project area and will provide access to the site for logging trucks and equipment.

As previously mentioned, the subject properties include Lot 5 and Lots 10 through 13 of the Dias Subdivision ([Exhibit 4](#)). The site is in a rural residential area on land locally designated "Rural Residential" (RR) and locally zoned "Rural Residential Agriculture" with a 2.5-acre minimum parcel size" (RA-2.5) under the County's certified LCP ([Exhibit 4](#)). Existing rural residential development borders the project parcels on all sides. Myrtle Avenue, a two-lane County road that links the cities of Eureka and Arcata near the inland edge of the Coastal Zone, is north of the subject site. Diked former tidelands associated with Humboldt Bay, which have been used for livestock grazing and hay production for at least a century, are across Myrtle Avenue to the north.

Homes within the Dias Subdivision that have already been permitted, constructed, or are under construction are on Lots 1 through 10 (see [Exhibit 4](#), showing approved subdivision map and approved plot plans for houses on Lots 5 and 10, which are within the project area that is the subject of this appeal). Some of the permitted homes, such as on Lots 4 and 8, are partially visible from public vantage points along Highway 101 north of Eureka. Up to three future homes are planned (though not yet permitted) for construction on Lots 11-13 within areas approved for major vegetation removal under this CDP (homes and tree removal on Lots 5 and 10 within the project area already have been permitted, though homes have not yet been constructed and previously permitted tree removal has not yet been completed).

Existing homes on adjacent properties outside of the Dias Subdivision are located on all sides of the area approved for tree removal under this appeal. Most of the approved tree/vegetation removal will occur within 150 feet of these existing structures on separate properties, and a lesser amount of tree removal will occur from between 150 feet and 300 feet of these existing structures. Additional scattered tree removal within an approximately 1.3-acre area will occur on portions of Lots 10-13 consistent with the California Forest Practice Rules (FPR) requirements for "conversion of timberland to a non-timber use of less than three acres in one contiguous ownership" (14 CCR §1104.1). Some of the trees within this area have already been approved for removal under previous County CDPs discussed above.

A gulch (also described as a basin by the forester) on a separate property to the north of the project area is surrounded on three sides by the subject property and collects rain runoff and provides drainage northward towards Freshwater Slough, which is connected to Humboldt Bay. The approved project includes a minimum buffer of 50 to 75 feet (identified on the ground with flagging) around the gulch area. No equipment or tree falling will occur in the gulch or its associated buffer area, and trees will be felled away from this area to avoid encroachment onto this neighboring property that is outside of the project area.

G. ANALYSIS OF APPELLANT'S CONTENTIONS

The appeal filed by Kimberly Tays is attached as [Exhibit 9](#). The appeal raises contentions related to visual resources, biological resources, and water quality as summarized above. As set forth in

Section 30603 of the Coastal Act, after certification of its LCP, an appeal of a local government-issued CDP for a development that is not located between the first public road and the sea is limited to allegations made on the grounds that the approved development does not conform to the standards set forth in the certified. As discussed below, the Commission finds that all but a portion of one of the contentions raised by the appellant presents valid grounds for appeal, but none raise a substantial issue of conformance of the approved development with the policies of the certified LCP. The different contentions are discussed above. The relevant policies are shown in [Appendix C](#).

1. Contentions Related to Visual Resources

The appeal contends that the project approved by the County does not adequately protect visual resources, inconsistent with section 3.40 of the LUP (including, but not limited to, section 30251 of the Coastal Act), because the tree removal project, as conditioned, (a) fails to ensure that the “treeline” will “suffer the minimum feasible disturbance” as required by LUP sec. 3.40-B-2, and (b) will be not be compatible with the character of the surrounding area, thereby degrading the scenic and visual qualities of the site as viewed from public vantage points (Highway 101, Myrtle Ave., and other vantage points). The appeal contends that there may be alternatives to the approved project that would better protect visual resources that should have been analyzed by the County.

Minimum Feasible Disturbance to “Treeline”

Section 3.40-B-2 of the certified Humboldt Bay Area Plan (LUP) states (emphasis added):

2. Protection of Natural Landforms and Features

Natural contours, including slope, visible contours of hilltops and treelines, bluffs and rock outcroppings, shall suffer the minimum feasible disturbance compatible with development of any permitted use, and the following standards shall at a minimum secure this objective:

- a. Under any permitted alteration of natural landforms during construction, mineral extraction or other approved development, the topography shall be restored to as close to natural contours as possible, and the area planted with attractive vegetation common to the region.*
- b. In permitted development, land form alteration for access roads and public utilities shall be minimized by running hillside roads and utility corridors along natural contours where feasible, and the optional waiving on minimum street width requirements, where proposed development densities or use of one- way circulation patterns make this consistent with public safety, in order that necessary hillside roads may be as narrow as possible.*

Only limited portions of the approved tree removal area are visible as part of the representative “treeline” visible from public vantage points. A portion of the project area is visible from

Highway 101 located at least a mile north of the project site (see [Exhibit 7](#)). Due to the varying topography of the site and the presence of a northeastern/southwestern trending ridgeline in the approximate middle of the property, virtually no tree removal in the southeastern half of the project area will be visible from public vantage along Highway 101 or Devoy Road (see [Exhibits 4-5](#)). Many of the trees in the lower portions of the project area north of the subdivision road, which extend as low as 40 feet in elevation, do not constitute the treeline as viewed from public vantage points ([Exhibit 7](#)).

The County's approval includes conditions (compiled in [Exhibit 6](#)) requiring that the timber harvesting be consistent with the plot plan (CDP condition #4, which shows the different tree removal zones, each of which is regulated pursuant to state Forest Practice Rules), with Forest Practice Rules for 150-foot and 300-foot fire clearance exemptions (CDP condition #1-a), with FPR for less-than-3-acre conversion exemptions (CDP condition #1-a), with the CEQA mitigated negative declaration prepared for the project (CDP condition #1-c, which includes required mitigation measures for the protection of bird nesting habitat and archaeological resources), and with erosion control and best management practices required by section 3432(8) of the Framework Plan (CDP condition #1-d-i). These various requirements and restrictions include, but are not limited to, numerous harvesting limitations such as: (i) minimum post-harvest coverage of trees across the properties; (ii) no harvesting of large, old trees; (iii) limits on silvicultural methods (e.g., clearcutting is prohibited); (iv) no harvesting or equipment near watercourses; (v) no work in sensitive habitat areas (such as the gulch) or associated buffer areas; (vi) requirements that "the post-harvest stand be primarily comprised of healthy and vigorous dominant and codominant trees well distributed throughout the treated area..." (14 CCR § 1038(c)(6)); and (vii) restrictions on time and number of days of harvesting, truck traffic, air quality, noise, and limiting operations on slopes greater than 15% (Small Woodland Performance Standards). These required measures limit the total amount of tree removal allowed, the location of tree removal relative to surrounding structures, and tree removal methods.

Because there are an estimated 1,500 trees within the project area, the plot plan approved by the County does not identify the location of each tree to be removed. Instead, the approved tree removal plans describe three different prescriptions for tree harvesting depending on tree location on the property relative to surrounding structures: (1) trees within 150 feet of existing structures; (2) trees between 150-300 feet from existing structures; and (3) trees more than 300 feet from existing structures (this zone is described in the project description as an extension of the 150-300-foot zone). Tree harvesting in each zone must comply with FPR as required by CDP conditions. As is required by FPR, trees to be harvested are identified on the ground (in this case with blue paint markings) indicating either trees to be harvested (marked with a blue line) or trees to remain (marked with an "L" for "leave") (see [Exhibit 5](#) for site photos). Some of the factors affecting whether a tree is selected for removal or retention within each zone relate to: (a) type of tree or vegetation (e.g., scrubby vegetation such as *Cotoneaster*, which is highly flammable, will be targeted for removal); (b) growth form of tree relative to fire risk (e.g., trees with fuel ladders, such as suppressed and intermediate crowns tucked under other trees, are targeted for removal); (c) proximity to surrounding trees, including those targeted for retention (e.g., FPR requires that canopies be sufficiently spaced to minimize the risk of fire spread from canopy to canopy); (d) size of tree (e.g., FPR require that larger trees on average (quadratic mean

diameter) be retained; and (e) value of tree for wildlife (e.g., FPR requires that snags and other “wildlife-friendly” trees, such as those with cavities or large limbs, be retained).

Although the harvesting operation will thin the tree stands on the subject property, the project as approved will retain large amounts of tree cover on the site. Since the filing of this appeal, Commission staff has visited the project site to view each of the tree removal areas, to observe site topography relative to its visibility from public vantage points, and to obtain clarifying information from the applicant’s forester as to the approximate number of trees required to be retained in each area post-harvest per the requirements of FPR, which are incorporated as conditions of the approved permit by CDP condition #1 and CDP condition #4 (see [Exhibit 10](#) for comments received from the forester since the filing of the appeal). The latter condition requires the applicant to limit logging to the tree removal proposed in the applicant’s site plan. Per the approved plans and the FPR requirements for the subject site, post-harvest tree spacing will equate to the following:

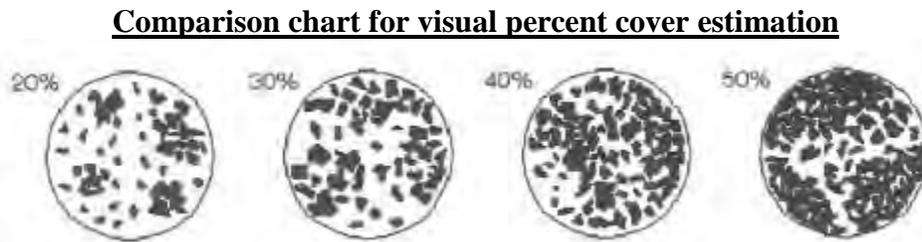
| | <u>Tree Removal Zones</u> | | |
|---------------------------------------------------|---------------------------|--------------------|----------------------|
| | <u>0-150 ft.</u> | <u>150-300 ft.</u> | <u>1.3-acre area</u> |
| Post-harvest conditions in each zone | | | |
| Total acreage in each zone | 5 ac. | 6 ac. | 1.3-ac. |
| Estimated number of trees/zone | 170 | 282 | 60 |
| Avg. diameter of trees/zone | 23 inches | 21 inches | 23 inches |
| Avg. tree spacing within each zone | 1 tree/40 feet | 1 tree/34 feet | 1 tree/35 feet |
| Avg. crown width within each zone | 24 feet | 22 feet | 24 feet |
| Percent crown cover in each zone | 34% | 39% | 51% |
| based on actual trees marked for retention | | | |

Since submittal of the permit application to the County, the forester has marked on the ground the trees to be removed and the trees to be retained. This more precise count of the actual trees to be retained in the northern portion of the project area is governed by FPR requirements and the CDP conditions of approval (the northern project area being the portion of the project area potentially most visible from public vantage points, though not necessarily representative of the “treeline” visible from public vantage points, since much of this area generally is below the ridgetop that bisects the property). The percent crown estimates are approximately 35%-50% post-harvest for the various tree removal zones, versus the original estimates of 20%-35%. This translates to the approved project retaining over 500 “healthy and vigorous dominant and codominant trees well distributed throughout the treated area” (project area), as required by FPR. Most of the trees to be retained are in the 300-foot zone and 1.3-acre conversion area, which are the highest portions of the property along and around the ridge.

Thus, many of the existing trees that help form the visible treeline as viewed from Highway 101 and Devoy Road will be retained, albeit at reduced density. The approved project protects the treeline consistent with the requirements of the certified LCP, because the tree line is defined more by the apparent massing of the canopy of the trees as seen from afar rather than the number of tree trunks, and much of the apparent massing of the canopy will be retained. The branches at the tops of the trees that extend horizontally away from the tree trunks form the major component of the visible treeline rather than the tips of the trunks themselves. To contribute to the visible treeline, trees do not have to be positioned in a perfect line, from branch tip to branch

tip. The canopies of trees positioned somewhat behind and somewhat in front of other trees all contribute to the visual treeline as seen from afar.

According to a comparison illustration provided by the applicant's forester, the following illustration depicts aerial views of the post-harvest canopy coverage and density of trees required to be retained under the approved project (imagine standing in the middle of the post-harvest stand and looking up; the white areas represent the visible sky; the dark areas represent tree canopy).



As discussed previously, the approved tree removal in areas along and around the ridgeline on the property will retain post-harvest canopy coverage estimates of 35% to 50%. The comparison of canopy densities demonstrates that even at lower densities of post-harvest retained canopy coverage, the remaining tree canopy area will extend over large areas. When viewed from afar at ground level rather than in plan view as is shown in the above comparison chart, the canopy coverage will appear to the viewer to fill in most of the treeline formed by the existing tree canopies, thereby helping to ensure the treeline “suffers the minimum feasible disturbance” as required by the LCP.

The treeline will also be protected consistent with the requirements of the certified LCP, because the approved project is situated directly adjacent to significant stands of existing tall redwoods and other trees outside of the project area that largely screen the project site from public vantage points to the north (e.g., from Highway 101 and Devoy Road). This surrounding screening vegetation is not at risk of removal under future tree removal projects so will remain a functional vegetative screen within the public viewshed even after future homes are permitted for construction on Lots 11-13.⁴ In terms of numbers of surrounding trees that serve as screening vegetation, there are (1) over 100 large, mature trees estimated⁵ in the gulch area on the north side of the property in between the project area and public vantage points to the north, (2) an estimated 50 trees in the deed-restricted area on the north side of the property, in between the project area and public vantage points to the north, and (3) an estimated 400 additional large

⁴ Certain existing trees outside of and adjacent to the project area that screen the project site from public roads will not be removed in the future because these trees are located either (a) within the large gulch area that provides drainage for the subdivision properties and contains water supply infrastructure for properties to the north, across Myrtle Avenue and within which, under both state Forest Practice Rules and County LCP regulations, harvesting of trees would be prohibited; or (b) within the open-space deed-restricted area restricted from future development under CDP 1-10-014.

⁵ Estimated by Commission staff during site visit to the property on 9/18/17 and by estimating acreage from the Humboldt County public GIS portal <http://webgis.co.humboldt.ca.us/HCEGIS2.0m/>.

mature trees⁶ in the forested area east of Lots 11-13, which shield the tree removal area and future home sites from public vantage points as viewed from Myrtle Avenue to the northeast. Thus, in addition to the over 500 trees that will be well-distributed throughout the subject site post-harvest, there also will be over 500 additional large, mature trees remaining on lands surrounding the subject site to the north and east post-project. The trees to be retained around the tree removal area, which are estimated by the forester to between 90 and 130 feet tall on average, will rise above the ridgetop, thereby helping to ensure the treeline suffers the minimum feasible disturbance as viewed from Highway 101, Myrtle Avenue, and Devoy Road.

In addition, the treeline would be further protected by the fact that a higher and more distant treeline on another ridge forms a backdrop to the subject project area as viewed from the Highway 101 vantage point. This more distant treeline can be observed in [Exhibit 7](#) (Google Street View of site from Highway 101). To the degree that the approved timber harvesting creates any gaps in the treeline on the southwest/northeast trending ridgeline on the subject property, views through the gaps would only be of trees from the more distant treeline rather than of bright sky. Thus, the more distant and higher treeline will help camouflage any gaps in the treeline on the subject property that might be created by the approved project, helping to ensure the treeline “suffers the minimum feasible disturbance” as viewed from Highway 101.

The applicant’s forester provided the following comments (in part) regarding the visual contentions raised in the appeal (see [Exhibit 10](#)):

...There is only one area from which to see the project hillside and that is for a very short distance after you pass the airport going north [on Highway 101] until you get to the eucalyptus trees lining the Hwy near Harper motors (approx. 1/4 mile). Even then, you have to look really hard to see the wooded knoll containing the project area; and then only a portion can be seen. A review of the project area topographic map shows that there is a trending NE/SW ridge line in the approximate middle of the project area. The southeastern part of the project area would not be visible from 101 or Myrtle Avenue because of the topography and trees along the ridge and the north half of the parcel. As regards the northern half and the ridgeline, there are trees on adjacent parcels along the fence line on the north side facing Hwy 101. Also there are trees that will be retained on the area marked as out on the project map (again north side). Additionally, there are very large and tall trees in the gulch area that traverses part of the project area immediately adjacent to the out area on the project map (north facing). Lastly, there is a large timber stand adjoining the subject parcels on the northeast and east sides which block any view coming from the north. Therefor only a small portion of the north facing area and the very top of the knoll (ridge line) can be seen on the skyline if you know where to look from that ¼ mile stretch along Hwy 101...

As stated above, LUP section 3.40-B-2 related to “Protection of Natural Landforms and Features” requires in part that (emphasis added) “*Natural contours, including...treelines, shall suffer the minimum feasible disturbance compatible with development of any permitted use...*”

⁶ Estimated by reviewing aerial photos of the adjacent property and extrapolating calculated estimates of number of trees per acre from the applicant’s forester for the subject property to the adjacent forested area.

The policy includes standards to “secure this objective” including “*the topography shall be restored to as close to natural contours as possible, and the area planted with attractive vegetation common to the region*” and “*land form alteration for access roads and public utilities shall be minimized...*” The approved project also complies with this LUP policy because the logging road and landing areas to be used to access trees for removal and to stage logging equipment and harvested trees already have been permitted and constructed under the previously approved County CDP for the subdivision. In addition, FPR and enforceable conditions of the CDP prohibit grading and operations on slopes steeper than 15% and require replanting of disturbed areas.

Although a feasible alternative to the proposed project would be to not conduct any tree removal at this time and instead couple tree removal with the future CDP approvals that will be needed to construct new single-family homes on Lots 11-13, this alternative would not result in the treeline “suffering” less disturbance than the approved project as conditioned by the County. The stated purpose of conducting the tree removal project is to reduce the possible spread of fire through the property, which the State classifies as being within the “wildland urban interface” and identifies as an area of “moderate fire hazard severity.”⁷ This fire rating means that the property could function as a fire vector where fire could spread throughout the property’s existing vegetative fuels, thereby putting several residential structures on adjacent properties at risk. To not reduce the horizontal and vertical fuel load of the subject rural residential property at this time would delay the reduction in fire risk in an approved residential subdivision that is partially developed and where CDPs have already been issued for 10 out of 13 homes.

While there are other combinations of trees besides those approved for removal under the subject CDP that also could be removed consistent with FPR and the LCP, the approved project, as conditioned, is consistent with the visual resource protection policies cited above, because (1) the County required the applicant to submit a detailed description of the post-harvest stand in terms of density and tree size as well as representative post-harvest photographs depicting post-harvest forest conditions to confirm that post-harvest forest on the site would look similar to existing and surrounding forests, compatible with the character of the surrounding area; (2) as explained above, due to existing site topography and intervening vegetation, only limited portions of the tree removal area are visible as part of the representative treeline visible from public vantage points; and (3) the approved project requires, through enforceable CDP conditions, adherence to the plot plan and to FPR, both of which require that the post-harvest stand of remaining trees be healthy, dominant, and well distributed throughout the project area. Therefore, there is a high degree of legal and factual support for the County’s decision that the approved development will result in the treeline “suffering the minimum feasible disturbance compatible with development” of the site for residential use consistent with LUP section 3.40-B-2 cited above.

Compatibility with Character of Surrounding Area

Section 30251 of the Coastal Act, codified in section 3.40 of the LUP, states as follows:

⁷ See the County’s public GIS website for the site rating (<http://webgis.co.humboldt.ca.us/HCEGIS2.0m/>) and the CalFire website for FAQ’s related to mapping of fire risk (mapped based on factors such as fuel, slope, and fire weather) (http://www.fire.ca.gov/fire_prevention/fire_prevention_wildland_faqs). California law requires CalFire to identify areas based on the severity of fire hazard that is expected to prevail there.

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.

As shown in [Exhibit 4](#), the project site, which includes portions of five lots of a previously approved 13-lot subdivision that was not appealed to the Commission, is surrounded by lands planned and zoned for rural residential development under the certified LCP. The subject subdivision lands and the surrounding lands include a mix of forested areas interspersed with single family homes. Removal of a limited number of trees within this rural residential area surrounded by partially forested rural residential lots, as limited by CDP conditions described above, will result in post-harvest conditions that are compatible with the character of the surrounding area (i.e., a mix of forested lands interspersed with scattered residential development).

The CEQA document completed for the project (Mitigated Negative Declaration) informed the County's action on the CDP and includes discussion of project effects on Aesthetics, including whether the project would (1) "have a substantial adverse effect on a scenic vista;" (2) "substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway;" (3) "substantially degrade the existing visual character or quality of the site and its surroundings;" and (4) "create a new source of substantial light or glare, which would adversely affect day or nighttime views in the area." The CEQA evaluation determined a "less than significant impact" because: (a) the project site is not within an area mapped or designated with scenic vistas or resources, including not within a CSA or CVA as discussed above; (b) the project will not involve "clear-cutting" but instead "will reduce fuel hazards by creating a park-like setting;" and (c) an existing deed restriction protecting trees on the lower (northern) portion of the property (approximately 0.6-acre in size) was recorded pursuant to Commission CDP No. 1-10-014 approved 9/16/10.

In addition to the CEQA analysis, the County's findings for approval of the subject CDP discuss visual impacts in the impacts table of the staff report ([Exhibit 8](#)), stating

"The project site is not located in a Coastal Scenic or Coastal View area, however, the Coastal Act does protect visual resources even outside of these areas. Information submitted by the applicant demonstrates that the visual impacts of the tree thinning project will be minimal. The project will not create "clear-cuts" but will reduce fuel hazards by creating a park-like setting. In addition, as part of the [previously authorized] subdivision, the Coastal Commission required a deed restriction over the gulch areas on the north side of the project area that prohibits

development. No trees will be removed in this area as it is outside the boundaries of the project area.”

As part of the application submittal to the County, the applicant’s forester submitted photographs of the expected density of trees to be retained in the area post-harvest based on similar operations to the approved project completed on a separate rural residential area “nearly identical to the subject property and in the vicinity” ([Exhibit 7](#)). The proposed post-harvest density of trees in the area shows a stand of redwood trees of similar post-harvest size (diameter) and density (percent crown cover) as approved by the County but with a more open understory and fewer “ladder fuels” (vegetation that allows a fire to climb up from the landscape or forest floor into the tree canopy) than pre-harvest conditions. As discussed, above, there will be over 500 “healthy and vigorous dominant and codominant trees well distributed throughout the treated area” per the requirements of FPR and enforceable CDP conditions. The post-harvest condition of the subject site will be compatible with the existing forested areas around the subject site, which consist of an estimated 500+ mature trees.

Moreover, as previously discussed, the County’s approval includes conditions requiring that the timber harvesting be consistent with the plot plan (which shows the different tree removal zones), with Forest Practice Rules for 150-foot and 300-foot fire clearance exemptions, with FPR for 3-acre conversion exemptions, with the CEQA mitigated negative declaration prepared for the project (which includes required mitigation measures for the protection of bird nesting habitat and archaeological resources), and with erosion control and best management practices required by section 3432(8) of the Framework Plan ([Exhibit 6](#)). Also as previously discussed, these requirements and restrictions include, but are not limited to, numerous harvesting limitations such as: (i) no harvesting of large, old trees; (ii) limits on silvicultural methods (e.g., clearcutting is prohibited); (iii) no harvesting or equipment near watercourses; (iv) no work in sensitive habitat areas or associated buffer areas; (v) requirements that “the post-harvest stand be primarily comprised of healthy and vigorous dominant and codominant trees well distributed throughout the treated area...” (14 CCR § 1038(c)(6)); and (vi) restrictions on time and number of days of harvesting, truck traffic, air quality, noise, and limiting operations on slopes greater than 15% (Small Woodland Performance Standards). These required measures ensure that the approved development is visually compatible with the character of the surrounding area consistent with section 30251.

Furthermore, Condition #2 of the CDP requires submittal of a post-harvest report “certifying that the measures as described in [conditions] 1.a.)-v) have been satisfied for the operation” including compliance of the project with FPR regulations for exemptions. CalFire, the State agency overseeing the timber harvest for compliance with FPR regulations, will conduct a post-harvest inspection to confirm that harvesting and slash treatment complies with the exemption regulations.

Finally, the County’s certified LCP requires that CDPs be obtained for future home construction on the remaining undeveloped lots in the subdivision (Lots 11 through 13, including a portion of the area that is the subject of this appeal). Any removal of trees proposed in the future will require a separate CDP under which the proposed major vegetation removal will be properly evaluated for its potential visual resources impacts.

Conclusion

Therefore, for the reasons discussed above, there is a high degree of legal and factual support for the County's decision that the development as approved is consistent with the visual resources protection policies of the certified LCP. In addition, contrary to the appeal contention otherwise, the approved CDP includes enforceable conditions limiting the total amount of tree removal allowed, the location of tree removal and tree removal methods, which together protect visual resources consistent with the LCP. As such the Commission finds that the contentions related to visual resources discussed above do not raise a substantial issue of conformance of the project as approved with the policies and standards of the certified LCP.

2. Contentions Related to Biological Resources

The appeal contends that the project approved by the County does not adequately protect environmentally sensitive habitat areas (ESHA), inconsistent with section 3.30 of the LUP (including section 30240 of the Coastal Act), because (a) the allowance for the removal of trees during the bird nesting season, even with the requirement that the site be surveyed by a qualified ornithologist prior to operations, potentially could impact nesting habitat for sensitive species associated with the nearby Freshwater Slough ESHA, and impacts to this forest habitat could therefore impact environmentally sensitive slough habitat, and (b) the approved project does not include adequate protections for the gulch by not adequately identifying a protection zone around the gulch where no timber operations would occur.

Measures to Protect Nesting Habitat

Coastal Act section 30240 is codified as a policy in section 3.30 of the LUP. Section 30240(a) requires that ESHA be protected against significant disruption of habitat values, and only uses dependent on ESHA resources may be allowed within ESHA. Section 30240(b) requires that development in areas adjacent to ESHA shall be sited and designed to prevent impacts that would significantly degrade the ESHA and shall be compatible with the continuance of the sensitive habitat areas. ESHA is defined under section 30107.5 of the Coastal Act as any area supporting a plant, animal, or habitat that meets two main criteria: (1) the plant, animal, or habitat is either rare or especially valuable because of its special nature or role in the ecosystem and (2) the area could be easily disturbed or degraded by human activities and developments. The County's certified LUP (section 3.30-B-1-a) further defines ESHA as follows (emphasis added):

a. Environmentally sensitive habitats within the Humboldt Bay Planning Area include:

- (1) Wetlands and estuaries, including Humboldt Bay and the mouth of the Mad River.*
- (2) Vegetated dunes along the North Spit to the Mad River and along the South Spit.*
- (3) Rivers, creeks, gulches, sloughs and associated riparian habitats, including Mad River Slough, Ryan Slough, Eureka Slough, Freshwater Slough, Liscom Slough, Fay Slough, Elk River, Salmon Creek, and other streams.*

(4) Critical habitats for rare and endangered species listed on state or federal lists.

As discussed in Finding II-F above, the project site is located about a mile and a half inland from Humboldt Bay. Freshwater Slough, a tidally influenced slough connected to Humboldt Bay, is located north of Myrtle Avenue across from the subject site. According to the applicant's consulting forester, the project area is comprised of third-growth redwood forest, and the trees proposed for removal are primarily (99%) redwood trees (there also are scattered Douglas-fir and Sitka spruce trees). The redwood forest consists of typical upland understory vegetation, such as sword fern (*Polystichum munitum*) and redwood sorrel (*Oxalis oregana*), commonly associated with redwood forests in the region. The appeal acknowledges that the stand of trees that comprises the project site is not ESHA ([Exhibit 9](#), page 8 of 10).

The project as approved by the County includes conditions prohibiting harvesting and equipment near watercourses, restricting work in sensitive habitat areas and associated buffer areas, measures to protect nesting birds, and a requirement to retain snags as well as live trees with visible evidence of use as nesting sites by hawks, owls, eagles, osprey, herons, or egrets. Condition #7 specifically requires either avoiding tree removal operations during the bird nesting season (March 15-August 15) or, for work during the nesting season, requiring a qualified ornithologist to survey the area no more than seven days prior to operations and flag for avoidance any active nests found, including appropriate buffers established in consultation with the California Department of Fish and Wildlife (CDFW):

“Tree removal and vegetation clearing associated with the Project should be conducted outside of the bird breeding season (the nesting season is generally considered to be March 15-August 15) in order to avoid “take” as defined and prohibited by Fish and Game Code (FGC) sec. 3503, 3503.5, 3513, and by the Federal Migratory Bird Treaty Act (16 U.S. Code 703 et seq.) If work must be conducted during the bird nesting season, a qualified ornithologist (someone who is able to identify Northern California birds, and who has experience in nest-searing for passerines and raptors) should thoroughly survey the area no more than seven days prior to tree/vegetation removal to determine whether active nests (nest containing eggs or nestlings) are present. If active nests are found, appropriate buffers should be developed in consultation with CDFW to avoid take.”

This condition, which allows removal of vegetation during the nesting season within habitat that might support nesting birds, provides that an ornithologist must survey the area prior to the development and flag any nests with appropriate buffers. As so conditionally approved, the project does not raise a substantial issue of conformance with Section 30240 of the Coastal Act (LUP section 3.30), because environmentally sensitive bird nesting habitat will be protected by avoiding active nesting habitat areas, and tree removal work adjacent to any identified nesting habitat will include appropriate buffers, developed in consultation with CDFW. CDP condition #1-d-i requires that the applicant complete the harvesting work before the onset of the rainy season by requiring that bare mineral soil disturbed by harvesting activities must be reseeded prior to the onset of winter rains to establish a stable ground surface that will prevent surface

erosion. Given the number of weeks expected to complete the project coupled with the need to schedule certified timber harvesting operators to complete the work, the County’s approval allows for the potential for harvesting during the nesting season provided that appropriate surveys are completed by a qualified ornithologist and any active nests are protected with adequate no-disturbance buffers developed in consultation with CDFW. The approach set forth in the condition is consistent with CDFW recommendations for vegetation removal projects in this region, as the County consulted with CDFW on this project. Moreover, as discussed above, the approved project does not allow for clearcutting (i.e., removing all of the trees in the area) and requires protection of those trees with visible evidence of use as nesting sites by hawks, owls, eagles, osprey, herons, or egrets. Thus, the appeal raises no substantial issue of the conformity of the approved project with LCP requirements relating to environmentally sensitive nesting habitat areas.

Measures to Protect the Natural Drainage (Gulch)

The approved project requires a minimum buffer of 50 to 75 feet around the natural drainage (gulch area), which is on a separate property and, as proposed by the applicant’s forester and required to be adhered to by FPR and CDP conditions, will be identified on the ground with flagging. No equipment or tree falling is allowed in the gulch or its associated buffer area. As a result, there will be no ground disturbance near the gulch or its associated vegetation buffer.

LUP sec. 3.30-B-8 addresses development in and around streams and natural drainage courses such as gulches. In addition to including sections 30230, 30231, and 30236 as LUP policies, the LUP also states in part as follows (emphasis added):

8. Coastal Streams, Riparian Vegetation and Marine Resources

...

a. Timber management and timber harvesting activities regulated by the California Department of Forestry and the Board of Forestry, and forest improvement activities under jurisdiction of the Department of Forestry shall be exempt from requirements of this section. Other new development within coastal streams, riparian area, and marine areas shall be consistent with policies and standards of this section (3.30B 8).

b. Within the Humboldt Bay Planning Area the following coastal streams (as mapped on USGS 7.5' Quads) have been identified:

- | | |
|--------------------------|-------------------------------------------------|
| <i>Mad River Slough</i> | <i>Liscom Slough</i> |
| <i>Ryan Slough</i> | <i>Fay Slough</i> |
| <i>Eureka Slough</i> | <i>Elk River</i> |
| <i>Freshwater Slough</i> | <i>Salmon Creek</i> |
| <i>McDaniel Slough</i> | <i>Rocky Gulch and its tributaries</i> |
| <i>Jacoby Creek</i> | <i>Unnamed tributaries to Freshwater Slough</i> |
| <i>Swain Slough</i> | <i>at Felt Road and Pigeon Point Road</i> |
| <i>Martin Slough</i> | <i>Unnamed tributary to Ryan Slough</i> |

...

- d. *Riparian corridors on all perennial and intermittent streams shall be, at a minimum, the larger of the following:*
- (1) 100 feet, measured as the horizontal distance from the stream transition line on both sides.*
 - (2) 50 feet plus four times the average percent of slope, measured as a slope distance from the stream transition line on both sides of intermittent and perennial streams.*
 - (3) Where necessary, the width of riparian corridors shall be expanded to include significant areas of riparian vegetation adjacent to the corridor, slides, and areas with visible evidence of slope instability, not to exceed 200 feet measured as a horizontal distance.*
 - (4) Notwithstanding the above riparian corridor width requirements, the width of the riparian corridor may be reduced where such a reduction would not result in the removal of woody vegetation, and the County determines, based on specific factual findings, that a reduction will not result in a significant adverse impact to the habitat. New structures, including houses, barns, sheds, etc., shall be placed a minimum of 50 feet from the stream transition lines.*
- e. *New development within the riparian corridors shall be permitted when there is no less environmentally damaging feasible alternative, where the best mitigation measures feasible have been provided to minimize adverse environmental effects, and shall be limited to the following uses.*
- (1) Timber management activities, provided:*
 - a. In precommercial thinning and release activities, that at least 50 percent of the tree crown canopy and 50 percent of other vegetation present before management operations shall be left standing. If either the County or the landowner requests, they may agree, after an on the ground inspection, to increase these percentages to protect special habitat values.*
 - b. Follow-up treatments or other timber management activities which affect the tree canopy shall be permitted only when the canopy has been sufficiently reestablished to prevent substantial adverse effects on soil erosion, wildlife, aquatic life, or the beneficial uses of water, these activities shall maintain a tree canopy similar to that which existed upon the completion of the initial thinning or release.*
 - c. In all timber management activities, including pre-commercial thinning, release activities, and site preparation, that heavy equipment shall be excluded from any area within 50 feet, measured as a slope distance, from the stream transition line and shall not be permitted in other portions of the riparian corridor*

except where explained and justified as the least environmentally damaging feasible alternative.

- d. *All activities shall be consistent with timber harvest rules of the Board of Forestry applicable to the protection of aquatic life and water quality. Mitigation measures for development with riparian corridors shall, at a minimum, include retaining snags within the riparian corridor unless felling is required by CAL-OSHA or permitted by California Department of Forestry forest and fire protection regulations, and retaining live trees with visible evidence of current use as nesting sites by hawks, owls, eagles, osprey, herons, or egrets.*
- i. *The County shall request the Department of Fish and Game to review plans for development within riparian corridors, the Department may recommend measures to mitigate disruptions to habitats*

...

- g. *Natural drainage courses, including ephemeral streams, shall be retained and protected from development which would impede the natural drainage pattern or have a significant adverse effect on water quality or wildlife habitat. Stormwater outfalls, culverts, gutters and the like, shall be dissipated, and, where feasible, screened. Natural vegetation within and immediately adjacent to the bankfull channel shall be maintained except for removal consistent with the provisions of this section.*

The above-cited policy related to development within and around coastal streams, including natural drainages such as the gulch area adjacent to the subject property, does not apply to the approved tree removal project. This is because the approved tree removal is subject to regulation by CalFire (formerly California Department of Forestry), and section 3.30-B-8-a cited above expressly exempts such regulated timber harvesting activities from the requirements of the LUP section.⁸

Although the LCP specifically exempts tree removal projects regulated by CalFire, such as the subject project, from the LCP policy cited above, the project approved by the County complies with the requirements of the above-cited policy. First, the project approved by the County does not authorize tree removal or tree removal equipment within the “riparian corridor” as defined in the policy. The subject gulch adjacent to the project area property contains no above-ground surface water, no riparian vegetation, and is not shown on any USGS topographic maps. It therefore is not considered either a perennial or intermittent stream subject to LUP policy 3.30-B-8-d. The gulch could be considered a “natural drainage course” as referred to in LUP policy

⁸ CalFire’s FPR include numerous requirements and restrictions related to timber harvesting within “Watercourse and Lake Protection Zones” (WLPZ). These WLPZ restrictions include, but are not limited to, the following (see 14 CCR § 916.4 et seq.): (1) minimum equipment exclusion zones of at least 25-50 feet from Class III watercourses, depending on sideslope steepness; (2) appropriate soil stabilization areas within and around setback zones; and (3) flagging of the WLPZ on the ground by a registered professional forester prior to the pre-harvest site inspection by CalFire staff.

3.30-B-8-g. However, the LCP specifically exempts tree removal projects regulated by CalFire from the subject policy.

Second, though exempted, the approved development would nonetheless be consistent with the policy, because, as approved by the County, the project does not authorize activities that would impede the natural drainage pattern or have a significant effect on water quality or wildlife habitat (CDP condition 1). In addition, as discussed below, the approved development as conditioned will not result in significant impacts on water quality. Moreover, the approved development as conditioned will not result in a significant adverse effect on wildlife habitat as (1) no tree removal or equipment is authorized to occur within 50 to 75 feet of the drainage area (CDP conditions 1 and 4); (2) natural vegetation within and immediately adjacent to the gulch will be maintained (CDP conditions 1 and 4); and (3) the approved project requires various measures discussed above to protect nesting bird habitat and other trees valuable for wildlife (CDP conditions 1 and 7).

Therefore, the Commission finds that there is a high degree of factual and legal support for the County's decision that the project as approved protects ESHA, including nesting bird habitat and natural drainage areas. As such the Commission finds that the contentions of the appeal do not raise a substantial issue of conformance of the project as approved with the policies and standards of the certified LCP.

3. Contentions Related to Water Quality

The appeal contends that the project approved by the County does not adequately protect water quality, inconsistent with section 3.30 of the LUP (including section 30231 of the Coastal Act), because: (a) removal of the trees will increase runoff and erosion, which will impact Freshwater Slough, which supports sensitive fish and other sensitive species, and (b) no specific best management practices (BMPs) to mitigate runoff impacts have been identified.

Coastal Act sections 30230 and 30231 are incorporated as policies in section 3.30 of the LUP.

As previously discussed, there are no mapped watercourses or riparian corridors on the property, though there is a "gulch" area (natural drainage course) adjacent to the property with no above-ground flowing water but which supplies water (stored in tanks within the gulch area) to neighboring agricultural property to the north, across Myrtle Avenue. The approved project: (1) does not authorize activities that would impede the natural drainage pattern or have a significant effect on water quality or wildlife habitat (CDP conditions 1); (2) prohibits tree removal and equipment within 50 to 75 feet of the drainage area (CDP conditions 1 and 4); (3) requires maintenance of natural vegetation within and immediately adjacent to the gulch (CDP condition 1); and (4) includes conditions requiring that the timber harvesting shall be consistent with the plot plan, with FPR, which includes erosion control requirements, with the MND, and with BMPs required by section 3432(8) of the Framework Plan (e.g., required replanting as needed to aid in erosion control; and appropriate runoff control measures).

Therefore, the Commission finds that there is a high degree of factual and legal support for the County's decision that the project as approved protects water quality. As such the Commission

finds that the contentions of the appeal do not raise a substantial issue of conformance of the project as approved with the policies and standards of the certified LCP.

4. Contentions Related to CEQA

The appeal contends that the project approved by the County is inconsistent with the requirements of CEQA, including (1) the requirements of Public Resources Code section 21080.5(d)(2)(A) that prohibit a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would lessen any significant effect the activity may have on the environment, as the County's approval did not assess such alternatives, and (2) the requirements of 14 CCR § 15126.4(a)(4)(B) that mitigations measures be roughly proportional to the impacts of the project in that the County's approval contains no mitigation measures that are proportional to the extensive impacts of the project.

Though the Appellant's contentions regarding whether the approved project complies with CEQA fails to validly assert that the approved project is inconsistent with the certified LCP, as discussed in the above Findings, the approved CDP includes conditions requiring fulfillment of mitigation measures specified to protect wildlife habitat (such as the required protection of snags and other wildlife trees), natural drainage courses (such as prohibiting operations within the drainage zone), water quality (such as erosion control measures), and visual resources (such as protecting the treeline and limiting the total number of trees to be harvested). All of the required measures ([Exhibit 6](#)) are enforceable CDP conditions included to ensure that the proposed development will avoid significant effects on the environment.

Also as discussed in the above Findings, while there are other combinations of trees besides those approved for removal under the subject CDP that also could be removed consistent with FPR and the LCP, the appeal does not raise a substantial issue of conformity of the approved project, as conditioned, with the visual resources, ESHA, and water quality protection policies cited above, because (1) the County required the applicant to submit a detailed description of the post-harvest stand in terms of density and tree size as well as representative post-harvest photographs depicting post-harvest forest conditions to confirm that post-harvest forest on the site would suffer the minimum disturbance and look similar to existing and surrounding forests; (2) due to existing site topography and intervening vegetation, only limited portions of the tree removal area are visible as part of the representative treeline visible from public vantage points; (3) the approved project requires, through enforceable CDP conditions, adherence to the plot plan and to FPR, which require that the post-harvest stand of remaining trees be healthy, dominant, and well distributed throughout the project area; (4) no tree removal or equipment is authorized to occur within 50 to 75 feet of the drainage area; (5) natural vegetation within and immediately adjacent to the gulch will be maintained; and (6) the approved project requires various measures discussed above to protect nesting birds habitat and other trees valuable for wildlife. Therefore, the Commission finds that there is factual and legal evidence in the record to support the County's approval of a CDP, and because the County's approval includes mitigation measures consistent with the requirements of the certified LCP, the Commission therefore finds that the appeal raises no substantial issue with respect to the grounds on which it was filed.