

**CALIFORNIA COASTAL COMMISSION**

NORTH COAST DISTRICT OFFICE  
 1385 8<sup>TH</sup> STREET, SUITE 130  
 ARCATA, CA 95521  
 VOICE (707) 826-8950  
 FACSIMILE (707) 826-8960



# Th15.5a

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Staff Report:	7/21/17
Hearing Date:	8/10/17

## STAFF REPORT: REGULAR CALENDAR

<b>Application No:</b>	<b>1-16-0793</b>
<b>Applicant:</b>	<b>Avataric Ruchirasala of Adidam</b>
<b>Agent:</b>	Jack Lewis
<b>Location:</b>	1512 and 1570 Stagecoach Road, north of Trinidad, Humboldt County (APNs 517-011-05 & -04).
<b>Project Description:</b>	Install a potable water collection system to serve an existing residence consisting of a collector well adjacent to an existing creek, a pump, and water and electrical line extensions.
<b>Staff Recommendation:</b>	Approval with Conditions

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## SUMMARY OF STAFF RECOMMENDATION

The applicants propose to install a new water collection system on McNeil Creek located at 1512 and 1570 Stagecoach Road, approximately two miles north of the City of Trinidad in the Stagecoach Road Area-of-Deferred-Certification. The proposed water collection system would be a passive well design and would replace the in-stream pump that currently supplies water to the single family residence located on the property.

Violations of the Coastal Act exist on the subject property including, but not limited to As previously discussed, violations of the Coastal Act exist on the subject property including, but

not limited to, the existing potable water system for the property which consists of an in-creek pump and associated above-ground piping that was installed without the benefit of a CDP in 2005. Approval of this application pursuant to the staff recommendation will require the applicant to remove the existing in-creek pump and restore the creek back habitat to natural condition as required by **Special Condition No. 6**.

Staff believes this new project with the attachment of certain special conditions would be consistent with the policies of Chapter 3 of the Coastal Act. The project as conditioned would comprise an allowable use under Section 30236 for development that entails the substantial alteration of a coastal stream for which adequate protections and the best feasible mitigation measures have been included to protect coastal resources from significant adverse environmental impacts.

To ensure the project is constructed using the best feasible mitigation measures and to monitor the riparian vegetation post-construction, staff recommends **Special Condition 4** requiring the applicant to comply with certain construction responsibilities, and **Special Condition 5** requiring post-construction riparian vegetation monitoring. To ensure the project minimizes impacts to the coastal stream habitat to avoid over-drafting of the creek, staff recommends **Special Condition 3** limiting the withdrawal of water from McNeil Creek consistent with the restrictions placed by the State Water Resources Control Board and the California Department of Fish and Wildlife. To assure that potential future buyers have specific notice of the water supply intake limitations and special condition requirements attached to the properties prior to purchase, the Commission attaches **Special Condition 8** requiring a deed restriction to be recorded against the properties involved in the application.

Staff believes that the proposed development, as conditioned, is consistent with all applicable Chapter 3 policies of the Coastal Act. The motion to adopt the staff recommendation of **approval** of Coastal Development Permit (CDP) 1-16-0793 with special conditions is found on [page 4](#).

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### EXHIBITS

- [Exhibit 1](#) – Regional Location Map
- [Exhibit 2](#) – Location of Development
- [Exhibit 3](#) – Project Sketch
- [Exhibit 4](#) – CDFW Permit
- [Exhibit 3](#) – Domestic Use Registration Certificate

## I. MOTION AND RESOLUTION

The staff recommends that the Commission adopt the following resolution:

### **Motion:**

*I move that the Commission approve Coastal Development Permit 1-16-0793 pursuant to the staff recommendation.*

Staff recommends a **YES** vote on the foregoing motion. 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:**

*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

This permit is granted subject to the following standard conditions:

- 1. Notice of Receipt and Acknowledgment.** 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. Interpretation.** Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
- 3. 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.
- 4. 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.

### III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. **North Coast Regional Water Quality Control Board Approval.** PRIOR TO COMMENCEMENT OF ANY CONSTRUCTION, the permittee shall provide to the Executive Director a copy of a permit issued by the Regional Board, a letter of permission, or evidence that no permit or permission is required. The permittee shall inform the Executive Director of any changes to the project required by the Regional Board. Such changes shall not be incorporated into the project until the permittee obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.
2. **State Water Resources Control Board Approval.** PRIOR TO COMMENCEMENT OF ANY CONSTRUCTION, the permittee shall provide to the Executive Director a copy of a permit issued by the State Water Board, a letter of permission, or evidence that no permit or permission is required. The permittee shall inform the Executive Director of any changes to the project required by the Board. Such changes shall not be incorporated into the project until the permittee obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.
3. **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 permittee 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 permittee obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

4. **Water System Standards and Limitations.**

The water supply system authorized by this permit amendment shall be subject to the following performance standards and limitations on use:

- A. The water appropriated shall not exceed 1,950 gallons per day from October 1 of each year to August 1 of the succeeding year, except for emergency fire suppression;
- B. For the protection of riparian habitat and aquatic species, in and below the point of authorized water appropriation diversion, the permittee shall bypass at least eighty percent (80%) of the surface flow of McNeil Creek at any time diversion for domestic use is occurring.
- C. To ensure compliance with the water appropriation limits of A and B above, the permittee shall install a well flow meter to monitor the flow rate and total water diverted.

**5. Construction Responsibilities.** The permittee shall comply with the following construction-related Best Management Practices (BMPs):

A. Timing of Construction Activities

- (i) Construction activities authorized by this permit shall be conducted during the period of June 1 through October 15 only.
- (ii) All construction activities shall occur during periods of dry weather only.

B. Minimize Discharge of Construction Pollutants to Coastal Waters. BMPs shall include, at a minimum, all of the following:

- (i) Covering stockpiled construction materials, soil, and other excavated materials to prevent contact with rain, and protecting all stockpiles from stormwater runoff using temporary perimeter barriers.
- (ii) Proper disposal of all waste.
- (iii) Prompt removal of all construction debris from the work area.
- (iv) Avoiding work in flowing water by, as needed, constructing temporary coffer dams and bypassing flowing water in accordance with CDFW permit requirements.

C. Minimize Erosion and Sediment Discharge. During construction, erosion and the discharge of sediment off-site or to coastal waters shall be minimized through the use of appropriate BMPs, including:

- (i) Land disturbance during construction (e.g., clearing, grading, and cut-and-fill) shall be minimized.
- (ii) Erosion control BMPs (such as mulch, soil binders, geotextile blankets or mats, or temporary seeding) shall be installed as needed to prevent soil from being transported by water or wind. Temporary BMPs shall be implemented to stabilize soil on graded or disturbed areas as soon as feasible during construction, where there is a potential for soil erosion to lead to discharge of sediment off-site or to coastal waters.
- (iii) Sediment control BMPs (such as silt fences, fiber rolls, sediment basins, inlet protection, sand bag barriers, or straw bale barriers) shall be installed as needed to trap and remove eroded sediment from runoff, to prevent sedimentation of coastal waters.

D. Minimize Other Impacts of Construction Activities. Other impacts of construction activities shall be minimized through the use of appropriate BMPs, including:

- (i) The damage or removal of native vegetation (including trees, native vegetation, and root structures) during construction shall be minimized to achieve water quality benefits such as transpiration, vegetative interception, pollutant uptake, shading of waterways, and erosion control.
- (ii) Soil compaction due to construction activities shall be minimized to retain the natural stormwater infiltration capacity of the soil.
- (iii) The use of temporary erosion and sediment control products (such as fiber rolls, erosion control blankets, mulch control netting, and silt fences) shall not incorporate plastic netting (such as polypropylene, nylon, polyethylene, polyester, or other synthetic fibers) to prevent wildlife entanglement and plastic debris pollution.

**6. Vegetation and Habitat Restoration.** WITHIN 90 DAYS OF COMPLETION OF DEVELOPMENT AUTHORIZED BY CDP NO. 1-16-0793, the permittee shall submit, for the review and written approval of the Executive Director, a post-construction report which includes photographs and evaluates the achievement of the proposed objectives of (1) reestablishing vegetation in all portions of the project area (including, but not limited to, temporary accessways and staging areas) designed to be re-established as forest and streamside habitats to a level of native plant coverage and density equivalent to existing vegetation coverage and density of the surrounding undisturbed areas and (2) removing the existing water system infrastructure (e.g., pump, sand bags, etc.) from McNeil Creek and restoring the creek habitat to natural conditions. If the report indicates that the revegetation of any of the disturbed areas, including the temporary access roads and staging areas, has not been successful, in part or in whole, the permittee shall submit a revised revegetation program to achieve the objective. The revised revegetation program shall require an amendment to Coastal Development Permit No. 1-16-0793.

**7. Protection of Archeological Resources.** If an area of cultural deposits or human remains is discovered during the course of the project, all construction shall cease and shall not recommence until a qualified cultural resource specialist, in consultation with the Yurok Tribe, analyzes the significance of the find and prepares a supplementary archaeological plan for the review and approval of the Executive Director, and either: (a) the Executive Director approves the Supplementary Archaeological Plan and determines that the Supplementary Archaeological Plan's recommended changes to the proposed development or mitigation measures are *de minimis* in nature and scope, or (b) the Executive Director reviews the Supplementary Archaeological Plan, determines that the changes proposed therein are not *de minimis*, and the permittee has thereafter obtained an amendment to CDP 1-16-0793.

**8. Deed Restriction Recordation of Permit Special Conditions.** PRIOR TO COMMENCEMENT OF ANY CONSTRUCTION, the permittee shall submit to the Executive Director for review and approval documentation demonstrating that the permittee has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

**9. Permit Effectiveness and Condition Compliance.** This coastal development permit shall be deemed effective upon the Commission's approval of the coastal development permit. Failure to comply with the special conditions of this permit may result in the institution of an action to enforce those conditions under the provisions of Chapter 9 of the Coastal Act.

## IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares as follows:

### A. PROJECT DESCRIPTION AND BACKGROUND

Project Description: The applicant proposes to install a potable water collection system in McNeil Creek to serve an existing residence involving the following: (1) excavating a 6-foot-diameter approximately 10-foot-deep pit adjacent to the creek, (2) installing a foundation of 2 feet of pea gravel and placing pierced 2-foot-diameter concrete pipe to within 2 feet of the ground surface; (3) installing below-surface piping and electrical conduit and completing the well to about 2 feet above ground surface with unpierced concrete pipe casing wrapped in filter cloth and sealed with concrete cover on top; (4) backfilling the pit with pea gravel; and (6) placing water and electrical line extensions above the ground surface from the well to the pump. The applicant proposes to revegetate any areas that are temporarily disturbed during construction.

Under the new water diversion system, water would be diverted at a rate of approximately 1,950 gallons per day and approximately 40,000 gallons of water would be stored in existing tanks on the subject property.

The existing potable water system for the property consists of an in-creek pump and associated above-ground piping that was installed without the benefit of a CDP, as explained in the permitting history below.

#### Permitting History for Subject Site:

- **CDP 1-83-096:** On June 10, 1983 the Commission approved this permit (submitted by James Knight and Kathleen Preston) authorizing the construction of a new 1,580-square-foot single family residence, onsite septic system, and paved driveway on the subject property, which at that time was undeveloped. The Commission granted its approval of the permit subject to six special conditions that included requirements to: (1) issue a deed restriction regarding the geological hazards of the site; (2) dedicate a public easement along the lateral shoreline from the mean high tide to the toe of the bluff for a period of 21 years; (3) submit final drainage facility plans; (4) acquire additional approval and a separate coastal permit for additional tree removal and major vegetation removal; (5) comply with the geologic report prepared for the site; and (6) place all exterior lighting so that it is not directed beyond property boundaries.

According to the permit application file, the water source proposed to serve the new residence was an existing diversion of McNeil Creek located on a separate property under separate ownership for which the applicants maintained deeded rights (the applicants' property deed included a formal legal description of the water right and easement for water extraction from the creek and for pipeline infrastructure extending from the water source to the subject property). The scope of CDP 1-83-096 did not include the development of or improvements to the water system that would serve the new residence, which dates back at least to the 1960s.



- **CDP 1-01-052:** On December 14, 2001, the Commission approved this permit authorizing, after-the-fact, property fencing, gates, and landscaping. The three special conditions attached to CDP 1-01-052 included requirements to assure visual compatibility with the character of the surrounding area. The conditions required that the run of the fence along the property's eastern side be reduced in height from six to four feet to reduce the apparent mass of the fence. In addition, the screening plants were required to be installed consistent with a revised landscaping plan wherein specific standards as to their spacing, irrigation, maintenance, and upkeep were to be detailed.
- **CDP 1-01-052-A1:** On November 19, 2004, the Commission approved this permit amendment that in part authorized the following: (1) replacing existing fencing and planting additional landscaping; (2) modifying the existing driveway and off-street parking facilities; (3) converting the existing attached two-car garage into an art studio/general utility space and relocating an existing pump house, water tank, generator, and liquefied petroleum gas tank into the newly created utility (4) adding a pre-fabricated solarium, new patio, and parking area to the converted garage structure; (5) installing four 5,000-gallon water storage tanks and constructing a new 10' x 12', seven- to eight-foot-high pump house and water treatment structure; and (6) constructing a series of 3-foot-wide, unimproved surface walking paths across the property. The new special conditions attached to the permit amendment included requirements to: (1) secure the developed parcel's rights to use of the utilities storage and off-street parking facilities located on the adjacent vacant parcel through recordation of an easement establishing such rights; and (2) remove the existing fence within one year of the Commission's action on the subject permit amendment.
- **CDP 1-01-052-A2:** The second amendment request proposed to modify CDP 1-01-052 to convert the water supply from a well water source to a surface water diversion based system drafting from McNeil Creek. The staff recommendation published on June 24, 2005 included recommended special conditions that would have: (1) imposed water supply system standards and limitations; (2) required submittal of a final erosion and runoff control plan; and (3) required recordation of a deed restriction recordation of permit special conditions.

According to the permit application file, the application was scheduled for the Commission's July 13-15, 2005 meeting. However, the applicant withdrew the permit amendment application on July 8, 2005. The applicant did obtain a permit from California Department of Fish and Wildlife, and installed a pump into a naturally formed pool on McNeil Creek. Thus, the existing water diversion system on the property that serves the existing residence never received the requisite CDP. Under the proposed CDP application, the applicant would remove the unauthorized existing water diversion system and replace it with the proposed new water collection system.

## **B. ENVIRONMENTAL SETTING**

The subject property is comprised of two bluff-top lots located on the west side of Stagecoach Road approximately ¼ mile south of the northern intersection with Patrick's Point Drive and

approximately 2.2 miles north of Trinidad (Exhibits 1 & 2). The site is located in an area of low-density, rural residential development along a densely vegetated, narrow road corridor. These bluff-top lots lie at an elevation of approximately 200 feet above sea level. The southerly lot (APN 517-011-05) is approximately 1-acre in size and is developed with a single-family residence built pursuant to a coastal development permit approved by the Commission in 1983 (CDP No. 1-83-096, Knight). The northerly parcel (APN 517-011-04) encompasses approximately 5 acres and is currently vacant and unimproved with the exception of off-street parking and utilities storage facilities authorized under CDP Amendment 1-01-052-A1 (described above). The site and surrounding area is vegetated with a North Coast Coniferous Forest consisting primarily of a Sitka spruce (*Picea sitchensis*)/western hemlock (*Tsuga heterophylla*) complex, with an attending understory of red alder (*Alnus rubra*), California wax myrtle (*Myrica californica*), swordfern (*Polystichum munitum*), western bracken fern (*Pteridium aquilinum*), evergreen huckleberry (*Vaccinium ovatum*), salal (*Gaultheria shallon*), and related undergrowth species.

Though not certified, the County's Trinidad Area Plan designates the subject site as a "Coastal Scenic Area," and includes the following guidelines:

*In Coastal Scenic Areas as designated on the Area Plan Maps, and applied to portions of parcels immediately adjacent to and visible from the designated area, it is the intent of these regulations that all development be subordinate to the character of the designated area, and to the scenic use and enjoyment of public recreational lands within these areas.*

Although the project site is located between the first public road (Stagecoach Road) and the sea, there are no trails that provide shoreline access through the subject property. The nearest public vertical accessways to the property are located at Martin Creek approximately .70 miles south and Scotty Point approximately 1.0 mile north.

### **C. STANDARD OF REVIEW**

The subject site is located within an Area of Deferred Certification within the Trinidad Planning Area of the County of Humboldt's Local Coastal Program. The project site is located between the first public road and the sea. Pursuant to Section 30604(a) of the Coastal Act, prior to certification of a certified LCP for this geographic segment, the standard of review that the Commission must apply to the project is the Chapter 3 policies of the Coastal Act.

### **D. OTHER AGENCY APPROVALS**

#### **California Department of Fish and Wildlife (CDFW)**

The permittee received a Section 1600 Streambed Alteration Agreement from the CDFW for the proposed water diversion from McNeil Creek on January 4, 2017 (Agreement No. 1600-2016-0439-R1) in 2011. The agreement authorizes the diversion of up to 1,950 gallons per day, except for emergency fire suppression. The agreement is valid for five years (through 1/4/22).

#### **North Coast Regional Water Quality Control Board**

The Regional Board requires a water quality certification for projects involving dredging and/or filling activities under Section 401 of the Clean Water Act. To ensure that the project ultimately

approved by the Board is the same as the project authorized herein, the Commission attaches **Special Condition 1**, which requires the permittee to submit to the Executive Director evidence of the Board's approval of the project prior to commencement of construction. The condition requires that any project changes resulting from the Board's approval not be incorporated into the project until the permittee obtains any necessary amendments to this CDP.

#### **State Water Resources Control Board**

The State Board has jurisdiction of water resources and administers the state's water rights system. The Commission attaches **Special Condition 2** requiring the permittee to submit to the Executive Director evidence of the Board's approval of the project prior to commencement of construction. The condition requires that any project changes resulting from the Board's approval not be incorporated into the project until the permittee obtains any necessary amendments to this CDP.

#### **U.S. Army Corps of Engineers (Corps)**

The Corps may have regulatory authority over the proposed project under Section 404 of the Clean Water Act. To ensure that the project ultimately approved by the Corps is the same as the project authorized herein, the Commission attaches **Special Condition 2**, which requires the permittee to submit to the Executive Director evidence of the Corps' approval of the project prior to the commencement of construction activities. The condition requires that any project changes resulting from the Corps' approval not be incorporated into the project until the permittee obtains any necessary amendments to this CDP.

### **E. COASTAL ACT REVIEW OF WATER SUPPLY PROJECTS**

Section 30236 of the Coastal Act states the following:

*Channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (1) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat.*

Section 30231 of the Coastal Act states as follows (emphasis added):

*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 30236 sets forth limitations on the types of projects that may be allowed to cause substantial alteration of rivers and streams, and those projects that do qualify as allowed shall incorporate the best mitigation measures feasible. Section 30231 requires in part the protection of the biological productivity and quality of coastal waters and streams through measures such as controlling runoff, preventing depletion of groundwater supplies, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing the alteration of natural streams.

McNeil Creek is a small, perennial, first-order stream that flows from its headwaters approximately one-half mile inland of Highway 101 through culverts beneath the highway, Patricks Point Drive, and Stagecoach Road through the permittee's property to the Pacific Ocean, which abuts the western boundary of the subject site. Due to the steep, near-vertical topographic breaks along the uplifted marine terrace edge where the stream cascades to the beach below, McNeil Creek does not support anadromous fish runs. McNeil Creek exhibits varying conditions as it flows downstream from where the creek passes beneath Stagecoach Road to where it flows down into the Pacific Ocean. The north bank of the stream in this area is characterized by a relatively steep-sided gulch with an abrupt vegetation change from riparian habitat to the adjacent North Coast Coniferous Forest. The south bank begins as a relatively steep-sided gulch directly adjacent to the culvert beneath Stagecoach Road, and flattens out to a gentle slope approximately twenty feet downstream of the road before resuming a steep grade. There is a less visible distinction between riparian habitat and North Coast Coniferous Forest on the south bank.

As described above, the permittee proposes to install a collector well adjacent to the creek approximately 25 feet off of Stagecoach Road. The water collection system would be six-foot-wide and ten-foot-deep and would contain a two-foot-wide pierced concrete collection well surrounded by pea gravel and existing earthen material to filter the creek water as it travels from McNeil Creek to the collection system. The concrete well would be dug to within two-feet of the surface, below-surface piping and electrical conduit would be installed, and unpierced concrete pipe would be placed to about two-feet above ground. Power and water lines would run along the ground to an uphill point where they would be connected with the utilities from the current pump. A water collection well point may be inserted below-ground from the collector well to the stream to facilitate water collection if the gravity collection system does not supply an adequate volume of water. The project as proposed would result in only minor alteration to the stream, as the well would be dug five feet from the stream and the well point would be inserted horizontally below-ground.

### **Necessary Water Project**

For analysis purposes, proposed development involving substantial alteration of a river or stream must demonstrate that the development: (1) is for one of the three uses specified in Section 30236; and (2) incorporates "the best mitigation measures feasible."

The collector well and related infrastructure proposed to be installed immediately adjacent to McNeil Creek to divert creek water is being pursued as a water supply project that will provide domestic water to serve a single family residence located in a rural residential area.

The Commission approved the permit for the original house construction on the property in 1983, which at that time obtained domestic water from another diversion point on McNeil Creek upstream on a separate property. The present water system was installed sometime in 2005 without the benefit of a CDP and involved diverting water from McNeil Creek via an in-stream pump since. The permittee has indicated that the system requires a high degree of maintenance and is also unreliable for providing the existing residence with a year-round domestic water supply, especially during the drier late-summer/early-autumn months. The current water collection system is a pump located within the stream that requires routine maintenance up to four times per year due to siltation buildup that involves digging the pump out of sediment and relocating it to a new pool. The permittee proposes to remedy the existing unpermitted situation and to develop a more reliable water system by replacing the current in-stream pump with a more efficient method that will not require routine maintenance and will act as a passive water collection system rather than an active pump system. By improving the current water supply system, the permittee will reduce the required maintenance and will reduce impact on the stream system caused by entering the stream to clean and change the pump. As the development is necessary to provide water to an existing residence and replaces the originally approved water diversion from McNeil Creek, the Commission finds that the primary purpose of the development is a necessary water supply project.

### **Maintaining Biological Productivity**

In addition to the allowable use provisions of Section 30236, development proposals approved pursuant to this policy must also be shown to have incorporated the best mitigation measures feasible to reduce potentially significant adverse impacts on coastal resources to less than significant levels. In addition, Section 30231 of the Coastal Act requires that the biological productivity and quality of coastal streams be maintained and, where feasible, restored.

The proposed water supply intake would be developed in riverine and riparian wetlands and could have potentially significant adverse effects on the water quality and aquatic and streamside habitat of lower McNeil Creek. For example, if overdrafting were to occur, the surface and subsurface flows within the creek could be diminished to a point where habitat impacts could result (e.g., unavailability of water to aquatic organisms, desiccation of hydrophytic vegetation in and along the riparian corridor). Overdrafting could also occur if water was diverted during the summer months when there is less rain and warmer temperatures, and when low summer flows can diminish the overall health of McNeil Creek. In addition, construction activities could impact the creek water quality.

To prevent potential impacts to riparian habitat and aquatic species, the State Water Resources Control Board's Division of Water Rights set specific limits on the types of uses the water appropriation could serve and the quantity of stream water to be diverted. These limits incorporate the recommendations of the Department of Fish and Wildlife that the permittee allow a minimum of eighty percent (80%) of the surface flow within McNeil to bypass the diversion system to ensure stream health and productivity. The limits also state that water may only be drawn from the creek from October 1 of each year to August 1 of the

succeeding year to prevent overdrafting of the creek during low stream flow periods associated with the dry season. To ensure that these water use limitations necessary to protect the downstream habitat of McNeil Creek are followed, the Commission attaches **Special Condition No. 4**. **Special Condition No. 4** reiterates the 80% bypass requirement established by the CDFW and to prevent impacts to aquatic resources from potential overdrafting. The condition further limits the maximum daily water appropriation to be diverted (not to exceed 1,950 gallons per day), as required by the CDFW permit, and limits the time frame that water can be diverted each year, as required by the Division of Water Rights permit, to further protect aquatic habitat from overdrafting.

To assure that potential future buyers of the two lots that comprise the property have specific notice of the water supply intake limitations and special condition requirements attached to the properties prior to purchase, the Commission attaches **Special Condition 8** requiring a deed restriction to be recorded against the properties involved in the application.

The construction activities associated with the installation of a water collection system could potentially allow sediments and materials to wash into and impact the water quality of McNeil Creek. The proposed water collection project would be installed approximately five feet from McNeil creek and within 25 feet of Stagecoach road on the south bank of the creek where there is a mild sloping grade. The vegetation in the proposed development area consists largely of native forest species such as swordfern (*Polystichum munitum*), California wax myrtle (*Myrica californica*), western bracken fern (*Pteridium aquilinum*), evergreen huckleberry (*Vaccinium ovatum*), and salal (*Gaultheria shallon*). There are no trees in the immediate area of the proposed collection well. The project involves minor vegetation removal in the area where the well will be installed as well as grading and soil disturbance from the compact excavator that will access the site via Stagecoach road. Commission staff completed a site visit with the permittee and CDFW to verify that there are no sensitive plant species within the proposed development area or path that will be used by the excavator to access the development area. The permittee has proposed to revegetate any areas that are temporarily disturbed during construction. The Commission attaches **Special Condition 6** to require the permittee to provide a post-construction vegetation monitoring report within 90 days of completion of construction. The report shall evaluate achievement of the restoration objectives of (1) reestablishing vegetation in all portions of the project area (including, but not limited to, temporary accessways and staging areas) designed to be re-established as forest and streamside habitats to a level of native plant coverage and density equivalent to existing vegetation coverage and density of the surrounding undisturbed areas and (2) removing the existing water system infrastructure (e.g., pump, sand bags, etc.) from McNeil Creek and restoring the creek habitat to natural conditions. If the monitoring report demonstrates that the revegetation efforts have not been successful, the permittee must submit a revised revegetation plan in the form of a further application to amend the permit.

The proposed project will not require construction work within the stream, and will require minimal work in the stream channel. There will be minor disturbances to the vegetation adjacent to the creek associated with a small compact excavator that will be used to excavate the water collection ditch. To control runoff and maintain the natural vegetation buffer areas that protect McNeil Creek, the permittee has proposed a number of mitigation measures and

to further minimize impacts to the riparian area the Commission attaches **Special Condition 4**. This condition incorporates the permittee's mitigation measures and requires that BMPs are implemented during project construction as proposed, including dry season scheduling for the excavation, preserving existing vegetation, and using runoff control and erosion control measures.

Therefore, as the proposed development is for an enumerated allowable use and as the project would incorporate or has been conditioned to include the best mitigation measures feasible, the Commission finds the proposed streambed development is consistent with Section 30236 of the Coastal Act. The Commission further finds that the development, as conditioned to protect the stream from sedimentation impacts from the proposed development, is consistent with the requirement of Coastal Act Sections 30231 that the biological productivity and the quality of coastal streams appropriate to maintain optimum populations of marine organisms and for the protection of human health be maintained and, where feasible, restored.

#### **F. PUBLIC ACCESS**

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.

Although the project site is located between the first public road (Stagecoach Road) and the sea, the development will not adversely affect public access. There are no trails that provide shoreline access through the subject property and therefore, the proposed site improvements would not result in a barrier to public coastal access. Furthermore, the proposed water system improvements would not change the nature or intensity of use of the site and thus, would not create any new demand for public access or otherwise create any additional burdens on public access. Therefore, the Commission finds that the proposed development will have no significant adverse effect on public access, and the development as proposed without new public access is consistent with the public access policies of the Coastal Act.

#### **G. ARCHAEOLOGICAL RESOURCES**

Section 30244 of the Coastal Act states:

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

The Yurok, a Native American tribe, is known to have settled along the Humboldt County coast within the general vicinity of the subject property. The Yurok had settlements extending from Little River State Beach near McKinleyville to areas within Del Norte County, including over 50 named villages clustered along the Klamath River and coastal lagoons and creeks.

To ensure protection of any cultural resources that may be discovered at the site during construction of the proposed project, the Commission attaches **Special Condition 7**. This special 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. To recommence construction following discovery of cultural deposits, the permittee is required to submit a supplementary archaeological plan for the review and approval of the Executive Director, who determines 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.

## **H. LOCAL COASTAL PROGRAM**

Section 30604(a) of the Coastal Act states as follows:

*(a) Prior to certification of the Local Coastal Program, a coastal development permit shall be issued if the issuing agency, or the commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200). A denial of a coastal development permit on grounds it would prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200) shall be accompanied by a specific finding which sets forth the basis for such conclusion.*

This section of the Act provides that the Commission shall issue a CDP only if the project will not prejudice the ability of the local government having jurisdiction to prepare an LCP that conforms with the Chapter 3 policies of the Coastal Act.

The subject site is within an area of deferred certification that includes all of the lots along the west side of Stagecoach Road and Patricks Point Drive between Patricks Point State Park to the north and Trinidad State Beach to the south within the Trinidad Planning Area of the County of Humboldt's Local Coastal Program. As conditioned, the proposed development will be consistent with Chapter 3 of the Coastal Act. Therefore, approval of the project will not



prejudice the ability of Humboldt County to prepare a LCP for this area that is in conformity with the provisions of Chapter 3 of the Coastal Act.

### **I. ALLEGED VIOLATION**

As previously discussed, violations of the Coastal Act exist on the subject property including, but not limited to, the existing potable water system for the property which consists of an in-creek pump and associated above-ground piping that was installed without the benefit of a CDP in 2005. Approval of this application pursuant to the staff recommendation will require the permittee to remove the existing in-creek pump and restore the creek back habitat to natural condition as required by **Special Condition No. 6**.

Although development has taken place prior to submission of this permit application, consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Commission review and action on this permit does not constitute a waiver of any legal action with regard to the alleged violations, nor does it constitute an implied statement of the Commission's position regarding the legality of development, other than the development addressed herein, undertaken on the subject site without a coastal permit. In fact, approval of this permit is possible only because of the conditions included herein and failure to comply with these conditions would also constitute a violation of this permit and of the Coastal Act. Accordingly, the permittee remains subject to enforcement action just as it was prior to this permit approval for engaging in unpermitted development, unless and until the conditions of approval included in this permit are satisfied. Failure to comply with the terms and conditions of this permit may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act. Only as conditioned is the proposed development consistent with the Coastal Act.

### **J. RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT OF 2000**

The Commission notes that its action on the proposed development is not based upon any animus toward the religious affiliation of the permittee. The Commission has reviewed the provisions of the Religious Land Use and Institutionalized Persons Act (RLUIPA), which prohibit certain actions even if *not* based upon animus, to ensure that its actions are not in violation of federal law in any other way. Section 2 of the RLUIPA, titled "Protection of Land Use as Religious Exercise" (42 USC §2000cc), contains four separate prohibitions on government action.<sup>1</sup>

Pursuant to that section, the Commission may not "implement a land use regulation..."

- "In a manner that imposes a substantial burden on the religious exercise of a[n] . . . institution, unless the imposition of the burden... (A) [furthers]... a compelling governmental interest; and (B) is the least restrictive means of furthering that compelling governmental interest" (RLUIPA Section 2(a));
- "In a manner that treats a religious assembly or institution on less than equal terms with a non-religious assembly or institution" (RLUIPA Section 2(b)(1));

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<sup>1</sup> These prohibitions apply to all state agencies, including the Commission. 42 USC §2000cc-5(4).

- “That discriminates against any assembly or institution on the basis of religion or religious denomination” (RLUIPA Section 2(b)(2)); or
- “That (A) totally excludes religious assemblies from a jurisdiction; or (B) unreasonably limit religious assemblies, institutions, or structures within a jurisdiction.” [RLUIPA Section 2(b)(3)]

These sections are inapplicable, initially, because the Commission’s action does not involve the implementation of a “land use regulation” as RLUIPA defines that phrase. RLUIPA specifically defines “land use regulation” to mean “a zoning or landmarking law ... that limits or restricts a claimant’s use or development of land... if the claimant has an ownership, leasehold, easement, servitude, or other property interest...or a contract or option to acquire such an interest.” RLUIPA Section 8(5); 42 USC § 2000cc-5(5). The Coastal Act provisions implemented by the Commission’s decision are neither zoning nor landmarking laws that limit or restrict the permittee use or development of the subject property.

Furthermore, even if the Commission’s action were to constitute implementation of a “land use regulation” for purposes of RLUIPA, it meets none of the four criteria listed above. Regarding the first prohibition, in RLUIPA Section 2(a), the Commission notes that the subject site is not used for church assembly and therefore, the Commission’s action imposes no substantial burden on the permittee’s religious exercise. The proposed amended development is not designed to facilitate the exercise of religion (much less is it central to such exercise). Thus, the imposition of conditions on the project by the Commission with the proposed revisions would not burden the permittee’s exercise of religion, much less pose a substantially burden to such activity.

Secondly, with respect to RLUIPA Section 2(b)(1), the Commission’s action treats the permittee on terms that are identical to those it would apply to any non-religious entity applying for the same development. It is the nature of the proposed amended development, and the fact that it involves coastal resource impacts, rather than the nature of the permittee, that is critical to the Commission’s decision.

Finally, the Commission’s action does not discriminate against the permittee on the basis of religion or religious denomination, and it does not exclude or unreasonably limit religious assemblies or institutions from any jurisdiction. Consequently, the Commission concludes that its action on the amended development is not in violation of the Religious Land Use and Institutionalized persons Act of 2000.

#### **K. CALIFORNIA ENVIRONMENTAL QUALITY ACT**

The County of Humboldt determined the proposed project to be categorically exempt from CEQA under section 15304 (“minor public or private alterations in the condition of land, water, and/or vegetation which do not involve removal of healthy, mature, scenic trees except for forestry or agricultural purposes”).

Section 13906 of the Commission’s administrative regulations requires Coastal Commission approval of a coastal development permit application to be supported by findings showing that 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 feasible alternatives or feasible mitigation measures available, which would significantly lessen any significant effect that the activity may have on the environment.

The Coastal Commission's review and analysis of CDP applications has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. As a responsible agency, the Commission conducted its analysis of the potential impacts of the proposed development that the Commission is authorized by the Coastal Act to review. The Commission has reviewed the relevant coastal resource issues associated with the proposed project and has identified appropriate and necessary conditions to assure protection of coastal resources consistent with the requirements of the Coastal Act. The staff report discusses the relevant coastal resource issues with the proposed development. All public comments received to date have been addressed in the staff report, including staff's oral presentation and the findings adopted by the Commission. The Commission incorporates its findings on Coastal Act consistency at this point as if set forth in full. As conditioned, there are no additional feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse environmental effect that approval of the proposed project, as modified, would have on the environment. Therefore, the Commission finds that the proposed project can be found to be consistent with the Coastal Act and CEQA Section 21080.5(d)(2)(A).

1-16-0793 (Avataric Ruchirasala of Adidam)

**APPENDIX A**  
SUBSTANTIVE FILE DOCUMENTS

Application File for Coastal Development Permit No. 1-16-0793

Application File for Coastal Development Permit No. 1-83-096

Application File for Coastal Development Permit No. 1-01-052

Application File for Coastal Development Permit Amendment No. 1-01-052-A1

Application File for Coastal Development Permit Amendment No. 1-01-052-A2