

CALIFORNIA COASTAL COMMISSION

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Th9a

Filed: 8/21/19
180th day: 2/17/20
Staff: M. Kraemer-A
Staff Report: 9/27/19
Hearing Date: 10/17/19

STAFF REPORT: REGULAR CALENDAR

Application No.: 1-19-0664

Applicant: Thomas & Cindy Michel

Location: 1192 Port Kenyon Road, Ferndale area, Humboldt County

Project Description: Construct a 2,000-square-foot, maximum 27-foot-tall farmhouse, 784-square-foot attached garage, and an on-site wastewater treatment and disposal system on a 5-acre agricultural lot.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The applicants propose to construct a 2,000-square-foot farmhouse on an agricultural lot containing an existing 1,200-square-foot agricultural barn and an agricultural well. The approximately 5-acre property is located approximately a half mile north of the city limits of Ferndale near the small unincorporated community of Arlynda Corners in the Eel River Delta, an area of cultivated agricultural lands in Humboldt County's coastal zone. The majority of the property, except for the property's riverine lands along and immediately adjacent to the Salt River, is classified as prime agricultural land. The applicants actively use the site for growing hay and for a specialized agricultural operation involving raising newborn female calves to breeding age, after which they are sold to local dairies where they enter the milking system. The operation requires less land but a greater on-site presence by the ranchers than regular grazing

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operations. The proposed farmhouse would facilitate the ranchers' access to the calves, which require a relatively high degree of attention, including bottle-feeding twice a day as newborns.

The application is being processed as a consolidated CDP application where the standard of review is the Chapter 3 policies of the Coastal Act, but the local government's certified LCP may be used as guidance. The property is locally planned and zoned for agricultural use (Agriculture Exclusive, AE). The County's certified land use plan allows for farmhouses to be established on AE lands and considers farm dwellings that are "incidental to agriculture" to be a permissible agricultural use of the property. The LUP expressly recognizes farmhouses occupied by the farm owner and their parents and children as dwellings incidental to the agricultural use. The LCP's restrictions on residential uses on agricultural lands reflect a core policy concern of the Coastal Act to protect coastal agriculture through the limitation on conversion of agricultural lands to non-agricultural uses (§30241 and §30242).

The applicants propose to construct a farmhouse to live on their agricultural land to enable more efficient management of their hay and heifer operations and to enhance the productivity of their agricultural lands. As proposed, the farmhouse would be (a) occupied by the farm owners/farm operators and (b) incidental to the primary farming use of the property. The applicants have taken measures to minimize the total development envelope for their farmhouse to that which is solely necessary to support their active agricultural operations on the property. The proposed quarter-acre farmhouse development area is typical for farmhouse development in the region. The clustering of development adjacent to Port Kenyon Road and near the existing barn and driveway will maximize the open pastureland areas available for continued hay and cattle operations north of the road and throughout the southern portion of the property.

Staff recommends that the Commission attach Special Conditions 1-2 to ensure that the maximum amount of prime agricultural land is maintained in agricultural production and to prevent any future conversion of the farmhouse and agricultural land to non-agricultural uses. Special Condition 1 would require that the authorized farmhouse be occupied by the farm owner(s) or farm operator(s) of the subject lot and be incidental to the primary farming use of the property. Special Condition 2 would require that all future improvements to the structures authorized by this permit that might otherwise be exempt from coastal permit requirements pursuant to Coastal Act §30610(a) must be authorized by an amendment to this CDP or a new CDP. This condition would allow the Commission to review whether future improvements to the development would impermissibly convert prime agricultural land. Special Condition 2 also would inform the applicants and any future purchasers of the property that any future conversion of the authorized farmhouse to a non-agricultural residential use would require a CDP amendment, because such a conversion would constitute a change in the intensity of the use of land that meets the definition of "development" under §30106 of the Coastal Act. This condition would help ensure that CDP authorizations are obtained for any such proposed development and provide the Commission with the opportunity to review any proposed conversion of these prime agricultural lands for consistency with the agricultural protection policies of the Coastal Act.

The motion to adopt the staff recommendation of approval with special conditions is on [page 4](#).

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EXHIBITS

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I. MOTION AND RESOLUTION

The staff recommends that the Commission adopt the following resolution:

Motion:

I move that the Commission approve coastal development permit 1-19-0664 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. Expiration:** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable amount of time. Application for extension of the permit must be made prior to the expiration date.
- 3. Interpretation:** Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
- 4. Assignment:** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

5. **Terms and Conditions Run with the Land:** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. **Farmhouse Restriction.** The authorized farmhouse is to be occupied by the farm owner(s) or farm operator(s) of the agricultural operations on the subject property and incidental to the primary farming use of the subject property. Compliance with these standards is required in order for the farmhouse to be occupied.
2. **Future Development Restriction.** This permit is only for the development described in Coastal Development Permit Application No. (CDP) 1-19-0664, including, but not limited to, the authorized farmhouse, which is to be occupied by the farm owner(s) or farm operator(s) and incidental to the primary farming use of the subject property. The following future development restrictions apply:
 - a. Pursuant to Title 14 California Code of Regulations (CCR) section 13250(b)(6), the exemptions otherwise provided in Public Resources Code (PRC) §30610(a) shall not apply to the development governed by the CDP 1-19-0664. Accordingly, any future improvements to the structures authorized by this permit shall require an amendment to CDP 1-19-0664 from the Commission or shall require an additional CDP from the Commission or from the applicable certified local government.
 - b. In addition, an amendment to CDP 1-19-0664 from the Commission or an additional CDP from the Commission or from the applicable certified local government shall be required for any repair or maintenance identified as requiring a permit in PRC §30610(d) and Title 14 CCR §13252(a)-(b); and
 - c. Pursuant to PRC §30106, any change in the density or intensity of the use of the land, including, but not limited to, conversion of the authorized farmhouse to a non-agricultural residential use shall require an amendment to CDP 1-19-0664 from the Commission.
3. **Deed Restriction Recordation of Permit Conditions.** PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicants shall submit to the Executive Director for review and approval documentation demonstrating that the applicants have executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (a) 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 (b) 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.

- 4. Final Project Plans/Flood and Geologic Hazard Mitigation.** PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicants shall submit for the review and written approval of the Executive Director, two sets of full-size scaled Final Plans in substantial compliance with those submitted to the Commission on July 10, 2019.

 - a. The residential design, including the first floor elevations, shall be consistent with draft plans submitted to the Commission on July 10, 2019.
 - b. All final design and construction plans, including site preparation, foundation design, drainage plans, and flood risk minimization measures, shall be consistent with the recommendations contained in (i) the soils report for the site prepared by Whitchurch Engineering dated May 9, 2019, and (ii) the letter regarding flood elevations and venting designs prepared by Ontiveros & Associates dated August 20, 2019. All authorized development shall be located in the locations proposed in the permit application.
 - c. The final plans shall include evidence that a licensed professional (e.g., Certified Engineering Geologist, Geotechnical Engineer, or Civil Engineer) has reviewed and approved all final site preparation, foundation design, drainage, and flood protection plans, and has certified that each of those plans is consistent with all of the recommendations specified in the above-referenced soils report, flood letter and plot plans approved by the California Coastal Commission for the project site.
 - d. The permittees shall undertake development in conformance with the approved final plans unless the Commission amends this permit or the Executive Director issues a written determination that no amendment is legally required for any proposed minor deviations.
- 5. Assumption of Risk, Waiver of Liability, and Indemnity Agreement.** By acceptance of this permit, the permittees acknowledge and agree (a) that the site may be subject to hazards from earthquake shaking, liquefaction, differential settlement, erosion, tsunami inundation, flooding, and other geologic and flood hazards; (b) to assume the risks to the permittees and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (c) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (d) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.
- 6. Construction Responsibilities.** The permittees shall adhere to appropriate construction-related "best management practices" (BMPs) to protect water quality, including, but not limited to, the following:

 - a. No construction materials, debris, or waste shall be placed or stored where it may be subject to entering coastal waters;

- b. Any and all debris resulting from construction activities shall be removed from the project site and disposed of properly;
- c. During the course of the project work, all trash shall be properly contained, removed from the work site on a regular basis, and properly disposed of to avoid contamination of habitat during demolition and construction activities;
- d. All on-site stockpiles of construction debris and soil or other earthen materials shall be covered and contained whenever there is a potential for rain to prevent polluted water runoff from the site; and
- e. During construction, development shall minimize erosion and sedimentation, the discharge of other potential pollutants resulting from construction activities, and stormwater and non-stormwater runoff, through the use of temporary BMPs. Appropriate erosion control BMPs may include mulch, soil binders, blankets or mats to prevent soil from being eroded by water or wind. Appropriate sediment control BMPs may include fiber rolls, silt fences, or straw bales to trap and remove eroded sediment from runoff.

7. Lighting Limitations. All exterior lighting attached to the authorized structures shall be low-wattage and downcast shielded such that no glare will be directed beyond the bounds of the property.

8. Protection of Archaeological Resources

- a. If an area of cultural deposits is discovered during the course of the project, all construction shall cease and shall not recommence except as provided in subsection (b) hereof; and a qualified cultural resource specialist shall analyze the significance of the find.
- b. A permittee seeking to recommence construction following discovery of the cultural deposits shall submit a supplementary archaeological plan for the review and approval of the Executive Director.
 - (i) If 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, construction may recommence after this determination is made by the Executive Director.
 - (ii) If the Executive Director approves the Supplementary Archaeological Plan but determines that the changes therein are not de minimis, construction may not recommence until after an amendment to this permit is approved by the Commission.

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares as follows:

A. PROJECT DESCRIPTION AND SETTING

The applicants, Thomas and Cindy Michel, propose to construct a 2,000-square-foot, maximum 27-foot-tall farmhouse, 784-square-foot attached garage, and on-site wastewater treatment and

disposal system at 1192 Port Kenyon Road, north of Ferndale, in Humboldt County (APN 100-241-001) (Exhibits 1-3). All proposed new development would be contained within an approximately quarter-acre development area clustered near Port Kenyon Road and the existing barn on the property (Exhibits 4-6). The existing approximately 5-acre rectangular-shaped lot is developed with an existing 1,200-square-foot agricultural barn and an agricultural well.¹

The subject lot is bisected by Port Kenyon Road and partially flanked on its east side by Rasmussen Lane, which are both County roads. The approximately 2-acre portion of the lot north of Port Kenyon Road is undeveloped grazing land that abuts the Salt River. The Salt River is a tributary of the Eel River that is tidally influenced up to approximately Dillon Road, approximately ~1,500 feet downstream from the northern boundary of the subject lot.² The remaining approximately 3-acre portion of the lot south of Port Kenyon Road is developed with the existing agricultural barn and well, plus a couple of accessory sheds and a pigeon coop. The proposed new farmhouse would be located south of and adjacent to the road and near the existing barn on the property, approximately 500 feet from the Salt River.

The property is located approximately half a mile north of the city limits of Ferndale, two-thirds of a mile west of the community of Arlynda Corners (which is provided with urban sewer and water services by the City), and near the small unincorporated subdivision of Port Kenyon to the west. Port Kenyon was established in the late 1800s along the banks of the Salt River as a shipping port community for the exchange of lumber, salmon, and farm products. Port Kenyon declined decades later due to silting in of the Salt River and repeated flooding. The property is within the service area boundary of the Riverside Community Services District for domestic water service.

The proposed farmhouse would be constructed on the highest portion of the property, adjacent to Port Kenyon Road, at an elevation of approximately 19 feet (NAVD88). The property slopes gently in two directions from its highest points adjacent to the road: both northward towards the Salt River and southward towards the existing grazing land on the southern portion of the property. The entire property is located within the FEMA-mapped 100-year flood zone of the Eel River.

The property is locally planned and zoned for agricultural use. The applicants actively use the site for growing hay and for a specialized agricultural operation involving raising newborn female calves to breeding age, after which they are sold to local dairies where they enter the milking system. The operation requires less land, but a greater on-site presence by the ranchers than regular grazing operations. The proposed farmhouse would facilitate the ranchers' access to the calves, which require a relatively high degree of attention, including bottle-feeding twice a day as newborns for approximately three months (and the applicants typically raise two sets of

¹ The portion of the subject lot where the barn and well are located is within the CDP jurisdiction of Humboldt County and within a mapped categorical exclusion area for agricultural structures approved by the Commission in 1986 (Categorical Exclusion Order E-86-4). The County excluded the development of the barn pursuant to E-86-4. The agricultural well and associated pump house were constructed in 2014.

² The current extent of tidal influence has been documented by the Humboldt County Resource Conservation District during implementation of the Salt River Ecosystem Restoration Project, which currently is in its eighth year of construction.

newborns annually, which combined require twice-daily bottle-feeding for six months of the year).

There are existing wetlands on the property that historically have been, and presently remain, in agricultural use (primarily cattle grazing). The wetlands are seasonally inundated and dominated by pasture grasses and herbs such as clover and buttercup. The proposed new farmhouse would be sited approximately 100 feet from the delineated wetlands.

B. STANDARD OF REVIEW

The proposed project is located entirely within the coastal zone and includes areas within the retained coastal development permit (CDP) jurisdiction of the Commission and the CDP jurisdiction delegated to the County of Humboldt by the Commission through the County's certified local coastal program (LCP). The portion of the property north of Port Kenyon Road, and a portion of the property south of the road where the new farmhouse and attached garage would be located within the Commission's retained CDP jurisdiction, within an area shown on State Lands Commission maps over which the state retains a public trust interest. The portion of the property where the barn is located and the remainder of the property south of Port Kenyon Road is in the County's CDP jurisdiction (a portion of the proposed primary leach field would be in the County's CDP jurisdiction).

Under Coastal Act section 30601.3, when a project requires a CDP from both a local government with a certified local coastal program and the Commission, the Commission may process a consolidated CDP application for the proposed development when the applicant, the local government, and the Commission's Executive Director agree to process the CDP as a consolidated CDP. In this case, Humboldt County and the applicants have both requested that the Commission process a consolidated CDP for this project, and the Executive Director has agreed. Under a consolidated CDP application, the standard of review that the Commission must apply to the proposed new development is the Chapter 3 policies of the Coastal Act pursuant to section 30601.3. The local government's certified LCP may be used as guidance.

C. OTHER AGENCY APPROVALS

The proposed project requires no other agency approvals other than a County building permit.

D. LOCATING AND PLANNING NEW DEVELOPMENT

Section 30250 of the Coastal Act states in applicable part (emphasis added):

(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and

the created parcels would be no smaller than the average size of surrounding parcels.

...

The intent of §30250(a) cited above is to channel development toward more urbanized areas where services are provided and potential impacts to resources are minimized. The property is within the service area boundary of the Riverside Community Services District for domestic water service. The applicants have provided evidence from the CSD that the CSD will provide water service for the proposed new farmhouse use.

The property is outside of the Ferndale municipal service area boundary for the treatment and disposal of domestic wastewater. Thus, the proposed farmhouse must be served by an on-site wastewater treatment and disposal system (OWTS). The applicants have provided plans prepared by professional engineers from Omsberg and Company for an OWTS. The applicants also have provided evidence from the County Department of Environmental Health (DEH), which is the lead agency in the County that oversees proper sewage disposal for domestic wastewater, that a DEH Environmental Health Specialist has reviewed and preliminarily approved the proposed OWTS as adequate to serve the proposed farmhouse.³

Thus, the Commission finds that adequate services will be provided for the proposed development, and, as described in the findings below, the proposed project, as conditioned, will not have significant adverse impacts, either individually or cumulatively, on coastal resources. The Commission therefore finds that the proposed development is consistent with Coastal Act §30250(a).

E. PROTECTION OF AGRICULTURAL LANDS

The proposed project is located in the Eel River Delta, an important area of cultivated agricultural lands in Humboldt County's coastal zone. The soils of the Eel River Delta are a significant coastal resource enhanced by the deposits left by repeated major and minor flooding events. As described in Finding IV-A above, the property is locally planned and zoned for agricultural use, and the site is currently in active agricultural use. The applicants, who currently reside in Ferndale, manage the existing farm operations and wish to live on the property to facilitate more efficient management of their farm operations.

Summary of applicable Coastal Act policies

The property is located approximately half a mile north of the city limits of Ferndale and two-thirds of a mile west of the small unincorporated community of Arlynda Corners, which is provided with urban sewer and water services by the City. The Coastal Act protects coastal agriculture first and foremost by requiring that "*new development be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it...*" [§30250(a)]. This requirement to concentrate urban development in existing urban areas establishes the fundamental framework for assuring that new urban development, including urban services, is not located in rural coastal areas where the protection of agricultural, scenic, biological, and

³ The applicants provided a copy of a 6/25/2019 email from Benjamin Dolf, Senior Environmental Health Specialist for County Division of Environmental Health, to Thomas Michael stating the County's preliminary determination that the proposed OWTS plans appear compliant with County regulations.

other coastal resources is paramount. Coupled with this framework for limiting urban development to existing developed areas, the Coastal Act requires the establishment of stable urban-rural boundaries to assure that urban sprawl from existing urban areas does not overtake rural agricultural areas. The Coastal Act also requires that the maximum amount of prime agricultural land be maintained in agricultural production, and that the conversion of agricultural land along the urban periphery be limited to instances where the viability of existing agricultural use is already severely limited by conflicts with urban uses or where conversion of agricultural lands would complete a logical neighborhood and contribute to the establishment of a stable limit to urban development or would concentrate development in urban areas. Specifically, Coastal Act §30241 states (emphasis added):

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

- (a) *By establishing stable boundaries separating urban and rural areas, including, where necessary, clearly defined buffer areas to minimize conflicts between agricultural and urban land uses.*
- (b) *By limiting conversions of agricultural lands around the periphery of urban areas to the lands where the viability of existing agricultural use is already severely limited by conflicts with urban uses or where the conversion of the lands would complete a logical and viable neighborhood and contribute to the establishment of a stable limit to urban development.*
- (c) *By permitting the conversion of agricultural land surrounded by urban uses where the conversion of the land would be consistent with Section 30250.⁴*
- (d) *By developing available lands not suited for agriculture prior to the conversion of agricultural lands.*
- (e) *By assuring that public service and facility expansions and nonagricultural development do not impair agricultural viability, either through increased assessment costs or degraded air and water quality.*
- (f) *By assuring that all divisions of prime agricultural lands, except those conversions approved pursuant to subdivision (b), and all development adjacent to prime agricultural lands shall not diminish the productivity of such prime agricultural lands.*

Essentially, under §30241, conversion of agricultural lands along the urban periphery is permissible only if agricultural use no longer viable, or unless conversion would complete a logical urban area and/or help to establish a stable urban-rural boundary that better protects agricultural land.

⁴ The portion of referenced section 30250 applicable to this project type and location [sub-section (a)] requires that, “New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources.”

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

In comparison to §30241 and its focus on conversions of agricultural lands around the urban fringe and creating a stable urban-rural boundary, Coastal Act §30242 addresses conversions of land suitable for agriculture in all other locations, i.e., rural locations without conflicts “*between agricultural and urban land uses.*” Coastal Act §30242 states (emphasis added):

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

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

In summary, the Coastal Act provisions on conversion of agricultural lands are as follows:

- Prime agricultural lands are to be maintained in production.
- Prime and non-prime agricultural lands *either on the urban periphery or surrounded by urban uses* may be converted if they satisfy standards stated in subsections (b) and (c) of §30241 as well as other applicable provisions of the Coastal Act.
- All *other* lands (i.e. rural locations without conflicts “between agricultural and urban land uses”) suitable for agricultural use may be converted only if conversion is consistent with §30242 and other applicable provisions of the Act.
- When an LCP or LCP amendment proposes conversion of any agricultural land on the urban periphery under the viability provision of §30241(b), the viability tests of §30241.5 also must be satisfied.

Summary of LCP policies

As discussed in Finding IV-B above, as this is a consolidated CDP application, the standard of review that the Commission must apply to the proposed new development is the Chapter 3 policies of the Coastal Act, and the County's certified LCP may be used as guidance.

The property is locally planned and zoned Agriculture Exclusive (AE) under the County's certified LCP. The County's certified land use plan (LUP, in this case the Eel River Area Plan) allows for farmhouses to be established on AE lands and considers farm dwellings that are "incidental to agriculture" to be a permissible agricultural use of the property. The LUP expressly recognizes farmhouses occupied by the farm owner and their parents and children as dwellings incidental to the agricultural use. Chapter 5 of the LUP describes the purpose of the AE land use designation as "*to protect prime and non-prime agricultural lands for long-term productive agricultural use.*" Principal uses allowed on AE lands under the certified LUP include (emphasis added):

*...production of food, fiber or plants, with residence as a use incidental to this activity, including two (2) separate residences where one is occupied by the owner/operator and the other by the parent or child of the owner/operator, and principal uses permitted under TC; ancillary development such as barns, storage sheds, and similar agricultural structures.*⁵

County certified Coastal Zoning Regulations (CZR) §313-7.1 lists the conditionally permitted uses allowable on agricultural lands in the AE zoning district, most of which are uses that are ancillary to or supportive of agricultural production and therefore clearly consistent with the above-cited LCP and Coastal Act policies that require the maximum amount of agricultural lands to remain in agricultural production.⁶ Certain other conditionally permitted uses specified in the CZR, such as Oil and Gas Drilling and Processing, Aquaculture, Resource-Related Recreation, and Coastal Access Facilities, are not ancillary to or supportive of agricultural production but otherwise are aligned with other overriding Coastal Act requirements that also apply to agricultural lands.⁷ Consistent with Coastal Act §30222, §30241, and §30242, the LCP gives precedence to agricultural land protection over these other Coastal Act priority uses on agricultural lands by specifying that conditionally permitted uses may only be authorized on agricultural lands provided that the conditional uses "*will not impair the continued agricultural*

⁵ The referenced principal uses permitted under TC include "*timber production including all necessary site preparation, road construction and harvesting, and residential use incidental to this use...*"

⁶ Allowed conditional uses in the AE zoning district that are ancillary to or supportive of agricultural production include Farm Employee Housing; Labor Camp; Second Agriculture Residence (where one is occupied by the owner/operator and the other by the parent or child of the owner/operator); Hog Farming; Feed Lots/Slaughter House; Stables and Kennels; Agriculture-Related Recreation; and Intensive Agriculture. Other conditional uses allowed in the AE zoning district under the certified IP that are not ancillary to or supported of agricultural production include Guest House; Essential Services; Solid Waste Disposal; Oil and Gas Pipelines; Major Electrical Distribution Lines; Minor Generation and Distribution Facilities; Aquaculture; Cottage Industry; Oil and Gas Drilling and Processing; Surface Mining; Metallic Mineral Extraction; Fish and Wildlife Management; Watershed Management; Wetland Restoration; Resource-Related Recreation; and Coastal Access Facilities.

⁷ The provision allowing oil and gas development is derived from Coastal Act §30260, which expressly overrides the coastal resource protection policies of the Coastal Act in specified circumstances to allow oil and gas development and other coastal-dependent industrial development in the coastal zone, even when inconsistent with other Coastal Act policies. Similarly, coastal access, recreation, and aquaculture are all priority uses under the Coastal Act.

use on the subject property or on adjacent lands or the economic viability of agricultural operations on the site” (CZR §312-18.1.1).

With respect to dwellings on land designated AE, as discussed above, the County’s certified LCP allows for farmhouses to be established as a principally permitted use⁸ on AE lands provided that such dwellings are (a) occupied by the farm owner/operator, and (b) incidental to the primary farming use of the property. Thus, the LCP considers such dwellings to be an agricultural use of the property that does not represent a conversion of agricultural lands to a non-agricultural use and which will enhance the productivity of on-site agricultural lands. However, the LCP only allows other types of farm-related dwellings [i.e., Farm Employee Housing; Second Agriculture Residence (occupied by the parent or child of the owner/operator who resides in the primary farmhouse)] as well as non-farm-related dwellings (i.e., Guest Houses) on AE lands as conditionally permitted uses. The relegation of most types of dwellings under the LCP to conditionally permitted uses recognizes the fact that (a) different types of dwellings have the potential to undermine the protection of agricultural land by taking land out of agricultural production, (b) residential development is not a Coastal Act priority, and (c) there is no provision in the Coastal Act that overrides the Coastal Act resource protection policies in favor of residential development.

Historic and Proposed Agricultural Uses

According to the applicants, who have owned the subject property since approximately 2000, the property has historically and currently been used to grow hay and to graze and raise cattle. As previously discussed, the applicants developed the existing 1,200-square-foot barn on the property to support the agricultural operations in approximately 2000 under County Categorical Exclusion Order E-86-4. The agricultural well was installed in 2014. The hay operation involves irrigating the pasture to prolong the growing season into the fall, cutting and baling the hay, and transporting hay bales to the barn for storage. The hay is used as supplemental cattle feed. The cattle operation involves acquiring day-old female calves from local dairy farmers and bottle-feeding animals in the barn until the calves are old enough to graze in the pasture (i.e., when they are approximately three months old). The heifers graze on the property until they are old enough to be bred, which is done either by artificial insemination or naturally with a bull on a neighbor’s field. Pregnant heifers then are sold to a local dairy where they enter the milking system. Birth to sale is an approximately two-year process. The number of cattle that the property can sustain at any given time depends on animal size, but currently there are eight cattle using the land (five larger and three smaller cattle). As discussed above, this specialized agricultural operation requires less land but a greater on-site presence by the ranchers than regular grazing operations. As such, the proposed farmhouse will facilitate the ranchers’ access to the calves, which require a relatively high degree of attention, including, as mentioned above, bottle-feeding twice a day as newborns. The applicants typically raise groups of newborn calves on the site at least twice in a year, requiring twice-daily bottle-feeding on site until calves are three months old for a total of at least six months out of the year.

⁸ Although the County’s certified LCP classifies farmhouses as a principally permitted use, certified IP section 313-163.1.9 expressly excludes farmhouses from being defined as *the* principally permitted use for purposes of appealability under section 30603(a)(4) of the Coastal Act.

Prime Agricultural Land

As cited above, Coastal Act §30241 requires the protection of prime agricultural lands and sets limits on the conversion of all agricultural lands to non-agricultural uses. The four different prongs of the definition of “prime agricultural land” relate to the value and utility of the land in terms of range of agricultural uses and productivity.⁹ The land use capability classification rates the utility of the land based on various physical factors (e.g., rock type, soil type, slope, erosion potential, etc.). The lower the rating the more utility the land is considered to have for various agricultural uses. The Storie Index Rating is based on soil characteristics that govern the land’s potential utilization and productive capacity (e.g., characteristics of the soil profile, surface texture, slope, drainage, nutrient level, acidity, alkalinity, etc.) independent of other physical or economic factors that might determine the desirability of growing certain plants in a given location. The third paragraph of the definition speaks to the number of “animal units” the land can sustain. An “animal unit” (AU) is a standardized measure of animals used for various agricultural purposes. A 1,000-pound beef cow is the standard measure of an animal unit. The dry matter forage requirement of one animal unit is 26 pounds per day. Animal unit equivalents (AUE) are calculated for various other animals. A 700-pound steer is 0.80 animal units. A 1,300-pound horse is 1.20 animal units. A 120-pound sheep is 0.20 animal units. The amount of forage used by one animal unit in a month is an “animal unit month” (AUM). Finally, the fourth prong of the definition of prime agricultural land relates to the agricultural value of the land in terms of its capacity to generate a minimum commercial revenue of \$200 per acre. Land that meets any one of the four criteria in the definition is considered “prime” under the Coastal Act.

Nearly the entirety of the subject property, except for the riverine lands along and immediately adjacent to the Salt River, is classified by the Natural Resources Conservation Service as “Prime Farmland if Irrigated” (land use capability class II). This classification is based on the NRCS’s soil mapping for the property as Weott Series, which is described in part as fine-silty, poorly drained alluvial soils on flood-plain steps.¹⁰ The classification as prime also is based on the fact that the subject land is capable of supporting approximately one animal unit per acre.¹¹ Because the “prime agricultural lands” definition cited above requires only one of the four prongs to be satisfied to meet this designation, and in this case at least two of the prongs are met, the property qualifies as prime agricultural land under the Coastal Act.

Limitations on Conversion of Agricultural Lands to Nonagricultural uses

As reflected in the above-cited policies, a core policy concern of the Coastal Act is the protection of coastal agriculture through the limitation on conversion of agricultural lands to non-

⁹ Coastal Act §30113 defines prime agricultural land as those lands defined as prime in sections (1), (2), (3), and (4) of Williamson Act §51201(c). This includes: (1) All land that qualifies for rating as class I or class II in the Natural Resource Conservation Service land use capability classifications. 2) Land which qualifies for rating 80 through 100 in the Storie Index Rating. (3) Land which supports livestock used for the production of food and fiber and which has an annual carrying capacity equivalent to at least one animal unit per acre as defined by the United States Department of Agriculture. (4) Land planted with fruit- or nut-bearing trees, vines, bushes or crops which have a nonbearing period of less than five years and which will normally return during the commercial bearing period on an annual basis from the production of unprocessed agricultural plant production not less than two hundred dollars (\$200) per acre.

¹⁰ Soil Survey Staff. 2014. Keys to Soil Taxonomy, 12th ed. USDA-Natural Resources Conservation Service, Washington, DC.

¹¹ According to verbal communication provided by Thomas Michel.

agricultural uses. The original Coastal Plan that formed the basis for the Coastal Act identified this concern, including the issue of land speculation and valuation that could effectively undermine the goal of maintaining agricultural lands. Given increasingly high housing costs, agricultural use often cannot compete with the use of land for even one single-family home on a large un-subdivided farm parcel along much of the coast (e.g., from Santa Barbara to Mendocino counties), and the trend to develop large expensive homes on such properties further exacerbates this problem. The loss of available lands for farming to residential estate development is recognized as a national trend, and many states, including California, have taken actions in attempt to curb this “rural sprawl.” Akin to the Williamson Act concern regarding the valuation of agricultural land at non-agricultural prices, the Coastal Act evinces a concern for the protection of an area’s agricultural economy and an assurance that increased assessments due to public services or non-agricultural development will not impair agriculture.

In order to meet the Coastal Act requirements to maintain the maximum amount of agricultural land in production and to minimize conflicts between agriculture and urban land uses, the Commission imposes special conditions, as discussed below, to prevent the impermissible conversion of agricultural lands to non-agricultural uses, including either the impermissible conversion of agricultural lands to residential uses or impermissible conversions rendering an agricultural use secondary to residential development. The Commission also finds that although the Eel River Delta flood plain where the subject site is located may not currently be as susceptible to the “rural sprawl” trend discussed above as other coastal areas of the state or even other areas of the North Coast (e.g., Mendocino County), special conditions are needed to ensure that the maximum amount of agricultural land will be maintained in agricultural production consistent with Coastal Act §30241.

As previously discussed, the applicants propose to construct a farmhouse to live on their agricultural land to enable more efficient management of their hay and heifer operations. As proposed, the farmhouse would be (a) occupied by the farm owners/operators, and (b) incidental to the primary farming use of the property. The applicants have taken measures to minimize the total area of their farmhouse development to that which is solely necessary to support their active agricultural operations on the property. The approximately quarter-acre development area is limited to (1) the 2,000-square-foot farmhouse and attached ~784-square-foot two-car garage (which combined have a ground footprint of approximately 5,200 square feet, including the minimum required setback distance from Port Kenyon Road), (2) the on-site wastewater treatment and disposal system (with a ground footprint of approximately 4,600 square feet, including the minimum required setback distance from the house and the two adjacent public roads) and (3) the new ~600-square-foot driveway stub off the existing barn driveway. This quarter-acre development area is typical for farmhouse development associated with large and small agricultural lots in the region and, as mentioned, includes the minimum yard setbacks for development from public roadways for agricultural zoning districts required by the County (a minimum 20-foot front yard setback from Port Kenyon Road and 20-foot side yard setback from Rasmussen Lane are required). The clustering of development adjacent to Port Kenyon Road and near the existing barn and driveway will minimize the structural encroachment into open prime agricultural lands available for continued hay growing and raising heifers north of the road and throughout the southern portion of the property. The proposed utilization of the existing

driveway access for the barn for access to the new farmhouse further minimizes the encroachment of farmhouse development onto other prime agricultural lands.

In this case, because the entirety of the subject property is classified as prime agricultural land except for the riverine and riverbank areas adjacent to the Salt River, which are classified as coastal wetland or stream habitats, there is no feasible alternative site available on the property to locate the farmhouse that would avoid siting new farmhouse development on land classified as prime under the Coastal Act. In addition, because the proposed farmhouse (a) will be occupied by the farm owner/operator and incidental to the primary farming use of the property, and (b) is the minimum size necessary to accomplish the agricultural purpose of the proposed agricultural farm use, the Commission finds that the proposed project is an agricultural use, is compatible with the long-term protection of resource lands, and will not impermissibly convert prime agricultural lands to non-agricultural uses, consistent with Coastal Act §30241 and §30242. This finding is consistent with County requirements, which, as discussed above, permit dwellings on agricultural lands without requiring a conditional use permit only if such dwellings are farmhouses to be occupied by the farm owner or farm operator and as long as such dwellings are incidental to the primary farming use of the property. The County requires a conditional use permit for other type of permissible dwellings on agricultural lands, including farm employee housing, guest houses (which by definition have no kitchen facilities and are not otherwise used as a separate dwelling), and second unit dwellings where one is occupied by the owner/operator and the other by the parent or child of the owner/operator. The County does not allow non-farmhouse single-family residences on agricultural lands.

If in the future the farmhouse was to be sold as a single-family residence and occupied by persons not engaged in the principal use of the land for farming purposes, the Commission finds that this future use of the land potentially would represent a change in the intensity of the use of land that meets the definition of “development” under §30106 of the Coastal Act. If the authorized farmhouse were to be converted to a non-farmhouse (typical single-family residence) in the future, such proposed development would not be compatible with the long-term protection of resource lands and would comprise the conversion of prime agricultural land to a non-agricultural use subject to the limitations on conversion of agricultural land set forth in Coastal Act §30241. The Commission therefore attaches Special Conditions 1, 2, and 3.

Consistent with the County and the proposed project, **Special Condition 1** requires that the authorized farmhouse be occupied by the farm owner(s) or farm operator(s) of the agricultural operations on the subject property and be incidental to the primary farming use of the subject property. Compliance with these standards is required in order for the farmhouse to be occupied.

Section 30610(a) of the Coastal Act exempts certain additions to existing single-family residential structures from CDP requirements. Pursuant to this exemption, once a farmhouse has been constructed, certain additions and accessory buildings that the applicants might propose in the future may normally be exempt from the need for a permit or permit amendment. However, §30610(a) requires the Commission to specify by regulation those classes of development which involve a risk of adverse environmental effects and require that a permit be obtained for such improvements. Pursuant to §30610(a), the Commission adopted §13250 of Title 14 of the California Code of Regulations (CCR). Section 13250(b)(6) specifically authorizes the

Commission to require a permit for improvements to existing dwellings that could involve a risk of adverse environmental effect by indicating in the development permit issued for the original structure that any future improvements would require a CDP amendment or new CDP. Depending on their nature, extent, and location, additions or accessory structures associated with the authorized farmhouse could result in a conversion of prime agricultural land to non-agricultural uses or otherwise be incompatible with the long-term protection of agricultural lands in a manner inconsistent with the requirements of §30241 of the Coastal Act that prohibit the conversion of prime agricultural land to non-agricultural uses. Therefore, pursuant to CCR §13250(b)(6), the Commission attaches **Special Condition 2-A** that requires that all future development on the subject parcel that might otherwise be exempt from coastal permit requirements pursuant to Coastal Act §30610(a) be required to be authorized by an amendment to this CDP or a new CDP. This condition will ensure that future improvements to the development will not impermissibly convert prime agricultural land.

Special Condition 2-C similarly requires that any future conversion of the authorized farmhouse to a non-agricultural residential use shall require a CDP amendment. Because such a conversion potentially would represent a change in the intensity of the use of land that meets the definition of “development” under §30106 of the Coastal Act, this condition will ensure that proper CDP authorization is obtained for any such proposed development and will provide the Commission with the opportunity to review a proposed conversion for consistency with the agricultural protection policies of the Coastal Act, including the limitations on development inconsistent with the long-term protection of agricultural lands.

Finally, **Special Condition 3** requires that the applicants execute and record a deed restriction approved by the Executive Director against the property that imposes the special conditions of this permit as covenants, conditions, and restrictions on the use and enjoyment of the property. This condition will help assure that future owners are aware of CDP restrictions applicable to future development.

For all of the reasons discussed above, the Commission finds that the proposed farmhouse, as conditioned, will not impermissibly convert agricultural land, is the minimum size necessary to accomplish the agricultural purpose of the proposed agricultural farm, and is therefore compatible with the long-term protection of agricultural lands. Therefore, the project as conditioned is consistent with §30241 of the Coastal Act.

F. GEOLOGIC AND FLOOD HAZARDS

Section 30253 of the Coastal Act states, in applicable part:

New development shall do all of the following:

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs...*

The proposed project entails new development in an area subject to high geologic and flood hazards that include the potential for strong earthquake shaking, liquefaction, differential settlement, tsunami inundation, and flooding.

Seismic Hazards

Northwestern California is one of the most seismically active regions in the continental United States. The Humboldt Bay/Eel River Delta region in particular occupies a complex geologic environment characterized by very high rates of active tectonic deformation and seismicity. An active segment of the Little Salmon fault zone is located less than 6 miles to the northeast of the project area along the northern boundary of the Eel River Delta. In addition, there are several other geologic sources capable of producing strong seismic shaking at the project site, including, but not limited to, the Mendocino Triple Junction (the intersection of three crustal plates near Cape Mendocino), the northern end of the San Andreas fault (near Point Delgada), and the Cascadia Subduction Zone (which is ~8 miles west of the site and capable of producing a magnitude 9.0 or greater earthquake).

According to a site-specific soils investigation prepared by Whitchurch Engineering for the proposed project dated May 9, 2019 (Exhibit 8), and according to County hazard maps (Exhibit 7), the project area is at low risk of surface fault rupture due to the absence of previously identified active faults crossing the project area and the lack of geomorphic evidence indicating the possible presence of previously unmapped faults. However, a large earthquake on one of the active faults in the region outside of the project area (see above) has the potential to cause high intensity ground-shaking at the project site during the lifespan of the proposed development. Strong ground-shaking can also result in liquefaction, defined as the sudden loss of strength and fluid behavior of unconsolidated materials. The damaging effects of strong ground shaking and liquefaction can in turn cause large displacements of the ground surface, including heaving, cracking and buckling, and differential settlement. Liquefaction, vertical displacement, and other seismically-induced ground deformation have been documented in the Eel River Delta during several historic earthquakes, including the 1992 Petrolia earthquake (magnitude 7.1) and the 1906 great San Francisco earthquake (magnitude 7.9).

Certain sites are more susceptible than others to the secondary effects of strong ground shaking as a result of the character of the surface substrates and depth to groundwater. Due to the character of the surface substrates in the project area (silty-clayey according to the Whitchurch report), and the relatively shallow depths to groundwater, the site is shown on County hazard maps as being within an area of potential liquefaction (Exhibit 7). However, according to the Whitchurch report, “the potential for ground surface displacement due to faulting or lateral spreading at this building site is considered to be negligible.”

In terms of mitigating potential seismic and liquefaction risks, the Whitchurch report recommends several mitigation measures related to (a) foundation and footing depth, soil bearing pressure, type and thickness, (b) site leveling and fill and cut bank installation, (c) engineered fill type and compaction specifications, (d) roof and site drainage design, and (e) revegetation of cut and fill slopes. The report also recommends adherence to detailed seismic standards consistent with the California Building Code. The Commission attaches **Special**

Condition 4 requiring the applicants to submit, prior to permit issuance, evidence that an appropriate licensed professional has reviewed and determines that all final foundation design, construction, grading, and drainage plans are in compliance with all the California Building Code, will adhere to all recommendations set forth in the report, and will thus minimize risks associated with liquefaction and other seismic hazard risks at the site.

The Commission also requires **Special Condition 5**, which requires the permittees to assume the risks of flooding and geologic hazards to the property and waive any claim of liability on the part of the Commission. Given that the permittees have chosen to implement the project despite flooding and geologic risks, the permittees must assume the risks. Special Condition 5 notifies the permittees that the Commission is not liable for damage as a result of approving the permit for development. The condition also requires the permittees to indemnify the Commission if third parties bring an action against the Commission as a result of the failure of the development to withstand the hazards. As previously discussed, **Special Condition 3** requires that the applicants execute and record a deed restriction against the property that imposes the special conditions of this permit as covenants, conditions, and restrictions on the use and enjoyment of the property. This condition will help assure that future owners are aware of the site's hazardous conditions.

Because the proposed project will comply with California Building Code and local building codes, which have been designed to allow structures to withstand strong seismic ground shaking, and because the project will comply with the site-specific geologic recommendations for foundation design and for minimizing risks associated with earthquakes, the development is designed to assure stability and structural integrity consistent with the requirements of §30253(b). Therefore, as conditioned, the Commission finds that the proposed project will minimize hazards and assure stability and structural integrity with respect to seismic ground shaking, liquefaction, and ground settlement consistent with §30253 of the Coastal Act.

Tsunami Hazards

Due to the known seismic activity in the Pacific Rim, there is the potential for both nearshore and distant tsunamis to impact development in the Eel River region. If (when) a major earthquake occurs along the Cascadia Subduction Zone, it could trigger a local tsunami that would hit the local shoreline within minutes. The subject property lies within the County's mapped Tsunami Evacuation Area (Exhibit 7). Tsunami Evacuation Areas, developed by the Redwood Coast Tsunami Working Group organized by Humboldt State University,¹² are those areas where, in case of a major earthquake, people are instructed to evacuate to higher ground (safe areas) to avoid tsunami-related inundation. A series of tsunami hazard warning signs are posted throughout the County along public roads and trails to alert the public to the hazardous areas, including along Highway 211, which provides access to and along the greater Ferndale area. In addition, the County maintains a tsunami early warning system, including the use of sirens, to minimize risk inside the tsunami vulnerability and evacuation areas.

¹² See <http://www2.humboldt.edu/rctwg/>

Because these mitigation measures to reduce tsunami hazard risk are in place in the project region, the Commission finds that there are no further feasible mitigation measures available to minimize the flood risk from tsunami wave run-up at the site.

Stormwater Runoff Flood Hazards

The proposed project is located in the FEMA-mapped 100-year floodplain of the Eel River.¹³ Thus, the subject site has a high flood risk. The applicants have incorporated certain measures into their project intended to minimize flood risk. First, the applicants have submitted a flood elevation certificate based on surveys by a licensed land surveyor stating that the finished floor elevation of the proposed farmhouse structure will be located at or above +22 feet NAVD88. This elevation is one foot above the 100-year Base Flood Elevation (BFE) for the Ferndale area established by FEMA's National Flood Insurance Program (the BFE is +21 feet NAVD88). In implementing the federal flood protection program, County building permit regulations require new residences to have a finished floor elevation at least one foot above BFE. The applicants' proposed plans (Exhibit 6) show the finished floor elevation for the farmhouse structure at +22 feet NAVD88.

Second, the applicants have proposed a series of engineered and non-engineered flood vents for the proposed structure. According to information provided by the applicants' engineer (Exhibit 9), the farmhouse and attached garage have been designed with flood venting consistent with FEMA standards to minimize potential damage to the structure in the event of a flood. Based on the size of the proposed farmhouse, a total of 1,843 square inches of venting is needed to meet FEMA requirements. The proposed plans show approximately 26 non-engineered, 8-inch by 16-inch vents (i.e., screened openings) evenly spaced around the perimeter of the foundational crawlspace for the farmhouse. Additionally, the proposed 784-square-foot attached garage is designed with four engineered vents (Smart-Vent model 1540-570, designed to automatically open when in contact with flood waters), which have a coverage area of 200 square feet per vent. The proposed vents are sized and positioned on the structures in accordance with FEMA requirements.

To ensure that the final plans include the various flood risk minimization measures proposed by the applicant, the Commission attaches **Special Condition 4**. This condition requires in part that prior to permit issuance, the applicant shall submit final plans for the Executive Director's review and approval that demonstrate compliance with all proposed flood risk minimization measures.

As previously discussed, **Special Condition 5** requires the permittees to assume the risks of flooding and geologic hazards to the project, waive any claim of liability on the part of the Commission, and indemnify the Commission. Also as previously discussed, **Special Condition 3** requires that the applicants execute and record a deed restriction against the property that imposes the special conditions of this permit as covenants, conditions, and restrictions on the use and enjoyment of the property. This condition will help assure that future owners are aware of the site's hazardous conditions.

¹³ Flood Insurance Rate Map Number 06023C1185F, effective on 11/04/2016

For all the above reasons, the Commission finds that as conditioned, the project will minimize risks to life and property from current flood hazards consistent with §30253 of the Coastal Act.

Sea Level Rise Flood Hazards

While the proposed measures described above address current flood risk from stormwater runoff, the Commission must consider whether the proposed measures account for flood risks may be exacerbated by projected sea level rise (SLR) over the life of the development.

The current extent of tidal influence in the Salt River extends just upstream of the Dillon Road bridge, approximately ~1,500 feet downstream from the northern boundary of the subject lot. In general, the Eel River Delta is vulnerable both to SLR and increased storm intensity associated with projected climate change and, as a result, is likely to experience more frequent and intense flooding episodes and an expansion of the 100-year floodplain over time. Flooding in the delta is exacerbated when river crest timing is coincident with high tides. Higher tides associated with SLR in the future will further impair the drainage of the Eel and Salt Rivers, thereby increasing backwater flooding on lands adjacent to the river and its tributaries.

The State of California has undertaken significant research to understand how much SLR to expect over this century and to anticipate the likely impacts of such SLR. In 2017, a working group of the Ocean Protection Council's (OPC) Science Advisory Team released *Rising Seas in California: An Update on Sea-Level Rise Science*. This report synthesized recent evolving research on SLR science, including a discussion of probabilistic SLR projections as well as the potential for rapid ice loss leading to extreme SLR. This science synthesis was integrated into the OPC's *State of California Sea-Level Rise Guidance 2018 Update* (State SLR Guidance). This guidance document provides statewide recommendations for state agencies and other stakeholders to follow when analyzing SLR in association with projects. Notably, the guidance provides a set of regional projections recommended for use when assessing potential SLR vulnerabilities for a project. Taken together, the Rising Seas report and State SLR Guidance account for the current best available science on SLR for the State of California.

The State SLR Guidance provides SLR projections for 12 tide gauges in the state and recommends using the projections for the gauge closest to the project site. In this case, the North Spit tide gauge at Humboldt Bay is the applicable gauge. The amount of SLR projected at the North Spit tide gauge for the year 2100 (i.e., through the approximately projected "lifespan" of the proposed farmhouse development) ranges from 4.1 feet (under the "low-risk aversion" scenario) to 7.6 feet (under the "medium high risk aversion" scenario) to 10.9 feet (under the "extreme risk aversion" scenario).¹⁴ The Humboldt Bay-Eel River region is experiencing the highest rate of relative SLR in the state due to active tectonic subsidence. The SLR projections in the State SLR Guidance account for regional seismic subsidence.

¹⁴ The OPC projections are based on different scenarios related to future emissions and concentrations of greenhouse gases, aerosols, and other climate drivers. As recommended by the OPC guidance, for the year 2100, the "low risk aversion" scenario is derived from taking the upper range of the 66% probability range for "RCP-8.5," which is the "Representative Concentration Pathway" that assumes there will be no significant efforts to reduce emissions globally. The "medium-high risk aversion" projection is derived from the upper range of the 0.5% probability range for RCP-8.5. The "extreme risk aversion" projection is based on presumed ice sheet loss in Greenland and the Antarctic.

The current mean monthly maximum water (MMMW) elevation at the North Spit tide gauge is approximately 7.8 feet NAVD88.¹⁵ Future MMMW in the year 2100 under the medium-high risk scenario cited above is projected to be approximately 15.4 feet NAVD88 (i.e., 7.8 ft. + 7.6 ft. of SLR). Consideration of the medium-high risk scenario (+7.6 ft.) is appropriate in this case, because the farmhouse as designed has a relatively low capacity to adapt to risks associated with tidal flooding, and the consequences the structure suffering tidal flooding impacts in the future would be significant. Consideration of the medium-high risk scenario also is consistent with the State SLR Guidance, which recommends a precautionary approach to SLR adaptation planning. Thus, under this scenario, portions of the property at and below 15.4 feet NAVD88 may be vulnerable to future tidal flooding (year 2100) on a regular basis (multiple times annually) in addition to backwater and riverine flooding associated with the site's floodplain location.

As previously discussed, the highest portion of the property, adjacent to Port Kenyon Road where the proposed farmhouse would be constructed, is at an elevation of approximately 19 feet (NAVD88). The proposed new farmhouse will be setback approximately 500 feet from the left bank of the Salt River and will be designed with a first-floor elevation of at least 22 feet (NAVD88) per the flood regulations discussed above. Assuming that by the year 2100 the extent of tidal influence in the Salt River will migrate upstream, and sea level will rise within the range of projected rates discussed above, thereby subjecting low-lying areas adjacent to the river (e.g., areas at elevations +15.4 feet NAVD88 and lower) to regular tidal flooding, the proposed project is sited and designed to avoid the risk of tidal flooding factoring in projected SLR at even the most extreme scenario (+10.9 ft.) for the presumed 75-year lifespan of the proposed development. Due to the farmhouse's proposed siting approximately 3.5 miles east of the Pacific Ocean and 500 feet south of the active channel of the Salt River, any necessary site fortification in the future will not result in shoreline armoring or impact shoreline erosion or sand supply.

For all of the above reasons, the Commission finds that the proposed project, as conditioned, will minimize risks to life and property from geologic and flood hazards consistent with §30253 of the Coastal Act.

G. PROTECTION OF MARINE RESOURCES, COASTAL WATERS, AND WETLANDS

Section 30230 of the Coastal Act states:

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

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

¹⁵ Northern Hydrology and Engineering 2015.

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

As discussed in Finding IV-A, the northern portion of the property abuts the Salt River, a tributary of the Eel River. The proposed new development will be set back approximately 500 feet from the Salt River channel.

The Salt River from its confluence with the Eel River (approximately four miles downstream from the property) to Williams Creek (approximately three miles upstream from the property) has, since 2012, been undergoing a large-scale, multi-year ecosystem restoration project that involves, in part, restoring estuarine habitat, hydrologic capacity, freshwater aquatic habitat, and riparian habitat along seven miles of the Salt River, including the stretch of river adjacent to the subject lot. Implementation of the multi-year project, led by the Humboldt County Resource Conservation District (RCD) and permitted under Commission CDP No. 1-10-032, commenced in 2012 and is expected to be completed by 2020.

The Salt River supports habitat for several species of fish, including federally and state threatened Coho Salmon (*Oncorhynchus kisutch*), federally threatened Chinook Salmon (*O. tshawytscha*), and federally endangered Tidewater Goby (*Eucyclogobius newberryi*). The restored Salt River estuary, downstream from the project site, supports a diverse array of marine resources, including Dungeness crab (*Metacarcinus magister*), English Sole (*Parophrys vetulus*), Pacific Herring (*Clupea pallasii*), Saddleback Gunnel (*Pholis ornate*), Shiner Surfperch (*Cymatogaster aggregata*), Starry Flounder (*Platichthys stellatus*), Topsmelt (*Atherinops affinis*), Eelgrass (*Zostera marina*), and salt marsh habitat (which itself supports several species of rare plants).¹⁶

In addition to the Salt River and marine resources adjacent to and downstream from the property, there also are coastal wetlands on the subject property itself that historically have been and presently remain in agricultural use (primarily hay production and cattle grazing). The agricultural wetlands on the property are managed, seasonally inundated, and dominated by pasture grasses and herbs such as clover and buttercup. Given their managed nature and long history of disturbance from agricultural use, the wetlands on the property do not provide significant habitat values to support rare species, native species, or a diversity of species and habitats.

¹⁶ Marine species were most recently documented from April to July of 2018 during spring-summer fish monitoring of the Salt River Ecosystem Restoration Project area, reported by the RCD on November 12, 2018. The upper extent of eelgrass in the Salt River was documented in 2016 by the RCD approximately 1.6 miles downstream from the project site. In 2015, H.T. Harvey & Associates, on behalf of the RCD, documented an initial baseline (out of a 10-year habitat monitoring program) of 146 acres of restored salt marsh habitat in the Salt River estuary, mostly at least 1.6 miles downstream from the subject site.

A wetland delineation was completed on the applicants' property in 2012 by GHD Inc. (on behalf of the RCD) as part of the Salt River Ecosystem Restoration Project described above. The purpose of the wetland delineation at that time was to identify upland agricultural areas on the property capable of receiving excavated sediments for beneficial agricultural use (e.g., soil amendment) from the planned Salt River channel restoration work. Special Condition 13 of CDP 1-10-032 for the Salt River Ecosystem Restoration Project allows for excavated sediments to be beneficially reused for agricultural purposes on agricultural lands in the area, provided that sediments are placed only in upland areas and only pursuant to an approved Sediment Reuse Plan approved by the Commission's Executive Director prior to placement of excavated sediments on the agricultural land. The wetland delineation, which was completed only for the portion of the property south of Port Kenyon Road, identifies coastal wetlands throughout a large portion of the agricultural lands extending from the southern property boundary northward to approximately 98 feet from the edge of the proposed house site and 48 feet from the edge of the proposed reserve leach field. In 2014, the Executive Director approved the placement of approximately 129 cubic yards of excavated sediments on the upland portions of the property consistent with Special Condition 13 of CDP 1-10-032. The approved sediment reuse area maintained the minimum wetland setback of 30 feet required under CDP 1-10-032. The approved sediment reuse area included the portion of the property adjacent to Port Kenyon Road and Rasmussen Ave., the area around the existing barn, and the entire development footprint proposed under this CDP application.

Although the applicants will create new impervious surfaces as part of the project (footprint of the new farmhouse and attached garage), given the relatively flat topography of the site and the sufficient permeable areas that will remain between the new impermeable areas and the delineated wetlands (almost 100 feet), the proposed development will provide for onsite infiltration of stormwater runoff, which will maintain the biological productivity and quality of onsite coastal wetlands consistent with §30231 of the Coastal Act. In addition, because the proposed project involves no significant grading or major vegetation removal, and because the setback distance proposed between the new development and the Salt River is substantial (~500 feet and across Port Kenyon Road), there is little potential for sediment-laden runoff originating from the development site to flow into coastal waters to degrade water quality. Nevertheless, to ensure that water quality will be adequately protected, the Commission attaches **Special Condition 5**. This condition requires in part the proper disposal of construction-related debris, the covering of stockpiles whenever there is a potential for rain to prevent polluted water runoff from the site, and the use of other appropriate construction-related best management practices BMPs for erosion and runoff control.

Therefore, the Commission finds that the proposed development, as conditioned, is consistent with §30230 and §30231 of the Coastal Act, because the project as conditioned will protect marine resources, water quality, and the biological productivity of coastal waters and wetlands.

H. VISUAL RESOURCES

Section 30251 of the Coastal Act states that the scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. The Section requires in applicable part that permitted development be sited and designed to protect views to and along

the ocean and scenic coastal areas, to minimize the alteration of natural land forms, and to be visually compatible with the character of surrounding areas.

The property is not within a designated Highly Scenic Area. In addition, there are no existing views of the distant ocean through the subject property available to the public from the public vantage points along Port Kenyon Road, which bisects the parcel east to west, or from Rasmussen Lane, which flanks the east side of a portion of the property. Instead, existing views from Port Kenyon Road looking south through the partially developed (with an existing barn) portion of the subject site where development is proposed include views of open agricultural lands, grazing livestock, scattered farmhouses and agricultural structures, and forested hills south of Ferndale. Views through the property looking west from Rasmussen Lane include open pasturelands, grazing livestock, and scattered farmhouses and agricultural structures. Due to the size of the property and areas proposed to remain as open agricultural land following construction, the proposed new house and garage, at a maximum height of 27 feet, will not have a significant effect on public views.

The building site is located on level ground, and no significant grading or major vegetation removal is proposed that would result in major landform alteration.

With regard to the compatibility of the proposed dwelling with the character of the surrounding area, the proposed residential design will be a Ranch-style home with horizontal HardiePlank siding, Milgard dual pane windows, and composition asphalt shingle roofing. The proposed architectural materials and house colors (light blue with white trim and red trim and tan-colored roofing) will be compatible with colors of the existing barn on the property, which is red with tan roofing, and with homes in the surrounding area, which include a diverse mix of colors and architectural styles (e.g., Ranch, Craftsman, and Victorian). The proposed siting of the new home close to Port Kenyon Road is compatible with the siting of homes in the neighborhood, and the size and height of the structure will not be of greater height or bulk than nearby development.

Given the rural setting with relatively minimal exterior lighting on existing structures in the surrounding area, there is potential for the nighttime character of the area to be impacted by outside illumination. Accordingly, to prevent the cumulative impacts of light pollution on the visual resources of the area, the Commission attaches **Special Condition 6**, which requires that all exterior lighting associated with the proposed development be low-wattage and downcast shielded such that no glare is directed beyond the bounds of the property or into adjoining coastal waters or environmentally sensitive areas.

In summary, the proposed project as conditioned is consistent with §30251, as the development will not adversely affect views to or along the coast, result in major landform alteration, or be incompatible with the character of the surrounding area.

I. ARCHAEOLOGICAL RESOURCES & TRIBAL CONSULTATION

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 project area lies within the traditional territory of the Wiyot tribe. At the time that Euro-Americans first made contact in this region, the Wiyot lived almost exclusively in villages along the protected shores of Humboldt Bay and near the mouths of the Eel and Mad Rivers. Today, representatives of the Tribe include the Wiyot Tribe on the Table Bluff Reservation, the Blue Lake Rancheria, and the Bear River Band of the Rohnerville Rancheria.

After consulting with the Native American Heritage Commission (NAHC) to obtain the current tribal consultation list for the proposed development site, Commission staff referred the project to the NAHC-recommended tribal contacts and other tribal representatives with known interest in the project area region.¹⁷ Tribal representatives from the Hoopa Valley Tribe, Wiyot Tribe, Bear River Band of the Rohnerville Rancheria, and Trinidad Rancheria all responded and identified no concerns related to the proposed development's possible effects on archaeological resources. However, the tribes all concurred that the Commission should include its "standard inadvertent archaeological discovery language" in the event that previously unrecorded archaeological resources are unearthed during construction. Therefore, the Commission attaches this reasonable mitigation measure as Special Condition 7.

Special Condition 7 requires that if an area of cultural deposits or human remains is discovered during the course of the project, all construction must cease and a qualified cultural resource specialist, in consultation with, at a minimum, the THPOs of the Wiyot Tribe, the Bear River Band of Rohnerville Rancheria, and the Blue Lake Rancheria, must analyze the significance of the find. To recommence construction following discovery of cultural deposits or human remains, the Permittee is required to submit a supplementary archaeological plan for the review and approval of the Executive Director and obtain a permit amendment for changes the Executive Director determines are not *de minimis* in nature and scope.

Therefore, the Commission finds that the proposed project, as conditioned, is consistent with Coastal Act §30244, as the development includes reasonable mitigation measures to ensure that construction activities will not result in significant adverse impacts to archaeological resources.

J. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

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

¹⁷ Commission staff referred to project (via email) to tribal representatives from the Bear River Band of the Rohnerville Rancheria, Big Lagoon Rancheria, Trinidad Rancheria, Wiyot Tribe, and Hoopa Valley Tribe on August 9, 2019. Commission staff reached out a second time via email to tribal representatives on September 18th.

The Commission incorporates its findings on Coastal Act consistency at this point as if set forth in full. No public comments regarding potential significant adverse environmental effects of the project were received by the Commission prior to preparation of the staff report. As discussed above, the proposed project has been conditioned to be consistent with the policies of the Coastal Act. As specifically discussed in these above findings, which are hereby incorporated by reference, mitigation measures that will minimize or avoid all significant adverse environmental impacts have been required. As conditioned, there are no other feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impacts which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, can be found consistent with the requirements of the Coastal Act to conform to CEQA.

APPENDIX A
SUBSTANTIVE FILE DOCUMENTS

Application file for Commission CDP Application No. 1-19-0664

Commission CDP File No. 1-10-032 (Salt River Ecosystem Restoration Project).

Commission Categorical Exclusion Order No. E-86-4

County of Humboldt certified Local Coastal Program (Eel River Area Plan & Coastal Zoning Regulations).

Griggs, G, Árvai, J, Cayan, D, DeConto, R, Fox, J, Fricker, HA, Kopp, RE, Tebaldi, C, Whiteman, EA (California Ocean Protection Council Science Advisory Team Working Group). Rising Seas in California: An Update on Sea-Level Rise Science. California Ocean Science Trust, April 2017.

Northern Hydrology & Engineering. (April 2015). Humboldt Bay: Sea level rise, hydrodynamic modeling, and inundation vulnerability mapping – Final report. Prepared for the State Coastal Conservancy and Coastal Ecosystems Institute of Northern California.

State of California. Sea-Level Rise Guidance. 2018 Update. California Natural Resources Agency, Ocean Protection Council.