

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE
1385 8TH STREET • SUITE 130
ARCATA, CA 95521
VOICE (707) 826-8950
FAX (707) 826-8960



Th14a

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STAFF REPORT: MATERIAL AMENDMENT

Amendment Application No.: **1-15-0204-A2**

Applicant: **Eureka Ready Mix Concrete Co., Inc.**

Location: “Hauck Bar” at River Mile 14 on the lower Eel River, off of Fowler Lane west of Highway 101, Alton area, Humboldt Co. (APNs 106-221-01, 201-221-09, 201-261-01 & 201-261-06).

Proposed Amendment: Amend permit granted for continued seasonal extraction of up to 150,000 cubic yards of river run aggregate (sand and gravel) per year for a period of five years from the dry river channel to allow for an additional five years of extraction.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

Commission staff recommends approval of Coastal Development Permit (CDP) Permit Amendment Request 1-15-0204-A2 with conditions.

On August 13, 2015, the Commission approved with conditions CDP 1-15-0204 authorizing the continued seasonal extraction of up to 150,000 cubic yards of gravel aggregate per year, for five years, from gravel bars on the lower Eel River. The Commission granted its approval of the mineral extraction development subject to 13 special conditions. The applicant proposes that the CDP be amended to add authorization for five additional years of gravel extraction.

The Commission has granted numerous permits in the past for sand and gravel extraction to the applicant and the several other gravel extraction operations on the lower Eel River. Mineral extraction is an allowable purpose under section 30233 of the Coastal Act for dredge and fill of coastal waters provided the extraction avoids environmentally sensitive habitat areas (ESHAs). The special conditions of the original permit require avoidance of riparian, salmonid, sensitive bird nesting habitat, and all other ESHAs. In addition, the special conditions include numerous requirements to avoid alteration of channel form, prevent degradation of water quality, and preserve passage on the river for recreational boaters and access to the shoreline for fishermen.

Gravel mining operations on the Eel River require the approval of a number of different local, state and federal agencies. Since the early 1990's, the agencies have coordinated their review of these projects through a comprehensive monitoring and management strategy to control the cumulative impacts of approved gravel operations on riverbed degradation and bank erosion. At the heart of the strategy is an administrative approval process involving a County established extraction review team (CHERT) composed of independent fluvial morphologists, hydrologists, biologists, and botanists that annually reviews the proposed extraction plans to provide the County and other agencies with scientific input on on-going gravel operations and identify the need for changes to those plans as deemed necessary by the monitoring data. The Army Corps of Engineer's Letter of Permission (LOP) procedure incorporates the CHERT review process. The applicant's proposes to amend the CDP to add authorization for five years of additional gravel extraction development to correspond with the authorization period of the Corps' current LOP which extends through the 2024 gravel extraction season. Staff believes that synchronizing the authorization periods as proposed will facilitate the continued coordinated review of annual gravel projects by the various reviewing agencies.

To add the additional years of gravel extraction as requested by the applicant and to clarify that the authorization period of the CDP ends after the 2024 gravel extraction season corresponding with the authorization period of Corps LOP 2015, staff recommends that Special Condition 11 be modified to change the date when gravel operations must terminate from December 31, 2019 to December 31, 2024. Other recommended special conditions would require evidence of approval of the additional years of gravel extraction by other reviewing agencies, including the State Lands Commission, Regional Water Quality Control Board, and the California Department of Fish and Wildlife. The other conditions of the original permit as amended through Amendment 1 would be reimposed.

Staff believes that the project, as conditioned, includes all feasible mitigation measures necessary to find the project consistent with the Chapter 3 policies of the Coastal Act

The motion to adopt the staff recommendation of approval of CDP amendment request 1-15-0204-A2 with special conditions is found on page 4.

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APPENDICES

[Appendix A – Substantive File Documents](#)

[Appendix B – Adopted Staff Recommendation for CDP\(s\) 1-15-0204](#)

[Appendix C – Adopted Staff Recommendation for CDP Amendment 1-15-0204-A1](#)

[Appendix D – Special Conditions as Amended Through CDP Amendment 1-15-0204-A1](#)

EXHIBITS

[Exhibit 1 – Regional Location Map](#)

[Exhibit 2 – Aerial Photo of Project Area](#)

[Exhibit 3 - Detailed Project Description of Original CDP 1-15-0204](#)

[Exhibit 4 – Geomorphic Impact Analysis \(Original CDP 1-15-0204\)](#)

I. MOTION AND RESOLUTION

Motion:

*I move that the Commission **approve** the proposed amendment to Coastal Development Permit No. 1-15-0204, subject to the conditions set forth in the staff recommendation.*

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

Resolution:

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

II. STANDARD AND SPECIAL CONDITIONS

The original permit (CDP No. 1-15-0204) contained 5 standard conditions and 13 special conditions. CDP Amendment No. 1-15-0204-A1 modified Special Conditions 4, 5, and 6. The current amendment modifies Special Condition 11¹. Special Conditions 1-13 as modified by the permit amendments are reimposed and remain in full force and effect. In addition, Special Conditions 14-17 are attached as new conditions to CDP Amendment No. 1-15-0204-A2. The new and modified conditions are listed below. New and deleted language appears as **bold double-underlined** and ~~**bold double strikethrough**~~ text respectively. For comparison, the text of the standard and special conditions as amended through the previous amendment (CDP Amendment No. 1-15-0204-A1) is included in Appendix D.

- 11. Authorized Development Termination Date.** The gravel operations authorized by this permit shall terminate on ~~December 31, 2019~~ December 31, 2024. Continued gravel operations after that date shall require a new coastal development permit.
- 14. State Lands Commission Approval, PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT AMENDMENT 1-15-0204-A2, the applicant shall**

¹ A typographical error in Special Condition 5.A. is also being corrected: the reference to plover Conservation Measures is being corrected to cuckoo Conservation Measures.

provide to the Executive Director a copy of any required lease, from the State Lands Commission (SLC), for the installation of seasonal crossings, gravel extraction, or other activities, or evidence that no lease or other permission is required for such activities during the extended period of gravel extraction operations between December 31, 2019, and December 31, 2024, authorized by CDP Amendment 1-15-0204-A2. The applicant shall inform the Executive Director of any changes to the project required by SLC. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

15. North Coast Regional Water Quality Control Board Approval. PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT AMENDMENT 1-15-0204-A2, the applicant shall provide to the Executive Director a copy of a Water Quality Certification (WQC) from the North Coast Regional Water Quality Control Board (RWQCB) pursuant to Section 401 of the Clean Water Act, or evidence that no WQC or other permission is required for the gravel extraction activities authorized by CDP Amendment 1-15-0204-A2 between December 31, 2019, and December 31, 2024. The applicant shall inform the Executive Director of any changes to the project required by the RWQCB. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.
16. California Department of Fish and Wildlife Approval. PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT AMENDMENT 1-15-0204-A2, the applicant shall provide to the Executive Director a copy of a Section 1603 Streambed Alteration Agreement from the California Department of Fish and Wildlife (CDFW), or evidence that no Streambed Alteration Agreement or other permission is required for the gravel extraction activities authorized by CDP Amendment 1-15-0204-A2 between December 31, 2019, and December 31, 2024. The applicant shall inform the Executive Director of any changes to the project required by CDFW. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.
17. Annual Approvals of Other State Agencies. PRIOR TO THE START OF EACH YEAR'S GRAVEL EXTRACTION OPERATIONS IN THE YEARS 2020 THROUGH 2024, the permittee shall provide to the Executive Director copies of permits or other required approvals issued by the Regional Water Quality Control Board (RWQCB), the State Lands Commission (SLC), and the California Department of Fish and Wildlife (CDFW) granting approval for that year's gravel extraction season, which is/are consistent with all terms and conditions of this coastal development permit, or evidence that no seasonal authorization(s) is/are required. The permittee shall inform the Executive Director of any changes to the project required by the RWQCB, SLC, and CDFW. 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.

III. FINDINGS AND DECLARATIONS

A. BACKGROUND AND AMENDMENT DESCRIPTION

On August 13, 2015, the Commission approved with conditions Coastal Development Permit (CDP) 1-15-0204 authorizing the continued seasonal extraction of up to 150,000 cubic yards of gravel aggregate per year, for five years, from the Hauck Bar, at river mile 14 on the lower Eel River, just below its confluence with the Van Duzen River in the Alton area of Humboldt County. The Commission granted its approval of the mineral extraction development subject to 13 special conditions. Special Condition 11 of the original permit requires that gravel operations authorized by the permit terminate on December 31, 2019, and that continued gravel operations after that date shall require a new coastal development permit.

On May 11, 2016, the Commission approved CDP Amendment No. 1-15-0204-A1 to modify three special conditions of the original permit imposed for the protection of the western snowy plover and yellow-billed cuckoo consistent with the measures, recommendations, and conditions of the September 3, 2015 Biological Opinion of the U.S. Fish and Wildlife Service. The Biological Opinion was issued by the U.S. Fish and Wildlife Service after the Commission had acted on the original CDP.

The currently proposed amendment (CDP Amendment No. 1-15-0204-A2) would modify the required termination date for gravel operations in Special Condition 11 of the original permit and authorize an additional five years of seasonal extraction at the subject property to be conducted consistent with the other terms and conditions of the original permit as previously amended. The five years of additional extraction would extend through the year 2024. The applicant proposes to continue seasonal extraction of up to 150,000 cubic yards of aggregate per year from two main extraction areas within the larger Hauck gravel bar. The first area is located on the northern Van Duzen River delta. The other extraction area is located on a gravel bar in the middle of the bankfull channel and is bordered on the east by the main channel and on the west by a secondary, or overflow channel that varies in location depending on winter flows and annual recruitment and scour (Exhibit 3). Extracted materials would be hauled to one of Eureka Ready Mix's processing facilities, which are located outside of the coastal zone.

The applicant also proposes to continue to install seasonal railroad flatbed crossings over secondary and overflow river channels to facilitate gravel transport and the reclamation of extraction areas. The location of summer crossings would be based upon river morphology and avoidance of sensitive riverine habitat elements. Historically, crossings have been placed on the Eel River at the west end of the Fowler Lane haul road (western extension of Highway 36) and at the south end of the upper haul road where it meets the Van Duzen River channel. See Exhibit 4 for full project details. Estimated abutment fill volume would be less than 400 cubic yards total for both ends of the crossing. Upon bridge removal, all fill materials would be removed from the wetted channel and abutment areas would be reclaimed to pre-crossing conditions.

The proposed annual extraction amount of 150,000 cubic yards (a) would continue to be proposed as an upper limit, (b) is consistent with the Humboldt County Programmatic Environmental Impact Report (PEIR) for the lower Eel River, and (c) is based upon evaluation of information and data that has been collected under the PEIR and existing Interim Management Programs. In any given year, project extraction volumes, locations, and methods would continue to be submitted by the applicant for approval by local, state, and federal agencies, including the County of Humboldt, California Department of Fish and Wildlife (CDFW), and the Army Corps of Engineers (Corps). Annual assessments and site evaluations would continue to be used to determine (1) where aggregate could be excavated without causing long-term river bed degradation, (2) the levels and volume of recruitment, and (3) appropriate extraction volumes. No mining would occur at any location until after specific mining and reclamation plans are developed and approved on the basis of annual environmental assessments and monitoring of the proposed project site.

Proposed gravel extraction operations would continue to utilize several different kinds of extraction methods, including traditional skimming, narrow skims, secondary channel skims, low terrace extractions, wetland pits, alcoves, and trenching for the purpose of salmonid habitat enhancement (See Appendix B for detailed extraction methods). The annual mining would include one or more of the above methods, depending on factors such as extraction site location, salmonid habitat enhancement needs, annual replenishment of aggregate, and other environmental factors. Most gravel extraction operations would utilize the traditional skimming extraction method. Traditional skimming extraction areas typically would be located on the inside of meanders, on point bars or side channel bars. The head of the bar, upstream riffle, and channel cross-over would be preserved by locating extractions on the lower two-thirds of the bar, downstream of such features. Minimum extraction floor elevations would be designed to maintain at least 20-inches of depth over riffles. Extractions from deposits bordering dry secondary channels would be designed with minimum extraction floor elevations no less than one foot above the adjacent secondary channel thalweg.

Extraction activities in areas containing woody vegetation would continue to be managed to protect vegetation from removal or disturbance by the extraction processes or low to moderate flow events. This vegetation protection would be achieved by adjusting extraction boundaries to avoid vegetation and by maintaining horizontal buffers around vegetation patches in a manner that would reduce erosion.

The proposed amended project would continue to maintain extraction area confinement to the elevation of the 35 percent exceedance flow of the Eel River in order to maintain confined stream depth for migrating salmonids, as is required by the Army Corps of Engineers (Corps) authorization for the development (LOP-2015) and the terms and conditions of the NOAA-Fisheries Biological Opinion.

On-bar stockpiling of aggregate would continue to occur in designated areas that would be delineated during the pre-extraction agency site visits. Any on-bar stockpiling would be temporary until transport to the processing facility could be coordinated. Extraction operations conducted after October 15th in any given mining year would maintain reclaimed conditions at

the end of each working day and temporary stockpiles would be no larger than the volume of aggregate that could be removed from the bar surface during the current work day.

As required under the current permit as amended through Amendment 1 (CDP Amendment 1-15-024-A1), during any given extraction year, gravel mining would not occur until after July 22nd, consistent with U.S. Fish and Wildlife Service (USFWS) recommendations for minimizing disturbance of the western snowy plover and the yellow-billed cuckoo during their breeding seasons. Extraction operations would continue to be completed in any given mining year by October 31st at the latest. Completion of extraction operations involves grooming and smoothing the extraction areas to prevent potential fish stranding and to promote a predictable flow pattern over the site upon inundation. Following final reclamation each year, all equipment and vehicles would be removed from the bank full channel by November 1st or earlier if declared by the Corps, NOAA-Fisheries, and/or the CDFW. This date generally coincides with the onset of the rainy season and rise in the river, which likely will inundate the extraction areas and/or prompt the upstream migration of adult salmonids.

To access areas of the bar, the applicant also continues to propose to construct seasonal crossings as necessary over secondary or overflow channels of the lower Eel River. The crossings continue to consist of two 58-foot-long railroad flat cars placed side by side over the channels with gravel abutments using either washed gravel or gravel scraped from surrounding areas. Brow logs or large concrete blocks would be utilized to front or stabilize abutment fill and decrease encroachment of the aggregate fill into the wetted channel. Crossings would be located at points of the channel that would be determined annually by a qualified fisheries biologist in consultation with the reviewing resource agencies.

Regulation History

Humboldt County. Gravel mining operations on the Eel River require the approval of a number of different local, state and federal agencies. The initiation of coordinated review of gravel mining began in 1991, when to comply with environmental review requirements under the California Environmental Quality Act (CEQA), Humboldt County prepared a PEIR that described and analyzed the potential environmental effects resulting from the ongoing gravel removal operations in the lower Eel and Van Duzen River watersheds. The PEIR was certified in July 1992 and is still used in the management of gravel extraction projects in the area today. Subsequent to the adoption of the PEIR, Humboldt County began regulating gravel operations through a comprehensive monitoring and management strategy that was established to control the cumulative impacts of approved gravel operations on riverbed degradation and bank erosion. At the heart of the strategy is an administrative approval process that annually reviews the proposed extraction plans, including proposed methods and locations of extraction. Additionally, the strategy includes a long-term monitoring component that provides data for use when making annual decisions on where and how much gravel can be removed from the lower Eel and Van Duzen Rivers without adversely affecting the rivers. The monitoring program involves periodic biological surveys, annual cross-sections and thalweg profiles, and annual aerial and ground photography at each gravel operation site. The information is then compiled and compared to previous year's data to determine quantities of gravel recruitment, changes in channel morphology, and potential impacts on wildlife and fisheries.

In addition to the monitoring component of the approval process, the County has established an extraction review team (CHERT) to provide the County and other agencies with scientific input on on-going gravel operations. CHERT is composed of independent fluvial morphologists, hydrologists, biologists, and botanists and the group has the authority to review all annual gravel extraction plans and identify the need for changes to those plans as deemed necessary by the monitoring data. CHERT plays an active role in the annual approval process, and works with the gravel mining operators to establish annual extraction quantities and extraction methods that comply with local, state and federal regulations and permit requirements.

U.S. Army Corps of Engineers (Corps). In addition to local government approval, the gravel extraction operations on the lower Eel and Van Duzen Rivers require authorization from the Corps. To coordinate and expedite Corps permitting for the numerous in-stream gravel extraction operations in Humboldt County, the Corps adopted a Letter of Permission (LOP) procedure for authorization of such projects. The LOP procedure incorporates the County's CHERT review process. An applicant who wants to be covered by the LOP must submit annual gravel plans and monitoring information to the Corps for approval under the procedure. LOP's have been issued for gravel extraction operations since 2002.

The Commission granted CDP No. 1-15-0204 in August of 2015, which was prior to the Corps' issuance of the current LOP (LOP 2015) later that year. In granting the CDP, the Commission anticipated that the Corps would grant the new LOP for another five-year period consistent with previous Corps LOPs issued for Eel River gravel operations. The applicant had applied under the original CDP for five years of gravel extraction operations, and the Commission imposed Special Condition 11 requiring that gravel operations authorized by the permit terminate on December 31, 2019. The Commission imposed the special condition, in part, to ensure that the period of the Commission's CDP authorization under the Coastal Act would be consistent with what was anticipated to be the period of the Corps' LOP authorization under the federal Clean Water Act. However, as approved, Corps LOP 2015 authorizes gravel extraction for a 10-year period through 2024. The Corps' consideration and issuance of a new LOP for an additional time period triggers consultation under the federal Endangered Species Act with NOAA Fisheries and USFWS for impacts on federally listed threatened or endangered species, including certain salmonid species, the western snowy plover, the yellow-billed cuckoo, and others. The final Biological Opinions by NOAA Fisheries and USFWS issued after consultation with the Corps prior to issuance of LOP 2015 address the impacts of the full ten-year period of gravel extraction operations on threatened and endangered species.

Approval of the current CDP amendment request (CDP Amendment No. 1-15-0204-A2) for an additional five-year period will once again bring the time period of CDP authorization into sync with the time period of LOP authorization. This synchronization will allow the Commission to review the next CDP granted to the applicant for continued gravel extraction operations beyond 2024 at a time when the next LOP review process generates updated biological and hydrological information on the impacts of gravel extraction operations on the environment and coastal resources through the next round of Endangered Species Act consultations with NOAA Fisheries and USFWS and the Corps' collaboration with the various permitting and reviewing agencies on gravel extraction protocols for the next LOP.

National Marine Fisheries Service (NMFS) and U.S. Fish and Wildlife Service (FWS). As with all “federal actions” that might adversely impact rare, threatened, and endangered fish and wildlife species, the LOP process is subject to consultations with the applicable natural resource trust agencies as required under Section 7 of the Endangered Species Act (ESA). Consultations are conducted by the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS) who are the trust agencies responsible for species listed under the ESA. Section 7 of the ESA directs all federal agencies to use their existing authorities to conserve threatened and endangered species, and, in consultation with other federal agencies possessing ecological expertise regarding ecology and habitat requirements for these plants and animals, ensure that their actions do not jeopardize listed species or destroy or adversely modify critical habitat.

Section 7 of the ESA applies to management of federal lands as well as other federal actions that may affect listed species, such as federal approval of private activities through the issuance of federal permits, licenses, or other actions such as the LOP gravel mining and authorization procedure. The consultation process consists of the applicant developing a biological assessment (BA) that details the current status of the fish and wildlife species in the subject area, as well a preliminary assessment of the likely effects of the action on those species. The BA is then submitted to the resource agencies assigned the responsibility for protecting the ESA-listed species. Following review and analysis of the information provided in the BA, the agencies issue a Biological Opinion (BO) regarding impacts of the proposed action on listed fish and wildlife species, in this case, gravel extraction operations. In past gravel extraction operation approvals, the Commission has relied upon the BOs issued by the agencies when considering gravel extraction operation permit applications. NOAA’s consultation covers the following threatened and endangered species: Southern Oregon/Northern California Coho salmon (*Oncorhynchus kisutch*), California Coastal Chinook salmon (*Oncorhynchus tshawytscha*), and Northern California steelhead trout (*Oncorhynchus mykiss*). The Southern Oregon – Northern California Coasts Evolutionarily Significant Unit of Coho salmon (SONCC Coho) is currently listed as a threatened species in areas between Punta Gorda and the California-Oregon border under both the Federal Endangered Species Act (ESA) and the state of California Endangered Species Act (CESA). SONCC Coho salmon were listed by the federal government in May of 1997, with critical habitat designated in May of 1999. Additionally, California Coastal Chinook salmon were federally listed as “threatened” in September of 1999, with critical habitat designated in February of 2000. Finally, North Coast steelhead trout were listed as “threatened” in June of 2000.

The USFWS has been providing consultation on the western snowy plover since it was listed as threatened in 1993, and on the Lower Eel River since plovers were first discovered nesting on Eel River gravel bars near Fernbridge in June of 1996. The Western Yellow-billed cuckoo was listed as threatened in August 2014 and critical habitat for the species has been proposed in the Lower Eel and Van Duzen Rivers in areas including the project site. The USFWS provided consultation on the cuckoo in the last consultation on the Corps LOP in September of 2015. The consultations provide critical evidence that proposed gravel mining operations on the Lower Eel and Van Duzen Rivers will not result in significant adverse impacts on threatened and endangered species. In past actions on coastal development permits for gravel mining on the

Lower Eel and Van Duzen Rivers, the Commission has relied upon the biological opinions to find consistency of the gravel mining projects with the Coastal Act.

Coastal Commission Permits. Over the past two decades, the Commission has issued more than 35 permits for gravel extraction operations on the lower Eel and Van Duzen Rivers. In general, actual annual extraction volumes in the lower Eel River have been lower than the annual approved volumes over the last decade. Actual gravel extraction for each operation has historically varied with market demands and river conditions. Actual annual extracted volumes have consistently been lower than approved volumes. From 1997 through 2014, a total of 3,366,790 cubic yards of aggregate was extracted from the Lower Eel River (averaging 187,044 cubic yards annually), which is only 65 percent of the total approved volume of 5,193,634 cubic yards. Between 2004 and 2018, a combined total of 643,863 cubic yards was extracted from the Eureka Ready Mix site, with an annual average of 42,924 cubic yards.

Environmental Setting

The lower Eel River from the city of Rio Dell downstream to the estuary is a depositional reach bordered by open pastures and some urban development. The average channel width of the lower Eel in the project area is 1,900 feet, and summer fog influences river water temperatures.

Bank protection and levee structures placed in the lower Eel River have limited the river's ability to migrate and overflow its banks. The river's meandering ability during high flows has been influenced by the past land uses in the area, including construction of the Sandy Prairie levee in 1959, the Grizzly Bluff levee following the 1964 flood, plus the cutting of the old original channel sometime in the 1860's at Fernbridge (approximately 5 river miles downstream of the project site). Levees separate potential overflow areas from the main channel and concentrate the high flow energy of floods to a narrower part of the river bed, thereby moving more bedload material through the project area. When available sediment exceeds the channel carrying capacity sediment deposition (channel aggradation) occurs.

The project site is located at the Hauck gravel bar, immediately downstream of the Van Duzen River confluence at the upstream extent of the broad, low-gradient floodplain of the Eel River (Exhibit No. 2). The Hauck Bar has been mined for sand and gravel on an ongoing basis since the 1950's. Eureka Ready Mix has been mining gravel from the site since 1981. The gravel extraction operation is located on four separate parcels that stretch along approximately 4,000 lineal feet of the river. The western boundary of the property is defined by the center-line of the main channel of the river. The parcels extend easterly from the center of the channel across the gravel bar, which is crossed by various secondary overflow channels, some of which are typically dry at the peak of summer. The Eel River flows north through the project parcels, parallel to Highway 101. The Van Duzen River enters the Eel River from the east at the upstream project limit, contributing to the large sediment depositional zone of the confluence. The meeting of the two rivers has resulted in accumulation of sediment creating a flat-water expanse extending nearly one mile upstream along the Eel River. At the end of the eastern most overflow channel, a bank rises steeply 10 to 15 feet to a terrace that extends eastward approximately 300 feet to the Sandy Prairie Levee, a flood control improvement installed by the Corps after the disastrous 1964 floods on the Eel River. This terrace area west of the levee is covered by riparian habitat and pasture land. East of the Sandy Prairie Levee, the terrace area extends another 2,000

feet to Sandy Prairie Road. This area to the east of the levee is devoted to agricultural pasture land with a barn complex located at the extreme eastern edge of the parcel.

B. STANDARD OF REVIEW

The subject property is bisected by the boundary between the retained CDP jurisdiction of the Commission and the CDP jurisdiction delegated to Humboldt County by the Commission through the County's LCP. The entire property is located within the coastal zone, and the western-most approximately two-thirds of the parcel lies within the Commission's retained jurisdictional area. The boundary between the Commission's CDP jurisdiction and that of the County runs generally north-south, just east of the Sandy Prairie Levee. All of the gravel extraction activities and proposed summer crossings are within the Commission's jurisdiction. Therefore, as required by Public Resources Code Section 30519(b) and Commission regulation section 13166(c), the standard of review that the Commission must apply to the project is the Chapter 3 policies of the Coastal Act.

C. OTHER AGENCY APPROVALS

State Lands Commission

The project is located in the bed of the Eel River, a navigable river, between the ordinary high water marks. The navigable portions of the river, between the ordinary low water marks on each bank, are considered lands of the State of California. In addition, the State holds a public trust easement over portions of the river above the ordinary low water marks. The State's property interests are administered by the State Lands Commission. The portions of the development within State lands require a lease agreement from the State Lands Commission (SLC). The SLC has issued lease agreements in the past to the applicant for the installation of seasonal crossings over secondary and overflow channels to access gravel extraction areas. The term of the current lease agreement expires on December 31, 2019, and the applicant has applied to the SLC for a new lease agreement which has not yet been acted on by the SLC. To ensure that the applicant has a sufficient legal property interest in the site to carry out the project and to comply with the terms and conditions of this permit, the Commission attaches **Special Condition 14** which requires that the applicant submit to the Executive Director prior to issuance of CDP Amendment 1-15-0204-A2 a copy of any required lease. Although the applicant is not currently planning wetland trenching that might extend below the ordinary low water mark into State lands, if the applicant were to pursue an extraction plan in any given year using wetland trenching, **Special Condition 17** requires that any required SLC authorization for such development would have to be provided prior to commencement of extraction as part of the annual gravel extraction plan required by **Special Condition 3**.

Humboldt County

Humboldt County Use Permit

The County approved a renewal of the Conditional Use, Coastal Development and Surface Mining permit (CDP-10-02/CUP-10-01/SMP-10-01/RP-10-01) on February 2, 2012. The renewal will expire on July 22, 2026.

CHERT Review

Pursuant to the Corps LOP permit procedures and the County of Humboldt's surface mining regulations, in-stream gravel mining projects within Humboldt County are required to be assessed for potential direct and cumulative to riverine resources by an independent scientific panel known as CHERT. The CHERT in turn makes specific recommendations including recommendations that may involve changes to the amount of gravel proposed to be extracted, the specific location(s) of the extraction area(s), or the proposed mining techniques. To ensure that the annual gravel extraction plan recommended for approval by CHERT each year is the same as the annual gravel extraction plan that is reviewed under this permit by the Commission, and to ensure that extraction does not exceed the extraction limits established under Special Condition 1, **Special Condition 3-A-(4)** requires the applicant to annually submit to the Executive Director, for written review and approval, a copy of the pre-extraction mining plan review comments obtained from the CHERT as part of the final gravel extraction plan as well as evidence that the final gravel extraction plan is consistent with all recommendations of CHERT and all terms and conditions of this permit. Special Conditions 1 and 3 are both reimposed under this amendment.

California Department of Fish and Wildlife (CDFW)

The proposed additional five years of gravel extraction operations require a new Section 1603 Streambed Alteration Agreement from the CDFW. The current agreement (#1600-13-0355) expired on January 31, 2019. To ensure that the project ultimately approved by the CDFW is the same as the project authorized herein, the Commission attaches **Special Condition 16**, which requires the applicant to submit to the Executive Director evidence of the CDFW's approval of the project prior to issuance of the permit amendment. The condition requires that any project changes resulting from the CDFW's approval not be incorporated into the project until the applicant obtains any necessary amendments to this coastal development permit.

Regional Water Quality Control Board

The proposed additional five years of gravel extraction operations require a Water Quality Certification (WQC) from the RWQCB pursuant to Section 401 of the Clean Water Act. The current WQC Order No. 2003-0017-DWQ expires on June 1, 2020. To ensure that the project ultimately approved by the RWQCB is the same as the project authorized herein, the Commission attaches **Special Condition 15**, which requires the applicant to submit to the Executive Director evidence of the RWQCBs' approval of the project prior to issuance of the permit amendment. The condition requires that any project changes resulting from the RWQCBs' approval not be incorporated into the project until the applicant obtains any necessary amendments to this coastal development permit.

U.S. Army Corps of Engineers (Corps)

Final LOP-2015 Approval

The project is within and adjacent to a navigable waterway and is subject to the authority of the U.S. Army Corps of Engineers under Section 404 of the Federal Water Pollution Control Act (33 USC 1251 et seq.) and Section 10 of the Rivers and Harbors Act (33 USC 403). As discussed above, the project requires review and authorization by the Corps. The Corps has permitted the proposed gravel operations under its Letter of Permission Procedure 2015 (LOP 2015), which expires at the end of 2024.

The applicant proposes that the CDP be amended to add authorization for five years of additional gravel extraction development to correspond with the authorization period of Corps LOP 2015 which extends through the 2024 gravel extraction season. The Corps' consideration and issuance of a new LOP for an additional time period triggers consultation under the federal Endangered Species Act with NOAA Fisheries and USFWS for impacts on federally listed threatened or endangered species, including certain salmonid species, the western snowy plover, the yellow-billed cuckoo, and others. The Corps also collaborates with other agencies, including CDFW, the RWQB, SLC, the County, and the Coastal Commission staff to determine whether any changes to the detailed gravel extraction protocols of the previous LOP are needed to better avoid adverse impacts to the environment. Synchronizing the issuance of all the various agency permits and approvals enables each permitting agency to consider and use the new information and comments generated by the LOP review process in the agency's review of applications submitted by the gravel extraction operators for the agency's permit. In addition, synchronization of the permits allows the agencies to minimize potential conflicts between the terms and conditions of the different kinds of permits issued by the different agencies. As discussed above, to add the additional years of gravel extraction as requested by the applicant and to clarify that the authorization period of the CDP ends after the 2024 gravel extraction season corresponding with the authorization period of Corps LOP 2015, the Commission modifies Special Condition 11 to change the date when gravel operations must terminate from December 31, 2019 to December 31, 2024. **Special Condition 11** as amended requires that continued gravel operations after that date shall require a new coastal development permit.

Annual Review

Permittees using the LOP are required to submit annual gravel plan and monitoring information to the Corps for approval prior to each year's gravel extraction activities. To ensure that the annual gravel extraction plan ultimately approved by the Corps each season is the same as the project specified in the annual gravel extraction plan approved by the Executive Director pursuant to Special Condition 1, **Special Condition 13**, requires the applicant, prior to commencing gravel extraction operations each year, to demonstrate that all necessary approvals from the Corps for the approved gravel extraction, as conditioned herein, have been obtained. The condition requires that any project changes resulting from the agency's approval not be incorporated into the project until the applicant obtains any necessary amendments to this coastal development permit.

U.S. Fish and Wildlife (USFWS) and NOAA-Fisheries (NMFS)

As discussed above, the Corps' issuance of its LOP for gravel extraction operations along the lower Eel River including at the subject site triggered consultation under the federal Endangered Species Act with NOAA Fisheries and USFWS for impacts on federally listed threatened or endangered species, including certain salmonid species, the western snowy plover, the yellow-billed cuckoo, and others. The final Biological Opinions by NOAA Fisheries and USFWS were issued in the summer of 2015 after consultation with the Corps prior to the Corp's issuance of LOP 2015. The Biological Opinions address the impacts of gravel extraction operations on threatened and endangered species through 2024, the termination date of the gravel extraction development authorized under the current CDP amendment.

D. PROTECTION OF COASTAL RESOURCES

Several coastal resource protection policies of the Coastal Act apply to gravel extraction projects along the Eel River. The applicant's gravel extraction project is typical of most of the gravel extraction operations on the lower Eel River in that it includes (a) traditional skimming of gravel bars that are dry and exposed in the summer but inundated during high winter flows, (b) trenching of gravel bars that may extend into the wetted channel even during the dry season, (c) the placement of gravel along the edges of secondary channels to create abutments for seasonal railroad flat car crossings for vehicles used in the gravel extraction operations, and (d) stockpiling, staging, and/or processing operations in upland areas adjoining the river and adjacent to existing riparian areas.

Permissible Use

As discussed in the Commission's findings for the original permit and Amendment 1, which are hereby incorporated by reference², the skimming of gravel bars and the placement of gravel along the edges of secondary channels to create abutments for seasonal railroad flat car crossings outside ESHA constitutes permissible fill and dredge of seasonal wetlands for mineral extraction pursuant to Section 30233(a)(5). Sections 30233 and 30240(a) both prohibit the skimming of the gravel bar in locations containing environmentally sensitive habitat area such as nesting habitat for the Western snowy plover, or developed riparian habitat. The trenching of gravel bars containing ESHA that extends into the wetted channel may only be authorized if it is a permissible alteration of a river or stream as set forth in section 30236. As discussed in the Commission's findings for the original permit and Amendment 1, which are incorporated herein by reference³, such wet trenching constructed in compliance with the requirements of **Special Conditions 1(B) and 3(A)** of the original permit is primarily for the improvement of fish habitat, and therefore is consistent with the use limitations of section 30236. Trenching can be an effective tool for the enhancement of salmonid migration corridors and in providing cold water refuge adjacent to the wetted channel. NOAA-Fisheries encourage the use of trenching on the lower Eel and lower Van Duzen Rivers to assist salmonid migration through dry river reaches.

Habitat Mitigation Measures

Section 30233 also requires that projects that entail the fill and dredge of coastal waters must demonstrate that feasible mitigation measures have been provided to minimize adverse environmental effects. In addition, section 30240(b) requires that development adjacent to ESHA be sited and designed to prevent impacts which would significantly degrade those areas and shall be compatible with the continuance of those habitat and restoration areas. As discussed in the Commission's findings for the original permit and Amendment 1, which are hereby incorporated by reference, the gravel extraction development authorized by the original permit and authorized for an additional five years under CDP Amendment No. 1-15-0204-A2 as conditioned, includes a number of feasible mitigation measures to minimize adverse

² See especially Finding G, "Gravel Extraction Operations within Riverine Wetlands," of CDP 1-15-0204 contained in Appendix B, attached hereto.

³ See especially Finding H, "Development within Coastal Rivers and Streams," of CDP 1-15-0204 contained in Appendix B, attached hereto.

environmental effects consistent with Section 30233 and to prevent impacts which would significantly degrade adjacent environmentally sensitive habitat areas consistent with Section 30240(b)⁴.

First, the proposed gravel extraction methods subject to the requirements of Special Conditions 1 and 3 of the original permit, which are reimposed in CDP Amendment No. 1-15-0204-A2, will avoid significant adverse impacts to channel form and minimize bank and bar erosion that would also degrade fishery habitat. **Special Condition 1** limits the amount of gravel extraction at this site to an annual maximum of 150,000 cubic yards. This limit is consistent with the cumulative impact analysis Humboldt County Programmatic Environmental Impact Report (PEIR) for gravel operations on the lower Eel River. In addition, **Special Condition 1** limits the use of gravel extraction techniques to those recommended by NOAA-Fisheries. Furthermore, annual gravel extraction plans are reviewed by CHERT in consultation with NOAA-Fisheries and the Corps to ensure that the particular methods proposed in any given year will minimize the chances of degradation of channel form and resulting impacts to salmonids. **Special Condition 3** requires that annual gravel extraction plans be submitted for the review and approval of the Executive Director and section (A)(4) of that condition requires that the submitted plans be consistent with the recommendations of CHERT. These requirements will ensure that disturbance of the active channel as it is reshaped each year by natural processes will be avoided.

Second, Special Conditions 1 and 7 of the original permit, which are reimposed in CDP Amendment No. 1-15-0204-A2, will ensure that disturbances to riparian habitat are prevented. **Special Condition 1** includes the requirement that the mining be performed, on the portions of the gravel bar that do not contain or are in close proximity to riparian vegetation with environmentally sensitive habitat characteristics. Furthermore, **Special Condition 7** reiterates that gravel extraction and processing operations shall not disturb or remove any area of environmentally sensitive vegetation growing on the gravel bar or river bank, and enumerates the threshold growth characteristics for when riparian vegetation becomes environmentally sensitive habitat. In this manner, significant degradation of all of the adjacent environmentally sensitive riparian vegetation in the vicinity of the project will be avoided.

Third, Special Conditions 5 and 6 of the original permit as modified by CDP Amendment No. 1-15-0204-A1, which are reimposed in CDP Amendment No. 1-15-0204-A2, will avoid degradation of the environmentally sensitive habitat of the Western yellow-billed cuckoo. In its September 2015 Biological Opinion, the U.S. Fish and Wildlife Service (USFWS) determined that with the use of surveys for cuckoos and determinations that no cuckoos are present within 1,000 feet of gravel operations, gravel extraction commencing as early as July 22nd will avoid development within cuckoo ESHA. **Special Condition 5** requires the applicant to undertake the proposed amended development consistent with the BO cuckoo conservation measures, including requirements for pre-activity surveys, establishment of a

⁴ See especially (1) Finding H, “Development within Coastal Rivers and Streams,” and Finding I, “Protection of Adjacent Environmentally Sensitive Habitat Areas,” of CDP 1-15-0204 contained in Appendix B, and (2) Finding E, “Protection of Adjacent Environmentally Sensitive Habitat Areas,” of CDP Amendment 1-15-0204-A1 contained in Appendix C, attached herein.

minimum 1,000-foot buffer if any cuckoo ESHA is detected, and riparian protective measures. Furthermore, **Special Condition 6** prohibits gravel extraction operations from occurring prior to July 22nd. As conditioned, the proposed amended development will avoid degradation of the cuckoo habitat.

Fourth, Special Conditions 4 and 6 of the original permit as modified by CDP Amendment No. 1-15-0204-A1, which are reimposed in CDP Amendment No. 1-15-0204-A2, will similarly avoid degradation of the environmentally sensitive habitat of the Western snowy plover. In its September 2015 Biological Opinion, the U.S. Fish and Wildlife Service (USFWS) determined that with the use of surveys for plovers and determinations that no plovers are present within 1,000 feet of gravel operations, gravel extraction commencing as early as July 22nd will avoid development within plover ESHA. **Special Condition 4** requires the applicant to undertake the proposed amended development consistent with the BO plover conservation measures, including requirements for pre-activity surveys, establishment of a minimum 1,000-foot buffer if any plover ESHA is detected, restrictions on vehicle use in areas of potential plover habitat, and other protective measures. Furthermore, **Special Condition 6** prohibits gravel extraction operations from occurring prior to July 22nd. As conditioned, the proposed amended development will avoid degradation of the plover habitat.

Fifth, Special Conditions 1, 3, 7, and 8 of the original permit, which are reimposed in CDP Amendment No. 1-15-0204-A2, will avoid significant adverse impacts on water quality. **Special Condition 1** requires the applicant to perform the mining project on the exposed gravel bar in order to avoid in-water activities that might result in sedimentation of the river. **Special Condition 3** requires that a runoff control plan be reviewed and approved by the Executive Director as part of the annual gravel extraction plan ensuring that mining equipment be maintained and operated in such a manner as to not allow for release of petroleum products into the river, that spill clean-up materials be available on the worksite, and that operators and sub-contractors undergo spill contingency training. **Special Condition 7** prohibits placing any material into the river during gravel extraction activities. **Special Condition 8** requires that all materials be promptly removed from the river bar after the cessation of mining and prior to the start of the rainy season. These mitigation measures will ensure that the project will not result in significant adverse impacts to coastal water quality.

Visual Resource Protection

Section 30251 of the Coastal Act provides in applicable part that the scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be (a) sited and designed to protect views to and along the ocean and scenic coastal areas, and (b) visually compatible with the character of surrounding areas. As discussed in the Commission's findings for the original permit, which are hereby incorporated by reference⁵, the gravel extraction area and processing facilities are generally not visible from Highway 101 or any other public coastal viewing areas. Therefore, the development, as conditioned, is consistent with the visual resource policies of section 30251 of the Coastal Act,

⁵ See especially Finding J, "Protection of Visual Resources," of CDP 1-15-0204 contained in Appendix B, attached herein

as the project is compatible with the visual character of the surrounding area and will not block views to and along the coast.

Conclusion

Therefore, for all the reasons discussed above, the Commission finds that the amended development is consistent with coastal resource protection policies of sections 30230, 30231, 30233, 30236, 30240, and 30251 of the Coastal Act.

E. PROTECTION OF PUBLIC ACCESS TO THE RIVER

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 the 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.

As discussed in the Commission's findings for the original permit, which are hereby incorporated by reference⁶, the project site is located between the first public road (Highway 101) and the sea (the Eel River is considered to be an arm of the sea in this area). The principal public access use of the project site that does occur is for recreational fishing. Other public access and recreational uses of this stretch of the river include recreational boating. The prime fishing season occurs in the spring or wet season when gravel extraction is not occurring. To the extent that canoeists and boaters do use the river channel during the extraction season, the Commission reimposes **Special Condition 2**, which will ensure that any crossings of the channel installed by the applicants will not block passage down the river. The condition requires that any proposed seasonal crossing of the low flow or secondary channels shall be of the railroad flatcar variety rather than culverted fill crossings. The condition also requires that the flatcar crossing be installed in such a manner that a minimum 3-foot vertical clearance is maintained above the surface of the water so that canoes and kayaks are able to pass through such a crossing.

Due to the significant adverse impacts that vehicle use on the gravel bars has on the plover, the FWS BO includes conservation measures aimed at minimizing vehicle impacts to plover habitat. Plover conservation measure number 7 imposes limits on vehicular use in potential plover nesting areas during the nesting season. Plover conservation measure number 8 states that access roads owned, controlled, or used by commercial gravel operators shall be gated and locked during the plover nesting season when no active extraction and hauling is occurring (including at night) in order to deter recreational vehicle impacts to plovers on gravel bars. As previously

⁶ See especially Finding K, "Public Access," of CDP 1-15-0204 contained in Appendix B, attached herein

discussed, **Special Condition 4**, as modified 1and reimposed by Amendment, requires the applicant to undertake the amended development consistent with the BO plover conservation measures, including restrictions on vehicle use in areas of potential plover habitat. However, the condition requires that gates shall be designed only to block vehicles and shall allow for pedestrian access to the river, unless the applicant obtains additional authorization from the Commission to block pedestrian access.

Thus, the Commission finds that the amended development, as conditioned, will have no significant adverse effect on public access, and the amended development as proposed without new public access is consistent with the public access policies of the Coastal Act.

F. CALIFORNIA ENVIRONMENTAL QUALITY ACT

The County of Humboldt, as the lead agency, adopted a Programmatic Environmental Impact Report (PEIR) to describe and analyze the potential environmental effects resulting from the gravel extraction operations in the lower Eel and lower Van Duzen Rivers in 1992.

Section 13096 of the Commission's administrative regulations requires Coastal Commission approval of coastal development permit applications to be supported by a finding showing the application, as modified by any conditions of approval, is consistent with any applicable requirement of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits 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.

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 project as proposed to be amended 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 amended development, as conditioned to mitigate the identified impacts, can be found to be consistent with the requirements of the Coastal Act to conform to CEQA.