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# W11a

Filed: 1/28/20  
180th Day: 7/26/20  
Staff: M. Kraemer-A  
Staff Report: 2/21/20  
Hearing Date: 3/11/20

## STAFF REPORT: MATERIAL AMENDMENT

**Application No.:** 1-15-0205-A2

**Applicant:** Leland & Paula Rock; Charles & Sally Dwelley

**Agent:** Mike Atkins, Mad River Properties

**Location:** Lower Van Duzen River from the Highway 101 bridge downstream to its confluence with the Eel River, Humboldt County.

**Proposed Amendment:** Amend permit granted for continued seasonal extraction of up to 100,000 cubic yards of river run aggregate (sand and gravel) per year from the dry river channel and related activities to allow for an additional five years of extraction activities.

**Staff Recommendation:** Approval with conditions

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## SUMMARY OF STAFF RECOMMENDATION

On August 13, 2015, the Commission approved with conditions CDP 1-15-0205, 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 Van Duzen River. 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 and Van Duzen Rivers. Mineral extraction is a permissible use 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 and Van Duzen Rivers 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 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 amended development, 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 1-15-0205-A2 with special conditions is found on page 4.

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### APPENDICES

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### EXHIBITS

[Exhibit 1 – Regional Location Map](#)

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

## I. Motion and Resolution

### A. Motion

I move that the Commission approve the proposed amendment to Coastal Development Permit No. 1-15-0205, 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 amendment and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

### B. 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. 1-15-0205) contained five (5) standard conditions and fourteen (14) special conditions. CDP Amendment No. 1-15-0205-A1 modified Special Conditions 4, 5, and 6. The current amendment modifies Special Condition 11 (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). Special Conditions 1 through 14 as modified by the permit amendments are reimposed and remain in full force and effect. In addition, Special Conditions 15 through 18 are attached as new conditions to CDP Amendment No. 1-15-0205-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. 1-15-0205-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.

### 15. State Lands Commission Approval

**PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT AMENDMENT 1-15-0205-A2, the applicant shall 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 January 1, 2020 and December 31, 2024 authorized by CDP Amendment 1-15-0205-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.

#### 16. North Coast Regional Water Quality Control Board Approval

PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT AMENDMENT 1-15-0205-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 1-15-0205-A2 between January 1, 2020 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.

#### 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 RWQCB, the 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) 1-15-0205 authorizing the continued seasonal extraction of up to 100,000 cubic yards of gravel aggregate per year, for five years, from gravel bars on the lower Van Duzen River, between the Highway 101 bridge downstream to its confluence with the Eel River in the Alton area of Humboldt County (for a detailed description of the development

approved under the original CDP, see the original staff report: [CDP 1-15-0205 Approved 8/13/2015](#)). The Commission granted its approval of the mineral extraction development subject to 14 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 CDP.

On May 11, 2016, the Commission approved CDP Amendment No. 1-15-0205-A1 to modify three special conditions of the original permit (Special Conditions 4, 5, and 6) imposed for the protection of the Western snowy plover and Western yellow-billed cuckoo consistent with the measures, recommendations, and conditions of the September 3, 2015 Biological Opinion (BO) of the U.S. Fish and Wildlife Service (FWS) (for a detailed description of the development approved under the CDP Amendment –A1, see the original staff report for the amendment: [CDP Amendment No. 1-15-0205-A1 Approved 5/11/2016](#)). The BO was issued by the FWS after the Commission had acted on the original CDP.

The currently proposed amendment (CDP Amendment No. 1-15-0205-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 100,000 cubic yards of aggregate per year from a large gravel bar on the lower Van Duzen River, just upstream from its confluence with the main stem of the Eel River. Extracted materials would be temporarily stockpiled on an upland stockpile site, with stockpiles reaching a maximum height of 30 feet.

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. The crossings would continue to consist of two 58-foot-long railroad flat cars placed side by side over the channel 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. 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 100,000 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 of the original staff report](#) for a detailed description of 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. 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 Corps authorization for the development (LOP-2015) and the terms and conditions of the National Marine Fisheries Service (NFMS) BO.

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 (1-15-0205-A1), during any given extraction year, gravel mining would not occur until after July 22nd, consistent with FWS recommendations for minimizing disturbance of the Western snowy plover and the Western 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 required by the Corps, NMFS, 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.

### **Regulation History**

The lower Eel River, including the lower Van Duzen River, which is a tributary to the Eel River, has been used for gravel extraction since 1911. Currently, 12 gravel operations are located along an approximately 10-mile stretch of the Lower Eel and Van Duzen rivers. The subject site is the lowest most gravel extraction operation on the Van Duzen River. All of the operations along the Eel River and the portion of the lowest most operation on the Van Duzen River west of the river railroad bridge are within the coastal zone. All of the gravel operations on the Lower Eel and Van Duzen Rivers are interrelated in the sense that all of the gravel bars derive their material from the same upstream sediment sources. The Eel River is considered to be a “hydraulically-limited” rather than “sediment-limited” river. This means that replenishment is more a factor of the size and duration of winter flows than the production of sediment in the watershed. Thus, over-extraction by all of the projects in the lower Eel River combined with multiple low winter flow years can contribute cumulatively to erosion of the bed and banks of the river, which in turn can erode adjacent riparian and other habitat areas, interfere with fishery resources, undermine bridge supports, and cause other significant adverse impacts if not properly managed.

Gravel mining operations on the lower Van Duzen and Eel Rivers, and other coastal rivers, require the approval of a number of different local, state and federal agencies.

### **Humboldt County.**

Subsequent to the adoption in 1992 of an EIR that described and analyzed the potential environmental effects resulting from the ongoing gravel removal operations in the lower Eel and Van Duzen River watersheds, Humboldt County began regulating gravel operations through a comprehensive monitoring and management strategy. The 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 existing gravel bar conditions and the proposed extraction plans, including proposed methods and locations of extraction. The annual review process is informed by long-term monitoring and surveys.

The County has also established an extraction review team (County of Humboldt Extraction Review Team, or “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 reviews all annual gravel extraction plans and identifies the need for changes to those plans as deemed necessary by the monitoring data. CHERT 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 Commission granted CDP No. 1-15-0205 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 lower Van Duzen and 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, 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. However, as approved, Corps LOP-2015 authorizes gravel extraction for a 10-year period through 2024.

Approval of the current CDP amendment request (CDP Amendment No. 1-15-0205-A2) for an additional five-year period will once again bring the time period of CDP authorization into synch 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 NMFS and FWS 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 ESA. Consultations are conducted by the NMFS and the FWS, which are the trust agencies responsible for species listed under the ESA.

Following review and analysis of the information provided by the applicant in a biological assessment, 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 (SONCC Coho) salmon

(Oncorhynchus kisutch), California Coastal Chinook salmon (Oncorhynchus tshawytscha), and Northern California steelhead trout (Oncorhynchus mykiss).

The FWS has been providing consultation on the threatened Western snowy plover (Charadrius nivosus nivosus) 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 (Coccyzus americanus) 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 FWS 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 and lower Van Duzen River have been lower than the annual approved volumes over the last decade and have historically varied with market demands and river conditions.

#### **Environmental Setting**

The project is located on the Van Duzen River, in the Alton area, on the west side of US Highway 101, approximately one mile south of State Highway 36.

The gravel extraction area consists of a large gravel bar formed by the action of both the Van Duzen and Eel Rivers and extends across the mouth of the Van Duzen River to the northern property line. The bar is largely exposed during low flow, dry season conditions and is largely submerged during high flow conditions in the winter. The Van Duzen River delta area near the confluence with the Eel River (i.e., at the project site) consists of a meandering network of interconnected channels. Constriction imposed by the Highway 101 bridge results in deposition above and below the bridge and scour at the bridge.

#### **B. Standard of Review**

The project site is located in the Commission's retained permit jurisdiction. The County of Humboldt has a certified Local Coastal Program (LCP), but the site is within an area shown on State Lands Commission maps over which the State retains a public trust interest. Therefore, as required by Public Resources Code section 30519(b) and Commission regulation, 14 CCR 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 site is located in the bed of the Van Duzen 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 expired 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 new Special Condition 15, which requires that the applicant submit to the Executive Director prior to issuance of this CDP amendment a copy of any required lease. If the applicant pursues an extraction plan in any given year using wetland trenching, Special Condition 17 also 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-A.

### **Humboldt County**

#### **Humboldt County Use Permit**

The County approved a renewal of the Conditional Use Permit, Surface Mining Permit, and Reclamation Plan (CUP-11-02/SMP-11-01/RP-11-01) on November 1, 2012. The renewal will expire on August 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 without changes.

### **California Department of Fish and Wildlife**

The proposed additional five years of gravel extraction operations require an extension of the Section 1603 Streambed Alteration Agreement from CDFW (#1600-2014-0079-R1). CDFW issued an extension on January 10, 2020, which extends the CDFW approval to 2024.

### **North Coast 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. 1B02126WNHU 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 16, which requires the applicant to submit to the Executive Director evidence of the RWQCB's 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**

#### **Final LOP-2015 Approval**

The project is within and adjacent to a navigable waterway and is subject to the authority of the Corps 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 LOP-2015.

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 CDP.

#### **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 is reimposed under this permit amendment without changes to require 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 Service and NOAA-Fisheries**

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 ESA with NMFS and FWS for impacts on federally listed threatened or endangered species. The final BOs by NMFS and FWS were issued in the summer of 2015 after consultation with the Corps prior to the Corp's issuance of LOP-2015. The BOs 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 Van Duzen and Eel Rivers. The applicant's gravel extraction project is typical of most of the gravel extraction operations on the lower Van Duzen River and 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 ([see the staff report for CDP 1-15-0205](#)) and Amendment 1 ([see the staff report for CDP 1-15-0205-A1](#)), 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 of environmentally sensitive habitat areas (ESHA) constitutes permissible fill and dredge of seasonal wetlands for mineral extraction pursuant to section 30233(a)(5). The skimming of the gravel bar in locations containing ESHA such as nesting habitat for the Western snowy plover or riparian habitat is not consistent with sections 30233 and 30240(a), and is, therefore, prohibited. 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, 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 ([see especially Finding H, “Development within Coastal Rivers and Streams” of CDP 1-15-0205](#)). Trenching can be an effective tool for the enhancement of salmonid migration corridors and in providing cold water refuge adjacent to the wetted channel. NMFS 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 that 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, the gravel extraction authorized by the original permit, and as authorized for an additional five years under this CDP amendment as conditioned, includes a number of feasible mitigation measures to minimize adverse environmental effects consistent with section 30233 and to prevent impacts which would significantly degrade adjacent ESHA consistent with section 30240(b) (see especially (1) [Finding H, “Development within Coastal Rivers and Streams,”](#) and [Finding I, “Protection of Adjacent Environmentally Sensitive Habitat Areas,”](#) of CDP 1-15-0205, and (2) [Finding E, “Protection of Adjacent Environmentally Sensitive Habitat Areas,”](#) of CDP Amendment 1-15-0205-A1).

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. 1-15-0205-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 100,000 cubic yards. This limit is consistent with the cumulative impact analysis included in the County’s PEIR for gravel operations on the lower Eel River and lower Van Duzen rivers. In addition, Special Condition 1 limits the use of gravel extraction techniques to those recommended by NMFS. Furthermore, annual gravel extraction plans are reviewed by CHERT in consultation with NMFS 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 the proposed amended development, as conditioned, will avoid disturbance of the active channel as it is reshaped each year by natural processes.

Second, Special Conditions 1, 2, and 7 of the original permit, which are reimposed in CDP Amendment No. 1-15-0205-A2, will ensure that disturbances to riparian habitat are prevented. Special Condition 1(F) includes the requirement that the mining be performed on the portions of the gravel bar that do not contain, and are not in close proximity to,

riparian vegetation with ESHA characteristics (i.e., riparian vegetation that is either (i) part of a contiguous riparian vegetation complex 1/16-of-an-acre or larger or (ii) one-inch-in-diameter at breast height or greater). Special Condition 3 requires each year's annual gravel extraction plan to include a botanical survey that maps all areas of riparian vegetation for avoidance. Special Condition 7 reiterates that gravel extraction and processing operations shall not disturb or remove any area of riparian ESHA growing on the gravel bar or river bank. In this manner, the proposed amended development as conditioned will avoid significant degradation of all of the adjacent riparian ESHA in the vicinity of the project.

Third, Special Conditions 5 and 6 of the original permit, as modified by CDP Amendment No. 1-15-0205-A1 and which are reimposed in this permit amendment (-A2), will avoid degradation of the cuckoo ESHA. In its September 2015 BO, the FWS determined that with the use of surveys for cuckoo and determinations that no cuckoo is 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 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 cuckoo habitat.

Fourth, Special Conditions 4 and 6 of the original permit, as modified by CDP Amendment No. 1-15-0205-A1 and which are reimposed in this permit amendment (-A2), will similarly avoid degradation of plover ESHA. In its September 2015 BO, the FWS determined that with the use of surveys for plover and determinations that no plover 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 plover habitat.

Fifth, Special Conditions 1, 3, 7, and 8 of the original permit, which are reimposed in CDP Amendment No. 1-15-0205-A2, will avoid significant adverse impacts on water quality. Special Condition 1(C) 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(A)-7 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 Resources 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, (see especially Finding J, "Protection of Visual Resources," of CDP 1-15-0205), the gravel extraction and gravel processing operations will be visible from Highway 101. However, the proposed project will not be any more prominent than the gravel extraction and processing activities that have occurred in the past for many decades. Stockpiling gravel adjacent to the highway could have the greatest impact on visual resources, because stockpiles could potentially become very tall and actually block some views of the river from the Highway. However, as proposed by the applicant, the stockpiles will only be a maximum of 30 feet high. At that height, the stockpiles will not rise above the tops of the trees in the adjacent riparian woodland and thus will not block views of the river that are not already blocked by the woodland.

### **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**

Section 30210 of the Coastal Act requires that maximum public access shall be provided consistent with public safety needs and the need to protect natural resource areas from overuse. Section 30212 requires, in part, that access from the nearest public roadway to the shoreline be provided in new development projects, except where it is inconsistent with public safety, military security, or protection of fragile coastal resources, or where adequate access exists nearby. Section 30211 requires that development not interfere with the public's right to access gained by use or legislative authorization. Section 30214 provides that the public access policies of the Coastal Act shall be implemented in a manner that considers the capacity of the site and the fragility of natural resources in the area. In applying sections 30210, 30211, 30212, and 30214, the Commission is also limited by the need to show that any denial of a permit application based on these sections or any decision to impose conditions requiring public access on the granting of a permit is necessary to avoid or offset a project's adverse impact on existing or potential access.

As discussed in the Commission's findings for the original permit (see especially [Finding J, "Public Access," of CDP 1-15-0205](#)), the project site is located between the first public road (Highway 101) and the sea (the Van Duzen/Eel River is considered to be an arm of the sea in this area).

Public recreational use of the river in this particular location includes fishing (though the prime fishing season occurs in the spring or wet season when gravel extraction is not occurring), recreational boating (canoeing and kayaking), birdwatching, and other uses. Public access to the river is available at the project site via a Caltrans right-of-way that runs parallel to Highway 101, on the west side of the highway, just north of the Van Duzen River Bridge.

To the extent that canoeists and boaters do use the river channel during the extraction season, the Commission reimposes [Special Condition 2\(A\)](#), 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 discussed, [Special Condition 4](#), as modified and reimposed by under this permit 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.

Finally, the Commission reimposes [Special Condition 14](#), which requires that the applicant continue to implement the established coastal access plan, including all provisions that ensure public safety fencing does not interfere with public access. This condition will allow for necessary safety measures while protecting pedestrian access to the river consistent with the access policies of the Coastal Act. If the applicant desires to install safety fences or barriers that block pedestrian access to or along the river, the applicant must apply for additional authorization from the Commission so that the Commission can evaluate whether such fences or barriers in the specific locations proposed would block the public's right of access inconsistent with the access policies of the Coastal Act.

Thus, the Commission finds that the amended development, as conditioned, will have no significant adverse effect on public access and that 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, 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.