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Filed: 10/8/20  
180th Day: 4/6/21  
Staff: M. Kraemer  
Staff Report: 2/26/21  
Hearing Date: 3/12/21

## STAFF REPORT: MATERIAL AMENDMENT

**Application No.:** 1-90-113-A2

**Applicant:** Clay Brennan

**Location:** Along the Ten Mile River estuary at 29020 North Highway One, approximately eight miles north of Fort Bragg, Mendocino Co.

**Approved Project:** Subdivide a 44-acre lot into three lots of approximately 14-acres each and designate building envelopes on resultant lots where future development will be confined.

**Proposed Amendment:** Reconfigure the approved building envelope on resultant Parcel 3 and increase its size from 5,000 square feet to approximately 33,000 square feet.

**Staff Recommendation:** Approval with conditions

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## SUMMARY OF STAFF RECOMMENDATION

On June 13, 1990 the Commission approved a land division to divide a 44-acre lot into three lots of ~14 acres each. The proposed subdivision map displayed specific building envelopes for each lot where the applicant proposed that any future additional development on each lot would be confined (Exhibit 10, pg. 10). The current proposed amendment would reconfigure and expand the approved 5,000-square-foot building envelope to approximately 33,000 feet (Exhibit 3). The building envelope is currently a singular rectangular-shaped area on the open terrace on the northwestern side of the property with no existing development other than a portion of the existing on-site septic system. The proposed amendment would reconfigure the building envelope into two

disjunct segments, including an approximately 12,000-square-foot western segment (that overlaps in part with the approved building envelope on the outer terrace) and an approximately 20,000-square-foot eastern segment. Essentially, the revised building envelope would include all portions of the property outside of delineated ESHA, proposed ESHA buffers, and hazard (geologic and flood) areas, based on updated technical studies.

The property is currently developed with a pre-Coastal Act single-family residence and associated accessory development. The purpose of the proposed building envelope reconfiguration and size increase is to provide greater flexibility in siting future development and to allow more development than otherwise could be accommodated in the existing 5,000-square-foot building envelope. The applicant has prepared a conceptual site plan for possible future development that shows a one-bedroom guest cottage and septic system improvements potentially to be located in the western envelope segment and a detached garage/music studio and separate accessory dwelling unit potentially to be located in the eastern envelope segment (Exhibit 3, pg. 2). Any future development on the site will require separate CDP authorization from Mendocino County. As the proposed amendment is an amendment of a CDP for a subdivision and involves moving a building envelope established in part by the original permit to protect coastal resources, the impacts of future development as they relate to the proposed revised building envelope must be considered in the review of the proposed amendment.

The primary Coastal Act issues associated with the proposed amendment request are visual resources and ESHA. The subject property abuts the Ten Mile River estuary, on the north side of the river and west of Highway One. The site is within a designated Highly Scenic Area (HSA) and is highly visible from Highway One and nearby beaches and trails in MacKerricher State Park, including from the California Coastal Trail.

The LCP requires that new development within HSAs shall be subordinate to the character of its setting, and new development on coastal terraces within HSAs shall cluster structures together, avoid development in open areas, and set development back from bluff areas near public access points. Staff believes that allowing significant new structures to be built in the future in the proposed reconfigured western building envelope on the exposed outer terrace area, even if designed with colors, materials, and height restrictions to minimize visual impacts, would not be subordinate to the character of the setting and would not minimize the visual impacts of development on terraces from public vantage points consistent with the LCP requirements. In contrast to the western building envelope, the larger eastern building envelope would be located on the edge of the open coastal terrace area of the parcel adjacent to the largest massing of trees on and adjacent to the parcel that would both partially screen future development from the highway and reduce its prominence. The 20,000-square-foot eastern building envelope would also be large enough to accommodate both the future guest cottage contemplated by the applicant for the western building envelope and additional residential structures, such as a garage/music studio or a new primary residence if it is one day necessary to relocate or retreat the existing residence located on the lowest portion of the property adjacent to the estuary.

There are several types of ESHA scattered across the property, and the proposed building envelopes would be separated from the ESHA by buffer widths ranging from 50 feet to 100 feet. Staff believes that in most cases, the proposed buffer widths are adequate to protect the habitat resources except for the proposed encroachment of the western building envelope to within 50 feet of the significant riparian ESHA associated with the Ten Mile River estuary. Staff therefore recommends adding new Special Condition 4, which would reconfigure the proposed western building envelope to set it back further from the river to provide a 100-foot buffer from the riparian ESHA and limit the kind of development that would be allowed within the building envelope to reduce the visual impacts of such development and meet the LCP policy requirements on clustering, avoiding development in open spaces, and setting development back from bluff areas near public access areas. Special Condition 4 would require that the applicant execute and record a deed restriction limiting future development in the western building envelope if approved by Mendocino County under separate CDP authorization to: (a) reserve leach field and related septic system improvements; (b) habitat restoration and enhancement activities; and (c) removal of debris and unauthorized structures.

As conditioned, staff has determined that the proposed development would be consistent with the certified Mendocino County LCP and public access policies of the Coastal Act. The Motion to adopt the staff recommendation of approval with conditions is on page 5.

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[Appendix A – Substantive File Documents](#)

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### EXHIBITS

[Exhibit 1 – Regional Location Map](#)

[Exhibit 2 – Vicinity Map](#)

[Exhibit 3 – Reconfigured Building Envelope on Parcel 3 Proposed by the Applicant](#)

[Exhibit 4 – Building Envelope Restrictions and Setbacks Imposed by the Commission](#)

[Exhibit 5 – Open Space Restrictions on Parcel 3](#)

[Exhibit 6 – Visual Analysis Provided by Applicant](#)

[Exhibit 7 –Future Development in Relation to ESHA/ESHA Buffers](#)

[Exhibit 8 – Biological Information \(excerpt\)](#)

[Exhibit 9 – Geotechnical Information \(excerpt\)](#)

[Exhibit 10 – Staff Report for CDP 1-90-113 approved by the Commission on 6/13/1990](#)

[Exhibit 11 – Immaterial amendment 1-90-113-A1 issued 7/27/2005](#)

## I. Motion and Resolution

### Motion

I move that the Commission approve the proposed amendment to Coastal Development Permit No. 1-90-113, 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.

### 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 certified Mendocino County Local Coastal Program and the public access and recreation 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 Commission approved Coastal Development Permit (CDP) 1-90-113 on June 13, 1990 with seven standard conditions and three special conditions (see Exhibit 10 for the text of all original permit conditions). An immaterial amendment to the original permit was issued on July 27, 2005 (Exhibit 11).

The subject CDP amendment affects the permit conditions as follows:

- Standard Conditions 1 through 7 and Special Conditions 1 and 2 are reimposed without changes and remain in full force and effect.
- Special Condition 3 is modified as shown below.
- Special Condition 4 is added as a new condition shown below.

Deleted and new language of the conditions appear in ~~bold double strikethrough~~ and **bold double underlined** text, respectively.

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3. Future Development: Any future development of the property shall require an amendment to Permit 1-90-113 from the California Coastal Commission **or a coastal development permit (CDP) from Mendocino County, consistent with the other special conditions of CDP 1-90-113 as amended.**

**4. Development Restrictions and Open Space Conservation Deed Restriction**

**A. No development, as defined in section 30106 of the Coastal Act, shall occur on Parcel 3 (APN 015-350-50) outside of the eastern building envelope as shown on Exhibit 4 to the February 26, 2021 staff report for Coastal Development Permit (CDP) Amendment 1-90-113-A2 except for the following development if approved by Mendocino County under separate CDP authorization:**

- (1) in the open space area on Parcel 3 (APN 015-350-50) as shown on Exhibit 5 to the February 26, 2021 staff report for Coastal Development Permit (CDP) Amendment 1-90-113-A2: (a) future installation of pipelines and utility lines associated with future permitted development in the approved building envelope if no less environmentally damaging alternative route is feasible; (b) repair and maintenance of existing legally authorized structures, utilities (e.g., electrical, septic, etc.), and access roads; (c) habitat restoration and enhancement activities; and (d) removal of debris and unauthorized structures; and**
- (2) in the western building envelope as shown on Exhibit 4 to the February 26, 2021 staff report for Coastal Development Permit (CDP) Amendment 1-90-113-A2: (a) reserve leach field and related septic system improvements sited a minimum of 100 feet from environmentally sensitive riparian habitat areas; (b) habitat restoration and enhancement activities; and (c) removal of debris and unauthorized structures.**

**No other development shall be permitted in the open space area described in A(1) above and the western building envelope described in A(2) above without an amendment to CDP 1-90-113 approved by the Coastal Commission.**

**B. PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT AMENDMENT 1-90-113-A2, the applicant shall execute and record a deed restriction in a form and content acceptable to the Executive Director, reflecting the above restrictions on development in the designated open space area and in the designated western building envelope. The recorded document(s) shall include a legal description and corresponding graphic depiction of the legal parcel(s) subject to this permit and a metes and bounds legal description and a corresponding graphic depiction, drawn to scale, of the designated open space area and the designated western building envelope prepared by a licensed surveyor based on an on-site inspection of the open space area. The deed restriction shall be recorded free of prior liens and any other encumbrances that the Executive Director determines may affect the interest being conveyed. The deed restriction shall run with the land in favor of the People of the State of California, binding successors and assigns of the applicant or landowner in perpetuity.**

### **III. Findings and Declarations**

#### **A. Description of Proposed Amendment and Existing Development**

The subject property is located on the north side of the Ten Mile River and west of Highway 1 at 29020 North Highway One, approximately eight miles north of the City of Fort Bragg in Mendocino County (APN 015-350-50) (Exhibits 1-2).

On June 13, 1990 the Commission approved a land division proposed by applicant William Blinn to divide a 44-acre lot into three lots of ~14 acres each. The original lot was developed with three pre-Coastal Act single-family residences, each to be sited on one of the resultant lots. The proposed subdivision map displayed specific building envelopes for each lot where the applicant proposed that any future additional development on each lot would be confined.

The current applicant, Clay Brennan, who is the current owner of Parcel 3 of the aforementioned three-lot subdivision, proposes to reconfigure the approved 5,000-square-foot delineated building envelope on the property and increase its size to ~33,000 feet (Exhibit 3). The building envelope on the subject lot is currently a singular rectangular-shaped area on the open terrace on the northwestern side of the property. The proposed amendment request would reconfigure the building envelope into two segments, including an approximately 12,000-square-foot western segment (that overlaps in part with the approved building envelope on the outer terrace) and a disjunct approximately 20,000-square-foot eastern segment. Essentially, the revised building envelope is proposed to include all portions of the subject property outside of delineated environmentally sensitive habitat areas (ESHA), proposed ESHA buffers, and hazard (geologic and flood) areas, based on updated technical studies.

The property is currently developed with a pre-Coastal Act single-family residence and associated accessory development, including a driveway, shed, pump house, water storage tank, and an onsite wastewater treatment and disposal system. A 10-foot-wide utility easement with existing overhead electrical transmission lines bisects the lot. The current size of the subject property is ~3.65 acres, since, as discussed in the below finding, the dune portion of the original 14-acre lot (across the river) now is under State ownership.

The purpose of the proposed building envelope reconfiguration and size increase is to provide greater flexibility in siting future development and to allow more development than otherwise could be accommodated in the existing 5,000-square-foot building envelope. The applicant has prepared a conceptual site plan for possible future development in the proposed reconfigured building envelope that shows an (estimated) ~640-square-foot one-bedroom guest cottage and septic system improvements potentially to be located in the western building envelope segment and an (estimated) ~1,500-square-foot detached garage/music studio and separate ~1,000-square-foot accessory dwelling unit (or family care unit) potentially to be located in the eastern building envelope segment (Exhibit 3, pg. 2).

Any future development on the site within the building envelope will require separate CDP authorization from Mendocino County. Any CDP approved for the site will be appealable to the Commission under Coastal Act sections 30603(a)(1), (2), and (3).

## **B. Permit History**

The original permit authorized a land division of a 44-acre lot into three 14-acre lots with specific building envelopes for future additional development on each lot. The original 44-acre lot included land on both sides of the Ten Mile River estuary, including sandy beach, wetland, and upland terrace habitats. The property at the time was described in the Commission staff report for CDP 1-90-113 (Exhibit 10) as follows:

“The Ten Mile River runs through the property naturally dividing it into two parts, one part consisting of sand dunes and the second part consisting of a steep blufftop vegetation with grassland and trees. Sandy beaches are on both sides of the river, accessible by the public. In fact, on file are many letters affirming extended public use...”

The CDP was approved with the following three special conditions, all of which relate to protection of the dune portion of the original lot and its associated visual resource, ESHA, and public access values:

- Special Condition 1 required the execution and recordation of an irrevocable offer to dedicate an open space and conservation easement over the environmentally sensitive and visually significant sand dune portion of the lot. In lieu of the required deed restriction, the condition could be satisfied if the State purchased the subject dunes.
- Special Condition 2 required the applicant to agree that the permit approval not result in interference with any public prescriptive rights of access that may exist on the sand dune portion of the property.
- Special Condition 3 declared that any future development of the subject property shall require a permit amendment from the Commission.

The land identified in Special Condition 1 was divided off from the original 44-acre property and purchased by the state for protection and public recreational use, and the purchased area now is part of MacKerricher State Park and Inglenook Fen-Ten Mile Dunes Natural Preserve. As the division of the property was brought about in connection with the purchase of such land by a public agency for public recreational use, the land division did not constitute development pursuant to section 30106 of the Coastal Act and thus did not require a coastal development permit. This portion of the original property that now is owned by the State is not affected by this amendment request.

On July 27, 2005, the Commission issued an immaterial amendment to Bruce Berry, the owner of Parcel 2 of the three-lot subdivision, to relocate the building envelope of Parcel



2 approved as part of the subdivision approximately 50-70 feet farther back from the bluff edge (Exhibit 11).

### **C. Environmental Setting**

The subject property abuts the Ten Mile River estuary, on the north side of the river and west of Highway 1. The site is within a designated Highly Scenic Area (HSA) under the Mendocino County certified Local Coastal Program (LCP). The County's HSAs are a type of Sensitive Coastal Resource Area as defined under section 30116 of the Coastal Act.

The Ten Mile River and its associated aquatic, riparian, and terrace habitats support numerous federally and state listed rare, threatened, and endangered plant and animal species, including, but not limited to, Coho Salmon (*Oncorhynchus kisutch*), Chinook Salmon (*Oncorhynchus tshawytscha*), Steelhead Trout (*Oncorhynchus mykiss*), Tidewater Goby (*Eucyclogobius newberryi*), and Bald Eagle (*Haliaeetus leucocephalus*). The portion of the river adjacent to the property is part of the Ten Mile Estuary State Marine Conservation Area (SMCA),<sup>1</sup> which is described as "one of the least developed estuaries along the North Coast with intact, extensive, and functioning estuarine, wetland, and riparian habitat."<sup>2</sup> The Ten Mile Beach SMCA is designated over the ocean waters directly offshore from the site, and the Ten Mile State Marine Reserve is offshore to the north.<sup>3</sup> The biological studies submitted with the permit amendment request identify various types of ESHA on the property that were not considered ESHA at the time of the original permit, including Coastal dune willow thicket (one parameter coastal wetland), Silk tassel scrub, Purple needlegrass grassland, and California oatgrass prairie.

The property, along with the two lots to the north that were part of the original three-lot subdivision, is planned and zoned under the Mendocino County certified LCP for Rural Residential uses with a 10-acre minimum parcel size and a Planned Unit Development combining district (RR-10-PD). Uses allowed in the RR zone include single family residences, vacation home rentals, light agriculture, and passive recreation. Additional RR lots (5 acres in size) lie on the coastal terrace to the immediate north of the subdivision. Lands to the east (inland of Highway One) are mostly open space, used for low-density residential and agricultural uses. Lands and waters to the south and west are part of the aforementioned open space parks and conservation areas.

### **D. Standard of Review**

The original project was approved prior to certification of the Mendocino County LCP. Therefore, the standard of review for the original permit application was the Coastal Act. The Commission effectively certified the County's LCP in October of 1992. As the project site is located within a now certified area of the LCP and between the first public

<sup>1</sup> For a description, see: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=90275&inline>

<sup>2</sup> California State Parks: [https://www.parks.ca.gov/?page\\_id=27788](https://www.parks.ca.gov/?page_id=27788)

<sup>3</sup> See <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=90274&inline>

road and the sea, pursuant to section 30604 of the Coastal Act, the applicable standard of review for the permit amendment request is the County LCP and the coastal access and recreation policies of the Coastal Act.

## **E. Visual Resources**

### **LCP Policies**

See Appendix B for list of applicable LCP visual resource policies and standards.

### **Consistency Analysis**

The visual policies of the County's LCP are extensive and detailed. It should be noted that the County's LCP policies are more detailed and restrictive than the provisions of section 30251 of the Coastal Act, the Chapter 3 policy pertaining to the review of new development for the protection of visual resources. Section 30005 of the Coastal Act allows local governments to adopt more restrictive policies.

LUP policy 3.5-3 states that all proposed divisions of land and boundary line adjustments within highly scenic areas (HSAs) shall be analyzed for consistency of potential future development with the visual resource policies of the LCP and shall not be allowed if development of resulting parcels could not be consistent with the visual resource policies. As the proposed amendment is an amendment of a CDP for a subdivision and involves moving a building envelope established in part by the original permit to protect coastal resources, the impacts of future development as they relate to the proposed revised building envelope must be considered in the review of the proposed amendment.

As cited in the policies and standards listed in Appendix B, new development in HSAs must be subordinate to the character of its setting. Any development permitted in these areas shall provide for the protection of ocean and coastal views from public areas including, as relevant to the subject property, highways, coastal trails, vista points, beaches, parks, and waters used for recreational purposes. The cited policies and standards also require that new development on terraces minimize visual impacts by providing bluff setbacks for development adjacent to or near public areas along the shoreline, by avoiding development in open areas if an alternative site exists, and by minimizing the number of structures and clustering them near existing vegetation, natural landforms, or artificial berms.

The subject site is comprised mostly of coastal terrace lands within a rural, natural setting surrounded by scattered low-density residential development and vast expanses of undeveloped natural lands. In the area surrounding the property, sweeping views of the ocean, dunes, and the river estuary are available from various public vantage points, including from Highway One, coastal trails, vista points, beaches, parks, and waters used for recreational purposes. Most of the existing 3.6-acre lot is undeveloped open terrace (except for the existing driveway and utility lines), bluff face, and riparian habitat along the riverine estuary. The existing residential structures, which are on the lower portion of the property close to the river, are visible from northbound Highway

One south of the river, from the Ten Mile River Bridge (including from its pedestrian bridge/California Coastal Trail), from beaches and dunes across the river from the property in MacKerricher State Park (including from the Haul Road coastal trail), and from coastal waters of the estuary used by recreational boaters. The visibility of the existing residential structures on the site is minimized somewhat by their location near the toe of a slope against a natural landform (vegetated bluff). The existing structures are not visible from vantage points north of the property.

According to calculations provided by the applicant (Exhibit 3, pg. 2), existing development covers approximately 5.8% of the lot area. If the existing 5,000-square-foot building envelope were to be built out in the future with additional development (if permitted by under separate CDP authorization consistent with the LCP), the lot coverage would total at most 8.9%. The Rural Residential zone in which the property is located allows for a maximum lot coverage of 15%.

The area on the lot where the existing approved building envelope is located is on the outer terrace, near the northwestern side of the property. The approved building envelope currently is undeveloped except for a portion of an underground septic system within a portion of the envelope area. The site of the approved building envelope where future development may be located (if permitted by under separate CDP authorization consistent with the LCP) also is visible from Highway One (traveling northbound from south of the river as well as traveling southbound from north of the property), from the Ten Mile River Bridge (including from its pedestrian bridge/California Coastal Trail), and from MacKerricher State Park (across the river to the northwest, west, and south/southwest of the site).

As described in the Project Description finding, the proposed permit amendment would reconfigure and expand the approved delineated building envelope from a singular rectangular building envelope of 5,000 square feet on the outer terrace to a segmented approximately 33,000-square-foot building envelope that includes an approximately 12,000-square-foot western segment and a disjunct ~20,000-square-foot eastern segment. Essentially, the revised building envelope proposes to include all portions of the subject property outside of delineated ESHA, proposed ESHA buffers, and hazard (geologic and flood) areas, based on updated technical studies. The western building envelope segment overlaps in part with the approved building envelope on the outer terrace, while the eastern building envelope segment would abut an existing grove of pine and cypress trees along the inland side of the property (the trees are mostly on the adjacent property to the east).

If the proposed expanded building envelope were to be developed in the future with additional residential accessory structures as proposed in the applicant's conceptual site plan (Exhibit 3, pg. 2), the lot coverage would be about 12%, greater than the current 8.9% potential lot coverage but less than the 15% maximum lot coverage allowed in the RR zone. Based on a visual analysis of these potential structures submitted by the applicant (Exhibit 6), structures in the western building envelope segment, even if designed with colors, materials, and height restrictions to minimize visual impacts, would not be subordinate to the character of its setting and would not

minimize the visual impacts of development on terraces consistent with the LCP, for the below reasons.

First, there would be triple the number of structures on the property visible from public vantage points than under current conditions, which itself is significant in an area where few structures are visible relative to vast expanses of undeveloped, natural lands (e.g., see Exhibit 6, pgs. 1 and 3). Currently, there are some neighboring houses visible on terraces north of the site from beaches and dunes in the nearby State Park. However, because very few structures on the immediate terrace on which the applicant's property is located currently are visible (especially as viewed traveling southbound on Highway One and from the Haul Road coastal trail in MacKerricher State Park (see Exhibit 6, pgs. 1, 2, and 6), adding a new structure to the public viewshed in this area would not result in development being subordinate to the existing open, natural setting with sweeping views of the terrace, estuary, dunes, and ocean. The applicant has suggested that the solitary tree in this portion of the site would offer a backdrop that would screen a small building; while this may be true from some specific vantage points, the structure would be visible from many points and be in conflict with the LUP visual protection policies cited in Appendix B.

Second, buildings developed in the western (outer terrace) envelope segment in the future would not provide for clustering all structures in a highly scenic area together and would not result in siting structures near a wooded area or existing vegetation, as is required under LUP policy 3.5-4 and CZC sec. 20.504.015(C). Confining all future structures to the eastern (inland) envelope segment would better achieve these standards, because there are a number of existing trees on the adjacent property to the east that would, from some public vantage points, serve as a backdrop to the new structure(s) to soften their visual impacts (see Exhibit 6, pgs. 1, 3, and 7).

Also, there are other existing structures around the eastern envelope that are visible from public vantage points, including the applicant's existing house and houses on neighboring properties to the east. Relatedly, siting a future structure in the western portion of the reconfigured building envelope would not avoid siting development in large open areas if an alternative site exists, as required by LUP policy 3.5-4 and CZC sec. 20.504.015(C)(7). An alternative to siting development in the large open area of the property does exist (i.e., the proposed eastern building envelope), as evidenced by the applicant's conceptual development plan (Exhibit 3, pg. 2).

Finally, siting future structures in the western reconfigured building envelope would not provide bluff setbacks adjacent to or near public areas along the shoreline, as required by required by LUP policy 3.5-4 and CZC sec. 20.504.015(C)(7)(c). The bluff setbacks in LUP policy 3.5-4 and CZC sec. 20.504.015(C)(7)(c) are distinct from setbacks required for geologic or ESHA reasons and are necessary to provide visual screening from public vantage points in nearby beaches, parks, and waters used for recreational purposes. The nearby beaches and trails on the dunes of MacKerricher State Park and the California Coastal Trail from the Haul Road and the Ten Mile River Bridge afford dramatic coastal views, including views of the coastal terrace where the subject property is located (see e.g., Exhibit 6, pgs. 6, 8, and 11).

Therefore, to meet the LCP policy requirements on clustering, avoiding development in open spaces, and setting development back from bluff areas near public access areas as required by LUP policy 3.5-4 and CZC sec. 20.504(C), the Commission adds new Special Condition 4. **Special Condition 4** allows only the following specified development in the western building envelope, if approved by Mendocino County under separate CDP authorization: (a) reserve leach field and related septic system improvements sited a minimum of 100 feet from environmentally sensitive riparian habitat areas; (b) habitat restoration and enhancement activities; and (c) removal of debris and unauthorized structures. To make it clear that development is generally restricted to the western and eastern building envelopes, Special Condition 4 also limits development within the open space area of the parcel outside of the building envelopes. As the existing residence, a water tank, pump house, driveway, septic system, and utility lines (e.g. electrical, septic, etc.) are located within this open space area, the special condition allows for repair and maintenance of all the existing development in the open space area that has been legally authorized. Special Condition 4 also allows for habitat restoration and enhancement activities and removal of debris and authorized structures, but otherwise prohibits development. All proposed future development that is consistent with these limitations and which is not otherwise exempt from CDP requirements must be approved by Mendocino County under separate CDP authorization. Furthermore, Special Condition 4 requires that the applicant execute and record a deed restriction that documents these restrictions on the use of the property to ensure that both the applicant and future purchasers of the property are notified of the prohibitions on development within the western building envelope.

In addition, the Commission modifies and reimposes **Special Condition 3** to clarify that any future development on the lot and on the other lots of the original subdivision, such as development of a reserve leach field and related septic system improvements, shall require an amendment to Permit 1-90-113 from the Commission or a CDP from Mendocino County, that complies with the other special conditions of CDP 1-90-113 as amended.

As conditioned, the proposed amendment would protect coastal views from public areas as required by the LCP by avoiding future development in the western terrace portion of the property that is highly visible from the highway, coastal trails, vista points, beaches, parks, and waters used for recreational purposes. Future development of the site would be subordinate to the character of this rural coastal setting where the visual character is established mostly by the natural features of the site including the dunes, estuary, ocean, natural bluffs, and open coastal terrace. And finally, as conditioned, the amendment will meet the LCP policy requirements on clustering, avoiding development in open spaces, setting development back from bluff areas near public access areas. Therefore, the proposed permit amendment, as conditioned, is consistent with the visual resources protection policies of the certified LCP.

## **F. Environmentally Sensitive Habitat Areas**

### **LCP Policies**

See [Appendix B](#) for list of applicable LCP ESHA policies and standards.

### **Consistency Analysis**

In 1990, when the original permit was granted, the subject property was known to contain dune, wetland, and rare plant ESHA associated with the riverine and dune areas that were part of the original 44-acre lot. The staff report for CDP 1-90-113 (Exhibit 10) describes the property as follows:

“The Ten Mile River runs through the property naturally dividing it into two parts, one part consisting of sand dunes and the second part consisting of a steep blufftop vegetation with grassland and trees. Sandy beaches are on both sides of the river, accessible by the public. In fact, on file are many letters affirming extended public use...”

This ESHA was protected in the original permit through the imposition of Special Condition 1, which required the execution and recordation of an irrevocable offer to dedicate an open space and conservation easement over the environmentally sensitive (and visually significant) sand dune portion of the lot. In lieu of the required deed restriction, the condition could be satisfied if the State purchased the subject dunes. The state purchased the land identified in Special Condition 1 for protection, and, as previously discussed, the purchased area now is part of MacKerricher State Park.

Since that time, several additional types of ESHA have been discovered on the remaining portion of the property (the current 3.65-acre lot, which includes the riverine bluff and terrace areas). The applicant commissioned updated biological studies to support the CDP amendment application, which identified several types of wetland, riparian, and rare plant community ESHA scattered across the terrace and bluff portions of the property (Wynn Coastal Planning & Biology, June 2020, Exhibits 7 and 8). These include freshwater emergent wetland, riparian vegetation, and sensitive scrub and grassland communities.

LUP policy 3.1-7 and CZC sec. 20.496.020 (see Appendix B) require that buffer areas shall be established adjacent to all ESHA to provide sufficient area to protect the ESHA from significant degradation resulting from future developments. These provisions of the LCP state that the width of the buffer area shall be a minimum of 100 feet, unless an applicant can demonstrate, after consultation with the California Department of Fish and Wildlife (CDFW, formerly CDFG) and County Planning staff (in this case the Commission, who is reviewing this permit amendment request), that 100 feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development; in which case the buffer can be reduced to not less than 50 feet in width. CZC sec. 20.496.020(A)(1)(a) through (g), cited in Appendix B, sets forth specific standards to be considered when determining the width of a buffer.

As discussed, the current amendment request seeks approval to change the dimensions and configuration of the existing building envelope in a manner that would greatly expand its coverage. The applicant has produced conceptual plans to develop several residential accessory structures in the reconfigured and expanded building envelope, including a garage/music studio, an accessory dwelling unit (or family care

unit), and a detached guest cottage. Separate CDP authorization from the County will be required for the proposed future development, and at that time the County will evaluate the adequacy of the proposed ESHA buffer for consistency with the LCP ESHA buffer policies based on the characteristics of the specific development proposed and its potential impacts on the adjacent ESHA. Depending on the timing of the subsequent CDP application, an updated ESHA survey may be required (e.g., wetland delineations normally are considered valid for five years; surveys for the Lotis blue butterfly are valid for two years, etc.).

As stated, the expanded building envelope would be more than five times the size of the current building envelope, yet much of the land on the property would remain undeveloped and would benefit the on-site resources by maintaining at least a 50-foot separation from the delineated ESHAs, which is the minimum width to which the required 100-foot buffer may be reduced if it can be determined that the 100-foot buffer is not necessary to protect the adjoining ESHA resources. In contrast, the building envelope approved under the original permit does not maintain even a 50-foot separation from all the ESHA now known to exist on the property, as the approved building envelope encroaches to within ~25 feet from the environmentally sensitive riparian habitat area along the Ten Mile River estuary.

The following (approximate) buffer widths are proposed by the applicant, as shown on Exhibit 3 pg. 1,<sup>4</sup> as the minimum distances that the edge of the reconfigured building envelope (western and eastern segments) would be located from the various types of ESHA:

<b>Type of ESHA</b>	<b>Approx. Minimum Distance from Edge of Western Building Envelope to ESHA</b> (area of future guest cottage)	<b>Approx. Minimum Distance from Edge of Eastern Building Envelope to ESHA</b> (area of future garage, music studio, ADU or FCU)
Riverine Wetlands	50 feet	>100 feet
Riparian Willow Thicket	50 feet	>100 feet
Silk Tassel Scrub	50 feet	80 feet <sup>4</sup>
Slough Sedge Sward	50 feet	50 feet

<sup>4</sup> Note that the applicant's revised site plan submittal on December 29, 2020 (Exhibit 3, pg. 1) added the 80-foot buffer setback line from the Silk tassel scrub ESHA to represent the proposed extent of the eastern building envelope segment even though the map shows the building envelope segment as extending past that distance (to the originally proposed 50-foot buffer width from the Silk tassel ESHA). The applicant's request for the 80-foot buffer was included in an email from Tara Jackson of Wynn Coastal Planning and Biology to M. Kraemer sent on 12/29/20.

Purple Needlegrass Grassland	50 feet	75 feet
CA Oatgrass Prairie	>100 feet	50 feet

Wynn Coastal Planning & Biology provided a buffer width analysis to support the proposed minimum 50-foot buffer widths, taking into account the factors set forth in CZC sec. 20.496.020(A)(1)(a) through (g) for determining the width of a buffer (Exhibit 8, pgs. 27-32). The reasons given in the biological evaluation in support of the recommended buffer reduction are quoted for each of the seven factors:

- (a) Biological Significance of Adjacent Lands. “The rare plant community, wetland and riparian presumed ESHAs that were observed on this parcel have the potential to host nesting birds or resting amphibians. The non-native grassland surrounding these ESHAs would not provide the same habitat or cover and thus should not be considered part of the ESHA. The buffer zone should remain to be measured from the edge of the presumed ESHAs and should be sufficiently wide to protect the potential habitat.”
- (b) Sensitivity of Species to Disturbance. “The Ten-Mile River, which borders the subject parcel, provides habitat to fish species including the endangered coho salmon (*Oncorhynchus kisutch*), marine mammals, shore birds and other wildlife. In addition to the 50ft buffer, the river is additionally being buffered by the riparian plant community itself, and in part the current residence and existing development. Due to the addition of these natural and cultural buffers, the width of the proposed 50’ buffer is sufficient to protect the potential ESHAs on the property. Due to the proximity of the project to Highway One and residential development, any species present on or near the property will be well adapted to human disturbance at this point in time. As existing development is already present on the property (one single family residence and two small out buildings) and as the proposed project is in such close proximity to Highway One, the impact of activity levels should not have a negative impact on any ESHAs.”
- (c) Susceptibility of Parcel to Erosion. “Erosion onsite will be minimal as the area where development is proposed is relatively flat. The existing single-family residence and driveway will help to buffer any erosion that may occur from the proposed project that may move towards the Ten-Mile River. In addition, the placement of straw wattles around the building envelope as recommended within the avoidance mitigation measures will help to ensure erosion levels remain low to non-existent.”
- (d) Use of Natural Topographic Features to Locate Development. “The areas where development is proposed is relatively flat, away from the steeper portion of the parcel. No hills or bluffs that could be used to buffer the ESHAs are present on the parcel. No bluff faces are proposed for development and the steeper portion of the parcel is included in the buffer zone.”



- (e) Use of Existing Cultural Features to Locate Buffer Zones. “The existing driveways may have some buffering effect and the development is proposed within areas maintained as fields by mowing. The main portion of the proposed development is proposed on the side of the driveway away from a portion of existing driveway.”
- (f) Lot Configuration and Location of Existing Development. “The existing development on this parcel as well as on the parcel to the east both exist within 100ft of the riparian habitat and some portions of rare plant community presumed ESHA. The proposed development is farther from presumed ESHA than the existing single-family residence. Avoidance mitigation measures, such as placing straw wattles between the proposed development and the ESHAs, are recommended in Section 7 of this document to ensure additional protection.”
- (g) Type and Scale of Development. “The development of the proposed accessory structures are similar in size to those of the surrounding properties, and a 50ft buffer is sufficient to protect the resources.”

The applicant’s foregoing analysis of the proposed buffer width in relation to the seven standards contained within CZC sec. 20.496.020(A)(1) is intended to inform the determination of whether the buffer proposed by the applicant would be adequate to protect the identified wetlands, riparian habitat, and sensitive scrub and grassland habitat areas on the subject lot. However, as detailed in the below findings, while the Commission finds that for some of the ESHA types on the property a 50-foot buffer is adequate, for other types of ESHA, a larger buffer is needed to protect the resources of that particular habitat area from possible significant disruption caused by future development that may be permitted in the proposed reconfigured building envelope areas.

### **(1) Slough sedge, Purple needlegrass, and California oatgrass ESHA Buffers**

The particular facts of this site suggest that some of the standards within CZC sec. 20.496.020(A)(1) should be weighed more in the evaluation of buffer width than other standards depending on the type of ESHA in question. For instance, given the small size and isolated configurations of the small patches of Purple needlegrass and California oatgrass prairie communities on the site, neither of these environmentally sensitive grassland areas nor the non-native grassland surrounding the ESHA provide especially valuable nesting, feeding, breeding, or resting habitat for native fauna. Thus, the first two factors of CZC section 20.496.020(A) regarding the biological significance of adjacent lands (in this case very low) and the sensitivity of species to disturbance (in this case also very low) weigh more heavily than the fact that there are no hills, bluffs, or other topographic features between the ESHA and the building envelopes to better buffer these sensitive habitat areas (relevant to the fourth factor of CZC section 20.496.020(A) regarding the use of natural topographic features to locate development), as such topographic features are not needed as much in this location to buffer wildlife that may be using the ESHA from future development in the building envelope.

Another consideration for justifying a reduced buffer width is the fact that there is little functional relationship between the non-native grassland habitat that lies between the edge of the eastern building envelope and the Slough sedge sward 50 feet to the north (as proposed), because the hydrologic feature that feeds into the sedge wetland is located on the opposite side of the wetland, on the adjacent property to the north. Moreover, the fact that the buffer area between the sedge area and the building envelope is flat, with permeable soils, and not susceptible to erosion suggests little increased value to a larger buffer in this area.

Other considerations that support the establishment of a reduced 50-foot buffer as adequate to protect the environmentally sensitive Slough sedge, Purple needlegrass, and California oatgrass habitat areas includes the fact that the primary plant species that define each type of ESHA (grasses and sedges) are not reliant on animal pollinators such as bees or hummingbirds. If reliance on pollinators were a factor, a larger buffer area with additional pollinator resources would be required. Additionally, these plant populations generally lack sensitivity to human activities aside from any potential direct impacts. Furthermore, the soils, topography, and location of these ESHA on the lot relatively far back from the bluff edge and inland of the driveway minimize the possibility of erosion occurring in the ESHA or their associated buffer areas.

In addition to evaluating the adequacy of the proposed 50-foot buffer width from the edge of the reconfigured building envelope to environmentally sensitive Slough sedge, Purple needlegrass, and California oatgrass habitat areas based on the factors set forth in CZC sec. 20.496.020(A)(1)(a) through (g), the applicant's biologist and Commission staff consulted CDFW regarding the proposed reductions of the ESHA buffers below the required 100 feet. As noted previously, LUP policy 3.1-7 and CZC sec. 20.496.020 state that the width of a buffer shall be a minimum of 100 feet unless an applicant can demonstrate, after consultation with the CDFW and (in this case) the Commission, that 100 feet is not necessary to protect the habitat resources, in which case the buffer can be reduced to not less than 50 feet. Commission staff and CDFW visited the site with the applicant's biologist in April and October of 2020. CDFW staff verified the boundaries of the ESHA delineations and concurred with the proposed buffer width of 50 feet as adequate to protect the sedge and grassland ESHA types on the property for the various reasons discussed above.

Based on the foregoing, the Commission finds that a 50-foot buffer between the environmentally sensitive Slough sedge, Purple needlegrass, and California oatgrass habitat areas and the reconfigured building envelope is consistent with LUP Policy 3.1-7, and CZC Section 20.496.020.

## **(2) Riverine wetlands, Riparian willow thicket, and Silk tassel scrub**

Based on their adjacency and topographic position near the river and below the top of bank, the wetlands adjacent to the river, the willow thicket habitat, and the Silk tassel scrub all function as part of the vegetated riparian corridor associated with the Ten Mile River. As summarized in the above table, the ESHA buffer widths vary with the different building envelope segments. In the case of the proposed eastern building envelope

segment, the applicant proposes an ESHA buffer width of least 80-100 feet (80 feet from the Silk tassel scrub; ~100 or more feet from the willow and wetland ESHA).

Although the Silk tassel scrub ESHA would be as close as 80 feet from the reconfigured eastern building envelope segment, the Commission finds this distance to be adequate to protect the resources of the scrub habitat because: (1) the site's natural topography offers an added buffering effect in that the building envelope segment is set back from the bluff edge atop the coastal terrace where the scrub ESHA is mostly confined to bluff face areas below the top of bank, and (2) the applicant's existing driveway (developed many decades ago) is located between the building envelope and the ESHA, immediately east of the scrub ESHA, and this feature presents an existing ongoing disturbance/use that suggests that species that use the scrub habitat for nesting, roosting, foraging, etc. are already adapted to some human disturbance. CDFW staff did not express concerns with the proposed 80-foot buffer from the eastern building envelope.

With respect to the western building envelope, as proposed, the reconfigured envelope would encroach to within 50 feet of riverine wetland, riparian willow, and Silk tassel scrub ESHA. As quoted above, the Wynn Coastal Planning & Biology buffer adequacy evaluation (Exhibit 8, pgs. 27-32) did not differentiate the adequacy of the proposed buffer widths between the varying types of ESHA on the property (e.g., upland grassland ESHA versus riverine wetland ESHA).

The Commission finds that some of the ESHA buffer factors weigh more in the consideration of the adequacy of the buffer width for the riparian, scrub, and wetland habitats associated with the Ten Mile River than for the sensitive slough sedge and grassland ESHAs. In the case of the former, significant consideration must be given to the biological significance of the adjacent waters of the Ten Mile River estuary, to the fact that there is a significant functional relationship between the riparian corridor and the hydrology and aquatic life of the river, and to the nesting, feeding, breeding, resting, and other habitat requirements of resident and migratory fish and wildlife species that are known to inhabit and rely on the Ten Mile River estuary and its associated wetland and riparian habitats.

As discussed in the Environmental Setting finding, the property abuts the State Marine Conservation Area, which is described by State Parks as "one of the least developed estuaries along the North Coast with intact, extensive, and functioning estuarine, wetland, and riparian habitat." The Ten Mile River and its associated aquatic, riparian, and terrace habitats support numerous federally and state listed rare, threatened, and endangered plant and animal species, including, but not limited to, anadromous salmonids, tidewater goby, among others. According to CDFW staff who were consulted on the proposed buffer reduction:<sup>5</sup>

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<sup>5</sup> Email from CDFW Environmental Scientist Rhiannon Korhummel to Commission staff (M. Kraemer and S. Targ) sent 12/15/2020.

“The vegetation along the stream banks supports stream function in numerous ways: provides a buffer to the stream and native wildlife from human and erosional activity, provides nesting, breeding, resting, and foraging habitat for native species, provides a protected wildlife corridor, and is intact native shrub habitat surrounded by upland grasslands. Further, the adjacent lands to the riparian and shrub communities are largely undeveloped which allows for infiltration of rainfall, foraging and dispersal habitat for wildlife away from humans, and minimal effects of human activities, including pollution, light pollution, domestic animals, and noise pollution.

“Also, 10-Mile River is a very important natural resource which should receive maximum protection from development impacts whenever possible....”

Some concerns noted by CDFW if development occurs too close to the riparian/shrub vegetation along the river bank include: “Decrease in native species abundance and biodiversity and the loss of ‘human-sensitive’ species that require natural habitats; permanent vegetation (i.e. habitat and infiltration areas) loss from proposed development; altered hydrology from increase of impervious surfaces; diminished water quality from discharge of pollutants; disturbance of wildlife from pets, noise, and human activities; increased light pollution; impacts of domestic animals on native wildlife; streambank and bluff destabilization from reduced vegetated areas and channelized flow from impervious surfaces; substantial evidence shows that narrow buffers are considerably less effective in minimizing the effects of adjacent development than wider buffers; [and] wider buffers retain avian diversity.”

Unlike the situation with the buffer between the eastern building envelope and the riparian ESHA where there is an existing cultural feature (i.e., the existing driveway) that presents an ongoing disturbance, no such feature exists between the riparian corridor and the open terrace area where the proposed reconfigured western building envelope segment is located. As the width of a buffer shall be a minimum of 100 feet unless an applicant can demonstrate, after consultation with the CDFW and (in this case) the Commission, that 100 feet is not necessary to protect the habitat resources, the Commission finds that in the case of the buffer between the western building envelope segment and the riparian corridor habitats along the river (riverine wetlands, willow riparian, and Silk tassel scrub), the applicant has not demonstrated that 100 feet is not necessary to protect the habitat resources of the riparian/river ESHA from future development within the western building envelope.

The Commission therefore imposes **Special Condition 4** which requires that the proposed western building envelope be reduced in size and reconfigured to set it back further from the river, siting it a minimum of 100 feet from environmentally sensitive riparian habitat areas. The building envelope reduction imposed by the Commission is shown in Exhibit 4.

As conditioned, the proposed amended development is consistent with LUP Policy 3.1-7 and CZC Section 20.496.020, which require the establishment of ESHA buffer areas to protect the ESHA from significant degradation resulting from future developments, and

with LUP policy 3.1-10 and CZC sec. 20.496.035, which require that development adjacent to riparian areas not degrade such areas or diminish their value as a natural resource.

## **G. Hazards**

### **LCP Policies**

See Appendix B for list of applicable LCP hazard policies and standards.

### **Consistency Analysis**

The subject site includes low-lying riverbank and terrace areas that are subject to hazards from flooding and bluff erosion. Based on the approved subdivision map, the building envelope approved in the original permit for Parcel 3 (the subject lot) appears to be set back between 20 feet to 80 feet from the top of bluff as mapped on the approved subdivision map.

In support of the proposed amendment request to reconfigure the building envelope on the lot, the applicant submitted an updated geotechnical study (Brunsing Associates, Inc., October 11, 2019, Exhibit 9) to evaluate, among other things, river bluff retreat hazards that may affect site stability in relation to future planned development to be located in the reconfigured building envelope. The report confirms that current flood levels at times reach within a few feet of the existing pre-Coastal residence built below the bluff and that “the existing residence may need to be raised or relocated over the next 75 years due to sea-level rise.” In contrast, the proposed building envelope for future development as conditioned is located on top of the coastal terrace at elevations estimated by the applicant’s geologist at 80 to 90 feet above Mean Sea Level (MSL), well above projected sea level rise along the Mendocino Coast in the year 2100.

The report also confirms that the proposed reconfigured building envelope areas would site new development sufficiently back from riverine and bluff areas to minimize risk and assure stability and structural integrity, factoring in projected SLR over the 75-year time frame. The report recommends a minimum 25-foot setback from the delineated bluff edge. The proposed reconfigured envelope as conditioned, conforms with the recommended geologic setback and also provides added suitable areas on the property to support existing residential development that may need to be relocated from low-lying areas that may become increasingly unstable and flood-prone over the coming decades.

Therefore, the Commission finds that as locating future development in the proposed building envelope as conditioned will minimize risks of geologic and flood hazards, the proposed amendment to reconfigure and expand the building envelope as conditioned is consistent with the policies of the Mendocino County LCP regarding geologic hazards.

## **H. Archaeological Resources**

### **LCP Policies**

See Appendix B for list of applicable LCP archaeological resource policies and standards.

### **Consistency Analysis**

The LCP requires review of all development permits to ensure that proposed projects will not adversely affect existing archaeological and paleontological resources (LUP policy 3.5-10). In addition, the LCP requires that the granting or modification of any coastal development permit by the approving authority shall be supported by findings which establish that, among other things, the proposed development will not have any adverse impacts on any known archaeological or paleontological resource (coastal zoning code sec. 20.532.095).

Under the Commission's review of the original permit, the original 44-acre lot was known to contain sensitive archaeological resources. Sensitive areas were identified as associated with the dune portion of the lot south of the river, which, as previously discussed, was split off and now is part of MacKerricher State Park and Inglenook Fen-Ten Mile Dunes Natural Preserve.

Commission staff referred the proposed permit amendment application to tribal representatives with known interest in the project area region.<sup>6</sup> Tribal representatives from the Bear River Band of the Rohnerville Rancheria and the Potter Valley Tribe responded and identified no concerns with the proposed building envelope reconfiguration on archaeological resources. Potter Valley Tribe Environmental Director Gregg Young noted that there may be cultural resources uncovered during future construction of structures or other development on the site, as the coastal bluffs were home to seasonal camps of the Potter Valley Tribe, Sherwood Valley Rancheria, Redwood Valley Band of Pomo Indians, and others. Mr. Young noted that the County planning and permit process for such future development would address the potential inadvertent discovery of archaeological resources, and he also noted that under that future CDP application review by the County, the Mendocino County Archaeological Commission may be involved. As noted previously in these findings, any CDP approved by the County for future development on the property would be appealable to the Commission.

Therefore, the Commission finds that the proposed amended development is consistent with LCP requirements to protect archaeological resources because the proposed building reconfiguration and expansion will not adversely affect archaeological resources, and future CDP review by the County of future development proposed in the reconfigured building envelopes will require, as needed, reasonable mitigation measures to address potential impacts to archaeological resources.

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<sup>6</sup> Commission staff referred the project (via email) to Tribal representatives from the following Tribes on February 12, 2021: Bear River Band of the Rohnerville Rancheria, Guidiville Band of Pomo Indians, Hopland Band of Pomo Indians, Kashia Band of Pomo Indians of Stewarts Point Rancheria, Potter Valley Tribe, Cahto Tribe, Redwood Valley or Little River Band of Pomo Indians, Round Valley Reservation/Covelo Indian Community, Sherwood Valley Band of Pomo Indians, Cloverdale Rancheria of Pomo Indians, Middleton Rancheria, and Coyote Valley Band of Pomo Indians.

## **I. Public Access**

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 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 of access to the sea where acquired through use or legislative authorization. Section 30214 provides that the public access policies of the Coastal Act shall be implemented in a manner that takes into account the capacity of the site and the fragility of natural resources in the area. In applying these sections, the Commission considers whether public access is necessary to avoid or offset a project's adverse impact on existing or potential access.

The original subdivision approved under CDP 1-90-113 raised public access issues with respect to the dunes south of the river adjacent to MacKerricher State Park that were part of the property at that time. That land has since been purchased by the State and added to the State Park, thereby satisfying Special Condition 1 of the permit and ensuring nearby public access. That condition remains in full force and effect and is not affected by this permit amendment request. Additionally, Special Condition 2 required the applicant to agree that the permit approval not result in interference with any public prescriptive rights of access that may exist on the sand dune portion of the property. By acceptance of the original permit, Special Condition 2 also remains in full force and effect.

The proposed amended development will not have any significant adverse impact on public access. No evidence of public access use at the existing 3.65-acre lot exists, including within the proposed reconfigured building envelope as conditioned. Therefore, the Commission finds that the amended development does not have any significant adverse effect on public access, and that the amended development as proposed without new public access is consistent with the requirements of Coastal Act sections 30210, 30211, 30212, and 30214 and the public access policies of the County's certified LCP.

## **J. California Environmental Quality Act**

Section 13096 of the Commission's administrative regulations requires Coastal Commission approval of CDP 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). Under section 15251(c) of Title 14 of the California Code of Regulations, the Commission's CDP regulatory process has been certified as the functional equivalent to the CEQA process. As a certified regulatory program, section 21080.5(d)(2)(A) of CEQA still applies to the Commission's CDP regulatory process and 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 and LCP 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 and LCP. 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 project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative, has no remaining significant environmental effects, either individual or cumulative, and complies with the applicable requirements of the Coastal Act and LCP to conform to CEQA.