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Staff:	C. Holloway-A
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STAFF REPORT: REGULAR CALENDAR

Application No.:	**1-19-0462**
Applicant:	**McKinleyville Community Services District**
Agent:	GHD
Location:	Along the east bank of the Mad River, near the intersection of Verwer Court and School Road in McKinleyville, Humboldt County.
Project Description:	Implement the "Mad River Floodplain Enhancement and Public Access Improvement Project" involving (1) restoration of off-channel aquatic and riparian habitats to benefit fish and wildlife; and (2) public access improvements, including a nature study trail and viewing areas.
Staff Recommendation:	Approval with conditions

SUMMARY OF STAFF RECOMMENDATION

The McKinleyville Community Services District (MCSD) proposes to remove two treated-wastewater percolation ponds located off of School Road in the McKinleyville area of Humboldt County and restore the area to Mad River floodplain habitat to benefit fish and wildlife, improve water quality, and increase resiliency to flooding. In addition,

MCSD proposes to install public access improvements, including a nature study trail, benches, and viewing areas and an improved launching point for hand-carried kayaks, canoes, and other small watercraft to access the Mad River.

The primary Coastal Act issues raised by this project include the potential for adverse impacts to marine resources, the need to ensure that the project comprises permissible diking, dredging and filling of coastal wetlands and waters, and permissible conversion of prime agricultural land on the edge of the urban-rural boundary. Staff believes that the proposed restoration of backwater channels, estuarine wetlands, and historic riparian habitat constitutes filling and dredging for "restoration purposes" consistent with section 30233(a)(6). Staff believes that the recreational small boat launching point would facilitate unique nature-viewing opportunities within the Mad River and therefore, the small amount of rock fill proposed for the launching point constitutes wetland fill for "nature study … or similar resource dependent activities," allowable under section 30233(a)(7)). Staff also believes that the proposed development, as conditioned to require feasible mitigation measures required by recommended **Special Conditions 3 through 11**, is the least environmentally damaging feasible alternative. Special Conditions 3 and 4 require monitoring of the habitat restoration area to ensure that the proposed project will be successful in restoring the various historic habitats and processes as proposed and increasing habitat values.

Staff believes that the conversion of prime agricultural land for public access and restoration purposes comprises a permissible conversion of agricultural land consistent with the criteria of section 30241 due to the location of the fields along the urban/rural boundary and the limited viability of agricultural lands immediately adjacent to the river.

Staff believes that the project, as conditioned, includes all feasible mitigation measures necessary to find the project consistent with the Chapter 3 policies of the Coastal Act. The motion to adopt the staff recommendation of approval with special conditions is on page 4.

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LIST OF EXHIBITS

I. Motion and Resolution

The staff recommends that the Commission adopt the following resolution:

Motion:

> I move that the Commission approve Coastal Development Permit Application No. 1-19-0462 pursuant to the staff recommendation.

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

Resolution:

> The Commission hereby **approves** Coastal Development Permit Application No. 1-19-0462 for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either (1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or (2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. Standard Conditions

This permit is granted subject to the following standard conditions:

1. **Notice of Receipt and Acknowledgment.** The permit is not valid until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.

2. **Expiration**: If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

3. **Interpretation**. Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.

4. **Assignment**. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

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

III. Special Conditions

This permit is granted subject to the following special conditions:

1. **Conformance of Final Public Access Construction Plans to the Geologic Recommendations**.

   A. All final design and construction plans for the public access trails, viewing areas, boat launch, and benches shall be consistent with the recommendations contained in the geologic report titled "Preliminary Engineering Geologic Report" dated March 2019, and in Addendum 1 of the geologic report titled "Addendum 1 to 'Preliminary Engineering Geologic Report'" dated September 16, 2020, prepared by SHN. All authorized development shall be located at least ten (10) feet back from the bluff edge as recommended in the geologic report.

   B. PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT 1-19-0462, the permittee shall submit, for review and written approval of the Executive Director, evidence that a licensed professional (Certified Engineering Geologist or Geotechnical Engineer) has reviewed and approved all final public access plans, and has certified that each of those plans substantially conforms with all of the recommendations specified in the above-referenced geologic report and plot plan approved by the California Coastal Commission for the project site.

   C. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

2. **Final Plans for Trail Signage and Other Trail Amenities**

   A. PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT 1-19-0462, the permittee shall submit for the review and written approval of the Executive Director, final site and design plans and details for all trail improvements, signage, waste receptacles, and other trail amenities that substantially conforms with the project description and with all special conditions of CDP 1-19-0462:

      (i) The plans shall demonstrate that:

a) The Phase 1 public access improvements shall include, at a minimum, all of the following authorized project components: (1) the installation of five new parking spaces along School Road, including one ADA parking space; (2) an improved access trail between the parking area and the estuarine overlook point; (3) instructional signage, including an informational kiosk near the entrance to the site to educate users on site uses (4) interpretive signage related to Wiyot Tribe cultural history of the project area with design and content developed in consultation with, and approved by, the Tribal Historic Preservation Officers (THPOs) of the Wiyot Tribe, Blue Lake Rancheria, and Bear River Band of the Rohnerville; (5) nature study signage at the welcome kiosk and along trail segments; and (6) one or more waste receptacles; and

b) Signage will be visually compatible with surrounding areas with respect to height and bulk, including signs that are no larger than corresponding signs by type that are currently installed on the adjacent Hammond Trail, and do not significantly obstruct views from public vantage points.

(ii) The plan shall contain at a minimum:

a) A site plan showing the locations of all trail improvements, signage, fencing, waste receptacles, and other related authorized improvements;

b) Evidence that the cultural interpretive signage design and content has been reviewed and approved by the THPOs of the Wiyot Tribe, Blue Lake Rancheria, and Bear River Band of the Rohnerville Rancheria;

c) A schedule for the installation of the Phase 1 and Phase 2 trails, signs, fencing, waste receptacles, and other related improvements that demonstrates, at a minimum, that all Phase 1 improvements listed in subsection 2A(i)(a) above will be installed within 90 days of completion of the improved access trail between the parking area and the estuarine overlook point; and

d) A preliminary operations and maintenance plan detailing the anticipated schedule for waste management and public access facility upkeep.

B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission approved amendment to this coastal

development permit, unless the Executive Director determines that no amendment is legally required.

3. **Submittal of As-Built Plans**. Within 90 days of completion of construction, the permittee shall submit to the Executive Director "as built" plans for the authorized aquatic and riparian habitat restoration work that show, at a minimum, the following: (a) site plan showing "as-built" topographic contours of the project site, including all excavation and fill areas of the channels, berms, and floodplain areas and demonstrating that the constructed channel and floodplain topography substantially conforms with the approved final plans; and (b) executed final planting plan, including locations, types, and numbers of all plants installed in riparian/wetland areas for fish and wildlife habitat improvement.

4. **Final Fish and Wildlife Habitat Improvement Monitoring and Reporting Plan**.

   A. PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT 1-19-0462 the permittee shall submit, for the review and written approval of the Executive Director, a final revised monitoring plan for the restoration components of the Mad River Floodplain and Public Access Enhancement Project. The final revised plan shall substantially conform to the preliminary monitoring plan prepared by California Trout dated October 19, 2020 (Exhibit 7), except that the plan shall be revised to include all of the following:

      i. A final planting and revegetation plan that includes the following:

         a. A map of all planned restoration and impact areas that includes the riparian areas shown on the Revegetation Planform Layout (Exhibit 4, page 7) and includes the wetland areas that will be actively planted, and the areas that will be monitored for passive restoration;

         b. A plant pallet for the wetland areas to be actively planted and a list of target species expected to colonize passive restored wetland areas;

         c. A description of the size and approximate number of container plants and the rate and method of seed application in each type of habitat to be actively planted;

         d. Provisions requiring the following: Only native plant species shall be planted in the proposed restoration areas. All proposed plantings shall be obtained from local genetic stocks within the North Coast region (Mendocino to southern Oregon coast, within approximately 30 miles of the coastline). If documentation is provided to the Executive Director that demonstrates that native vegetation from local genetic stock is not available, native vegetation obtained from genetic stock outside of the local area may be used. No plant species listed as problematic and/or

invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a "noxious weed" by the governments of the State of California or the United States shall be utilized within the project area; and

e. Provisions requiring that all proposed planting shall be completed as soon as possible and no later than the end of the first full optimal planting season that occurs after completion of construction.

ii. A final maintenance plan that includes descriptions of and proposed schedules for weeding, plant replacement, and other proposed maintenance activities;

iii. A final monitoring plan for five years of post-construction monitoring for transitional wetland and riparian restoration areas that includes a description of vegetation monitoring methods and success criteria for revegetation survivability and native plant cover absolute cover, which shall meet, at a minimum, the following standards:

a. 80% survivability of plantings by the end of Year 3;

b. 50% native plant absolute cover in the overstory and understory layers by the end of Year 3; and

c. By the end of Year 5 in each habitat area: 80% survivability of plantings, 75% native plant absolute cover or equivalent coverage as compared to nearby intact riparian reference area.

iv. A Fisheries Performance Monitoring Plan that includes, at a minimum, provisions for five years of monitoring for presence and distribution of fish species in channel restoration areas. The Plan shall include monitoring objectives, a timeframe for monitoring, and details on sampling seasons, frequency, and techniques;

v. A final reporting plan that includes, at a minimum, provisions for: (1) submittal of as-built plans and photographs to the Executive Director within 180 days of completion of each phase of construction documenting that all stockpile areas, temporary access roads and bridges and staging areas temporarily impacted by construction activities have been returned to pre-project conditions as proposed; and (2) submittal of annual monitoring reports and a final monitoring report to the Executive Director by December 31st of each monitoring year;

vi. An updated timeline for planting, maintenance, monitoring, and reporting activities; and

vii. Requirements for remediation should the restoration area(s) not meet the approved performance standards. Remediation shall include a requirement that the Permittee submit a remediation plan to the Executive Director that recommends further action and provides a timeline for additional monitoring and reporting. The remediation plan and results of post-remediation monitoring shall be processed as an amendment to this CDP, unless the Executive Director determines that no amendment is legally required.

B. If the final monitoring report indicates that the habitat improvement project has been unsuccessful, in part or in whole, based on the approved goals, objectives, and success standards set forth in the approved final monitoring plan, the permittee shall submit a revised or supplemental plan to remediate those portions of the original plan that did not meet the approved goals, objectives, and performance standards. The revised or supplemental plan shall be processed as an amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

C. The permittee shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

5. Construction Requirements to Protect Marine Resources and Water Quality. All mitigation measures proposed by the permittee shall be implemented, including all mitigation measures included in the CEQA document adopted for the project (compiled in Appendix B), the document titled Avoidance and Minimization Measures dated July 12, 2019, and in permits and consultations completed by CDFW and NOAA-Fisheries for the project, including, but not limited to, the following proposed measures as modified herein:

A. Timing of Work:

i. Isolation of the instream work area and construction related to the backwater off-channel habitat complex shall only occur between July 1 and October 31st when freshwater inflow and groundwater elevations are lowest and when the ground surface is dry and to reduce the chance of stormwater runoff occurring during construction.

ii. Construction within stream channels shall only occur between July 1 and October 31st.

B. Staging and Stockpile Management:

i. Staging and stockpile areas shall be located at least 150 feet from coastal waters and drainage courses and all other wetlands;

ii. Fueling and maintenance of construction equipment and vehicles shall be conducted off site if feasible. Any fueling and maintenance of equipment required on site shall take place only at designated staging areas located in upland areas at least 150 feet from coastal waters, drainage courses, and storm drain inlets, if feasible (unless those inlets are blocked to protect against fuel spills). All fueling and maintenance areas shall be designed to fully contain any spills of fuel, oil, or other contaminants. Equipment that cannot be feasibly relocated to a designated fueling and maintenance area may be fueled and maintained in other areas of the site, provided that procedures are implemented to fully contain any potential spills;

iii. Silt fencing shall be installed around all temporary staging and stockpile areas to prevent sediment- and pollutant-laden runoff from exiting the site(s); and

iv. Following construction, all staging area shall be ripped or disked for decompaction, and post-construction erosion control measures shall be implemented, including spreading weed-free straw mulch over bare soils.

C. Minimizing Vegetation Removal & Soil Compaction:

i. The damage or removal of non-invasive vegetation (including trees, native vegetation, and root structures) during construction shall be minimized to maintain transpiration, vegetative interception, pollutant uptake, shading of waterways, erosion control, and other water quality benefits;

ii. Soil compaction due to construction activities shall be minimized to retain the natural stormwater infiltration capacity of the soil; and

iii. Placement of fill in the project restoration area(s) shall occur only when the area(s) is not inundated by water.

D. Erosion, Sediment, and Runoff Control:

i. During construction, silt fencing shall be used to isolate work areas from surrounding channels and other sensitive areas and to capture any sediment that might flow from the site;

ii. No construction materials, debris, or waste shall be placed or stored where it may be able to enter or be washed by stormwater runoff into coastal waters;

iii. Saturated soils shall be handled and transported in a manner that prevents excess discharge or spillage of soils or water to surrounding areas;

iv. Following completion of construction or prior to the onset of precipitation capable of generating runoff, whichever comes first, all disturbed soil areas shall be treated with appropriate erosion control devices (e.g., seeding, straw mulch, wood mulch, matting, etc.);

v. Only certified weed-free straw shall be used for mulching, and biodegradable geotextile fabrics shall be used where possible; and

vi. Erosion-control seeding shall not include the use of the invasive species Italian ryegrass (Lolium multiflorum also known as Festuca perennis), a common component of erosion-control seed-mixes.

E. Additional Water Quality Protection Measures:

i. Heavy equipment used in project construction shall be in good condition, shall be inspected for leakage of coolant and petroleum products, and shall be repaired offsite, if necessary, prior to entering the property. If equipment must be washed, washing shall occur offsite only;

ii. Equipment operators shall be trained in the procedures to be taken should an accidental spill occur. Absorbent materials designed for spill containment and cleanup shall be kept onsite during construction for use in the event of an accidental spill;

iii. Drip pans shall be used for stationary equipment to capture any drips or leaks; and

iv. If temporary plugs are installed within the construction backwater channel to minimize potential turbidity impacts, plugs shall be removed from upstream to downstream with the downstream-most plug removed during a rising tide to minimize turbidity impacts to Mad River related to channel connection.

6. **Protection of Sensitive Bird Nesting Habitat Areas.** If work will be conducted during the avian nesting season (February 15 – August 31), PRIOR TO COMMENCEMENT OF CONSTRUCTION, the permittee shall implement all of the following proposed measures to protect nesting habitat areas of rare, threatened, and endangered bird species (sensitive bird ESHA) from significant disruption:

A. A qualified biologist shall survey for sensitive bird ESHA (i.e., active nesting areas of rare/sensitive bird species) in and adjacent to the construction area according to current California Department of Fish and

Wildlife (CDFW) recommended survey protocol(s) no more than seven days prior to the commencement of construction. The minimum survey area shall include areas that will be directly impacted by construction activities and within a 1,000-foot radius of said activities, as recommended by Slauson Wildlife, in its Biological Assessment report dated November 2019. Surveys within a construction segment shall also be repeated any time construction activities within the construction segment have ceased for more than seven days;

B. If any sensitive bird ESHA is detected (i.e., detection of an active nesting areas of sensitive species), the biologist, in consultation with CDFW, shall determine the extent of a construction-free buffer zone to be established around the nest, and construction in the buffer zone shall be delayed until after the young have fledged, as determined by additional surveys conducted by a qualified biologist. The construction-free buffer zone shall be a minimum of 300 feet for nesting raptors and a minimum of 100 feet for other special status bird species; and

C. The permittee shall submit the survey required in subpart A above to the Executive Director, including a map that locates any sensitive bird nesting habitat identified by the survey and delineates any required construction-free buffer zone, and a narrative that describes proposed nesting bird disturbance avoidance measures.

7. Vegetation Trimming for Viewing Platforms and Trails.

A. PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT 1-19-0462, the permittee shall submit, for the review and written approval of the Executive Director, a final plan for vegetation trimming activities that substantially conforms with the draft document titled “MCSD Mad River – Vegetation Removal Guidelines” from November 6, 2020 (Exhibit 6), except that the final plan shall be revised to include all of the following:

i. A final vegetation maintenance plan that demonstrates the following:

a. The vegetation trimming associated with the public access components of the project authorized under this CDP shall be limited to the following: (i) removal of the top 2-3 feet of vegetation (as generally depicted in Exhibit 6) to maintain and enhance the existing gaps in vegetation between the bench locations and the Mad River for nature study viewing purposes, and (ii) removal of the minimum practicable amount of vegetation to maintain a clear pathway for pedestrians along approved public trails; and

b. Vegetation trimming activities associated with the public access amenities within 300 feet of vegetation that may provide nesting

habitat for sensitive avian species shall be avoided during the nesting season (February 15 – August 31).

ii. The final plan shall include, at a minimum, the following:

a. A map and narrative description of where vegetation trimming will occur, which may include photographs of project features (bench, viewing platforms, trails, etc.) showing proposed not-to-exceed vegetation removal lengths; and

b. A preliminary schedule for vegetation trimming activities.

B. The permittee shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

8. **Protection of Northern Red-legged Frogs**. The permittee shall undertake development in compliance with the following proposed frog protection measures included in the CEQA document adopted for the project (compiled in Appendix B):

A. Construction activities in the freshwater wetland habitat located in the percolation ponds shall not occur during the breeding (January – May) and metamorphosis (June – August) periods for northern red-legged frogs;

B. If it is not possible to complete construction activities outside of the breeding and metamorphosis periods, a qualified biologist shall perform a pre-construction survey for northern red-legged frogs (adults, subadults, tadpoles, or egg masses) according to current CDFW recommended survey protocol within 100 feet of all suitable habitat; and

C. If any northern-red legged frog is observed in an active construction zone, the contractor shall immediately halt construction activities until a biologist, in consultation with CDFW, has relocated the frog(s) to a safe habitat outside of the construction zone.

9. **Protection of Fish.** The permittee shall undertake development in compliance with the following proposed fish protection measures included in the CEQA document adopted for the project (compiled in Appendix B):

A. All measures required for fish handling and protection imposed by CDFW and NMFS under their respective permits and consultations shall be implemented; and

B. To prevent fish from moving into the work area during construction, prior to commencement of construction, a fish screen barrier shall be installed upstream of confluence of the active stormwater ditch and Mad River.

10. Protection of Lyngbye's Sedge. Significant impacts to the special-status plant species Lyngbye's Sedge present, or likely to be present, onsite shall be minimized, avoided, and contingently compensated by complying with the following proposed protection measures:

A. Pre-construction surveys: PRIOR TO THE COMMENCEMENT OF CONSTRUCTION OF THE HABITAT RESTORATION PROJECT, the permittee shall conduct pre-construction surveys for Lyngbye's sedge. Surveys shall be conducted as close to the start of construction activities as possible, but also in the appropriate season for optimal species-specific detection (i.e., when plants are flowering). Survey methods shall comply with CNPS/CDFW rare plant survey protocols and shall be performed by qualified field botanists. Any populations of Lyngbye's sedge that are detected shall be mapped. Populations shall be flagged if avoidance is feasible and population is located adjacent to construction areas. The locations of any Lyngbye's sedge populations to be avoided shall be clearly identified in the contract documents (plans and specifications). Results of the surveys shall be submitted to the Executive Director.

B. Lyngbye's sedge plants within the project footprint that cannot be avoided shall be salvaged prior to construction. Salvaged plans shall be stored in nursery containers, watered regularly to ensure survival, and ultimately re-planted on the restored landscape following completion of construction during the appropriate planting season by a qualified field botanist.

11. Final Debris Stockpiling and Disposal Plan.

A. PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT 1-19-0462, the permittee shall submit, for the review and written approval of the Executive Director, a final plan for the stockpiling and disposal of all construction debris and waste expected to be generated by the authorized work. The plan shall demonstrate that:

i. All temporary stockpiles of construction debris, excess sediments, vegetative spoils, and any other debris and waste associated with the authorized work shall be minimized and limited to areas where (a) they can feasibly be contained with appropriate BMPs to prevent any discharge of pollutants to coastal waters and wetlands, and (b) consistent with the siting requirements of Special Condition 4(B)(i); and

ii. All construction debris, excess spoils, and any other debris and waste generated by the authorized work shall be disposed of at an authorized disposal site(s) capable of receiving such materials.

The plan shall include, at a minimum, the following:

i. A site plan showing all proposed locations for the temporary stockpiling of construction debris, soils and vegetative spoils, excess materials, and any other debris and waste associated with the authorized work in relation to wetland areas, drainage courses, storm drain inlets, project features, and property lines;

ii. A description of how the stockpiled materials will be removed from the construction site and identification of all debris disposal sites that will be used; and

iii. A schedule for the removal of all construction debris, excess materials, and any other debris and waste associated with the authorized work.

B. The permittee shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

12. **Protection of Archaeological Resources.** If an area of cultural deposits or human remains is discovered during the course of the project, all construction shall cease and shall not recommence until a qualified cultural resource specialist, in consultation with the Tribal Historic Preservation Officers of the Wiyot Tribe, Blue Lake Rancheria, and the Bear River Band of the Rohnerville Rancheria, analyzes the significance of the find and prepares a supplementary archaeological plan for the review and approval of the Executive Director, and either: (A) the Executive Director approves the Supplementary Archaeological Plan and determines that the Supplementary Archaeological Plan's recommended changes to the proposed development or mitigation measures are de minimis in nature and scope, or (B) the Executive Director reviews the Supplementary Archaeological Plan, determines that the changes proposed therein are not de minimis, and the permittee has thereafter obtained an amendment to CDP 1-19-0462.

13. **Assumption of Risk, Waiver of Liability, and Indemnity Agreement**.

A. By acceptance of this permit, the permittee acknowledges and agrees (i) that the site may be subject to hazards from, storms, flooding, erosion, earth movement, and other natural hazards, many of which will worsen with future sea level rise; (ii) to assume the risks to the permittee and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with

respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

B. **PRIOR TO ANY CONVEYANCE OF THE PROPERTY THAT IS THE SUBJECT OF THIS COASTAL DEVELOPMENT PERMIT**, the permittee shall execute and record a deed restriction, in a form and content acceptable to the Executive Director: (i) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property (hereinafter referred to as the "Standard and Special Conditions"); and (ii) imposing all Standard and Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The restriction shall include a legal description of the applicant's entire parcel or parcels. It shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the Standard and Special Conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes – or any part, modification, or amendment thereof – remains in existence on or with respect to the subject property.

14. No Future Bluff or Shoreline Protective Device

A. By acceptance of this Permit, the permittee agrees, on behalf of itself and all successors and assigns, that no bluff or shoreline protective device(s) shall be constructed to protect the development approved pursuant to CDP 1-19-0462, including, but not limited to, paved public access trails, viewing platforms, benches, trail signage and trash receptacles, including in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, liquefaction, bluff retreat, landslides, or other coastal hazards in the future, and as may be exacerbated by sea level rise. By acceptance of this Permit, the applicant hereby waives, on behalf of itself and all successors and assigns, any rights to construct such devices that may exist under applicable law.

B. By acceptance of this Permit, the applicant further agrees, on behalf of itself and all successors and assigns, that the landowner shall remove the development authorized by this Permit, including paved public access trails, viewing platforms, benches, trail signage and trash receptacles, if the County or any other government agency with legal jurisdiction has issued a final order, not overturned through any appeal or writ proceedings, determining that the public access structures are currently and permanently unsafe for use due to coastal hazards, and that there are no measures that could make the structures suitable for use without the use of bluff or shoreline protective devices. In the event that the edge of the bluff-top recedes to a point where any portion of the permitted development is no longer safe to use, but no

government agency has ordered that the structures not be used, the landowner shall remove the threatened portions of the development and relocate them to an inland location to maintain a level of public access comparable with what has been provided by this project. If any portion of the development at any time encroaches onto public property, the permittee shall either remove the encroaching portion of the development or apply to retain it. Any application to retain it must include proof of permission from the owner of the public property. The permittee shall obtain a coastal development permit for removal and relocation of approved development unless the Executive Director provides a written determination that no coastal development permit is legally required.

C. Prior to removal/relocation, the permittee shall submit two copies of a Removal/Relocation Plan to the Executive Director for the review and written approval. The Removal/Relocation Plan shall clearly describe the manner in which such development is to be removed/relocated and the affected area restored so as to best protect coastal resources, including the Mad River. In the event that portions of the development fall to the bluffs or river before they are removed/relocated, the landowner shall remove all recoverable debris associated with the development from the bluffs and ocean/river and lawfully dispose of the material in an approved disposal site. Such removal shall require a CDP.

15. **State Lands Commission Review.** PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT 1-19-0462, the permittee shall provide to the Executive Director a written determination from the State Lands Commission that: (A) no State or public trust lands are involved in the development; or (B) State or public trust lands are involved in the development and all permits required by the State Lands Commission have been obtained; or (C) State or public trust lands may be involved in the development, but, pending a final determination, an agreement has been made with the State Lands Commission for the approved project as conditioned by the Commission to proceed without prejudice to that determination.

IV. Findings and Declarations

The Commission hereby finds and declares as follows:

A. Project Description and Location

The McKinleyville Community Services District (MCSD) (hereafter “Applicant”) proposes to implement the Mad River Floodplain and Public Access Enhancement Project (Project) on a 9.3-acre project area owned by MCSD. The project site is located along the east bank of the lower reaches of the Mad River, near the intersection of Verwer Court and School Road in McKinleyville, Humboldt County (APNs 508-021-006; 508-021-007; and 506-341-017) (Exhibits 1-2). The Project includes two primary

components – (1) restoration of floodplain habitat to benefit fish and wildlife and (2) public access improvements, including a nature study trail and viewing areas. The habitat restoration component of the project involves restoration to riparian and aquatic habitat of two wastewater percolation ponds permitted by the Commission in 1983 (see below Finding) that are adjacent to and separated by levees from the river's primary channel. The ponds would be restored to riparian and off-channel aquatic floodplain habitat for fish and wildlife habitat. The public access component would enhance coastal access by establishing an improved trail network that would connect to existing informal coastal trails and provide an ADA-compliant viewing platform overlook to the river and surrounding coastal areas. Public access improvements are split into two phases. Project components are listed below and depicted in detail in Exhibits 3-6**.**

Fish and Wildlife Habitat Improvements

- **Restore floodplain habitat**: Decommission 4.25 acres of leveed percolation ponds by lowering the existing levee system to restore floodplain connectivity with the river, restore native floodplain elevations, and restore native riparian and wetland vegetation.

- **Connect off-channel and backwater habitat to the main channel:** Restore the hydrologic connection between the main river channel and the restored floodplain habitat by dredging a 1,775-foot-long backwater channel and associated short tributary channels to provide for riverine connectivity and off-channel backwater refugia habitat for fish and wildlife.

- **Create upstream pond habitat:** Construct a 20-foot wide by 100-foot long off-channel pond within the restored floodplain habitat area, 1,200 feet upstream along the restored backwater channel, and increase habitat complexity through placement of large woody debris.

Phase 1 Public Access Improvements

- Install five new paved parking spaces along School Road, including one ADA parking space.

- Construct a 4-foot-wide, approximately 800-foot-long gravel trail connecting School Road parking area to an estuary overlook at existing stormwater ditch (see Exhibit 5, page 1 of 4).

- Provide river access for small hand-carried non-motorized boats by minor grading of the river bank and rearrangement of existing river boulders.

- Install instructional and interpretive signage, including informational kiosks to educate users on guidelines for site uses, ecological attributes of the project area, and Wiyot Tribe cultural history of the project area.

Phase 2 Public Access Improvements

- Construct an 8-foot-wide, 970-foot-long paved ADA-accessible looping trail system connecting the School Road parking area and two new paved bluff overlook areas described below. A portion of the paved trail would be constructed over the northern approximately 500 feet of the gravel trail described in Phase 1 (see page 2 of 4 of Exhibit 5).

- Install a new ADA-accessible paved viewing platform/bluff overlook with benches and interpretive panels on the upper bluff portion of the site.

- Create a new improved lower overlook area around an existing bench at the southwestern terminus of the looping paved trail system.

- Install additional instructional and interpretive signage.

Actions common to the entire project area

- 1.44 miles of existing access roads would be utilized temporarily for site access. Prior to off-site hauling, the existing access roads would be resurfaced with silt, sand, and gravel excavated from the percolation pond area.

- Three staging areas would be established to complete proposed project activities. Staging areas are depicted on page 2 of 7 of Exhibit 4 and on page 1 of 4 of Exhibit 5). Staging area 1 (0.5-acre, 150 ft x 150 ft) is located approximately 750 feet east of the existing percolation ponds, adjacent to a larger 5.4-acre-area proposed for stockpiling soil and materials to be used in habitat restoration of the percolation ponds. Staging area 2 (0.2-acre, 135 ft x 100 ft) is located near the existing stormwater ditch at the planned outlet of the off-channel complex. Staging area 3 (0.1-acre) is located near the westernmost end of School Road and would be used to construct public access features. Staging and stockpile areas are proposed in upland areas only and would not impact wetlands or active agricultural uses. Upon completion of construction activities, the temporary staging and stockpiling areas would be restored to pre-project conditions.

B. Background and Environmental Setting

The McKinleyville Community Services District provides wastewater treatment, water service, recreation facilities, and other public services to a population of approximately 17,000 in the McKinleyville area north of the City of Arcata. The 9.2-acre project site is part of the Applicant's 95-acre parcel which consists mostly of pastureland used for the disposal of all treated wastewater from the primary wastewater treatment plant located approximately a mile north of the subject site. The percolation ponds were permitted

under a CDP approved by the Commission in 1983[1] but are no longer needed to serve the Applicant's wastewater facility due to upgrades that have been made at the main wastewater plant in recent years.

The 9.2-acre project area is developed with the inactive wastewater percolation ponds and informal, unmanaged "social" trails established throughout the riparian area along the river and upper bluff area accessed via School Road. The project site is located on the floodplain and the bluff overlooking the Mad River and coastal dunes seaward of the river. The project site is flanked by the Mad River to the west, agricultural land to the east, School Road (a public County road) and an urban residential neighborhood to the north, and floodplain and agricultural land to the south.

The Mad River drains a 497-square-mile basin on the north coast of California. The mouth is approximately six miles north of Humboldt Bay and three miles north of the project site, near the McKinleyville airport. The project site is within the zone of tidal influence. The river in general provides habitat for a variety of rare, threatened, and endangered fish species, including, but not limited to, coho and Chinook salmon, summer and winter-run steelhead, coastal cutthroat trout, Pacific lamprey, and green sturgeon. The increasingly rare eulachon or "candlefish," a small, migratory fish of great historic and cultural importance to local native Americans, has also been documented in the Mad River estuary. The floodplains and the riparian corridor of the Mad River estuary are dominated by dense willow and horsetail vegetation and provide habitat for native wildlife, including, but not limited to deer, beaver, river otter, harbor seals, and various species of raptors and songbirds.

The river occasionally overtops the pond levees providing incidental habitat benefits for wetland vegetation and waterfowl. Additionally, occasional flood waters flow through the historic backwater channel that connected the main river channel and the ponds, which has resulted in freshwater and estuarine wetland habitats and riparian vegetation in this area. The confluence of the proposed restored backwater channel intersects with an existing stormwater ditch that drains the pasture floodplain to the east.

C. Other Agency Approvals

Humboldt County Conditional Use Permit

Because the project proposes habitat restoration on lands that are planned and zoned for agricultural uses under the Humboldt County general plan and zoning regulations, the County required a conditional use permit for the project. The County approved PLN-2019-15879 on November 19, 2020.

U.S. Army Corps of Engineers (Corps)

[1] The wastewater treatment percolation ponds were permitted under CDP 1-83-41 which authorized installation of percolation ponds, sewage outfall pipes, access roads, willow planting, and bank protection.

The Corps has regulatory jurisdiction over the project pursuant to the Clean Water Act and the River and Harbors Act. The Corps determined on August 3, 2020 that the project qualified for a Nationwide permit (NWP 27 – Aquatic Habitat Restoration, Enhancement, and Establishment Activities).

National Marine Fisheries Service (NMFS)

During its review of the project, the Corps consulted with NMFS and determined the project was not likely to affect federally threatened Southern Oregon/Northern California (SONCC) coho salmon, California Coastal (CC) Chinook salmon (Oncorhynchus tshawytscha), Northern California (NC) steelhead (O. mykiss), or their designated critical habitats. (NMFS No: WCRO-2020-01575).

U.S. Fish and Wildlife Service (USFWS)

USFWS received a copy of the CEQA ISMND for the project and did not have any comments. The Corps did not consult with the USFWS because the project is not expected to have significant impacts on endangered or threatened species under the purview of USFWS.

North Coast Regional Water Quality Control Board (RWQCB)

The Regional Board has regulatory jurisdiction over the project pursuant to the Clean Water Act and California Water Code. The Regional Board issued a water quality certification for the project on October 27, 2020 (No. 1B20062WNHU).

California Department of Fish and Wildlife (CDFW)

CDFW has regulatory jurisdiction over the project pursuant to the California Fish and Game Code and the California Endangered Species Act (CESA). SONCC coho salmon (Oncorhynchus kisutch), which has the potential to occur in the project area, is listed as threatened under CESA. CDFW issued a Streambed Alteration Agreement for the project on September 30, 2020 (Notification No. 1600-2020-0207-R1).

State Lands Commission (SLC)

The SLC has direct jurisdiction and authority over ungranted sovereign tidelands and submerged lands underlying the State's navigable waterways (ocean, bays, sloughs, lakes, and rivers) as well as over lands subject to the public trust. The project area includes lands that may be subject to the public trust. To ensure that the permittee has the legal ability to undertake all aspects of the project on these public lands, the Commission attaches **Special Condition 15**. This condition requires that the project be reviewed and, if necessary, approved by the SLC.

D. Allowable Uses in Wetlands and Streams

Section 30233 of the Coastal Act provides, in applicable part, as follows (emphasis added):

a. The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

   (1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.

   (2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.

   (3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.

   (4) Incidental public service purposes, including, but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.

   (5) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.

   (6) Restoration purposes.

   (7) Nature study, aquaculture, or similar resource dependent activities.

b. Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation. Dredge spoils suitable for beach replenishment should be transported for these purposes to appropriate beaches or into suitable longshore current systems.

c. In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary…

Section 30236 of the Coastal Act states (emphasis added):

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

The proposed project will involve dredging and filling and substantial alteration of riverine habitats, including, among other project elements, the excavation or dredging of 7,700 cubic yards of topsoil and subsoil to restore the historical backwater channel as a connection between the restored off-channel ponds and the main river channel for fish and wildlife habitat improvement purposes. Excavated materials from the wastewater ponds will be used to (1) construct habitat islands for topographic diversity within the created wetland and open water areas and (2) to resurface existing upland access roads within the project area. Table 1 summarizes the cut and fill volumes for the project.

Table 1. Project Cut and Fill Areas and Volumes:

Location	Total Excavation (CY)	On-site Material Re-use (CY)	Disposal at MCSD Wastewater Management Facility (CY)	Off-site Hauling of Other Excavated Material (CY)
Pond Biosolids, Screened for Disposal	4,800	0	4,800	0
Pond (including Levees) below Biosolids	11,100	5,100	0	6,000
Backwater Channels	7,700	0	0	7,700
Trail and Public Access Features	TBD	TBD	0	0
Off-site Hauling	-	-	-	13,700
Total	23,600	5,100	4,800	13,700

The dredging of the historical river and stream floodplains, the restoration of riparian forest along the outer edges of the active and historic river benches, and modifications to the river bank at the confluence of the new off-channel habitat complex constitute “substantial alteration” of the river that must be found consistent with the provisions of section 30236. The proposed project also includes elements involving filling of wetlands/ waters that must be found consistent with the provisions of 30233, including (1) creation of the new non-motorized boat access point along the river, which will result in fill within approximately 0.1-acre of river bank area through placement of large rocks along the edge of the active channel, and (2) placement of dredged materials and large woody debris within the river and wetland features to create topographic variety within the restored wetland and beneficial habitat enhancement features.

Section 30233 limits the approval of the diking, filling, or dredging of open coastal waters, wetlands, and estuaries to only seven enumerated uses and requires that the diking, filling, and dredging can only be approved when the dredging, filling and diking is the least environmentally damaging feasible alternative, and feasible mitigation measures are provided to minimize adverse environmental effects. Section 30236 limits

the allowance of any proposed substantial alteration of a river or stream to only three purposes and requires that the best mitigation measures feasible be provided. These policy "tests" are discussed below in relation to the proposed wetland dredging and filling and substantial alteration of the river:

a. Allowable Uses

As discussed in the below findings, the project's proposed dredging and filling activities are allowable (1) under both section 30233(a)(6) for restoration purposes and under section 30236(3), because the primary function is the improvement of fish and wildlife habitat, and (2) under 30233(a)(7) for nature study uses for the public access trail and non-motorized boating improvements.

Restoration purposes and improvements of fish and wildlife habitat

The proposed restoration work is expected to provide extensive benefits to juvenile salmonids and other aquatic species. Restoration entails returning something to a prior state. Freshwater and estuarine wetlands are extremely dynamic systems in which specific physical functions such as nutrient cycles, succession, water levels and flow patterns directly affect biological composition and productivity. Consequently "restoration," as contrasted with "enhancement," encompasses not only reestablishing certain prior conditions but also reestablishing the processes that create those conditions. In addition, the reestablished conditions must persist to some degree, in order for a project to result in restoration. Moreover, finding that proposed diking, dredging, and/or filling constitutes "restoration purposes" must be based, in part, on evidence that the proposed project will be successful in improving habitat values. Should the project be unsuccessful at increasing and/or enhancing habitat values, or worse, if the proposed diking, dredging and filling impacts of the project actually result in long term degradation of the habitat, the proposed project would not be for "restoration purposes."

In sum, to ensure that a proposed restoration project achieves its stated habitat objectives, and therefore can be recognized as being for "restoration purposes," the project must demonstrate that: (1) it either entails a return to or re-establishment of former habitat conditions, or it entails actions taken that will result in the reestablishment of ecological processes and abiotic/biotic linkages associated with the freshwater and estuarine habitats; (2) there is a reasonable likelihood that the identified improvements in habitat value will result; and, (3) the restoration project has been designed to provide the desired habitat characteristics in a self-sustaining, persistent fashion independent of the need for repeated maintenance or manipulation to uphold the habitat function.

Through the combination of several components of the proposed project involving the diking, dredging, and filling of coastal wetlands (summarized above), the project will reestablish freshwater and estuarine habitats that historically existed in the area prior to hydrologic modifications of the site by historic land use practices such as constructing levees and draining the land (via routing runoff to channelized ditches) to support agriculture.

Table 2 below summarizes existing and proposed habitat types in the project area. The proposed project will result in an increase in wetland, open water, and riparian habitat. The project will improve over 1,700 feet of historic backwater channel, creating over an acre of new stream channel and backwater habitats on the Mad River, 2 acres of wetland habitat, and an added 0.5-acre of riparian habitat.

Table 2. Existing and Proposed Habitat Acreages

Existing Habitat Type/Feature	Acres	Proposed Habitat Type	Acres
Constructed percolation ponds	4.0	Open Water Channels	1.4
Estuarine Wetlands (Historic backwater channel)	0.5	Wetland	2.0
Riparian	1.6	Riparian	2.1
Total	6.1		5.5

The essential purpose of the proposed dredging and filling activities is to restore backwater channel, open water habitat, wetlands, and riparian habitat to a natural condition of much greater ecological value than the existing altered, degraded habitats. The proposed project will restore protected and slow flowing side channels that are hydrologically connected to the main river channel during high flow periods to provide calmer over-wintering aquatic rearing habitat for state and federally threatened juvenile salmonids (SONCC coho salmon, CC Chinook salmon, and NC steelhead). The project may also provide habitat for other sensitive aquatic species, including, but not limited to, federally threatened tidewater goby and state-listed threatened longfin smelts. Surface water ponding and shallow soil saturation on site may also increase available habitat for native amphibians (including, potentially, for Northern red-legged frog, *Rana aurora*, a state-listed species of special concern).

The Final Recovery Plan for the SONCC coho salmon (NMFS, 2014) states that “lack of floodplain and channel structure, impaired estuary function, impaired water quality and altered sediment supply are the key limiting factors for coho salmon production in the Mad River Basin.” Top recovery priorities in that report and in several other statewide plans and policies[2] include improving channel structure and off-channel rearing habitat. With this recovery need in mind, the Applicant, in partnership with California Trout, developed the proposed riverine floodplain restoration project with the primary function of improvement of fish and wildlife habitat, especially winter rearing coho habitat.[3] By restoring access to a functional floodplain at the edge of a coastal estuary, the proposed project will improve ecological function and provide unimpeded access to support the

[2] Including, but not limited to, the Steelhead Restoration and Management Plan for California (CDFW, 1996); Recovery Strategy for California Coho Salmon (CDFW, 2004); and California Water Action Plan (CNRA, CEPA, CDFA, 2014).

[3] See https://caltrout.org/projects/mad-river-estuary-restoration

reproduction, growth and survival of salmonids. Large wood will be placed in the restored off-channel habitat to improve and diversify fish habitat. In addition to its fish habitat benefits, the proposed channel reconstruction work will restore the diversity of habitats that historically occurred in the river corridor, including forest riparian habitat, active bench habitats, and transitional "ecotone" habitats between estuarine/freshwater and wetland/ upland areas. The restored habitat and vegetative diversity along the river corridor will promote a greater diversity of birds and other wildlife and will be significantly more valuable than the monotonous willow and alder stands that currently choke the existing river system.

These findings that the proposed project constitutes "restoration purposes" and has the primary function of fish and wildlife habitat improvement are based, in part, on the assumption that the proposed project will be successful in restoring the various historic habitats and processes as proposed and increasing habitat values. Specifically, the increased habitat values expected to result from the proposed restoration include (1) restored natural connection to the river, (2) increased quantity of available salmonid habitat, and (3) increased quality of available salmonid habitat through riparian and wetland revegetation. Should the project be unsuccessful, or worse, if the proposed dredging/filling impacts and substantial alteration of the river actually result in long-term degradation of the riverine habitats, the proposed project would not be for "restoration purposes" and its primary function would not be for improvement of fish and wildlife habitat (inconsistent with sections 30233 and 30236 respectively).

To ensure that the project is implemented as proposed and achieves the intended restoration benefits, the Commission attaches Special Conditions 3 and 4. **Special Condition 3** requires submittal of as-built plans within 90 days of completion of construction that demonstrate, at a minimum, (a) the final constructed channel and floodplain topography conforms with the approved final plans; and (b) the locations, types, and numbers of plants installed conform with the final planting plan. **Special Condition 4** requires submittal of a final revised habitat monitoring and reporting plan for the project. The Applicant has prepared a preliminary monitoring plan to demonstrate that the project meets its intended physical, hydrological, and biological goals. Titled "Mad River Floodplain and Public Access Enhancement Project Vegetation Monitoring Plan" (Plan) dated October 19, 2020, the Plan states that project objectives include "a self-maintaining and dynamic off-channel habitat complex to benefit anadromous salmonids and other aquatic species." The Plan describes riparian and wetland revegetation strategies, proposes limited monitoring activities post-construction, and includes potential adaptive management strategies and a reporting schedule.

Although the Applicant's proposed Monitoring Plan includes many important elements, it also is missing several critical elements, such as (1) a detailed planting plan; (2) timeline for monitoring activities; and (3) success criteria. Therefore, Special Condition 4 requires the Applicant to submit a final revised habitat monitoring plan for the Executive Director's review and approval that substantially conforms to the submitted plan, except that it shall be revised to include added provisions for the above omitted elements as well as details on fish monitoring, maintenance activities, and reporting schedule. Furthermore, Special Condition 4 requires that the final revised Plan include provisions

for remediation to ensure that the goals and objectives of the restoration project are met. Inclusion of Special Condition 4 ensures that the Applicant constructs the project as proposed and that restoration of marine, stream and wetlands habitat is successful.

Therefore, the Commission finds that the proposed restoration of historic floodplain, historic riparian habitat, and historic backwater channel habitat entails actions that will result in the reestablishment of ecological processes associated with the riverine habitat that historically existed in the area. The Commission therefore finds that the proposed project constitutes filling and dredging for restoration purposes as allowed under section 30233(a)(6) and has the primary function of improvement of fish and wildlife habitat as allowed under section 30236(3).

Nature study uses

The placement of large rock material for boating access will create a safer and more stable boat launching access point for small non-motorized watercraft (e.g., kayaks and canoes) for nature-study and low-impact recreational boating outings. The opportunities afforded by these public access amenities include up-close views of aquatic vegetation and species and views of and access to upriver and downriver habitats. The proposed boat launch has been designed to minimize impacts to the riverine habitat, with construction involving only minor bank regrading and rearrangement of existing large boulders. The boat launch will link to the improved trail system and associated nature-oriented interpretive signage.

The Applicant has proposed trail signage including an informational kiosk near the entrance to the site and interpretive and nature study signage along trail segments. Sign content will include information to inform users of site uses and safety, interpretive signage related to Wiyot Tribe cultural history of the project area, and nature study signage to educate users on local habitats and resource issues. While the Applicant has proposed signage throughout the public access component of the Project, final plans for design and content have not been completed and, therefore, Commission staff has not had the opportunity to review sign design and content for consistency with project goals. To ensure that the proposed fill is for a permissible nature study use, the Commission attaches Special Condition 2. **Special Condition 2** requires submittal of final design plans for all signage and other trail amenities prior to construction of such amenities that demonstrate in part that nature study signage shall be erected at the entrance kiosk and along trail segments. The signage plan must include a description of sign content demonstrating that the signage will include, at a minimum, instructional, nature study, and interpretive signage consistent with the nature study goals of the project. The signage plan will must also confirm that signs are appropriately located, sized and designed to be visually compatible with surrounding areas.

Therefore, the proposed boating component of the project within coastal waters as conditioned constitutes a form of nature study, as it (a) is integral to the appreciation and comprehension of biophysical elements that comprise wetland areas; and (b) dependent upon the presence of the natural area resource through which the boating access ramp connects to provide a nature study experience. As such, the Commission

finds that the proposed fill for the boat launch component of the proposed project is consistent with section 30233(a).

b. Alternatives

For projects involving diking, dredging, and filling of wetlands, the Commission must ensure that there is no feasible less environmentally damaging alternative to the diking, dredging, and filling aspects of a project. Coastal Act section 30108 defines "feasible" as "…capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors." Alternatives considered include the following:

i. No project alternative: The "no project" alternative would maintain the status quo of the site and would not restore and enhance 4.25 acres of habitats in the Mad River floodplain for a net gain of 2 acres of riverine wetlands, including 1.4 acres of off-channel rearing habitat for juvenile salmonids and 0.5-acre of riparian habitat. Existing conditions in the restoration project site consist of the historic backwater channel which is a moderately trafficked foot and bicycle trail through degraded wetland and riparian habitat. The wastewater percolation ponds have been actively used and managed by MCSD since 1983 and are proposed to be decommissioned and restored. The "no project" alternative would decommission the ponds without completion of a restoration element. The ponds would continue to be isolated from the Mad River for long periods of time. Without the proposed project, the project area would continue to function as an impaired, ecologically limited and disconnected system, and there would be no restoration of juvenile salmonid overwintering rearing habitat in the Mad River, which is critical for the recovery of SONCC coho salmon in the region. Furthermore, there would be no restored wetland and riparian habitat for the benefit of other fish and wildlife species. Therefore, the no project alternative is not a feasible less environmentally damaging alternative to the proposed development, as conditioned.

ii. Alternative design concepts: Several other design concepts were evaluated as alternatives to the proposed scale of the restoration project ranging from (a) the minimal design concept of returning the wastewater ponds to flat floodplain conditions without dredging out the historical backwater channel to (b) more expansive designs involving the construction of an upstream swale adjacent to the ponds to provide additional flow-through from overtopping river events. An options analysis was prepared as part of the initial project planning, and, based on input from stakeholders including resource agencies, the proposed scale and design of the restoration project was chosen to achieve the goal of restoring connectivity and backwater channel benefits for native fish. Therefore, expanding or reducing the scale of the proposed restoration project is not a feasible less environmentally damaging alternative to the proposed development, as conditioned.

iii. Alternatives to the non-motorized boat access: The project includes the construction of a new non-motorized boat access point within the public access portion of the project and along the bank of the river. The boat access point would be constructed by placing large rock boulders along the river's edge and carving steps out of the rock to facilitate safe access to the water for people hand-carrying the small boats to and from the water's edge. An alternative to the proposed boat access point is not constructing boat access along the Mad River. Under this alternative, there would be no improved boating access to the river at an appropriate location as proposed. It is expected that the other public access improvements to the site will attract additional public interest in launching small watercraft, even if not boat ramp is constructed. Without the proposed improvements, access to the river would require difficult maneuvering down slippery slopes and unstable rock that would contribute to bank erosion and degradation of the riverine habitat. Installing a small stabilized access point as proposed will protect the channel banks and will meet the objective of providing nature study uses in the navigable river channel.

Another alternative to the non-motorized boat ramp would be to install a motorized boat launch at the subject site. However, this alternative would require a larger ramp with more wetland fill. Given the design widths and depths proposed for channel restoration in this area, installation of a motorized boat ramp at this location is not a less environmentally damaging feasible alternative. Therefore, the use of alternative boating access configurations is not a feasible less environmentally damaging alternative to the proposed development as conditioned.

The Commission concludes that, as conditioned, the project is the least environmentally damaging feasible alternative and consistent with the alternatives test of section 30233(a).

c. Feasible Mitigation Measures

In addition to requiring that diking, dredging, and filling in coastal wetlands only be permitted if found to be an allowable use and the least environmentally damaging feasible alternative, section 30233 further requires that feasible mitigation measures be provided to minimize adverse environmental effects. Section 30236 also requires the incorporation of the best feasible mitigation measures feasible to avoid or minimize the significant adverse environmental effects of the proposed stream alteration project. The potential project impacts and mitigation measures are discussed below.

i. Measures to protect water quality and marine resources: As discussed in Finding E, below, the project could result in direct impacts to water quality and sensitive salmonids. To address these impacts, the Applicant has proposed feasible mitigation measures that will minimize the adverse environmental effects of construction of the proposed project. These mitigation measures include implementation of: (1) construction best management practices to

reduce water quality and biological impacts associated with construction-related erosion and turbidity; and (2) mitigation measures including fish surveys and relocation programs to protect sensitive salmonids. **Special Conditions 5, 9, and 11** require that these proposed mitigation measures be implemented.

ii. Measures to protect Northern red-legged frog: The Biological Assessment completed by Slauson Wildlife found suitable breeding habitat for Northern red-legged frog within the project area and especially within the wetted riparian and percolation pond areas. The project's restoration activities could result in direct impacts to Northern red-legged frog habitat and/or individual frogs. To minimize impacts to Northern red-legged frogs, the IS/MND includes BIO-7. This measure is adapted and required to be implemented by **Special Condition 8.** Special Condition 8 requires pre-construction surveys for Northern red-legged frogs (adults, subadults, tadpoles, or egg masses) prior to any construction activities that occur outside of the breeding and metamorphosis periods (January – May and June – August, respectively) and, if individuals are observed, requires consultation between a qualified biologist and CDFW to determine whether Northern red-legged frogs should be relocated outside of the construction zone.

iii. Measures to protect Lyngbye's sedge: Finally, although in the long term the proposed project will create more potential habitat for special-status and rare brackish or freshwater marsh species, construction activities could result in the disturbance of Lyngbye's sedge. To minimize impacts to Lyngbye's sedge and other potential rare plant species, the IS/MND includes BIO-9, adapted and incorporated into the CDP as Special Condition 10. **Special Condition 10** requires the Applicant to (1) conduct pre-construction surveys to identify Lyngbye's sedge plants within the project footprint and flag plants for avoidance; and (2) for plants within the project footprint that cannot be avoided, salvage and ultimately replant individuals of Lyngbye's sedge within the restored wetland habitat upon completion of construction.

Therefore, the Commission finds that the proposed project, as conditioned, provides feasible mitigation measures to minimize adverse environmental effects consistent with section 30233(a), and the mitigation provisions of section 30236 have been met.

d. Biological Productivity and Functionality

The fourth general limitation set by section 30233(c) is that any proposed dredging or filling in coastal wetlands or estuaries must maintain or enhance the functional capacity of the wetland. The mitigation measures incorporated into the project and required by the special conditions discussed above will ensure that the project will not have significant adverse impacts on coastal waters or wetlands in and around the project vicinity. Furthermore, the project's stated purpose is to restore and enhance the biological productivity of coastal wetlands, and conditions of the permit will ensure that the site is monitored for achievement of these goals. Therefore, the Commission finds

that the project, as conditioned, will maintain and enhance the functional capacity of wetlands consistent with the requirements of section 30233 of the Coastal Act.

Summary of Consistency Findings with Section 30233

For all of the reasons set forth above, the Commission thus finds that the proposed wetland dredging and filling, as conditioned, are for allowable uses (both section 30233(a)(6) for restoration purposes for floodplain enhancement/habitat restoration aspects of the project and section 30233(a)(7) for nature study uses for the public access trail and non-motorized boating improvements), that there is no feasible less environmentally damaging alternative, that feasible mitigation measures will be provided to minimize adverse environmental effects associated with the dredging and filling of coastal wetlands, and that the functional capacity of the wetland will be maintained consistent with section 30233 of the Coastal Act.

Summary of Consistency Findings with Section 30236

The Commission also finds, for all of the reasons discussed above, that the proposed substantial alterations of the Mad River (floodplain enhancement/habitat restoration aspects of the project) are for an allowable use (primary function is for the improvement of fish and wildlife habitat), and, as conditioned, the project incorporates the best feasible mitigation measures feasible to avoid or minimize the significant adverse environmental effects of the proposed stream alteration activities. Therefore, the Commission finds that the proposed development, as conditioned, is consistent with section 30236 of the Coastal Act.

E. Marine Resources and Water Quality

Section 30230 of the Coastal Act states (emphasis added):

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

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

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

Section 30232 of the Coastal Act states:

> Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials. Effective containment and cleanup facilities and procedures shall be provided for accidental spills that do occur.

As cited above, Coastal Act sections 30230 and 30231 require, in part, that marine resources and coastal wetlands and waters be maintained, enhanced, and where feasible restored. These policies specifically call for the maintenance of the biological productivity and quality of marine resources, coastal waters, streams, wetlands, and estuaries necessary to maintain optimum populations of all species of marine organisms and for the protection of human health.

a. Restoration of Marine Resources and Biological Productivity:

A primary purpose of the project is to restore habitat for marine resources (threatened salmonids) and the biological productivity and quality of coastal waters (Mad River). The Mad River is a major river system north of Humboldt Bay listed under section 303(d) of the Clean Water Act as impaired for sediment, turbidity, and temperature, all of which are stressors to salmonid habitat and productivity. Juvenile salmonids need rearing areas of slow-moving water off of the high flow channel, particularly during winter months when channel velocity and turbidity in are highest.

The elements of the project that will restore habitat for marine resources and biological productivity and quality of the river include (a) decommissioning the existing wastewater percolation ponds and restoring off-channel aquatic, wetland, and riparian habitats in place of the ponds; (b) reconnecting the restored backwater areas to the main river to allow fish access by dredging a 1,775-foot-long channel within an historical side channel; and (c) planting the newly created backwater channel with wetland and riparian vegetation. As discussed above in Finding D, the proposed restoration work is expected to increase available “critical habitat” for federal- and state-listed threatened and endangered fish species, including, but not limited to, SONCC coho salmon, CC Chinook salmon, and NC steelhead.

b. Protecting marine organisms:

Although the proposed project will maintain and enhance marine resources as discussed above, if not carefully implemented, construction of the project in the sensitive stream environment could result in direct impacts to sensitive salmonids (including “take” of individuals under the federal Endangered Special Act due to pre-construction fish relocation and post-construction monitoring) and other marine resources. A small stormwater ditch is located at the northern end of the floodplain restoration area within the project site. Stormwater runoff flows into this ditch from a culvert at Fischer Road, and the river backwaters this ditch from seasonal fluvial activity and, at times, from tidal inundation. While existing habitat within this stormwater ditch is poor and inconsistent, fish presence has been confirmed in the ditch and within a small tidal puddle that may remain nearest the confluence of the stormwater ditch. Fish species including SONCC coho salmon, CC Chinook salmon, Tidewater Goby, Western

Mosquitofish, and Three-Spined Stickleback could be harmed by dewatering and construction within this ditch.

To address these concerns, the Applicant, as the lead CEQA agency, included a mitigation measure (BIO-1) in the Initial Study/Mitigated Negative Determination (IS/MND) that limits in-channel work to the dry season (defined as between July 1st and October 31). In addition, BIO-2 requires the Applicant to conduct preconstruction surveys for fish and other aquatic species. BIO-3 requires implementation of a fish relocation program prior to dewatering activities that includes installation of fish screens upstream and downstream of the work area and relocation of all native aquatic vertebrates and large invertebrates to a flowing channel segment by a qualified fisheries biologist. Specifically, the biologist will use seining, dip netting, electrofishing or other appropriate trapping procedures to ensure all individuals are removed from the work area. The captured fish and other aquatic organisms will be transferred first to aerated buckets and then to appropriate habitat within a flowing segment of the river. BIO-1, BIO-2, BIO-3 have been incorporated into this CDP as **Special Conditions 5 and 8**.

With the implementation of the protective measures proposed by the Applicant, NMFS concluded in a Letter of Concurrence (July 15, 2020) that the project as proposed "is not likely to adversely affect SONCC coho salmon, CC Chinook salmon and NC steelhead, and their designated critical habitats." NMFS lists increased turbidity, decreases in riparian vegetation, and entrance of petroleum products associated with heavy equipment use as the main effects of the proposed project. The Letter of Concurrence finds that with the implementation of proposed BMPs, construction activities are expected to have insignificant or discountable effects on water quality and critical habitat.

c. Protection of water quality during construction:

The project involves excavation and handling of construction materials that if not properly implemented without appropriate Best Management Practices (BMPS) could result in erosion and polluted runoff entering coastal waters. The majority of excavated materials would remain on site through incorporation into other project features including public access and habitat restoration areas. Excavated material from the existing constructed ponds, which includes biosolids from the past use of the ponds for wastewater treatment, would be disposed of in uplands within the wastewater management facility reclamation area located in the proposed stockpile area footprint (Exhibit 3).[4] The remainder of excavated material would be disposed of off-site.

The Applicant has proposed a number of BMPs to be implemented during construction to protect water quality, control sediment and erosion, and prevent leaks and accidental spills, including, but not limited to; (1) restricting construction activities within stream channels to the low-flow period; (2) staging construction materials at least 150 feet from

[4] The North Coast Regional Water Quality Control Board has reviewed and approved the proposed reuse of excavated biosolids on site.

coastal waters; (3) limiting refueling of construction equipment to designated staging areas at least 150 feet from coastal waters; (4) installing silt fencing around all temporary stating and stockpile areas; (5) ensuring that staging areas are decompacted and restored to pre-project conditions following construction; (6) implementing erosion, sediment, and runoff control BMPs to ensure that no construction materials, debris, or waste are able to enter coastal waters; (7) maintaining heavy equipment in good condition free of leakage of coolant and petroleum products; (8) training equipment operators in procedures to be taken should accidental spills occur; and (9) requiring that drip pans be used for stationary equipment to capture any drips or leaks. These measures are included as requirements of **Special Condition 5.** In addition, **Special Condition 11** requires, prior to commencement of construction, the completion of a final debris disposal plan to ensure that all construction-related debris is disposed of at an authorized upland disposal location following project completion and/or prior to the onset of the rainy season, whichever is earlier.

d. Protecting the marine environment from trash and debris over time:

To ensure that increased public use of the project site from installation of the proposed public access improvements will not result in more discarded trash that will adversely affect water quality and the marine environment, **Special Condition 2** requires the installation of at least one trash receptable during the phase 1 public access component. **Special Condition 2(ii)(d)** requires, prior to commencement of construction, a preliminary operations and maintenance plan detailing the anticipated schedule for waste management and public access facility upkeep.

In conclusion, for the reasons stated above, the Commission finds that the proposed project, as conditioned, will maintain and enhance the biological productivity and quality of coastal waters both during construction and post-construction consistent with sections 30230, 30231, and 30232.

F. Conversion of Agricultural Lands

Section 30241 of the Coastal Act requires the protection of prime agricultural lands and sets limits on the conversion of all agricultural lands to non-agricultural uses. Section 30241 states (emphasis added):

> The maximum amount of prime agricultural land shall be maintained in agricultural production to assure the protection of the area's agricultural economy, and conflicts shall be minimized between agricultural and urban land uses through all of the following:
>
> a. By establishing stable boundaries separating urban and rural areas, including, where necessary, clearly defined buffer areas to minimize conflicts between agricultural and urban land uses.
>
> b. By limiting conversions of agricultural lands around the periphery of urban areas to the lands where the viability of existing agricultural use is already severely limited by conflicts with urban

uses or where the conversion of the lands would complete a logical and viable neighborhood and contribute to the establishment of a stable limit to urban development.

c. By permitting the conversion of agricultural land surrounded by urban uses where the conversion of the land would be consistent with Section 30250.

d. By developing available lands not suited for agriculture prior to the conversion of agricultural lands.

e. By assuring that public service and facility expansions and nonagricultural development do not impair agricultural viability, either through increased assessment costs or degraded air and water quality.

f. By assuring that all divisions of prime agricultural lands, except those conversions approved pursuant to subdivision (b), and all development adjacent to prime agricultural lands shall not diminish the productivity of such prime agricultural lands.

Historical Context of Agriculture in Humboldt County and along Mad River

Humboldt County has a long history of coastal agriculture. Humboldt County has a total land area of approximately 2.3 million acres, and approximately one third of this land base (~690,000 acres) is directed to some type of agricultural use. Traditional agriculture in the county consists of grazing beef cattle on coastal rangeland; dairy cows on rich pasture bottomlands around Humboldt Bay; and row crops and orchards on terraced river floodplains. The high rainfall, deep, fertile soil, and marine climate make some of the County's agriculture land highly productive. Humboldt County agricultural products (excluding timber) had a market value of approximately $256 million in 2016[5] with the top four crops, by value, excluding timber, consisting of livestock products (milk, cheese), livestock (beef cattle, dairy cows, sheep, etc.), nursery stock (cut flowers, ornamental tree production, etc.), and field crops (alfalfa, silage, range, etc.).

Historical county maps show that the project area was used as a farmstead complex and dairy farm as early as 1941. Known historically as Fisher Ranch, the property has been used for agricultural purposes ever since, including during its use by the Applicant as part of its wastewater treatment facility beginning in 1984. As previously discussed, the Applicant constructed the two percolation ponds on the floodplain in 1984 as part of the McKinleyville Wastewater Treatment Facility effort to dispose of treated effluent via wastewater reclamation in lieu of direct discharge to Mad River. Between 1985 and 1990, wastewater effluent was also discharged directly on the agricultural fields during the dry season from May 15 to October each year. Despite their use for treated

[5] Humboldt County Department of Agriculture Crop Report 2016.

wastewater disposal, the fields have remained in agricultural production for hay/fodder crop production.

Prime Agricultural Lands within the Project Area

Coastal Act section 30113 defines "prime agricultural land" through incorporation-by-reference of paragraphs (1) through (4) of section 51201(c) of the California Government Code:

> "Prime agricultural land entails land with any of the follow characteristics: (1) a rating as class I or class II in the Natural Resource Conservation Service land use capability classifications; or (2) a rating 80 through 100 in the Storie Index Rating; or (3) the ability to support livestock used for the production of food and fiber with an annual carrying capacity equivalent to at least one animal unit per acre as defined by the United States Department of Agriculture; or (4) the ability to normally yield in a commercial bearing period on an annual basis not less than two hundred dollars ($200) per acre of unprocessed agricultural plant production of fruit- or nut-bearing trees, vines, bushes or crops which have a nonbearing period of less than five years."

The four different prongs of the definition of "prime agricultural land" relate to the value and utility of the land in terms of range of agricultural uses and productivity. According to the definition above, and according to mapping by the Natural Resources Conservation Service, approximately 5 acres of the project area is classified as prime agricultural land based on soil characteristics, although much of this area consists of existing riparian habitat along the Mad River that has never been used for agriculture. According to the land use designation of the project site under the McKinleyville Area Plan segment of the County's certified LCP, the entirety of the project site is designated as "Agricultural Exclusive Prime." The portion of the project site that contains prime agricultural land that is within the proposed public access improvement area is approximately 2.2-acres. The portion of the project site that contains prime agricultural land that is within the proposed habitat improvement area is 2.3-acres, and, as previously discussed, the Commission previously authorized the conversion of 4.25 acres of this area to a non-agricultural use (wastewater percolation ponds) in 1983. The dominant historic agricultural use in the 9.3-acre project area of the Applicant's parcel was pasture or livestock grazing, though that use ceased upon the Applicant's acquisition of the property in the early 1980s and subsequent (1) conversion of the land to wastewater facility uses (percolation ponds), and (2) erection of agricultural fencing along the School Road access to the site. At its highest levels of production, the pastures surrounding the project area owned by the Applicant are estimated to be capable of supporting 1 to 2 Animal Unit Months (AUMs).[6]

[6] The AUM estimate is based on estimates determined on lands with similar soils in the region. An "animal unit" (AU) is a standardized measure of animals used for various agricultural purposes. A 1,000-pound beef cow is the standard measure of an animal unit. The dry matter forage requirement of one animal unit is 26 pounds per day. Animal unit equivalents (AUE) are calculated for various other animals. A 700-pound steer is 0.80 animal units. A 1,300-pound horse is 1.20 animal units. A 120-

Conversion of Agricultural Lands

The project will convert a total of 4.95 acres of land historically used for agriculture to public access and habitat restoration uses. The conversion area includes the entire 9.2-acre project area except for the 4.25-acre portion of the site occupied by the percolation ponds that were authorized for conversion by the Commission by its approval of the coastal development permit to construct the ponds.

Section 30241 cited above applies to prime agricultural land and all agricultural lands on the periphery of an urban area. The subject property is on the periphery of an urban area, as it is immediately adjacent to the LCP-certified urban limit line of the County's McKinleyville Area Plan portion of its certified LCP. Therefore, the Commission must review the proposed conversion of the agricultural land to public access and restored habitat uses for consistency with the requirements of section 30241.

As cited above, section 30241 requires that the maximum amount of prime agricultural land be maintained in agricultural production to maintain the agricultural economy of the area. As cited above, section 30241 also enumerates a series of measures to be undertaken to minimize conflicts between agricultural lands, both prime and non-prime, and urban uses. The Commission finds that for the reasons discussed below, the conversion of the subject agricultural lands to the proposed roadway improvements that will occur around the periphery of an urban area is a permissible conversion consistent with the applicable criteria of section 30241.

a. Establishing Stable Boundaries Between Urban and Rural Uses

The project site is located along the boundary between urban and rural areas. The agricultural conversion area borders residential development within the urban area of McKinleyville to the north, the river to the west, and mostly agricultural lands to the east and south. The LCP-designated urban boundary borders School Road immediately to the north of the site and Fisher Road immediately to the east of the Applicant's pasture that is used for wastewater reclamation/fodder crop production. The establishment of ongoing public access and restored habitat uses on the MCSD's property together with the MCSD's continued use of the remaining pasturelands on its 95-acre parcel for the discharge of treated wastewater while allowing continued seasonal grazing serves to block residential and other more urban uses from encroaching into the agricultural lands south of School Road beyond the boundary between urban and rural areas.

In addition, the area proposed for conversion is separated by a fence from the lands to remain in agricultural use, which will help prevent public access users from interfering with and affecting the viability of continued agricultural use of those lands. Therefore, conversion of the subject agricultural lands will serve to minimize conflicts between agricultural and urban land uses by establishing a stable boundary separating urban

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pound sheep is 0.20 animal units. The amount of forage used by one animal unit in a month is an "animal unit month."

and rural areas and providing a clearly defined buffer between potentially incompatible uses.

b. Limiting Conversions Around Urban Periphery to Areas Already Compromised by Urban Uses

The proposed conversion area is currently fenced off from the remaining agricultural lands of the Applicant's property to the east, which serves to protect public health and safety by separating users of the site for public access purposes from the spray irrigation of the agricultural lands with treated wastewater as part of the Applicant's wastewater management program. Most of the lands to be converted already are compromised by urban uses insofar as residents of the neighborhood and members of the public in general have been using this area for river access for many decades. The area features informal social trails and a well-traveled gravel path that was established atop a buried stormwater drain that extends from the end of School Road to an outlet point near the river. The County installed the stormwater drain in approximately 2001 (under Commission CDP 1-01-030). The remainder of the lands to be converted consist of riverine riparian habitat adjacent to the river. Thus, the proposed agricultural conversion involves only those areas either already used by the public/urban uses or riparian and wetland habitats directly adjacent to the river.

c. Allowing conversion of agricultural land surrounded by urban uses consistent with Coastal Act Section 30250

Coastal Act Section 30250 requires that new residential, commercial, or industrial development be located within, contiguous to, or in close proximity to existing development. Section 30241(c) does not apply to the subject development as (1) the project site is not surrounded by urban uses and (2) the conversion of agricultural lands for public access and habitat restoration uses does not involve locating new residential, commercial, or industrial development in close proximity to existing development.

d. Develop Lands Not Suitable for Agriculture First Before Converting Agricultural Lands

The proposed conversion of approximately five acres of agricultural land would occur on land not particularly suited for agriculture use. The area between the fence and the river is located on the edge of a river bluff and in an area that is already compromised by members of the public for river access. The remaining acres to be converted are comprised of wetland and riverine riparian habitat and are better suited for critical habitat restoration purposes. Thus, the proposed agricultural conversion involves lands not suitable for agriculture that have not been used for agriculture in recent years.

e. Avoid Public Service Facility Expansion That Would Impair Viability of Agricultural Lands

The proposed habitat restoration and public access development is being funded largely through grants and will not be financed through assessments against the adjoining agricultural properties. In addition, the proposed conversion of grazing lands, as part of

the proposed public access project as conditioned, would not result in emissions that would degrade air quality. Furthermore, as discussed above, the development has been designed so as not to degrade water quality. Therefore, the development will not impair air and water quality and thereby impact agricultural viability of the surrounding agricultural lands.

f. Avoid Diminishment in Productivity Associated with Divisions of Prime Agricultural Land and Impacts from Adjacent Development

The proposed project does not involve a subdivision of prime agricultural lands. In addition, the proposed conversion to public access use would not diminish the productivity of the adjacent prime and non-prime agricultural lands the public access improvements would only enhance the existing informal public access use of the project area that has occurred for approximately 20 years without significant adverse effects on the remaining agricultural uses of the lands to the east.

Conclusion

Therefore, for all of the reasons stated above, the Commission finds the proposed conversion of agricultural lands is a permissible conversion of agricultural land consistent with section 30241 of the Coastal Act, because the lands proposed for conversion: (1) are located around the periphery of an urban area; (2) are not well suited for agriculture use given proximity to unstable bluffs and riparian floodplain areas; (3) would establish a stable boundary separating urban and rural areas; and (4) would serve to minimize urban-rural land use conflicts.

G. Environmentally Sensitive Habitat

Section 30240 of the Coastal Act states:

a. Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

b. Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

As cited above, section 30240 of the Coastal Act limits activities within an ESHA to only uses that are dependent on the resources of the ESHA (such as restoration and nature study uses) and only when the ESHA will be protected against any significant disruption of habitat values. In addition, section 30240(b) requires that development in areas adjacent to ESHA not degrade the ESHA and be compatible with the continuance of the habitat.

ESHA in the project area includes riparian vegetation and nesting habitat for raptors and rare, threatened, and endangered bird species. The applicant proposes development

within the riparian ESHA, including improving pedestrian trail access through existing riparian habitat and trimming riparian vegetation around the proposed view overlook spots for nature-study viewing opportunities of the river and surrounding coastal areas. The Applicant proposes development adjacent to the riparian ESHA including additional trail and public access improvements.

Riparian Vegetation Trimming for Trail Use

The proposed public access use within riparian ESHA is for nature study uses. The portions of the trails to be designated within the ESHA are limited to locations where there are existing informal trials currently used by the public, and as a result, there will be no new trail construction within ESHA. By formally designating a single primary trail through the area, public access use will be confined to a single route through previously disturbed riparian areas, thereby helping to maintain and restore the remainder of the ESHA. Only a minimal amount of vegetation removal is required for the proposed public access trail use (approximately 36 square feet of willows for construction of the Phase 2 public access component of the project). Ongoing vegetation trimming may also be necessary from time to time to maintain clearance on either side of the trail. As summarized in Table 2 above, the proposed restoration of 2.1 acres of riparian habitat far exceeds the size of the vegetation removal area proposed for these public access improvements.

The applicant has prepared a preliminary plan for vegetation trimming activities titled “MCSD Mad River – Vegetation Removal Guidelines”, dated November 6, 2020, to ensure that vegetation trimming is limited to the minimum extent necessary to keep the trail clear for users. The plan states that vegetation trimming activities associated with the public access components shall be timed to occur outside of the nesting season for sensitive aviation species (February 15 – August 31). While the draft vegetation trimming plan includes restrictions on when vegetation removal can occur, it does not specify the amount of vegetation that will be removed for trail maintenance. Therefore, to ensure that vegetation clearing is limited to the minimal extend practical, the Commission attaches **Special Condition 7.** This condition requires submittal of a final plan for vegetation maintenance that restricts vegetation trimming, that requires a map or clear description of where vegetation trimming will occur, and that includes a schedule for trimming activities on an ongoing basis.

Riparian Vegetation Trimming for Nature Study Use

The project proposes riparian vegetation trimming on an annual or biannual basis within the lower overlook area between the public access bench and Mad River. Ongoing vegetation trimming includes the removal of the top 2-3 feet of riparian (willow) branches for maintenance of existing view corridors from an existing bench and does not involve clearing and removal of entire plants. The proposed vegetation removal is minor and is not expected to significantly disrupt the riparian habitat. As discussed, the proposed restoration of 2.1 acres of riparian habitat far exceeds the size of the vegetation removal area proposed for these public access improvements. **Special Condition 4**, previously discussed, requires the Applicant to submit a final revised habitat monitoring plan for the Executive Director’s review and approval that includes,

among other provisions, a final monitoring plan for the riparian habitat restoration that will ensure the success of the proposed restoration project and adequately compensate for riparian impacts associated with vegetation trimming.

If the applicant were to exceed the proposed vegetation removal amounts, the Commission finds that the proposed maintenance activities could significantly disrupt the habitat. Therefore, to ensure that vegetation removal does not impact sensitive nesting bird habitat, the Applicant will plan vegetation trimming activities associated with the public access components to occur outside of the nesting season for sensitive aviation species (February 15 – August 31) and will limit vegetation trimming to removal of the top 2-3 feet. To ensure that the vegetation removal guidelines are followed, **Special Condition 7** requires submittal of a final vegetation trimming plan prior to commencement of construction of the public access project. Adherence to a final vegetation trimming plan will ensure that long-term vegetation removal does not exceed levels approved under this CDP and significantly disrupt the riparian habitat values. The proposed work within riparian ESHA is for a resource-dependent use (nature study), and the vegetation trimming is limited so as not to degrade the riparian ESHA. Therefore, the vegetation trimming is consistent with section 30240(a).

Public Access Construction Impacts on ESHA

According to the IS/MND, potentially suitable nesting habitat occurs in the proposed project area for the California ESA-listed Little willow flycatcher. In addition, several bird species listed as rare by CDFW are known to nest in or near the proposed project site, including black-crowned night herons, yellow warbler, and yellow-breasted chat. Construction activities related to installation of the public access trails, overlook areas, and signage could result in disturbance to nesting birds from noise and other forms of disturbance.

To ensure that impacts to nesting bird species are avoided, the IS/MND includes several mitigation measures, adapted and incorporated into this CDP as **Special Condition 6**. This condition requires pre-construction surveys by a qualified biologist for any work conducted during the avian nesting season. If any sensitive bird ESHA is detected (i.e., detection of an active nesting area of a raptor or rare species), the biologist, in consultation with CDFW, shall determine the extent of a construction-free buffer zone to be established around the nest, and work in the buffer zone shall be delayed until after the young have fledged, as determined by additional surveys conducted by a qualified biologist. By identifying nesting habitat and delaying construction until after the young birds have fledged, the project will protect the nesting activities of sensitive bird species against any significant disruption from construction activities occurring within the ESHA and will prevent impacts which would degrade or prevent the continuance of the nesting areas that could result from construction activities occurring adjacent to the ESHA.

Stormwater runoff and discharges of contaminants from trail and overlook construction areas could adversely affect water quality within the riparian ESHA wetlands. As discussed above, the Applicant has proposed a number of BMPs to be implemented during construction to protect water quality by controlling erosion and sedimentation and

preventing leaks and accidental spills of fuel, concrete waste discharges, and other construction related materials and fluids. **Special Conditions 5 and 10** require the Applicant to implement these BMPs as proposed. Implementation of the BMPs will protect the riparian ESHA against any significant disruption from construction related water quality impacts occurring within the ESHA and will prevent water quality impacts which would degrade or prevent the continuance of the ESHA from construction activities occurring adjacent to the ESHA.

Therefore, for the reasons discussed above, the Commission finds that the proposed project as conditioned is consistent with the requirements of section 30240.

H. Coastal Hazards

Section 30253 of the Coastal Act states in applicable part:

> New development shall do all of the following:
>
> (a) Minimize risks to life property in areas of high geologic, flood, and fire hazard.
>
> (b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs…

The proposed project is situated within the Mad River fault zone in an active seismic area that is subject to seismic ground shaking, slope instability, and seismically induced ground deformation (liquefaction and seismic compaction). In addition, portions of the project area are subject to tsunami inundation and flooding, which is expected to worsen with projected sea-level rise (SLR). There are two primary hazard issues raised by the proposed restoration and public access project. First, there is the potential for the project to affect flood hazards on surrounding structures, roads, and adjacent properties, as the project involves hydrologic alterations to the site, including grading, excavation, and the construction of channel features. The low-lying areas of the public access component and the entire restoration component of the project area are located within the FEMA-mapped 100-year flood zone[7]. Second, the upper public access components are located on the Mad River bluff at elevations ranging from approximately 10 to 40 feet (NAVD88) and are subject to bluff erosion hazards. The river bluff adjacent to the site is currented armored with a 1,300-foot-long permitted stabilization structure (a combined rock slope protection structure incorporating bioengineered riparian vegetation) that was placed under emergency permit authorization in 2008 and permanently authorized by the Commission in 2020 under CDP 1-09-050, with the Commission finding that the stabilization structure was

[7] Flood Insurance Rate Map Number 06023C0670G, effective on 6/21/2017.

necessary to protect existing (pre-1977) residences (on Verwer Court), roads (including School Rd.), and sewer and water lines in the project vicinity from bluff erosion hazards.

Restoration Elements of the Project

Technical studies prepared for the project include a Hydraulic Analysis Report and Basis of Engineering Designs report (Northern Hydrology & Engineering, June 2017) that included a hydrologic analysis used to determine river levels, model flood conditions, develop channel parameters, appropriately size drainage culvert connections, and determine other project elements essential to project success. In addition to considering factors related to fish passage and fish habitat improvement, the technical studies considered overall stability and structural integrity factors to design channel size, configuration, engineered material sizing and placement, open water placement, configuration, and sizing, and other project elements. The technical reports analyzed two recent flood flow events and found that while flood flows extend east beyond the riparian corridor and historical backwater channel into the low-lying portions of the adjoining pasture lands, the existing berms surrounding the wastewater ponds were not overtopped during flood events. Thus, the restoration design involves lowering the northern, southern, and western berms to enhance wetland hydrology in much of the restoration area, but leaving the eastern berm intact as part of an expanded riparian bench at 13 to 14 feet elevation so that it will continue to protect the adjacent land to the east of the restored habitat while directing water flow towards the riverine wetlands and backwater channel areas. The project's location on the inside of a meander bend within an active floodplain is ideal for backwatering and is a natural sediment deposition area. Due to high sediment loading from the Mad River watershed, project features such as the backwater channel and off-channel pond are expected to accrue sediment and aggrade over time. The project has been designed to withstand some aggradation while still providing valuable high flow refugia from mainstem river velocities over time.

According to the IS/MND, creation of the off-channel habitat complex, including the restored wetland ponds, will lower surfaces elevations and expand the footprint of wetted habitats. Under existing conditions, this area inundates during flood events (approximately 5-year events and greater) and will continue to inundate in the future during similar flood events. Post-construction, the inundation footprint is expected to expand, given the lowered surface elevations within the off-channel alignment and the removal of the levees on three sides of the percolation ponds to expand wetland and riparian habitats, consistent with project goals and objectives. An increase in off-site flooding as a result of project actions will not occur.

Public Access Elements of the Project

The public access components of the project were analyzed for potential flood and geologic hazards in an engineering geologic report completed by SHN Consulting Engineers & Geologists, Inc in March 2019 and addended September 16, 2020. Low-lying public access components are located within the flood zone and may be inundated during high flow events. The low-lying public access project elements have been designed to withstand flood flows as described below:

- The boat launch pad will inundate during high flow events with regularity. Smaller rock, fill, or other material that could mobilize during high flow will not be used to create this feature. The boat launch pad will be created by setting large rocks in place with steps cut in to improve foot access.

- A bench will be placed at the boat launch pad location and may become inundated during extreme flood events. The bench will be secured to existing grade with bolts to prevent it from being washed away. Periodic maintenance may be required to remove deposited sediments with a shovel or similar hand labor.

- Lower unpaved trails may inundate during more significant high flow events. The lower trail to the boat launch will be paved to facilitate maintenance and access to the boat launch pad.

- The spur trail along the river to the south will be compacted but unpaved and will not receive significant volumes of fill during construction. The spur trail may be impacted by extreme flood events.

Portions of the public access improvements may be subject to flooding during extreme flood events. These features may also be threatened by scour or erosion associated with the Mad River bluffs. However, all the public access amenities can be moved or removed relatively easily if threatened from erosion/scour. In addition, the consequences of occasional flooding of the development would not be severe in that these improvements do not include habitable structures and are only provided for short-term recreational use. To ensure that public access amenities are protected from geologic hazards to the maximum extent feasible while still providing public access to the bluff habitat and river viewsheds, the project geologist has proposed that all public access amenities will be set back at least 10 feet from the edge of the bluff. The Commission's geologist and engineer have reviewed the geologic report and concur with the Applicant's finding that public access components will be adequately set back to minimize geologic risk and, at that setback distance, will not be reliant on the existing permitted stabilization structure along the river bluff. Should the bluff begin to retreat to the point where the public access components are threatened, the setback between the improvements and the bluff edge will provide space for workers and equipment to utilize for the work involved in relocating the public access components before they are undermined. **Special Condition 1** requires the submittal of final public access plans that conform to the geologist's bluff setback and other recommendations for designing the project to minimize risk and assure stability and structural integrity in an inherently hazardous area.

Because the Applicant is electing to undertake new development in an inherently hazardous area, the Applicant must assume the risks. **Special Condition 13** therefore is included to require the Applicant to assume the risks of flooding and geologic hazards to the property and to waive any claim of liability on the part of the Commission. Special Condition 13 notifies the Applicant that the Commission is not liable for damage as a result of approving the permit for development. The condition also requires the

Applicant to indemnify the Commission if third parties bring an action against the Commission as a result of the failure of the development to withstand the hazards.

Furthermore, **Special Condition 14** prohibits the construction of bluff armoring (such as the expansion of the existing stabilization structure) to protect any of the authorized public access improvements, such as the viewing platform or trails, should they become threatened with bluff erosion hazards in the future. The Applicant has not proposed to construct or expand the bluff stabilization structure and no bluff armoring would be authorized by this permit. However, the Applicant or a successor-in-interest could request a bluff armoring at some point in the future. Therefore, because of the numerous adverse impacts to coastal resources caused by shoreline protective/bluff armoring devices, to comply with the section 30253 prohibition on new development in any way requiring the "construction of protective devices that would substantially alter natural landforms along bluffs and cliffs," it must be clear that, as new development, the entire development recognized and approved by this permit is not allowed a bluff stabilization device now or in the future. Therefore, Special Condition 14 is imposed to require the Applicant to acknowledge that, as new development, the Applicant has no right to a shoreline protective device for the project, and no future shoreline protective device will be constructed or expanded on site to protect the development authorized under this CDP.[8]

Sea-Level Rise Effects on the Project

While the reports described above address the current flood risk from stormwater runoff, the Commission must consider whether SLR may contribute to or exacerbate hazards or impact coastal resources. The project must be designed and built in a manner that minimizes risks to surrounding development and avoids impacts to coastal resources in light of both current conditions and changes that may arise in the future.

The Humboldt Bay region has the highest rate of SLR in the State due to active land subsidence, with up to 1.2 feet of rise expected by 2030, 3.1 feet by 2050, and 10.9 feet by 2100.[9] Based on its flood zone location and considering local relative SLR projections, the project area is vulnerable to an increased level of periodic inundation as a result of high tide and flood events. The property also may be subject to increased

[8] This condition also is consistent with Special Condition 3 of CDP 1-09-050 which authorized the 1,300-foot-long stabilization structure that the Commission found necessary to protect existing residences (on Verwer Court), roads (including School Rd.), and sewer and water lines in the project vicinity from bluff erosion hazards. Special Condition 3 states that in the event that the stabilization structure is no longer needed to protect existing threatened structures, the permittee (Humboldt County) shall apply for a CDP with an analysis of the feasibility of removing the hard components of the structure (e.g., rock), and of the environmental tradeoffs associated with removing, retaining, or modifying the structure.

[9] These are the "extreme risk aversion" (H++) projections given in the Commission's recently adopted Sea Level Rise Policy Guidance Science Update, Table G-2. The projections for relative sea level rise in Humboldt Bay take into account the combined effects of regional eustatic sea level rise and vertical land motion (tectonic uplift and subsidence).

storm intensity associated with projected climate change and, as a result, may experience more frequent and intense flooding episodes.

The State of California has undertaken significant research to understand how much SLR to expect over this century and to anticipate the likely impacts of such SLR. In 2017, a working group of the Ocean Protection Council's (OPC) Science Advisory Team released *Rising Seas in California: An Update on Sea-Level Rise Science*. This report synthesized recent evolving research on SLR science, including a discussion of probabilistic SLR projections as well as the potential for rapid ice loss leading to extreme SLR. This science synthesis was integrated into the OPC's *State of California Sea-Level Rise Guidance 2018 Update* (State SLR Guidance). This guidance document provides statewide recommendations for state agencies and other stakeholders to follow when analyzing SLR in association with projects. Notably, the guidance provides a set of regional projections recommended for use when assessing potential SLR vulnerabilities for a project. Taken together, the Rising Seas report and State SLR Guidance account for the current best available science on SLR for the State of California.[10]

The State SLR Guidance provides SLR projections for 12 tide gauges in the state and recommends using the projections for the gauge closest to the project site. In this case, the North Spit tide gauge at Humboldt Bay is the applicable gauge. The amount of SLR projected at the North Spit tide gauge for the year 2050 ranges from 1.5 feet (under the "low-risk aversion" scenario) to 2.3 feet (under the "medium high risk aversion" scenario) to 3.1 feet [under the "extreme risk aversion" (H++) scenario].[11]

The current mean monthly maximum water (MMMW)[12] elevation at the North Spit tide gauge is approximately 7.8 feet NAVD88.[13] Future MMMW in the year 2050 under the low risk scenario cited above is projected to be approximately 9.3 feet (i.e., 7.8 ft. + 1.5 ft. of SLR). Consideration of the low risk scenario (+1.5 ft.) is appropriate in this case, because, as a wetland restoration project, the project as designed has a relatively high

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[10] In addition, the Commission's adopted SLR Policy Guidance, as updated with science updates in November 2018, references the best available science throughout the document, including the 2018 OPC SLR Guidance.

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

[12] MMMW is not an official tidal datum, but it is the tidal boundary most closely associated with the current Humboldt Bay natural shoreline elevation. MMMW is the tidal base elevation that has been used in various regional SLR planning documents (e.g., Trinity Associates 2015) to assess shoreline vulnerability and to depict areas that would be vulnerable to tidal inundation should the existing shoreline protection (e.g., agricultural dikes) be breached.

[13] Northern Hydrology and Engineering 2015.

capacity to adapt to risks associated with tidal flooding, and the consequences of the development being subjected to tidal flooding in the future would not be severe from the standpoint of impacts to coastal resources and life and property. For example, increased tidal flooding "impacts" in the wetland restoration area would be beneficial for marine resources and would not pose any risk to new structures in the restoration area. Increased flooding impacts in the public access portion of the project, as described above, would be minimal and, in extreme cases, the bench, viewing platform, and interpretive signs could be relocated or removed if threatened by SLR.

As designed, much of the restoration project area will be below 9.3 feet in elevation (the proposed design elevations range between 0 feet for the pond to 14 feet for the riparian bench), which is designed for regular inundation by riverine overflow and necessary for its intended purpose for fish habitat improvement. The restoration project area is surrounded by agricultural lands that range from 10-15 feet in elevation and the nearest road to the east of the project site, Fisher Avenue, is at an elevation of 11-12 feet. Because the eastern riparian bench/levee will be 13-14 feet in height, this feature will be expected to continue to protect the field, roads, and residences east of the floodplain factoring in SLR over the coming decades.

Based on the above discussions, the Commission concludes that, as conditioned, will minimize risks to life and property from geologic and flood hazards consistent with section 30253.

I. Public Access and Recreation

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 Applicant proposes to construct, operate, and maintain 1,200 feet of gravel trail, 315 feet of paved ADA accessible trail, two ADA accessible bluff overlook areas with, two benches, a small boat access point along the river, and instructional and interpretive signage. The trail segments will connect users to the paved School Road Trail and will provide viewing and resting opportunities at key lookouts along the Mad River bluff area. In addition, a new parking area will be established and will provide four new parking spaces and one new ADA parking space along with a turnaround area at the end of School Road. The public access trails and viewpoint overlooks will improve opportunities for ADA access to the river and its associated habitats and viewscapes

and will increase opportunities for nature study and wildlife viewing. The small boat river access point will improve recreational opportunities for lightweight non-motorized watercraft boaters, fishermen, boaters, bird watchers, and other user groups. **Special Condition 2** will ensure that trail support facilities for the public, including parking improvements and waste receptacles, are included concurrently with the development of the initial trail improvements planned for the Phase 1 public access improvements. The condition requires submittal of final site and design plans for all trail improvements, signage, waste receptacles, and other trail amenities prior to permit issuance. Among other things, the condition requires that the Phase 1 access improvements shall include all the amenities proposed by the Applicant.

Construction of the project will result in temporary closure of portions of the project site accessible from School Road. Public access will be limited during the expected construction period of the public access features for up to eight weeks during the normal working hours of 8 am – 5 pm. Signage and symbolic fencing will be provided to block access where necessary for public safety. During construction of the habitat restoration project elements that may take at least 12 weeks, public access to the backwater channel and ponds will be excluded with signage and symbolic fencing. An approximately 24” x 36” sign may be installed in these areas that reads “Area Closed During Construction” or similar language. A symbolic fence will be installed at approximately the County storm drain pipe to be closed during times of flooding to indicate access is not supported beyond the gate. An approximately 24” x 36” sign may be installed that reads “Area Closed” or similar language. All proposed area closures and symbolic fencing will be short-term and temporary.

As discussed above in Finding G, the public access improvements are sited and designed to protect the riparian habitat on the site from significant disruption and degradation. Trails will be located along the routes of existing informal trails, vegetation clearing for the construction of trails will be limited, and future vegetation trimming activities to preserve scenic views from the constructed public access overlook areas will be performed in accordance with submitted vegetation removal guidelines to ensure that vegetation trimming is limited to the minimum extent necessary.

Therefore, as the project will enhance public access use, the temporary construction interference with public access and recreational use of the site will be limited to a relatively short duration, and as pedestrian and fishing access will be maintained in portions of the project site for the duration of the project, the Commission finds that the project, as conditioned, will not have a significant adverse effect on public access, and that the project as proposed is consistent with the requirements of Coastal Act sections 30210, 30211, and 30212. In addition, as the proposed trail and other access improvements have been sited and designed to minimize vegetation clearing, the access improvements will be implemented in a manner that takes into account the capacity of the site and the fragility of the riparian habitat and other natural resources in the area consistent with the requirements of Coastal Act section 30214.

J. Protection of Archaeological Resources

Coastal Act section 30244 states as follows:

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

The project area lies within the traditional territory of the Wiyot Tribe. At the time that Euro-Americans first made contact in this region, the Wiyot lived almost exclusively in villages along the protected shores of Humboldt Bay and near the mouths of the Eel and Mad Rivers. Today, representatives of the Wiyot Tribe include the Table Bluff Reservation Wiyot Tribe, the Blue Lake Rancheria, and the Bear River Band of the Rohnerville Rancheria. In addition to referring information about the project to the Tribal Historic Preservation Officers (THPOs) of these divisions of the Wiyot Tribe, Commission staff also referred the project to the other tribal contacts recommended for consultation by the Native American Heritage Commission (NAHC) and other tribal representatives with known interest in the project area region, including the Yurok Tribe, the Blue Lake Rancheria, the Big Lagoon Rancheria, the Hoopa Valley Tribe, the Karuk Tribe, and the Cher-Ae Heights Community of the Trinidad Rancheria.

In addition to Commission staff's outreach, a cultural resources investigation was completed for the subject property on May 2018 by Roscoe and Associates. The investigation included a record search at the Northwest Information Center and a review of archaeological/historical reports and published literature pertinent to the project area. The Applicant and Roscoe and Associates consulted with tribal representatives. The Blue Lake Rancheria's THPO office responded to outreach from the Applicant and Commission staff and indicated that tribal representatives and the Applicant discussed several measures including adoption of Inadvertent Archaeological Discovery protocol and coordination with the Blue Lake Rancheria, Bear River, and Wiyot Tribe on language and content for interpretative signs about Wiyot history and culture. The Applicant agreed to incorporate these measures into the project design. **Special Condition 2** includes provisions to ensure that the Applicant's public access signage plan conforms with the recommendations of the THPOs. To ensure protection of archaeological resources that may be discovered at the site during construction of the proposed project, the Commission includes Special Condition 12. **Special Condition 12** requires construction to cease and not recommence until the significance of the find can be analyzed in consultation with the THPOs of the Wiyot Tribe and a Supplementary Archaeological Plan for protecting the resource is prepared, submitted, and approved by the Executive Director.

The Commission thus finds that the proposed project, as conditioned, is consistent with section 30244, as the development includes reasonable mitigation measures to address adverse impacts to archaeological resources.

K. Visual Resources

Section 30251 of the Coastal Act states, in applicable part, as follows:

> The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas…

The project area affords views of School Road and a dense residential area to the north, riparian habitat, the Mad River and Mad River bluff to the south, surrounding meadows and pastures to the east, and coastal dunes and distant ocean views to the west. The mixture of housing, roads, and natural habitats creates a mixed visual character. From within the project area, views of the trails and other public access amenities proposed within the meadow and riparian areas will present a similar appearance to the views currently afforded from within the project area of the existing public access improvements. The proposed conversion of the percolation ponds to riparian habitat will present a more natural appearance that will blend better with the surrounding riparian habitat that currently exist. With regard to views of the project site from School Road and other public vantage points outside the project area, the project will formalize public parking that already exists and will add a new welcome kiosk and interpretive panel to enhance the public access experience. To ensure that the public access amenities will not block or adversely affect scenic public vistas, Special Condition 2 requires submittal of final design plans for trail amenities including, but not limited to, the welcome kiosk, interpretive panels, and signs. **Special Condition 2** requires the proposed signage to be compatible with the surrounding area in terms of design and size. In addition, the new benches and viewpoints will enhance the public's opportunities to enjoy the scenic and visual qualities of the Mad River estuary. The Commission, therefore, finds the project consistent with section 30251, because the project as conditioned will protect views to and along the ocean and the surrounding scenic area, minimize the alteration of natural land forms, and will be visually compatible with the character of the surrounding area.

L. California Environmental Quality Act (CEQA)

The Applicant (MCSD) served as the lead agency for the project for California Environmental Quality Act (CEQA) purposes. MCSD adopted a mitigated negative declaration for the project on March 11, 2020.

Section 13096 of the Commission's administrative regulations requires 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 requirements of the 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's regulatory program for reviewing and granting CDPs has been certified by the Resources Secretary to be the functional equivalent of environmental review under CEQA. (14 CCR § 15251(c).)

The Commission incorporates its findings on Coastal Act consistency as if set forth in full herein. 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 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 development, 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 to conform to CEQA.