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Staff:	C. Mitchell
Staff Report:	10/28/22
Hearing Date:	11/18/22

STAFF REPORT: MATERIAL AMENDMENT

Application No.:	**1-90-187-A1**
Applicant:	**Paula and Kirk Brust**
Location:	1920 Peerless Ave., in the unincorporated community of Manila, Humboldt County
Approved Project:	Construct a 965-square-foot single-story, single-family residence with attached 23-square-foot covered porch and gravel driveway, and a 560-square-foot single-story secondary residence.
Proposed Amendment:	Remodel existing single-family residence and construct a 1,494-square-foot, two-story addition consisting of a first-floor, two-car garage and a second-floor bedroom and bathroom.
Staff Recommendation:	Approval with conditions

SUMMARY OF STAFF RECOMMENDATION

On August 9, 1990, the Commission approved with conditions CDP 1-90-187, authorizing construction of a 965-square-foot single-story, single-family residence with attached 23-square-foot covered porch and gravel driveway, and a 560-square-foot single-story secondary residence. The original permit located the two residences on the portion of the property closest to the road in order to avoid a potential area of sensitive archaeological resources and vegetation located in the southern portion of the property. The applicants are proposing to remodel the existing primary residence and to construct a 1,494-square-foot, two-story (max 25-ft. high) addition consisting of a first-floor, two-car garage and a second-floor bedroom and bathroom. The addition will be built on top of the existing gravel driveway, in between the existing residence and the road. The

subject property is located in the unincorporated Manila area on the Samoa Peninsula. The existing residence is located approximately 150 feet from the edge of Humboldt Bay.

The project raises hazards concerns under section 30253 of the Coastal Act, because it involves development located in a low-lying area that is vulnerable to flooding and geologic hazards. Flooding is expected to be exacerbated by sea level rise given the site's bayfront location; however, the residence is sited at an elevation that is expected to be above flood levels over the anticipated life of the proposed structure. As the project is considered new development for which there is no right to construct shoreline protection devices, and as construction of a shoreline protective device likely could not be found consistent with the Coastal Act, recommended Special Condition 7 would require the applicants to acknowledge that no shoreline protective device can be constructed in the future. Special Condition 5 would require the applicants to assume the risks of coastal hazards of the property and waive any claim of liability on the part of the Commission, and Special Condition 6 requires that all future improvements to the development authorized by this permit that might otherwise be exempt from CDP requirements obtain an amendment to this CDP or a new CDP.

The project, as conditioned, includes all feasible mitigation measures necessary to find the project consistent with the Coastal Act's policies requiring minimization of flood hazards risks, protection of public trust lands, and the protection of visual resources, nearby environmentally sensitive habitat areas, cultural resources, water quality, and public access.

The Motion to adopt the staff recommendation of approval with conditions is found on page 4.

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EXHIBITS

I. Motion and Resolution

Motion

I move that the Commission approve the proposed amendment to Coastal Development Permit No. 1-90-187, subject to the conditions set forth in the staff recommendation.

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

Resolution

The Commission hereby approves the coastal development permit amendment on the grounds that the development as amended and subject to conditions will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit amendment 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 amended development on the environment, or 2) there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the amended development on the environment.

II. Standard and Special Conditions

The Commission approved Coastal Development Permit (CDP) 1-90-187 on August 9, 1990 with seven standard conditions and one special condition (see Exhibit 6 for the text of all original permit conditions).

The subject CDP amendment affects the permit conditions as follows:

- Standard Conditions 1 through 7 are reimposed without changes and remain in full force and effect.
- Special Condition 1 is modified as shown below.
- Special Conditions 2 through 9 are added as new conditions shown below.

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

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1. Any changes to the project as submitted, such as a revised building or driveway locations, shall require an amendment to **~~this~~** permit **1-90-187 or a new coastal development permit (CDP).**

2. **Lighting Limitations. All exterior lighting, including any lights installed as part of the development approved under CDP 1-90-187-A1, or in the future, shall be low-wattage, shielded, and downcast such that no light will shine beyond the bounds of the property or into adjacent sensitive habitats.**

3. **Construction Responsibilities. The applicant shall adhere to appropriate construction-related best management practices (BMPs) during construction to protect water quality, including, but not limited to, the following:**

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

    B. **Any and all debris resulting from construction activities shall be removed from the project site and disposed of properly;**

    C. **During the course of the project work, all trash shall be properly contained, removed from the work site on a regular basis and properly disposed of to avoid contamination of habitat during demolition and construction activities;**

    D. **All on-site stockpiles of construction debris and soil or other earthen materials shall be covered and contained whenever there is a potential for rain, to prevent polluted water runoff from the site; and**

    E. **BMPs shall be used to prevent the entry of polluted stormwater runoff into coastal waters during construction and post-construction, including the use of appropriate BMPs for erosion and runoff control and post-construction BMPs for roof runoff controls, vegetated buffer strips, and bioretention as detailed in the current California Storm Water Quality Best Management Handbooks (http://www.cabmphandbooks.com).**

4. **Protection of Archaeological Resources.**

    A. **If an area of cultural deposits or human remains is discovered during the course of the project, all construction shall immediately cease and shall not recommence except as provided in subsection (B) hereof, and the permittee shall retain a qualified cultural resources specialist to analyze the significance of the find in consultation with the Tribal Historic Preservation Officers of the Wiyot Tribe, the Bear River Band of the Rohnerville Rancheria, and the Blue Lake Rancheria. A minimum 50-foot exclusion zone where unauthorized equipment and personnel are not permitted shall be established (e.g., taped off) around the discovery area.**

    B. **A permittee seeking to recommence construction within the exclusion zone following the inadvertent discovery shall submit a**

Supplementary Archaeological Plan (SAP) prepared by the cultural resources specialist identifying any necessary changes to the project for the review and approval of the Executive Director. If the Executive Director determines that the SAP's recommended changes to the proposed development or mitigation measures are de minimis in nature and scope and approves the SAP, construction may recommence after this determination is made by the Executive Director in writing. If the Executive Director determines that the changes therein are not de minimis, construction may not recommence until after a further amendment to this permit is approved by the Commission.

5. **Assumption of Risk, Waiver of Liability, and Indemnity Agreement. By acceptance of this permit amendment, the applicant acknowledges and agrees (a) that the site may be subject to hazards from earth movement, earthquake shaking, liquefaction, differential settlement, erosion, flooding, and other geologic and flood hazards, some of which will worsen with future sea level rise; (b) 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; (c) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (d) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.**

6. **Future Development Restriction. This permit is only for the development described in coastal development permit amendment (CDPA) 1-90-187-A1. Pursuant to Title 14 California Code of Regulations (CCR) section 13250(b)(6), the exemptions otherwise provided in Public Resources Code (PRC) section 30610(a) shall not apply to the development governed by the CDPA 1-90-187-A1. Accordingly, any future improvements to the development authorized by this permit shall require an amendment to CDPA 1-90-187-A1 from the Commission or shall require an additional CDP from the Commission. In addition thereto, an amendment to CDPA 1-90-187-A1 from the Commission or an additional CDP from the Commission shall be required for any repair or maintenance identified as requiring a permit in PRC section 30610(d) and 14 CCR section 13252(a)-(b).**

7. **No Future Bluff or Shoreline Protective Device**

   A. **By acceptance of CDPA No. 1-90-187-A1, the applicant acknowledges and agrees, on behalf of himself and all successors and assigns, that no bluff or shoreline protective device(s) shall be constructed to**

protect the development approved pursuant to CDPA 1-90-187, as amended, including, but not limited to, the new residence, attached garage, and attached deck, including in the event that the development is threatened with damage or destruction from waves, erosion, storm surge, tidal inundation, liquefaction, or other coastal hazards in the future, and as may be exacerbated by sea level rise. By acceptance of this Permit Amendment, the applicant hereby waives, on behalf of himself and all successors and assigns, any rights to construct such devices that may exist under any applicable law.

B. **By acceptance of this Permit Amendment, the applicant further agrees, on behalf of herself and all successors and assigns, that the landowner shall remove all or a portion of the development authorized by this Permit Amendment and restore the site, if:**

(1) 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 structures are currently and permanently unsafe for occupancy or use due to damage or destruction from waves, flooding, erosion, bluff retreat, landslides, or other hazards related to coastal processes, and that there are no feasible measures that could make the structures suitable for habitation or use without the use of bluff or shoreline protective devices;

(2) essential services to the site (e.g., utilities, roads) can no longer feasibly be maintained due to the coastal hazards listed above;

(3) removal is required pursuant to LCP policies for sea level rise adaptation planning; or

(4) the development requires new and/or augmented shoreline protective devices that conflict with relevant LCP or Coastal Act policies.

C. **In addition, CDPA No. 1-90-187, as amended, does not permit encroachment onto public trust lands, and any future encroachment must be removed unless the Coastal Commission determines that the encroachment is legally permissible pursuant to the Coastal Act and authorizes it to remain. Any future encroachment would also be subject to the State Lands Commission's (or other designated trustee agency's) leasing approval.**

8. **State Lands Commission Review. PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT AMENDMENT 1-90-187-A1, the applicant shall provide to the Executive Director a written determination from the State Lands Commission or other designated trustee agency that no State or public trust lands are involved in the development permitted by this CDP amendment. If such written determination cannot be provided because State or public trust lands are or may be involved in the development permitted by CDP Amendment No. 1-90-187-A1, prior to issuance of the CDP amendment, the Permittee shall submit an application to the Commission to amend this CDP to authorize development on State or public trust lands, at which time the Commission can consider whether encroachments onto State or public trust lands are permissible under the Coastal Act and, if so, whether additional conditions of approval are required. In addition, if State or public trust lands are or may be involved in the development authorized by 1-90-187-A1, prior to issuance of this permit amendment, the applicant shall provide to the Executive Director for review and approval evidence that (A) they have obtained all permits required by the State Lands Commission or other designated trustee agency; or (B) pending a final determination, an agreement has been made with the State Lands Commission or other designated trustee agency for the approved project as conditioned by the Commission to proceed without prejudice to that determination.**

9. **Deed Restriction Recordation of Permit Conditions. PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT AMENDMENT 1-90-187-A1, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (a) indicating that, pursuant to this permit amendment, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (b) imposing the Special Conditions of CDP 1-90-187, as amended, as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.**

III. Findings and Declarations

A. Project Description and Environmental Setting

The 0.44-acre subject lot is located at 1920 Peerless Avenue in the unincorporated community of Manila, on the west side of Humboldt Bay, Humboldt County (APN 400-031-08) (Exhibit 1). On August 9, 1990, the Commission approved construction of a 965-square-foot single-story, single-family residence with attached 23-square-foot covered porch and gravel driveway, and a 560-square-foot single-story secondary residence with an attached covered entry and a concrete walkway connecting to the parking area. The original permit located the two residences on the portion of the property closest to the road in order to avoid a potential area of sensitive archaeological resources and vegetation located in the southern portion of the property. The Commission granted its approval subject to seven standard conditions and one special condition. The special condition specified that any changes to the project as submitted, such as a revised building or driveway locations, shall require an amendment to this permit.

The current applicants and owners of the property, Paula and Kirk Brust, propose to remodel the existing primary residence and to construct a 1,494-square-foot, two-story (max 25 ft. high) addition consisting of a first-floor, two-car garage and a second-floor bedroom and bathroom. The addition will be built on top of the existing gravel driveway, in between the existing residence and the road (Peerless Ave). Interior changes to the existing residence are minor and consist of remodeling the existing kitchen and bathroom and relocating closets in order to construct a new staircase and attach to the garage addition.

The subject property is located in the Manila area on the Samoa Peninsula. The Samoa Peninsula is an approximately 10-mile-long, one-mile-wide coastal bar (referred to as the North Spit) that separates Humboldt Bay from the Pacific Ocean (Exhibit 1). The City of Arcata is located approximately three miles east of the peninsula's northern end, and the City of Eureka is located approximately two miles away across Humboldt Bay to the southeast of the central portion of the peninsula. The Peninsula contains several public access points for access to the dunes and ocean on the west side, and to Humboldt Bay on the east side. The nearest public access point to the bay is located at the Manila Park, approximately 1,000 feet from the subject property (via public roads).

The Manila area consists of a mixture of small and larger residential parcels developed with single-family residences and containing natural resource lands. Although much of the Samoa Peninsula has been developed for industrial and residential use, the area still contains upland sand dune communities, estuarine wetlands, and dune hollows and other freshwater wetlands. The Manila Park contains freshwater wetland areas approximately 300 feet from the subject property, and riparian vegetation extends from the wetland area to approximately 100 feet from the residence. Humboldt Bay is located approximately 150 feet from the existing residence at its closest point.

B. Minor Remodel vs. Replacement Structure

Assessing the extent of a remodel is important because, at a certain point, alterations to a structure can be so substantial that they can no longer be considered minor improvements and instead must be considered a new or replacement structure. As a new or replacement structure, the entire development must be consistent with the Chapter 3 policies of the Coastal Act.

Section 30610 of the Coastal Act states, in relevant part

> Notwithstanding any other provision of this division, no coastal development permit shall be required pursuant to this chapter for the following types of development and in the following areas:
>
> (b) Improvements to any structure other than a single-family residence or a public works facility; provided, however, that the commission shall specify, by regulation, those types of improvements which (1) involve a risk of adverse environmental effect, (2) adversely affect public access, or (3) involve a change in use contrary to any policy of this division. Any improvement so specified by the commission shall require a coastal development permit.
>
> (d) Repair or maintenance activities that do not result in an addition to, or enlargement or expansion of, the object of those repair or maintenance activities; provided, however, that if the commission determines that certain extraordinary methods of repair and maintenance involve a risk of substantial adverse environmental impact, it shall, by regulation, require that a permit be obtained pursuant to this chapter.

Section 13252(b) of the Commission's regulations states, in relevant part (<u>emphasis added)</u>

> (b) Unless destroyed by a natural disaster, <u>the replacement of 50 percent or more of a single family residence,</u> seawall, revetment, bluff retaining wall, breakwater, groin or any other structure <u>is not repair and maintenance under Section 30610(d) but instead constitutes a replacement structure requiring a coastal development permit.</u>

Based on section 13252(b), in past actions the Commission has looked at the extent of proposed alteration to an existing residence to determine whether it alters the existing residence to such a significant degree that the entire structure constitutes a "new development" that must, as a whole, comply with Coastal Act policies. For example, the Commission has found that improvements and alterations to a structure have resulted in a replacement structure that requires a CDP when: 1) 50% or more of the major structural components were replaced; 2) there was a 50% increase in gross floor area; 3) replacement of less than 50% of a major structural component, when considered in conjunction with prior remodeling work, resulted in cumulative alterations exceeding 50% or more of that major structural component; and/or 4) less than a 50% increase in floor area where the alteration resulted in a cumulative addition of 50% or more of the

floor area, taking into account previous additions to the structure.[1] The proposed development will expand the ground floor of the structure and add a partial second story, altering the existing main residence footprint, foundation, structural roof elements, and exterior walls. The western wall of the existing residence (approximately 28' long) will be rebuilt in order to connect to the new addition. An existing bathroom will be enlarged, and interior walls will be removed and rebuilt in new areas to accommodate an updated first-floor plan for the existing residence. The proposed improvement project will result in a greater than 50% increase in gross floor area. The proposed project will add 1,494 square feet to the existing 965-square-foot residence, resulting in a 150% increase in gross floor area. Therefore, the Commission finds that the proposed project rises to the level of a major remodel and constitutes a replacement structure or new development within the meaning of Coastal Act sec. 30610(d) and CCR sec. 13252(b).

C. Standard of Review

The project site is located on former tidelands on the margin of Humboldt Bay, entirely within the Commission's retained permit jurisdiction. The County of Humboldt has a certified Local Coastal Program (LCP), but the site is within the Commission's retained jurisdiction. Therefore, as required by Public Resources Code section 30519(b) and 14 CCR section 13166(c), the standard of review that the Commission must apply to the project is the Chapter 3 policies of the Coastal Act.

D. Other Agency Approvals

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

California State Lands Commission (State Lands)

State Lands has jurisdiction and management authority over public trust lands, including all ungranted tidelands, submerged lands, and the beds of navigable lakes and waterways. State Lands also has review authority over public trust lands legislatively granted in trust to local governments. The project site is located on filled tidelands that may be subject to the public trust, however, the Applicant did not submit information indicating the public trust status of the project site. Coastal Act regulations define public trust lands as "all lands subject to the Common Law Public Trust for commerce, navigation, fisheries, recreation, and other public purposes." Public trust lands include "tidelands, submerged lands, the beds of navigable lakes and rivers, and historic tidelands and submerged lands that are presently filled or reclaimed, and which were subject to the Public Trust at any time."

State Lands is responsible for determining the landward location and extent of the State's sovereign fee ownership of public trust lands. However, the public trust boundary is generally defined by reference to the ordinary high water mark,[2] as

[1] See A-5-VEN-17-0009 (Thomas), A-5-LGB-18-0012 (Bracamonte); 6-18-0182 (Harris); 5-18-0223 (Walsh), among others.

[2] Civil Code, § 670

measured by the mean high tide line[3]; these boundaries remain ambulatory, except where there has been fill or artificial accretion, a boundary line agreement, or court judgment that fixes the boundary. This project is located on a lot in an established residential neighborhood and is the first line of development that is adjacent to Humboldt Bay. Accordingly, if the boundary of the State's sovereign fee ownership of public trust lands is ambulatory with the ordinary high water mark in this area, the boundary could be located on the project site. The Manila area consists of a natural sand spit separating Humboldt Bay from the ocean. Eastern portions of the spit appear to consist of former tidelands of Humboldt Bay that were partially filled at some point and sold. It is unclear whether the State maintains an ownership interest in the lands on which the proposed development is sited, and State Lands has indicated it requires additional time to review the history of land ownership in Manila to make a determination of the State's interest. To ensure that the Applicant has a sufficient legal property interest in the site to carry out the project consistent with the terms and conditions of this permit, the Commission attaches **Special Condition 8**. This condition requires that the Applicant submit a written determination from the State Lands Commission or other designated trustee agency that no State or public trust lands are involved in the development permitted by this CDP. If such written determination cannot be provided because State or public trust lands are or may be involved in the development, prior to issuance of this CDP, the Applicant shall submit an application to the Commission to amend this CDP to authorize development on State or public trust lands, at which time the Commission can consider whether encroachments onto State or public trust lands are permissible under the Coastal Act and, if so, whether additional conditions of approval are required.

E. Locating and Planning New Development

Section 30250(a) of the Coastal Act states that new development shall be located within or near existing developed areas able to accommodate it or in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. The intent of this policy is to channel development toward more urbanized areas where services are provided and potential impacts to resources are minimized.

The subject property is located in the Manila residential area, which is a moderately developed community that is planned and zoned for single family residential use with some commercial and public lands. The community contains developed residences, a 10-acre park, and commercial businesses. The subject property is located on Peerless Ave., which is a short, local road that dead ends near Humboldt Bay. The subject lot is planned and zoned for single-family residential uses. The surrounding area consists of a mix of lots that have been developed with single-family homes of varying sizes and heights and vacant lots.

[3] Borax Consol. v. City of Los Angeles, 296 U.S. 10 (1935); Marks v. Whitney, 6 Cal.3d 251, 257-258 (1971).

The subject property is served by community water and sewer systems provided by the Manila Community Services District. Thus, there are adequate services to accommodate the proposed redevelopment resulting in a three-bedroom residence. The subject site is located outside of mapped flood hazard areas and is not expected to be impacted by sea level rise during the project life. The proposed development may be vulnerable to tsunami hazards, however, and as discussed in Finding F below, the development has been conditioned to minimize tsunami hazards consistent with the requirements of Coastal Act section 30253. Furthermore, as discussed in the below findings, the project has been conditioned to protect visual resources, nearby environmentally sensitive habitat areas, and water quality.

Therefore, the Commission finds that as conditioned, the proposed development is consistent with Coastal Act section 30250(a), in that it is located in a developed area, has adequate water and sewer capability to accommodate it, and will not cause significant adverse effects, either individually or cumulatively, to coastal resources.

F. Coastal Hazards

Section 30253 of the Coastal Act states, in applicable part, as follows (emphasis added):

> New development shall do all of the following:
>
> a. Minimize risks to life and 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…

Coastal Act section 30270 states:

> The commission shall take into account the effects of sea level rise in coastal resources planning and management policies and activities in order to identify, assess, and, to the extent feasible, avoid and mitigate the adverse effects of sea level rise.

The proposed project is located on filled tidelands on the margin of Humboldt Bay, in an area subject to high geologic and flood hazards that includes the potential for strong ground shaking, liquefaction, and tsunami hazards. The frequency and severity of flood events at the site is expected to worsen with projected sea-level rise rates for the region.

Earthquakes and Seismic Hazards

Northwestern California is one of the most seismically active regions in the continental United States. The Humboldt County region occupies a complex geologic environment

characterized by very high rates of active tectonic deformation and seismicity. According to the applicant's soil study, the subject site is approximately 1.5 kilometers south of a trace of the Freshwater Fault and approximately 3 kilometers north of the Little Salmon Fault, both of which are considered active thrust faults. Thrust faults are low angle faults that build up considerable horizontal stress before they fail and can generate large seismic events. Although relatively infrequent, high-intensity ground shaking, liquefaction, and tsunamis are some of the seismic hazards with the potential to occur at the site.

Although the project site is located in a mapped area of potential liquefaction, the soil mapping for the property identifies it as "0-Relatively Stable" and the risk of liquefaction if very low for the proposed development. The Humboldt County Building Department indicated that no soil study or geologic report is necessary for the project site. To address potential seismic hazards associated with earthquakes, the applicant plans to adhere to California Building Code guidelines for seismically active areas.

Flood Hazards and Sea-Level Rise

All proposed new development will be located above the FEMA-mapped 100-year floodplain.[4] The proposed development is also located above the estimated maximum flood elevation during the life of the structure taking into account sea level rise (as discussed further below). However, given the proximity of the site to the tidally influenced Humboldt Bay, the site is vulnerable both to sea-level rise (SLR) and increased storm intensity associated with climate change and, as a result, is likely to experience more frequent and intense flooding episodes and an expansion of the 100-year floodplain over time.

Section 30270 of the Coastal Act requires the Commission to take into account the effects of sea level rise (SLR) in coastal resource planning and management policies and activities in order to identify, assess, and, to the extent feasible, avoid and mitigate the adverse effects of SLR. Sections 30253 and 30250 provide standards for safety of new development and require new development to occur in areas able to accommodate it, respectively, while sections 30235 and 30236 place limits around approvable protective devices. Therefore, to be consistent with the Chapter 3 policies of the Coastal Act, proposed development must be sited, designed, and conditioned in such a way that minimizes SLR hazards and considers the impact of the development upon coastal resources over its full anticipated life, avoiding and mitigating those impacts as appropriate.

Sea level rise will have dramatic impacts on California's coast in the coming decades and is already impacting the coast today. In the past century, the average global temperature has increased by about 0.8°C (1.4°F), and as a result global sea levels have increased by 7 to 8 inches (17 to 21 cm). In addition, SLR has been accelerating in recent decades, largely due to greenhouse gas emissions, with the global rate of SLR

[4] Flood Insurance Rate Map Number 06023C0835G, effective on 6/21/2017.

tripling since 1971.[5] There is strong scientific consensus that SLR will continue over the coming millennia regardless of future human actions, but the exact rate and amount will depend on the amount of future greenhouse gas emissions as well as the exact contribution from sources such as the Antarctic and Greenland ice sheets, which are areas of continuing research. While planning coastal development under this uncertainty presents challenges, it is widely documented that underestimating SLR could result in costly damages and adverse outcomes to coastal resources. Planning and development decisions on the California coast must, therefore, be appropriately precautionary and made with the full understanding that SLR will change coastal landscapes and hazard conditions. Not only will siting and design decisions regarding proposed coastal development influence the future safety of the development and overall resiliency of the California coast, but such decisions will also affect the way that coastal resources protected under the Coastal Act respond to changing sea levels over time.

Currently, the best available science on SLR projections in California is provided in the State of California Sea-Level Rise Guidance (OPC 2018)[6] and is reflected in the Coastal Commission Sea Level Rise Policy Guidance (CCC 2018).[7] These documents present probabilistic SLR projections as well as an extreme "H++" scenario for twelve locations (tide gauges) along the California coast, and provide recommendations for which projections to use in various planning contexts based on level of risk aversion and project type. The medium-high risk aversion scenario, which has an estimated 0.5% chance of being exceeded, should be analyzed for projects with greater consequences and/or a lower capacity to adapt, like residential and commercial development. With sea level rise, shoreline development will experience increasingly hazardous conditions, including worsening storm flooding, inundation, and shoreline and bluff erosion. On a relatively flat shoreline, even small amounts of SLR can cause large losses of beach width. For example, for a shoreline with a slope of 40:1, a simple geometric model indicates that every foot of SLR will result in a 40-foot landward movement of the ocean/beach interface, resulting in significant loss of beach habitat and recreational space as well as representing a change in the location of public tidelands subject to the public trust doctrine. This change could also expose previously protected backshore development to increased tidal/wave action and flooding, and those areas that are already exposed to such conditions will be exposed more frequently and with greater severity. SLR will also cause coastal groundwater tables to

[5] IPCC, 2021: Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change [Masson-Delmotte, V., P. Zhai, A. Pirani, S.L. Connors, C. Péan, S. Berger, N. Caud, Y. Chen, L. Goldfarb, M.I. Gomis, M. Huang, K. Leitzell, E. Lonnoy, J.B.R. Matthews, T.K. Maycock, T. Waterfield, O. Yelekçi, R. Yu, and B. Zhou (eds.)]. Cambridge University Press. In Press.

[6] Ocean Protection Council (OPC). 2018. State of California Sea-Level Rise Guidance: 2018 Update. https://www.opc.ca.gov/webmaster/ftp/pdf/agenda_items/20180314/Item3_Exhibit-A_OPC_SLR_Guidance-rd3.pdf.

[7] Coastal Commission (CCC). 2018. California Coastal Commission Sea Level Rise Policy Guidance: Interpretive Guidelines for Addressing Sea Level Rise in Local Coastal Programs and Coastal Development Permits.

rise in some locations, potentially emerging from the ground to cause flooding, as well as impacts such as damage to development and infrastructure, saltwater intrusion into aquifers, and changing liquefaction risks. Importantly, rising groundwater could constrain the types of adaptation strategies that can be protective; for example, while shoreline armoring may be effective to address overland flooding and inundation from SLR, it may not protect against groundwater rise impacts, depending on the characteristics of the site.

These changing hazard conditions may also alter the impacts of development upon coastal resources. In particular, coastal resources such as beaches and wetlands could disappear if they are squeezed between rising sea levels and a fixed line of development on the shoreline. Such losses will impact public access, recreation, public views, and other coastal resources – all of which are protected under Chapter 3 of the Coastal Act. Further, loss of these public resources could have significant implications from an environmental justice standpoint, since coastal open spaces and habitats are an opportunity for all to visit and enjoy the California coast and would disproportionately burden those who cannot afford to live near the coast.

The State SLR Guidance provides SLR projections for 12 tide gauges in the state and recommends using the projections for the gauge closest to the project site. In this case, the North Spit tide gauge at Humboldt Bay is the applicable gauge. The amount of SLR projected at the North Spit tide gauge for the year 2100 (i.e., through the projected "expected lifespan" of the new residence) ranges from 4.1 feet (under the "low-risk aversion" scenario) to 7.6 feet (under the "medium-high risk aversion" scenario) to 10.9 feet (under the "extreme risk aversion" scenario).[8]

The current mean higher high water (MHHW) elevation[9] at the North Spit tide gauge, which is roughly equivalent to the daily high tide, is approximately 6.5 feet NAVD 88, and the mean annual maximum water (MAMW) elevation at the North Spit tide gauge is approximately 8.8 feet NAVD 88.[10] Future water levels in the year 2100 under the medium-high risk scenario cited above (adding 7.6 feet of SLR) are projected to range from 14.1 feet on a daily basis (MHHW) to 16.4 feet during the highest tides of the year. Consideration of the medium-high risk scenario (+7.6 ft.) is appropriate in this case,

[8] 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.

[9] The MHHW elevation is the average of the higher high water height of each tidal day observed over the 19-year National Tidal Datum Epoch.

[10] Northern Hydrology and Engineering 2014. MHHW and MAMW are two tidal base elevations that have been used in various regional SLR planning documents including the SLR Vulnerability Assessment for the communities of King Salmon, Fields Landing, and Fairhaven (Trinity Associates 2018) to assess community vulnerability and to depict projected daily and annual high tides resulting from tidal inundation via the King Salmon canals.

because the residence as designed has a relatively low capacity to adapt to risks associated with tidal flooding (e.g., erosion and flood hazards), and the consequences of the development being subjected to tidal flooding impacts in the future would be significant (e.g., structural damage to residence). Consideration of the medium-high risk scenario also is consistent with the State SLR Guidance, which recommends a precautionary approach to SLR adaptation planning. Thus, under this scenario, around the year 2100, portions of the property at and below 14.1 feet may be vulnerable to future tidal flooding on a daily basis and portions of the property under 16.4 feet may be vulnerable to tidal flooding multiple times annually.

The elevation of the subject property ranges from 5 feet directly adjacent to the Bay to 31 feet at the highest point. The existing residence proposed for redevelopment is located at approximately 26 feet NAVD88. Assuming that by the year 2100 sea levels will rise within the range of projected rates discussed above, thereby subjecting low lying areas of the property to regular tidal flooding, the residential redevelopment as proposed is sited and designed to avoid the risk of tidal flooding factoring in projected SLR at even the most extreme scenario (+10.9 ft.) for the presumed remaining 75-year lifespan of the existing and proposed residential improvements.

Although the project as proposed is sited and designed to minimize flood risks, low-lying portions of the property will be subjected to flooding within the design life of the redeveloped structure, and the applicant is electing to develop the site in an inherently hazardous area. Thus, the Commission attaches **Special Condition 5**, which requires the applicant to assume the risks of coastal hazards of the property and waive any claim of liability on the part of the Commission. Through this condition the applicant is notified 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 in the event that third parties bring an action against the Commission as a result of the failure of the development to withstand hazards.

The Commission also notes that section 30610(a) of the Coastal Act exempts certain improvements to existing single-family residential structures from coastal development permit requirements. Pursuant to this exemption, once a house has been constructed, certain improvements that the applicant might propose in the future are normally exempt from the need for a permit or permit amendment. Depending on the specific improvements proposed, building additions and remodeling of the residence could increase flood hazard risks. Section 30610(a) requires the Commission to specify by regulation those classes of development which involve a risk of adverse environmental effects and require that a permit be obtained for such improvements. Pursuant to section 30610(a) of the Coastal Act, the Commission adopted section 13250 of Title 14 of the California Code of Regulations (CCR). Section 13250(b)(6) specifically authorizes the Commission to require a permit for improvements to existing single-family residences that could involve a risk of adverse environmental effect by indicating in the development permit issued for the original structure that any future improvements would require a development permit. Improvements to the footprint of the approved redevelopment or accessory structures that encroach onto the lower portions of the property could increase the danger of harm to residents and property damage from

flooding in a manner inconsistent with the requirements of section 30253 of the Coastal Act that risks of flood hazard of development be minimized. Therefore, pursuant to section 13250(b)(6) of Title 14 of the CCR, the Commission attaches **Special Condition 6** which requires that all future improvements to the development authorized by this permit amendment that might otherwise be exempt from CDP requirements requires an amendment or new CDP. This condition will allow future development to be reviewed by the Commission to ensure that future improvements to the development will not increase flood hazard risks. **Special Condition 9** also requires that the applicants record and execute a deed restriction approved by the Executive Director against the property that imposes the special conditions of this permit amendment as covenants, conditions, and restrictions on the use and enjoyment of the property. Special Condition 5, discussed above, will also help assure that future owners are aware of these CDP requirements applicable to all future development.

The project does not include a proposed shoreline protective device, and, as new development, the project is not entitled to shoreline protection now or in the future.[11] If the project required a shoreline protective device to be safe from hazards, due to the many adverse impacts shoreline protective devices have on coastal resources, the project would not be consistent with several Coastal Act policies, including Section 30253(b). Such armoring, by its very nature, is almost always also inconsistent with Coastal Act policies relating to coastal hazards, bluff alteration, visual resources, and public access. Coastal Act limitations on armoring are necessary because shoreline armoring can and often does have a variety of significant negative impacts on coastal resources, including adverse effects on sand supply, public access, coastal views, natural landforms, and overall shoreline and beach dynamics on and off-site, ultimately resulting in the loss of beaches and adverse impacts to coastal vistas and areas for recreation, which are all fundamental coastal resources. Therefore, the Commission rarely approves construction of shoreline protective devices for new development projects, due to the articulated impacts. The applicant has not proposed to construct a shoreline protection device and no shoreline protection would be authorized by this permit amendment; however, the applicant or a successor-in-interest could request a shoreline protection device at some point in the future. Although it appears the project will be safe from coastal hazards in the short-term, due to the flooding risks associated with siting development in this area of Humboldt Bay over the long-term and projections that the area between the project site and bay waters will narrow with sea level rise, it must be clear that, as new development, the entire development approved by CDP 1-90-187, as amended, is not entitled to a shoreline protection device now or in the future. The applicant bears the risk of developing in this hazardous area with the knowledge that a shoreline protective device is not consistent with the Coastal Act and would not likely be approved if requested at some point in the future. Accordingly, in addition to **Special Condition 5** requiring the applicant to assume the risks of developing in an area subject to coastal hazards, the Commission imposes **Special Condition 7**, which prohibits future shoreline protective devices for the approved development and requires

[11] Section 30235 of the Coastal Act requires approval of shoreline protective devices only when necessary to protect an “existing” structure or coastal-dependent use in danger of erosion, neither of which applies to this residential project.

the applicant to waive any rights to shoreline protective devices that may exist under applicable law.

It is also important to ensure that any risks that lead to the site or development becoming unsafe, and/or that lead to access to it (including roads or utilities) not being available, are also internalized by the Applicant and that such circumstances be codified as requiring removal and/or relocation. The Samoa Peninsula contains low-lying areas that are more vulnerable to sea level rise, including the only access routes into the peninsula from the town of Arcata, State Route 255. The Samoa Peninsula can be accessed from the north by State Route 255 via the City of Arcata, and from the south by State Route 255 via the City of Eureka. The Humboldt County Humboldt Bay Area Plan Sea Level Rise Vulnerability Assessment indicates that with as little as 1.6 feet of sea level rise, up to 1.5 miles of State Route 255 east of Mad River Slough would be chronically flooded or tidally inundated, impacting the only access to the Samoa Peninsula via Arcata. With 3.2 feet of sea level rise, State Route 255 will be tidally inundated at the Mad River Bottom area, likely preventing access to the Samoa Peninsula from Arcata. In addition, rising groundwater and drainage impairment in response to rising sea levels could possibly compromise portions of Highway 255 near Arcata sooner. If this portion of State Route 255 is closed, State Highway 255 from Eureka to the Samoa Peninsula would become the sole source of access for the communities of Fairhaven, Samoa, and Manila. The City of Eureka Sea Level Rise Assets Vulnerability and Risk Assessment indicates that with 5.4 feet of sea level rise, and possibly even sooner, portions of State Route 255 between the bridges spanning Humboldt Bay from Eureka could be tidally inundated with the mean monthly maximum tide (MMMW). Without the northern portion on State Route 255 accessible, the inundation of the southern portion of State Route 255 would result in the complete loss of ingress and egress to the several communities on Samoa Peninsula, including the property here. Because the development may become inaccessible during its expected lifetime, **Special Condition 7** requires the landowner to remove the development if any government agency has ordered that the structures are not to be occupied due to any of the hazards identified above, essential services to the site can no longer feasibly be maintained due to coastal hazards, or if the development requires new or augmented shoreline protection inconsistent with the Coastal Act.

Coastal hazards and shoreline protective devices also raise public trust concerns. The common law public trust doctrine protects the public's right to access tidelands, submerged lands, and navigable waters, which the State holds in trust for the public's use and enjoyment. This doctrine is enshrined in California's Constitution, which provides in Article X, section 4, that no individual may "exclude the right of way" to any "frontage or tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this State." Cal. Const. Art. X, Sec. 4. The Constitution further directs the Legislature to enact laws that give the most "liberal construction" to Article X, section 4, so that access to navigable waters of the State "shall be always attainable for the people." The Commission has a responsibility to implement the Coastal Act in a manner that protects public trust resources and public trust uses both now and in the future.

As discussed above, future sea level rise will cause the landward migration of the intersection of tidal areas with the shore and, thus, the tidelands and submerged lands that are public trust resources. If development is protected by shoreline protection or other fixed development that prevents the landward migration of the shoreline that would have otherwise occurred, sea level rise will in many cases cause the narrowing and eventual loss of beaches, dunes and other shoreline habitats, as well as the loss of offshore recreational areas. This narrowing, often referred to as "coastal squeeze," can lead to the loss of trust resources in this manner. To the extent that shoreline armoring contributes to erosion and blockage of the natural inland migration of the tidelands and shoreline, and thus results in the loss of public access to tidelands and submerged lands, their construction is inconsistent with the State's obligation to protect the public's right to access these areas. In addition, the Commission must consider impacts to the public trust that are caused by upland or upstream development outside the trust boundary, including as a result of sea level rise.[12]

Moreover, private residential uses are not public trust uses. The public trust boundary is an ambulatory line in most locations, and as erosion occurs or sea levels rise, the public trust boundary will move inland as the mean high tide line moves inland. As the shoreline migrates inland, structures may become located on public trust lands, occupying land that would otherwise be available for public access, ecosystem services and other coastal resource benefits held in trust for the public. This permit amendment does not authorize development on public trust lands; if the public trust boundary migrates landward to encompass the development approved under this CDP, the development may need to be removed pursuant to **Special Condition 7,** unless the Commission determines that the encroachment is legally permissible.

Finally, as discussed in Finding C, the project is located on former tidelands that were filled and may already be subject to the public trust. Accordingly, **Special Condition 8** requires the applicant to obtain a determination from the State Lands Commission or other designated trustee agency of the public trust status of the project site prior to issuance of the CDP. If such written determination cannot be provided because State or public trust lands are or may be involved in the development, prior to issuance of this CDP, the Applicant shall submit an application to the Commission to amend this CDP to authorize development on State or public trust lands, at which time the Commission can consider whether encroachments onto State or public trust lands are permissible under the Coastal Act and, if so, whether additional conditions of approval are required.

Tsunami Hazards

The subject property, along with many others on the Samoa Peninsula, is shown on emergency planning maps published in 2009 and updated in 2021 by the California Emergency Management Agency, California Geologic Survey (CGS), and University of

[12] The California Court of Appeals describes this distinction as follows: "As a consequence, the dispositive issue is not the source of the activity, or whether the water that is diverted or extracted is itself subject to the public trust, but whether the challenged activity allegedly harms a navigable waterway." *Envtl. Law Found. et al. v. State Water Res. Control Bd.*, 26 Cal.App.5th 844 (2018).

Southern California as being within the mapped Tsunami Hazard Area[13] (Exhibit 2). The Gorda plate is being actively subducted beneath the North American plate north of Cape Mendocino, along the southern part of what is commonly referred to as the Cascadia Subduction Zone (CSZ). Large magnitude quakes equivalent to the 2011 Japan earthquake are estimated to occur irregularly at intervals every 200-800 years, with the last documented occurrence in 1700. If the region were to suffer a major earthquake along the CSZ, a local tsunami could hit the Humboldt Bay shoreline within minutes. The only warning residents, employees, and visitors in the area will receive will be a natural warning – strong ground shaking lasting several minutes – occurring 10 to 15 minutes before inundation by the first tsunami wave.

The CGS Tsunami Hazard Area Maps that were recently updated in 2021 rely on State of California 2009 Tsunami Inundation Maps for Emergency Planning and are based on 975-year return period probabilistic tsunami inundation model results, meaning there is a 5% chance that a tsunami of this scale will happen in the next 50 years. Other probabilistic maps exist for the 475-year chance event (with a 10% probability that this tsunami inundation level will happen in the next 50 years) and for the 2,475-year event (2% chance of occurring in the next 50 years). The 975-year return probability captures a Cascadia earthquake event and also takes into account earthquake-induced uplift and subsidence from a Cascadia event. The State Inundation Maps do not consider risks from tsunamis generated by local offshore sources like submarine landslides, which can generate some of the more extreme localized inundation but do not yet have probability occurrences associated with them. The CGS tsunami hazard area maps do, however, attempt to include potential local tsunami sources not considered in probabilistic models. The CGS maps also extend the hazard areas to coincide with geographic features or city streets. Therefore, the CGS hazard lines are often conservatively drawn further inland to an easily identifiable geographic feature, such as a road.

Although the subject property is entirely within the CGS-mapped Tsunami Hazard Area, the property is not shown in a tsunami inundation area according to publicly available inundation maps. The American Society of Civil Engineers (ASCE) developed a mapping tool (ASCE 7 Tsunami Design Geodatabase, V 2022) to show offshore tsunami amplitude and period and runup elevation in order to inform building code requirements for new structures that must be designed to consider tsunami loads. According to the ASCE tool, the proposed residence is located above the projected runup elevation (Exhibit 2).

While the proposed redevelopment is outside of the mapped inundation area, there is a lot of uncertainty with tsunami models, and portions of the property as low as 4 ft in elevation would be vulnerable to tsunamis and, as mentioned previously, the entire property is located in the CGS Tsunami Hazard Area. Nearly the entire Samoa Peninsula is mapped as a Tsunami Hazard Area, with several higher-elevation islands scattered throughout the communities.

[13] https://www.conservation.ca.gov/cgs/tsunami/maps/humboldt.

The community of Manila, with assistance from the Redwood Coast Tsunami Working Group, has organized around efforts to become a NOAA Tsunami Ready Community. Efforts have included identifying multiple tsunami evacuation sites and producing maps to show the closest route to each site, distributing informational handouts for surviving a tsunami in Manila, installing a tsunami siren, posting signs throughout the community, holding community meetings, and organizing evacuation drills where residents are asked to practice navigating to the nearest tsunami evacuation route from their residence. The nearest evacuation site from the subject property is approximately 0.5 miles away at the Manila Community Services District. These established tsunami warning and evacuation procedures minimize risks to life from the flood risk from tsunami wave run-up at the site. Therefore, the Commission finds, due to the relatively high elevation of the property and the existing community preparedness measures in place, coupled with Special Conditions 5 and 9, there are no further feasible mitigation measures available to minimize the flood risk from tsunami wave run-up at the site. **Special Condition 5** requires the landowner to assume the risks of flooding hazards to the property and to waive any claim of liability on the part of the Commission. To ensure that all future owners of the property are aware of the flood hazard present at the site, the Commission's immunity from liability, and the indemnity afforded the Commission, **Special Condition 9** requires recordation of a deed restriction that imposes the special conditions of the permit as covenants, conditions, and restrictions on the use of the property.

Conclusion

As discussed above, the project as conditioned will not eliminate all risk to life and property from geologic and flood hazards. However, all feasible mitigation measures necessary to minimize the flood and geologic risks have been incorporated into the project as conditioned, consistent with section 30253(a). In addition, the development is designed to assure stability and structural integrity and will not destroy the site or require the construction of a shoreline protective device, consistent with the requirements of section 30253(b). Furthermore, the Commission finds that the proposed amended development, as conditioned, takes into account the effects of sea level rise consistent with section 30270 of the Coastal Act.

G. Protection of Coastal Waters

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

> 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.

There are no creeks or watercourses on the property, although the property adjoins Humboldt Bay, and the proposed new development will be sited approximately 150 feet back from and 19 feet in elevation above the higher waters of the Bay. The proposed improvements will not change the total area of impervious surfaces on the property, because the improvements will be built on top of the existing gravel driveway. Given the development's distance from Bay waters and the significant permeable areas between the residential structures and the water, there is sufficient area to allow for onsite infiltration of stormwater runoff. Moreover, because the project involves no grading or vegetation removal over the gradually sloping property, there is very little chance that sediment-laden runoff originating from the development site will flow from the property into Humboldt Bay.

Nevertheless, to ensure that the applicant adheres to appropriate construction-related best management practices (BMPs) for dust control and other water quality protection measures employed to prevent sedimentation of slough waters, the Commission imposes new **Special Condition 3.** This condition requires, in part, the proper disposal of construction-related debris, the covering of stockpiles whenever there is a potential for rain to prevent polluted water runoff from the site, and the use of appropriate BMPs for erosion and runoff control as detailed in the current California Storm Water Quality Best Management Handbooks.

Therefore, the Commission finds that the proposed amended development, as conditioned, will protect the quality of coastal waters and estuaries and is consistent with section 30231.

H. Visual Resources

Section 30251 of the Coastal Act states that the scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. This section requires, in applicable part, that permitted development be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural landforms, and to be visually compatible with the character of surrounding areas.

The project setting is a residential neighborhood with existing shrubbery and trees lining the streets surrounding the developed lots. There are no views of Humboldt Bay through the property from the public roadway (Peerless Ave). There are views of Humboldt Bay from the adjacent Manila Community Park just south of the residence, but these views will not be impacted by the proposed development and there is a large swath of mature vegetation in between the park and the subject property. Kayakers, paddleboarders, and other small water-craft can launch from several points in Manila and could potentially see the residence from the water, although the property slopes upwards from the Bay and may not be visible at all. The property also may be visible from travelers along Highway 101 across the Bay near Arcata. Still, the proposed new

maximum 26-foot-tall addition, which may be visible from Peerless Ave and the bay, will be of similar design to the existing residence (wood and metal siding and metal roofing) and compatible with similar two-story residences in the surrounding neighborhood. In addition, the expanded and remodeled structure will be set back approximately 100 feet from the shoreline, a similar distance as the existing house and other houses in the immediate vicinity, and thus will not significantly impact views from the water.

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

Although the development is compatible with the surrounding development, it is located adjacent to natural, undeveloped areas including Humboldt Bay and adjacent vegetation. While no exterior lighting is proposed as part of this project, if exterior lighting is erected in the future on the redeveloped residence in a manner that would illuminate the nearby, naturally dark natural area, there is potential for the improvements to degrade the dark nighttime character of the area. Accordingly, to prevent the cumulative impacts of light pollution on the visual and biological resources of the area, the Commission imposes new **Special Condition 2**, which requires that all exterior lighting associated with the proposed development be low-wattage, shielded, and downcast such that no light is directed beyond the bounds of the property or into the adjoining Eureka Slough habitat. These lighting requirements will also reduce glare effects on users of small water-craft on the bay.

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

I. Public Access

Coastal Act section 30210 states:

> In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Coastal Act section 30211 states:

> Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Coastal Act section 30212(a) states, in part:

> Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent

with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or, (3) agriculture would be adversely affected.

Coastal Act section 30214 states in part:

(a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:

(1) Topographic and geologic site characteristics.

(2) The capacity of the site to sustain use and at what level of intensity.

(3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.

(4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.

(b) It is the intent of the Legislature that the public access policies of this article be carried out in a reasonable manner that considers the equities and that balances the rights of the individual property owner with the public s constitutional right of access pursuant to Section 4 of Article X of the California Constitution. Nothing in this section or any amendment thereto shall be construed as a limitation on the rights guaranteed to the public under Section 4 of Article X of the California Constitution…

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 proposed project will not adversely affect public access. The subject property does have shoreline frontage on Humboldt Bay, which is used by the public for recreational boating. The proposed project will not interfere with public parking, which is and will continue to be available at the Manila Park located off of Peninsula Drive approximately 1,000 feet from the subject property. There is no evidence of public use of the subject property for public access, no evidence of trails on the property, and no indication that the site has been used for public access purposes in the past. The proposed development will not increase the demand for public access to the shoreline, as it involves construction of one new single-family residence. And, as discussed previously in Findings C and E, **Special Condition 8** requires the Applicant to submit a written determination from the State Lands Commission or other designated trustee agency that no State or public trust lands are involved in the development permitted by this CDPA. If such a determination cannot be provided because State or public trust lands are or may be involved in the development, prior to issuance of this CDP, **Special**

Condition 8 would require the Applicant to submit an amendment application to the Commission to authorize development on State or public trust lands, at which time the Commission could consider whether encroachments onto State or public trust lands are permissible under the Coastal Act and, if so, whether additional conditions of approval are required. For all of these reasons, the Commission finds that the proposed amended development, which does not include provision of public access, is consistent with the public access policies of the Coastal Act.

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. Three federally recognized Tribes in the region – the Wiyot Tribe, the Blue Lake Rancheria, and the Bear River Band of the Rohnerville Rancheria – include citizens of Wiyot ancestry that are culturally affiliated with the greater Humboldt Bay region Wiyot ethnographic area as mapped by the Tribes.

After consulting with the Native American Heritage Commission (NAHC) to obtain the current tribal consultation list for the proposed development site, Commission staff referred the project to the NAHC-recommended tribal contacts and other tribal representatives with known interest in the project area region.[14] Commission staff referred the project to the Tribal Historic Preservation Officers (THPO) for the Wiyot area Tribes listed above and other local Tribes. Tribal representatives from the Blue Lake Rancheria responded and, due to the project location's proximity to known cultural resources, recommended that the Commission include its "standard inadvertent archaeological discovery language" in the event that previously unrecorded archaeological resources are unearthed during construction. Therefore, the Commission attaches this reasonable mitigation measure as added **Special Condition 4.**

Special Condition 4 requires that if an area of cultural deposits or human remains is discovered during the course of the project, all construction must cease, the discovery area must be taped off for avoidance, and a qualified cultural resource specialist, in consultation with, at a minimum, the THPOs of the Wiyot Tribe, the Bear River Band of Rohnerville Rancheria, and the Blue Lake Rancheria, must analyze the significance of the find. To recommence construction following discovery of cultural deposits or human remains, the Permittee is required to submit a supplementary archaeological plan for

[14] Commission staff referred to project (via mail and email) to tribal representatives from the Bear River Band of the Rohnerville Rancheria, Big Lagoon Rancheria, Trinidad Rancheria, Wiyot Tribe, and Hoopa Valley Tribe on October 5, 2022.

the review and approval of the Executive Director and obtain a permit amendment for changes the Executive Director determines are not de minimis in nature and scope.

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

K. California Environmental Quality Act (CEQA)

The County of Humboldt, as the lead agency, determined the project to be categorically exempt from environmental review pursuant to sections 15301 of CEQA guidelines (Existing Facilities) and 15061(b)(3) (Common Sense Exemption). In addition, the Coastal Commission's review and analysis of land use proposals pursuant to the Coastal Act has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA (14 CCR § 15251(c).)

Section 13096 of the Commission's 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 requirement 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 incorporates its findings on Coastal Act consistency as if set forth in full. No public comments regarding potential significant adverse environmental effects of the project were received by the Commission prior to preparation of the staff report. As discussed above, the project 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, either individually or cumulatively, which the activity may have on the environment. Therefore, the Commission finds that the proposed amended development, as conditioned to mitigate the identified impacts, can be found to be consistent with the requirements of the Coastal Act to conform to CEQA.

APPENDIX A

Staff Report for CDP 1-90-187

Application File for CDP Amendment Application No. 1-90-187-A1

County of Humboldt Local Coastal Program (Humboldt Bay Area Plan & Coastal Zoning Regulations)

Humboldt County Humboldt Bay Area Plan Sea Level Rise Vulnerability Assessment (Laird, 2018)

City of Eureka Sea Level Rise Assets Vulnerability and Risk Assessment (Laird, 2016)