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STAFF REPORT: MATERIAL AMENDMENT

Application No.: A-1-MEN-01-051-A2

Applicant: Loke and Cheng Cheng Tan

Agent: Andy Harney

Location: 17230 Ocean Drive, west of Highway One, approximately 3 miles south of Fort Bragg, Mendocino County (APN 017-330-10).

Approved Project: Construction of a 6,966-square-foot, two-story residence with an 886-square-foot attached garage, driveway, water supply system from existing well, septic system and landscaping.

Project Approved Under Amendment -A1: Modify the design of the approved house resulting in a 6,933-square-foot, two-story, 26-foot-high residence with an 857-square-foot attached garage to be located entirely within the previously approved building envelope, driveway, water supply system from existing well, septic system and utility shed.

Project Currently Proposed Under -A2: (1) Modify the size and design of the approved house resulting in a 3,273-square-foot, two-story, 26-foot-high residence with a 594-square-foot attached garage and 934 square feet of front and rear patio areas to be located entirely within the previously approved building envelope, (2) realign and shorten the approved access driveway, and (3) install native plant landscaping in an open-space deed-restricted area.

Staff Recommendation: Approval with conditions

SUMMARY OF STAFF RECOMMENDATION

The subject property is located on a coastal bluff dominated by maritime pine forest (Beach pine forest and Bishop pine forest) within an area designated “highly scenic” under the Mendocino County certified LCP. The site is visible from Jug Handle State Reserve to the southwest. The 11-acre lot is the southern-most lot of a five-lot subdivision approved by the Commission In 1989 under CDP No. 1-89-028. Under this subdivision approval, a 10,000-square-foot building envelope was designated near the western edge of the lot where future residential development would be confined. The approval also included deed-restricted open space areas on the subdivided lots to protect ESHA, including an area of riparian vegetation and 50-foot buffer area around the ESHA on the subject lot east of the approved building envelope. In 2003, slight changes to the shape and orientation of the building envelope were approved under an amendment to the 1989 permit (CDP Amendment No. 1-89-028-A4), and additional conditions were added restricting future development in additional areas on the lot to protect rare plant ESHA near the bluff edge (and a 60-foot buffer around the rare plant ESHA) and to preserve native vegetation between the building envelope and the bluff edge in a manner that would screen future residential development from public views to the southwest.

In February of 2003, the Commission approved with conditions CDP No. A-1-MEN-01-051 (de novo) authorizing the construction of a 6,966-square-foot, two-story residence with an 886-square-foot attached garage located within the previously designated building envelope. The approved development also included (outside of the building envelope) a driveway, water supply system from existing well, septic system and landscaping. In November of 2006, the Commission approved a permit amendment to modify the design of the residence in a manner that would result in approximately the same floor area but would increase the height of the residence from 24 feet to 26 feet. The redesigned house was to be located entirely within the previously approved building envelope. New conditions were added to the amended permit related to design restrictions, maintenance of trees for visual screening, landscaping restrictions, no future armoring, assumption of risk, conformance of final plans with geotechnical recommendations, and other conditions. After issuance of the permit as amended, the applicant proceeded with the authorized removal of major vegetation and the installation of portions of the septic and water systems. The permit for development on the site was exercised and is valid, but the authorized residence has not yet been constructed.

This permit amendment again requests to modify the size and design of the residence while confining all residential development within the previously approved building envelope. The proposed amended plans are for a residence more than half the size of the currently authorized structure (3,273 square feet as compared to 6,933 square feet), significantly reducing the footprint, interior floor area, and amount of glazing visible to public vantage points from the south, and the proposed realigned driveway, which enters the property from the northwestern access easement instead of from the eastern easement, is less than a quarter the length of the existing authorized driveway. As a result, the proposed project as amended would have a significantly smaller footprint through portions of the property dominated by maritime pine forest.

Staff believes that the proposed amended residence would not increase and, in some cases, would significantly reduce impacts to visual resources, geologic hazards, and environmentally sensitive habitat areas (ESHA), as the residence (1) would not encroach any closer to the bluff edge and would conform with updated geologic setback recommendations, (2) would not encroach within any previously established rare plant or riparian ESHA buffers, (3) would continue to be screened by an intervening forested area that is part of a deed restricted area of native vegetation between the approved development and the bluff that would protect views toward the property from Jug Handle State Reserve, and (4) would significantly reduce encroachments into maritime pine forest ESHA due to the shorter realigned driveway. Because the proposed CDP amendment is for a more LCP-consistent project than is currently authorized by the underlying permit, Commission staff recommends approval of the amendment with additional special conditions to achieve better consistency with the LCP, including modifications to Special Conditions 4, 5, and 8, and new Special Conditions 10 through 13.

The Motion to adopt the staff recommendation of approval with conditions is on **page 5**.

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APPENDICES

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EXHIBITS

[Exhibit 1 – Vicinity Map](#)

[Exhibit 2 – Project Plans](#)

[Exhibit 3 – Areas Restricted as Open Space under CDP 1-89-028-A4](#)

[Exhibit 4 – Visual Details](#)

[Exhibit 5 – Geotechnical Recommendations \(excerpt\)](#)

[Exhibit 6 – Botanical Report \(excerpt\)](#)

[Exhibit 7 – Subdivision Map Showing Access Easements to Subject Lot](#)

[Exhibit 8 – Staff Report for 1-89-028 \(Belinda Point Subdivision permit\)](#)

[Exhibit 9 – Building Envelope Delineation Requirements](#)

I. Motion and Resolution

Motion

I move that the Commission approve the proposed amendment to Coastal Development Permit No. A-1-MEN-01-051, subject to the conditions set forth in the staff recommendation.

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

Resolution

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

II. Standard and Special Conditions

The Commission approved Coastal Development Permit (CDP) A-1-MEN-01-051 on February 6, 2003 with five standard conditions and ten special conditions. With the Commission's approval of A-1-MEN-01-051-A1 on November 15, 2006, the original ten special conditions were deleted and replaced with nine new special conditions. The subject CDP amendment affects the nine permit conditions as follows:

- Standard Conditions 1 through 3 and Special Conditions 6, 7, and 9 are reimposed without changes and remain in full force and effect.
- Special Conditions 4, 5, and 8 are modified as shown below.
- Special Conditions 10 through 13 are added new conditions shown below.

Deleted and new language of the conditions appear in ~~bold double strikethrough~~ and **bold double underlined** text, respectively. [Appendix C](#) includes an aggregate list of all currently applicable adopted special conditions for the subject site, including conditions imposed under CDP 1-84-028 as amended through Amendment No. -A4 and conditions imposed under A-1-MEN-01-051, as amended through Amendment No. -A2.

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4. No Future Bluff or Shoreline Protective Devices
 - A. By acceptance of this permit, **as amended by CDP Amendment No. A-1-MEN-01-051-A2,** the applicant agrees, on behalf of themselves and all

- successors and assigns, that no bluff or shoreline protective devices shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. A-1-MEN-01-051-A1, **as amended by CDP Amendment No. A-1-MEN-01-051-A2**, including, but not limited to, the residence, foundations, garage, driveway, or appurtenant residential development in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, bluff retreat, landslides, ground subsidence or other natural hazards in the future. By acceptance of this permit, the applicant hereby waives, on behalf of themselves and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235 or under Mendocino County LUP Policy No. 3.4-12 and Mendocino County Coastal Zoning Ordinance No. 20.500.020 (E)(1).
- B. By acceptance of this permit, the applicant further agrees, on behalf of themselves and all successors and assigns, that the landowner shall remove the development authorized by this permit, **as amended by CDP Amendment No. A-1-MEN-01-051-A2**, including the residence, garage, foundations, and driveway, and other appurtenant residential development if any government agency has ordered that the structures are not to be occupied due to any of the hazards identified above. In the event that portions of the development fall to the beach or other tidelands before they are removed, the landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.
- C. In the event the edge of the bluff recedes to within 10 feet of the principal residence but no government agency has ordered that the structures not be occupied, a geotechnical investigation shall be prepared by a licensed geologist or civil engineer with coastal experience retained by the applicant, that addresses whether any portions of the residence are threatened by wave, erosion, storm conditions, or other natural hazards. The report shall identify all those immediate or potential future measures that could stabilize the principal residence without shore or bluff protection, including but not limited to removal or relocation of portions of the residence. The report shall be submitted to the Executive Director and the appropriate local government official. If the geotechnical report concludes that the residence or any portion of the residence is unsafe for occupancy, the permittee shall, within 90 days of submitting the report, apply for a coastal development permit amendment to remedy the hazard which shall include removal of the threatened portion of the structure.
5. Assumption of Risk, Waiver of Liability and Indemnity Agreement
- By acceptance of this permit, **as amended by CDP Amendment No. A-1-MEN-01-051-A2**, the applicant acknowledges and agrees: (i) that the site may be subject to hazards from landslide, bluff retreat, erosion, subsidence, and earth

movement; (ii) to assume the risks to the applicant 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.

...

8. ~~Conformance of the Design and Construction Plans to the Geotechnical Report~~ **Approval of Final Plans for Development Authorized by CDP Amendment No. A-1-MEN-01-051-A2**

- A. All final design and construction plans, including foundations, grading and drainage plans, shall be consistent **with (i) the Design Restrictions of Special Condition 1, and (ii)** with the recommendations contained in the geotechnical report dated June 28, 2001 prepared by BACE Geotechnical Consultants, **except as updated by the Brunsing Associates Inc. supplemental geotechnical recommendations for the site dated November 13, 2020 and August 24, 2021.** PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT AMENDMENT NO. A-1-MEN-01-051-A42, the applicant shall submit, for the Executive Director's review and approval, evidence that **(i) a licensed architect has reviewed and approved all final design and lighting plans for exterior materials and lighting and has certified that each of those plans is consistent with the limitations and restrictions of Special Condition 1; and (ii)** a licensed professional (Certified Engineering Geologist or Geotechnical Engineer) has reviewed and approved all final design, construction, and drainage plans and has certified that each of those plans is consistent with all of the recommendations specified in the above-referenced geotechnical report approved by the California Coastal Commission for the project site.
- 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 amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

...

10. **PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT AMENDMENT (A-1-MEN-01-051-A2), 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 amendment a deed restriction, in a form and content acceptable to the Executive Director: (A) indicating that, pursuant to this permit, as amended, 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 this permit, 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 amendment. 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, as amended, 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. This deed restriction shall supersede and replace the deed restriction recorded pursuant to Special Condition 9 of Coastal Development Permit No. A-1-MEN-01-051-A1, approved on November 15, 2006, which deed restriction is recorded as Instrument No. 2007-16285 in the official records of Mendocino County, and the deed restriction recorded pursuant to Special Condition No. 4 and Special Condition No. 5 of Coastal Development Permit No. A-1-MEN-01-051 approved on February 6, 2003, which deed restriction is recorded as Instrument No. 2006-04729 in the official records of Mendocino County.

11. Future Development Restriction

This permit is only for the development described in Coastal Development Permit Application No. A-1-MEN-01-051, as amended through Amendment A-1-MEN-01-051-A2. The following future development restrictions apply: (A) pursuant to Title 14 California Code of Regulations (CCR) section 13250(b)(6), the exemptions otherwise provided in Public Resources Code (PRC) §30610(a) shall not apply to the development governed by the CDP A-1-MEN-01-051, as amended. Accordingly, any future improvements to the structures authorized by this permit shall require an amendment to CDP A-1-MEN-01-051 from the Commission or shall require an additional CDP from the Commission or from the applicable certified local government; and (B) an amendment to CDP A-1-MEN-01-051 from the Commission or an additional CDP from the Commission or from the applicable certified local government shall be required for any repair or maintenance identified as requiring a permit in PRC §30610(d) and Title 14 CCR §13252(a)-(b).

12. Protection of Archaeological Resources. If an area of cultural deposits is discovered during the course of the project, all construction shall cease and shall not recommence until a qualified cultural resource specialist 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 A-1-MEN-01-051.

13. Building Envelope Delineation Plan

A. PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT AMENDMENT (A-1-MEN-01-051-A2), the applicant shall submit to the Executive Director, for review and written approval, a plan for installing low-stature fencing or other demarcation barrier (e.g., split-rail or similar fencing, driftwood logs, small boulders, etc.) to delineate the approved, surveyed building envelope on the property and portions of the approved realigned driveway from adjacent pine forest and riparian ESHA and ESHA buffer. The purpose of the fencing/demarcation is to provide a visible "barrier" along the perimeter of the authorized development areas to clearly establish a visible boundary between areas where authorized development and activities associated with residential development are permitted on the site and adjacent ESHA and ESHA buffers outside of the authorized development areas.

1). The plan shall demonstrate that

(a) The fencing or other demarcation/barrier shall be low stature (approx. 4 feet or less) and made of natural, earth-toned, non-reflective materials;

(b) The fencing or other demarcation/barriers shall be established along, at a minimum, the northern, western, and southern perimeters of the surveyed building and between portions of the realigned driveway and adjacent ESHA buffer as shown on Exhibit No. 9 to the staff report for CDP Amendment No. A-1-MEN-01-051-A2; and

(c) Temporary construction fencing or similar temporary barriers shall be installed in the required areas prior to commencement of construction to minimize the potential for construction encroachment into adjacent ESHA/ESHA buffers. The permanent fencing/demarcation barriers shall be installed prior to occupancy of the residence.

2). The plan shall include, at a minimum, the following components:

- (a) A revised site plan showing the location of the fencing/barriers relative to surveyed building envelope as surveyed by licensed land surveyor Forrest Francis in July 2021;
- (b) A detailed illustration/typical plan showing the fence/barrier design and height;
- (d) A schedule for installation of the fence/barriers; and
- (e) A plan for maintaining the fencing/barriers over the life of the project to ensure that they will have the intended benefit of protecting the environmentally sensitive forest habitat adjacent to the authorized development areas.

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 further Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

III. Findings and Declarations

A. Description of Proposed Amendment

The subject property is an ~11-acre bluff top lot located three miles south of Fort Bragg ([Exhibit 1](#)). The Commission originally approved new residential development on the lot in 2003, but the approved house has not yet been constructed (see Permit History, below). Applicants Loke and Cheng Cheng Tan propose the following changes to the approved permit issued for the site: (1) modify the size and design of the previously approved 6,933-square-foot, two-story, 26-foot-high residence and 857-square-foot attached garage house resulting in a 3,273-square-foot, two-story, 26-foot-high residence with a 594-square-foot attached garage and 934 square feet of front and rear patio areas to be located entirely within the previously approved building envelope (see [Exhibit 2](#)); (2) realign and shorten the approved access driveway, which as currently authorized extends across the lot from the eastern access easement to instead utilize the access easement on the northwestern side of the lot (see [Exhibit 7](#)); and (3) install native plant landscaping in an open-space deed-restricted area on the property. The proposed new landscaping would be installed in an area restricted as open space under CDP No. 1-89-028-A4 (see [Exhibit 3](#), and Permit History, below).

B. Permit History & Related Permits Relevant to Proposed Development

Belinda Point Subdivision (CDP No. 1-89-028)

The Belinda Point subdivision, which consists of five lots totaling approximately 57 acres, was originally approved with six special conditions by the Commission pursuant to CDP No. 1-89-028 granted to E.F.S. Associates on June 13, 1989 ([Exhibit 8](#)). All the subdivision parcels were proposed to be served by onsite wells and septic systems, and all parcels are served by two common driveways extending from Ocean Drive toward the shoreline, along alignments that are north of the applicant's parcel. The subject lot is the southern-most lot in the subdivision (see [Exhibit 7](#), subdivision map).

Each of the five subdivision lots, which range in size from 8.6 to 13.9 acres, was assigned a designated building envelope proposed by the applicant as part of the subdivision application. The building envelopes on each lot were initially developed to address environmental concerns related to bluff setback policies and ESHA protection. Conditions of the CDP required that ESHA on the property be deed restricted as open space. The majority of the deed restricted ESHA is located on the four parcels to the north of the subject property, with a small patch of protected riparian ESHA located on the applicant's lot immediately to the east of the defined building envelope (shown on project plans, [Exhibit 2](#)). Furthermore, an offer to dedicate a vertical public accessway to a cove from Ocean Drive across the subdivision properties was required to be recorded in a location along the northerly boundary of the subdivision, well to the north of the subject lot.

Appeal of Development on Subject Property (Appeal No. A-1-MEN-01-051)

On August 16, 2001, the Mendocino County Planning Commission approved with conditions local CDP #12-2001 granted to Gene and C.J. Meredith to develop the subject lot with an 8,610-square-foot, two-story residence with three separate elements connected by a 210-foot-long bridge/library, together with a driveway, well, septic system, and landscaping. The building site approved by the County was located within a new building envelope, which modified the Commission's approval of the original subdivision and its defined building envelope, even though the Commission had not yet approved a CDP amendment. The height of the structure as approved by the County would have been 28 feet above the finished grade, with six passive ventilation chimneys, each rising an additional 9 feet higher than the roof line, for an effective height of 37 feet. The project was appealed to the Commission in September of 2001, and on July 11, 2002,¹ the Commission found that a substantial issue had been raised with regard to the consistency of the project as approved by the County with the provisions of certified LUP policies concerning protection of visual resources. The Commission continued the *de novo* portion of the appeal hearing. The project was subsequently revised by the applicant (see below).

Amendment to Belinda Point Subdivision Permit (Amendment No. 1-89-028-A4)

¹ Findings for substantial issue can be accessed from the Commission's website: <https://documents.coastal.ca.gov/reports/2002/7/Th15a-7-2002.pdf>

To accommodate the revised project description for the de novo review of CDP No. A-1-MEN-01-051, in January of 2003² the Commission approved an amendment to the original subdivision permit (Amendment No. 1-89-028-A4) to change the existing location and configuration of the 100-foot by 100-foot building envelope on the subject lot (to a 125-foot by 80-foot rectangular building envelope) while retaining the maximum 10,000-square-foot size of the originally approved building envelope located a minimum of 50 feet from the bluff edge. The Commission added new special conditions that relate specifically to future development restrictions on the subject lot, including, but not limited to, conditions restricting certain areas of the property to open space as follows:

- Native Vegetation Area: Special Condition 7 of Amendment No. 1-89-028-A4 required establishment and recordation of a deed-restricted open space area in the area between the building envelope and the bluff edge (see Exhibit 3). The purpose of the deed-restricted area is to protect the pine forest that is a defining feature of the natural setting as viewed from beaches and public vantage points at Jug Handle State Reserve. Under Special Condition 7 of 1-89-028-A4, the only development allowed within this deed-restricted area is (a) removal of three specific trees (the authorized removal of which was completed by the applicant in the fall of 2020); (b) removal of any new trees that grow within the portion of the open space area identified as a View Corridor in Exhibit 5 of the staff report prepared for Amendment 1-89-028-A4 (see Exhibit 3); (c) the removal of non-native vegetation; and (d) the following development if approved by the Commission under separate CDP authorization: (i) tree limbing and the removal of dead trees or other vegetation as required by fire management law for maintaining defensible space; (ii) reforestation with native species or non-invasive exotic species to replace dead or dying trees or trees removed for any other purpose; (iii) installation of berms for visual screening or landscaping; and (iv) drainage improvements. Under this permit amendment request, the proposed new landscaping in the open space deed restricted area includes the planting of several native trees (Bishop pine, Beach pine, and various species of native willow trees) between the house and the bluff south of the approved building envelope.
- Rare Plant Area: Special Condition 8 of Amendment No. 1-89-028-A4 required establishment and recordation of a deed-restricted open space area around the Mendocino Coast paintbrush (Castilleja mendocinensis) habitat on the property. No development is allowed in the occur in the rare plant ESHA or its 60-foot buffer as depicted in Exhibit 5 of the staff report prepared for 1-89-028-A4 (see [Exhibit 3](#)).

De Novo Approval of CDP No. A-1-MEN-01-051 (Meredith)

² Findings for approval can be accessed from the Commission's website: <https://documents.coastal.ca.gov/reports/2003/1/W25a-1-2003.pdf>

In February of 2003,³ the Commission approved CDP No. A-1-MEN-01-051 (applicants Gene and C.J. Meredith) for the construction of a 6,966-square-foot, two-story (maximum 24-foot-high) residence with an 886-square-foot attached garage, driveway, water supply system from existing well, septic system and landscaping. The Commission granted its approval subject to 10 special conditions related to design restrictions, erosion control, geologic hazards, assumption of risk, landscaping restrictions, and other issues.

Permit Amendment No. A-1-MEN-01-051-A1 (Tan)

In November of 2006,⁴ the Commission approved CDP Amendment No. A-1-MEN-01-051 (applicant Tan) to modify the design of the approved house resulting in a 6,933-square-foot, two-story (maximum 26-foot-high) residence with an 857-square-foot attached garage to be located entirely within the previously approved 125-foot by 80-foot building envelope. With the Commission's approval of A-1-MEN-01-051-A1, the original 10 special conditions were deleted and replaced with nine new special conditions, which relate to design restrictions, erosion control, geologic hazards, assumption of risk, landscaping restrictions, deed restriction, and other issues. The subject permit amendment was issued (after numerous permit extensions were approved from 2008 to 2019) on September 25, 2020, and the permit was exercised in the fall of 2020 (the authorized major vegetation removal was completed, and portions of the septic and water systems were installed).

C. Environmental Setting

The subject property is an ~11-acre bluff top parcel located about three miles south of Fort Bragg, Mendocino County (17230 Ocean Drive, APN 017-330-10). The property is designated and zoned Rural Residential, Five Acres Minimum, Planned Development (RR:L-5:PD) under the County's existing certified LCP. Within the RR Zone, a single-family residence is a permitted use, subject to approval of a CDP.

The property is located on an uplifted coastal terrace that slopes gently to the west and south and is largely vegetated by maritime pine forest dominated by Beach pine (*Pinus contorta* ssp. *contorta*) and Bishop pine (*P. muricata*). The parcel includes approximately 550 linear feet of bluff edge. The bluff is approximately 40 to 50 feet in height, with mostly near-vertical slope gradients.

The property is located within an area designated "Highly Scenic" under the County's certified LCP. Although the parcel is not visible from Highway One or other public roads, the parcel is visible from the publicly visited Jug Handle State Reserve headland to the southwest.

³ Findings for approval can be accessed from the Commission's website: <https://documents.coastal.ca.gov/reports/2003/2/Th20a-2-2003.pdf>

⁴ Findings for approval can be accessed from the Commission's website: <https://documents.coastal.ca.gov/reports/2006/11/W9a-11-2006.pdf>

D. Standard of Review

The original project was approved prior to certification of the Mendocino County LCP. Therefore, the standard of review for the original permit application was the Coastal Act. The Commission effectively certified the County's LCP in October of 1992. As the project site is located within a now certified area of the LCP and between the first public road and the sea, pursuant to section 30604 of the Coastal Act, the applicable standard of review for the permit amendment request is the County LCP and the coastal access and recreation policies of the Coastal Act.

E. Visual Resources

LCP Policies

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

Consistency Analysis

Portions of the subject lot are visible from Jug Handle State Reserve to the south, and the proposed house, as amended, will be visible from public beaches and other public vantage points in the reserve. Although a few existing houses can be seen from Jug Handle State Reserve (including, on the parcel immediately south of the applicant's property, a two-story structure partly screened by trees, and on the parcels immediately to the north there are one-story structures in open grassland with no natural screening available), the viewscape from the park along this stretch of coast is dominated by views of Pine Cove Beach located within the embayment at the mouth of Mitchell Creek, the dramatic coastal bluffs, and the forested bluff-top terrace. Houses are generally scattered along the terrace about every 400-500 feet.

The subject site is identified as a highly scenic areas (HSA) under the Mendocino County certified LCP where various policies ([Appendix B](#)) require that new development be subordinate to the character of its setting. Any development permitted in a designated HSA shall provide for the protection of ocean and coastal views from public areas including, as relevant to the subject property, coastal trails, vista points, beaches, parks, and waters used for recreational purposes. The cited policies and standards also require that new development on terraces minimize visual impacts by providing bluff setbacks for development adjacent to or near public areas along the shoreline, by avoiding development in open areas if an alternative site exists, and by minimizing the number of structures and clustering them near existing vegetation, natural landforms, or artificial berms.

The proposed house, while modified in size and design, will be located entirely within the previously approved 10,000-square-foot building envelope approved for development by the Commission under CDP 1-89-028-A4. According to calculations provided by the applicant (summarized in Table 1 below), the proposed modified house design will result in an overall reduction of the size of the residential structure in terms of building footprint (2,609 square feet, reduced from the existing approved 5,289 square feet) and interior floor area (3,237 square feet, reduced from the existing approved

6,933 square feet). The total amount of glazing also is reduced, with approximately 200 square feet of glazing facing southward (and thus potentially visible to visitors of Jug Handle State Reserve).

Table 1. Size comparison of existing home approved under CDP Amendment No. A-1-MEN-01-051-A1 in 2006 and the currently proposed house design under this permit amendment request.

Size (in square feet)	Existing House Approved Under A-1-MEN-01-051-A1	Proposed Modified House Under A-1-MEN-01-051-A2
Building Footprint	5,289	2,609
Interior Floor Area	~6,933 entry level: ~4,451 upper level: ~2,500	3,273 entry level: 1,884 upper level: 1,389
Front Patio	N/A	445
Rear Patio	N/A	489
Garage	857	594
Max Height (in feet)	26 (chimneys extend to 31 feet)	26
Footprint of Access Driveway	~34,000 (extending through lot from the east)	6,783 (extending onto lot from the north)

Both CDP 1-89-028 (as amended through -A4) and the existing CDP for development on the subject site (as authorized under CDP A-1-MEN-01-051-A1) include several special conditions related to the protection of visual resources, summarized below:

- Special Condition 7 of 1-89-028-A4 required establishment and recordation of a deed-restricted open space area of native vegetation in the area between the approved building envelope and the bluff edge (this area is shown on Exhibit 3). The purpose of the deed-restricted area is to protect the pine forest that is a defining feature of the natural setting as viewed from beaches and public vantage points at Jug Handle State Reserve. Under Special Condition 7 of 1-89-028-A4, the only development allowed within this area is (a) removal of three specific trees (the authorized removal of which was completed by the applicant in the fall of 2020); (b) removal of any new trees that grow within the portion of the open space area identified as a View Corridor in Exhibit 5 of the staff report prepared for 1-89-028-A4 (see [Exhibit 3](#)); (c) the removal of non-native vegetation; and (d) the following development if approved by the Commission under separate CDP authorization: (i) tree limbing and the removal of dead trees or other vegetation as required by fire management law for maintaining defensible space; (ii) reforestation with native species or non-invasive exotic species to replace dead or dying trees or trees removed for any other purpose, (iii) installation of berms for visual screening or landscaping, and (iv) drainage improvements.
- Special Condition 1-A of CDP A-1-MEN-01-051-A1 requires that all exterior siding of the approved structures on the site shall be composed of natural or

natural appearing materials, and all siding and roofing of the approved structures shall be composed of materials of the colors proposed in the application or darker earth tone colors only. In addition, all exterior materials, including roofs and windows, shall be non-reflective to minimize glare.

- Special Condition 1-B of CDP A-1-MEN-01-051-A1 requires that all exterior lights, including any lights attached to the outside of the approved buildings or located along walkways, shall be the minimum necessary for the safe ingress and egress of the structures, and shall be low-wattage, non-reflective, shielded, and have a directional cast downward such that no light will shine beyond the boundaries of the subject parcel
- Special Condition 2 of CDP A-1-MEN-01-051-A1 requires that as trees die or are removed for any other purpose, all existing trees growing within the Area of Native Vegetation Open Space Deed Restriction required by Special Condition 7 of 1-89-028-A4 that are removed shall be replaced in-kind with native tree species throughout the life of the approved residential development, and in the same locations as they are currently growing.

The proposed amended development is consistent with Special Condition 7 of 1-89-028-A4 (Area of Native Vegetation Open Space Deed Restriction), because the proposed landscaping plan includes “reforestation with native species” within the deed-restricted area as allowed under the special condition. The proposed trees to be planted include Bishop pine, beach pine, and several species of willows (see Exhibit 2, which includes the proposed landscaping plans). All the proposed species are native, regionally appropriate, and present in natural habitats in the immediate project vicinity. The proposed landscaping also conforms to Special Condition 2 of the existing permit (Maintenance of Trees for Visual Screening of Development), which requires that as trees die or are removed for any purpose, as the three trees authorized for removal under the existing permit were removed last fall, such trees are to be replaced in-kind with native tree species. Furthermore, the proposed landscaping conforms to the restrictions of Special Condition 7 of the existing permit (Landscaping Restrictions), which prohibits the planting of any plant species listed as problematic and/or invasive by the California Native Plant Society, the California Exotic Pest Plant Council, or by the State of California. Special Conditions 2 and 7 of the existing permit are reimposed without changes as conditions of this permit amendment and remain in full force and effect.

Furthermore, the proposed development is consistent with Special Condition 1 (Design Restrictions) of the existing permit (A-1-MEN-01-051-A1), because the revised exterior materials will be composed of natural, dark earth-tone non-reflective colors and materials (see [Exhibit 4](#), Visual Details). The existing approved house exterior is “Morgan Hill Gold” stucco (brownish gold color), and the proposed new color will be darker tone overall, and approximately half of the overall massing. The existing approved roof design is described as dark brown/terra cotta Split Clay Barrel Tile. The proposed roof design will be grey metal (Kendall Charcoal) with low-reflectance coating, which differs in color from the existing approved design but is a darker earth tone color

consistent with Special Condition 1-A. In addition, unlike the original design, the proposed lower slope roof will be less visible to visitors of Jug Handle State Reserve. Furthermore, the stone proposed at the south-facing exterior chimney is similar to the existing stone veneer cladding approved under the existing design. Finally, as proposed, exterior lighting consists of a few luminaries around the front entry of the building that will be low-wattage, non-reflective, shielded, and have a directional cast downward. Special Condition 1 of the existing permit is reimposed without changes as a condition of this permit amendment and remains in full force and effect.

To ensure that the amended development is constructed consistent with the approved final plans, the Commission modifies and reimposes **Special Condition 8**. This condition requires in part that all final design and construction plans be constructed consistent with the design restrictions of Special Condition 1, and prior to issuance of the permit amendment, a licensed architect must review and approve all final design and lighting plans for exterior materials and lighting and certify that each of those plans is consistent with the limitations and restrictions of Special Condition 1.

Special Condition 9 attached to A-1-MEN-01-051-A1 required the applicant to execute and record a deed restriction imposing the requirements of Special Conditions 1, 2, and 7 (and other conditions) as covenants, conditions and restrictions on the use and enjoyment of the property. On January 18, 2007, the applicant recorded a deed restriction on the property and submitted the deed restriction to the Commission, satisfying the above conditions. However, the conditions imposed in the original permit are particular to the specific development plans approved under the original permit. Therefore, the Commission imposes new **Special Condition 10**, which requires the applicant to record a similar deed restriction for the amended project with its new development plans, to impose the special conditions of the permit amendment as covenants, conditions and restrictions on the use and enjoyment of the property. The deed restriction required by Special Condition 10 will supersede and replace the deed restrictions recorded pursuant to Special Condition 9 of A-1-MEN-01-051-A1.

Therefore, for all the above reasons, the Commission finds that the amended development, as conditioned, will protect public views, is subordinate to the character of its setting, and is consistent with the visual resource protection provisions of the certified LCP.

F. Hazards

LCP Policies

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

Consistency Analysis

The subject parcel is a bluff top parcel that overlooks the ocean. The bluff slopes are variable in steepness and are generally 50-60 feet high with small sea caves located along the base of the bluff face. Mendocino County LUP policy 3.4-7 requires that new structures be set back a sufficient distance from the edge of the bluffs to ensure their

safety from bluff erosion and retreat during their economic life spans (75 years), and the setback should be of sufficient distance to eliminate the need for a shoreline protection device to protect the development in the future.

The original building envelope approved in 1989 under CDP 1-89-028 for the subdivision established a 75-foot setback from the bluff edge as recommended by the preliminary geotechnical report prepared for the subdivision. The preliminary geotechnical report did not include a site-specific analysis of bluff retreat. Instead, the preliminary geotechnical report relied on general assessments of bluff retreat for other parts of California in making its recommendation for a 75-foot setback.

The Commission approved CDP 1-89-028-A4 in 2003 to modify the location and dimensions of the original building envelope. The approved amendment changed the building envelope from a 100-foot by 100-foot square to a 125-foot by 80-foot rectangle and located it west of the original placement but no closer than 50 feet from the bluff edge. The amendment request was accompanied by updated geotechnical reports that contained a site-specific analysis of bluff retreat occurring at the project site and provided conclusions and recommendations regarding the geologic suitability of the site for the proposed development. As discussed in the Commission's findings for the originally approved residence, the Commission's geologist reviewed the geotechnical recommendations and agreed with the conclusion that the bluff is eroding at a relatively low average rate of about 1.75 inches per year. The Commission's geologist recommended a minimum development setback of 39 feet on the subject property as measured from the bluff edge equal to the rear of the small sea caves located at the base of the coastal bluffs. Special Condition 9 of CDP 1-89-028-A4 requires that all future development allowable outside of the building envelope must be located no closer than 39 feet from the bluff edge and must be developed consistent with the recommendations of the geotechnical report.

Consistent with the 2003 geotechnical recommendations, the building envelope approved by CDP 1-89-028-A4 is no closer than 50 feet from the bluff edge (11 feet further than the bluff setback recommendation), and the residential development approved under CDP A-1-MEN-01-051-A1 is no closer than 50 feet from the bluff edge. The current amendment request proposes no changes to the building envelope or geologic setback previously approved by the Commission, and the proposed amendment would place all amended development either within the previously approved building envelope (i.e., the proposed modified house design and reorientation would remain entirely within the previously approved building envelope) or within locations outside of the building envelope that are no closer than 50 feet from the bluff edge (i.e., the proposed realigned driveway that extends across the property from the north rather than from the east as previously approved would be no closer than 50 feet from the bluff edge).

In support of the proposed amendment request, the applicant submitted an updated geotechnical study (Brunsing Associates, Inc., November 13, 2020 with an updated slope stability analysis submitted August 24, 2021, [Exhibit 5](#)) to supplement the earlier (2001) study on the site, which included subsurface exploration, laboratory testing,

conclusions and recommendations regarding foundation support, seismicity, fault rupture hazard, bluff retreat rate, and site drainage. The supplemental study included an updated slope stability analysis, an updated bluff retreat rate analysis (factoring in sea-level rise (SLR) consistent with the Commission's adopted SLR policy guidance over the next 75 years), updated recommendations, and a site visit with the land surveyor to observe the bluff edge and any related slip out features and to ensure the accurate siting of the approved building envelope sufficiently set back from the edge of the bluff (at least 50 feet) to ensure the safety of the proposed development from bluff erosion and retreat for at least 75 years.

The updated reports project that the bluff may erode back 11 feet over the next 75 years, and adding the 16.8 feet of potential slope failure determined from the updated stability analysis to the 11 feet of erosional bluff retreat (factoring in SLR) plus a factor of safety of 1.5, the reports recommend a total bluff edge setback of 42 feet (up from the previously recommended 39 feet), with an additional 2 feet of setback distance from a slip-out feature noted on the south end of the property (so a total recommended setback of 44 feet from the slip-out feature at the south end of the property). The reports confirm that the approved building envelope and realigned driveway, as surveyed on site by the land surveyor in 2021, conforms with all recommended geologic setbacks, and the proposed development will be sufficiently set back from the bluff edge to minimize risk and assure stability and structural integrity, factoring in projected SLR over a 75-year time frame. In fact, the proposed modified house design and reorientation will be approximately 65 feet back from the bluff edge, which is 15 feet further back than the home as approved under the existing permit (A-1-MEN-01-051-A1). The surveyed building envelope and proposed building footprint relative to the current (2021) bluff edge are shown in [Exhibit 5](#).

LUP Policy 3.4-1 states, in part, that geologic investigations for development in areas of known or potential geologic hazards shall determine if mitigation measures could stabilize the site. The various geotechnical reports completed for the proposed development include a series of recommendations to ensure that residential development of the site does not contribute to geologic hazards. The recommendations include measures related to site grading and soil compaction specifications; foundation support; seismic design criteria; procedures for placing concrete slabs-on-grade; and site drainage. The existing permit (A-1-MEN-01-051-A1) included Special Condition 8 requiring that prior to permit issuance all final design and construction plans for the amended development be consistent with the recommendations contained in the 2001 geotechnical report. Since the building plans have been updated to reflect the proposed new house design, and since updated recommendations have been provided in updated 2020/2021 geologic reports, the Commission modifies and reimposes **Special Condition 8** to require that all final design and construction plans, including foundations and grading drainage plans, be consistent with the recommendations contained in the geotechnical reports dated June 28, 2001, November 13, 2020, and August 24, 2021, and that prior to issuance of the CDP amendment, a licensed professional shall certify that the final plans are consistent with the updated geotechnical recommendations. The condition also requires that the amended development be constructed consistent with the approved final plans.

As was the case with the originally approved residence, the proposed amended residence will be located on an inherently hazardous coastal terrace 50 to 60 feet in height that is eroding and underlain by sea caves. The proposed amended development can only be found consistent with the above-referenced LCP provisions if the risks to life and property from the geologic hazards are minimized and if a protective device would not be needed in the future. Information submitted by the original applicants' geologist states that if the new development is set back 42 feet from the bluff edge (44 feet from the slip out along the bluff edge on the southern end of the property), the development would be safe from erosion and would not require any devices to protect the proposed development during its useful economic life.

Although a comprehensive geotechnical evaluation is a necessary and useful tool that the Commission relies on to determine if proposed development is appropriate at all on any given blufftop site, the Commission finds that a geotechnical evaluation alone is not a guarantee that a development will be safe from bluff retreat. As discussed in the findings for the original approval (A-1-MEN-01-051) and the first amendment (A-1-MEN-01-051-A1), it has been the experience of the Commission that in some instances, even when a thorough professional geotechnical analysis of a site has concluded that a proposed development will be safe from bluff retreat hazards, unexpected bluff retreat episodes that threaten development during the life of the structure sometimes still do occur.

Thus, site-specific geotechnical evaluations cannot always accurately account for the spatial and temporal variability associated with coastal processes and therefore cannot always absolutely predict bluff erosion rates. Geologic hazards are episodic, and bluffs that may seem stable now may not be so in the future. Therefore, the Commission finds that the subject lot is an inherently hazardous piece of property, that the bluffs are clearly eroding both at the margins and underneath the landform, and that the proposed amended development will be subject to geologic hazard and may someday require a bluff or shoreline protective device, inconsistent with the LCP (Coastal Zoning Code (CZC) sec. 20.500.010).

The Commission further finds that the amended development could not be approved as being consistent with the LCP if projected bluff retreat would affect the proposed development and necessitate construction of a seawall to protect it. Based upon the geologic report prepared for the site and the evaluation of the originally approved project by the Commission's staff geologist, the Commission finds that the risks of geologic hazard are minimized if the residence is set back 42 feet from the bluff edge (44 feet from the bluff edge as measured from the slip out at the south end of the property). However, due to the inherently hazardous nature of the project site, the fact that no geology report can conclude with any degree of certainty that a geologic hazard does not exist, the fact that the approved development and its maintenance may cause future problems that were not anticipated, and because the LCP requires that in the permitting of new development the need for shoreline protective devices shall not be engendered, it is necessary to amend Special Condition 4 and 5 to ensure that no future shoreline protective device will be constructed as proposed by the applicants.

Amended **Special Condition 4** prohibits the construction of shoreline protective devices on the parcel and requires that the landowner provide a geotechnical investigation and remove the house and its foundation if bluff retreat reaches the point where the structure is threatened, and that the applicant accepts sole responsibility for the removal of any structural debris resulting from landslides, slope failures, or erosion of the site. These requirements are consistent with LUP policy 3.4-7 and CZC sec. 20.500.010, which state that new development shall minimize risk to life and property in areas of high geologic, flood, and fire hazard, assure structural integrity and stability, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding areas, nor in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. The Commission finds that the amended development could not be approved as being consistent with the LCP if projected bluff retreat would affect the proposed house and necessitate construction of a seawall to protect it.

As noted above, some risks of an unforeseen natural disaster, such as an unexpected landslide, "meteotsunami," massive slope failure, etc. could result in destruction or partial destruction of the house or other development approved by the Commission. In addition, the development itself and its maintenance may cause future problems that were not anticipated. When such an event takes place, public funds are often sought for the clean-up of structural debris that winds up on the beach or on an adjacent property. As a precaution, in case such an unexpected event occurs on the subject property, amended Special Condition 4 also requires the landowner to accept sole responsibility for the removal of any structural debris resulting from landslides, slope failures, or erosion on the site, and agree to remove the house should the bluff retreat reach the point where a government agency has ordered that the structure not be occupied.

Additionally, the Commission amends **Special Condition 5**, which requires the landowner to assume the risks of extraordinary erosion and geologic hazards of the property and waive any claim of liability on the part of the Commission. Given that the applicant has chosen to implement the project despite these risks, the applicant must assume the risks. In this way, 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. In addition, the condition ensures that future owners of the property will be informed of the risks, the Commission's immunity from liability, and the indemnity afforded the Commission.

As previously discussed, Special Condition 9 attached to A-1-MEN-01-051-A1 required the applicant to execute and record a deed restriction imposing the requirements of Special Conditions 4 and 5 (and other permit conditions) as covenants, conditions and restrictions on the use and enjoyment of the property. On January 18, 2007, the applicant recorded a deed restriction on the property and submitted the deed restriction to the Commission, satisfying the above conditions. Since the conditions imposed under A-1-MEN-01-051-A1 are particular to the specific development plans approved under the that permit amendment, the Commission imposes new **Special Condition 10**. This

condition requires the applicant to record a similar deed restriction for the amended project with its new development plans to impose the special conditions of the permit amendment as covenants, conditions and restrictions on the use and enjoyment of the property. The deed restriction required by Special Condition 10 will supersede and replace the deed restrictions recorded pursuant to Special Condition 9 of A-1-MEN-01-051-A1. The Commission finds that Special Condition 10 is required, in part, to ensure that the proposed development is consistent with the LCP and that recordation of the deed restriction will provide notice of potential hazards of the property and help eliminate false expectations on the part of potential buyers of the property, lending institutions, and insurance agencies that the property is safe for an indefinite period of time and for further development indefinitely into the future, or that a seawall could be constructed to protect the development as amended.

The Commission notes that section 30610(a) of the Coastal Act and CZC sec. 20.532 of the County's certified IP exempt certain additions to existing single family residential structures from coastal development permit requirements. Pursuant to this exemption, once a house has been constructed, certain additions and accessory buildings that the applicant might propose in the future are normally exempt from the need for a permit or permit amendment. Section 30610(a) requires the Commission to specify by regulation those classes of development that 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. However, section 13250 specifically authorizes the Commission to require a permit for additions to existing single-family residences that could involve a risk of adverse environmental effect. For example, installing a landscape irrigation system on a blufftop property in a manner that leads to saturation of the bluff could increase the potential for landslides or catastrophic bluff failure. In addition, installing a sizable accessory structure for additional parking, storage, or other uses normally associated with a single-family home in a manner that does not provide for the collection, conveyance, and discharge of roof runoff to areas away from the bluff edge could potentially exacerbate bluff erosion at the subject site. Moreover, section 13250(b)(1) indicates that improvements to a single-family structure in an area designated as highly scenic in a certified land use plan involve a risk of adverse environmental effect and therefore are not exempt. As discussed previously, the entire subject property is within an area designated in the certified LCP as highly scenic. Because the project site is located within a highly scenic area, future improvements to the amended project will not be exempt from permit requirements pursuant to section 30610(a). Therefore, pursuant to section 13250(b)(1) of the Commission's regulations, future improvements to the amended development would not be exempt from CDP requirements, and the County and the Commission will have the ability to review all future development on the site to ensure that future improvements will not be sited or designed in a manner that would result in a geologic hazard. **Special Condition 11** is added to memorialize this requirement.

The Commission thus finds that the amended development, as conditioned, is consistent with the policies of the certified LCP regarding geologic hazards, because the amended development, as conditioned, will not have adverse impacts on the stability of

the coastal bluff or on erosion, and the Commission will be able to review any future additions to ensure that development will not be located where it might result in the creation of a geologic hazard. Only as conditioned is the amended development consistent with the LCP geologic hazard policies.

G. Archaeological Resources

LCP Policies

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

Consistency Analysis

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

Under the Commission's review of the original permit, the original 57-acre lot was known to contain sensitive archaeological resources. Coastal bluffs were home to seasonal camps of the Potter Valley Tribe, Sherwood Valley Rancheria, Redwood Valley Band of Pomo Indians, and other Native American Tribes. An archaeological survey conducted in the subdivision area identified an archaeological site on the subdivision property (designated CA-MEN-1604), though not on the subject lot per se. The survey concluded that it was possible that additional archaeological resources may exist on the original subdivision site, and that the resources might become evident during construction. To protect any archaeological resources that could have been inadvertently unearthed during construction of the roadways and six wells that were authorized under CDP 1-89-028 (including one well on the subject lot and a roadway north of the lot), the Commission included Special Condition 6, which required that if archaeological resources were discovered during construction, all work that could damage or destroy the archaeological resources was required to be suspended, and a qualified archaeologist should to inspect the site, determine the nature and significance of the archaeological materials, and, if needed, develop appropriate mitigation measures to protect the archaeological resources.

Commission staff referred the proposed permit amendment application to tribal representatives with known interest in the project area region.⁵ A tribal representative

⁵ Commission staff referred the project via email to Tribal representatives from the following Tribes on December 29, 2021: Bear River Band of the Rohnerville Rancheria, Guidiville Band of Pomo Indians, Hopland Band of Pomo Indians, Kashia Band of Pomo Indians of Stewarts Point Rancheria, Potter Valley Tribe, Cahto Tribe, Redwood Valley or Little River Band of Pomo Indians, Round Valley Reservation/Covelo Indian Community, Sherwood Valley Band of Pomo Indians, Cloverdale Rancheria of Pomo Indians, Middleton Rancheria, and Coyote Valley Band of Pomo Indians.

from the Kashia Band of Pomo Indians of Stewarts Point was the only Tribe to respond to the request for comments, and they identified no concerns and specified that they had no comment.

In its approval of residential development on the site under the original permit (A-1-MEN-01-051) and the first permit amendment (A-1-MEN-01-051-A1), the Commission did not impose a special condition related to procedures for inadvertent discovery of archaeological resources. The Commission adds this reasonable mitigation measure as Special Condition 12 to this permit amendment. **Special Condition 12** requires that if an area of cultural deposits is discovered during construction, all construction must cease, and a qualified cultural resource specialist must analyze the significance of the find. To recommence construction following discovery of cultural deposits or human remains, the applicant is required to submit a supplementary archaeological plan for 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 is consistent with LCP requirements to protect archaeological resources because the amended development, as conditioned, includes reasonable mitigation measures to protect archaeological resources.

H. Environmentally Sensitive Habitat Areas

LCP Policies

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

Consistency Analysis

LUP policy 3.1-7 and CZC sec. 20.496.020 require that buffer areas shall be established adjacent to all ESHA to provide sufficient area to protect the ESHA from significant degradation resulting from future developments. These provisions of the LCP state that the width of the buffer area shall be a minimum of 100 feet, unless an applicant can demonstrate that 100 feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development; in which case the buffer can be reduced to not less than 50 feet in width. CZC sec. 20.496.020(A)(1)(a) through (g), cited in [Appendix B](#), sets forth specific standards to be considered when determining the width of a buffer.

The subject parcel contains ESHA. As noted previously, the original subdivision approval required the recordation of a deed-restricted open space area over the riparian ESHA and a 50-foot buffer area around the riparian ESHA east of the building envelope.

Proximity of Amended Development to Rare Plant ESHA and Riparian ESHA

In its action to approve CDP 1-89-028-A4, the Commission determined that the 60-foot buffer around the rare Mendocino Coast paintbrush (*Castilleja mendocinensis*) habitat⁶ and the 50-foot buffer around the riparian habitat would be adequate to protect both types of ESHA from the impacts of future development and would be consistent with LUP policy 3.1-7 and CZC sec. 20.496.020 that require new development to be adequately set back from ESHA to provide for a sufficient area to protect the ESHA from significant degradation. Special Condition 8 of CDP 1-89-028-A4 imposed an open space deed restriction (where no future development is allowed) over the Mendocino coast paintbrush habitat and the recommended 60-foot buffer. This area is depicted in [Exhibit 3](#). In addition, Special Condition 9 of CDP 1-89-028-A4 required all future development on the parcel to be located outside of (a) the open space deed restricted area imposed by Special Condition 8 over the Mendocino Coast paintbrush habitat and its buffer, and (b) the open space deed restricted area imposed by Special Condition 1 of CDP 1-89-028 over the riparian ESHA on the property and its 50-foot buffer (this area also is shown in [Exhibit 3](#)). The conditions of CDP 1-89-028 as amended by Amendment 1-89-028-A4 remain in full force and effect. As proposed and conditioned, the modified house and driveway proposed under Permit Amendment A-1-MEN-01-051-A2 will be located outside of the deed restricted areas mentioned above, as confirmed by the applicant's botanist, as explained below.

To support the CDP amendment application, a qualified botanist completed an updated, focused, seasonally appropriate botanical survey of the specific portions of the 11-acre site where changes to the authorized development are proposed under this permit amendment request ([Exhibit 6](#)). The areas surveyed include the approved building footprint where the redesigned house would be located, areas around the building footprint where new landscaping is proposed, the existing deed-restricted rare plant area (to understand whether the previously identified rare plant population still is present and to confirm that the proposed amended development avoids encroachment into rare plant areas and the previously approved minimum 60-foot buffer area around rare plant areas), and the proposed new driveway alignment that enters the property from the existing access easement north of the property (see [Exhibit 7](#), Subdivision Map, which depicts the locations of the two access easements to the subject lot – one on the northeastern end of the lot, which the approved driveway alignment utilizes and one on the northwestern end of the lot, which the proposed realigned driveway will utilize).

The botanical survey located the previously mapped rare plant population and confirmed that the proposed new driveway alignment and all proposed new landscaping will not encroach within the rare plant area or within its 60-foot deed restricted buffer area (deed restricted as open space under Special Condition 8 of CDP 1-89-028-A4; see Project Plans, [Exhibit 2](#)). The botanical survey also located new (not formerly mapped) rare Mendocino Coast paintbrush plants below the bluff edge on the property slightly south of the originally mapped rare plant population (see Exhibit 6, page 14). As proposed, all amended development avoids encroachment into the rare plant area and

⁶ The rare plant species has a California Rare Plant Rank of 1B.2. See the California Native Plant Society Rare Plant Inventory for more information: <https://rareplants.cnps.org/Plants/Details/425>

maintains a minimum 60-foot buffer from the rare plant population and a minimum 50-foot buffer from the riparian ESHA.

The biological report prepared for the originally approved development evaluated the ESHA buffer widths and considered the seven criteria of CZC sec. 20.496.020(A)(1)(a) through (g) in arriving at recommendations for the two ESHA areas. The conclusion that the narrower (than 100-foot) buffers would be adequate to protect the rare plant ESHA was based in part on a recommendation that a physical construction barrier, such as a row of straw bales laid end to end, be installed during construction between the area of earth disturbance and the edge of the ESHA to avoid sedimentation impacts to the habitat. Special Condition 9 of CDP 1-89-028-A4 requires that such a barrier be installed during future residential development to ensure that this recommendation is carried out and that the ESHA buffers will be adequate to protect the rare plant and riparian habitats. To ensure that such a barrier would be installed to protect the ESHA on the site from the impacts of construction of the proposed amended development, in its action to approve the amended development under CDP A-1-MEN-01-051-A1, the Commission added **Special Condition 6(A)**, which requires that prior to commencement of construction, a physical barrier consisting of straw bales be placed end to end between any construction and the edge of the ESHA open space areas required by CDP 1-89-028 as amended. This condition is reimposed without changes to this permit amendment and remains in full force and effect.

Another condition that is reimposed without changes to this permit amendment and remains in full force and effect is **Special Condition 7** related to landscaping restrictions. To avoid the possibility that non-native, invasive plant species would be introduced as part of future landscaping at the site and spread into surrounding ESHA and displace native vegetation, the Commission included Special Condition 7(A) in its approval of CDP A-1-MEN-01-051-A1. To prohibit the use of specified rodenticides on the property, the Commission also included Special Condition 7(B) prohibiting the use of specified rodenticides. Rodenticides are sometimes used to prevent rats, moles, voles, and other small animals from eating the landscaping plantings, and rodenticides can present risks to non-target wildlife present in urban and urban/wildland areas.

As previously discussed, the applicant is proposing new landscaping as part of this amendment ([Exhibit 2](#), pages 10-11). The proposed landscaping includes the planting of several types of native, regionally appropriate trees, shrubs, and herbaceous plants within and around the approved building envelope on the property. As proposed, the landscaping plan is consistent with Special Condition 7, and, as previously discussed, Special Condition 7 is reimposed without changes to this permit amendment and remains in full force and effect. Also as previously discussed (Finding III-E), the proposed landscaping plan is consistent with Special Condition 7 of CDP 1-89-028-A4 (Area of Native Vegetation Open Space Deed Restriction), because the proposed landscaping plan includes “reforestation with native species” within the deed-restricted area as allowed under the special condition.

As conditioned to (1) establish adequate buffers to protect the rare plant and riparian ESHAs, (2) require that straw bales be placed end to end between the delineated rare

plant and riparian ESHA buffers and development activities, and (3) prohibit use of specified rodenticides and planting of invasive exotic species as part of the landscaping, the Commission finds that the amended development, as conditioned, will protect the rare plant ESHA and riparian ESHA on the property consistent with LUP policies 3.1-7 and 3.1-10 and with CZC sec. 20.496.010, 20.496.020, and 20.496.035.

Beach Pine and Bishop Pine Sensitive Natural Communities

In addition to the rare plant and riparian ESHA discussed above, the remainder of the property is dominated by maritime pine forest – Beach pine forest (*Pinus contorta* ssp. contorta)⁷ closer to the bluff and Bishop pine forest (*P. muricata*)⁸ a bit further inland on the lot. The Beach pine forest community and the presence of Bishop pine trees were noted in the most recent botanical survey completed for the site by the applicant's botanist in support of this CDP amendment application. In addition, in its review of this permit amendment application, Commission staff visited the site and observed the presence of both Beach pine and Bishop pine trees within 100 feet of the approved building footprint.⁹ Both types of pine forest are classified as sensitive natural communities that meet the definition of ESHA under the Coastal Act and the certified LCP due to their rarity status.¹⁰ The approved building site and proposed realigned driveway are directly within or within 50 feet of the environmentally sensitive Beach pine forest habitat, and portions of the approved development (e.g., septic system area and original driveway alignment) appear to be directly within the environmentally sensitive Bishop pine forest habitat on the property. Furthermore, there is no location on the subject property where residential development *could* be located that would avoid encroachment into ESHA and/or minimum ESHA buffers required under the LCP.

In prior Commission permit actions related to this site, the Commission did not recognize that these pine forest areas were rare and therefore qualified as ESHA under the Coastal Act, though the Commission did note their presence on the property. It is unclear why the Commission did not previously address the issue. However, had the Commission recognized the maritime pine forest natural communities as ESHA in its prior permit actions, the proposed residential development would not have complied with policies of the Coastal Act (in effect for CDP 1-89-028) or the certified LCP (subsequent permit actions), because the development would have been located in

⁷ CNPS 2021: see <https://vegetation.cnps.org/alliance/48>.

⁸ CNPS 2021: see <https://vegetation.cnps.org/alliance/509>.

⁹ No vegetation data has been collected on the property to confirm the determination that the Beach pine forest and Bishop pine forest sensitive natural communities occur on the site. However, the applicant's botanist documented the presence of Beach pine forest in the focused botanical survey completed for the site and also documented Bishop pine trees on the property, and Commission staff with botanical expertise and familiarity with these two sensitive natural communities also observed both pine species on site. The subject site is within the documented geographic range of both pine forest communities.

¹⁰ Both have a rarity rank of S3, which is designated as a sensitive natural community by the California Department of Fish and Wildlife Vegetation Classification and Mapping Program (VegCAMP). See <https://wildlife.ca.gov/Data/VegCAMP/Natural-Communities#sensitive%20natural%20communities> and <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=153609&inline>

ESHA and/or areas set aside as required buffers from the ESHA.¹¹ Therefore, the Commission would not have been able to approve the development unless another policy of the Coastal Act provided authority for approval despite inconsistencies with ESHA policies. Section 30010 of the Coastal Act provides such authority when necessary to avoid an unconstitutional taking of private property (discussed more below), but the Commission did not assert this authority in its prior permit actions.

On the other hand, the Commission did approve permits for residential development on the site, which are valid and have been exercised. Rather than obtain a permit amendment to authorize the currently proposed 3,273-square-foot, two-story residence and 594-square-foot attached garage, the applicant could simply proceed with constructing the previously authorized residence and related development, consisting of a much larger 6,966-square-foot, two-story residence with an 886-square-foot attached garage, resulting in a larger footprint with more significant impacts to ESHA pine forests on the property.

Takings Approval

Section 30010, as informed by U.S. Supreme Court jurisprudence,¹² prohibits the Commission from granting or denying a permit in a manner that would take private property for public use without just compensation. In prior Commission actions, the Commission has applied section 30010 to require approval of some development that may be inconsistent with the Coastal Act when necessary to avoid an unconstitutional take of private property and in order to allow for a reasonable economic use of the property. In these situations, however, the Commission must ensure that projects are as consistent as possible with the Coastal Act or certified LCP, and typically conditions projects to minimize, as much as possible, the impacts of the allowed use on coastal resources.

Consistent with the intent of section 30010 and given the unique history of this project and the overriding importance of implementing the Coastal Act in a way that is most protective of significant coastal resources (section 30007.5), the Commission may approve the proposed amendment to allow construction of the proposed residence as a more LCP-consistent and coastal resource-protective alternative to the currently authorized development.

The Commission finds that there are no economically viable alternatives to the proposed project that would satisfy the Coastal Act and LCP. The subject parcel is designated and zoned as Rural Residential, Five Acres Minimum, Planned

¹¹ For example, section 30240 of the Coastal Act limits development in ESHA to “uses dependent on those resources” and also requires that development adjacent to ESHA be “sited and designed to prevent impacts which would significantly degrade those areas . . .”

¹² See *Lucas v. South Carolina Coastal Council*. ((1992) 505 U.S. 1003, 1014 [regulation that denied all economically viable use of property was a taking]; *Penn Central Transportation Co. v. New York*. ((1978) 438 U.S. 104, 124 [regulation that does not deny all economically viable use may still qualify as an unconstitutional taking based on an evaluation of the character of the government action, its economic impact, and its interference with reasonable, investment-backed expectations].

Development (RR:L-5:PD) under the certified LCP. Within the RR designation, a single-family residence is a permitted use, subject to approval of a CDP. The zoning designation allows other uses besides a home (including, under CZC sec. 20.376.010, Vacation Home Rental, Light Agriculture, Row and Field Crops, Tree Crops, and Passive Recreation), including development that would likely have fewer impacts on ESHA than the proposed project, such as a passive recreational use. As noted above, however, the applicants purchased this property subject to an approved permit to build an even larger home than is currently proposed, and any development on the site would need to be constructed entirely in ESHA or ESHA buffer. All proposed development will be confined within the previously approved 10,000-square-foot building envelope. The physical location of the development building envelope at the project site was determined from a surveyed map prepared by a licensed surveyor (Forrest Francis) in July of 2021, which is the basis for the proposed amended site plan. It verifies that the proposed development is in the same footprint as the house that was previously permitted.

In addition, the proposed permit amendment represents a less environmentally damaging alternative to the residential development of the site compared to the development as authorized by the Commission under CDP A-1-MEN-01-051 and A-1-MEN-01-051-A1, in particular with respect to the proposed driveway realignment. As shown in [Exhibit 7](#), the proposed new driveway alignment will enter the property from the access easement on the northern end of the lot, closer to the approved building envelope, which is located near the western end of the lot. As such, this proposed driveway alignment is much shorter than the currently approved driveway alignment, and therefore has a smaller footprint through pine forest ESHA than the existing authorized driveway alignment, which enters the property from the eastern easement and requires a significantly larger footprint (five to six times as long) through pine forest ESHA.

The Commission finds that allowance of some residential development on the site is necessary to avoid an unconstitutional taking of private property, and the currently proposed residence is a significantly less environmentally damaging project than what is allowed under existing permits and is sufficient to allow a reasonable economic use of the property.

Approvable Project

Having reached this conclusion that the applicants are entitled to some development on their property despite the LCP inconsistencies, the Commission also finds that the Commission must still comply with the requirements of the Coastal Act by approving and siting the development in a manner that is as consistent with the certified LCP as possible. Furthermore, CZC sec. 20.496.020(A)(4) states that any development permitted within an ESHA buffer area (in this case in violation of the LCP policies protecting ESHA and requiring minimum 50-foot ESHA buffers) shall comply at a minimum with several standards, including, but not limited to, the following: (a) development shall be compatible with the continuance of the adjacent habitat area; (b) structures shall be allowed within the buffer area only if there is no other feasible site

available on the parcel; (c) development shall minimize impervious surfaces, removal of vegetation, amount of bare soil, noise, dust, artificial light, nutrient runoff, air pollution, and human intrusion; (d) appropriate mitigation measures shall be required as a condition of project approval. To achieve better consistency with the LCP requirements, the project must be subject to various special conditions, as discussed in the above findings and listed below:

- **Special Condition 10** requires the applicant to record a deed restriction for the amended project with its new development plans, to impose the special conditions of the permit amendment as covenants, conditions and restrictions on the use and enjoyment of the property.
- **Special Condition 11** requires a permit for additions and improvements to the single-family residence in the future that could involve a risk of adverse environmental effect.
- **Special Condition 6(A)** requires that prior to commencement of construction, a physical barrier consisting of straw bales be placed end to end between any construction and the edge of the ESHA open space areas.
- **Special Condition 7** related to landscaping prohibits the planting of non-native, invasive species on the property or the use of rodenticides.
- **Special Condition 13** requires submittal of a building envelope delineation plan to clearly establish a visible boundary between areas where authorized development and activities associated with residential development are permitted on the site (i.e., the building envelope) and adjacent ESHA and ESHA buffers outside of the approved surveyed building envelope.

The applicants are proposing to construct a 3,273-square-foot, maximum 26-foot-high, single family home. All proposed development will be confined within the previously approved 10,000-square-foot building envelope. The physical location of the development building envelope at the project site was determined from a surveyed map prepared by a licensed surveyor (Forrest Francis) in July of 2021, which is the basis for the proposed amended site plan. Because the proposed realigned driveway is only a fraction of the footprint of the previously authorized driveway alignment, and with the required conditions of approval, the proposed amended development maximizes consistency with the ESHA protection policies of the certified LCP while avoiding a taking of private property without just compensation.

I. Public Access

Section 30210 of the Coastal Act requires that maximum public access shall be provided consistent with public safety needs and the need to protect natural resource areas from overuse. Section 30212 requires that access from the nearest public roadway to the shoreline be provided in new development projects, except where it is inconsistent with public safety, military security, or protection of fragile coastal

resources, or where adequate access exists nearby. Section 30211 requires that development not interfere with the public's right of access to the sea where acquired through use or legislative authorization. Section 30214 provides that the public access policies of the Coastal Act shall be implemented in a manner that considers the capacity of the site and the fragility of natural resources in the area. In applying these sections, the Commission considers whether public access is necessary to avoid or offset a project's adverse impact on existing or potential access.

The original subdivision approved under CDP 1-89-028 raised public access issues, and Special Condition 4 of CDP 1-89-028 required dedication and recordation of a vertical public access easement along the north end of the subdivision (north of the subject lot) from Ocean Drive to the bluff edge and beach. In addition, Special Condition 5 required installation of a pedestrian access way at the front entrance gate to the subdivision to provide connectivity to the dedicated easement. The dedicated vertical easement and pedestrian access have since been accepted by the Mendocino Land Trust and opened to the public as the Belinda Point Trail. Therefore, these conditions have been satisfied and remain in full force and effect, unaffected by this permit amendment request. Additionally, Special Condition 2 required the applicant to agree that the permit approval not result in interference with any public prescriptive rights of access that may exist on the subdivision property. By acceptance of the original permit, Special Condition 2 of CDP 1-89-028 also remains in full force and effect.

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

J. California Environmental Quality Act

Section 13096 of the Commission's administrative regulations requires Coastal Commission approval of CDP applications to be supported by a finding showing the application, as modified by any conditions of approval, is consistent with any applicable requirement of the California Environmental Quality Act (CEQA). Under section 15251(c) of Title 14 of the California Code of Regulations, the Commission's CDP regulatory process has been certified as the functional equivalent to the CEQA process. As a certified regulatory program, section 21080.5(d)(2)(A) of CEQA still applies to the Commission's CDP regulatory process and prohibits approval of a proposed development if there are any feasible alternatives or feasible mitigation measures available, which would substantially lessen any significant adverse effect the proposed development may have on the environment.

The Commission incorporates its findings on Coastal Act and LCP consistency at this point as if set forth in full. No public comments regarding potential significant adverse environmental effects of the project were received by the Commission prior to

preparation of the staff report. As discussed above, the project as proposed to be amended has been conditioned to be consistent with the policies of the Coastal Act and LCP. As specifically discussed in these above findings, mitigation measures that will minimize or avoid all significant adverse environmental impacts have been required. As conditioned, there are no other feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impacts which the activity may have on the environment.

Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative, has no remaining significant environmental effects, either individual or cumulative, and complies with the applicable requirements of the Coastal Act and LCP to conform to CEQA.