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STAFF REPORT: REGULAR CALENDAR

Application No.: 1-23-0289

Applicant: Johnny and Nancy Kinder

Location: 1755 Buhne Drive, in the unincorporated community of King Salmon, 1.5 miles south of Eureka, Humboldt County

Project Description: (1) Remodel and add 364 sq. ft. to 1,313 sq. ft., 2-story, single-family home, resulting in 1,677 sq. ft., 2-story, single-family home with a 212 sq. ft. second-story deck, and (2) demolish and replace 410 sq. ft. detached garage.

Staff Recommendation: Approval with conditions

SUMMARY OF STAFF RECOMMENDATION

The applicants propose to remodel and improve an existing (pre-Coastal Act) 1,313 sq. ft., two-story, three-bedroom, single-family residence. The subject site is located within the King Salmon subdivision on the shores of Humboldt Bay. The subdivision, which is located directly across from the bay entrance channel, consists of former tidelands that were partially filled during the mid-1900s and were later divided, mostly into 25-foot-wide, 5,000-square-foot (or smaller) lots. The tidelands were filled in a manner that left interior tidal channels within the subdivision, and while many of the King Salmon lots are adjacent to the tidal channels, the subject property is not.

The primary Coastal Act issue raised by new development in King Salmon is flood hazards. Nearly the entire King Salmon subdivision, including the subject property, lies within the FEMA-mapped 100-year flood zone and is subject to flooding from extreme high tides and tsunamis. The subject property ranges in elevation from 9-10 feet

NAVD88. Under the medium-high sea level risk analysis, the entire property and the first floor of the residence could be subjected to regular tidal flooding by the year 2100. The proposed residential improvements will not expand the footprint of the residence and will not substantially extend the life of the existing structure. The proposed project does not constitute redevelopment (alterations to the major structural elements of the residence individually total less than 50%), therefore additional flood risk minimization measures that have previously been utilized in the King Salmon area (such as locating all habitable portions of the structure above the estimated maximum flood elevation and incorporating concrete walls and flood vents where appropriate) are not being proposed as part of the project. Staff's recommendation includes Special Condition 9, which requires the applicants to assume the risks of coastal hazards of the property and waive any claim of liability on the part of the Commission; Special Condition 7, which requires the applicants to acknowledge that the proposed development is not entitled to a shoreline protection device and to remove the improvements authorized under this permit if any government agency has ordered that the improvements are not to be occupied due to any of the hazards identified above, essential services to the site can no longer feasibly be maintained due to coastal hazards, or if the improvements require new or augmented shoreline protection inconsistent with the Coastal Act, and Special Condition 2, which requires that all future improvements to the development authorized by this permit that might otherwise be exempt from CDP requirements obtain an amendment to this CDP or a new CDP.

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

The Motion to adopt the staff recommendation of approval with conditions is found on [page 4](#).

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I. Motion and Resolution

Motion

I move that the Commission **approve** Coastal Development Permit Application No. 1-23-0289 pursuant to the staff recommendation.

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

Resolution

The Commission hereby **approves** Coastal Development Permit Application No. 1-23-0289 for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either (1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or (2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. Standard Conditions

This permit is granted subject to the following standard conditions:

- 1. Notice of Receipt and Acknowledgment.** The permit is not valid, and development shall not commence, until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
- 2. Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
- 3. Interpretation.** Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
- 4. Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

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

III. Special Conditions

This permit is granted subject to the following special conditions:

1. Final Plans.

- A. PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT 1-23-0289, the applicant shall submit to the Executive Director for review and written approval final construction, drainage, and landscaping plans in substantial compliance with those submitted with the application materials on July 25, 2023, including evidence that a licensed professional (Certified Engineering Geologist or Geotechnical Engineer) has reviewed and approved final plans for residential structures and has certified that the plans include appropriate measures for design and structural stability to address seismic hazards consistent with state and local building code requirements;
- B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission approved amendment to this CDP unless the Executive Director determines that no amendment is legally required.

2. Future Development Restriction.

This permit is only for the development described in Coastal Development Permit Application No. (CDP) 1-23-0289, including, but not limited to, improvements to portions of the foundation, exterior walls, and roof, 364 sq. ft. addition to the second story, 38 sq. ft. covered entry, 192 sq. ft. fenced patio, and 410 sq. ft. garage. The following future development restrictions apply:

- A. Pursuant to Title 14 California Code of Regulations (CCR) section 13250(b)(4), a permit shall be required for certain improvements to the existing single-family residences that would result in an increase of 10 percent or more of internal floor area or height of an existing structure.
- B. In addition, an amendment to CDP 1-23-0289 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 section 30610(d) and Title 14 CCR §13252(a)-(b); and

- 3. Construction Responsibilities.** The applicant shall adhere to appropriate construction-related best management practices (BMPs) to protect water quality and surrounding environmentally sensitive habitat areas, including, but not limited to, the following:
- A. BMPs shall be used to prevent the entry of polluted stormwater runoff into coastal waters during construction and post-construction, including the use of appropriate BMPs for erosion and runoff control and post-construction BMPs for roof runoff controls, vegetated buffer strips, and bioretention as detailed in the current California Storm Water Quality Best Management Handbooks (<http://www.cabmphandbooks.com>).
 - B. Minimize Erosion and Sediment Discharge. During construction, erosion and the discharge of sediment off-site or to coastal waters shall be minimized through the use of appropriate Best Management Practices (BMPs), including:
 - i. Erosion control BMPs (such as mulch, soil binders, geotextile blankets or mats, or temporary seeding) shall be installed as needed to prevent soil from being transported by water or wind. Temporary BMPs shall be implemented to stabilize soil on graded or disturbed areas as soon as feasible during construction, where there is a potential for soil erosion to lead to discharge of sediment off-site or to coastal waters.
 - ii. Sediment control BMPs (such as silt fences, fiber rolls, sediment basins, inlet protection, sand bag barriers, or straw bale barriers) shall be installed as needed to trap and remove eroded sediment from runoff, to prevent sedimentation of coastal waters.
 - C. Minimize Discharge of Construction Pollutants. The discharge of other pollutants resulting from construction activities (such as chemicals, paints, vehicle fluids, petroleum products, asphalt and cement compounds, debris, and trash) into runoff or coastal waters shall be minimized through the use of appropriate BMPs, including:
 - i. Materials management and waste management BMPs (such as stockpile management, spill prevention, and good housekeeping practices) shall be installed or implemented as needed to minimize pollutant discharge and polluted runoff resulting from staging, storage, and disposal of construction chemicals and materials. BMPs shall include, at a minimum:
 - a) Covering stockpiled construction materials, soil, and other excavated materials to prevent contact with rain, and protecting all stockpiles from stormwater runoff using temporary perimeter barriers.

- b) Cleaning up all leaks, drips, and spills immediately; having a written plan for the clean-up of spills and leaks; and maintaining an inventory of products and chemicals used on site.
- c) Proper disposal of all wastes; providing trash receptacles on site; and covering open trash receptacles during wet weather.
- d) Prompt removal of all construction debris from the project area.

D. Minimize Other Impacts of Construction Activities. Other impacts of construction activities shall be minimized through the use of appropriate BMPs, including:

- i. The damage or removal of non-invasive vegetation (including trees, native vegetation, and root structures) during construction shall be minimized, to achieve water quality benefits such as transpiration, vegetative interception, pollutant uptake, shading of waterways, and erosion control; and
- ii. Soil compaction due to construction activities shall be minimized, to retain the natural stormwater infiltration capacity of the soil.

4. Protection of Archaeological Resources. The landowner/ permittee shall undertake development in compliance with the following mitigation measures to protect archaeological and/or tribal cultural resources:

- A. If an area of tribal cultural and/or archaeological resources is discovered during ground-disturbing activities, all construction shall cease and shall not recommence except as provided in subsection (C) hereof, and the permittee shall retain a qualified archaeologist and/or tribal cultural resource specialist to analyze the significance of the find in consultation with the Native American Tribes listed on the NAHC list. The archaeologist and/or tribal cultural resource specialist shall immediately notify the Tribes on the NAHC list. An “exclusion zone” where unauthorized equipment and personnel are not permitted shall be established (e.g., taped off) around the discovery area that includes a reasonable buffer zone recommended by the monitor(s). Project activities may continue outside of the exclusion zone.
- B. Should human remains be discovered on-site during the course of the project, immediately after such discovery, the on-site archaeologist and/or tribal cultural resource specialist shall notify the county coroner within 24 hours of such discovery, and all construction activities shall be temporarily halted until the remains can be identified. An “exclusion zone” may be established around the discovery area. Project activities may continue outside of the exclusion zone. If the county coroner determines that the human remains are those of a Native American, the coroner shall contact the NAHC within 24 hours, pursuant to Health and Safety Code Section 7050.5. The NAHC shall deem

- the Native American most likely descendant (MLD) to be invited to participate in the identification process pursuant to Public Resources Code Section 5097.98. The landowner/permittee shall comply with the requirements of Section 5097.98 and work with the MLD person(s) to preserve the remains in place, move the remains elsewhere onsite, relinquish the remains to the descendants for treatment, or determine other culturally appropriate treatment. Within five (5) calendar days of notification to NAHC, the permittee/landowner shall notify the Coastal Commission's Executive Director of the discovery of human remains and identify any changes to the proposed development or mitigation measures that may be needed related to the inadvertent discovery. The Executive Director shall maintain confidentiality regarding the presence of human remains on the project site. The Executive Director shall determine whether the identified changes are de minimis in nature and scope.
- C. A permittee seeking to recommence construction within an exclusion zone following discovery of tribal cultural and/or archaeological resources shall submit a Supplementary Archaeological Plan (SAP) prepared by an archaeologist in consultation with the Native American Tribes listed on the NAHC list for the review and written approval of the Executive Director. If the Executive Director approves the SAP and determines that the SAP's recommended changes to the proposed development or mitigation measures are de minimis in nature and scope, construction may recommence after this determination is made by the Executive Director in writing. If the Executive Director approves the SAP but determines that the changes therein are not de minimis, construction may not recommence until after an amendment to this permit is approved by the Commission.
- 5. Landscaping Restrictions.** Only native and/or non-invasive plant species shall be planted as landscaping on the property. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be identified from time to time by the State of California, shall be employed or allowed to naturalize or persist on the site. No plant species listed as a "noxious weed" by the governments of the State of California or the United States shall be utilized within the bounds of the property.
- 6. Lighting Limitations.** All exterior lighting, including any lights installed as part of the development approved under CDP 1-23-0289, or in the future, shall be low-wattage, shielded, and downcast such that no light will shine beyond the bounds of the property or into adjacent sensitive habitats.
- 7. No Future Shoreline Protective Device and Removal of Development.**
- A. By acceptance of this Permit, the applicants agree, on behalf of themselves and all successors and assigns, that no shoreline protective device(s) shall be constructed to protect the development approved pursuant to Coastal Development Permit No. 1-23-0289 including, but not limited to, the

residential additions, covered entry, fenced patio, and garage, in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, or other natural hazards in the future. By acceptance of this Permit, the applicants hereby waive, on behalf of themselves and all successors and assigns, any rights to construct such devices to protect the development approved pursuant to Coastal Development Permit No. 1-23-0289 that may exist under Public Resources Code Section 30235 or any other applicable law.

B. By acceptance of this Permit, the applicants further agree, on behalf of themselves and all successors and assigns, that they are required to remove all or a portion of the development approved pursuant to Coastal Development Permit No. 1-23-0289, and restore the site, if:

- (1) the County or any other government agency with legal jurisdiction has issued a final order, not overturned through any appeal or writ proceedings, determining that all or part of the approved development is currently and permanently unsafe for occupancy or use due to damage or destruction from waves, flooding, erosion, bluff retreat, landslides, or other hazards related to coastal processes, and that there are no feasible measures that could make the approved development suitable for habitation or use without the use of bluff or shoreline protective devices;
- (2) essential services to the site (e.g., utilities, roads) can no longer feasibly be maintained due to the coastal hazards listed above;
- (3) removal of the approved development is required pursuant to LCP policies for sea level rise adaptation planning; or
- (4) the approved development requires new and/or augmented shoreline protective devices that conflict with any relevant Coastal Act policies, applicable LCP policies or the conditions of this permit.

8. Deed Restriction. PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT 1-23-0289, the permittee shall submit to the Executive Director for review and approval documentation demonstrating that the permittee has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (a) indicating that, pursuant to this permit, 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 covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed

restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

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

IV. Findings and Declarations

A. Project Description and Location

The applicants, Johnny and Nancy Kinder, propose to (1) remodel and expand an existing (pre-Coastal Act) 1,313 sq. ft., two-story, three-bedroom, single-family residence to a 1,677 sq. ft., two-story, two-bedroom, single-family residence with a 212 sq. ft. second-story deck, 38 sq. ft. covered entry, and 192 sq. ft. fenced patio, and (2) demolish and rebuild a 410 sq. ft. detached garage. Internal remodels consist of modifying a portion of the interior walls, converting living spaces from one use to another, and installing a lift. A 121 sq. ft. portion of the first floor would be raised by nine inches in order to match the elevation of the rest of the first floor. The 364 sq. ft. second-story addition would be partially constructed over this raised portion of the residence and partially constructed over the main first floor area. The proposed project would raise approximately 20% of the first-floor framing, replace approximately 42% of the roof, and add additional support footings to approximately 13% of the foundation. The second-story addition would increase the total square footage of the residence by 27%. The proposed development does not constitute major redevelopment, as alterations to the major structural elements of the residence (foundation, framing, roof structure) are individually less than 50%.

The project site is a 0.14-acre property located at 1755 Buhne Drive (APN 305-231-023) in King Salmon, approximately 1.5 miles south of Eureka. The project site is located between developed parcels with existing residences to the east, north and south, and Buhne Dr. (a County road) to the east.

The proposed development constitutes improvements to an existing single-family residence under section 30610(a) of the Coastal Act and section 13250 of the Commission's regulations, because the improvements are either directly attached to the existing house, include structures normally associated with a single-family residence, or involve landscaping on the lot.

Although certain types of improvements to existing single-family residences are exempt from coastal development permit requirements, Commission's regulations require a CDP for certain classes of such development enumerated in the regulations because they involve a risk of adverse environmental effects. The proposed development involves improvements to an existing single-family structure located within 300 feet of the mean high tide that would result in an increase of 10 percent or more of internal floor area of an existing structure and, therefore, are improvements to an existing single-family residence that require a CDP under the Commission's regulations.

B. Environmental Setting

The subdivision of King Salmon is located on the shores of Humboldt Bay, south of Eureka, directly across from the Humboldt Bay entrance channel ([Exhibit 1](#)). Much of King Salmon consists of former tidelands that were partially filled during the mid-1900s and later divided, mostly into 25-foot-wide, 5,000-square-foot (or smaller) lots that were originally used for summer fishing cabins. The tidelands were filled in a manner that left interior tidal channels within the subdivision, and while many of the King Salmon lots are adjacent to the tidal channels, the subject property is not. The nearest tidal channel with connectivity to Humboldt Bay is located at least 170 feet away from the parcel where the applicant is proposing development.

King Salmon is accessed by King Salmon Avenue and Buhne Drive, which flanks the northwest and western sides of the subdivision and separates the developed area from a dune area that borders Humboldt Bay. The King Salmon area is protected from wave action from the bay by a rock jetty and dune area to the west of Buhne Drive that is owned by the Humboldt Bay Harbor, Recreation, and Conservation District and which supports public access use. There is ample public access parking along Buhne Drive, including immediately adjacent to the subject property.

C. Standard of Review

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

D. Other Agency Approvals

This project is located on a lot in an established residential neighborhood and behind the first line of development that is adjacent to the tidal channels connected to Humboldt Bay. The proposed project requires no other agency approvals other than a County building permit.

E. Public Trust Lands

As described above, the King Salmon area consists of historic tidelands that are presently filled and which were subject to the Public Trust prior to the mid-1900s. State Lands has jurisdiction and management authority over public trust lands, including all ungranted tidelands, submerged lands, and the beds of navigable lakes and waterways. State Lands also has review authority over public trust lands legislatively granted in trust to local governments. Section 13577(f) of the Coastal Commission's regulations define public trust lands as "all lands subject to the Common Law Public Trust for commerce, navigation, fisheries, recreation, and other public purposes." Public trust lands include "tidelands, submerged lands, the beds of navigable lakes and rivers, and historic tidelands and submerged lands that are presently filled or reclaimed, and which were subject to the Public Trust at any time."

State Lands is responsible for determining the landward location and extent of the State's sovereign fee ownership of public trust lands. In this case, the Applicant submitted a written determination from the State Lands Commission on May 15, 2023, stating that no State or public trust lands are involved in the proposed development.

F. Locating and Planning New Development

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

The subject property is located in the King Salmon subdivision, which is a densely developed community that is planned and zoned for single family residential use and some commercial development. The community contains over one hundred developed residences and commercial businesses. The subject property is located along Buhne Drive, where the majority of lots are developed with residential or commercial structures. The subject lot is planned and locally zoned for single-family residential uses under the Humboldt County certified LCP. Most of the lots in the surrounding area have been developed with single-family homes of varying sizes and heights that display a variety of architectural styles.

The subject property is served by community water and sewer systems provided by the Humboldt County Community Services District. Thus, there are adequate services to accommodate the proposed new two-bedroom residence. Although the subject site is

located in a flood hazard area, as discussed in Finding G below, the development has been conditioned to minimize flood hazards consistent with the requirements of Coastal Act section 30253. Furthermore, as discussed in the below findings, the project has been conditioned to protect visual resources, nearby environmentally sensitive habitat areas, and water quality.

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

G. Geologic and Flood Hazards

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

New development shall do all of the following:

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

Coastal Act section 30270 states:

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

The proposed project is located in an area subject to high geologic and flood hazards that includes the potential for strong ground shaking, liquefaction, differential settlement, and flooding. Almost the entire King Salmon subdivision, including the subject property, lies within the FEMA-mapped 100-year flood zone and is subject to flooding from extreme high tides and tsunamis. The frequency and severity of flood events at the site is expected to worsen with projected sea-level rise rates for the region.

Earthquakes and Seismic Hazards

Northwestern California is one of the most seismically active regions in the continental United States. The Humboldt County region occupies a complex geologic environment characterized by very high rates of active tectonic deformation and seismicity. The subject site is approximately 2 miles north of the Little Salmon fault zone and 2 miles west of the Freshwater fault, both of which are considered active thrust faults. Thrust faults are low angle faults that build up considerable horizontal stress before they fail

and can generate large seismic events. Although relatively infrequent, high-intensity ground shaking, liquefaction, and tsunamis are some of the seismic hazards with the potential to occur at the site.

The proposed project consists of a remodel and 364 sq. ft. second-story addition to an existing single-family residence. Additional foundation footings will be installed underneath the perimeter of the residence to support the expanded two-story residence. As described in Finding IV-A above, the proposed project would raise approximately 20% of the first-floor framing, replace approximately 42% of the roof, and add additional support footings to approximately 13% of the foundation. The second-story addition would increase the total square footage of the residence by 27%. The proposed development does not constitute major redevelopment, as alterations to the major structural elements of the residence (foundation, framing, roof structure) are individually less than 50%.

To minimize risk of developing these improvements in a geologically hazardous area, the proposed project has been designed in accordance with the current California Building Code and local building codes. The structural plans have not been finalized but are being designed by a qualified engineer to address seismic hazards. To ensure that the applicant develops the project in a manner that minimizes risk from seismic hazards, the Commission attaches **Special Condition 1** requiring submittal of final plans prior to commencement of construction that have been reviewed and approved by a qualified professional (geologist or engineer) confirming that the new foundation and buildings are designed with appropriate measures to address seismic and fault hazard risks. Therefore, the development is designed to assure stability and structural integrity consistent with the requirements of section 30253(b).

Flood Hazards

King Salmon is among the lowest-lying communities on Humboldt Bay and one of the most vulnerable areas to sea level rise on the entire United States west coast.¹ The risk of flooding is therefore a significant natural hazard affecting proposed development within King Salmon. Nearly the entire King Salmon subdivision, including the subject property, lies within the FEMA-mapped 100-year flood zone and is subject to flooding from extreme high tides. The 100-year Base Flood Elevation (BFE) for the King Salmon area established by FEMA's National Flood Insurance Program is +10 feet (NAVD 88). The property ranges in elevation from 9 to 10 feet, and the existing residence is between 10.6 and 11.3 feet in elevation.

The project as proposed includes certain measures to minimize flood risk. Namely, the proposed residential improvements will not expand the footprint of the residence. In addition, a portion of the first floor will be raised so that the remodeled portion of the residence is at 11.3 feet. As the existing residence has habitable space on both the first and second story, and as the proposed development does not constitute major

¹ Russell and Griggs 2012b; J. K. Anderson, Laird, and Patton 2017; Laird 2018c; OPC Working Committee 2018.

redevelopment (alterations to the major structural elements of the residence are individually less than 50%), additional flood risk minimization measures that have previously been utilized in the King Salmon area (such as locating all habitable portions of the structure above the estimated maximum flood elevation and incorporating concrete walls and flood vents where appropriate) are not being proposed as part of the project. Nevertheless, because the applicant is proposing residential improvements in an inherently hazardous area, the Commission attaches **Special Condition 9**, which requires the applicant to assume the risks of coastal hazards of the property and waive any claim of liability on the part of the Commission. Through this condition the applicant is notified that the Commission is not liable for damage as a result of approving the permit for development. The condition also requires the applicant to indemnify the Commission in the event that third parties bring an action against the Commission as a result of the failure of the development to withstand hazards.

Sea-Level Rise

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

Sea level rise will have dramatic impacts on California's coast in the coming decades and is already impacting the coast today. In the past century, the average global temperature has increased by about 0.8°C (1.4°F), and as a result global sea levels have increased by 7 to 8 inches (17 to 21 cm). In addition, SLR has been accelerating in recent decades, largely due to greenhouse gas emissions, with the global rate of SLR tripling since 1971.² There is strong scientific consensus that SLR will continue over the coming millennia regardless of future human actions, but the exact rate and amount will depend on the amount of future greenhouse gas emissions as well as the exact contribution from sources such as the Antarctic and Greenland ice sheets, which are areas of continuing research. While planning coastal development under this uncertainty presents challenges, it is widely documented that underestimating SLR could result in costly damages and adverse outcomes to coastal resources. Planning

² IPCC, 2021: Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change [Masson-Delmotte, V., P. Zhai, A. Pirani, S.L. Connors, C. Péan, S. Berger, N. Caud, Y. Chen, L. Goldfarb, M.I. Gomis, M. Huang, K. Leitzell, E. Lonnoy, J.B.R. Matthews, T.K. Maycock, T. Waterfield, O. Yelekçi, R. Yu, and B. Zhou (eds.)]. Cambridge University Press. In Press.

and development decisions on the California coast must, therefore, be appropriately precautionary and made with the full understanding that SLR will change coastal landscapes and hazard conditions. Not only will siting and design decisions regarding proposed coastal development influence the future safety of the development and overall resiliency of the California coast, but such decisions will also affect the way that coastal resources protected under the Coastal Act respond to changing sea levels over time.

Currently, the best available science on SLR projections in California is provided in the State of California Sea-Level Rise Guidance (OPC 2018)³ and is reflected in the Coastal Commission Sea Level Rise Policy Guidance (CCC 2018).⁴ These documents present probabilistic SLR projections as well as an extreme “H++” scenario for twelve locations (tide gauges) along the California coast, and provide recommendations for which projections to use in various planning contexts based on level of risk aversion and project type. The medium-high risk aversion scenario, which has an estimated 0.5% chance of being exceeded, should be analyzed for projects with greater consequences and/or a lower capacity to adapt, like residential and commercial development.

With sea level rise, shoreline development will experience increasingly hazardous conditions, including worsening storm flooding, inundation, and shoreline and bluff erosion. On a relatively flat shoreline, even small amounts of SLR can cause large losses of beach width. For example, for a shoreline with a slope of 40:1, a simple geometric model indicates that every foot of SLR will result in a 40-foot landward movement of the ocean/beach interface, resulting in significant loss of beach habitat and recreational space as well as representing a change in the location of public tidelands subject to the public trust doctrine. This change could also expose previously protected backshore development to increased tidal/wave action and flooding, and those areas that are already exposed to such conditions will be exposed more frequently and with greater severity. SLR will also cause coastal groundwater tables to rise in some locations, potentially emerging from the ground to cause flooding, as well as impacts such as damage to development and infrastructure, saltwater intrusion into aquifers, and changing liquefaction risks. Importantly, rising groundwater could constrain the types of adaptation strategies that can be protective; for example, while shoreline armoring may be effective to address overland flooding and inundation from SLR, it may not protect against groundwater rise impacts, depending on the characteristics of the site.

These changing hazard conditions may also alter the impacts of development upon coastal resources. In particular, coastal resources such as beaches and wetlands could

³ Ocean Protection Council (OPC). 2018. State of California Sea-Level Rise Guidance: 2018 Update. https://www.opc.ca.gov/webmaster/ftp/pdf/agenda_items/20180314/Item3_Exhibit-A_OPC_SLR_Guidance-rd3.pdf.

⁴ Coastal Commission (CCC). 2018. California Coastal Commission Sea Level Rise Policy Guidance: Interpretive Guidelines for Addressing Sea Level Rise in Local Coastal Programs and Coastal Development Permits.

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

The State SLR Guidance provides SLR projections for 12 tide gauges in the state and recommends using the projections for the gauge closest to the project site. In this case, the North Spit tide gauge at Humboldt Bay is the applicable gauge. The amount of SLR projected at the North Spit tide gauge for the year 2100 (i.e., through the projected “expected lifespan” of the new residence) ranges from 4.1 feet (under the “low-risk aversion” scenario) to 7.6 feet (under the “medium-high risk aversion” scenario) to 10.9 feet (under the “extreme risk aversion” scenario).⁵

The current mean higher high water (MHHW) elevation at the North Spit tide gauge, which is approximately the daily high tide, is approximately 6.5 feet NAVD 88, and the mean annual maximum water (MAMW) elevation at the North Spit tide gauge is approximately 8.8 feet NAVD 88.⁶ Future water levels in the year 2100 under the medium-high risk scenario cited above (adding 7.6 feet of SLR) are projected to range from 14.1 feet on an approximate daily basis (MHHW) to 16.4 feet during the highest tides of the year. Consideration of the medium-high risk scenario (+7.6 ft.) is appropriate in this case, because the residence as designed has a relatively low capacity to adapt to risks associated with tidal flooding (e.g., erosion and flood hazards), and the consequences of the development being subjected to tidal flooding impacts in the future would be significant (e.g., structural damage to residence). Consideration of the medium-high risk scenario also is consistent with the State SLR Guidance, which recommends a precautionary approach to SLR adaptation planning. Thus, under this scenario, around 2100 portions of the property at and below 14.1 feet may be vulnerable to future tidal flooding on a daily basis.

⁵ The OPC projections are based on different scenarios related to future emissions and concentrations of greenhouse gases, aerosols, and other climate drivers. As recommended by the OPC guidance, for the year 2100, the “low risk aversion” scenario is derived from taking the upper range of the 66% probability range for “RCP-8.5,” which is the “Representative Concentration Pathway” that assumes there will be no significant efforts to reduce emissions globally. The “medium-high risk aversion” projection is derived from the upper range of the 0.5% probability range for RCP-8.5. The “extreme risk aversion” projection is based on presumed ice sheet loss in Greenland and the Antarctic.

⁶ Northern Hydrology and Engineering 2014. MHHW and MAMW are two tidal base elevations that have been used in various regional SLR planning documents including the SLR Vulnerability Assessment for the communities of King Salmon, Fields Landing, and Fairhaven (Trinity Associates 2018) to assess community vulnerability and to depict projected daily and annual high tides resulting from tidal inundation via the King Salmon canals.

As previously discussed, the property ranges from 9-10 feet in elevation. The existing residence is sited at 11.3 feet NAVD88. Therefore, the entire property and the residence are below 14.1 feet and, assuming that by the year 2100 sea levels will rise within the range of projected rates discussed above, all areas of the property and the first floor of the residence will be subjected to regular tidal flooding. In addition, according to a local Vulnerability Assessment Report (Laird, 2018) the only point of entry into the community, King Salmon Road, will become compromised when water levels reach 11.0 feet.

The applicant submitted a site-specific coastal hazard analysis memo for the proposed project. The memo concluded that the site is vulnerable to coastal hazards, including from sea level rise, flooding, and storm events. The report acknowledges the likelihood that the subject parcel and the King Salmon community will be impacted by flood events during the life of the project. The limited additions to the existing residence would not serve to significantly extend the life of the existing structure. Changes to major structural components are not likely to significantly extend the life of the structure, because the changes represent a small portion of the total residence. As described above, the proposed project would add additional support piers underneath the perimeter of the foundation, adding approximately 13% to the total foundation. Approximately 42% of the roof will be replaced, and approximately 20% of the first-floor framing will be raised. The second-story addition would increase the total square footage of the residence by 27%. The new entry and paved patio will be easily removable in the event that they are threatened by coastal waves, erosion, or other hazards. The proposed development does not constitute major redevelopment, as alterations to the major structural elements of the residence (foundation, framing, roof structure) are individually less than 50%.

Nevertheless, because the applicant is proposing residential improvements in an inherently hazardous area, the Commission attaches **Special Condition 9**, which, as previously discussed, requires the applicant to assume the risks of coastal hazards of the property and waive any claim of liability on the part of the Commission. Through this condition the applicant is notified that the Commission is not liable for damage as a result of approving the permit for development.

While the proposed improvements do not include a proposed shoreline protective device, as new development, the proposed improvements are not entitled to shoreline protection now or in the future.⁷ Coastal Act Section 30253 requires that new development not “create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area.” Coastal Act limitations on armoring are necessary, because shoreline armoring can and often does have a variety of significant negative impacts on coastal resources, including adverse effects on sand supply, public access, coastal views, natural landforms, and overall shoreline and beach dynamics on and off-site, ultimately resulting in the loss of beaches and adverse impacts to coastal

⁷ Section 30235 of the Coastal Act requires approval of shoreline protective devices only when necessary to protect an “existing” structure or coastal-dependent use in danger of erosion, neither of which applies to this residential project.

vistas and areas for recreation, which are all fundamental coastal resources. The applicant has not proposed to construct a shoreline protection device and no shoreline protection would be authorized by this permit; however, the applicant or a successor-in-interest could request a shoreline protection device at some point in the future. As stated, the applicant bears the risk of developing in this hazardous area with the knowledge that a shoreline protective device to protect the approved development is not consistent with section 30253 of the Coastal Act. Accordingly, to comply with the prohibition under section 30253 that new development “neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area,” the Commission imposes **Special Condition 7**, which requires the applicant to acknowledge that the residential additions, covered entry, fenced patio, and garage authorized by this permit constitute new development under the Coastal Act, which is therefore not entitled to a shoreline protective device under Section 30235 of the Coastal Act. The condition prohibits future shoreline protective devices for the approved development and requires the applicant to waive any rights to shoreline protective devices that may exist under applicable law.

It is also important to ensure that any risks that lead to the site or development becoming unsafe, and/or that lead to access to it (including roads or utilities) not being available, are also internalized by the applicant and that such circumstances be codified as requiring removal and/or relocation. Because the development is projected to be regularly impacted by tidal flooding and may become inaccessible during its expected lifetime, **Special Condition 7** requires the landowner to remove the improvements authorized under this permit if any government agency has ordered that the improvements are not to be occupied due to any of the hazards identified above, essential services to the site can no longer feasibly be maintained due to coastal hazards, or if the improvements require new or augmented shoreline protection inconsistent with the Coastal Act, any applicable LCP policies or the conditions of this permit.

As previously discussed, **Special Condition 8** also is imposed to require that the applicants record and execute a deed restriction approved by the Executive Director against the property that imposes the special conditions of this permit as covenants, conditions, and restrictions on the use and enjoyment of the property. Special Condition 8 will help assure that future owners are aware of these CDP requirements applicable to all future development.

Finally, the Commission notes that section 30610(a) of the Coastal Act exempts certain improvements to existing single-family residential structures from coastal development permit requirements. Pursuant to this exemption, once a house has been constructed, certain improvements to a house are normally exempt from CDP requirements. Depending on the specific improvements proposed, however, further building additions and remodeling of the residence could increase flood hazard risks. Section 30610(a) requires the Commission to specify by regulation those classes of development which involve a risk of adverse environmental effects and require that a permit be obtained for

such improvements. Pursuant to section 30610(a) of the Coastal Act, the Commission adopted section 13250 of Title 14 of the California Code of Regulations (CCR). Section 13250(b)(4) specifically authorizes the Commission to require a permit for certain improvements to existing single-family residences located within 300 feet of the mean high tide that would result in an increase of 10 percent or more of internal floor area or height of an existing structure. Therefore, to ensure that the applicant and all future owners are on notice, pursuant to section 13250 (b)(4) of Title 14 of the CCR, the Commission attaches **Special Condition 2** which requires that all future improvements to the remodeled residence that would result in an increase of 10 percent or more of internal floor area or height requires an amendment or new CDP. At a minimum, this condition will allow future development meeting the 10 percent improvement threshold to be reviewed by the Commission to ensure that such future improvements to the development will not increase flood hazard risks.

Tsunami Hazards

In addition to the risk of flood hazards associated with extreme high tides and future sea level rise, the subject property, along with many others around Humboldt Bay, is shown on emergency planning maps published in 2009 and updated in 2021 by the California Emergency Management Agency, California Geologic Survey, and University of Southern California as being within the zone of potential inundation by a tsunami. If the region were to suffer a major earthquake along the Cascadia Subduction Zone, a local tsunami could hit the Humboldt Bay shoreline within minutes. Maximum tsunami inundation levels are believed to be at least 30 feet above mean sea level at this location. The average ground elevation of the site is 9-10 feet above Mean Sea Level. Thus, the site could be affected by a tsunami surge rising 20 feet above ground level, and it is not possible to site the project out of the tsunami inundation area where it would avoid potential damage from all tsunamis.

The National Weather Service, in combination with other agencies, has developed a community tsunami readiness program and tsunami warning and evacuation procedures have been established for the King Salmon community. A tsunami siren has been installed, there is a clearly marked tsunami evacuation route and a sheltering location has been established on higher ground on the adjoining PG&E power plant site. Evacuation drills have also been conducted in the area.

Furthermore, if the applicant and future landowners receive notification of the flood risks associated with the property, then the applicant and future landowners of the property can decide whether to implement development on the site despite the risks. Therefore, as discussed previously, the Commission attaches **Special Condition Nos. 9 and 8**. As discussed, **Special Condition 9** requires the landowner to assume the risks of flooding hazards to the property and to waive any claim of liability on the part of the Commission, and **Special Condition 8** requires recordation of a deed restriction that imposes the special conditions of the permit as covenants, conditions, and restrictions on the use of the property.

Conclusion

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

H. Protection of Coastal Waters

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

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

The site is relatively flat, and no grading or major vegetation removal is proposed. Construction activities will be limited to the previously developed portions of the parcel. There are no channels or watercourses on the property, and there are several neighboring properties to the south located in between the subject property and the nearest canal connected to Humboldt Bay, approximately 170 feet away from the proposed development. The proposed development is primarily an interior remodel and addition to an existing residence. The proposed project would remove two existing decks and add a new covered entry and fenced concrete patio, resulting in 178 sq. ft. of new impervious surface. The new garage would be constructed in the same footprint as the existing one, and the existing paved garage would be unchanged. The approximately 6100-sq. ft. property is covered by approximately 1,840 sq. ft. of existing impervious surfaces. While the proposed project will result in a slight increase in impervious surfaces, there will still be sufficient impermeable on the subject property to allow for retention and treatment of stormwater onsite.

To ensure that the applicant adheres to appropriate construction-related best management practices (BMPs) for dust control and other water quality protection measures, the Commission attaches **Special Condition 3**. This condition requires, in part, the proper disposal of construction-related debris, the covering of stockpiles whenever there is a potential for rain to prevent polluted water runoff from the site, and

the use of appropriate BMPs for erosion and runoff control as detailed in the current California Storm Water Quality Best Management Handbooks.

Therefore, the Commission finds that the proposed development, as conditioned, is consistent with section 30231 of the Coastal Act, because the project as conditioned will protect marine resources, water quality, and the biological productivity of coastal waters and wetlands.

I. Visual Resources

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

The property is not within a designated Highly Scenic Area. The project site is located in a densely developed residential neighborhood. Expansive and unobstructed public views of Humboldt Bay and coastal dunes are available for motorists and pedestrians from Buhne Drive seaward of the subject site, and the project will have no effect on these existing public views. In addition, public parking is available along Buhne Drive for access to the dunes and shoreline and viewing the Bay. Thus, the proposed development will have no significant adverse impact on views to or along the shoreline as seen from publicly accessible vantage points.

As discussed above, the building site is located on level ground, no major vegetation removal is proposed that would result in significant natural landform alteration, and the project will not increase the maximum height of the existing residence (24 ft).

With regard to the compatibility of the proposed dwelling with the character of the surrounding area, the proposed two-story residence to be remodeled will be a maximum of 24 feet tall and will consist of Hardi-panel and Hardi-plank siding painted in a blue/brown color scheme, and metal roofing. It will be of similar size, scale, and architectural style to some of the other newer development in the neighborhood. The character of the King Salmon area is largely defined by its bay-shore setting and predominantly single-family residential and commercial composition. The community consists of a diversity of architectural styles and sizes with structures ranging from small, older cabins and manufactured homes to larger two- and even a few three-story homes.

Although the development pattern is very compact in the King Salmon area, the overall nighttime character of the area in terms of outside illumination is largely rural in nature, with very little exterior lighting evident. As a result, with the exception of nominally shielded street lighting along Buhne Drive and security lighting within the parking areas of commercial properties in the community, King Salmon has fewer glares from external nighttime lighting than many communities of similar size and density. Accordingly, to

protect the visual character of the area as well as prevent the cumulative impacts of glare to the visual resources of the area, the Commission attaches **Special Condition 6** which requires all exterior lighting associated with the proposed development to be low-wattage and downcast shielded such that no glare is directed beyond the bounds of the property or into adjoining environmentally sensitive areas.

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

J. Public Access

Coastal Act section 30210 states:

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

Coastal Act section 30211 states:

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

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

Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or, (3) agriculture would be adversely affected.

Coastal Act section 30214 states in part:

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

(1) Topographic and geologic site characteristics.

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

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

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

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

In applying these sections, the Commission considers whether public access is necessary to avoid or offset a project's adverse impact on existing or potential access.

The proposed project will not adversely affect public access. The subject property does not have shoreline frontage because it does not front onto a canal and it is across the road (Buhne Drive) from the dune and beach area. Public parking is and will continue to be available on both sides of Buhne Drive, and the parking spaces adjacent to the subject property will not be impacted by the proposed development, as the new driveway will be located off of King Salmon Avenue where public parking currently does not exist. There is no evidence of public use of the subject property for public access, no evidence of trails on the property, and no indication that the site has been used for public access purposes in the past. The proposed development will not increase the demand for public access to the shoreline, as it involves construction of one new single-family residence. And, as discussed previously, the applicant has submitted a written determination from the State Lands Commission that no State or public trust lands are involved in the development permitted by this CDP. For all of these reasons, the Commission finds that the proposed project, which does not include provision of public access, is nevertheless consistent with the public access policies of the Coastal Act.

K. Environmentally Sensitive Habitat Areas

Section 30240 of the Coastal Act states:

- a. Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.
- b. Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

The subject property does not contain any known environmentally sensitive habitat. However, coastal dune habitat exists west of Buhne Drive, approximately 100 feet adjacent to the subject property. Coastal dune habitats in the North Coast region in

general often support populations of rare, threatened, and endangered plant species, including beach layia (*Layia carnosa*), Humboldt Bay wallflower (*Erysimum menziesii* ssp. *eurekaense*), pink sand verbena (*Abronia umbellata* var. *breviflora*), dark-eyed gilia (*Gilia millefoliata*), and other rare species. Both the Commission and the County in past permitting actions for projects in the region have considered these rare plant habitat areas to be ESHA under the Coastal Act and certified LCP. Additionally, the Commission has considered coastal dune habitat in and of itself in the absence of rare species to be ESHA, since the habitat in general is both rare and especially valuable because of its special nature and role in an ecosystem and could be easily disturbed or degraded by human activities and developments.

Although no landscaping has been proposed as part of the project, the Commission finds that the coastal dunes and freshwater wetlands located adjacent to the proposed development do constitute ESHA, and the ESHA could be adversely affected if nonnative, invasive plant species were introduced in landscaping at the subject site. If any of the proposed landscaping were to include introduced invasive exotic plant species, the weedy landscaping plants could colonize (e.g., via wind or wildlife dispersal) the adjacent dune or wetland ESHA over time and displace native vegetation, thereby disrupting the functions and values of the ESHA. The Commission attaches **Special Condition 5** to ensure that only native and/or non-invasive plant species are planted on the subject property. As conditioned, the proposed project will ensure that the ESHA near the site is not significantly degraded by any future landscaping that would contain invasive exotic species.

With the mitigation measures discussed above, which are designed to minimize any potential impacts to the adjacent ESHA, the project as conditioned will not significantly degrade adjacent ESHA and will be compatible with the continuance of the habitat area. Therefore, the Commission finds that the project as conditioned is consistent with section 30240(b) of the Coastal Act.

L. Tribal Consultation & Protection of Archaeological Resources

Coastal Act section 30244 states as follows:

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

The project area lies within the traditional territory of the Wiyot tribe. At the time that Euro-Americans first made contact in this region, the Wiyot lived almost exclusively in villages along the protected shores of Humboldt Bay and near the mouths of the Eel and Mad Rivers. Three federally recognized Tribes in the region – the Wiyot Tribe, the Blue Lake Rancheria, and the Bear River Band of the Rohnerville Rancheria – include citizens of Wiyot ancestry that are culturally affiliated with the greater Humboldt Bay region Wiyot ethnographic area as mapped by the Tribes.

After consulting with the Native American Heritage Commission (NAHC) to obtain the current tribal consultation list for the proposed development site, Commission staff referred the project to the NAHC-recommended tribal contacts and other tribal representatives with known interest in the project area region.⁸ Commission staff referred the project to the Tribal Historic Preservation Officers (THPO) for the Wiyot area Tribes listed above and other local Tribes. No tribal representatives have responded as of the date that this staff report was published. However, given the project's proximity to areas where tribes historically settled along the coast, to ensure protection of any archaeological resources that may be inadvertently discovered at the site during ground-disturbing activities associated with the proposed development, the Commission attaches **Special Condition 4**. This condition requires that if an area of cultural deposits is discovered during the course of the project, all construction must cease and a qualified cultural resource specialist must analyze the significance of the find in compliance with state and federal laws. To recommence construction following discovery of cultural deposits or human remains, the Permittee is required to submit report for the review and approval of the Executive Director demonstrating whether any changes to the project are required to protect archaeological resources. If the Executive Director determines that changes to the project are necessary, and those changes are not de minimis, the Permittee must obtain a permit amendment from the Commission before proceeding with construction.

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

M. California Environmental Quality Act (CEQA)

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

Section 13096 of the Commission's regulations requires Commission approval of CDP applications to be supported by a finding showing the application, as modified by any conditions of approval, is consistent with any applicable requirement of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits approval of a proposed development if there are any feasible alternatives or feasible

⁸ Commission staff referred to project (via mailed letter and email) to tribal representatives from the Bear River Band of the Rohnerville Rancheria, Big Lagoon Rancheria, Trinidad Rancheria, Wiyot Tribe, and Hoopa Valley Tribe on October 16, 2023.

mitigation measures available that would substantially lessen any significant adverse effect the proposed development may have on the environment.

Accordingly, this report has discussed the relevant coastal resource issues with the proposal and the Commission incorporates its findings on Coastal Act consistency at this point as if set forth in full. No public comments regarding potential significant adverse environmental effects of the project were received by the Commission prior to preparation of the staff report. As discussed above, the project has been conditioned to be consistent with the policies of the Coastal Act. As specifically discussed in these above findings, which are hereby incorporated by reference, 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 that would substantially lessen any significant adverse impacts, either individually or cumulatively, that the activity may have on the environment. Therefore, the Commission finds that the proposed development, as conditioned to mitigate the identified impacts, can be found to be consistent with the requirements of the Coastal Act to conform to CEQA.

APPENDIX A

Application File for CDP Application No. 1-23-0289

Applicable policies and standards from the County of Humboldt Local Coastal Program (Humboldt Bay Area Plan & Coastal Zoning Regulations), used for guidance

Humboldt County: Humboldt Bay Area Plan Communities at Risk Sea Level Rise Vulnerability Assessment (Laird, 2018).